



## International Covenant on Civil and Political Rights

Distr.: General  
22 August 2013

Original: English

---

### Human Rights Committee

#### List of issues in relation to the initial report of Malawi (CCPR/C/MWI/1)\*

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

1. Please explain what steps have been taken to fully incorporate the provisions of the Covenant in the legislation of Malawi so that the Covenant can be directly invoked and given effect by courts. Please also clarify which provisions of the Constitution, if any, are inconsistent with the Covenant and in what ways these inconsistencies will be addressed. Please also provide information on what procedures are in place for the implementation of the Committee's Views under the Optional Protocol. Finally, please provide information on what measures have been taken to raise awareness of the Covenant and the Optional Protocol among judges, lawyers and prosecutors.
2. Please explain whether the Malawi Human Rights Commission has the competencies, means and mandate to function in line with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles). Please also provide information on steps taken to ensure the independence of the Commission, and to increase its resources in order to enable the Commission to fulfil its mandate. Please clarify what mechanisms are in place for the effective consideration and implementation of the recommendations issued by the Commission.

##### Non-discrimination, equality between men and women (arts. 2, para. 1, 3 and 26)

3. Please provide information on the findings of the Law Commission with regard to its review of the Penal Code, in particular sections 137(A), 153, and 156, in the context of the Human Rights Committee's previous recommendation to decriminalize consensual same-sex sexual activity. Please clarify whether the State party will introduce monitoring of cases of violence based on sexual orientation. Please also specify whether the State party has set up awareness-raising campaigns to educate the population on the issue.
4. Please provide information on steps taken to ensure that persons who engage in illegal practices targeting widows, such as appropriating a widow's estate, "sexual

---

\* Adopted by the Committee at its 108th session (8-26 July 2013).

cleansing” rituals, and “widow inheritance”, are prosecuted and punished, if found guilty. Please also indicate what measures, including awareness-raising campaigns, have been adopted to eliminate these traditional practices affecting the dignity and personal integrity of women. Please also clarify whether the Marriage and Divorce Family Relations Bill has been adopted by Parliament, and, if so, provide information on its provisions. Please also provide information on measures adopted to raise awareness of the new Gender Equality Law among lawyers, prosecutors, judges and society at large.

### **Right to life (art. 6)**

5. Please indicate whether the State party intends to ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights and amend the Criminal Code with the aim of formally abolishing the death penalty. Please explain whether the death penalty continues to be imposed by some courts and tribunals and, if so, specify the number of persons condemned to death and the number of commutations of the death sentence in the last five years. Please also explain how this is in line with the moratorium on the application of the death penalty and the Constitutional Court decision in the case of *Kafantayeni v. Attorney General*.

6. With regard to reports of cases of extrajudicial killings, please report on the outcome of criminal proceedings related to (1) the death of Edson Msiska in January 2012 in police custody; (2) the killing of Fanikizo Phiri by a police officer during a student demonstration; (3) the death of a student, Robert Chasowa, on campus.

### **Prohibition against torture and cruel, inhuman or degrading treatment or punishment, right to liberty and security of person, treatment of persons deprived of their liberty (arts. 7, 9, 10, 12 and 13)**

7. Please provide information on steps taken to effectively combat torture and excessive use of force by police officers. Please provide information on the work of the Independent Police Complaints Commission, in particular (a) the total number of complaints of alleged torture and cruel, inhuman or degrading treatment on the part of police officers or prison officials that have been filed since its establishment; (b) how many of those have been investigated; (c) the outcome of the investigations and the action taken against those found guilty; and (d) the measures taken for the rehabilitation and compensation offered to victims.

8. Please provide information on steps taken to prevent and combat domestic violence, in particular measures taken to implement and promote the Prevention of Domestic Violence Act. Please provide information, on an annual basis and disaggregated by sex, on the number of cases of domestic violence that have been reported, how many of those have been investigated, how many alleged perpetrators were prosecuted and what sanctions were imposed. Please also provide information on what programmes are in place to train judges and law enforcement personnel on combating domestic violence. In addition, please describe the measures taken to provide assistance specifically to women victims of domestic violence and the number of shelters available to them. Please clarify whether the State party will take steps to criminalize spousal rape.

9. Please provide information on whether female genital mutilation is explicitly prohibited in the Penal Code. What steps has the State party taken to combat and prevent such harmful traditional practices?

10. Please provide information, on an annual basis, on the number of persons held in pretrial detention, as well as the average length of pretrial detention. Are pretrial detainees

held separately from convicted prisoners? Please provide information on the impact of the measures taken to address long pretrial detention periods, as mentioned in the State party's response to paragraph 12 of the Committee's previous concluding observations. Please also indicate whether the new Legal Aid Act allows all persons in police custody and in detention on remand to be assisted by a lawyer. In addition, please indicate what alternative measures to detention, other than bail, can be imposed by the courts.

11. Please provide information on the work of the Prison Inspectorate, as well as the frequency of prison visits. Does the Inspectorate have the power to make unannounced visits? Please clarify to whom the Inspectorate issues its recommendations and whether these are made public. Please also provide information on steps taken to improve detention conditions, including those aimed at nutrition, sanitation, health facilities and overcrowding. How many inmates have died per year since 2005, and what were the reported causes of death? Please also provide an update on the status of the Prison Services Bill, and clarify what steps are being taken to ensure that it is consistent with the State party's obligations under the Covenant concerning conditions of detention. Please also clarify whether juveniles are detained separately from adults, as provided for in the Constitution, and whether men and women are detained in premises that are entirely separate. Finally, please explain what concrete steps the State party has taken to comply with the November 2010 Constitutional Court decision in *Gable Masangano v. The Attorney General*.

### **Elimination of slavery and servitude (art. 8)**

12. Please provide statistical data, by year, on the extent of trafficking in persons, including for sexual exploitation and child labour, including statistics broken down by sex, age and country of origin. Please also provide information on the number of persons prosecuted and convicted and convictions handed down by the courts against the perpetrators of these acts. Please provide information on the impact of steps taken to combat and prevent trafficking and sale of persons, in particular persons under 18 years of age. Please provide an update on the status of the draft Anti-Trafficking Legislation. What concrete measures are in place to protect and rehabilitate victims of trafficking? Please provide information on programmes in place for the provision of training to judges, prosecutors and police officers on the identification, investigation and prosecution of trafficking cases.

### **Right to a fair trial (art. 14)**

13. Please provide an update on steps taken to strengthen the functioning of the judicial system, including efforts to increase access to quality legal assistance and paralegals, as well as the number of judicial officers. Please also indicate whether measures have been taken to reduce the excessive backlog of cases to be handled by courts and, in particular, inform the Committee on the impact of steps taken to strengthen the appeals procedure, with the aim of expediting the appeals process and guaranteeing that all appeals are considered promptly by a court.

### **Right to recognition as a person before the law (art. 16)**

14. Please provide information on whether the Disability Bill has been passed by parliament and what the contents are.

**Prohibition of arbitrary or unlawful interference with privacy, family, home or correspondence (art. 17)**

15. Please provide information on the status of the review of the 2010 amendment of the Police Act, which expanded the authorization of searches without a warrant.

16. Please provide an update on the status of the HIV/AIDS (Prevention and Management) Bill and clarify how article 10 of the Bill (permitting a health service provider to disclose one's HIV status) and its provisions on compulsory testing in certain circumstances are in conformity with the rights guaranteed in the Covenant.

**Freedom of conscience and religion (art. 18)**

17. Please provide information on steps taken to ensure that members of religious minorities are not discriminated against on the basis of their religious beliefs, including in access to education, subsidies, and places of worship.

**Freedom of opinion and expression (art. 19)**

18. Please indicate whether the State party considers repealing the provisions of the Penal Code that empower the Minister of Information to ban newspapers. Please also provide information on the number of journalists and human rights defenders who have been arrested since 2005, the grounds for their arrest, as well as the outcome of the arrests. Please also inform the Committee on the status of the Access to Information Bill and how the regulation of access to information and freedom of expression in Malawi complies with article 19 of the Covenant, in particular with regard to the Committee's general comment No. 34 (2011) on freedoms of opinion and expression.

**Freedom of assembly and association (arts. 21, 22)**

19. Please provide an update on the status of the work of the Commission of Inquiry set up to investigate the handling of demonstrations on 20 July 2011. Please clarify whether those found responsible for killings and ill-treatment of demonstrators have been punished and whether compensation has been offered to victims or their relatives.

**Freedom of movement, marriage, family and measures for the protection of minors (arts. 12, 23 and 24)**

20. Please clarify whether the State party has prohibited corporal punishment in all settings, including in the home and private alternative care settings. Please also provide information on steps taken to prevent sexual abuse of children, and to prosecute and punish perpetrators.

21. Please provide an update on the legislative and awareness-raising measures taken by the State party to protect children against forced and early marriages, as recommended by the Committee in paragraph 19 of its previous concluding observations, and to increase the legal minimum age for marriage to 18 years.

22. Please provide information on the impact of measures taken to eliminate child labour and economic exploitation of children, especially on tobacco and tea farms, subsistence farms and in domestic service. Please also inform the Committee on an annual

basis of the progress made to prevent children from living in the streets and the prevalence of this phenomenon.

**Rights of persons belonging to minorities (art. 27)**

23. Please provide information on measures taken to ensure that members of ethnic, religious or linguistic minorities enjoy the right, in community with other members of their group, to their own culture, to profess and practise their own religion, and to use their own language. Please also provide information on indigenous peoples in Malawi and how their rights are being respected.

**Dissemination of information relating to the Covenant (art. 2)**

24. Please provide information on steps taken to disseminate information on the Covenant and its First Optional Protocol, the submission of the initial report of the State party, the previous concluding observations, and the forthcoming examination of the report by the Committee. Please also provide more information on the involvement of civil society, non-governmental organizations (NGOs), and the Malawi Human Rights Commission in the preparatory process of the report.

---