



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

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Committee against Torture

Concluding observations on the initial report of Malawi*

1. The Committee considered the initial report of Malawi¹ at its 1941st and 1944th meetings,² held on 2 and 3 November 2022, and adopted the present concluding observations at its 1965th and 1968th meetings, held on 18 and 21 November 2022.

A. Introduction

2. The Committee welcomes the State party's acceptance of the simplified reporting procedure on 8 December 2016 and the response to the list of issues prior to reporting, which is considered the initial report of the State party, along with the supplementary information provided during the consideration of the initial report. It regrets, however, that the initial report was submitted 22 years late.

3. The Committee appreciates having had the opportunity to engage in a constructive dialogue with the State party's delegation and the responses provided to the questions and concerns raised during the consideration of the report.

B. Positive aspects

4. The Committee welcomes the accession to or ratification of the following international instruments by the State party since its accession to the Convention:

(a) The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, in 2022;

(b) The International Convention for the Protection of All Persons from Enforced Disappearance, in 2017;

(c) The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, in 2010;

(d) The Convention on the Rights of Persons with Disabilities, in 2009;

(e) The Optional Protocol to the Convention on the Rights of the Child, on the sale of children, child prostitution and child pornography, in 2009;

(f) The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, in 2005;

(g) The Southern African Development Community Protocol on Extradition, in 2002.

* Adopted by the Committee at its seventy-fifth session (31 October–25 November 2022).

¹ CAT/C/MWI/1.

² See CAT/C/SR.1941 and CAT/C/SR.1944.



5. The Committee also welcomes the State party's initiatives to revise and introduce legislation in areas of relevance to the Convention, including the entry into force of the following:

- (a) The Access to Information Act, in 2017;
- (b) The HIV/AIDS (Prevention and Management) Act, in 2018;
- (c) The Trafficking in Persons Act, in 2015;
- (d) The Marriage, Divorce and Family Relations Act, in 2015;
- (e) The Gender Equality Act, in 2014;
- (f) The Child Care, Protection and Justice Act, in 2014;
- (g) The Prevention of Domestic Violence Act, in 2006.

6. The Committee commends the State party's initiatives to amend its policies and procedures in order to afford greater protection of human rights and to apply the Convention, in particular the adoption of the following:

- (a) The National Action Plan on the United Nations Security Council resolution 1325: Women, Peace and Security (2021–2025);
- (b) The National Strategy on Ending Child Marriage (2018–2023);
- (c) The National Plan of Action to Combat Gender-Based Violence in Malawi (2014–2020);
- (d) The National Plan of Action against Trafficking in Persons (2017–2022);
- (e) The Standard Operating Procedures and the National Referral Mechanism to Identify Trafficking Victims, in 2019;
- (f) The National Action Plan on Persons with Albinism in Malawi (2018–2022);
- (g) The National Human Rights Action Plan, in 2018.

C. Principal subjects of concern and recommendations

Definition and criminalization of torture

7. While noting the prohibition of torture and cruel, inhuman or degrading treatment or punishment enshrined in section 19 (3) of the Constitution, which is non-derogable in accordance with section 44 thereof, the Committee regrets that torture is still not codified as a specific offence in the Penal Code with a definition that conforms to article 1 of the Convention. The Committee notes the information provided by the State party that several acts that could amount to torture are criminalized in the Penal Code and other legislation. However, it notes that these offences do not cover acts of psychological torture; lack the specific purposes listed in article 1 of the Convention; and provide for penalties that are not necessarily commensurate with the gravity of the crime. The Committee draws the State party's attention to its general comment No. 2 (2007), in which it underscores the preventive effect of having the crime of torture defined as an offence in its own right (arts. 1 and 4).

8. The Committee urges the State party to establish in its national law a definition of torture in line with that provided in article 1 of the Convention. The State party should review and amend its legislation to ensure that all forms of torture are prohibited in line with the definition contained in article 1 of the Convention, noting that serious discrepancies between the Convention's definition of torture and that incorporated into domestic law create actual or potential loopholes for impunity. In addition, the Committee recommends that the State party ensure that penalties for torture are commensurate with the gravity of the crime, as set out in article 4 (2) of the Convention.

Fundamental legal safeguards

9. While taking note of sections 42 and 44 (2) of the Constitution that provide for procedural safeguards to prevent torture and ill-treatment in law, as well as several steps taken by the State party to enhance these guarantees, the Committee regrets the lack of information on the measures to ensure respect for fundamental legal safeguards and the disciplinary measures imposed on law enforcement officials who have disregarded them. The Committee is further concerned by reports indicating that persons in custody are in practice not routinely afforded the following legal safeguards from the very outset of deprivation of liberty:

- (a) Notification of the rights of the arrested person, including the right to bail;
- (b) Constitutional 48-hour limit to be brought before a judge;
- (c) Timely access to an independent medical examination aimed at uncovering signs of torture and ill-treatment in police custody;
- (d) The right to an independent lawyer or access to legal aid, where necessary, owing to an insufficient number of licensed lawyers (702), as well as the lack of legal aid lawyers vis-à-vis the high demand for legal aid (41 lawyers and 58 paralegals need to handle more than 26,000 cases);
- (e) The absence of interview recordings due to the lack of audio and video equipment in police interrogation rooms. This equipment is currently installed in only two police stations;
- (f) Inadequate or erroneous record-keeping of arrested and detained persons, which reportedly delays lawful release, despite the State party's assertion to the contrary, and the lack of an adequate central registration system in place (art. 2).

10. The State party should:

- (a) **Continue to strengthen its efforts to ensure that all persons deprived of liberty are afforded in practice all fundamental legal safeguards from the very outset of their detention, including the rights to be informed of their rights in a language that they understand; to be brought before a judge within the time frame prescribed by law; to request and receive an independent and confidential medical examination, free of charge, or by a doctor of their choice upon request; to challenge the lawfulness of their detention; and to prompt access to a lawyer and, if necessary, to free legal aid of adequate quality and through a properly funded and resourced legal aid bureau, including during the initial interrogation and inquiry. In this connection, the Committee encourages the State party to continue with its ongoing efforts to address the precarious situation of legal aid, including the ongoing instalment of the toll-free telephone services in police stations for arrested persons to access legal aid and eventual opening of the legal aid offices in all 28 districts, among others;**
- (b) **Continue to install video and audio recording equipment in police interrogation rooms and ensure that recordings are made available to defendants and their counsels, at no cost to the defendant; and that they may be used as evidence in court;**
- (c) **Establish a central register of detention for all detainees at all stages of their deprivation of liberty, including during transfers to different places of detention, and ensure that all persons have their deprivation of liberty properly registered at every place of detention;**
- (d) **Provide information to the Committee on the complaints received, including the number of such complaints, regarding failure to respect fundamental legal safeguards and on their outcome, including the disciplinary measures taken against officials who fail to afford fundamental legal safeguards, in the next periodic report.**

Pretrial detention

11. The Committee welcomes the information provided by the delegation about the ongoing efforts to set up a comprehensive case management system for the judiciary, but regrets to note that there is currently no efficient procedure to track the length or lawfulness of detention after arrest. It is concerned by reports indicating the placement of persons in pretrial detention for prolonged periods, beyond statutory limits, often amounting to the length of the maximum sentence for the alleged offence (arts. 2, 11 and 16).

12. **The State party should ensure that the regulations governing pretrial detention are scrupulously respected and that such detention is resorted to only in exceptional circumstances and for limited periods and in accordance with the law, taking into account the principles of necessity and proportionality and the presumption of innocence, and envisage using alternatives to remand detention, as laid out in the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules), the Guidelines on the Conditions of Arrest, Police Custody and Pre-trial Detention in Africa (Luanda Guidelines) and the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules). The State party should advance its efforts to operationalize the case management system and set up a formal procedure to track the detention of all persons deprived of liberty through a consolidated and automated registry of proceedings that marks the expiration date of the allowed duration of pretrial detention and the date of completion of prison sentences. It should also promote the use of alternatives to pretrial detention, in accordance with international standards, and strengthen training for judges in this regard.**

Malawi Human Rights Commission

13. While noting that the Malawi Human Rights Commission has been granted A status by the Global Alliance of National Human Rights Institutions since 2000, the Committee is concerned that the financial and human resources allocated to the Commission are insufficient to allow it to perform all its functions effectively, in particular its role in receiving and investigating complaints about alleged human rights violations, monitoring of detention facilities and follow-up activities to its recommendations, in addition to its mandates under the Gender Equality Act and the Access to Information Act (art. 2).

14. **The State party should ensure the functional independence of the Malawi Human Rights Commission by providing it with additional financial and human resources and an adequate budget that allows it to carry out its functions, in conformity with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles).**

Confessions obtained through torture or ill-treatment

15. The Committee is seriously concerned about the provisions of section 176 of the Criminal Procedure and Evidence Code that fail to prohibit the admissibility of confessions obtained under torture or ill-treatment and that allow the domestic courts to rely upon such confessions, if they are satisfied, beyond reasonable doubt, that their content is materially true, regardless of allegations of torture. It is further concerned at reports indicating the common use of torture or ill-treatment to elicit confessions, the lack of investigations and prosecutions in this regard, as well as the limited capacity of public officials to gather forensic evidence (art. 15).

16. **The State party should:**

(a) **Take legislative and other necessary measures to amend section 176 of the Criminal Procedure and Evidence Code and ensure that confessions, as well as any other statements, made as a result of torture shall not be invoked as evidence in any proceedings, except when they are used as evidence against a person accused of torture as evidence that such statement was made, and that such cases are investigated;**

(b) **Develop training modules for law enforcement officers on non-coercive interviewing and investigation techniques, including the Principles on Effective Interviewing for Investigations and Information Gathering (the Méndez Principles),**

introduce advanced investigative tools and establish a sound system of gathering forensic evidence;

(c) Provide the Committee with information on any cases in which confessions were deemed inadmissible on the grounds that they had been obtained through torture or ill-treatment; and indicate whether any officials have been prosecuted and punished for extracting such confessions.

Conditions of detention

17. The Committee notes with interest the steps taken by the State party aimed at addressing the overcrowding in places of detention, including the administration of mobile courts, construction of new blocks in several prisons, as well as the measures foreseen under the new prison bill, pending its adoption. However, it raises the following concerns:

(a) Severe prison overcrowding persists (more than 200 per cent of the actual capacity) and material conditions, notably ventilation, sanitation problems and inadequate food and water supplies, remain poor in several prisons, despite some reported improvement projects in this regard. The Committee notes the release of 499 prisoners (out of more than 16,000) on presidential pardon during the coronavirus disease (COVID-19) pandemic did not address the dire situation in prisons appropriately and reportedly did not include vulnerable detainees, such as older persons and those who were ill;

(b) The reported lack of or inadequate prison medical and health-care services, and lack of recreational and educational activities to foster rehabilitation of inmates;

(c) Allegations that persons with intellectual or psychosocial disabilities are routinely held in custody for prolonged periods or in prisons among the general prison population, at times subjected to solitary confinement and restraints, with no access to any appropriate assistance, despite the State party's assertion to the contrary;

(d) The provisions of section 91 (1) (b) of the Prison Act currently in force, which provide for solitary confinement as a form of punishment applicable to prisoners aged at least 16 for a period of up to 25 days, even though the Committee takes note of the information provided by the State party that solitary confinement is applied, for the most part, for protection purposes and does not exceed 15 days, and is never applied to children (arts. 2, 11 and 16).

18. The Committee calls upon the State party to intensify its efforts to bring the conditions of detention into line with the Nelson Mandela Rules and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules). The State party should, in particular:

(a) Take all necessary legislative and other measures, including the enactment of the prison bill, to reduce overcrowding in prisons, especially by making more use of alternatives to detention, and continue to implement plans to develop and renovate the infrastructure of prisons and other detention facilities;

(b) Guarantee that the basic needs of persons deprived of liberty are satisfied, including with regard to water, sanitation and food, and ensure the proper medical and health care of prisoners, in accordance with rules 24–35 of the Nelson Mandela Rules, including as regards the specific needs of women, pregnant women and mothers with children in detention;

(c) Facilitate access to recreational and cultural activities in places of detention, as well as vocational training and education, with a view to supporting the rehabilitation of detainees in the community;

(d) Ensure that detainees with intellectual or psychosocial disabilities are not held in police custody and prisons, but are directed to appropriate health institutions and detainees who require psychiatric supervision and treatment are provided with adequate accommodation and psychosocial support care;

(e) Ensure that the legislation and practice on solitary confinement is in line with international standards, particularly rules 43–46 of the Nelson Mandela Rules and

rule 67 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty and ensure that the new prison bill, once adopted, complies with these standards.

Incidents of violence and deaths in custody

19. The Committee regrets the lack of comprehensive statistical data on the total number of deaths in custody for the period under review, disaggregated by places of detention, the sex, age and ethnicity or nationality of the deceased and the cause of death. According to the scant information provided by the State party, there had been 12 deaths in police custody as a result of suicide since 2020, and 414 deaths in prisons between 2014 and 2018. It is also concerned at reports alleging that the causes of death in detention include torture, ill-treatment, as well as the lack of adequate health care, and that investigations by a coroner (judicial officer) are not routinely carried out in cases of death. The Committee takes note of information provided by the State party's delegation about two violent incidents recorded in Zomba central prison in the past four years, but regrets not having received comprehensive information on cases of inter-prisoner violence, suicides and other sudden deaths in prisons, on the system in place to record and report the aforesaid incidents and to provide protection and prevention measures to detainees in vulnerable situations. It also takes note of the information provided by the delegation about the increase in the number of health clinics in prisons, however, it regrets the lack of information on the measures in place to conduct medical examinations upon admission to prisons, including remand facilities, and to identify and document signs of torture or ill-treatment. While noting that the Prison Inspectorate, as well as the Malawi Human Rights Commission, are mandated to receive complaints, including those concerning torture or ill-treatment, from persons deprived of liberty and conduct investigations, the Committee remains concerned by the low number of cases brought before the Commission (five each year on average), including two allegations of torture by prison officers in Zomba and Chichiri prisons. It further regrets the lack of comprehensive information on the number of complaints received by the Prison Inspectorate and followed up by appropriate prosecution services, the sentences handed down and redress afforded to the victims (arts. 2, 11 and 16).

20. The State party should:

(a) **Adopt measures to record all violent incidents, injuries and deaths in police custody and prisons, ensure that such cases are immediately brought to the attention of relevant authorities ex officio for further investigation, including independent forensic examination – in cases in which autopsies are called for, they should be performed in accordance with the Minnesota Protocol on the Investigation of Potentially Unlawful Death – and compile and provide to the Committee detailed information on the number of cases of injuries and deaths in all places of detention, including suicides, their causes and the outcome of investigations into such cases;**

(b) **Ensure that all relevant staff, including medical personnel, prosecutors and judges, are specifically trained to identify cases of torture and ill-treatment, in accordance with the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol, as revised);**

(c) **Ensure that thorough medical screening on admission to prison (in particular, to the remand prison) is conducted without the presence of police or prison officials and that if the medical personnel conducting the screening have grounds to believe that ill-treatment of a person has occurred, the case is immediately reported to the prosecutor's office or other relevant authorities;**

(d) **Adopt strategies and programmes for the prevention of violence, suicide and self-harm in custody, introduce a risk assessment tool across the prison system and provide training to penitentiary staff in the management of prisoners in this regard; and recruit a sufficient number of prison personnel to ensure an adequate ratio of prisoners to staff.**

Investigation of torture and ill-treatment by law enforcement officers and independent complaints mechanisms

21. While taking note of the information provided by the State party regarding human rights training provided to police officers, the Committee remains concerned about reports indicating the prevalence of torture, ill-treatment, sexual and gender-based violence, excessive use of force and extrajudicial killings committed by police officers. The Committee welcomes the establishment of the Independent Police Complaints Commission in 2021, although it notes with concern reports indicating that it lacks the financial and human resources to be fully operational. It also notes the information provided by the delegation that the Commission had received 105 complaints since 2021 but remains concerned by the fact that only two cases have been recommended for prosecution thus far. The Committee is further concerned about the lack of progress on pending investigations, including the so-called Msundwe saga concerning allegations of sexual assault and rape of women and girls by police in 2019 (arts. 2, 11–13 and 16).

22. The State party should:

(a) **Ensure that prompt, impartial and effective investigations are carried out ex officio into all allegations relating to violence, notably torture, ill-treatment, sexual and gender-based violence and excessive use of force, inflicted by law enforcement officers and that the alleged perpetrators are prosecuted and punished; ensure that alleged perpetrators of torture and ill-treatment are immediately suspended from duty for the duration of the investigation, subject to observance of the principle of the presumption of innocence; and inform the Committee about the number of complaints received, investigated and prosecuted, including those initiated ex officio, and redress afforded to victims;**

(b) **Take steps to strengthen the existing complaints mechanisms by allocating sufficient financial and human resources, ensure that complainants, including victims of torture, who are being held in places of detention can lodge complaints and are protected against any intimidation or reprisals as a consequence of their complaints and that there is no institutional or hierarchical relationship between that body's investigators and the suspected perpetrators of such acts.**

Monitoring of detention facilities

23. According to the information provided by the State party's delegation, the Inspectorate of Prisons conducts, on average, four monitoring visits to places of deprivation of liberty each year, while the Malawi Human Rights Commission has carried out three visits since 2018, which seems rather irregular and sporadic. The Committee also lacks the information it needs to determine whether such visits are unannounced, whether all places of deprivation of liberty can be visited by these bodies and whether international organizations and civil society actors can be invested with powers of supervision over places of detention and custody. Lastly, the Committee regrets the lack of information on the steps taken by the State party to follow up on visit reports and the recommendations therein (arts. 2, 11 and 16).

24. In the light of the State party's pledges made in the context of the universal periodic review process, in November 2020, the Committee encourages the State party to ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. In the meantime, the State party should strengthen the mandates of the monitoring bodies in place and take all possible measures to ensure that international and national monitors are able to carry out regular, independent and unannounced visits to all places of deprivation of liberty. The State party should also ensure effective implementation of the recommendations put forward by monitoring bodies following their visits to detention facilities.

Juvenile justice

25. The Committee is concerned about section 14 of the Penal Code, which sets the minimum age of criminal responsibility at 10. It is further concerned about the information on budgetary constraints in reformatory centres, which might affect the safety, health and

well-being of children detained there and regrets the absence of comprehensive information on the non-custodial alternatives to detention applied in practice (arts. 2, 11 and 16).

26. The State party should raise the minimum age of criminal responsibility and ensure the full implementation of juvenile justice standards, as expressed in general comment No. 24 (2019) of the Committee on the Rights of the Child (paras. 20–28). It should strengthen promoting non-custodial and non-judicial measures, such as diversion, probation, mediation, counselling or community service, wherever possible, for all child offenders, and ensure proper funding to reformatory centres, so that the regime of detention in general for child offenders conforms to international standards.

Death penalty

27. While noting that no executions have been carried out since 1994, a number of death sentence rehearings have taken place since 2015 and 22 of the 25 persons on death row had their sentences commuted in 2022, the Committee remains concerned that domestic legislation continues to provide for the death penalty for a range of criminal offences, including under the Defence Force Act of 2004. It is further concerned about reports received indicating that the courts sentencing persons to capital punishment often rely on forced confessions in the absence of due process guarantees, and that the death-row inmates are held in poor material conditions (arts. 2, 11 and 16).

28. The Committee invites the State party to consider abolishing the death penalty and ratifying the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty. In the meantime, it invites the State party to commute all death sentences to prison terms, strengthen legal safeguards and guarantees of due process at all stages of the proceedings and for all offences, and ensure that the conditions of detention for condemned prisoners are in accordance with international standard.

Sexual and gender-based violence

29. The Committee raises the following concerns:

(a) While welcoming several legislative, policy and institutional measures adopted by the State party to combat violence against women and girls, including sensitization and training activities, the establishment of 20 one-stop centres in hospitals, victim support units in 135 police stations, the toll-free telephone lines and simplified reporting procedures, among others, the Committee is concerned by reports indicating the prevalence of and an increase in this phenomenon and victims' difficulties in accessing medical and psychosocial services, as well as legal support. The Committee also notes data provided by the State party on registered gender-based violence cases since 2005, but regrets the lack of comprehensive information on the investigations and prosecutions of these cases, including domestic violence, and on the assistance, support services and compensation provided to victims in all adjudicated cases;

(b) Marital rape is not criminalized under the Penal Code. In this connection, the Committee is concerned that section 62 of the Marriage, Divorce and Family Relations Act foresees criminalization of marital rape merely during judicial separation;

(c) Sections 137A, 153 (a) and (c), 154 and 156 of the Penal Code criminalize consensual same-sex activities, with a prison sentence of up to 14 years. The reports received indicate that such criminalization renders LGBT+ persons particularly vulnerable to violence by both public officials and private persons and such violence is generally underreported to the national authorities due to fear of reprisals, prosecution and further discrimination. In this regard, the Committee notes the moratorium in place since 2012 on the prosecution for consensual same-sex acts but remains concerned about the information received that a transgender woman was charged under article 153 (c) of the Penal Code in 2021 (arts. 2, 12–14 and 16).

30. The State party should ensure that all cases of gender-based violence, especially those involving actions or omissions by State authorities or other entities that engage the international responsibility of the State party under the Convention, are thoroughly

investigated with a gender-sensitive and culturally sensitive approach, that alleged perpetrators are prosecuted and, if found guilty, punished appropriately, and that the victims or their families receive redress, including adequate compensation. In particular, the Committee recommends that the State party:

(a) **Ensure the strict enforcement of the Prevention of Domestic Violence Act and amend the Penal Code to criminalize marital rape under all circumstances;**

(b) **Ensure that victims of sexual and gender-based violence benefit from protection and have access to medical and legal services, including counselling, safe and adequately funded shelters and redress, including rehabilitation;**

(c) **Intensify efforts to raise awareness among both men and women, including through educational and media campaigns, of the criminal nature of gender-based violence against women in order to challenge its social acceptance and address the stigma discouraging victims from reporting it;**

(d) **Take measures to prevent violence and discrimination against LGBT+ persons on the basis of their sexual orientation and gender expression or identity, including by repealing the above-mentioned sections of the Penal Code and ensuring that its complaints mechanisms are accessible to and capable of facilitating effective protection for victims of or at risk of violence;**

(e) **Collect and share with the Committee data, disaggregated by age, sex and type of crime, on the number of complaints, investigations, convictions and sentences imposed for sexual and gender-based violence, including domestic violence, rape, marital rape, and violence targeting persons based on their sexual orientation or gender expression or identity, on the protection measures, legal and medical services and redress provided to victims.**

Harmful traditional practices

31. While welcoming the State party's declared commitment to combat harmful traditional practices³ and the legislative and other steps taken to eliminate them, including outlawing child marriage in 2015, the Committee is concerned about the increase in child marriages since the start of the COVID-19 pandemic. The Committee is further concerned at the lack of legislation explicitly criminalizing the practice of female genital mutilation. It is also concerned about the reported physical violence inflicted on women in relation to accusations of witchcraft. Furthermore, it regrets the lack of information on investigations and prosecutions for harmful practices, protective measures and redress provided to victims. Lastly, the Committee is concerned at the information received about lenient sentences being handed down in convictions for some of these practices (arts. 2 and 16).

32. **The State party should strictly enforce the legislation concerning the minimum age of marriage and clearly indicate that child marriages have no legal effect and constitute a harmful practice, in the light of general recommendation No. 24 (1999) of the Committee on the Elimination of Discrimination against Women. The Committee also recommends that the State party consider adopting legislation explicitly criminalizing female genital mutilation. The State party should immediately investigate all cases of harmful traditional practices, prosecute the perpetrators and provide redress to victims, adopt measures to eradicate these practices and continue to enhance its sensitization activities, particularly among families, communities and traditional leaders, on the harmful effects of these practices.**

Persons with albinism

33. The Committee notes the information on the steps taken by the State party to combat violence against persons with albinism, including the training of public officials, as well as awareness-raising activities. However, it regrets the lack of information on investigations, prosecutions and convictions handed down, including on the crimes of trafficking in the body parts of persons with albinism, and on the security, protection and prevention measures

³ [A/HRC/46/7](#), paras. 122.64–122.66, 122.141, 122.162 and 122.168–122.180.

adopted, including the assistance and redress afforded to the victims, as well as on the initiatives to address the root causes of such violence (arts. 2, 12–13 and 16).

34. The State party should take effective measures to prevent and protect persons with albinism from ritual attacks and other harmful traditional practices, ensure that all acts of violence are investigated, that perpetrators are brought to justice and that victims receive reparation and have access to rehabilitation services, and address the root causes of such violence.

Trafficking in persons

35. The Committee commends several steps taken by the State party to combat trafficking in persons and the gradual increase in prosecutions and convictions of the perpetrators of trafficking since 2013. Nevertheless, it is concerned about several reported shortcomings identified in the State party's strategy: the legal framework does not properly address the crime of trafficking for sexual exploitation, including through online or digital technologies; cases of trafficking are allegedly underreported vis-à-vis the prevalence of the phenomenon, including child trafficking; data collection on reported and investigated cases are insufficient and lack disaggregated information on the age, sex, gender of the victim, form of trafficking and redress provided to victims. The Committee also notes with concern the recent discovery of a mass grave with 25 bodies, allegedly victims of trafficking, found in northern Mzimba district (arts. 2 and 16).

36. The State party should:

(a) **Take legislative steps to ensure that the crime of trafficking for sexual exploitation is properly criminalized in the Trafficking in Persons Act, including its online and digital technology dimensions;**

(b) **Strengthen its investigative efforts into the crime of trafficking in persons and related practices, including accountability for the mass graves in Mzimba district; prosecute and punish perpetrators in accordance with the gravity of the crime; and provide the Committee with comprehensive and disaggregated data on the number of investigations, prosecutions and sentences handed down;**

(c) **Allocate sufficient funds to implement the legislative and policy frameworks aimed at preventing and combating trafficking, protecting victims and providing them with effective redress, including by strengthening the specialized training to law enforcement officers, judges, prosecutors, social workers and other first responders on identifying victims and on investigating, prosecuting and sanctioning perpetrators under the relevant anti-trafficking legislation.**

Asylum system and non-refoulement

37. While welcoming the State party's efforts to afford protection to asylum-seekers, the Committee is concerned that, according to section 11 of the Refugee Act, a negative decision of the Refugee Committee concerning an application for refugee status can be only appealed to the appropriate Minister and that there is no judicial review of such an outcome. It is further concerned about reports that perceived LGBT+ asylum-seekers are often refused registration and processing of their applications. Furthermore, the Committee notes with concern the absence of a procedure to identify vulnerability among asylum-seekers, including torture, trafficking and sexual and gender-based violence, which heightens the risk of violating the principle of non-refoulement. It is also seriously concerned about the situation of persons in Dzaleka refugee camp, notably the severe overcrowding, the lack of access to basic services, as well as allegations of gender-based violence and restrictions on movement. It is further concerned about reports suggesting that migrant children are placed in detention, often with adults, in poor living conditions and with no access to appropriate assistance to take account of their vulnerable situation (arts. 2–3 and 16).

38. The State party should abide by its obligations under article 3 of the Convention and ensure that, in law and in practice, persons may not be expelled, returned or extradited to another State where there are substantial grounds for believing that they would be in danger of being subjected to torture or ill-treatment. In particular, the State

party should guarantee that all asylum-seekers have access to fair procedures, notably a detailed and thorough interview to assess the risk that they may be subjected to torture and ill-treatment in their country of origin in view of their individual circumstances and ensure rapid and appropriate identification of persons in vulnerable situations and provide them with the necessary access to health-care and psychological services. It should immediately address the precarious conditions in the Dzaleka camp, ensure that migrant children are not detained solely because of their immigration status and are not detained with adults, other than their family members, and adopt security measures to protect all persons placed in camps. The State party should consider amending the Refugee Act by introducing judicial review of administrative decisions to expel individuals and ensure that a right of appeal has suspensive effect.

Human rights defenders and journalists

39. The Committee notes with concern the lack of legislation explicitly protecting the work of human rights defenders and other civil society actors, notably in view of the allegations of threats, arrests, beatings, harassment and intimidations against human rights defenders, civil society activists and journalists in the course of their work, including exercising their right to peaceful assembly or reporting on issues of public interest. It also regrets the lack of information on investigations and prosecutions, including their outcome, and on any protective measures adopted in this regard (arts. 2, 12–13 and 16).

40. **The State party should consider enacting legislation with a view to protecting human rights defenders and taking measures to promote the free and safe civic space, provide protection from any violent acts or intimidation to which defenders or journalists may be exposed because of their activities defending human rights, including their work to protect against and prevent torture and ill-treatment. It should also take all measures to investigate any such allegations and punish those responsible and provide adequate redress.**

Mob justice

41. While noting the steps taken by the State party to tackle mob violence, the Committee remains concerned by reports of mob attacks against alleged offenders, some resulting in deaths, presumably due to a lack of public confidence in the police and criminal justice system. It is also concerned about the lack of information on investigations and prosecutions in this regard (arts. 2, 12 and 16).

42. **The State party should strengthen efforts to eliminate the phenomenon of mob justice and conduct campaigns to raise awareness of its illegal nature, investigate and prosecute such violence and adopt measures to restore public confidence in the police and judicial institutions.**

Redress, including compensation and rehabilitation

43. While noting the information provided by the State party regarding the constitutional rights to an effective remedy (section 41 (3)), as well as the possibility to claim damages in civil proceedings, and the actual damages awarded in a handful of cases, the Committee notes with concern that, apart from the compensatory damages, victims have no access to redress, including the means for as full medical and psychosocial rehabilitation as possible, as required under article 14 of the Convention (art. 14).

44. **The State party should ensure that victims of torture and ill-treatment obtain redress, including the means for as full rehabilitation as possible, and in addition to their claim of pecuniary and non-pecuniary damages, they can acquire access to medical and psychosocial rehabilitation. The State party should conduct an assessment, in cooperation with specialized civil society organizations, of torture victims' existing needs in terms of rehabilitation.**

Training

45. The Committee acknowledges the efforts made by the State party to develop and implement education and training programmes on human rights, including modules on the

Convention covering the absolute prohibition of torture, for police and prison officers, including the joint training conducted with civil society. However, it regrets the lack of information on specific training on the Convention for judges, prosecutors, border guards and military personnel (art. 10).

46. The State party should include the provisions of the Convention in the curricula of mandatory courses for all relevant authorities, including judges, prosecutors, border guards and military personnel.

Follow-up procedure

47. The Committee requests the State party to provide, by 25 November 2023, information on follow-up to the Committee's recommendations on pretrial detention, confessions obtained through torture or ill-treatment and conditions of detention (see paras. 12, 16 (a) and (b) and 18 (a) above). In that context, the State party is invited to inform the Committee about its plans for implementing, within the coming reporting period, some or all of the remaining recommendations in the present concluding observations.

Other issues

48. The Committee encourages the State party to consider making the declarations under articles 21–22 of the Convention.

49. The State party is requested to widely disseminate the report submitted to the Committee and the present concluding observations, in appropriate languages, through official websites, the media and non-governmental organizations and to inform the Committee about its dissemination activities.

50. The Committee requests the State party to submit its next periodic report, which will be its second, by 25 November 2026. To that end, and in view of the fact that the State party has agreed to report to the Committee under the simplified reporting procedure, the Committee will, in due course, transmit to the State party a list of issues prior to reporting. The State party's replies to that list of issues will constitute its second periodic report under article 19 of the Convention.
