



HAUT-COMMISSARIAT AUX DROITS DE L'HOMME • OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS
PALAIS DES NATIONS • 1211 GENEVA 10, SWITZERLAND
www.ohchr.org • TEL: +41 22 917 9000 • FAX: +41 22 917 9008 • E-MAIL: registry@ohchr.org

REFERENCE:GH/fup-121

20 November 2017

Excellency,

In my capacity as Special Rapporteur for Follow-up to Concluding Observations of the Human Rights Committee, I have the honour to refer to the follow-up to the recommendations contained in paragraphs 12, 13, 24, and 25 of the concluding observations on the report submitted by Malawi ([CCPR/C/MWI/CO/1/Add.1](#)), adopted by the Committee at its 111th session in July 2014.

On 18 November 2016, the Committee received the reply of the State party. At its 121st session (16 October-10 November 2017), the Committee evaluated this information. The assessment of the Committee and the additional information requested from the State party are reflected in the Report on follow-up to concluding observations (see [CCPR/C/121/4](#)). I hereby attach a copy of the relevant section of the said report (advance unedited version).

The Committee considered that the recommendations selected for the follow-up procedure have not been fully implemented and decided to request additional information on their implementation. The Committee requests the State party to provide this information in the context of its next periodic report due on 31 July 2018.

The Committee looks forward to pursuing its constructive dialogue with the State party on the implementation of the Covenant.

Please accept, Excellency, the assurances of my highest consideration.

Mauro Politi
Special Rapporteur for Follow-up to Concluding Observations
Human Rights Committee

His Excellency Mr. Robert Dufter Salama
Ambassador
Permanent Representative
Email: mission.malawi@ties.itu.int

Report on follow-up to concluding observations of the Human Rights Committee, [CCPR/C/121/4](#):

Assessment of replies¹

- A Reply/action largely satisfactory:** The State party has provided evidence of significant action taken towards the implementation of the recommendation made by the Committee.
 - B Reply/action partially satisfactory:** The State party has taken steps towards the implementation of the recommendation, but additional information or action remains necessary.
 - C Reply/action not satisfactory:** A response has been received, but action taken or information provided by the State party is not relevant or does not implement the recommendation.
 - D No cooperation with the Committee:** No follow-up report has been received after the reminder(s).
 - E Information or measures taken are contrary to or reflect rejection of the recommendation**
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Concluding observations:	CCPR/C/MWI/CO/1/Add.1 , 23 July 2014
Follow-up paragraphs:	12, 13, 24 and 25
First reply:	CCPR/C/MWI/CO/1/Add.2 , 18 November 2016
Committee's evaluation:	Additional information required on paragraphs 12[B], 13[C][C], 24[C][C] and 25[C]

Paragraph 12: Extrajudicial killings

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

Summary of State party's reply

Police completed investigations into the excessive use of force during the nationwide protests of July 2011. 9 police officers were charged with homicide related offences: criminal cases in relation to four officers are before courts while the rest of the suspects' files are with the office of the Director of Public Prosecutions for prosecution.

The Attorney General's office is in the process of establishing mechanisms to ensure that real victims receive compensation.

Committee's evaluation

[B]: The Committee notes the information provided, but requires additional information on: (a) the outcome of court proceedings against the four police officers charged with homicide-related offences, including any convictions secured and the specific punishment imposed; (b) the status of prosecution of remaining cases referred to the Director of

¹ Full assessment available from CCPR/C/119/3 and http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/1_Global/INT_CCPR_FGD_8108_E.pdf

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Public Prosecutions; (c) progress made by the Attorney General's Office in ensuring that victims' families are provided with compensation and rehabilitation, including, if applicable, the amount of compensation paid and the rehabilitation services offered. The Committee also requires information on investigations, prosecutions and convictions regarding cases of extrajudicial killings other than those committed during the demonstrations of July 2011.

Paragraph 13: Prohibition of torture

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 and make them publicly accessible;

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

(d) Ensure that the Police Act complies with the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, and strengthen its efforts to train police officers in human rights.

Summary of State party's reply

(a): In September 2015, two expatriates started the consultation process with key stakeholders for the establishment of the Independent Police Complaints Commission (IPCC).

(b) and (c): The IPCC will be an independent body responsible for receiving and investigating complaints against police officers, including death or injury as a result of police action and those occurred in police custody. Pending the establishment of the IPCC, enquiries into serious acts of police misconduct have been carried out by the Professional Standards Unit (PSU) within the police. Some culprits are either prosecuted or face disciplinary actions, including dismissal. Reports of the PSU may be accessible to the public in accordance with relevant regulations on access to information.

(d): Under section 44 of the Police Act, firearms may be used against a person in lawful custody who is charged with or convicted of a felony and is escaping or attempting to escape; any person who by force rescues or attempts to rescue any person from lawful custody or by force prevents the arrest of himself or another person. In all such cases, a warning is first given that firearm is about to be used and resort to use of firearm is the last option after other alternatives have been explored. Use of firearms is for purposes of disabling and not killing.

Section 105(4) of the Police Act provides for the use of force or firearm during riots, assemblies or demonstrations against a person who kills or seriously injures or attempts to do so; or shows a manifest intention of killing or injuring another person; or against a person who destroys and seriously damage or attempts to do so or shows a manifest intention to destroy any property considered valuable. The degree of force used is for purposes of preventing such actions from taking place. A firearm or other weapon may be used in such cases.

The State party considers that the provisions of the Police Act do not contradict the Basic Principles on the Use of Force and Firearms.

The training manual for police uses the Basic Principles on the use of Force and Firearms as part of the syllabus. These principles are taught at the basic police training at recruitment stage and cadet courses.

Committee's evaluation

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[C] (a), (b), and (c): The Committee regrets the considerable delay in establishing the Independent Police Complaints Commission (IPCC), and requires information on the progress made in this respect; on the composition of the commission and the authority it would report to; and on measures taken to ensure its independence from police and to provide it with adequate human and financial resources to enable it to operate effectively. Pending the establishment of the IPCC, the Committee also requires clarification on how the investigations into allegations of torture and ill-treatment by the Professional Standards Unit within the police meet the requirements of independence and impartiality.

The Committee regrets that no information was provided on whether a central system to keep track of all complaints of torture and ill-treatment has been established and on whether such information is publicly accessible and not provided upon request only. The Committee reiterates its recommendation.

[C] (d): The Committee appreciate the information on the provisions of the Police Act regulating the use of firearms, but requires clarification as to how such use for purposes of preventing fleeing of a person charged with or convicted of felony pursuant to Section 44 of the Police Act, and for protecting property considered valuable under 105(4) of the Police Act, where there is no threat to life comply with the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials that limit the lawful use of firearms only to circumstances of extreme necessity to respond to an imminent threat of death or serious injury or to prevent a particularly serious crime that involves a grave threat to life.

Paragraph 24: Sexual abuse of children

The State party should:

(a) **Amend the Penal Code so as to criminalize all forms of sexual abuse of children regardless of 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 as to produce impunity when adjudicating sexual violence cases.**

Summary of State party’s reply

(b): No case is withdrawn solely by the State unless for insufficient evidence. Generally cases may be withdrawn upon victim’s request and the presiding court has the power to refuse or grant the request. Police officers are trained to question the reasons behind any such withdrawals to avoid undue influence.

The victim support unit plays an important role in the rehabilitation of victims, providing basic counselling services. Advance counselling is offered by the Social welfare under the Ministry of Gender or the One Stop centre (in Blantyre), and NGOs also play a crucial role in this respect.

Committee’s evaluation

[C] (a) and (c): The Committee regrets that the State party provided no information regarding steps taken to criminalize all forms of sexual abuse of children regardless of the sex of the child and to ensure that the “corroboration rule” requiring a witness testimony is not applied in such a way as to produce impunity when adjudicating sexual violence cases. The Committee reiterates its recommendations.

[C] (b): The Committee notes the information provided, but requires more specific information on measures taken since the adoption of the concluding observations to bring all perpetrators of all forms of sexual abuse of children to justice, and information on compensation and concrete rehabilitation services offered to victims in practice. The Committee reiterates its recommendations.



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Paragraph 25: Forced and child marriages

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 stakeholders and conduct awareness-raising campaigns aiming to prevent forced and child marriages;

(c) Prosecute alleged perpetrators, punish those convicted and compensate the victims.

Summary of State party's reply

No information provided.

Committee's evaluation

[C]: The Committee regrets that the State party provided no information on the implementation of its recommendation on forced and child marriages. The Committee reiterates its recommendation.

Recommended action: A letter should be sent informing the State party of the discontinuation of the follow-up procedure. The information requested should be included in the State party's next periodic report.

Next periodic report: 31 July 2018
