



REPUBLIC OF MALAWI

**OPENING STATEMENT DELIVERED BY THE DIRECTOR
OF PUBLIC PROSECUTIONS, DR. STEVEN W.S. KAYUNI**

**DURING THE 75TH SESSION OF THE COMMITTEE
AGAINST TORTURE IN GENEVA, SWITZERLAND**

**ON THE REVIEW OF THE REPUBLIC OF MALAWI'S
INITIAL REPORT UNDER THE CONVENTION AGAINST
TORTURE**

2ND NOVEMBER 2022

1. The Chairperson of the Committee, distinguished members of the Committee, distinguished delegates, ladies and gentlemen, on behalf of the Government of Malawi and the people of Malawi, The Malawi delegation is honoured to appear before you today to introduce Malawi's initial report and engage in a constructive dialogue on the measures being taken by Malawi to implement the Convention Against Torture.
2. The delegation comprises senior officers of various Government Ministries, Departments and Agencies. Appearing before you are officials from the Ministry of Justice, Malawi Police Service, Legal Aid Bureau, Ministry of Gender, Community Development and Social Welfare and Malawi's Permanent Mission here in Geneva. The delegation was supposed to include an officer from the Malawi Prisons Service. However, due to last-minute logistical issues, the officer has not been able to travel to Geneva.
3. Chairperson, distinguished members of the committee, the express condemnation and prohibition of torture or cruel, inhuman or degrading treatment or punishment, in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and ultimately under the Convention Against Torture, is testament to the seriousness of the act and its repercussions on a human being. Subjecting fellow human beings to torture or cruel, inhuman or degrading treatment or punishment is inexcusable and must be condemned using the strongest measures possible. We wish to commend the Committee for working relentlessly to remind States Parties of their obligation to prevent and prohibit acts of torture, and shining a light on acts of torture that, if not for the Committee, would go unnoticed and victims' rights not vindicated.
4. Malawi joins the international community in the absolute condemnation of torture; this is why the Constitution of Malawi expressly prohibits torture, cruel, inhuman and degrading treatment and punishment. Malawi has not stopped there, it ratified the Convention Against Torture as an unequivocal expression of her support for

the cause to outlaw torture, cruel, inhuman and degrading treatment and punishment.

5. Chairperson, distinguished members of the Committee, we wish to take this opportunity to express our Government's gratitude to this Committee for allowing Malawi to use the Simplified Reporting Procedure to submit the Initial Report.
6. We would like at the outset to acknowledge all the key stakeholders who worked on the Initial Report. (The full list is annexed to the Report as Annex 1). The Report, therefore, is a product of a wide consultative process which included a data collection exercise in all four regions of the country. The consultations were conducted in selected districts (three in the northern region, three in the central region, three in the eastern region and four in the southern region). Each regional consultation exercise culminated in a regional consultative working session. Resultantly, four regional workshops were held. The report was finally subjected to validation, at the national level, with all the major stakeholders.
7. Chairperson, distinguished members of the Committee, the Bill of rights in the Constitution of Malawi remains the bedrock of our human rights architecture.- The Constitution provides for an array of human rights including the express guarantee of the inviolability of human dignity. Section 19 of the Constitution expressly prohibits torture, cruel, inhuman or degrading treatment and punishment, which is non-derogable and not subject to any statute of limitation. The Constitution also prohibits the use of corporal punishment in judicial proceedings or in any other proceedings before any organ of the State.
8. Although Malawi's statute books do not contain a definition of torture as provided under the Convention nor does it have an express criminal offence termed torture, various criminal offences which amount to torture as defined under article 1 of the Convention, can be found in various pieces of legislation such as the Penal Code (Cap 7:01), the Trafficking in Persons Act (Cap 7:06); the Prevention of Domestic

Violence Act (Cap 7:05) and several more pieces of legislation stated in paragraphs 4 and 40 of our Report.

9. As an example, Chapter XXII of the Penal Code provides for the criminalisation of acts which would endanger the life and health of a person. Such offences include acts intended to cause grievous harm; grievous harm; attempting to injure by explosive substances; maliciously administering poison with intent to harm; unlawful wounding and assaults occasioning actual bodily harm. These offences attract hefty punishments and are not subject to any statute of limitation.
10. Malawi reiterates its commitment to ensuring that all acts of torture and attempts to commit torture are offences under our criminal law and are punishable with hefty punishments by ensuring that the Law Commission continues to conduct consultations on how to strengthen legislation relating to torture.
11. We will now share with you some additional and significant legislative, policy and administrative developments that have occurred since the submission of the Report in 2019.

Legislative Developments

Chairperson and distinguished members of the committee,

12. The Law Commission's report on the review of the Prisons Act was tabled before the Cabinet Committee on Legal and Parliamentary Affairs in June this year. The Committee endorsed the Report and recommended that Report should be tabled before the full Cabinet. Once the Cabinet endorses the report, the Ministry of Justice will proceed to work on the Prisons Bill, which will replace the current Act.
13. The Law Commission's Report proposes progressive ways to improve the conditions of detention of prisoners by proposing a more human rights-based approach to the management of prisons to comply with the minimum international standards on the treatment of prisoners. This will be a significant improvement to the current Act which

predates Malawi's current constitutional dispensation. The Report also proposes the establishment of a parole board and parole system; open prisons and halfway houses.

14. The second legislative development is the Access to Information Act (Act No. 13 of 2017) which came into force on 30th September 2020. This law is crucial in empowering citizens and residents of Malawi to access information held by the State or any of its organs in so far as such information is crucial to assist them in vindicating their rights. This law is a vital tool in ensuring that public officers such as police officers and prison officers are held accountable and are transparent in how they exercise their duties.
15. The third legislative development is the tabling of the Penal Code (Amendment) Bill, 2022 before Parliament. The Penal Code (Amendment) Bill proposes to decriminalise sedition and enhance the legal framework for terrorism and sexual offences against children and persons with mental disabilities; by repealing the offence of sedition and related offences; enhancing penalties against sex offenders, particularly where the victim is a child or a person with a mental disability; extending the law to protect the boy child and male persons with mental disabilities from sexual exploitation; effecting consequential amendments to the age of a child following the amendment to section 23 of the Constitution, redefining a child as a person under the age of eighteen years; decriminalising sexual acts between children below eighteen years and whose age difference is two years or less and the introduction of terrorism and terrorism-related offences.
16. The Bill was tabled in Parliament in August 2022 and referred to the Legal Affairs Committee of Parliament. The Legal Affairs Committee will present its report during the Parliamentary sitting commencing 14th November 2022 then Parliament will consider whether to pass the Bill or not.

Policy and Administrative Developments

Legal safeguards of detainees

Chairperson and distinguished members of the committee,

17. As we have highlighted in our Report, all detainees enjoy legal safeguards under the Constitution of Malawi. Section 42 provides among other rights, for the right to have access to a legal practitioner, to request and receive an examination by an independent physician of their choice, to be informed of their rights and of the charges against them, to notify a relative or any other person of their choice of their arrest, and to be brought promptly before a judge within 48 hours or shortly thereafter or be released on bail.
18. In order to address prolonged pre-trial detention, the Prison Service has trained its own paralegal officers to provide in-house legal clinics to the newly admitted inmates which would facilitate speedy trials. Furthermore, CSOs such as the Paralegal Advisory Services Institute (PASI) play a crucial role in ensuring that remandees are brought before a court of law and are granted bail through the Legal Aid Bureau.

Conditions of detention in prisons

19. The Government of Malawi has made strides to improve the conditions of detention in prisons. However, overcrowding in prisons remains an issue the Government is grappling with. To address this issue, the Malawi Prisons Service has since 2018 constructed and rehabilitated prison cells in 8 prison stations providing an additional 2,635 square metres of space to prisoners. The Malawi Prisons Service is also in the process of constructing a maximum-security prison in the capital city, Lilongwe.
20. Other measures being taken to address prison overcrowding include ensuring the quick disposal of cases through conducting mobile courts, the Judiciary meting out more non-custodial sentences for less serious offences and the President pardoning prisoners who are old, in ill health or have displayed good behaviour.

21. The Malawi Government considers prisoners' nutrition as an important aspect of prison life. However, due to serious economic challenges facing the Malawi Government, compounded with other pressing priorities on the national budget the sums appropriated to the Prison Service for the procurement of food are inadequate. . However, the Malawi Prison Service has put in place measures to provide food to prisoners over and above the sums appropriated to it by Parliament every year, such as running farms where prisoners engage in farming and supply food for their prison and other prisons.
22. The Prison Service also strives to provide appropriate health services to prisoners. The Prisons Act mandates the availability of a medical officer at every prison to oversee the health of prisoners. A doctor from the Ministry of Health is designated as the medical officer of Prisons who oversees medical officers such as nurses, environmental officers, pharmacists, nutritionists and nurse midwife technicians, posted in various prison stations. These medical officers pay particular attention to the needs of vulnerable prisoners such as pregnant women, women with children and prisoners with mental disabilities.
23. Furthermore, to improve the prison environment, the Prisons Service, in conjunction with stakeholders among them being United Nations Office on Drugs and Crime (UNODC) is rehabilitating prison structures to ensure that they are health-friendly by improving ventilation.
24. Malawi Prison Service has also put in mechanisms to manage communicable diseases. The Malawi Prisons Service has adopted the SADC minimum standard package to prevent the transmission of communicable diseases within the prisons using the three-phase intervention model. As an example, in almost all prisons, inmates living with HIV have access to ART. As far as Tuberculosis (TB) is concerned; there is a high prevalence of TB in prisons. However, the Malawi Prison Service periodically conducts health education sessions and mass screening of prisoners. To

prevent TB transmission, since 2020, the Prison Service has improved ventilation in 16 of out 32 prison stations.

25. During the height of the COVID-19 pandemic, the Ministry of Health provided PPEs and testing for COVID-19 in prisons. Whereas the Department of Disaster Management Affairs provided funds for the procurement of PPEs and medical supplies as well as funds for the rehabilitation and construction of isolation cells. CSOs have also played a crucial role in supporting the Government's efforts during the pandemic. Furthermore, to reduce overcrowding, the President, His Excellency Dr Lazarus McCarthy Chakwera, pardoned 499 prisoners who had either been convicted of less serious offences or had served half of their sentences or displayed reformative behaviour.

Mechanisms for providing redress

Chairperson and distinguished members,

26. To ensure that there are mechanisms in place for the accountability of actions of law enforcement officers, the Independent Complaints Commission of Police (IPCC) established under the Police Act to investigate complaints against the Malawi Police Service (MPS) and its officers in the conduct of its duties, was finally operationalized in January 2021. The Commission is headed by a Commissioner. Since January 2021, the Commission has received 105 complaints from the public through walk-ins, e-mails and phone calls. Some of the complaints dominating the list include police brutality. Out of the 105 cases, the Commission is investigating 54 cases relate to deaths of persons while in police custody or death at the hands of the police such as police shootings and 17 cases involving excessive use of force by police officers. 2 cases have been recommended for prosecution whereas the other cases are still under investigation. Among the cases being investigated is the case involving allegations that police officers raped women and teenage girls in Msundwe, M'bwatalika, and Mpingu in Lilongwe District, in 2019, commonly dubbed the 'Msundwe Saga'.

27. The Prisons Inspectorate established under section 169 of the Constitution is tasked with monitoring the conditions, administration and general functioning of penal institutions while taking into account the relevant international standards. The Inspectorate continues to provide oversight over the conduct of prison officers and has the power to receive complaints from prisoners and other persons, conduct investigations and recommend action to be taken against any prison officer. The Inspectorate enjoys operational independence free of interference from any branch of Government.

28. Another institution in the Malawi legal system which is crucial in the promotion and protection of human rights of people in Malawi is the Malawi Human Rights Commission (MHRC). The MHRC is an independent national human rights institution established under section 129 of the Constitution and enjoys an “A” status accreditation at the Global Alliance of NHRIs. The Human Rights Commission consists of the Law Commissioner, the Ombudsman and persons nominated on behalf of reputable organizations working in the area of human rights. Section 131 of the Constitution expressly prohibits a person in public office or the President or Vice-President, a Minister or Deputy Minister or a member of Parliament from being a member of the Commission. This ensures that the MHRC remains independent in the exercise of its duties. The members of the Commission are appointed through a transparent process outlined in the Human Rights Commission Act. The Commission is funded through sums appropriated by Parliament.

29. The MHRC is empowered to investigate any allegations of violation of human rights. As an example, in 2019, the MHRC investigated acts of torture allegedly perpetrated by police officers resulting in the death of Mr Lule Buleya. Mr Buleya was arrested and charged with offences *inter alia* relating to the abduction of a 14 year-old boy with albinism. In February 2019, while in police custody, in the capital city, Lilongwe, Mr Buleya died. The MHRC issued a report on its investigation in May 2019. The report concluded that the deceased was tortured and that the cause of death was torture

using electricity. The MHRC recommended that the police officers involved be prosecuted and the prosecution commenced in 2020.

30. The MHRC has also been charged with an additional mandate to oversee the implementation of provisions of the Access to Information Act which is crucial in vindicating the rights of citizens against acts perpetrated by public officers.
31. With regard to the adjudication of cases, the Malawi Judiciary is working towards improving service delivery and has since introduced specialised High Court divisions (one of them being the Criminal Division), working towards the re-introduction of the functional e-case management system, developed the capacity of judicial officers, increased the number of judges, established a committee to address outstanding court judgements, expedited the process of confirmation of criminal cases from magistrate courts and revamped and scaled up the use of mobile courts to dispose of matters.
32. The Judiciary continues to treat cases of allegations of torture with the utmost seriousness. One of the notable cases is the case of the death of Mr Lule Buleya which I mentioned earlier. In September, this year, the High Court found the 13 police officers with a case to answer, and the prosecution will now proceed to its finality. To also provide redress to the deceased's family, the court awarded the widow of the deceased damages amounting to K44 million (about USD\$41,353) for loss of life, in November 2021. The court, through civil proceedings, makes orders for damages for victims of torture. Another example is the case of **Magombo v Attorney General** Personal Injury Cause No. 282 of 2018, the claimant claimed damages for pain and suffering and loss of amenities of life, following being beaten up while in police custody for one day. The court awarded the Claimant K2,000,000.00 for pain and suffering; K1,000,000.00 for loss of amenities of life; K1,000,000.00 for disfigurement and K30,000,000.00 as punitive damages and costs of the action (to be taxed). A total of K34,000,000.00 (about USD 31,950).

33. Another institution crucial in the vindication of both victims of torture and persons accused of committing acts of torture is the Legal Aid Bureau, which was established in 2011. Since its inception, the Bureau has increased its reach throughout the country by opening its offices in 19 of the 28 districts of the country. . The Bureau currently has 41 lawyers and 58 paralegals, which is an increase from the 13 lawyers and 19 paralegals the Bureau had in the 2018/2019 financial year. The Government of Malawi is committed to ensuring that the Bureau has offices in all districts and that the number of lawyers and paralegals will be further increased to continue to support pre-trial detainees and prisoners.

Sexual and Gender-Based Violence

Chairperson and distinguished members of the committee,

34. To address the issue of sexual violence, the Government of Malawi continues to implement the one-stop centre model to provide assistance to victims which includes providing counselling and medical and psycho-social needs. Furthermore, the Malawi Police Service has Police Victim Support Units (PSVUs) within the Community Policing Services Branch. These units provide victims with emergency safety and protection as well as provide initial care and support to victims before being referred to a hospital or any relevant authority. There are also Community Victim Support Units (CVSUs) in rural and remote areas. Victims or friends and relatives of victims of gender-based violence can also use the toll-free lines (116 and 5600) to report a case. In 2020, with the support of the United Nations and the European Union in a project called the Spotlight Initiative, a harmonised data collection tool was created to facilitate cohesive Sexual and Gender-Based Violence and harmful practices-related data collection by the major players in the one-stop centre model, namely the Malawi Police Service, the Judiciary, health and social welfare offices. This tool is aimed at addressing the challenge of collecting data relating to Sexual and Gender-Based Violence. The data

collection tool is crucial in ensuring that the Government of Malawi implements evidence-based interventions to eliminate all forms of violence against women and girls. As much as the project is reaping rewards. The project is in only six districts, two in the North, two in the Centre and two in the South. Furthermore, there are limited resources to train and coordinate various actors involved in Sexual and Gender-Based Violence and a shortage of staff to implement interventions.

Harmful cultural practices

Chairperson and distinguished members of the committee

35. Malawi has taken several measures to eliminate harmful cultural practices. The legislative measures taken include the enactment of the Prevention of Domestic Violence Act, the Marriage Divorce and Family Relations Act, the Child Care, Protection and Justice Act, the Gender Equality Act and the HIV and AIDS (Prevention and Management) Act which contain provisions that criminalize all harmful practices.

36. The policy measures which have been taken include the adoption of the National Strategy on Ending Child Marriages (2018- 2023) and the National Action Plan on UNSCR-1325 on Women, Peace and Security (2021-2025). The Government of Malawi is also sensitizing communities to modify societal attitude towards harmful cultural practices. 28 District Chief Forums and 310 community Chief Forums are leading in GBV Patrols, ending child marriages, modifying and eliminating harmful practices. Religious leaders are also playing a crucial role in eliminating harmful cultural practices in communities. The primary targets of these interventions are vulnerable girls (including those already married, withdrawn or at risk of getting married), parents, guardians, relatives and men and boys who help perpetrate are affected by the practice of child marriage; and children's peer groups. The secondary targets are religious, community, traditional and cultural leaders, policymakers, school administrators and teachers, local government officers,

police, social workers, child protection workers, health workers, members of law enforcement agents and the judiciary

Persons with albinism

Chairperson and distinguished members of the committee,

To combat the attacks against people with albinism, the Government of Malawi in collaboration with various stakeholders has been implementing the following special measures:

- (a) the establishment of a multi-sectoral National Technical Committee on Abuse of Persons with Albinism in Malawi that has been discussing with all concerned stakeholders on the initiatives and strategies to end the increased and gross violations of human rights of persons with albinism;
- (b) the adoption of 13th June as an International Albinism Awareness Day (IAAD) and the implementation of multimedia awareness programmes to educate and sensitize the general public on albinism issues in the country;
- (c) training of police prosecutors and magistrates across the country in prosecuting cases of attacks against persons with albinism;
- (d) the review of the Penal Code and the Anatomy Act to make provisions for new offences and meting out stiffer penalties;
- (e) placement of a Practice Direction by the Chief Justice that all albinism-related cases must solely be handled by professional magistrates;
- (f) development of a handbook for prosecutors, magistrates and judges to guide the prosecution of albinism cases;
- (g) strengthening of community protection and cross-border systems using inter-country and regional cooperation;
- (h) placement of learners with albinism in schools with boarding facilities where the police are providing security; and

- (i) mapping of persons with albinism across the country to identify their population size and where they live to arrange for proper security measures.

Trafficking in Persons

Chairperson and distinguished members of the committee,

- 37. Since the enactment of the Trafficking in Persons Act in 2015, the Government of Malawi adopted the Standard Operating Procedures (SOPs) and the National Referral Mechanism (NRM) to identify trafficking victims. Furthermore, the Government has gazetted 4 safe homes for victims of trafficking and conducted various trainings targeting health workers, social welfare officers, law enforcement officers and judicial officers.
- 38. The Government of Malawi through the Department of Social Welfare and Ministry of Homeland Security also provides victims of trafficking with psychosocial support and access to remedies, through legal redress. To specifically address the trafficking of women and girls for economic reasons, the Government is implementing the National Action Plan on UNSCR 1325 on Women, Peace and Security (2021 to 2025). The plan is aligned with UNSCR pillars of participation, protection, prevention, relief and recovery.

Refugees and Asylum seekers

Chairperson and distinguished members of the committee,

- 39. Malawi continues to uphold the principle of non-refoulement. Section 10 of the Refugee Act (Cap. 15:04) confirms the principle. The Government, through the Refugees Department within the Ministry of Homeland Security, ensures that asylum seekers have access to refugee status determination procedures from the point of entry.

40. To comply with the principle of non-refoulement Persons of Concern (PoC) who claim asylum are assessed at the point of entry into Malawi by the Department of Immigration, once cleared, they are referred to the Transit Shelter for further processing.
41. The Government of Malawi with the support of cooperating partners provide basic necessities to asylum seekers and refugees present at Transit Shelters and Dzaleka Refugee Camp.

Training and capacity development

42. The Government of Malawi in cooperation with international partners such as UN bodies, the Commonwealth Secretariat, regional bodies such as SADC and local CSOs, provide trainings relating to the prohibition of torture. The Malawi Police Service and the Malawi Prisons Service conduct such trainings to cadets on enrolment and continuous trainings throughout their service. The trainings also target senior police and prison officers.

International Cooperation

43. To ensure that acts of torture are investigated, and perpetrators arrested and prosecuted, the Government of Malawi enters into extradition treaties and mutual legal assistance treaties with other countries and regional bodies. Malawi ratified the South African Development Community (SADC) Protocol on Extradition. Malawi has also entered into several Mutual Legal Assistance Treaties and Memoranda of Understanding with Mozambique, Tanzania, Zambia, Zimbabwe, Rwanda, India, Egypt, Kenya and the Netherlands.

Challenges

44. Chairperson, distinguished members of the Committee, while Malawi is making some concerted efforts in ensuring that the provisions of the Convention are implemented at the national level, there have been some challenges such as:

- (a) inadequate funds to implement progressive laws and policies;
- (b) lack of data collection mechanisms ;
- (c) limited training and capacity development of law enforcement officers, judicial officers and medical practitioners in addressing cases of torture;
- (d) limited coordination between law enforcement agencies; and
- (e) limited awareness about the provisions of the Convention despite the sensitization campaigns conducted by Government and Civil Society Organisations.

45. In conclusion, on behalf of the Government of Malawi, we reiterate Malawi's commitment to ensuring that the provisions of the Convention are implemented at the national level. It is the firm resolve of the current administration to face these challenges head-on and ensure that the ideals and dreams of our founding fathers are fully realized. In this regard, we wish to appeal to our international and regional partners to provide the necessary technical assistance to help Malawi to build the capacity necessary to implement the Convention. Our delegation looks forward to engaging in a constructive dialogue with the Committee.

We thank you for your attention.