



# International Convention for the Protection of All Persons from Enforced Disappearance

Distr.: General  
8 March 2024

Original: English

## Committee on Enforced Disappearances

### List of issues in relation to the report submitted by Malawi under article 29 (1) of the Convention\*

#### I. General information

1. With reference to paragraph 4 of the State party's report,<sup>1</sup> please provide additional information about the participation of civil society organizations and the Malawi Human Rights Commission in the preparation of that report through the process led by a national task force chaired by the Ministry of Justice.
2. As regards the information provided by the State party in paragraphs 15, 16 and 22–24 of its report, please clarify the status of the Convention in domestic law, including the Constitution, and explain if an act of parliament has incorporated the Convention into domestic law. Concerning the State's affirmation that "there are no judicial decisions in which the Convention has been applied *sensu stricto*", please indicate whether the provisions of the Convention can be directly invoked before and applied by the courts or other competent authorities.
3. With reference to the Malawi Human Rights Commission, please provide additional information about:
  - (a) Its competences with respect to cases of disappearances, including enforced disappearances, and activities carried out in relation to the Convention;
  - (b) Whether the Commission has received any complaints relating to enforced disappearances since the entry into force of the Convention and, if so, describe the actions taken and their results;
  - (c) The measures taken to promote awareness of the Convention among the general public and national and local authorities;
  - (d) The steps taken to ensure that the Commission has available the necessary financial, technical and human resources to fully perform its functions;
  - (e) How the independence and impartiality of the Commission are guaranteed.
4. Please clarify whether the State party intends to make the declarations provided for in articles 31 and 32 of the Convention related to the Committee's competence to receive and consider individual and inter-State communications, and the steps taken in that regard.

\* Adopted by the Committee at its twenty-sixth session (19 February–1 March 2024).

<sup>1</sup> [CED/C/MWI/1](#).



## II. Definition and criminalization of enforced disappearance (arts. 1–7)

5. Please indicate whether there exist databases on disappeared persons and, if so, indicate the type of information that is entered into them. Please specify whether that information is crossed-checked with other databases, such as registers of persons deprived of liberty, and the methodology used to keep the existing databases up to date (arts. 1–3, 12 and 24).

6. Please provide information on steps taken to gather statistical information and identify cases of enforced disappearances in the State party. In that context, please provide available data, disaggregated by sex, gender identity, sexual orientation, age, nationality, ethnic origin, religious affiliation and occupation of the victim, on: (a) the number of disappeared persons in the State party, specifying the date and place of disappearance and the number among them who have been located; (b) the number of persons who may have been subjected to acts that may correspond to the definition of enforced disappearance under article 2 of the Convention; and (c) the number of persons who may have been subjected to the acts referred to in article 3 of the Convention, including disappearances committed for the purpose of trafficking in persons, illegal intercountry adoption and, in the light of the Committee’s general comment No. 1 (2023) on enforced disappearance in the context of migration, disappearances of migrants (arts. 1–3, 12 and 24).

7. With respect to paragraphs 26–31 of the State party’s report, please describe the legal and administrative measures adopted to ensure that no derogation from the right to not be subjected to enforced disappearance can be made under exceptional circumstances, including a state of emergency (arts. 1, 12 and 24).

8. In the absence of an autonomous crime of enforced disappearance and with regard to paragraphs 25, 32–36 and 59–65 of the State party’s report, please provide information on:

(a) The progress of the work on “a comprehensive legal framework that will address the offence of enforced disappearance”, including a prospective timeline for its adoption and its compatibility with the Convention;

(b) Any other steps taken to incorporate enforced disappearance as an autonomous offence in domestic law in accordance with the definition contained in article 2 of the Convention;

(c) The measures taken to define enforced disappearance as a crime against humanity in accordance with article 5 of the Convention (arts. 2, 4, 5 and 7).

9. With respect to paragraphs 66–68 of the State party’s report, please explain:

(a) The applicable legislation governing the conduct enumerated in article 6 (1) (a) and (b) of the Convention and how this legislation ensures that any person engaging in such conduct is held criminally responsible;

(b) The legislation that addresses the prohibition to invoke an order or instruction from any public authority to justify an offence of enforced disappearance and indicate whether the notion of “due obedience” as a criminal law defence has any impact on the implementation of this prohibition (art. 6).

10. In relation to paragraphs 69–73 of the State party’s report, please describe the actions adopted to ensure enforced disappearance is punished with appropriate penalties that take into account its extreme seriousness, while avoiding the death penalty. Please explain the efforts made to guarantee that courts take into account the mitigating and aggravating circumstances provided for under article 7 (2) of the Convention (arts. 2, 4 and 7).

11. Concerning reports on disappearances of persons with albinism and crimes of trafficking in their body parts,<sup>2</sup> as well as allegations of arbitrary detentions, discrimination and violence against lesbian, gay, bisexual, transgender and intersex persons,<sup>3</sup> please indicate:

- (a) Whether any complaints have been lodged with regard to disappearances affecting persons with albinism and lesbian, gay, bisexual, transgender and intersex persons;
- (b) The measures taken to investigate such allegations, prosecute and sanction perpetrators and provide reparations to victims;
- (c) The actions taken to prevent such acts (arts. 1–3, 12 and 24).

### **III. Judicial procedure and cooperation in criminal matters (arts. 8–15)**

12. In relation to paragraphs 74–76 of the State party’s report, please explain, including by providing information on the specific legal provisions, the State party’s affirmation that “all the offences in the Penal Code in relation to enforced disappearance are not subject to any statute of limitation”. Please indicate the measures taken to guarantee the right of victims of enforced disappearance to an effective remedy, in compliance with section 41 of the Constitution (art. 8).

13. Please explain how the State party establishes its competence to exercise jurisdiction over enforced disappearance in the cases contemplated in article 9 (1) and (2) of the Convention (art. 9).

14. Please describe the procedures in place to ensure the presence of alleged offenders before the competent authorities and the legal, administrative or judicial measures in place to carry out a preliminary inquiry or investigation to establish the facts should the State party take the measures referred to in article 10 (1) of the Convention (art. 10).

15. With respect to paragraphs 89–97 of the report, please explain the actions taken to guarantee: (a) that any person tried for enforced disappearance benefits from a fair trial; and (b) the independence and impartiality of courts. In that regard, please describe the measures taken to prevent and combat corruption, specifically among police officers, government officials and the judiciary<sup>4</sup> (arts. 11 and 12).

16. Please indicate whether the Malawi Defence Forces are competent under domestic law to investigate or prosecute alleged cases of enforced disappearance and, if so, in which circumstances and under which legislation (art. 11).

17. While noting the State party’s indications in paragraphs 89 and 97 of its report that Malawi “does not have specific procedure relating to reporting cases of enforced disappearances”, but “has effective mechanisms in place to investigate cases of enforced disappearance when they arise”, please specify:

- (a) The authorities responsible for receiving complaints and investigating cases of alleged enforced disappearance, including how the authorities referred to in paragraphs 17–21 and 86 divide their functions, who can report such cases to those authorities and the requirements for doing so;
- (b) The measures taken to ensure a prompt, thorough and impartial investigation, including in the absence of an official complaint, and a determination to be reached as to the fate of the disappeared persons;
- (c) The steps taken to ensure that the competent authorities have the necessary powers and resources to effectively conduct investigations into allegations of enforced disappearance, including access to documentation and other relevant information, and access

<sup>2</sup> CRPD/C/MWI/CO/1-2, paras. 21 and 22; and CAT/C/MWI/CO/1, paras. 33 and 34.

<sup>3</sup> CAT/C/MWI/CO/1, para. 29 (c); and CCPR/C/MWI/QPR/2, para. 12.

<sup>4</sup> CCPR/C/MWI/QPR/2, para. 4.

to all places of deprivation of liberty and any other in which there are reasonable grounds to believe that a disappeared person may be held;

(d) Whether any complaints have been lodged for acts corresponding to those described in articles 2 and 3 of the Convention. If so, please provide disaggregated data on the search and investigations carried out and their results; the profile of the perpetrator; the proportion of proceedings launched that resulted in convictions; and the sanctions imposed on the perpetrators (arts. 2, 3 and 12).

18. Please describe how the State party ensures that persons suspected of having committed an enforced disappearance are not in a position to influence the progress of an investigation. In particular, indicate:

(a) Whether domestic law provides for the suspension from duties, from the outset and for the duration of an investigation, when the alleged offender is a State official;

(b) The mechanisms in place to ensure that law enforcement, security forces or any other public official do not participate in the investigation into an enforced disappearance when one or more of their officials are suspected of being involved in the commission of the offence (art. 12).

19. Please describe the remedies available to complainants in case the competent authorities refuse to search for a disappeared person and investigate the related allegations, and the mechanisms available for the protection of all persons referred to in article 12 (1) of the Convention against all ill-treatment or intimidation as a result of the complaint or any evidence given. In regard to paragraph 87 of the State party's report, please provide an update on the development of the "Malawi Law Commission's comprehensive law on the protection of witnesses and whistleblowers" (art. 12).

20. In the absence of an autonomous crime of enforced disappearance and noting the information provided in paragraphs 98–103 of the State party's report, please indicate:

(a) Whether the offences under the Penal Code that may be invoked for purposes of extradition in cases of enforced disappearance regard enforced disappearance as a political offence, an offence connected with a political offence or as an offence inspired by political motives;

(b) Any extradition agreements with other States parties that may have been concluded since the entry into force of the Convention and indicate whether enforced disappearance has been included in such agreements;

(c) Whether any restrictions or conditions apply to requests for mutual legal assistance or cooperation, in light of articles 14, 15 and 25 (3) of the Convention;

(d) Whether the State party has made or received any requests for international cooperation in respect of cases of enforced disappearance since the submission of its report to the Committee and, if so, please report on the measures taken (arts. 13–15 and 25).

21. Considering reports available on trafficking in persons,<sup>5</sup> please provide information on:

(a) The actions adopted to ensure that the applicable legislation, notably the Trafficking in Persons Act 2015, considers the possibility that victims may have been victims of disappearance, including enforced disappearance;

(b) In relation to those cases, disaggregated data on the perpetrators and the victims, including by sex, age and nationality, on the investigations carried out and their results, including the proportion of proceedings launched that resulted in convictions, and sanctions imposed on the perpetrators;

(c) In relation to those cases, the measures adopted to provide the victims with appropriate protection and reparation (arts. 2, 3, 12 and 24).

<sup>5</sup> CAT/C/MWI/CO/1, paras. 35 and 36.

#### IV. Measures to prevent enforced disappearances (arts. 16–23)

22. With reference to paragraphs 104–107 of the State party’s report, the Extradition Act 1968 and the Refugee Act 1989, please indicate:

(a) Whether the State party envisages adopting an explicit prohibition on carrying out an expulsion, return, surrender or extradition in cases in which there are substantial grounds for believing that the person would be in danger of being subjected to enforced disappearance;

(b) The procedures, mechanisms and criteria applied to evaluate and verify the risk that a person subject to expulsion, return, surrender or extradition to another State may be subjected to enforced disappearance;

(c) Whether it is possible to appeal a decision authorizing an expulsion, return, surrender or extradition and, if so, before which authority, under which procedure and whether the appeal has suspensive effect;

(d) The measures taken to avoid detentions, trafficking in persons and forced relocation of refugees and asylum-seekers to the Dzaleka Refugee camp in the Dowa district,<sup>6</sup> under precarious conditions that sometimes result in disappearances, including enforced disappearances (art. 16).

23. Regarding paragraphs 108–112 of the State party’s report and section 42 of the Constitution, please describe:

(a) The legal provisions that expressly prohibit secret or unlawful detention;

(b) The measures taken to guarantee that, from the outset of the deprivation of liberty, all persons deprived of liberty, regardless of the offence of which they are accused, have access to counsel, can contact their relatives or any other person of their choice and, in the case of foreign nationals, can communicate with their consular authorities;

(c) Whether any restrictions can be applied to the above rights and describe any complaints regarding a failure to observe those rights and the outcomes thereof;

(d) How the access of the authorities and institutions that are authorized to visit places in which persons are deprived of liberty is implemented in practice, even if such a visit is unannounced (art. 17).

24. With respect to paragraphs 110, 113–116 and 120–124 of the State party’s report, as well as reports alleging delays and failures in the record-keeping of persons deprived of liberty,<sup>7</sup> please specify:

(a) The measures taken to ensure that all official registers and records of persons deprived of liberty, regardless of the nature of the place of deprivation of liberty, include all the elements listed in article 17 (3) of the Convention and are duly completed and kept up to date;

(b) Whether any complaints have been lodged with respect to delays in recording or failures to record a deprivation of liberty or any other pertinent information in the registers. If so, please report on the proceedings initiated and, if applicable, the sanctions imposed, and the measures taken to ensure that such delays or failures are not repeated;

(c) The actions taken to ensure that persons deprived of liberty are released in a manner permitting reliable verification that they have actually been released and to assure their physical integrity and their ability to exercise fully their rights at the time of release, and how the “vibrant legal framework and practice” referred to by the State party contribute to this purpose (arts. 17, 21 and 22).

<sup>6</sup> *Ibid.*, paras. 37 and 38.

<sup>7</sup> *Ibid.*, paras. 9 (f) and 11.

25. Please report on measures taken to guarantee that any person with a legitimate interest can take proceedings before a court to challenge the lawfulness of the deprivation of liberty, and the measures in place to prevent delaying and obstructing the provision of this remedy and to impose sanctions for delays or obstructions (arts. 17 and 22).

26. Please describe the procedures to be followed to guarantee that any persons with a legitimate interest have access to at least the information listed in article 18 (1) of the Convention. Please indicate the restrictions and conditions that may be imposed on such access, the means available for appealing against the refusal to disclose such information, and the measures in place to prevent delaying and obstructing such appeals and to impose sanctions for delays or obstructions (arts. 18, 20 and 22).

27. While taking note of the information provided by the State party in paragraphs 125–127 of its report, the Committee requests clarification as to whether the State party provides, or envisages providing, regular training on the Convention, to civil or military law enforcement personnel, medical personnel, public officials and other persons who may be involved in the custody or treatment of persons deprived of liberty, including judges, prosecutors and other officials responsible for the administration of justice. Please indicate the content and frequency of such training (art. 23).

## **V. Measures to protect and ensure the rights of victims of enforced disappearance (art. 24)**

28. As relates to paragraphs 36 and 128–130 of the State party’s report, please specify:

(a) The extent to which the definition of “victim” in domestic legislation complies with article 24 (1) of the Convention;

(b) The forms of reparation and compensation provided for in domestic legislation for victims of acts that amount to enforced disappearance in compliance with article 2 of the Convention and whether they include all those listed in article 24 (5) of the Convention;

(c) The procedures available to victims of acts that amount to enforced disappearance in compliance with article 2 of the Convention to obtain compensation and reparation, including the applicable time limits;

(d) The authority responsible for granting compensation or reparation and whether access to compensation or reparation is conditional on a criminal conviction;

(e) The measures taken to guarantee the right of victims to know the truth regarding the circumstances of the enforced disappearance, the progress and results of the investigations and the fate of the disappeared person (art. 24).

29. In view of the Committee’s Guiding Principles for the Search for Disappeared Persons,<sup>8</sup> please indicate the actions taken to guarantee that the search for an alleged victim of enforced disappearance is initiated ex officio and as soon as the competent authorities are notified of the disappearance, even if no formal complaint has been made. Please describe the measures taken to ensure that the search continues until the fate of the disappeared person has been clarified and the protocols and procedures for searching for, locating and releasing disappeared persons and the applicable time frames. Please report on the steps taken to ensure the systematic collection of ante-mortem information related to disappeared persons and their relatives and to set up a national DNA database to identify victims of enforced disappearance (art. 24).

---

<sup>8</sup> CED/C/7.

30. In view of the information available concerning a mass grave with 30 bodies, allegedly victims of trafficking, found in Mtangatanga Forest in northern Mzimba district<sup>9</sup> in 2022, please report on:

(a) The measures taken to ensure that searches for mass graves are carried out and that all the graves are located, and indicate the number of graves located;

(b) The efforts made to identify, respect and return the remains of disappeared persons, the method used to identify individuals' remains, as well as the number of persons found and of those identified;

(c) The investigations carried out and their results, specifying whether those responsible were identified, prosecuted and punished in accordance with the seriousness of their acts, and how relatives were informed of the progress and results of the investigation and the fate of the disappeared persons (art. 24).

31. Regarding paragraph 130 of the State party's report, please provide more information on the type of support provided by the victim support services at the 364 police formations, how it meets the specific needs of victims of enforced disappearances, and the content of the training received by the officers in these police formations to handle cases of enforced disappearances (arts. 23 and 24).

32. Please describe the procedures in place to issue a declaration of absence or of death of the disappeared person and the impact such declarations have on the State party's obligation to continue the search and investigation into an enforced disappearance until the fate of the disappeared person has been clarified. Please report on the legal situation of disappeared persons whose fate has not been clarified and that of their relatives, in matters such as social welfare, financial matters, family law and property rights, and the measures taken to ensure the application of a gender perspective in relation to article 24 (6) of the Convention (art. 24).

33. Please provide information about the measures taken to guarantee the right to form and participate freely in organizations and associations concerned with attempting to establish the circumstances of enforced disappearances and the fate of disappeared persons, and to assist victims of enforced disappearance (art. 24).

## **VI. Measures to protect children against enforced disappearance (art. 25)**

34. While taking note of the information provided in paragraphs 131–135 of the State party's report, the Committee would appreciate receiving clarification on the following:

(a) Whether domestic law criminalizes the conduct described in article 25 (1) of the Convention and, if not, whether the State party envisages adopting such legislation;

(b) Whether any complaints have been lodged regarding such acts, specifying the measures taken to locate the children who have been victims of wrongful removal or enforced disappearance and the results thereof, and the procedures in place to return them to their families of origin;

(c) The steps taken to prosecute and punish the perpetrators of such acts;

(d) The measures taken to improve birth registration in order to prevent any risk of wrongful removal of children and the results those measures have yielded (art. 25).

35. In relation to paragraph 134 of the State Party's report and in view of the Committee's joint statement on illegal intercountry adoptions,<sup>10</sup> please describe the system of adoption or other form of placement of children in the State party and the status of the work on a new bill on the adoption of children, specifying how it would protect children against enforced disappearance in such a context. Please indicate whether domestic legislation establishes any

<sup>9</sup> CAT/C/MWI/CO/1, paras. 35 and 36.

<sup>10</sup> CED/C/9.

procedures to review and, where appropriate, annul any adoption, placement or guardianship that originated in an enforced disappearance. If no such procedures are yet in place, indicate the steps taken in this regard (art. 25).

36. Considering allegations of trafficking in children and reports suggesting that migrant children are placed in detention, often with adults, in poor living conditions,<sup>11</sup> please indicate the measures the State party has taken to protect children, especially unaccompanied minors, from enforced disappearance, particularly in the context of migration and trafficking (art. 25)

---

---

<sup>11</sup> [CAT/C/MWI/CO/1](#), para. 37.