



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

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Committee on Enforced Disappearances

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**Consideration of reports of States Parties under
article 29 (1) and additional information under
article 29 (4) of the Convention**

**Replies of Malawi to the list of issues in relation to its report
submitted under article 29 (1) of the Convention***

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* The present document is being issued without formal editing.



I. Introduction

1. The Government of Malawi is pleased to submit responses to the list of issues and questions posed by the Committee on Enforced Disappearances in relation to Malawi's initial report.

II. Replies to the list of issues (CED/C/MWI/Q/1)

A. General information

Reply to paragraph 1

2. The preparation of the report involved a consultative process which involved a number of stakeholders through regional meetings. The Malawi Human Rights Commission (MHRC) and Civil Society Organisations (CSOs) like the Paralegal Advisory Institute; Center for the Development of People; Human Rights Defenders Coalition; Human Rights Consultative Committee; Youth and Society; Center for Human Rights, Education, Advice and Assistance; the Evangelical Association of Malawi; Catholic Commission for Justice and Peace and Youth Net and Counselling were all part of the meetings and they provided the information which fed into the report.

Reply to paragraph 2

3. Section 211 of the Constitution of Malawi provides for the status of the any International Convention in domestic law. Basically, domestication of international instruments is usually done by incorporating provisions of a convention into existing laws or where they cannot fit into an existing law, a new Act of Parliament is enacted. At the moment, there is no Act of Parliament that has incorporated the Convention into domestic law. However, the Penal Code, the Child Care Protection and Justice Act and the Criminal Procedure and Evidence Code (CP & EC) have provisions proscribing offences akin to the offences of enforced disappearances as provided under the Convention. Further, the elements of the offence of enforced disappearance can be seen in offences such as kidnapping and abducting with intent to confine a person and wrongfully concealing or keeping in confinement a kidnapped or abducted person under sections 262 and 264 of the Penal Code, respectively.

4. The courts in Malawi do have regard to the provisions under International Conventions to which Malawi is a party. The court may apply the provisions of ratified International Conventions as part of domestic law. In *Re David Banda* [2008] MWHC 243 the court must interpret the Constitution, statutes and all other laws in a manner that as far as possible, avoids conflict of international law. This was reaffirmed in *Re Chifundo James*, MSCA Adoption Appeal No 28 of 2009

Reply to paragraph 3

5. Section 129 of the Constitution guarantees the powers of the MHRC for the protection and investigation of violations of the rights accorded by the Constitution or any other law. The Commission is operationally independent in accordance with section 130 of the Constitution of Malawi, section 11 of the Human Rights Commission Act (Cap 3:08 of the Laws of Malawi), and the Paris Principles. Through collaborations with partners like the UNDP and the European Union, the MHRC has provided staff with capacity-building opportunities in the protection of rights and investigations of violations of human rights.

6. The MHRC has not received complaints specifically relating to enforced disappearances since the entry into force of the convention. The Commission receives and investigates complaints on multiple human rights violations, some on issues akin to elements of enforced disappearances.

7. As part of its constitutional mandate of protecting human rights in Malawi, the Commission conducts awareness campaigns on human rights in general to the general

population. It may be noted that many of the sensitisation campaigns touch on issues akin to enforced disappearances, though not directly.

8. The Government of Malawi supports the Commission to discharge its functions and provides funding appropriated by Parliament each financial year. The funding levels for the Commission since the 2018/2019 financial year have increased from K789,065,236 to K3,000,000,000 in the 2024/2025 financial year. The Government acknowledges that the funds appropriated to the MHRC are not enough but it is progressively working towards addressing it. The Commission has a total establishment of 124 personnel, of which 61 positions are filled, representing a staffing level of 49.1 per cent.

9. The members of the Commission are appointed in line with section 131 of Constitution and hold office for a tenure of 3 years.

Reply to paragraph 4

10. Malawi notes the importance of making the declarations under the articles as an important statement for the protection of all persons against enforced disappearances. However, it is still consulting on making the declarations provided for in articles 31 and 32 relating to the Committee's competence to receive and consider individual and inter-state communications.

B. Definitions and criminalisation of enforced disappearance (arts.1-7)

Reply to paragraph 5

11. Malawi is yet to establish a database of disappeared persons within the meaning of the Convention owing to the fact that the offence of enforced disappearance is yet to be domesticated. However, during the reporting period, the Independent Complaints Commission (ICC) and MHRC have recorded 4 and 1 reported cases of disappeared persons involving state agents, respectively. All cases reportedly involve foreigners as victims and investigations are underway by both institutions.

Reply to paragraph 6 to the list of issues

12. The Malawi Police Service collects data on reported missing persons and the information captured includes name, sex, age, tribe, village, traditional authority and district of the missing person. The ICC has a case file register which records reported cases of missing persons. The Malawi Human Rights Commission and other civil society organisations in the human rights sphere, as oversight institutions, also collect statistical information on different thematic areas related to human rights violations. However, there are no specific steps taken to gather statistical information and identify cases of enforced disappearances committed for any purpose in Malawi.

Reply to paragraph 7

13. Section 45 (2) of the Constitution of Malawi proscribes derogation from the right to life and the prohibition of torture and cruel, inhuman or degrading treatment or punishment even during a state of emergency. The ratification of the Convention is a strong statement of Malawi's commitment to ensuring that no person is subjected to enforced disappearances.

14. In a bid to give effect to the provisions of the Constitution, Malawi has established and operationalized the ICC with the mandate to investigate complaints against police officers of the nature akin to enforced disappearances. The government continues to provide financial support to the MHRC and the Legal Aid Bureau, bodies which have the capacity of engaging communities and providing awareness on the right not to be subjected to enforced disappearances, and providing legal aid in cases of enforced disappearances, respectively. Further, section 169 of the Constitution establishes the Prisons Inspectorate. Among other functions, under section 169(3)(a), the Prisons Inspectorate is charged with monitoring the conditions, administration, and general functioning of penal institutions and this may help prevent secret detentions.

Reply to paragraph 8

15. Malawi is still consulting on the comprehensive legal framework that will address the offence of enforced disappearance and incorporate it as an autonomous offence in domestic law. This also applies to the steps Malawi would have taken to define enforced disappearance as a crime against humanity.

Reply to paragraph 9

16. The domestic law clearly provides for the criminal liability for any level of participation in the offence committed. Under section 244 of the Penal Code, no criminal responsibility shall attach to a person who carries out an act that is prescribed or authorised by law or regulatory instrument. This entails that only lawful instructions must be obeyed otherwise the notion of ‘due obedience’ as a criminal defence shall not apply.

17. Section 169 (2) of the Malawi Police Service Standing Orders (1995), promulgated under section 8 of the Police Act (Cap. 13:01) provides that a senior officer shall be personally responsible in a situation where he or she orders a junior officer to carry out an illegal act. In the matter of *Republic v Paul Chipole and 12 others*, Criminal Case No. 122 of 2020 senior police officers are being prosecuted for the death of a suspect in custody on orders allegedly given to junior officers which led to the death. The Court has not yet delivered its judgment.

Reply to paragraph 10

18. The offence of enforced disappearance has not yet been domesticated in Malawi as such there are no specific actions adopted to ensure enforced disappearance is punished with appropriate penalties. However, offences of similar generic carry heavy penalties ranging from 7 years to life imprisonment. For example, under section 135 of the Penal Code, abduction of a woman for purposes of marriage or carnal knowledge attracts 7 years of imprisonment, while under section 263 of the Penal Code kidnapping or abducting a person with in order to subject to grievous harm, ransom or slavery attracts imprisonment for 10 years.

19. Where aggravating factors outweigh mitigating factors, punishment is heavy. For example, under section 261 of the Penal Code, kidnapping or abducting a person with intent to murder attracts imprisonment for life.

Reply to paragraph 11

20. There are no recorded complaints lodged with regard to disappearances affecting persons with LGBTIQ+. However, cases of attacks on people with albinism have been recorded, some of which involved the disappearance of persons with albinism.

Table 1

Trends on Cases of Attack of Persons with Albinism in Malawi

<i>Sr.</i>	<i>Year</i>	<i>Total</i>
1	2013	1
2	2014	7
3	2015	50
4	2016	60
5	2017	29
6	2018	24
7	2019	20
8	2020	5
9	2021	5
10	2022	8

<i>Sr.</i>	<i>Year</i>	<i>Total</i>
11	2023	6
12	2024	3
Total		218

Table 2
Status of Cases Recorded

<i>Sr.</i>	<i>Case Narration</i>	<i>Total</i>
1	Cumulative case reported	218
2	Cases Completed	80
3	Closed Undetected	20
4	Ongoing cases	117
	Matter in court	28
	Matter in Court Pending Judgment	6
	Under Investigation	79

Source: The Malawi Police Service.

21. To protect persons with albinism, from any forms of violence and, harmful practices, including ritual killings of their body parts, some legislative measures have been adopted. A Handbook for Investigators, Prosecutors and Magistrates concerning offences against persons with albinism was launched, to strengthen the legal response to crimes against persons with albinism. The Handbook consolidates relevant provisions from the Penal Code (Cap 7:01), the Anatomy Act (Cap 34:03), the Child Care, Protection and Justice Act (Cap 26:03), the Trafficking in Persons Act (Cap 7:06) and the Witchcraft Act (Cap 7:02). It outlines in a simplified form all offences likely to be committed against persons with albinism.

22. From a policy perspective, the MoGCDSW adopted the National Action Plan on Persons with Albinism (2018–2020). The Action Plan is still in use. It provides a comprehensive, multisector blueprint for ending violence against persons with albinism and ensures that they equally enjoy their rights. The key stakeholders in implementing the Plan are various Ministries, Departments and Agencies, including the Department of Disability Affairs, MHRC, Police, the Judiciary and NGOs such as the Association of Persons with Albinism (APAM). As a result of the implementation of the Plan, in-service training for prosecutors and magistrates in the prosecution of cases of atrocities against persons with albinism has been conducted across the country.

23. Furthermore, the office of the Director of Public Prosecutions appointed a Special Counsel to work on cases against persons with albinism. The Chief Justice also issued a practice direction that all albinism-related cases must solely be handled by professional magistrates. The Judiciary has been giving priority to cases involving offences against persons with albinism and consistently imposing severe penalties, including the maximum sentence of life imprisonment. As a result of these efforts, the number of attacks on persons with albinism is decreasing, reflecting the government's commitment to reducing such incidents to zero.

24. To further protect persons living with albinism from abductions, killings, attacks and mutilation, the Government of Malawi has instituted a multisectoral National Technical Committee on Abuse of Persons with Albinism in Malawi to coordinate initiatives and strategies being implemented concerning persons with albinism. Furthermore, a multimedia awareness programme is being implemented to educate and sensitize the general public on albinism issues in the country and the community policing structures across the country have been revamped to protect persons with albinism. Learners with albinism are being placed in schools with boarding facilities where the Police are providing security. The mapping of persons with albinism across the country has been done to identify their population size and where they live to arrange for proper security measures.

25. The courts in Malawi have been meting out over stiff punishments in cases involving persons with albinism as victims. In the matter of *Rep v. Moses and Others*, Criminal Case No. 14 of 2019 a sentence of life imprisonment was handed where the convicts were found guilty of murdering a person with albinism.

C. Judicial procedure and cooperation in criminal matters (arts 8 -15)

Reply to paragraph 12

26. The language of the provisions of all offences under the Penal Code akin to enforced disappearances do not have any statute of limitations. These include abducting a woman for purposes of marriage or carnal knowledge under section 135 of the Penal Code; kidnapping or abducting a person in order to subject the person to grievous harm, ransom or slavery, under section 263 of the Penal Code; and kidnapping or abducting a person with intent to murder under section 261 of the Penal Code.

Reply to paragraph 13

27. It should be emphasised that Malawi has not yet domesticated the offence of enforced disappearance. However, different pieces of legislation such as the Penal Code under section 262 and 263 proscribes acts related or akin to enforced disappearance in the form of abduction and kidnapping.

28. The Penal Code establishes the competence to exercise jurisdiction and gives the State the jurisdiction of investigating and prosecuting under sections 262 and 263 when they are committed in Malawi or partly outside Malawi by its citizens. In the event that the offender has run out of the country (Malawi), there are procedures for extradition provided under the Extradition Act which also legalizes the use of Mutual Legal Assistance to extradite a suspect who ran away into the states which Malawi entered into an agreement with.

Reply to paragraph 14

29. Any person suspected of having committed an offence is detained for a period of 48 hours before being produced before a competent court of law. This is a constitutionally guaranteed right. The court may release the person on bail with or without conditions depending on whether the person will be available for trial and where the person is a flight risk or may abscond bail, the court may not release the person.

30. Under sections 161D to 161H of the CP & EC a person may be held in custody beyond 24 hours for a period of up to 120 days. This period is not only aimed at ensuring the presence of the alleged offender before competent authorities but also gives time for the authorities to thoroughly investigate the alleged offences.

Reply to paragraph 15

31. The Constitution guarantees every accused person the right to a fair trial under section 42 which includes; compliance within 48 hours the accused should be charged at the court of law. There is also an established lay-visitors scheme which is provided for under section 124 of the Police Act to monitor police cells to ensure that no accused person overstays in cells for more than 48 hours. In addition, the police have an inbuilt mechanism known as the Professional Standards Unit which ensures compliance of conduct and receives complaints of corruption against police officers. There is also an oversight body by the name of the Independent Complaints Commission established under section 128 of the police Act which oversees the operations of police and investigates and makes recommendations for cases of corruption against police.

32. Any person tried for any offences, including enforced disappearances, has a right to legal representation of choice or at the expense of the state through the Legal Aid Bureau. The Government through parliament appropriates funding to the Bureau for its operations. There are toll free lines available in police stations through which people arrested for various offences can seek legal representation.

33. The Corrupt Practices Act is a guiding legislation that deals with corruption involving the civil service including interplay between public officers and the private sector. Furthermore, section 50 of the Access to Information Act protects members of the general public who report corruption allegations and other misconduct from reprisals.

34. The Anti-Corruption Bureau is currently executing the National Anti-Corruption Strategy (NACS II), which began in 2019 and runs until 2024 emphasizing that combatting corruption is a collective responsibility that requires coordination among stakeholders to achieve a corruption-free Malawi. NACS II serves as a blueprint for creating a corruption-free society by involving all sectors in anti-corruption efforts. By addressing key drivers of corruption and areas of heightened risk, NACS II aims to dispel the notion that fighting corruption is solely the ACB's responsibility. The NACS II adopts a multistakeholder approach inviting the Executive, Legislature, Judiciary, Local Government, Private Sector, CSOs, Faith-Based Organisations, media, traditional leaders; youth; and academia to actively participate in the fight against corruption. The implementation of NACS II is being coordinated by a multi-sectoral National Integrity Committee (NIC).

35. The ACB has also revitalised its Whistleblowing Campaign, which encourages any person who is of the view that they have witnessed any suspected corrupt practices to report to the ACB. In addition, the approach adopted by the NACS II to make every stakeholder responsible for fighting corruption is proving effective. Civil Society Organisations such as the Human Rights Defenders Coalition also initiated a Whistleblowing campaign in July 2020 inviting any person to report to them any suspected corrupt practices; to relay the same to the ACB. Government also intends to adopt legislation on whistleblowing. A special Law Commission has been empanelled to develop recommendations on how the law can be crafted.

36. Further, each Ministry, Department or Agency is mandated to establish an Integrity Committee to prevent and fight corruption and ensure the prudent use of resources at the Ministerial, Department or Agency level. Malawi has also enhanced its public finance management system to address past corruption cases, including the implementation of the Integrated Financial Management Information System (IFMIS). IFMIS aims to enhance fiscal management by ensuring expenditure control, timely financial reporting, and promoting transparency and accountability. Additionally, the Government repealed and replaced the Public Finance Management Act (No. 4 of 2022) aimed at strengthening the legal framework for transparent, efficient, and responsible management of public resources.

37. The judiciary is guided by section 9 of the Constitution of Malawi to interpret, protect and enforce the Constitution and all laws in accordance with the Constitution in an independent, impartial manner with only regard to legally relevant facts and prescriptions in law. The Judiciary has a Code of Ethics which guide their conduct. It also has the Judiciary Complaints Handling Committee and the Judiciary Institutional Integrity Committee which promotes integrity and ethics among judicial officers and receive reports of misconduct including on corruption. There is also Judicial Service Commission which has constitutional mandate to discipline judicial officers.

Reply to paragraph 16

38. The Malawi Defence Force (MDF) may help the Malawi Police Service in investigating cases of enforced disappearances in instances where the commission of the offence undermines state security. However, the MDF does not have the legal competence under domestic law to prosecute alleged cases of enforced disappearance.

Reply to Paragraph 17

39. Under section 99 of the Constitution, the powers to institute and undertake all criminal proceedings are vested in the Director of Public Prosecutions (DPP). The Malawi Police Service under the Police Act has powers to receive and investigate any criminal offences, and powers to prosecute criminal offences under the authority of the DPP. The Malawi Human Rights Commission under section 129 of the Constitution and the Independent Complaints Commission established under the Police Act, conduct investigations and report the same to the police for prosecution.

40. The police detectives are constantly trained in the investigation of all criminal cases, which may also be of similar nature to offences of enforced disappearance. Section 35 of the Police Act and section 113A of the Criminal Procedure and Evidence Code give the police the authority to conduct searches on all cases when there is a reasonable suspicion that an offence has been committed including cases of enforced disappearance. Furthermore, section 28 of the Criminal Procedure and Evidence Code empowers the police to effect an arrest without a warrant of arrest.

41. Section 129(a) of the Police Act gives the ICC mandate to investigate complaints against a police officer or against the Police Service. The genera of complaints against police officers and the police service are therefore unlimited. Section 130(d) gives the Independent Complaints Commission, the mandate to obtain information from the Inspector General, any police officer or any other person or authority as may be necessary for conducting an investigation giving it access to information, documentation and places of interest to their investigation.

42. Malawi has not received any complaints for acts corresponding to those described in articles 2 and 3 of the Convention.

Reply to paragraph 18

43. Article 40 of the Malawi Public Service Commission Regulations provides that a state officer suspected of committing an offence shall cease to exercise any of such powers or functions, and shall not leave Malawi without any authority of his responsible officer during the period of interdiction or until the interdiction is cancelled. This aims at creating a room for investigations.

44. Under section 5 of the Rules of Procedure (Defence Force) under the Defence Force Act, a person suspected of a serious criminal offence akin to enforced disappearance is detained in military authority for a maximum period of 72 days to pave way for investigations. Similarly, under section 68 of the Police Act, a police officer who has committed a criminal offence is interdicted to pave way for investigations.

45. Section 89 (1) (g) of the Constitution of Malawi empowers the President to institute a Commission of Enquiry to conduct an investigation on any other case, including of enforced disappearances where public officers in the security agencies may have been suspected to have committed an offence.

Reply to paragraph 19

46. In cases where criminal justice agencies refuse to institute an investigation on cases of enforced disappearances, complainants and other concerned parties can report to the Malaw Human Rights Commission and the office of the Ombudsman, who are constitutionally mandated to account on their failure to investigate the allegations. The Malawi Law commission is still in the process of developing the law on the protection of witnesses and whistleblowers.

Reply to paragraph 20

47. The offences under the Penal Code that may be invoked for purposes of extradition in cases of enforced disappearance are not marked as political offences or offences inspired by political motives.

48. During the reporting period, Malawi has concluded extradition agreements with Kenya, Rwanda and India. Under the agreements, extraditable offences are offences that are punishable under the laws of both parties by imprisonment or other deprivation of liberty for a period of at least one year.

49. In Malawi requests for mutual legal assistance or cooperation are subject to the Mutual Assistance in Criminal Matters Act of 1994. Section 18(3) of the Act provides that mutual legal assistance or cooperation can be denied where:

(a) The request relates to the prosecution or punishment of a person in respect of conduct that occurred, or is alleged to have occurred, outside the country making the request

and similar conduct occurring outside Malaŵi in similar circumstances would not have constituted an offence against the laws of Malaŵi;

(b) The request relates to the prosecution or punishment of a person in respect of conduct where, if it had occurred in Malaŵi at the same time and had constituted an offence against the law of Malaŵi, the person responsible could no longer be prosecuted by reason of lapse of time or for any other reason; and

(c) The provision of the assistance would impose an excessive burden on the resources of Malaŵi.

50. Malawi has not made or received any requests for mutual legal assistance or cooperation in respect of cases of enforced disappearance since the submission of its report to the Committee.

Reply to paragraph 21

51. Since Malawi has not yet domesticated the offence of enforced disappearance, the victims of the available reports of human trafficking may be considered as victims of disappearance but not necessarily victims of enforced disappearance.

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

Reply to paragraph 22

52. Malawi already has a legal framework on prohibition on carrying out an expulsion, return, surrender or extradition where there are substantial grounds for believing that the person would be in danger of being subjected to situation akin to enforced disappearance. Section 10 of the Refugees Act, 1989 and section 6 of the Extradition Act prohibit the expulsion on return of refugees. No refugees or asylum seekers are to be enforced to return to their home countries when doing so poses a danger to them.

53. Under section 9 of the Extradition Act 1968, from the warrant of arrest to committal proceedings the High Court is mandated to hear as a preliminary inquiry if there is no relevant offence for which the person in question may be extradited. The state party has an obligation to find the type of offence the person is suspected of and any evidence against him.

54. Section 10 of the Extradition Act, it is possible to appeal in the Supreme Court of Appeal the decision of the High Court where the committal is not successful. The appeal has the effect of staying or pending the decision until the disposal of the appeal.

55. Sections 18 and 19 of the Constitution of Malawi guarantee every person's right to personal liberty and the inviolability of human dignity and personal freedoms. The courts in Malawi are replete with decisions confirming every person's right to personal liberty and the inviolability of human dignity and personal freedoms regardless of the person's status. It should be pointed out that the relocation process of refugees to Dzaleka Camp followed the decision of the court.

Reply to paragraph 23

56. Section 42 of the Constitution of Malawi guarantees the right of every person who is detained, including every sentenced prisoner, to be given the means and opportunity to communicate with, and to be visited by, his or her spouse, partner, next-of-kin, relative, religious counsellor and a medical practitioner of his or her choice; to challenge the lawfulness of his or her detention in person or through a legal practitioner before a court of law; and to be released if such detention is unlawful. The above clearly proscribe secret or unlawful detention.

57. Section 42 (1) (c) of the Constitution, any person arrested or detained is informed of the right to legal representation by legal practitioner of their choice or at the expense of the state through the Legal Aid Bureau. The government through parliament appropriates funding to the Bureau for its operations. The Bureau also intensifies public awareness

campaigns of the access to legal representation through electronic, print and social media as well as community engagements.

58. Under section 44 (1) of the Constitution, the above rights may only be restricted where the restriction is prescribed by law, it is reasonable, recognised by international human rights standards and necessary in an open and democratic society.

59. In practice, authorities and institutions authorised to visit places where persons are deprived of liberty like Malawi Human Rights Commission, Independent Complaints Commission and the Prison Inspectorate are given access as long as they produce a valid means of identity.

Reply to paragraph 24

60. Malawi is yet to take necessary measures to ensure that all official registers or records of persons deprived of liberty, regardless of the nature of the place of deprivation of liberty, include all the elements listed under article 17(3) of the Convention and are duly completed and kept up to date. There are no recorded complaints lodged with respect to delays in recording or failures to record deprivation of liberty or any pertinent information in the register.

61. Every person who has been released after being deprived of liberty is released subject to a documented order in an open manner. The release order serves as an assurance of the restoration of all their rights and their ability to exercise them fully.

Reply to paragraph 25

62. The Constitution of Malawi guarantees the protection of human rights. Under section 15 (2) any person with sufficient interest in the promotion, protection and enforcement of human rights is entitled to the assistance of the courts, the Ombudsman, the Malawi Human Rights Commission and other organs of the government to ensure promotion, protection and enforcements of the rights and the redress of any grievances in respect of those rights.

63. Where a person has been arrested and detained for any offence, the detainees are recorded both at police and prisons of Malawi to prevent secret detention. In the event of secret detention, a person through relatives and counsel may make an application of *habeas corpus* to force the state to release the detained person.

64. The courts in Malawi have also held that secret detentions are unlawful, see *Chitsa & Chitsa v Rep High Court, Principal Registry Miscellaneous Criminal Application 160 of 2009 (unreported)* in which it was held that if a person is deprived of liberty unlawfully the detention is unlawful. In the matter of *Ken Williams Mhango v Attorney General, Civil Cause No. 980 of 1998 (unreported)* in which the court awarded compensation to the claimant for unlawful detention.

Reply to paragraph 26

65. Section 37 of the Constitution guarantees the right to of access to all information held by the State or any of its organs at any level of Government in so far as it is required for the exercise of his or her rights. Further, Malawi enacted the Access to Information Act to give effect to this Constitutional guarantee.

66. Under section 59 & 61 of the Prison Act it is specifically provided that that all detainees should be recorded and In line with Article 19 of the Convention, confidentiality and privacy is guaranteed. i.e., medical records are kept private at the Clinic in prisons.

67. In line with Article 20 of the Convention, Malawi legislation does not provide for this mechanism. However, in practice, people with legitimate interest can have access to information on the remand warrant only. In line with Article 22 of the Convention, where one denies information, under section 43 (1) (27) of the Prison Act, prison officers' failure to disclose information is an offence against discipline. Section 51 & 53 of the Access to Information Act creates an offence for denying access to information.

Reply to paragraph 27

68. In Malawi, law enforcers like the Police are trained on how to handle different kinds of crimes although such trainings are not regular as they are dependent on availability of funds. Refresher courses on human rights are also offered to senior officers in the Malawi Polices Service and the Malawi Defence Force.

E. Measures to protect and ensure the rights of victims of enforced disappearances (art 24)**Reply to paragraph 28**

69. There is no legislation specifically on enforced disappearance in Malawi as such there is no definition available at the moment. However, where enforced disappearance occurs reference will be made to the rights affected under the Constitution or any relevant written law, and the pieces of legislation providing for the remedies where such rights have been violated.

70. In the absence of domestication of the Convention, the only guarantee is access to information under section 37 of the Constitution and the Access to Information Act.

Reply to paragraph 29

71. It should be noted that the convention is yet to be domesticated in Malawi. In the absence of domestication, there are no actions that have been 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.

Reply to paragraph 30

72. There are no measures taken for the search of mass graves that have been carried out. The case concerning a mass grave in Mtangatanga forest is an issue of trafficking which involved 30 bodies.

73. The Government through the Malawi Police Service conducted an investigation which led to the arrest and detention of the suspected criminals. The suspects were arrested, and prosecuted by the office of the Directorate of Public Prosecutions and the High Court acquitted all the suspects.

74. The bodies of the victims of human trafficking which were found in Mtangatanga forest were badly decomposed such that post-mortem could only be conducted to establish the cause of death.

75. The bodies were not returned as they were badly decomposed. There was no identification as the bodies were badly decomposed. After the post-mortem, the 30 bodies were properly buried. Since the bodies could not be identified, it was not possible to inform their relatives.

Reply to paragraph 31

76. The victim support services at the 364 police formations is in the nature of psychosocial and financial support towards victims of offences of a nature similar to enforced disappearance such as abduction, kidnapping and killing of persons with albinism. The victims are supported with counselling and transport to their homes of origin.

77. The police officers in the police formations are trained on how to handle victims of offences of the nature similar to enforced disappearances.

Reply to paragraph 32

78. There are no special procedures in place to issue a declaration of absence or death of a disappeared person. However, the doctrine of presumption of death after a lapse of 7 years applies.

Reply to paragraph 33

79. Section 32 of the Constitution of Malawi guarantees every person the right to freedom of association, which includes the freedom to form associations. The courts in Malawi have always upheld the right to freedom of association and the case of *The Registered Trustees of Public Affairs Committee v Attorney General, Speaker of the National Assembly and Malawi Human Rights Commission*, Civil Cause No. 1861 of 2003.

F. Measures to protect children against enforced disappearance (art. 25)**Reply to paragraph 34**

80. In Malawi, no legislation criminalises the conduct described in article 25 (1) of the Convention as it is yet to be domesticated. However, Malawi has legislation that criminalises the wrongful removal of children and the falsification, concealment or destruction of documents attesting to the true identity of the children.

81. Section 15 of the Trafficking in Persons Act criminalizes child abduction. The Child Care, Protection and Justice Act, while domesticating the Convention on the Rights of the Child and the Children's Charter, establishes mechanisms for the protection of all children regardless of the circumstances of birth (section 78-criminalizes child abduction, 79-criminalizes trafficking in children, 84-inquiries and placements of children suspected to have been tracked or abducted, 85-child recovery order where child is suspected to have been abducted).

82. Malawi does not have recorded complaints lodged regarding the wrongful removal of children and the falsification, concealment or destruction of documents attesting to the true identity of the children resulting from enforced disappearances.

83. Malawi has made strides in encouraging expectant women to give birth at hospitals where the newborn children are registered at birth. This has tremendously improved birth registration.

Reply to paragraph 35

84. In Malawi, inter-country adoptions are governed by law under the Child Care Protection and Justice Act and the Adoption of Children Act 1949 hence intercountry adoptions can only be done where there is a High Court order. Furthermore, the domestication of the Convention on the Rights of the Child and the African Children's Charter has addressed the issue of illegal adoptions in Malawi. Generally, the domestic legislation provides for procedures for review and where appropriate, annul any adoption, placement or guardianship but not necessarily that originated in an enforced disappearance.

Reply to paragraph 36

85. Migrant children (those not breastfeeding) are diverted to the social welfare department who then place them in temporary safety homes until their papers are processed.

III. Conclusion

86. The Government of Malawi looks forward to providing any more information the Committee on Enforced Disappearances may require, during the review of the initial report. The government of Malawi acknowledges that a lot of work is required to domesticate the convention and would welcome technical assistance from the Committee.
