



ACERWC
African Committee of Experts on
the Rights and Welfare of the Child

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The African Committee of Experts on the Rights and Welfare of the Child

Communication No: 0021/Com/003/2022

Decision No: 002/2025

People Serving Girls at Risk & Equality Now on behalf of *Maggie*

(the Complainants/the Applicants)

Against

The Republic of Malawi

i. Submission of the Communication and Procedure

1. The Secretariat of the African Committee of Experts on the Rights and Welfare of the Child (the Committee/ACERWC) received a Communication dated 12 July 2022, pursuant to Article 44(1) of the African Charter on the Rights and Welfare of the Child (the Charter/ACRWC). The Communication is submitted by People Serving Girls at Risk & Equality Now on behalf of *Maggie* (the Complainants/Applicants) against the Republic of Malawi (the Respondent State). According to Section IX (2) (i) of the Revised Guidelines for the Consideration of Communications and Monitoring Implementation of Decisions by the ACERWC (the Revised Communications Guidelines), the Secretariat transmitted a copy of the Communication to the Respondent State on 22 July 2022 and requested the Respondent State to submit its arguments on the admissibility within sixty (60) pursuant to section IX(2)(iv) of the Revised Communications Guidelines.
2. After issuance of a reminder Note Verbal on 29 September 2022, the Secretariat received the arguments of the Respondent State on 25 November 2022. The respondent State's arguments were transmitted to the Applicants in accordance with the Revised Communications Guidelines. The Applicants' Observations were received on 12 January 2023.
3. The Committee considered the question of admissibility at its 41st Ordinary Session, held from 26 April to 6 May 2023 in Maseru, Lesotho, and declared the Communication admissible.
4. A hearing was scheduled to take place during the 42nd Ordinary Session held from 08-17 November 2023 in Addis Ababa, Ethiopia. At that hearing, the parties expressed willingness to pursue an amicable settlement under the auspices of the Committee.
5. The parties, however, were unable to reach an amicable settlement, and the Committee proceeded to consider the merits of the Communication.
6. A hearing on the merits of the Communication was conducted during the 45th Ordinary Session of the ACERWC held from 07-11 April 2025 in Maseru, Lesotho, in the presence of both the Applicants and the Respondent State.

ii. Summary of alleged facts

7. The Complainants allege that *Maggie*, a 16-year-old Malawian National, was recruited together with another girl by a man on 22 February 2018 from her village, to work as a babysitter in Blantyre. Upon arrival on 1 March 2018, however, the girls were handed over to a bar owner and required to work in the bar. The Complainants submit that, contrary to the parties' agreement, the two girls were informed that, in addition to their normal duties at the bar, they would be required to provide sexual services to patrons. It is alleged that the girls were forced to engage in sexual acts with the bar owner, collecting the proceeds. The Applicants further submitted that for a period of twenty-six (26) days, the girls were forced to have sexual intercourse with no less than ten (10) men per day and would be given fifty (50) Kwacha per day for food.

8. The Complainants allege that on 26 March 2018, the two girls were able to escape and reported the matter at the Soche Police Station. In their statements, they only identified the bar owner and did not mention the recruiter, nor the patrons who were paying to have sexual intercourse with them. The police referred the girls to a medical centre in Blantyre, where a doctor found that they had syphilis and were HIV positive.
9. The Complainants submit that the girls were kept in the Victim Support Unit, where they were allegedly sexually abused by some police officers and that their allegations were not believed by the police.
10. It is alleged that a criminal court case was instituted against the bar owner at the Blantyre Magistrate's Court, where the accused was charged with two counts of trafficking in children under section 15 as read with section 14 of the Trafficking in Persons Act. The first count related to the *Maggie*, and the second to the other trafficked and sexually abused girl. The Applicants note that section 14 of the Trafficking in Persons Act criminalises trafficking in persons, and section 15 prescribes a penalty of twenty-one (21) years' imprisonment for trafficking a child, without the option of a fine. They further submit that it is immaterial to the commission of the offence of trafficking of a child that the child consented or that the means of trafficking as provided in Section 2 of the Act were used.
11. The Complainants allege that on 30 March 2018, the day of the court hearing, a person known to the recruiter came to the police station, negotiated with the police officers, and, by force and threats with the assistance of police, compelled the girls to leave. *Maggie* went back to her village, and the other girl went to Lilongwe. It is submitted that the case was adjourned to 9 April for the absence of the girls, and the accused was granted bail.
12. On 30 April 2018, People Serving Girls at Risk (PSGR) learned about the case in the media and visited Soche police station to establish the facts and access the police file, but was denied access. PSGR traced the file at the court and, together with the Young Women Christian Women's Association (YWCA) through the support of Equality Now and a social worker, located *Maggie*; but were not able to trace the other girl. *Maggie* was re-prescribed for syphilis and HIV medication and received psychological counselling and further medication after having been diagnosed with post-traumatic stress disorder. The Complainants provide that in August 2018, with support from PSGR, she agreed to be transferred to a shelter in Blantyre run by an NGO for a period of three weeks and to continue with her hospital appointments.
13. The Complainants indicate that on 24 August 2018, Women Lawyers Association was able to get the Regional Prosecutor on the case, and it was transferred to the Regional Magistrates' Court where it was heard for the first time on 13 September 2018. The hearing took place in the Magistrate's office without a public gallery. Since then, the Complainants submit that the case has been adjourned eleven (11) times, with no indication of when it will be finalised.

iii. Alleged violations

14. The complaints allege that the Respondent State is in violation of:

- Article 27 on the right to be protected from sexual exploitation
- Article 29 of the prohibition against sale, trafficking, and abduction
- Article 16 on the right to protection against child abuse and torture
- Article 15 of the right to be protected from child labour
- Article 4 on the best interests of the child
- Article 1 on State Party Obligations

iv. Applicant's submission on admissibility

15. The Complainants submit that the Communication fulfils all the requirements under Article 44 of the Charter and the provisions of the Revised Guidelines for the Consideration of Communications. The Complainants argue that they have standing before the Committee in line with Section I (i) of the Revised Communications Guidelines as they are registered in a Member State; the alleged victim was a child at the time the violations occurred, and they have obtained her consent.
16. Regarding the Form and Content of the Communication, the Complainants submit that the communication fulfils all the requirements of Section II of the Revised Communication Guidelines as the identity of the Victim is disclosed, the Communication is submitted in writing and duly signed, and the Respondent State is a State Party to the Charter.
17. Concerning the Conditions of Admissibility, the Complainants submit that the Communication fulfils the requirements contained in Section IX of the Revised Communication Guidelines.
18. On the issue of exhaustion of local remedies, the Complainants submit that, according to Section IX(1)(d) of the Communications Guidelines, a Communication is admissible if it has been "submitted after having exhausted available and accessible local remedies," or if "it is obvious that this procedure is unduly prolonged or ineffective." The Complainants submit that the requirement of exhaustion of domestic remedies could not be met in this case because the domestic remedies were unduly prolonged and were not available and effective. They argue that the mere existence of domestic mechanisms does not establish their availability or effectiveness. It is their submission that the Respondent State has had several years to dispense with this matter since the Complainants brought the case to its attention but failed to do so. In this regard, the Complainants submit that the local remedies have been unduly prolonged and that the principle of exhaustion of local remedies should be waived. The Applicants point to prolonged investigations, repeated court adjournments and delay in prosecution, and submit that these circumstances amount to a failure by the Respondent State to provide an effective remedy and justify waiver of the exhaustion requirement.

v. The Respondent's submission on admissibility

19. In its response to the Complainants' submission on admissibility, the Respondent State contends that the Complainants failed to exhaust local remedies and did not provide evidence of attempts to do so. The Respondent State submits that local remedies are available, sufficient, and effective and that local avenues for redress should have been exhausted before approaching the Committee.
20. The Respondent State acknowledges the positive steps that the Complainants took to seek justice on the matter. However, it is submitted that there are available accessible and effective local remedies which the complainants should have had recourse to, to finalise the hearing within a reasonable time. The Respondent State submits that such alternatives include requesting consent from the Chief Resident Magistrate to reassign the case to another magistrate or to seek the services of a private lawyer.
21. The Respondent State submits that the reasons for the eleven (11) adjournments seem plausible and justifiable and argues that the Complainants have a fair share of the blame for the delay, noting that they could have sought a consent form from the Chief Resident Magistrate and the services of a private lawyer when they found that the file was missing.
22. The Respondent State also argues that COVID -19 contributed to the delay, and that the file is still open and being effectively dealt with by its courts. Accordingly, the Respondent State submits that the Committee declares the Communication inadmissible.

vi. The Committee's analysis on admissibility

23. The Committee's analysis of the admissibility is guided by Article 44 of the Charter and the Revised Communication Guidelines. Article 44 of the Charter and Section I (1) of the Revised Communication Guidelines state that 'nongovernmental organisations legally recognised by one or more of the Member States of the African Union or State Party to the Charter or the United Nations, among others, can submit a Communication before the Committee.' The Committee notes that PSGR is registered in Malawi and Equality Now is registered as an international non-governmental Organisation in Kenya and enjoys observer status with the ACERWC. Moreover, it is noted that the Respondent State is a State Party to the Charter as it ratified the Charter in 1999. The Committee further notes that, in terms of Section I (4) (a) of the Revised Communication Guidelines, the Committee's jurisdiction is determined by the complainant's age at the time of the alleged violation; the victim was sixteen (16) years old when the alleged violations occurred. As such, the Committee finds that the Complainants have locus standi.
24. Admissibility is assessed pursuant to the conditions in Section IX (1) of the Revised Communications Guidelines. Therefore, the Committee assesses whether or not the Communication meets these conditions.

25. The first condition is the Communication must be compatible with the provisions of the Constitutive Act of the African Union and the African Children's Charter. The Committee notes that the claims made by the Complainants seek to protect the rights guaranteed under the Charter, and fall within the objectives of the Constitutive Act, including promotion and protection of human and peoples' rights (Article 3(h)). Therefore, the Committee considers that the Communication is compatible with the Constitutive Act of the African Union and the Charter.
26. The second condition requires that the Communication should not be exclusively based on information circulated by media or manifestly groundless. The Committee notes that the information contained in the Communication is supported by material drawn from domestic court proceedings and annexed documents, including signed statements by the victim and records of attempts by the Applicants to pursue remedies. Having examined the communication and its annexes, the Committee finds that the communication is not manifestly groundless and is not based solely on media reports.
27. The third condition is that the Communication does not raise matters pending settlement or previously settled by another international body or procedure in accordance with any legal instruments of the African Union and principles of the United Nations Charter. To verify this, the Committee sought information from other similar and relevant bodies. From the responses it received and the absence of opposition by the Respondent State on this matter, the Committee concludes that the present Communication is not pending before or has not been settled by another procedure.
28. The fourth condition is that the Communication is submitted after exhaustion of available and accessible local remedies, unless it is obvious that this procedure is unduly prolonged or ineffective. The Committee, from the Parties' submissions on admissibility, identifies two issues that require analysis, namely:
- a. *Whether local remedies have been unduly prolonged; and*
 - b. *Whether local remedies were available and effective in the circumstances of the case.*
- a. *Whether local remedies have been unduly prolonged*
29. Section IX (1) (d) of the Revised Guidelines on Communications provides an exemption for the condition of exhaustion of local remedies where they are unduly prolonged. In assessing whether local remedies are unduly prolonged, the Committee reviews the procedural history of the case taking into consideration the principle of best interests of the child pursuant to Article 4 of the Charter.
30. The Committee has a longstanding position substantially developed in its Jurisprudence where it has found that delays of four years may be considered unduly prolonged when the State has been aware of the ongoing violations.¹ In *Minority*

¹ ACERWC, Communication 002/Com/002/2009, Communication 007/Com/003/2015, *Minority*

Rights Group International v. Mauritania, where over four years had passed since the domestic case was filed, including nearly two years since the appeal hearing was repeatedly and indefinitely postponed, the Committee found that the State had been duly notified of the violation and had failed in its responsibility to move the justice process forward.² Similarly, in the *Nubian Children Case*, the Committee concluded that there had been undue delay where local proceedings had been initiated more than six years prior but were delayed due to various procedural issues including a bench not being constituted or a substantive hearing date not being set. In both above-mentioned cases, the Committee determined that four and seven years of delays constituted a 'sufficient period of time attempting to see if local remedies would offer any prospect of success and adequate remedies'.²

31. In the present case, the Committee notes that the violations occurred in 2018 while the case was brought before the Committee in 2022. In analysing the facts submitted in the Communication, the Committee finds that the Complainants have, since the occurrence of the violations, taken actions that were in line with the judicial requirements, including filing a complaint before the magistrate's court and undertaking the required action for the outcome of the justice process. Further, the Committee finds that the case is still at the pre-trial stage. The Committee further notes that the Court file is reported missing, which increases the risk of further delay.
32. The committee finds that the multiple adjournments and postponements that have been experienced throughout the procedure are not in line with the access to justice for the victim, and no such delay can be regarded as justifiable. The reasons advanced by the Respondent State justifying the delay cannot exonerate the responsibility of the Respondent State in its obligation to provide justice for citizens and, in this case, for the victim.
33. The Committee recalls its jurisprudences where it held that prolonged court proceedings are not in the best interests of the child as "the implementation and realisation of children's rights in Africa is not a matter to be relegated for tomorrow, but an issue that needs proactive immediate attention and action."³ The Committee finds that the causes of the multiple adjournments by the national authorities, the prolonged postponements, and the reported disappearance of the court file, among other things, are elements that are inconsistent with the principle of best interests of the child as enshrined in article 4 of the Charter.
34. Taking the specificity of the violations into account, especially on the issue of rape, the Committee reiterates that 'time is of the essence especially in cases involving rape' because delays "may render the entire investigation ineffective."⁴ The Committee notes that more than 5 years have passed since this matter was first

Rights Group International et.al v. Mauritania, paras. 24, 29; ACERWC, *Institute for Human Rights and Development in Africa (IHRDA) and others on behalf of Children of Nubian descent v. Kenya*, at para. 27. ACERWC, Communication 007/Com/003/2015 *Minority Rights Group International et.al v. Mauritania*, paras. 8-11, 24, 27-30.

² ACERWC, Communication 002/Com/002/2009, *IHRDA et.al on behalf of Children of Nubian descent v. Kenya*, para. 34; ACERWC, Communication 007/Com/003/2015, *Minority Rights Group International et.al v. Mauritania*, para. 30.

³ ACERWC, Communication 002/Com/002/2009, *IHRDA et.al on behalf of Children of Nubian descent v. Kenya*, para.35.

⁴ ACERWC, Communication 006/Com/002/2015, *IHRDA and Finders Group Initiative on behalf of TFA v. Cameroon*, para. 56.

brought to the attention of the Respondent State in Malawi and the accused person is still to be brought to trial.

35. In the circumstances, the Committee concludes that the delay is undue; therefore, imputable to the Respondent state.

b. Whether the local remedies were available and effective

36. The Committee notes that aside from the issue of undue delay, issues of availability and effectiveness have been raised by both Parties. The Respondent State argues that the alternative measures, namely the option of requesting the Chief Regional Magistrate to review the court record and the option of seeking private prosecution of the matter with permission from the Director of Public Prosecutions, are available local remedies. The Committee finds that these suggested measures are beyond the ambit of local remedies. The Committee reiterates that only judicial remedies which are available, effective, and sufficient should be exhausted.⁵ The Committee underlines that Complainants are not required to exhaust non-judicial remedies in the context of Section IX (1) (d) of the Revised Communications Guidelines.

37. In the present case, the Committee notes that the alternative measures referred to by the Respondent State are non-judicial remedies which the Complainants should not be subjected to. Moreover, the Committee recalls its jurisprudence where it held that remedies are “available” if a complainant can pursue them without impediment or they can make use of them in the circumstances of their case and “effective” if they offer a reasonable prospect of success.⁶ Therefore, even if remedies are available in principle, yet have not been available for the Complainants in their specific case, the Committee finds that such remedies are unavailable.⁷

38. The Committee notes that the availability referred to, goes beyond the mere existence and questions the accessibility which may be impacted by various factors, including, among others, the costs of pursuing a remedy and proximity, etc. The Committee is of the view that the other options, namely requesting the Chief Regional Magistrate to review the court record and seeking private prosecution of the matter with permission from the Director of Public Prosecutions, might not have been accessible for the victim, and therefore, supports that they were not available.

39. Regarding the issue of effectiveness, the Committee reiterates that local remedies are “effective” if they offer a reasonable prospect of success.⁸ The Committee recalls its jurisprudence in the Nubian case,⁹ in situations where violations are widespread, widely reported by international or domestic observers, or at least one legal case has been filed before domestic courts, the Committee recognises that the State had

⁵ ACERWC, Communication 002/Com/002/2009, *Institute for Human Rights and Development in Africa (IHRDA) and other v Kenya*, para 28; ACHPR, Communications 147/95 and 149/96, *Sir Dawda K Jawara v The Gambia*, (May 2000), para 31.

⁶ ACERWC, Communication 007/Com/003/2015, *Minority Rights Group International et.al v. Mauritania*, para. 23; ACHPR, Comm. No. 477/14, 2015 *Crawford Lindsay von Abo v. The Republic of Zimbabwe*, Para. 67.

⁷ ACERWC, Communication no 012/Com/001/2019, *Center for Reproductive Rights and Legal and Human Rights Center (on behalf of Tanzanian girls) v Tanzania*, Decision no 0012/Com/001/2019, para 21; Inter-American Court of Human Rights, *Durand and Ugarte v. Peru*, Preliminary Objection, 1999.

⁸ ACERWC, Communication 007/Com/003/2015, *Minority Rights Group International et.al v.*

Mauritania, para. 23; ACHPR, Comm. No. 477/14, 2015, *Crawford Lindsay von Abo v. The Republic of Zimbabwe*, Para. 67

⁹ ACERWC, *IHRDA et.al on behalf of Children of Nubian descent v. Kenya*, para. 27

adequate notice and opportunity to address those violations. The Committee further recalls its jurisprudence and the jurisprudence of the African Commission on Human and Peoples' Rights, holding that remedies are not effective where the State has received ample notice of the alleged violations taking place in its country but failed to investigate or prosecute those responsible.¹⁰

40. In the case at hand, the Committee notes that the fact that the State has had ample notice and opportunity to adjudicate on this matter is not in contention. The Committee further notes that the Complainants made repeated efforts to engage with various relevant authorities to address the challenges faced in obtaining justice on this matter, including a meeting with the Director of Public Prosecutions in September 2021, after which it was confirmed that the file is missing. The Committee finds that these facts demonstrate that the Respondent State was duly notified and that proceedings have been pending before domestic courts since 2018. The Committee reiterates that "an unduly prolonged domestic remedy cannot be considered to fall within the ambit of an 'available, effective, and sufficient' local remedy."¹¹
41. In light of the foregoing, the Committee finds that in the present case, local remedies were unduly prolonged and therefore, are unavailable and ineffective. It is the Committee's longstanding position that in similar situations, the requirement of exhaustion of local remedies is waived.
42. The fifth condition relates to the fact that the Communication is presented within a reasonable period after exhaustion of local remedies at the national level. The Committee notes that given that the local remedy was unduly prolonged and its exhaustion has been waived, this condition is not applicable in the present Communication.
43. As for the last condition, the Committee found that the Communication does not contain any disparaging or insulting language and therefore, meets this requirement.
44. For the reasons set out above, the African Committee of Experts on the Rights and Welfare of the Child concludes that the Communication fulfils all the admissibility conditions laid down in the Revised Communications Guidelines, and hence, declared admissible.

vii. Submission on the Merits of the Communication

Preliminary objection

45. The Respondent State submits that the Applicants introduced new prayers during the amicable settlement process that were not part of the original pleadings. Specifically, the Respondent State submits that the following are new prayers: request for review of education policies, reform of child protection laws, and development of child-rights-centred curricula for police and prosecutors. The Respondent relies on the

¹⁰ ACHPR, Comm. No. 379/09, Monim Elgak, Osman Hummeida and Amir Suliman (represented by FIDH and OMCT) v. Sudan, para. 56-64 (2014); ACHPR, Comm. No. 275/03 (2007), Article 19 v. State of Eritrea, para. 77-78, ACHPR, Comm. No. 301/05, (2011), Haregewoin Gabre-Selassie and IHRDA (on behalf of former Dergue Officials/Ethiopia), para 113.

¹¹ ACERWC, Communication 002/Com/002/2009, HRDA et.al on behalf of Children of Nubian descent v. Kenya, paras. 31-32.

jurisprudence of the East African Court of Justice in *Alice Nijimbere v SG of EAC* and *Hon. Dr. Margaret Zziwa v SG of EAC*, arguing that parties are bound by their pleadings and no relief can be granted on unpleaded issues unless expressly left to the adjudicating body. The Respondent further submits that entertaining such new claims without formal amendment risks discouraging amicable settlements and would prolong proceedings before the Committee.

46. The Applicants submit that the objection is misplaced. They argue that the prayers presented during the amicable settlement process were not “new” but merely a better-articulated version of the remedies already contained in the original Communication. According to the Applicants, the purpose of this articulation was to guide negotiations by providing greater clarity and detail, without departing from the scope of the original submissions.
47. The Applicants further contend that the Committee’s Revised Guidelines for the Consideration of Communications do not expressly prohibit amendments to pleadings, nor do they require a party to file a formal notice to effect such an amendment. In their view, the procedural flexibility inherent in the Committee’s mandate should be interpreted as permitting reasonable elaboration or clarification of remedies during the process.
48. Regarding the specific prayer concerning the review of education-related policies, the Applicants maintain that it is in fact rooted in their original claim for “appropriate remedies” under the African Children’s Charter and therefore falls within the scope of the communication rather than constituting an unpleaded issue.
49. Lastly, the Applicants submit that human rights litigation is distinct from ordinary adversarial proceedings and must not be constrained by rigid technicalities. They recall the judgment of the African Court on Human and Peoples’ Rights in *Mtikila v Tanzania*, where the Court considered measures of satisfaction that had not been expressly requested by either party, relying on its inherent power under Article 27 of its Protocol. They argue that if a human rights body may, on its own initiative, grant remedies not specifically requested, then it follows that it must also be competent to allow clarifications or elaborations of existing prayers by a party. On this basis, the Applicants requested the Committee to dismiss the preliminary objection.

viii. The Committee’s analysis of the preliminary objection

50. In terms of Section XVI (1) of the Committee’s Revised Guidelines for the Consideration of Communications, a party to a Communication who intends to raise a preliminary objection at the stage before the Committee makes a decision on the merits of the Communication, shall do so in writing not later than 30 days after receiving the other party’s submissions on admissibility or on the merits in accordance with the provisions of the Guidelines.
51. The Committee acknowledges that indeed, the Applicants presented proposed terms during the amicable settlement process that included prayers not contained in the initial communication. The Respondent, however, did not raise a formal objection to those proposals while settlement discussions were underway.
52. The Committee notes that the Respondent’s objection does not relate to the Applicants’ submissions on merits but rather concerns matters that arose during the amicable settlement process, particularly the alleged introduction of “new prayers.”
53. The Committee notes, at the outset, that the process of amicable settlement is distinct and independent from the determination of a communication on its merits. The purpose of an amicable settlement is to facilitate dialogue and promote a consensual

resolution between the parties under the auspices of the Committee. The Committee is of the view that any discussions, proposals, or terms raised during that process are confined to the amicable settlement process. Consequently, once an amicable settlement process has failed and the matter proceeds to the merits stage, the Committee is bound to consider the issues, facts and prayers contained in the original communication as submitted by the Applicants.

54. The Committee further notes that the Respondent State participated in the amicable settlement process without raising any formal objection to the inclusion or discussion of the “new prayers” it now challenges. It would therefore be inconsistent for the Respondent to later object to matters that were the subject of mutual discussion during the amicable process. The Committee emphasises that amicable settlement proceedings are voluntary and collaborative in nature, and objections concerning the scope or content of such discussions should be raised contemporaneously within that process. In that regard, the Committee is of the view that issues emanating from the amicable process cannot properly form the basis of a preliminary objection at the merits stage and the Committee, therefore, considers the Respondent’s preliminary objection misplaced.
55. Notwithstanding the foregoing finding, the Committee deems it necessary to address, for purposes of clarity, whether it may, in the course of determining a communication on its merits, consider or grant prayers that were not expressly included in the initial communication submitted by the Applicants.
56. While the Committee acknowledges that its Revised Guidelines for the Consideration of Communications do not expressly address the procedure for amendment of pleadings, this silence cannot be interpreted as permitting parties to a communication to amend or expand their prayers at will. Procedural fairness, legal certainty, and equality require that each party is aware of the case they must meet. Allowing one party to alter its prayers during the course of proceedings without notice, justification, or leave of the Committee would prejudice the other party and undermine the integrity of the process. The Committee therefore emphasises that in principle, any amendment or expansion of prayers must be made formally, with notice to the Committee and the Respondent. In the absence of such a process, the Committee is bound to determine the matter strictly on the basis of the prayers and issues raised in the original Communication.
57. The Committee notes that the African Court case relied on by the Applicants (*Rev. Christopher Mtikila v. United Republic of Tanzania*) concerned the inherent power of the Court to grant remedies not specifically pleaded by either party in the context of satisfaction and reparation. However, that jurisprudence does not relate to the procedural question of whether a party to ongoing proceedings may unilaterally introduce new prayers or amend existing ones. The principle in the *Mtikila* case concerns the adjudicator’s remedial discretion, not the parties’ latitude to amend their claims.
58. The Committee notes that, just like the African Court, it possesses a degree of discretion to recommend appropriate measures or remedies which, in its view, are necessary to give full effect to the rights guaranteed under the African Children’s Charter, even where such measures were not expressly requested by the parties. This authority stems from the Committee’s protective mandate under the African Children’s

Charter. However, this discretion cannot be interpreted as permitting the Committee to determine prayers that were not part of the original communication. Allowing parties to expand or alter their claims, without proper notice or amendment, would undermine the principles of certainty and fairness.

59. In this regard, while dismissing the preliminary objection on the basis that it concerns matters that arose during the amicable settlement and is therefore misplaced, the Committee affirms that its examination of the Communication on the merits shall be confined to the issues and prayers contained in the original Communication submitted by the Applicants.

ix. Applicants' submissions on merits

60. The Applicants submit that the Respondent State has failed to discharge its obligations under the ACRWC, thereby allowing violations of the victim's rights to persist. They allege that the victim was trafficked under false pretences and subjected to sexual exploitation in prostitution at a bar, where she endured repeated abuse and inhuman treatment. Although the violations were perpetrated by private individuals, the Applicants argue that the State is internationally responsible for failing to prevent such exploitation, to protect the child, and to respond with due diligence.

61. They further submit that the circumstances surrounding the recruitment, harbouring, and exploitation of the victim amount to trafficking in children, which is expressly prohibited by the Charter. They allege that the Respondent State failed to adopt adequate preventive measures, to identify the victim as a child trafficking survivor, to provide appropriate shelter and assistance, and to ensure that perpetrators were effectively prosecuted and punished.

62. The Applicants contend that the victim endured degrading treatment, including while in the custody of state officials, which constitutes abuse and torture. They submit that the failure to investigate, prosecute, and sanction both private actors and state agents for these violations is a breach of the Respondent State's obligations under the Charter.

63. In addition, the Applicants allege that the victim was subjected to hazardous labour in the form of brewing beer and serving in a bar under exploitative conditions, which severely undermined her physical, moral, and social development. They maintain that this form of exploitation falls within the worst forms of child labour and that the Respondent State has failed to take appropriate measures to prevent such violations.

64. Finally, the Applicants argue that the Respondent State did not uphold the best interests of the child, as evidenced by prolonged delays in the proceedings, the disappearance of the case file, and the lack of adequate medical, psychological, and protective support. They submit that the Respondent State has failed to adopt and enforce the necessary measures to give full effect to the rights guaranteed under the Charter.

65. In light of the foregoing, the Applicants allege that the Respondent State has violated its obligations under Articles 1 and 4 of the African Charter on the Rights and Welfare of the Child, as well as the substantive rights guaranteed in Articles 15, 16, 27 and 29

of the Charter, through its failure to prevent, protect, investigate and remedy the violations suffered by the victim.

x. Respondent's submissions on merits

66. The Respondent State submits that it has taken adequate and positive steps, both in law and in practice, to protect children from trafficking, sexual exploitation, and abuse. It recalls that Malawi is a party to several international instruments, including the Palermo Protocol and the Ouagadougou Plan of Action, and has enacted comprehensive domestic legislation such as the Child Care, Protection and Justice Act and the Trafficking in Persons Act. Furthermore, the Constitution of Malawi contains specific guarantees for the rights and welfare of children, including protection from exploitation, and the establishment of independent institutions such as the Independent Complaints Commission under the Police Act provides a mechanism for accountability of state agents.

67. The Respondent State acknowledges that the facts of the present case disclose elements of trafficking and sexual exploitation. It concedes that the acts of the bar owner amounted to child trafficking and profiting from sexual exploitation. However, it rejects the contention that the State failed to act with due diligence. The Respondent maintains that once the matter was reported, the police promptly investigated, arrested the suspect, and charged him with two counts of child trafficking and earning a living through prostitution. The prosecution was able to examine four witnesses in court, with only one remaining to close its case when the proceedings stalled due to the prolonged illness of the presiding Magistrate. In the Respondent's view, this interruption was beyond its control and cannot be attributed to lack of diligence or good faith on the part of the State. Additionally, the Respondent State concedes that regarding the alleged abuse of the victim at Soche Police Station, the matter is yet to be investigated, and the matter has been referred to the Independent Complaints Commission, which is mandated to investigate misconduct by police officers, including criminal conduct.

68. The Respondent State submits that all measures were taken to remedy the victim, including the prompt arrest and prosecution of the suspect and that the State acted swiftly and in good faith to protect the child and bring the perpetrators to justice, and that any delays were due to circumstances outside its control.

69. The Respondent has further submitted that it did not violate articles 1,4,15,16,27 and 29 of the Charter as it took positive steps to investigate and expeditiously prosecute the matter to its logical conclusion. The Respondent further argues that it is not liable to pay damages to the victim and thereby prays that the Communication be dismissed and that no damages be awarded to the complainant.

xi. Applicants' observations on the Respondent's submission on merits

70. In response to the Respondent's submissions, the Applicants submit that the Respondent State violated Articles 27 and 29 of the Charter by failing to effectively investigate and prosecute acts of trafficking and sexual exploitation committed against the victim. They note that the Respondent has conceded that the facts establish trafficking within the meaning of the Charter. However, they contend that despite initial steps taken to arrest and prosecute the trafficker, the proceedings have been marked

by inordinate and unjustified delays, which have effectively stalled the prosecution for several years. The Applicants argue that such delays undermine the urgent nature of child rights protection and demonstrate a lack of due diligence on the part of the State. They further submit that the Respondent has failed to investigate other key actors, including the recruiter and police officers who allegedly abused the victim while in custody, thereby perpetuating impunity and denying the victim access to justice.

71. The Applicants also submit that the Respondent State violated Article 16 of the Charter by failing to protect the victim from abuse and torture. They submit that the State has acknowledged that allegations against police officers remain uninvestigated and that no sufficient evidence has been provided to demonstrate that any meaningful investigative steps have been taken. The Applicants argue that this lack of prompt and effective investigation reflects a failure to adopt adequate measures to protect the victim from abuse and to ensure accountability for violations committed by both private and State actors.
72. In addition, the Applicants argue that the Respondent State violated the best interests of the child principle under Article 4 of the Charter. They contend that the prolonged delays in the prosecution, spanning several years, and the failure to investigate related acts of trafficking and abuse are inconsistent with the obligation to ensure that the child's best interests are a primary consideration. The Applicants submit that the Respondent's continued inaction and reliance on incomplete prosecutorial steps do not meet the required standard of diligence and have resulted in ongoing harm to the victim.

The Committee considers and analyses the alleged violations in the order in which they were submitted in the communication.

a. *Alleged violation of article 27 of the ACRWC on sexual exploitation*

73. Article 27 of the African Children's Charter provides that States have the responsibility of protecting the child from all forms of sexual exploitation and sexual abuse. The article further provides that States parties should take measures that prevent the inducement, coercion or encouragement of a child to engage in sexual activity, use of children in prostitution, and the use of children in pornographic activities.
74. The Applicants allege that the victim's right to be protected from sexual exploitation under article 27 was violated through her subjection to trafficking for the purposes of sexual exploitation at the bar, albeit through the actions of third parties. They further contend that the bar owner profited from the victim's sexual exploitation by collecting money from patrons who sexually abused her in exchange for money. The Applicants allege that the Respondent has failed to provide protection for the victim and has not made specific attempts to redress the victim's specific case through prudent investigation and expeditious prosecution of all the private actors involved.
75. The Respondent concedes that the bar owner profited from the victim's sexual exploitation and that the victim's right to protection from sexual exploitation was violated as a result. The Respondent, however, argues that it took immediate action to investigate, arrest and prosecute the accused person expeditiously and redress the victim's case. The Respondent states that the suspect was arrested in 2018, a few weeks after the matter was reported, the police promptly obtained witness statements from the victims and other witnesses as well as cautioned the suspect. The suspect was subsequently taken to court and charged with two counts of child

trafficking and earning a living through prostitution. The prosecution commenced in earnest and four witnesses were interviewed, with only one witness remaining to close the State's case when the proceedings stalled due to the prolonged illness of the presiding Magistrate. The Respondent argues that the delays in the trial were therefore caused by circumstances beyond its control and cannot be attributed to a failure of due diligence. On this basis, the Respondent maintains that it acted promptly and effectively in response to the allegations, and that it did not violate article 27 of the Charter.

76. The issue for determination by the Committee is whether the Respondent State exercised due diligence in investigating and prosecuting the perpetrators, and whether the prolonged delay in concluding the criminal proceedings amounts to a violation of its obligations under article 27 of the Charter.
77. The Committee notes that the obligations stemming from article 27 are laid out in the ACERWC General Comment No. 7 on Article 27 (Sexual Exploitation). The obligations require States to adopt immediate legislative, administrative and social measures to prevent exploitation, to investigate and prosecute perpetrators without delay, and to provide remedies and rehabilitation for victims. The Committee underlines that these obligations are of immediate effect and are not subject to progressive realisation.¹²
78. The Committee recalls its decision in *IHRDA & Finders Group Initiative (on behalf of TFA) v Cameroon*,¹³ where it emphasised that prolonged delays in prosecuting perpetrators of sexual abuse render investigations ineffective and violate the protection guaranteed under article 27. The Committee emphasised that five years is more than enough time to bring a perpetrator to justice. The Committee draws further inspiration from the African Commission, which in *Zimbabwe Human Rights NGO Forum v Zimbabwe*¹⁴ and in *SERAC v Nigeria*¹⁵, affirmed that States may be held responsible when they fail to exercise due diligence to prevent, investigate and punish abuses committed by private actors. Similarly, in *Norbert Zongo and Others v. Burkina Faso*, the African Court on Human and Peoples' Rights found that the State's failure to investigate and prosecute the matter within a reasonable time constituted a violation of the right to a fair trial and the State's duty to act with due diligence.¹⁶ This approach ensures that States are motivated to implement measures that protect peoples' rights as well as provide the necessary support and remedies in instances where the rights have been violated.
79. The Committee notes in the present communication that the Respondent State investigated the matter, arrested the suspect, and initiated prosecution. However, the proceedings stalled for several years due to repeated adjournments. The Applicants documented at least eleven adjournments between February and August 2019, attributed to reasons such as illness of the magistrate or family members, unavailability of a witness, power outages, confusion over hearing dates and weather-related factors. The Committee finds that such a pattern of repeated adjournments, many for avoidable or trivial causes, demonstrates a lack of urgency and continuity required when prosecuting sexual exploitation offences involving children.

¹² ACERWC General Comment No. 7 'Sexual Exploitation' (2021) para 33.

¹³ ACERWC, *The Institute for Human Right and Development in Africa and Finders Group Initiative on behalf of TFA (a minor) V. The Government of Republic of Cameroon* No. 006/Com/002/2015 para 58.

¹⁴ *Zimbabwe Human Rights NGO Forum v Zimbabwe* (2006) AHRLR 128 (ACHPR) 2006 para 146.

¹⁵ *Social and Economic Rights Action Centre (SERAC) and Another v Nigeria* (2001) AHRLR (ACHPR 2001)

¹⁶ African Court on Human and Peoples' Rights (AfCHPR), *Beneficiaries of late Norbert Zongo, Abdoulaye Nikiema alias Ablasse, Ernest Zongo, and Blaise Ilboudo and Burkinabe Movement for Human and Peoples' Rights v Burkina Faso* Application No. 013/2011 Judgment para 156.

80. It should also be noted that during the hearing, on 10 April 2025 during the 45th Ordinary Session of the ACERWC, the Respondent indicated that the Magistrate had unfortunately passed on and that the case file had gone missing for a period before being traced. The Committee finds that such factual occurrences cannot absolve the Respondent of its obligations under article 27. The duty of due diligence requires that proceedings be continuous and effective, and the death of a judicial officer or the loss of a case file cannot justify the denial of justice to a child victim of sexual exploitation.
81. The Committee emphasises that the obligation placed on States to protect the rights of children requires proactive and efficient action. Where violations occur, States are expected to investigate, prosecute, and provide support to victims without undue delay. Failure to do so leaves children exposed to further harm. In the present case, the Committee notes that the victim has endured both physical and psychological consequences of sexual exploitation and despite that, to date, justice has not been served as the matter has not been finalised.
82. ***The Committee, therefore, finds the Respondent in violation of article 27 of the Charter by failing to meet the due diligence obligations to expeditiously investigate and prosecute the alleged perpetrators of sexual exploitation.***

b. Alleged violation of Article 29 of the ACRWC on sale, trafficking and abduction

83. Article 29 (a) of the Charter places an obligation on States Parties to take appropriate measures to prevent the abduction, the sale of, or traffic in children for any purpose or in any form, by any person including parents or legal guardians of the child.
84. The Applicants submit that the victim was trafficked from her home village under the false promise of domestic work but was instead handed over to a bar owner who subjected her to sexual exploitation for profit. They argue that these facts constitute trafficking within the meaning of the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons as it involved the recruitment, transfer and receipt of a child for purposes of exploitation. The Applicants further submit that the Respondent State failed to take measures to prevent the trafficking, to protect the victim once she was trafficked, and to provide her with adequate assistance and remedies. They emphasise that the victim was only identified and assisted through the intervention of civil society actors, and that State institutions failed to provide shelter, medical care or psychosocial support. The Applicants further argue that the Respondent failed to investigate and prosecute all perpetrators involved, including the recruiter and the men who paid to exploit the victim, thereby denying her access to justice and effective remedies as required.
85. The Respondent accepts that the acts committed by the bar owner constitute trafficking and sexual exploitation but maintains that it took prompt action to investigate, arrest and prosecute the accused.
86. The issues for determination before the Committee in relation to article 29 of the Charter are whether the Respondent State exercised due diligence in investigating, arresting, and prosecuting the perpetrators of the trafficking and whether the Respondent State fulfilled its obligations under article 29 of the Charter to provide protection, assistance, and support services to the victim as a trafficked child.

87. Regarding whether the Respondent State exercised due diligence in investigating, arresting, and prosecuting the perpetrators of the trafficking, the Committee notes its findings under article 27 (above) concerning undue delay and deficiencies in the domestic proceedings. The Committee further observes that there are no indications that investigations were launched into the role of the alleged recruiter, despite the allegations on how the victim was lured from her home. The Committee is therefore of the view that the Respondent has failed to investigate and prosecute all persons involved in the chain of trafficking the victim.
88. Regarding whether the Respondent State fulfilled its obligations to provide protection, assistance, and support services to the victim as a trafficked child, the Committee notes that according to the CEDAW General Recommendation No. 38 on trafficking in women and girls in the context of global migration,¹⁷ International human rights law imposes positive obligations on States to identify victims of trafficking irrespective of self-identification, and to provide assistance and protection. Such assistance must include immediate access to information on their rights, the medical, psychological, social and legal services available to them and how to acquire access to them, as well as to safe and appropriate accommodations. Additionally, victims of trafficking are entitled to access to justice and remedies.¹⁸
89. In the present communication, the Committee commends the Respondent State for the measures taken to prevent trafficking of children. These include ratification of international instruments that seek to prevent human trafficking against children, sexual exploitation and organised crime; and the adoption of laws at domestic level that address trafficking such as the 1994 Republic of Malawi Constitution, the Child Care, Protection and Justice Act, the Trafficking in Persons Act and the National Plan of Action Against Trafficking in Persons (2023-2028).
90. The Committee, however, notes that following the report at Soche Police Station, the victim was taken to a One-Stop Centre in Blantyre where a medical practitioner examined her and confirmed that she contracted syphilis and was HIV positive. However, rather than being placed in a shelter as required under victim support procedures, she was returned to the Soche Police Station where she spent four nights and was allegedly subjected to further sexual abuse by police officers. The Committee further notes that after the victim and another girl went missing from the police station, there is no indication by the Respondent that efforts were made to locate the victim. It is the Applicants and other civil society organisations that located the victim. Thereafter, they referred the victim to state institutions where, in the final analysis, such protection was inadequate. For instance, according to the Applicants' submissions, the victim was turned away from a shelter due to lack of space to accommodate her. The victim had to return to the village from which she was trafficked in the first place.
91. These facts demonstrate a failure to provide timely, adequate and effective assistance and rehabilitation to a child identified as a trafficking victim, including failure to secure safe accommodation, continuous medical and psychosocial care, and measures to prevent further harm.

¹⁷ CEDAW General Recommendation No. 38 (2020) on trafficking in women and girls in the context of global migration CEDAW/C/GC/38.

¹⁸ CEDAW General Recommendation No. 38, para 38-43.

92. ***The Committee, therefore, finds the Respondent in violation of article 29 (a) of the Charter on sale, trafficking and abduction due to its failure to exercise due diligence in investigating and prosecuting all alleged perpetrators, including the recruiter, and its failure to provide adequate remedies to the victim as a trafficked child.***

c. Alleged violation of Article 16 of the ACRWC on protection against child abuse and torture

93. Article 16 (1) of the Charter requires States Parties to take specific legislative, administrative, social and educational measures to protect the child from all forms of torture, inhuman or degrading treatment and especially physical or mental injury or abuse, neglect or maltreatment including sexual abuse while in the care of a parent, legal guardian or school authority or any other person who has the care of the child. Article 16(2) prescribes that protective measures shall include effective procedures for the establishment of special monitoring units to provide necessary support for the child and for those who have the care of the child, as well as other forms of prevention and for identification, reporting, referral, investigation, treatment, and follow-up of instances of child abuse and neglect.

94. The Applicants submit that the Respondent State failed to protect the victim from child abuse and torture, contrary to Article 16 of the ACRWC as she was allegedly subjected to sexual abuse by police officers at Soche Police Station and no effort was made to investigate or hold the alleged perpetrators accountable. The Applicants further submit that the bar owner has not been duly prosecuted, with the matter still stuck at pre-trial stage and the file missing.

95. The Respondent State submits that the allegations of child abuse and torture were comprehensively investigated by the police which resulted in the arrest of the suspect who was charged with child trafficking and the offence of earning a living through prostitution, and prosecution commenced. The Respondent further concedes that the allegations of sexual abuse of the victim by the police officers are yet to be investigated. The Respondent however submits that the Director of Public Prosecutions already wrote to the Independent Complaints Commission which is mandated to receive and investigate complaints by the public against police officers to institute criminal investigations against the perpetrators.

96. The issues for determination by the Committee are whether the Respondent took comprehensive measures to prosecute the alleged perpetrator, and to investigate the alleged sexual abuse of the victim by the police officers.

97. The Committee notes that the African Children's Charter does not define 'torture' or 'cruel, inhuman or degrading treatment or punishment.' However, the Committee's General Comments, international instruments and jurisprudence provide accepted legal definitions and interpretative guidance. In its General Comment No. 7 on Article 27 of the Charter, the Committee clarified that sexual exploitation and abuse fall within the threshold of torture, cruel, inhuman or degrading treatment.¹⁹ The African Commission has similarly held that the terms "cruel, inhuman or degrading treatment or punishment" must be interpreted broadly to encompass both physical and mental

¹⁹ ACERWC General Comment No. 7, para 19

abuse.²⁰ The Committee also draws inspiration from the jurisprudence of the UN Human Rights Committee which, in General Comment No. 20 on Article 7 of the International Covenant on Civil and Political Rights (ICCPR), emphasises that the prohibition is not limited to acts that cause physical pain, but extends to acts inflicting mental suffering.²¹ In General Comment No. 28 on article 3 of the ICCPR (equality of rights between men and women), the Human Rights Committee further underscores the obligation of States to adopt laws and practices that address violence against women, including rape.²² Likewise, the Committee draws inspiration from the CEDAW Committee's General Recommendation No. 19, which affirms that gender-based violence impairs or nullifies the enjoyment of human rights and fundamental freedoms, including the right not to be subjected to torture or cruel, inhuman or degrading treatment.

98. Against this background, the Committee affirms that rape and sexual abuse, particularly against a child, constitute a grave form of inhuman and degrading treatment. As already noted in the Committee's previous decisions, such acts have devastating and long-lasting consequences, including heightened risks of post-traumatic stress disorder, depression, and other serious mental health problems.²³
99. Article 16(2) of the Charter obliges States Parties to adopt specific protective measures such as reporting, referral, investigation, treatment and follow-up to protect children from torture and inhuman or degrading treatment. This obligation applies not only when violations are committed by State actors, but also in cases involving non-State actors. In *TFA v. Cameroon*, the Committee held that article 16 places a positive duty on States to take necessary measures to prevent abuse and torture, and where violations occur, to conduct exhaustive investigations and ensure that appropriate remedies are provided.²⁴ This approach is echoed by the Committee against Torture, which in its General Comment No. 2 on the implementation of article 2 of the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, emphasises that where State authorities fail to exercise due diligence in preventing, investigating, prosecuting and punishing private actors, the State is considered to have acquiesced in the acts of torture.²⁵
100. The Committee recalls that in its decision in *ACJPS v. Sudan*, it found that failure to prosecute and provide remedies for a victim of rape amounted to a violation of article 16 of the Charter. The Committee further emphasises that sexual exploitation and abuse of children can result in severe and long-lasting harm, including neurological and psychological impairments, and can deprive victims of their right to quality of life. These impacts underscore the critical importance of prompt investigation, effective prosecution, and the provision of comprehensive support services to victims.
101. From the facts of the Communication, the Committee notes that although the victim was examined at a One-Stop Centre, she was reportedly returned to Soche Police Station instead of being placed in a shelter as required by victim support procedures.

²⁰ *Media Rights Agenda v Nigeria* (Communication 224 of 1998) [2000] ACHPR 24 (6 November 2000)

²¹ UN Human Rights Committee CCPR General Comment No. 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment) 10 March 1992, para 5

²² UN Human Rights Committee General Committee (HRC) CCPR General Comment No. 28: Article 3 (The Equality of Rights Between Men and Women) 29 March 2000, CCPR/C/21/Rev.1/Add.10, para11.

²³ See for instance, ACERWC, *African Centre for Justice and Peace Studies on behalf of Ms. Umjumah Osman Mohamed Vs the Republic of Sudan* No: 0016/Com/004/2020.

²⁴ *The Institute for Human Right and Development in Africa and Finders Group Initiative on behalf of TFA (a minor) V. The Government of Republic of Cameroon*, ACERWC, Communication No. 006/Com/002/2015, para 73.

²⁵ Committee against Torture, General Comment 2 on implementation of article 2 of the Convention against torture and other cruel, inhuman or degrading treatment or punishment (2008) para 18.

She allegedly remained there for several nights and was subjected to further sexual abuse by police officers.

102. The Committee recalls its earlier findings under article 27 that the Respondent failed to act with due diligence in ensuring the timely prosecution of the main perpetrator and reiterates that the illness of the presiding magistrate cannot justify the prolonged delay, particularly in a case involving sexual abuse where prompt action is essential to preserve evidence. The Committee further notes with concern that no progress has been made in investigating the alleged sexual abuse of the victim by police officers at Soche Police Station. While the Respondent indicates that the matter was referred to the Independent Complaints Commission, the Committee, while commending this step, considers that mere referral, without evidence of tangible steps taken to identify and hold the alleged perpetrators accountable, does not meet the State's positive obligations under article 16(2).
103. ***The Committee, therefore, finds the Respondent in violation of article 16 of the Charter on protection against child abuse and torture due to its failure to exercise due diligence in investigating and prosecuting all alleged perpetrators, including the accused police officers, as well as its failure to provide adequate remedies to the victim.***

d. Alleged violation of Article 15 of the ACRWC on child labour

104. According to article 15 of the ACRWC, every child shall be protected from all forms of economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's physical, mental, spiritual, moral, or social development.
105. The Applicants submit that the victim was subjected to economic exploitation and forced to perform work that interfered with her physical, mental and social development in violation of Article 15 of the Charter. They further submit that there has been no justice as neither the bar owner nor the alleged recruiter has been held accountable for their actions. The Respondent did not make any submissions regarding the alleged violation of article 15.
106. The main issue for determination by the Committee is whether the victim's circumstances constitute child labour and whether the Respondent State failed to comply with its obligation to protect the victim from economic exploitation and from work that is likely to be hazardous or to interfere with the victim's physical, mental, moral, and social development.
107. In assessing whether the victim's circumstances constitute prohibited child labour, the Committee is guided by Article 3 of ILO Convention No. 182 (1999) (Worst Forms of Child Labour) and by ILO Convention No. 138 (1973) on Minimum Age.
108. Article 3 of the ILO Convention 182 on Worst Forms of Child Labour, provides that child labour comprises activities including all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour; the use, procuring or offering of a child for prostitution; and work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.

109. The ILO Convention 138 (Minimum Age Convention) addresses the issue of child labour by setting the minimum age for employment. Its Preamble states that it seeks to 'establish a general instrument on the subject, which would gradually replace the existing ones applicable to limited economic sectors, with a view to achieving the total abolition of child labour'. The Minimum Age Convention establishes a minimum age that 'shall not be less than the age of completion of compulsory schooling' and shall not be less than 15 years, in any case.²⁶ The framework, therefore, prioritises and seeks to prohibit work that may interfere with a child's education. The Minimum Age Convention also aims to protect children from engaging in work that might interfere with their development.
110. Further, the Minimum Age Convention prohibits, without qualification, the employment of a person under the age of 18 years which is likely to jeopardise their health, safety or morals. The Minimum Age Convention, however, provides that employment of children from the ages of 13 to 15 may be permitted provided that the work is light and not likely to be harmful to their health and development and not prejudicial to their school attendance or vocational training. The Minimum Age Convention thus emphasises the prioritisation of a child's right to education. By setting these standards, the aim was to ensure that children can enjoy their right to education and healthy development without the encroachment of harmful labour practices.
111. In the present Communication, as already noted, the facts indicate that the victim, along with her friend, were deceived into believing they would be employed as domestic workers. It transpired however, that they would be working in a bar and not as domestic servants. They were oriented and informed that in addition to their bar duties, which included brewing the traditional beer for sale, they would be required to provide sexual services to patrons and that the bar owner would be collecting the money from the patrons. The girls refused but were told that if they wanted to leave, they had to work for their transportation money. The Committee notes that for a period of 26 days, the victim and her friend were allegedly made to have sex with no less than 10 men per day. They received 50 Kwacha per day for food (equivalent to USD 0.04 and not enough to purchase basic food in Malawi)
112. The Committee is of the view that exposing the victim to such work undoubtedly interfered with her physical, mental and social development. In addition, it resulted in the harm of the victim's health, safety and morals, as she had to engage in sexual intercourse with many patrons and allegedly contracted an STD and HIV as a result. In light of the foregoing, the Committee finds that the victim was subjected to child labour within the scope of article 15(1) of the Charter.
113. Given the impacts of child labour on children, States Parties are obliged to take measures to ensure the protection of children from all forms of child labour. Article 15 (2) of the Charter places an obligation on States Parties to take all appropriate legislative and administrative measures to ensure the full implementation of this Article which covers both the formal and informal sectors of employment and having regard

²⁶Art 2(3) Minimum Age Convention, 1973.

to the relevant provisions of the International Labour Organisation's instruments relating to children. States Parties shall in particular:

- a. Provide through legislation, minimum ages for admission to every employment;*
- b. Provide for appropriate regulation of hours and conditions of employment;*
- c. Provide for appropriate penalties or other sanctions to ensure the effective enforcement of this Article;*
- d. Promote the dissemination of information on the hazards of child labour to all sectors of the community.*

114. Further, in its General Comment No. 5 on State Party obligations, the Committee stipulates that legislation in the labour sector should specify the minimum age at which children may enter the workforce, and under what conditions, before that age, they may undertake light work. Further to this, the law should (in accordance with national conditions) detail the forms of hazardous work which children are not allowed to perform. Slavery, debt bondage and other harmful practices must be outlawed,²⁷ and businesses must be brought into the fold in furtherance of children's rights. The General Comment also provides that States Parties must monitor businesses to ensure that they do not use child labour and that any negative impact of business activities upon children is mitigated.²⁸

115. Regarding the obligation to provide through legislation, minimum ages for admission to every employment, the Committee notes that the Respondent State has enacted legislation that protects children from child labour, for instance, the Constitution and the Employment Act of Malawi. The Committee notes that the Employment Act of Malawi expressly prohibits employment of persons under the age of 14 years in any public or private agricultural, industrial or non-industrial undertaking or any branch thereof.²⁹ The Employment Act also prohibits a person between the ages of 14 and 18 years from undertaking hazardous work. Hazardous work has been framed as an occupation or activity that is likely to be harmful to health, safety, education, morals or development of such a person, or prejudicial to the attendance at school or any other vocational or training programme.³⁰ The Committee therefore finds that the Respondent State has complied with its obligations under article 15 (2) (a) of the Charter, by providing, through legislation, minimum ages for admission to every employment.

116. Regarding the obligation to provide for appropriate regulation of hours and conditions of employment, the Committee notes the Applicants' submission that, although the law makes provision for children over the age of 14 to work under certain conditions, these are not always complied with in practice. In addition, the Committee notes the Applicants' contention that the present Communication reflects a broader systemic issue linked to trafficking and inadequate regulation of child labour, particularly affecting vulnerable children. The Committee observes, however, that the Applicants

²⁷ ACERWC General Comment No. 5 on State Party Obligations under the ACRWC (Article 1) and Systems Strengthening for Child Protection (2018), 30.

²⁸ ACERWC General Comment No. 5, 48.

²⁹ Article 21 of the Employment Act of Malawi.

³⁰ Article 22 of the Employment Act of Malawi.

have not provided sufficient evidence to substantiate the claim that minimum age of employment laws are generally not complied with or that there exists a systemic problem of child labour in Malawi. The Committee considers that the circumstances of the present case, without further supporting evidence, are insufficient to demonstrate the existence of a broader systemic issue.

117. The Committee further observes that, in the present case, the victim was subjected to exploitative and harmful working conditions, including deception as to the nature of her work, engagement in bar work, sexual exploitation and abuse, and inadequate feeding. While the Committee considers that such conditions are incompatible with the standards envisaged under article 15 of the Charter, it recalls that the responsibility of the State under article 15(2)(b) relates to the establishment and effective regulation of conditions of employment. In the absence of sufficient evidence demonstrating that the Respondent State failed to regulate or oversee such conditions in a manner attributable to it, the Committee cannot conclude that the Respondent State violated article 15(2)(b) of the Charter.
118. Regarding the obligation to provide for appropriate penalties or other sanctions to ensure the effective enforcement of article 15, the Committee notes that the Respondent State has enacted legislation prohibiting child labour and related exploitative practices. The Committee, however, emphasises that the mere existence of laws is insufficient if they are not accompanied by effective implementation. In the present Communication, although the Respondent State has taken legislative measures to prevent child labour, the Committee is of the view that these laws have not been implemented because the State failed to prosecute the alleged perpetrators and remedy the victim. The Committee observes that neither the bar owner nor the alleged recruiter has been held accountable for their actions. As already noted, the case was characterised by repeated adjournments and administrative failures, including missing case files, and the victim has not obtained justice to date. The Committee considers that these failures undermine the effectiveness of the legal framework and demonstrate a lack of enforcement of applicable laws. The Committee therefore finds that the Respondent State has failed to comply with its obligations under article 15(2)(c) of the Charter due to its failure to prosecute the alleged perpetrators in a timely manner.
119. With regard to the obligation to promote the dissemination of information on the hazards of child labour to all sectors of the community, the Committee notes that the Applicants did not make specific submissions nor provide evidence regarding the Respondent State's compliance or lack thereof with this obligation. In the absence of sufficient information, the Committee is unable to determine whether there has been a violation of Article 15(2)(d) of the Charter.
120. In light of the foregoing, the Committee finds that the victim was subjected to child labour within the meaning of article 15(1) of the Charter, as she was exposed to economic exploitation and compelled to perform work that was hazardous and interfered with her physical, mental, moral, and social development. The Committee further finds that the Respondent State has failed to comply with its obligations under Article 15(2) (c) of the Charter, due to its failure to effectively ensure the timely investigation and prosecution of the alleged perpetrators.

121. On the other hand, the Committee cannot establish violations under Article 15(2)(a), (b) and (d) of the Charter due to insufficient information before it.
122. ***The Committee, therefore, finds the Respondent in violation of article 15 (1) and article 15 (2) (c) of the Charter due to its failure to exercise due diligence in prosecuting the alleged perpetrator of the violations suffered by the victim, and its failure to ensure her access to adequate remedies.***

e. Alleged Violation of Article 4 on the best interests of the Child

123. Article 4 of the Charter provides that in all actions concerning the child undertaken by any person or authority, the best interests of the child shall be the primary consideration. In all judicial or administrative proceedings affecting a child who is capable of communicating his/her own views, an opportunity shall be provided for the views of the child to be heard either directly or through an impartial representative as a party to the proceedings, and those views shall be taken into consideration by the relevant authority in accordance with the provisions of appropriate law. It is applicable in all actions or omissions undertaken by any person including state and non-state actors.³¹
124. The main issue of contention by the Applicants is that the Respondent State failed to prosecute the criminal case expeditiously and to its logical conclusion. They submit that the effect of the delay of over four years was to rob the victim of two years of her childhood. They allege that the delay in finalising the case, including through acts of negligence as the file was missing at court at the time this Communication was filed, is contrary to the principle of the best interests of the child.
125. The Respondent maintains that the conduct displayed by the Malawi Police Service in undertaking initiatives to arrest the perpetrator and commence prosecution was done in the best interests of the child.
126. The issues under consideration require that the Committee examine what the principle of the best interests of the child entails in the present case, and whether the Respondent State's initiatives to investigate and prosecute the matter were consistent with its obligation to ensure that the child's best interests are the primary consideration in all matters affecting her.
127. The Committee's General Comment No. 5 on State Party obligations states that 'there are no conditions attached to this principle which could dilute its scope, reach or standard of application.'³² Further, in its General Comment No.7 on sexual exploitation, the Committee states that the obligation to protect and guarantee children's best interests extends to the adoption of adequate legislative and regulatory measures, and to prompt, adequate and diligent responses by all stakeholders to complaints of violations received. Psychosocial support to victims and redress for infringements are also part of ensuring children's best interests.³³ States must ensure that the potentially negative consequences for victims and witnesses, of procedures to investigate acts of

³¹ ACERWC, *The Centre for Human Rights (University of Pretoria) and La Rencontre Africaine Pour La Defense Des Droits De L'homme (Senegal)* Decision 003/Com/001/2012 at para 35.

³² ACERWC, General Comment No. 5, para 4.2.

³³ ACERWC General Comment No. 7, para 36.

sexual violence and efforts to prosecute perpetrators, are reduced as much as possible. The principle of “do no harm” must be uppermost, and States must adopt the necessary legislative and regulatory measures to act with due diligence to prevent and investigate acts of sexual violence committed by State and non-State actors, prosecute and punish perpetrators, and provide a remedy to victims. The necessity of the due diligence principle in pursuing sexual violations is also emphasised. In cases where the violence has already occurred, the Committee requires that governments undertake exhaustive investigations and ensure that commensurate compensation is awarded to the victims.³⁴

128. The Committee notes that the determination of the best interests of the child requires an in-depth consideration of the multiple competing elements and interests of each child concerned. The principle is flexible and adaptable so that it can be applied to the needs of children considering their specific circumstances.³⁵
129. In the present Communication, the Committee notes that the Respondent State’s failure to timeously and expeditiously prosecute the case, and the inordinate delays that have persisted for more than four years are contrary to the best interests of the child principle. The Committee emphasises that the best interests of the child would require swift justice in cases of exploitation and abuse, not only to ensure accountability of perpetrators but also to secure remedies and rehabilitation for the victim. Finalisation of the case within a reasonable period would have enabled the victim to access justice and remedies.
130. Furthermore, while the Committee acknowledges the enactment of legislation to protect children by the Respondent State, it emphasises that the mere existence of legislation is not sufficient to satisfy State obligations under the Charter. The Respondent State has failed to discharge its obligation to effectively enforce this legislation, by not taking reasonable and necessary administrative measures, including the expeditious prosecution of the accused persons and the diligent investigation of all alleged perpetrators. States Parties are required to not only ensure that their laws are consistent with the Charter, but also that those laws are implemented in a manner that protects children. The Committee recalls that child protection systems, which contain the full array of measures to prevent and respond to child abuse, neglect, and exploitation, are integral to the implementation of the Charter in the best interests of children. This includes remedies for infringements, among other measures.³⁶ In the present Communication, the Respondent State has however not expeditiously prosecuted the matter, and the victim has not had access to remedies to date, contrary to the best interests of the child principle.
131. ***The Committee, therefore, finds the Respondent in violation of article 4 (1) of the Charter due to its failure to exercise due diligence in investigating and prosecuting the alleged perpetrators of the violations suffered by the victim, and its failure to ensure her access to adequate remedies.***

f. Alleged violation of Article 1 of the ACRWC on obligations of States Parties

³⁴ As above, para 37.

³⁵ UN CRC General Comment No. 14, para 35.

³⁶ ACERWC General Comment No.7, para 38.

132. Article 1 of the Charter obligates States to recognise the rights, freedoms and duties enshrined in [the] Charter and undertake the necessary steps, in accordance with their Constitutional processes and with the provisions of the present Charter, to adopt such legislative or other measures as may be necessary to give effect to the provisions of this Charter.
133. The Applicants submit that the import of this provision is that Malawi and other member states to the Charter are required to adopt legislative and other measures to ensure that they promote, protect, respect and fulfil all rights and freedoms contained therein. They argue that the Respondent has failed to guarantee the victim's fundamental rights and freedoms as outlined in the Charter. They also submit that it is now trite under African human rights jurisprudence that once a state is found in violation of any of the substantive provisions, it also follows that it has violated article 1, which requires it to adopt legislative and other measures to give effect to the provisions of the treaty. The Respondent, on the other hand, has not made any submissions in respect of the alleged violation of article 1.
134. The provisions of article 1 of the Charter obliges State Parties to the Charter first to recognise all the rights, freedoms and duties enshrined under the Charter. Upon recognition of the rights, freedoms and duties enshrined under the Charter, State Parties to the Charter are required to undertake all the necessary steps to adopt such legislative or other measures as may be necessary to ensure implementation of provisions of the Children's Charter.
135. As the African Commission Rights has emphasised, internationally recognised human rights standards impose four levels of obligations on States that commit to a rights regime: the duties to respect, protect, promote, and fulfil rights.³⁷ The duty to protect requires States to shield rights-holders from violations by third parties through legislation and by providing effective remedies. This obligation encompasses the duty to prevent violations, to investigate alleged violations, and to prosecute and punish perpetrators.³⁸In this context, States are under a clear obligation to conduct effective investigations into all allegations of human rights violations, including rape. The African Commission has made it clear that failure to carry out such investigations in a manner that brings perpetrators to justice demonstrates a lack of genuine commitment on the part of the State. Failure to investigate amounts to an international responsibility on the part of the State, whether the violations are committed by its own agents or by private individuals.³⁹
136. The Committee has also affirmed this standard in its jurisprudence, including in *Minority Rights Group International and SOS-Esclaves (on behalf of Said Ould Salem and Yarg Ould Salem) v. Mauritania*, where it stressed that the obligation of due diligence requires States not only to prevent human rights violations but also to investigate them, prosecute perpetrators, and ensure they are punished.⁴⁰
137. In this context, States must also identify groups that are especially vulnerable to abuse and adopt measures to prevent violence before it occurs. Where violations have already taken place, States are required to conduct thorough investigations and ensure that victims obtain adequate compensation and rehabilitation. A failure by any

³⁷ *Social and Economic Rights Action Centre (SERAC) and Another v Nigeria* (2001) AHRLR (ACHPR 2001) para 44.

³⁸ As above, para 46.

³⁹ *Egyptian Initiative for Personal Rights & INTERIGHTS v Egypt*, Communication No 323/06, ACHPR, para 163.

⁴⁰ *Minority rights group international and Sos-Esclaves on behalf of Said Ould Salem and Yarg Ould Salem V The Government of the Republic of Mauritania*, Communication No: 007/Com/003/2015, ACERWC para 52.

organ of the State to act diligently in this regard renders the State responsible for breach of its obligations under the Charter.

138. In the present communication, the Committee notes that the Applicants argue that the Respondent has not effectively investigated or prosecuted all those responsible for the Victim's abuse and exploitation. While the Respondent indicates that prosecution of the bar owner commenced and that some witnesses were interviewed, the Committee notes with concern that, to date, the matter has not been concluded, contrary to the requirement of timely prosecution in cases involving sexual abuse and trafficking. Furthermore, as already noted, no progress has been demonstrated in investigating the serious allegations of sexual abuse by police officers at Soche Police Station, despite the Respondent's acknowledgement that the matter was referred to the Independent Complaints Commission. The Committee also notes that no evidence has been presented that any steps were taken to identify and investigate the alleged recruiter, despite his involvement in the case.
139. The Committee takes the view that, the human rights obligation of States is that of obligation of result, not obligation of diligence.⁴¹ In that regard, the due diligence of the Respondent State in relation to the current communication should be assessed by the result it has achieved. The Committee further reiterates that States have a duty to conduct effective investigations into allegations of sexual abuse, including where children are involved. This standard has also been affirmed in the jurisprudence of the European Court of Human Rights (ECtHR). In *P.M. v. Bulgaria*, the ECtHR emphasised that investigations into alleged sexual abuse must be capable, in principle, of establishing the facts of the case and identifying and punishing those responsible.⁴² Similarly, in *M.C. v. Bulgaria*, the Court held that States have a positive obligation not only to enact criminal laws that adequately criminalise rape but also to ensure their practical application through effective investigation and prosecution.⁴³
140. As the circumstances of the present communication demonstrate, the victim reported the violations to the authorities; she was medically examined at the request of the police and the findings confirmed that she had contracted sexually transmitted infections because of the abuse. The victim also alleged that she was sexually abused by the Police Officers at Soche Police Station. Despite the availability of this evidence, the Respondent State failed to ensure an effective investigation and timely prosecution. The Respondent State was under a duty to act with due diligence to substantiate the available evidence, identify all alleged perpetrators, and ensure accountability. The prolonged delays in the prosecution of the bar owner, the absence of any investigation into the alleged recruiter, and the lack of progress in addressing the allegations against the accused police officers reveal shortcomings in meeting this obligation. In cases involving violations of children's rights, time is of the essence, and justice delayed is justice denied. Prolonged delays and inaction in investigating, prosecuting, and remedying such abuses undermine the very purpose of the Charter and perpetuate the suffering of the victim.
141. ***The Committee, therefore, finds the Respondent in violation of article 1 (1) of the Charter on obligations of states parties due to its lack of due diligence to***

⁴¹ Association of Victims of Post Electoral Violence and Another v Cameroon (2009) AHRLR 47 (ACHPR 2009) para 110, 111; De Cubber v Belgium, application 9186/80, European Court of Human Rights, judgment, 26 October 1984 para 35.

⁴² P.M. V Bulgaria, *Application no. 49669/07*, European Court of Human Right, Judgment, 24 January 2012, para 64.

⁴³ M.C. V Bulgaria, *Application no. 39272/98*, European Court of Human Right, Judgment, 4 December 2003, para 153.

investigate the alleged violations and effectively prosecute and punish the alleged perpetrators, as well as failing to ensure an effective remedy to the victim.

xii. Request for Compensation

142. The Applicants request that the Republic of Malawi be ordered to pay compensation to the Victim in the sum of 50 million Malawi Kwacha (approximately USD 49,000), to cover pain and suffering resulting from the violations she endured, as well as her current and future health expenses.
143. The Respondent, however, argues that under the Trafficking in Persons Act, victims of human trafficking are entitled to institute civil proceedings against any person, including public officers, in relation to offences under the Act. Such proceedings may seek compensation, restitution and recovery of damages. On this basis, the Respondent maintains that while the Complainant is within her rights to pursue damages, such claims should be directed against the bar owner, who is alive and facing prosecution, or the police officers allegedly involved, rather than against the State itself. The Respondent further contends that a claim for damages against the State before the Committee is inconsistent with the principle of subsidiarity, given that the domestic framework provides avenues for the victim to pursue compensation. The Respondent requests that the Committee dismiss the complainants' prayer for compensation.
144. In response, the Applicants submit that the Respondent State's objection to the claim for compensation is unfounded and reflects a misapprehension of the principles governing State responsibility for internationally wrongful acts. They contend that the compensation claim is legitimate and constitutes an appropriate remedy in light of the violations suffered by the victim. The Applicants further argue that the Respondent cannot rely on its domestic law to evade international responsibility, as affirmed under Article 27 of the Vienna Convention on the Law of Treaties and relevant international jurisprudence. They also submit that the failure of the domestic system to effectively resolve the matter necessitated recourse to the Committee, thereby bringing the dispute within the realm of international adjudication.
145. The Applicants also argue that it is established practice for human rights bodies to award monetary compensation as a form of just satisfaction. While acknowledging that the determination of the appropriate quantum rests with the Committee, they argue that the victim's circumstances, including severe abuse, enduring trauma, the contraction of HIV, and the need for lifelong medical and psychosocial support, justify an award of compensation. They therefore maintain that the Respondent State should be held accountable at the international level and request the Committee to determine and award appropriate compensation to the victim.
146. In determining whether the Respondent State should compensate the victim, the Committee, while acknowledging the existence of domestic legal avenues for claiming compensation and commending the Respondent State for establishing them, recalls that under international law, States cannot rely on their internal law as a justification

for failing to fulfil their treaty obligations.⁴⁴ The Committee notes that a child victim is entitled to a right to a remedy and reparation for violations of the Charter.⁴⁵ While this obligation rests primarily on the State, the existence of domestic remedies does not absolve the State of its responsibility to ensure effective reparation, consistent with its obligations under the Charter. The Committee further affirms that the Respondent State's obligations under article 1 of the Charter to respect, protect, promote and fulfil the rights enshrined therein include the duty to ensure effective remedies and reparations to victims of violations.

147. In the present Communication, the facts indicate that despite the existence of legal mechanisms, the victim could not access adequate protection or sustained support without the intervention of third parties and was exposed to further harm while under the responsibility of State authorities. The Committee considers that the Respondent State cannot shift the burden of providing remedies entirely onto private individuals through domestic proceedings.⁴⁶ To do so would undermine the protective purpose of the Charter and weaken the effectiveness of the rights it guarantees. The responsibility to compensate the victim arises from the Respondent State's failure to exercise due diligence in preventing, investigating, and prosecuting the violations.
148. The Committee emphasises that where a State is found internationally responsible for a violation of the Charter, it bears the primary obligation to ensure that the victim is adequately compensated, notwithstanding the existence of complementary avenues for redress under domestic law. The Committee further recalls that it is well established in its jurisprudence that where a State Party is found to be responsible for violations of the Charter, it is under an obligation to ensure that the victim receives adequate and effective compensation. The African Court has reiterated that the right to reparations for the breach of human rights obligations is a fundamental principle of international law, and a State that is responsible for an international wrong is required to make full reparation for the damage caused.⁴⁷ As affirmed by the African Court in *Rev. Christopher R. Mtikila v. United Republic of Tanzania*, a core principle of contemporary international law on State responsibility now recognised as customary international law is that any breach of an international obligation which results in harm creates a corresponding duty on the State to provide adequate reparation.
149. In this Communication, the Committee has found the Respondent in violation of articles 1 (1) ,4 (1),15 (1) & 2 (c) ,16, 27 and 29 (a) of the African Children's Charter, and thus it is responsible for the wrongful act against the victim and cannot be absolved from compensating the victim.
150. In determining appropriate reparations following a finding of violations of the Charter, the Committee is guided by its Guidelines on Reparations.⁴⁸ These Guidelines require that reparations be fair, adequate, prompt and effective. They should also be proportionate to the damage suffered.⁴⁹ Furthermore, reparations must adopt a child-

⁴⁴ Article 27 of the Vienna Convention on the Law of Treaties provides that a State Party "may not invoke the provisions of its internal law as justification for its failure to perform a treaty."

⁴⁵ The ACRWC, Article 1; ACERWC Guidelines on Reparations, available <https://www.acerwc.africa/sites/default/files/2026-03/ACERWC%20Guidelines%20on%20Reparations.pdf> paras 10–11.

⁴⁶ The state bears the primary responsibility. See Articles 27, 29, 16 and 15 of the Charter.

⁴⁷ AfCHPR, Application No. 006/2012, *African Commission on Human and Peoples' Rights v Republic of Kenya*, para 36.

⁴⁸ ACERWC Guidelines on Reparations (2025).

⁴⁹ Para 17.

victim-centred approach, requiring a full understanding of the harm suffered and the specific needs and circumstances of the child victim.⁵⁰ This approach further requires that the victim be enabled to participate in decisions affecting the form and content of reparations, and that such processes be conducted in a manner that safeguards her interests. The Committee further recalls that the Guidelines require that, in cases involving sexual exploitation and abuse, reparations must consider the multi-dimensional and long-term consequences of the violations on the child, their family, and community.⁵¹

151. According to the Committee's Guidelines on Reparations, in assessing compensation, consideration is given to factors such as physical or mental harm; lost opportunities; including employment, education and social benefits; material damages and loss of earnings, including loss of earning potential; moral damage, such as pain, suffering, harm to dignity, and mental and emotional harm; and costs required for legal or expert assistance, medicine and medical services, and psychological and social services.⁵²
152. The Committee also draws inspiration from its jurisprudence, where it has repeatedly held that 'rape causes a deep and long-lasting psychological, mental and physical damage, that attracts reparation in the form of monetary compensation, among others.'⁵³ The Committee further draws inspiration from the jurisprudence of other human rights treaty bodies and notes the positive trend of ordering a determined amount of monetary reparation to victims of human rights violations.⁵⁴
153. The Committee notes the circumstances of the victim who is a rural girl in a situation of heightened socio-economic vulnerability, which contributed to her trafficking and exploitation. The Committee further notes that the victim allegedly endured repeated sexual abuse and suffered from physical and psychological harm, including sexually transmitted infections, including HIV, and post-traumatic stress disorder characterised by recurring nightmares, depression, and suicidal ideation, as documented in the medical report submitted by the Applicants. While the medical record does not conclusively establish the victim's medical condition before the violations, these findings were not contested by the State during the hearing.
154. The Committee further notes the evidence presented during the hearing regarding the victim's suicide attempt while at a shelter, her discontinuation of prescribed anti-depressants, and the limited effectiveness of livelihood support provided, including the provision of a sewing machine which has not enabled sustainable reintegration. In this regard, the Committee considers that the prolonged delay in the prosecution of the main alleged perpetrator, together with the failure to investigate other alleged perpetrators by the Respondent, has compounded and prolonged the physical and psychological harm suffered by the victim, and the victim must therefore be compensated.
155. In determining whether to grant the specific amount of compensation requested by the Applicants, the Committee notes its Reparation Guidelines which require it to assess whether it is reasonably satisfied that the basis for the figure is sufficiently specified;

⁵⁰ Para 22-24.

⁵¹ Para 18.

⁵² Para 90.

⁵³ ACERWC, Communication No 006/Com/002/2018, Institute for Human Right and Development in Africa and Finders Group Initiative (on behalf of TFA (A minor)) v the Government of the Republic of Cameroon para 81.

⁵⁴ ACtHPR, Application No. 022/2017, Harold Mbalanda Munthali v Republic of Malawi (2022).

whether the complainants provide clarification and detail on how the amount was reached, for example, breaking it down into specific items, and provided, for example, documentary evidence, examples of comparative regional bodies, and national standards; and whether the Respondent State contested the figure and the extent to which it has cooperated with the Communication process.⁵⁵ In the present Communication, while the Committee acknowledges the seriousness of the harm suffered by the victim, it observes that the Applicants have not provided sufficient clarification and detail on how the requested amount was reached, nor sufficient supporting evidence to substantiate the quantum of the claim. The Committee notes that, apart from the medical report and oral updates provided during the hearing, no further supporting evidence was submitted to substantiate the amount claimed. The Committee is therefore not reasonably satisfied that the basis for the requested amount has been sufficiently specified and is unable to determine an appropriate quantum.

156. The Committee is therefore of the view that the amount for compensation is best determined at the national level, as provided in its Reparation Guidelines that ‘if the Committee considers compensation to be an appropriate reparation but is unable to determine such, it can decide that the amount is best determined at the national level.’⁵⁶ A similar approach was adopted by the African Commission in *J (Represented by the Initiative for Strategic Litigation in Africa (ISLA) & Kenya Legal and Ethical Issues Network on HIV & AIDS (KELIN)) v Namibia*,⁵⁷ where the Commission, having found violations of the African Charter on Human and Peoples’ Rights, held that compensation was warranted but was unable to determine the amount to be awarded due to the insufficient substantiation of the claim. The Commission therefore decided that the Republic of Namibia should decide on the amount of compensation to be awarded to the victim for the violations found.

157. The Committee, therefore; directs the Respondent State to determine and award compensation to the victim through an appropriate mechanism, in compliance with the following requirements derived from the Guidelines on Reparations:

- a) The process shall be child-sensitive and accessible.⁵⁸
- b) The victim shall be informed and enabled to participate, subject to her evolving capacity.⁵⁹
- c) The determination of compensation shall take into account the full extent of harm, including physical, psychological, and moral damage.⁶⁰
- d) The Respondent State shall ensure that the compensation is adequate, proportionate, and responsive to the victim’s needs.⁶¹
- e) Where necessary, the Respondent State shall adopt measures to safeguard the compensation, including the establishment of appropriate mechanisms.⁶²

⁵⁵ Para 113.

⁵⁶ Para 116.

⁵⁷ Communication 734/19 [2024] ACHPR 11 (8 March 2024).

⁵⁸ Paras 22-24, 119-120.

⁵⁹ Paras 52-55.

⁶⁰ Para 90.

⁶¹ Para 17.

⁶² Para 111(d).

158. In addition to the compensation awarded by the Respondent State, the Respondent State shall further facilitate the victim's access to any additional remedies available under domestic law, including civil proceedings, by providing the necessary legal, financial, and institutional support.

xiii. Decision of the Committee

159. For the reasons given above, the African Committee of Experts on the Rights and Welfare of the Child finds the Respondent State in violation of its obligations under article 1 (1) (obligation of states parties); article 4 (1) (best interests of the child); article 15 (1) & 2 (c) (child labour); article 16 (protection against abuse and torture); article 27 (sexual exploitation); and article 29 (a) (trafficking, sale and abduction). The Committee therefore recommends that the Government of the Republic of Malawi to:

- a. Take expeditious measures to ensure that criminal matter *State v Tomasi Bitton 484/2018* is heard and determined to its logical conclusion without any further delay.
- b. Take expeditious measures to investigate the alleged sexual abuse by police officers at the VSU as well as the act of recruitment by the alleged recruiter which would constitute trafficking in children.
- c. Fully implement the provisions of the Trafficking in Persons Act and its subsidiary instruments, particularly the Regulations and Standard Operating Procedures for the Identification and Assistance to Victims of Trafficking in Persons and the National Referral Mechanism, to ensure the protection, rehabilitation, and reintegration of child victims of trafficking and sexual exploitation across all districts in Malawi.
- d. Adopt clear and binding procedural timelines for the investigation and prosecution of trafficking and sexual exploitation cases, with the aim of ensuring that such cases are handled expeditiously and without unreasonable delay.
- e. Strengthen and adequately resource the National Coordination Committee against Trafficking in Persons to enable it to effectively monitor and report on cases of trafficking for sexual exploitation, maintain disaggregated data by age, gender, and region, and coordinate the implementation of anti-trafficking measures nationwide.
- f. Strengthen existing labour inspection mechanisms to effectively monitor and address child labour and trafficking in the both the formal and informal sectors.
- g. Take adequate measures to compensate the victim for the pecuniary and non-pecuniary damage she suffered because of the above-mentioned violations and the Respondent's failure to exercise due diligence in investigating the matter and prosecuting the alleged perpetrators expeditiously.

Reporting on implementation

160. As per Section XXI (1) of the Revised Communication Guidelines of the Committee, the Government of the Republic of Malawi shall report to the Committee on all measures taken to implement the decision of the Committee within 180 days from the date of receipt of the Committee's decision.

Done at the 46th Ordinary Session of the ACERWC

26 November-06 December 2025

A handwritten signature in blue ink, appearing to read 'Sabrina Gahar', is centered at the top of the page. The signature is written in a cursive style with a long horizontal stroke at the end.

Honourable. Sabrina Gahar
Chairperson of the African Committee of Experts
On the Rights and Welfare of the Child