

AFRICAN UNION		UNION AFRICAINE
الاتحاد الأفريقي African Commission on Human & Peoples' Rights		UNIÃO AFRICANA Commission Africaine des Droits de l'Homme & des Peuples
No. 31 Bijilo Annex Lay-out, Kombo North District, Western Region, P. O. Box 673, Banjul, The Gambia Tel: (220) 441 05 05 /441 05 06, Fax: (220) 441 05 04 E-mail: <a href="mailto:au-banjul@africa-union.org">au-banjul@africa-union.org</a> ; Web <a href="http://www.achpr.org">www.achpr.org</a>		

**57<sup>th</sup> Ordinary Session  
04 - 18 November 2015, Banjul, The Gambia**

**Concluding Observations and Recommendations on the Initial and Combined  
Periodic Report of the Republic of Malawi on the Implementation of the  
African Charter on Human and Peoples' Rights (1995 - 2013)**

**I. Introduction**

1. The Republic of Malawi (Malawi) is a State Party to the African Charter on Human and Peoples' Rights (the African Charter or the Charter), having ratified the same on **17 November 1989**.
2. Malawi also ratified the Protocol to the African Charter on Human and Peoples' Rights relating to the Rights of Women in Africa (the Maputo Protocol), on **20 May 2005**.
3. Malawi submitted its Initial and Combined Periodic Report (the Report) in accordance with Article 62 of the African Charter to the African Commission on Human and Peoples' Rights (the Commission) and Article 26 of the Maputo Protocol, on 19 July 2013.
4. The present Report, which covers the period from 1992 to 2013, combines the initial and all outstanding Periodic Reports (Second to Eleventh)<sup>1</sup>.
5. The African Commission considered the Report during its 56<sup>th</sup> Ordinary Session, held from 21 April - 7 May 2015 in Banjul, The Gambia.
6. The Report was presented to the African Commission by the Delegation from Malawi (the Delegation), which comprised the following officials:
  - Honourable S.B. Tembenu -Minister of Justice;
  - Dr. Janet Banda - Solicitor General and Secretary for Justice;
  - Pacharo Kayira - Chief State Advocate;
  - Placid Hara - Chief Paralegal Officer;
  - Ambassador Shophie Kalinde - Chairperson, Human Rights Commission;

<sup>1</sup> Computed from that date on which Malawi deposited the instrument of accession to the Charter, being 23 February 1990,

- Winston Mwafulirwa – Human Rights Commission;
- Duncan Mwapasa – Deputy Inspector General of Police;
- Alice Mkandawire – Principal Gender Development Officer – Ministry of Gender, Children, Disability and Social Welfare;
- Makhumbo R. Munthali – Centre for Human Rights;
- Victor Mhango – CHREA (Civil Society); and
- Josephine Chinere – Daily Times (Media).

7. The Report highlights the developments, which have taken place in the country in the area of the promotion and protection of human and peoples' rights, and measures put in place to comply with the country's obligations under the African Charter in the period between 1992-2013, as well as under the Maputo Protocol between 2005 - 2013.
8. The Commission welcomes the submission of the Report of Malawi. However, it notes that having deposited the instrument of accession to the African Charter on 23 February 1990, the obligation of Malawi to Report under Article 62 of the Charter arose since May 1992. It therefore regrets the twenty-one (21) years delay in reporting by the State.
9. The Commission appreciates that Malawi has now brought its reports up-to-date and further appreciates the quality of the Report as well as its sincerity regarding the achievements, shortcomings and challenges faced by the Government in the promotion and protection of human and peoples' rights.
10. The Commission also notes with appreciation that Malawi was the first State Party to the Maputo Protocol to submit to the African Commission a report on the measures that have been taken to implement the Protocol in the country.
11. Furthermore, the Commission appreciates the frank and constructive dialogue that it had with the Delegation during the presentation of the Report.
12. The present Concluding Observations follow the presentation and examination of the Report. They give an account of the positive aspects, the factors restricting the enjoyment of human rights and the areas of concern identified in the Report. The Commission also makes recommendations to the Republic of Malawi on measures required to strengthen the enjoyment of human rights as guaranteed by the African Charter, as well as other relevant regional and international human rights instruments.

## **II. Positive Aspects**

The Commission:

13. Welcomes the efforts made by Malawi in preparing and presenting its Report and Commends the latter for its commitment towards implementing the provisions of Article 62 of the African Charter;

14. Notes and Appreciates that the Initial and Combined Report of Malawi indicates the legislative, policy and institutional measures which have been taken to implement the Maputo Protocol, thus making Malawi the first country to comply with the requirement of reporting under Article 26 of the Protocol;
15. Commends the efforts made by Malawi in ensuring the representation of relevant stakeholders including civil society organisations (CSOs), during the preparation of the Report, thus making the process participatory;
16. Further Commends the legislative, policy, judicial and institutional measures adopted by Malawi during the reporting period to enhance the enjoyment of human rights by Malawians, including notably:
  - The Constitution of Malawi, 1994;
  - The Environmental Management Act, 1996;
  - The Prevention of Domestic Violence Act, 2006;
  - The Domestic Violence Act, 2006;
  - The Penal Code (Amendment) Act, 2010;
  - The Child (Care, Protection and Justice) Act, 2010;
  - The Police Act, 2010;
  - The Deceased Estates (Wills, Inheritance and Protection) Act, 2011;
  - Legal Aid Act, 2011;
  - The Disability Act, 2012;
  - The Gender Equality Act, 2012;
  - The Mining Policy, 2013;
  - The Anti-Human Trafficking Act, 2015;
  - The Marriage, Divorce and Family Relations Act;
  - The Education Act;
  - The National Response to Combat Gender Based Violence (2008 – 2013);
  - The National Sexual and Reproductive Health Rights Policy (2009);
  - The National Safe Motherhood Programme, 2009;
  - The National HIV and AIDS Policy, 2010;
  - The National Post-Abortion Care Strategy;
  - The National Policy on Orphans and other Vulnerable Children;
  - The establishment of the National AIDS Commission and the Department of Nutrition, HIV and AIDS;
  - The Gender Equality Act Implementation Plan;
  - The Accelerated Girls' Education Programme;
  - The Re-admission Programme for Young Mothers;
  - The Affirmative action in allocating bursaries to needy pupils especially girls; and
  - The Education Policy Investment Framework.
17. Commends Malawi for the ratification of various regional and international human rights instruments, as set out in Annex 1 hereto;

18. Further Commends Malawi for making a declaration under Article 34(6) of the Protocol on the African Court on Human and Peoples' Rights, which allows individuals and Non-Governmental Organizations to seize the African Court directly;
19. Welcomes the initiation of the following draft laws and policies which have the potential to enhance the promotion and protection of human rights in Malawi;
  - The Access to Information Bill;
  - The Mines and Minerals Bill; and
  - The Draft Artisanal and Small-scale Mining Policy;
20. Commends Malawi for the domestication of the Maputo Protocol through the enactment of the Gender Equality Act, Marriage Divorce and Family Relations Act, the Prevention of Domestic Violence Act, and the Deceased Estates (Wills, Inheritance and Protection) Act;
21. Notes with appreciation that the Bill of Rights in the Constitution of Malawi embraces a number of international and regional human rights instruments;
22. Further Notes with appreciation the establishment by Malawi of The Law Commission, as a constitutional body which is mandated amongst others, to systematically review the laws so as to bring them in conformity with its obligations under international and regional treaties, and Commends the reported achievements of The Law Commission up-to-date;
23. Notes in particular with appreciation that the mandate of the Law Commission extends to a systematic review of all laws concerning gender equality;
24. Welcomes the establishment of institutions for the promotion of human rights, such as the Human Rights Commission, and the Human Rights Unit of the Ministry of Justice and Constitutional Affairs;
25. Commends the various legislative, policy, institutional and other measures by Malawi to improve gender equality, access to wealth creation and the overall quality of life for women, as well as to increase women's representation in governance and public service, including:
  - The campaign to ensure that there is 50-50 representation of males and females in Parliament;
  - Efforts by the Ministry of Education to ensure an equal selection rate for girls and boys from primary to secondary schools; and
  - The adoption of various measures to mitigate the gender disparities in tertiary education, including the 50-50 enrolment policy in Teachers Training, and the non-residential system;
26. Appreciates the criminalization of sexual violence against women under the Penal Code and Domestic Violence Act in Malawi, and the introduction of victim support units in Police stations within the context of Community Policing to

handle cases of gender-based violence and to promote the protection of children, including through provision of counselling, assistance with legal redress and where appropriate referrals to the public hospitals for relevant medical assistance;

27. Appreciates further, the establishment of one-stop centres established in hospitals in every district where police officers, social welfare officer and health officers offer all required assistance to victims of violence;
28. Commends the efforts to investigate claims of violation of access to health rights by sexual minorities;
29. Welcomes legislative and administrative efforts aimed at eliminating harmful cultural practices affecting women;
30. Further welcomes legislative efforts aimed at addressing the problem of trafficking in persons and children;
31. Commends the various programmes initiated to enhance access to reproductive health care and to improve the standard of living and quality of life of its female citizenry, including in particular: the launch of the Presidential Initiative on Maternal Health and Safe Motherhood which plans to increase the number of women who give birth at health care facilities; and the launch by the Ministry of Agriculture of the Agriculture Sector Gender, HIV and AIDS Strategy for the period 2012 to 2017;
32. Notes with appreciation that Malawi has made considerable efforts during the reporting period to improve access to education for its population, including through:
  - The achievement of overall enrolment rate of 83% of its primary school age group, which is a very good stride towards the Millennium Development Goal and the Education For All goals for 2015;
  - The introduction of Free Primary Education in 1994, which has played a significant role in increasing primary school enrolments;
  - The adoption of the Education Act, the Higher Education Act and the Higher Education Students Loans and Grants Act; and
  - The adoption of measures to ensure the promotion of educational equity by creating inclusive environments in schools, supportive of the needs of boys and girls as well as children with special needs and severe disabilities;
33. Welcomes the decision of the Constitutional Court in *Francis Kafantayeni and others (Constitutional Case No. 12 of 2005)*, following which the imposition of the death penalty is no longer mandatory in murder cases in Malawi, as well as the efforts of the State to comply with this decision by amending Section 210 of the Penal Code which provided for death as a mandatory penalty for murder, and

also by referring all cases where the death penalty was imposed back to the courts for review of sentencing;

34. Notes with appreciation steps taken by Malawi to appropriately investigate cases of arbitrary deprivation of life including by law enforcement agents, and to ensure the prosecution and punishment of the perpetrators;
35. Welcomes the establishment of the Independent Police Complaints Commission to investigate and deal with allegations of brutality, deaths or misconduct at the hands of the police or in police custody or detention centres, as well as the Lay Visitors Scheme at each Police Station, where local people monitor conditions of detention;
36. Notes with appreciation, the efforts towards improving prison conditions in line with constitutional and international standards, following the High Court judgment in the case of *Gable Masangano vs. Attorney General (Constitutional Case No. 15 of 2007)*;
37. Welcomes the efforts in improving the criminal justice system including through the amendment of the Criminal Procedure Code and the Evidence Code which provide for pre-trial custody time limits to prevent prolonged detention of suspects before trial, as well as the enactment of the Local Courts Act to facilitate access to justice by the rural communities;
38. Also Welcomes the measures taken to address the challenges in the criminal justice system, including through:
  - The appointment of 10 High Court Judges and 2 Supreme Court judges during the 2013-2014 financial year, as well as the proposal to appoint 57 trained paralegals as Third Grade Magistrates who will mainly serve in the rural areas; and
  - The recent recruitment of 1800 police officers in 2015, as well as the adoption of a comprehensive programme to recruit over 1000 police officers every year for the next 5 years, to deal with the shortage of police officers in the country;
39. Commends Malawi for other current reforms within its criminal justice system, such as the establishment of the Homicide Working Group and the initiative to ring-fence funds for the Director of Public Prosecution's office, the Judiciary and Department of Legal Aid; both of which are aimed at reducing the backlog of homicide cases and the number of people on remand in prisons;
40. Commends the steps taken so far to strengthen the enforcement of the decisions of the Ombudsman, in particular, the proposed review of the Ombudsman Act;
41. Appreciates the establishment of the Legal Aid Bureau as a separate entity from the Ministry of Justice, to provide legal aid to needy citizens;

42. Welcomes the efforts by Malawi to develop Guidelines through the office of the Director of Public Prosecution, on how police officers can use laws relating to 'rogues' and 'vagabonds' in compliance with human rights standards;
43. Commends the efforts made by Malawi during the reporting period to improve the socio-economic rights of its population, including through:
- The provision of subsidized farm inputs such as fertilizers to the elderly, the very poor, the disabled, and other socially disadvantaged groups, so as to address the issue of lack of equal access to resources for farming and hence food security;
  - The adoption of several policies to facilitate access to housing by its citizens, including the Civil Servants Home Ownership Scheme and the Malata-Cement subsidy programme;
  - The introduction of a number of programmes to enhance social security, including the Social Cash Transfer programme, which provides support to the vulnerable groups such as the elderly, child-headed households and ultra-poor;
  - The allocation of twelve percent (12%) of its total national budget to health; and
  - The adoption of initiatives to ensure food security;
44. Welcomes the steps taken by Malawi to address child labour, through the development of the National Action Plan (2009 to 2016) which provides direction for progressive elimination of child labour;
45. Commends the significant steps taken by Malawi to address the HIV/AIDS pandemic in the country, including: the creation of the National AIDS Commission; the creation of the Department of Nutrition, HIV and AIDS under the Office of the President and Cabinet; and the adoption of the HIV and AIDS Policy;
46. Welcomes the on-going processes towards developing legislation on HIV and AIDS, which seeks to promote largely a human rights approach to HIV and AIDS management and prevention;
47. Welcomes the efforts towards the equalization of opportunities for persons with disabilities including through the 2010 amendments to the Constitution which now lists disability issues as one of the Principles of National Policy, as well as the adoption of the Disability Act;
48. Lauds Malawi for transforming the Department of Disability Affairs into a stand-alone and fully fledged Ministry which also couples with the Department for the Elderly in 2009, and the establishment of a Directorate of Disability Affairs by the Human Rights Commission in 2013, to handle the human rights aspects of disabilities;

49. Commends the support provided to CSOs through programmes such as Democracy Consolidation Programme, the Democratic Governance Programme, and Gender Equality and Women Empowerment Programme, whilst guaranteeing the financial independence of CSOs;
50. Commends the continuous efforts of the Government to combat human trafficking including through the recent enactment of the Anti-Human Trafficking Act; and
51. Congratulates Malawi for adopting legislation aimed at improving the efficiency, transparency and sustainability of its mining sector, including the Mining Governance and Growth support project (2011), the Mining Policy (2013) and the Mining Act, as well as for its efforts towards adopting the Extractive Industry Transparency Initiative.

### **III. Factors Restricting the Implementation of the Rights Enshrined under the African Charter**

52. Limited resources at the disposal of the State which inhibits its ability to ensure that all its citizens enjoy the rights guaranteed under the African Charter;
53. Widespread poverty which inhibits the enjoyment of human rights, including for instance, the right of access to education as a result of children dropping out of school with the encouragement of their parents to seek employment to sustain themselves and their families;
54. Slow pace of legislative and administrative reforms to match the constitutional standards and the obligations under the African Charter.
55. Weak institutional frameworks in key government agencies which inhibit effective delivery of justice and democratic accountability services to the citizens;
56. Lack of public awareness of the human rights among citizens as guaranteed under the Charter, and how to exercise these rights, resulting in a lack of empowered citizens and consequent weak demand side for the fulfilment of human rights by the Government; and
57. Harmful cultural practices continue to restrict women in Malawi from fully enjoying their rights, and are often the cause of several human rights violations against them;

### **IV. Areas of Concern**

While recognising the significant efforts made by the Government to promote and protect human rights in accordance with the provisions of the African Charter, the Commission is however concerned about the following:



## **Ratification and domestication of international instruments**

58. Malawi has not yet ratified some key regional and international human rights treaties which are critical for enhancing the enjoyment of human rights, including:

- i. Protocol to the OAU Convention on Prevention and Combating of Terrorism;
- ii. Protocol on the Statute of the African Court of Justice and Human Rights;
- iii. African Charter on the Values and Principles of Public Service and Administration;
- iv. Protocol to the OAU Convention on the Prevention and Combating of Terrorism;
- v. International Convention for the Protection of All Persons from Enforced Disappearance;
- vi. International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families;
- vii. Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the Abolition of the Death Penalty;
- viii. The Optional Protocol to the UN Convention against Torture;
- ix. The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights;
- x. Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women;
- xi. Optional protocol to the Convention on the Rights of Persons with Disabilities; and
- xii. Optional Protocol to the Convention on the Rights of the Child on a communications procedure;

59. Malawi is also yet to domesticate some relevant regional and international human rights treaties that it has ratified, including notably the African Charter, due to prolonged procedures for domestication of international law under its legal architecture;

60. The slow pace of legislative and administrative reforms affects the implementation of the rights under the African Charter. It is noted from the Report that many legislation to protect the rights of vulnerable groups are yet to be enacted, with the draft bills still pending in Parliament, including for instance, the Education Bill which seeks to introduce compulsory primary education, and the Bill on HIV and AIDS (prevention and management) which aims to address the issue of discrimination against people living with HIV and AIDS as well as gender-based violence;

## **Right to Life and the Death Penalty**

61. Malawi still retains the death penalty. While its *de facto* moratorium on the death penalty for over 20 years and the abolition of mandatory death sentences is a positive step, there remain concerns about conditions of detention for death row

detainees, including their subjection to protracted imprisonment, and the application of the death penalty to offences such as non-homicidal capital offenses;

62. Malawi still has challenges in preventing arbitrary deprivation of life;

### **Prohibition of Torture and Ill-treatment**

63. Malawi has not expressly criminalized torture under its penal laws, the UN Convention against Torture (CAT) has not yet been domesticated, and the Optional Protocol to the CAT has not been ratified;

64. The delay in the establishment of the Independent Police Complaints Commission (as stipulated by the Police Act of 2010), to investigate complaints of brutality, deaths or misconduct at the hands of the police impedes access to redress;

### **Administration of Justice / Access to Justice**

65. The reported frequent incidences of non-compliance with the determination of the Ombudsman negatively impacts people's right of access to justice;

66. The criminal justice system is so overwhelmed such that criminal cases, especially serious ones such as homicides take a long time to be completed. Also, the long pre-trial detention periods deprive incarcerated persons of the right to trial within a reasonable time or in the alternative, conditional or unconditional release;

67. Lack of capacity by the office of the Director of Public Prosecutions due to inadequate resources and few numbers of prosecutors;

### **Conditions of prisons and detention centres**

68. Overcrowding in prisons, resulting amongst others in unsanitary conditions, food shortages and starvation, as well as wide spread of infectious diseases such as tuberculosis, HIV, and pneumonia;

### **Harmful Traditional Practices**

69. The existence of customary discriminatory practices such as patriarchal attitudes and deep-rooted stereotypes regarding the roles, responsibilities and identities of women and men in all spheres of life, as well as traditional beliefs resulting in acts of torture and violence against elderly women on account of suspicion of practicing witchcraft;

### **Infant and maternal mortality rate**

70. Malawi's maternal mortality rate (MMR) remains one of the highest in the world, despite the efforts of the Government to reduce the MMR and the recorded decline in the statistics;
71. Poor general health indicators in Malawi, including in the areas of HIV and AIDS and child health;

### **Human Trafficking**

72. Trafficking in persons is a problem in Malawi, as a source, transit and destination country for trafficked persons;

### **Freedom of Expression and Access to Information**

73. Inordinate delay in the enactment of the access to information law in Malawi and the continued existence of laws limiting freedom of expression such as criminal defamation;

### **Human Rights Defenders**

74. Lack of specific legislation that guarantee the protection of the rights of activists and human rights defenders.

### **Economic Social and Cultural Rights**

#### **Right to Education**

75. High level of girl-child dropout from schools due to different reasons, including amongst others: poverty, long distance to schools, inadequate infrastructure in form of classrooms and sanitary facilities, early marriages, pregnancies and family responsibilities;

#### **Child Labour**

76. Child labour persists as a result of economic difficulties, whereby many families resort to sending their children to engage in child labour to sustain the families;

#### **Right to Health**

77. Inability to access essential health services because of shortages in skilled staff, deficiencies within the organization of services, and the distance to health care facilities deeply affect women and citizens in general in accessing their right to reproductive and health rights;

### **Rights of Persons Living with HIV/AIDS**

78. HIV and AIDS is a major concern and burden to the enjoyment of good health, and also the process of developing legislation on HIV and AIDS, has been pending since 2008;

## **V. Recommendations to the Government of the Republic of Malawi:**

In view of the foregoing, the African Commission recommends that the Government of the Republic of Malawi should:

### **General**

79. Continue to comply with its obligations under Article 62 of the African Charter, and Article 26 of the Maputo Protocol;

### **Ratification and domestication of international instruments**

80. Expedite the processes for the ratification of outstanding regional and international human rights instruments, so as to enhance the framework for the promotion and protection of human and peoples' rights in Malawi, including the following:

- i. Protocol to the OAU Convention on Prevention and Combating of Terrorism;
- ii. Protocol on the Statute of the African Court of Justice and Human Rights;
- iii. African Charter on the Values and Principles of Public Service and Administration;
- iv. Protocol to the OAU Convention on the Prevention and Combating of Terrorism;
- v. International Convention for the Protection of All Persons from Enforced Disappearance;
- vi. International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families;
- vii. Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the Abolition of the Death Penalty;
- viii. The Optional Protocol to the UN Convention against Torture;
- ix. The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights;
- x. Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women;
- xi. Optional protocol to the Convention on the Rights of Persons with Disabilities; and
- xii. Optional Protocol to the Convention on the Rights of the Child on a communications procedure;

81. Speed up the processes for the full domestication of the African Charter and all other regional and international human rights instruments that it has ratified, in line with its international obligations;

82. Conclude the processes for the enactment of legislation and policies which are being drafted and which have the potential to enhance the enjoyment of human and peoples' rights by the citizens;

### **Right to Life and the Death Penalty**

83. Adopt an official moratorium on the death penalty as a step towards the definitive abolition of the death penalty;
84. Expedite the conclusion of re-sentencing hearings for those individuals, who previously received automatic death sentences in light of the 2007 *Kafantayeni* decision;
85. Provide in its next report, detailed statistics on cases of extra-judicial killings, as well as of measures taken by the State to investigate such cases and ensure the trial and punishment of perpetrators;

### **Prohibition of Torture and Cruel, Inhuman and Degrading Treatment**

86. Enact a specific law to define, prohibit and criminalize torture in accordance with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Commission's Robben Island Guidelines (RIGs), as well as initiate programs for training all its law enforcement agents on the RIGs;
87. Expedite the effective establishment and operationalization of the Independent Police Complaints Commission entitled to investigate complaints of brutality, deaths or misconduct at the hands of the police;
88. Adopt other comprehensive and adequate measures to effectively combat torture and excessive use of force by police officers and other State agents;
89. Further conduct investigations on all alleged cases of torture, brutality, deaths in custody and misconduct at the hands of the police, prosecute persons who are allegedly responsible, punish those who are convicted with adequate sanctions, and adequately compensate victims;
90. Continue to train police officers and other law enforcement officials on matters relating to the prohibition of torture and fair administration of justice, and in general, strengthen its on-going efforts to provide human rights training to its law enforcement agents;
91. Make use of the Commission's Guidelines on the Conditions of Arrests, Police Custody and Pre-trial Detention in Africa while providing training to the Police and adopting laws and policies;
92. Strengthen its on-going efforts to put in place oversight mechanisms/institutions within its Police Service, and further set up human rights monitoring units and designate human rights officers within its law enforcement and security agencies;

### **Access to Justice /Administration of Justice**

93. Take the necessary measures to ensure strict respect for the constitutionally stipulated timelines for remands in police custody and pre-trial detention, and where breached, ensure a system for payment of adequate compensation to affected persons;
94. Provide legal aid for indigent detainees and prisoners, including putting in place mechanisms to ensure that prisoners sentenced to death are provided with legal representation on appeal, and as well, train and motivate lawyers to represent indigent defendants;
95. Increase the resources and personnel available to the criminal justice system so that there are sufficient judges, lawyers, and paralegals to minimize the sizeable backlog of cases, and reduce the pre-trial detention periods to durations that comply with international standards;
96. Adopt a comprehensive strategy to address the incidences of non-compliance with the determinations of the Ombudsman which negatively impacts people's right of access to justice;

### **Right to liberty and security of person / Conditions of Prisons and Detention Centres**

97. Review the Prisons Act (1955), which the Report acknowledges is in much need of total overhaul, to align with current international human rights standards;
98. Systematically review prison conditions with the goal of relieving overcrowding and poor living conditions, provide funds for the construction of new prisons, and also provide clean, safe, and adequate prison conditions, together with adequate food for prisoners, in compliance with international standards for prisoners and pre-trial detainees;
99. Ensure that minors are separated from adult prisons and that convicted persons are separated from detainees awaiting trial;
100. Provide remedial educational and vocational training activities in prisons to facilitate the social reintegration of prisoners;
101. Ensure in-service human rights training for the police and law enforcement officers;

### **Harmful Traditional Practices**

102. Adopt a comprehensive strategy to modify or eliminate negative cultural practices and stereotypes which are harmful to and discriminate against women, and to promote women's full enjoyment of their human rights;

## **Protection of the rights of Women and Children**

103. Enact a legislative framework that provides for affirmative action for women including the stipulation of specific female representation quotas in decision-making positions, to increase women's representation;
104. Urgently strengthen on-going initiatives to reduce the high rate of maternal and infant mortality in Malawi including by eliminating all barriers to maternal health services in the country, increasing budgetary allocation to the health sector to at least 15% of total annual budget in line with the Abuja Declaration, and also promoting human rights-based and people-centred private-sector investment in the health sector;
105. Enhance the availability and accessibility of maternity services, including post-natal services, including by: increasing the number of healthcare facilities that are fully equipped to provide comprehensive maternal healthcare; increasing the number and training of skilled health personnel and utilization of skilled health personnel during pregnancy, childbirth and postnatal period at all levels of the health system; and building and improving facilities in rural areas and access to skilled medical birth attendants to reduce labour complications;
106. Undertake concrete measures to reduce the incidence of unsafe abortion, which is one of the main causes of maternal mortality in Malawi;
107. Conclude the on-going process of reviewing its laws and policies on abortion to bring them in line with the Maputo Protocol;
108. Meanwhile, develop and implement comprehensive educational measures and awareness-raising campaigns to ensure that women, healthcare providers and the general public are aware of the current exceptional circumstances in the Penal Code under which abortion is currently permitted;
109. Ensure that women who develop abortion-related complications receive appropriate post-abortion healthcare and are not additionally victimized by health care providers and the criminal justice system;
110. Take adequate measures to increase knowledge of, and access to contraceptive methods, and ensure that contraceptives are available and affordable, paying particular attention to adolescents and women in rural areas;
111. Amend the Domestic Violence Act to include marital rape as a punishable offence, and also take appropriate measures to eliminate all forms of discrimination against women, and to eradicate harmful traditional practices;
112. Adopt measures to effectively end early/child marriage;

113. Harmonize its domestic laws with international standards on the minimum age of marriage by raising this to 18 years, and also conduct awareness campaigns on the same, especially in rural areas;
114. Enforce provisions stipulated in the international instruments and domestic legislations which prohibit child labour;
115. Undertake legislative, administrative, social welfare and educational measures to protect children from all forms of physical or mental violence, injury or abuse, neglect and exploitation or maltreatment, including sexual abuse by persons or institutions including those entrusted with their care;

### **Trafficking in Persons**

116. Expedite the enactment of the Trafficking in Persons Bill into Law, strengthen its efforts to eliminate trafficking in persons, in particular of women, girls and boys for sexual exploitation and child labour, prosecute all persons allegedly responsible, and punish those who are convicted;
117. Continue to train law enforcement officials and immigration officers on issues relating to trafficking in persons;
118. Offer protection and rehabilitation to victims, and enhance its cooperation with neighbouring countries;
119. Undertake campaigns to raise awareness among the population regarding the negative effects of trafficking;

### **Freedom of Expression and Access to Information**

120. Expedite the conclusion of the process of passing the Access to Information Bill into law which has been pending for 8 years, whilst ensuring that the law mirrors the international standards and best practices set out in the Model Law on Access to Information for Africa developed by the Commission;
121. Ensure that the review of the Communications Act incorporate the regional and international standards on freedom of expression and access to information, to which Malawi has subscribed, and further adopt legislative, policy and institutional frameworks to strengthen freedom of speech and access to information in Malawi; and
122. Decriminalize defamation and other laws limiting the right to freedom of expression, by reviewing relevant statute books;



### **Freedom of Assembly**

123. Take steps to effectively sensitize and train its security agents on a rights-based approach to crowd management including by developing guidelines for human rights-based management of public demonstrations;

### **Human Rights Defenders**

124. Adopt a law protecting human rights **defenders** in conformity with the **UN Declaration on Human Rights Defenders 1998 and the Commission's Resolutions on Human Rights Defenders including** ACHPR/Resolution 69 (XXXV) 04, ACHPR/Resolution 119 (XXXII) 07, and ACHPR/Res.196 (L) 11;

### **Rights of Persons Living with HIV/AIDS**

125. Strengthen its on-going initiatives in combating HIV/AIDS;
126. Expedite the conclusion of the process of developing a human-rights centred legislation on HIV and AIDS, which has been pending since 2008;

### **Economic Social and Cultural Rights**

127. Make use of the Commission's State Party Reporting Guidelines for Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights, when presenting its next State Report to the Commission;

#### **Right to Education**

128. Pass the Education Bill which seeks to introduce compulsory primary education and strengthen learning and vocational training programmes for all, especially the youth who were not able to access education, and further ensure equitable access to all levels of education, especially by those in rural areas as well as girls and women;

#### **Child Labour**

129. Strengthen its on-going initiatives aimed at the elimination of child labour;

#### **Right to Health**

130. Strengthen the on-going initiatives towards increasing access to health care facilities and ensuring that such facilities are adequately equipped to provide high quality and hygienic health care services, with particular reference to maternal health care;

### **Protection of the Aged and Persons with Disabilities**

131. Provide in its next periodic report, detailed information on the implementation of the Disability Act and the operations of the Ministry of Disability Affairs and the Disability Trust Fund;

132. Review the definition of Non-Discrimination in the Disability Act to include 'Reasonable Accommodation';

### **The duty to promote human rights**

133. Raise the awareness of the entire population of Malawi about their rights under the African Charter, including through its incorporation in the curricula of formal and vocational institutions, and through other informal civic education programs;

### **Refugees, Internally Displaced Persons (IDPs) and Migrant Workers**

134. Adopt a comprehensive strategy for the domestication and effective implementation of the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention) which Malawi ratified on 29 May 2013; and

### **Implementation of Concluding Observations**

135. Inform the Commission, in its next Periodic Report<sup>2</sup>, of measures taken to ensure implementation of the recommendations contained in the present Concluding Observations, and in the Promotion Mission report of 2008.

**Adopted at the 57<sup>th</sup> Ordinary Session of the African Commission on Human and Peoples' Rights, held from 04 to 18 November, 2015, in Banjul, Republic of The Gambia**

---

<sup>2</sup> This is due to be submitted to the Commission by 25 April 2017.

## Annex 1

### Human Rights Instruments ratified by Malawi

1. International Covenant on Economic, Social and Cultural Rights: **22 December 1993**
2. International Covenant on Civil and Political Rights: **22 December 1993**
3. Optional Protocol to the International Covenant on Civil and Political Rights: **11 June 1996**
4. International Convention on the Elimination of All Forms of Discrimination: **11 June 1996**
5. Convention on the Elimination of All Form of Discrimination Against Women: **12 March 1987**
6. United Nations Convention against Transnational Organized Crime: **17 March 2005**
7. Protocol to Prevent, Suppress and Punish Trafficking Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Preamble, Supplementing the United Nation Convention against Transnational Organized Crime: **17 March 2005.**
8. Protocol against the Smuggling of Migrants by Land, Sea and Air Supplementing the United Nations Convention against Transnational Organized Crime: **17 March 2005.**
9. Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery: **2 August 1965**
10. Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of others: **13 October 1965**
11. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: **11 June 1996**
12. Convention on the Rights of the Child: **2 January 1991**
13. Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Labour: **19 November 1999**
14. Right to Organize and Collective Bargaining Convention: **22 March 1965**
15. Freedom of Association and Protection of the Right to Organise Convention: **19 November 1999**
16. Equal Remuneration Convention: **22 March 1965**
17. Discrimination (Employment and Occupation) Convention: **22 March 1965**
18. Convention Concerning Forced and Compulsory Labour: **19 November 1999**
19. Abolition of Forced Labour Convention: **19 November 1999**
20. Convention Relating to the Status of Refugees: **10 December 1987**
21. Protocol Relating to the Status of Refugees: **10 December 1987**
22. Rome Statute of the International Criminal Court: **19 November 2002**
23. Geneva Convention for Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field: **5 January 1968**

24. Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea: **5 January 1968**
25. Geneva Convention Relative to the Treatment of Prisoners of War: **5 January 1968**
26. Geneva Convention Relative to the Protection of Civilian Persons in Time of War: **5 January 1968**
27. Protocol Additional to the Geneva Convention of 12 August 1949 and Relating to the Protection of Victims of International Armed Conflicts (Protocol I): **7 October 1991**
28. Protocol Additional to the Geneva Convention of 12 August 1949 and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II): **7 October 1991.**
29. Convention Governing the Specific Aspects of Refugee Problems in Africa: **4 November 1987**
30. African Charter on Human and Peoples Rights: **17 November 1989**
31. African Charter on the Rights and Welfare of the Child: **16 September 1999.**
32. African Protocol on the Rights of Women: **20 May, 2005**