



List of issues prepared in the absence of the initial report of Malawi

Constitutional and legal framework within which the Covenant is implemented (art. 2)

1. Please explain whether the Covenant can be directly invoked and given effect by courts, tribunals and administrative authorities, in line with the May 2007 ruling of the Malawi Supreme Court of Appeal? If so, please provide examples of such cases. What measures have been taken to raise awareness about the Covenant among public officials and State agents, in particular through training of judges, lawyers and law enforcement officers?
 - (1) **Whether the Covenant can be directly invoked and given effect by courts**
 - (a) Section 211(1) of the Constitution provides that any international agreement ratified by an Act of Parliament shall form part of the law of Malawi if so provided for in the Act of Parliament ratifying the agreement. International agreements entered into before the Constitution came into force also form part of the law of Malawi. Malawi ratified the International Covenant on Civil and Political Rights on 22 December, 1993. The Covenant, therefore, forms part of the law of Malawi.
 - (b) Malawi is a dualist State as such, no international Convention can have the force of law in the country before incorporation into the

domestic laws. The Covenant cannot, therefore, be directly invoked. However, Chapter IV of the Constitution provides for human rights and section 10 provides that in interpreting all laws, the provisions of the Constitution shall be regarded as the supreme arbiter and ultimate source of authority. In that regard, courts, tribunals and administrative authorities do consider the provisions of the Covenant in applying the law to ensure conformity with international law and obligations under the Covenant.

- (c) In the case of Charles Kafantayeni and others (Constitutional Case No. 12 of 2005), the court took into account similar provisions of the Covenant enshrined in the Constitution in arriving at its decision. In the case of Adoption of Children Act chapter 26:01 of the laws of Malawi and Chifundo James, (MSCA Adoption Appeal No. 29 of 2009), the court stated that international agreements and customary international law form part of the law of Malawi subject to the provisions of section 211 of the Constitution.

Accordingly, courts of law can give effect to the provisions of the Convention in so far as they are not found to be inconsistent with the provisions of the Constitution.

(2) Awareness of the Convention by public officials etc

- (a) The majority public officers working in the justice sector and administration are conversant with the provisions of the Covenant and take a human rights based approach in the work they do.
- (b) From time to time, legal and judicial officers undergo training in the application of international human rights

law as part of the Government's efforts in promoting human rights in Malawi. For example, under the Government/EU Rule of Law Programme, the Government through the Ministry of Justice has trained lawyers, the Police and judicial officers in human rights. Human rights have been further mainstreamed in the work of Law enforcement agencies.

- (c) Efforts continue to be made to train Police Officers to take a human rights based approach in the handling of cases.

Non-discrimination, equality between men and women (arts. 2, para. 1, 3 and 26)

- 3. Please provide information on measures taken to protect persons from discrimination and violence based on sexual orientation. Please report on the number of persons that have been attacked since 2005 based on their sexual orientation, including by police or other security forces, and specify whether perpetrators have systematically been prosecuted and punished. Are legislative amendments foreseen to de-criminalize homosexuality?

(1) Measures against discrimination and violence based on sexual orientation

- (a) Section 20 of the Constitution guarantees equality of persons and prohibits discrimination in any form, and all persons are, under any law, guaranteed equal and effective protection against any discrimination on any grounds or any status.
- (b) Issues of discrimination based on sexual orientation have not been reported. The vast majority of society has not accepted homosexuality and homosexuality is not

practiced in the open. Therefore it is very unlikely that cases of discrimination and violence based on sexual orientation would be reported.

- (c) In the highly publicized case of Republic versus Tiwonge Chimbalanga and Steven Monjeza (Criminal Case number 359 OF 2009) two male individuals were tried and convicted of the offence of indecent practices between males. They were never attacked for their sexual orientation and were subsequently pardoned.

(2) Attacks based on sexual orientation

There are no official records of cases of violence based on sexual orientation.

(3) Systematic prosecutions

- (a) There are no specific measures or policies established by the Government to target people based on their sexual orientation. The Government respects right to privacy of its citizens. However, the Penal Code (Chapter 7:01 of the Laws of Malawi) criminalizes acts against the order of nature, and acts considered to be indecent. Homosexuality is regarded as indecent and against the order of nature. In that regard, homosexuality is illegal. Any person who commits acts against the order of nature is prosecuted in accordance with the law.

- (b) In 2009, two male individuals, Tiwonge Chimbalanga and Steven Muonjeza were arrested, tried and sentenced to fourteen years imprisonment on conviction of indecent practices between males. The President subsequently pardoned them.. (See Republic versus Steven Muonjeza Soko and Tiwonge Chimbalanga Kachepa Criminal case

No. 359 of 2009, [http://www.scribd.com/doc/31700824/Judgement-against-Malawi couple](http://www.scribd.com/doc/31700824/Judgement-against-Malawi-couple)) this was an unprecedented case and the State prosecuted them to uphold the law and protect public morals, which are held in high esteem by the society.

- (c) The Malawi Law Commission has had occasion to consider the issue of homosexuality and has recommended to Government that this matter does not receive the support of the people of Malawi. Government, has in relation to homosexuality, taken into account public views in carrying out its constitutional obligation under section 13 (m) which provides that the Government, in adopting and implementing policies, should promote law and order and respect for society.

(4) Legislative Amendments to de-criminalize homosexuality

The Government has an obligation under s. 13 of the Constitution, to actively promote the welfare and development of the people of Malawi by progressively adopting and implementing policies and legislation aimed at advancing national interests. Since acts of homosexuality are against public morals of the Malawi Nation, there are no legislative amendments foreseen in the near future as the law as currently contained in the Statute Books on the matter is adequate. The Government will continue to listen to the voices of its people on this matter. In the meantime, the Government has no intentions whatsoever to decriminalise homosexuality.

- 4. Please provide information on measures taken, including legislative steps, to: (1) prevent a deceased husband's family from illegally taking the widow's estate; (2) protect a widow from forced sex with an in-law as part of a "sexual cleansing" ritual following her

husband's death; and (3) combat the alleged practice of the widow being considered as part of the "inheritance" by a brother-in-law or other male relative.

(1) Measures taken to prevent property grabbing

- (a) The Government is aware of cases where some individuals have grabbed intestate property especially from a surviving spouse, in most cases widows and their children. In order to address this problem, Malawi through comprehensive legal reform led by the Malawi Law Commission continues to review her domestic laws and practices to, firstly, bring them in line with the Constitution as well as international human rights instruments to which she is a party, and the broader international law. This is an ongoing process. The Ministry of Gender also conducts civic awareness programmes addressing issues of property grabbing
- (b) The Deceased Estates (Wills and Inheritance Protection) Act, which repealed the Wills and Inheritance Act, was passed by Parliament in July, 2011. The Act protects the immediate family and the surviving spouse and children and clearly spells out the beneficiaries and criteria for allocating intestate property. A person, who not being entitled thereto under a will or upon intestacy takes possession of property which occasions or is likely to occasion hardship to a person who is entitled to the property commits an offence and on conviction is liable to a fine of K1, 000,000.00.

However, although the Act provides for the offence of property grabbing prosecution of cases of this nature remains a challenge. Reports of property grabbing have been made to the Police. However, prosecution is rarely done as this is perceived to be a family matter. Most cases are left to be mediated between family members. The issue of property grabbing is being

mainstreamed in the curricula of the Police training schools so that cases of such nature can be duly prosecuted.

(2) Sexual Cleansing and inheritance of widows

Government is aware of the existence of these practices and in collaboration with traditional leaders, religious groups and the civil society, has embarked on civic education on the dangers of these practices. It is pleasing to note that this initiative has started yielding results as some traditional leaders have now started coming forward to discourage their subjects from conducting some of these dangerous practices. Challenges still remain as trying to change people's customs is a long process but Government is determined to ensure that these practices are stopped at all levels of society.

4. Please provide information on when new draft bills on marriage, divorce and family relations, estates of deceased persons (Wills, Protection and Inheritance), and gender equality will be presented to the National Assembly.

- (1) The Marriage Divorce and Family Relations Bill is currently being considered by Cabinet
- (2) The Deceased Estates (Wills and Inheritance Protection) Act 2011 was passed by Parliament in July 2011.
- (3) The Gender Equality Bill is at present with the Law Commission as a proposed piece of legislation.

Right to life (art. 6)

5. According to information before the Committee, there is a factual moratorium on executions since 1992. Please indicate whether the State party intends to ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, and amend the

Criminal Code, with the aim of formally abolishing the death penalty.

(1) The majority of people in Malawi do not support the abolition of the death penalty as such, Malawi retains the death penalty and has no intentions and immediate plans to ratify the Second Optional Protocol to the ICCPR. Section 8 of the Constitution stipulates that the legislature when enacting laws shall reflect, in its deliberations, the interests of all the people of Malawi and shall further the values explicit and implicit in the Constitution. Malawi will continue to listen to the voices of its people regarding the issue of death penalty.

(2) Following the case of Francis Kafantayeni and others, Constitutional Case No. 12 of 2005 the imposition of the death penalty is no longer mandatory in murder cases. Section 210 of the Penal Code which provided for death as a mandatory penalty for murder was amended in 2010. The Courts have the discretion of imposing a death sentence or life imprisonment for persons convicted of murder and other cases which carry death as a penalty.

6. Please provide information on steps taken since 2005 to investigate cases of alleged arbitrary deprivation of life by police officers, punish the officers who are found responsible, and provide remedies and compensation to the victim's relatives.

(1) The Law in Malawi prohibits all forms of arbitrary deprivation of life by any person including the Police. Police Officers suspected of having arbitrarily deprived life of persons are prosecuted like any other suspect would be.

(2) The following are some of the cases in which Police Officers have been tried for alleged arbitrary deprivation of life-

(a) Republic versus Windson Matumba (Criminal Case Number 14 of 2007).

In this case, the defendant, a Police Officer, shot dead Colonel Dzineso, an army Officer, allegedly mistaking him for a wanted suspect. He was convicted of manslaughter and sentenced to twelve years imprisonment.

(b) Republic versus Joshua Cheuka and 3 others Criminal Case number 73 of 2008. Police officers were convicted of manslaughter for shooting charcoal vendors.

(c) In the case of Republic versus Jonathan Msinkhu, a police officer was convicted of manslaughter for causing an accident after driving a motor vehicle while intoxicated and while on duty.

(3) Relatives of the deceased have been compensated for the deprivation of life of the deceased. In the case in which a student named Fanikizo Phiri was shot by a Police Officer during student demonstrations, the family of the deceased was compensated.

7. Please indicate which crimes are punishable by the death penalty, and whether its application in such cases is mandatory.

(1) The offences of murder, rape, treason and armed robbery are punishable by death and life imprisonment.

(2) In a unanimous judgment, the Constitutional Court of Malawi ruled that the automatic imposition of a sentence of death in murder and other offences violated the constitutionally guaranteed right to life and hence amounted to inhuman punishment as it did not provide the individual concerned an opportunity to mitigate their death sentence (*See Francis Kafantayeni and others, Constitutional Case No. 12 of 2005 delivered on 27th April 2007*). Consequently, the imposition of death penalty is not mandatory in Malawi.

(3) Since the inception of democracy, no convicted person has been executed in Malawi.

Prohibition against torture and cruel, inhuman or degrading treatment or punishment, right to liberty and security of person, treatment of persons deprived of their liberty (arts. 7, 9, 10, 12 and 13)

8. Please provide information on: (1) the total number of cases of alleged torture and cruel, inhuman or degrading treatment on the part

of police officers or prison officials that have been investigated since 2005; (2) the outcome of the investigations and the action taken against those found guilty; and (3) the measures taken for the rehabilitation and compensation offered to victims. Please also elaborate whether human rights are a standard component of curricula for law enforcement officials.

(1) Cases of Torture etc

There are no official records of complaints of torture by law enforcement officials in the country. There have been several complaints lodged with the Malawi Human Rights Commission whose report is submitted to Parliament

(2) Outcome of Investigations

Since there have been no formal complaints of torture, there have been no formal investigations conducted. On complaints with Malawi Human Rights Commission, the Commission undertakes its own investigations and the findings and actions taken are submitted to Parliament in its annual report.

(3) Measures taken for rehabilitation of Victims

No formal measures have been taken to rehabilitate victims of torture since there have been no formal complaints and investigations on issues of torture.

Section 19 of the Constitution guarantees the inviolability of the dignity of all persons. It provides that no person shall be subjected to torture of any kind or to cruel, inhuman or degrading treatment or punishment. Government continues to uphold the

dignity of all persons and will take measures to ensure that this right is respected.

(4) Whether human rights are a standard component of study by law enforcers

Human rights remain the bedrock of academic study in the country at all levels and are emphasized upon in the training of Police Officers, Prison Officers and other law enforcement officers.

9. Please provide information on steps taken to prevent and combat domestic violence, including training for judges, police and health officers, as well as on public awareness-raising campaigns for women on their rights and available remedies. Please also provide information on measures taken to ensure that acts of domestic violence are effectively investigated, and that perpetrators are prosecuted and sanctioned under the Prevention of Domestic Violence Act. Please specify whether spousal rape is explicitly defined as a crime under the Penal Code.

(1) Steps taken to combat Domestic violence

- (a) Government has mainstreamed issues of gender in academic studies at all levels with special emphasis on combating domestic violence.
- (b) The Prevention of Domestic Violence Act (Chapter 7:05 of the Laws of Malawi provides for offences of domestic violence.
- (c) The Law Commission is currently carrying out a review of the Prevention of Domestic Violence Act and one of the issues being

considered is the expression of the definition of the term “domestic violence” to include forced sexual encounters between spouses.

- (d) The Department of gender in the Ministry of Gender, Child and Community Development has a core function of looking into issues of women and children affairs. There has been wide civic education and campaigns against domestic violence. Various programmes implemented by this department have led to more women being aware of their rights and the remedies available to them in cases of domestic violence.

(2) Investigation of reported cases of domestic violence

- (a) Investigation and prosecution of these cases remains under the jurisdiction of the Malawi Police Service in liaison with the Office of the Director of Public Prosecutions.
- (b) Police Stations have Victim Support Units where complaints of this nature are reported and investigated. These Units are also empowered to mediate on complaints and suggest possible solutions. Where a complaint is found to be serious, the matter is referred to court.
- (c) The main challenge in cases of domestic violence is the issue of lack of economic empowerment of women. Most married women depend on their husbands for financial support. In some instances, women tend to withdraw complaints they lodge against their husbands for fear that the husband will

leave them and as a result, they will have no financial support for their children.

- (d) Suspects of domestic violence have usually been tried under the Penal Code. The Government continues to familiarize police officers of the provisions of the Prevention of Domestic Violence Act. The process is on-going. It is anticipated that more offences will be tried under the Act

(3) Whether marital rape is recognized

There is no statutory recognition of marital rape. There are no records of complaints of marital rape.

- 10. Please specify how many persons are held in pretrial detention. What is the average length of pretrial detention? Are pretrial detainees held separately from convicted prisoners?

(1) Number of Persons in pretrial detention

At the time of preparing this report the updated statistics was not available. However, the prisons in the country are holding a daily average of 12, 000 inmates about ten percent of which are remandees. The number of detainees in police units vary according to arrests made and as such it is difficult to determine the exact number at the time of reporting.

- (2) Section 42 (2) of the Constitution provides that a person has the right to be brought before a court of law and be charged or to be informed of the reason of his further detention within forty eight hours of his arrest. Therefore, the prescribed period for pretrial detention is forty-eight hours and in some instances it is extended with the permission of the Court. Law enforcement Officers are

aware of this requirement and apply it in conduct of investigation and prosecution of cases.

- (3) The Criminal Procedure and Evidence Code was amended and a new Part IVA was inserted which provides for pretrial custody time limits for the following –
- (a) in cases where a person is accused of an offence triable in a subordinate court, he or she may be held in lawful custody pending the commencement of his or her trial for a maximum period of thirty days;
 - (b) in cases where a person is accused of an offence triable in the High Court, he or she may be held in lawful custody for a maximum period of thirty days pending committal to the High Court;
 - (c) in cases where a person is accused of an offence triable in the High Court is committed to the High court, he or she may be held in lawful custody pending commencement of his or her trial for a maximum period of sixty days; and
 - (d) the maximum period that a person accused of treason, genocide, murder, rape, defilement and robbery may be held in lawful custody pending commencement of his or her trial shall be ninety days.

The prosecution may, at least seven days before the expiry of the custody time limit imposed, make an application to court for a further extension of the time limit.

(4) Remandees are kept separate from convicted prisoners.

11. Has a system been established for regular and independent monitoring of places of detention? Please provide information on steps taken to improve detention conditions, including those aimed at nutrition, sanitation, health facilities, and overcrowding, in particular since the ruling of the Constitutional Court dated 9 November 2010 in *Gable Masango v. The Attorney General*. How many inmates have died per month since 2005, and what were the reported causes of death?

(1) Regular and independent monitoring of places of detention

- (a) Government established a Prison Inspectorate, chaired by a High Court Judge to inspect and provide recommendation on ways of improving places of detention. Other Members of the Committee include the Ombudsman and the Chairperson of the Malawi Human Right Commission.
- (b) The Police Act establishes an Independent Complaints Commission whose mandate includes investigation of complaints against the Police. The Act also establishes the Lay Visitors Scheme where communities are involved in monitoring conditions of detention in police holding cells.

(2)Steps taken to improve prison conditions

- (a) Government has a budget to build new prisons in all the three regions of the Country.
- (b) Number of Deaths per Month since 2005 and their causes of death, the data is being compiled
- (c) Malawi has developed mechanisms and a system to ensure that conditions in places of detention are improved. However, challenges still remain mostly because of congestion in prisons. Government continues in its efforts to improve conditions in prison.

12. Please comment on reports that most suspects are allegedly arrested without a warrant, and that police officials allegedly regularly arrest a suspect's relative to draw a wanted individual out of hiding.

(Persons suspected of having committed offences are arrested with an arrest warrant as required by the Law, however, the Laws of Malawi permit arrests without warrant in certain exceptional circumstances. Arrests without a warrant are permitted where a police officer, upon reasonable suspicion and in the exercise of his discretion, suspects the commission of an offence. The Police are allowed to keep the suspect for 48 hours within which they must either charge the suspect or inform him or her of the reasons of his or her arrest. If the police intend to prolong the arrest, they must obtain permission from the Court as per the requirement of section 42 of the Constitution as read with Part IVA of the Criminal procedure and Evidence Code (Chapter 8:01 of the Laws of

Malawi) . An arrested person is also allowed under the Constitution to commence legal proceedings for his or her release.

- (2) Police Officers are not permitted under the law to arrest a suspect's relative in order to draw a wanted individual out of hiding. Such acts are not lawful or acceptable by the Malawi Government and Police Officers concerned once identified are disciplined accordingly.

Elimination of slavery and servitude (art. 8)

- (11) Please provide information on steps taken to combat and prevent trafficking and sale of persons, in particular persons under 18 years of age. What concrete measures are in place to protect and rehabilitate victims of trafficking? Please elaborate whether legal amendments are foreseen with the aim of defining trafficking of all persons, including boys, as a crime within the Penal Code? Please provide information on the provision of training to judges, prosecutors and police officers on the identification, investigation and prosecution of trafficking cases, and whether such training adopts a victims-based approach.

(1) Steps to combat and prevent trafficking of persons

- (1) Government is aware that Malawi is being used as a source and destination country for trafficking of persons. Most of the persons trafficked are children and women both within and between countries for purposes of labour, prostitution, domestic work, begging and many other forms of exploitation.

The Government works hand in hand with partners such as Plan Malawi, World Vision and Salvation Army, among others, to find solutions to this problem. Malawi has been involved in various

activities aimed at sensitizing immigration officers, police officers, prosecutors and other relevant stakeholders of the human trafficking phenomenon. The Immigration Department and the Police have been given the mandate to actively look out for these offences. When perpetrators of trafficking are found, they are dealt with in accordance with the law.

Various activities have been undertaken with the assistance of the International Organization for Migration (IOM), the International Labour Organization (ILO) and other local and international NGOs and development partners. These efforts have earned the country the prestigious Tier One Status by the United States Government in the United States State Department's Annual Report on Human Trafficking. Tier One Status takes into account the extent of the problem and the successes that Government has made in curbing trafficking.

(2) Amendment of legislation

- (a) The Penal Code was amended and a new section 147A was inserted which criminalizes the promotion of prostitution. Any person who owns or otherwise manages a house or business for prostitution, procures another person to become a prostitute, solicits another person to become a prostitute or transfers persons within and outside Malawi to become prostitutes commits a crime which is punishable by a fourteen year custodial sentence.

- (b) Malawi recognizes that existing laws and reforms to the Penal Code are inadequate in combating human trafficking. The amendments only targeted trafficking of women and children in prostitution and leave

out trafficking for other purposes such as forced labour. Consequently, the Law Commission has set up a commission to develop anti-trafficking legislation.

(3) Provision of Training

Law enforcement officers including judicial officers have been trained in identification, investigation and prosecution of trafficking offences.

Some progress has been made towards combating internal child trafficking for purposes of labour.

(4) Whether training adopts a victim based approach

The training takes a victim based approach and law enforcement officers are trained to always be conscience of the rights of the victims since most of them are often traumatized after going through the trafficking ordeal. The interests of the victims are taken into account and, as is the case in the application of human rights, the rights of the suspects are also respected.

Right to a fair trial (art. 14)

12. Please provide information on steps taken to strengthen the functioning of the judicial system, including efforts to increase access to quality legal assistance. Please provide information on steps taken to formalize and institutionalize the role of paralegals and the services they provide to pretrial detainees and persons accused of criminal offences? What is the status of the Legal Education and Legal Practitioners Amendment Bill and the Legal Aid Bill? Please also indicate which measures have been taken to strengthen the appeals procedure, in particular with the aim of expediting the appeals process and guaranteeing that all appeals are considered promptly by a court.

(1) Steps taken to improve the functioning of the judicial system and expedition of hearing of appeals

- (a) Government intends to increase the numbers of judicial officers to ensure that hearing of appeal cases are expedited.
- (b) Government is taking steps aimed at ensuring that appeals are heard within a reasonable time.
- (c) The judiciary has commenced the hearing of cases on appeal on assizes where matters are being disposed of instantly. The judiciary has developed a policy of hearing Appeals almost every week. It is hoped that once this practice concretizes, appeals will no longer take long to be concluded.

(2) Status of Paralegals

(a) Government recognizes the important role that paralegals play in the criminal justice system .With the assistance of the European Union, a number of people were trained at Mpemba Staff Development Institution in Blantyre District of Malawi and some of them have gone further and studied for their diplomas in Law at the University of Malawi. The Ministry of Justice recruits Paralegals with a view of ensuring that the right to fair trial is guaranteed to all those people who seek legal assistance. Steps are being taken to increase the number of paralegals so that they can be stationed in all the regions of Malawi.

(3) The Law Commission set up a commission to review the /report of the Legal Education and Legal Practitioners Act. Some of the issues under consideration was the status of paralegals. The review of the Act was concluded. However, the report has not yet been published.

(4) Status of Bills I

(i) The Legal Aid Bill was passed by Parliament. It is Act No. 7 of 2011. Government is in the process of working on the institutional set-up so that the Act comes into operation.

- (ii) The Legal Education and Legal Practitioners (Amendment) Bill (is still under review by the Law Commission.

Right to recognition as a person before the law (art. 16)

12. Please provide information on laws and policies in place to ensure that persons with disabilities enjoy legal capacity on an equal basis with others.

- (1) The Constitution of the Republic of Malawi provides that every person is equal before the law and that no one can be discriminated against on any grounds including disability. To that end, the Government guarantees that every person with disabilities enjoys equal status with those people that have the capacity.
- (2) The Government has also developed policies that ensure that people with disabilities are given priority in several areas of society like areas of employment and the enjoyment of social services. Infrastructure has been adjusted to ensure accessibility by persons with disabilities.
- (3) Section 13 (g) of the Constitution which provides for people with disabilities was amended in 2009. The policies developed by Government in relation to people with disabilities has shifted from supporting the disabled to enhancing the dignity and quality of life of persons with disabilities.

- (4) The Disability Bill is currently being finalized for Cabinet consideration and it is hoped that it will be tabled in Parliament in November 2011.

Prohibition of arbitrary or unlawful interference with privacy, family, home or correspondence (art. 17)

15. Please provide information on the Police Act of 2 December 2009, giving police forces the power to conduct home searches without obtaining a search warrant beforehand.

The Police Act number 11 of 2010 allows the police service to undertake a search without a warrant in certain exceptional circumstances. These searches are not undertaken arbitrarily and without any factual basis. The Police must have a justifiable reason to undertake a search without a warrant. This position of the law is in tandem with the provisions of the Constitution which guarantees the right to privacy and the maintenance of public security.

16. Please indicate the steps taken by the State party to guarantee confidentiality of medical information, including a person's HIV status. Please also explain how article 10 (permitting a health service provider to disclose one's HIV status) and the provisions on compulsory testing of the HIV/AIDS (Prevention and Management) Bill are in conformity with the rights guaranteed in the Covenant.

(1) Confidentiality of medical information

- (a) The Government's policy is that all medical information is confidential

(b) The Government of Malawi does not have a policy of compulsory testing for HIV and AIDS. In the prevention of mother to child transmission, HIV/AIDS testing is offered to all mothers who are pregnant. Those who do not want to undergo the testing have the liberty to opt out of the same. Consequently, the medical information is kept confidential.

(2) Compatibility of HIV/AIDS Bill with Article 10 of the covenant and the provisions on compulsory

(b) The proposed Bill which is being considered by Cabinet, prohibits compulsory testing for HIV and AIDS except in the following instances-

- (i) under an order of a court of competent jurisdiction where a person is charged with a sexual offences;
- (ii) for commercial sexual workers;
- (iii) for persons who intend to enter into polygamous marriages;
- (iv) for pregnant women and their spouses; and
- (v) for donors of blood and tissues.

Freedom of conscience and religion (art. 18)

17. Please provide information on the existence of different religions within the State party's jurisdiction, and the main status differences, if any, between the dominant religion and other

denominations, in particular with regard to the granting of subsidies and the protection of and access to places of worship, in particular for those belonging to religious minorities.

(1) Existence of different religions

- (a) In Malawi, every person has the right to freedom of conscience, religion, belief and thought. The enjoyment of this right is evidenced by the diverse range of religious practices in the country. Religious associations are recognized by Government and are often involved in many spheres of Government work and their views are often sought in some policy formulation. The Government has no policy that discriminates people based on their religions in the granting of subsidies and the protection and access to places of worship.

(2) Types of religious practices

- (a) The major religions are Christianity, and Islam and the minority religious groupings are the Hinduism, Baha'i, indigenous religions among others. These religions coexist in harmony and actually do have associations which jointly conduct national prayer activities as a way of promoting religious tolerance.
- (b) The Government has no policy that discriminates against people based on their religion in the granting of subsidies and the protection and access to places of worship. A persons' religious belief is not a factor that is considered in the determination of beneficiaries of subsidies..

Freedom of opinion and expression (art. 19)

18. Please provide information on the amendment to the Penal Code, giving powers to the Minister of Information to ban newspapers. Please provide information on the number of journalists and human rights defenders who have been arrested since 2005, the grounds for their arrest, as well as the outcome of the arrests. Please explain the decision by the Malawi Communications Regulatory Authority barring all private radio stations in Malawi from airing live broadcasts of opposition rallies in the lead up to the 2009 elections, without its permission. Please also provide information on the reasons for the closure by the police of the private broadcaster Joy Radio on polling day, 19 May 2009?

Information on amendment of section 46 of the Penal Code

- (a) In its original form, Section 46 of the Penal Code gave the Minister absolute powers to ban any publication, which, in his opinion, was in the national interest. The owner of the publication had no recourse to judicial review of the Minister's decision. The amendment reduced the absolute powers of the Minister by subjecting his decision to the test of reasonableness while retaining the power to ban publications that clearly undermined national security or public morals such as pornography.

The new amendment, therefore, is an improvement on the old law.

It should be noted that this issue has been a topic of previous discussion and Malawi submitted a report on the same to the Rapporteur on Promotion and Protection of

Opinion of Expression and attached as Annex 1, is the written response of Government.

(2) Decision by MACRA banning radio stations from airing live broadcasts of opposition rallies

The ban was issued to preserve public security.

(3) Closure of Joy Radio

Joy Radio Station was closed for broadcasting campaign material after the closure of the campaign period which is contrary to the Presidential and Parliamentary Elections Act. The alleged offenders were tried and were acquitted.

All closures of private radio stations in the country are done for reasons of public security and in full cognizance of international human rights standards.

20. Please provide information on the number of persons arrested since 2005 for holding or expressing political views. Please also provide information on whether plans are foreseen to amend the Penal Code with the aim of prohibiting the use of forced or compulsory labour as punishment for holding or expressing political views opposed to the established political, social or economic system.

- (1) There are no political prisoners in Malawi.

- (2) The Constitution of Malawi prohibits the imposition of any forced or compulsory labour as punishment for holding or expressing political views as such there is no need for such an amendment.

Freedom of assembly and association (arts. 21 and 22)

(12) Please provide information on legislative restrictions placed on the right to peaceful assembly, including criteria for prohibiting an assembly, as well as any cases recorded since 2005, where the holding of an assembly or demonstration was prohibited, and the reasons invoked.

- (1) Every person in the country has the right to freely assemble and demonstrate provided he notifies the local authorities and the police forty-eight hours before the commencement of such assembly or demonstration. This law was enacted to ensure that the enjoyment of the right is undertaken with the full guarantee of the demonstrator's security and that of the public. All assemblies that complied with the requirement on notices have and continue to be undertaken without any restrictions. The amended Police ACT of 2010 comprehensively provides for procedures to be followed in the conduct of assemblies and demonstrations.

- (2) In certain instances, planned demonstration have not taken place due to non-compliance with the provisions of the Law on demonstrations. The most recent planned demonstration of August 2011 failed to take place because injunctions were obtained by concerned citizens stopping the demonstrations from taking place and the organizers

of the demonstrations decided to postpone the demonstrations pending dialogue that is ongoing with Government on the issues that had been raised through a petition presented to Government in July.

Freedom of movement, marriage, family and measures for the protection of minors (arts. 12, 23 and 24)

21. Please provide information on the status of the draft Penal Code amendment and the Child (Care, Protection and Justice) Act. Is corporal punishment prohibited by law in all settings? What steps are taken to ensure that corporal punishment is not resorted to in practice? Please also provide information on steps taken to prevent sexual abuse of children, and to prosecute and punish perpetrators. What steps is the State party taking to prohibit and prevent female genital mutilation?

(1) The Penal Code (Amendment) Bill was passed by Parliament and it is Act Number 1 of 2011.

(2) The Child (Protection, Care and Justice) Bill, 2010 was passed by Parliament and it is Act Number... of 2011.

(3) Corporal Punishment

Corporal punishment is prohibited by law and there are no records that the same is resorted to by public officials. The Constitution provides that no person shall be subjected to corporal punishment in connection with any judicial proceedings or in any other proceedings before an organ of the State.

(4) Genital mutilation

The Government has no official records of practice of genital mutilation being undertaken in the country. However, civic education is being conducted through programmes implemented

by the Ministry of Gender on the dangers of undertaking certain cultural practices that may be hazardous to people's health.

22. Please indicate whether further amendments are foreseen to the draft Child (Care, Protection and Justice) Bill, to increase the minimum age of criminal responsibility. Please also provide information on measures taken to develop and implement alternatives to custodial sentences for minors.

(1) Age of criminal responsibility

Through a 2010 amendment to the Penal Code, the age of criminal responsibility was raised from seven years to ten years. In the same amendment, a person under fourteen years is not criminally responsible unless it can be shown that at the time of commission of the crime they had knowledge that they ought not to commit the crime. This is an increase from the previous provision under which a child twelve years could have criminal liability

(2) Custodial Sentences for minors

- (a) Custodial sentences for minor offenders is discouraged and remains a last resort, after exhausting all alternative penalties. Custodial sentence for minor offenders applicable where an offence committed is so serious that no alternative remedy would suffice in the circumstances. There are also several juvenile detention centers in the country where juveniles are kept.

(b) The Child (Care, Protection, and Justice) Act provides that no children under the age of sixteen should be kept in prison.

(c) Diversion is an alternative to custodial sentences and this is being applied by Child Justice Courts.

22. Please provide information on measures taken to eliminate child labour and economic exploitation of children, especially on tobacco farms, subsistence farms and in domestic service. Please also specify whether legislative steps are foreseen to prohibit the use, procurement or offering of persons under 18 years of age for the purposes of prostitution or pornography.

(1) Government has increased surveillance of tobacco farms to eliminate child labour and economic exploitation. This is an ongoing process whose measures may culminate in the enactment of law that may comprehensively tackle the scourge of child labour.

(2) Prostitution and pornography are offences and persons who commit these offences are duly prosecuted

Right to take part in the conduct of public affairs (art. 25)

23. Please provide information on the reasons why local government elections have been held only once since 1995, as opposed to once every five years as required by the Local Government Elections Act, and indicate the scheduled date for the next local government elections.

Previous scheduled local government elections were not held due to budgetary constraints. Government intends to hold tripartite elections in 2014.

Rights of persons belonging to minorities (art. 27)

24. Please provide information on which ethnic, religious or linguistic minorities exist on the territory of the State party, and what measures, including positive measures of protection, have been taken to ensure that members of such minorities enjoy the right, in community with other members of their group, to their own culture, to profess and practice their own religion, and to use their own language.

(1) Government's policy is to treat all people as equals. Positive discrimination is pursued in favour of those people that are perceived as a minority ethnically , or religiously among others. However, the problem on the basis of being a member of a society which is considered a minority is not so pronounced in Malawi.

(2) Preservation of cultural practices as long as they are not harmful, and languages, are encouraged in Malawi.

- (3) Academic studies up to standard five in public primary schools are taught in the native language of an area where the school is located, after which English is used as a language of instruction.
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