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**70<sup>th</sup> Ordinary Session of the African  
Commission on Human and Peoples' Rights**

**23 February- 9 March 2022**

**Concluding Observations and Recommendations on the 2<sup>nd</sup> and 3<sup>rd</sup>  
Combined Periodic Report of the Republic of Malawi on the  
Implementation of the African Charter on Human and Peoples' Rights  
(2015 - 2019)**

**And**

**Initial Report on the Protocol to the African Charter on Human and  
People's Rights on the Rights of Women  
(2005-2013)**

## 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 Charter 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 to the African Charter to the African Commission on Human and Peoples' Rights (the Commission) at the Commission's 56<sup>th</sup> Ordinary Session, which was held from 21 April to 7 May 2015. The Initial and Combined Periodic Report covered the period from 1992 to 2013.
4. The Report under consideration, covers the period from 2015 to 2019, and combines the second and third periodic Reports (the Report) of Malawi.
5. The Report was presented to the Commission by the Delegation from Malawi (the Delegation), attached to this Report as **Annex 1**.
6. The Report was considered by the Commission during its 68<sup>th</sup> Ordinary Session held virtually from 14 April to 4 May 2021.
7. The Report highlights the developments which had taken place in the country, on the promotion and protection of human rights, and measures which had been put in place by the State to comply with its obligation under the African Charter and the Maputo Protocol in the period between 2015 to 2019.
8. The Commission welcomes the presentation of the Report by Malawi and commends the Delegation for its frank and constructive dialogue with the Commission during its presentation of the Report. In this regard, the Commission wishes to congratulate Malawi, for its diligence and commitment to its obligation under the African Charter and the Maputo Protocol.
- 9.—These Concluding Observations give an account of the positive aspects, the factors restricting the enjoyment of human rights and the challenges identified in the Report.
10. In conclusion, the Commission makes recommendations to Malawi on measures for strengthening the enjoyment of human rights as guaranteed by the African Charter, the Maputo Protocol as well as other relevant regional and international human rights instruments.

**PART A: Concluding Observations and Recommendations on the Combined 2<sup>nd</sup> and 3<sup>rd</sup> Periodic Report of Malawi for the period 2015-2019 under the African Charter**

**I. Positive Aspects**

11. The Commission notes a number of positive aspects in Malawi's efforts towards the fulfilment of its obligations under the African Charter.

**Reporting Obligation and Cooperation with the Commission**

12. The Commission:

- i. Welcomes the efforts made by Malawi in preparing and presenting its periodic Report and commends the latter for its commitment towards implementing the provisions of Article 62 of the African Charter;
- ii. Notes and Appreciates that the second and third periodic Report of Malawi indicates the legislative, policy, institutional and other measures which have been taken to implement the Maputo Protocol, in line with Article 26 of the Maputo Protocol;
- iii. Commends the efforts made by Malawi to ensure that the preparatory process of this periodic Report was highly participatory and involved relevant stakeholders including civil society organisations;
- iv. Commends Malawi for setting up a National Task Force through the Human Rights Section in the Ministry of Justice and Constitutional Affairs to coordinate implementation of the Commission's 2015 Concluding Observations on the Initial and Combined Periodic Report of Malawi 2015 on the African Charter; and
- v. Lauds Malawi for providing comprehensive answers to the issues raised by the Commission in its Concluding Observations on Malawi's Initial and Combined Periodic Report (1995 - 2013) 2015, enabling the Commission assess the progress recorded by Malawi during the reporting period, in the protection and promotion of human and peoples' rights, as well as the outstanding challenges.

**Ratification of Regional and International Human Rights Instruments**

13. The Commission commends Malawi for ratifying the Protocol to the African Charter on the Values and Principles of Public Service and Administration and the International Convention for the Protection of all Persons from Enforced Disappearances during the period under review.

## **Enactment of National Laws and Policies guaranteeing human rights**

### *National Legislation*

14. The Commission 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:

- i. Trafficking in Persons Act 2015;
- ii. Marriage, Divorce and Family Relations Act 2015;
- iii. Court Amendment Act 2016;
- iv. Land Act 2016;
- v. Customary Land Act 2016;
- vi. National Agriculture Policy 2016;
- vii. National Policy for Older Persons 2016;
- viii. The Gender Equality Act Implementation and Monitoring Plan (2016 – 2020);
- ix. National Strategy on Inclusive Education (2016 – 2020);
- x. The Constitutional Amendment Act 2017;
- xi. Access to Information Act 2017;
- xii. National Planning Commission Act 2017;
- xiii. Health Sector Strategic Plan II (2017 – 2022);
- xiv. National Action Plan on Trafficking in Persons (2017 – 2022);
- xv. Accelerating Inclusive Local Governance and Participatory Democracy for Effective Social Economic Development (2017 – 2023);
- xvi. HIV/AIDS (Prevention and Management) Act 2018;
- xvii. Political Parties Act 2018;
- xviii. National Action Plan on Persons with Albinism (2018 – 2020);
- xix. National Strategy on ending child marriage (2018 – 2022);
- xx. National Strategy for Adolescent Girls and Young Women (2018-2022);
- xxi. National Disability Mainstreaming Strategy and Implementation Plan (2018 – 2023); and
- xxii. Citizenship Amendment Act 2019.

## **Civil and Political Rights**

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

15. The Commission commends Malawi for operationalising the Independent Police Complaints Commission (IPCC) in 2020.

### *The right to life/death Penalty*

16. The Commission congratulates Malawi for its efforts in safeguarding the right to life including by observing a moratorium on the death penalty since 1994, the abolition of the mandatory death sentence for murder and treason, as well as efforts towards legally abolishing the death penalty for all offences.

### *Prisons and Conditions of Detention*

17. The Commission commends Malawi for the:

- i. Administrative efforts aimed at establishing a complaint handling mechanism in selected prisons in Malawi, to ensure that cases of torture are effectively reported;
- ii. Various institutional measures adopted to address the issue of overcrowding in prisons such as:
- iii. reviewing inmate records for early release, holding field courts inside prisons, monitoring and inspecting prisons by the Inspectorate of Prisons, releasing prisoners on bail, acquittal and discharge or order to perform community service and granting of presidential pardons;
- iv. Establishment of the Lay Visitors Scheme under Sections 124 -126 of the Police Act 2010, which allows members of the community to assess and report on the conditions of detention in police stations; and for
- v. Steps taken to fully operationalize the IPCC, created under the Police Act 2010 and mandated to receive and investigate complaints from the public against Police officers and the Police Services; to investigate deaths or injuries due to police action; and to investigate all deaths and injuries that occur during police detention.

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

18. The Commission commends Malawi for:

- i. Regulating Communications services through the Malawi Communications Regulatory Authority (MACRA) which operates independently of the Government of Malawi (the Government);
- ii. The sensitization campaigns organized by the Electoral Commission, on the importance of freedom of expression and access to information during elections and how to exercise the rights cautiously so as not to compromise the integrity of the elections;
- iii. Implementation of the Communications Act, 2016 enacted to ensure that consumers of communications services including internet connectivity are provided with affordable services and that the

- consumers are protected from any exploitative and prohibitive practices by communications companies; and
- iv. Efforts made by the Government through various bilateral and multilateral initiatives to ensure that the cost of internet connectivity becomes affordable for the majority of consumers of communications services.

### ***Refugees, IDPs and Migrants Workers***

19. The Commission commends Malawi for:
  - i. Embarking on the development of a National Migration Policy to ensure coordinated and efficient efforts by relevant stakeholders in the management of migrants. The Policy provides a framework for the safe, orderly and regular management of migrants whilst upholding national interests as well as the human rights of the migrants; and
  - ii. Adopting the National Disaster Risk Management Policy which presents the aspirations of the Government of Malawi in ensuring that disaster losses and impacts are sustainably reduced.

### ***Statelessness***

20. The Commission welcomes:
  - i. The Government's "*I Belong Campaign to End Statelessness in Ten Years (Campaign)*" which features a Global Action Plan for 2014-2024 and aims to resolve existing major situations of statelessness, prevent new cases of statelessness from emerging, and assist in better identifying and protecting stateless populations; and
  - ii. Pledges made by the Government at the High-Level Segment on ending Statelessness in October 2019, including undertaking and publishing a qualitative study by June 2020 to better understand the situation of groups and individuals staying on its territory, who are stateless or at risk of statelessness, with a view to finding a solution to their situation as well as review the Nationality/Citizenship Law.

### ***Access to justice***

21. The Commission notes with appreciation the Court Amendment Act (2016) establishing divisions in the High Court of Malawi in an effort to enhance access to justice and improve the efficiency of the judiciary.
22. The Commission appreciates the establishment of the Legal Aid Fund and welcomes the setting up of district offices of the Legal Aid Bureau, to increase access to justice and ensure legal representation for indigent persons.

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

23. The Commission commends Malawi on:

### ***Right to housing***

- i. Signing of an agreement for a grant from the African Development Bank to implement the Post Cyclone Idai Emergency Recovery and Resilience Project which aims to reconstruct and rehabilitate damaged infrastructure (including roads, bridges, and water supply and sanitation facilities) and to restore agricultural livelihoods.

### ***Right to work***

- i. The enactment of the Employment Act which provides for the minimum age of entry into employment; and
- ii. Implementation of the Malawi Youth Forest Restoration Programme which provides young people with training and jobs, as well as foster environmental stewardship throughout the country.

### ***Right to health (HIV/AIDS)***

- i. The enactment of the HIV/AIDS (Prevention and Management) Act (2018) which prohibits discrimination of any person on a basis relating to HIV/AIDS related infections, and establishes the National AIDS Commission which oversees all issues relating to HIV/AIDS; and
- ii. The coordinated approach provided in the National Health Policy (2018 - 2030) which addresses key issues central to the development and functioning of the health system in Malawi, particularly: health service delivery; preventive health and social determinants for health; leadership and governance; health financing; human resources for health; medicines, medical supplies, medical equipment and infrastructure; population management; and health information.

### ***Right to education***

- i. Dissemination of the National Inclusive Educational Managers from National Level to Zonal Levels targeting Directors, District Commissioners, District Education managers, Secondary and Primary School Head teachers, and teachers;
- ii. The establishment of the National Inclusive Education Strategy 2016 to 2020; and

- iii. The development of a 10 year (2020-2030) National Education Investment Plan by the Ministry of Education, Science and Technology which has taken Inclusive Education and Gender as one of its priority areas.

#### ***Right to water***

- i. Prioritization of water and sanitation activities including the Malawi Growth and Development Strategy III which seeks to provide safe water supply and improved sanitation to people of Malawi including the elderly and vulnerable; and
- ii. The Malawi Vision 2063 which also prioritizes water and sanitation as very key in the country's development.

#### ***Right to food***

- i. Donation of food and non- food items to assist households that were affected by the Cyclone Idai in collaboration with other Partners; and
- ii. Adoption of the National Multi-Sector Nutrition Policy (2018 - 2022), which provides a guiding framework for the successful implementation of the national nutrition response and seeks to uphold the Government's commitment to eliminate malnutrition in all forms.

#### ***Right to culture***

- i. Adoption of the National Cultural Policy (2015) which aims to identify, preserve, and promote Malawian arts and culture for national identity, unity in diversity, posterity and sustainable socio-economic development.

#### ***Trafficking in persons***

24. The Commission welcomes the steps taken by Malawi to address trafficking in persons, through the development of the National Action Plan on Trafficking in Persons (2017 - 2022) which lays out priority actions, including: prevention and awareness raising, victim protection and assistance, legislative framework, policy development and law enforcement.

#### ***Rights of Children***

25. The Commission commends Malawi for:
  - i. The Constitutional amendment under Section 23 (6), increasing the age of the child from sixteen (16) to eighteen (18) years with a view to curbing child marriage and the steps being taken to harmonize all laws on the age of the child;
  - ii. The elimination of child labour, including through: Developing the List of Hazardous Work for Children Order, containing



- specifications of works that children aged between 5 - 17 years are prohibited from doing; The adoption of the National Code of Conduct and National Action Plan on child labour; and Implementation of various programmes including; Child Labour Elimination in Action for Real Change (CLEAR), and Achieving Reduction of Child Labour in Support of Education (ARISE); and
- iii. Efforts to address violations of children's rights, through the development of legal and policy frameworks, including: Child protection and Justice Act, Trafficking in Persons Act, National Policy on Orphans and other Vulnerable Children, National Early Childhood Development Policy, National Social Support Policy, National Education Policy, and the National Human Rights Action Plan.

### *Rights of Older Persons and Persons with Disabilities*

26. The Commission commends Malawi for:

- i. Efforts taken to protect the rights of older persons and persons with disabilities, including the National Policy for Older Persons 2016; draft Bill for older Persons and the 2012 Disability Act under review;
- ii. Implementation of the National Policy for Older Persons which adopts a multi-stakeholder approach;
- iii. The protection of the right to education for persons with disabilities through lobbying for inclusive education;
- iv. Policies adopted to address issues affecting persons with disabilities including the National Action Plan on Persons with Albinism as well as the National Disability Mainstreaming Strategy and Implementation Plan (2018-2023); and
- v. Training of sign language communicators to be deployed in courts, including Ministries and the National Assembly.

### *Extractive Industries and the Environment*

27. The Commission commends Malawi for:

- i. The adoption of the Mines and Minerals Act of 2019 which provides a contemporary regulatory framework for the mining sector in Malawi and through the inclusion of several progressive clauses safeguards national interest in contracts that Malawi signs with different multinationals for the harnessing of national resources;
- ii. The provision on "*community development agreements*", which places a mandatory obligation on mining companies to contribute no less than 0.45 per cent of their annual gross sales revenue on community development activities as prescribed in Community Development Agreements (CDAs);

- iii. The Tree planting campaign rolled out in all districts in the country in 2020; and
- iv. The launching of the Malawi's Strategy on Climate Change Learning in February 2021 by the Minister of Forestry and Natural Resources, with the objective to contribute to the National Climate Change Resilience Programme through the strengthening of human resources skills development and institutional arrangements for the advancement of green, low emission and climate resilient development.

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

28. The Commission notes factors restricting the implementation of the rights enshrined under the African Charter as follows:

- i. Weak implementation of national laws and policies, which inhibits Malawi's ability to ensure that all its citizens enjoy the rights guaranteed under the African Charter;
- ii. Limited resources at the disposal of the State, which has affected progress in the implementation of human rights related programs;
- iii. Slow pace of institutional reforms to match the constitutional standards and the obligations under the African Charter, which affects the pace of enjoyment and enforcement of human rights in Malawi; and
- iv. Despite progress in the general awareness of rights in Malawi, there is still lack of public awareness of the human rights among citizens as guaranteed under the African Charter, resulting in a lack of empowered citizens and consequent weak demand for the fulfilment of human rights by the Government.

## **III. Areas of Concern**

29. 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:

### **Reporting Obligations and Cooperation with the Commission**

30. While the Commission appreciates Malawi's response to its recommendations in Malawi's initial and combined Report of 2015, it however notes that, the current Report does not provide specific and comprehensive answers to some of the questions and issues raised by the Commission. In this regard the Report does not for instance, provide comprehensive disaggregated data, including gender disaggregated data on its implementation of the rights guaranteed in the African Charter in order to allow the Commission to objectively assess Malawi's level of compliance *vis-à-vis* the obligations contained in the African Charter.

31. In addition, the Report does not also follow the Commission's State Reporting Guidelines under Article 62 of the African Charter.

### **Ratification of Regional Human Rights Instruments**

32. Malawi has not yet ratified some key regional 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. Protocol to the OAU Convention on the Prevention and Combating of Terrorism;
- iv. Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa; and
- v. Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa.

### **Ratification of International Instruments**

33. Malawi has not yet ratified some key international human rights treaties, including:

- i. International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families;
- ii. Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR), aiming at the Abolition of the Death Penalty;
- iii. The Optional Protocol to the UN Convention against Torture;
- iv. The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights;
- v. Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women;
- vi. Optional protocol to the Convention on the Rights of Persons with Disabilities;
- vii. Optional Protocol to the Convention on the Rights of the Child on a communications procedure; and
- viii. Optional Protocol to the Convention against Torture (OPCAT).

### **Domestication of Regional and International Human Rights Instruments**

34. In addition to the above, Malawi is yet to domesticate some relevant regional and international human rights treaties that it has ratified, notably, the African Charter and the International Convention for the Protection of all

Persons from Enforced Disappearance, due to its dual system for domestication of international law under its legal architecture.

### **Civil and Political Rights**

35. The Commission is generally concerned about the lack of information in the Report regarding adequate awareness of the population about their rights, legal procedures and available remedies in respect of their civil and political rights.

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

36. The Commission is concerned that:

- i. Malawi has neither signed nor ratified the OPCAT and there are no indications on the steps taken to ratify the same;
- ii. Malawi has not expressly criminalized torture under its Penal Code and has not domesticated the UN Convention against Torture and Other Cruel, Inhuman or Degrading treatment or Punishment (CAT);
- iii. The Report does not contain information on measures the Government is putting in place to raise awareness amongst members of the judiciary on their obligation to open inquiries into allegations of torture or ill-treatment particularly when they are raised during trial; and
- iv. The Report is silent on the remedies that are available for suspects who have been convicted despite alleging that their confessions were obtained through torture.

37. The Commission is also concerned about:

- i. The lack of information on legislative and other measures that are in place to ensure adequate redress for victims of torture including compensation, rehabilitation, satisfaction and guarantees of non-repetition; and
- ii. The lack of definitive data in the Report on the number of victims of torture including on persons with albinism, and measures adopted to ensure adequate redress for victims of torture including compensation, rehabilitation, satisfaction and guarantees of non-repetition.

### ***The right to life/death Penalty***

38. The Commission is concerned that:

- i. Malawi has observed a moratorium on the death penalty since 1994. In this regard, while noting the positive steps taken, there remains

concerns as to prison conditions for death row detainees, and deaths of persons in prison custody; and

- ii. Lack of data on the re-sentencing hearings for individuals who had previously received the automatic death sentences in light of the 2007 Malawi High Court *Kafantayeni* decision, which prevents the Commission from making an objective assessment of the process.

### ***Prisons and Conditions of detention***

39. The Commission is concerned about the:

- i. Conditions of the current prison facilities, as they continue to house inmates of all categories;
- ii. Lack of data in the report on rehabilitation, recreation and education programs and facilities available to prisoners;
- iii. Lack of information regarding the number or quality of meals for inmates; as well as information regarding sanitary facilities and the availability of antiretroviral drugs for inmates with HIV-AIDS;
- iv. Lack of statistics on deaths in prisons and places of detention;
- v. Lack of information on the continuous training of law enforcement officials in matters relating to the protection of human rights; and
- vi. Lack of information regarding the number of female Officers recruited in the Police and in the Penitentiary/Correctional Services.

### ***Refugees, IDPs and Migrants Workers***

40. The Commission is concerned that Malawi has not adopted a Refugee Policy and that the National Migration Policy which incorporates aspects of refugees, is still pending approval by Cabinet.

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

#### ***Rights to Housing***

41. While the Commission appreciates the post Cyclone Idai Emergency Recovery and Resilience Project, the Commission is concerned that this project only targets five (5) out of fifteen (15) districts and two (2) cities affected, resulting to unequal distribution of resources and remedies to the victims in other affected areas.

#### ***Rights of Older Persons and Persons with Disabilities***

42. The Commission is concerned with the fact that the draft Bill for older Persons has not been enacted into law, while the 2012 Disability Act is still under review.
43. The Commission is also concerned with the lack of disaggregated statistical data for older persons in the Report.

#### *Rights of Indigenous populations/Communities*

44. Malawi has still not conducted the Study recommended by the Commission in the Concluding Observations of the State Report of 2015, aimed at establishing the existence of Indigenous Populations in the country.

#### *Extractive Industries and the Environment*

45. The Commission is concerned that the Delegation did not respond to the Commission's inquiries about the Kayelekera uranium mine which was temporarily closed in 2014 and remains so for the foreseeable future. Information about legislative measures taken by the State to ensure the smooth transition of affected communities from economic dependence on the operations of the Kayelekera mine remains pending.

### **RECOMMENDATIONS**

46. In view of the foregoing, the Commission makes the following recommendations to Malawi:

#### **Reporting Obligations**

47. Malawi should:
  - i. Continue the regular submission of Periodic Reports on the implementation of the African Charter in compliance with Article 62 of the African Charter;
  - ii. Provide, in its next Periodic Report, up-to-date statistics and data on all relevant sectors as well as on activities of institutions with a human rights mandate; and
  - iii. Inform the Commission, in its next Periodic Report, of the measures taken to address the issues of concern and to ensure the effective implementation of the recommendations contained in these Concluding Observations relating to the African Charter.

## **Ratification of Regional/International Human Rights Instruments**

48. Efforts should be made by Malawi to ratify the following Instruments:

- i. The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa;
- ii. The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa;
- iii. Second Optional Protocol to the ICCPR aiming at the abolition of the Death Penalty;
- iv. Protocol to the OAU Convention on Prevention and Combating of Terrorism;
- v. Protocol on the Statute of the African Court of Justice and Human Rights;
- vi. International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families;
- vii. The Optional Protocol to the UN Convention against Torture;
- viii. The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights;
- ix. Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women;
- x. Optional protocol to the Convention on the Rights of Persons with Disabilities; and
- xi. Optional Protocol to the Convention on the Rights of the Child on a communications procedure.

## **Civil and Political Rights**

49. Malawi should include in its next report, information regarding adequate awareness of the population about their rights, legal procedures and available remedies in respect of their civil and political rights.

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

50. Malawi should in its next review period:

- i. Enact laws to define and expressly 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;
- ii. Initiate programs for training law enforcement agents on the Robben Island Guidelines;
- iii. Ensure that victims of torture and other ill-treatment, including persons with Albinism have the right to all forms of redress including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition in accordance with General

- Comment No. 4 on the African Charter on Human and People Rights; and
- iv. Adequately resource the IPCC to enable it discharge its mandate effectively.

### *Prisons and Conditions of Detention*

51. Malawi should:

- i. Improve prison conditions to house more inmates;
- ii. Create programs and respective spaces for the rehabilitation, education and recreation of prisoners;
- iii. Provide information on existing sanitary facilities in prisons, as well as information on the distribution of antiretroviral drugs to inmates with HIV-AIDS;
- iv. Take necessary measures to record and publicize deaths that occur in prisons and places of detention;
- v. Include matters relating to the protection of human rights in training of law enforcement officials; and
- vi. Provide ~~Læk~~ information on the number of female Officers recruited in the Police and in the Penitentiary/Correctional Services.

### *The right to life/death Penalty*

52. Malawi should:

- i. Adopt an official moratorium on the death penalty as a positive step towards the definitive abolition of the death penalty; and
- ii. Provide in its next report, measures taken by State to investigate cases of deaths in prison custody and ensure the trial and punishment of perpetrators where investigation reports suggest unnatural deaths.

### *Refugees, IDPs and Migrants Workers*

53. Malawi should adopt a Refugee Policy and the Government should ensure that the National Migration Policy is approved by Cabinet.

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

#### *Rights to Housing*

54. Malawi should extend opportunities and benefits provided by the post Cyclone Idai Emergency Recovery and Resilience Project to all districts in the region, and ensure that redress to victims of the cyclone is all-inclusive.



### *Rights of Older Persons and Persons with Disabilities*

55. Malawi should:

- i. Enact the draft Bill for older Persons, as well as the 2012 Disability Act which is still under review into law; and
- ii. Include disaggregated statistical data for older persons in its next periodic Report.

### *Extractive Industries and the Environment*

56. Malawi should provide information in its next periodic Report on the legislative and other measures taken by the State to compensate communities affected by the closure of the Kayelekera uranium mine.

### *Rights of Indigenous Populations/Communities*

57. Malawi should undertake the Study referred to in Paragraph 43 of the Initial and Combined Report under reference to ascertain the existence of indigenous populations and communities in the country as recommended by the Commission.

## **PART B: MAPUTO PROTOCOL**

58. Regarding the implementation of the Maputo Protocol, the Commission notes the following positive aspects:

### **I- POSITIVE ASPECTS**

59. The Commission notes that there are many positive aspects regarding Malawi's compliance with its obligations under the Maputo Protocol which it ratified on 20 May 2005.

### **Reporting obligation and cooperation with the Commission**

60. The Commission commends Malawi for submitting its second Periodic Report in accordance with Article 26 of the Maputo Protocol which is well-articulated and in line with the Guidelines for State Reporting under the Maputo Protocol.

### **Legal framework for the promotion of women's rights in Malawi**

61. The Commission commends Malawi for the following Laws:

- i. The Prevention of Domestic Violence Act;
- ii. The Marriage Divorce and Family Relations Act;
- iii. The Gender Equality Act and the HIV and AIDS (Prevention and Management) Act; and
- iv. The Customary Land Act.

## **IMPLEMENTATION OF SPECIFIC RIGHTS IN THE MAPUTO PROTOCOL**

### **Article 2: Elimination of Discrimination against Women**

62. The Commission commends Malawi for:

- i. Its commitment to the promotion and protection of the rights of women through the enactment of a number of progressive laws aimed at reversing previously discriminatory laws, norms and practices in the country;
- ii. Adoption and implementation of the Gender Equality Act Implementation and Monitoring Plan for gender equality, integration, influence, empowerment, dignity and opportunities for men and women in Malawi (2016 - 2020);
- iii. Implementation of Section 11 of the Gender Equality Act which provides that an appointing or recruiting authority in the public service shall appoint no less than forty percent (40%) and no

- more than sixty percent (60%) of either sex in any department in the public service;
- iv. Lobbying, advocacy, awareness and sensitization campaigns to reduce gender disparities;
- v. The Mandatory reporting of Ministries; Departments and Agencies (MDAs) on gender indicators and outcomes of number of women recruited and sent for further studies and trainings through the Organizational Performance Appraisal which MDAs signed with the Office of the President and Cabinet;
- vi. The public service Sexual Harassment Policy developed to make public service institutions favorable for all gender groups; and
- vii. Ensuring gender equality and the empowerment of women in the county through several strategies.

### **Article 3: Right to Dignity**

63. The Commission commends Malawi for:

- i. Male engagement strategy which identifies and prioritizes interventions for involving men and boys in Gender Based Violence (GBV), Sexual Reproductive Health Rights (SRHR) and HIV-related issues;
- ii. Measures taken to address GBV, including the setup of one stop centres in hospitals; victim support units at Police stations; community support units and the provision of toll free lines; and
- iii. The establishment of counselling and rehabilitation centres to redress victims of GBV.

### **Article 5 & 6: Elimination of Harmful Practices and Marriage**

64. The Commission notes with satisfaction:

- i. The express prohibition of harmful practices as provided for under the HIV/AIDS (Prevention and Management) Act;
- ii. Initiatives to combat harmful traditional practices, including activities which clarify toxic cultural and social norms;
- iv. The 2018 Strategy to end child marriages which is providing guidance in the implementation of interventions targeting girls especially those in rural areas;
- v. Engagement and lobbying with community leaders including chiefs and religious leaders to become champions for ending child marriages and promoting girls' education;
- vi. The minimum age of marriage at 18 under the Marriage, Divorce and Family Relations Act; and the amendment of the Constitution to increase the age of a child as well as the age of consent to marry to 18;

- vii. The express view by the Malawi Law Commission that Marriage below the age of 18 is a health hazard and that early marriage has negative development implications; and
- viii. The National Strategy which aims at eradicating child marriage by 2022.

### **Article 7: Separation, Divorce and Annulment of Marriage**

65. The Commission notes:

- i. Section 24 (1) (b) (i) of the Constitution which recognises that women can own property separately or jointly and that they are entitled to a fair distribution of the marital property upon dissolution of marriage; and
- ii. Section 74 of the Marriage, Divorce and Family Relations Act which further provides for equitable distribution of matrimonial property.

### **Article 9: Right to Participation in the Political and Decision-Making Process**

66. The Commission commends Malawi for electoral reforms to include gender quotas in the election of Members of Parliament.

### **Article 12: Right to Education and Training**

67. The Commission notes with satisfaction:

- i. Efforts made by the Government to encourage girl children to stay in school remain and continue with their education such the *National Strategy on Inclusive Education 2016 to 2020* with initiatives inter alia: inclusive education projects and Keeping Girls in School; and
- ii. The Re-Admission Policy in 2016 which provides for the readmission of girls back into school after pregnancy during the COVID-19 Lockdown. The policy also enables pregnant girls to sit for exams during their pregnancy.

### **Article 14: Health and Reproductive Rights**

68. The Commission notes with satisfaction, the:

- i. Domestication of the Maputo Protocol through the enactment of various legislations, including the Gender Equality Act, Marriage Divorce and Family Relations Act and HIV/AIDS (Prevention and Management) Act;
- ii. Improved status of child mortality and maternal mortality;
- iii. Measures taken to ensure postnatal care for women including outreach mobile clinics in hard-to-reach areas; information, education and counselling conducted to the communities and

- antenatal mothers on importance of postnatal care; availability of revised postnatal registers and reporting tools to track performance; and revision of postnatal care guidelines which requires women to be in hospital 48 hours before discharge; and
- iv. Revision of Post Abortion Care (PAC) Guidelines and community awareness programs on the Guidelines.

### **Article 23: Special Protection of Women with Disabilities**

69. The Commission applauds Malawi for:

- i. The adoption of a National Policy for Older Persons and efforts to establish a Community Elderly Committee; and
- ii. Plans to introduce Elderly Friendly Health Services which includes geriatric services in existing outreach clinics.

### **I. FACTORS RESTRICTING THE ENJOYMENT OF THE RIGHTS GUARANTEED IN THE MAPUTO PROTOCOL**

70. Lack of awareness of the Maputo Protocol results to slow implementation of the Protocol.

### **III. AREAS OF CONCERN**

71. In spite of the Government's efforts to promote and protect the rights of women, the Commission is concerned about the following:

### **Reporting obligation and cooperation with the Commission**

72. While the Commission appreciates the detailed responses provided by Malawi to the various questions regarding implementation of the Maputo Protocol, the Commission would appreciate more information on the concerns raised by the Commission hereunder.

### **Article 2- The Right to non-discrimination**

73. The Commission is concerned that:

- i. There is no indication in the Report about how the Government intends to scale up the sensitisation of the gender-related legal instruments and awareness to the grassroots;
- ii. Gender quotas for political positions and in the private sector still remain problematic; and
- iii. Implementation of affirmative action measures for women in the civil service seems to be hampered by patriarchal cultural values which limit women's access to leadership opportunities.

### **Article 3- Right to dignity**

74. The Commission is concerned:

- i. That while the Report states that the Prevention of Domestic Violence Act has been reviewed, there is no indication that the offence of marital rape has been included, and the amended Bill is yet to be presented to Parliament;
- ii. About lack of data on the registration and acceptance by the authorities of cases for domestic violence; and
- iii. Sexual harassment especially for women running for public office.

### **Article 5 & 6: Elimination of Harmful Practices and Marriage**

75. The Commission is concerned that there is no information about other forms of harmful cultural practices in the Report, including widow's marriage to brother-in-law as an obligation, FGM etc.

76. While the Commission applauds the protection accorded on the girl child under the Marriage, Divorce and Family Relations Act, it is concerned that implementation of the Act remains a challenge.

### **Article 12: Education and Training**

77. The Commission is concerned by the high illiteracy rate among females and stigma towards pregnant girls on their return to schools.

78. The Commission is also concerned about the high drop-out rate among girls due to lack of toilets in schools for girls to manage their sanitation needs, especially during their periods.

### **Article 14: Sexual and Reproductive health rights**

79. The Commission is concerned that the Report does not provide any information on the Termination of Pregnancy Bill developed by the Law Commission and yet to be deliberated on and approved by Cabinet at the time of presentation of this Report, even though there have been attempts to take the Bill in Parliament as a Private Members Bill.

## **V - RECOMMENDATIONS**

80. In view of the foregoing, the Commission makes the following recommendations to Malawi:

### **Reporting obligation**

81. The Government should continue to comply with its obligations under Article 26 of the Maputo Protocol, including by implementing the Commission's recommendations.

### **Article 2- The Right to non-discrimination**

82. The Government should create more awareness on policies and laws in the country that relate to gender parity and ensure that the awareness campaigns are done across the country, including in the rural areas.

83. The Government should increase its efforts in challenging deeply rooted beliefs and attitudes surrounding women's appointment in public and political positions, and implement affirmative actions as stipulated in the Gender Parity Equality Act.

### **Article 3- Right to dignity**

84. The Government should inform the Commission during its next review, about the status of the amended Prevention of Domestic Violence Act.

85. The Government should create conditions so that, in practice, sexual harassment that inhibits women from running for public office is reduced.

86. The Government should take steps to pass a law against sexual harassment.

### **Article 5 & 6: Elimination of Harmful Practices and Marriage**

87. In its next Periodic Report, the Commission would appreciate more information on other forms of harmful cultural practices that exist in Malawi, including the issue of widows being compelled to marry their brothers-in-law.

88. The Government should use practical and effective legal, policy and programmatic measures to stop early, child and forced marriage. This should include enforcement of criminal liability for perpetrators, addressing poverty and education causes as well as provision of information on reproductive health to avoid early sexual activity and ultimately early marriages.

89. The Government should include information on the registration and admissibility by the judiciary bodies of cases brought in the context of marital rape.

#### **Article 12: Education and Training**

90. The Government should take measures to clearly and firmly lower the illiteracy rate among women and girls, and allow girls to remain in schools, including the creation of specific toilets for them in schools.

#### **Article 14: Sexual and Reproductive health rights**

91. The Government should provide in its next Periodic Report, information on the status of the Termination of Pregnancy Bill and reasons for delay in its finalization and enactment into law.

#### **Cooperation with the Commission**

92. The Commission urges Malawi to also provide in its next Periodic Report, detailed information on the effective implementation of the recommendations made in these Concluding Observations relating to the Maputo Protocol.

**The Commission requests the Government of Malawi to submit its next periodic report within two years from the notification date of the present Concluding Observations.**

**Adopted by the African Commission on Human and Peoples' Rights at the 70<sup>th</sup> Ordinary Session held from 23 February to 9 March 2022**