

## ADVANCE EDITED VERSION

Distr.: General  
26 April 2011

Original: English

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**Human Rights Committee****101st session**

New York, 14 March–1 April 2011

**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?

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

2. 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?

3. 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.

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.

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

**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.
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.
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?
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?
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.

**Elimination of slavery and servitude (art. 8)**

13. 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.

### **Right to a fair trial (art. 14)**

14. 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.

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

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

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

16. 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.

17. 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.

### **Freedom of conscience and religion (art. 18)**

18. 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.

### **Freedom of opinion and expression (art. 19)**

19. 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?

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.

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

21. 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.

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

22. 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?

23. 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.

24. 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.

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

25. 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.

### **Rights of persons belonging to minorities (art. 27)**

26. 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.