

MALAWI'S COMMENTS ON OUTSTANDING UPR ISSUES

Introduction

You will recall that during the consideration of Malawi's UPR report by the United Nations Human Rights Council in November 2010 Malawi accepted 65 recommendations, rejected 39 recommendations and there were twenty three (23) recommendations on which Malawi did not make a stand pending further consultations.

Today Malawi is honored to make her stand on those 23 recommendations. Reference is made to the Report on Malawi adopted by the Human Rights Council (A/HRC/16/4), specifically Paragraph 104 and the subparagraphs there under.

We note that two threads run through the 23 recommendations and these are:

1. The need for Malawi to accede to several conventions and protocols.
2. The need for Malawi to domesticate several conventions which she has already ratified.

We wish to highlight that Malawi remains committed to carry out her obligations in regard to all treaties to which she is a party. In that regard we wish to state that when deciding to ratify international instruments, Malawi is guided by her Constitutional requirements, specifically sections 7, 8 and 12. These provisions taken together require the Executive and the Legislature to take into consideration the express interests and wishes of the people of Malawi as well as the fundamental principles which guide the Constitution.

Guided by these principles therefore, Malawi will therefore progressively continue to consider which international instruments require ratification. Let me now turn to the 23 recommendations, and reference is made to Paragraph 104 on the Report on Malawi:

Recommendations

1. Consolidate the legal framework for the promotion and protection of human rights, through the ratification of the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (Algeria)

a. No immediate plans to ratify this treaty.-REJECT

2. Sign and ratify the International Convention for the Protection of All Persons from Enforced Disappearance, as well as the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (France);

a. The two conventions will be successively considered in an ongoing process of consideration of treaties that may be ratified- ACCEPT.

3. Ratify the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (Azerbaijan);

a. Malawi will consider ratification of the Protocol and make her position known at the appropriate time-ACCEPT

4. Consider ratifying all outstanding international human rights instruments, and update domestic legislation to bring it into line with their provisions (South Africa);

a. Malawi continuously considers outstanding international instruments that require ratification. This process requires extensive consideration and consultations. In that regard Malawi commits herself that in line with her constitutional requirements she will

ensure that her domestic laws will be in line with her international commitments-ACCEPT

5. Consider ratifying the Convention on the Prevention and Punishment of the Crime of Genocide (Brazil);

a. *Malawi will consider ratifying the Genocide Convention. We are pleased to report that Malawi has just criminalized genocide under Section 217A of the Penal Code (Chapter 7.01 of the Laws of Malawi) as amended in 2010-ACCEPT.*

6. Expedite the ratification of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (Turkey);

a. *Malawi ratified the Optional Protocol to the CRC in September 2010.*

7. Ratify the Second Optional Protocol of the ICCPR with a view to fully abolishing capital punishment (Italy);

a. *Malawi retains the death penalty and as such has no intentions to ratify the Optional Protocol to the ICCPR. Malawi will continue to listen to the voices of the people regarding the issue of the death penalty- REJECT*

8. Adhere to the following international instruments: the Second Optional Protocol to the International Covenant on Civil and Political Rights; the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights; the Optional Protocol to CEDAW; the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; the Optional Protocol to the Convention on the

Rights of the Child on the involvement of children in armed conflict; the Optional Protocol to the Convention on the Rights of Persons with Disabilities; and the International Convention for the Protection of All Persons from Enforced Disappearance (Argentina);

- a. **Malawi has no immediate plans to ratify the Optional Protocol to ICCPR, will consider ratification of Optional Protocol to ICESCR, has no plans to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the Optional Protocol to the Convention on the Rights of Persons with Disabilities; and the International Convention for the Protection of All Persons from Enforced Disappearance. Malawi has already ratified the Optional Protocol to the CRC- REJECT Optional Protocol to ICCPR, Migrant Workers Convention, ACCEPT Optional Protocol to ICESCR.**
9. Sign and ratify the Optional Protocol to the Convention against Torture; the International Convention for the Protection of All Persons from Enforced Disappearance; the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights; the Optional Protocol to the Convention on the Rights of Persons with Disabilities; and ratify the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (Spain);
- a. *Malawi will consider ratification of OPCAT, Optional Protocol to ICESCR, Optional Protocol to the Convention of the Rights of Persons with Disabilities and Optional Protocol to CEDAW. Malawi has no immediate plans to ratify the International Convention for the*

***Protection of All Persons from Enforced Disappearance-ACCEPT
OPCAT, OP CEDAW, REJECT Enforced Disappearances.***

10. Ratify the Second Optional Protocol to the ICCPR (Switzerland);
 - a. ***Malawi has no immediate plans to ratify Optional Protocol to ICCPR-RE***
 - b. ***JECT***
11. Pursue efforts to harmonize national legislation with the commitments undertaken at the international level (Algeria);
 - a. ***Malawi through comprehensive legal reform led by the Law Commission continues to review her domestic laws firstly to bring them in line with the Constitution as well as international instruments to which she is a party, and the broader international law. This is an ongoing process.***
12. Ensure that domestic laws are in conformity with international human rights obligations (Australia);
 - a. ***Malawi will ensure that her laws are in conformity with international law as well as international instruments to which she is party.***
13. Harmonize national laws with international treaties to which Malawi has acceded (Libyan Arab Jamahiriya);
 - a. ***Malawi will successively ensure that her laws are in conformity with her international treaty obligations. Such process will be ongoing.***
- 14.. Ensure that all human rights treaties are given full legal effect in domestic laws (Norway);

- a. Malawi will strive to ensure all human rights treaties to which she is a party are given full effect.*
15. Take immediate steps to ensure that CEDAW is given full legal effect in its domestic laws (Azerbaijan);
- a. Malawi will through ongoing legal reforms ensure that CEDAW is given full effect in her domestic laws. This process will take time.*
16. That CEDAW be incorporated into domestic law and that efforts are also directed towards the need for the passing of all other pending bills that affect the women in Malawi (Norway);
- a. Malawi will through ongoing legal reforms ensure that CEDAW is given full effect in her domestic laws. This process will take time.*
17. Increase significantly, in conformity with international standards, the minimum age of criminal responsibility of children, which is currently 10 years (Mexico);
- a. Through a 2010 amendment to the Penal Code, the age of criminal responsibility has been raised to 10 years from 7 years. In the same amendment, a person under 14 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 of 12 years.*
18. Increase the age of minimum criminal responsibility to at least 12 years, as recommended by the CRC (Austria);
- a. Through a 2010 amendment to the Penal Code, the age of criminal responsibility has been raised to 10 years from 7 years. In the same amendment, a person under 14 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 of 12 years.

19. Create a comprehensive policy to improve the rights of the child, which is essential in this situation, in parallel with the ratification of OP-CRC-AC (Hungary);

a. In 2010 Malawi enacted a comprehensive law on the rights of the child namely the Child Care, Protection and Justice Act. In late 2010 Malawi also ratified the OP-CRC.

20. Consider extending a standing invitation to all special procedures of the Human Rights Council (Latvia);

a. Malawi will consider this option and respond to the HRC at the appropriate time.

21. Promote equality between men and women, and to this end reinforce its cooperation with international and regional mechanisms, especially special procedures (France);

a. Malawi has taken active steps to ensure that there is equality between men and women and will continued to work with international and regional mechanisms to achieve this.

22. Develop and strengthen appropriate legislative measures to address the issue of sexual abuse and exploitation, ensure prompt prosecution of perpetrators, guarantee that no person under the age of 14 is admitted to employment or work, amend the Constitution to raise the minimum age for engaging in hazardous work to 18 years, and enact and implement

legislation to ensure the complete prohibition of corporal punishment (Italy);

a. Malawi will successively look into these issues as raised by the delegation of Italy.

23. Adopt the necessary measures to guarantee that, in accordance with national legislation, children under 14 years of age do not work, and amend the Constitution so as to raise to 18 years the minimum age for engaging in work that is likely to be harmful (Spain).

a. Malawi will ensure that all measures are taken to prevent cases of child labour.

In conclusion Malawi remains committed to ensure that her people continue to enjoy to the fullest extent all the rights enshrined in the Constitution. Malawi also thanks the UN, her cooperating partners for all the assistance that we continue to receive in our quest for a fully democratic Malawi hinged on the rule of law and human rights.

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THE END