

UNCT Malawi Submission to the Universal Periodic Review of Malawi

I. Background and framework

This joint UNCT briefing note aims to provide information for the second Universal Periodic Review (UPR) of Malawi during the 22nd session of the UPR Working Group, to be held in Geneva from April-May 2015.

A. Scope of International Obligations

1. Malawi has ratified most of the core UN human rights treaties with the exception of the Convention on Enforced Disappearances and the Convention on the Rights of Migrant Workers. It has also ratified a total of 29 ILO Conventions, including all eight core Conventions, three of the four governance Conventions (with the exception of Employment Policy Convention No. 122) as well as 22 technical Conventions. It is party to the *1951 Convention relating to the Status of Refugees* (with reservations) and its *1967 Protocol* (collectively jointly referred hereafter referred as the *1951 Convention*). It has also ratified the *1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa*. Malawi is a State party to the *1954 Convention relating to the Status of Stateless Persons Convention* but not to the *1961 Convention on the Reduction of Statelessness*. Malawi ratified the UN Convention Against Transnational Organized Crime and its two protocols, the Trafficking Protocol and the Protocol against the Smuggling of Migrants by Land, Sea and Air on March 17, 2005.

B. Constitutional and legislative framework

2. In 1995, Malawi adopted a progressive Constitution containing a comprehensive set of civil and political rights. Since the first UPR Review of Malawi in 2010, the UNCT welcomes that a number of domestic laws have since been adopted, including the Gender Equality Act 2013, the Disability Act 2012, the Deceased Estates (Wills, Inheritance and Protection) Act 2011 and the Childcare (Protection and Justice) 2010.

3. At the same time the domestic legal framework contains inconsistencies with international human rights standards, including the lack of recognition of sexual orientation as a prohibited ground of discrimination, the criminalisation of consensual same sex activity and abortion (under the Penal Code), the provisions of the Citizenship Act discriminating against women and the definition of the age of a child under domestic law which is not consistent with the Convention on the Rights of the Child.

4. In 2010, as part of the first UPR Review the Government agreed to expedite the repeal and reform of discriminatory legislation, with a focus on the adoption of outstanding bills, particularly those affecting women and children. A/HRC/16/4 (UPR, 2011, para 102.1) - It also agreed to comprehensively amend or repeal, as a matter of urgency, the Witchcraft Act (A/HRC/16/4 (UPR, 2011, para 102.5). The witchcraft Act is still under review of the Law Commission (with UN Women and UNFPA support) as is the Prevention of Domestic Violence Act. Furthermore, the Marriage, Divorce and Family Relations Bill has not been passed yet although at its 2010 UPR Review the Government agreed to make every effort to ensure that it enters into force as soon as possible (A/HRC/16/4 (UPR, 2011), para 102.4). On 25 July 2014, the President of Malawi signed a commitment to end child marriage

5. Despite recommendations arising from the 2007 Constitutional Review Process to raise the definition of a child to 18, in line with the provisions of the Convention on the Rights of the Child, the Child Care, Protection and Justice Act 2010 still defines a child as a person below the age of 16 years. At the same time, the Employment Act defines a child as a person below the age of 14 years for purposes of child labour. In addition, Section 22(7) of the Constitution allows persons between the age of 15 years and 18 years to marry as long as they have the consent of their parents or guardians.

C. Institutional and human rights infrastructure and policy measures

6. The Malawi Human Rights Commission (MHRC) is vested with competence to promote and protect human rights both by the Constitution and the Human Rights Commission Act. Though underfunded and lacking in capacity, the Commission is a key national institution undertaking invaluable work.¹ The Commission has presented a submission to the Ministry of Justice and Constitutional Affairs on a set of proposed amendments to the Human Rights Commission Act aimed at strengthening the enabling legal framework for the Commission including a provision on immunity of Commissioners and Staff of the Commission; a clear and objective process for removal of Commissioners from office; extending the term of office of Commissioners from a 3 to a 5 year term of office; that the Law Commissioner and Ombudsman should not have voting powers and, the scheme of selection of Commissioners should be changed from the current provisions where selection is done by the Law Commissioner and Ombudsman and that this function should be vested in a distinct independent authority.

7. The Malawi Growth and Development Strategy II 2011-16 aims to reduce poverty through sustainable economic growth and infrastructure development, with broad thematic areas, including social development and support, governance and gender and capacity development. A number of strategies were also launched during the reporting period including the Health Sector Strategic Plan and the National Girls Education Strategy (2014).

8. Malawi is yet to finalize and implement the Child Policy and National Plan of Action for Children. Government is nonetheless in the process of finalizing a National Plan of Action for Vulnerable Children for the period 2014-2018. Government has therefore made progress in implementing *recommendation 102.11 of the UPR* but more needs to be done to fully implement it. It adopted a Child Labour National Action Plan 2010-16.

9. Malawi has also finalised a National Action Plan to combat Gender Based Violence 2014-2020.

10. The National HIV /AIDS Policy currently being reviewed provides that the ‘Government and partners shall put in place mechanisms to ensure that HIV/AIDS/STI prevention, treatment, care and impact mitigation services can be accessed by all without discrimination, including persons engaged in same sex relations.’

II. Cooperation with human rights mechanisms

A. Cooperation with treaty bodies

11. Malawi submitted its initial report to the UN Human Rights Committee in 2012, which the UNCT welcomes. Malawi is up to date with its state party reporting under the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). The Government’s initial report to the UN Committee against Torture has been overdue since 1997, its initial report to the Committee on Economic Social and Cultural Rights has been overdue since 1996, its report to the Committee on the Elimination of Racial Discrimination has been due since 1997 and its initial report to the Committee on the Rights of Persons with Disabilities has been due since 2011. The UN in Malawi is currently providing financial and technical assistance to the Government to enable it to clear this backlog.

¹ <http://www.hrcmalawi.org/2013annualreport.pdf>

III. Implementation of international human rights obligations, taking into account applicable international humanitarian law

A. Equality and non-discrimination

12. Although the Malawi Constitution guarantees equal rights to men and women and prohibits discrimination, in reality immense obstacles to equality perpetuate gender disparities in many aspects of life. Gender disparities exist in areas such as the education, agriculture, trade, political participation, health and employment. These disparities produce gendered inequalities in the division of power, participation and control over resources and decision-making processes, so that Malawian women remain disadvantaged in the socio-economic, legal and political arenas of society.

13. Women's experience of HIV and AIDS accentuates existing gender disparities and affects women's roles at home, work and in society. The psychosocial and socioeconomic dimensions of HIV and AIDS are different for women and men because of women's unequal status in the community. Gender inequality is a key variable in the high incidence of HIV and AIDS transmission among women. According to UNAIDS; women and girls between the ages of 15-30 experience very high rates of HIV and AIDS infection in Malawi due to the low socio-economic status of women in addition to various cultural practices that prevent women from negotiating safer sex. Vulnerability to HIV and AIDS is increased by a lack of respect for women's sexual and reproductive health rights. Women's subordinate position in Malawian society restricts the possibilities for women to take control of their lives to combat HIV and AIDS, leave a high-risk relationship or have adequate access to quality health care.

14. The Constitution of Malawi does not classify sexual orientation, although Section 20(1) of the Constitution guarantees equal and effective protection from discrimination. The Penal Code criminalizes consensual same sex relationships. The Malawi Law Commission has not yet commenced a review of the Penal Code, in particular sections 137(A), 153, and 156, pursuant to the Human Rights Committee's recommendations of 2012 and 2014 to decriminalize consensual same-sex activity. The Penal Code Amendment law of 2011 also introduced a new provision criminalizing lesbian behavior, in addition to an existing provision penalizing men who have sex with men.

15. H.E. Dr. Joyce Banda, former President of the Republic of Malawi, upon accession to power in 2012 promised Malawians that her Administration would repeal laws that criminalize homosexual practices, although the promise was not fulfilled and a moratorium of arrests was put in place which the Government delegation renewed during its 9-10 July 2014 dialogue with the Human Rights Committee. Newly elected President Professor Peter Mutharika committed to place the issue of sexual minority to a referendum, in line with the positions of other presidential candidates. The UNCT refers to the 2014 recommendation of the Human Rights Committee to the Government of Malawi to "Review its legislation to explicitly include sexual orientation and gender identity among the prohibited grounds of discrimination and repeal the provisions that criminalises homosexuality and other consensual sexual activities among adults (arts. 137 (A), 153, 154 and 156 of the Penal Code). Ensure that public officials refrain from using language that may encourage violence and raise awareness to eliminate stereotyping and discrimination". Furthermore, the High Court of Malawi issued a notice calling for submissions on whether the offence of sodomy is constitutional and announced on 30th October 2013 that it will deliver a judgment on the constitutionality of Section 153(a) of the Penal Code in view of section 20(1) of the Constitution of Malawi.

16. Laws criminalizing consensual same sex relations, such as the Penal Code and societal stigma and discrimination also have a detrimental impact on the enjoyment of the right to health. Often LGBTI persons are left out from public health initiatives, such as education programmes, or provision of disease and infection prevention and care and support initiatives. Laws criminalizing same sex relations can result in LGBTI being denied access to the information, support and services necessary to make informed decisions and to reduce their vulnerability and risk to HIV. Decriminalization of

same sex relationships has therefore been identified as a key strategy to improve national responses to HIV.²

17. In addition, stigma and discrimination perpetuated by health care providers results in a reluctance to access health care facilities by LGBTI persons. Consequently, their right to the highest attainable standard of health is jeopardized given their limited access to prevention, treatment, care and support. As a result, the denial of health services has negative effects on the fight against HIV. As of 2013, the HIV and AIDS prevalence rate among the general population remains at 10%.³ However, the prevalence rate is 21% among Men having Sex with Men (MSM).⁴ One third of MSM were married or cohabiting with a woman.⁵

18. The Gender Equality Act (2013), a ground breaking piece of legislation translating the Constitution and CEDAW commitments into domestic law came into force in April 2014. It includes a specific prohibition of traditional harmful practices, such as widow cleansing and widow inheritance, prohibition of gender based violence, sex discrimination, sexual harassment, provisions on participation of women in decision-making position in all spheres of life, especially public and political life, equality of access to education and training, sexual and reproductive health rights, the and portrayal of persons in the media. The Gender Equality Act has proposed the introduction of quotas in education, employment and politics to ensure the visibility and substantive participation of women in those spheres. Institutions which have carried out public awareness exercises include the Ministry of Gender, Law Commission, Human Rights Commission, and non-state actors in order to publicise the new statute. These awareness efforts also target lawyers, prosecutors, judges and society at large. The Deceased Estate (Wills, Inheritance and Protection) Act also makes it an offence to dispossess widows or any beneficiary of a deceased estate. Efforts are underway to develop implementation guidelines for the Gender Equality Act although the almost one year delay between adoption of the Act and its implementation is a hindrance to citizens seeking protection from the law.

19. Challenges to achieving gender equality include the reduced number of women in Parliament from 22 percent at the 2009 elections to 16.7 percent in 2014. Malawi has no quota system for women and Members of Parliament are elected through the first past the post system. The current cabinet has seen a reduction of number of women Ministers from 28.1 percent in 2013 to 15 percent in 2014.

20. The Marriage and Divorce Family Relations Bill, pending since 2006 has not yet been adopted by parliament, and is currently with cabinet which is due to make modifications before it is sent to the National Assembly. One of the main controversies surrounding the bill concerns the age of marriage which is proposed as 18 years of age, while the Constitution currently provides for the possibility of people between 15 and 18 to enter into marriage with parental consent. The Constitutional provision is one of the main underlying causes of child marriage in Malawi which is one of the highest rates in the world. The other controversial issue in the bill concerns the issue of polygamy which Parliament is very reluctant to prohibit. Polygamy in Malawi is justified on the basis of custom or religion. The UNCT requests the State Party to pass the Marriage, Divorce and Family Relations Bill to include a provision that clearly establishes the requirement for full and free consent of both partners to a marriage and to raise the minimum age of marriage to 18. The Child Care (Protection and Justice) Act (2010) prohibits forced marriages (but not early marriages) and also child trafficking.

21. Section 9 of the Citizenship Act discriminates against women on the basis of their marital status. Whilst men can confer their citizenship which they acquire through marriage, Malawian

² UNDP, Assessment of Legal, Regulatory and Policy Environment for HIV and AIDS in Malawi, July 2012.

³ The HIV prevalence rate among the general population stands at 10% Country HIV Estimates – Malawi – 2013, with women and girls having higher infection rates at 13% while men's is 8% and are often infected at younger ages. Coverage of PMTCT services is at 68%, (DHS 2010).

⁴ Baral and others, HIV Prevalence Risks for HIV Infection, and Human Rights among Men Who Have Sex with Men (MSM) in Malawi, Namibia and Botswana (2009).

⁵ UNAIDS 2010 Global Report, available at www.unaids.org/documents/20101123_GlobalReport_em.pdf [accessed on 24 October 2012]

women are expected to renounce their Malawian citizenship at the first anniversary of marriage with a non-Malawian man.

B. Right to life, liberty and security of the person

22. The enjoyment of the right to life for women and girls is undermined by the following factors. Malawi's maternal and neonatal health situation continues to be characterized by high maternal mortality, the highest in the Sub-Saharan Africa region at 675/100,000 live births, neonatal mortality at 31 /1000, infant mortality rate of 66/1000 and 112/1,000 under five mortality rate. (Malawi Demographic and Health Survey) (MDHS), 2010. What is concerning is that most maternal deaths are preventable.

23. The major causes of maternal deaths include haemorrhage, hypertension, sepsis and unsafe abortion. Whilst skilled attendance at birth increased from 54 per cent in 2004 to 71 per cent (MDHS)(2010), access to emergency obstetric care services is still limited with only 2% of the health facilities providing a full package of the services⁶. In addition, there is a significant unmet need for family planning (26%). While the contraceptive prevalence rate has been increasing, the total fertility rate has remained high at 5.7 children per woman at the end of their reproductive life due, in part, to inadequate access to long acting reversible contraceptives by sexually active women. The chances of women dying of pregnancy related causes is therefore very high. What is more concerning is the continued limited access to quality sexual and reproductive health information and services for women and girls especially in rural and hard to reach areas.. Furthermore due to the high rate of teenage pregnancies, the country experiences a high number of cases of obstetric fistula, a debilitating pregnancy related complication that leads to stigma, discrimination and ostracisation of the affected women and girls. The Gender Equality Act 2013 provides for the first time under domestic law the right to adequate sexual and reproductive healthcare.

24. Sections 149 to 151 of the Penal Code prohibit procurement of an abortion, an offence which attracts up to fourteen years imprisonment. Unsafe abortion contributes close to 17% of the maternal deaths. The restrictive abortion law which only allows abortion to save the life of the mother robs women and girls of their right to life. A Special Law Commission is currently reviewing this prohibition which the UNCT welcomes. The UNCT recalls the Human Rights Committee's 2014 recommendation to the Government to "Urgently review its legislation on abortion and provide for additional exceptions in cases of pregnancy resulting from rape or incest and when the pregnancy poses a risk to the health of women. The law should ensure that reproductive health services are accessible for all women and adolescents, including in rural areas". The UN is working with the government to step up efforts to reduce maternal mortality and teenage pregnancies. There is need to increase awareness and education on the importance of family planning and on sexual and reproductive rights in line with government commitments made at the London Family Planning Summit in 2012. Among others, the government committed to raising the age of marriage and increasing contraceptive prevalence to 60% by 2020.⁷

25. The HIV epidemic is declining in Malawi, with prevalence declining from 15.2% in 2005 to 10.3% in 2013 and AIDS-related deaths have declined from 97,000 in 2005 to 48,000 in 2013. There has been a decline of 41% in the number of new HIV infections since 2010. Malawi is on track to achieve both MDG 6 (combat HIV AIDS, malaria and other diseases) and it is also on track to achieve MDG 4 (reduce child mortality).

26. On the subject of extrajudicial killings, the UNCT calls on the Government to implement the Human Rights Committees 2014 recommendation that the State party should prosecute all alleged

⁶ EmONC assessment report, 2010

⁷ <http://www.nyasatimes.com/2012/07/12/malawi-promises-to-raise-contraceptive-prevalence-rate-to-60-vp/>

perpetrators of extrajudicial killings, complete expeditiously all the trials that have been already initiated, punish those who are convicted, and protect, rehabilitate and compensate the victims. The report of the “Commission of Inquiry into the Demonstration, Riots, Looting, Arson, Public Disorder, Deaths, Injuries and Loss of Property on the 20th and 21st July 2011” found that the police used excessive force including that the ‘amount of live ammunition used was beyond necessity and resulted into deaths and injuries that could have been avoided. Such use of excessive force is not in tandem with the laws of Malawi and applicable international law.’ In addition, the police also demonstrated a lack of sufficient human and material resources as well as lack of crowd management skills. It was reported that nine police officers were arrested and charged in relation to the killings⁸, although it is understood that no trials have commenced.

27. In relation to the death of Robert Chasowa, a Commission of Inquiry was established in April 2012 and the Commission’s final report issued in October 2012 named 12 possible suspects. The report concluded that “the manner in which police handled the matter was inherently unprofessional and reprehensible. The deliberate attempt to conceal the truth is a cause of serious concern”.⁹ The report called for the police to act independently and impartially and investigate the case, not be used for political purposes and for the prosecution of those responsible. A number of persons were on bail facing trial in 2012, including a current member of parliament, although the case appears not to have progressed further.

28. It was reported that three policemen (George Kamphe, Victor Nsoloma and Lucius Mpakeni) were convicted of manslaughter of Edson Msiska in 2014, three others were earlier acquitted.¹⁰

29. According to the Malawi Human Rights Commission 2013 Annual report, torture is still widespread in police cells and most prisoners and detainees live in degrading and inhuman conditions. The Commission also noted that prison overcrowding is commonplace in most prisons in country together with a lack of food and healthcare for prisoners. In a December 2013 report the Malawi Human Rights Commission found that the Government had acted unlawfully and unconstitutionally by denying prisoners access to food and healthcare. Malawi Government’s 2012 report to the UN Human Rights Committee noted that torture is not yet criminalised in country and defendants have to be charged with assault or causing grievous bodily harm. As part of its UPR Review the Government committed in 2010 to ensure that legislative measures are taken in order to improve the protection of the human rights of inmates and detainees, including passing the Malawi Prison Bill into law, although this has not yet occurred. The prison setting also poses a higher risk of HIV transmission due to overcrowding, lack of HIV prevention services and commodities such as condoms and lubricants. Prisoners in Malawi remain one of the highest groups at risk at HIV and the Government of Malawi needs to improve its HIV programmes and services in prison to achieve Zero new HIV infection and Zero Discrimination.

30. An Independent Police Complaints Commission was established by the Police Act, although this Commission has not yet been operationalised. At its 2010 UPR Review the Government accepted a recommendation to promptly establish the Police Complaints Commission (A/HRC/16/4 (UPR, 2011, para 102.21) -. The UN Human Rights Committee in 2014 also called for the Government to expeditiously establish the Commission and to allocate adequate human and financial resources to it and to establish a central system to keep track of all complaints publicly accessible. It also called on the Government to investigate all cases of torture, prosecute the alleged perpetrators and compensate the victims and ensure that the Police Act complies with the Basic Principles on the Use of Force and Firearms by Law Enforcement Officers and strengthen its efforts to train police officers in human

⁸ <http://www.nyasatimes.com/2013/05/08/nine-malawi-police-officers-face-murder-charges-for-july-20-killings/>

⁹ <http://www.malawivoice.com/2012/10/23/the-chasowa-commission-of-report-17966/>

¹⁰ <http://timesmediamw.com/three-malawian-police-officers-convicted-for-murder/>

rights. The UNCT also notes that the Malawi Police Service currently has an Internal Affairs Unit with the mandate to investigate complaints against police officers including among others violations of human rights although the Unit is highly understaffed.

31. Violence against women and girls is widespread in Malawi. According to the 2013 Gender Based Violence Survey 40% of women have experienced sexual violence, 30% of women have experienced physical violence and 44% have experienced psychosocial violence. Gender-based violence is rooted in socio-economic and cultural factors at household and community levels including social-cultural and economic inequalities between men and women, boys and girls and women empowerment and very limited involvement of men in promoting gender equality. In addition, child marriages in Malawi are found to be one of the highest rates in the world. On average, one out of two girls will be married by their 18th birthday. Data shows little to no change since 2000 Government statistics show that between 2010 and 2013, 27,612 girls in primary and 4,053 girls in secondary schools dropped out due to marriage. During the same period, another 14,051 primary school girls and 5,597 secondary school girls dropped out because they were pregnant. Sexual abuse of girls by teachers in schools, wife inheritance and sexual cleansing of widows are some of the aspects of gender-related violence, which render the victims vulnerable to HIV. Rape and sexual assault, significantly increase the risk of HIV. There is a need for more gender sensitive legislation and stronger enforcement of existing gender sensitive laws, greater support to victims and increased public awareness and promotion of gender equality. In addition, marital rape is not criminalised under the Penal Code and attempts to introduce it into the Code were rejected by the National Assembly.

32. The 2013 Violence against Children Survey also reveals striking levels of violence against children with 20% of females and 15% of males reported to have experienced one incident of sexual abuse prior to the age of 18. 50% of females and 66% of males experienced physical violence prior to 18 years and approximately 25% of females and 20% of males experienced emotional violence. Less than 50% of all Malawians aged 13 to 24 years knew of a place to seek help. Whilst Malawi has 101 Police Victim Support Units, 300 Community Victim Support and 500 Child Protection Workers it needs do more to ensure that protection and response services are made available to and accessed by more women and children.

33. Corporal punishment is prohibited under article 19 of the Constitution “in connection with any judicial proceedings or any other proceedings before any organ of the state” although it is not explicitly prohibited in all settings as called for by the UN Committee on the Rights of the Child in 2009.¹¹

34. The Prevention of Domestic Violence Act (PDVA) (2006) was adopted to deal with cases of violence against women. However, reinforcement of this piece of legislation remains a challenge due to the high level of legal illiteracy among women who are the majority of those who suffer domestic violence. The other challenge is the pressure women face to withdraw cases when they report cases of domestic violence as well as the overly lengthy justice delivery system. On the positive side, there has been significant awareness raising about the Statute, training of judges has taken place and victim support units have been established dealing with domestic violence. The PDVA also provides for measures including protection orders. The law is however currently under review because it was found to possess gaps and the review will include who bears the burden of paying house rentals in the event that a spouse who was paying has been ejected from the home under a protection order.. Current legal inconsistencies also include that the law permits marriage at 15 but the crime of defilement applies to rape of girls below the age of 16, signifying a husband could be defiling his wife because of the inconsistency in the marriage and defilement age.

35. In cases of sexual violence legal representation for women does not take away the social dimension of these problems and special rules need to be formulated detailing how sexual offences are going to be conducted as many women are unwilling to recount their sexual experiences or

¹¹ CRC/C/MWI/CO/2

violence which they have suffered because of the stigma and life after the disclosure. Furthermore, a key challenge to successfully prosecuting defilement and other sexual violence offences is the rule requiring that the testimony of the principal witness in the case must be substantiated by another person through confirmation that the crime had occurred in the said manner. The major challenge facing the prosecution is that in the case of children most of the time there is no corroboration and the case is lost. Malawi does not currently have DNA testing facilities and most cases without corroboration are lost due to this factor.

36. Although the Child Care, Protection and Justice Act specifically criminalizes child trafficking and makes it punishable by imprisonment for life, the existing legal framework that covers the offence of trafficking in persons is weak, particularly regarding victim support, the transnational nature of the offence and makes no reference to the offence of trafficking in persons. In light of this, the Malawi Law Commission proposed the enactment of legislation known as the “Trafficking in Persons Act” (‘*An Act to make provision for the prevention and elimination of trafficking in persons; provide for the establishment of a Board for coordination and management of matters related to trafficking in persons; to make provision for care, assistance and protection of trafficked persons; and to provide for international and local cooperation on matters of trafficking in persons.*’) The Commission was also concerned about a lack of awareness of the concept of trafficking in persons in Malawi¹² Whilst the commission finalised the draft legislation in 2011, the Government is now due to submit the Bill to Parliament in September 2014 for discussion and enactment into law. Relevant *UPR recommendations accepted by the Government at its 2010 UPR review namely (A/HRC/16/4 (UPR, 2011) - 102. 12, 102.31, 102.32 and 102.33)* have not been fully implemented.

C. Administration of justice, including impunity, and the rule of law

37. Access to justice is constrained by a number of factors in Malawi including a lack of legal literacy and human rights awareness. Furthermore, the country possesses a lack of judges and lawyers. Only a handful of the country’s 350 lawyers undertake legal aid work. The failure to operationalise the Legal Education and Legal Practitioners Act which established the Malawi Institute of Legal Education, and allows private universities to offer law degrees is one reason for a shortage of lawyers. Furthermore, the Legal Aid Act which was adopted in 2011 establishing the Legal Aid Department as a Bureau, has also not yet been operationalised. Pre-trial delays are also common. A large backlog of cases before the courts remains. It was reported that the country had 945 murder suspects awaiting trial in 2014.

38. Malawi has made progress in strengthening the juvenile justice system. Six child friendly courts are operational in Blantyre, Zomba, Mzuzu, Nkhata-bay, Salima and Mulanje. 37 child magistrates, 39 police prosecutors, 37 probation officers and 34 court clerks have been trained in child justice systems to strengthen provision of judicial services in all magistrates’ courts in the country. Furthermore, in 2010 Parliament amended the Penal Code and raised the minimum age of criminal responsibility from 7 to 10 years. Government has therefore implemented recommendation 102.37 of the UPR although more needs to be invested in implementing existing legislation.

D. Right to privacy, marriage and family life

39. Since 2008 Malawi has continued to develop a new HIV Management Bill which aims to promote the rights of all people living with HIV to access prevention, treatment, care and support, including LGBTI. The HIV Bill is still in draft stage and further consultations are planned to ensure that Malawi develops a law that is rights based and promotes and protects the rights of all Malawians to access HIV services.

E. Freedom of religion or belief, expression, association and peaceful assembly, and right to participate in public and political life

¹² Government of Malawi, 2011: Report of the Law Commission on the Development of Trafficking in Persons Legislation, p. 17

40. In May 2012 the National Assembly voted to repeal article 46 of the Penal Code under which the Minister of Information could ban newspapers not in the public interest.

41. Dr Joyce Banda's term as President from April 2012- May 2014 was marked by greater respect for the right to freedom of opinion and expression. This contrasts with the situation prevailing under the preceding administration, as highlighted by the Human Rights Committee in its November 2011 Concluding Observations when it expressed concerns that "journalists and human rights defenders cannot express their views, including by criticizing the authorities, without fear of reprisals consisting of arrests, ill-treatment, harassment and prosecution".¹³

42. In June 2014 newly elected President Mutharika in his inauguration speech committed to passing and implementing an access to information bill.¹⁴

43. Whilst the media in general terms is currently free to report on issues it wishes to and the public enjoy freedom of expression, the Malawi Broadcasting Corporation is not independent. The 2012 report of the Commission of Inquiry into the Demonstration, Riots, Looting, Arson, Public Disorder, Deaths, Injuries and Loss of Property on the 20th and 21st July 2011 criticised the State Broadcaster for failing to broadcast accurate and balanced information to the public, which was a 'deliberate departure from the truth' and 'only helped to fuel the tension'.

F. Right to Food

44. Malawi has one of the highest levels of chronic malnutrition in the region with the rate of childhood stunting at 47 percent. In 2012/13, almost 2 million Malawians were classified food insecure and in 2013/14, about 1.85 million were classified as food insecure in spite of a national surplus of maize production. Following the 2013 visit of the UN Special Rapporteur on the Right to Food at the invitation of the Government, the UNCT calls on the Government to seriously consider implementing the recommendations of the Special Rapporteur contained in his report.¹⁵

G. Right to education

45. Despite the abolition of school fees in 1994, over 10 per cent of eligible children in Malawi do not attend school. Net enrolment rates are high in grades one and two for both boys and girls, but completion rates for primary education are low at 26 per cent on average and only 16 per cent for girls. Class sizes are huge, with a teacher: pupil ratio of 1:107. There is a serious shortage of classrooms, estimated at above 20,000, forcing many children to learn outside in the open. Only 20 per cent of children have access to furniture. Teaching and learning materials are in short supply, though the situation has eased somewhat with the new curriculum reforms. Teacher-pupil ratios are high, notably in the rural areas, due to lack of housing and other amenities.¹⁶

46.. With reference to progress attained in the Malawi education system, the Malawi Progress Report on Millennium Development Goals (2012) revealed that the enrolment ratio of girls to boys in primary education reached parity in the 2008/2009 school year. The highest was at 1.04 in 2009, but dropped to 1.02 in 2011.¹⁷ While gender parity in enrolment in secondary education is not yet achieved and is unlikely to be achieved by the MDG target date of 2015, the ratio of girls to boys increased from 0.60 in 2000 to 0.84 in 2011. The UNCT calls on the Government to implement the 2009 recommendations of the Committee on the Rights of the Child including to ensure that primary

¹³ CCPR/C/MWI/CO/1

¹⁴ <http://www.herald.co.zw/latest-president-arthur-peter-mutharikas-inauguration-speech/>

¹⁵ A/HRC/25/57/Add.1

¹⁶ http://www.unicef.org/malawi/education_3963.html

¹⁷

education is compulsory, free of direct and indirect costs and accessible to all children, including children living in rural and remote areas.

H. Migrants, Refugees and asylum seekers

47. As of 31 May 2014, Malawi hosted 5,867 Refugees and 13,011 asylum-seekers. No refugee has been recognized by the Government of Malawi since December 2011 leaving many persons in legal limbo. Those without work permits are also unable to leave the camps. There are also reports of denials of entry into the State party to persons in need of international protection. The UNCT calls on the Government to implement the 2014 Concluding Observation of the UN Human Rights Committee calling on the state party to fully comply with the principle of *non-refoulement* and ensure that all persons in need of international protection receive appropriate and fair treatment at all stages, and that decisions on refugee status determination are dealt with expeditiously.