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Excellency,

I have been following the third cycle of the Universal Periodic Review (UPR) of the Republic of Malawi and welcome the constructive engagement of your Government during the 36th session of the UPR Working Group in November 2020.

As the final outcome report on the review of Malawi has been recently adopted by the Human Rights Council at its 46th session, I would like to take this opportunity to follow up on a number of areas raised in the two reports that my Office had prepared for the review of Malawi – the Compilation of United Nations information and the Summary of Stakeholders' submissions – which I consider in need of particular attention over the next four and a half years, until the next cycle of the UPR. In identifying those areas, I have considered the statements and/or recommendations made by 83 delegations and the presentation made and responses provided by the delegation of Malawi. I have also considered the actions taken by the Government of Malawi to implement the 154 recommendations fully supported during the second cycle of the UPR. The aforementioned areas cover a range of issues, which appear in the annex to this letter.

Positive note is taken of your Delegation's statement at the plenary of the Human Rights Council that following the review in the Working Group, your Government, together with the relevant stakeholders, undertook an assessment of the position conveyed on each of the recommendations that had been received, and subsequently supported six recommendations relating to sexual and reproductive health rights that had previously been noted.

I am encouraged by your Delegation's statement that an implementation plan would be developed to implement the recommendations, and in that regard would suggest also including in this plan the areas identified in the annex to this letter. My advice to all Member States is to develop and implement national action plans in close consultation and cooperation with all stakeholders, in particular the national human rights institution and all civil society organizations and, where necessary, with the support of international organizations, including my Office and other United Nations entities, under the leadership of the United Nations Resident Coordinator.

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H.E. Mr. Eisenhower MKAKA M.P.
Minister for Foreign Affairs
Republic of Malawi



Due note is taken of your Delegation's statements at the plenary of the Human Rights Council and the Working Group session that the Human Rights Section in the Ministry of Justice would be transformed into a national mechanism for comprehensive reporting and follow-up in relation to recommendations received from all international and regional human rights mechanisms and to treaty obligations, and that technical assistance in undertaking this transformation would be required. My office stands ready to provide such assistance and in the interim would strongly recommend the use of the OHCHR practical guide on this topic, which is available at:

http://www.ohchr.org/Documents/Publications/HR_PUB_16_1_NMRF_PracticalGuide.pdf.

Please note that I am sharing my advice with all Member States as they go through the third cycle of the UPR with a view to assisting them with the implementation of the recommendations, following the review. One important measure that can positively contribute to follow-up action is voluntary mid-term reporting. Therefore, I strongly encourage all Member States to submit a voluntary mid-term report two years after the adoption of the UPR outcome report. In this regard, I encourage Malawi to consider submitting a mid-term report on follow-up to the third cycle of the review, by 2023.

As stated by the Secretary-General in his 2017 report on the work of the Organization (A/72/1, paragraph 98): *"The Human Rights Council's universal periodic review process is now entering a new cycle, with every Member State scheduled for a third round of scrutiny. We will work to strengthen the relevance, precision and impact of the Council's recommendations, including by providing better support to Member States in implementation, stronger collaboration with United Nations country teams and the establishment of national mechanisms for human rights reporting and follow-up to link the universal periodic review to the implementation of the Sustainable Development Goals."*

I look forward to discussing with you ways in which my Office may assist Malawi in relation to the areas identified in this letter and its annex.

Please, accept, Excellency, the assurances of my highest consideration.

Michelle Bachelet
High Commissioner for Human Rights

cc: H.E. Mr. Titus Songiso MVALO
Minister of Justice and Constitutional Affairs
Republic of Malawi

Ms. María José TORRES
United Nations Resident Coordinator
Republic of Malawi

Annex

Scope of international obligations and cooperation with international human rights mechanisms and bodies

- Ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Optional Protocol to the Convention on the Rights of Persons with Disabilities, the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, the Convention on the Reduction of Statelessness, and the Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption.
- Withdrawing the reservations to the Convention relating to the Status of Refugees.
- Strengthening cooperation with the International Committee of the Red Cross and with the Special Representative of the Secretary-General for Children and Armed Conflict, and exploring increased cooperation with the United Nations Children's Fund and other United Nations entities in the implementation of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict.

National human rights framework

- Completing the process of harmonization of relevant legislation with the Constitutional amendment of 2017 which defined a child as a person under the age of 18 years.
- Criminalizing the sale of children through illegal adoption, the transfer of organs of the child for profit and the engagement of the child in forced labour.
- Amending all laws and regulations that discriminated against women, in particular the Witchcraft Act, the Citizenship Act, the Penal Code and Police Service Standing Order 31.
- Enacting legislation to regulate the relationship between formal and customary justice mechanisms and strengthening measures to ensure that customary judicial mechanisms complied with the Convention on the Elimination of All Forms of Discrimination against Women.
- Ensuring the compulsory, consistent and systematic verification of the age of individuals considered for recruitment to the armed forces to effectively prevent the recruitment of children, and including an explicit provision in the Penal Code to criminalize the recruitment of children into armed forces or non-State armed groups.
- Accelerating the adoption of the migration policy and the enactment of the draft refugee law.
- Ensuring that the Malawi Human Rights Commission enjoyed full independence, in accordance with the Paris Principles and was provided with adequate resources.

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

A. Cross-cutting issues

Equality and non-discrimination

- Conducting awareness-raising campaigns for members of the legal profession, law enforcement agencies and the general public to promote an understanding of the concept of the substantive equality of women and men.
- Eradicating the violence and discrimination experienced by lesbian, gay, bisexual, transgender, and intersex persons, including by decriminalizing same-sex relations and, in the interim, clarifying the legality of a moratorium on arrests and prosecutions for consensual homosexual acts, issued by the Ministry of Justice and Constitutional Affairs in 2012.

Development, the environment, and business and human rights

- Combating corruption and strengthening institutional capacities to effectively detect and investigate cases of corruption and prosecuting alleged perpetrators.
- Ensuring that companies effectively implement international and national environment and health standards and ensuring the effective monitoring and implementation of those standards, and imposing appropriate sanctions and providing remedies if violations occurred.
- Increasing children's awareness of and preparedness for climate change and natural disasters through the school curriculum and teacher training programmes.

B. Civil and political rights

Right to life, liberty and security of person

- Abolishing the death penalty and commuting all existing death sentences to imprisonment, and in the interim, establishing a moratorium on executions.
- Investigating reports of extrajudicial killings and suspicious deaths in police custody.
- Providing an urgent response to attacks against persons with albinism and providing training to public officials on the rights of persons with albinism and the obligations of the State in that regard; ensuring enhanced oversight of traditional medicine practitioners and using the review of the Witchcraft Act to reflect on witchcraft practices; ensuring that all alleged crimes against persons with albinism are promptly and thoroughly investigated; and providing psychological, medical and legal assistance to persons with albinism who were victims of attacks and to their families.
- Addressing the concern at the high prevalence of harmful practices, such as child and/or forced marriage, female genital mutilation in certain communities, polygamy, "widow cleansing", initiation rites, ceremonies for girls which led to abuse, and the practice of prescribing sex with girls or women with albinism as a cure for HIV, including by effectively implementing the existing legal provisions prohibiting harmful practices and ensuring that all harmful practices are investigated and that victims have access to effective remedies and adequate protection mechanisms.
- Addressing the challenges in enforcing the special orders provided for in the Prevention of Domestic Violence Act in relation to the protection of children who were in a domestic relationship with the perpetrator.
- Addressing prison overpopulation, the lack of adequate food and medical care for prisoners, and the poor conditions of the physical structures in prisons.

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

- Raising the age of criminal responsibility to an internationally accepted standard and giving the child the benefit of the doubt in the context of punishment when his or her age is in dispute.
- Ensuring that juveniles who are deprived of their liberty are detained separately from adults and males separately from females, and ensuring that children who are awaiting trial, if detained, are not held together with convicted prisoners.
- Operationalizing the child justice courts and using the diversion mechanisms and the alternatives to punishment provided by the Childcare Protection and Justice Act and ensuring that judges, police officers, prosecutors, court staff, social workers and other relevant officials are duly trained in such processes.
- Ensuring that all cases of sale of children, child prostitution and child pornography are effectively investigated and that alleged perpetrators are prosecuted and, if convicted, punished with appropriate sanctions commensurate with the gravity of their crimes.
- Ensuring that the informal justice sector, which provided mechanisms for accessing justice through village mediations, camp courts and paralegal services, adhered to human rights principles.
- Ensuring that women have effective access to justice, by establishing courts, including mobile courts, and by enhancing women's legal literacy, raising awareness of their rights, providing legal aid and ensuring that fees were reduced for women with low incomes and waived for women living in poverty.

Right to participate in public and political life

- Increasing the representation of women in political and public life, inter alia, by expediting the process of amending the relevant electoral laws to introduce minimum quotas for female candidates on political parties' electoral lists and for the executive structures of political parties.

Prohibition of all forms of slavery

- Effectively implementing the Trafficking in Persons Act; addressing the root causes of trafficking of women and girls and the exploitation of prostitution; and establishing appropriate mechanisms aimed at early identification, referral and support for victims of trafficking, including through the provision of access to shelters and adequate legal, medical and psychological assistance.
- Establishing mechanisms for ensuring that child victims of trafficking are compensated, and providing adequate resources for social and rehabilitation services for victims.
- Addressing concerns about reports of cases of child sex tourism at the holiday resorts along Lake Malawi, and conducting advocacy within the tourism industry on the harmful effects of child sex tourism.

Right to family life

- Facilitating family-based care for children wherever possible and establishing a system of foster care for children who cannot stay with their families, with a view to reducing the institutionalization of children.
- Discouraging and prohibiting polygamy and ensuring that the rights of women in existing polygamous unions are protected.

C. Economic, social and cultural rights

Right to work and to just and favourable conditions of work

- Finalizing the child labour policy and child protection policy to protect children from the worst forms of child labour, and allocating sufficient human, technical and financial resources to labour inspection in order to fully, regularly and effectively implement the laws and policies on child labour.
- Adopting effective measures to achieve equal opportunities for women and men in the labour market and eliminate occupational segregation, and adopting measures to effectively implement the principle of equal pay for work of equal value and to narrow the gender wage gap.

Right to social security

- Reviewing the criteria for benefiting from social welfare programmes, taking into account the vulnerability to skin cancer and vision impairment faced by persons with albinism and, in particular, ensuring that social welfare programmes were not conditional on undertaking work related activities that are harmful to persons with albinism, such as performing manual work in the sun.

Right to an adequate standard of living

- Ensuring that all poverty reduction and social protection programmes produce sustainable results, and adopting measures to address poverty in the light of the 2030 Agenda for Sustainable Development.

Right to health

- Reducing maternal mortality, by ensuring the provision of adequate sexual and reproductive health services, in particular access to antenatal, delivery and postnatal services; and strengthening efforts to improve access to basic health-care services with trained health workers for children and pregnant women, especially in rural areas.
- Scaling up immunization, addressing chronic malnutrition and stunting, and reducing child mortality due to malaria, neonatal conditions and preventable diseases, such as pneumonia and diarrhoea.
- Implementing the Office of the United Nations High Commissioner for Human Rights technical guidance on the application of a human rights-based approach to the implementation of policies and programmes to reduce and eliminate preventable mortality and morbidity of children under 5 years of age.
- Enacting the HIV/AIDS bill into law and achieving universal coverage for antiretroviral treatment.
- Improving adolescent girls' access to reproductive health-care services and increasing support for reproductive health and family planning services and access to affordable contraceptives and contraceptive methods.
- Decriminalizing abortion in all circumstances and removing barriers to abortion, and ensuring access to safe abortion and post-abortion care services.
- Ensuring that sun protection lotion is included on the list of essential medicines, available free of charge and distributed regularly, along with sun protective clothing to persons with albinism; and ensuring that training and information on albinism and related health issues are provided to mothers of children with albinism immediately after the birth of their child.

Right to education

- Improving the quality of education, including by providing adequate school infrastructure and by increasing the number of qualified teachers, and ensuring sufficient funding for the roll-out of free secondary education.
- Eliminating the hidden cost of education, such as “development fees”; recruiting newly qualified teachers to reduce the ratio of pupils to teachers; addressing the high number of dropouts, particularly among girls; addressing the sexual abuse of children, especially girls, by teachers and peers; decentralizing and simplifying the re-admission process for adolescent girls returning to school after pregnancy and ensuring they are given the appropriate support; making schools accessible to children with disabilities and providing them with infrastructure, teaching and learning materials that are disability-friendly; improving efficiency in the spending of resources allocated to the education sector; and reinforcing and developing programmes to encourage the training of female teachers.
- Ensuring the full implementation of the Inclusive Education Advocacy Programme, including by providing the necessary resources for special needs education.

D. Rights of specific persons or groups

Women

- Improving women’s access to credit, financial services and technical assistance, and encouraging and supporting women’s entrepreneurship, by providing capacity-building programmes.
- Expediting the adoption of the customary land bill to ensure the protection of women’s customary land rights, access to land, including for food crops and income-generating opportunities, and control over productive resources, and promoting their participation in decision-making regarding land allocation.
- Criminalizing marital rape and ensuring that the evidentiary requirements in cases relating to sexual offences did not lead to impunity for the perpetrators; providing capacity-building programmes for judges, prosecutors, police officers and other law enforcement officials on the strict application of criminal law provisions on violence against women; and ensuring that all cases of violence against women are thoroughly and effectively investigated.

Children

- Ensuring that the right of the child to have his or her best interests taken as a primary consideration is appropriately integrated and consistently interpreted and applied in all legislative, administrative and judicial proceedings and decisions and in all policies, programmes and projects that are relevant to or have an impact on children.
- Strengthening the Youth Parliament and strengthening structures for the participation of children, especially at the community level, in the family, at school and in judicial and administrative procedures concerning them.
- Eliminating discrimination against groups of children in the most vulnerable situations, such as girls, children with disabilities, children with albinism, children living with HIV/AIDS and children in rural areas.
- Implementing programmes aimed at preventing violence against children; ensuring that more services are available, by strengthening the technical and operational capacities of the police and community victim support centres, as well as child protection workers; strengthening mechanisms for the early detection and prevention of child abuse at the community level and raising awareness of their existence and procedures; taking the measures necessary to ensure that child victims of violence receive psychological and recovery support and encouraging

them to report cases of abuse, violence and neglect; and addressing police violence against children, by providing police with special training on child-friendly techniques for dealing with children.

- Prioritizing and ensuring the provision of adequate resources for the full implementation of the Childcare Protection and Justice Act and other relevant legislation, and ensuring the development of programmes and policies for the prevention of sexual violence against and abuse of children.
- Prohibiting corporal punishment in the Constitution and legislation, and strengthening awareness-raising programmes to promote positive, non-violent and participatory forms of child-rearing and discipline.
- Eliminating child marriage and developing comprehensive awareness-raising campaigns and programmes on the provisions criminalizing harmful practices and on their negative consequences on children, as well as campaigns on the harmful effects of child marriage on the physical and mental health and well-being of girls.
- Ensuring that children in street situations are provided with adequate food, clothing, housing, health care and educational opportunities.

Persons with disabilities

- Adopting a human rights-based approach to disability; formulating a comprehensive strategy for the inclusion of children with disabilities; implementing the Disability Act 2012 and the corresponding national action plan; establishing the Disability Trust Fund; and adopting measures towards fully inclusive education.

Migrants, refugees and asylum seekers

- Establishing effective mechanisms to identify, at an early stage, refugees, asylum-seeking and migrant children who enter Malawi and who might have been recruited or used in hostilities abroad.
- Increasing the support and facilities for children in refugee camps, particularly by addressing the shortage of sanitation, education facilities, leisure activities and medical services, and by providing children with the opportunity to continue higher education and have access to employment.

Stateless persons

- Revising the Citizenship Act to ensure that women and men enjoy equal rights to acquire, change, transfer and retain nationality and to introduce safeguards to ensure that children born in its territory who would otherwise be stateless were granted nationality.
- Effectively implementing the National Registration Act making birth registration compulsory and universal, and developing mobile registration structures and creating mechanisms for registration at the traditional authority level to ensure that the registration service is accessible to all.