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Draft report of the Working Group on the Universal Periodic Review*

Malawi

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Introduction

1. The Working Group on the Universal Periodic Review, established in accordance with Human Rights Council resolution 5/1, held its ninth session from 1 to 12 November 2010. The review of Malawi was held at the 2nd meeting, on 1 November 2010. The delegation of Malawi was headed by the Honourable Attorney-General, Ministry of Justice and Constitutional Affairs, Justice Jane Ansah. At its 6th meeting, held on 3 November 2010, the Working Group adopted the report on Malawi.
2. On 21 June 2010, the Human Rights Council selected the following group of rapporteurs (troika) to facilitate the review of Malawi: Angola, Belgium and Ukraine.
3. In accordance with paragraph 15 of the annex to resolution 5/1, the following documents were issued for the review of Malawi:
 - (a) A national report submitted/written presentation made in accordance with paragraph 15 (a) (A/HRC/WG.6/9/MWI/1);
 - (b) A compilation prepared by the Office of the High Commissioner for Human Rights (OHCHR) in accordance with paragraph 15 (b) (A/HRC/WG.6/9/MWI/2);
 - (c) A summary prepared by OHCHR in accordance with paragraph 15 (c) (A/HRC/WG.6/9/MWI/3).
4. A list of questions prepared in advance by Denmark, Sweden, the United Kingdom of Great Britain and Northern Ireland, the Czech Republic, Germany, Latvia, Slovenia, the Netherlands and Norway was transmitted to Malawi through the troika. Those questions are available on the extranet of the universal periodic review.

I. Summary of the proceedings of the review process

5. During the interactive dialogue, 39 delegations made statements. Recommendations made during the dialogue are to be found in section II of the present report.

A. Presentation by the State under review

6. Ms. Ansah introduced the report. Malawi thanked the Human Rights Council secretariat, the United Nations Development Programme in Malawi and the Commonwealth secretariat, which had assisted in its preparation. It was the product of a consultative process that had engaged several ministries, the Human Rights Commission, the Law Commission, the National Assembly, the Ombudsman and non-governmental organizations.
7. Malawi became independent in 1964. The 1964 Constitution recognized only civil and political rights. The 1966 Constitution did not include a Bill of Rights. In 1994, a new Constitution with a full-fledged Bill of Rights came into force.
8. The Executive is headed by the President, who is the Head of State and Government. The Constitution provides that the Executive is responsible for the initiation of policies and legislation. The Legislature consists of a single, 193-member Chamber. The Judiciary comprises the Supreme Court, the High Court and subordinate courts, and has the responsibility of interpreting, protecting and enforcing the Constitution and all laws.
9. Malawi stated that its national priorities were contained in the Malawi Growth and Development Strategy, which recognized the importance of human rights in the context of

good governance and democracy. There were nine key priority areas that were grouped into five thematic areas that demanded immediate progress, namely, sustainable economic growth, social protection, social development, infrastructure development and improved governance. The main focus was on accelerating sustainable growth while ensuring social development, good governance and environmental sustainability.

10. Malawi stated that the Constitution was the supreme law of the land. It provided for the full promotion, protection and enjoyment of all human rights.

11. The Constitution permitted derogation during a state of emergency with respect to freedom of expression, freedom of information, freedom of movement, freedom of assembly, the right to be promptly brought before a court of law, and the right not to be detained without trial. All derogation measures were subject to applications and challenges in the High Court.

12. Malawi explained that under its Constitution, several independent human rights institutions had been established, including the Human Rights Commission, the Office of the Ombudsman and the Law Commission, mandated to ensure the modernization of laws and the elimination of any defects in them, whether of a procedural, substantive or policy nature.

13. Malawi stated that its Constitution provided that everyone had the right to life and could not be arbitrarily deprived of his or her life, except through the execution of the death penalty imposed by a court of competent jurisdiction. The High Court of Malawi had ruled that the mandatory death penalty in capital offences violated the right to life.

14. The right to personal liberty had been enforced by courts and there had been several cases in which the courts had ordered compensation for false imprisonment.

15. Freedom of assembly and association were also guaranteed under the Constitution. They could be limited, taking into account the interests of national security, public safety, public order, morality or health.

16. The Constitution provided for a cluster of fair trial rights. The Criminal Procedure and Evidence Code had been amended, and time limits for pretrial custody had been established.

17. The Constitution also provided that the dignity of all persons was inviolable and that no person could be subjected to torture or any cruel, inhuman or degrading treatment or punishment. Malawi was party to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. Corporal punishment was also proscribed under the law.

18. The Constitution prohibited discrimination in any form. However, it allowed for positive discrimination to address inequalities. Any person that propagated discriminatory practices could be amenable to criminal sanctions.

19. Malawi stated that it was introducing policies that prohibited harmful social and cultural practices that perpetuated the subservience of women

20. Every person had the right to freedom of movement and assembly. Refugees were restricted to living in camps unless they had been granted a residence permit. Malawi strictly enforced this requirement, and it had made a reservation to the Convention relating to the Status of Refugees.

21. Malawi stated that it had embarked on several programmes aimed at reforming prison conditions. New prisons were being built to reduce congestion, and those prisons that did not meet international standards on sanitation were being closed.

22. Under the Police Act, adopted in 2009, a new legal framework had been established for the operations of the Police Service. The Act provided for the establishment of the Office of the Independent Complaints Commission to investigate complaints involving brutality, death or misconduct at the hands of the police. It also provided for the creation of a Lay Visitors Scheme, mandated to inspect conditions of detention at police stations.

23. Malawi stated that in 1998 it had set up the Anti-Corruption Bureau, which was an independent institution mandated to investigate and prosecute all matters related to corruption. There had been several cases in which prominent personalities had been prosecuted for corruption.

24. Regarding the right to education, Malawi indicated that it introduced free primary education. Since 1994, there had been a steady rise in the number of children enrolled in primary schools.

25. Private schools and other private institutions of higher learning were permissible, provided that such schools or institutions were registered and complied with the legal requirements relating to the education sector.

26. University education was heavily subsidized by the Government. Thus, it had extended equitable access to tertiary-level education, which had previously been implemented only at the secondary level. Malawi further stated that affirmative action was being implemented in favour of women and the less privileged.

27. The right to health was being implemented through the Essential Health Package, which addressed major causes of morbidity and mortality, which disproportionately affected the poor and the most vulnerable groups. The right to health was one of the main priority areas addressed in Vision 2020, and Malawi was currently implementing a policy of free health care.

28. Priority areas in the field of health included reducing the number of maternal deaths and improving reproductive health services.

29. A remaining challenge was to ensure that both medical personnel and patients were fully aware of their rights and obligations.

30. The Constitution provided that every person had the right to fair and safe labour practices and remuneration. The Ministry of Labour was charged with the responsibility of ensuring social justice, peace and skills assessment as prerequisites for poverty reduction and economic growth.

31. Malawi indicated that it had introduced several policies and measures aimed at protecting orphaned children. It had instituted the Ministry of Gender, Children and Community Development. The Ministry strengthened the capacity of families and communities to provide support, care and protection to vulnerable children, the aged, marginalized families and those affected by HIV/AIDS.

32. The Government had also included human rights in the primary school curriculum, and this would soon be extended to the secondary school level. Malawi indicated that, despite all these efforts, numerous challenges remained, although lessons continued to be learned. For example, the Children and Young Persons Act, which had been considered by the Law Commission to be obsolete, had been replaced by the Child Care, Protection and Justice Act 2010, which consolidated the law relating to children and established child justice courts.

33. The Constitution provided that women had the right to full and equal protection by the law and the right not to be discriminated against on the basis of their gender and marital status. The Government had put in place a policy to increase the number of women in positions of power and influence.

34. The Law Commission had reviewed laws perceived to be gender-insensitive and discriminatory. The review had resulted in the Marriage, Divorce and Family Relations Bill, which would soon be adopted.

35. Malawi stated that, despite the various efforts made to ensure the realization of human rights, it still faced the following major challenges: poverty (the majority of the population was below the poverty line and lived in rural areas), weak institutions (the main challenge in this area had remained the inability to retain human resources) and lack of public awareness.

36. Malawi reaffirmed its commitment to the promotion and protection of human rights at the national and international levels, and stated that there was still much to be done to ensure the practical enjoyment of human rights.

37. Malawi viewed its participation in the universal periodic review as an opportunity to interact and to share its accomplishments, its challenges and its vision for the future in the area of human rights.

38. Responding to advance questions raised by Denmark related to the ratification of international human rights instruments, Malawi stated that it had continuously reviewed its domestic laws to ensure that they were in line with human rights standards, and that it was actively looking into the ratification process with regard to other key international human rights instruments.

39. In response to advance questions raised by Denmark, the Czech Republic, the United Kingdom, Norway and the Netherlands regarding homophobia, Malawi stated that it had no plans to legalize homosexuality. The wishes of the people of Malawi in this regard should be respected. It noted that there was no international consensus on gay rights or on the right of gay persons to marry. Malawi should not be unduly singled out and unnecessarily pressured to legalize homosexuality. Malawi recalled that a resolution on gay rights considered for adoption by the United Nations in 2008 had been defeated.

40. Responding to an advance question raised by Sweden regarding non-discrimination on the basis of sexual orientation, Malawi stated that there was no homophobia or incitement against gay people. The law simply outlawed unnatural acts, which could even be committed in a sexual relationship between a man and a woman. With regard to prison conditions, the Government had taken many steps to improve them. It had ended mandatory pre-trial detention to prevent prison overcrowding. The Government was phasing out all outdated prison blocks and was building model new prisons. The Government had established an independent police complaints commission to investigate police brutality.

41. Regarding advance questions raised by the United Kingdom on freedom of expression, Malawi stated that such freedom was constitutionally guaranteed, but should be exercised within the confines of the law. The case involving the arrest of a clergyman in August 2010 was being handled by the courts.

B. Interactive dialogue and responses by the State under review

42. A number of delegations thanked Malawi for its cooperation with the universal periodic review mechanism and commended the delegation for having presented the national report. A number of delegations also commended Malawi for its commitment to promoting respect for human rights, development and gender equality.

43. Algeria noted that political reforms, as well as efforts within the framework of the socio-economic development plan 2020, attested to the country's commitment to improving living conditions and ensuring the enjoyment of human rights. Algeria encouraged Malawi to pursue its efforts to achieve gender equality, to fight poverty and to realize the right to

health and education. Algeria noted that challenges faced by Malawi had also manifested themselves in a backlog of reports due to human rights treaty bodies. It welcomed the spirit of openness and objectivity with which Malawi had addressed challenges. Algeria made recommendations.

44. Morocco welcomed the engagement of Malawi in the promotion and protection of human rights and the strengthening of the rule of law. Morocco noted the inclusive and open approach adopted in the preparation of the national report, in consultation with civil society. It highlighted the 2020 vision, a road map for the achievement of strategic national development goals and priorities, and noted the centrality of human rights in that regard. Morocco also commended the role played by the institution of the Ombudsman in consolidating a culture of human rights. Morocco made recommendations.

45. France requested clarification with regard to recent restrictions imposed on freedom of expression and freedom of the press. France inquired whether the human rights institutions of Malawi, including the National Commission and the Ombudsman, and civil society had been consulted prior to the entry into force of those restrictions; it also asked what means and remedies against them were available. France then referred to the criminal prosecution of persons who had engaged in same-sex relations. France requested information about measures taken to implement recommendations of the Committee on the Elimination of Discrimination against Women. France made recommendations.

46. Azerbaijan noted with interest the Poverty Reduction Strategy Paper and the Malawi Economic Growth Strategy, and commended the human rights approach adopted in relation to the achievement of the Millennium Development Goals. Azerbaijan also commended Malawi for being party to most international human rights treaties and for the establishment of a Human Rights Commission, which had been accredited with “A” status. Azerbaijan made recommendations.

47. Mexico acknowledged efforts made by Malawi, in particular the establishment of the Human Rights Commission, which had been accredited with “A” status; the fight against corruption; and progress made with regard to the achievement of the Millennium Development Goals (MDGs), including in particular the significant decreases in the infant and child mortality rates. Mexico made recommendations.

48. South Africa noted with appreciation Malawi’s commitment to prioritizing issues such as sustainable economic growth and improved governance, and praised its promotion of gender equality. South Africa suggested that the Human Rights Commission be allocated sufficient funding and resources. It also welcomed the adoption of the National Plan of Action for Orphans and Other Vulnerable Children, and urged Malawi to finalize a comprehensive national action plan for children. South Africa made recommendations.

49. Canada commended Malawi’s decision to become one of the first countries to ratify the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa, and to sign the SADC Protocol on Gender and Development. Canada also congratulated Malawi on working with civil society to advance women’s rights through the 50/50 campaign in 2009. Canada was concerned, however, at the prevalence of violence against women and schoolgirls and at the trafficking of women and girls for sexual exploitation and child labour. Canada made recommendations.

50. Germany commended the initiatives undertaken in the area of poverty reduction and access to food. Germany expressed interest in learning more about plans to fight malnutrition. It also asked if there were any plans to change the legal framework with the aim of ending discrimination against citizens with same-sex orientation. Germany made a recommendation.

51. Malaysia commended Malawi for its strong commitment to further increasing socio-economic development, as demonstrated by its national development agenda Vision 2020. Malaysia noted that the progress achieved in poverty eradication, infrastructure development, economic growth and human resources development would contribute significantly to the protection of human rights. Despite resource constraints, Malawi had made progress in most MDG indicators, including in reducing the infant and child mortality rates. Malaysia made recommendations.

52. Hungary noted with satisfaction that Malawi had prioritized several aspects of human rights in the context of democracy and good governance, but was concerned about discriminatory laws and stereotypes that continued to hamper women in various areas. Hungary was also alarmed at the non-mandatory education policies in Malawi, as well as the high rate of illiteracy and the growing incidence of child labour and street children, in addition to deficiencies in the juvenile justice system. Issues related to freedom of expression and the rights of lesbian, gay, bisexual and transgender (LGBT) persons, as well as refugees and asylum seekers, were also still awaiting legal solutions. Hungary made recommendations.

53. Cuba acknowledged progress made by Malawi, including in the area of health care and HIV/AIDS prevention and education. It also made reference to the national plan for the education sector (2008-2017) and the implementation plan, which should help to increase the quality of education. Cuba noted the achievements made with regard to self-reliance in the area of food. Cuba made recommendations.

54. China noted with appreciation Malawi's comprehensive legal framework and its Strategy Paper for Poverty Reduction in accordance with the MDGs. China praised its compulsory primary education, its enhancement of women's status and its promotion of the right to food. China appealed to the international community to fully understand the difficulties of Malawi and to provide financial and technical assistance in order to improve its capacity. China encouraged Malawi to focus on its poverty reduction programme and to promote its economic development.

55. Slovakia commended progress achieved in pursuing MDGs, in particular with regard to child mortality and food security. However, Slovakia was concerned about increasing restrictions on the freedom of expression. Media criticizing the authorities had reportedly been subjected to harassment. Slovakia also remained concerned about conditions in prison and detention centres, in particular overcrowding. Slovakia made recommendations.

56. Brazil welcomed the efforts of Malawi to make progress regarding most MDGs and acknowledged the country's efforts to eliminate gender-based discrimination. It noted that one of the specific challenges identified was the non-realization of the right to food. Brazil noted with concern reports indicating that cases of sexual abuse and exploitation of women persisted. Brazil indicated that another area that might deserve further attention was refugee policy. Brazil made a number of recommendations.

57. Sweden expressed concerns at the existing discrimination based on sexual orientation. Sweden recalled Malawi's ratification of the International Covenant on Civil and Political Rights as well as the basic principle of non-discrimination, which also underpinned the African Charter on Human and Peoples' Rights and the Universal Declaration of Human Rights. Sweden referred to credible reports of incidents involving torture and other forms of ill-treatment carried out by police officers, as well as the prevalence of impunity. It also referred to unsatisfactory living conditions in prison and requested Malawi to elaborate on its strategy to address those issues. Sweden made recommendations.

58. Norway congratulated Malawi on having achieved improved food security and commended it for advancements in the participation of women in decision-making.

However, it was concerned by reports regarding violations of the freedoms of expression, the press, assembly and association, despite an existing legal framework protecting those rights. Norway made recommendations.

59. Malawi thanked all delegations that had made recommendations and stated that it would consider them seriously. On the issue of the decriminalization of same-sex marriage, Malawi emphasized that it had no law criminalizing such marriage, but a law proscribing unnatural offences. It noted Malawi's historical background. Malawi had been a British protectorate, and when it had gained its independence, it had adopted all the laws then in force, including that regarding unnatural acts. In 1994, Malawi had adopted a new Constitution, under which a Law Commission had been established that was mandated with the task of reviewing all laws to ensure that they were consistent with the Constitution. The Law Commission was in the process of reviewing legislation. Since 2009, the Legislature had enacted more than 50 Acts of Parliament.

60. Regarding violence against women, the perception was that it was on the increase; in fact, however, incidents had not been reported until recent years. There had also been reports of cases involving violence against men. Therefore, violence against women had not necessarily increased, but had been further exposed. Those responsible for violence against women had been prosecuted. With the legislation that had been adopted and the vigilance exercised by the Government in prosecuting offenders, violence against women had been properly addressed.

61. Regarding prison conditions, in addition to having taken steps to build more prisons, Malawi had introduced other measures, including with regard to community service, the commutation of sentences, the granting of pardons and the possibility of parole.

62. Concerning the minimum criminal age of responsibility, there was a penal code amendment bill before Parliament that took that into account. On the marriage age, the Constitution provided that any one could marry at the age of 15 with the consent of his or her parents.

63. Australia welcomed the positive measures towards achieving the Millennium Development Goals. It encouraged Malawi to pursue gender equality in all areas of society, including in relation to sexual and reproductive health and the dissolution of marriages. Australia also welcomed Malawi's interest in strengthening measures to prevent trafficking and noted that Australia has offered assistance in that area. Australia was pleased to learn about the pardon granted by the President to a homosexual couple sentenced to imprisonment. Australia made recommendations.

64. The United Kingdom inquired about the extent of the consultation with civil society in the preparation of national report and its involvement in the follow-up process. The United Kingdom shared its concerns about reports of intimidation and threats of closure of newspapers and incidents of arrest at public demonstration. It also referred to the pardon of two persons convicted of having engaged in homosexual acts and urged Malawi to review its laws to counter discrimination. The United Kingdom made recommendations.

65. Turkey welcomed the establishment of a Human Rights Commission and an Office of the Ombudsman, as well as the ratification of most human rights treaties. Turkey commended efforts to adopt the Police Act 2009, under which an Independent Complaints Commission had been established, and expressed confidence that Malawi would take steps to prevent and punish acts of ill-treatment. Turkey encouraged steps to make primary education compulsory and to include human rights education in school curricula. Turkey made a recommendation.

66. Italy commended Malawi for the efforts undertaken in implementing the first phase of the World Programme for Human Rights Education and welcomed the moratorium on

executions that had been in place since 1992. It expressed concern about homophobia and the recent detention, prosecution and sentencing to 14 years of imprisonment of a couple on the basis of sexual orientation, and welcomed the pardon granted to them. With regard to female genital mutilation, Italy noted that the practice persisted within some ethnic groups and asked whether Malawi was considering acceding to the Optional Protocol to CEDAW. It also noted with concern that children were still victims of child labour, corporal punishment and sexual abuse. Italy made recommendations.

67. Austria praised Malawi's efforts towards gender equality. However, it inquired about plans to ensure for women equal access to property and enhance the role of women. Austria commended the presidential decision to pardon two persons convicted under laws prohibiting consensual same-sex conduct, but shared its concern with regard to the existence of such laws. Austria also inquired about the two bills pending in Parliament with regard to improving access to justice, particularly for women. Austria made recommendations.

68. The United States commended Malawi for progress in aligning its national legislation with some international human rights conventions, but was concerned by the criminalization of homosexual activity. It noted that it viewed the decriminalization of homosexuality as integral to the continued protection of universal human rights in Malawi, and crucial to the urgent need to fight the spread of HIV/AIDS. In this regard, the United States made a recommendation.

69. Libya welcomed the adherence by Malawi to a number of international and regional human rights instruments. Libya made recommendations.

70. Argentina referred to the country's efforts to review its refugee policies and refugee law. It also welcomed the adoption of the first part of the Plan of Action for the first phase of the World Programme for Human Rights Education. Argentina requested information about measures to overcome practices affecting the vulnerability of persons affected by HIV/AIDS and measures to eradicate gender discrimination. Argentina made recommendations.

71. Spain made reference to the non-application of the death penalty since 1992, but noted that there were still more than 20 persons sentenced with the death penalty. Spain applauded the President's decision to pardon two persons who had been convicted under the legislation criminalizing same-sex activities between consenting adults. Spain wished to know when the visits by the Special Rapporteur on the right to food (requested in 2003 and reiterated in 2010) and the Special Rapporteur on adequate housing (requested in 2009) could take place. Spain made recommendations.

72. Switzerland commended Malawi for adopting several national policies aimed at promoting the rights and well-being of children, notably in the areas of education, food security and HIV/AIDS. Switzerland noted that the trafficking of children remained a major problem. It noted that national legislation did not adequately suppress and punish the trafficking of boys and that the Penal Code sanctioned only the trafficking of girls under the age of 16. Switzerland expressed concern about provisions in the Penal Code authorizing the prosecution and punishment of people solely for their sexual orientation or gender identity. Switzerland made recommendations.

73. Luxembourg praised the establishment of the National Human Rights Commission and the encouraging presence of women in Parliament. It welcomed the recent presidential decision to pardon two people sentenced on the basis of their sexual orientation. Luxembourg raised concern about the high rate of maternal mortality, in particular among rural women. Luxembourg congratulated Malawi on its considerable progress in the area of right to food. Luxembourg made recommendations.

74. On the involvement of civil society in the preparation of the national report, Malawi stated that the Ministry of Justice had invited all stakeholders to several meetings. Regarding police brutality, a new Police Act had introduced many reforms and was currently being implemented. The Government had prosecuted police officers who had overstepped their mandate. Malawi was ensuring that the rights of suspects, detainees and convicted were not abused. With regard to women's rights, they were guaranteed under the Constitution, which protected the right of women to own property individually or jointly.

75. Malawi stated that its socio-economic status would have a direct impact on the improvements that have been recommended in many areas, such as improvements in terms of prison conditions, compulsory education and access to health care in rural areas. The Government was aware of all the challenges, and it was doing its best, given its social and economic situation.

76. Regarding gay marriage, it was a process, even in countries that had made recommendations in that regard. Malawi's Law Commission was working on laws that needed to be updated.

77. Malawi did not have female genital mutilation, which had never been practiced there.

78. With regard to immigration rules, Malawi stated that there was under no prohibition in national law for Malawian women to get married to foreign nationals.

79. Regarding standing invitations, Malawi would progressively consider them and, where necessary, respond appropriately.

80. Slovenia commended Malawi for the recent ratification of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, but noted with concern that harmful practices such as corporal punishment, female genital mutilation and early and forced marriage were widely practiced. Slovenia was also concerned that children, especially girls, children with disabilities, child labourers, street children and orphans, were subjected to discrimination, abuse, neglect, violence, trafficking and exploitation. In addition, Slovenia expressed concern and raised questions about discrimination and violence against women and about the extent of human trafficking. Slovenia made recommendations.

81. Ghana commended Malawi for progress made in the achievement of most Millennium Development Goals, as well as steps taken by the Human Rights Commission to implement human rights education and training. Ghana noted concerns expressed by CEDAW on the low participation of women at all levels of decision-making, as well as discriminatory practices against women with respect to recruitment, equal pay for work of equal value, and maternity protection. Ghana made recommendations.

82. Ireland welcomed the adoption of the Prevention of Domestic Violence Act in 2006, as well as the provisions of the Deceased Estates Bill and the Marriage, Divorce and Family Relations Bills, and inquired about the date of their entry into force. It also inquired about the efforts made to ensure swift access to justice in order to keep pre-trial detention at a minimum. Ireland made recommendations.

83. Egypt expressed appreciation for the fact that, in upholding human rights, Malawi had launched its 2020 Vision and adopted a human rights approach towards the achievement of the MDGs. Egypt asked Malawi to share its best practices regarding the right to food. However, Egypt regretted the fact that progress had yet to be achieved in relation to ensuring gender equality and reducing maternal mortality. Egypt drew attention to the negative impact of HIV/AIDS and extreme poverty on the human rights situation, but noted commendable efforts to improve access to education and health-care services. Egypt made recommendations.

84. The Holy See was pleased to note that progress has been made in the implementation of the Millennium Development Goals and that the right to health care was one of its main priority areas in the 2020 Vision. It noted that the death penalty was no longer mandatory and indicated that it hoped that it would be banned. The Holy See indicated that churches were deeply concerned about the low primary school completion rate. The Holy See made recommendations.

85. Nepal commended Malawi's efforts in reducing poverty and improving the life of its population through the long-term agenda of Vision 2020. It referred to Malawi's Poverty Reduction Strategy Paper to implement MDGs and its economic growth strategy. Nepal praised the establishment of the independent Human Rights Commission, the Anti-Corruption Bureau, the Ombudsman, the Law Commission and the Independent Complaints Commission.

86. Latvia touched upon the issue of standing invitations to special procedures and noted that two requests by special procedures to visit Malawi had not been accepted to date. In that regard, Latvia made a recommendation.

87. Mozambique referred to 1994 as a new page in the history of human rights with the adoption of a new Constitution that reincorporated the Bill of Rights. It referred to the progress made in the area of education, the right to health and other fields. It commended Malawi for making the death penalty no longer mandatory in the Penal Code Bill. Mozambique asked Malawi to share its experience in the field of police and prison reform.

88. Bangladesh highlighted the existence of a human rights commission with "A" status, as well as progress on most MDG indicators. It welcomed the adoption of the National Plan of Action for Orphans and Other Vulnerable Children, in addition to policies and actions to ensure the enjoyment of the right to health. However, Bangladesh expressed concern that discrimination persisted against girls and vulnerable groups of children, including children with disabilities and orphans. Bangladesh was also concerned at the high prevalence of HIV/AIDS and its socio-economic consequences. Bangladesh made recommendations.

89. The Sudan noted with satisfaction the many reforms undertaken by Malawi to ensure the full enjoyment of the basic and fundamental human rights of its citizens. The Sudan asked about plans to address the school drop-out rate. The Sudan made recommendations.

90. Zimbabwe praised Malawi's tradition of inclusiveness and its total commitment to the promotion and protection of human rights. Zimbabwe mentioned the lessons learned from Malawi's experience and encouraged Malawi to share such experiences. Zimbabwe made recommendations.

91. Mauritius noted with interest the adoption of a Plan of Action for the World Programme of Human Rights Education, and welcomed the National Plan of Action for Orphans and Other Vulnerable Children. It inquired whether the National Action Plan for Children had been finalized. Mauritius commended Malawi for its progress on most MDG indicators and appealed to the international community to provide technical assistance. Mauritius was aware of the challenges and capacity constraints that Malawi still faced in addressing issues such as poverty, marginalization and unemployment, and made recommendations.

92. In its concluding remarks, Malawi stated that the Law Commission was reviewing the Witchcraft Act.

93. Regarding pre-detention trial, the new procedural code and evidence act had established pre-trial custody time limits. The maximum amount of time that a person could be held in pre-trial detention was 120 days, and this was in relation to most serious crimes,

including genocide and treason. Under the Constitution, a person should not be held for more than 72 hours without having been brought before a court.

94. Concerning the school drop-out rate, the main problems were lack of food and long distances. The Government had adopted the feeding of children at school, and there were several school feeding projects that the Government was gradually taking over. In addition, there was a plan to build five universities and to train more teachers.

95. As regards human trafficking, the Law Commission had drafted anti-trafficking legislation that would be considered by the Cabinet and eventually passed on to Parliament. Australia had offered technical assistance for the implementation of the law.

96. The enjoyment of the right to food had been achieved by subsidizing indigent farmers, who were provided with seed and fertilizer.

97. The National Action Plan on children had been subjected to a consultative review and would soon be launched.

98. The bills on the empowerment of women and gender equality would be tabled in Parliament after Cabinet review.

99. Malawi thanked delegates who had made observations and recommendations, which would be taken into consideration.

100. Malawi reaffirmed its commitment to the full observance of human rights and the total enjoyment of all rights by its people. In 1994, Malawi had opted for a system of government and a constitutional order based on good governance, the rule of law and the dignity of man. Since then, the country had made significant progress in ensuring the fulfilment of the dreams, values and ideals enshrined in the Constitution.

101. Malawi had a Bill of Rights, an independent judiciary and governance institutions. In addition, it had engaged in legislative and administrative reforms to ensure that legal institutions and administrative frameworks were in line with the Constitution and international standards. However, the challenges faced by Malawi were many, including a lack of adequate resources and a lack of capacities and expertise.

II. Conclusions and/or recommendations

102. **The recommendations formulated during the interactive dialogue and listed below have been examined by Malawi and enjoy its support:**

102.1. **Expedite the repeal and reform of discriminatory legislation, with a focus on the adoption of outstanding bills, particularly those affecting women and children (Canada);**

102.2. **Adopt and implement expeditiously the Prisons Bill and Legal Aid Bill and other measures needed towards humanization of its penitentiary system (Slovakia);**

102.3. **Enact the Legal Education and Legal Practitioners Amendment Bill and the Legal Aid Bill currently pending before Parliament (Austria);**

102.4. **Make every effort to ensure that the Deceased Estates Bill and the Marriage, Divorce and Family Relations Bills, particularly in relation to the rights of women, enter into force as soon as possible (Ireland);**

102.5. **Comprehensively amend or repeal, as a matter of urgency, the Witchcraft Act (Ireland);**

- 102.6. Continue to strengthen human rights institutions to ensure the continued promotion and protection of human rights, and raise public awareness around human rights issues nationwide (South Africa);
- 102.7. Strengthen efforts to implement the socio-economic development strategy for the period until 2020 (Algeria);
- 102.8. Continue efforts to implement the aims of the 2020 Development Plan (Libyan Arab Jamahiriya);
- 102.9. Strengthen the use of modern means of awareness-raising and dissemination with regard to a culture of human rights, notably the rights of vulnerable groups, and the role of institutions for the protection and promotion of human rights (Morocco);
- 102.10. Continue to attach particular priority to the strengthening of national capacities, both legislative and institutional, in the area of human rights, with the support of the international community (Morocco);
- 102.11. Finalize and implement the draft National Action Plan for Children, and put in place effective national legislation and policies to protect the rights of children (Australia);
- 102.12. Pay particular attention to the rights of the child, especially in combating trafficking and exploitation (Egypt);
- 102.13. Consider continuing to work towards strengthening Government institutions (Zimbabwe);
- 102.14. Consider consolidating the gains on human rights promotion and protection through the public awareness programme (Zimbabwe);
- 102.15. Strengthen cooperation with regional and international human rights mechanisms, and avail itself of international technical assistance and support, as appropriate, by relevant bodies in order to mitigate the insufficiency of human and financial resources (Algeria);
- 102.16. Strengthen its cooperation with specialized agencies and programmes of the United Nations system, including the United Nations Population Fund, the United Nations Children's Fund, the Joint United Nations Programme on HIV/AIDS and the Office of the United Nations High Commissioner for Human Rights (Azerbaijan);
- 102.17. Follow-up on the recommendations of CEDAW, by renewing national efforts for gender equality, including through educational and sensitization campaigns (Mexico);
- 102.18. Implement further policies to ensure gender equality throughout society and the promotion of the rights of women and children (South Africa);
- 102.19. Take measures, including through legislation, to ensure equality of women, particularly in decision-making processes and access to basic services and infrastructure (Australia);
- 102.20. Amend or derogate legislation that discriminates against women, and adopt measures to expedite the enactment of outstanding bills in this regard, such as the Gender Equality Bill, the Deceased Estates (Wills, Inheritance and Protections) Bill and the Marriage, Divorce and Family Relations Bill (Spain);
- 102.21. Adopt and implement appropriate measures, in compliance with international standards, to eliminate reported torture, ill-treatment and other

excessive force by law enforcement personnel against suspects, and ensure due accountability for such misconduct, as stipulated in the country's Constitution, and promptly establish the Police Complaint Commission, as provided in the Police Act (Slovakia);

102.22. Take all necessary measures towards upholding the total prohibition against torture and, in this regard, conduct thorough and impartial investigations into all allegations of torture and physical abuse and bring to justice anyone suspected of having committed excessive use of force, torture and other human rights violations (Sweden);

102.23. Develop and adopt measures to prevent, prosecute and punish acts of torture and ill-treatment of prisoners or criminal suspects (United Kingdom of Great Britain and Northern Ireland);

102.24. Intensify its work on improving prison conditions and bring them fully into line with international standards (Sweden);

102.25. 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 (Norway);

102.26. Take measures to significantly improve prison conditions such as overcrowding, substandard sanitation and poor health facilities (Austria);

102.27. Conduct a public awareness campaign, with engagement at the highest political levels, to strengthen the implementation of the 2006 Prevention of Domestic Violence Act, and highlight the unacceptability of violence against women and address the attitudes and stereotypes that perpetuate discriminatory practices that are harmful and violent towards women (Canada);

102.28. Undertake more effective measures to address the problems of impunity and violence against women and girls, including through the strengthening of law enforcement and the judicial system and intensive media and education programmes aimed at increasing public awareness and sensitivities on the rights of women (Malaysia);

102.29. Develop and adopt measures to tackle gender-based violence by increasing women's access to justice and widening coverage of community policy and victim support units in rural areas (United Kingdom of Great Britain and Northern Ireland);

102.30. Strengthen efforts to address violence against women and protection for victims (Bangladesh);

102.31. Address the legal gaps in national legislation on human trafficking and ensure that cases of trafficking are investigated effectively at the earliest possible date with a view to bringing to justice those responsible, and ensure that victims benefit from full reparation (Switzerland);

102.32. Include the effective prosecution and punishment of traffickers in legislation (Slovenia);

102.33. Adopt practical measures to counteract any form of child labour and human trafficking that stunts and deeply wounds the innate dignity of children (Holy See);

- 102.34. Continue efforts to promote access to justice, with a view to ensuring legal protection in the enjoyment of human rights by all citizens on an equal basis (Morocco);
- 102.35. Take measures to ensure for victims effective recourse against any act of torture, particularly those committed in detention centres (France);
- 102.36. Take measures to guarantee effective access for women victims of gender-based violence to justice, reparation and to rehabilitation (Brazil);
- 102.37. Actively implement existing legislation and strategies on violence against children and arrange an adequate juvenile justice system, with emphasis on raising the minimum age of criminal responsibility (Slovenia);
- 102.38. Ensure that no one is detained for long periods without trial (Ireland);
- 102.39. Ensure that freedom of religion and of religious practice continue to be guaranteed to all citizens, as the country's Constitution provides (Holy See);
- 102.40. Take the steps necessary to ensure that laws protecting freedoms of expression, press, assembly and association are implemented and adhered to (Norway);
- 102.41. Ensure the relevant constitutional provisions relating to freedom of the press are properly implemented and adhered to and that a free press, freedom of speech and assembly are allowed to thrive without undue interference (United Kingdom of Great Britain and Northern Ireland);
- 102.42. Ensure that rural women participate in the decision-making process and have equal access to health services at the primary care level (Luxembourg);
- 102.43. Strengthen efforts aimed at increasing the representation of women in decision-making processes (Ghana);
- 102.44. Strengthen efforts to combat poverty, discrimination and the promotion of the status of women and children (Morocco);
- 102.45. Continue implementing socio-economic development strategies and plans designed to reduce poverty (Cuba);
- 102.46. Take the measures necessary for the implementation of the MDGs, including the strategy paper for poverty eradication and the Malawi strategy for economic development (Libyan Arab Jamahiriya);
- 102.47. Continue to fight poverty with cooperation from the international community (Bangladesh);
- 102.48. Undertake more effective measures to ensure the accessibility of crucial public services such as education, health care and social benefits to the population living in rural areas, in particular rural women and children (Malaysia);
- 102.49. Continue implementing programmes and measures aimed at guaranteeing educational and quality health-care services to all the population (Cuba);
- 102.50. Continue its efforts in the health sector to implement the 2020 Government vision, in order to reach the goal of free health care for all Malawians (Sudan);

- 102.51. **Adopt a school feeding programme and integrate it with local agricultural production (Brazil);**
- 102.52. **Focus on priorities set by the Government to strengthen human rights, especially agriculture and food security and the development of the green belt for irrigation and water, as well as education and technology (Libyan Arab Jamahiriya);**
- 102.53. **Improve conditions in hospitals in order to ensure the provision of appropriate health-care services (Libyan Arab Jamahiriya);**
- 102.54. **Pay attention to maternal and child health, and reduce child mortality (Libyan Arab Jamahiriya);**
- 102.55. **Redouble efforts to save mother and child by pursuing the education of young girls, increasing the preparation of birth assistants and accelerating the development of public health structures, especially in rural areas (Holy See);**
- 102.56. **Strengthen efforts aimed at eliminating HIV/AIDS, and cooperate with WHO in this regard (Libyan Arab Jamahiriya);**
- 102.57. **Continue to fight HIV/AIDS with the support of the international community (Bangladesh);**
- 102.58. **Continue efforts to promote human rights, particularly in the areas of education and professional training (Morocco);**
- 102.59. **Integrate human rights concepts into the curricula for university education (Libyan Arab Jamahiriya);**
- 102.60. **Make education one of its top priorities, and reinforce “equitable access to higher education” based on academic and educational standards (Holy See);**
- 102.61. **Consider promoting and strengthening vocational education and training opportunities to reduce the high number of school dropouts (Mauritius);**
- 102.62. **Strengthen Malawi’s cooperation with the international community, in particular specialized agencies and programmes of the United Nations system, with a view to building capacity and obtaining technical assistance in crucial areas such as poverty eradication, education, health care and social security (Malaysia);**
- 102.63. **Seek international assistance in order to address the challenges of extreme poverty and HIV/AIDS, in particular to ensure the supply of anti-retroviral drugs (Egypt);**
- 102.64. **To call on Malawi to appeal to the international community to fully understand the many challenges faced by the Government of Malawi and consequently provide the necessary technical assistance (Sudan);¹**
- 102.65. **Consider seeking assistance to build adequate capacity to develop and retain appropriate human resources to eradicate poverty (Zimbabwe).**

¹ The recommendation as read during the interactive dialogue: “Appeals to the international community to fully understand the many challenges faced by the Government of Malawi and consequently provide the necessary technical assistance” (Sudan).

103. Malawi considers that the first part of recommendation 3 above has already been implemented.

104. The following recommendations will be examined by Malawi, which will provide responses in due course, but no later than the 16th session of the Human Rights Council, in March 2011. The response of Malawi to these recommendations will be included in the outcome report adopted by the Human Rights Council at its 16th session.

104.1. 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);

104.2. 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);

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

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

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

104.6. 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);

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

104.8. 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);

104.9. 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);

104.10. Ratify the Second Optional Protocol to the ICCPR (Switzerland);

104.11. Pursue efforts to harmonize national legislation with the commitments undertaken at the international level (Algeria);

- 104.12. **Ensure that domestic laws are in conformity with international human rights obligations (Australia);**
- 104.13. **Harmonize national laws with international treaties to which Malawi has acceded (Libyan Arab Jamahiriya);**
- 104.14. **Ensure that all human rights treaties are given full legal effect in domestic laws (Norway);**
- 104.15. **Take immediate steps to ensure that CEDAW is given full legal effect in its domestic laws (Azerbaijan);**
- 104.16. **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);**
- 104.17. **Increase significantly, in conformity with international standards, the minimum age of criminal responsibility of children, which is currently 10 years (Mexico);**
- 104.18. **Increase the age of minimum criminal responsibility to at least 12 years, as recommended by the CRC (Austria);**
- 104.19. **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);**
- 104.20. **Consider extending a standing invitation to all special procedures of the Human Rights Council (Latvia);**
- 104.21. **Promote equality between men and women, and to this end reinforce its cooperation with international and regional mechanisms, especially special procedures (France);**
- 104.22. **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);**
- 104.23. **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).**
105. **The recommendations below did not enjoy the support of Malawi:**
- 105.1. **Completely overhaul the legal system to ensure the compliance of the Constitution and all other domestic legislation with international human rights obligations and standards and, in this regard, amend and/or derogate all legal provisions, including customary law, which result in discrimination, especially on the basis of sexual orientation (Mexico);**
- 105.2. **Consider revising its national legislation in order to prevent situations of statelessness (Brazil);**
- 105.3. **Present the constitutive documents for the establishment of the Malawi Human Rights Commission to the International Coordination Committee of National Human Rights Institutions so that they can be disseminated and their**

status determined in accordance with the Paris Principles (Libyan Arab Jamahiriya);

105.4. Ensure that clear targets and indicators are developed with civil society in the next Growth and Development Strategy to protect and monitor human rights, particularly the rights of women and girls (Canada);

105.5. Continue to implement its national laws in accordance with the universally agreed human rights norms and principles (Egypt);

105.6. Design policies and programmes aimed at combating harmful traditional practices, in particular female genital mutilation (Egypt);

105.7. Take further action towards gender equality, including a legal provision on the minimum age for marriage (Hungary);

105.8. Repeal legislation that causes Malawian women to lose their citizenship when marrying a foreign national (Austria);

105.9. In accordance with recommendations made by CEDAW, take all appropriate measures in order to eliminate all forms of discrimination against rural women and harmful traditional practices (Luxembourg);

105.10. Ensure that discriminatory laws are amended or repealed, adopt a comprehensive strategy to modify or eliminate negative cultural practices and stereotypes, and strengthen efforts to implement existing legislative measures regarding violence against women, including assistance and protection for victims (Slovenia);

105.11. Strengthen efforts to eliminate discrimination against girls and vulnerable groups such as children with disabilities and orphans (Bangladesh);

105.12. Proceed to a de jure moratorium on the death penalty at the earliest possible date, with a view to its final abolition and, in this regard, sign and ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights (Spain);

105.13. Abolish the death penalty (Switzerland);

105.14. Take all necessary social, education and legal measures towards the complete elimination of female genital mutilation (Italy);

105.15. Adopt legal measures to prohibit, sanction and effectively prevent the practice of female genital mutilation (Argentina);

105.16. Recognize the equality of women and, if it is needed, reinforce the prohibition of female genital mutilation (Holy See);

105.17. Put in place a moratorium on convictions for same-sex relationships and, over time, decriminalize homosexuality in order to fully apply the principle of equality and non-discrimination among all persons (France);

105.18. Put in place effective measures to prevent discrimination, prosecution and punishment on the basis of sexual orientation or gender identity (Canada);

105.19. Reform the penal code and abolish discrimination against people based on their sexual orientation (Germany);

105.20. Fulfil its obligations under international human rights law and review its national legislation, as a matter of urgency, to decriminalize same-sex relationships and prohibit discrimination on any grounds, including sexual orientation (Sweden);

- 105.21. **Repeal legislation discriminating against individuals on the basis of their sexual orientation or gender identity (Australia);**
- 105.22. **Review penal code provisions that discriminate against individuals on the basis of sexual orientation or gender identity, in order to ensure an end to hostility or violence against such groups (United Kingdom of Great Britain and Northern Ireland);**
- 105.23. **Review national legislation with the aim of decriminalizing homosexuality between consenting adults and prohibiting discrimination on the grounds of sexual orientation and gender identity (Italy);**
- 105.24. **Repeal legislation criminalizing homosexuality and introduce policies aimed at ending discrimination against LGBT people (Austria);**
- 105.25. **Decriminalize homosexual activity (United States of America);**
- 105.26. **Derogate legislation that criminalizes same-sex activities between consenting adults and adopt measures to combat incitement to hatred for reasons of sexual orientation or gender identity, and allow the registration of NGOs that defend matters of sexual orientation and gender identity without discrimination (Spain);**
- 105.27. **Review domestic legislation with a view to decriminalizing homosexual relations and prohibiting all forms of discrimination, in compliance with Malawi's international commitments. Release immediately and unconditionally all persons currently deprived of their liberty only for this reason (Switzerland);**
- 105.28. **Renew its efforts to combat ongoing discrimination on a de facto and de jure basis concerning sexual orientation, and decriminalize same-sex relations (Luxembourg);**
- 105.29. **Decriminalize same-sex relations (Ireland);**
- 105.30. **Adopt and implement measures to provide for independent media free from any intimidation and suppression, in accordance with its international obligations (Slovakia);**
- 105.31. **Introduce measures to ensure equal rights for women in the area of employment, in order to ensure equal pay for equal work and better enforcement of laws to protect women from discrimination (Ghana);**
- 105.32. **Intensify measures to address the problems of maternal mortality and unsafe abortions, reviewing punitive provisions regarding the latter (Austria);**
- 105.33. **Make primary education compulsory, in conformity with article 28 of the Convention on the Rights of the Child (Mexico);**
- 105.34. **Strengthen the education system by making it mandatory and free of cost (Hungary);**
- 105.35. **Adopt a comprehensive social security system and the HIV Bill (Hungary);**
- 105.36. **Take all necessary measures for the realization of effective compulsory and free-of-cost primary education for all (Italy);**
- 105.37. **Continue efforts to ensure that all children finish primary school and make primary education compulsory (Austria);**

105.38. Consider making primary education compulsory, in accordance with article 28 of the Convention on the Rights of the Child (Mauritius);

105.39. On the question of the rights of sexual minorities, review laws in order to ensure that legislation is brought into line with international human rights norms (Norway).

106. Malawi considers that recommendations 105.8, 105.14, 105.15, 105.16 and 105.31 are not applicable to the situation in the country and, in this regard, refers to the responses that it provided in paragraphs 59, 77 and 78 of section B of the present report.

107. All conclusions and/or recommendations contained in the present report reflect the positions of the submitting States and/or the State under review. They should not be construed as endorsed by the Working Group as a whole.

Annex

Composition of the delegation

The delegation of Malawi was headed by Justice Dr. Jane Ansah, the Honourable Attorney-General, Ministry of Justice and Constitutional Affairs, and was composed of five members:

- Mr. Pacharo Kayira, Senior Assistant Chief State Advocate, Ministry of Justice and Constitutional Affairs;
 - Ms. Kahaki Jere, Senior State Advocate, Ministry of Justice and Constitutional Affairs;
 - Ms. Loyce Merrick, Principal Foreign Service Officer, Ministry of Foreign Affairs;
 - The Rev. Dr. Zacc Kawalala, Commissioner, Human Rights Commission;
 - Mr. Wycliffe Masoo, Director of Research and Documentation, Human Rights Commission.
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