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**Promotion et protection de tous les droits de l'homme,
civils, politiques, économiques, sociaux et culturels,
y compris le droit au développement**

Informations communiquées par la Commission malawienne des droits de l'homme*

Note du secrétariat

Le secrétariat du Conseil des droits de l'homme fait tenir ci-jointe la communication présentée par la Commission malawienne des droits de l'homme**, reproduite ci-après conformément à l'article 7 b) du Règlement intérieur figurant dans l'annexe de la résolution 5/1 du Conseil des droits de l'homme, qui dispose que la participation des institutions nationales des droits de l'homme s'exerce selon les modalités et les pratiques convenues par la Commission des droits de l'homme, notamment la résolution 2005/74 du 20 avril 2005.

* Institution nationale des droits de l'homme à laquelle le Comité international de coordination des institutions nationales pour la promotion et la protection des droits de l'homme a accordé le statut d'accréditation «A».

** La communication est reproduite en annexe telle qu'elle a été reçue, dans la langue originale seulement.

Annexe

[Anglais seulement]

Contribution of the Malawi Human Rights Commission to the discussion on the report of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights

I. Introduction

1. The Malawi Human Rights Commission (MHRC) in its capacity as a National Human Rights Institution with an “A” Status is making this submission to the 22nd Session of the Human Rights Council to highlight the situation of human rights in Malawi, in light of the issue of the effects of foreign debt and other related international financial obligations of states, on the full enjoyment of human rights.

2. Foreign Debt is the money one country owes to another country or financial institutions, as a result of loans and/or a negative balance of trade. The imperative to address the effects of foreign debt on human rights arises from the principle of international assistance and cooperation, which is implicitly or explicitly provided for in the Charter of the United Nations and numerous other binding international instruments.¹ The underlying factor is that developed States have the responsibility to assist developing States to achieve and realise economic, social and cultural rights. Similarly, developing countries also have the responsibility to request for international assistance from developed States and financial institutions for the States to fulfil their human rights obligations under the ICESCR.

3. In addition to these international binding instruments, there are a number of other instruments that have been adopted by various United Nations bodies (especially the United Nations Economic and Social Council and the General Assembly) that highlight the adverse impact of external debt on the enjoyment of human rights and demonstrate the political commitment of the international community to the enhancement of international cooperation in the field of human rights.² These political commitments reinforce the obligations of States under international human rights law concerning, inter alia, international assistance and cooperation.

II. The situation of Malawi

4. Against the above background, it should be observed that as a developing country, Malawi’s economy depends on external aid to a large extent, with over 40% of its national

¹ <http://www.ohchr.org/EN/Issues/Development/IEDebt/Pages/HRightsAndForeignDebt.aspx> (checked on 9th February 2013). This provision is found under Article 1(3) of UN Charter; Article 28 of UDHR; Articles 2(1) and 22 of ICESCR; Article 4 of CRC; and Article 4(2) of CRDP.

² These may be found under Article 3(3) of the Declaration on the Right to Development; Paragraph 10, 12 and 13 of the Vienna Declaration and Programme of Action; and Paragraph 13 of Millennium Declaration.

budget financed by external sources. Most of its development activities are implemented through donor aid in form of donations as well as debt, with the development budget accounting for up to 80% of the budget financed from external sources. The Ministry of Finance, through the Debt and Aid Division is the main agent of Government responsible for managing the foreign aid and public debt portfolios. It is responsible for compilation and dissemination of public debt statistics.

5. Most of the donations and debt that Malawi receives is often, if not most of the times, attached with some conditions for Malawi to access the said donation, aid or debt. The donor community, which includes international Financing institutions, would require Malawi to fulfil certain conditions or adjust certain policy for them to provide the much needed donation, aid or debt.

6. According to the Government of Malawi's Annual Review of the Public Debt Portfolio of October 2012³, during the 2011/2012 financial year, Malawi faced a number of challenges which affected the economy's performance. The challenges included the suspension of the Extended Credit Facility (ECF) programme that was supported by the International Monetary Fund (IMF), reduced donor inflows, foreign exchange shortages and high domestic interest rates among other factors.

7. The Extended Credit Facility (ECF) was declared off track on account of economic governance concerns. Consequently, development partners suspended the provision of general budget support to Malawi. Reduced donor inflows put pressure on domestic borrowing such that Government borrowed significantly from the Reserve Bank of Malawi to finance its expenditures.

8. In August 2011, the Malawi Kwacha was devalued by 10%, and was followed by a further 49% devaluation of the local currency in April 2012. Furthermore, Government adopted a free floating exchange rate regime. The effects of devaluation manifested in the increased external debt stock and service (in Malawi Kwacha) for the last quarter of the 2011/12 financial year and estimates for 2012/13 financial year in local currency terms. For instance, as at 30th June 2012, the external debt stock was reportedly at US\$1, 107.6 million. This meant it had increased by 12 percent from US\$984.6million in June 2011, aside from the domestic debt stock which was at US\$818 million. The external and domestic debt stock actually accounted for 31 percent and 23 percent respectively, as a proportion of Malawi's Gross Domestic Product (GDP).

9. In 2011/12 financial year, the Government contracted new loans mostly from International Development Association (IDA) of the World Bank and the African Development Bank (AfDB). The newly contracted loans are for projects in the following sectors: Agriculture, Education, Energy and Mining, Private Sector Development and Water, Sanitation and Irrigation. This is in line with the Malawi Growth and Development Strategy where the listed sectors are identified as the key priority areas.

10. The steps or policy changes taken to devalue the Malawi Kwacha and the floatation of the foreign currency are often some of the conditionalities that the creditors have imposed on the Government for it to access some of the loans and/or grants. The effects of these policy changes cannot be over emphasised. They have adversely affected the full enjoyment of human rights of the citizens of Malawi through grossly compromised affordability and accessibility of essential public and private goods and services, just to mention a few. Some of these conditionalities have undermined developing countries', Malawi included, poverty reduction goals of debt relief and ownership of development strategies

³ http://www.finance.gov.mw/index.php?option=com_docman&task=cat_view&gid=75&Itemid=114, Malawi Government, Ministry of Finance, *Annual Debt Report (October 2012)*

11. The right to a decent standard of living is dramatically getting eroded, due to rising costs of goods and services on the market, as a result of the long overdue but tough and bitter economic reforms undertaken by the new Government administration from May, 2012. These included the 49% devaluation and eventual floatation of the Local Currency (the Malawi Kwacha), as well as the Automatic Fuel Pricing Mechanism. These have consequently continued to yield attendant effects on the lives of people, especially as the purchasing power has continued to plummet, with the inflation rates hitting an all time high of over 33.3% as at February, 2013. The cost of food and other essential needs has equally been rising, making it even tougher for citizens, including the already majority poor and vulnerable sections of society.

12. The other main problem is in the fact that donor communities, aid agencies and International Financing Institutions (IFIs) do not seem to always factor in a human rights' based approach to their conditionalities for a country to access debt. This has resulted in affecting the most vulnerable sections of the society more, where the Governments have been "forced" to take some steps to ensure both access to the loans and grants alongside their duty and obligation to fulfil the human rights standards.

13. Malawi qualified for the Multi-lateral Debt Relief Initiative (MDRI) in September, 2006 after reaching the completion point of the Highly Indebted Poor Country (HIPC) programme. It eased pressure on the budget freeing resources towards poverty reducing efforts. This is one of the effective ways and/or steps ever made by developed countries (bilateral donors), multilateral donor agencies and creditors to make a difference for essential public goods and services' delivery, towards relieving developing States of the national budgetary pressure, to allow them to use the available resources in the realisation of economic, social and cultural rights instead of servicing the loans and debts.

III. Conclusion

14. In light of the foregoing discussion, the situation of Malawi where the issue of foreign debt and its impact on enjoyment of human rights remains a huge concern for a majority of citizens already at the peripheral of essential human rights entitlement, makes it even more critical for States to ensure that their rights and obligations arising from external debt agreements and arrangements. In particular, the contraction and acceptance of unreasonable and excessive obligations to repay external debts should not be at the expense of the dignity and human rights' entitlement of the peoples of Malawi. It should not hinder progressive realisation of economic, social and cultural rights.

15. Furthermore, non-State lenders must always respect the obligation on their part, to ensure responsible financing, in that debt contracts to which they are party or policies related thereto, always underscore the aspect of fully respecting and protecting the citizens' full enjoyment of human rights.
