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Information presented by the Malawi Human Rights Commission*

Note by the Secretariat

The Secretariat of the Human Rights Council hereby transmits the communication submitted by the Malawi Human Rights Commission,** reproduced below in accordance with rule 7(b) of the rules of procedures described in the annex to Council resolution 5/1, according to which participation of national human rights institutions is to be based on arrangements and practices agreed upon by the Commission on Human Rights, including resolution 2005/74 of 20 April 2005.

* National human rights institution with “A”-status accreditation from the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights.

** Reproduced in the annex as received, in the language of submission only.

Annex

[English only]

Contribution of the Malawi Human Rights Commission to the Panel Discussion on the Vienna Declaration and Program of Action at the 22nd Session of the Human Rights Council

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 Vienna Declaration and Programme of Action, (VDPA).

2. While noting that the VDPA addresses a number of issues, including: the universality, indivisibility, interdependence and interrelatedness of human rights; democracy, development and human rights; poverty and social exclusion among other areas, MHRC’s submission is focusing on the two critical areas of: ratification and domestication of international human rights instruments and compliance with state party reporting obligations; and, women’s rights.

3. Ratification and Domestication of Human Rights Instruments and Compliance with State Party Reporting Obligations

4. Malawi is a party to almost all the major international human rights instruments including: the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT); the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW); the Convention on the Elimination of Racial Discrimination; the Convention on the Rights of the Child (CRC); the Convention Against Transnational Organised Crime; and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.

5. The provisions of most of the international human rights instruments ratified by Malawi have found expression in the provisions of the bill of human rights that is entrenched in Chapter four of the Constitution of the Republic of Malawi, (the Constitution). Furthermore, a number of statutes that entrench the human rights standards and principles espoused in relevant international human rights instruments have been enacted or are in the process of being promulgated.

6. In line with the Constitution of the Republic of Malawi, Malawi follows a dualist system with respect to the application of international human rights instruments. Section 211 of the Constitution provides that “*Any international agreement entered into after the commencement of this Constitution shall form part of the law of the Republic if so provided for by an Act of Parliament*”. This makes domestication of these instruments by an express act of incorporation a critical step.

7. In the area of state party reporting, Malawi has consistently reported to the UN Committee on the CEDAW and the UN Committee on the CRC. In the year 2010, Malawi submitted its Universal Periodic Report to the UN Human Rights Council. Malawi also submitted a report on the ICCPR to the UN Human Rights Committee. Apart from these

reports, Malawi continues to face the challenge of a considerable backlog of state party reports. However, the Ministry of Justice and Constitutional Affairs embarked on a comprehensive programme to ensure the submission of all of Malawi's outstanding state party reports. The Ministry empanelled a Task force on state party reporting in which MHRC is a member. Currently the Task force is compiling a report on the African Charter on Human and Peoples Rights for submission to the African Commission. Further, the Ministry of Gender, Children and Community Development is working on reports on the CEDAW and CRC.

II. Conclusion

8. It is critical that increased international assistance continues to be directed to Malawi to support its efforts on ratification and domestication of international human rights instruments and the concerted steps being undertaken by the Malawi Government and other players to ensure full compliance by Malawi of her state party reporting obligations.

III. An Overview of Women's Rights: Progress, Challenges and Way Forward

9. MHRC notes that the VDPA draws attention to the importance of women's rights and the rights of the "girl-child", as an inalienable, integral and indivisible part of universal human rights. It emphasizes on the full and equal participation of women in political, civil, economic, social and cultural life, at the national, regional and international levels and the eradication of all forms of discrimination on grounds of sex are priority objectives of the international community. It also explicitly recognizes gender-based violence, sexual harassment and exploitation, including those resulting from cultural prejudice and international trafficking as incompatible with the dignity and worth of the human person. It thus calls upon states to eliminate gender-based discrimination through national action and international cooperation in such fields as economic and social development, education, safe maternity and health care, and social support and also urges States to combat violence against women in accordance with its provisions.

10. Malawi has recorded significant progress in the area of women's rights at both the normative and institutional framework level. Since 1994 when Malawi adopted a new Constitution that entrenches a Bill of Rights, women's rights have found expression in the Constitution. A number of Laws have been enacted that protect women's rights, such as: the Prevention of Domestic Violence Act of 2006, the Penal Code (Chapter 7:01 of the Laws of Malawi), that was amended to strengthen issues that affect women, such as, an upward revision of the age of sexual consent, and the repeal of the Wills and Inheritance Act that has been replaced by the Deceased Estates (Will and Inheritance) Act, that safeguards women's interests with respect to deceased property, following the death of a spouse, among other things.

11. Several law reform processes are also underway that will contribute to the strengthening of the legal framework, once they are enacted into law for instance the proposed Gender Equality Statute and other proposed legislation on marriage and divorce, HIV and AIDS (Prevention and Management) and Trafficking in Persons. The country is also increasingly gaining a critical mass of women participating in politics and decision making structures.

12. Several Institutions such as the Ministry of Gender, Children and Community Development, MHRC and Civil Society Organisations (CSOs) also run a number of programmes on the promotion and protection of women's rights.

13. Notwithstanding the progress outlined above, a number of challenges still stand in the way of the effective realisation of women's rights. For example, domestic violence against women and female children is still rampant, the commonly reported cases comprising incest, defilement, rape, child trafficking, wife abuse or battering and forced sex. The Malawi Police Crime Report for the period January to December 2012 shows an increase of 15.8% of these cases in the year 2012 as compared to the year 2011.

14. Malawi currently does not have any legislation which defines or makes reference to marital rape as a criminal offence or specifically prohibit sexual harassment in work places. Malawi still retains discriminatory a citizenship law that disadvantages women on the basis of gender. Further, the limited utilisation of human rights based approaches in court decisions and culture undoubtedly play a big role in fueling the marginalisation of women and female children. Where relevant laws are in place, there are many structural and institutional challenges that affect the effective enforcement of such laws. These include entrenchment of patriarchal attitudes and human resource and financial related constraints on the part of law enforcement institutions.

IV. Conclusion

15. It is critical that increased international assistance continues to be directed to Malawi to support programmes that the Malawi Government, MHRC and other players are implementing directed at: educating the general public on issues of women's rights, gender-based violence and the relevant laws; capacity building of law enforcement agencies, including through training to enable them entrench human-rights-based-approaches; law reform and human rights monitoring and investigations.
