



**Convention on the Elimination  
of All Forms of Discrimination  
against Women**

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**Committee on the Elimination of Discrimination  
against Women**

**Consideration of reports submitted by States parties under  
article 18 of the Convention on the Elimination of All Forms  
of Discrimination against Women**

**Sixth periodic report of States parties**

**Malawi\***

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\* The present report is being issued without formal editing.



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## **Foreword**

The purpose of this report is to honour the commitments undertaken by the Republic of Malawi when it signed and ratified the Convention on the Elimination of All Forms of Discrimination against Women.

The report was prepared by the Ministry of Women and Child Development, in its capacity as the national machinery for gender issues and in an effort to fulfill its legal mandate to follow up on public policies for the advancement of women and for ensuring equal rights and opportunities for men and women.

The United Nations Population Fund provided financial support for the report's preparation. The data used in preparing this report contains a systematic overview of the main documentary and statistical data produced in Malawi by various State and non-governmental institutions, the academia and experts. These data were supplemented with information gathered in interviews with experts and key informants. Critical discussion of the report made it possible to incorporate additional information.

The Malawi Government is pleased to submit this sixth report to the Committee for its consideration, in accordance with the commitment undertaken by the country when it ratified the Convention.

**Honourable Anna Kachikho, M.P.**  
**Minister of Women and Child Development**

**ACRONYMS**

AIDS	Acquired Immuno-deficiency Syndrome
ART	Anti-Retroviral Therapy
ARV	Antiretroviral
CBOs	Community Based Organisations
CCPW	Community Based Child Protection Workers
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CHAM	Christian Health Association of Malawi
CRC	Convention on the Rights of the Child
DCDOs	District Community Development Officers
DHS	Demographic and Health Survey
DSWOs	District Social Welfare Officers
GDP	Growth Domestic Product
IHS	Integrated Household Survey
IMF	International Monetary Fund
IOM	International Organisation for Migration
HIS	Integrated Household Survey
HIV	Human Immuno-deficiency virus
HTC	HIV Testing and Counseling
MDGs	Millennium Development Goals
MGDS	Malawi Growth and Development Strategy
MHRC	Malawi Human Rights Commission
MICS	Multiple Indicator Cluster Survey
MNACT	Malawi Network Against Child Trafficking
NAC	National AIDS Commission
NAF	National HIV and AIDS Action Framework
NAP	National AIDS Policy
NER	Net Enrolment Ratio
NESP	National Education Sector Plan
NGOs	Non-Governmental Organisations
NPA	National Plan of Action
NRIS	National Registration Identification System
NSF	National Strategic Framework
OPC	Office of the President and Cabinet
ORT	Other Recurrent Transactions
OVC	Orphans and other Vulnerable Children
PIF	Policy and Investment Framework
PLHIV	People Living with HIV
PMTCT	Prevention of Mother To Child Transmission
SADC	Southern African Development Community
SSA	Sub-Sahara Africa
UNGASS	United Nations General Assembly Special Session
UNHCR	United Nations High Commissioner for Refugees

## INTRODUCTION

1. The Republic of Malawi ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW hereinafter) in September, 1987. In accordance with article 18 of CEDAW, the initial report was submitted in 1988 to the Committee on the Elimination of Discrimination Against Women. After 16 years, Malawi submitted the Combined Second, Third, Fourth and Fifth Report in 2004.

2. The Combined report was considered by the Committee at its 727<sup>th</sup> and 728<sup>th</sup> meetings in May, 2006.

3. This document is the sixth report on the measures adopted by Malawi to comply with the provisions of the Convention and covers the period from 2006 to 2008. The Committee's comments on the previous report were taken into consideration during the drafting process, as were the opinions and joint analyses provided by representatives of State institutions and civil society with regard to the current situation and the progress made during the reporting period.

4. This report has been developed through a thoroughly consultative process which involved members from the public sector including Government ministries and governance institutions; private sector; the academia; civil society including networks and organizations representing women's interests; and international organizations<sup>1</sup>.

5. The report is divided into three parts. The first part provides general information on Malawi and describes the social, economic and political context during the reporting period. The second part contains the responses to the concluding remarks by the Committee and a detailed review of the implementation of each article of the Convention, including an analysis of the progress made and of relevant trends. By way of conclusion, the third part gives an overview of the main challenges that the Government of Malawi faced in the period of reporting.

6. With respect to the Committee's comments and recommendations on Malawi's previous reports, the Government appreciates the acknowledgement of the progress it has made and observes that the actions taken in response to those observations and concerns have informed this report.

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<sup>1</sup> Such as UNHCR.

## Part I: BACKGROUND

### 1.1 SOCIAL-ECONOMIC CONTEXT

7. Projections for 2007 indicate that the population of Malawi is estimated at 11,937,934 with an annual growth rate estimated at 3.32 percent. The average population density is 105 per m<sup>2</sup>. Population projections for the years 1999 to 2008 estimate a steady increase in the population for the 0 - 14 and 15 - 19 years age groups and a decline in the fifty five years plus age group (see Table 1). Further, estimates indicate a population of 16 million by 2015 and this rapid population growth is a key factor for the high and persistent poverty levels and wide spread environmental degradation in Malawi.

8. Population growth in Malawi is determined by various factors including fertility, mortality, migration and urbanization. The last recorded data with respect to fertility indicates that it stands at 6 per cent which is still considerably high (DHS 2004). With respect to mortality, life expectancy has fallen from 46 years in 1987 to 37 years in 2005, largely due to HIV and AIDS. Maternal mortality slightly improved from 1120 per 100,000 in 2000 to 984 per 100,000 in 2004. Under-five mortality decreased from 189 per 1000 in 2000 to 133 per 1000 in 2004, while infant mortality has declined from 104 per 1000 in 2000 to 76 per 1000 in 2004. Data from the Multiple Indicator Cluster Survey (MICS) 2006 shows that the infant mortality rate is estimated at 69 per 1000 live births while the probability of dying Under-five mortality rate is estimated at approximately 118 per thousand live births.

9. There has been an increase in rural-urban migration. Integrated Household Survey (IHS) 2005 showed that 17.2 percent household heads had internally migrated with 11 percent moving to urban areas. Migration has a considerable effect on poverty, the spread of HIV and the environment.

10. The urban population growth rate of Malawi is 6.3 percent and this is one of the highest in the world. This has led to housing shortages, increase in crime and spread of HIV and high rates of unemployment.

11. The Government has just completed the Population and Housing Census and the results are expected to be released around September, 2008.

**Table 1: Population Projections**

	Percentage of the population:									
<b>Age Group</b>	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
<b>0 - 14</b>	44	45.1	45.6	46	46.4	46.7	47	47.3	47.5	47.2
<b>15 - 19</b>	10.8	10.8	10.7	10.6	10.5	10.5	10.4	10.3	10.3	10.2
<b>55 +</b>	6.3	5.7	5.2	4.7	4.5	4.3	4.2	4.1	4.0	4.0

*Source: National Statistical Office, Projected Population Based on the 1998 Malawi Population and Housing Census*

## 1.2 SOCIO-ECONOMIC INDICATORS

12. The Malawi economy is characterized by severe and widespread poverty. The Malawi Growth and Development Strategy (MGDS) indicates that poverty has not changed significantly for seven years. The Integrated Household Survey (IHS) 2004/05 indicates that 52.4 percent of the population lives below the poverty line.<sup>2</sup> This means that about 6.3 million people are poor and 2.7 million Malawians live in ultra poverty or cannot afford to meet the daily-recommended food requirements with rural areas being poorer than urban areas. The Southern region is the worst hit by poverty followed by the Northern region. The manifestations of poverty include low income, food insecurity, high malnutrition and high incidence of preventable diseases.

13. The MGDS indicates that female headed households are worse-off. It also indicates that during the last 7 years, 30 percent of the poor moved out of poverty while 30 percent of the non-poor moved into poverty indicating that there is continued economic vulnerability in Malawi. The Poverty Vulnerability Assessment<sup>3</sup> indicates that major factors affecting the level of household poverty are household size; education; access to non-farm employment; access to irrigation; proximity to markets and trading centres; and access to tarmac roads. Health indicators have worsened over the last ten years. During this period, the number of physicians per population has fallen by half and child immunization has also decreased from 82 percent in 1992 to 64 percent in 2004. Child malnutrition has remained virtually unchanged since 1992 and almost half of under-five children are stunted and 22 percent are severely stunted.

14. Malawi successfully attained all the requirements necessary to reach the completion point of Highly Indebted Poor Countries. Subsequently almost 95 percent (about US\$ 3 billion) of all external debts have been cancelled. This is an important milestone, since additional financial resources have been made available for redirection into other pertinent socio-economic development programmes.

15. Malawi's economy remains predominantly agriculture based contributing to more than a third of the country's Gross Domestic Product (GDP) and to over 90 percent of export earnings. The service sector contributes 45.1 percent of the GDP.

16. Malawi's economy remains weak and vulnerable to external shocks. World Bank and IMF statistics chart economic growth for Malawi during the period 2000-2005 was 3.4 percent compared to 4.2 percent for Sub-Saharan Africa (SSA). Similarly, although inflation has been declining in the last two years, it is still high by regional standards at 15 percent in 2005 compared to 8.9 percent for SSA (World Bank and IMF Statistics). Movements in Malawi's inflation rate have closely followed those of weather patterns, international fuel prices, money supply, and the exchange rate. The causes include fiscal slippages, high prices of essential commodities e.g. food and fuel; unaffordable levels of domestic debt stock which has exerted pressure on the country's monetary policy; and depreciation of the local currency. The currency depreciation was a direct consequence of switching from a fixed to a floating exchange rate regime. Further, due to poor physical infrastructure in transport, energy, and water, private sector investment particularly in manufacturing has been sluggish.

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<sup>2</sup> This indicates the percentage of people that live on less than a dollar a day.

<sup>3</sup> Report was released in June, 2006.

### 1.3 GENERAL POLITICAL STRUCTURE

17. According to the Constitution of the Republic, adopted in 1995, Malawi is a sovereign state with rights and obligations under the Law of Nations. The Constitution is supreme authority in Malawi and as such, any act or law that is inconsistent with it is to the extent of the inconsistency, invalid.<sup>4</sup>

18. Under the Constitution, the State is a democracy with participatory and representative rights. It entrenches the doctrine of separation of powers between the organs of state: the executive, the legislature and the judiciary.<sup>5</sup> Any person exercising the powers of State derives the legal and political authority from the people of Malawi and exercises the power in accordance with the Constitution solely to serve and protect their interests.<sup>6</sup> All persons exercising powers of State do so on trust and the authority to exercise this power is conditional on the sustained trust of the people of Malawi which can be maintained through open, accountable and transparent Government and informed democratic choice.<sup>7</sup>

19. The executive comprises the President and up to two deputies, Cabinet and the Attorney General. Its function is to initiate policies and legislation and implement laws.

20. The legislature is headed by the Speaker and comprises Parliament<sup>8</sup>, the Clerk of Parliament and elected Members. Its function is to enact laws that should reflect the interests of the people of Malawi and constitutional values.

21. The judiciary is independent of the executive and the legislature and consists of the Chief Justice, Justices of Appeal, High Court Judges, the Registrars of the Supreme Court and High Court; and professional and lay magistrates. The highest court of appeal is the Supreme Court of Appeal; the High Court which has unlimited original jurisdiction and appellate jurisdiction; and magistrates' courts. Three specialized courts have since been established: the Commercial Division of the High Court, the Constitutional bench of the High Court<sup>9</sup>; and the Industrial Relations Court which is subordinate to the High Court.

22. The role of the judiciary is to interpret and protect the Constitution in an 'independent and impartial manner with regard only to legally relevant facts and prescriptions'. The judiciary has been mandated to promote values that underlie an open and democratic society; take the rights enshrined in the Constitution into account; and to have regard to current norms of public international law and comparable case law.

23. The territory of the Republic comprises 118,480 km<sup>2</sup>, of which 24, 210 km<sup>2</sup> is surface fresh water; and it is divided into four administrative regions and twenty-eight districts.

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<sup>4</sup> Section 5.

<sup>5</sup> See sections 7,8 and 9 of the Constitution.

<sup>6</sup> Section 12 (i).

<sup>7</sup> Section 12 (iii).

<sup>8</sup> Parliament is made up of the President as Head of State and the National Assembly – section 49 (1).

<sup>9</sup> This was done through a law amending the Courts Act to allow for the ad-hoc establishment of a High Court bench to deal with disputes of a constitutional nature.



#### **1.4 GENERAL NORMATIVE FRAMEWORK FOR THE PROTECTION OF RIGHTS OF WOMEN**

24. The 1995 Constitution provides for equality of individuals before the law<sup>10</sup> and for the protection and enjoyment of civil and political rights without discrimination on grounds of race, colour, sex, language, religion, political or other opinion, nationality, ethnic or social origin, disability, prosperity, birth or other status.<sup>11</sup>

25. Under the Constitution, every person enjoys State protection and recognition of the rights enshrined in the Constitution, international instruments and other statutes. The Constitution also provides for the enforcement, restrictions and limitations of rights and what forums may be approached for enforcement of rights. These forums include the courts, the Human Rights Commission and the Office of the Ombudsman.

26. Institutionally, the Ministry of Women and Child Development is the national machinery which has the mandate to oversee the coordination and mainstreaming gender in all development initiatives, implementation of community development programmes and social welfare services in Malawi.

27. The Ministry has five departments of which three deal with core technical services: Women Development Affairs; Community Development; and Child Development Affairs. The other two offer support services: administration, finance and human resources; and planning and research.

28. The Department of Women Affairs is the secretariat for the National Gender Machinery and is responsible for coordination, advocacy and mainstreaming of gender in all Government policies, frameworks, programmes and activities. The department is also responsible for promotion of women's rights including reproductive health rights.

#### **1.5 INFORMATION AND PUBLICITY**

29. The democratic dispensation that started in the early 1990s promotes an open society that respects a human rights culture. Gender mainstreaming has been carried out through various state institutions spearheaded by the Ministry responsible for Women and Child Development. Other governance institutions such as the Human Rights Commission, the Law Commission, the Office of the Ombudsman and non-state actors from civil society and international organizations have also taken an active role in implementing gender issues across society.

30. Continued low literacy levels among women and men prevent effective human rights education in Malawi. Use of English as a medium of communication in the human rights arena has also hampered progress.

31. Malawi continues to make efforts to widely disseminate CEDAW throughout the country. There is only one officially translated version of CEDAW despite many local

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<sup>10</sup> Section 41 (1).

<sup>11</sup> Section 20 (1).

languages and dialects. Using languages and methods that promote access by rural communities to discover, practice, protect and fulfill human rights remains a challenge.

32. Government recently established the Department of Civic Education under the Ministry of Information. The mandate of this department is to co-ordinate all initiatives regarding development and dissemination of information, education and communications materials on government policies and programmes to ensure relevance, correctness and maximum outreach.

33. It is further expected that the Department of Civic Education shall assist in the publication, simplification and promulgation of the CEDAW, the African Charter on Human and Peoples' Rights and its Protocol on the Rights of Women, the Beijing Platform for Action, the pending SADC Protocol on Gender and Development, among other relevant texts in collaboration with the Ministry of Women and Child Development.

## **1.6 CEDAW AND NATIONAL LAWS**

34. Since the discussion of the Combined Report in 2006, there have been various reforms in legislation which is aimed at domestication of the provisions of the CEDAW. The reforms have been initiated by both the public and non-public sectors.

### **Constitutional Review**

35. Government approved the Law Commission's proposal to review the Constitution in 2004. The special Law commission responsible for the process commenced its work in earnest in 2006. The Ministry of Women and Child Development contributed substantially to the Constitutional Review process by preparing a comprehensive Position Paper that made several recommendations with regard to women, regardless of age. The Position Paper fully adopted the recommendations made by the Committee on the Combined State Party Report for Malawi. Most submissions in this paper were similar to those made by other stakeholders and have been addressed by the Law Commission.

36. One of the areas highlighted as problematic is section 23 of the Constitution which sets out the age of a child, for purposes of that section, at 16 years. The Ministry considered the vulnerability of the girl child and proposed that the age of majority be raised to eighteen years so as to harmonize the provision with the Convention on the Rights of the Child (CRC). It takes into account a specific characteristic of Malawian children, the majority of whom under the age of eighteen years are still in secondary school and are in need of protection of the law as children. The Law Commission has taken this issue on board and proposes that the age of majority be raised to eighteen years.

37. The constitutional review process also involved examination of section 22 of the Constitution on family and marriage. A number of stakeholders noted that the Constitution is unclear on the minimum age for marriage. Under section 22, a person of eighteen years of age may enter into marriage without seeking the consent of his or her parents; persons aged between fifteen and eighteen years must obtain consent from parents before entering into marriage; and the State is obliged to "discourage" marriages where either party is under the age of fifteen years. Many commentators argue that there is no minimum age for marriage in Malawi. It has also been argued that marriages where one or both parties are under the age of fifteen years may only be discouraged by the State but are not prohibited.

38. Most of the submissions made to the Law Commission on the issue of minimum age for marriage suggested that it should be raised to eighteen years in compliance with international standards on the definition of the child.<sup>12</sup> The Law Commission therefore recommended that the minimum age for marriage with parental or guardian consent should be raised to eighteen years as above that age and further recommended that above the age of twenty-one years, marriage may be entered into without parental consent.

39. The Constitutional review process was completed in 2007 and the recommendations and Amendment Bill have been passed on for consideration by Cabinet. It is hoped that Parliament may consider the said recommendations in the course of 2008.

### **Customary Laws**

40. Presently, there have been two programmes that have been initiated to tackle customary laws that are inconsistent with the CEDAW, and these are the Gender-related Law Reform Programme and the Development of HIV and AIDS Legislation Programme.

41. The Gender-related Law Reform Programme has examined cultural and traditional practices that denigrate women purely on account of the sex, gender and marital status and found such harmful practices. The Gender Commission also observed that often women do not participate in the harmful practices out of choice but are compelled due to an inherent imbalance in power relations between men and women. The Commission has considered that those practices which discriminate women purely on the basis of sex, gender and marital status should be prohibited and eliminated.

42. The development of HIV and AIDS Legislation programme also looked at some cultural and social practices in light of HIV and AIDS. It was observed that in Malawi, like in many countries, HIV and AIDS has had greater impact on women than men. Women constitute the greater numbers of victims of the HIV and AIDS scourge. In 2008, NAC has estimated that the total HIV population is 898,888 of which adult women over 15 years represented 53 percent. The risk of contracting HIV below the age of 25 years is manifestly higher for girls and women than for boys and men.

43. Women also bear the brunt of caring for AIDS patients. The Commission also considered the cultural and social practices in the context of their contribution to propagating the spread of HIV and AIDS. This recently concluded programme has also made recommendations towards the prohibition of some harmful practices that propagate HIV infection. Law Commission has in various review programmes looked at certain statutory laws that codify customary law. In some instances, the Law Commission has recommended the prohibition of harmful customary laws and practices. The Law Commission has completed a review of the statutory law on succession, marriage and divorce which codified certain customary laws.

### **Violence Against Women**

44. Gender based violence is a persistent problem for women and girls in Malawi. It reinforces subordination of women and further promotes sexual abuse which leads to injury, HIV infection and

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<sup>12</sup> The Convention on the Rights of the Child, the International Covenant on Civil and Political Rights, the African Charter on Human and Peoples' Rights and the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages define a child as any person under the age of eighteen years.

unwanted pregnancies. In 2004, 28 percent of women had, by the age of 15 years, and 13 percent of married women experienced physical violence. Intimate partners, such as husbands, are often key perpetrators and that the most common forms include slapping and arm twisting (16 percent);<sup>13</sup> and forced intercourse or marital rape (13 percent).<sup>14</sup>

45. In response to this, Government inherited a process spearheaded by the civil society that led to the enactment of the Prevention of Domestic Violence Act in April, 2006. Although the law is effectively in force, there are a number of areas that need further development before the law is made fully operational. The Ministry of Women and Child Development is aware of the existing gaps in the law and is making an effort to review the law.

46. The development of the Gender Equality statute and Trafficking in Persons Bill are further aimed at arresting incidents and cases of gender based violence manifested through such forms as sexual harassment especially at the workplace, culture-based gender violence which promotes discrimination and spread of HIV infection; sexual exploitation as a result of trafficking in persons and other means.

47. At policy level, Government adopted the National Strategy to Combat Gender Based Violence (2002 – 2006) and the National Response to Gender Based Violence (2007 – 2011).

### **Inheritance Laws**

48. Government also undertook the review of the Wills and Inheritance Act and recommended the adoption of a proposed Deceased Estates (Wills, Inheritance and Protection) Bill. This Bill specifically abolishes all customary laws involving succession. Of particular relevance to women under this programme is the abolition of discriminatory inheritance practices between the girl and boy child. Under the current law, upon marriage, a daughter inherits less than a son. This provision was considered to be discriminatory, particularly as the law on marriage is currently flexible enough to permit even fifteen-year-old girls to enter into marriage.

49. Government also recommended that as an exception to the discrimination rule, younger children should inherit a larger share of a deceased estate in keeping with the greater needs of a younger child. It was further recommended that the first call on distribution of a deceased estate should accrue to the “immediate family” which has been defined as comprising the surviving spouse and children. This will ensure that property rights of women and children are better protected as compared to the current system of inheritance based on customary laws on inheritance.

50. Another recommendation is to the effect that all children shall benefit from the estate of a deceased parent, regardless of the circumstances of their birth.

51. Government through the Ministry of Women and Child Development has taken great strides in widely circulating these recommendations and lobbying Members of Parliament to ensure that they will be enacted by Parliament in 2008.

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<sup>13</sup> In 2007, the media reported a case where a husband chopped off his wife’s hands.

<sup>14</sup> DHS, 2004.

### **Marriage, Divorce and Family Relations Bill**

52. The review of laws on marriage and divorce constituted the second phase of the Gender-Related Law Reform Programme. The laws under review were the Marriage Act, the African Marriage (Christian Rites) Registration Act, the Asiatics (Marriage, Divorce and Succession) Act, the Divorce Act, the Married Women Maintenance Act, and the Maintenance Orders (Enforcement) Act as well as customary laws relating to marriage and divorce.

53. The Law Commission recommended the repeal of all these statutes and instead the enactment of a new Bill entitled the Marriage, Divorce and Family Relations Bill. In the proposed Bill, the Law Commission has recommended the prohibition of polygamy, on account of its discriminatory effect and the negative impact it has on women. The Bill recognizes that there is sometimes wilful neglect of women and children during the subsistence of marriage and not just after divorce or during separation. In this regard, specific provisions have been recommended relating to the welfare of women and children both in terms of maintenance and in terms of giving the knowledgeable child, an opportunity to state his views on issues relating to custody.

### **The Gender Equality Statute**

54. The development of a gender equality statute is the last phase in the Gender-related Law Reform Programme which also directly covers the issue of abolishing customary laws with a detrimental effect on women and children. The proposed Bill aims to prohibit customary and traditional practices that violate the rights of women and children. These practices promote compulsory sexual activities upon women as stand alone practices or as part of other rites or practices.

### **The National Registration Bill**

55. The National Registration Bill seeks to introduce mandatory registration of all births and deaths, and the issuance of identity numbers and cards to all Malawians of over 16 years of age as well as the official registration of all non-Malawians residing in the country. The Bill will also provide a legal base to establish a National Registration Bureau responsible for the development, co-ordination and implementation of a National Registration and Identification System (NRIS). The NRIS organs will reach down all the way to the village level where vital registration will take place.

56. The enactment of the National Registration Bill has far reaching consequences for women. It is hoped that with a registration system in place, among other things, it shall be easier for Government to target women and conduct various programmes with better knowledge of various age groups and populations.

57. The Bill also seeks to repeal the existing legislation on registration of births and deaths. The Bill which has been tabled before Parliament before has not been debated and it is hoped that it shall be tabled before Parliament in 2008.

### **Child (Care, Protection and Justice) Bill**

58. The review of the Children and Young Persons Act was conducted in response to a submission from the Parliamentary Caucus on Women and Children on the need to review certain aspects of the

law on affiliation. It was noted that this law also has a bearing on women especially the girl child. The review process was finalized in 2005 and culminated in a report of the Law Commission's findings and recommendations incorporating a proposed Bill entitled the Child (Care, Protection and Justice) Bill.

59. This Bill is a comprehensive attempt to domesticate the CRC as it extends beyond issues of child justice to include matters pertaining to duties and responsibilities of parents towards their children; determination of children in need of care and protection; guardianship; fosterage; residential placements; powers and duties of child justice courts in care and protection matters; duties and functions of local authorities relating to child justice and protection; and protection of children from undesirable practices.

### **HIV and AIDS (Prevention and Management) Bill**

60. The development of legislation on HIV and AIDS was a response to a growing scourge which raised a multi-sectoral dimension cutting across economic, legal, human rights, social, political and psychological spheres among others.

61. The main institutions at Government level are the National AIDS Commission (NAC), a public trust and the Department of Nutrition, HIV and AIDS which operates under the Office of the President and Cabinet.

62. The disproportionate impact of the scourge on women and girls illustrates the omission of gender considerations in implementing rights for members of the society. Economic insecurity forces women in to high risk behaviour without an option to negotiate safe sex. As such, the proposed law is intended to reduce the impact of the scourge on women. Government has noted that women are heavily affected as infected and affected people and that most cultural and social practices that propagate the spread of HIV infection have a greater impact on women.

63. The proposed law therefore prohibits certain cultural practices that are known to increase likelihood of infecting others with HIV. It has also been noted that there are incidental effects of the epidemic including loss of property, stigma and discrimination against those infected and has legislated against the vices.

### **Trafficking in Persons Bill**

64. Government noted that Malawi is a country of origin, transit and destination of trafficking victims and initiated the development of legislation to combat human trafficking. Issues of child trafficking were tackled under an earlier initiative to legislate for matters pertaining to children during the Review of the Child and Young Persons Act.

65. It was also noted that both external and internal trafficking of persons occurs in Malawi for labour and sexual exploitation. Incidents of harvesting of organs especially sexual organs have been on the increase.

66. Government expects the proposed law on anti-trafficking in persons to provide for legislative protection of victims, prevention of trafficking, prosecution of offenders and promotion of co-operation between Malawi and other states in combating human trafficking.

67. The Department of Justice of the United States government until recently rated Malawi on tier 1 status which recognized Malawi's initiatives to end human trafficking.

68. In the recent review, Malawi has been downgraded to tier 2 for, among other reasons, failure to sufficiently punish perpetrators of human trafficking. Government has noted the existing gaps in various existing legislation and underscored the importance of developing specific legislation on human trafficking and still continued to use existing pieces of legislation such as the Employment Act<sup>15</sup> and the Penal Code<sup>16</sup> to curb human trafficking.

## **1.7 CEDAW AND NATIONAL POLICIES AND PROGRAMMES**

### **Malawi Growth and Development Strategy**

69. The MGDS is the overarching strategy for Malawi for a period of 5 years, 2006 to 2011. It is a single reference document for policy makers in Government; private sector; civil society organizations; development partners and the general public. The MGDS is aimed at transforming Malawi from a predominantly importing and consuming country to a predominantly manufacturing and exporting economy.

70. The philosophy behind the MGDS is to reduce poverty through sustainable economic growth and infrastructure development. It has laid out six priority areas which define the direction of the country for a period of 5 years. These priority areas include agriculture and food security; irrigation and water development; transport infrastructure development; energy generation and supply; integrated rural development; and prevention and management of nutrition disorders, HIV and AIDS.

71. The six priority areas are also intended to accelerate the attainment of other goals such as the Millennium Development Goals (MDGs) and as such, recognize the importance of other critical areas such as health; education; gender; environment and governance. The MGDS also builds on the Malawi Economic Growth Strategy that emphasizes the need to create a conducive environment for private sector investment. The six priority areas have been built around five broad themes on sustainable economic growth; social protection; social development; infrastructure development; and improved governance. All the activities under the themes have been costed and take into account the limited resources available.

### **The National Gender Policy**

72. The initial National Gender Policy expired in 2005 and Government has completed the review of the National Gender Policy for the period 2005 to 2010. The National Gender Programme which was developed with a view to operationalize the expired National Gender Policy is still valid until December, 2009.

<sup>15</sup> This law prohibits child and forced labour.

<sup>16</sup> This statute criminalizes sexual exploitation, slavery, slave-like practices, among other things.

73. The overall goal of the revised National Gender Policy is to mainstream gender in the national development process in order to enhance participation of women and men, girls and boys for sustainable and equitable development.

74. It also aims at responding to current major challenges and emerging issues that include HIV and AIDS, gender based violence (GBV), human trafficking, increased environmental degradation and high levels of poverty all of which have a gender dimension.

75. Other than the CEDAW, the revised National Gender Policy has been informed by the 1993 Vienna Conference on Human Rights; the Southern African Development Cooperation (SADC) Declaration on Gender and Development, 1997, the Draft SADC Protocol on Gender and Development and the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa.

76. The eight policy themes of the revised Policy include Gender, Literacy, Education and Training; Gender and Reproductive Health; Agriculture, Food Security and Nutrition; Natural Resources and Environmental Management; Governance and Human Rights; Poverty Eradication and Economic Empowerment; Gender and HIV and AIDS; and Gender Based Violence.

### **The National HIV and AIDS Policy, National Strategic Framework (NSF) on HIV and AIDS**

77. In 2003, NAC developed both an implementation plan for the NSF and a National AIDS Policy (NAP) which incorporates most of the current international policy principles and lays down the administrative and legal framework for all programmes and interventions "to reduce infections and vulnerability, to improve provision of treatment, care and support for people living with HIV (PLHIV) and to mitigate the socio-economic impacts of the epidemic." Upon the expiry of the NSF, a National HIV and AIDS Action Framework (NAF) 2005-2009 was developed to continue driving the timely and effective national HIV AND AIDS response for the next five years. The NAF also incorporates elements of OVC care under its impact mitigation.

78. With respect to institutional framework, Government established the Department of Nutrition, HIV and AIDS under the Office of President and Cabinet in 2004. The Department has oversight responsibilities over the national response to HIV and AIDS while NAC remains the implementing institution.

79. Activities implemented by the National AIDS Commission follow the Malawi HIV and AIDS National Action Framework (NAF) 2005-2009, which has identified eight priority areas for its five year period, namely: prevention and behaviour change; treatment, care and support; impact mitigation; economic and psychosocial; mainstreaming, partnerships and capacity building; monitoring and evaluation; research; resource mobilization, tracking and utilization; and national policy coordination and programme planning. The NAF hopes to harness available resources to bring the HIV and AIDS prevalence down and provide treatment, care and support to people living with HIV and AIDS and all those who are affected by the epidemic, especially orphans, vulnerable children, widows and widowers and the elderly.



### **National Plan of Action for Orphans and Other Vulnerable Children (OVC) 2005-2009**

80. The National Plan of Action (NPA) for Orphans and Other Vulnerable Children, developed by the Ministry of Women and Child Development, is a strategic response to ensure that the rights of OVC are fully met through mitigating the effects of HIV and AIDS. The NPA was launched in 2005 by the President on the Day of the African Child, which demonstrates the Government of Malawi's commitment to implement the United Nations General Assembly Special Assembly Session (UNGASS) goals on HIV and AIDS for OVC. The NPA also attempts to translate some of the MDGs into reality. The six strategic areas of the NPA are:

- improve access for OVC to essential quality services in education, health, nutrition, water and sanitation, and birth registration with increased support from social safety nets;
- strengthen the capacity of families and communities to care for OVC;
- provide the legal framework and coordination to protect the most vulnerable children;
- build the technical, institutional and human resource capacity of key OVC service providers;
- raise awareness at all levels to create a supportive environment for children and families affected by poverty and HIV and AIDS; and
- monitoring and evaluation.

81. So far, the NPA has been quite effective, with some minor problems being registered with Community Based Organizations (CBOs), which still need some capacity building and training so that their efforts are better coordinated.

### **Education Policy**

82. The Ministry of Education and Vocational Training is currently in its second Education Plan, known as the Policy and Investment Framework (PIF). The initial PIF was a ten-year plan from 1995 to 2005. The implementation of Free Primary Education remains the most significant achievement of the initial PIF. Despite lack of strategic planning, insufficient budgetary allocation and thus implementation, PIF is a step in the right direction.

83. Currently, a revised PIF covering the years 2005 to 2012 is operational. This PIF aims, amongst other issues, to address the challenges emanating from the introduction of the Free Primary Education Policy in 1994. Through the PIF, Government aims at developing and providing quality basic education for every child in an effective partnership with relevant stakeholders.

84. The PIF has proposed a number of objectives for the education system. It aims at increasing access to educational opportunities for everyone at all levels of the system. The aim is to increase the Net Enrolment Ratio (NER) in all districts to 95 percent by the year 2015. At the secondary school level, the intention is to increase the Gross Enrolment Ratio from the current 18 percent of the relevant age cohort to 30 percent. At the tertiary level, the target is to raise the participation of the relevant age cohort in tertiary institutions from the current 0.3 percent to 1 percent.

85. The PIF's strategy seeks to minimize the tradeoffs among these sub-sectors while assigning the highest priority to accelerated progress towards universal primary schooling because universal primary education gives the highest social returns to investment - a more economically active, informed, healthier and participatory population. In recognition of this, the PIF proposes measures for alleviating the problems of poor attendance, enrollment, repetition and dropout at all levels of the system. At the primary school level where these problems are particularly acute, the PIF suggests strategies, which will help reduce repetition and dropout rates to less than 5 percent in grades I to 7 and to less than 10 percent in Standard 8.

86. The PIF also stresses the need for ensuring that Malawi's education system does not intensify existing inequalities across social groups and regions. The PIF identifies strategies, including bursary schemes, for improving the participation of girls and women, children with special needs and other disadvantaged youths and that of rural communities at all levels of the education system. At the primary, secondary and tertiary levels the intention is to increase female participation to at least 50.

87. In order to operationalize the PIF, the Ministry developed a ten-year National Education Sector Plan (NESP) which was launched in 2007. The Plan provides specific targeted strategies for the various themes of the PIF in all education sectors from basic to tertiary, including vocational training.

### **Food Security and Nutrition Policies**

88. In 2005, Government developed a National Nutrition Policy (2006-2011) which consists of a Food Security Policy to be implemented by the Ministry of Agriculture and a National Nutrition Policy to be implemented by the Department of Nutrition, HIV and AIDS in OPC. In order to overcome the shortfalls of past nutrition policies, this Policy aims at reducing prevailing nutrition disorders and ensuring that all Malawians have improved nutritional status to effectively contribute to economic growth and development. To implement the Policy, the National Nutrition Programme (2006-2011) has been developed, guided by the Policy and Strategic Plan for Nutrition (2006-2011) and supported by the Communication Plan (2006-2011) as a tool for service delivery at all levels. To realize the National Nutrition Policy Goal, the Business Plan for Nutrition and HIV and AIDS (2006-2011) outlines the roles and responsibilities for every stakeholder.

89. The current policy faces a great challenge for the nutritional status of the people of Malawi. Its overall goal is to significantly improve the nutritional status of all Malawians, with special emphasis on vulnerable groups including, but not limited to expectant and lactating mothers, children below the age of 15 years, orphans, people with disabilities, the aged and PLHIVs.

90. According to the Policy, stunting among under-five children is at 56 percent; wasting is 5 percent; underweight is at 22 percent; malnutrition in adults is between 25-36 percent; obesity is at 25 percent in urban areas, 12 percent in rural areas and 7 percent among children nationally. Micronutrient deficiencies of vitamin A are at 80 percent in preschool children, 38 percent in school age children, 57 percent in women of child bearing age and 38 percent in men. Iron deficiency is at 73 percent in preschool children, 54 percent in school age children,

44 percent in women of child bearing age, 47 percent in pregnant women and 17 percent of men suffer from anaemia. Iodine deficiency disorders are also common and it is estimated that cretinism is at 3 percent; urinary iodine deficiency is at 50 percent in school children and 87 percent of children have low intelligence quotient in areas with high iodine deficiency.

### **Programmes and Projects**

91. Government has been running a number of programmes and projects that are aimed at implementing the CEDAW.

### **Social Protection Scheme**

92. Social Protection has been specifically recognized as the second theme in the MGDS. Social protection constitutes of policies and practices that protect and promote the livelihoods and welfare of the poorest and most vulnerable people.

93. The Social Cash Transfer system started in April 2006 when the methodology for a pilot social cash transfer scheme was designed and tested in Mchinji district. The pilot scheme was implemented from September, 2006. The social cash transfer scheme was intended to reduce poverty, hunger and starvation in all households living in the pilot area which are ultra poor and at the same time labour constrained; providing a role in the protection strategy against HIV and AIDS, malaria and other debilitating diseases; increase school enrolment and attendance of children living in target group households and invest in their health and nutrition status; generate information on the feasibility, costs and benefits and on the positive and negative impact of a Social Cash Transfer Scheme as a component of a Social Protection Programme for Malawi.

94. In 2007, Government embarked on developing a Social Protection Policy and Programme. Government recognized that in order to develop a comprehensive programme, important lessons on existing social protection programmes needed to be drawn. The social cash transfer scheme is being piloted in Mchinji, Salima, Likoma, Machinga and Mangochi districts through the District Assemblies.

95. Prior to the introduction of the pilot scheme, Concern Worldwide was implementing a cash transfer scheme for humanitarian purposes to deliver cash as an alternative to food aid. This initiative was undertaken in Dowa district.

96. Beneficiaries are identified based on two criteria: they are ultra poor and they are labour constrained. The categories that fall under 'ultra poor labour constrained households', are the elderly, the elderly with OVC, female headed households with more than 3 orphans, chronically ill persons, persons with disabilities as well as child-headed households.

97. The ultra-poor are those who live below the poverty line and characterized as those who have only one meal per day, are unable to purchase essential non-food items like soap, clothing, school utensils, and have no valuable assets. Labour constrained households are those which lack at least one able bodied household member in the age group 19 to 64, who is fit for work, or when one household member in the age group 19 to 64 years, who is fit for work, has to care for more than 3 dependents.

98. The monthly cash transfers vary according to household size and take into account if the household has children enrolled in primary or in secondary school:

- 1 person household MK 600<sup>17</sup>;
- 2 person household MK 1,000;
- 3 person household MK 1,400; and
- 4 and more persons household MK 1,800.

99. For children enrolled in primary school a bonus of MK 200 is added, for children in secondary school a bonus of MK 400 is added. This bonus is meant to encourage school enrolment and retention as well as investment in the children's health and nutrition status and as protection of children from exploitation and abuse such as child labour or early marriages.

100. To date, 2,442 households benefit from the pilot scheme reaching 11,170 beneficiaries. Of these, 7,480 are children, 6,013 of them are orphans. 1,604 are headed by the elderly while 34 are child-headed and 1,585 are female-headed households.

101. The volume of the transfer depends on the household size and the number of school going children. The impact of the transfers on the well-being of the household members, especially on the children, has been significant. Children are now being bathed, fed, are going to school and have access to more nutritious food and health services. A key component of the National Social Protection Programme will be a scheme to support 10 percent of the poorest households in Malawi. Projections indicate that in ten years time, through this scheme, as many as 250,000 households may benefit.

102. Government anticipates that social cash transfers shall assist in achieving the Millennium Development Goals; tackling income poverty; improving nutrition; promoting empowerment of women<sup>18</sup> and more balanced gender relations.

### **Women and Child Protection**

103. In 2005, the Ministry of Women and Child Development developed the Stop Harming and Exploiting Children project, which is being implemented with significant success. It aims at creating a protective environment for children, with emphasis on the most vulnerable, through protection, prevention and rehabilitation. More awareness has led to more reporting of cases of child abuse. The Ministry is currently in the process of developing a National Policy on Child Protection.

### **Mechanisms for Policy Coordination**

104. The coordination of policies and activities relating to women's rights is handled by the Ministry of Women and Child Development. In the past, capacity limitations within the Ministry affected effective coordination. During the reporting period, however, notable progress has been made towards an effective coordination at various levels. The Department of Women Affairs in the Ministry

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<sup>17</sup> In July, 2008, 1 US \$ = 141 Kwacha.

<sup>18</sup> In many countries, social grants are primarily distributed to women.

of Women and Child Development coordinates women protection and rights programmes. In order to ease the capacity limitations of the Ministry, coordination work is managed by a number of networks such as the NGO/Gender Co-ordination Network. The network is composed of Non-Government Organizations that work on gender and women matters.

105. The roles of the different players in the network are coordinated by the Ministry of Women and Child Development and are by and large well-defined, with each member playing a role best suited to its portfolio.

106. Data collection on women's rights issues has also been a challenge. The Malawi Human Rights Commission is currently attempting to fill the data gap by coordinating various stakeholders to collect data on various vulnerable groups. Again, these efforts will be run in close connection with the Ministry of Women and Child Development so as to avoid any duplication of efforts.

107. Although the Ministry has tried to overcome its own financial limitations in coordinating activities by making use of the networks, the effective capacity of the Ministry is still constrained. The Malawi Government's Treasury's recurrent budget especially for Other Recurrent Transactions (ORT) to the Ministry of Women and Child Development has been steadily declining for the past five financial years. The overall recurrent budget declined from MK 412 million in 2002/03 to MK 173 million in 2005/06. ORT funding declined from K 312 million in 2002/03 to MK 73 million in 2005/06. For the 2006/07 financial year, the Ministry's recurrent funding ceiling was pegged at MK 207 million and ORT at MK 81 million.

108. Budgetary allocation for women's programmes at Local Government level is one challenge affecting the implementation of CEDAW. It is not known how much of the budgetary allocation at Local Government level is actually allocated to women. It is highly unlikely that, where it is known, the allocation issued for women is utilized correctly due to the limited knowledge of women's rights issues at local Government level.

109. Although the Ministry of Women and Child Development has made commendable efforts in disseminating the CEDAW and at sensitizing and training various stakeholders on it, some district Government officials still display low levels of knowledge on the Convention.

110. There are, however, other challenges facing the coordination of women's rights activities. For instance, the competition especially among committees set up under various sectors at the local level, result in duplication due to their reluctance to working together. Additionally, women's rights are a relatively novel phenomenon in Malawi and most sectors and communities fail to appreciate the significance and urgency of issues pertaining to them.

## **Part II: GENERAL MEASURES OF IMPLEMENTATION**

111. This part outlines the measures taken by the State party after receiving Concluding observations made by the Committee in relation to the Combined Second, Third, Fourth and Fifth Report and it further outlines the measures taken by Malawi to implement the Convention article by article.

**Article 1 – Definition of discrimination**

112. In the Combined Report, Malawi reviewed the general legal framework and constitutional guarantees of equality between men and women, affirming that the Constitution of the Republic does not legally define discrimination. Discrimination is prohibited against all persons on various grounds including sex, gender and marital status.

113. The legislature has not yet defined discrimination against women. Malawi is party to CEDAW, the Universal Declaration on Human Rights, the Charter of the United Nations, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights which have defined discrimination. In the Development of a Gender Equality statute programme under the Law Commission, an attempt has been made to incorporate the definition of discrimination of women in line with the international instruments and the CEDAW itself.

114. The development of a Gender Equality statute programme is also looking into the definition of ‘discrimination of women’ in light of those other sectors where women face rampant discrimination such as cultural life and the public sphere. The process is proposing legislative intervention such as prohibition of practices that propagate discrimination of women; promotion of participation of women in public life on an equal basis with men; health with specific reference to sexual and reproductive rights of women; education; dignity including sexual harassment; and poverty reduction and economic empowerment.

115. Customary laws and practices continue to contribute to the disparities that define roles and power relations between men and women. In isolating the practices that were felt to be discriminatory on account of sex or gender, the Law Commission observed that there is need for clarity and focus on norms intended to eliminate discrimination against women. These practices have been prohibited under the proposed law on gender equality.

116. In conclusion, although the Constitution does not allow discrimination, a legislative definition under the Gender Equality statute, due for completion in 2008, shall entrench the values under CEDAW and promote accessibility of the CEDAW in local courts.

**Article 2 – Obligations of State parties**

117. The Constitution has embodied the principle of equality both as a human right and a principle of national policy. In developing the Gender equality statute, the Law Commission is introducing legislative and other interventions aimed at prohibiting all forms of discrimination against women and girls. It is expected that when the Gender Equality statute comes into force, it shall entrench the protection of women through legal means in order to ensure effective protection and access to competent national tribunals and other public institutions such as the office of the Ombudsman and the Human Rights Commission.

118. The State is also obliged to adopt and implement policies and legislation that can assist in the attainment of gender equality. The principle of national policy on gender equality coupled with the clause prohibiting discrimination on account of gender and sex underscore the obligations of the State with respect to entrenching gender equality. Under the Constitution, the

State is further obliged to enact laws that address inequalities in society and prohibit discriminatory practices and imposition of criminal sanctions against perpetrators of inequality.

119. The Gender equality statute aims at making the constitutional provisions applicable by expanding the instances where one may invoke the statutory provisions in a court of law. The proposed law aims at providing for cases where inequalities may arise and the penalties for such violation. The proposed law also provides for other remedies beyond criminal sanctions that may be enforced against perpetrators.

120. Prior to Gender-related Law Reform programme, the Law Commission did not particularly emphasize gender considerations in law reform but has now adopted a policy that starting with composition of special Law Commissions that review various laws to the way the subject matter under review is dealt with, there should be mainstreaming of gender issues and gender considerations when developing and reviewing laws.<sup>19</sup>

121. Although the offence of rape has not been made gender-neutral, the special Law Commission on the review of the Penal Code (2000) has defined sexual activity widely to include practices between or perpetrated by females. Some proposed amendments to the Penal Code include criminalization of indecent practices between females; prohibition of sexual activities for commercial purposes; and introduction of offences against morality relating to children. The offences introduced relating to children include indecent practices with children or in the presence of a child; showing, selling or exposing offensive material to a child; and procuring a child to engage or simulate sexual activity in public entertainment.

122. Although the reviewed Penal Code has not yet been adopted, the proposals that were made in 2000 have guided later reform programmes including the development of the Gender Equality statute and HIV and AIDS legislation processes.

123. The proposed legislation on HIV and AIDS programme also prohibits discrimination on account of actual or perceived infection with HIV. Although this provision has been made in the HIV and AIDS legislation, the Commission observed that the common victims of such forms of discrimination are women as they bear the brunt of the epidemic both as infected and affected individuals.

124. In developing data, the National Statistical Office ensures that data is developed in a gender segregated fashion which can be used to monitor the situation of men and women in Malawi.

### ***Article 3 – Appropriate measures to ensure full development and advancement of women***

125. In 2005, when the SADC Declaration on Gender and Development which required State parties to ensure by 2005 that 30 percent of positions in public life are reserved for women expired, Government had not achieved 30 percent of representation in any sector. This notwithstanding, Malawian civil society organizations involved in the protection and promotion of women's rights have been involved in the development of the SADC Protocol on Gender and Development which has proposed participation of women in public life should be on an equal basis with men; meaning that the threshold of participation shall be at 50 percent.

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<sup>19</sup> Malawi Law Commission (2000), Report on the Review of the Penal Code, Government Press, Zomba.

126. The National Gender Policy has been reviewed by the Ministry of Women and Child Development. The new Policy, which is waiting Cabinet approval, builds on the successes and attempts to rectify the weaknesses of its predecessor.

127. Some of the achievements of under the previous Policy include development and implementation of gender mainstreaming guidelines, national strategy to combat gender based violence and national gender programme; capacity building in gender mainstreaming for public, private and civil society organizations; increased number of women in parliament and decision making positions; enactment of the Prevention of Domestic Violence Act and development and review of various pieces of legislation with a gender perspective.

128. The present Draft Gender Policy has been based on the current overarching policy guideline, the Malawi Growth and Development Strategy (MGDS). The main purpose of the draft Policy is to mainstream gender in the national development process to enhance participation of women and men, girls and boys for sustainable and equitable development for poverty eradication.

129. The MGDS recognizes gender equality to be very important for the attainment of equitable and sustainable social and economic development. It has adopted gender as one of its sub-themes. The MGDS indicates that gender issues are an integral part of the overall national development agenda. The Gender Development Index of 0.374 is proof of the existence of large gender disparities. This implies that there is low women participation in economic, social, political and other sectors of society regardless of the higher population of women. The MGDS therefore, aims at mainstreaming gender in the national development plans to enhance equal participation of both sexes in order to achieve sustainable development.

130. Under the draft Policy on Gender, the Ministry of Economic Planning and Development has been given specific duties which include ensuring that all policies, macro and micro are gender responsive; building capacity of planners and policy analysts to enhance their gender analysis skills as a strategy for establishing effective structural linkages between central and sectoral planning and local authorities; ensuring that gender budgeting is mainstreamed in the planning processes; ensuring that all data collected, analyzed and disseminated by the National Statistical Office is disaggregated by gender.

131. Since 2001, Government has been implementing building capacity of public sector institutions by requiring the appointment of a gender Focal Point within the institutions. These Gender focal points have been trained in gender mainstreaming and analysis since then.

132. From 2002, through 2006, Government implemented a National Strategy to Combat Gender Based Violence. This resulted in bringing awareness across the population and stakeholders on causes and the impact of violence against women and gender based violence; promoting access to justice for victims; ensuring adequacy of legal provisions to curb gender based violence; and strengthening of capacities of implementing institutions. The Strategy was reviewed between 2007 and 2008.

133. In July, 2008, government adopted the National Response to Gender Based Violence. The operative period of the National response is from 2008 to 2011. The National Response document acknowledges how rampant the problem of gender based violence is in Malawi and



aims at enhancing Malawi's commitment to CEDAW and other human rights instruments and supporting Government in preventing and addressing incidents of gender based violence in Malawi.

134. It is also expected that the National Response shall assist in ensuring the enactment of Gender-related legislation and sensitization of all stakeholders including people at grassroots on matters of gender based violence; enhancing capacities of law enforcement agencies and other institutions to apply human rights principles when dealing with issues of gender based violence; finalization and operationalization of the Gender Based Violence policy; strengthening of coordination and partnerships of stakeholders in gender based violence; ensuring that victims of gender based violence get the necessary care and support; and that sex disaggregated data on gender based violence is available.

#### ***Article 4 – Special measures***

135. The on-going programme on the development of the Gender Equality statute intends to introduce a quota system in order to promote visibility of women in public life, the political sphere and in education. The quota has been pegged at 40 percent and it is intended to apply across the public sector institutions. It also ensures that enrolment of females at primary, secondary and tertiary levels of education takes into account and is pegged at the minimum of 40 percent of students eligible.

136. The enjoyment of women's rights guaranteed by the Constitution has been limited by the absence of legislation that would make those provisions practical and operational. The enactment of the proposed Gender Equality statute shall ensure that the constitutional rights are enjoyed and enforced easily.

137. The Gender Commission has also made recommendations to the effect that although the private sector is not bound to comply with the proposed quota, it is encouraged to do so. The Commission has also proposed that Government should introduce programmes and initiatives towards encouraging private sector institutions to comply with the quota system.

138. Government continues to engage the media in conducting various campaigns through which issues of women's rights and provisions of CEDAW are discussed. In 2006, Government made a deliberate effort towards using the media as a tool in disseminating CEDAW and its provisions. This initiative is being spearheaded by the Ministry of Women of Child Development.

139. At policy level, the draft National Gender Policy has also proposed that the National Gender Machinery should ensure gender mainstreaming in all activities of every organization in the country including, in particular, promoting the use of sex-disaggregated data, promoting the use of gender analysis in planning and reporting, and promote attention to women's issues, etc; and that each organization will appoint a gender focal point who shall be an officer at a senior decision-making level who shall be the point of contact on gender mainstreaming issues.

**Article 5 – Modification of social and cultural patterns**

140. Regulation of harmful practices has been addressed under two programmes that have been undertaken by the Law Commission: the Gender-related Law Reform and the HIV and AIDS Legislation programmes.<sup>20</sup> Prior to the Law Commission initiatives, the Malawi Human Rights Commission (MHRC) also undertook a study to find social and cultural practices that violate human rights or frustrate the enjoyment of human rights.<sup>21</sup> Relying on the findings of the MHRC and other sources<sup>22</sup>, the Law Commission isolated a number of practices that were known to discriminate against women purely on account of their sex, gender and marital status. The Law Commission has proposed the prohibition of such practices and has imposed criminal sanctions against any person perpetrating such practices.

141. The Gender-related Law Reform Commission decided to prioritize three main areas for immediate legislative interventions: inheritance laws; laws on marriage and divorce; and the gender equality statute. In the review of the Wills and Inheritance Act, the principle piece of legislation on matters of inheritance which has also codified some customary law principles, the Commission decided to modify these provisions with respect to inheritance in order to reduce hardship for the spouse and immediate family.

142. The Law Commission has also proposed the outlawing of polygamy as an institution of marriage, alongside other practices in order to ensure that discriminatory practices that were propagated by customary laws are eliminated.

143. The Law Commission further noted that while the same practices discriminate against women on account of their sex, gender and marital status, the practices also propagate the spread of HIV infection. The Law Commission noted that almost under all circumstances, it is women who are adversely affected by the practices and has further proposed the prohibition of, albeit, the same harmful practices under the proposed HIV and AIDS legislation.

144. The Ministry of Women and Child Development has introduced a number of programmes in order to eliminate and reduce the impact of adverse cultural effects on females. The Women, girls and HIV Programme examines a number of cultural and traditional practices that propagate the spread of HIV infection against women. Other programmes include training programmes for traditional leadership; and campaign programmes in the media against harmful cultural practices.

**Article 6 – Suppression of the exploitation of women**

145. Currently, there is no law in place to regulate trafficking and exploitation of women. Malawi was ranked in the tier 1 by the Department of Justice of the United States Government in 2007 on account of the efforts it has undertaken in order to curb trafficking in women and children. Tier 1 is the highest level of ranking.

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<sup>20</sup> The Gender-related Law Reform Programme has dealt with the issue of cultural practices in all phases, the Review of Laws on Marriage and Divorce and Development of the Gender Equality statute programmes. The Gender Equality statute programme shall be completed in the third quarter of 2008. The HIV and AIDS Legislation programme was completed in May, 2008.

<sup>21</sup> Malawi Human Rights Commission (2006), Cultural Practices and Human Rights, MHRC.

<sup>22</sup> The Evangelical Association of Malawi also conducted a similar study and identified a number of practices that are perceived to be harmful to women and children.

146. However, in the recent Report released by the United States Department of Justice, Malawi has been downgraded to Tier 2 status which recognizes that there are still some areas that Malawi has to address in order to get elevated again.<sup>23</sup> Some of the reasons advanced for the downgrading from tier 1 include failure to sufficiently prosecute and punish human trafficking offenders.

147. There is increased information on incidents of trafficking in women within and outside Malawi.<sup>24</sup> In human trafficking terms, Malawi is a source, transit and destination country.<sup>25</sup> Outside destinations range from Western Europe, America and South Africa where women are often engaged in exploitative sex. In some instances, girls who legitimately leave Malawi in search for education and employment end up being exploited sexually and economically.<sup>26</sup>

148. Exploitation within households especially of girls in domestic employment continues at an alarming rate. The cases are seldom reported and are dealt with, in most cases, without involving law enforcement agencies.<sup>27</sup> Government has been aware of this growing problem and has since embarked on a programme to develop legislation against trafficking in persons. The special Law Commission developing this piece of legislation intends to entrench four core areas with respect to trafficking in persons which are: protection of victims; participation of the public and stakeholders; prosecution of offenders; and prevention of trafficking.

149. There is no available data on the number of women and children involved in sexual exploitation, including prostitution, pornography and trafficking, although these are recognized social problems.<sup>28</sup>

150. In terms of trafficking, reports from the International Organization for Migration (IOM) indicate that women and girls are recruited along major trucking routes by long-distance truck drivers, who promise them jobs, marriage, or an education in South Africa.<sup>29</sup> They cross the border at Beitbridge or Komatipoort with no documents. Once in Johannesburg, the victims are held as sex slaves. Malawian businesswomen also traffic victims to brothels in Johannesburg. Of the 80 people deported to Malawi every month from South Africa, IOM reports that at least two are trafficking victims.

151. According to a report by the Malawi Human Rights Commission,<sup>30</sup> young girls from poor families are being sold to wealthy people as sex slaves in remote areas in the northern border districts of Karonga and Chitipa. Some parents are giving away their daughters to pay off debts. In the northern region of Malawi, a traditional custom known as *kupimbira* is practiced by the Nyakyusa and Ngonde, who live along the shores of Lake Malawi, along the Tanzanian border, and in the Misuku Hills. Under this tradition, girls are held in perpetual bondage and are often subject to abuse.

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<sup>23</sup> This Report was released in June, 2008. It is the U.S. State Dept Trafficking in Persons Report, June, 2008.

<sup>24</sup> Malawi Law Commission (2005), Human Trafficking in Malawi – Research Paper, Government Print, Zomba.

<sup>25</sup> Ibid.

<sup>26</sup> Ibid.

<sup>27</sup> Ibid.

<sup>28</sup> Ibid.

<sup>29</sup> IOM, Seduction, Sale and Slavery: Trafficking in Women and Children for Sale and Exploitation in Southern Africa, Pretoria, May 2003.

<sup>30</sup> Malawi Human Rights Commission (2006), Cultural Practices and Human Rights, MHRC.

152. European tourists have visited Malawi to engage in the sexual exploitation of children. They have recruited girls and boys in the holiday resorts along Lake Malawi. In some instances, sex tourists are resident in Malawi engaged in various legitimate activities. For instance, in 2002, a British national was arrested on suspicion of sodomizing street children. He was convicted and his conviction was upheld by the Malawi Supreme Court of Appeal but he was pardoned by the former Head of State, in May 2003.<sup>31</sup> He had been convicted on three counts and sentenced to 12 years of imprisonment with hard labour. He had served only 1 year and 6 months of his sentence and has since been deported.

153. In addition, people have been arrested in Malawi for trafficking in human body parts or organs, a practice frequently associated with either witchcraft or satanism. In May 2003, seven people accused of trafficking in human body parts were sentenced to 14 years in jail. In that same month, a woman was on trial for trafficking girls to Europe for prostitution under the pretense of providing them with education and jobs. One of the victims had reported her story to the police after escaping from a brothel in Germany.

154. Earlier, in 1999, three girls from Lilongwe were arrested in a police raid at a sex club in Amsterdam and a local businesswoman stood trial on the charges of procuring prostitution outside Malawi but was acquitted on technical grounds.<sup>32</sup> These girls aged between 15 and 19 were subjected to various indignities during their stay in the Netherlands, first by their trafficker and later by Nigerian businessmen to whom they were sold off to for US\$ 10,000.

155. Legislative responses include the Penal Code review<sup>33</sup> and the development of Anti-trafficking in persons legislation by the Law Commission. These efforts are to ensure that traffickers can no longer avail themselves of loopholes in the law as is currently the case.

156. Prostitution is largely not regulated in Malawi. Women working in the commercial sex industry, have at times been arrested by the Police, and this, almost always, prompts an outcry from women's organizations that the arrests were discriminatory as the men procuring the prostitutes are not arrested. The lack of regulation often is to the detriment of women sex workers who are often physically abused by their clients. An attempt to shut down brothels and arrest pimps in urban areas in an attempt to curb the spread of HIV has been made.

157. The Police Service and the Immigration Department are implementing programmes and put in place mechanisms in place for the protection of women and children. These include Victim Support Units and Child Protection Units which provide support and shelter to victims. Police and immigration officers manning border points and other law enforcement agents were in 2005 exposed to sensitization exercises on human and child trafficking. This initiative was done by the International Organization on Migration in collaboration with the Law Commission. As such, border law enforcement officers are now alert to intercept human traffickers. The sensitization process also included community policing personnel.

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<sup>31</sup> *Republic v. Richard Hayles*, Criminal Case No. 655 of 2001; *Richard Hayles v. Republic*, MSCA Criminal Appeal No. 8 of 2002. In this matter, the accused was a teacher at a secondary school and was also involved with a charitable organization operating in Malawi. The complainants were former street children whom he was helping with educational and other needs.

<sup>32</sup> *Republic v. Ruth Lourenco*, Criminal Case No. 150 of 1999. Lilongwe Senior Resident Magistrate Court (Unreported). In this case, a Malawian businesswoman was accused of trafficking three Malawian girls who were arrested and deported after a police raid at a sex club in the Netherlands. She was charged with procuring for prostitution contrary to section 140(d) of the Penal Code.

<sup>33</sup> Although the reviewed legislation has not been passed by Parliament, it continues to be presented every year for consideration and enactment by Parliament.

158. The Immigration Office has also introduced some measures to combat trafficking in women and children. For example, the office have set up a requirement that everyone traveling out of the country with children have return tickets to ensure their return to the country.

159. The Ministry of Women and Child Development through its District Community Development Officers (DCDOs) is raising awareness on sexual exploitation. However, DCDOs are challenged in their ability to assist victims who face no alternative source of income and support after withdrawal. Lack of transport and resources to send the children back to their homes and also basic needs to support the withdrawn children so that they do not go back to their employment remain a problem.

160. District Social Welfare Officers (DSWOs) work with Community Child Protection Officers at community level and have been encouraging the establishment of child rights clubs to address child sexual abuse among other protection issues. Life skills trainings are being used to target adolescent girls to reduce levels of exploitation. There is a growing trend where girls are recruited to work in restaurants only to realize later that they are being used to sleep with men who pay them. DSWOs have been particularly active in intercepting perpetrators and assisting the rehabilitation of victims.

161. In 2007, Government increased the number of CCPWs from 243 to 602. This initiative is on-going and is intended to expand the outreach of the CCPWs. It is expected that up to 800 CCPWs shall be trained by the end of 2008 and funds have already been allocated for this task. The training in question is conducted for a period of five weeks.

162. The recovery and rehabilitation of child victims has been through counselling by the Social Welfare Officers and Child Protection Officers, hospital personnel and the Victim Support Units.

163. The Ministry of Women and Child Development has also set up a National Network against Child Trafficking composed of NGOs that reports to a Technical Working Group on Child Protection. The Network has been set up in order to provide assistance on the elimination of child trafficking and to provide support in reintegration and rehabilitation.

164. The End Child Prostitution, Child Pornography, and Trafficking of Children for Sexual Purposes International launched a project for child victims of commercial sexual exploitation in Malawi, Mozambique, and South Africa. The project aims to increase child participation in the fight against commercial sexual exploitation, to strengthen the children's life skills, to improve the quality of recovery and reintegration programmes for victims, and to reduce victims' sense of isolation. Eye of the Child, a local NGO, will be implementing the project in Malawi.

165. Government also launched the Stop Child Abuse Campaign in 2007 which although targeted at children generally also targets the girl child. The specific thrust of this campaign is towards combating trafficking; child labour; child marriages; and abuse.

166. Government is also drafting the Child Protection Policy which is expected to be completed in 2008. The International Organization for Migration (IOM) in Pretoria has recently launched a US\$ 1.9 million 2-year programme to prevent trafficking in persons and to protect victims and provide them with rehabilitative assistance or with return and reintegration options. The programme will focus on researching and disseminating countertrafficking data throughout the region, as well as building the capacity of law enforcement agencies and NGO service providers to enable them to identify and assist potential victims. Working with Governmental and NGO partners, IOM will also identify victims of trafficking, provide them with some

rehabilitation options, and assist them with voluntary repatriation and reintegration. IOM has also pledged to support the trafficking legislation review programme to be undertaken by the Law Commission.

167. Some NGOs have also taken an initiative to combat human trafficking generally and even provide assistance in post victimization reintegration and rehabilitation by imparting vocational skills to those who were engaged in commercial sexual exploitation.

168. The Malawi Network Against Child Trafficking<sup>34</sup> (MNACT) has in 2008 commissioned a study to assess the extent of human trafficking in Malawi. The thrust of this exercise is towards children but it is hoped that the information obtained from this study shall go a long way to give more statistics on the human trafficking situation in Malawi.

169. The proposed legislation on trafficking in persons shall embrace the definition of trafficking in persons; punish severely offenders of trafficking; promote protection of victims and their rights; and address matters of internal and external trafficking. The special Law Commission has also considered but not concluded whether there should be an independent agency to deal with matters of trafficking or there should be an ad-hoc task force that shall embrace all stakeholders. It is expected that the report of the special Law Commission shall be published by October, 2008.

#### ***Article 7 – Equality in political and public life at national level***

170. The political fora remain one of the areas where inequalities between men and women continue to manifest themselves. In key decision making positions, women are by far outnumbered by their male counterparts.

171. The Constitution has made provision for *de jure* equality and has further provided that legislation may be passed to address inequalities in society. In its deliberations, the Gender Commission was of the view that this provision of the Constitution has laid the basis on which special measures may be adopted in order to accelerate *de facto* equality between the sexes.

172. Women have since 1994 been eligible to vote and be voted into public offices. The Electoral commission indicates that during general elections, more women than men actually vote.

173. There are several factors that hamper numerical superiority of women in Parliament and effective representation. Although, women are, on the basis of equality with men, entitled to campaign for a political party or cause, there are many underlying factors that prevent them. The main reasons that stand out are the requirement of English as a medium of communication in Parliament and lack of financial resources.

174. With respect to financial resources, political life requires a lot of financial resources to support political campaigns. Due to limited education, women often have limited access to financial resources and as such, are unable to compete on the same footing as men.

175. The other problem that keeps the statistics for women lower in public and political life is the votability of women. In most cases, voters tend to have preference for male representatives due to deep rooted stereotypes that the political sphere is an exclusive domain

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<sup>34</sup> The Malawi Network Against Child Trafficking is a network of NGOs that work in the child rights area and aim to combat child trafficking which is on the increase in Malawi especially with respect to prevention of child trafficking and protection of victims and potential victims.

for men. This is the case even where a number of women have been voted into office and have successfully represented their constituents.

176. At Cabinet level, there are 38 Cabinet Ministers (19 ministers and 19 deputies), only 7 are female of which 4 are full ministers and 3 are Deputy Ministers. There are 5 female Principals Secretaries against 33 male Principal Secretaries.<sup>35</sup>

177. Less than 10 percent management positions in the rural local assemblies compared to an average of 43 percent in urban local assemblies of Mzuzu, Blantyre, Lilongwe and Zomba are occupied by women.<sup>36</sup>

178. NGOs have more women in decision-making positions (38.7 percent) than local and central governments, which have 22.5 percent and 22.4 percent respectively. However, most of the women in decision-making positions working in the NGOs are based in urban centres.<sup>37</sup>

**Table 2: Summary of women in decision-making positions in relation to men in institutional categories**

<i>Institutional Category</i>	<i>Women</i>	<i>Men</i>	<i>Percentage of Women</i>
Executive Arm of Government	6	37	16.2
Judiciary	4	27	12.9
Legislature	27	193	14.0
Central Government (visited) <sup>38</sup>	55	171	24.3
Local Government (Urban visited)	65	76	46.0
Local Government (Rural visited)	9	51	15.0
Private Sector (visited)	11	110	9.1
Civil society (visited)	27	48	36.0
Political (visited)	15	39	27.8
Parliament (visited)	3	7	30.0
Religious (visited)	13	274	4.5
Parastatal (visited)	5	23	17.8

*Source: Women and Men in Decision Making Positions (2008)*

<sup>35</sup> Robert Kafakoma and Mckey Mphepo, (2008) *Women And Men In Decision Making Positions*, Research Report (Unpublished); [http://www.malawi.gov.mw/Home\\_percent20Cabinet.htm](http://www.malawi.gov.mw/Home_percent20Cabinet.htm) (visited on 1 July, 2008).

<sup>36</sup> *ibid.*

<sup>37</sup> *ibid.*

<sup>38</sup> This makes reference to the institutions actually visited and not all institutions within that sector.

179. The Ministry has been tracking performance and domestication of the CEDAW and other international instruments such as the SADC Declaration on Gender and Development of 1997 which provided for a 30 percent threshold for women in the Parliament. The Solemn Declaration on Gender Equality, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women and the Draft SADC Protocol on Gender and Development to which Malawi is party call for 50 percent representation of women in decision making positions.

180. Government has also noted that there has been no increase in the numbers of women in Parliament on account of the fact that there have been no elections within the reporting period. There have also been no local government elections during the reporting period. There were however, by-elections at Parliamentary level in which only men were elected to Parliament.

181. In response to this, the Ministry has developed a programme intended to achieve fifty percent representation of women in Parliament during the 2009 Parliamentary elections. The National Programme was launched on 18 July, 2008 styled 'Increasing Women Representation in Parliament and Local Government' with support from the civil society and development partners. The Ministry has also established a specialized unit to spearhead the programme.

182. The role of civil society organizations is to implement the programme activities in collaboration with institutions that have been accredited to undertake such activities by the Malawi Electoral Commission.

183. The proposed Gender Equality statute has made provision for special measures intended to reduce the dominance of men in public and political life.

#### ***Article 8 – Equality in political and public life at international level***

184. Malawi has no specific mechanisms for ensuring the participation of Malawian women in international organizations. The President has powers to appoint ambassadors, high commissioners, plenipotentiaries, diplomatic representatives, consuls and consular officers. Under the Ministry of Foreign Affairs, which is presently headed by a female minister, there is no discrimination with respect to participation in the diplomatic service. While the powers vest in the presidency, there are no guidelines regarding who may be appointed into Foreign Service.

185. Equality of opportunity is entrenched by constitutional provisions on non-discrimination on the basis of sex, gender and marital status and shall be further re-enforced by the proposed Gender Equality statute that intends to establish a minimum threshold of 40 percent for women in public service.

#### ***Article 9 – Equality under the law with respect to nationality***

186. In accordance with section 47 of the Constitution, the law does not discriminate on the grounds of sex regarding the right to retain or acquire nationality and emphasizes that citizenship shall not be arbitrarily denied or deprived. Section 47 has also defined acquisition of citizenship which includes acquisition by birth, descent, marriage, registration, naturalization or other means that have been prescribed by law.



187. The Citizenship Act<sup>39</sup> remains in force without amendments.<sup>40</sup>

188. In addition, changes need to be made as to the above mentioned provisions in the Citizenship Act to ensure the equal rights of women with regard to acquiring and retaining citizenship.

189. However, the national legal framework on immigration is currently insufficient. During the period of reporting, the inequalities observed in the last report have not been addressed by review, amendment or repeal of the Immigration and Citizenship Acts.

190. Presently, the Department of Immigration is developing a Policy document on Immigration for Malawi and it is expected that this shall make further recommendations regarding the disparities between men and women with respect to immigration issues.

191. The legislation does not provide for a definition of statelessness and Malawi is not a party to the *1954 Convention relating to the Status of Stateless Persons* or *1961 Convention on the Reduction of Statelessness*. The principles of both these Conventions need to be incorporated into national law. Malawi has been encouraged by the international community especially the UNHCR to become party to the *1954 Convention relating to the Status of Stateless Persons* and *1961 Convention on the Reduction of Statelessness*. Moreover, it should remove its reservation to Article 34 of the 1951 Convention Relating to the Status of Refugees.

192. At the end of 2007, out of the total number of 9,707 refugees and asylum seekers, 8,689 were residing in Dzaleka Camp and the remaining 1,018 were living in urban areas. Of the 3,032 refugees, 1,694 are Rwandan, 594 Burundian and 719 Congolese. Of the 6,675 asylum seekers, 2,801 are Rwandan, 1,893 Burundian and 1,926 Congolese. Other nationalities represented are Angolan, Eritrean, Ethiopian, Somali, Zimbabwean, Kenyan, Sudanese and Ugandan. Almost 46 percent of the asylum seekers and refugees are women.

193. Malawi has made nine reservations to the 1951 Refugee Convention, namely, Article 7 on exemption from Reciprocity, Article 13 on Movable and Immovable Property, Article 15 on Rights of Association, Article 17 on Wage Earning Employment, Article 19 on Liberal Professionals, Article 22 on Public Education, Article 24 on Labour Legislation and Social Security, Article 26 on Freedom of Movement and Article 34 on Naturalization. The reservations on freedom of movement (and the related encampment policy), wage earning employment and naturalization prevent refugee women from enjoying a full set of human rights and hinders empowerment in terms of refugee women's opportunities to become self-sufficient.

194. The legal framework that Malawi has put in place to enhance the plight of children in the country extends to refugee children. This is in accordance to the CRC. The Government's respect for the fundamental right of a child to education, led to universal primary education

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<sup>39</sup> Cap 15:01.

<sup>40</sup> The Citizenship Act provides that upon marrying a foreign man, the Malawian woman will lose the right to Malawian citizenship unless she renounces the citizenship of her foreign husband on the first anniversary of marriage. It also provides that the children of a Malawian woman by a foreign husband cannot be Malawian citizens by virtue of their mother being Malawian. However, a Malawian male in a similar situation retains his citizenship and is able to pass it on to his children. As such, the law is not in conformity with the CEDAW as the Convention prescribes that women should be granted equal rights with men to acquire and retain citizenship.

being provided to all children, including refugees, despite Malawi's reservation to Article 22 of the Refugee Convention.

195. The Prevention of Domestic Violence Act, passed in April, 2006, has been viewed as a critical tool in ensuring a strengthened legal framework in combating domestic violence. Refugee women have suffered and continue to suffer gender based and domestic violence wherever they are. When the Act finally becomes operational, it is hoped that it shall offer the necessary protection to refugee women. The Penal Code also has provisions that ensure protection of refugee women.

196. Asylum seekers arriving in Malawi mostly enter through the northern border districts, and are registered at Karonga Reception Centre by the Government Field Assistants working at the Centre. Those arriving through other border crossing points are registered with occasional difficulties at Dzaleka Camp. However, there is a precondition in place since April 2006 which requires all asylum seekers to obtain immigration clearance from their port of entry before registration and this precondition is occasionally enforced.

197. Routinely, immigration officers do not issue the clearances and asylum seekers are not aware of such a requirement.

198. The Camp Administration has sometimes refused to register asylum seekers who do not hold immigration clearances. When such asylum seekers approach the nearest immigration office, the Regional Immigration Office in Lilongwe, they have been told to collect their clearances at the northern border of Karonga, 700 kilometers north from Lilongwe. Taking into account that Karonga Reception Centre was officially closed from May 2007 to March 2008, and that not all asylum seekers arrive in Malawi through Karonga, as well as the fact that asylum seekers do not usually have any identity documents and have often very limited resources to travel back to Karonga, the practice of sending asylum seekers to their border entry point at their own expense is not feasible and puts the asylum seekers and especially vulnerable women in a very cumbersome position.

199. Government has made attempts to record and regulate the arrivals into Malawi at the borders. There is still need for Government to ensure that women are not made more vulnerable thereby compromising their right to seek asylum, safety and well-being.

200. The registration of asylum seekers is done on individual basis. The information recorded at the initial registration at Karonga Reception Centre contains basic bio-data, such as name, nationality, sex, and date of birth. Asylum seekers also fill in asylum application forms at the Reception Centre. However, with regard to reasons of flight, in most cases the information recorded at the registration stage is very limited.

201. The Police are responsible for law enforcement and maintenance of order within Malawi and the Camp. There is a police station at Dzaleka Camp, which serves both the camp residents and local Malawians, with 4 policemen assigned to it two of whom are on duty 24 hours a day. There are also 6 security guards who work under the Camp Administration.

202. There are no female police officers at Dzaleka Camp, which the Ministry of Home Affairs explains is due to lack of accommodation for female officers. UNHCR has constructed

a female police officer's residence which it hopes will be utilized from mid-2008. The absence of female police officers works heavily against female refugees who have to face male law enforcement officers whenever there has been a violation of their rights. In case of sexual offences, this places refugee women in a very compromised position as some are unable to communicate the details of the violations they have suffered.

203. All camp residents, as well as refugees and asylum-seekers residing in urban areas, have access to police and they are encouraged to report to the police all security incidents, threats and other matters.

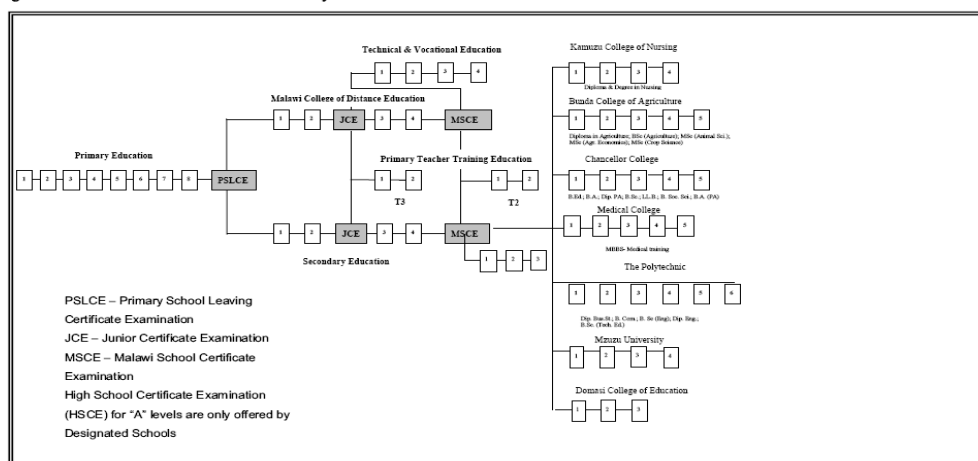
204. Refugees and asylum seekers enjoy the same rights for legal remedies as Malawians and have access to court proceedings. Refugee women are not discriminated against in the criminal proceedings. However, there are several cases where the proceedings have been affected by extensive delays, just as is the case for refugee men and Malawians in general.

205. With respect to exploitation, the UNHCR, Government and other partners are conducting regular participatory assessment interviews with women asylum seekers with a view to identify vulnerable women such as victims of trafficking.

### *Article 10 – Education and training*

206. Education is entrenched in the Constitution as a right for all persons. The Constitution further provides that primary education shall consist of at least 8 years of education. The structure of the education system in Malawi indicates that 8 years of primary education result in an award for a Primary School Leaving Certificate of Education; 2 years of secondary education result in a Junior certificate of Education after which an individual may pursue tertiary education; a further 2 years results in a Malawi School Certificate of Education; after which a student may pursue technical and vocational training or enroll with the University of Malawi or Mzuzu University or the Domasi College of Education. This structure is indicated in Figure 1:

Figure: 1 The Structure of the Education System in Malawi



Source: Ministry of Education

207. Gender inequality in education persists in enrolment, retention, delivery and attainment. There is an inextricable link between education and poverty which poses a great challenge to the development agenda in the country. Not only is education positively associated with agricultural productivity, higher incomes, lower fertility rates and improved nutrition and health, it is also a prerequisite for attaining these outcomes. Education is also a prerequisite for the enjoyment of social, economic and political rights by women thereby enabling them to vote and be voted for and to engage in viable economic activities including access to higher levels of income and loan facilities.

208. The MGDS notes that education is the key for attaining prosperity and a catalyst for socio-economic development, industrial growth and an instrument for empowering the poor, the weak and the voiceless. Education enhances group solidarity, national consciousness and tolerance of diversity. The three priority areas for education as a sub-theme under the MGDS are equipping students to enable them function as competent and productive citizens; to provide an academic basis for gainful employment in the informal, private and public sectors; and to produce at tertiary level, high quality professionals with relevant knowledge and skills in relevant fields.<sup>41</sup>

209. Government has responded to the challenges facing women and girls in their quest to access education by adopting a number of initiatives such as the Girls' Attainment of Basic Literacy Education – Social Mobilization Campaign, Social Mobilization Campaign on Education Quality, the Re-Entry Policy for Girls into Schools and the engendering of the Curriculum.

210. Education indicators for Malawi are among the lowest in Sub-Saharan Africa. Pre-school education has not received much attention compared to the other tiers of education and the main players in the pre-school education facilities are non-public sector institutions.

211. The adult literacy rate in Malawi is 60.9 percent with the urban population at 90.5 percent and the rural population accounting for 58.7 percent. The total school-age population by school level, age and sex are presented in Table 3:

**Table 3: School-age population**

<b>School Level</b>	<b>Age</b>	<b>Both sex</b>	<b>Male</b>	<b>Percentage</b>	<b>Female</b>	<b>Percentage</b>
<b>Primary</b>	6 - 13	2857643	1415656	49.54 percent	1441987	50.46 percent
<b>Secondary</b>	14 - 17	1,193,326	563,465	47.22 percent	629,861	52.78 percent

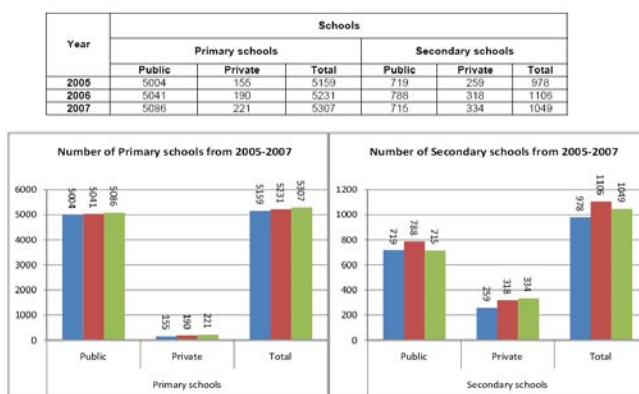
*Source: National Statistical Office 2007 projections estimates (2007)*

212. Access to education, retention of pupils and students, content and delivery of education remain a challenge. The quality of education has been steadily affected by a number of factors especially in public educational institutions. While the number of teachers in private schools is slowly increasing,

<sup>41</sup> See the MGDS, pp. 50-51.

the numbers in public institutions is steadily decreasing. The number of schools run by both public and private sectors is increasing though slowly. The figures for the number of schools are indicated in Figure 2:

Figure 2: Number of all primary and secondary schools from 2005 – 2007  
Source: Ministry of Education (2007)



213. The majority of the population has no formal educational qualifications. In 2000, a survey conducted by the National Statistical Office indicated that 88 percent of the population (84 percent males and 92 percent females), had no formal educational qualifications (i.e. possessed neither a Primary School Leaving Certificate, nor a Junior Certificate of Education, neither a Malawi School Certificate of Education nor 'A' Levels, neither a Diploma nor Degree)<sup>42</sup>. The illiteracy rates for women are particularly high, with the proportion of women who have never attended formal schooling increasing from 19 per cent, in the age group 20 to 24 years, to 70 per cent from those aged 65 years and older.<sup>43</sup> In comparison, the figures for men are 9 per cent and 38 per cent respectively.<sup>44</sup>

214. Although the introduction of free primary education in 1994 increased the gross enrolment rate to 132 per cent and the net enrolment rate to 78 per cent in 1999,<sup>45</sup> the challenges surrounding primary education have resulted in high dropout rates. It is estimated that currently, only 30 per cent of children who start primary school complete primary education.<sup>46</sup> The retention rates of children are especially low in poorer households and for the girl child.<sup>47</sup> Since 2004, the annual enrolment for primary education has averaged about 32,000 pupils for the years 2004, 2005 and 2006.<sup>48</sup> The figures for these years in secondary school enrolment have averaged at 19,000 students.<sup>49</sup> These figures are not indicative of the quality of education that these pupils and children are receiving which most commentators state is dismal.

<sup>42</sup> World Bank and Government of Malawi (2004) *Malawi Strategic Country Gender Assessment*, Lilongwe: UNDP–Malawi, p. 49.

<sup>43</sup> *ibid.*

<sup>44</sup> *ibid.*

<sup>45</sup> The MPRSP, p. 49.

<sup>46</sup> *ibid.*

<sup>47</sup> *ibid.*

<sup>48</sup> Government of Malawi, EMIS, 2006.

<sup>49</sup> *ibid.*

215. Enrolment into primary and secondary schools shows a steady increase for the reporting period. In 2004, the enrolment into primary school was 3,166,786 while the same stood at 3,306,926 in 2007 representing an increase of 4.2 percent. For the same period, the enrolment into secondary schools stood at 180,157 and 210,325 representing an increase of 14.3 percent.

216. The reasons for the low figures as regards the enrolment and retention of girls and children are varied and multifaceted. Some of the more common reasons have been cited as: advanced age of girls at time of enrolment; early and teenage pregnancies; early marriages; demands for labour; low household incomes; sexual harassment and poor ethical values by male teachers; sexual harassment by fellow male students; lack of capacity to implement the engendered curriculum; stereotyping and prejudice in male and female student relationships; and lack of proper sanitation facilities which forces girls to drop out of school after attaining puberty.

217. The challenges for girls in accessing education continue throughout the levels. Girl's account for only 37 per cent of gross enrolment in secondary schools.<sup>50</sup> The figures are equally low in higher education where out of the approximately 4000 places available, less than 30 per cent are occupied by female students.<sup>51</sup> Enrolment is limited by inadequate school places, boarding facilities, learning and financial resources. Statistics for enrolment into technical entrepreneurial and vocational training also indicate a low figure for girls.

218. The Ministry of Education has noted the need for sanitation facilities in school in order to meet needs for girls. Currently, sanitation facilities are being improved through an on-going process of construction of toilets and provision of safe water in schools. In rural areas, the Ministry of Education is providing boreholes while in urban areas, the Ministry is providing piped water.

219. The Ministry has also noted that cases of sexual harassment in educational institutions are on the increase although no official figures have been computed. The Ministry is developing a strategy on sexual harassment in schools. The absence of a strategy and policy with respect to sexual harassment in schools has negatively affected completion of education by girls and boys.

220. The Ministry also noted that sexual harassment goes beyond the school environment and that it is rampant at community and household levels. It should be noted that even external sexual harassment affects pupils in their performance at school hence the need for a comprehensive policy, legislation and severe punitive measures to curb the malpractice. The Gender Equality statute has made provision for the criminalization and civil remedies against sexual harassment.

221. Some educational and training institutions have incorporated gender into their curricula and introduced life skills training programmes which are core subjects in schools in order to address training needs for girls.

222. Gender equality in the recruitment of teachers has also been a challenge since there are no guidelines at Ministry of Education to guide the recruitment process. This also applies to

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<sup>50</sup> *ibid.*

<sup>51</sup> *ibid.*

technical colleges which are under the same Ministry. Although a Handbook on Initial Primary Education Programme developed by the Ministry has proposed recruitment on the basis of equality, numbers of female recruits still fall short due to lack of accommodation. For instance, at the Domasi College of Education, which recruits teachers for secondary schools, there are 270 places for female students and 390 places for male students representing 42 percent and 58 percent respectively. However, those not admitted on a residential basis are admitted on merit where admission is almost on equal basis. The Ministry is developing guidelines to ensure recruitment on equal basis in public education institutions and also promotion of non-traditional courses for female students who often do not apply for science and mathematics courses.

223. Dropout rates for female students are higher than for male counterparts. In some instances, the Ministry recruits more women than men but due to high dropout rates for female students, the numbers of female students are far lower than for males. Reasons for high dropout rates include economic and social reasons and health related issues such as pregnancy.

224. The Ministry of Education has also introduced bursaries and scholarships which are intended to enable girls to attain education. In technical colleges, bursaries and scholarships were intended for female students in male-dominated courses but now the criteria for scholarships is not gender but need based. The Ministry is proposing a quota for female students in accessing bursaries and scholarships which has also been proposed under the Gender Equality statute.

### ***Article 11 – Employment and work***

225. The Constitution has guaranteed the right to fair and safe labour practices. It prohibits discrimination and enshrines the principle of fair wages and equal remuneration for work of equal value without distinction or discrimination of any kind, *in particular, on the basis of gender*, among other grounds. The Employment Act has further entrenched the principle of non-discrimination and various grounds, including sex. The Law Commission, under the Development of HIV and AIDS Legislation programme, proposes that HIV and AIDS should be added as a ground on which discrimination is prohibited in the employment arena.

226. The Constitution entrenches the right to freely engage in economic activity, to work and pursue a livelihood in Malawi. Another fundamental principle in the Employment Act is the right to equal pay for work of equal value. This means that women are entitled to enjoy all the rights and cannot be discriminated against on the basis of gender.

227. However Cases of women losing jobs on account of pregnancy also continue to surface. In other instances, pregnancy is reason for withholding of pay during maternity leave and oftentimes, maternity leave is not computed for purposes of promotion or other career advancing opportunities.

228. Women also continue to suffer violence in the workplace. Sexual harassment by male co-workers is still rampant reflecting socially constructed roles. Harassment in the workplace or elsewhere denigrates the female purely on the basis of her sex and women are, as a result,

insulted and demeaned. However, there is still lack of available evidence to prove the extent of sexual harassment.

229. The single available evidence of allegations of sexual harassment is the case of *Rose K. Kankosi v The Office of the Ombudsman*<sup>52</sup> which was decided outside the reporting period. The case was based on unfair labour practice amounting to breach of the complainant's rights under the Constitution in terms of section 31 of the Constitution, and constructive dismissal in terms of section 60 of the Employment Act. The complainant alleged that she was victimized at her workplace for resisting the sexual advances of the respondent. The Court concluded that on the basis of available evidence before it, the conduct of the respondent towards the complainant amounted to unwarranted sexual advances. The Court further concluded that the sexual advances in question amounted to sexual harassment.<sup>53</sup>

230. There is no law or policy in place proscribing sexual harassment. The proposed Gender Equality statute proposes that sexual harassment should be prohibited by law. The proposed law aims at proscribing sexual harassment in light of the right to dignity of a woman and that as a result, both criminal and civil sanctions should operate against perpetrators of sexual harassment.

231. Child labour remains rampant in various parts of Malawi. Children are engaged both domestic and industrial work. The Constitution and the Employment Act prohibit child and forced labour. The basis for prohibiting child labour is to afford children with protection from work that is hazardous and exploitative.

232. About 38 percent of children in Malawi between the ages of 5 to 17 years are engaged in some sort of labour; and 95 percent of these children are under 14 **years** old.<sup>54</sup> Over 75 percent work within the household while 24 percent work outside the home. Most children work in agricultural sector and cases have been reported where children often quit school to work on tobacco farms.

### ***Article 12 – Health care***

233. There is no explicit legal provision which establishes the right to health and health facilities. The Constitution provides for an obligation on the State to provide *adequate* health care commensurate with the needs of Malawian society and international standards of health care. It further provides for an obligation to achieve adequate nutrition for all in order to promote good health and self-sufficiency. These are stated as principles of national policy and not rights for Malawians. Malawians are entitled to development, the application of which right has singled out women alongside children and the disabled as requiring special consideration with respect to access to, among other things, health services.

234. The Gender Commission on the development of the Gender Equality statute has proposed provisions in the new legislation with respect to health, especially with respect to

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<sup>52</sup> IRC Matter No. 70 of 2003 (Industrial Relations Court, Lilongwe Registry (Unreported)).

<sup>53</sup> The ruling of the Chairman of the Industrial Relations Court, MCC Mkandawire, pp. 6–10.

<sup>54</sup> Maxton Tsoka and Sidon Konyani, *Child Labour Baseline Study*, Centre for Social Research, University of Malawi, Zomba, February, 2003.



sexual and reproductive health. This was in line with the Reproductive Health Policy that was adopted in 2002.

235. Access to health services is limited especially in rural areas. Health services are provided by Government, faith based organizations, the private sector and traditional health service providers. The government accounts for 60 percent and the Christian Health Association of Malawi (CHAM) accounts for 25 percent. The private sector contribution is relatively small and accounts for the remainder.

236. Key statistics on women show that in 2004 female youth literacy<sup>55</sup> stands at 54 percent; the median age of first marriage for girls is at 17 years; the maternal mortality rate is 984 per 100,000 live births; maternal deaths each year were at 6,000; while maternal deaths stood at 16 per day. Contraceptive prevalence rate is at 28 percent while adolescent fertility rate was 30 percent.

237. During the reporting period, there is an indication of an increase in usage of family planning services. Unplanned pregnancies are common.

238. General awareness of contraception methods has generally improved and amongst women in the 15 to 49 years age group. 97 percent women in this age group have knowledge of at least one family planning method. Awareness campaigns have been conducted with radio and personal interaction being most effective due to illiteracy. According to the DHS 2004, 97 percent of women age 15 to 49 and 97 percent of men age 15 to 54 know at least one modern method of family planning. The most widely known method of contraception among all women are injectable contraception (93 percent); condom and the pill use (90 percent); and female sterilization (83 percent). The most widely known form of contraception among women without any form of sexual experience is the male condom (72 percent).

239. The average ideal family size for all women in 2004 was 4.0, a decline from 4.8 in 2000. An estimated 35 percent of women wanted no more children and wanted to limit their family size to the current levels and 6 percent had been sterilized. Unmet need for contraception<sup>56</sup> is at 28 percent for married women: 17 percent for spacing births; 10 percent for limiting births. The total demand for family planning among married women increased from 60 percent in 2000 to 62 percent in 2004. Contraception use among married women in Malawi is 33 percent with 28 percent using a modern method. The condom remains the most preferred method of contraception especially among younger women perhaps due to its dual effect of preventing HIV infection. Older women continue to prefer injectable contraceptives.

240. Over a 5 year period from 1999, 20 percent of pregnancies were unwanted and 21 percent were mistimed (wanted later). The percentage of unwanted births made a dramatic increase from 14 percent in 1992 to 22 percent in 2000 but declined to 20 percent in 2004. Premature termination of pregnancy is still practised notwithstanding that it is criminal in Malawi. The Gender Commission having examined the position in light of sexual and reproductive rights has recommended that criminal laws that penalize abortion should be varied in the least in order to ensure the enjoyment of reproductive rights by females. It has also been

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<sup>55</sup> In the 15 to 24 year age group.

<sup>56</sup> The percentage of currently married women who either do not want any more children or want to wait before having their next birth but are not using any method of family planning.

reported that most abortions are done upon compulsion by male counterparts to terminate the pregnancy.

241. Government facilities have taken the lead in provision of contraceptives. International organizations and non-Governmental organizations also support this initiative.

242. The number of women who received antenatal care from a doctor or a qualified nurse in Malawi has increased from 91 percent in 2000 to 93 percent in 2004. Nurses and trained midwives provide such services to 82 percent of women while traditional birth attendants provide services to 2 percent. 10 percent receive antenatal care from doctors and 5 percent did not get any antenatal care. Consequently, 50 percent births were attended by a nurse or midwife, 6 percent by a doctor or clinical officer and only 1 percent by a patient attendant. These figures indicate an increase of 2 percent in the proportion of births attended by a doctor or clinical officer between 2000 and 2007.

243. Postnatal care which is recommended to start immediately after birth to 42 days afterwards, is not received at all by 70 percent of all women. Among those who received postnatal care (30 Percent) received care within 2 days of delivery; few had check-ups 3 to 6 days after delivery and 8 percent received care between first and sixth week after delivery.

244. Breastfeeding is nearly universal in Malawi. Almost 98 percent of children are breastfed for a median period of 23.4 months. Bottle feeding is relatively uncommon and the use of bottle feeding for children under 6 months has remained at 3 percent. These figures are likely to change due to the introduction of Prevention of Mother to Child Transmission (PMTCT) initiative where women who are infected with HIV are being advised to breast feed their children.

245. The Ministry of Health indicates that in many instances, individuals have to travel long distances to health facilities. In some instances, women have to travel distances in excess of 20 km in order to access health facilities. The Ministry has plans to build more health facilities throughout the country such that the average distance to a health centre should fall below 5 km at any given point throughout the country.

#### *HIV and AIDS*

246. Malawi remains one of the countries in the world heavily hit by the HIV and AIDS epidemic. The total population of people infected with HIV in 2008 is estimated at 898,888 of which 89,055 are children between the ages of 0 to 14 years. The national adult prevalence estimate for 2008 is 12.0 percent. The urban prevalence rate for HIV in the 15 to 49 year age group stands at 15.6 percent against 11.6 percent for the rural population. The urban population of infected individuals is estimated at 179,745 while the rural population is at 630,088. The number of infected women above 15 years is 473,348. The number of deaths annually due to AIDS is estimated at 85,000.

247. The statistics indicate that women still make up the majority of the total number of infected people. Regional epidemiology indicates that in the Southern region of Malawi, HIV prevalence is at 18.6 percent, the Central region at 9.3 percent and the Northern region at 13.5 percent. Heterosexual contact accounts for 88 percent of all infections while mother to child transmission and blood

transfusion account for the remainder. Other statistics for HIV prevalence among special population groups are indicated in Table 3.

**Table 3: HIV Prevalence Profile**

Female sex workers	69.1 percent
Primary school teachers - male	24.2 percent
Primary school teachers - female	21.6 percent
Secondary school teachers – male	17.6 percent
Secondary school teachers - female	16.7 percent
Female border traders	23.1 percent
Male vendors	7 percent
Truck drivers	14.7 percent
Fishermen	16.6 percent
Estate workers – male	19.5 percent
Estate workers – female	17.1 percent
Police – male	24.5 percent
Police – female	32.1 percent

*Source: National AIDS Commission (2008)*

248. General awareness of HIV and AIDS is almost universal in Malawi. Almost everyone has heard about AIDS although more comprehensive knowledge is limited especially with respect to beliefs about AIDS; and knowledge of HIV transmission and prevention. Men have better knowledge on HIV prevention and misconceptions about HIV and AIDS than women since almost 30 percent of female household members in Malawi have never been to school. Condom use and limiting the number of sexual partners are known as preventive methods. Biologically, women are more susceptible to HIV infection than men but a substantial number of men and women realize that a healthy looking person can have HIV.

249. Initiatives taken, during the reporting period, include the move by the Ministry of Health towards the integration of health services which promotes a comprehensive model of antenatal care which promotes an optional test for all pregnant women at antenatal clinics. The Comprehensive HIV and AIDS Programme for Women and Girls aimed at decreasing the feminization of the epidemic in Malawi by promoting knowledge of prevention methods among girls and young women; girl

education; knowledge on violence against women and girls; knowledge on property and inheritance rights of women and girls; reducing the burden of care for patients on women and girls; and care and treatment for women and girls.

250. The Counseling and HIV Testing Scale-Up Plan (2006- 2010) was developed in 2005 as a planning tool to lay out the framework and strategies within which HTC services would be massively scaled up. Within this plan was a two-year cost operational plan for the years between 2006 and 2007. Under this plan, seven strategies were formulated, which, if realized, could lead to nearly three million Malawians accessing HTC services from 2006 to 2010. These include enhancing equitable access to HTC by all Malawians; strengthen Quality of HTC Services; development of human resource capacity for delivery of HTC Services; creation of demand of HTC Services; development and dissemination of HTC resource materials; research; and exchange of experiences.

251. Government approved the second national ARV scale up plan in 2005 to run from 2006 to 2010. This plan had the aspiration to establish universal access to ART, with its primary aim being to start 35,000 new patients on ART in 2006, 40,000 in 2007, and 45,000 each year in 2008, 2009 and 2010, reaching a total of 245,000 patients by the end of 2010.

252. These numbers were achieved by continuing scale up in the 60 sites in Round 1, by bringing 38 new sites in Round 2 into service delivery by April 2006, possibly introduction of more sites in Round 3 delivering therapy by 2007 and by involving the private sector. Plans to reduce the burden of work in established clinics include less use of a lower cadre of health worker to follow-up patients and decentralising to health centres of service delivery.

253. The National Tuberculosis Control Programme developed a five year plan against one of the major opportunistic infections associated with HIV and AIDS. The plan was intended to run up from 2002 to 2006. In this plan, Government implemented a three year plan from 2003 to 2005 for expanded HIV/TB activities.

254. The main elements of this plan were: voluntary counseling and HIV testing services for TB patients, provision of preventive therapy for HIV infected individuals who do not have TB, adjunctive CTX preventive therapy to HIV positive people with TB, and provision of antiretroviral (ARV) therapy to patients with HIV-related TB.

255. Approximately 30,000 out of the 100,000 new HIV infections in Malawi have been attributed to mother to child transmission. An estimated 18.3 percent of the 540,000 women giving birth every year are estimated to be HIV infected, representing 98,000 women in need of access to PMTCT. A five-year plan for the provision of PMTCT for 2006-2010 has been drafted and it aims at dramatically improving upon the 2.7 percent of HIV infected women who had received ARV prophylaxis in 2004. The milestones of this plan are: to increase the number of pregnant women tested for HIV from over 100,000 in 2006 to over 400,000 in 2010; to provide ARV prophylaxis to 10,000 women or child pairs in 2006 and over 65,000 in 2010; and thereby to prevent 40,000 infections in infants over the next 5 years.

256. One of the known causes of increased vulnerability of women and girls is unequal power relations between men and women. Women are often unable to enforce their sexual and reproductive health rights such as insistence on using condoms due to fear of losing a partner or

marriage. Men have more sexual partners than women. Often spouses engaging in sex with multiple sex partners do not inform each other about their sero-status.

257. Stigmatization of infected women is higher than for men who may leave their spouse to marry another woman who is not infected.

258. Traditional and cultural practices are known for bringing about unequal power relations. As such, women and girls bear the brunt of caring for AIDS patients. The proposed pieces of legislation on gender equality and HIV and AIDS intend to prohibit these harmful cultural practices. The proposed legislation on HIV and AIDS which has based the prohibition on the likelihood of infection to another has also taken note of the fact that the victims of most of the harmful practices are women who are often compelled to participate in the dangerous practices.

259. The practice by some traditional healers of advising people to cleanse themselves of HIV infection by having sexual intercourse with albinos or virgin girls has also led to prevalence of infection to increase among women and the girl child. Government is on course to produce a National Policy to regulate the practice of Traditional Healers; has criminalized dissemination of misleading information in the proposed legislation on HIV and AIDS; has fortified the Penal Code sexual offences; and has further proposed that all sexual offenders should be tested for HIV infection in criminal matters.

260. There is scant information on breast, ovarian and cervical cancer. There is no facility for treating cancer patients in Malawi and knowledge among girls is relatively low. Currently, the Government is promoting awareness and education, together with simplified procedures for tests and mammography either for free or at reduced prices in health centres throughout the country.

### ***Article 13 – Economic and social security***

261. The Constitution has created a framework for ensuring that women realize their rights on accessing family benefits; access to credit; and participation in recreational activities, sports and all aspects of life. Women are under the Constitution guaranteed the right to acquire and maintain rights in property including that obtained by inheritance. Other benefits include the right to acquire and retain custody of children and the equal right to make decisions that affect their upbringing; upon dissolution of marriage, the right to a fair disposition of property that is held jointly with a spouse; and the right to fair maintenance.

262. The programme on the Wills and Inheritance Act ensures that the immediate family which has been defined as the spouse and children benefit from the inheritance in the first instance.

263. There is no rule denying women access to credit but discrimination exists in practice. The population that may access credit in Malawi is already low and as such, the gender gap in accessing credit remains a reality. Credit opportunities in Malawi are already very limited. Very few small and medium enterprise entrepreneurs have access to credit. Access to formal credit and credit for investment remains insufficient for women. Most of the women access credit through microfinance institutions.

264. The right to participate in a culture and language of choice is enshrined in the Constitution. The right may be limited or restricted by law, or by international human rights standards, in an open

and democratic society and where it is reasonable. This justifies the position the Gender and HIV and AIDS Commissions introduced some limitations on some traditional and cultural practices.

#### ***Article 14 – Rural women***

265. Malawi remains predominantly rural. The Constitution has provided for a collective right to development where women, children and the disabled have been recognised as a deserving special consideration in application of that right. The Constitution further provides that the State shall ensure equality of opportunity for all in accessing basic resources, education, health services, food, shelter, employment and infrastructure. The State is further obliged to justify its policies in accordance with this responsibility.

266. The quality of life in rural areas remains much lower than in urban areas. A large percentage of the rural population are predominantly subsistence farmers and women account for 80 percent. The cost of living is lower than in urban areas. Access to agricultural inputs is limited by availability and affordability. Rural women spend more time on agricultural-related work compared to men. Safe water is a challenge for rural women who have to walk long distances up to 5 kilometres in order to find water.

267. Rural women are subjected to more discrimination than their urban counterparts. They have been stereotyped as weaker and subservient beings than men. Failure to marry is considered worse for women than in men of the same age. Divorced women face even greater discrimination and may be shunned since they are considered failures. Marriage is a source of respect and status in the rural areas. Some of these attitudes are entrenched by customary laws. Unlike their urban counterparts, rural women are often subjected to harmful and discriminatory social and cultural practices. Within the domestic setting, power relations remain tilted in favour of men. Most rural women face violence including physical assaults. They have no or limited contribution to the number and spacing of children. Any attempt to interfere with the husband's key decision's often results in divorce or physical abuse. Unfortunately, rural women are socially and culturally expected to put up with such abuse and this is reinforced by traditional and religious beliefs and practices.

268. Rural women have limited access to health care. Often, they are required to walk long distances in order to access health care. In the home, they bear the burden of caring for the sick even when they are themselves overburdened by domestic chores. The national rate of infant mortality is 76 per 1,000 live births and child mortality of 62 per 1,000. Urban mortality rates are generally lower than rural rates. Under-five mortality rates indicate 116 per 1,000 in urban areas compared to 164 per 1,000 in rural areas. Comparing the 3 regions in Malawi, the Northern Region has lower under-five mortality (120 per 1,000 live births) compared with either the Central region (162 per 1,000) or the Southern Region (164 per 1,000). Similarly, infant mortality is lower in the Northern Region (82 per 1,000) compared with either the Central Region (90 per 1,000) or the Southern Region (98 per 1,000).

269. High levels of fertility among rural women are a consequence of their inability to negotiate family planning which is exclusively determined by men. Rural women have fertility rates of 4.2 children per woman compared with 6.4 children per woman of urban residence. Education and the economic status of the woman consistently appear to be an important variable in the analysis of fertility-related behaviour. Women with no or lower primary education (1 to 4 years) have a

total fertility rate that is higher than that of women with higher primary education (5 to 8 years) or secondary or higher education.

270. Rural women contribute heavily to labour needs of their societies. Rural women contribute more towards agricultural labour compared to men; they also produce more domestic food compared to men. Having contributed heavily to production of food, women are also largely involved in preparation of food in the home. These tasks are passed on and shared with the female children leaving boys to either rest or engage in academic or economic activities. In the production of commercial crops, predominantly tobacco and tea, women also contribute more labour.<sup>57</sup>

271. Women are also valued, especially, in rural areas for their fertility. The fertility rate for women in rural areas is higher per woman compared to urban woman.<sup>58</sup> Child bearing still takes place notwithstanding the other commitments that the rural woman is subjected to. Barren women are looked down upon and failure to produce children in a marriage is considered a valid ground for divorce.

272. Access to real property for rural women is usually through the head of the family, who is a male. In patrilineal societies, access to land is through the husband while in matrilineal societies is through the paternal uncle. In both instances, the male figure remains in control of family land. However, it has been noted that in matrilineal societies, the ownership of land remains with women while the control is with the men. This is a traditional right for women.

273. The Law Commission is reviewing existing legislation to align it with the new land policy. It remains a challenge in light of the land reforms going on whether the proposal to introduce title holding in Malawi will not deprive women in matrilineal society of their traditional right to own land which they do enjoy albeit it is controlled by men.

#### ***Article 15 – Equality before the law in civil matters***

274. Equality of all Malawians before the law is enshrined in article 41 of the Constitution. The International Covenant on Civil and Political Rights, the African Charter on Human and Peoples' Rights also entrench the principle of equality before the law.

275. Under the Constitution, women also have legal capacity, on the basis of equality with men, to enter into contracts, acquire and maintain rights in property, acquire and retain citizenship and generally assert their rights.

276. Access to courts is still limited due to cost of legal process including payment of legal fees.

277. Women enjoy the right to movement in order to pursue economic interests, education and employment. In many instances, women still have limited enjoyment of this right due to control measures introduced by male counterparts restricting their right to move.

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<sup>57</sup> The National Statistical Office has indicated that this is indicative and not conclusive as data on these issues has not been computed and verified.

<sup>58</sup> Refer to previous footnote.

**Article 16 – Marriage and family law**

278. The Constitution recognizes the family as a fundamental unit of society that is entitled to protection by the State and society. Family remains deeply entrenched in Malawian society and is highly respected both in rural and urban areas. The Constitution has singled out marital status as one of the grounds on which discrimination against women should be prohibited.

279. Inequalities between men and women exist at all stages of family life, notably, at entry, during subsistence and upon exit from marriage.

280. The Constitution has provided for equal rights to men and women to marry and found a family. It further provides that any person above the age of 18 years may not be forced to enter into marriage. Persons between 15 and 18 years may enter into marriage with parental or guardian consent. Marriages for person where one or both parties are below 15 years shall be discouraged by the State. By allowing marriage for persons below 21 years, the Constitution has allowed for child marriages, according to the Marriage Act.

281. Child marriages exist in Malawi on account of tradition and religion although they have steadily declined. Attainment of puberty seems to be the indicator for readiness for marriage. In rural areas, young girls, upon attainment of puberty, are subjected to traditional instruction which includes instruction in readiness for marriage. The rites of passage to adulthood, in some cultures, are concluded by sexual union with a male chosen by the elders (*fisi*).

282. Due to high levels of poverty, parents encourage children to get married often to well doing men, so that they can escape poverty. Such parents often cite fear for shame due to premature pregnancy for the girls as reason for encouraging them to honourably enter into marriage.

283. Children have also been married off in order to settle debt incurred by the parents or guardians. A practice known as *kupimbira* practiced in the northern part of Malawi is a form of debt repayment where a daughter may be transferred to the creditor for failure to pay the debt back.

284. The Law Commission has reviewed laws on marriage and divorce. During the review, the Commission considered a number of statutes that deal with marriage and also customary law. The Commission learnt that there is a diversity of marriages under the legal system. Most marriages are contracted under customary law using the patrilineal system, predominant in the northern region and Nsanje district in the south; and the matrilineal system predominant in the central and southern regions. These systems have been described in the Combined Report in Part 16.4.

285. During the review process, the Law Commission considered the rights and obligations of parties to the marriage contract. The first observation made by the Commission was that rights and obligations in marriage are often determined by the nature of formalities that have been adopted on entry into marriage. The Commission concluded that the formalities for entry into marriage should only go as far as determining the validity of the marriage and should not confer rights and obligations on the parties.



286. Family has long been treated as a private entity not to be interfered with by the State or society. In reality, both the State and society have found their way into marital confidences. The prevalence of domestic violence which led to the enactment of the Prevention of Domestic Violence Act is one form of intervention by the State. Third party interference into marriages has been prescribed under the proposed law on marriage and divorce.

287. Incidents of domestic violence continue at an increasing rate and include sexual, financial, physical and psychological abuse. Sexual abuse could be a result of individual perversion but recently, it has been blamed on traditional healers who prescribe sexual intercourse with minors as a panacea for HIV infection and an essential ingredient in acquisition of wealth. Men are usually coaxed into sleeping with their daughters even at six months of age.

288. Cases of physical abuse are also on the increase. In two cases sensationalized by the media, one involved a case where a maid was doused in hot water by her employer (female) and another case where a husband chopped off his wife's hands on account of suspicion of adultery. Both government and civil society organizations have been addressing issues of domestic violence by providing essential services to women victims including provision of shelters and legal assistance.

289. Marriages end on different grounds. The Marriage Act has provided for five grounds on which marriages contracted under it may be dissolved. During the review process, the Commission considered the adoption of a unified regime to regulate all marriages in Malawi. This further entails the adoption of common grounds of divorce and the Commission recommended that for all marriages in Malawi, divorce should be granted if the marriage has irretrievably broken down. According to the proposed law, irretrievable breakdown maybe proven through evidence of adultery, desertion, insanity, conviction for a sexual offence or any other reason that in the eyes of the court has brought about the irretrievable breakdown.

290. With respect to maintenance, the existing law, the Married Women (Maintenance) Act, provides for maintenance only to women. The Constitution entrenches this position by providing among the rights of women that a woman is entitled to fair maintenance on dissolution of marriage. The review process has taken a gender equality approach and provided that maintenance may be made both by either a husband or a wife. The proposed law also provides for maintenance during subsistence of marriage; following divorce, judicial separation and nullity of marriage; and for single pregnant women. The courts have been empowered to make, vary or discharge orders made with respect to maintenance. Orders for maintenance made in foreign countries may be registered in Malawi and an order for maintenance may be made against a person resident in a foreign country.

291. The Constitution further guarantees equal rights with respect to acquisition and retention of custody, guardianship and care of children. This position has been reinforced in the proposed law on marriage and divorce. In line with the CRC, issues of custody of children have to take into account not just the age of the child but also the best interests of the child.

292. Termination of marriage may also be at the instance of death of one party to the marriage. In most instances, cases of property-grabbing arise and interference with matrimonial

property rights of the wife arises. Although the Wills and Inheritance Act was amended to prohibit property-grabbing or dispossession, effective implementation remains distant since no prosecutors have been appointed to date. Further, the Bill has not been enacted by Parliament.

293. Family remains the core group unit of society but has been redefined especially in light of the HIV and AIDS epidemic. The epidemic has led to the emergence of single-parent households, child-headed households and grandparent-headed households.

294. Government has made a number of initiatives to protect the interests of orphaned children. The National Plan of Action for Orphans and Other Vulnerable Children (NPA-OVC) for the period 2005 to 2009 represents one of these initiatives. The NPA-OVC is intended to create an environment for the realization of rights of orphans and other vulnerable children. The thrust of the NPA-OVC is to develop and implement an integrated safety net system that will deliver multifaceted care and support packages at household level. It has spelt out a work schedule, stakeholder responsibilities and a framework for continuation, improvement and scaling up of OVC interventions already in place.

295. The challenge of realizing equality between men and women remains a pipe dream especially in the family environment. There is hope that the gender stereotyping and inequalities may change after the enactment of the proposed law on marriage and divorce.

### **PART III: FACTORS AND CHALLENGES AFFECTING THE FULFILMENT OF OBLIGATIONS UNDER THE CONVENTION**

296. While considerable progress has been registered during the period covered by the report, one of the main obstacles to the fuller implementation of the Convention's provisions remains the existence of discriminatory practices which have a negative effect on the fulfilment of the principles, objectives and targets established in the legal, institutional and policy framework relating to gender equality in Malawi.

297. Increasing awareness and accepting the significance of respecting, protecting and fulfilling women's rights in building the rule of law and of the importance of women's participation as equal partners in and beneficiaries of the social and economic development of the country has been difficult.

298. There has also been limited progress in implementing the provisions of the Convention which must be considered in the context of extreme poverty which applies to a large percentage of the population especially women. Malawi remains one of the poorest country in the world where income distribution remains unequal.

299. The domestic legal framework still needs further harnessing through domestication of international treaties that have been ratified by Malawi for the promotion and protection of women's rights. Existing legislation must be applied more effectively and women's access to justice must be facilitated, with particular emphasis on women from the most marginalized groups, such as poor, rural, disabled and indigenous women and adolescent girls.

300. Malawi is yet to ratify the Optional Protocol to the CEDAW.

301. With respect to prevention of domestic violence, Government has registered progress in facilitating accessibility of institutions that would set the response machinery to domestic violence in motion. This includes increasing victim support facilities where complaints maybe lodged, setting up child-friendly courts, promoting speedy disposal of matters in the judicial process and promoting and protecting the victims' exercise of his or her rights. Nevertheless, there are still delays in trials and judicial decisions.

302. Government has facilitated the drafting of a law on gender equality which would ensure provision of equal opportunities for women and strengthen existing State policies, plans and programmes with respect to women. However, up to date, the process of developing this law has not been concluded.

303. The difficulties with regard to failure to develop and adopt the gender equality statute equally apply to other related statutes which have in some instances been presented before Parliament. These challenges reflect a lack of consensus between political forces and the various stakeholders in the women's movement.

304. Implementation of the gender equality initiatives continues to overly depend on resources provided by international partners. The State has not allocated enough resources to institutions promoting the advancement of women or for the implementation of Gender policies and programmes. It should be stressed, however, that the gradual mainstreaming of the gender

perspective in other national policies (the National HIV and AIDS Policies, National Nutrition Policy and National Education Sector Plan, among others) is opening up opportunities for mobilizing political and financial support for gender issues.

305. The Ministry of Women and Child Development which is insufficiently funded by Government but is at the helm of driving the gender agenda, has limited capacity to have an impact on the institutions and other Government authorities in order to reach a position where it could ensure the adoption of a gender equity approach within the Government.

306. Although progress has been made in reducing the total fertility rate, there are still significant differences between desired and actual fertility, which are related to women's level of education, place of residence, income and ethnic group. Of particular concern are the relatively high rates of teenage pregnancy and maternal mortality, which reflect a lack of access to health information and basic health services. In the light of this situation, reducing maternal mortality has become a priority, not only for the health sector but also for the Malawi Growth and Development Strategy, which set targets in all policy matters.

307. Challenges include absence of a reporting mechanism; ignorance of who harassment cases should be reported to; inability to report due to social and cultural reasons; and absence of trained personnel to offer counselling services to victims of sexual harassment.

308. Health care is labour intensive and physicians, nurses, clinicians, health surveillance assistants provide the backbone of health care delivery. The health sector has been heavily affected by attrition, morbidity and absenteeism as well as medical brain drain. Attrition rates among health workers have been steadily increasing over the last 20 years. Death is the main cause of attrition and made up 45 percent of all attrition cases between 2004 and 2005. Approximately 10 percent of the deaths are likely to be attributable to AIDS. Other factors leading to attrition were retirement and resignation.

309. Brain drain of health care workers has proven very costly for the country in terms of loss of financial investment in each health care worker and loss of their skill and knowledge. A study in 2006 indicated that the financial cost of an enrolled nurse-midwife that emigrates from Malawi amounts to between US\$71,081.76 and US\$7.5 million at Bank interest rates of 7 percent and 25 percent annually over a 30 year period respectively.

310. In 2006, when Malawi had an HIV prevalence rate of 14.1 percent, the number of physicians per 1,000,000 people was 1.1 and the number of nurses per 1,000,000 was 25.6 in public hospitals. In 2004, the Ministry of Health published a report which described the human resource situation as a deep crisis for the health sector. Malawi has an extremely low ratio of skilled to unskilled staff and lack of skilled staff remains one of the greatest challenges. Unequal distribution of health care workers exacerbates the problem and while most of the population in Malawi is rural, almost 50 percent of qualified doctors operate in the four central hospitals in the cities.

311. Malpractices and attitudes by some health service providers continue to contribute to limited access for health services. Discrimination and ill-treatment of patients compels people to seek alternative services where their dignity is respected. Discrimination in favour of patients of higher financial standing continues in health facilities and that such patients receive

better service and medication against the poor who are in majority. This discrimination is worse against rural women who also form the bulk of the population.

312. On the other hand, health service providers are few and overworked. The strain on human resources has heavily been contributed to by the HIV and AIDS epidemic. Almost 90 percent of health care workers indicate that their workload was increasing primarily due to HIV and AIDS and high vacancy rates for staff.

313. As such, there is need for continuation of improvements to women's access to family planning information and services, the quality of prenatal care, the proportion of hospital births, the promotion of care for complications of childbirth and the operation of traditional birth attendants in order to ensure safe motherhood.

314. There is need to redefine health priorities, given the changes in morbidity and mortality indicators, particularly in case of women, who show an increased incidence of cervical, uterine and breast cancer. However, rates of early detection are still too low as a result of cultural problems and insufficient access to health services.

315. Various forms of discrimination which women encounter in the workplace, whether in the formal or informal sector, including sexual harassment, call for greater efforts to review and enforce labour laws, reduce the gender pay gap and improve women's working conditions, especially in the domestic service.

316. Women's limited access to property ownership and the absence of a comprehensive public policy establishing mechanisms to boost their access to credit perpetuate inequalities in women's economic and social development, particularly in the rural areas.

317. Continued efforts are necessary to improve women's access to credit, land and technical assistance.

318. There is a need to spread awareness of specific laws on the protection of women with respect to their languages, culture and to specific protective measures concerning the recognition of these rights and how they may participate in them.

319. There is need for Government to take concerted effort to conduct deliberate campaigns to raise the standing of women as a way of countering social stereotypes that hold women back and lower their status, particularly in the labour market and in the economic sphere.

320. Institutions that produce information need to make further efforts to provide data and statistical analyses that reflect the gender perspective, so as to have an impact on the formulation of public policy.

## ANNEXURES

1. Government of Malawi (2006), Malawi Growth and Development Strategy – in electronic form;
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