

Universal Periodic Review

(22nd session)

Contribution of UNESCO to Compilation of UN information

(to Part I. A. and to Part III - F, J, K, and P)

Malawi

I. BACKGROUND AND FRAMEWORK

A. Scope of international obligations: Human rights treaties which fall within the competence of UNESCO and international instruments adopted by UNESCO

1. Table:

<i>Title</i>	<i>Date of ratification, accession or succession</i> <i>dd/mm/yyyy</i>	<i>Declarations /reservations</i>	<i>Recognition of specific competences of treaty bodies</i>	<i>Reference to the rights within UNESCO's fields of competence</i>
Convention against Discrimination in Education (1960)	Not the state party to this convention	<i>Reservations to this Convention shall not be permitted</i>		Right to education
Convention on Technical and Vocational Education (1989)	Not the state party to this convention			Right to education
Convention concerning the Protection of the World Cultural and Natural Heritage (1972)	05/01/1982, Ratification			Right to take part in cultural life
Convention for the Safeguarding of the Intangible Cultural Heritage (2003)	16/03/2010, Ratification			Right to take part in cultural life
Convention on the Protection and Promotion of the Diversity of Cultural Expressions (2005)	16/03/2010, Accession			Right to take part in cultural life

II. Input to Part III. Implementation of international human rights obligations, taking into account applicable international humanitarian law to items F, J, K, and P

Right to education

Constitutional Framework:

2. The **1994 Constitution of Malawi**¹, within its **article 13**: “The State shall actively promote the welfare and development of the people of Malawi by progressively adopting and implementing policies and legislation aimed at achieving the following goals: (a) gender equality [...], (f) education: To provide adequate resources to the education sector and devise programmes in order to - i. eliminate illiteracy in Malawi; ii. make primary education compulsory and free to all citizens of Malawi; iii. offer greater access to higher learning and continuing education; and iv. promote national goals such as unity and the elimination of political, religious, racial and ethnic intolerance. [...], (g) the disabled [...].” **Article 25** recognizes the right to education to all persons. **Article 20** prohibits discrimination. **Article 24** states that “1. Women have the right to full and equal protection by the law, and have the right not to be discriminated against on the basis of their gender or marital status.” **Article 26** grants that “Every person shall have the right to use the language and to participate in the cultural life of his or her choice.” Under the Constitution of Malawi, “every person has the right to freedom of conscience, belief, thought, religion and academic freedom” (**Article 44.1.h**).

Legislative Framework:

3. The legal framework of Malawi is composed of:

- i) “The **Technical Entrepreneurial and Vocational education Training Act of 1999** is intended to promote technical education training. The broad objectives of the legislation are to a) promote and integrated, demand-driven, competency-based modular technical education and training; b) monitor gaps between supply and demand for skills; c) support the adoption and application of appropriate technologies; d) promote managerial and business skills, and a spirit of entrepreneurial culture for wage and self-employment; e) facilitate sound and sustainable financing and funding mechanisms for technical education and training; and f) facilitate and bring together the expertise and moderate the different interests of stakeholders of technical education and training.
- ii) “The **University of Malawi Act** of 1974, as amended in 1998², provides for the establishment of the University of Malawi and for the conduct and management thereof; for the establishment and incorporation of the Council of the University of Malawi as a body corporate and as the governing body of the University; for the establishment of a Senate thereof; and for the repeal of the University of Malawi Act.”³
- iii) According to the report submitted for the 48th International Conference on Education in 2008, one of the priorities in Malawi is to “prepare and put in place **Higher Education Act** that articulates values and goals of Malawi’s higher education, creates and defines its governance; and generally, institutionalizes a Council for Higher

¹ <http://www.unesco.org/education/edurights/media/docs/173376ac70ebb40e2c587bbd2067533a2d268b4e.pdf>,

² <http://www.unesco.org/education/edurights/media/docs/3608a3a94f7a9807bbd81850176e98b3d19f86e9.pdf>,

³ IBE, World Data on education, 7th ed., 2010/2011, Malawi, p. 3,

http://www.ibe.unesco.org/fileadmin/user_upload/Publications/WDE/2010/pdf-versions/Malawi.pdf

Education as a regulatory body responsible for accreditation and regulating the system for greater efficiency and effectiveness including ensuring gender balance, and addressing the needs of needy and vulnerable groups and mainstreaming special needs education and HIV/AIDS”⁴.

- iv) “Malawi has enacted **Refugee Act in 1989**⁵ [which has no provision regarding the right to education]. Malawi is a signatory to both the 1951 Convention relating to the Status of Refugees and its 1967 Protocol and Malawi also is a signatory to the 1969 OAU Convention Governing the Specific Aspects of the Refugees problems in Africa. When ratifying the Convention, the Government of Malawi made various reservations [...], [among which]: 22 (Public Education) [...]. Generally, reservations mean that the state is not bound to provide refugees with any conditions that are more favorable than those accorded to aliens generally in the same circumstances in that country. However, it should be noted that the reservation to Public Education is no longer being applied.”⁶
- v) The **Gender Equality Bill of 2012**⁷ “covers the following key issues: [...] (c) equality of access to education and training”. Part V of the bill ensures equality of access to scholarships (article 15), integration of the principles of gender equality and human rights to schools (article 18).
- vi) **Bill No. 35 of 2012** on Education was passed by Parliament on October, 30th of 2013⁸. This act is supposed to replace the 1962 Education Act. However, we have not had access to the act.

Policy Framework:

A) General information

4. “In pursuit of surpassing the achievements that the Ministry of Education, Science and Technology has realized between 2004 and 2009, and ensuring that education progress does not falter, the Government through the Ministry has developed the **National Education Sector Plan (2008-2017)**, on the foundation of *equitable access, relevant quality and management and governance* in order to improve the Malawian education system.” The strategies are to improve infrastructures, supplies of both teaching and learning materials as well as capacity building and management reforms for basic and secondary education. For tertiary education, the strategies are to review the curriculum to respond to the country's needs, to improve training of teachers, to rehabilitate technical colleges and public universities and to provide more learning materials. Generally speaking, the strategy for education is to improve the budget allocation, to improve cooperation between community, private sector, organizations and students and address cross cutting issues (HIV/AIDS, Health and Nutrition in schools and colleges, gender equity and Special Needs education).⁹

5. The NESP “responds to the three thematic areas through calling for improvements in **Early Childhood Development** (Early Childhood Education), **non-formal education** (out-

⁴ The Development of education: national report of Malawi for the 48th International Conference on Education, 2008, p. 27, http://www.ibe.unesco.org/National_Reports/ICE_2008/malawi_NR08.pdf,

⁵ <http://www.unesco.org/education/edurights/media/docs/b25dcd5feab1c95d45749b47d855b75489873d82.pdf>,

⁶ Legal framework, UNHCR, United Nations Malawi, <http://www.unmalawi.org/agencies/unhcr.html>,

⁷ <http://www.unesco.org/education/edurights/media/docs/18229e57defdcc7d46bd9cf8cbf919e1171ebabb.pdf>

⁸ Order Paper of 10-30-2013,

http://www.parliament.gov.mw/docs/order_papers/OP_30-10-2013.pdf

⁹ Programmes, Plans for the future, Ministry of Education, Science and Technology,

https://www.malawi.gov.mw/index.php?option=com_content&view=article&id=24&Itemid=80

of-school outh and adult literacy) and **formal education** (primary, secondary, technical and vocational training – tertiary and higher education)”¹⁰. “The NESP is informed by other plans such as the **Malawi Growth and Development Strategy (MGDS)** and the **Education For All (EFA)** national plan of action.”¹¹ Following the NESP, the **Education Sector Implementation Plan (ESIP) 2009-2013**¹² aims to serve as a guide for the articulation of the broad development objectives of the NESP strategy 2008-2017. It extracts strategies and activities to be undertaken in the five-year period which would later be refined and redefined in annual work plans and budgets. The ESIP is an operational tool for all managers and implementers at every level of the education system.

6. “The ESIP sets the following priorities: **basic education** (early childhood development, primary education, out of school children and youth and adult literacy), **secondary education, teacher education, technical, entrepreneurial and vocational education and higher education**, respectively. Within basic education, primary education is accorded the highest priority, followed by early childhood development (ECD), out of school children and youth and adult literacy. The ESIP organizes these priorities into three thematic areas, as : (i) **access and equity**, (ii) **quality and relevance**, and (iii) **governance and management**. The main components of the ESIP include: (1) Policy Reform Agenda and Strategic Priorities [...]; (2) Sector and Sub-sector Activities [...]; (3) Institutional Framework and Capacity Development [...]; (4) Financing [...]; (5) Monitoring and Evaluation Framework.”¹³

B) Inclusive Education

7. As far as education and training is concerned, the objective of the 2006 **NATIONAL POLICY ON EQUALISATION OF OPPORTUNITIES FOR PERSONS WITH DISABILITIES** is to: “Promote equal access and inclusion of persons with disabilities in education and training programmes”.¹⁴

According to a report published by the UN in 2007, Malawi is one of the countries where child labour is the most widespread. In this context, Malawi has launched an **Action Plan 2010-2015** aimed to fight against child labour in the country. The objective is to enable children to go back to school.¹⁵

C) Teachers

8. “Development Aid from People to People, an international non-profit development organization, has established **teacher training colleges** in Malawi that offer pre-service education designed to equip new teachers with the skills necessary for rural schools.[...] The Ministry of Education posted graduates of the programme to rural government schools.”¹⁶

9. “In Malawi, community teachers recruited into the government’s **second-chance basic education programme** participate in weekly training and planning sessions run by

¹⁰ National Education Sector Plan, p. 1

¹¹ Malawi Report submitted for the Seventh Consultation on the implementation of the Convention and Recommendation against Discrimination in Education (2000-2005), 2006, p. 5

¹² <http://www.unesco.org/education/edurights/media/docs/bed24712c0c9703e8b559eaaad0fe1dc90083112.pdf>,

¹³ Education Sector Implementation Plan, pp. 12-13

¹⁴ <http://www.unesco.org/education/edurights/media/docs/687fb3b139cffa5aea52884d83d399a6ce4db476.pdf>

¹⁵ Press Agencies (22/10/2010)

¹⁶ Education For All, Global Monitoring Report 2013-2014, p 241
<http://unesdoc.unesco.org/images/0022/002256/225660e.pdf>

supervisors and receive more intensive training in both content and teaching methods during holidays, led by tutors from government teacher training colleges.”¹⁷

10. “In Malawi, the introduction of the current **distance education programme** doubled the government’s capacity to supply teachers. However, the number of teacher candidates recruited to the programme is still limited by the budget available to pay them once they become teachers and the capacity of teacher education colleges to support and supervise the trainees.”¹⁸

11. “The **Safe Schools project** used national advocacy networks to lobby successfully for revisions to teachers’ codes of conduct and call for stronger enforcement of regulations relating to misconduct. Awareness workshops were held for school supervisors and school committee members, who then ran sessions with teachers, pupils, counsellors and parents on the revised code.”¹⁹

D) Curriculum

12. “In Malawi, battery-powered DVD players and interactive instructional DVDs are used to assist with training.”²⁰

13. In 2013, the Republic of Malawi issued the **National ICT Policy**, in which “Government has defined priority areas that will have a huge impact in the realization of an information society and knowledge-based economy. As Malawi implements the policy, the following benefits are expected to be realised: [...] higher education status for the country due to the increased access to education and learning materials at all levels of education; [...].The following outcomes will be realized after implementing this policy: a. Increased access to basic health and educational facilities; and increased skills in ICT; [...].”²¹

E) Financing of education

14. “Malawi’s **Social Cash Transfer Scheme** provides US\$14 per month to more than 26,000 households to fight poverty and hunger and help families send their children to school (UN, 2013).”²²

F) Gender equality

15. “Gender programmes are guided by the **National Gender Policy** coordinated by the Ministry of Women and Child Development. Gender coordination committees and focal

¹⁷ Education For All, Global Monitoring Report 2013-2014, p 243

<http://unesdoc.unesco.org/images/0022/002256/225660e.pdf>

¹⁸ Education For All, Global Monitoring Report 2013-2014, p 249

<http://unesdoc.unesco.org/images/0022/002256/225660e.pdf>

¹⁹ Education For All, Global Monitoring Report 2013-2014, p 271

<http://unesdoc.unesco.org/images/0022/002256/225660e.pdf>

²⁰ Education For All Global Monitoring Report, p 28

http://unesco.nl/sites/default/files/dossier/gmr_2013-4.pdf?download=1

²¹ National ICT Policy 2013,

<https://www.malawi.gov.mw/Publications/Malawi%20ICT%20Policy%20Final.pdf>

²² Education For All, Global Monitoring Report 2013-2014, p 124

<http://unesdoc.unesco.org/images/0022/002256/225660e.pdf>

points have been established in the Ministry of Education at central, division and district levels as well as in education institutions in order to mainstream gender. Gender issues have been incorporated into the school curriculum through the establishment of a Gender unit at the Malawi Institute of Education (a curriculum centre).”²³

16. “Under Gender Affairs, the Ministry will from 2011 implement a **project focusing on Gender and HIV/AIDS** especially at community level, taking into account the intricate relationship between the two. The European Commission has pledged to support the project at an estimated cost of about \$12 million under the 10th European Development Fund (EDF). The Ministry also expects to get resources through the pool funding towards the Women Girls and HIV/AIDS program. The Department of Gender Affairs will also continue implementing gender mainstreaming activities including training of more focal points and dissemination of gender mainstreaming guidelines.”²⁴

Cooperation:

17. Malawi **is not party** to the 1960 UNESCO Convention against Discrimination in Education.

18. Malawi **did not report** on the measures taken for the implementation of the 1960 UNESCO Recommendation against Discrimination in Education within the framework of the:

- a) **Sixth Consultation** of Member States (covering the period 1994-1999)
- b) **Eighth Consultation** of Member States (covering the period 2006-2011).

19. However, Malawi **did report** to UNESCO within the framework of the **Seventh Consultation** of Member States (covering the period 2000-2005).

20. Malawi **did not report** on the measures taken for the implementation of the 1974 UNESCO Recommendation concerning Education for International Understanding, Co-operation and Peace and Education relating to Human Rights and Fundamental Freedoms within the framework of the:

- a) **Fourth Consultation** of Member States (covering the period 2005-2008).
- b) **Fifth Consultation** of Member States (covering the period 2009-2012).

²³ Malawi Report submitted for the Seventh Consultation on the implementation of the Convention and Recommendation against Discrimination in Education (2000-2005), 2006, p. 5

²⁴ https://www.malawi.gov.mw/index.php?option=com_content&view=article&id=29:future-plans-and-programmes-for-the-ministry-of-gender-children-and-community-development-2010-2014&catid=21:gender-child-development-a-community-de

21. Malawi **reported** within the framework of the **First and Second Consultations** (1993 and 2011) on the measures taken for the implementation of the 1976 UNESCO Recommendation on the Development of Adult Education.

22. Malawi **is not party** to the 1989 UNESCO Convention on Technical and Vocational Education (1989).

Freedom of opinion and expression

Constitutional and Legislative Framework:

23. Freedoms of opinion, expression, and the press are protected under Chapter IV Article 34, 35, and 36 of the Malawi Constitution (1999)²⁵.

24. The 1998 Communications Act regulates the Communications Sector in Malawi, comprising telecommunications, postal services and media broadcasting²⁶. It establishes the Malawi Communications Regulatory Authority (MACRA) as the central regulatory body issuing broadcast licenses.

25. Defamation and libel are both criminal and civil offences in Malawi as defined in the Malawian Penal Code, Part II, Division III, Chapter XVIII, Section 200 to 204²⁷. Other laws including the 1967 Protected Flag, Emblems and Names Act²⁸ and the 1968 Censorship and Control of Entertainments Act²⁹ contains provisions of penalties of a fine and a period of imprisonment up to two years.

26. The constitution guarantees access to information (Chapter IV, Article 37)³⁰ which is regulated by the National Access to Information Policy³¹, adopted in January 2014. A draft bill to enact this right into law was prepared in 2003 but has yet to be introduced into Parliament³².

Media Self-Regulation:

27. Media self-regulatory mechanisms exist in Malawi through the Media Council of Malawi

Safety of Journalists:

²⁵ https://www.constituteproject.org/constitution/Malawi_1999

²⁶ The Communications Act at <http://www.macra.org.mw/downloads/Communications%20Act%201998.pdf>

²⁷ The Malawi Penal Code at http://ppja.org/countries/malawi/Malawi_penal_code_pdf_14611.pdf

²⁸ The Protected Flag, Emblems and Names Act at http://ppja.org/countries/malawi/flag_emblems_names.pdf

²⁹ The Censorship and Control of Entertainments Act at

http://www.culturalcoalitionmw.org/sites/default/files/Censorship%20Act_21-01.pdf

³⁰ https://www.constituteproject.org/constitution/Malawi_1999

³¹ The National Access to Information Policy at

<http://www.malawi.gov.mw/Publications%20National%20Access%20to%20Information%20Policy.pdf>

³² Draft bill of Access to Information at

<http://www.humanrightsinitiative.org/programs/ai/rti/news/Draft%20MISA%20Malawi%20ATI%20Bill%20-%20Apr-04.pdf>

28. UNESCO recorded no killing of journalists in Malawi between 2008 and 2013. However, UNESCO notes the sporadic report of journalists being intimidated and harassed while carrying out their professional work³³.

III. RECOMMENDATIONS

Right to education

29. *Recommendations made within the framework of the first cycle of the Working Group on the Universal Periodic Review, considered on (please check the date on the following web site: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/Documentation.aspx>)*

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

- i) A - 102.3. **Enact the Legal Education and Legal Practitioners Amendment Bill and the Legal Aid Bill** currently pending before Parliament (Austria);
- ii) A - 102.17. Follow-up on the recommendations of CEDAW, by renewing national efforts for **gender equality**, including through educational and sensitization campaigns (Mexico);
- iii) A - 102.28. Undertake more effective measures to address the problems of **impunity and violence against women and girls**, including through the strengthening of law enforcement and the judicial system and intensive media and education programmes aimed at increasing public awareness and sensitivities on **the rights of women** (Malaysia);
- iv) A - 102.48. Undertake more effective measures to ensure the **accessibility** of crucial public services such as education, health care and social benefits to the population living in rural areas, in particular rural women and children (Malaysia);
- v) A - 102.49. Continue implementing programmes and measures aimed at guaranteeing **educational and quality health-care services to all the population** (Cuba);
- vi) A - 102.52. Focus on priorities set by the Government to strengthen **human rights**, especially agriculture and food security and the development of the green belt for irrigation and water, as well as education and technology (Libyan Arab Jamahiriya);
- vii) A - 102.55. Redouble efforts to save mother and child by pursuing the **education of young girls**, increasing the preparation of birth assistants and accelerating the development of public health structures, **especially in rural areas** (Holy See);
- viii) A - 102.58. Continue efforts to promote **human rights**, particularly in the areas of education and **professional training** (Morocco);
- ix) A - 102.59. Integrate **human rights concepts into the curricula for university education** (Libyan Arab Jamahiriya);
- x) A - 102.60. Make education one of its top priorities, and reinforce “**equitable access to higher education**” based on academic and educational standards (Holy See);

³³ Including the 2013 attacks on journalists Raphael Mlozoa, Anthony Wasamba, and Tchoko Chikondi.

- xi) A - 102.61. Consider promoting and strengthening **vocational education and training opportunities** to reduce the high number of **school dropouts** (Mauritius);
- xii) A - 102.62. Strengthen Malawi's **cooperation with the international community**, in particular specialized agencies and programmes of the United Nations system, with a view to building capacity and obtaining technical assistance in crucial areas such as poverty eradication, education, health care and social security (Malaysia);
31. The recommendations below did not enjoy the support of Malawi:
- xiii) R - 105.14. Take all necessary social, education and legal measures towards the complete elimination of **female genital mutilation** (Italy);
- xiv) R - 105.33. **Make primary education compulsory**, in conformity with article 28 of the Convention on the Rights of the Child (Mexico);
- xv) R - 105.34. Strengthen the education system by making it mandatory and **free of cost** (Hungary);
- xvi) R - 105.36. Take all necessary measures for the realization of **effective compulsory and free-of-cost primary education for all** (Italy);
- xvii) R - 105.37. Continue efforts to ensure that all children **finish primary school** and make primary education compulsory (Austria);
- xviii) R - 105.38. Consider making primary education compulsory, in accordance with article 28 of the Convention on the Rights of the Child (Mauritius);

32. Analysis:

Though Malawi adopted various measures to ensure gender equality and inclusive education, it did not take sufficient measures to promote human rights education. In addition, Malawi does not offer compulsory and free education for all.

33. Specific recommendations for the second UPR cycle:

- 33.1. Malawi is encouraged to ratify the 1960 UNESCO Convention against Discrimination in Education.**
- 33.2. Malawi is encouraged to continue to submit state reports for the periodic consultations of UNESCO's education related standard-setting instruments.**
- 33.3. Malawi could be encouraged to make primary education free and compulsory.**
- 33.4. Malawi may be encouraged to further promote human rights education.**

Freedom of opinion and expression

34. Malawi is recommended to continue with its effort to introduce a freedom of information law that is in line with international standards³⁴.

³⁴ See for example, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (ICCPR), the recommendations of the 2000 Report of the UN Special Rapporteur on Freedom of Opinion and Expression, the 1981; 2002 Recommendation of the Committee of Ministers of the Council of Europe, the 2002 African Commission on Human and Peoples' Rights Declaration of Principles of Freedom of Expression in Africa and the 2000 Inter-American Commission on Human Rights' Declaration of Principles of Freedom of Expression.

35. Malawi is recommended to decriminalize defamation and place it within a civil code that is in accordance with international standards³⁵.

36. Malawi must ensure that journalists and media workers are able to practice the profession in a free and safe environment as part of their fundamental human rights in accordance with international standards³⁶. It must investigate all attacks on journalists and media workers, and ensure full implementation of the rule of law.

Cultural rights

37. As a State Party to the Convention concerning the Protection of the World Cultural and Natural Heritage (1972), the Convention for the Safeguarding of the Intangible Cultural Heritage (2003) and the Convention on the Protection and Promotion of the Diversity of Cultural Expressions (2005), Malawi is encouraged to fully implement the relevant provisions that promote access to and participation in cultural heritage and creative expressions and, as such, are conducive to implementing the right to take part in cultural life as defined in article 27 of the Universal Declaration of Human Rights and article 15 of the International Covenant on Economic, Social and Cultural Rights. In doing so, Malawi is encouraged to give due consideration to the participation of communities, practitioners, cultural actors and NGOs from the civil society as well as vulnerable groups (minorities, indigenous peoples, migrants, refugees, young peoples and peoples with disabilities), and to ensure that equal opportunities are given to women and girls to address gender disparities.

Freedom of scientific research and the right to benefit from scientific progress and its applications

38. With regard to contribution of science and technology to development, Malawi, following up to its report submitted in 2012, is further encouraged to report to UNESCO within the framework of the on-going consultations with Member States on the monitoring of the implementation and the proposed revision of the 1974 Recommendation on the Status of Scientific Researchers, in particular on the measures undertaken in the country to implement such principles of the Recommendation as the obligation of state authorities to ensure that scientific researchers have the responsibility and the right to work in a spirit of intellectual freedom; to participate in the determination of the aims, content and methods of research, which should be compatible with respect for universal human rights and fundamental freedoms, as well as ecological and social responsibility; to creativity, occupational mobility, international cooperation for furtherance of international peace, cooperation and understanding, etc.

³⁵ See for example, General Comments No 34. of the International Covenant on Civil and Political Rights (ICCPR), 2006 Recommendation of the 87th Session Human Rights Committee, the recommendations of the UN Special Rapporteurs on the Right to Freedom of Opinion and Expression, and Resolution 1577 (2007) of the Parliamentary Assembly of the Council of Europe.

³⁶ See for example, UN General Assembly Resolution A/RES/68/163 and Human Rights Council Resolution A/HRC/21/12