



**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**

**Combined second, third, fourth and fifth periodic report of  
States parties**

**Malawi\***

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## Introduction

In 1988, Malawi submitted its initial report to the Committee on the Elimination of All Forms of Discrimination against Women. The Committee considered that report and its amendment during the Committee's 154<sup>th</sup> and 158<sup>th</sup> meetings on 23<sup>rd</sup> and 25<sup>th</sup> January 1990.<sup>1</sup>

The subsequent second, third, fourth and fifth reports were due on 11<sup>th</sup> April 1992, 1996, the year 2000 and 2004. Due to circumstances beyond the Government's control, the three reports were not submitted accordingly. The current report is therefore, encompassing the three reports and the 2004 reporting period. In order to ensure that this report is compiled, in 2001, the Government of Malawi and its stakeholders formed a National CEDAW Working Committee. The Committee comprised ten people from various organisations including Government, NGOs, Civil Society and the private Sector.<sup>2</sup> The terms of reference of the committee included the compilation of the country's CEDAW Report.

As part of information collection exercise, focus group discussions were held with selected community members comprising 30 Groups of women, men, girls and boys of 10 people each within the matrilineal and patrilineal societies, in both rural and urban areas. The first draft of the report was presented at a stakeholders' workshop and all the comments were incorporated in the report.

The report's compilation followed the CEDAW reporting guidelines and took into account the observations made by the Committee on the Elimination of All Forms of Discrimination against Women after its consideration of the initial report.

This report is in two parts. Part I provides background information on Malawi, with a focus on the country's gender profile. This part is included in order to update the information and to reflect the progress that Malawi has made in the gender and development area.

Part II of the report covers the progress made in the implementation of CEDAW. The report explains the legal policy and programmatic measures undertaken by the country. It further reports on the reality in Malawi's communities. The Government of Malawi considers that the experiential knowledge of women, men, girls and boys in the communities and their actual observations are crucial in the assessment of the enjoyment of women's and people's rights.

### **Part I: Background Country Information**

This part briefly describes the general social, economic, political and legal framework of Malawi. It is the context within which Malawi implements the Convention on the Elimination of All Forms of Discrimination Against Women. It shows that the country is amongst the poorest in the world. The information further reveals the gender disparities in the country that make women enjoy their human rights less than men.

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<sup>1</sup> CEDAW/C/SR.154.

<sup>2</sup> There are now nine members in the Committee: Christobel Chakwana (Ministry of Gender, Youth and Community Services), Trifonia Dafter (Chair of the Parliamentary Committee on Social and Community Services), Garton Kamchedzera (Faculty of Law, University of Malawi), Mercy Makhambera (Malawi Human Rights Resources Centre), Emily Makuta (Investment Development Bank), Fiona Mwale (Ministry of Justice), Mike Mwanyula (Ministry of Finance), Sophia Nthenda (Public Affairs Committee), and Vita Onwuasoanya (Department of Disaster Preparedness, Relief and Rehabilitation).

## 1. Introduction

1.1 According to the 1998 census, the population of Malawi was estimated at 9.9 million people of whom 51% were women and the inter-censal growth rate was 2%.<sup>3</sup> This means that for every 96 men counted, there were 100 women. The population density estimate was high at 105 in 2000 compared to 85 people per square kilometre estimated in the 1987 census.

1.2 Malawi is one of the poorest countries in the World and was ranked 163<sup>rd</sup> out of 173<sup>4</sup> countries at 0.400 according to the 2002 Human Development Index report<sup>5</sup>, which is lower than the 1995 report at 0.62 when Malawi was at the 90<sup>th</sup> rank. The country has remained predominantly rural, and dependent on agriculture. Poverty is most widespread in the rural areas, where 9 out of every 10 people live; 22 out of every 100 people do not have access to toilet facilities. The difference between the rich and the poor is amongst the third worst in the World, with a Gini Co-efficient index of 0.88. About 3 in every 5 people are not able to spend more than 600 Kwacha<sup>6</sup> per month. Inflation has remained high, ranging from 9.1% in 1997, to 83.1%, 44.8% and 29.6% in 1995, 1999 and 2000 respectively.<sup>7</sup> Refer to the insert.

## 2. Land and the People

For the history, physical features, size and administration before the democratic dispensation, please refer to the initial report submitted in 1988.

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<sup>3</sup> National Statistical Office, *1988 Malawi Population and Housing Census Report of Final Results* (Zomba; National Statistical Office, 2000).

<sup>4</sup> UNDP, *Human Development Report 2002* (Oxford; Oxford University Press, 2002).

<sup>5</sup> SAPES, UNDP, SADC, *SADC Regional Human Development 2000* (Harare; SAPES Books, 2000).

<sup>6</sup> 75 Kwachas are equal to 1 United States Dollar.

<sup>7</sup> Malawi Government, *Economic Report* (Lilongwe; Malawi Government, various years).

	<i>Indicator</i>	<i>Distribution</i>				
		<i>Women</i>	<i>Year</i>	<i>Men</i>	<i>Year</i>	
Health	Life Expectancy at Birth	44	1988	40	2000	
	Crude Birth Rate (per 1,000 people)	37.9	(1999)			
	Percent underweight children under 5 severely underweight		5.9	(2000)		
	Percent severely stunted children under 5		24.4	(2000)		
	Percent of births with medical prenatal care		91.4	(2000)		
	Percent of births with medical assistance at delivery		55.6	(2000)		
	Infant Mortality Rate (per 1,000 live births)		103.8	(2000)		
	Under 5 mortality rate (%)		188.6	(2000)		
	Total Fertility Rate (births per woman)	6.3	1998			
	Adolescent Fertility Rate (births per 1,000 women aged 15-19)	151	1999			
	%Children/teenagers (aged 10-14) married	2.3	2000	2	2000	
	% of children or teenagers (aged 15-19) married	38.2	2000	8.3	2000	
	Unmet need for family planning	30%	1998			
	Maternal Mortality Ratio (per 100,000 live births)	1120	1998			
	Risk of unintended pregnancy (% of married women aged 15-19)	36	1999			
	Economic Assets and Opportunity	Contraceptive prevalence (all women)	25.0	200		
		Contraceptive Prevalence (% of married women)	30.6	2000		
Alimi or farmers as %		90.2	1998	66.8	1998	
Employee		4.8	1998	21.2	1998	
Family Business		2.1	1998	2.8	1998	
	Self Employees	2.8	1998	8.8	1998	
	Employer	0.1	1998	0.3	1998	

2.1 Malawi's population has generally remained young, with a median age of 18. This pattern mirrors those observed in the 1992 Malawi Demographic and Health Survey (MDHS) and 1998 Population and Housing Census. One out of 6 people were children below the age of 5. Of the 9.9 million people, 1.2, 3.1, and 4.1 million people lived in the Northern, Central, and Southern Regions respectively.

2.2 Currently Malawi is divided into 28 districts, 6, 9 and 13 in the Northern, Central and Southern Region respectively. All the districts in the North and two districts in both the South and the Central Regions are predominantly patrilineal. The rest of the districts are predominantly matrilineal. In both societies males dominate females, as family and political power is masculinised.

	<i>Women</i>	<i>Year</i>	<i>Men</i>	<i>Year</i>	
Economic Indicators	National poverty line	54.0	2000		
	Gini Coefficient	0.88	200		
	Average annual inflation	29.6	2000		
	GDP per capita (PPP US\$)	615	2000	64.5	1998
	Growth rate	1.7	2000	77.0	1998
	External debt/GDP	150.3	2000	74.4	1999
Poverty Levels	Total debt service as % of GDP	3.5	2000	36.7	1998
	Poor	63.3	1998	64.7	1998
	Ultra poor	28.0	1998	27.6	1998
	Share of per capita income	0.377	1998	0.623	1998
Family Relations	% of sex of household head	26.6	2000	73.4	2000
	% Children under 15 years of age with both parents dead	0.8	1998	0.8	1998
	% Children/teenagers aged 10 to 14 and married	2.3	2002	2.0	1998
Key Decision Making Positions	% of children/teenagers aged 15-19 and married	38.2	2002	8.3	2002
	Cabinet Ministers				
	Members of Parliament	17	2001	176	2001
	Speakers and Deputy Speakers of Parliament	1	2003	3	2001
	Ambassadors	4	2001	17	2001
	District Commissioners	2	2001	25	2001
	University College Principals/heads	1	2003	5	2002
Judges	4	2003	20	2002	
Traditional chiefs	13	2002	192	2002	

2.3 The domination of men in key decision making positions illustrates the unequal power relationships and the powerlessness of women in Malawi. The indicators in the insert underline the fact that there is unequal enjoyment of human rights in Malawi between women and men.

2.4 The macro-economic indicators show a declining economy. The country's currency, the Kwacha depreciated during the one party era after it was floated from K8.7 to the United States Dollar (US \$) to K15.00 per US \$. This trend has continued and currently it is at K109 to a US \$. Consequently, the interest rates have also risen, from 31.0 during the single party era to 52 in 2001. Gross Domestic Product, on its part dropped from 9.6% in 1995 to 2.0% in 1998, rising to 4.0% in

1999. The external debt, during the same time, had been high. It had been rising since 1996, when it was 88.6%. Since then, it had been 90.8%, 142.7%, 144.0% and 150.3% in 1997, 1998, 1999, and 2000 respectively. Amidst such borrowing, the rate of Gross Domestic National Product has not matched the demands for economic stability. After rising to 4.0% in 1999, it dropped to 1.7% in 2000.

2.5 Malawi like most countries in Sub-Saharan Africa underwent structural adjustment policies using four market oriented strategic objectives. The first was to control inflation through decreased public spending, increased taxes, controlled wage levels, and removal of price controls and subsidies. The second specific objective was the restoration of fiscal balance through the reduction of government expenditure, broadening sources of revenue, and the reform of financial institutions. The third objective was the elimination of the current account deficit, pursued through currency flotation and devaluation. The fourth goal was to reduce the role of the state on the national market, pursued through deregulation, liberalisation and privatisation.

2.6 The structural adjustment programmes have been blamed for having an adverse impact on the poor, especially women. The various structural adjustment programmes have not translated into poverty reduction.”<sup>8</sup> The current Government therefore, developed a Vision 20:20 document and adopted a Poverty Alleviation Programme (PAP), partly to mitigate the adverse effects of the structural adjustment programmes on human welfare. This programme has several aspects including the introduction of free primary education, the adoption of the gender approach to development; and a Malawi Social Action Fund, financed by a World Bank loan to promote rural development. These initiatives have culminated into the development of the Malawi Poverty Reduction Strategy Paper (MPRSP).

### 3. General Political Structure

3.1 Malawi’s current Constitution first came into force provisionally in 1994. In 1995, the Constitution came definitively into force. It clearly entrenches the doctrine of separation of powers between the Executive, the Legislature and the Judiciary.<sup>9</sup> The Executive consists of a President, a Vice President or two, Government Departments, a Cabinet, the Attorney General and a Director of Public Prosecutions.<sup>10</sup> The Constitutional function of the Executive is to initiate policies and legislation and to implement laws.<sup>11</sup>

3.2 The Legislature consists of Parliament, Speaker, Clerk of Parliament, and elected Members of Parliament.<sup>12</sup> The function of the Legislature is to enact laws that should reflect the interests of the people of Malawi and Constitutional values.<sup>13</sup> The third branch of Government, the Judicature, is independent of both the Legislature and the Executive.<sup>14</sup> It consists of the Office of the Chief Justice, the Supreme Court of Appeal and justices of appeal, the High Court and judges, and courts subordinate to the High Court and professional and lay magistrates. The role of the judiciary is to

<sup>8</sup> Malawi Government, ‘Poverty Reduction Strategy Paper’ (Lilongwe; Malawi Government; 2001), at 16.

<sup>9</sup> Malawi Constitution 1994, sections 7-9.

<sup>10</sup> Malawi Constitution, sections 78-79, 92-94, 98, and 99.

<sup>11</sup> Malawi Constitution, section 7.

<sup>12</sup> Malawi Constitution, sections 48, 53, 55.

<sup>13</sup> Malawi Constitution, section 8.

<sup>14</sup> Malawi Constitution, sections, 9, 103, 105, 106, 108-109, 110, and 111.

interpret and protect the Constitution “in an independent and impartial manner with regard only to legally relevant facts and prescriptions.”<sup>15</sup>

3.3 The Judicature is required to adopt a three-pronged approach in interpreting the law.<sup>16</sup> First, the Constitution requires that the courts should “promote the values which underlie an open and democratic society.”<sup>17</sup> The second is that any court must take into account the human rights enshrined in the Constitution.<sup>18</sup> Thirdly, “where applicable, the courts are required to “have regard to current norms of public international law and comparable case law.”<sup>19</sup>

3.4 The country has reverted to dualism with regard to domestic application of international human rights standards. The 1994 Constitution provided for both dualism and monism.<sup>20</sup> In general, an international agreement could become part of the law of Malawi if ratified by an Act of Parliament or if the ratifying statute is provided. However, any international agreements that Malawi entered into before the new Constitution commits the country to abide by it and subject itself to harmonise its own laws with the international instruments. Parliament has however, removed this provision and provided that all international standards have to be specifically incorporated into the Malawi legal system after ratification. This means that people in Malawi can directly invoke the provisions of an international agreement that has been acceded to if it is incorporated into Malawi’s legal system. However, the effect of this restriction is mitigated by a provision that allows the courts to “have regard to current norms of public international and comparable case law” when interpreting the Constitution.<sup>21</sup>

3.5 Members of the Executive, the Legislature, the Judicature, all those who exercise the powers of state, and everybody in Malawi is legally subject to the Constitution, which is supreme. Section 12 of the Constitution underlines that all “legal and political authority of the State derives from the people of Malawi” to be “exercised in accordance with” the Constitution “solely to serve and protect their interests.”<sup>22</sup> This principle is followed by two tenets that expressly refer to the notion of trust. One requires all “persons responsible for the exercise of powers of the State” to do so “on trust” to “the extent of their lawful authority and in accordance with their responsibilities to the people of Malawi.”<sup>23</sup>

#### **4. General Legal Framework and the Enjoyment of Women’s Rights**

4.1 The current Malawi Constitution clearly makes provisions for the protection of human rights. The Judiciary has jurisdiction “over all issues of judicial nature.”<sup>24</sup> Any court within the Judiciary further has the competence to decide whether an issue is within its competence.<sup>25</sup>

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<sup>15</sup> Malawi Constitution, section 9.

<sup>16</sup> Malawi Constitution, section 11.

<sup>17</sup> Malawi Constitution, section 11(1)(a).

<sup>18</sup> Malawi Constitution, section 11(1)(b).

<sup>19</sup> Malawi Constitution, section 11(1)(c).

<sup>20</sup> Malawi Constitution, section 211.

<sup>21</sup> Malawi Constitution, section 11.

<sup>22</sup> Malawi Constitution, section 12.

<sup>23</sup> Malawi Constitution, section 12.

<sup>24</sup> Malawi Constitution, section 103 (2).

<sup>25</sup> Ibid.

4.2 In addition to the Judiciary, the Constitution provides for three offices independent of the Judiciary, the Executive and the Legislature. These are the Office of an Ombudsman,<sup>26</sup> a Human Rights Commission,<sup>27</sup> and a Law Commission.<sup>28</sup> The Office of the Ombudsman investigates and grants remedies in cases that meet two conditions.<sup>29</sup> The first condition is that a person must have suffered injustice. The second condition is that it should be apparent that there is no reasonably available remedy through court proceedings or that there is no practicable remedy. Acts of Parliament have attempted to limit the jurisdiction of the Ombudsman to complaints against public bodies. The Human Rights Commission's functions, have focused on the protection and investigation of the violations of human rights enshrined in the Constitution; and<sup>30</sup> have incorporated public awareness campaigns. The Law Commission has the power to review and make recommendations about the repeal and amendment of laws.<sup>31</sup> Such powers extend to the drafting of laws and civic education.

4.3 The Constitution prevents the National Assembly or any subordinate legislative authority, and the Executive from making any law or taking any action, which abolishes or infringes the rights enshrined in the Constitution.<sup>32</sup> Such rights include some women's rights in section 24. The Constitution is clear that any person "who claims that a fundamental right or freedom guaranteed" by the Constitution has been infringed can bring an action for a remedy. In earlier cases, the High Court took the view that only those, whose human rights had been infringed, could bring an action in a court. It is increasingly acknowledged that "any person" including human rights organisations who can show that somebody's human rights have been infringed can seek class and public interest litigation.

4.4 The person claiming that a human right has been infringed has two possible courses of action allowed under the Constitution.<sup>33</sup> First, such a person can make an application to a court to protect or enforce such a right. The court has powers to make any order to secure enjoyment of the right including a compensatory award.<sup>34</sup> The second possible course of action is to make an application to the Ombudsman or Human Rights Commission for advice or any assistance.<sup>35</sup>

4.5 The majority of Malawians however repose much confidence in the traditional or primary justice foras. These are largely presided over by village head persons and chiefs. The president appoints the chiefs based on recognised lineage ties. The People repose more confidence in these foras than in the centralised bodies provided for under the Constitution because the traditional institutions are more accessible geographically and financially, remain participatory, deliver justice quicker, and grant remedies more flexibly. However, there is an acknowledgement that some traditional laws, procedures and practices infringe human rights principles more especially of women.

<sup>26</sup> Malawi Constitution, section 120.

<sup>27</sup> Malawi Constitution, section 129.

<sup>28</sup> Malawi Constitution, section 132.

<sup>29</sup> Malawi Constitution, section 123 and the Ombudsman Act.

<sup>30</sup> Malawi Constitution, section 130 and the Human Rights Commission Act.

<sup>31</sup> Malawi Constitution, section 135 and the Law Commission Act.

<sup>32</sup> Malawi Constitution, section 46(1).

<sup>33</sup> Malawi Constitution, section 46(2).

<sup>34</sup> Malawi Constitution, section 46(3 and 4).

<sup>35</sup> Section 46(2)(b).

## 5. Information and Publicity

5.1 One outstanding development in the democratic dispensation has been the open promotion of human rights. International organisations, NGOs, and Government have collaborated to disseminate information about the importance of a human rights culture. The Government of Malawi through Ministry of Gender and Community Services and the Human Rights Commission, NGOs and International Organisations have carried out gender mainstreaming and human rights sensitisation campaigns focusing on women, men, girls and boys responsibilities and duties.

5.2 Low literacy levels among women and men, hamper the effectiveness of human rights education in Malawi. In addition, some of those who are considered literate but cannot read or understand English, which is the primary medium of communication used by most human rights advocates in the country, can not understand the human rights issues properly. A notable stride against such problems has been the simplification of CEDAW in a book titled “ Women and the Law in Malawi and the training of 120 trainers to disseminate the contents of the book in 1993. Further, the Convention on the Rights of the Child has been translated and popularised into two local languages.

5.3 The Government of Malawi through the Ministry of Gender and Community Services and the Malawi Human Rights Resource Centre has translated the Convention on the Elimination of All Forms of Discrimination Against Women into one language. The challenge for all human rights advocates in Malawi is to use language and methodologies that can allow most rural communities to discover that human rights are inherent in every person and that they can be claimed.

## 6. Programmes implemented to address gender disparities

6.1 The then Ministry of Community Services, which was responsible for women and children issues was restructured and renamed Ministry of Women and Children Affairs, Community Development and Social Welfare in 1992. The purpose was to encompass the Women in Development and the Convention on the Rights of Children (CRC) issues that Malawi acceded in 1991. A Women In Development (WID) Policy and Plan of Action was developed and adopted in 1993. This was followed by the review of the National Commission on Women in Development Act; sensitisation of Ministers on advancement of women, Population and development; and women’s rights issues. This period saw the intensification of community based population education programme that covered the whole country and reached a total of 3.7 million people (1.5 million women, 1 million men, 500,000 women and 700,000 boys) with sexual reproductive health and gender roles messages. Further, the National Commission on Women In Development (NCWID) facilitated the establishment of the National Family Welfare Council of Malawi (NFWCM) a women based parastatal responsible for the coordination of population and development including family planning and safe motherhood issues under the Ministry of Gender and Community Services. The NFWC remained operational until 1999 when it was moved to Ministry of Health and Population and it was dissolved in 2000.

6.2 After the International Conference on Population and Development (ICPD) in 1994; the Social Summit and the Fourth World Conference on Women Beijing in 1995; Malawi developed a National Platform for Action. The Platform identified 4 critical areas of concern for Malawi namely: *Poverty Alleviation and Empowerment; the Girl Child; Violence Against Women; and Peace*. The platform was launched on 8<sup>th</sup> March 1997 and it coincided with the signing of the Southern African

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Development Community (SADC) Gender and Development Declaration by the Heads of States and Governments in the same year on 8<sup>th</sup> September 1997 in Blantyre Malawi.

6.3 The declaration committed the Heads of States/ Government and their countries to place gender firmly on their development agenda. Ensure equal representation of women and men in the decision-making positions. Promote women's full access to, and control over production resources. Repeal and reform all laws, amending constitutions, and changing social practices that still subject women to discrimination. Enhance access to quality education by women and men while removing stereotypes. Making quality reproductive and other health services more accessible to women and men. Promoting and protecting the human rights of women and children. Recognising, protecting, and promoting the sexual reproductive rights of women and girls. Take urgent measures to prevent and deal with the increasing levels of violence. And encourage mass media dissemination of information on women's and children's human rights.

6.4 Further, Malawi developed the National Gender Policy that took on board the critical areas identified in the Platform. The Policy was launched on 8<sup>th</sup> March 2000 and it identified 6 thematic areas namely: Education and Training; Reproductive Health; Food and Nutrition Security; Natural Resources and Environmental Management; Governance and Human Rights; and Poverty Eradication and Economic Empowerment. This therefore, necessitated a further Ministry review and renaming to Ministry of Gender and Community Services in 1999 with a specific department of Gender Affairs; and was designated the National Gender Machinery for Malawi. Its main mandate is to spearhead the formulation, implementation, Coordination, collaboration, monitoring and evaluation of Gender Policy, Programmes, Projects and activities at all levels. The goal is to mainstream gender in the national development process to enhance participation of men, women, boys and girls for sustainable and equitable development for poverty eradication. To this effect, the Gender department has 4 entry programmes namely: Gender mainstreaming; Economic Empowerment; Food Utilisation and Dietary Diversification; and Community based Population Education with a focus on sexual reproductive health and HIV/AIDS issues.

6.5 In order to operationalise its mandate, the Ministry as the National Gender Machinery identified gender focal points in all the public, private, Parastatal and NGO sectors whose role is to ensure that the gender agenda is part and parcel of the stakeholders business. A gender programme is currently being finalised to implement the policy while efforts are being undertaken to develop the Gender Equality Act. In addition, between 1997 and 1999, the national machinery intensified the gender sensitisation and awareness campaigns. Workshops were held for influential people in Malawi such as: 48 Principal Secretaries who produced and signed their own Gender and Development Declaration known as the Makokola Declaration for Malawi, 60 senior Officials, 33 Cabinet Ministers, 177 Members of Parliament and 140 Chiefs. This facilitated the approval of various Gender Policy Documents. Further, nation wide gender and human rights awareness sessions were held and a total of 100 trainers who trained 1500 each reached 150,000 community members while mass media reached 75% of the total population. Furthermore, a Parliamentary Women's Caucus was formed across party lines to ensure that women's rights issues and the removal of discriminatory practices are taken on board in the house. A Women and Children Affairs Committee that has turned into a Community and Social Affairs Parliamentary Committee was formed to deal with all social issues that

affect women and children. At Cabinet level, a Cabinet Committee on Gender, Youth and Persons with Disability was established to approve and present such issues at the Cabinet.

6.6 To ensure that all stakeholders are mainstreaming gender in their work, the NGO gender Coordination network was formed in 1998. The role of the network is to coordinate all gender activities within the NGO/Civil Society sector. The network is a member of various committee of government to ensure that NGOs interests are taken on board.

6.7 In the public sector, the Ministry of education curriculum has been reviewed and made gender responsive. Gender specialists produced a classroom teacher's checklist for use by the teachers. In order to ensure that girls enrol, remain and complete the school cycle, a girls attainment in basic literacy and education (GABLE) programme was implemented from 1996 to 2002 with a social mobilisation campaign that is on going. This programme provided tuition for girls who passed examinations and learning materials to all the students in the primary school.

6.8 The Ministry of Defence's policy was not to employ female soldiers. This policy was reviewed in 1999 and by 2000 the first female soldiers recruits graduated at the Military College. To date over 130 female solders have been trained and recruited out of which 11 have been commissioned officer cadets.

6.9 The Ministry of Agriculture reviewed it training materials and curriculum to accommodate more girls and created an agricultural gender roles unit. The unit is working on mainstreaming gender in agriculture.

6.10 The Ministry of Home Affairs promoted several women at various levels and increased the intake levels in the Malawi Police Service. To date there are 1269 female police officer having increased from 272 in 1995.

6.11 Ministry of Forestry, Fisheries, Environment, Energy and Wild Life reviewed its curriculum and constructed facilities for girls at its training college in order to attract girls to join forestry training. Its wild life, afforestation, environment and energy programmes were made gender sensitive. Malawi took the lead in mainstreaming gender in the forestry sector, which it was coordinating in SADC.

6.12 The University increased its selection ratio from 10 females out of 100 males to 30 females out of 100 males in 1998 and it is currently moving towards 40 females out of 100 males.

## **7. Conclusion**

The adoptions of the new constitution and the gender approach to development in 1995 have provided conducive, environment for the elimination of existing gender disparities. The conducive legal framework for realising women's rights and addressing gender-based disparities are in place but progress is however slow because of the existing socialisation processes that strengthen male dominance.

## **Part II: Progress, Constraints and Realities by Article**

This part of the report gives an account on the implementation of CEDAW in Malawi. It recognises and uses the CEDAW standards to examine Malawi's Constitution, policies, and principal legislation

and programmes. For each component of a CEDAW Article, the report outlines the realities of women.

## **Article 1: Definition of Discrimination against Women**

### **1.1 CEDAW Standard**

*Article 1: For the purposes of the present Convention, the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.*

### **1.2 Descriptions of Discrimination in Malawi's Constitution**

1.2.1 The 1995 Malawi's Constitution is progressive because its Chapter 4 enshrines a bill of rights even though it does not legally define discrimination. The pre-1994 Constitution did not refer to discrimination although it was party to the Universal Declaration of Human Rights.<sup>36</sup>

1.2.2 The 1995 Constitution is more emphatic and explicit in its entrenchment of human rights. One such enshrined principle in the current Constitution is that all persons are equal before the law.<sup>37</sup> The only limitation to the enjoyment of lawful rights is the lack of enactment of implementation legislation and its enforcement. The Constitution, further, has a non-discrimination clause that prohibits discrimination against women based on sex, race, colour, sex, language, religion, political or other opinion, nationality, ethnic or social origin, disability, property, birth or other status<sup>38</sup>.

Legal awareness in Malawi is low, particularly among women. As a result, no justice forum has considered the non-discrimination clauses in cases involving alleged violation of women's rights. Exceptionally though, the Office of the Ombudsman has on its register a very high number of complaints against discriminatory behaviour at 200 for 2000 alone.<sup>39</sup> The Office of the Ombudsman is more accessible and user-friendly than most of the public offices that administer justice in Malawi.

### **1.3 Description of Discrimination against Women in Malawi Sectoral Laws**

1.3.1 Since the enactment of the Constitution, the State has adopted one piece of legislation that addresses discrimination. The Employment Act 2000 adds "family responsibilities" as a prohibited factor in the treatment of employees.<sup>40</sup> On their part, courts have expressed willingness to enforce non-discrimination clauses.<sup>41</sup>

1.3.2 An ongoing law reform on gender and the law may result in greater articulation and specific laws to eliminate gender based discrimination. The Special Commission on Gender and the Law has adopted the principle of non-discrimination between women and men as one of the guiding tenets in its work. The Commission has prioritised three areas for its work: succession law, family relations,

<sup>36</sup> Malawi Constitution, 1996.

<sup>37</sup> Malawi Constitution 1994, section 12(v).

<sup>38</sup> Malawi Constitution, section 20.

<sup>39</sup> Office of the Ombudsman, Register of Complaints (Lilongwe; Office of the Ombudsman, 2002).

<sup>40</sup> Employment Act, Act No. 6 of 2000, section 5.

<sup>41</sup> *Thandiwe Okeke vs the Attorney General*, Miscellaneous Civil Application No. 73 of 1997 (unreported), Justice Mwaungulu.

and a possibility for a Gender Equality Act, which could articulate operative definitions of discrimination against women.

#### **1.4 The Definition of Discrimination and the Reality in Malawi**

1.4.1 Major contributing factors to the disparities are customary law and cultural practices. There is a wide gap between the proclamations in the Constitution and the living law that determines the roles and power relations of men and women. Customary law is internalised as a norm in the socialisation process and women are the custodian of the culture that emphasises on the unequal power relationships between women and men and some that guarantee that, women should remain submissive to men.

1.4.2 Customary law, further, allows polygamy. In some cases, domestic violence against a wife is acceptable within the customary law, which expects the husband to exercise a disciplinary role.

#### **1.5 Conclusion**

Malawi's Constitution does not allow discrimination, but there has been no legislative or judicial definition. An ongoing law reform process may result in stronger and clear norms to eliminate forms of discrimination against women. The customary law currently condones gender stereotypes and unequal division of gender roles and creation of male and female images.

### **Article 2: Obligations to Eliminate Discrimination**

#### **2.1 CEDAW Standards**

Article 1: States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

- (a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realisation of this principle;
- (b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;
- (c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;
- (d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;
- (e) To take all appropriate measures to eliminate discrimination against women by any person, organisation or enterprise;
- (f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;
- (g) To repeal all national penal provisions which constitute discrimination against women.

## 2.2 Introduction

2.2.1 The Constitution has provided a firm foundation for taking measures to eliminate discrimination against women in Malawi. The National Gender Policy, developed after the Constitution, has complied with the Constitution, which requires that the Government must adopt policies that can help the country attain gender equality.<sup>42</sup>

2.2.2 Gender-based disparities, cultural attitudes, patriarchal capitalism, and the general powerlessness of women mean that a lot more work need to be undertaken in order to translate the standards in the Convention and the Constitution into de facto equality, fairness and development.

## 2.3 Legal Embodiment of the Principle of Equality Between Women and Men

2.3.1 Unlike its precursor, the 1994 Constitution guarantees the adoption and implementation of gender equality as a goal and non-discrimination as crosscutting principles. In addition to the non-discrimination clause,<sup>43</sup> the Constitution underlines the importance of gender equality.<sup>44</sup> The State is required to promote the welfare and development of the people of Malawi by progressively adopting policies and legislation that promote “principles of non-discrimination.”<sup>45</sup> It further requires the implementation of policies that address “social issues such as domestic violence” to attain gender equality, among others.<sup>46</sup> The Constitution further allows the State to pass legislation to address inequalities in the society and prohibit discriminatory practices. Such measures, according to the Constitution, could include the use of criminal punishments.<sup>47</sup>

2.3.2 In this connection, Section 13 of the Constitution guides the State to adopt policies and legislation that progressively advances the welfare of the people of Malawi through the adoption of such measures as the following:

- “Full participation of women in all spheres of the Malawian Society on the basis of equality with men”.
- The implementation of the principles of non-discrimination and such other measures as may be required; and
- The implementation of policies to address social issues such as domestic violence, security of the person, lack of maternity benefits, economic exploitation and rights to property.<sup>48</sup>

2.3.3 Legally, every woman can invoke section 24(1) of the Constitution to enforce her right “not to be discriminated against” on the basis of “gender or marital status.”<sup>49</sup> Another provision that women can invoke in Malawi is section 30 of the Constitution. The provisions enshrine the right to development, particularly for “women, children and [people with disabilities]. Measures required to realise the right to development must include “equality of opportunity for all in their access to basic

<sup>42</sup> Malawi Constitution, section 13(a).

<sup>43</sup> Malawi Constitution, section 20.

<sup>44</sup> Malawi Constitution, section 13(a).

<sup>45</sup> Malawi Constitution, section 23 (a)(ii).

<sup>46</sup> Malawi Constitution, section 13(a)(iii).

<sup>47</sup> Malawi Constitution 1994, section 20(2).

<sup>48</sup> Malawi Constitution 1994.

<sup>49</sup> Malawi Constitution 1994, section 24(1).

resources, education, health services, food, shelter, employment and infrastructure.”<sup>50</sup> Similarly, but more emphatically, section 30 stipulates that the State has “a responsibility to take measures to introduce reforms aimed at eradicating social injustices and inequalities.”<sup>51</sup>

## **2.4 Adoption of Appropriate Anti-Discrimination Legislative Measures**

2.4.1 Legislatively, the establishment of the Law Commission under the Constitution is a strategic measure in facilitating measures against gender-based discrimination. The Law Commission has reviewed a number of laws and made some proposals to Cabinet. The Commission has so far not followed a logical programme based on the requirements and gaps in the Constitution. Instead, the Law Commission has responded to requests and suggestions from Government departments and donors. In the year 2001 the Law Commission on Gender and the Law was established.

In its first report in 1996, the Law Commission made several recommendations related to the welfare of women. It recommended that the dispossession of widows, a huge area of concern in the country, should become a criminal offence. The Commission further recommended that the affiliation awards against a putative father should be increased from 24 Kwacha (\$12 the then \$ to Kwacha rate was 1:2) to 500 Kwacha (\$33.33 the then \$ to Kwacha rate was 1:15) per month. Furthermore, the Law Commission recommended that the Citizenship Act, which entails unequal treatment of men and women should be abrogated. The Citizenship Act so links citizenship to marriage for women that a Malawian woman who marries a non-Malawian loses her Malawian citizenship and is unable to transfer her birth-related citizenship to her children. Lastly, the Law Commission recommended strong legal punishments against people who commit the crime of defilement.

2.4.2 The Commission’s first report did not result into law. The proposal to tackle the dispossession of surviving spouses and children was however enacted into law in 1998. The law made it a crime to dispossess surviving spouses and children, amending the Wills and Inheritance Act.<sup>52</sup> The amendment further required the appointment of special prosecution officers to focus on the offence. The amendment furthermore required the development and implementation of a civic education programme against the dispossession of surviving spouses and children. However, no special prosecutor has been appointed, although the Office of the Director of Public Prosecutions has prosecuted few cases. The civic education programme required under the revised law has not been developed; however, Community Development Assistants of the Ministry of Gender and Community Services and Human Rights NGOs have carried out sensitisation campaigns on property dispossession. The campaigns have been carried out during the annual 16 days of Activism on Gender Based Violence coordinated by the Government. Property dispossession remains a big problem in Malawi and the Special Law Commission on Gender and the Law has prioritised the examination of the Wills and Inheritance Act. A draft report on the review has been produced.

2.4.3 Since previous special law commissions did not mainstream gender issues, their recommendations have sometimes made gender insensitive conclusions. For example, on rape, the Commission refused to make the crime gender-neutral, arguing that the element of penetration is crucial and that only a man can penetrate a female. The Commission further refused to recognise

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<sup>50</sup> Malawi Constitution 1994, section 30.

<sup>51</sup> Malawi Constitution 1994, section 30(3).

<sup>52</sup> Wills and Inheritance Act, No. 25 of 1967 (Chapter 10:02, Laws of Malawi), section 84A.

marital rape, maintaining that to do otherwise would open up private life in families to public scrutiny.<sup>53</sup>

2.4.4 One specific piece of legislation allows the punishment of discrimination against women. The Employment Act of 2000 carries a fine of MK10,000 for a breach of the general anti-discriminatory provisions in sections 5 and 6, which prohibit discrimination against any employee on any ground including sex, and obliges employers to pay equal remuneration for work of equal value, regardless of any consideration including sex. The Act further provides for an entitlement to maternity leave, the right to return to work subsequent to that leave and forbids termination of employment on the basis of pregnancy or related issues<sup>54</sup> A fine of MK20,000 is imposed on any employers breaching this provision.

## 2.5 State Restraint from Engaging in Discrimination

2.5.1 There have been, since 1994, four policy initiatives that could help achieve gender equality in Malawi through state actions. The first was the 1993 Policy on Women In Development, that was followed by the National Platform of Action for Women,<sup>55</sup> launched on 8<sup>th</sup> March 1997 as a follow up to the Beijing Conference. The Platform has four priority areas of action namely:

- poverty alleviation and the empowerment of women;
- the girl child;
- violence against women; and
- peace.

In the same year 1997, on 8<sup>th</sup> September, Malawi signed the SADC Gender and Development declaration that commits Malawi to ensure that gender equality and equity at all levels is achieved.

2.5.2 The second is the Government's Poverty Alleviation Framework designed to reduce poverty. In Malawi, poverty is most prevalent and deeper among women and this policy recognised the existing gender disparities, but falls short of the plans of action to address them. Eight years since its adoption, however, the poverty situation in Malawi has decreased slightly from 66% in 1993 to 63% in 2000. In spite of such indications, there has been no comprehensive evaluation of the programme to determine its effectiveness in addressing gender-based disparities. The development of the MPRSP calls for the monitoring of poverty from a gender perspective because gender equality is one of the cross cutting issues mainstreamed in each of the pillars.

2.5.3 The third was a long-term perspective study intended to capture and guide the realisation of the country's Vision by the year 2020. The *Vision 2020*,<sup>56</sup> study was funded by the United Nations Development Programme and steps towards achieving them has been included in the MPRSP as an implementation tool. The third policy instrument is the National Gender Policy, launched in 2000.<sup>57</sup>

<sup>53</sup> Law Commission, 'Report of the Commission on Criminal Justice' (Lilongwe; Malawi Law Commission, 2000).

<sup>54</sup> Employment Act, No 6 of 2000, sections 47, 48 and 49.

<sup>55</sup> Government of Malawi, *The National Platform for Action: Follow Up to the 4<sup>th</sup> World Conference on Women* (Lilongwe; UNICEF, 1997).

<sup>56</sup> Malawi Government, 'Vision 2020: National Long-Term Perspective Study' (Lilongwe; Malawi Government), at 88.

<sup>57</sup> Malawi Government, *National Gender Policy* (Lilongwe; Malawi; 2000).

The Vision 2020 Statement states that:

“By the year 2020, Malawi as a God fearing nation, democratically mature, environmentally sustainable, self reliant with equal opportunities for and active participation by all, having social services, vibrant cultural and religious values and being technologically driven middle-income country”.

This policy in as far as good governance and human rights are concerned, provides that “the policy shall promote democratic governance and ensure gender equality and equality before the laws of Malawi”.<sup>58</sup> An implementation programme has been developed and it is in its finalisation stage. The implementation of the policy, however, still requires more human, economic and organisational resources as many Government departments and stakeholders are not able practically to mainstream gender.

2.5.4 The fourth instrument, that is more promising in terms of delivery, is the Poverty Reduction Strategy Paper.<sup>59</sup> Developed under the support of the World Bank and the International Monetary Fund, the strategy regards gender as a crosscutting,

issues and requires action to reduce gender-based disparities. The gender strategies adopted in the paper are:

- Strengthening the institutional capacity for implementation of the National Gender Policy
- Engendering budgets
- Promotion of gender sensitive formal and informal legal environment
- Eradication of gender-base violence
- Enhancement of women’s participation in leadership and decision making processes

2.5.5 There is much challenge to translate the policies into action in Malawi, as the indicators on poverty and disparities show.<sup>60</sup> The priority areas outlined in the Malawi Platform for Action, were incorporated in the National Gender Policy and a Gender Based Violence Strategy was developed and launched in 2002. From the year 2000 Malawi joined the international community in the 16 days campaigns on violence against women. A total of 840 community action groups with a total membership of 8400 have been formed on gender based violence; over 1.5 million women and girls and one million men and boys have been reached with Gender based violence messages and issues. In 1998, on 8<sup>th</sup> March, Malawian women presented a petition to the President of Malawi on elimination of violence against women. In the same year, 1998 Malawi signed the SADC Gender and Development addendum on the elimination and eradication of violence against women and children. Several organisations carried out research and advocacy on violence against women and books have been produced such as “*In Search of Justice*”<sup>61</sup> and “*Dispossessing the Widow*”,<sup>62</sup>. The publications have shed some light on the plight of women such as the slowness of the Administrator General’s Office in administering the deceased estate without a will, executors or personal representatives,<sup>63</sup> due to inefficiency, too centralised systems, and mismanagement. As a result, many widows and surviving children lose some of their inheritance and millions of Kwachas remain in an-administered estates. To

<sup>58</sup> Malawi Government, National Gender Policy (Lilongwe; Malawi Government, 2000), paragraph 5.5.

<sup>59</sup> Malawi Government, ‘Malawi Poverty Reduction Strategy Paper’ (Lilongwe; Malawi Government; 2002).

<sup>60</sup> Part 1 of this Report.

<sup>61</sup> Women and Law in Southern and Africa Research Trust – Malawi, ‘In Search of Justice’, (Blantyre; WILSA-Malawi, 2000)

<sup>62</sup> Women and Law in Southern and Africa Research Trust, ‘Dispossessing the Widow’ (Blantyre; WILSA-Malawi, forthcoming).

<sup>63</sup> Administrator General Act, No. 30 of 1967 (Chapter 10.01, *Laws of Malawi*).

educate the masses on wills and inheritance issues, the Ministry of Gender and Community Services in collaboration with its stakeholders has embarked on the Will writing and property disposition issues campaign. So far five districts have been covered. In addition the translation of CEDAW into one local language has been completed and it will be disseminated to the local masses shortly.

2.5.6 The provisions in the Constitution on the elimination of discrimination against women has been strengthened by the adoption of the National Gender Policy. The policy has provided for other government ministries, departments and public authorities to mainstream gender equality, which includes guaranteeing the special rights, accorded to women under the Constitution. However, the Ministry of Gender and Community Services is a line ministry with no coercive powers. There is therefore need to make the Ministry of Gender and Community Services, a central ministry. The provision in the Poverty Reduction Strategy Paper could be a starting point as it has a strategy on strengthening the capacity for the implementation of the National Gender Policy.

2.5.7 The community interactions conducted as part of the information collection exercise showed that despite the intensification of gender equality campaigns and policies from the late 1990s, women continue to face severe impediments to the realisation of their rights. Poverty, poor levels of participation in the design and monitoring of programmes, traditions and cultural stereotypes, and patriarchy are the broad reasons for the slow empowerment of women in Malawi.

## 2.6 Restrictions, Limitations and Constraints

2.6.1 The enjoyment of women's rights provided for in sections 24(1) and 24(2) of the Constitution requires the passing of legislation to make it more practical and operational. This shortfall must not negate the essential content of the right or freedom provided for and it must generally be applied. The need to harmonise the national and international provisions need not be overemphasised because that will be the only way to enable them to meet the international standards in the open democratic society.<sup>64</sup> In addition, the general right to equality is non-derogable in times of emergency.

2.6.2 There are however many limitations against the right not to be discriminated against. Customary law provides for discriminatory practices such as polygamy, early marriages, wife inheritance, and the payment of bride price or related charges amongst both matrilineal and patrilineal communities. Such customary law limitations are cemented by gender-stereotyped attitudes and actions that feminise and masculinise roles and regard the woman as inferior to the man.

### 2.6.3 Ensuring Institutional-based Protection of Women and Men

2.6.4 The 1994 Constitution has provided for an institutional framework to protect the enjoyment of human rights in general. But no explicit institutional framework for the protection of women's rights in particular has been put in place. Institutions such as the Law Commission, the Office of the Ombudsman, the Human Rights Commission, the Office of the Director of public Prosecutions (DPP), and the court system are not adequately equipped to deal with the general protection of human rights.

2.6.5 In their work, some of these institutions have created committees to focus on women's rights. The Human Rights Commission has a Committee on Women's Rights, but the Committee's systems for that Commission are under funded. The Human Rights Commission's Plan for Action for 2001,

<sup>64</sup> Malawi Constitution, section 44.

does not provide for the specific implementation of international equality standards for women. Further, although two public hearings per quarter are conducted, they are yet to address the issue of discrimination against women. The Commission's Annual Report makes no reference to any activities related to CEDAW between 1999 and 2000 and those related to discrimination against women.<sup>65</sup>

2.6.6 The Special Law Commission on Gender and the Law is an example of a special committee charged with gender law reform and likely to be dissolved when it completes its task. In its 1996-2002 report, the Law Commission does not indicate that any work has been done to address the enjoyment of women's rights. Plans are however, underway to train all special commissioners to ensure that gender is mainstreamed in their commissions activities, thereby ensuring sustainability in the Law Commission's work.

2.6.7 The contribution of the Office of the Director of Public Prosecution to the elimination of discrimination against women has been in the enforcement of section 84A to the Wills and Inheritance, which criminalizes the dispossession of surviving spouses and children. Although no statistical data was available, officers were able to comment that they assisted a number of widows whose property had been seized. On its part the Ministry of Gender and Community Services receives complaints of property disposition at 3 per week on average. These are documented and linked to the office of DPP and/or other legal institutions. The general perception in the country, nevertheless, is that the 1998 law appears not to be working as no special prosecutors have been appointed and the Office of the Director of Public Prosecutions is short on staff. The ideal situation should have been to strengthen the existing community outreach programmes of the Ministry of Gender and Community Services in collaboration with its stakeholders to deal with the cases at all levels. The Special Law Commission on Gender has decided to revisit the issue, focussing on why it has been difficult to enforce the new law.

2.6.8 The Courts system has the important role of interpreting the Constitution and the laws under it. Practice shows that sometimes matters involving offences such as rape are decided against women with magistrates and even high court judges basing their decisions on customary traditional views rather than international human rights practice. A High Court Judge acquitted a brutal rapist arguing that although the woman resisted the rape, it was common knowledge that women always pretend to resist sexual intercourse.<sup>66</sup>

## **2.7 Measures to Eliminate Discrimination Against Women by Persons and Organisations or Enterprises**

2.7.1 The legal and institutional framework in Malawi indicates that it may be easier to monitor compliance with human rights principles within the public sphere. There are however no such measures for the regulation of the private sector especially in the context of a free market. The Government's significant step so far has been the enactment of the Employment Act. Being a new Act it is hoped that its enforcement measures being put in place will assist in addressing the issues.

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<sup>65</sup> The Human Rights Commission, 'Report of the Human Rights Commission 1999-2000 (Lilongwe; Human Rights Commission, 2000).

<sup>66</sup> *Rashid Hussein James v Rep*, High Court Criminal Case No. 12 of 1999.

## 2.8 Repeal of Laws that are Discriminatory

2.8.1 The significant repeal of discriminatory laws was during the transition period to multiparty politics. The Decency in Dress Act, which forbade the wearing of trousers and miniskirts for women was repealed. Some women now wear trousers. In most rural and peri-urban areas, however, it is still unacceptable for women to wear trousers. During the community interactions men argued that a woman who wears a pair of trousers is challenging the role and position of men.

### **The Trousers as Symbol of Male Power**

During the information collection, it was noted in one of the rural areas that a young woman who went to her home village to visit her parents wearing a pair of trousers was not welcomed. The villagers, including her parents, were offended by her dressing. Her father did not greet her. Instead, he went into his house, collected his clothes and gave them to her. She understood the message. So, she borrowed a dress from her sister in law wore it and apologised to the father and put on went to apologise to the father.

2.8.2 In addition to customary laws and gender stereotypes, there are still some written laws that are discriminatory. Section 9 of the Citizenship Act, for example, makes provision for the acquisition of citizenship by a foreign national who marries a Malawian. Only Malawian men marrying foreign nationals can confer their nationality upon their spouses. Female nationals who marry foreigners cannot confer their nationality upon their spouses. Such a woman must denounce either her Malawian citizenship or that she may have acquired through the husband. This decision must be made within a year of the marriage. The issue as to whether the provisions are unconstitutional was raised in several court cases. Most trial judges do not find it necessary to decide on the issue of discrimination. There is therefore, need for the Law Commission to repeal this provision.

## 2.9 Conclusion

Malawi has a potentially useful Constitutional framework to address discrimination against women. There is also a policy that can help public and private institutions to advance the enjoyment and protection of the rights of women in Malawi. However, a lot of work has to be undertaken in order to narrow the existing gender disparities and level the playing field. Although inadequate funding and human resources at all levels due to attrition are major cause of the apparent lack of efficacy, there is need to enhance organisational resources and to prioritise the realisation of women's rights in the Government's programme, as a principal duty bearer. In addition, there is need to give communities and other development partners a greater role in the identification of duties that must be carried out by them to eliminate discrimination against women.

## **Article 3: Appropriate Measures for the Development and Advancement of Women**

### **3.1 CEDAW Standards**

Article 3: States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

### **3.2 Introduction**

3.2.1 The Government of Malawi committed itself to advance the enjoyment of the rights of women in the country by being a party to various international instruments and conference plans of actions on women's rights in addition to CEDAW.<sup>67</sup>

### **3.3 General Measures**

3.3.1 The Government has taken significant measures to improve the advancement of women. It adopted the "Gender and Development" approach in 1995 having shifted from the "Women in Development" Approach." The Women and Development Approach assumed that women have a problem and they needed help. It also did not address women's strategic interests in the mainstream development agenda.

3.3.2 One notable institutional change since the transition to a multiparty system of Government was that the National Commission on Women in Development was renamed the National Commission on Gender Trust. The body's new role is to advocate and lobby for gender equality. Since that change, the body has predominantly had programmatic problems largely due to lack of institutional support. Efforts are however, underway to revive it through the establishment of a secretariat.

3.3.3 There are at least five significant measures adopted since 1994. The first was a new Constitution in 1994. This Constitution enshrines a Bill of Rights and requires that the enjoyment of women's rights should be a subject for legislation, policy and programmes.<sup>68</sup>

3.3.4 The second measure is that Government has allowed Non-Governmental Organisations to carry out programmes that aim at empowering women on human and women's rights education; legal education; women's assertiveness and leadership skills programmes; lobbying and advocacy campaigns for more women in decision-making positions including political participation.

The third measure was the adoption of the National Gender Policy in 2000. One major aim of the policy is to improve the rate at which women are advancing in Malawi.

3.3.5 The fourth measure was the inclusion of the implementation of the National Gender Policy into the country's Poverty Reduction Strategy Paper. The fifth measure is the development of the National Gender Programme which, is focusing on actions for the implementation of the National Gender Policy's six thematic areas of concern. The programme document outlines Coordination

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<sup>67</sup> Platform for Action and the Beijing Declaration, Fourth World Conference on Women, Beijing, China, 4-15 September, 1995 (New York; United Nations, 1996); Southern African Development Community Declaration on Gender and Development, Blantyre Malawi, 1997; the Southern African Development Community Addendum on the Protection and Eradication of Violence Against Women and Children.

<sup>68</sup> Malawi Constitution 1994, Part IV, especially sections 13, 24 and 30.

mechanisms with a focus on broad-based participation of stakeholders, strategic objectives, activities, their outputs and a budget.

### **3.4 Measures in Civil and Political Matters**

3.4.1 The 1994 Constitution enshrines civil and political rights. It provides for the freedoms of association, conscience, opinion, expression, the press, assembly, movement and residence. It also requires access to information held by the state, to ensure enjoyment of rights. Section 40 (1) and (3) of the Malawi constitution allows every person to form, join and participate in political activities. It allows people to campaign and participate in peaceful political activities and to vote using a secret ballot system or to stand for election for any public office. For all these rights, the non-discrimination standard in section 20 applies.

3.4.2 In order to operationalise the Constitutional provisions that promote equal exercise and enjoyment of civil and political rights in Malawi, the National Gender Policy was developed. The policy's implementation programme is key to equal enjoyment of civil and political rights for women and men. The National Gender Policy's goal is to mainstream gender in all development processes to enhance the participation of women, men, boys and girls for equitable development and poverty reduction. One area that requires special focus, according to the policy, is female representation in politics and decision-making.<sup>69</sup>

3.4.3 Even though there is a conducive environment for non-discriminatory civil and political human rights enjoyments, there are insufficient mechanisms to address the impediments that affect women in Malawi. First, more women than men fail to participate in some civil and political activities because of lack or low levels of education. The literacy rate for women is 49% compared to 72% for men. Coupled with this is the stereotyped perception among most Malawians that some civil and political roles are masculine. For example, according to customary law, a male successor to village headship or chieftaincy is preferred. Women are appointed to such positions only when there is no man. Further, there is a dominant perception that leadership in general and high profile politics are for men and not women. Furthermore, when women and men participate in a single activity, the roles are allocated according to sex, with women performing the decorative and nurturing functions.

3.4.4 Current legislation that regulates civil and political participation does not address the participation of women as a gender issue.<sup>70</sup> In turn, all the three political parties that are represented in Parliament have no policy reflected in their manifestos.

### **3.5 Measures in Economic Matters**

3.5.1 Section 29 of the Constitution allows women and men to "freely engage in economic activity, to work and pursue a livelihood anywhere in Malawi." The Constitution further accords all persons with the right to enjoy development and demands that there should be equal opportunity for all in accessing basic resources, food, shelter employment, infrastructure, education, and health services.<sup>71</sup>

<sup>69</sup> Malawi Government, National Gender Policy (Lilongwe; Malawi Government), 5.5.

<sup>70</sup> Political Parties (Registration) Act, the Local Government Act, the Electoral Commission Act, the Presidential Elections Act, and the Parliamentary Elections Act.

<sup>71</sup> Malawi Constitution, section 30.

3.5.2 The Government has liberalised the economy and this has resulted in an increase in the number of small businesses including those managed or co-managed by women.<sup>72</sup> The National Gender Policy provides for economic empowerment in one of its six thematic areas. In line with this, the Government has further, encouraged and established micro-credit schemes and organisations for poor people. The Government in collaboration with its stakeholders has provided credit to 44773 women in 2003 compared to 22469 in 1995 and trained 53085 in 2003 compared to 27790 in 1995. The number of credit beneficiaries is lower than those trained and the outreach is slower, because of inadequate loan portfolios.

3.5.3 In addition, the Government developed a Small and Medium Enterprise Policy. Coupled with this was the introduction by the Ministry of Gender and Community Services and its stakeholders of appropriate technologies for production oriented businesses that range from bamboo furniture, bee keeping, mushroom growing, bakery, broad room weaving and batik among others. To date a total of 10,000 individual women have benefited compared to 600 women in 1995. Women in Malawi have done very well in business undertakings as evidenced by scooping the first award in the Women In Business (WIB) SADC fair in 2000 in Namibia and 2002 in Blantyre Malawi.

3.5.4 The reproductive and community work performed by women is not remunerated nor included in the GDP. Most employed women are in low paid jobs and concentrate on the lower employment ladder because of inadequate educational qualifications. For example, the 1995 Civil Service Census showed that out of the 112,975 Civil Servants only 28,269 were women. In 2003, data for Senior Managers in Civil Service reveals that out of 698 Senior Officers only 68 (10%) are women. This implies that women's participation in decision making is limited. Consequently, there is dependency on men among most women.

3.5.5 Agriculture remains the back bone of Malawi's economy and 90% of women are full time farmers: and contribute 79% to agriculture labour compared to 21%. Thirty-two percent of women get their household income from crop production.<sup>73</sup> Yet women have limited access to factors of production such as land, farm inputs, labour and extension services; and they concentrate on food rather than cash crops. They also do not have adequate time for productive tasks.

3.5.6 Further, the HIV/AIDS pandemic is making women and the elderly to be economically powerless because they are the main care providers for the infected and affected. This is because of the cost sharing policy that is impacting negatively on women such as the home based care.

### **3.6 Measures in Social and Cultural Matters**

3.6.1 The Constitution states that any cultural practices that impact negatively on women should be eliminated.<sup>74</sup> The Constitution further directs Government to undertake reforms aimed at eradicating social injustices and inequalities, particularly for women, children, and people with disabilities.<sup>75</sup>

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<sup>72</sup> 'Malawi Gemini Study' (Zomba; 2002)

<sup>73</sup> National Statistical Office, Integrated Household Survey (Zomba; National Statistical Office, 2000).

<sup>74</sup> Malawi Constitution 1994, section 24(2).

<sup>75</sup> Malawi Constitution, section 30(3).

3.6.2 The Government through the Ministry of Gender and Community Services, is working with the communities to address issues of gender based violence which are prevalent due to traditional and cultural practices.

3.6.3 Certain Ministries are particularly involved in cultural development. The Ministry of Youth, Sports and Culture supports the preservation of the positive Malawi's culture by encouraging traditional dances and preserving old artefacts. The Ministry of Education, Science and Technology also encourages pupils in schools to practice and know their cultures whilst appreciating gender issues.

3.6.4 Furthermore, chiefs, opinion and church leaders and the community are being sensitised by the government through the face to face interaction, radio, television, mass communication and advocacy on the adverse effects of some harmful traditional and cultural practices. To this effect, there has been a reduction in some of the negative cultural practices such as wife inheritance.

3.6.5 The success and adoption of appropriate measures to advance the development of women are hampered by limited funds, low literacy levels amongst women, and the negative attitude towards changing the existing cultural practices that impact negatively on women rights. During information collection, some communities indicated that because of women knowing and demanding their rights, the traditional fabric that promotes male dominance is threatened.

3.6.6 Culture however remains a strong source of resistance and harmful traditional practices that impact negatively on women. For example, it was reported that some cultural practices expose women to sexually transmitted diseases including HIV/AIDS in practices such as wife cleansing (*kulowa kufa*), organised mass rape (*gwamula*) and wife inheritance (*chokolo*).

### **3.7 Conclusion**

The provision made in various policies including the National Gender policy, the MPRSP and the National Gender Programme provide a strong base for the realisation of women's rights and programmes addressing the same.

## **Article 4: Acceleration of Equality Between Women and Men**

### **4.1 CEDAW Standards**

Article 4: Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between women and men shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence for the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.

Adoption by States Parties of special measures, including those measures contained in the present Convention, aimed at protecting maternity shall not be considered discriminatory.

### **4.2 National Standards**

4.2.1 The Constitution of Malawi clearly states that '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 gender or

marital status. The recognition of the need for equality between women and men is also clear in the National Gender policy of Malawi for the period 2000 to 2005.

4.2.2 Despite this recognition, both the Malawi Constitution and National Gender Policy are silent on the temporary measures aimed at accelerating *de facto* equality between women and men. As well as these documents, other policy instruments such as the Poverty Reduction Strategy Paper and the National Budget do not specify affirmative action by the Government to accelerate equity in important socio-economic life of women.

### **4.3 Gender Disparities in Malawi**

4.3.1 According to Human Development Index Reports, all the indicators are poorer for women except life expectancy at birth. That indicator could be deceptive, as the drop in life expectancy is higher for women than for men. Health indicators are poor for both men and women, but women bear a disproportionate burden in caring for the sick and their needs and rights are not met by service delivery systems. The maternal mortality rate for women has increased from 620 deaths per 100,000 births in 1987 to 1120 in 2000. The enrolment rate is 50:50 between girls and boys in standard one. By standard five, girls' retention drops drastically, and classroom achievement rates are poor than for boys because of the multiple roles they play as house workers before going to school and in school as firewood and water collectors for teachers. In terms of income, women are more disadvantaged than men.<sup>76</sup> The introduction of the girls attainment to basic literacy and education (GABLE) has however, increased girls retention rate from 5% to 12% in Primary School and 4% to 11% in Secondary School while the University selection has increased from 4% 25% to 30% between 1995 and 2002.

4.3.2 The disparities and deprivation manifest themselves in other areas directly or indirectly related to the human development index. The number of reported sexual assaults against women has been steeply increasing since 1995. The situation is the same for domestic violence, where reported cases have more than doubled between 1995 and 1999, from 3,900 to 8,000. Although there has been sensitisation on gender based violence and freedom of the press many more cases are not reported because culturally families believe that reporting such issues will bring shame to their households.

4.3.3 The disparities are wide in decision-making positions. The percentage of women in Parliament has increased since the submission of the last report, from 5.6% to 8.8% and for Cabinet Ministers, it is currently at 18% from 9% in 1995. However, the rate of senior women office bearers has increased between the elections in 1994 and 2002 from 5% to 13% respectively. A slight increase has also been noticed in the rate of women Traditional Authorities, which had increased from 2% in 1995 to 6.2% in 2003. In comparison this gain could be looked at as a drop because more new male Traditional Authorities have been created since 1999 than female. Female magistrates currently constitute 9.8% having increased from 2% 1995 and judges 9.1% from 4% in 1995, which is a rise from 0% in the first report.

4.3.4 Previously, the Malawi army did not employ women. Gender was mainstreamed in the Malawi Army between 1997 and 2000 which, led to the change in the employment policy. The first female army recruits graduated in 2000 and by end 2003 11 female officer cadets have been commissioned. In the Police services, the number of female officers increased from 272 in 1995 to 1269 in 2003.

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<sup>76</sup> This report, under Article 10.

4.3.5 There is also uneven gender distribution in the labour force in the formal and informal employment sectors. Women comprise 29% of the labour force in the formal wage employment sector, and 96% in agriculture concentrating in subsistence farming.

#### **4.4 Affirmative Action and the Disparities**

4.4.1 The area in which, the state has taken an affirmative action programme is in the area of the girls' education funded by the United States Development Agency for Development (USAID). The project provided tuition for girls who passed their examinations in primary education. When free primary education was introduced the tuition was given for secondary education. Coupled with this one was the social mobilisation campaign for girls' education. This contributed to the increased retention rate of girls from 5% to 12% and 4% to 11% in secondary and primary education respectively. Even though the affirmative action of tuition provision phased out, their contributions to the enrolment of girls have been outstanding. It should however, be noted that when the tuition was shifted to secondary education, 4000 boys dropped out of school. Another aspect was that 80% of the teachers were not adequately sensitised in gender and they favoured boys in the distribution of books and food because they paid tuition and the girls were only given left over. In order to ensure that the attitude of the teachers, change the primary school curriculum was engendered and teachers were sensitised on gender and development issues between 1994 and 2000. The classroom gender checklist was developed and the secondary and University selection ratios were increased from 1:3 to 1:2 and currently moving towards 1:1. Girls who dropped out of school due to pregnancy are being readmitted.

4.4.2 The second set of affirmative action initiatives within the meaning of CEDAW has been projects to improve safe motherhood. The Government, in collaboration with United Nations and other international development agencies have implemented a project to promote safe motherhood, 14 hospitals were made baby friendly from 1998 and the maternity services were given first priority.

4.4.3 The University of Malawi has taken the third affirmative action where deliberate effort was taken to reserve at least 30% of university places for women. To this effect, the University of Malawi has used a lower cut off intake point for women. The 30% is however, satisfied because of the high intake of girls at the University's College for Nursing where the average enrolment for girls has been over 80%. Additionally, Forestry programmes stipulate that 50% of community committee members must be women.

4.4.4 In economic empowerment, the Ministry of gender has a nation wide economic empowerment programmes that reaches 70% women and 30% men according to poverty assessment results. Consequently, a total of 37,160 women and 15,925 men have been trained in business, credit and technology management while 19,453 women and 8,337 men have accessed credit between 1995 and 2003. These actions go beyond the recognition that poverty is rampant in Malawi.

4.4.5 The Poverty Alleviation Framework and the Vision 20:20 noted that there were acute gender gaps in poverty between women and men. Despite signing the SADC Gender and Development Declaration, which stipulates that women should occupy 30% decision-making positions, the Government has not set quotas to accelerate the realisation of such intention. In the 2000, the Government produced the Policy Investment Framework. The Framework stipulates that female participation at primary, secondary, and tertiary level is to be increased to at least 50% of the total

enrolment at all levels of the education system. The National Health Plan of 1999 to 2004 has improvement of equity in the delivery of health care regarding its impact on the status of vulnerable groups, particularly women and disadvantaged youths as its key focus. This includes the expansion and improvement of reproductive health facilities. The Malawi Poverty Reduction Strategy Paper has identified the improvement of access to micro-finance as an important means for attaining an equitable distribution of income.

4.4.6 The Malawi Social Action Fund (MASAF) has instituted a requirement for 30% to 50% women representation in project committees at the community level therefore, increasing women's participation in decision-making in community development work.

4.4.7 There have been several micro-finance programmes being run by various organisations that have targeted the poorest who have no collateral like women. The services are however, limited in their outreach because of inadequate resources for loans and some men do not understand why women are targeted by some services.

4.4.8 During the information collection exercise, it was noted that some men stated that they did not understand why some programmes were favouring women. The interactions with the communities further confirmed that women remain suppressed in many aspects of life. In some areas where polygamy is prevalent among the Ngoni and Chewas communities, women and children are regarded as a source of cheap labour and a factory for child bearing.

4.4.9 By its mandate the Ministry of Gender and Community Services should monitor the impact of the implementation of the affirmative actions. Unfortunately, the Ministry is confronted with many capacity problems including poorly funding; and staff attrition (impact of HIV/AIDS) which, among others contribute to its failure to monitor the implementations effectively.

## **Conclusion**

Affirmative action is required in order to level the play field in gender gaps and acceleration gender equality between women and men as was done in the GABLE project, University of Malawi selection; micro-credit; among others. Otherwise, the many policies and legislation that seek to address gender disparities lack specific-time bound temporary measures that can accelerate gender equality. The situation is worsened by a string patriarchal customs and attitudes in Malawi's communities and shortage of development projects that involve rural communities in design, implementation, and monitoring.

## **Article 5: Sex Roles and Stereotyping**

### **5.1 CEDAW Standards**

Article 5: States Parties shall take all appropriate measures:

(a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;

(b) To ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and

development of their children, it being understood that the interest of the children is the primordial consideration in all cases.

## **5.2 Introduction**

5.2.1 Gender relations and roles in Malawi are maintained, to a considerable extent, by cultural norms and beliefs. Most of the practices that are based on the idea of the inferiority of the woman, gender based violence, determination of roles, and attitudes between the sexes can be observed during the time the girl is born, brought up, puberty, marriage, adulthood, and even death. The processes adopted include socialisation and observance of customary and other rules and practices passed on from generation to generation.

5.2.2 Malawi's Constitution requires the attainment of gender equality, but does not single out the importance of addressing the determination of gender roles, relations and the stereotyping of men and women. The observations by the National CEDAW Working Committee during the community interactions revealed that stereotyping of women is still strongly embedded in the Malawian social fabric. However, mainly because of income poverty, lack of basic needs and advocacy about gender equality, Malawi is in a social transition whereby sex roles and attitudes are changing amidst stiff resistance from patriarchy.

## **5.3 The Determination of Gender Roles and Stereotyping in Malawi**

5.3.1 The determination of gender roles and relations and the perpetuation of stereotyped attitudes start at birth. When a child is born in Malawi, she or he will be named according to her sex. Although there is no general preference for boys, many parents prefer that the first child in a family should be male. The boy is regarded as, potentially physically, socially and economically strong than the girl, the protector, provider, and a head of his family who will command respect amongst family members.

5.3.2 The upbringing of boys and girls follows the sex of the children and the parents. Very young children, the National CEDAW Working Committee learnt from the communities visited, are mainly taken care of by mothers, considered the natural nurturers. As the child becomes a toddler, the two parents share the preparation of the child as a future adult. As the child is approaching puberty, girls are considered to be a responsibility of mothers and other women whilst boys learn from their fathers and other men. During this stage, most Malawians in rural areas insist that boys and girls should stay away from each other as much as possible.

5.3.3 Boys' and girls' roles in the household are allocated according to sex. Girls are expected to join their mothers in nurturing their father and brothers and have less time to play or study. Girls in Malawian households cook, fetch water, clean the household, and pound maize for flour making, among other roles. Boys are expected to learn from their fathers on how to carry out certain tasks and protect their sisters from undue familiarity with boys and men and violence. In general, girls work as apprentices, accompanying their fathers during tasks, and observing and helping other older men. As the fathers have fewer tasks than mothers, boys have more time for play and study. In families where there are no girls, however, boys perform tasks regarded as feminine without apprehension. Girls, in rural communities, are taught to kneel when speaking or attending to older men, while boys are expected to squat.

5.3.4 The socialisation in the family is complemented by the participation of the community in the upbringing of the boy or girl. This is done through rites of passage, rituals and counselling sessions to prepare boys into men and girls into women. Such practices are often performed secretly and involve the use of passwords and coded language. Examples of such practices are the *kumeta*, which is conducted within the *Nyau* secret societies among the *Chewa* and *jando*, a ritual that involves circumcision of boys among the Yao. The teaching methods are not participatory and are sometimes accompanied with slapping. Other forms of violence and strong language especially for boys and girls who are known to be difficult or potentially deviating from their expected masculine or feminine roles and respect of those found to be elders in language and posture are also punished.

5.3.5 Although rituals are rare amongst urban or educated people, counselling sessions are common. For those who belong to a religion, the counselling is sometimes provided by their religious organisations for both urban and rural areas. In addition to rituals and counselling ceremonies, girls and boys in rural areas are not expected to sleep where their parents spend nights. Instead, girls spend nights in a girls common room, away from the boys' common room. These practices are declining due to other aspects of social changes.

5.3.6 The traditional rituals, commonly called *kumeta*, are conducted according to sex. Men conduct rituals to prepare boys as men and women work with girls to make them acceptable women for their husbands and in society. The image of the woman advocated during such rituals and counselling sessions is that of a supporter, inferior and submissive person ready and skilled in providing sexual and household services to her husband and a capable mother. The girl is also taught rules of hygiene, to take care of herself and her future family. On the other hand, the image of the man inculcated during the counselling ceremonies and traditional rituals masculine, a person capable of controlling the sex, household and other life of his wife and a disciplinarian for her and their children. The rituals and counselling sessions masculinise or feminise roles and tasks for both men and women.

5.3.7 The perpetuation of stereotyped roles and unequal gender relations is partly a result of the role of song and dance in Malawian societies. Songs that reflect sex roles and stereotyping are passed on from community to community and generation to generation through ceremonies, dance, and mere entertainment. Such songs are not uncommon on Malawi's radio stations. In some communities, songs and dance are powerful communication channels that can be used to change behaviour of communities or a particular individual to attain societal expectations or common goals.

5.3.8 Once puberty is attained, marriage is possible, according to perceptions in Malawi's communities. This is particularly the case for the girl who is regarded as maturing faster than boys and a potential wife who can start begetting children, maintained by a husband. Before the marriage, counselling sessions are arranged for the girl, but not for the boy. Older women and instructors commonly called *Anamkungwi*, spend time with a prospective wife to teach her on how to be a good wife. In urban areas and rural communities, the sessions are known as kitchen parties or bridal shower and are dominated by women advising the prospective wife that she can make or unmake her marriage if she does not satisfy her husband and through homemaking services. During the sessions, the girl, like in traditional rituals is not expected to ask question, but just to listen.

5.3.9 As marriage, the tasks of women and men are generally expected to fall within the expected feminine and masculine roles. Such roles pertain to family and community life. Both at the family and

community levels, men are expected to lead and women must support and provide nurturing services. Hence chiefs are predominantly men in Malawi.

5.3.10 Each marriage in customary law must have marriage advocates or advisors, to render counselling services to the husband and the wife. In many cases religious organisations, friends and relatives are increasingly taking this role. Other forms of counsel include women councils such as *Nthembere Ilala* in the Northern Region. The *Nthembere Ilala* has powers to summon a husband upon a complaint by his wife.

#### 5.4 Measures Taken To Modify Socio-Cultural Patterns and Some Achievements

5.4.1 Much of the work to modify the strong social patterns in Malawi has involved advocacy and education. For example, since 2000, the Government and NGOs jointly participate in 16 Days of Activism, an initiative to advocate against violence against women.

5.4.2 The Malawi media is a useful channel for messages on gender equality. Newspapers run columns where debates on harmful cultural practices amongst other human rights issues are discussed. There are Radio programmes on Violence against women including violence in the home. Politicians, including the President have also spoken in favour of gender equality and the elimination of harmful traditional practices.

5.4.3 The Primary school curriculum has been revised to incorporate gender issues. The members of the National CEDAW Working Committee verified from teachers and pupils that gender issues are indeed being taught.

5.4.4 The advocacy and education on gender is yielding positive results. Young people, the National CEDAW Working Committee observed, are more gender sensitive than adults, partly because of what they learn at school. In turn, some of the young people form clubs that advocate on gender equality. Interestingly, it is not strange in such organisations to have prominent girl leaders.

5.4.5 Another noticeable achievement is that some departments that were traditionally considered masculine have started enrolling women. An example is the Army, which has since 1999 been recruiting women soldiers, offering them the same basic training as their male counterparts. The Army has further recently instituted a programme to train personnel on gender issues.

5.4.6 More importantly though, the National CEDAW Working Committee learnt that some gender roles are changing. Some men indicated that they co-work with their wives to carry out tasks that were traditionally considered to be for women. Women admitted that some men now cook and fetch water and food. This was most common in peri-urban and other areas well exposed to gender equality messages. In both the peri-urban areas and rural areas however, the change in roles can be attributed to destitution and the need to cope against poverty and hunger. Many community members now think that it is futile to cling to traditional roles and attitudes if the family's survival is at risk. In all areas, noticeably though, some roles are yet to change. Such roles include the headship of the family and shared responsibilities in household work. The headship of the family is only possible if there is no capable man and the very few men who may assist with household work do so secretly.

5.4.7 Constraints however still exist satisfactorily to change social-cultural patterns that stereotype women. The construction of gender relations, roles and attitudes in Malawi is deeply embedded and gets reproduced in other arenas such as the school and the work place. For example, where women

have begun to enrol in male- dominated courses such as engineering and motor vehicle mechanics, they are often rejected and offered “softer” courses such as carpentry, which may not appear so obviously “male”. Since institutions offering such vocations are usually male- dominated administratively, efforts to change these culturally- conditioned mindsets about what women can /should and cannot/should not do need to be relentless. It is still believed to a large extent that there are certain vocations or careers that are inherently female such as nursing and secretarial services. Even such basic jobs as chauffeuring have been considered traditionally male areas, and it is only in the last four years that there has been an increase in female drivers especially in the public sector. Conversely, recent years have seen more men joining the nursing profession, which is heavily dominated by females.

## **5.5 Conclusion**

5.5.1 Despite concerted efforts by government and its partners to modify the socio cultural biases against women, perception of women continues to cast them in a less privileged role and in effect treats them as second class citizens. Stereotypical roles of men and women are still observed and sometimes perpetuated by the women themselves, who have been conditioned to be subservient.

## **Article 6: Exploitation of Women**

### **6.1 CEDAW Standards**

Article 6. States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.

### **6.2 Introduction**

6.2.1 The right not to be sexually exploited is at risk for many women in Malawi. This is manifested through prostitution, trafficking and harmful cultural practices. With deepening and growing deprivation, the sexual exploitation of women is alarmingly growing in rural areas. In the rural areas, sexual activity is apparently becoming a source of comfort among the poor, despite strong local condemnation of such practices.

6.2.2 Early marriages, teenage pregnancies, cases of defilement and rape, are commonly reported to the police communities and by the media.

6.2.3 Reports from the country’s refugee camp disclose that many young girls do not stay in the camp for long. Instead, they move to urban centres where many are believed to engage in commercial sex.

6.2.4 Currently, there is no law on trafficking and exploitation of women for sexual purposes. In cases where the law could be invoked, punishment is not deterrent. There are however, mechanisms to support the rehabilitation of victims and the reform of offenders but these are inadequate.

### **6.3 Trafficking of Women**

6.3.1 Incidents of trafficking of women are increasing in Malawi. For example, in 1998/99 14 Malawian girls were deported from Brussels where they had been trafficked to work as sex workers. A report by Jonathan Martens et al of International Organisation for Migration (IOM) revealed that Malawi is the source of the girls, South Africa is the transit country and Europe is the final

destination. Both boys and girls are vulnerable to trafficking in Malawi. Boys from the Lakeshore districts have been trafficked to Europe for pornography while girls from all over the country are trafficked for prostitution.

6.3.2 Those women and girls who go out to foreign countries in search of education and jobs are exploited sexually and economically. Several parents encourage their children to travel abroad to study hoping that the children will find better jobs to earn a living and pay school fees. Other young women travel to Europe searching for better life. There is however, evidence that some of those girls and young women end up as prostitutes themselves.

6.3.3 The Government of Malawi is aware of this problem and is currently putting in place mechanisms to address the issue. For instance, three trafficking syndicates were broken into and the cases were taken to court. The cases could not be concluded because of lack of legal basis for prosecution. A special Law Commission on Penal Code observed that there was no law that directly punish traffickers in Malawi. Accordingly, the Commission proposed a new provision into the Penal Code to punish such criminal act. The proposal to enact the new law to address trafficking of peoples more especially women and children has been presented to Parliament and is yet to be considered.

#### **6.4 Commercial Prostitution**

6.4.1 Commercial sexual exploitation and sex tourism are most prevalent in Malawi's urban areas and lakeshore resorts. In the urban areas, young women solicit for money and pleasure in return for sex in certain streets and in some public entertainment places. In the lakeshore areas, the mushrooming of hotels and resorts have partly contributed to prostitution and growing sexual tourism against the interests of very young women in search of money.

6.4.2 Older men and women, sexual tourists, and paedophiles are increasingly subjecting street children to sexual exploitation. The media has cited a number of sexual exploitation cases against children living or working on the street. These children "expose themselves to HIV/AIDS by engaging in informal sex trade to earn money in exchange for protection, a meal or a place to sleep." The Government conducted a survey in 1995 to ascertain the "*Magnitude of street children in the cities of Lilongwe and Blantyre*". This resulted in some NGOs opting to work on issues of street children and to provide, protect, promote their rights, while equipping them with life saving knowledge and skills. Sexual exploitation of children has therefore, become, one of the major challenges in Malawi.

6.4.3 The Penal Code does not criminalize prostitution as such but rather the exploitation of prostitution<sup>77</sup>. Thus practices such as procurement of children and women, soliciting, living on the earnings of prostitution (pimping) and the running of brothels are criminal offences that rank as misdemeanours.<sup>78</sup>

6.4.4 Although prostitution is not criminalized, the police treat prostitutes as criminals. Such women are usually arrested for being rogues and vagabonds who are picked while "wandering aimlessly at night". In the cases where female prostitutes are found with their male partners, only the women are arrested and men are left scotch free.

<sup>77</sup> Sections 140-147.

<sup>78</sup> Penal Code, sections 140-147.

6.4.5 In addition, commercial sex workers can and are abused including being raped. Unfortunately, they do not get full and equal protection of the law as other women, since those in prostitution are considered to consent to and indeed invite the dehumanising treatment by the very nature of their trade.

## **6.5 Sexual Exploitation in the Household and Institutions**

6.5.1 Women are further exploited in some homes in Malawi. Males in the households sometimes sexually abuse maids and children employed in the homes. These cases are reported in the Newspapers. Such women are so powerless that they rarely report the sexual advances against them as that may result in the loss of their only sources of income. For those married, many husbands take the view that a wife should not refuse them sexual intercourse. This violates their rights as wives and exposes them to sexually transmitted infections and HIV/AIDS.

6.5.2 There is also an increase in the sexual exploitation of young girls in both primary and secondary schools by teachers as evidenced by the increased number of disciplinary cases at the Ministry of Education Science and Technology. The government takes administrative procedures through interdiction or transfer to another school; but little or no criminal charges are ever brought against the perpetrators especially in cases of defilement. Most parents are not aware of where to seek redress. Conversely, there are some parents who encourage their young girls to get sexually involved with their teachers in order for them to either marry or contribute to the upkeep of the home.

6.5.3 Currently the Government in collaboration with its stakeholders is working on a Domestic Violence Bill which seeks to criminalize marital rape and other sexual violence offences. A Special Law Commission had refused to include marital rape as a criminal offence arguing that to do so would be to subject the privacy of the family to public scrutiny.<sup>79</sup>

## **6.6 Sexual Exploitation Through Customary Law and Cultural Practices**

6.6.1 Following the removal of reservations on the CEDAW accession, Malawi reviewed its Constitution in 1995. Section 24, subsection 2 (a) of the Constitution stipulates that ***“Legislation shall be passed to eliminate customs and practices that discriminate against women, particularly practices such as sexual abuse, harassment and violence”***. Despite this progression, no law to eliminate cultural practices has been passed. Some cultural practices still exist such as:- *“Kuchotsa fumbi”* (removing dust) initiation of sexual intercourse after initiation. *Gwamula*, (society accepted rape) as a rite of passage for young boys who are growing into men. Incest by a father who has sexual intercourse with his daughter before determining *“lobola”* or bride price. *“kulowa kufa”* (cleansing death) another male is asked to have sexual intercourse with the widow to cleanse her and the clan of death after the death of her husband. *“Chokolo”* or wife inheritance where a deceased man’s relatives inherits the widow as his wife. *“Fisi”* (hyena) a man will secretly have sexual intercourse with the women during initiation or when a husband fails to procreate without consent. *“kusunga mwamuna”* or keeping the husband happens during the temporary absence of the wife, a woman is selected (usually the wife’s younger sister) to live with the husband and take care of him, in order to prevent him from going to other women. *“kuhaha”* betrothal of little girls from poor parents. *kuhahaza*, the tendency of men to have sexual intercourse with women in a manner that demonstrates their

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<sup>79</sup> Law Commission, ‘Report of the Commission on Criminal Justice (Lilongwe; Malawi Law Commission, 2000).

dominance and under the pretext of seeking pleasure. “*Kutenga Mwana*” taking the child thus having the first sexual intercourse 3 months after the child’s birth while holding it as a cleansing process with the husband or a hyena in his absence. “*Chimwamaye*” this is a wife or husband exchange among others.

6.6.2 The Government is aware of the negative impact of such customs and recommendations have been made to the Special Law Commission on Gender to review them. Further, the Government has used mass media to create awareness on the effects of such practices and their impact on HIV/AIDS. Poverty seems to worsen the seeking for sexual intercourse for money by some women as a coping up mechanisms against hunger and poverty. This goes to the extent of having sexual intercourse on credit. Poverty and deprivation have in some cases, led men to recklessly pay for sexual intercourse. Some husband’s failure to support his family forces some women to have sexual intercourse with other men.

## 6.7 Conclusion

Sexual exploitation of women in Malawi exists, mainly because of the cultural practices and economic powerlessness of women. The laws seem not clear in dealing with these problems and new forms of exploitation are emerging and rising among both urban and rural communities. Although some traditional practices are fading out, but others still exist in some areas of the country that treat women as objects of sexual pleasure for men. There are however, several initiatives by and NGO sectors to address these problems especially in the wake of HIV/AIDS. Among such initiatives is the on going work to review and enact new laws by the Special Law Commission on Gender.

## Article 7: Political and Public Life

### 7.1 CEDAW Standards

Article 7. States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right:

- (a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies;
- (b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government;
- (c) To participate in non-governmental organizations and associations concerned with the public and political life of the country.

### 7.2 Introduction

7.2.1 The inequalities between men and women are further manifested in the political and public life. Women are outnumbered in all key decision making positions. Even where they are present, women play subservient roles, and are rarely recognised as key actors in the formulation and implementation of development activities.

7.2.2 The Malawi Constitution is very progressive and it requires that disparities in political and public life should be eliminated. Unfortunately, most laws have not been harmonised to accommodate

the various international provisions that Malawi is party to that facilitate women's participation in key decision making positions. This is at variance with the implementation of various initiatives aimed at increasing women's participation in decision making.

### 7.3 Voting and Eligibility in Elections

7.3.1 Women are eligible to vote and stand for any office in Malawi. "Every person" has the right to form, join, and to recruit members for a political party. Everyone is allowed to campaign for a political party or cause."<sup>80</sup> In addition, every person is legally free to participate in peaceful political activities intended to influence the composition and policies of the government and to freely make political choices.<sup>81</sup> In addition, every person has the right to vote, in secret and to stand for public office.<sup>82</sup>

*Representation Of Women In Political Parties 1994 And 1999*

<i>Political Party</i>	<i>Male, 1994</i>	<i>Female, 1994</i>	<i>Total, 1994</i>	<i>% Women</i>	<i>Male, 1999</i>	<i>Female, 1999</i>	<i>Total</i>	<i>% Women</i>
AFORD	32	1	33	3	29	1	30	3
UDF	79	5	84	5.9	83	12	95	12.6
MCP	50	4	54	7.4	58	3	61	4.9
Independent	-	-	-	-	5	1	6	16.7
Total	167	10	177	5.6	176	17	193	8.8

7.3.2 Although more women than men vote, most of them are not ready to join politics because of their cultural orientation that denies women to work in public life.

### 7.4 Representation in Parliament

7.4.1 Malawi law has since independence required the use of English in Parliament. The requirement for fluency in English disadvantages those who cannot communicate in the language and there is no translation equipment. In addition, participation in high-level politics is regarded as a male domain with most women contented to play supportive roles. Furthermore, many women lack financial resources to mount political campaigns and political parties predominantly prefer candidates who are men.

7.4.2 The Political Parties (Registration and Regulation) Act, the Parliamentary Elections Act, and other electoral laws do not require reservations of quotas in favour of women although the country signed the Southern African Development Community Declaration on Gender and Development requiring at least 30% representation by women in all key positions.

7.4.3 During the one party-rule system, the former president appointed women into Parliament for the first time in 1977. During 1966 and 1992, there were cumulatively 363 elected male Members of Parliament and 23 women Members of Parliament. In addition out of the cumulative, 92 who were

<sup>80</sup> Malawi Constitution, section 40.

<sup>81</sup> Malawi Constitution, section 40.

<sup>82</sup> Malawi Constitution, section 40.

nominated as Members of Parliament, 40 were women. This nomination enabled some women to participate in politics.

7.4.4 The Government, in collaboration with civil society, embarked on a campaign on the importance of voting for women Members of parliament in the 1994 and 1999 general elections. For the first time in the history of Malawi, 62 women contested in the 1999 elections against 606 men. Out of these, 59 women passed through the primary stage, ready to contest parliamentary seats. Seventeen were duly elected.

7.4.5 The elected women Members of Parliament were sensitised in gender and development and trained in advocacy lobbying, communication, and assertiveness skills to enable them to effectively participate in Parliamentary processes.

### 7.5 Representation in Cabinet and Other High Levels

7.5.1 Women representation in cabinet and other high levels remain very low. Currently women constitute 13.8% full Cabinet Ministers and 21% of Deputy Ministers.

### 7.6 Participation in Local Government

7.6.1 In the 2000 local government elections, 76 women were elected, representing only 10.7% of the total number of councillors in the country. Out of 4 Deputy Mayors' positions, 3 are however, occupied by women representing 75%. Only 3.7% of District Commissioners are women. Out of 205 Traditional Authorities, only 13 are women. In the process of selection the Traditional Authorities, the institution of chief-teensy protects and promotes patriarchy because men dominate it.

### 7.7 Representation in Top Civil Service and Statutory Positions

Grade	No. of Officers at Grade	No. of Female Employees	% Of Women at Each Grade
SPC (P1)	1	0	0
DSPC (S2)	1	0	0
PS (S2)	48	11	22.9
Heads Of Department	52	5	9.62
Senior Deputy Secretaries (S3)	26	3	11.54
Senior Deputy Heads Of Dept	54	6	11.11
Deputy Secretaries	86	16	18.6

7.7.1 Men also dominate participation in top civil service positions. Only 25% of Chief Executives of Statutory Co-operation are women. In the Public Service, 22.9% of Principal Secretaries or technical heads of ministerial departments are women. Three out of 22 judges are women representing 13.6%. Only 3 out of 19 ambassadors are women representing 15.8%. There has however, been an improvement from Malawi's last report especially in terms of female Principal Secretaries from 2 in 1992 to 11 to date.

7.7.2 The civil service is the biggest employer in Malawi, with over 128,000 employees. The head of civil service is the Secretary to the President and Cabinet assisted by the Deputy Secretary to the President and Cabinet. Both of these are men. Since 1964 after independence, the government in 2003 appointed the first woman Deputy Governor for the Reserve Bank of Malawi; and in the year 2000 appointed the first woman Deputy Inspector General of Police.

## **7.8 Participation in Government Policy Formulation and Implementation**

7.8.1 Before 1995, all policies that government formulated and implemented did not use participatory approach. Currently, most policy formulation exercises such as Vision 2020, Malawi Poverty Reduction Strategy Paper, National Gender Policy and Land Policy among others followed participatory approach where women and men were consulted.

7.8.2 Predominantly, policy formulation is initiated at high government levels, where there are few women in high positions. In some areas participation in policy formulation is largely by powerful opinion leaders such as chiefs, who are mostly men. This obviously means that women's views may not be adequately reflected in the final product of the policy and programmes. Since at this stage all high level officials who are predominantly male attend.

## **7.9 Participation in Civil Society**

7.9.1 The Constitution of Malawi states that: "every person shall have the right to freedom of association" which includes the freedom to form an association. No person may be compelled to belong to any association."<sup>83</sup>

7.9.2 Unfortunately, men do not seem comfortable to head non-governmental organisations that focus on women's rights. In the religious sphere, like in politics, women are led and dominated by men. Almost all religions in Malawi have women's wings, which are directly women-led but subordinate to the overall leadership of men. Recently, Malawi however, noticed the ordination of female clergies in the Protestant Churches. Although these have been ordained as clergy, none of them is in the higher levels of decision making.

## **7.10 Conclusion**

Women are underrepresented and dominated by men in all spheres of political, economic and public life. Roles are masculinised or feminised and most women's roles tend to be subservient or supportive of those carried out by men. Legal illiteracy and prevailing customs, which do not regard women as leaders, are some of the causes of women's powerlessness to occupy positions of influence. Hiding behind cultural practices and neglecting the interests of the poor exacerbates the plight of women regarding representation in political and public life.

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<sup>83</sup> Malawi Constitution, section 32.

## **Article 8: International Representation and Participation**

### **8.1 CEDAW Standard**

Article 8. States Parties shall take all appropriate measures to ensure to women, on equal terms with men and without any discrimination, the opportunity to represent their Governments at the international level and to participate in the work of international organisations.

### **8.2 Introduction**

8.2.1 Gender disparities in Malawi are further manifested in representation for the country at the international level. Although women are often included in the country's delegations to international and other foras, most influential positions on the delegation are assigned to men.

8.2.2 The disparities in the participation of Malawian women at the international level are low despite the requirement in the country's Constitution. The Constitution states that "there shall be full participation of women in all spheres of Malawian society on the basis of equality with men".<sup>84</sup>

### **8.3 Opportunity to Represent Government at International Level**

8.3.1 Since the submission of the initial report, participation of women in the international affairs has increased. There are currently 19 Ambassadors and 1 High Commissioner representing Malawi of which 3 are women these are appointed by the President subject to the approval of a Parliamentary Committee on Public Appointments.

8.3.2 In the Cabinet for example, the Minister for Foreign Affairs and International Cooperation is a woman, the first to occupy that position since Malawi's independence in 1964.

8.3.3 However, most women who work in the foreign offices for the country occupy subordinate or support roles. The trend is reflected in the Ministry of Foreign Affairs itself where there are 9 women out of a staff of 44 members of staff within the top decision-making and professional ranks.

### **8.4 Participation in International Organisations**

8.4.1 The international organisations that work in Malawi recruit Malawians according to the organisations' needs and policies. However, most of the Malawian women recruited serve as support staff, a reflection of the general situation in the country

### **8.5 Conclusion**

Despite the existing gender disparities, Malawi has made some strides over the reporting period in appointing women to decision-making positions at international level such as the Minister of Foreign Affairs and International Cooperation and the 3 ambassadors. More work still needs to be done in order to have women in the most influential positions in Malawi.

## **Article 9: Nationality**

### **9.1 CEDAW Standards**

1. Article 9 States Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of

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<sup>84</sup> Malawi Constitution, sections 13 (a) and 24.

nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband.

2. States Parties shall grant women equal rights with men with respect to the nationality of their children.

## **9.2 Introduction**

9.2.1 The Constitution grants women the right to acquire and retain citizenship and nationality on equal basis with men.<sup>85</sup> Contrary to the Constitution, the law that regulates the acquisition and loss of Malawian nationality is still biased against women who marry non-Malawians.

9.2.2 Section 47(1) of the constitution affirms that men and women have the right to citizenship and nationality. The Constitution further provides for the acquisition or loss of citizenship by any person but stipulates that citizenship must not be arbitrarily denied or deprived.<sup>86</sup>

## **9.3 Acquisition or Change of Citizenship**

9.3.1 The Citizenship Act provides for the acquisition of citizenship by birth, descent or by registration. The Act allows for the acquisition of citizenship of another country by marriage but restricts the requirement only to women.<sup>87</sup> Foreign wives of Malawian men however can acquire citizenship not by marriage, but through registration.

9.3.2 Malawian Women married to foreigners can be deprived of their citizenship if they fail to renounce their husband's nationality on the first anniversary of their marriage, while non-Malawian women married to Malawian men must also make a similar choice on the anniversary of their marriage. In contrast, Malawian and non-Malawian men are not obliged to make a choice either way. Thus, the law creates inequalities that seem to be guided by the customary perception that the woman follows the man in matters of marriage.

## **9.4 Immigration and the Right to a Nationality**

9.4.1 Under the Immigration Act, women are considered to be dependants of a male figure be it father, husband or uncle. Married women are not allowed to migrate unless they are under the custody of a husband. Although children under 18 can acquire passports in their own right or travel under their mother's passports, they cannot immigrate unless the consent of the father or another male guardian is given. Furthermore, children born to a mixed union are entitled to a dual citizenry until the age of 18, when they are required to make a choice between the citizenry of either of their parents.

9.4.2 The Ministry of Home Affairs has embarked on programmes to improve efficiency. It has deployed officers to investigate illegal immigration. The impact on women is not yet known but it is possible that women married to illegal immigrants will be negatively affected.

9.4.3 The Malawi passport has been redesigned and through the perforation and scanning the bearer's photographs it cannot easily forge it.

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<sup>85</sup> Malawi Constitution, section 24(1)(iv).

<sup>86</sup> Malawi Constitution, section 47(2).

<sup>87</sup> Citizenship Act, section 9.

## **9.5 Exercise of the Right to a Nationality**

9.5.1 Although most women are allowed, under both the Constitution and the Citizenship Act, to enjoy their right to a nationality, marriage often determines such enjoyment. Culturally, a woman in Malawi is supposed to be with her husband, who is regarded as the head of the family. Most women cannot therefore, acquire or change their nationality without the consent of their husbands.

9.5.2 The requirement that a foreign woman should renounce her nationality entails that she cannot stand for certain public offices if she does not adopt her husband's nationality. Such offices include the Presidency, and Membership of Parliament and Councillorship.

## **9.6 Conclusion**

The Constitution of Malawi envisages that certain laws must be changed to advance gender equality. The laws on the enjoyment of the right to nationality are examples of such laws. Both the Citizenship and Immigration Act contain provisions that are contrary to the Malawi Constitution and CEDAW. Until declared invalid by the High Court or repealed by Parliament, the provisions that entrench gender inequalities and promotes discrimination remain part of the law of Malawi.

## **Article 10: Education and Training**

### **10.1 CEDAW Standards**

Article 10. States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women:

(a) The same conditions for career and vocational guidance, for access to studies and for the achievement of diplomas in educational establishments of all categories in rural as well as in urban areas; this equality shall be ensured in pre-school , general, technical, professional and higher technical education, as well as in all types of vocational training;

(b) Access to the same curricula, the same examinations, teaching staff with qualifications of the same standard and school premises and equipment of the same quality;

(c) The elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging coeducation and other types of education which will help to achieve this aim and, in particular, by the revision of textbooks and school programmes and the adaptation of teaching methods;

(d) The same opportunities to benefit from scholarships and other study grants;

(e) The same opportunities for access to programmes of continuing education including adult and functional literacy programmes, particularly those aimed at reducing, at the earliest possible time, any gap in education existing between men and women;

(f) The reduction of female student drop-out rates and the organisation of programmes for girls and women who have left school prematurely;

(g) The same opportunities to participate actively in sports and physical education;

(h) Access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning.

## **10.2 Introduction**

10.2.1 Malawi's indicators on education are low and manifest gender-based disparities. Access to education, retention of pupils and students, content and delivery of education, and attainment by pupils and students has been low. Vocational guidance and education are in short supply, particularly for women. Adult and continuing education are in high demand particularly among rural women.

10.2.2 The 1994 Constitution provides for free and compulsory education and states that "everyone has the right to education", and requests the State to allocate adequate resources to improve education in Malawi.<sup>88</sup> The Government has pursued a policy of free primary education since 1994, however, education is not yet compulsory.

10.2.3 The Girls Attainment in Basic Literacy and Education (GABLE) which was an affirmative action programme was implemented between 1993 and 1998 to promote the enrolment and retention of girls in schools. The programme provided tuition for all the girls in primary school who passed their examination and entered another class, learning materials for every pupil and introduced the phasing of school fees for every child in standards 1 to 4. Approximately half a million girls benefited from the programme. When free primary education was introduced in 1994, the tuition for girls was shifted to secondary education.

## **10.3 Access to Education and Retention**

10.3.1 Pre-school education in Malawi has not received adequate attention before and after 1994. In 1994, only 1% pre-school going age children were enrolled. The enrolment had increased to 26.6% by 1999. This is mainly due to growth in the number of community-initiated pre-schools under the Ministry of Gender and Community Services; and privately managed services. In June 2003 the Government of Malawi adopted an Early Childhood Development Policy which covers the area of pre-school education.

10.3.2 Access to education remained low in Malawi until 1994 when the new Government introduced the free primary education policy in a phased manner and made the uniform policy flexible. Enrolment suddenly rose from 1.0 million in 1993 to 3.2 million in 1994. In 1993, the Government changed its policy to allow girls who dropped out of school due to pregnancy to return. After the introduction of free primary education in 1994, the Government also removed the requirement that pupils should wear uniforms. These policy measures partly resulted in the narrowing of the gender gap on enrolment.

### *Enrolment Rates by Sex and School Year*

10.3.3 The enrolment rates seem to be stabilising, especially after 1999. This is mainly due to the recognition by parents that the free primary education policy, as implemented, is still not affordable as schools demand contributions from parents to manage and develop schools due to inadequate funding

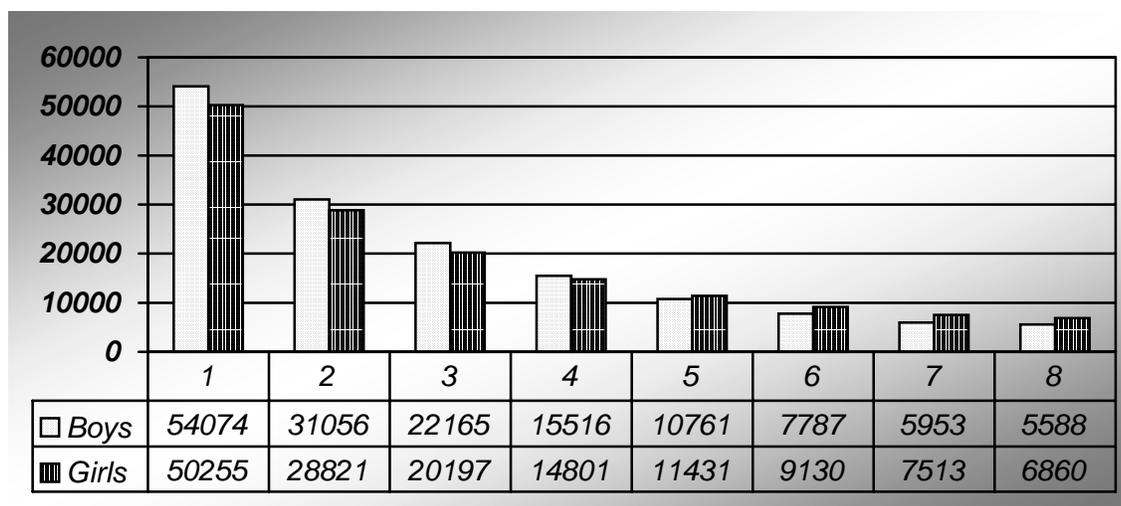
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<sup>88</sup> Malawi Constitution, section 13(f).

by government. Additionally, the quality of education has declined and most school facilities are not yet conducive to the girls needs.

10.3.4 Although the enrolment gap between boys and girls has narrowed, discrepancies exist regarding drop out rates. More boys than girls drop out from class 1 to 4. From class 5 however, when the girls' labour is in great demand at home and the girl attains puberty, more girls than boys drop out, resulting in significantly fewer girls completing primary school. In addition to the demand for the girls' labour at home, the adolescent girls drop out mainly due to preference on the part of parents for boys education. Coupled with this are early marriages, teenage pregnancies and high prevalence rate of HIV/AIDS, which results in girls becoming care givers. The situation is aggravated by teachers' treatment of girls compared to boys in class.

#### *Number of Pupils Dropping Out By Class and Sex*



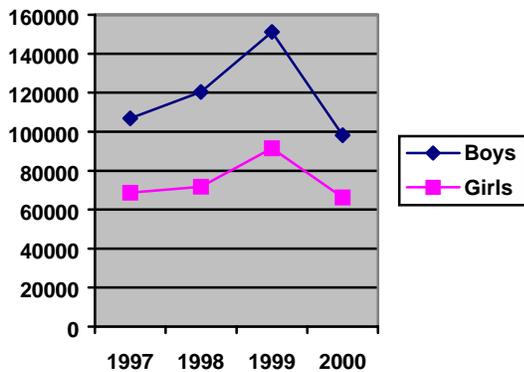
10.3.5 The Government and its development partners have also taken measures to improve access to secondary and vocational education for girls. The most significant programme was the Girls Attainment in Basic Literacy Education- Social Mobilisation Campaign (GABLE) 1 and II, 1994 and Social Mobilization Campaign for Educational Quality funded by USAID. The objective of the GABLE project was to change community attitudes towards girls education and elicit support for their education.

10.3.6 The second measure was the conversion of Distant Education Centres (DECs) to Community Day Secondary Schools. This resulted in increased enrolment of girls who were not selected to conventional secondary schools. The shortage of learning materials, qualified teachers and poor management have however, resulted in more girls dropping out due to lack of accommodation since the schools are far from home, insecurity and pregnancy. For example, of the 3380 pregnancy-related drop out cases, 2704 cases or 80% were from community day secondary schools.<sup>89</sup>

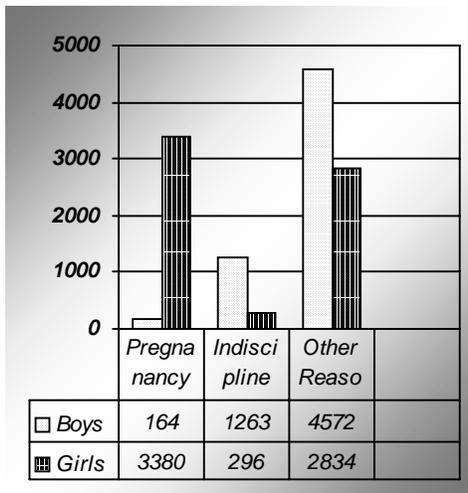
<sup>89</sup> Government of Malawi, 'Education Basic Statistics Malawi 2000' (Lilongwe; Ministry of Education, 2000).

10.3.7 The third measure was the establishment of the Technical Entrepreneurial and Vocational Education and Training (TEVET) project in 1997. This programme provides technical, entrepreneurial and vocational education and training skills and competencies to the labour market. To encourage girls participation TEVET has introduced a bursary scheme.

10.3.8 In secondary school, the enrolment<sup>90</sup> of girls had been rising due to the change in the selection policy to 50% for both girls and boys. In 1997, 68,689 girls were enrolled compared to 106,798 boys. In 1998, the number of enrolled boys in secondary schools was 120,446 against 71,826 girls. The overall figure for girls enrolment continued to rise in 1999, when it was 91,524 compared to 151,216 for boys. In 2000, United States International Agency for Development funding for the affirmative action GABLE’s tuition of girls in secondary schools phased out and the number of enrolled girls dropped dramatically to 66,205, lower than in 1997.



10.2.8 The overall drop out figures in secondary schools is higher for boys than girls, because more boys are dismissed from school due to in-discipline. While for girls pregnancy is the greatest contributor to their drop out from secondary school.



<sup>90</sup> Figures for this and on primary education from Government of Malawi, ‘Education Basic Statistics Malawi 2000’ (Lilongwe; Ministry of Education, 2000).

10.3.9 At tertiary level, the total enrolment rates for women in Malawi's six teachers' training colleges were lower than that for men. The latest statistics on enrolment indicate that out of the total 12,129 trainees enrolled, women constituted 35% or 4248. Enrolment in technical and vocational colleges is low for both men and women. For example, in 1997 the enrolment of women was 1290; it increased slightly to 1308 in 1998 and dropped to 1305 in 1999, and rose to 1504 in 2000. Generally, however, there has been an increase in enrolment of women and girls in tertiary levels as than before 1994.

10.3.10 There is a marked variation in literacy rates in Malawi. In 1998, rural female and male literacy rates were 47% and 61% respectively where as in urban areas, it was 75% female and 83% males.

10.3.11 Before 1994, the Government ran an extensive adult literacy programme, where more women than men enrolled. The drawback of that programme however was that the curriculum was perpetuating gender stereotypes and the then Government's political ideology and propaganda. Coupled with this was the poor budgetary allocation for adult education resulting in most of the classes closing.

10.3.12 During the report compilation exercise it was noted that there is a high demand for adult education in the communities. Adult literacy programmes at the grassroots had been intensified around 1999/2000 by the Government (Ministry of Gender and Community Services) and its stakeholders as one way of reducing poverty in Malawi. In response to this, new materials were developed and distributed; the number of instructors increased from 1500 to 4500 to meet the demand; the instructors honoraria was also increased from K200.00 per month to K500.00 and New classes were opened. Additionally, an adult literacy policy is being drafted.

10.3.13 More women enrol for literacy classes in Malawi than men do. This is because men do not want to expose their ignorance in the presence of women. Men are shy to be in the same classes with the women. The Government is currently exploring possible strategies to address this problem.

10.3.14 At the University level, the University of Malawi has been implementing a policy of preferential selection for girls and women. The University's policy, backed by Government, allows girls and women to enter the University using lower cut off points than boys and men and reserving at least 30% of the University's bed spaces for the women and girls. Although the reservation of the 30% bed spaces for women has increased, Kamuzu College of Nursing absorbs the 75% of female students.

10.3.15 There are two Universities in the country. The University of Malawi, which has five constituent Colleges namely: Bunda College of Agriculture, Chancellor College, Kamuzu College of Nursing, Malawi College of Medicine and Polytechnic. There has also been a University-supported technical education services offered by a board of Governors and stationed at the University of Malawi's Polytechnic. The Polytechnic offers courses in Engineering, Accountancy, Business Studies, Management, and Technical Education. A College of Medicine specialises in the training of doctors and it is the newest of the University of Malawi's colleges. Nurses are trained at the two campuses of the Kamuzu College of Nursing. Bunda College specialises in agriculture whilst Chancellor College offers courses in Education, Humanities, Science, Social Sciences and Law. The second university is

Mzuzu, which was opened in 2001 and it offers course in education. There is currently a move to have a higher education act, which will open a way for the establishment of universities.

***Enrolment in University Colleges by Sex Between 1997 and 1999*** (Source: Government of Malawi, 'Education Basic Statistics Malawi 2000' (Lilongwe; Ministry of Education, 2000))

College	1997					1998					1999				
	Both	Male %		Female %		Both	Male %		Female %		Both	Male		Female	
Bunda	616	423	69	193	31	490	370	76	120	24	509	400	79	109	21
Chancellor	1,596	1,129	71	467	29	1,292	931	72	361	28	1,448	1,078	74	370	26
Kamuzu Nursing	325	46	14	279	86	263	65	25	198	75	231	67	29	164	71
Polytechnic	1,089	901	83	188	17	1,031	856	83	175	17	1,088	892	82	196	18
Medical	90	68	75	22	24	93	70	75	23	25	95	73	77	22	23
Mzuzu	0	0	0	0	0	0	0	0	0	0	194	152	78	42	22
Board of Governors	477	378	79	99	21	216	161	75	55	25	390	274	70	116	30
Total	4,124	2,960	72	1,164	28	3,179	2,303	72	876	28	3,527	2,632	75	895	25

#### 10.4 Content of Education and the Removal of Gender Stereotyping

10.4.1 The Government has tried to eliminate gender stereotypes through the curriculum. In 1992, the Government established a Gender Appropriate Curriculum initiative to incorporate gender sensitivity in the primary school and teacher training curricular. The primary teacher textbooks have been reviewed to make them gender sensitive. The curricular in both primary and secondary schools incorporate not only gender issues, but also HIV and AIDS and population studies. The curriculum further includes topics on family planning and health. More recently, there have been discussions to include Human Rights education as part of the social studies curriculum.

10.4.2 Girls and Boys confirm that gender issues are taught in the class. The majorities of the teachers are however, not trained in gender mainstreaming and have not been oriented on the new curricular, although plans are underway to implement an extensive orientation of teachers at both pre-service and in-service levels.

10.4.3 Changes against gender stereotypes have extended to sports in schools. Increasingly, girls and women are participating in sports activities such as soccer, which was exclusively men's sport. Sporting facilities, activities, and physical education have declined due to inadequate funds allocated to these activities.

10.4.4 In addition, the Government lifted a subject restriction policy from early 90s. Girls are encouraged to opt for subjects of their choice. Despite this stereotypes still exist where some pupils, and teachers who are not trained in gender consider certain subjects as masculine such as science and engineering. But increasingly, boys are taught subjects traditionally regarded as feminine like Home Economics and nursing whilst girls are encouraged to enjoy science and other subjects associated with men and boys.

## 10.5 Delivery of Education

10.5.1 Although the content of education includes gender issues and human rights, there are still problems related to delivery, which adversely affects quality. Many teachers are still autocratic. Studies have shown that many teachers think that child rights make students undisciplined. School punishment is often harsh, not matching the offences that are sometimes alleged and established unfairly.

10.5.2 There are few teachers who are adequately trained to deliver the new curricular, which contains human rights notions and principles. Many lack skills in teaching methods that are human rights based and gender sensitive. For example, teachers tend to call on boy students more than girls, allegedly because girls take too long to stand up. Teaching in primary and secondary schools is rarely participatory for most girls. In addition, of the 29687 male teachers in primary schools, nearly half, 14,092 were unqualified in 2000. For women, more are unqualified, 9,182 against 8,971 who are qualified.

10.5.3 In 2000, there were 47,840 primary school teachers, of who 40% are women. In secondary school, women constituted 20.4% of the 5905 teachers. In vocational institutions, there are 113 teachers comprising 95% males and 5% females.

10.5.4 There are far lesser women in Malawi's education institutions, especially at University level. At University level, 22.5% of the 560 teaching staff were women. At that level, not more than two Faculties have policies to enhance gender balance on the teaching staff.

10.5.5 In order to improve the quality of teachers, the Government embarked on a crash programme to train more teachers using Malawi Integrated In Teacher Education programme (MIITEP) in 1996 and Malawi Support System Programme (MSSSP). The two programmes were developed to assist in training teachers in response to the free primary education's high demand for teachers.

## 10.6 Education Attainment

10.6.1 Girls and women in Malawi have for long achieved less in education than men. Apart from the first four classes of primary school, more girls than boys repeat. In 2000, the pass rates of the Primary School Leaving certificate Examination were 79.3% and 71.1% for boys and girls respectively. At Junior Certificate Level, (after two years of secondary school), the pass rate for girls was 61% compared to 31% for boys, an indication that the initiatives to improve the attainment of girls in education may be bearing results, although both results were too low for such a low level. At the end of secondary education, the pass rate for girls was 14.3% and 23.4% for boys. At University level, the indications are that significant numbers of women and girls are yet to achieve awards in non-traditional areas such as natural sciences, engineering and law refer to table below:

10.6.2 Girls achieve less than boys do for the following reasons. First, heavy workloads at home allow them less time than boys and men for study. Second, most teaching methods adopted in Malawi's schools favour boys and men. Third, many girls are sexually, physically, and verbally harassed by boys and teachers, who instil timidity and subservience. Fourth, boys generally receive more encouragement from parents and guardians to stimulate study. Fifth, some subjects such as the natural sciences are masculinised and exclude women and girls who could excel in such subjects.

**Number of Awards by course of Study, Gender and year 2000**

Awards	1998			1999			2000		
	Total	M	F	Total	M	F	Total	M	F
Bachelor of Arts	46	27	19	30	20	10	44	21	23
BA (Human Resource Management)	19	12	7	19	12	7	-	-	-
BA (Public Administration)	14	12	2	17	14	3	13	9	4
BA (Theology)	1	-	1	18	17	1	10	10	-
B Acc.	53	45	8	59	53	6	52	42	10
BBA	74	56	18	49	34	15	50	31	19
B Ed.	122	74	48	92	72	20	144	106	38
BSc	44	39	5	47	37	10	50	39	11
BSc (Agriculture)	90	69	21	170	126	44	89	67	22
BSc (Engineering)	46	43	6	77	74	3	63	60	3
BSc (Techno Ed.)	-	-	-	17	17	-	-	-	-
BSc (Environment Science and Techno)	26	24	2	7	6	1	51	40	11
BSc Nursing	16	15	1	11	4	7	33	22	11
B Soc Sc	79	63	16	52	39	13	51	33	18
LL B (Hons)	9	6	3	20	19	1	18	12	6
MA	2	2	-	33	27	6	12	9	3
MBBS	18	13	5	16	7	9	21	18	3
MSc	8	6	2	17	11	6	32	23	9
Other	125	76	49	165	85	80	124	27	97
<b>Total</b>	<b>792</b>	<b>582</b>	<b>210</b>	<b>916</b>	<b>674</b>	<b>242</b>	<b>857</b>	<b>569</b>	<b>288</b>

Source GOM: Education Basic Statistics; Malawi 2000

10.6.3 The Government and its partners have taken several measures to encourage girls and women's attainment in education. For example, between 1990 and 1994 a UNDP bursary scheme for high achieving pupils from standard 1 to 8 were in the ratio of 3 girls to 1 boy in each participating school. This bursary which paid for school fees and other learning materials benefited about 26,000 pupils. A scholarship programme, for non-repeating girls in Distance Education Centres and conventional secondary schools was also introduced. This scholarship paid for school and boarding fees for the girls thereby encouraging them to attain high and good grades.

10.6.4 To encourage girls and women's attainment in non-traditional subjects at university level, the Government administered a scholar-ship and a career counselling scheme for girls who opted for not-traditional fields such as engineering, management, transport, economic, agricultural economics and sciences from 1987 – 1995. This programme which was funded by the United States Agency for International Development benefited 347 students in the University of Malawi.

## 10.7 Conclusion

Malawi recognises that education is important for personal and national development because it expands a person's and society's capabilities. The right to education is recognised in the Constitution and primary education has been officially free since 1994. Malawi further recognises that gender disparities in education must be eliminated and several initiatives have attempted to reduce the gaps in education. Education can also be a vehicle to eliminate gender-related stereotypes in society. Hence, the various curricula have incorporated gender issues and learning materials are largely gender sensitive. However, gender disparities in education persist in enrolment, retention, delivery and attainment. In addition, the Government's determination to ensure free primary education against inadequate resources has affected the quality of education. The hope lies in the implementation of the strategies in the Poverty Reduction Strategy Paper that aim at achieving equality in education to remove the disparities among men and women, boys and girls.

## Article 11: Employment

### 11.1 CEDAW Standards

Article 11.1.1 States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:

- (a) The right to work as an inalienable right of all human beings;
- (b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;
- (c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining including apprenticeships, advanced vocational training and recurrent training;
- (d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work;
- (e) The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave;
- (f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.

11.1.2. In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures:

- (a) To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;
- (b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;
- (c) To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities;

(d) To provide special protection to women during pregnancy in types of work proved to be harmful to them.

11.1.3. Protective legislation relating to matters covered in this article shall be reviewed periodically in the light of scientific and technological knowledge and shall be revised, repealed or extended as necessary.

## **11.2 Introduction**

11.2.1 Malawi is basically an agricultural and rural country. For example, in 1997, 66% of the population were economically active, but 78% of them were engaged in subsistence farming. Formal employment only involved 8.8% of the population aged 10 and over. Majority of them were men and women accounted for 18.7% only.

11.2.2 One of the legislative landmarks since the transition to multiparty politics has been the enactment of twin pieces of legislation on employment. The first was the Labour Relations Act,<sup>91</sup> which entrenched collective bargaining, co-determination, and institutionalised industrial Relations Court. The second was the Employment Act,<sup>92</sup> which repealed previous legislation on employment and attempted to apply some international standards as embedded in Conventions of the International Labour Organisation. One principle entrenched and applied in the Act is non-discrimination.<sup>93</sup>

## **11.3 Guaranteeing of Employment Rights and Opportunities<sup>94</sup>**

11.3.1 Malawi's constitution provides that every person has the right to "freely engage in economic activity, to work and to pursue a livelihood anywhere in Malawi."<sup>95</sup> The Constitution further guarantees the rights to fair and safe labour practices, to form and join trade unions, fair wages and equal remuneration, for "work of equal value without discrimination of any kind, on the basis of gender, disability or race."<sup>96</sup> The Employment Act 2000 attempted to apply these principles to the employment contract in Malawi, but discrepancies still remain. For instance, 91.6% of the economically active women work in agricultural-related tasks. Although more women than men are unemployed, men dominate economic activity in Malawi. Women outnumber men in subsistence agriculture and the economically inactive.

11.3.1 The lower representation of women in employment is a result of poorer and less opportunities in accessing employment, unequal treatment in employment and lower educational attainment. The numbers of women vocationally trained are also lower than for men. At all levels, society generally perpetuates the stereotype images and roles of women as household makers.

11.3.1 Women who are educated or trained sometimes experience discrimination during selection for jobs and interviews. Some employers have advertised that they are seeking to employ men, whilst some selection panels ask gender insensitive questions such as on pregnancy, marital status, and

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<sup>91</sup> Act No.16 of 1996.

<sup>92</sup> Act No. 6 of 2000.

<sup>93</sup> Act No, 6 of 2000, section 3.

<sup>94</sup> National Statistical Office, 1998 Malawi Population and Housing Census Report of Final Census Results (Zomba; National Statistical Office, 2000).

<sup>95</sup> Malawi Constitution, section 29.

<sup>96</sup> Malawi Constitution, section 31.

familial responsibilities. Sexual harassment is also common at the work place where employers seek sexual favours from the prospective and employees.

11.3.1 Women further, generally experience discrimination during employment, despite the requirements of the Employment Act. Most women, especially in the agricultural sector, are engaged on a temporary basis hence not entitled to most benefits, are insecure and easily dismissed. In the sectors where women tend to outnumber men, agriculture and domestic work, the conditions of service are insecure for women. In domestic work for example, girls and women are sometimes not paid. Instead, shelter, food, or clothing are considered payment. Girls and women employed to work in households are sometimes sexually harassed or abused by teenage or adult males in the household. Sexual harassment is not yet widely recognised as unacceptable. In some cases, employed women in all sectors are subjected to sexual harassment or lured into illicit sexual relationships with managers, employers, or men workers. Although the employment Act adopted in 2000 has many international standards. But it is silent on sexual harassment.

#### **11.4 Selection of Profession and Career<sup>97</sup>**

11.4.1 Employed women in Malawi predominantly work in agriculture activities that require manual work. Of the total economically active women in Malawi, 91.8% work in agriculture and contribute 70% of the agricultural labour force. Trade employs 31.4% of the total labour force of which 3.6% are women. Community and social service account for 35.7% of the total labour force of which 2.1% are women. Manufacturing employs 20.2% of the total labour force out of which, 1% are women. Education employs 39.6% of the total labour force and 1.4% are women. Health and social work employs 40.9% and 0.58% are women.

11.4.2 There are gender disparities in the representation of women in employment. Women tend to concentrate in gender-stereotyped employment that mirror their culturally accepted roles such as petty trading and agriculture. As already alluded to, efforts are being made to train women and men in non-traditional fields like Nursing and home economics for boys and engineering and law for girls. To achieve this, the University Colleges in 2001, adopted a policy which states that 40% of its faculty positions be occupied by women by 2006, partly to provide role models for girls and women who aspire for further studies.

11.4.3 Programmes such as the promotion of girls and women role models are increasingly becoming common and women achievers are generally well accepted in Malawi. When women are channelled into non-traditional subjects, a fair number tend to choose certain tasks and roles that are consistent with motherhood. This is because of the lack of support mechanisms in the non-traditional fields. Most employers do not offer conditions of service that are responsive to the needs of women, particularly mothers within those non-traditional areas.

#### **11.5 Remuneration in Employment**

11.5.1 The Employment Act prohibits discrimination at all the stages of the employment contract. It expressly requires the observance of the principle of equal pay for equal work. It also provides for equal rights to annual leave, sick leave, and adds that women are entitled to 3 months maternity leave.

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<sup>97</sup> Figures from: National Statistical Office, *1998 Malawi Population and Housing Census Report of Final Census Results* (Zomba; National Statistical Office, 2000).

Termination on account or related to pregnancy is prohibited and can be criminally punished. The Act further specifies the same maximum working hours for men and women doing the same work. Women and men are entitled to a minimum wage and equal treatment for the same work in terms of promotion, workloads and other duties and rights. Dismissal must be justified and unfair dismissal is a ground for reinstatement or/and compensation for both women and men. The Act further provides for the doctrine of constructive dismissal, when an employer makes it difficult for an employee to continue with the contract.

11.5.2 The Employment Act was passed in 2000 and its provisions are yet to be known and understood by many employers and employees. There is evidence that some employers do not treat women equally with men. For example, women receive less than men for equal, if not more work in many of Malawi's tea and tobacco estates. The discrimination that women face in employment is further exemplified by the dominance of employment related complaints to the Office of the Ombudsman. The employment-related complaints by women to the Ombudsman have overwhelmingly related to unfair treatment or discrimination.<sup>98</sup>

11.5.3 Apart from payment during sickness as provided by the Employment Act, social protection during employment is still a matter of private contracts. There are no minimum legislative or policy norms or guidelines to ensure social protection for employees. Various employees therefore run their own pension and social insurance schemes and offer these as part of the employment package. It is yet to be established on how many of the employees are socially protected through the market and individual bargaining. The matter is also yet to be regarded as an issue for Malawi's trade unions.

## **11.6 Protection from Violence in the Work Place**

11.6.1 Another area that requires attention in Malawi is violence in the work place. Sexual harassment of women by male workers is still rampant, a reflection of socially constructed roles and images that exist in Malawian society. The woman is regarded not only as inferior, but also as a sex object. Although the criminal law prohibits insulting the modesty of women; men at the workplace often make demeaning or sexually suggestive remarks in the presence of co-workers. In addition, not many women know that sexual harassment is not acceptable, as there is neither law nor policy. Attempts are however, made to include sexual harassment in a gender mainstreaming handbook for public servants which will assist in addressing the problem in this sector.

## **11.7 Conclusion**

The enactment of the Employment Act and the Labour Relations Act are major milestone in the regulation of the employment contract in Malawi. The Act is largely based on international standards. It underlines non-discrimination in employment. Non-discrimination against women however is still manifested in the representation and treatment in the various economic activities in Malawi. Women's labour is still largely in agriculture and some of the work such as housework that women do is not economically recognised. The Employment Act is not comprehensive and has not addressed issues of sexual harassment at the various stages of the employment contract. In addition, the provisions of the Act are yet to be widely known, understood and practised in a country where women's status is low,

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<sup>98</sup> Office of the Ombudsman, 'Register of Complaints' (Lilongwe; Office of the Ombudsman, 2002).

education still favours boys and men, and where the dominant image of the woman is that of a child bearer, sex object and house worker.

## **Article 12: Health and Health Care Services**

### **12.1 CEDAW Standards**

Article 12.1.1 States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.

12.1.2 Notwithstanding the provisions of paragraph 1 of this article, States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.

### **12.2 Introduction**

12.2.1 Women in Malawi bear disproportionate burdens with regard to the country's overall poor health status. The country's Constitution states that policies and laws in Malawi must aim at providing adequate health care "commensurate with the health needs of Malawian society and international standards of health care."<sup>99</sup> The Constitution further recognises that Malawi must achieve "adequate nutrition for all in order to promote good health and self-sufficiency."<sup>100</sup>

12.2.2 Unlike other human rights, the right to health is not recognised in the Constitution except within the context of the right to development. The Government and its partners have attempted to provide health services and goods for the people of Malawi. Some of the programmes, such as safe motherhood, have primarily been directed at the health needs of women and children. At the same time, the nation's care burdens have increased because of AIDS. Women's time, energy and productivity have been lost on care, a role that is still feminised in Malawi.

### **12.3 Access to Health for Women**

12.3.1 The health facilities in Malawi are provided by the Government, the Christian Health Association of Malawi (CHAM), the private sector, traditional health providers, and households. The health services and personnel have been in short supply for a long time. In 1996, for example, the country had 450 enrolled nurses and midwives, 236 medical assistants, and 152 health assistants, 124 enrolled community nurses, 23 assistant environmental health officers, and 2,627 health surveillance assistants. The country, then, had only 20 medical specialists, all stationed at the central or referral hospitals, where there were an addition of 58 medical officers. Only 3 pharmacists were registered two of whom, were working in administrative positions. by 1998,<sup>101</sup> for example, there were 24 health units, 345 dispensaries, 70 maternity units, 389 health control centres 28 rural hospitals, 28 hospitals managed by CHAM, 1 mental hospital, 21 district hospitals, and three central hospitals.

12.3.2 Since then, the number of districts has been increased to 28 with the expectation that the number of district hospitals will accordingly rise. A referral hospital has been established and is functional in Mzuzu, to serve the Northern Region. Within the context of a liberalised market, the

<sup>99</sup> Malawi Constitution, section 13 (c).

<sup>100</sup> Malawi Constitution, section 13 (b).

<sup>101</sup> E.g., in the Country's Report to the CRC, from where these figures are taken.

number of privately owned clinics and hospitals has increased both in rural and urban areas. On its part, the Government launched the Bakili Muluzi Health Initiative. Its purpose is to make basic health services and goods such as essential drugs, particularly for children free and more accessible.

12.3.3 In addition to the insufficient health facilities, women in Malawi face problems to access health facilities, services, and goods. The poor access of women to health care is exacerbated by poor transport network, lack of transport money and time to travel to the health facility.

12.3.4 During the report compilation it was found out that the attitude of health providers is another reason for people not attending health services. Many health providers are known to be rude, harsh, and discriminatory. In some cases, women are mishandled during childbirth possibly because of heavy workloads, uncooperative behaviour by patients, and lack of materials to use, in the hospital according to the health workers. Health workers, particularly women, are overworked in health facilities. In maternity wards, patients indicated that men health workers were more caring, possibly because men are summoned only during complications and do not bear as heavy burdens as the women health workers.

#### **12.4 Discrimination Against Women in Health Care**

12.4.1 It was also established that there was discrimination in the Malawi's health care system. The discrimination is based on economic and cultural status. People who are poor, especially women, are discriminated against in favour of those with higher social status including men. In most health centres, most women have to stand on long queues for treatment.

12.4.2 Many community members consulted had negative attitudes towards health centre personnel mostly those with lower socio-economic status, who rarely received enough attention. In contrast, those of higher economic status would sometimes not queue and usually, received more attention, spending more time with the examining health personnel and receiving better medication than the poor.

12.4.3 The health book, which has to be bought by each community member wishing to use a public hospital, is meant to be an improvement on patients' records keeping, to avoid destruction. It was however, found out that most communities are not aware of the purpose of the health book, which is demanded by the health personnel. Most villagers regard this as unaffordable since they have to buy this and use it whenever they seek medical assistance.

#### **12.5 Access to Family Planning and Contraceptive Service<sup>102</sup>**

12.6 Since the submission of the first country report, access and use of family planning services has increased. As a result, there has been a decrease in fertility levels from 7.6 in 1992 to 6.7 births per woman in rural areas and 4.5 per woman in urban area by 2000. These rates however are still very high mainly because of the low education levels among women, leading to unplanned fertility. For example, in the five years before the 2000 Malawi Demographic and Health Survey, unplanned pregnancies accounted for 40% of all births, 18% were mistimed, and 22% were unwanted.<sup>103</sup>

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<sup>102</sup> Figures from: National Statistical Office and ORC Macro, *Malawi Demographic Health Survey 2000* (Zomba and Calverton; National Statistical Office; 2000).

<sup>103</sup> National Statistical Office and ORC Macro, *Malawi Demographic Health Survey 2000* (Zomba and Calverton; National Statistical Office; 2000), chapter 7.

12.7 The knowledge of contraception methods has increased since 1992. Amongst women aged 15 to 49 years, 97% know at least one family planning method, an example of the effectiveness of awareness campaigns through the radio and face to face interaction. 92% of the surveyed women in Malawi knew injectables, 91% the pill, 90% the male condom and 83% female sterilisation condom according to the 2000 Malawi Demographic and Health Survey. The knowledge seems to vary with age, sexual activity and education.

12.8 The unmet need for family planning has decreased to 30% from 36% amongst married women since 1992. The unmet need for spacing is 17% and that for limiting the number of children is 13%. While there is considerable progress in family planning, the progress seems insufficient considering that nearly half of the demand for contraception is unmet. This situation is in the light that abortions are illegal in Malawi. Abortion is most prevalent among younger women, who do not want the pregnancy or are forced by their sexual partner to terminate it. There are no reliable statistics on abortion.

12.9 The contraception prevalence rate has increased significantly since 1992, jumping from 7% to 26% amongst married women. The preference for contraception methods has changed, with the use of injectables increasing from 2% in 1992 to 16% in 2000, a period when the use of the pill and IUD decreased. There is however, a large difference in the contraception use between rural and urban women. The contraception use among urban women is 38% and 24% for their rural counterparts. Contraception use is highest among middle-aged women. Only 13% of married women aged 15 to 49 years use contraception. In the age group 35 to 44 years, contraceptive prevalence rate is 32%. In contrast, the prevalence rate is 20% for older women of child bearing age 45 to 49. Whilst older women favour injectables, the younger and unmarried women tend to favour the condom, which is largely promoted as a strategy to avoid contracting HIV.

12.10 The contraception use is higher among men than women. 44% of sexually active currently married women stated that they had ever used a method of contraception compared to 64.7% among men. The current use of any method of contraception amongst these was 25% and 27.4% for women and men respectively. This reflects differentials in education levels and control in decision-making. In the consulted communities women stated that many men force their wives to have sexual intercourse without contraception, threatening divorce or separation if the woman insisted. To cope, some women said they were secretly obtaining injectables.

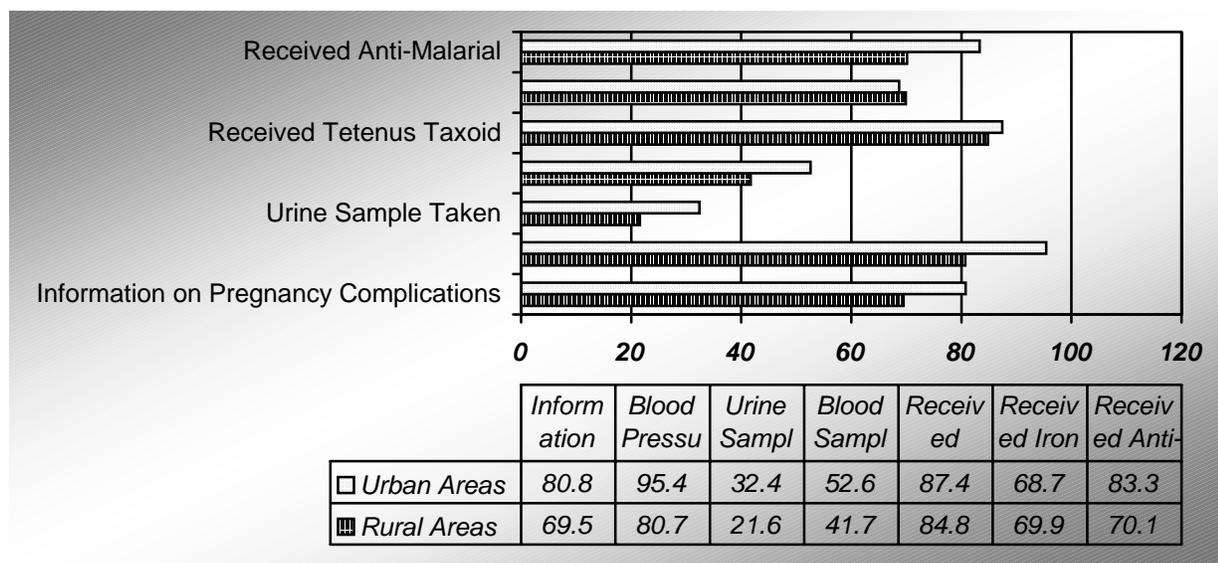
12.11 Government facilities are the major sources of contraception use. Supported by international development agencies such as UNFPA, the Government is providing family planning services to 68% of current users, as compared to 59% in 1996. This is largely because the Government is dominant in its provision of injectables, leaving private medical facilities such as Banja La Mtsogolo to provide family planning services to 28% of current users. Shops and other private supplies account for 4% of current contraception users.

## **12.12 Pregnancy and the Welfare of Women**

12.12.1 The number of women receiving antenatal care from a doctor or qualified nurse in Malawi increased slightly to 91% in 2000 compared to 90% in 1991. Nurses and trained midwives provided such services to 83% of the women whilst traditional birth attendants provides services to 3%. 8% receive antenatal assistance from doctors. 5% did not get any antenatal care. Although the number of

women receiving antenatal care is high, most of them do not receive assistance from qualified personnel.

12.12.2 There are also discrepancies in the antenatal services received. For instance, women are expected to attend antenatal clinics at least four times during pregnancy, one in the first trimester and at least three during the rest of the pregnancy. The median number of antenatal care visits dropped from 4.8 in 1992 to 3.4 in 2000. 50% of Malawian women do not attend antenatal care during the first five months of pregnancy. The services rendered at rural and urban antenatal clinics vary in extent.



The number of women delivering at health facilities is 55%, identical to 1992. 44% of births are delivered at home, whilst privately managed facilities served 15% of deliveries.<sup>104</sup>

### 12.13 Female Morbidity and Mortality

12.13.1 Unlike indicators on family planning, maternal mortality has risen in Malawi since 1992. For the period 1994 to 2000, the maternal mortality ratio was 1120 deaths per every 100,000 births, a rise from 620 estimated for the period 1986 to 1992. Such a dramatic rise has been attributed to two factors namely wrong estimates and due to the rise in AIDS cases, and AIDS-related illnesses.

12.13.2 The indicators on longevity of life are poor and indicate that the quality of life is poor. Life expectancy for women is 44 years at birth, down from 45 years at birth in 1987. The life expectancy for men is 40 years at birth, again down, from 41.4 in 1987. These mortality figures are against a crude birth rate of 37.9 and a total fertility rate of 6.2. The country's crude death rate is 21.1 and the infant mortality rate is 121 per 1000 births, down from 159 per 1000 births in 1987 an indication that it is declining.

<sup>104</sup> National Statistical Office and ORC Macro, *Malawi Demographic Health Survey 2000* (Zomba and Calverton; National Statistical Office; 2000),

12.13.3 Preventable diseases account for most of the deaths in Malawi. AIDS, malaria, cholera and diarrhoea are Malawi's greatest killers. Over 25% of children were victims of acute respiratory infections and 18% under the age of 5 were reported to have had diarrhoea in the two weeks preceding the Demographic Health Survey respectively.<sup>105</sup> The Government runs and coordinates preventive and curative programmes. For example, for Malaria, the Government is encouraging the supply of impregnated bed nets with mosquito repellent to pregnant mothers. In 2000, at least 13% of households in Malawi owned impregnated bed nets.

12.13.4 The mortality among boys and girls has declined since 1992 when the under-five mortality rates were 234 deaths per 1000 live births. In 2000, the rate had dropped to 189 deaths for the period 1996 to 2000. The drop in the mortality rate of boys and girls represents progress made by the child survival programmes coordinated and implemented by the Ministry of Health and Population and improved access to clean water. The vaccination coverage has also been above average. 70% of children aged 12 to 23 were fully vaccinated in 2000. This however is a decline, compared to the 82% coverage reported in 1987. The level of vaccination retention has also fallen from 86% to 81%, suggesting that the process used in vaccination might not be complying with human rights as more and more care takers choose not to take their children for vaccination.

#### **12.14 HIV, AIDS and Sexually Transmitted Diseases**

12.14.1 Malawi is heavily afflicted by the acquired immune deficiency syndrome (AIDS). Heterosexual contact accounts for 90% of HIV infections in the country, and this is a manifestation of women's powerlessness. The prevalence rate is one of the highest in the world, at 15% for the 15 - 49 age group. The HIV prevalence rate of new infections among young women in the 15 to 24 years age group is about 4 to 6 times higher than that for young men of the same age group. In 1998, 46% percent of adult infections occurred amongst the youth, but young women accounted for 60% of those new infections.

12.14.2 The HIV infection figures further show that more young women are infected than their male counterparts. This may partly be explained by the fact that women tend to be more biologically susceptible to HIV and other sexually transmitted diseases. The figures however, reveal some gender dimensions about HIV infections. As HIV is mostly spread heterosexually in Malawi, the indicators confirm the observation that there is gross generation sexual intercourse whereby older men than women tend to have sexual intercourse with young girls and young women are not skilled to negotiate for safer sexual intercourse.

12.14.3 The awareness of AIDS in Malawi is very high, at 99% among women and 100% among men. 84% of women and 92% of men knew in the year 2000 that a "healthy-looking person can have the AIDS virus. In 1992, such awareness was at 74% and 86% for women and men respectively. About two thirds of both men and women knew that the HIV virus could be transmitted from mother to child during delivery and pregnancy.<sup>106</sup>

<sup>105</sup> National Statistical Office and ORC Macro, Malawi Demographic Health Survey 2000 (Zomba and Calverton; National Statistical Office; 2000), chapter 7.

<sup>106</sup> Also: UNDP, *Malawi National Human Development Report 2001* (Lilongwe; UNDP, 2001).

12.14.4 The high and increasing levels of knowledge about AIDS may be a reflection of the measures taken to increase knowledge about HIV infections and AIDS amongst Malawi's population. Current programmes coordinated by the National AIDS Commission of Malawi and implemented by Government agencies and non-governmental organisations have included the use of the media, public meetings, youth programmes, and information, education, and communication; and behaviour change campaign materials. AIDS prevention programmes focus on the use of condoms, limiting the number of sexual partners, and delaying sexual experiences for young people. The people less knowledgeable about HIV and AIDS are women, who are sexually inexperienced, rural, and less educated. For example, partners who report discussions about HIV and AIDS are those who have more than secondary school education.

12.14.5 There is however still no evidence to show that the high levels of knowledge and the widespread AIDS awareness programmes are resulting into significant behaviour change amongst women and men of Malawi. Evidence of actions taken to protect partners indicate that the numbers of women and men who are currently adopting prevention measures advocated in current programmes still remain low. For example, 47.7% of women and men having sexual intercourse did not protect their partners from HIV infections in the twelve months that preceded the Malawi Demographic and Health Survey. 48.6% did not tell their partners about their HIV status and only 12.3% used condoms.

12.14.6 The lower rates of behaviour change on HIV infection prevention are not relative to the knowledge levels. This may suggest that the current programming methods on HIV and AIDS are not really addressing all the immediate, underlying, and basic causes of infections. One problem of the current programming is that there is too much focus on message giving rather than facilitating behaviour change communication processes that can result in change of opinions and cultural practices that predispose women and men to the infections, in making assessments, analyses and taking new action.

12.14.7 The imbalances in power relations between women and men are not adequately being addressed. For instance, women and girls are unable to use their knowledge on HIV and AIDS and demand for condoms use because they are afraid of losing a partner to another woman or end their marriage if such as demand is not met.

12.14.8 In addition, the powerlessness of women is exemplified by the fact that men have more sexual partners than women. Only 1% of women who were married during the 2000 Malawi Demographic Health Survey reported having extra-marital affairs compared to 2% of men who reported having two or more sexual partners. Amongst those unmarried, the rates of people with multiple partners is much higher. 38% of sexually active women reported having at least one sexual partner in the twelve months preceding the survey compared to 67% among men. 21% and 20% of unmarried and married men respectively admitted to have paid for sexual intercourse.

12.14.9 Ironically such higher rates of multiple sexual partners correlate with the higher levels of education among sexually active women in the 15 – 19 age group. 66% of unmarried women who had sexual intercourse reported doing so with more than one partner in the twelve months preceding the Malawi Demographic Health Survey.

12.14.10 Disproportionately, women and girls bear a heavy burden of caring for HIV and AIDS patients. Coupled with this is the stigmatisation of women who are HIV positive compared to men;

and their burden of care for the increasing number of orphaned children currently being added to the poor at 70,000 every year.

12.14.11 Opportunistic infectious diseases such as tuberculosis, that has increased by 500% between 1985 and 1999 have affected women more.<sup>107</sup> While stigma may be decreasing, denial on the part of AIDS patients and care givers results in many speculations and witch hunting because AIDS is associated with promiscuity. Further, due to high patients bed ratios by AIDS patients who occupy 70% of the hospital beds, most of the cases are given home based care. This means that the Government is transferring its responsibility to the community and increasing women's work load and poverty because they can not be productive.

### 12.15 Harmful Traditional Practices

12.15.1 Malawi still maintains some harmful traditional practices for women. In some areas, food taboos exist that prevent girls and women from eating some nutritious foods. For example, pregnant women and children are not allowed to eat eggs. Such practises are decreasing because of nutrition home management and health education by community workers under the Ministry of Gender and Community Services; and other stakeholders. Such practices are virtually unknown among young and educated people.

12.15.2 Sexual intercourse -related practices such as *Kuchotsa fumbi* (removing dust), *kupita kufa* (cleansing death), *kupimbira* (giving a girl child as payment for credit), *chokolo* (wife inheritance), and *fisi* (hyena) both demean and harm the reproductive health rights of women; and expose them to HIV infection and sexually transmitted diseases. There seem to be a belief that men have the right to sexual intercourse regardless of their status and that sex is a tool for addressing many ills in a particular society.

12.15.3 *Fisi* for a childless couple agreed usually between the man who cannot procreate and the *fisi*, who is paid to have sexual intercourse with a married woman. "*Chimwamaye*" is wife and husband exchange. "*Kutenga mwana*" performed to cleanse a new born through a sexual act between the parents whilst holding the baby is a harmful practice if the biological father is dead or away as another man may perform the ritual on behalf of the dead or absent father.

12.15.4 The curriculum for female and male initiation ceremonies contains information that incites the initiates to be sexually active or adventurous, as they believe that puberty is synonymous with adulthood and that sexual intercourse is for such people.

### 12.16 Conclusion

Although the state of health in Malawi is generally poor, women bear a disproportionate burden of the misery through shouldering care burden and high levels of morbidity and maternal mortality. In general, women remain powerless in sexual and reproductive health rights resulting in high prevalence of HIV/AIDS, and other sexually transmitted diseases particularly among younger women. The health system appears inadequate to respond to the health challenges in the country and the attitude of health providers is far from being adequate. Other programmes undertaken by the

<sup>107</sup> Malawi Government, 'Poverty Reduction Strategy Paper' (Malawi Government; Lilongwe, 2001).

Government and non-governmental organisations are biased towards message delivery rather than effectively changing gender power relations and the construction of gender roles.

## **Article 13: Social and Economic Benefits**

### **13.1 CEDAW Standards**

Article 13.1.1 States Parties shall take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights, in particular:

- (a) The right to family benefits;
- (b) The right to bank loans, mortgages and other forms of financial credit;
- (c) The right to participate in recreational activities, sports and all aspects of cultural life.

### **13.2 Introduction**

13.2.1 The traditional system that used to provide most of the economic benefits to women is weakening. Family ties in which the traditional system was based are increasingly being attenuated. Due to the weakened traditional support systems women, orphaned children, and the elderly are increasingly competing for resources.

### **13.3 Constitutional Requirements**

13.3.1 The Malawi Constitution has provided sufficient framework for the realisation of the rights enshrined in Article 13 of CEDAW. The Constitution enshrines the right to development.<sup>108</sup> Duties to realise this right are primarily on the state, which must take measures focussing on women, children, and people with disabilities.

13.3.2 The principles of national policy in the Constitution and the Bill of Rights enshrined in Chapter 4 of the Constitution,<sup>109</sup> require certain goals to be achieved for various groups of people including women. The Constitution commits the Government to attain gender equality through policies, law reform and other measures that include the provision and facilitation of maternity benefits, and any “such other measures as may be required.”

13.3.3 The Constitution requires that people with disabilities must be supported through greater access to public places, fair opportunities in employment, and the fullest possible participation in all spheres of Malawi’s life.

13.3.4 There are also goals related to children and the role of the family. The State must through its policies “encourage and promote a conducive environment for the full development of healthy, productive, and responsible members of the society.”<sup>110</sup> The family, on its part must be recognised as a fundamental and vital social unit.

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<sup>108</sup> Malawi Constitution, section 30.

<sup>109</sup> Malawi Constitution, Parts III and IV.

<sup>110</sup> Malawi Constitution, section 13((h))

13.3.5 Although there are no enshrined enforceable rights for people who are elderly, the Constitution requires social security for such people. Such members of society must be supported “through the provision of community services”.<sup>111</sup> They also must be encouraged to participate in community life.

13.3.6 In terms, of culture and language, the Constitution enshrines a right for every person to “use the language and to participate in the cultural life of his or her choice.”<sup>112</sup>

13.3.7 The National Gender Policy seeks to create a conducive environment to enable women, men, girls and boys and other segments of the society to participate in and benefit equitably from social welfare and economic empowerment programmes in order to improve their socio-economic status.

#### **13.4 Family and Other Benefits**

13.4.1 Malawi has no formal systems of family benefits. The Government and employers provide for pension schemes, gratuities, and death benefits for their employees. Women whose husbands are employed in the public services are entitled to death benefits. The administrative procedures are however, cumbersome and charges on the death gratuity are very high.

13.4.2 In the eroded traditional system, women view the family, as a means of social protection, even when the disadvantages outweigh any benefits. The system offers no material benefits to married people except during weddings, kitchen/bridal showers and send off parties; and upon the birth of a child. On such occasions, relatives and friends bring gifts to the prospective members of the marriage or to the husband and the wife. Of late, the ideas have been modified and they are occasions for counselling both the woman and man and gift presentation to the couple.

13.4.3 The communality of Malawian life is still visible during weddings and funerals. During weddings, the extended family and friends assume the duty of arranging the wedding and they contribute towards the budget. During the wedding, elaborate and extravagant activities are moderated to give money and gifts to the newly-weds and give them a boost in their start to shared life. During times of funerals, communities come together to mourn with the bereaved family, contribute towards the cost of the funeral, carrying out tasks such as cooking for the funeral attendees, digging the grave, and offering as much social support as can be afforded.

13.4.4 Although the wedding and the funeral are demonstrations of communality and solidarity, gender stereotyping is also enhanced by such occasions. At weddings for example, the roles are feminised and masculinised, with women cooking, singing and dancing and men presiding over most committees and the function itself. At funerals, women are expected to cook, show grief whilst men organise the ceremony and exemplify strength. Widows are expected to be inside the mourning house, wailing, and being consoled while widowers remain outside the house with their peers.

#### **13.5 Bank Loans, Mortgages and Other Forms of Financial Credit**

13.5.1 Most women in Malawi are economically powerless mainly because of lack of access to and control over capital. It is the policy of Government to promote the strengthening credit mechanisms in order to allow women’s access to credit.

<sup>111</sup> Malawi Constitution, section 13(j).

<sup>112</sup> Malawi Constitution, section 26.

13.5.2 Available studies have revealed that women's access to credit has improved. The number of micro financing institutions for women, have increased from 3 in 1990 to 10 in 1999. Women constituted 15% of those having access to credit in 1995, the proportion had increased to 40% by 1999. This resulted into an increase in the number of women engaged in off-farm business activities from 3 000 to 45 000 in 1995 and 2003, respectively. The number of women trained in business management also increased from 10 000 to 80 000 during the same period. In the economic activities programme run by the Ministry of Gender and Community Services, alone the number of women reached with business management increased from 10,000 in 1995 to 80,085 in 2003 while access to credit has increased to 44,773 in 2003.

13.5.3 Collateral requirements by lending institutions, low education levels, lack of knowledge and information by women on lending institutions, and long distances to the lending institutions are some of the obstacles against women's access to credit facilities. In particular, some of the organisations that used to work in rural areas have withdrawn to urban areas or ceased to operate because of poor loan repayment rates and the increasing poverty in rural areas. During the report compilation period it was learnt that there is a huge demand for capital. Unfortunately, such services do not exist in most of the visited areas.

13.5.4 Although there is no law that bars women from taking bank loans in their own name and right, many commercial lending institutions have insisted on a male guarantor, usually a husband if the woman has no sufficient collateral. The requirement for collateral and guarantors prejudices women more than men. Most women do not have assets that can be accepted as collateral because property is feminised and masculinised. In addition, those who are not married to rich men or have no man to act as a guarantor are also disadvantaged. The Government and other stakeholders have gone round the problem by using the group system which act as guarantor for its members

### **13.6 Recreation Facilities, Sports and Other Aspects of Cultural Life**

13.6.1 The Government has recognised the role of sports and culture for a long time and has had a special ministry to this effect. The role of the Ministry is to support and develop sports and cultural activities in Malawi.

13.6.2 Women's role in culture, have been feminised. Traditional dances in rural areas have provided the easiest recreation for women, men, girls and boys.

13.6.3 The dances are divided into mix dances of women and men that may be accompanied with singing. In each of such a dance, the styles are feminised and masculinised to a weaving harmony in the singing rhythms and dancing patterns. The second type of dancing involves women only. In this type of dancing, women control their compositions and arrangements. The compositions and arrangements are however, used as a means of self-expressions against injustices directed at them by the society and their husbands. Men primarily exclusively control the dances by women. Some of the dances such as Nyau, take the form of secret societies, shrouded in myths and well-kept passwords and other secrets. Occasionally, a woman who goes through the initiation into the secret society offers rare services in the mode of the dance and is accepted into the association of males.

13.6.4 As the Euro-centric culture permeates Malawian culture, European and North American type of parties are becoming prominent among urban dwellers and young people. The culture of night club is also increasingly becoming prominent. In rural areas, married men can go to a beer party with their

wives, imbibe together, and sing their way home. On the other hand, women who visit night clubs in urban areas are regarded as prostitutes and of loose morals. In rural areas, some women smoke or sniff or eat tobacco but they remain respected while those in urban and per-urban areas are regarded as prostitutes and immoral too.

13.6.5 The other form of recreation for women is sports. In traditional Malawian societies, dances and manual work usually fulfilled the role of modern sport. In some cases, women do not participate in sporting activities due to triple roles.

13.6.6 Increasingly, however, young people are not feminising or masculinising games like the older generations. The country, for example, has a women national football team and University male students play net ball.

13.6.7 The range, frequency, and quality of sports in Malawi have deteriorated, because of poor funding. Football has remained the dominant game, but girls' participation in various sporting activities is increasing. With the introduction of television and other forms of media entertainment, young people however, are becoming increasingly watchers and spectators rather than participators in culture and sports.

## **13.7 Conclusion**

Social insurance provision, cultural participation, and sport are areas that manifest gender inequalities and sexual stereotypes, but can be converted into sources of gender equality. More programmes are demanding to support or supplement the eroding traditional social security system. The unfavourable conditions militating against women's access to credit can also be removed. Malawi, is potentially vibrant culturally and active in sport, according to Vision 2020. The country can draw from its diverse and lasting cultural heritage of dances, art, and other forms. It can also add new sporting activities to its existing types of traditional and modern sports. Such potential must be tapped in such a way that the cultural and sporting energies and opportunities do not continue to entrench gender stereotypes, but rather promote gender equality.

## **Article 14: Rural Women**

### **14.1 CEDAW Standards**

Article 14.1.1 States Parties shall take into account the particular problems faced by rural women and the significant roles which rural women play in the economic survival of their families, including their work in the non remunerated sectors of the economy, and shall take all appropriate measures to ensure the application of the provisions of this Convention to women in rural areas.

14.1.2 States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right:

- (a) To participate in the elaboration and implementation of development planning at all levels;
- (b) To have access to adequate health care facilities, including information, counselling and services in family planning;
- (c) To benefit directly from social security programmes;

(d) To obtain all types of training and education, formal and non-formal, including that relating to functional literacy, as well as, inter alia, the benefit of all community and extension services, in order to increase their technical proficiency;

(e) To organize self-help groups and co-operatives in order to obtain equal access to economic opportunities through employment or self-employment;

(f) To participate in all community activities;

(g) To have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes;

(h) To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.

## **14.2 Introduction**

14.2.1 Malawi is predominantly rural, and 86.3% of women live in rural areas.<sup>113</sup> According to the Constitution of Malawi, the quality of living standards is an indicator of the success of government policies and legislation.<sup>114</sup> In addition, the Constitution has provided for an equal right to development for rural women.<sup>115</sup> Rural women must not be discriminated against.<sup>116</sup>

14.2.2 The general quality of life in rural areas is poor, as reflected in various studies, consultations in rural areas, the Government reports and the Malawi Human Development Social Indicators Report. The indicators show that poverty is worse among women and children and that more rural women suffer inequalities and disparities than urban women. Further, rural women are more powerless than their urban counterparts. They do not have the ability to articulate their right to development and to reproductive health rights. The table below illustrates the rural women's inability to negotiate for safer sexual intercourse.

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<sup>113</sup> National Statistical Office, 1998 Malawi Population and Housing Census Report of Final Census Results (Zomba; National Statistical Office, 2000).

<sup>114</sup> Malawi Constitution, section 13.

<sup>115</sup> Malawi Constitution, section 30.

<sup>116</sup> Malawi Constitution, sections 20 and 24.

Indicator	Value	
	Urban Women	Rural Women
○ No education at all for those 6 years old and above	11.7%	31.1%
○ Primary school net attendance ratio	87.5%	77.9
○ Secondary school net attendance ratio	30%	5%
○ No exposure to the mass media	20.7%	50.7%
○ Earning cash	38.5%	24.2%
○ Some one else deciding how to use earnings of the woman	10.9%	37.8%
○ No final decision on own health care	42.6%	54.9%
○ Agree with at least one reason for wife-beating	22.4%	38.2%
○ Able to refuse sex on the ground of tiredness	55.3%	61.4%
○ Able to refuse sex when husband has another sexual relation	65.8%	68.6%
○ Cannot refuse sex at all	21%	15.8%
○ Total fertility rate	4.5	6.7
○ Median age at first birth	20.1%	19.1
○ Teenage pregnancy and motherhood prevalence	27.1%	34.2
○ Knowledge of any contraception method	99.9%	98.2%
○ Use of any contraception method	41.2%	28.9%
○ Women in polygamous unions	8.5%	18.5%
○ Median age at first marriage for those between 20 and 49 years of age	18.7%	17.8%
○ Unmet need for family planning	13.5%	17.8%
○ Under five mortality rate (both sexes)	147.9	210.4
○ Women assisted by doctors and nurses during delivery over a period of 5 years	81.6%	51.9%
○ Knowledge of ways to avoid AIDS	76.1%	65.4%
○ Men having other sexual partners	49.3%	34.8%

### 14.3 Roles of Rural Women and Constraints

14.3.1 Women in rural areas experience particular problems or similar problems as urban woman but with more grave degrees of deprivation, exclusion, and exploitation. Three problems are largely unique to rural Malawian women. The first is severe limited access to factors of production resulting in wasted labour. In 1998, 65% of the rural population was predominantly subsistence farmers, and women accounted for 80%. The rural population lacks affordable and appropriate tools, implements, and other farm inputs such as fertilisers and seeds. They are limited in skills, and predominantly use the hand hoe as an indispensable tool. Although the rural communities confirmed that farming roles are shared between men and women; women spend 9 hours per day on agriculture work compared to 5 hours by men.

14.3.2 Secondly, rural women walk 1-5 kilometres to fetch firewood and water. Only 35% of the population have access to protected water compared to 65% who use unprotected sources and unclean water.

14.3.3 Thirdly, rural women are subjected to harmful traditional and cultural practices. Such practices include wife inheritance and exclusion from key communal leadership positions such as heading a village. Wife battering is often understood in rural areas as a corrective measure. Interactions with communities at grassroots level revealed that the practice of wife battering is still very prevalent. Women also confessed that their husbands decide on the number and spacing of children and that any resistance on the women's part could result in beating or marriage disruption. The 2000 Malawi Demographic and Health Survey<sup>117</sup> indicated that 38% of the rural women agree with at least one reason justifying wife- beating compared with 22% of urban women. It is believed, and even taught at the cultural level, that wife- beating is a seasoning for the marriage. The fact that a man has paid dowry for a woman is also sometimes used as a justification for beating her, thereby reinforcing impressions that the practice is a form of purchase that turns the woman into a property. Despite these implications, dowry payment is still part of the marriage rites and no measures have been put in place to sanction it

14.3.4 Rural women play significant roles in the sustenance of family livelihoods and communal life. Rural women contribute 69% to agricultural labour compared to 31% for men, produce 80% of the household food compared to 20% by men and process 90% of the food in the country. They contribute 71% to casual labour in the tea and tobacco estate sector. In the homes, rural women's roles include food preparation for the family, cleaning and fetching most household essentials such as firewood, water, and foodstuffs. In the face of increasing hunger and deepening poverty, men have increasingly undertaken some of these roles, but women still disproportionately carry out the bulk of the tasks.

14.3.5 From a cultural perspective, women, in rural areas are valued for their reproduction role despite being poorly supported by men. The fertility rate for rural women remains high, at 6.7 births per woman compared to 4.5 births for urban women. Women with no formal education, who are mostly in rural areas have on average, 7.3 children in their life time, whilst those who have attended secondary or higher education have on average 3.0 children per woman.<sup>118</sup> In rural areas, the reproductive capacities and services of rural women are considered essential for sustaining lineage's and social status. Failure to give birth, can lead to divorce.

#### **14.4 Discrimination in Rural Areas**

14.4.1 Women in rural areas are stereotyped as subservient to men, child bearers and weaker than men. Women in urban areas are able to wear pairs of trousers while in the rural area trousers are not yet acceptable. This is because most communities have not yet accepted the change in the Dressing Code. Although many dances and ceremonies involve men and women, certain rules and activities are reserved for men unless a woman can prove masculinity and earn the respect and acceptance of men. For example, among the Chewa, a secret ancestral dance called *nyau* has two sections, one for men,

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<sup>117</sup> National Statistical Office and ORC Macro *Malawi Demographic and Health Survey 2000* (Zomba and Calveton, 2001), chapter 3.

<sup>118</sup> National Statistical Office and ORC Macro, *Malawi Demographic and Health Survey 2000* (Zomba and Calveton; National Statistical Office and Calveton; 2001).

and another for women. Willing women can participate in the male roles but they are really initiated into the male section and men are not expected to participate in the women's section.

14.4.2 Rural women experience discrimination according to their status. Unmarried women are generally treated with less dignity than their married counterparts. Those who have been divorced are generally regarded as failures in providing for a family, and sometimes, even as immoral. This is because marriage confers status, responsibility and respect among peers. Childless women are often sneered at for their inability to conceive. If not divorced, lack of reproductive capacity is a justification for polygamy amongst some people in Malawi. Women who reside in the husband's home are often excluded from certain roles and expected to be more polite, hardworking, submissive and less powerful than the 'owners of the village.' A similar treatment though is also applied to men who reside in their wives villages. A man and a woman residing in the husband's village are sometimes threatened with temporary or permanent expulsion to their villages if they are considered to be non-conforming nagging or 'behaving as if the village is theirs.'

14.4.3 Both customary and statutory laws contribute to the discrimination against women. For example, the Wills and Inheritance Act<sup>119</sup> provides that a woman who is married patrilocally is entitled to three fifths to share with other dependants of a deceased husband who dies intestate. In contrast, a woman married matrilocally is entitled to half of the intestate estate to share with other dependants. Women who are not Malawians, in further contrast, are guaranteed at least the first K10,000.00 of the estate.

## **14.5 Elaboration and Implementation of Development Activities**

14.5.1 The Government in liaison with non-governmental organisations and international development agencies are increasingly insisting on participatory programming for rural development. Consultations with rural women, men, girls and boys were undertaken in the formulation of the national policies such as National Gender Policy, Land policies and Youth Policy.<sup>120</sup>

14.5.2 During the consultation with rural women, men, girls and boys it was learnt that development workers who undertake consultation processes in rural areas often interact with community leaders such as chiefs, who are mostly men. Vulnerable women such as widows are often invisible to development workers and as such they remain voiceless, and unable to play key roles in their own development. Since 1994 however, there have been a number of development initiatives established in rural areas for rural women in agriculture. A women's programme intensified its efforts through a UNDP funded project to improve agricultural extension services for rural women. Through this programme, women's access to training and extension services increased. Women groups got involved in growing various seed crops, cash crops like burley tobacco and livestock such as poultry and dairy among others. During the reporting period, more rural women have been involved in development planning. For example, specific targets have been set for women representation in development committees, training programmes and study tours among others.

<sup>119</sup> Act No. 25 of 1987 (Chapter 10:01, *Laws of Malawi*), sections 14-18.

<sup>120</sup> Government of Malawi, 'Malawi Land Policy (Lilongwe; Ministry of Agriculture and Housing, 2001).

## 14.6 Access to Health Care Facilities

14.6.1 Women's access to health care facilities is still limited. For example, the urban child mortality rate was 148 deaths per 1000 births, compared to 210 per 1000 children born in rural areas. The most serious problem Malawian women face to access health care services and facilities is transport. They have to travel long distances in search of health care. On average, 41.5% rural women, men, girls and boys take one hour of travelling to a health facility compared to 12.2% for urban areas.<sup>121</sup>

14.6.2 The use of antenatal services is reasonably high, at 91% for the whole country. The rate among rural women is 90.6%, whilst it is 97.3% among their urban counterparts. There are further disparities in the quality of antenatal services between rural and urban areas.<sup>122</sup>

14.6.3 The high fertility levels in Malawi are due to unplanned pregnancies. Unplanned, mistimed and unwanted births are more prevalent among rural women than their urban counterparts. The wanted fertility rates in rural and urban areas are 5.5 and 3.5 children respectively. The unmet need for family planning in rural areas is 30.5%, compared with 19.2% amongst urban women.

14.6.4 Contraception use has increased by 60% among urban women compared to 38% for rural women. Urban women are more likely to use contraceptive methods at, 38%, compared to 24% for their rural counterparts.

14.6.5 Malnutrition in Malawi remains chronic and rampant. For example, Boys are likely to be stunted than girls. For instance, 25.8% of the boys were stunted and were below three standard deviation points compared to 23% for girls. In rural areas stunting was at 26.1% for boys compared to 13.5% for urban areas. Among women aged 15 to 49 years, 25% are obese in urban areas compared to 10% in rural areas and have increased risk to cardiovascular diseases and pregnant related complications. The prevalence of malnutrition among rural women is 9.4%, compared to 5.5% in urban areas.<sup>123</sup>

## 14.7 Benefit from Social Security Programmes

14.7.1 Social security in Malawi takes the forms of social traditional security measures and a few ad hoc programmes supported by Government and some non-governmental organisations. There is no formal universal social security system.

14.7.2 Non-governmental organisations, Government, and international development agencies sometimes run programmes to address particular crises. In 2001 and 2002, the World Food Programme, Catholic relief services, World Vision and other agencies offered relief, distributed food to men and women in need. Other non-governmental organisations provide supplementary feeding to malnourished children and pregnant and lactating mothers in need. In schools, World Food Programme and other organisations provide school feeding and take home rations for girls. These programmes are on pilot phase in a few project areas.

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<sup>121</sup> National Statistical Office, Integrated Household Survey 1997-1998 (Zomba; National Statistical Office, 2000), at 38.

<sup>122</sup> Figure in under the discussion of the implementation of Article 12, in this report.

<sup>123</sup> National Statistical Office and ORC Macro, *Malawi Demographic and Health Survey 2000* (Zomba and Calverton; National Statistical Office and Calverton; 2001), Chapter 10.

14.7.3 In Government hospitals and health centres the services are free though insufficient. In agriculture, the government provided initial inputs through a programme called ‘Starter Pack’ in 1999. The ‘pack,’ comprised a packet of fertiliser legume and cereal seed packets, that most rural farmers, the majority of whom are women, appreciated. In the following growing season, the universal starter park programme was replaced with a “Targeted Input Programme”, directed at orphaned children and elderly people.

14.7.4 The perception of rural women and men was that traditional social security had severely deteriorated since the submission of the initial CEDAW report, due to deregulation, remove of subsidies, high HIV/AIDS prevalence and increasing privatisation of essential services such as farm inputs.

## 14.8 Training Opportunities

14.8.1 Remarkable disparities exist between rural women and girls, compared to their urban counterparts. For example, in rural areas, 31.1% of the women and girl aged 6 and above had no education at all compared to 11.7% among urban women and girls. The primary school net attendance ratios are 87.5% and 77.9% for urban and rural women and girls respectively.

14.8.2 In secondary schools, the ratios are 23.4% and 3.7% for urban and rural women and girls respectively.

14.8.3 The primary school repetition rate amongst rural girls and women is very high, 47.1% for class 1 and 43.3% for standard eight. For urban girls and women the respective ratios are 29.1% and 27.2% for standard one and standard eight. In the year 2000, the repetition rates for rural girls and women are higher in the rest of the classes, except for class 7 where 11.0% rural girls repeated compared to 12.4% in urban areas.

14.8.4 For dropout rates, however, a higher rate of rural girls drop-out in all the classes. The highest drop out rate is in the last year of primary school at 14.1%, compared to 9.9% for urban girl and women. By standard eight most girls in rural areas are being pressurised to get married. As a result, illiteracy is commonest among rural women. Amongst the 2,072,805 illiterate women aged 5 and above in the country in 1998, 92.96% were in rural areas. Education opportunities in Malawi vary according to residence. Of the population aged 15 – 49, 48.3% of those in rural areas cannot read at all, compared to 17.5% in urban areas. The rates of women who cannot read at all in the entire country according to age groups are as follows:

Age	Rate
15-19	24.2
20-24	36.5
25-29	46.4
30-34	49.4
35-39	53.1
40-44	63.3
45-49	68.1

14.8.5 Thus, illiteracy increases with increasing age, underlining the need for adult literacy.

14.8.6 Since the submission of the initial country report, however, the provision of adult education has declined. The demand for adult literacy among is very high but the inadequacy of resources limits its delivery. The Government, through the efforts of the Ministry of Gender and Community Services is trying within the limited resources to resuscitate the programme.

14.8.7 Ministries required to work at the community level provide services that are essential for the capacity of rural women and men. The Ministry of Agriculture has a network of field assistants, whose mandate is to provide advice to small-holder farmers. Health surveillance assistants in the Ministry of Health and Population provide advisory services on health and hygiene. The Department of Forestry, similarly, has officers who work at the community level rendering advice in forestry management. The Ministry of Gender and Community Services has community development assistants to work as facilitators and motivators in community-level development undertakings.

14.8.8 Some of the communities visited, appreciated the dedication and efforts of Government community workers, despite poor economic resources.

14.8.9 The work of non-governmental organisations in training is gaining prominence and appreciation by community members.

#### **Access to Employment Through self-help and Co-operatives**

14.8.10 Since 1994, the country has passed a new Act on co-operatives, which has supplemented the Constitution. The Constitution enshrines the right to economic activity. The Co-operative Societies Act<sup>124</sup> is meant to be a framework of co-operatives.

14.8.11 Before 1994, the Government used to orchestrate self-help projects for rural areas. Participation in the projects was sometimes forced and resented. On the adoption of a multiparty system of government and a culture of freedoms, self-help projects to some extent have been abandoned. One result of such a shift has been deterioration in infrastructure in rural communities and a prevailing dependency syndrome on government.

14.8.12 To address the gap in rural development participation, the Government established an initiative within its poverty alleviation programme framework called the Malawi Social Action Fund (MASAF), with funding from World Bank for community projects. The communities contribute in kind and time such as moulding bricks for the construction work such as school blocks.

14.8.13 Although the Co-operatives Act has passed, it is not known in communities. There is however, some progress to animate and mobilise community members to form co-operatives in the rural areas. Some examples include dairy farmers, chicken, chilli and feed growers co-ops among others.

### **14.9 Participation in Community Activities**

14.9.1 Participation in community activities involves both women and men, but roles are often feminised or masculinised. In development related activities such as the moulding of bricks, road and school blocks construction, both men and women participate.

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<sup>124</sup> Introduced as Bill No. 30 of 1999.

14.9.2 The Ministry of Gender and Community Services, has established several community based initiatives aimed at improving the plight of rural women. These include economic empowerment groups, adult literacy classes, orphan care committees, early childhood development committees and community action committees on gender-based violence among others. The participation of women in such initiatives has increased over the years mainly because of the set target of 30% representation. For example, women should constitute 70% compared to 30% men in all economic empowerment groups.

14.9.3 Communities themselves however have many cultural activities that they initiate and undertake, mobilising each other into well-planned actions. Such activities include weddings, funerals, and dances. In the context of AIDS, some communities have organised home-based care schemes and community-based orphan-care committees to address pressing problems. Government and some NGOs have provided technical support in the establishment of home based care and early childhood development centres. The government has developed policies in Early Childhood Development, and Orphan Care and Other Vulnerable Children policies provide to guidance to stakeholders engaged in these initiatives. Other activities include the establishment of, communal gardens and providing labour in return for teaching and other needed services. Many non-governmental organisations have capitalised on such efforts to mobilise human and financial resources for orphan and home-based care services. Organisations like Freedom Foundation, whose patron is the First Lady of Malawi, Madam Muluzi, has been instrumental in fund-raising activities in support of orphans and the elderly.

14.9.4 Community participation mirrors the construction of roles, with most women undertaking feminised roles. When such roles attract remuneration, men tend to take over in the belief that gender roles are changing. In the context of severe poverty and deprivation an increasing numbers of men are willing to undertake feminine roles as long as they bring an income.

#### **14.10 Access to Agricultural Credit, Markets, Appropriate Technology, and Fair Agrarian Reforms**

14.10.1 Women's access to land is often through the family head. Such family heads are almost invariably men. In patrilineal societies, access to land is through a male. In matrilineal societies, the family head is the maternal uncle. In such societies, men access land through their marriages unless the woman is taken to live in the man's village. In both matrilineal and patrilineal societies, the husband is regarded as the key controller in the use of any land allocated to his family. From 2002 efforts were initiated to develop a new Land Act based on the new land policy.

14.10.2 Secondly, although access to credit increased after 1994, agricultural credit for rural women has dwindled. Before 1994, rural women and men could organise into farmers clubs to access agricultural credit, provided by the Government. The government has de-linked from provision of credit facilities. Instead, the credit facilities are provided by private financial lending institutions.

14.10.3 The provision of fair marketing services has declined since the country's submission of the last report. This is due to the fact that Agricultural Development and Marketing Corporation, which has a network of markets, closed some of them and reduced its services to pave way for greater liberalisation of the agricultural market. Although the number of private traders in agriculture has

increased, communities indicate that prices offered for their farm produce are very low, therefore affecting women's productivity.

#### **14.11 The Quality of Living Standards**

14.11.1 As noted, the quality of living standards in rural areas is poor despite the entrenchment of the right to development in the Constitution. The poor quality of life is reflected in housing conditions, access to electricity, and water supply and utilisation, among others.

14.11.2 Most people in Malawi live in poor housing conditions. 66% lived in dwelling units that had thatched roofs with mud or wattle walls in 1998.<sup>125</sup> In the past rural housing schemes were pioneered through few initiatives especially by Habitat for Humanity. The organisation built low cost, interest free houses for rural people. In 2001, the government established a Village Housing Scheme for rural vulnerable women and men.

14.11.3 Electrification is still novel in most rural areas of Malawi. It is estimated that only 1% of the rural areas, compared to 29% in urban areas use electricity. A rural electrification project started in 2002.

14.11.4 Amongst some of the appropriate technologies that could improve the quality of life in rural areas is the use of solar energy. According to the Ministry of Gender and Community Services there are 30 bio gas plants and just over 1000 solar energy users in rural areas.

14.11.5 The provision of safe water services is one notable improvement since 1994. By 1998, 2.6 million or 27% of the population had access to boreholes as their main source of drinking water. 25% of the rural areas, drew drinking water from unprotected wells. 21% used either piped water or communal standpipes.

14.11.6 The Government has since 1994, intensified its efforts to ensure access to safe and potable water, overseeing the construction of 11,800 boreholes, 5,000 protected shallow wells, 66 rural gravity fed schemes, and 55 urban water supply schemes by 1988. Similarly, about 10,000 tap points within 62 gravity-fed piped water schemes were constructed and only 605 were operational in 2000.

#### **Conclusion**

Malawi is predominantly rural and poor women constitute most of the rural people and the poor. Despite a constitutional undertaking that the quality of rural living standards should be recognised as a key indicator of the success of development programmes, such standards have not yet been realised especially by rural women. The reasons range from a poor work ethic amongst supposed community workers, poor participation of women and men in the formulation of development projects, liberalisation of the market, and tradition. As a result, gender disparities are most prevalent in rural communities and among rural women.

#### **Article 15: Equality Before The Law**

##### **15.1 CEDAW Standards**

Article 15.1.1 States Parties shall accord to women equality with men before the law.

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<sup>125</sup> National Statistical Office, *1998 Malawi Population and Housing Census Report of the Final Census Results* (Zomba; National Statistical Office, 2000), Chapter 12.

15.1.2 States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals.

15.1.3 States Parties agree that all contracts and all other private instruments of any kind with a legal effect which is directed at restricting the legal capacity of women shall be deemed null and void.

15.1.4 States Parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile.

## **15.2 Introduction**

15.2.1 The Malawi Statutes are currently undergoing reviews and have changed to reflect the principle of equality before the law. Both customary and written laws do however, have regulations that do not treat women equally with men before the law. There are no gaps on equality before the law between the standards in the Convention and Malawi's Constitution. The Convention provisions have however, not been harmonised with the national laws.

## **15.3 Accordance of Equality Before the Law to Women With Men**

15.3.1 The 1966 Constitution provided that "all persons regardless of colour, race or creed should enjoy equal rights and freedoms."<sup>126</sup> That Constitution further stated that the people of Malawi recognised the "sanctity of the personal liberties enshrined in the United Nations Universal Declaration on Human Rights."

15.3.2 The old Constitution however inherently had significant limitations and restrictions. There were no express provisions to address the legal status of women in the eradication of gender disparities. Sex was not expressly mentioned in the non-discrimination clause. Equality before the law was subjected to laws that could be said to be reasonably required in the interests of defence, public safety, public order, or the national economy.

15.3.3 The period 1992 to 1996 coincided with Malawi's transition into a multiparty system of government. There was greater recognition of human rights during this period, including equality before the law. The momentum from the Beijing conference also boosted the drive towards greater enjoyment of human rights for women and men. As a result women took part in the Constitutional review process. This resulted in the principle of equality before the law enshrined in the Constitution. This period of increased participation in politics did not however, change the stereotype that politics is largely for men.

15.3.4 The principle of equality before the law became prominent in the law in 1994, when the current Constitution was passed. The Constitution requires that every person should have a right to be recognised as a person before the law.<sup>127</sup> The state is required to implement gender equality through

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<sup>126</sup> Section 2(1)(iv).

<sup>127</sup> Malawi Constitution, 41(1).

policy and legislation.<sup>128</sup> Government policy is to “promote democratic governance and ensure gender equality and equity before the laws of Malawi.”<sup>129</sup>

15.3.5 Customary law further places limitations on the enjoyment of the right to be treated equally before the law. Customary law in Malawi ideologically assumes that men have superior status and accordingly treats them as such in political and family leadership, land holding and dealings in land.

15.3.6 The period after 1996 coincided with the shift in approach from women in development to gender and development. The responsible ministry was therefore renamed then Ministry of Gender, Youth and Community Services to reflect the new approach. The Ministry has created a number of community level initiatives help promote the principle of gender equality through sensitisation in gender and development issues. Outside the Ministry, the Law Commission is currently reviewing laws, including customary law, which may infringe principle of equality before the law of women and men. The state radio, Malawi Broad Casting Cooperation and television stations have programmes designed to promote the equality principle. The government, in addition, has allowed several women’s rights Non- Governmental Organisation to work in Malawi. Some of these organisations advocate for equality in the law between men and women.

15.3.7 The majority of Malawians use customary law, where equality between men and women is challenged by patriarchal norms. For example, cases brought by men are generally treated as more important than those brought by women. One reason for this is that most women in Malawi are considered of lower status compared to their male counterparts.

#### **15.4 Equal Legal Capacity in Civil Matters**

15.4.1 At the time of submitting the first report, there were more constraints in civil matters because Knowledge on legal rights was very poor amongst women. Customary law, religious beliefs, cultural practices and attitudes, and unbalanced power relations between women and men militated against women. Women remained dependent on men and they had little access to factors of production and power-giving facilities such as land, extension services and capital among others.

15.4.2 The law did not change during the 1992-1996 period. Programmatically, the Government through the National Commission on Women in Development now the National Commission on Gender and Development Trust developed a book title “*Women and the Law in Malawi*”, to address women’s poor participation in civil matters. The book was distributed nationally and internationally, and a total of 120 extension workers drawn from Ministries of Gender, Agriculture, Health, Education and the NGO community were trained in its use. Plans to review and translate the book into a local language “chichewa”, to accommodate the new constitution and other laws are underway. The plan have however, to be considered within the context of the Special Law Reform on Gender Commission. There is inadequate knowledge among women about their legal rights and the equality in law.

15.4.3 The new Constitution enshrines the right to have equal legal capacity. Customary law underlines the importance of male involvement in civil matters and women must, in many cases, go

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<sup>128</sup> Malawi Constitution, section 13(a).

<sup>129</sup> Malawi Government, National Gender Policy (Lilongwe; Ministry of Gender and Community Services, 2002), section 5.5.

through men for a transaction including the formalisation of marriage. The situation is worsened with the lower levels of education among women.

15.4.4 The work of the Ministry of Gender and Community Services in collaboration with women's rights NGOs on legal education is noteworthy. The legal education work underline gender equality in all the campaigns. Micro-credit schemes are one of the enhancement strategies for the enjoyment of women's equality provision.

## **15.5 Equal Rights to Conclude Contracts**

15.5.1 Before, 1994, very few women were able to participate in commercial contracts. Commercial contracts were masculinised, expected to be within a male sphere. Women's poor participation in commercial contracts was because of low literacy rates and lack of sufficient access to capital. During 1992 to 1996, there was higher unemployment rate among girls than boys.<sup>130</sup> Despite the high unemployment rate among girls than boys, there was no deliberate policy to promote women's employment or participation in commercial contracts.

15.5.2 The new Constitution explicitly states that women's rights should include the right to enter into contracts.<sup>131</sup> The new Government encouraged micro credit schemes for women. Women had more access than men to micro-credit facilities in 2000 due to the increased number of financing institutions schemes. Unfortunately women tend to borrow small amounts than men possibly because the control of the factors of production such as land is largely in the hands of men; and women in Malawi are socialised to be submissive and look down upon themselves. They do not have self-esteem and assertiveness. Further, legal requirements such as land and credit transactions are not friendly to most women due to low literacy level and legal illiteracy.

## **15.6 Nullification of Instruments that Restrict the Legal Capacity of Women**

15.6.1 At the time of the submission of the first report, there was no law to nullify legal instruments that restrict women between 1988 and 1992. The Government had a price control policy mainly with regard to food items and other necessity items on which women disproportionately spend their income compared to men. The situation prevailed until 1994, when the new Government liberalised prices.

15.6.2 In the current Constitution, the state is required to pass legislation to eliminate customs and practices that discriminate against women.<sup>132</sup> The state is also allowed to use legislation and render discriminatory practices and propagation of such practices criminally punishable by the courts.<sup>133</sup> There are some companies and other institutions that insists that a husband and not a wife should complete application forms for education and other services.

## **15.7 Equal Rights to Administer Property**

15.7.1 Customary law puts greater control of the property in the hands of men that results in gender stereotyping, with some court decisions holding that a husband has ultimate legal power to control property in the family. Because of the social construction of gender roles women are allowed to

<sup>130</sup> Malawi Government and UN in Malawi, Situation Analysis of Poverty in Malawi (Lilongwe; Malawi Government and the UN in Malawi), at 122.

<sup>131</sup> Malawi Constitution, 1994, Article 24(1)(a)(i).

<sup>132</sup> Malawi Constitution, section 24(2).

<sup>133</sup> Malawi Constitution, section 24(2).

administer mostly feminine property. Some statutes such as the Wills and Inheritance Act and the Registered Land Act promote or condone discrimination on the basis of sex. Customary law and cultural norms allow a married woman to administer the property that is regarded as feminine. The current review process of the Wills and Inheritance has however, made gender sensitive provisions and in some case, more sensitive to women and children's needs.

15.7.2 From 1994, the Constitution required that equal rights in civil law must include equal capacity to acquire and maintain rights to property independently or in association with others.<sup>134</sup> In addition to the provisions in the Constitution that the enjoyment of some rights could be limited or restricted if certain conditions are met, the law did not recognise acquisition of property rights because of household and other indirect contribution.<sup>135</sup> Between 1992 and 1994, the number of female business owners increased mainly because of increased access to micro-credits. Rural women however largely remained powerless to acquire and administer property. In particular, female-headed households, who constitute 30% of all households, were materially poorer than male-headed households.

15.7.3 From 1996 there has been an increase on gender sensitisation and awareness campaigns by government in collaboration with some non-governmental organisations. Research and advocacy work on the dispossession of widows, a fairly rampant practice in Malawi, domestic violence and gender-based violence in general have been carried out. In addition, youth human rights institutions and groups; and university students have undertaken campaigns to sensitise communities of their legal rights. The effect of these campaigns has been overwhelming. Community members are beginning to appreciate that both women and men can own and control property as more and more women become educated and economically empowered.

## **15.8 Equal Treatment During All Stages of Legal Proceedings**

15.8.1 The enactment of the new Constitution in 1994 resulted in some legal reforms and activism. The General non-discrimination clause requires that everyone must be guaranteed equal and effective protection against discrimination on the grounds of sex.<sup>136</sup> Every person has the right of access to any court of law or tribunal<sup>137</sup> and a right to effective remedies<sup>138</sup>. Rights to fair treatment and fair trial must apply to everyone. The laws against the wearing of trousers by women were repealed, as part of the law reform. The Government in collaboration with its stakeholders provides free legal aid to women who have sought advice and paralegal services are increasingly being offered.<sup>139</sup>

15.8.2 The legal system is slowly being transformed but more needs to be done. For example, the formal and customary judicial systems have some functionaries who are not gender sensitive. Women are underrepresented in the justice administration sector. Amongst lawyers, some men portray gender insensitive attitudes and prefer to partner with fellow men. Parties to proceedings intimidate some female lawyers. Currently, women continue to be victimised in rape cases. A High Court judge acquitted a man who brutally had sexual intercourse with a woman against her consent because in the

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<sup>134</sup> Constitution, section 24(1)(a)(ii).

<sup>135</sup> *Malinki v Malinki* (1978-1980) 9 *Malawi Law Reports* 441.

<sup>136</sup> Constitution, section 20(1).

<sup>137</sup> Malawi Constitution, section 41(2).

<sup>138</sup> Malawi Constitution, section 41(3).

<sup>139</sup> Malawi Law Commission, Report of the Special Law Commission on Penal Reform (Lilongwe; Law Commission; 2000).

judge's view, women always say no to sex even when they want it.<sup>140</sup> Women still have poorer access to the justice system as evidenced in the property dispossession issue.

## **15.9 Equal Freedom of Movement**

15.9.1 The 1994 Constitution recognises that every person has the right to freedom of movement within the borders of Malawi and the freedom to leave Malawi.<sup>141</sup> The restrictive Preservation of Public Security Act was also repealed. With increasing literacy and the effect of the cash economy, more and more women are exercising this right. Yet male members of the family such as fathers, husbands, uncles and brothers continue to control women's movements.

## **15.10 Equal Freedom to Choose Residence and Domicile**

15.10.1 During submission of the first report, (1988 to 1992), husband or father based citizenship marriage law was operational. It stated that the children of a Malawian woman married to non-Malawian would not be Malawian citizens.<sup>142</sup> The residence of the woman depended on marriage and the family location. Customary law required a woman in a matrilineal society and a woman in a patrilineal society to reside in her village or husband's village respectively unless the husband indicated that he or his family prefers another location.

15.10.2 During 1992 to 1996, the Law Commission presented recommendations to Parliament to change the law on citizenship, but the recommendations were refused on a technicality.

### **15.10.3 Conclusion**

The 1994 Constitution has ample provision for equality between men and women, unlike under the previous Constitution. Cultural factors, traditions, stereotyping of men and women, and women's relative economic powerlessness still militate against de facto equality. The Constitutional framework provides the foundation for greater promotion of gender equality and realisation of Constitutional provisions.

## **Article 16: Equality in Marriage and Family Law**

### **16.1 CEDAW Standards**

Article 16.1.1 States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:

- (a) The same right to enter into marriage;
- (b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent;
- (c) The same rights and responsibilities during marriage and at its dissolution;
- (d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;

<sup>140</sup> *Rashid Hussein James v Rep*, High Court Criminal Case No. 12 of 1999.

<sup>141</sup> Malawi Constitution, section 39(1 and 2).

<sup>142</sup> Citizenship Act, section 9.

(e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;

(f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;

(g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation;

(h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.

16.1.2 The betrothal and the marriage of a child shall have no legal effect and all necessary action including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.

## **16.2 Introduction**

16.2.1 The Constitution requires that the family must be recognised as a fundamental social unit entitled to social protection.<sup>143</sup> Further, section 24 of the Constitution specially protects the rights of women to “full and equal protection by the law” and non-discrimination.

16.2.2 In Malawi, the family is key for the realisation of gender equality and removal of the inequalities and stereotypes. There is therefore, need to programmatically focus on the family in order to produce multiplier effects in the elimination of discrimination against women and the promotion of gender equality.

16.2.3 Gender inequalities are manifested at various stages of the family life that starts at inception to termination of marriages. In addition, the law is marriage-based and it neglects programmes designed to remove discrimination.

## **16.3 Entry into Marriage**

16.3.1 Women and men have in general the same rights to choose and enter into a marriage. This is reinforced by section 22 of the Constitution, which guarantees to both men and women the equal right to enter into marriage and find a family. Before 1994, such a right was not expressly recognised.

16.3.2 Non-consensual or forced marriages are prescribed under section 22 while marriages of persons below the age of fifteen are discouraged. On the other hand, marriages of persons between the ages of fifteen and eighteen require full parental consent. The Constitution allows child marriages. This is in contrast with section 19, of the Marriage Act, which prescribed twenty-one as the minimum age for marriage and required parental consent.

16.3.3 Child marriages exist in Malawi. 75% of women are married by age 20, compared to 21% for men of the same age. Early marriages were confirmed during report compilation community interactions. Girls as young as 12 years old were in marriage, as long as they could conceive. Child betrothal also exists although has sharply declined. There is however an indirect form of forced

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<sup>143</sup> Malawi Constitution, Articles 13(1) and 22.

marriages in Malawi's rural communities, exacerbated by deepening levels of poverty. For example, Parents often encourage their children to get married early, to lessen economic burdens and even to acquire a new source of economic support.

16.3.4 The community interactions during the report compilation revealed that the right to enter into marriage and find a family is not always equally exercised by men and women especially because of the potentially polygamous nature of most marriage unions. Women are usually compelled to remain in such unions for fear of losing financial and material support especially for the children.

#### **16.4 Types of Marriages and Formalities**

16.4.1 Malawi's legal system provides a diversity of marriage systems and this creates discrimination in the allocation of rights to women. Marriage rights are allocated according to the form of marriage chosen by the spouses, which in essence is determined by culture, religion and the written law.

16.4.2 The predominant form of marriage in Malawi is under African customary law which itself is regulated according to whether the society is patrilineal (predominant in the Northern region) or matrilineal (predominant in the parts of Central and Southern regions). These marriages are potentially polygamous. Validity depends on the payment of "*lobola*" or bride price for marriages celebrated according to the customs of patrilineal societies. '*Lobola*' is paid in exchange of a woman's reproductive and other wifely services. The amount of *lobola* varies with the behaviour and education of the woman. Little *lobola* is charged when the family considers their daughter not of much value and use depending on her behaviour. The practice treats the woman as a commodity of exchange. In Nsanje in Southern Region, patrilocal the *lobola* may also vary according to the actual or potential sexual intercourse performance of the woman, determined by an incestuous act involving her own father.

16.4.3 For matrilineal societies, the validity of the marriage depends on the existence of marriage advocates, who are usually male. Customary marriages can be registered at District Assemblies, but such registration does not change the nature of the marriage and few people utilise this facility to have a marriage certificate.

16.4.4 Both matrilocal and patrilocal marriages insist on preliminary payments of gifts by the man to signify seriousness of intent. When the suitor and woman agree to get married, his side communicates to the girl's side. In the patrilocal system of Southern Malawi, the suitor sends preliminary money to the girl's family through her. After this and for all areas, the young man's representative meets the representatives of the woman and proposes marriage on behalf of the extended family. At this stage, the woman's side charges "*Chiwongo*" and in some areas, "*Chamlomo*", to indicate the formal intent to have the woman as a wife. Engagement is a public event and the man's side is expected to present gifts that show that he is willing to carry out his masculine tasks. The gifts usually include an axe, a hoe, and a piece of cloth, to indicate that he will take care of the woman and manage the household.

16.4.5 The second type of marriage is the one contracted under the Marriage Act.<sup>144</sup> These marriages follow the old English Law system and are monogamous. This provision is reinforced by the Penal

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<sup>144</sup> Act No. 3 of 1902 (Chapter 25: 01, *Laws of Malawi*).

Code, which prescribes for the offence of bigamy.<sup>145</sup> Validity depends on registration with the Registrar of Marriages.

16.4.6 The third type of marriage is that contracted under the Asiatic (Marriage, Divorce and Succession Act).<sup>146</sup> These marriages are in accordance with Asian customs. The Act caters for the interests of the few members of the Asian Community in Malawi. These marriages are characterised by bride wealth and polygamous nature.

16.4.7 The fourth type of marriage is that contracted under the African Marriage (Christian Rites Registration) Act. These are marriages celebrated in Christian churches but remaining customary and hence potentially polygamous except in the Roman Catholic, Seventh Day and Anglican Churches who also register their Marriages under the Marriage Act.

16.4.8 Thus although women who marry in the many Christian churches springing up in Malawi intend and believe to contract monogamous marriages, the law ignores such intentions.

16.4.9 The fifth type of marriage is marriages “by repute and permanent cohabitation”, introduced by the 1994 Constitution.<sup>147</sup> Although this provision introduces security to couples who stay together without following the formalities of marriage, many Malawians find such unions unacceptable and erosive of social cohesion as they by-pass the marriage ceremony where kin relations, community members, and friends participate in the union of the couple. In the African sense, marriage is regarded not only as a union between two people, but also between two extended families. Other people in Malawi further argue that the recognition of sexual unions by repute and cohabitation as marriages forces couples who freely choose not to be regarded as married into the institution of marriage to fit the law.

## **16.5 Rights and Duties in the Family in General**

16.5.1 Although Malawi’s law is marriage-based, its concern is mainly the inception and dissolution of marriage, leaving life in the ongoing family very much unregulated. The family is regarded as a private sphere even when it is known that there is injustice in the family. Although the family is regarded as a private matter, the husband is expected and regarded as the head.

16.5.2 The roles in the family are masculinised or feminised. Husbands, as heads of the families, usually control the affairs of the marriage and households. If the wife does that, she or her husband is despised as not having been married. During the report compilation community consultations it was learnt that some traditional roles are changing especially in areas that are exposed to new knowledge about gender but mainly because of deprivation. For instance, Men are increasingly joining their wives to cook and fetch food and water. Even though some roles such as pounding maize are still regarded as women’s men can take the maize to the dehauller or maize mill in a car or on a bicycle. Gardening has always, according to the communities been regarded as a shared role.

16.5.3 The notion that the husband is the head of the family is strong even among educated women, as it is also supported by religion and traditionally marriage is seen as the epitome of the woman’s life

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<sup>145</sup> Penal Code, Act No. 22 Of 1929 (Chapter 7:01, Laws of Malawi), sections, 164 and 165.

<sup>146</sup> Act No. 3 of 1902 (Chapter 25:01, *Laws of Malawi*)

<sup>147</sup> Malawi Constitution, section 22(5).

and a survival mechanism. For example, many professional women deviate from their career paths upon marriage, to keep the marriage and comply with the wishes of their husbands and families.

## **16.6 The Privacy of the Family and Injustices**

16.6.1 The laws and society's treatment of the family as a private sphere promotes dysfunctional families and violates the rights of most women. The forms of injustices that exist in many of Malawi's families include domestic violence in its physical, psychological, economic, sexual and social forms. With increasing awareness campaigns by the Ministry of Gender and Community Services and its partners, the number of women who report domestic violence is increasing. It rose from 3900 in 1995 to 8000 in 1999 and above 20,000 in 2003.<sup>148</sup>

16.6.2 The number of non-governmental organisations working on such issues is increasing and their services include shelter provision to abused women, and intervention in some cases of forced marriages or child betrothals.

## **16.7 Property Rights**

16.7.1 No specific law governs matrimonial property rights (between spouses) during marriage although the Constitution now specifically provides for equal rights for women to the acquisition and maintenance of property rights without regard to their marital status.<sup>149</sup> For all the marriages however, property rights are feminised or masculinised. Cooking utensils, for example, are for women while the other property such as land and cars are usually for men.

16.7.2 Although all family members may be benefiting from the property, its ownership is ascribed to the husband, the wife, or a child. This is largely because most people in Malawi treat property merely as objects and not as a power relationship that may involve people who do not hold nominal titles.

## **16.8 Parental Responsibilities**

16.8.1 According to the law, women and both parents have a duty to be known by and raise their girls and boys children. Where the parents are married, both of them have equal guardianship and are entitled to custody (physical care and control) of the children.<sup>150</sup> Guardianship covers the right to control the upbringing of a child and is not lost merely because parents separate. The custody of children is usually given to the mother in the event of separation and divorce, especially for very young children. Some children can be adopted formally,<sup>151</sup> but most adoptions are informal and amongst relatives, usually with regard to orphaned children, whose proportion is increasing because of the AIDS epidemic.

16.8.2 Children are regarded as very important in a couple's life. If the wife cannot conceive, she is often blamed. In such cases, husbands under customary marriages often take a subsequent wife or find an excuse for an extra-marital affair. If the husband cannot procreate, the woman may be forced to have sexual intercourse with another man who can make her conceive. If the woman does that without the consent of her husband, she may be divorced or subject herself to ill-treatment at home. In other

<sup>148</sup> United Nations System in Malawi, Common Country Assessment of Malawi (Lilongwe, the UN in Malawi, 2001), at 70.

<sup>149</sup> Malawi Constitution, 1994, section 24(1)(ii).

<sup>150</sup> Malawi Constitution, 1994, section 24(1)(iii).

<sup>151</sup> Adoption Act. (Chapter, *Laws of Malawi*).

cases, a “*fisi*” hyena is brought into the house to have sexual intercourse with the wife. The *fisi* procreates on the husband’s behalf.

16.8.3 In the event of a child belonging to unmarried parents, the Affiliation Act provides for the application by the mother for maintenance. The amount of money the father can pay was raised to K3000.00 (US\$66.7 at the then \$ Kwacha rate of K45.00) per month or K30,000.00 (US\$666.7 at the then \$ Kwacha rate of K45.00) lump sum. Evidence from mothers and courts records show that many fathers default paying the amounts to maintain their own children. The heavy responsibility in such a case remains in the hands of a mother, who can even be prosecuted if she misuses the father’s contribution.<sup>152</sup>

16.8.4 During report compilation community consultations it was found out that the husband makes the decision on the number of children; and most women felt that a large number of children would strengthen their marriage. The children are used as a bargaining tool for favours from the husband especially where there is a polygamous union. It was discovered however that an increasing number of women were going for family planning services without the knowledge of their husbands in order to ensure reasonable spacing between children.

16.8.5 The children are considered to belong to both parents during the subsistence of the marriage but are usually left to the woman at separation or dissolution. It was found that even in patriarchal societies, this was becoming the norm. The reason being that men were finding it economically burdensome to keep children, and especially if they decided to remarry.

## **16.9 Sexual Rights**

16.9.1 All the marriage systems assume that spouses have sexual rights to be enjoyed between them, but the husband is accepted as having an overriding demand and appetite for sexual intercourse. It is also within this context that the husband is allowed to take other wives to quench his sexual appetite. With increasing levels of poverty, many men who have multiple partners increasingly prefer not to marry formally. Instead, they are maintaining mistresses and having casual sexual intercourse with a variety of women. According to the 2000 Demographic and Health Survey (DHS), only 1% of married women interviewed agreed to having had other sexual partners in the previous 12 month compared to 18% among men.

16.9.2 In a typical discriminatory position of the law, a husband can sue for damages against a man who had sexual intercourse with his wife. A wife cannot recover such damages if her husband commits adultery.<sup>153</sup>

## **16.10 Termination of Marriages in General**

16.10.1 There are different conditions and consequences for the termination of marriages. Termination during the lives of the spouses is difficult for marriages registered under the Marriage Act. Such marriages cannot be terminated within three years of celebration unless there is exceptional deprivation and hardship. A woman in a dysfunctional marriage is hence expected to endure until at least after three years or else show that the situation is so exceptionally unbearable that she has to be

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<sup>152</sup> Affiliation Act, No. 25 of 1946 (Chapter 26:02, Laws of Malawi).

<sup>153</sup> Divorce Act, No. 5 of 1905 (Chapter 25:04, Laws of Malawi).

freed.<sup>154</sup> For divorce, the spouse has to prove an adultery that has not been condoned, cruelty that is a threat to limb or health, or three year of uninterrupted desertion.<sup>155</sup>

16.10.2 Endurance during marriage is taught in Malawi through kitchen parties and counselling sessions for newly-weds. Many wedding songs warn the woman of what marriage entails and that she has to brace and endure herself. Customary law marriages have support and counselling systems and it is easier to terminate those marriages than Marriage Act marriages. Customary law marriages have advocates, usually close and respected relatives, on each side. A woman who is in dysfunctional family can contact her husband's representatives for help if she cannot resolve their differences. The husband, likewise, can contact the marriage advocate from his wife's side. If one advocate cannot resolve the conflict, both may discuss the matter with one or both spouses. Once marriage advocates fail to resolve a conflict that may lead to the termination of the marriage and customary law allows the parties to divorce. The principle is that it is pointless to force parties to stay married if both or one of them does not want to do so.

### **16.11 Termination, Property, Children and Maintenance**

10.11.1 The three issues that often arise on divorce are property, the care of children and maintenance and they are not in favour of most women. Property is allocated according to how it was feminised or masculinised. The High Court, on its part, insists that the party who can prove that the title vest in her/him should be given the property. If a party's claim is based on contributions, Malawi courts still insist that the contribution must be direct and financial. Housework and indirect contributions are not given any value. The 1994 Constitution has not improved the situation because it states that the woman is entitled to "a fair disposition of property that is held jointly with a husband." This means that property that is held in common or held separately but to which the wife contributed are not subject to fair disposition.

16.11.2 The Constitution however may have improved the law on maintenance. It requires that the woman is entitled to "fair maintenance, taking into consideration all the circumstances and, in particular, the means of the former husband and the needs of the children."<sup>156</sup> The Married Women (Maintenance) Act<sup>157</sup> still in force however, treats maintenance as an obligation for the man only and remains sustainable until the death of the wife or the husband; and the wife's adultery or remarriage. Under the statute, the wife is regarded as dependent on marriage, incapable of having her own economic life.

16.11.3 The 1994 Constitution further requires equal rights with regard to the custody, care, and guardianship of children. Under customary law, children born under a matrilineal marriage belong to the mother's side. Children born under a patrilineal marriage belong to the father's side. For children born in marriages contracted under the Marriage, Act, the courts insist that custody should be according to the welfare of the child in question. Under this principle, young children are usually given to the mother, as the focus is not on the rights of the child.

<sup>154</sup> Divorce Act, No. 5 of 1905 (Chapter 25:04, *Laws of Malawi*).

<sup>155</sup> Divorce Act, No. 5 of 1905 (Chapter 25:04, *Laws of Malawi*).

<sup>156</sup> Malawi Constitution, section 24(1)(b)(ii).

<sup>157</sup> No 13 of 1948 (Chapter 25:05, *Laws of Malawi*).

16.11.4 The Human Rights Commission has made some successful interventions with regard to children unfairly taken away from their mothers due to patriarchal customary systems. The aim of the Commission in such cases has been to ensure that neglected children receive proper care. This has included negotiating maintenance packages for the children's welfare.

## **16.12 Termination, Death and Property**

16.12.1 Property grabbing/dispossession was found to be a very real obstacle to the realisation of matrimonial property rights for the woman. Attempts to change the law on inheritance have not really addressed problems that widows meet when their marriages terminate as a result of death. With regard to interstate estates the Law reserves only half of the estate for a widow who married patrilocally and only two fifths for a widow who married matrilocally<sup>158</sup> Thus there is not only discrimination against but also amongst women. As for widowers or men, the law assumes that men cannot be dependent on women and therefore, makes no provision for husbands to inherit from the interstate estates of their wives.

16.12.2 Further, section 14 of the Wills and Inheritance Act<sup>159</sup> provides that in the case of marriages contracted under the Marriage Act, if a spouse is excluded from a will, the court cannot override such exclusion if it is clearly intentional. This provision affects the woman more than the man because of the general economic disparities between them even within family relationships. The man is in a better position to leave property under a will and any exclusion will affect negatively and unfairly on the woman.

16.12.3 The amendments to the Wills and Inheritance Act making the provision for the prosecution of "property – grabbers" have not been effective because the requisite public prosecutors have not yet been appointed. The gap has been overcome on a small scale by institutions such as the Police, the Human Rights Commission, and some chiefs. The Director of public prosecution has also successfully prosecuted a few cases. The overall review of the Wills and Inheritance Act has however, attempted to address all these identified problems and it is expected that the act will take effect within the next year.

## **16.13 Legally Neglected Families**

16.13.1 The law in Malawi assumes that all families are marriage based. Unfortunately only 55% of the people aged 10 and above or older were married in 1998. 37% had never been married. Female-headed households constituted 26% of all families. The law's focus on marriage-based families ignores the interests of people who are outside formal marriage arrangements. Such families include single parents, child-headed households that constituted 15% of all households in 1999 and grandparent-headed families. Such families are increasing because of AIDS, which is killing many parents. For example, it has been estimated that the country will have 20.1% of all its children orphaned by the year 2110, indicating an escalation, in child-headed households or increasing care burdens for relatives particularly grand mothers.

16.13.2 The Government and its partners have programmes to ensure that the interests of orphaned children are met. A programme coordinated by the Ministry of Gender and Community Services, on

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<sup>158</sup> Wills and inheritance Act, Act No. 25 of 1967 (Chapter 10:02, *Laws of Malawi*).section 16(a and b).

<sup>159</sup> Act No. 25 of 1967 (Chapter 10:02, *Laws of Malawi*).

orphan care covers the entire country and emphasises community capacity development for the care of orphaned children. Some non-governmental organisations are working on the interests of the elderly and faith-based communities have increased support for the elderly programmes especially in the wake of HIV/AIDS pandemic.

16.13.3 Malawi Social Action Fund (MASAF) has targeted services delivery for female headed households. Work has been started to address the interests of girl mothers and their children. A lot needs to be done because many girls drop out of school due to pregnancy and they need assistance as they are forced to head households or assume family responsibilities too early.

#### **16.14 Conclusion**

Family relations in Malawi are much characterised by unequal power relationships between women and men. The family and the ceremonies that lead to it contribute to gender stereotypes although there are trends that this may change. As the family is regarded as private, much injustice such as domestic violence and neglect remain unchecked. The law is a major contributor to the inequalities and injustices associated with the family. It discriminates not just against women but also among women. In addition, some types of families such as female headed and child headed households are neglected by law and programmatically.

#### **Report Sources**

The information in this report is drawn from a variety of resources. The major sources however were official Government reports, mainly as compiled by the National Statistical Office, policy documents, and written laws. The Government further used reports compiled by the United Nations. The richest sources of information were community interactions during the report compilation process that covered all the three regions in the country.

Some of the sources are indicated throughout the report in footnotes. The footnotes are indicative only and are not meant to be comprehensive.

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