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**UN CONVENTION ON THE ELIMINATION OF  
DISCRIMINATION AGAINST WOMEN (CEDAW)  
CSOs SHADOW REPORT FOR MALAWI 2015**

**JOINT CEDAW MALAWI CIVIL SOCIETY  
ORGANISATIONS SHADOW REPORT 2015**

**LILONGWE, MALAWI**

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Compiled by Women and Law in Southern Africa Research and Education Trust  
Malawi (WLSA-Malawi) and Faculty of Law, Chancellor College, University of Malawi  
for Malawi CSOs.

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## Acronyms

AIDS	Acquired Immuno Deficiency Syndrome
ALR Mal	Africa Law Report, Malawi Series
BDFA	Beijing Declaration and Platform for Action
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CHRR	Centre for Human Rights and Rehabilitation
COWFA	Coalition of Women Farmers
COWLHA	Coalition of Women Living with HIV and AIDS
CSO	Civil Society Organization
FGD	Focus Group Discussion
FISP	Farm Input Subsidy Programme
GBV	Gender Based Violence
HIV	Human Immunodeficiency Virus
HRCC	Human Rights Consultative Committee
KII	Key Informant Interviews
LDF	Local Development Fund
MDFR	Marriage, Divorce and Family Relations Act
MHRC	Malawi Human Rights Commission
MLR	Malawi Law Reports
MoGCDSW	Ministry of Gender, Children, Disability and Social Welfare
MP	Member of Parliament
NGO-GCN	Non-Governmental Organisations Gender Coordination Network
NGO	Non-Governmental Organisation
OVOP	One Village One Product
PAC	Public Appointments Committee
SRHR	Sexual and Reproductive Health Rights
TBA	Traditional Birth Attendant
VAW	Violence Against Women
VSL	Village Savings and Loans
WLSA	Women and Law in Southern Africa Research and Education Trust

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Needless to say, the Report would not be owned by the women of Malawi, if it was not for all the grassroots women who took time out of their busy days to share their views and concerns about women's rights in Malawi. The 'under-the-tree' sessions were very insightful and simultaneously helped to raise awareness of CEDAW amongst women in Malawi.

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## Executive Summary

Malawi has made some significant progress towards strengthening the legal and policy framework for women's rights over recent years. It has ratified and signed among others: the Convention on the Elimination of all Forms of Discrimination Against Women; the SADC Declaration on Gender and Development; the African Charter on Women and People's Rights; and the Beijing Platform for Action. Malawi is taking positive steps to meet its obligations under the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). Key milestones achieved since the submission of the last Periodic Report in 2010 include the enactment of the Gender Equality Act No 13 of 2013; the Marriage, Divorce and Family Relations Act No 2 of 2015; and the Trafficking in Persons Act No 3 of 2015. The Constitution and these laws go a long way in providing for the *de jure* equality of women. In addition, a number of key development indicators, such as maternal mortality, and girls' enrolment in primary and secondary education have significantly improved since Malawi last reported on CEDAW. Maternal mortality has reduced from 675 to 574/100,000 live births<sup>1</sup> and enrolment at both primary and secondary level has reached gender parity.<sup>2</sup>

Despite these noteworthy achievements, women in Malawi continue to face very significant challenges with regards to both the *de jure*, as well as the *de facto* protection of their human rights as enshrined in the CEDAW and the Beijing Declaration and Platform for Action. While the 7<sup>th</sup> Periodic Report acknowledges some of these challenges, it is vital that a number of particularly critical issues are given increased attention and are addressed with the utmost urgency in the immediate future. The most important issues and respective recommendations, as jointly identified by CSOs in Malawi, are:

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

Section 20 of the Constitution prohibits discrimination against all persons and the Gender Equality Act, in section 4, prohibits sex discrimination. It is noteworthy that the two provisions have not adopted the definition of discrimination as provided in the CEDAW. It is therefore recommended for Government to review the Gender Equality Act to prohibit discrimination of women as such, not only on the basis of sex. The State is further asked to actively disseminate the Gender Equality Act to increase its awareness amongst women at all levels.

### *Article 2 – Policy Measures*

The State Party is commended for the legal and policy framework that is in place aimed at guaranteeing and achieving equality between women and men. However, it is noted that the State Party must undertake additional steps to achieve substantive equality. The following were noted as some of the recommendations: (1) Full domestication of the CEDAW to guarantee the elimination of all forms of discrimination against women since domestication will provide the necessary legal backing for promotion and protection of women's human rights; (2) review of the Constitution of the Republic of Malawi to recognise discrimination against women on the ground of sexual orientation; (3) full implementation and operationalization of the recently approved National Gender Policy in line with the Gender

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<sup>1</sup> MGD End Line Survey 2014

<sup>2</sup> Malawi Progress Report on Millennium Development Goals (2012)

Equality Act and other gender related laws; and (4) roll-out of public awareness campaigns of both national and international human rights instruments in order to increase knowledge of rights.

#### *Article 3 – The Development and Advancement of Women*

The State recognises and acknowledges the challenges being faced in the advancement of women in Malawi. The Report makes a number of observations on the National Gender Machinery i.e. the Department of Gender in the Ministry of Gender, Children, Disability and Social Welfare (MoGCDSW). These include that the Ministry is being overwhelmed since it does not only deal with gender issues but also disability, children and social welfare. Underfunding to the Ministry and other Ministries for the implementation of gender programmes and activities was also highlighted as a challenge. It is recommended that the MoGCDSW is restructured with the aim of reducing the workload for the Ministry and that a multi-sectoral approach to gender equality is adopted which will ensure gender mainstreaming in all ministries apart from the MoGCDSW. This will require engendering all ministries, and in particular the Ministry of Finance as well as increasing funding towards gender programmes in all ministries.

#### *Article 4 – Acceleration of Equality between Men and Women*

The State Party is being commended for the enactment of the Gender Equality Act, which has provided for a gender-neutral quota of 40:60. It is, however, noted that its effects are yet to manifest themselves in recent public appointments such as that only one female out of six people was appointed as a commissioner of the Malawi Human Rights Commission. The State Party is therefore being called upon to fully implement the quotas in all appointments.

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

The State Party rightly acknowledges that gender stereotypes continue to negatively affect the advancement of women, but does not provide sufficient strategies to address them. It is thus recommended to develop a comprehensive strategy to modify negative cultural practices, which are harmful to and discriminate against women.

#### *Article 6 – Exploitation of Women*

It is commendable that the State Party enacted the Trafficking in Persons Act, which is a step towards protecting women from exploitation as Malawi faces challenges of both internal and external trafficking. However, the lack of data on trafficked women presents a major challenge towards the development of mechanisms protecting women from trafficking. The State should maximise benefits from the regional integration on cooperation and information exchange mechanisms towards the implementation of the Act. Further to this, it is pertinent to develop a complete database on trafficking and prostitution of women.

#### *Article 7 – Political and Public Life*

The dismal performance of women in the 2014 elections such as the current 32 women in the National Assembly as compared to 43 in 2009 of 193 constituencies reflects the challenges being faced by female aspirants. Political parties have also not taken positive steps towards having female candidates and not to mention women with disabilities. Gendered stereotypes are a hindrance to the achievement of *de facto* equality for women in the political arena. It is

recommended that the Government expedite the process of amending electoral laws with the aim of introducing gender neutral political quotas. The State is also asked to put in place mechanisms and programmes providing support for women who aspire to join Parliament but also sitting MPs, Councillors and other women holding political and public offices. It is further suggested that political parties be provided incentives to increase women membership and participation.

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

Positive strides have been made to increase the number of women representing Malawi at the international stage. However, it is noted that there are disparities and unequal number of women and men representing Malawi. The State is thus urged to ensure that appointments for representation at the international stage should not be politically influenced. Implementation of temporary special measures aimed at ensuring that there are equal numbers of women and men representing Malawi at the international level are recommended.

#### *Article 9 – Nationality*

The State has rightly recognised the discriminatory effect of Section 9 of the Citizenship Act on the loss of citizenship by women who marry foreign men. It is however being asked to expedite the process of reviewing the Citizenship Act with the aim of repealing this discriminatory law. Further to this, the State is asked to review the common law position on dependent domicile for married women and abolish this discriminatory law through statute.

#### *Article 10 – Education*

Significant progress has been made in ensuring gender parity for girls and boys in primary and secondary education. However, the State is asked to progressively construct early childhood development centres across the country and provide resources for the operation of these centres. Further, it is important that the State adopts and implements a Violence Against Girls in Schools Policy to assist in responding to incidents of violence against girls in schools.

#### *Article 11 – Employment*

A vast majority of women in Malawi work in the informal sector. The major challenges in employment include the lack of protection of women's rights in the informal sector and it requires the State Party to actively implement policies protecting women's labour rights. The State Party is also asked to ensure the enforcement and formulation of gender policy and sexual harassment policies in the various organisations and institutions. Further, the crucial role played by the Industrial Relations Court cannot be overstated; hence the State Party is called upon to provide adequate human and financial resources.

#### *Article 12 – Equality in Access to Health Care*

Availability, accessibility and acceptable health care services remain a major challenge for the achievement of the right to health for women. This is reflected through the lack of skilled health personnel as well as long distances to health facilities. The State Party is thus called upon to progressively provide health care facilities and personnel in all districts. The involvement of Traditional Birth Attendants (TBAs) in the delivery of maternity health services is also a critical issue for consideration. The current position with inadequate health personnel and facilities results in women accessing maternity health services from Traditional Birth Attendants though banned. The State is asked to reinstate TBAs to be under the primary

health care concept within decentralised arrangements to ensure accessibility in remote rural areas (or provide an alternative). It is however imperative that TBAs are properly trained; certified and provided with adequate equipment.

It is also important that the State Party trains the health service providers in sign language to respond to health needs of the deaf and dumb patients.

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

Information gathered during the production of this report indicates that women access loans from formal financial lending institutions and Village Savings Banks. It was however noted that women lack financial literacy, entrepreneurship skills, collateral and cultural practices. As such women have equal access to loans in theory; however, the frequency of them actually accessing loans is much lower than that of men. Further, some Village Savings Banks results in application of rules detrimental to women. It was noted that repayment of loans where defaulters lose property at the value of the loan and not the property is a major hindrance to the achievement of women's rights.

We urge the state to make programs such as MARDEF, FISP to be more accessible to women and ensure that along the way, women with disabilities are benefitting

#### *Article 14 – Rural Women*

Malawi continues to be largely rural with nearly 85% of the total population living in rural areas and rural women continue to be over-represented among the majority of the poorest, illiterate, and voiceless. A number of issues were identified as affecting the status of rural women. These include issues of land and agrarian reforms and access to economic benefits such as the Social Cash Transfer Scheme. The major challenge for land reform for rural women was identified as the application of customary law in regulating land issues under the Customary Land Bill. Customary law is seen to reinforce discriminatory practices for women for instance in patrilineal areas. It is thus proposed that the State reviews Section 19 of the Customary Land Bill. The State Party is further asked to provide full and proper regulation of the Social Cash Transfer Scheme to benefit the most vulnerable women and particularly women with disabilities.

#### *Article 15 – Equality before the Law and in Civil Matters*

Women in Malawi have recourse to both formal and informal injustice structures in accessing justice. It is observed that each of these systems has its disadvantages. For instance, the informal justice system structures are not gender sensitive whilst the formal justice structures are affected by lack of adequate financial and human resources. The Legal Aid Bureau continues to operate with inadequate human and financial resources. The State is therefore asked to recognise the positive role played by informal justice structures through engendering these structures. It is also important that there is adequate allocation of resources to the Legal Aid Bureau and the judiciary amongst other institutions to effectively assist women.

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

The State is commended for the enactment of the Marriage, Divorce and Family Relations Act (MDFRA). It is however noted that there are a number of significant inconsistencies in the laws regulating the age of a child and capacity to marry amongst others. The State is, therefore, called upon to review Section 22(7) of the Constitution and set the minimum age of marriage at 18. In addition to this, there should also be harmonisation of the laws on the age

of a child to be set at 18. The State is also asked to ensure speedy and progressive operationalization of the MDFRA.

#### *Ratification of the CEDAW Optional Protocol*

Non-ratification of the CEDAW Optional Protocol by Malawi means that women and women's groups in the country cannot use the individual complaints/communications or the inquiries procedure under the Protocol. The State Party is therefore urged to ratify the Optional Protocol without delay.

#### *The Impact of Natural Disasters*

The natural disasters experienced in 2014 in 15 of the 28 districts in Malawi left a number of people displaced and homeless. Observably the data and media reports during the disaster were not gender disaggregated. This resulted in the lack of response programmes and mechanisms tailored towards addressing the victims' needs according to gender. The State Party is, therefore, asked to ensure that the Department of Disaster Management Affairs should mainstream gender in practice and ensure that there is gender disaggregated data. It is no doubt that during natural disasters, PWDs are the most affected, this data should also further be disaggregated with disability aspect in mind.

#### *Violence against Women*

Violence against women still presents challenges for women in Malawi. Lack of effective remedies and corrupt officials in the enforcement agencies is a hurdle to women's rights in the country.

Overall, the State has made substantial achievements with respect to gender equality promotion and women's empowerment in its legal and policy framework. However, there is a lot more that needs to be done to achieve substantive equality between women and men.

## Introduction

Malawi ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in 1987. In line with its obligations under Article 18 of the CEDAW, the Government of Malawi submitted its 7<sup>th</sup> Periodic Report to the CEDAW Committee in 2014. This Report will be discussed at the 62nd session of the CEDAW Committee in 2015. In order to get additional information on the status of women's rights in Malawi, a broad coalition of NGOs working in the area of women's rights and gender equality have come together to produce a Joint CSO CEDAW Shadow Report for Malawi.

The Report has been developed in a highly participatory manner, bringing together a wide variety of views from NGOs across Malawi, as well as grassroots women. The reporting process was overseen by a Reference Group of key NGOs and comprised inclusive stakeholder workshops in the three regions of Malawi, as well as Focus Group Discussions with grassroots women and Key Information Interviews. The final report was shared with all participants and formally adopted by the Reference Group as representing the joint view of women's rights CSOs in Malawi. As such, it is the first of its kind for Malawi.

The Report is comprehensive and systematically reviews the level of implementation of all substantive articles of the CEDAW. The State Party Report on each provision is critically analysed. Positive steps undertaken by the Government are duly recognised and implementation or information gaps are identified. The latter are particularly crucial and are summarised under each article as 'recommendations'. As such, the Report aims to provide a useful tool for the CEDAW Committee to critically engage with the 7<sup>th</sup> Periodic Report and challenge the Government of Malawi to further increase its efforts to make the provisions of the CEDAW a reality for all women in Malawi.

The Report is structured as follows: Firstly, the methodology is outlined. Secondly, a comprehensive review of each article is provided and recommendations to the State Party are outlined. Thirdly, all recommendations are summarised. Lastly, a joint CSO statement highlighting the most critical issues regarding the implementation of CEDAW in Malawi is included.

Overall, the Report shows that Malawi has made some significant progress regarding the legal and policy framework for women's rights over recent years. Key milestones include the enactment of the Gender Equality Act; the Marriage, Divorce and Family Relations Act; and the Trafficking in Persons Act. In addition, a number of key development indicators such as maternal mortality and girls' enrolment in primary and secondary education have significantly improved since Malawi last reported on CEDAW. Maternal mortality has reduced from 675 to 574/100,000<sup>3</sup> live births and enrolment at both primary and secondary level has reached gender parity.

However, despite these noteworthy achievements, women in Malawi continue to face very significant challenges with regards to both the *de jure* as well as the *de facto* protection of their human rights as enshrined in the CEDAW and the Beijing Declaration and Platform for

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<sup>3</sup> Ibid see note 1 above

Action. While the 7th Periodic Report acknowledges some of these challenges, some particularly pressing issues should be given increased attention. These are highlighted in the recommendations section and further stressed in the CSO statement.

## **Methodology**

The compilation of this Report applied a multi-method approach that combined a thorough literature review of available documentation on the status of women's rights in Malawi with Key Informant Interviews (KII) conducted with selected women's rights NGOs and other officials; eleven in-depth Focus Group Discussions (FGDs) with grassroots women's groups conducted in the three regions of Malawi (North, Centre and South); and three medium-scale participatory workshops with women's rights NGOs conducted in all three regions.

Broad ownership by NGOs was ensured through close collaboration with an NGO Reference Group, which was set-up to guide the production of this Report. Regular meetings and consultations with this group formed a corner stone of the report compilation process.

Specifically, the report production process took the following steps:

- Phase 1: Awareness raising of the general public on the CEDAW reporting process through a press release
- Phase 2: Literature review
- Phase 3: Development of data collection tools
- Phase 4: Key Informant Interviews
- Phase 5: NGO consultations – 3 regional workshops
- Phase 6: Focus Group Discussions with grassroots women
- Phase 7: Compilation of draft report
- Phase 8: Review of draft report by the Reference Group
- Phase 9: Feedback Session with INGOs and Reference Group
- Phase 10: Validation workshop

The development and analysis of the Report was guided by the three principles of equality, non-discrimination and state obligations on which women's rights under the CEDAW are constructed. These principles assisted in appreciating the framework of goals, rights, duties and accountability in relation to women's rights in Malawi.

## 1. Article 1 – Definition of Discrimination against Women

### 1.1 Observations

#### 1.1.1 Enactment of the Gender Equality Act

The enactment of the Gender Equality Act is a significant milestone towards the protection of women's human rights in Malawi. It duly represents the State's obligation in eliminating discrimination. However, there is limited progress in the implementation of the Act. It has been noted, for instance, that the new Act aims at ending all forms of harmful cultural and social practices. In spite of the Act, these practices continue largely unabated as discussed in detail in the section on sex roles and stereotyping.

#### 1.1.2 Definition of Sex Discrimination in the Gender Equality Act.

As noted in the State Report, the Act does not define discrimination against women as is defined in Article 1 of the Convention on the Elimination of Discrimination Against Women (CEDAW). Instead, it includes a definition of 'sex discrimination'. It is apparent, therefore, that the Act uses 'sex discrimination' synonymously with the term 'discrimination'.

While the definition may be all-inclusive for men and women, it is not sufficiently broad to be compatible with the definition that is contained in the CEDAW. This definition is limiting as it recognises discrimination only on the basis of sex thereby not considering other forms of discrimination against women. Arguably, 'sex discrimination' does not include discrimination on the basis of sexual orientation. As noted by the CEDAW Committee in General Recommendation No. 25 that certain groups of women, in addition to suffering from discrimination directed against them as women, may also suffer from multiple forms of discrimination based on additional grounds such as race, ethnic or religious identity, disability, age, class, caste or other factors (including sexual orientation). Such discrimination may affect these groups of women primarily, or to a different degree or in different ways, than men.<sup>4</sup> State parties may need to take specific temporary special measures to eliminate such multiple forms of discrimination against women and its compounded negative impact on them.

It is particularly notable, for instance, that neither **Section 20** of the Constitution of the Republic of Malawi nor **Section 4** the Gender Equality Act expressly prohibit discrimination on the ground of sexual orientation (please see the discussion in Article 2).

#### 1.1.3 Criminalization of Sex Discrimination

The criminalisation of sex discrimination as provided for in the Gender Equality Act provides an opportunity for women to have redress where their rights have been violated. However, without women being aware of these laws, there is no way that they can obtain such remedies. As it will be discussed in the section on Article 2, knowledge of laws remains a challenge for women in Malawi.

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<sup>4</sup> UN Committee on the Elimination of Discrimination Against Women (CEDAW), *General recommendation No. 25, on article 4, paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women, on temporary special measures*, 2004, available at: <http://www.refworld.org/docid/453882a7e0.html> [accessed 2 August 2015] Para. 12

## 1.2 Recommendations to the State Party

The State Party should:

- a. Review the Gender Equality Act to prohibit discrimination against women not only on the basis of sex but on other multiple grounds or in other forms<sup>5</sup>.
- b. Develop clear programmes aimed at disseminating the Gender Equality Act to all women and men.

## 2. Article 2 – Policy Measures

### 2.1 Observations

#### 2.1.1 Enactment of the Gender Equality Act and other Gender Related Laws.

As stated above, we laud the Government of Malawi's enactment of the Gender Equality Act, which is a major step towards the achievement of gender equality and non-discrimination against women in Malawi. Apart from the Gender Equality Act, Malawi has recently enacted additional gender-related laws, including the Child Care, Protection and Justice Act in 2010; the Deceased Estates (Wills, Inheritance and Protection) Act in 2011; and the Disability Act (Act no. 8 of 2012); the Education Act (passed in 2013); and the Trafficking in Persons Act (Act no.3 of 2015).

##### 2.1.1.1 Limited Domestication of the CEDAW in Malawi

The previous Shadow Report to the 6<sup>th</sup> Periodic State Report of Malawi observed that Malawi is yet to domesticate the CEDAW. The State in its 7<sup>th</sup> Report took the position that the Gender Equality Act, the Constitution in Sections 13(a), 19, 20 and 24 and other gender related laws are a domestication of the CEDAW. The enactment of these laws, specifically the Gender Equality Act, can thus be seen to be a reaction to the position taken by the Malawi Supreme Court of Appeal *In the matter of the Adoption of Children Act (Cap 26:01) and In the matter of Chifundo James (an infant) (MSCA Adoption Appeal No. 28 of 2009) being Adoption Cause No. 1 of 2009*. In this case, the court clearly stated that the CEDAW does not form part and parcel of the laws of Malawi unless if so domesticated by Parliament. Indeed, it is debatable whether enactment of these laws adequately domesticates the CEDAW. Notably, not all articles or standards in the CEDAW have been translated into domestic laws.

Admittedly, some would agree that the enactment of the gender related laws, such as the Gender Equality Act, which has some provisions reflecting standards as provided under CEDAW, would qualify as domestication of that treaty. Although it could be conceded that the enactment of the Gender Equality Act is somewhat a form of domestication of the CEDAW, it may be contended that the domestication is not comprehensive. The Act does not translate all the articles and standards under the CEDAW. Such limited domestication presents more challenges for women in enforcing their rights before the courts since they cannot directly invoke the CEDAW in the courts of Malawi and not all rights as provided for in the CEDAW are provided for in the in other relevant laws, leaving women with limited legal remedies to have recourse to.

##### 2.1.1.2 Challenges in the Implementation of Gender Related Laws

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<sup>5</sup> Examples including sexual orientation

The enactment of the gender related laws and the implementation of the Gender Equality and Women's Empowerment (GEWE) Programme are commendable steps towards the achievement of gender equality in Malawi. Further, the State Party notes that the GEWE aims at advocacy towards enactment and implementation of gender related laws<sup>6</sup>. However, there has not been adequate dissemination of the Gender Equality Act and other relevant laws to the general public, specifically women, who are the final beneficiaries. The resulting lack of awareness means that the laws are rarely used. In addition, there have been challenges in the implementation of these laws or programs as manifested through the GEWE being operational in only 13 of the 28 districts in Malawi. Indeed most of the women's groups working with grassroots women consulted for this Report expressed concern that the new laws are not known amongst women and there are no resources aimed at ensuring their dissemination.

i. Inadequate Funding Towards Gender Related Programmes

A 2014 Ministry of Gender, Children, Disability and Social Welfare (MoGCDSW) Report on the implementation of the Beijing Platform for Action indicated inadequate funding to gender programmes and activities as a block to achieving gender equality and women empowerment. It is also noted that almost all programmes on gender are supported by development partners.<sup>7</sup> The challenge with such support is that it is project based and once the project phases out there is no further continuation by the Government.

ii. Lack of Coordination Amongst Implementing Institutions

Since the enactment of the Gender Equality Act in 2012, there has been delay in the development of an implementation plan for the Act as a result of lack of clarity on the roles of the MoGCDSW and the Malawi Human Rights Commission (MHRC). However, it is noted that in 2015, the MHRC developed an Implementation and Monitoring Plan for the GEA. The efficient and effective implementation of this Plan will depend on proper costing and sufficient budgetary allocation.

Further to this, institutions such as the police and the courts, which are mandated to protect and enforce the Act, do not offer adequate assistance to some of the women who invoke these laws. (Please see Article 15 for further details).

### 2.1.2 The National Gender Policy

The delay in adopting the National Gender Policy has been a barrier to the achievement of gender equality and non-discrimination. This is because government officials in the various departments did not have a good reference point, which should have been the guide in their daily duties. It cannot be overstated how important this Policy is in guiding measures aimed at achieving gender equality and women's empowerment. It is commendable that the government approved the draft National Gender Policy. It is however, essential that the same be fully operationalized and implemented to inform all government programs.

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<sup>6</sup> Para. 1 of the State's Response to the List of Issues and Questions by the CEDAW Committee.

<sup>7</sup> Malawi country report (2014) Implementation of the Beijing declaration and platform for action (1995) and the outcomes of the twenty third special session of the general assembly (2000) in the context of the of the twentieth anniversary of the fourth world conference on women and the adoption of the Beijing declaration and platform for action 2015

### **2.1.3 Amendment of the Penal Code**

We commend the State Party for reviewing and increasing the age of defilement of girls from 13 to 16 years. This position acts to protect more girls from sexual exploitation. Nevertheless, the amendment of the Penal Code to extend the definition of ‘sexual activity’ (in the offence of indecent practices between females) to include practices between or perpetrated by females as provided in *Section 137A*<sup>8</sup> is a threat to non-discrimination on the ground of sexual orientation. There is a need to have regard to multiple or intersectional discrimination, which women suffer as recognised in General Recommendation No. 25 of the CEDAW Committee.

## **2.2. Recommendations to the State Party**

The State Party should:

- a. Fully domesticate the CEDAW to guarantee the elimination of all forms of discrimination against women since domestication will provide the necessary legal backing for promotion and protection of women’s human rights.
- b. Take additional measures to disseminate all gender related laws to the general public, specifically to women which will help to ensure that the civil and criminal sanctions stipulated in the Gender Equality Act are invoked by women. This can be done through the translation of the laws into the local languages.
- c. Increase budgetary allocation for the implementation of gender related programmes and activities.
- d. Fast tracking the operationalization and implementation of the National Gender Policy which should inform government planning and programs.

## **3. Article 3 – The Development and Advancement of Women**

### **3.1 Observations**

#### **3.1.1. Challenges to the Advancement of Women**

As rightly noted in the State Report, there still remain challenges to the advancement of women especially in politics. However, this will be discussed in more detail in the section on Article 7, Political and Public Life. A number of issues are however, considered herein;

##### **3.1.1.1 The National Gender Machinery**

The National Gender Machinery for Malawi is defined in the draft National Gender Policy as being the Department of Gender in the Ministry of Gender, Children, Disability and Social Welfare (MoGCDSW). It is notable that the MoGCDSW does not only cover women affairs but is also responsible for other vulnerable groups in society such as children and the disabled. This has succeeded in entrenching prejudices against gender issues and in pushing matters of gender to the side-lines. Besides, placing the sole responsibility of ensuring gender equality in all spheres of women’s lives on this Ministry has led to a lack of, or limited,

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<sup>8</sup>Any female person who, whether in public or private, commits an act of gross indecency with another female person, or procures another female person to commit any act of gross indecency with her, or attempts to procure the commission of any such act by any female person with herself or with another female person, whether in public or private, shall be guilty of an offence and shall be liable to imprisonment for five years.”

consideration of gender issues by other Ministries as well as by central Government and other higher levels of Government.

All ministries and institutions need to work together with the Ministry of Gender in the development and implementation of their gender related programmes. The Gender Equality Act is a tool for achieving gender equality, which can be used by these institutions and ministries as a guiding framework.

In addition to the above, the following have also been identified as challenges faced by the National Gender Machinery:

**i. Gender Desk Officers**

The placement of gender desk officers or gender focal points in other Ministries has not been effective since most of these officers are at a junior level and hence not able to influence decision-making and policy changes at a higher level.

**ii. Capacity of the Ministry of Gender, Children, Disability And Social Welfare (MoGCDSW)**

Research undertaken for this Report has also shown that the Ministry of Gender, Children, Disability and Social Welfare (MoGCDSW) is overwhelmed with the responsibility of covering not only gender issues but also disability, children and social welfare issues. This is due to a number of reasons such as understaffing within the ministry as evidenced through the lack of gender officers in the districts. Usually reliance is placed on social welfare officers who are themselves not adequate but also lack financial resources. In other cases, the Ministry relies on community development officers/assistants who in many cases lack the adequate knowledge on gender issues. As a result, insufficient emphasis is put on the gender component. It is proposed that leaving the Ministry with only the gender component or working with other ministries to mainstream gender will go a long way in easing the pressure.

**iii. Lack of Institutional Support to Gender Issues Amongst Top Government Officials**

In addition to this, information gathered in the development of the report indicates that there is a perception amongst officials in higher government authorities (who are also the policy makers) that there is too much inclusion of gender issues in programmes, which are being implemented. This has presented challenges in mainstreaming gender in some of the government departments and ministries. It has also been noted that since Malawi first created the Ministry of Gender, Children, Disability and Social Welfare (MoGCDSW), only women have been appointed as Ministers. This, observably, has only succeeded in creating a mind-set that gender issues are women issues only such that some high ranking government male officials do not see the need to take gender issues seriously.

**iv. Inadequate Funding to the Ministry of Gender, Children, Disability and Social Welfare (MoGCDSW)**

Moreover, the Ministry of Gender, Children, Disability and Social Welfare (MoGCDSW) continues to face inadequate funding towards its activities. The budgetary allocation for the Ministry in the 2015-2016 Budget is the lowest of all Ministries at less than 0.36% of the national budget. This has resulted in too much reliance on development partners to develop and sustain programmes aimed at eliminating discrimination against women. Other ministries

have also not taken an active role in mainstreaming gender in their programmes using the funding allocated to them.

### **3.2 Recommendations to the State Party**

The State Party should:

- a. Restructure the Ministry of Gender, Children, Disability and Social Welfare (MoGCDSW), so that the Ministry is left with only the gender component as its mandate.
- b. Recruit gender desk officers in the other ministries at the highest level of policy making and planning in order to have an influence on the decision making process.
- c. Increase awareness amongst government officials that gender is not a women's issue only and that it is a cross cutting issue in development planning.
- d. Raise awareness in the Ministry of Finance on the vital role adequate budgetary allocation plays in ensuring gender equality. It is proposed that a mandatory percentage of the national budget be allocated towards the Ministry of Gender.

## **4. Article 4 – Acceleration of Equality between Men and Women**

### **4.1 Observations**

#### **4.1.1 Gender Neutral Quotas in the Gender Equality Act**

The Government of Malawi is commended for adopting the 40/60% quota in matters of employment in the Public Service as provided for in the Gender Equality Act. This requires an appointing authority in the public service to appoint no less than 40% and no more than 60% of either sex in any department in the public service.<sup>9</sup> This is a positive commitment but the effectiveness of the same remains to be seen.<sup>10</sup> It is also of concern that the quota does not apply to the private sector. Besides, there is still need to amend the Malawi Public Service Regulations to fully put the law into effect in terms of employment in the public service.

In addition, the development of the proposed law on the 40/60 quota in executive positions of political parties and their candidate lists remains to be seen. The enactment of such a law is seen as one key solution to the dismal performance of female politicians in the 2014 Presidential, Parliamentary and Local Government Elections. Indeed, the number of women in Parliament has decreased from 22% in the 2009 elections to 16.7% in 2014. The assumption is that this law will ensure that women are given equal opportunities to men in Parliament.

The inability to make meaningful gains in the representation of women in Parliament or Local Councils has also been attributed to the present 'first past the post' (simple majority) system which Malawi applies. It has been argued that the 'first past the post' system excludes women since they are less likely to be selected as candidates by male-dominated party structures and the same is translated into them not performing well during elections<sup>11</sup>.

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<sup>9</sup> Section 11 of the Gender Equality Act of 2013

<sup>10</sup> Refer to Article 7 for further details

<sup>11</sup> Further information on women and political and public life is provided in the section discussing Article 7 of the Convention.

The State Party is further applauded for the introduction of the Re-Admission Policy in education. A more detailed discussion on this policy will be undertaken under Article 10.

#### **4.2 Recommendations to the State Party**

The State Party should:

- a. Take active measures and steps to fully implement the gender neutral quota in employment in the public service through reviewing the Malawi Public Service Regulations among other steps.
- b. Review the Gender Equality Act to include the 40/60 quota in employment in the private sector;
- c. Amend the Electoral Laws to include the gender neutral quota of 40:60.
- d. Employ other strategies aimed at ensuring equality between women and men.

### **5. Article 5 – Sex Roles and Stereotyping**

#### **5.1 Observations**

We commend the Government for the enactment of the laws prohibiting and criminalising harmful practices that result in discrimination against women.

##### **5.1.1 The Position of Sex and Gender Stereotypes in Malawi**

As noted from the State Report, gender stereotyping and traditional practices remain a significant obstacle to achieving gender equality in Malawi. This is evident from the violation of women's rights due to cultural practices, which, amongst others, perpetuate violence against women and transmission of HIV/AIDS to women.

Women engaged in the development of this Report indicated that religious and cultural beliefs have resulted in increased violence against women in all its forms be it physical, psychological, sexual and economic. For example, women consulted in tobacco growing areas indicated that tobacco growing is done together with the men but that it is men who take the tobacco to the markets as the head of the house. The women lamented that it is during the tobacco selling season when men have gone for the sales that they end up spending the money earned on other women and come home empty handed without sharing the proceeds with their wives. Women cannot report or question such behaviour by their husbands on the basis that the man is the head of the house and therefore the overall decision maker. This is further worsened by cultural practices requiring women to persevere in their marriages even when being subjected to violence by their husbands. However, there is limited effort by Government to change these practices.

##### **5.1.2 Polygamy**

Polygamy is also a cultural practice which perpetuates violence to both women and children. Such a practice is also in conflict with the spirit of the CEDAW aimed at guaranteeing equal rights for men and women in marriage. Women who were interviewed indicated that their husbands have infected them with HIV but still proceeded to marry other women. Most women choose not to divorce their husbands since they do financially and socially depend on

their husbands. Further to this, some men who have contracted HIV and who knowingly are on life prolonging drugs hide the same from their wives, putting their lives at risk. Yet, there is no indication that Government is taking active measures to end such cultural practices, often times under the guise of the right to culture.

### **5.1.3 Harmful Practices as Recognized in the Laws**

Section 3 of the Gender Equality Act defines a harmful practice as; *'a social, cultural or religious practice, which, on account of sex, gender or marital status, does or is likely to undermine the dignity, health or liberty of any person, or result in physical, sexual, emotional or psychological harm to any person'*. However, the Act does not explicitly identify what these cultural practices are. There is need to specify some of the harmful cultural practices as is the case under Section 81 and 82 of the Child Care, Protection and Justice Act; which spells out child marriages or betrothal and pledge of a child as security as examples of harmful cultural practices. Furthermore, the Malawi Human Rights Commission conducted a research, which identified marriage by proxy and initiation ceremonies among others as some of the harmful cultural practices.<sup>12</sup> Specifically, the Government must clearly recognise that any cultural practice in clear violation of women's human rights must not be upheld in the name of 'culture' and must be abolished or modified. The Government cannot continue to uphold harmful cultural practices as part of the right to culture under **Section 26** of the Constitution<sup>13</sup> whilst women continue to suffer violations of their human rights.

## **5.2 Recommendations to the State Party**

The State Party should:

- a. Develop a comprehensive strategy to eliminate, prohibit and/or modify harmful cultural practices that discriminate against women. This should include it expressly identifying, in the relevant laws or affirmative stand-alone policies, cultural practices which are harmful.
- b. Increase its engagement with traditional or initiation ceremony leaders and religious leaders, amongst others, as custodians of cultural and religious beliefs to work together in eliminating harmful practices.
- c. Raise consciousness/awareness amongst communities or specifically women on harmful cultural practices.
- d. Refrain from upholding harmful practices in the guise of the right to culture without due regard to the discriminatory effects of these practices on women.

## **Article 6-Exploitation of Women**

### **6.1. Observations**

#### **6.1.1. Enactment and Implementation of the 'Trafficking In Persons Act**

It is commendable that in February 2015 the Government passed the Trafficking in Persons Act (Act No 3 of 2015). Notably, when the relevant Bill was presented in Parliament for enactment, there was no definition of the term trafficking. Now, the Act does include a

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<sup>12</sup> Malawi Human Rights Commission, 'Cultural Practices and their Impact on the Enjoyment of Human Rights, Particularly the Rights of Women and Children in Malawi.

<sup>13</sup> Section 26: 'Every person shall have the right to use the language and to participate in the cultural life of his or her choice'.

definition of the term ‘trafficking in persons’.<sup>14</sup> It is observable from this definition that the Act applies not only to acts done in, but also those done beyond, the territory of Malawi. As such, for the law to be implemented effectively Malawi needs to expedite the process of establishing coordination mechanisms with other relevant institutions in other countries, especially in neighbouring countries. The Government must also expedite the process of establishing the National Coordination Committee, which is key to the operationalization of the Act and the draft implementation plan. Though Malawi is part of Southern Africa Network Against Abuse and Trafficking of Children (SANTAC), the government needs to enhance cooperation and information exchange mechanisms such as these within the region.

#### **6.1.2. Extent of the Problem of Trafficking and Prostitution of Women Remains Unknown**

The 7<sup>th</sup> State Report, and other reports, indicates that trafficking of persons is a growing problem in the country. For instance, a judicial officer, through an unpublished study, established that increased numbers of girls are trafficked from rural to urban areas for prostitution. Voices of some immigration and police officers indicate that increased numbers of women and their whole families are trafficked from some districts in the Southern Region to other parts of the country to work in tobacco estates. Also, indications are that increased numbers of women are being trafficked from Malawi to other countries in Southern Africa especially in South Africa. Others are trafficked to Europe (particularly Ireland). They end up as sex slaves.

Observably, there is simply no reliable data on the extent of the problem of trafficking and prostitution of women in the country. A 2014 report by the United States Department of State highlighted that poor record management and lack of government direction contributed to shortcomings in tracking accurate investigation, prosecution, and conviction statistics nationwide.<sup>15</sup> Occasionally, a media statement by non-governmental organisations will state that at least 500 people are trafficked annually.<sup>16</sup> Another report will state that more than 120 children from Malawi were rescued from trafficking to Mozambique.<sup>17</sup> However, these reports and studies do not provide specific figures on trafficking of women. They also do not establish the full extent of the problem of exploitation and prostitution in the country. Therefore, in the absence of reliable data and statistics perhaps governmental responses are at risk of being inappropriate to address the issue with sufficient focus until such time as the scale of the problem is fully understood.

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<sup>14</sup>Under Section 2 of the Act ‘trafficking in persons’ means recruiting, transporting, transferring, harbouring, receiving or obtaining a person within or beyond the territory of Malawi, through: (a) threats or use of force or coercion; or (b) abduction; or (c) fraud or deception; or (d) abuse or threats of abuse of power or position; or (e) abuse or threats of abuse of position of vulnerability; or (f) abuse or threats of abuse of the law or legal process; or (g) giving or receiving or payments to obtain consent of a person having control of the trafficked person, for the purpose of exploitation of that person.

<sup>15</sup> United States Department of State, *2014 Trafficking in Persons Report - Malawi*, 20 June 2014, available at: <http://www.refworld.org/docid/53aab9d2b.html> [accessed 6 August 2015]

<sup>16</sup> <http://www.nyasatimes.com/2015/02/25/network-calls-malawi-mp-to-pass-trafficking-in-persons-bill/>

<sup>17</sup><http://malawivoice.com/2015/02/26/malawi-parliament-passes-anti-human-trafficking-bill/>

### 6.1.3. Lack of awareness of the Trafficking in Persons Act amongst Law Enforcement Agents

Though Government passed the Trafficking in Persons Act, there is lack of, or very limited, awareness among relevant government officials such as the Police of the enactment of this new anti-trafficking law. Not much is being done by Government to disseminate laws on the trafficking of women. Similar to this, other relevant laws are just on paper. There is doubt, for instance, among law enforcers whether this new Act has been gazetted and whether it is now operational. As such, they continue to operate as if this law is not there. The result is that issues of trafficking continue to be loosely addressed under different legal frameworks such as the Child Care, Protection and Justice Act (2010), the Penal Code and the Immigration Act.

Besides, there are not many governmental interventions addressing issues of trafficking. For instance, border law enforcement agencies lack the necessary training to combat trafficking. It is also apparent that Government's delay in introducing a national identity system is compounding the challenges faced in combating cross-border trafficking of women. Law enforcement agencies continue to lament that it is very difficult to detect women who are trafficked across borders – such as across the northern border – due to similarities in the languages spoken in the border districts.

### 6.1.4. Continued Violation of Rights of Sex Workers

It is notable that in its 7<sup>th</sup> State Report, Government has just made a general claim that it is working in conjunction with some non-state actors to combat prostitution in the country. However, Government continues to ignore rights of commercial sex workers. In the 7<sup>th</sup> State Report, there is scarcely any mention of specific measures that Government is taking to address rights of women engaged in prostitution.

Nonetheless, sex workers continue to suffer many abuses in the country. From an interactive discussion with a commercial sex worker it is evident that sex workers are unable to access health care, sexual and reproductive health services, and are the victims of police violence, unlawful arrests and extortion. One participant complained as follows: *“We are often beaten by the police. In some cases, they forcibly demand sex from us to release us from custody whenever they have arrested us as rogues and vagabonds.”*<sup>18</sup>

Besides, it is notable that the law in Malawi does not criminalise prostitution itself. It makes it a criminal act for a male person to live on earnings from prostitution or for a male person to persistently solicit or importune women for ‘immoral purposes.’<sup>19</sup> Similarly, the law makes it a criminal act for a female person to live on earnings from prostitution or to aid for gain the prostitution of another woman.<sup>20</sup> Though prostitution itself is not criminalised, practice shows that law enforcers mistakenly regard prostitution itself as a criminal act. Even the general public regards prostitution as a criminal act and would like it to continue being criminalised. As a result, sex workers continue to operate in the shadows. Furthermore, this mistaken belief that prostitution is criminalised compounds the risks associated with trafficking and exploitation of women in the country.

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<sup>18</sup> FGD with commercial sex workers

<sup>19</sup> Section 145 of the Penal Code (cap 7:01 of the Laws of Malawi).

<sup>20</sup> Section 146 of the Penal Code.

Practice also shows that enforcement of this ‘anti-prostitution law’ is discriminatory in nature. In the current legal framework, both the one providing sex services and the one who obtains such services do not commit crimes as such. However, practice shows that it is the sex worker and not the client who are criminalised. It was noted by a judicial officer that periodically the police conduct ‘sweeping exercises’. In these exercises, both men and women are arrested. However, it is almost always the case that only women, and not men, are brought before court under this ‘anti-prostitution law’ as was the case in *Bridget Kaseka and 6 others v Republic*.<sup>21</sup> Often times, police arrest women involved in prostitution at night and charge them of the offences of being Idle and Disorderly’ or being a ‘Rogue and Vagabond’ under the Penal Code. And, occasionally, a female procurer may be arrested, charged, and fined, as was the case of a ‘madam’ running a brothel in Ntcheu (a district in the Central region).<sup>22</sup> Yet, it is hardly ever the case that a male procurer is arrested and charged. However, studies and on-site observation show that some bar owners, most of them men, run houses within their compounds which are used for purposes of prostitution. Arguably, such bar owners are living off proceeds from prostitution and have to be prosecuted accordingly. This discriminatory criminalisation of prostitution continues to create an environment in which the rights of sex workers, including the right to be free from discrimination and the right to equality, are violated. It has resulted in the entrenchment of stereotypes that continue to undermine the equality of women and that stigmatise sex workers.

#### **6.1.5. Lack of Commitment to Remove Criminal Sanctions for Women Engaged In Prostitution**

In the State Report, it is notable that Government is silent on whether or not it will remove the criminal sanctions for women engaged in prostitution. But from interactive interviews with some senior officers from the Ministry of Justice and from the police it is clear that Government would like to continue with the criminal sanctions for women engaged in prostitution. Also, voices from grassroots, particularly from women, do not support the decriminalisation of prostitution. Criminal sanctions against prostitution are justified on health, moral and religious grounds. Some justify it on the basis that prostitution is a threat to families and that removing the criminal sanctions will encourage more women to be engaged in prostitution which will ultimately endanger the institution of the family. But some grassroots voices support the removal of the criminal sanctions. The view is that prostitution should just be regulated. Women engaged in prostitution should just be required to operate with a licence and that they should be taxed. One FGD participant reasoned that the requirement of a licence will prevent children from engaging in prostitution. And, that taxation of prostitution will increase the price of sexual services, which will price out a lot of women from prostitution.

#### **6.1.6. Neglect of the Plight of Children Engaged In Prostitution**

Remarkably, some of the ‘employees’ of the ‘madam’ at Ntcheu referred to above, who, besides selling beer also operated as sex workers, were reportedly minors. In such a case, the

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<sup>21</sup> Criminal Appeal Case No. 2 of 1999

<sup>22</sup> See the Nation Newspaper of 28<sup>th</sup> February 2015.

Liquor Act<sup>23</sup>, in prohibiting employment of children in bars, and the Employment Act,<sup>24</sup> in prohibiting the employment of children in places that are hazardous to their social development and education, were applicable in this case. Yet, the madam was not punished under the applicable law. The place itself was at first closed by the authorities but, according to media reports, the Minister of Gender, Children, Disability and Social Services directed that the place should be re-opened.<sup>25</sup>

Additionally, it is remarkable that the law on defilement is equally applicable to men who have sex with minors who just happen to be sex workers. But from a case handled by the police in Rumphu, a district in the Northern Region of Malawi, it is evident that law enforcers do not apply the defilement law in these cases. For instance, a man was arrested in January 2015 on suspicion that he was having sex with a minor. It turned out that the minor was a commercial sex worker. The man was released on police bail and no further hearing has taken place in this case. A discussion with a police officer disclosed that the police are unwilling to prosecute the man. This case, and that of the 'madam' in Ntcheu, exemplifies the point that the law is weak in protecting minors engaged in prostitution in the country. It is also apparent that Government's delay in introducing a national identity system is compounding the challenges faced in combating the problem of children engaged in prostitution.

#### **6.1.7. Insufficient Support Services for Survivors of Trafficking and Prostitution**

There is lack or limited support by Government for victims of trafficking in the form of protective and supportive reception by Police when survivors of trafficking report a crime. Additionally, safe houses for survivors of trafficking are lacking. As a result, it is the non-state actors who are shouldering the burden of providing services to survivors of trafficking. The state provides almost no funding for this purpose.

Additionally, there is insufficient support for women who wish to leave prostitution. A police officer gave the example of Zambia where there are measures, supported by Government, which are available to women who wish to leave prostitution. Such measures include provision of counselling, credit facilities, and marriage arrangement for those willing. Currently, some NGOs such as CEDEP and Theatre for Change are doing something on this in the country, but without the necessary support from Governments.

## **6.2 Recommendations to the State Party**

The State Party should:

- a) Maximize benefits from the regional integration on cooperation and information exchange mechanisms with neighbouring countries on trafficking and cross-border prostitution of women.
- b) Establish a reliable database on the trafficking and prostitution of women for better prevention, protection and prosecution of trafficking. This should involve setting up a computerised system of capturing information at border posts and other offices.

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<sup>23</sup>Cap 50:07 of the Laws of Malawi.

<sup>24</sup>Cap 55:01 of the Laws of Malawi.

<sup>25</sup>See an article on Nyasatimes, 15<sup>th</sup> April 2015, available on [www.nyasatimes.com/.../mama's-shabeen](http://www.nyasatimes.com/.../mama's-shabeen). Accessed on 15th July 2015.

- c) Establish a time frame for the implementation of the newly passed Trafficking in Persons Act. Additionally, adopt and implement a public advocacy awareness campaign on the Act.
- d) Train border control officers on how to identify survivors of trafficking.

## **Article 7 – Political and Public Life**

### **7.1 Observations**

#### **7.1.1 Challenges Faced By Women in Political Participation**

We confirm that there are no *de jure* barriers that are placed on women for effective and equal participation during voter registration and voting in Malawi. However, women participation in national elections is limited to registration, dancing during political party campaigns and voting on the election's day. As indicated in the State Report, there are more female voters than there are men. Women face challenges to effectively participate in the other core areas such as running for office as candidates for the various political parties and being elected to the various political offices. Notably, there were 2 female presidential candidates compared to 10 men in the last presidential election and the women failed to get the electoral mandate. In addition, the number of women parliamentarians has also dwindled during the 2014 parliamentary elections. Currently there are 32 women in the National Assembly compared to 43 in 2009. The number of female councillors is 56 out of the 457 councillors elected during the last general election. Even statistics for 2014 Tripartite Election painted a gloomy picture for the future of women in politics as out of 1292 people vying for 193 Parliamentary seats, only 257 were women and 44 constituencies had no female parliamentary contestants<sup>26</sup>

There are a lot of factors or challenges that have limited the participation of women during national elections and have contributed to the current reduced numbers of women in the National Assembly. The Government of Malawi acknowledges some of the challenges faced in the previously submitted State Report but has not put in place measures to ensure that they are progressively working towards improving the situation of women. Specific challenges faced by women to effectively participate in political life in Malawi are as follows:

#### **7.1.2 No Amendment to the Electoral Laws to Effect the Gender-Neutral Quota of 40/60**

As already alluded to above under Article 4, the electoral laws have not been amended to ensure that there is effective implementation of the gender neutral quota of 60/40. There are no mandatory rules that would require that certain seats be reserved for women candidates. Malawi has no quota system and Members of Parliament are elected through the first past the post system. This has led to reduced numbers of women in parliament.

#### **7.1.3 Minimal Support from Political Parties to Women Candidates**

The increase in the number of women parliamentarians in 2009 is attributed to the strong moral and financial support that was given by the Democratic Progressive Party (DPP) to its female candidates. It has been observed that the DPP ensured that more women were nominated and adequate support was given. As a result, a lot of women were voted as parliamentarians from this political party. In 2014, no similar initiatives were taken by political parties to support the female candidates and the external support from the 50/50 campaign was inadequate to sustain them.

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<sup>26</sup>See <http://allafrica.com/stories/201406050076.html>, accessed on 08/08/2015

Most of the female parliamentarians who were elected in 2009 lost their seats in 2014. There was no visibility of women in their constituencies.

Although political party manifestos highlighted the need for gender equality, the implementation of the same was vague and still remains so. Additionally, there are no incentives given to political parties to encourage them to have more female MPs. For instance, under section 40(2) of the Constitution of Malawi, any political party represented in Parliament, and which has secured more than one-tenth of the national vote in elections to that Parliament, is provided with funds by the state. In the provision of these funds, the number of female MPs that a political party has is not considered.

There is also a lack of support for women in the lower level party structures such as Party Area Committees. These Party Area Committees are found at the local level and provide a good starting point for supporting women since in most cases these committees decide who to support as a candidate. Deliberate efforts targeting these local committees are important in enhancing women's political participation from the local level towards the highest levels of office. This will also ensure that gender equality issues and support for women in politics is not seen as being for elite women holding top positions.

#### **7.1.4 Lack of Financial Resources to Effectively Conduct a Campaign**

Women lack financial resources to conduct campaigns that involve cash hand-outs. The Government has not placed a ban on campaigns that focus on the issuance of hand-outs and other monetary incentives. The 50/50 campaign that was launched to empower female candidates did not raise adequate resources to financially support women during the campaign period. Women who were contesting in the elections lamented that the financial support was given to them very late and it did not make a difference as most voters had already shunned them. Hence, the 50/50 campaign was conducted like an event and not a process because of the delayed support to women. Further to this, no support is given to women who get elected to the National Assembly to ensure that they perform to the expectation of their voters. There was also lack of male involvement in the 50/50 campaign programme and it was viewed as though it was a women only agenda. Female candidates have further been victimised as there have been demands for sex in return for materials and financial support by various supporters.<sup>27</sup>

Politically, aspiring women Members of Parliament have been unable to access loans for their campaigns due to a lack of collateral. Potential female Members of Parliament have been known to refrain from participating in politics out of fear of land seizure should they fail to repay their loans.

In addition to this, preparatory interviews for this Report indicated that there is also a lack of support for current sitting female MPs to ensure that they return to Parliament in the next elections. This can be done through supporting them with financial and other resources aimed at ensuring that they develop their areas which should assist them win in the next elections. In addition to this, training women candidates to focus on issue based campaigns which should also allow them to deliver as office holders.

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<sup>27</sup> A Focused Group Discussion with women parliamentarians and some 2014 women aspirants.

### **7.1.5 Negative Gender Stereotypes, Images and Roles**

There are also negative gender stereotypes, images, and roles that affect the effective participation of women as leaders during elections. There is societal attitude, influenced by culture and religion, that the role of a woman is to care for the family and the home and take care of the sick in hospitals. Women who participate as leaders in national elections are viewed negatively by society. Some women did not receive support from their spouses who expect them to do domestic chores. Such spouses would complain that participation in politics by their wives leads to a neglect of the domestic chores. Some female candidates were also called prostitutes by people in the communities as they were viewed negatively for taking on the male dominated area of standing as candidates. It is also noted that women do not support fellow women during elections. Notably, the number of women registered voters is high compared to that of men. For instance, in 2014 over 7.4 million people registered to vote, a 16 percent increase from the elections in 2009. And, according to the Malawi Electoral Commission (MEC), the majority of these were women.<sup>28</sup> However, it has noted that women voters do not necessarily translate into more women being voted into power. Interactive interviews with various stakeholders indicate that women generally vote for men and not fellow women. It was also noted that even in various village development committees, most leaders are men.

### **7.1.6 Low Levels of Education for Women**

Women's generally low level of education affects them negatively as voters would prefer a candidate who can converse in English and has good academic qualification. Focus Group Discussions with women from the urban and rural areas gathered that the low levels of education affected the women negatively as it was generally perceived that they could not perform better than the educated male candidates.

### **7.1.7 Low Female Representation in Public Appointments**

There is a reduction in the number of women Ministers from 28.1% in 2013 to 15% in 2014. The number of Chief Executive Officers in statutory corporations is 5 females compared to 95 for men. The number of female Principal Secretaries is currently 17 females compared with 29 men. Generally, female representation in public appointments increased during the Joyce Banda Government between 2012 and 2013 but the ratios were still low when compared with male representation. Thus, although great strides were achieved during the years 2012 and 2013 to ensure that more women took up leadership roles, the numbers are now plummeting.

## **7.2 Recommendations to the State Party**

The State Party should:

- a. Expedite the process of amending the relevant electoral laws to introduce the gender neutral 40/60 quota.
- b. Revise electoral laws to have specific quotas for women i.e. automatic reservation for women in specific constituencies and include the rotational gender system.
- c. Amend section 40(2) of the republican Constitution to provide that a political party represented in Parliament, and which has secured a prescribed number of female

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<sup>28</sup><http://www.undp.org/content/undp/en/home/presscenter/articles/2014/05/19/malawi-50-years-later-the-importance-of-the-2014-elections-.html>, accessed on 7/08/2015

MPs. will be provided with state funds as a means of encouraging parties to have more female MPs.

- d. Ban the issuance of hand-outs and money to voters during campaigns.

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

### **8.1 Observations**

The State Report indicates that there are 4 heads of foreign missions, and 3 deputy heads. At the time of drafting this Report, there were 4 female heads of mission, with a total of 41 females in total representing the state internationally. There is no justification for having more men than women in international positions. Notably, appointments are based on political affiliation as well as experience and capacity. Other than for political reasons, there are no factors that would impede women's participation in national and international appointments. It is further commendable that positive strides are being made in other public offices such as the Malawi Police Service. According to a key informant consulted the Malawi Police Service has made sure that women serving as police officers get the same opportunity as their male colleagues to go on peace keeping missions. This is evident from the last contingent to Darfur, Sudan which had 60% of women.

However, there are a number of cultural and social stereotypes that hinder women from effectively participating in international representation. First, appointments to high profile positions are prone to gendered stereotypes. It is common that when a woman has been promoted to a high-level position it is assumed she has provided sexual favours to the decision-maker in exchange for her promotion. It is assumed that she is not deserving of a promotion but a man instead, and it is assumed she does not have the capacity to handle the new role, even if her credentials are known to all<sup>29</sup>. Other stereotypes include that: Firstly On top of being a seasoned professional, women must also be an excellent home-maker/cook, which limits the definition of what it means to be a female leader, and significantly reduces the chances of many strong, capable candidates. Secondly, there is a widespread perception that one must be competitive and aggressive to succeed in politics and take on a high-level role, and women are seen as too passive. Here, as pointed above, further trainings on such skills as diplomacy, international negotiation skills, presentation skills, advocacy skills would be most beneficial. Thirdly, a lack of appreciation of separation of powers and checks and balances makes recruiters think it is paramount that women coming into cabinet/other offices should also be MPs. However, a large number of male candidates do not, according to one key informant, have the same stringent measures placed on them. Removing this stereotype would ease pressure on women to first prove to be “superwomen” as to deserve an appointment and it would level the playing field for all women to aspire to such roles.

The situation is further compounded by the fact that the appointing authority for international positions is the President. Appointments for both men and women are highly political appointments. The President is not obliged to answer to anyone regarding this. Despite the 50:50 calls for equal representation of women in cabinet and public service, he/she is not

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<sup>29</sup> Interviews with a Key Informant representing Malawi at an International Organisation

bound by them. There have not been any recorded complaints about discrimination based on sex during the parliamentary Public Appointment Committee's deliberations on the selection process for representatives to senior government level or foreign missions. Awareness of CEDAW amongst PAC members, which is largely male dominated, is varied. Some are aware of it, others are not. As such, they do not bear it in mind when deliberating over appointees.

There was no literature in the area of gender discrimination in the public service available at the time of drafting this report. But, according to the Malawi Human Rights Commission, there was one incidence that arose in the public sector where the opportunity to develop the relevant jurisprudence arose. Reference is made to one Mary Nangwale, who was appointed to be the Inspector General of the Malawi Police Service. Her appointment was rejected by the Public Appointments Committee. This incident has scarcely been interrogated to find out if there were underlying gender prejudices and stereotypes that led to the rejection of her appointment. Additionally, her rejection points to a lost opportunity to develop jurisprudence addressing gender discrimination of women within national appointments but also speaking to the approach towards international appointments and other senior level public appointments.

It is worth noting that the Ministry of Foreign Affairs initiated a Diaspora Engagement Programme in 2012, and established the Diaspora Affairs Unit in the Ministry of Foreign Affairs and International Cooperation, to manage the programme. One of the duties of the programme is to build capacity for all members through knowledge sharing. However, to-date, here has been little concrete output from this initiative.

## **8.2 Recommendations to the State Party**

The State Party should:

- a. Ensure that appointments for international representation should not be politically influenced, in so far as it disfavours women, by the Public Appointments Committee.
- b. Implement affirmative action aimed at ensuring that there are equal numbers of women and men representing Malawi at the international level.
- c. Facilitate training and development in diplomacy, presentation and advocacy skills for women such as establishing a training institute for potential career diplomats
- d. Progressively implement measures aimed at removing gendered stereotypes which prevent women from being appointed as international representatives.

## **9. Article 9 – Nationality**

### **9.1 Observations**

#### **9.1.1 Discriminatory Effects of Section 9 of the Citizenship Act**

We note with appreciation that Government acknowledges the discriminatory effects of section 9 of the Citizenship Act and is undertaking efforts to ensure that the law is amended. In our interviews with officers from the Department of Immigration, it was confirmed that the law was not, in fact, being implemented against women who get married to foreign husbands. The reason is that it is difficult to trace the women as the records are not kept electronically. In the same light,

Government has also put in place the Migration and Citizenship Policy of 2015 that eliminates the discriminatory practice that affects women who get married to men from outside Malawi. However, it is noted that there has been slow progress by the Government, through the Law Commission, to ensure that the Citizenship Act is amended accordingly. There are indications that the Law Commission has put the review of the Citizenship Act as part of its 2015 work plan. Observably, the current law reform work of the Law Commission is being funded, not by the State, but by donors – the European Union, under the Democratic Governance Program. This means that any work on the review of the Citizenship Act, for instance, depends on continued funding from the donors. Thus, without financial support from the Government, there is risk that the work will stall if the donors decide to pull out.

### **9.1.2 The Dependent Domicile for Married Women**

In Malawi, the common law rule that a married woman's domicile is dependent on the husband still applies. The same has discriminatory effects against women to husbands with foreign domicile. Where such husbands dispose of their movable property in a will made in Malawi, the validity of the will is to be governed by the law of the country in which the husband was domiciled at death.<sup>30</sup> This may put structural barriers to such a woman to challenge the validity of the will where she has reason to do so. The woman may also not access justice to commence divorce proceedings as the foreign domicile will render the court not have jurisdiction over the matter.<sup>31</sup>

## **9.2 Recommendations to the State Party**

The State Party should:

- a. Ensure that a Special Law Commission on the Review of the Citizenship Act is empanelled and that it should comprehensively review the Citizenship Act, with special focus on discriminatory provisions such as section 9, within a specified timeline. In the absence of donor funding, the State should ensure that the Law Commission is funded for this purpose.
- b. Review the common law position of dependent domicile for married women and abolish this discriminatory law through a statute.<sup>32</sup>

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<sup>30</sup>See *In Re Barretta* 11 MLR 110; *In Re Hussein* [1923-60] ALR Mal 276.

<sup>31</sup>See *Kaunda v Kaunda* 16(2) MLR 545.

<sup>32</sup>See the Domicile and Matrimonial Proceedings Act 1973 (for England and Wales).

## Article 10: Education and Training of Women

### 10.1 Observations

#### 10.1.1 Meaningful Early Childhood Education Remains a Challenge

It is commendable that Government adopted the National Early Childhood Development (ECD) Policy and the National ECD Strategic Plan. However, Government continues to neglect investment in early childhood education. It does not provide adequate financial support to this sector.<sup>33</sup>

Furthermore, the State Report shows that the number of Early Childhood Centres (ECDs) and that of children enrolled at this level of education has been increasing over the years. However, all indications are that most of these ECDs were provided not by Government but by non-state actors such as the Roger Federer Foundation through ActionAid, both international organizations<sup>34</sup> and, the available ECDs are inadequate to cater for the population of children eligible for early childhood education. According to the Minister of Gender, Children, Disability and Social Services, about 1.5 million of the country's children have no access to pre-school facilities.<sup>35</sup>

Besides, interactive interviews with non-governmental organizations involved in early childhood education in Malawi reveal that Government hardly supports the available ECDs. Though Government may initially provide support to a community to construct such a centre, Government fails in the training of the caregivers and Parents Committees. It is almost always the case that such training is provided by non-state actors. Also, though the State Report has indicated that incentives are provided to caregivers to encourage them in their work, experiences on the ground show otherwise. The caregivers are unpaid and without any meaningful incentive from Government. It is non-state actors, such as the Roger Federer Foundation and ActionAid, which may provide those incentives. Notably, the provision of these incentives by non-state actors, where available, is uncertain. It all depends on the lifespan of the relevant projects implemented by these non-state actors. As such, the end of such projects may mean the end of the incentives.

Additionally, the interactive interviews with non-governmental organizations involved in early childhood education in Malawi reveal ECDs are under the Ministry of Gender, Children, Disability and Social Welfare (MoGCDSW), Children, Disability and Social Services. They are scarcely a concern of the Ministry of Education even though it is allocated funds from the budget for such a purpose. It is noted that the former ministry is ill-equipped to deal with matters of education.

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<sup>33</sup>See Press Statement from the Association of Early Childhood Development in Malawi, (2014) '*Nipped in the Bud: How Small Budgets for ECD are pushing children into marginalisation*' available at [www.aecdm.org](http://www.aecdm.org), accessed 5/08/2015.

<sup>34</sup>See <http://www.actionaid.org/news/roger-federer-opens-new-childcare-centre-malawi>, accessed on 5/08/2015

<sup>35</sup><http://www.nyasatimes.com/2015/07/22/federer-urges-malawi-to-lay-more-emphasis-on-early-education-of-children>, accessed on 05/08/2015.

### **10.1.2 Lack of Progress in the Implementation of The Education Act**

It is commendable that Government adopted a new Education Act in 2013 and that some of its provisions have been implemented. These include provisions on the Readmission Policy and on a 50/50 girl-boy ratio in the selection of students to secondary schools.

However, there is limited progress in the implementation of the Act. It has been noted, for instance, that the new Act provides for decentralization of the administration of education matters in the country. One such matter relates to the disciplinary control of teachers. Currently, disciplinary control of teachers (and such other public officers) is centralized. This means, for instance, that when there is a disciplinary matter against a teacher, such as an allegation of impregnating a student, the concerned District Education Manager can only interdict the concerned teacher. The matter is referred to the Teaching Service Commission, headquartered in Lilongwe. The problem is that the Commission may not be staffed at a given time, or it may be facing resource constraints. This leads to delays in making a decision on a matter. These delays have resulted in some teachers successfully challenging their interdictions in court. As a result, errant teachers are not disciplined as speedily and successfully as would deter others. This default lack of punishment of errant teachers leaves girls vulnerable to sexual exploitation by their teachers. An education officer lamented that if the envisaged decentralization in the administration of education under the new Act was fully implemented, there will be speed in the disciplining of teachers, which will go a long way in protecting students from sexual exploitation by their teachers. It is therefore evident that lack of full implementation of the Act is compounding the vulnerability of girls in education in the country.

Besides, it has been noted that orientation of officers in the Ministry of Education on the Act has been done at the national level only. There has scarcely been any orientation of the stakeholders at the local level. The result is that there is limited awareness at the local level of the provisions of the Act and what they mean for girl education in the country.

### **10.1.3 Challenges in the Implementation of the Readmission Policy**

It is also commendable that Malawi has adopted and is implementing a Readmission Policy for girls who dropped out of school on account of pregnancy. However, it seems there are no statistics on the number of girls readmitted nationally under this policy. In these circumstances, it is hard to measure the success of the policy. Nonetheless, the policy seems to have registered some success. In Rumphu, a district in the Northern Region, an example is given of a girl who was readmitted at a primary school and has been selected to a secondary school with likelihood that she will pursue further studies.

Despite this, some girls who are eligible for readmission are facing challenges. In some cases, mission schools refuse to readmit girls who dropped out of school on account of pregnancy. Such girls may be left with no alternative schools and may ultimately be forced out of school. Additionally, there is scarcely any counselling for these girls to prepare them for integration in school. There are indications that the Government relies on 'Mother Groups' to provide such counselling to these girls. However, observations indicate that these Mother Groups lack the necessary skills and training to provide the necessary counselling. These girls may also need some remedial classes to enable them to catch up with others. Further to this, these girls

are often victims of abuse, teasing, and stigma from fellow students, which, in some cases, results in the concerned girls completely dropping out of school.

#### **10.1.4. Challenges in the Provision of Adult Literacy**

The State Report is silent on the question of adult literacy. However, from the interactive interviews with non-governmental organizations involved in the education sector in the country, it is evident that Government has largely neglected adult literacy. It is acknowledged that Government has, over the years, implemented various programmes on adult literacy. However, it has been noted that these programs are donor driven. Also, it is non-state actors, and not Government, which provide the necessary support to this form of education. It has also been observed that the form of adult literacy that Government is presently providing is very limited in scope. It only focuses on acquisition of basic reading, writing and numerical skills. However, educationists suggest that Government should start providing what is termed as ‘functional literacy’ whereby learners also acquire information, other than literacy, writing and numerical skills, that is usable in their efforts to improve their living standards.<sup>36</sup>

#### **10.1.5 Lack of Progress in the Adoption of the Violence against Girls in Schools Policy**

Violence against girls in schools remains a problem and it includes violence from fellow male students and from male teachers. On the latter, accounts from the grassroots communities consulted indicated that male teachers force girls to have sexual relations with them on condition that if they do not do so, they will be given a failing grade. In other cases, teachers have impregnated girls but all that happens is that the teacher is moved to another school. Such lenient punishments contribute further to this violence.

#### **Children with disabilities**

Children with disabilities are still facing ‘blatant educational exclusion, they are not only ‘substantially less likely to be in school’ but also even where they are in school they are less likely to complete their primary education and make a successful transition to secondary school due to several factors.

We applaud the government of Malawi for establishing an inclusive education department within the Ministry of Education, Science and Technology which has been implementing inclusive education in a few districts. We therefore request the state to enrol the inclusive education in all districts to impact more, disseminate widely the strategy for inclusive education, create enabling environments within the schools to embrace learners with disabilities and establish disability assessment clinics in all schools to identify hidden disabilities such as intellectual, visual etc. we also urge the government to increase the social cash transfer initiatives to PWDs to act as an incentives for the girls to be in schools instead of begging in the streets. We urge the government fasten the review of the education bill where compulsory education is being recommended and this will force all children regardless of background and gender to be in school.

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<sup>36</sup>Paul Kishindo, The Functional Literacy Program in Malawi: Educating Adults for Improved Standards of Living, *Journal of Social Development in Africa* (1994), 9,1, 19-26. Available on <http://archive.lib.msu.edu/DMC/African%20Journals/pdfs/social%20development/vol9no1/jsda009001006.pdf>, accessed on 5/08/2015.

The State Report states that Government is in the process of adopting the Violence against Girls in School Policy. The Report states that the Policy, as developed by the Human Rights Commission and others earlier in 2012, was forwarded to Government for action. However, interactive interviews with various education officers indicate that there has been little, if any, progress in the adoption of the Policy. Schools are left to deal with the problem on their own. Some schools do have by-laws to address this problem. Notably, some of these by-laws have lenient punishment of the perpetrators of violence. A senior education officer observed that cultural attitudes support these weak punishments in these by-laws. He stated that boys who succeed in being sexually violent to girls are celebrated in their respective societies. And, girls, due to lack of exposure and limited literacy among parents, are cultured not to report such incidents. This is especially the case in the rural areas. In these circumstances, the lack of an appropriate legal and policy framework compounds the entrenchment of sexual stereotypes that continue to undermine the right to bodily integrity and security of person of the girls in school.

#### **10.1.6. The Continued Inadequate Facilities for Girls in Schools**

Various education officers who were interviewed for this Report indicated that bad facilities, or lack of facilities, remains a huge barrier to learning for girls and is one of the major causes of drop out from school among girls. For instance, there is lack of sanitation facilities for girls. The lack of, or the dilapidated stated of, infrastructure and learning resources, and the insufficiency of teaching staff in schools, especially in poor and/or rural communities, continues to be a huge problem. The problem is particularly felt in secondary schools. Here, it is the lack of boarding facilities which is a major problem for girls. As a result, some resort to self-boarding which involves renting a house in communities near the school. However, interviews conducted with community members in Mchinji (a district in the central region of Malawi) indicated that girls in these self-boarding facilities are approached by men (both married and unmarried) for sexual purposes. These men promise to provide money for the girls' daily upkeep in return for sex, leading to girls dropping out of school due to pregnancy and early marriages.

Further, in Rumphi District there is one conventional government secondary school with boarding facilities for both girls and boys. This is Rumphi Secondary School, built several decades ago. There are many primary schools which compete to feed students (male and female) to this school. Since then, Government has not built any other secondary school with boarding facilities for girls in the district. There is also no information that Government will soon provide boarding facilities at any other secondary school in the district. The result is that, save for those girls whose parents can afford private education and save for the less than 30 female students in a year who enrol at Rumphi Secondary School, the rest of the girls end up in day secondary schools. The problem is that girls from distant primary schools have to cover long distances to these day secondary schools. These are the girls who are the most vulnerable to dropping-out from school due to pregnancies, early marriages, and the burden of walking long distances. The situation in Rumphi is typical of experiences elsewhere in the country. The State of the Nation Address by the State President in Parliament stated that during the 2014/15 financial year Government constructed, nationwide, 7 girls hostels using the Local Development Fund. The President further stated that in the 2015/16 financial year,

Government will commence construction of a secondary school at Thumbwe, and 12 girls' hostels nationwide. It is evident that the number of hostels so constructed is very low. Observably, there is scarcely any indication that the construction of these hostels are, geographically, concentrated in one area or they are spread throughout the country.

## **10.2 Recommendations to the State Party**

The State should:

- a. Progressively construct Early Childhood Centres across the country. Provide training and incentives to caregivers. Also, it should place ECDs under the Ministry of Education for meaningful education of the children.
- b. Develop a timeline, with corresponding outputs, on the implementation of the new Education Act. This should include adopting and implementing a public advocacy awareness campaign on the Act.
- c. Include, in the implementation of the Readmission Policy, a plan of involving Mother Groups, teachers and the community to encourage girls who dropped out of school on account of pregnancy to go back to school.
- d. Meaningfully support adult literacy education, by also progressively implement functional literacy programmes.

## **11. Article 11 - Employment**

### **11.1 Observations**

#### **11.1.1 Discrimination in the Workplace and Wage Gap**

We commend the State Party for the active steps taken through the enactment of laws protecting women's right to fair labour practices and employment. However, despite having such *de jure* equality, legislation has not yet translated in *de facto* equality for women in employment. According to some officials from Malawi Congress of Trade Union and the Ministry of Labour, no law in Malawi discriminates against women in employment but in practice women face discrimination. To an extent, some employers do not employ women. This is usually done in the private sector especially in the manufacturing industry<sup>37</sup>. On paper, there is no wage gap between women and men. The law is clear on the principle of equal pay for work of equal value. The minimum wage is also a general one with no gender differences<sup>38</sup>. It is worth commending the State for the enactment of several labour related laws to safeguard its employees. However, the majority of women who are employed have low paying jobs compared to their male counterparts.

The vast majority of women in Malawi are employed in the informal sector, with almost over half of the population earning their living through farming and small-scale businesses. Overall, 89% of working persons are in informal employment setups. Women are more likely

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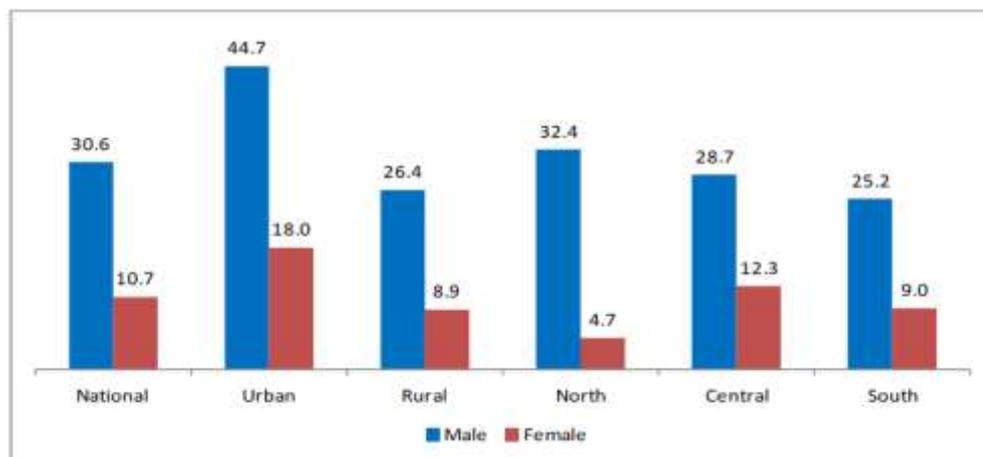
<sup>37</sup> Key informant interviews with Malawi Congress of Trade Union.

<sup>38</sup> Key informant interview with Ministry of Labour

to be employed in informal employment than men. There are a number of challenges for women involved in the informal sector since such employment does not provide safety nets such as sick leave, maternity leave, pension or other benefits.

There are marked differences in involvement in informal employment between rural and urban areas. In rural areas, the percentage of employed persons in informal employment is 91% compared to 69% in urban areas<sup>39</sup>. Men and women in urban areas are less likely to be engaged in informal employment than their counterparts in the rural areas. In Malawi, as is the case in most developing countries, agriculture is the main employer. Employment in agriculture overshadows trends in non-agriculture employment which is very crucial to job creation policies. The table below shows the percentage of men and women in wage employment in the non-agricultural sector<sup>40</sup>.

**Figure 1: Percentage of men and women in wage employment in the non-agricultural sector**



Source: Malawi Labor Force Survey 2013

There is a higher proportion of men in wage employment in non-agriculture, averages 3 times the proportion of women in the same. Across regions, the gap is more pronounced. The Northern region has 8 times the proportion of men in wage employment in non-agriculture compared to women and the gap is twice and thrice in central and southern region, respectively<sup>41</sup>.

The share of women in wage employment in non-agriculture sector provides information on the extent of gender equality and women empowerment in the labour market. When the share of women in wage employment in non-agricultural sector is low, it indicates women are less favourably represented than men in wage employment in non-agriculture sector. The figure below presents the percentage share of women in wage employment in non-agriculture at national, regional level and for rural and urban areas<sup>42</sup>.

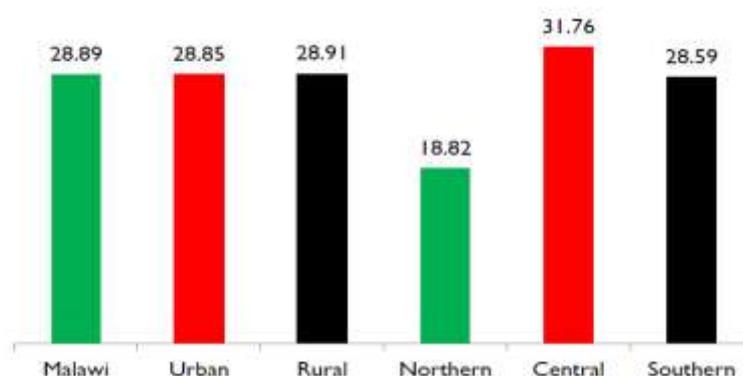
<sup>39</sup>Government of Malawi, Malawi Labour Force Survey, 2013.

<sup>40</sup>Ibid

<sup>41</sup>Government of Malawi, Malawi Labour Force Survey, 2013

<sup>42</sup>Ibid

**Figure 2: Percentage share of women in wage employment in non-agricultural employment at national, regional level for rural and urban areas**



Source: Malawi Labour Force Survey, 2013

The results show that the share of women in wage employment in non-agriculture, at national level, is 29%. The Northern region has the worst share of women in non-agricultural wage employment with, only 19% of non-agriculture employees in paid wage employment. The Central region has the highest share of paid employment in non-agriculture at 32% compared to 29% in the Southern region. The share of paid employment in non-agriculture averages about 29% at national level<sup>43</sup>.

### 11.1.2 Maternity Leave

Women continue to face challenges when they get pregnant while employed. In some cases, they may lose their jobs but their dismissals are done in such a manner that employers do not expressly state that the dismissal is on account of pregnancy. The State and non-state actors are generally in compliance with the Employment Act which guarantees maternity leave for female employees for at least eight weeks every three years on full pay. The Act also guarantees that when an employee is on maternity leave, her normal benefits, entitlements and period of employment shall continue uninterrupted. It should also be noted that the Malawi Public Service Regulations gives 90 days of maternity leave to all female employees while the Employment Act provides 8 weeks of leave within every 3 years. Thus, there is a difference in the number of weeks or days for maternity leave between the Employment Act and Malawi Public Service Regulations<sup>44</sup>. This should provide room for bargaining. Nonetheless, the State Party is encouraged to become a party to the ILO Convention C183 on Maternity to ensure the full protection of women.

### 11.1.3 Youth Unemployment

Youth unemployment remains a challenge in Malawi with females representing a higher percentage of the unemployed population. Data collected from the Malawi Labour Force Survey (2013) shows that 30.6% of females and 23.8% of males between the ages of 15-34 years are unemployed as well as 28.2% females and 16.9% males between the ages of 15 to 34 years<sup>45</sup>. Results of the Welfare Monitoring Survey (2011) show that the labour force

<sup>43</sup> Ibid

<sup>44</sup> Observation at Stakeholder workshop in Blantyre.

<sup>45</sup> Government of Malawi, Malawi Labour Force Survey 2013

participation rate in Malawi for youths aged 15-24 was 78% and there were more females than males participating in the labour force, 79% and 77%, respectively. The rate was higher in the rural areas than in the urban, 81% and 50%, respectively. The national youth employment rate was about 84%, with males slightly edging females, 87% and 83%, respectively<sup>46</sup>. The unemployment rate was around 16%, with females slightly edging males, 13% and 17%, respectively<sup>47</sup>. Rural areas had a higher employment rate than urban areas, 89% against 50%, respectively<sup>48</sup>. The higher numbers of female youth who are unemployed is one of the indicators of the disparities between males and females in education. With more males who complete school, they stand a better chance of getting employed than females<sup>49</sup>.

#### **11.1.4 Unpaid Care Work**

Care work is part of the informal labour which remains undervalued, neglected and poorly regulated in Malawi.<sup>50</sup> In a country with increasing levels of HIV/AIDS and growing demands for family and community based care for the sick, the importance of unpaid care work cannot be overemphasized. In most communities in Malawi, this is commonly performed by volunteer care givers, mainly women. It is however noted that such work is unremunerated.

The Malawi Constitution provides for the right to safe and fair labour practices for all persons. However, unlike the case with paid workers, there is no legislation that has translated this right into specific practical legal obligations in favour of unpaid care givers. There is need for specific legislation that provides for minimum standards of health and safety including provision of work materials and psycho-social support, working hours and protection from exploitation and abuse. It is high time that volunteer care work was recognized as a form of labour, albeit unpaid, that requires equal protection as other forms of labour, properly regulated in similar terms to formal paid labour.<sup>51</sup>

#### **11.1.5 Paternity Leave**

Paternity leave has not yet been institutionalised under the Employment Act. The Ministry of Labour is still in the process of discussing the amendment with relevant stakeholders. Information gathered from stakeholder workshops shows that there is lack of awareness on the importance of paternity leave, resulting in limited support for its introduction among rural men and women. On its part, the Malawi Congress of Trade Union has plans underway for labour law reform, which includes union proposals to have paternity leave included in the law. It has also been noted that some employers and unions are already considering having the provision on paternity in their conditions of employment. However, women who were consulted on the Report expressed views that paternity leave is not necessary as men will tend to abuse the opportunity for leave to partake in other activities other than taking care of their children. There is, therefore, a need for increased debate, consultations and to raise awareness

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<sup>46</sup> Government of Malawi, Welfare Monitoring Survey 2011

<sup>47</sup> Ibid

<sup>48</sup> Ibid

<sup>49</sup> Ibid

<sup>50</sup> Kanyongolo N, Informal labour and the ethic of care: Legal protection of care-givers in Malawi.

<sup>51</sup> Ibid

on the issue<sup>52</sup>. The State Party can also take further guidance on the standards and issue through ratification of the ILO Convention No. 156 on Workers with Family Responsibilities to inform the discussion.

#### **11.1.6 Gender Policy on Sexual Harassment in the Workplace**

There is a need to raise awareness and encourage women to report sexual harassment at the workplace. Sexual harassment is under-reported due to the fear of losing the employment and no mechanisms are in place to report sexual harassment in the work place. This is further exacerbated by a lack of gender and sexual harassment policies in the workplace by many employers. Observably, less than 5% of organisations in Malawi have a gender policy<sup>53</sup>. It is however commendable that the Gender Equality Act provides an opportunity for victims of sexual harassment to report anywhere and not just within the institution. This will nevertheless necessitate full protection of these victims such as job security after reporting.

#### **11.1.7 Domestic Workers**

Inspection of domestic workers in a private home requires special permission, which is very difficult to acquire. As such, many abuses are taking places in the shadows, without being noticed. Nonetheless, there is inadequate enforcement of labour laws and an insufficient number of labour inspectors to visit residents or estates where young girls are employed as domestic workers. Some of these girls are also employed in tobacco estates thus encouraging child labour. Also, there is little compliance to the statutory minimum wage among domestic employers. Indications are that many women in this sector are not aware of their rights.<sup>54</sup> Most of those interviewed showed that they are not paid overtime allowance if they work long hours. Some are not allowed leave days, or weekly days off, and may not be paid severance allowance at the end of the contract period. It is apparent that most of these workers are not aware of their rights. Even those who are aware are not sufficiently empowered to enforce their rights.

#### **11.1.8 Industrial Relations Court**

It is worth noting the commendable work done by the Industrial Relations Court in Malawi in enforcement of labour related laws to both employers and employees. However, the court lacks financial muscle for it to ably execute its operations.<sup>55</sup> In addition to this lack of financial resources, the court is also faced with a lack of human resources specifically considering the tripartite nature of the tribunal.

#### **11.1.9 Women in Mining**

One of the emerging issues in Malawi is the involvement of women in the mining sector. Some of the women participate as employees working for multinational or national mining companies. Other women are involved in the informal, small scale nomadic mining. Still, others are involved in the sale of minerals from small scale mining. It is notable that the country does not have laws or policies in place regulating the informal minerals markets thereby resulting in exploitation of women. The result is that women do not benefit as much as men from such mining.

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<sup>52</sup> Stakeholder consultations

<sup>53</sup> Key informant interview with NGO official

<sup>54</sup> Key Informant interview

<sup>55</sup> *ibid*

### **Women with disabilities**

It is also noted that women with disabilities often lack access to formal education and training to develop skills necessary to compete in the labor market, particularly in the increasingly vital field of information technology.

We urge the state to utilise and provide adequate resources for its Social Rehabilitation and Recreation Centres under MoGCDSW in Malawi where women can train on various skills and promote their skills at local and international labour market. All government and state departments must be comprised 2% of women with disabilities. The state should invest in inclusive economic development and Publicize road maps out of poverty engaging women at all levels.

## **11.2 Recommendations to the State Party**

The State Party should;

- a. Safeguard and protect rights of women in the informal sector such as domestic workers and put in place monitoring mechanisms on matters such as minimum wage and employee rights and benefits.
- b. Conduct more consultations, debate and engagement between State and non-state actors in advocating for paternity leave.
- c. Engage in enforcement and formulation of gender policy and sexual harassment policy at organisational level with guidelines for redress since women are in all these sectors.
- d. Ensure that women's employment and benefits after mergers or acquisition of public institutions by the private sector are guaranteed. This should be done through the Public Private Partnership Commission, which deals with mergers and acquisitions of public entities.

## **12. Article 12 – Equality in Access to Health Care**

### **12.1 Observations**

#### **12.1.1 Inadequate Availability, Accessibility and Acceptable Health Care Services**

Whilst the State is commended for successfully passing laws such as the Gender Equality Act of 2013 that protect sexual and reproductive health rights and has various health-related policies and programmes, the implementation of the same has been elusive. As such, Government needs to take progressive steps to ensure that the health services are available, accessible and acceptable for women and men.

The 2015/16 National Budget has made no improvements in the allocation towards health. Only 8.7% of the budget has gone towards health, with health activists lamenting on the inadequacy of such an allocation. This is also because according to one health expert, the allocation is geared towards overhead costs such as wages and salaries and not service delivery. The situation will impact negatively on the delivery of health services in the country.

Most critically, there is a highly insufficient geographic coverage of health facilities in Malawi. Women from rural areas continue to walk long distances. For example, women from Kondanzimu Villagewalk about 40 kilometres to access Mapale Health Centre in Mzuzu City, in

the Northern Region of Malawi. Elsewhere, women from a village in Chileka, in Blantyre, a district in the Southern Region, walk for 4 hours to get to the Health Centre at Chileka Airport in Blantyre. Although hospital attendance is free in health centres, there are indirect costs that have to be paid. Women (and men) are not allowed to access health services at the district hospitals without a referral from a health centre. However, the health centres are not accessible. A charge of MK1 500 as registration fees is required to be paid where a visit is made to the district hospital without a referral and most women are not able to afford it.

It is noted that there are inadequate medicines in most health facilities. Women are told that there are no medicines and they have to purchase them from the local pharmacies. As a result some health personnel keep cooler boxes with medicine and they collect money from patients who can afford to pay and sale the same. It is not clear whether the medicines are taken from the hospital coffers or purchased privately.

There is a serious lack of skilled health personnel in health centres. As a result, women face a lot of challenges in accessing quality care. This is particularly challenging for pregnant women. Most women reported cases of verbal and physical abuse from nurses when accessing care whilst pregnant and this discourages women from seeking help at the health facilities and preference is given to Traditional Birth Attendance because of the care and respect they receive. Further, hospitals are overcrowded. As a result, patients frequently share beds, sleep on the floor and in the corridors. There are also delays as most of the health personnel arrive very late at the health centres. There is also an insufficient continuity of programmes, as programmes change with the changing of government e.g. programme on shelters for pregnant women. There is, therefore, a need for national plans that do not change from government to government.

It is evident that the state has not taken adequate measures to ensure that women have timely and affordable access to health services as per General Recommendation No. 24 on Access to Health Care<sup>56</sup>.

### **12.1.2 The Ban on Traditional Birth Attendants (TBA)**

The recently enacted ban on TBAs has been widely implemented with punitive sanctions given to both the attendants and the woman who has given birth at a TBA. The ban has been welcomed in areas where women have easy access to health facilities and where Health Surveillance Assistants are available. However, women in the most rural areas face challenges in accessing health centres or hospitals as they are not available. In some communities, women have to walk for hours and cover long distances to reach the health centres. The ban on TBA has adversely affected women from these communities as they do not have alternative care. It is also noted that maternity shelters are not available in some health centres and some women give birth on the way to the hospital. Where maternity shelters are available, pregnant women and their guardians find challenges to be away from home and camp at the shelters as they also have the family to care of. It is further noted that the ban has not been followed by any alternative facilities for the women as

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<sup>56</sup> UN Committee on the Elimination of Discrimination Against Women (CEDAW), *CEDAW General Recommendation No. 24: Article 12 of the Convention (Women and Health)*, 1999, A/54/38/Rev.1, chap.I, available at: <http://www.refworld.org/docid/453882a73.html> [accessed on 20 August 2015]

the Government did not provide for health centres in these communities leaving women helpless. It has hence been recommended that TBA be reintroduced in these communities and they should be trained and certificates provided so that they are enabled to provide adequate advice and care.

### **12.1.3 Commendation on Family Planning Efforts**

The State should be commended for the efforts it has taken to ensure that there is availability of contraceptives in the rural and urban areas at no cost. Despite these considerable efforts, it must be noted that there still is a 26% unmet need for contraceptives in Malawi.<sup>57</sup> There is also limited awareness on the availability of emergency contraceptives. The discussion with grassroots women revealed that some women do not use contraceptives for it is believed that they interfere with fertility, reduce sexual appetite and cause other reproductive health complications.

### **12.1.4 Expanding the Grounds for Abortion**

Unsafe abortions are on the increase in Malawi and the work of the Special Law Commission on the Termination of pregnancy and the Malawi Law Commission currently reviewing the grounds of abortion is an important step in the right direction. Unsafe abortions have been a contributing factor to the high maternal mortality rate in Malawi. There is a need to expand grounds of legal abortion as suggested by the Maputo Protocol and the CEDAW Committee. Consultations with women in both urban and rural areas, however, revealed that there is need to engage in more public debate on abortion and raise awareness about the negative impacts of unsafe abortion. There is still a divergence of views on whether abortion should be legalised on grounds such as incest or rape. Most grassroots women consulted for this Report agreed to permitting abortion only on medical grounds but took a strong stand against expanding the grounds for abortion. There are fears that if abortion is legalised on wider grounds, young girls will be encouraged to be promiscuous.

### **12.1.5 Further Efforts in Reducing HIV Transmission**

The State Report states that door-to-door testing has been implemented in Malawi. However, the reach is very limited. It is commendable that the HIV/AIDS strategy is being revised and an inclusive process to develop the strategy was adopted. Regarding mandatory HIV testing of commercial sex workers, progress is being made. In a recent High Court decision, as stated in *Bridget Kaseka and 6 others v Republic*,<sup>58</sup> the court awarded compensation to commercial sex workers who had undergone mandatory HIV testing. The court's decision is a good precedent that clearly states that mandatory testing for any person, including commercial sex workers, is illegal. With regard to mandatory testing for pregnant women, most women supported the mandatory testing to protect the child. However, it was recommended that the health personnel do provide counselling and adequately explain the process to pregnant woman.

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<sup>57</sup>Malawi: Reproductive Transitions – Unmet Need for Family Planning. Available at <http://www.prb.org/pdf14/malawi-unmet-need-contraception.pdf>, accessed on 7/08/2015.

<sup>58</sup> Criminal Appeal Case No. 2 of 1999

### **12.1.6 Plans to Introduce the Mandatory Health Insurance in Malawi**

The Ministry of Health (MoH) plans to introduce a mandatory health insurance programme as part of the public sector reform programme. The aim is to ensure universal coverage of health services in Malawi. In the 2015 Report titled Health Insurance Document Review, it has been stated that the current government spending of \$7.6 per capita per annum is inadequate to deliver Malawi Essential Health Package (EHP), which is costed at \$ 44.4 per capita per annum.<sup>59</sup> It has also been noted that donor funding to the MoH accounts for 65. 4% of total health care funding and the State spending 20.5 %.<sup>60</sup> The study finally recommends that multiple sources of funding including innovating financing which requires that communities contribute to the National Health Insurance be made. In particular, the Government needs to implement the suggested mandatory health insurance program in a manner that does not exclude the poor.

### **12.2 Recommendations to the State Party**

The State Party should:

- a. Take positive steps to ensure that health facilities and services are available in both urban and rural communities.
- b. Increase resource allocation to the Ministry of Health.
- c. Re-instate TBAs to be under the Primary Health Care concept within decentralised arrangements to ensure accessibility in remote rural areas (or provide an alternative). It is imperative, however, that TBAs are properly trained, certified and provided with adequate equipment
- d. Raise awareness and encourage debate on expanding the grounds for abortion and highlight the harmful effects of unsafe abortion.

## **13. Article 13 – Social and Economic Benefits**

### **13.1 Observations**

#### **13.1.1 Protection under the Law**

The passing of the Deceased Estates (Wills, Inheritance and Protection) Act in 2011 and the Marriage, Family Relations and Divorce Act 2015 has so far protected those who are aware of this law and has aided traditional leaders who are aware of this law to better dispense justice. But access to benefits for women is limited within these spheres.

In terms of access to loans and credit, women have equal access to loans in theory, however, the frequency of them actually accessing loans is much lower than that of men, due to low entrepreneurial skills, lack of financial literacy, lack of collateral, and cultural practices.<sup>61</sup> According to one financial institution consulted, the type of credit facilities that are available to women are salary backed loans, Local Purchase Order Financing, Inventory Finance, Asset

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<sup>59</sup> Ministry of Health, Health Insurance Document Review, 15 July 2015

<sup>60</sup> Ibid

<sup>61</sup> KII with a financial institution, Blantyre.

Finance, Bid Bonds and Guarantees. 30% of all their loan applicants are women with 100% of all female applicants who qualify being given loans. The rejection rate is minimal, because women take more time generally to assess loans, as they are more risk averse. Usually women take loans for households, asset finance and they are usually 100% supported by collateral.

Although men have more guarantors than women, women tend to use collateral more than men as they are more risk averse. Men are more likely to default on payments, usually due to over trading (when a business goes beyond its core business and takes on more business than it is supposed to).

According to another leading financial institution, business women in Malawi are faced with a number of challenges that directly impact on the development of their businesses. For instance, most of the women are self-employed compared to those who are employed in the formal sector. Women's representation in the banking sector remains low. Moreover, only 17% of Malawian women are currently banked and just a few women who own businesses have access to bank credit. Most women entrepreneurs lack business management skills and proper collateral to advance their businesses.

In comparison, a third lending institution indicated that approximately 70% of their applicants are male, 10% being female and 20 % being corporate institutions. Thus both women and men have access to loans, advances, overdrafts, and invoice discounting without discrimination. The ratio of successful female applicants to male is 50:50: there is no gender discrimination; applicants are successful based on qualifications. Guarantors are more likely to be male as they are more likely to have property as collateral. This third institution also indicated that factors that inhibit women from accessing loans include their lack of financial capacity to service the loans as most women are not economically independent. Moreover, not all women have the necessary financial literacy to run a business let alone acquiring adequate support from their spouses or partners to run the businesses.

The picture that emerges is that women, compared to men, have limited access to loans and credit facilities.

### **13.1.2 Repayment of Loans**

#### **i. Village Banks**

Repayment of loans has been easy with village banks partly because of the small size of the loans and flexibility in repayment of loans and partly because of the communal nature of the banks. Although the village banks grab collateral from defaulters, incidences are low as there is more leeway in adding time for the loan to be repaid.<sup>4</sup> Women interviewed gave examples of land and other property being taken from them after default. Such property being is sold for the value of the loan and not its own value.

#### **ii. Formal Lending Institutions**

Formal lenders in Malawi including rural banks, savings and credit cooperatives, and special credit programmes supported by the Government and NGOs prefer to give loans to

households with diversified asset portfolios and with diversified incomes, thus putting women at an increased disadvantage when compared to men. According to the Beijing Platform for Action Malawi Country Report, most micro finance institutions have been known to charge exorbitant interest rates (i.e. above 40%). A 2014 survey that was conducted during the production of Malawi's Human Development Report on Inclusive Growth revealed that this discourages many women from borrowing, making them to opt for village loans and savings instead. This therefore ensures that most women do not graduate from small scale businesses. Further to this, according to all formal institutions consulted, men are also more likely to default on repayments. .

Although rural women have access to loans through village savings banks, their access to larger financial institutions is limited. Most loans taken by rural women are for purchasing fertiliser, farming utensils, clothes and food. Women in urban areas, with higher levels of income, access loans for the purpose of purchasing vehicles or property or as capital for a start-up business. Long distances and restrictive conditions, including weekly repayment, of the loans from the larger financial institutions discourage most potential applicants. Repaying at the end of the agricultural season is deemed to suit all applicants in rural areas as it is the one time they have an increase in earnings.

### **13.1.3 Women's Economic Contribution**

In rural areas, most women are involved in commercial farming together with their husbands. The hindrance they face from achieving financial independence is men's control over all earnings. Family finances are spent by men on detrimental social activities that include alcohol abuse and the hiring of prostitutes even after some of the finances obtained from a loan have been given to the husband by the woman. (In most cases, women decide for what purposes the loan should be used for, because it is hers, although at times, advice is given to her by the husbands on how to handle it. However, men tend to have control over the profits made.)

Further challenges faced include late disbursement of loans, refusal by some banks to give women loans on the basis of illiteracy, a lack of collateral and placing a minimum of how much one can borrow. In rural areas, women with young children (under the age of 5) are at times denied access to loans on the basis that children take up their time and thus, engaging in business would not be conducive for them. Cultural practice that deems the man as the head of the household and not the woman also hinders women's interest in accessing loans.<sup>6</sup> in patrilineal societies; land ownership by women is not common practice<sup>7</sup>. This fact however has not hindered them from applying for loans but has been a factor in the rejection of their applications. Where loans have been refused on unclear grounds, the village chief is the first point of contact in addressing their complaint.

## **13.2 Recommendations to the State Party**

The State Party should:

- a. Increase financial literacy for women to enable them manage their financial resources and businesses.
- b. Introduce entrepreneurship lessons in schools and Farmer Business Schools;

- c. Devise mechanisms to make financial institutions to lower interest rates especially for those in the lower income bracket
- d. Implement the Personal Property Securities Act Developed Credit programmes specifically for rural women in which they may repay at the end of an agricultural season.

## 14. Article 14 – Rural Women

### 14.1 Observations

Malawi continues to be largely rural with nearly 85% of the total population living in rural areas and rural women continue to be over represented among the majority of the poorest, illiterate, and voiceless.

#### 14.1.1 Economic Contribution of Rural Women

The review of literature and interactive interviews reveal that rural women continue to play an important role in the economic survival of their families and communities. We further note that rural women continue to play triple roles in society i.e. reproductive, productive and community managing roles. Rural women represent over 80% of participants in all non-remunerated community activities, such as brick moulding, caring for children in pre-schools, and working at funerals, weddings and other ceremonies.<sup>62</sup> The triple roles of women limits their participation in remunerated work since they have to simultaneously play their roles and balance competing claims on each of them. Nonetheless, rural women engage in small-scale businesses and subsistence farming to support their families although important national statistics continue to miss out the economic contributions of these women.<sup>63</sup> Of late, rural women are taking part in community-based economic development interventions known as Village Savings and Loans accessed through Village Banks. In the rural settings, customary land is lost in the event of default for payment of VSLs; regardless of its value.

#### 14.1.2 Harmful Cultural Practices

We commend the State for enacting the Gender Equality Act, which prohibits harmful practices.<sup>64</sup> However, the fact remains the law is yet to be disseminated to the rural areas. Also, widows in Malawi frequently live in extreme poverty and suffer from social stigmatisation and economic deprivation purely because they have lost their husbands. In some areas, widows are subjected to grieving and funeral rites such as forced ‘purification’ through sexual violence, being ‘inherited’ by male relatives of their deceased husbands, head shaving, loss of freedoms and social status, and property dispossession. Thus the incident of widowhood is often the catalyst for extreme poverty. Despite the fact that the Deceased Estate (Wills, Inheritance and Protection) Act forbids property grabbing, a practice by which relatives of a widow’s deceased husband chase widows out of their houses and seize their land, their possessions, and sometimes even their children, this practice is still out there.

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<sup>62</sup> SADC Gender Barometer (2014) *Productive Resources and Employment, Economic Empowerment* p. 142 available at: [file:///C:/Users/User/Downloads/19381\\_chap4\\_baro\\_2014\\_econfin%20\(1\).pdf](file:///C:/Users/User/Downloads/19381_chap4_baro_2014_econfin%20(1).pdf) last accessed 26-08-2015

<sup>63</sup> Ibid

<sup>64</sup> See Section 5 of the Gender Equality Act.

### **14.1.3 Land and Agrarian Reforms**

While progress has been made with regard to land reforms under the proposed Customary Land Bill, which is meant to protect customary land rights of women and to promote their participation in decision-making with regard to customary land allocation and control over production resources, this Bill is yet to be tabled in Parliament. However Section 19 (3) (a) of the draft bill, which provides that customary estates shall be governed by customary law in respect of any dealings, remains a threat to the protection of women's land rights. The Bill does not provide a definition of what customary law is. However, the Land Policy does provide a definition of customary law as comprising 'the rules grounded in prevailing customs which are applicable to particular communities'.<sup>65</sup>

It is notable that prevailing customs in the patrilineal districts of Malawi require allocation and inheritance of land along the male line. Continued application of such custom means that women will still be left out of inheriting land. Thus, the proposed Bill fails to recognise that women are not a homogenous group and will be affected differently by the law once enacted. Further, the application of customary law by Land Committees and other tribunals risk entrenching gendered stereotypes supported by customs, which disadvantage women. However, reform of the land laws will have a positive significance towards the protection of women's rights and hence the process must be expedited.

### **14.1.4 Social Security Programs**

The State Party reports that since 2006, Government has been operating a Social Cash Transfer Scheme as a means of offering social protection to the ultra-poor. It is important to note that by 2015 the implementation of the social cash transfer has not trickled down to all the 28 districts in the country. Moreover the identification process of beneficiaries, does not single out rural women as primary beneficiaries. It is also observable that the amount of money given (about MK 3,600 approx. USD8) per month/household is too little to improve livelihoods of rural women. Corruption has also plagued the Social Cash Transfer Programme with media reports indicating instances of political or public leaders (and their relations) appearing on the list of beneficiaries.

Another social security programme is the Farm Input Subsidy Programme (FISP). Similarly in this programme, identification process does not prioritise rural women as a special category. By and large, rural women struggle to be listed in different safety nets that are operated by the government or non-state actors. However, some of the safety nets that are meant for the development of the communities, such as the public works programmes and the LDF initiatives, have the potential of exposing rural women to the much needed economic gains to ensure the survival of their households.

## **14.2 Education and Training**

As already noted under Article 10, the Government runs an adult literacy programme. However, this programme is not available in all districts. Often times, the centres close way before students have a chance to sit for their exams. This is usually because of lack of materials and non-payment of stipends to the instructors. Apart from this, and some NGO-led

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<sup>65</sup> The Malawi Land Policy, 2002, p. 13

initiatives, illiterate rural women do not receive any training or education that can increase their technical proficiency.

#### **14.2.1 Living Conditions of Rural Women**

Living conditions of rural women in Malawi are appalling. 51 years into independence, Malawi has not had any well-defined rural housing programme. Almost 80% of rural women live in glass thatched mud houses that frequently leak during the rainy season. There is lack of, or very limited access to, water and sanitation. In some cases, rural women still draw drinking water from unprotected sources. Women walk long distances to access portable water.

#### **14.3 Recommendations to the State Party**

The State Party should:

- a. Develop specific programmes to ensure that rural women participate meaningfully in remunerative work to improve their livelihoods.
- b. Review Section 19 of the draft Customary Land Bill to exclude the application of customary law to land matters.
- c. Expedite the passing of the Customary Land Bill and relevant land reforms with provisions safeguarding women's land rights.
- d. Develop, and commit financial support to, specific programmes for rural women in all critical sectors.

### **15 Article 15 – Equality before the Law and in Civil Matters**

#### **15.1 Observations**

The State Party has made good progress by the enactment of the Gender Equality Act and other gender-related laws that provide for equality before the law for women and men. However, the implementation of these laws still remains a challenge as many people are not aware and lack knowledge on guidelines on how to implement the Act as aforementioned in Article 2.

##### **15.1.1 Legal Aid Bureau**

The Legal Aid Bureau was created by the Legal Aid Act No.28 of 2010. The Act was assented to by the President of the Republic of Malawi in 2011 and operationalised in 2013. The Director and Deputy Director were appointed early 2015 and the operations only began in March 2015. However, the official warrant establishing of the Bureau was only issued in September, 2015.

Under the Legal Aid Bureau, legal aid is, in principle, accessible to both men and women equally. Those that are able to make it to the Legal Aid Bureau offices and apply for legal aid are assisted on the merits of their application for legal aid irrespective of their gender. As a matter of fact, in terms of pure numbers women outnumber men in terms of applicants for legal aid. Almost all women applicants for legal aid are granted legal aid by the Bureau.

Women are assisted in various ways by way of Court proceedings or mediation. The majority of issues are to do with divorce, maintenance, distribution of matrimonial property, custody of children and deceased estates<sup>66</sup>.

According to an official from the Bureau, resource constraints are the main challenges being faced by the Bureau. In terms of human resource the Bureau has only 11 lawyers to service the entire country. This number of lawyers is too few for them to make a meaningful impact. Further the Bureau is constantly underfunded such that it is always short on the basics required in order to operate effectively. There are no sufficient vehicles; there is usually no fuel for the available vehicles, no stationery etc. Again, the Bureau does not have offices at the district level though this is something provided for in the Act. It is only represented at regional level which is the Northern region, Central region and Southern region. As such, the Bureau is not able to reach out to the poor in the rural areas of the country who are in need of legal aid.

#### **15.1.2 Freedom of Movement, Residence and Domicile**

The issue of importing alien women in Malawi (for purposes of prostitution) still remains something that the State needs to address. Under the Immigration Act, and under matrimonial related laws, many women are not aware of the implications in terms of residence and domicile if they get married to a foreigner.<sup>67</sup>

#### **15.1.3 Challenges in Accessing Justice by Women**

There are several laws that are protecting women particularly in civil matters such as the Constitution, the Gender Equality Act of 2012, the Deceased Estate (Wills, Inheritance, Protection) Act of 2011, the Prevention of Domestic Violence Act of 2006. However, there is lack of knowledge, awareness and training of the newly enacted laws by law enforcement officials such as magistrates and prosecutors, particularly those in rural areas. It takes some time for these officials to have access to laws enacted in Parliament. The MoGCDSW is also inadequately funded such that it is heavily dependent on donor funding which minimizes its control over issues to be addressed<sup>68</sup> Some officials consulted from the Judiciary commented that the issue of receiving bribes and/or corruption, however, is a major impediment to access to fair justice by both the informal and formal courts.<sup>69</sup> Chiefs, judiciary staff as well as police officers frequently request bribes from people in order to assist them timely.<sup>70</sup>

It is noted that women who are deaf and dumb are not well represented due to barrier in communication and even sometimes the judicial failing to interpret the rights provisions of persons with disabilities due to lack of knowledge as issue of disability are not commonly mainstreamed. Other victim support units are not only inaccessible enough for PWDs on wheel chair or using crutches as the rooms are often very tiny and overcrowded but also negative attitudes as these women are trying to access such services. Case handling institutions such as the Malawi Police Services which has the bulk of responsibility of investigation, case building and prosecuting and the Judiciary require extra intensive efforts in

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<sup>66</sup> Key informant interview

<sup>67</sup> This is further discussed in Article 9 on Nationality

<sup>68</sup> Observations from a stakeholder consultation workshop.

<sup>69</sup> MBC Television Exclusive Interview with the Chief Justice, 1<sup>st</sup> August, 2015.

<sup>70</sup> Ibid

training to equip them with specialized appreciation of the science of handling such cases. Sign language and issues of disability should be embedded in the police training curriculum but also each police station and judicial must have a sign language interpreter, the judiciary must be aware of the other relevant policies when making their applications.

#### **15.1.4 Formal versus Informal Justice System**

Interactions with women, especially rural women, indicate that they access justice, particularly in civil matters, through primary or informal justice structures on an equal basis with men. The indication from the ground is that such tribunals have proven to be vital in other areas such as taking girls out of early marriages and preventing gender based violence (in cases reported to these forums).<sup>71</sup>

However, the quality of justice under these systems is debatable. Most of these tribunals are operated by people who are not gender sensitive and are not inclusive in relation to participation of women. In addition, there is also a limit in the knowledge of the laws specifically human rights by these tribunals.

Consultations with officials from the Judiciary and other stakeholders indicated that the Judiciary has courts in all districts in Malawi. However, there are a number of problems associated with the operation of these courts and access to justice for women. The first problem is the lack of personnel to operate the courts. With this, court structures and other infrastructure are available but there are no officers to preside over matters due to shortage of judicial personnel. In other cases, as the second problem, there are personnel available but no infrastructure within which to operate. We commend the State Party for taking steps to renovate some of the courts though the same has stalled due to lack of funding. The other problem faced by women accessing justice in these courts is the technicality of proceedings in terms of the language which is exacerbated by the lack of legal representation highlighted above. Another issue for women before these courts is the issue of costs. Interactions with grassroots women indicated that in some cases they are asked to pay a certain fee to have summons or other court orders served on the other party.

The laws stipulate that there should be no exclusion of men and women in the access to justice in either the formal or informal system<sup>72</sup>. However, the de facto situation is that there is inequality perpetrated by distance and language barriers, lengthy court processes, and long distances to courts, which hinder women's access to justice.<sup>73</sup> Despite several challenges, traditional justice forums play a positive role in ensuring access to justice by women.

#### **15.1.5 Same Sex Relationships**

The State Party has not taken any positive steps to decriminalize same sex relations between consenting adults. Firstly, there is lack of engagement with the issue by the Malawi Human Rights Commission mainly as a result of lack of independence from the government since the

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<sup>71</sup> Observation from a focus group discussion

<sup>72</sup> Section 41 of the Constitution of Malawi

<sup>73</sup> Observation from focus group discussions and judiciary officials

Commission is heavily dependent on funding from the government. Due to this, the Commission has restrictions on its mandate to conduct public inquiries on same sex relations. However, Civil Society Organizations such as Centre for the Development of People (CEDEP) and Centre for Human Rights and Rehabilitation (CHRR) are still advocating and lobbying for the cause. Secondly, the definition of marriage under the MDFRA does not encompass every person in society according to their sexual orientation such as the Lesbians, Gays, Bisexuals and Transgender<sup>74</sup>.

## **15.2 Recommendations to the State Party**

The State Party should;

- a. Allocate adequate financial, material and human resources to the Legal Aid Bureau for expansion (decentralisation) and community outreach programs i.e. mobile legal clinics.
- b. Expedite the process of transition from Legal Aid Department to Legal Aid Bureau.
- c. Allocation of adequate human and financial resources and engendering of the Malawi Judiciary to effectively deliver justice to women.
- d. Engender informal justice forums which should include female traditional leaders and members who have to be trained in gender issues.

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

### **16.1 Observations**

#### **16.1.1 Enactment of the Marriage, Divorce and Family Relations Act**

We commend Malawi as a State Party for taking some appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations through the enactment of the Marriage, Divorce and Family Relations (MDFR) Act No. 3 of 2015. The Act came into force on the 31<sup>st</sup> of July 2015. The new law has ensured that Malawi has one law that applies to different types of marriages that exist in the country. Thus, the enactment of the Act has repealed several laws related to marriage, divorce and maintenance that were scattered across several Acts. The Act further makes provision for marriage, divorce and family relations between spouses and between unmarried couples. The Act also makes provision for the welfare and maintenance of spouses, unmarried couples and their children.

Another positive development is that the Act provides for the same rights and responsibilities during marriage and at its dissolution. In the sense that regardless of marriage formalities, parties to a marriage have among others, the following rights: Equal rights in their right to consortium (what a spouse is entitled to receive from the other, i.e. companionship, care, affection, aid, financial support and sexual relations e.tc); a married woman can choose to use her maiden name, surname of her husband, or both; upon divorce, a wife can choose to maintain the use of the surname of her husband, unless there is legal proof that she has used the name for an improper or fraudulent motive; regardless of what any existing law says, a spouse has the right to retain his or her citizenship during the course of a marriage; and a

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<sup>74</sup> Section 14 of the MDFRA

spouse has the responsibility towards the upbringing, nurturing and maintenance of children of a marriage, whether alone or together with the other spouse.

#### **16.1.2 Distribution of Matrimonial Property at Divorce**

On distribution of matrimonial property upon divorce, we commend the State Party for coming up with clear guidelines in the MDFR which provides that the court shall equitably divide and re-allocate property base on following factors: The income of each spouse; the assets of each spouse; the financial needs of each spouse; the obligations of each spouse; the standard of living of the family during the marriage; the age and health of each spouse; the direct and indirect contributions made by either spouse, including through the performance of domestic duties. It is our considered view that these are clear guidelines as far as distribution of matrimonial property is concerned.

#### **16.1.3 Registration of Marriages**

The MDFR has also put in place mechanisms to standardise the registration of marriages. For instance, the Act has established the public office of Registrar of Marriages, who shall be the same person holding the position of Registrar General or acting in his or her behalf. It also specifies that District Commissioners, Traditional Authorities who has been given the power to register a marriage, and clerics are designated as “registrars” with authority to perform functions of the Registrar of Marriages. A list of registrars of marriages may be published by the Ministry responsible for Social Welfare. With the exception of marriages by repute or permanent cohabitation, the Act provides that every marriage shall be registered by the Registrar of Marriages. The Registrar of Marriages shall ensure that all registrars have Marriage Register Books and Books of Marriage Certificates. All registrars shall submit monthly records of their entries in their Marriage Register Books to the Registrar of Marriages.

#### **16.1.4 The Minimum Age of Marriage**

There is inconsistency in the different provisions regulating who a child is in Malawi. The age of a child is dependent or specific to an area of law as illustrated below: Section 23(6) of the Constitution provides that a child is any person under the age of 16; and, similarly, Section 2 of the Child Care Protection and Justice Act defines a child to be a person under the age of 16. On the other hand, Section 42(2) (g) provides that accused persons under the age of 18 years should be treated consistently with the special needs of children This was buttressed in *Re Stanford Kashuga (Miscellaneous Civil Cause Number 129 Of 2012)*, wherein the Court on 4<sup>th</sup> February, 2015 made a declaration that, part of section 2 of the Child Care Justice and Protection Act which defines a child as a person under the age of 16 years affronts section 42 (2) (g) of the Constitution in so far as that definition applies to persons within the criminal justice process. This is a clear manifestation that there is a need to settle the issue of who is a child in Malawi for all practical purposes.

The inconsistency is also evident in the laws regulating the minimum age of marriage. Section 2 of the MDFR states that marriages involving persons under the age of 18, regardless of parental consent, are deemed invalid. This is in contradiction with the Constitution of Malawi, which states in section 22(7) that children between the ages of 15 and 18 can still enter into a valid marriage as long as they obtain consent from their parents or guardians. It is further noted that Section 138(1) of the Penal Code provides the defilement age as 16. As such, a

man who marries under Section 22(7) of the Act risks criminal prosecution for the offence of defilement. Thus, there is significant inconsistency in legal provisions regulating the minimum age for marriage.

## **16.2 Recommendations to the State Party**

The State Party should:

- a. Review the Constitution to repeal Section 22(7) and set the minimum age of marriage at 18.
- b. Harmonise all relevant laws regulating the age of a child in order to firmly set the limit at 18 years;
- c. Operationalise the Marriage, Divorce and Family Relations Act without further delay.
- d. Raise awareness in communities on the dangers of early marriages.

## Conclusion

The Government of Malawi is commended for the positive steps taken to achieve its obligations under the CEDAW and the Beijing Platform for Action amongst others. There are indications that the State is doing relatively well on the legal and policy framework aimed at ensuring equality between women and men. This is illustrated through the enactment of the Gender Equality Act No 13 of 2013; the Marriage, Divorce and Family Relations Act No 2 of 2015; and the Trafficking in Persons Act No 3 of 2015. However, there still remain significant challenges towards achieving equality in the various spheres of women's lives. Of significance is the lack of implementation of the different policies and laws to change women's lives as a matter of fact.

In addition, a number of issues have also been identified as areas of concern in the implementation of the CEDAW in Malawi. Amongst these are: the lack of the definition of discrimination in the Constitution and the GEA as required by the CEDAW. This is also related to the call on Malawi to fully domesticate the CEDAW with the aim of ensuring that women are able to invoke it in enforcing their rights before the various domestic tribunals. The State is further asked to develop programmes aimed at dissemination the gender related laws. It is further encouraged to expedite the process of adopting the National Gender Policy.

Implementation of the CEDAW and programmes aimed at achieving gender equality in Malawi are also affected by the lack of coordination between the MoGDCSW, other line ministries and other stakeholders and NGOs. It is thus observed that a multi-sectoral approach to achieving gender equality will ensure *de facto* equality for women. It is notable that the State has taken positive action through temporary special measures under the GEA with the introduction of the 40:60 gender neutral quotas, though its impact is yet to be determined.

Gendered stereotypes and roles are a contributing factor to the inequalities for women. Dismal performance during elections and lack of adequate numbers of women in public life are a manifestation of these stereotypes. Hence, the State is encouraged to develop comprehensive strategies aimed at modifying negative cultural practices.

The enactment of the Trafficking in Persons Act goes a long way in confirming the State's attempt to address the exploitation of women through trafficking. However, there is a need for the State to fully utilise and work together with neighbouring countries in combating trafficking in women. It is also important for the government to put in place good record keeping systems aimed at keeping an up to date database on victims of trafficking.

In education, significant strides have been made but the State is asked to progressively construct early childhood development centres across the country and provide resources for the operation of these centres. The State is also encouraged to put in place measures aimed at protecting girls from violence in schools through among others the adoption and implementation of the Violence against Girls in School Policy.

Related to women's employment rights, it has been noted that a vast majority of women in Malawi work in the informal sector. The State is asked to ensure protection of women in the informal sector but also the enforcement and formulation of gender policy and sexual harassment policies in the various organisations and institutions.

Availability, accessibility and acceptable health care services remain a major challenge for the achievement of the right to health for women. This is reflected through the lack of skilled health personnel as well as long distances to health care centres. The involvement of Traditional Birth Attendants in the delivery of maternity health services is also a critical issue for consideration. The State is asked to reinstate TBAs to be under the primary health care concept within decentralised arrangements to ensure accessibility in remote rural areas (or provide an alternative). It is however imperative that TBAs are properly trained certified and provided with adequate equipment.

On economic and social benefit issues, it was noted that women lack financial literacy and entrepreneurship skills. Further, the lack of regulation of Village Savings Banks results in application of rules detrimental to women. It was noted that repayment of loans where defaulters lose property at the value of the loan and not the property is a major hindrance to the achievement of women's rights.

Rural women continue to be over represented among the majority of the poorest, illiterate, and voiceless. The major challenge for land reform for rural women was identified as the application of customary law in regulating land issues under the Customary Land Bill. Customary law is seen to reinforce discriminatory practices for women. It is thus proposed that the State reviews Section 19 of the Customary Land Bill. And, women continue to be affected more than men by natural disasters. The State is asked to ensure that the Department of Disaster Management Affairs should mainstream gender in practice and ensure that there is gender disaggregated data.

Informal justice system structures are not gender sensitive whilst the formal justice structures are affected by lack of adequate financial and human resources. The State is therefore asked to recognise the positive role played by informal justice structures through engendering these structures. It is also important that there is adequate allocation of resources to the Legal Aid Bureau and the Judiciary amongst other institutions to ably assist women.

The State is commended for the enactment of the MDFRA. It is however noted that there are a number of inconsistencies in the laws regulating the age of a child and capacity to marry amongst others. The State is therefore, called upon to review Section 22(7) of the Constitution and set the minimum age of marriage at 18. In addition to this, there should also be harmonisation of the laws on the age of a child to be set at 18. The State is also asked to ensure speedy and progressive operationalisation of the MDFRA.

Indications on the ground largely reflect that Malawi has made a lot of gains in achieving *de facto* equality through the enactment of various gender related laws. However, a lot needs to be done to ensure equality as a matter of fact for women in addition to the legal and policy framework in place.

Violence against women still prevents challenges for women in Malawi. Lack of effective remedies and corrupt officials in the enforcement agencies is a hurdle to women's rights in the country.

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## Appendix 1: Additional Issues

### 1. Ratification of the Optional Protocol

Malawi signed the Optional Protocol to the Convention on the Elimination of all Forms of Discrimination against Women on 7<sup>th</sup> September, 2000. In doing so it recognised the competence of the Committee on the Elimination of Discrimination against Women to receive and consider complaints from individuals or groups within its jurisdiction. However, Malawi is yet to ratify the Protocol and hence not bound. This means that women and groups in Malawi cannot use the communications and inquiries procedure under the Optional Protocol. The State is urged to ratify the Optional Protocol as a sign of showing its commitment.

### 2. Impact of Natural Disasters

On 28<sup>th</sup> January, 2015 the President of the Republic of Malawi declared Malawi a disaster zone after floods hit 15 of the 28 districts. The floods left 230, 000 people displaced, 104 people dead and 645 people injured as of 11<sup>th</sup> February 2015.<sup>75</sup> Observably the data that was coming in as the floods ensued was not gender disaggregated. The Malawi Vulnerability Assessment Committee Report 2015 report unfortunately suffers from the same problem. Yet as a result of the gender division of labour women greatly depend on natural resources and the environment as such women and girls are disproportionately affected by floods and other natural disasters. Rural women during the whole period the country was hit by floods continued to be victims of gender-based violence but found it hard to access the needed legal remedies. Generally, the legal structures were unavailable and are generally corrupt. This gives the women no option but to remain in abusive relationships, the abuse which is compounded by the natural disasters.

So, the on-going disaster response must adequately address the specific needs of women and girls especially those who head households. A gender responsive approach is crucial to enhance the nation's recovery from this disaster. It is also important to note that the 2015 floods were unique in the sense that they affected a large number of districts including urban areas. Thus, the State had not been fully prepared for such in the urban areas. It is therefore important that the State's disaster planning and management takes into consideration the dichotomies existing between women and men as well as rural and urban areas.

Additionally, agricultural production continues to dwindle with the ever changing climate and recent floods have contributed to wide-spread food insecurity in the country. Rural women are the most affected as they do not have the means to purchase necessary food. When inadequate food is available at household, men and boys are generally given priority.<sup>76</sup> The State is asked to ensure that the Department of Disaster Management Affairs mainstreams gender in practice and to ensure data disaggregation to guarantee all citizens' needs are met during disasters.

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<sup>75</sup> UNICEF, Malawi Floods Situation Report no.9.

<sup>76</sup> FAO, (2011), Gender Inequalities in Rural Employment in Malawi: An Overview- available at: <http://www.fao.org/docrep/016/ap092e/ap092e00.pdf>

### 3. Violence against Women

Violence against Women (VAW) in Malawi is usually addressed from a broader perspective in the context of Gender Based Violence (GBV)<sup>77</sup>. The State Party has put in place a number of responses, programs, and laws in response to GBV. The PDVA, the CCPJA and the National Response to Combat Gender Based Violence are some of the responses. The PDVA is currently undergoing technical review which should assist in removing some obstacles in the responses to violence domestic violence. These include, rape, sexual harassment, defilement, domestic violence as well as other harmful cultural and traditional practices

#### a. Domestic violence

The State's response to violence through the enactment of the Prevention of Domestic Violence Act and other government policies have however demonstrated to be limited, inadequate and ineffective as seen by the increase in violence against women. The women consulted in the development of this report indicated that domestic violence is still prevalent in the country. Consultations with women revealed the nature of the domestic violence suffered. One woman narrated of the violence that she suffers at the hands of her husband: *'I remember having received a phone call that a relation of mine was ill. I answered the phone in the presence of my husband who allowed me to visit the sick relation. A few days later, upon my return, my husband asked me where I was and beat me. He then denied me food for a whole week. The sad part is that I am HIV positive and in need of good nutrition.* Another important issue to note is that most women's knowledge on domestic violence relates to physical violence as opposed to other forms.

#### b. Remedies

Most of the women further indicated that the institutions mandated with preventing as well as providing remedies against domestic violence do not adequately assist them. The women complained of corrupt officials in the police service and judiciary. In the words of one of the women: *'I remember reporting to the police that my husband was beating me and the police summoned him. Whilst we were seated outside the police station my husband arrived and went past me into the police station. After a few minutes, he came out and left. I was called into the police station where the police officers shouted at me, saying I was rude to my husband.* Accounts like these speak of the lack of assistance from these institutions and the failure of the state to fulfill its obligation of providing effective complaints procedures and remedies.<sup>78</sup> It is unfortunate that remedies under the PDVA have proven not to be effective for many women since in many cases the violence continues. For instance, occupation orders as provided under the PDVA have proven difficult to enforce for women in patrilineal settings where they live at their husband's place or village, where the husband's family also stay. Thus women face hostilities in the enforcement of such orders.

#### c. Standard of Proof in Sexual Offences

Standard of proof in sexual offences requires corroboration of evidence as a matter of practice in the courts. This continues to present challenges for women. In sexual offences cases such as rape, it is a matter of practice that the court considers corroborative evidence. This presents challenges for women to

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<sup>77</sup> Government of Malawi (2014) *Implementation of the Beijing Declaration and Platform for Action*; Ministry of Foreign Affairs, p. 33.

<sup>78</sup> General Recommendation No. 19: Violence against women, 1992, available at: <http://www.refworld.org/docid/52d920c54.html> . para. 24 (i)

prove their case before the court. Whilst acknowledging that this is just as a matter of practice, it is pertinent that the State takes positive steps towards removal of this requirement.

**d. Support structures for victims of violence**

It is also notable that the country does not have adequate support structures for women survivors of violence. For instance, the State is yet to fully establish and set up shelters for survivors of violence. Some of the shelters available are run by individuals who often do not have adequate resources to run these shelters. In many cases, survivors of violence end up going back to the site of the violence, in many cases their homes for financial dependence. The State's obligation under the CEDAW is clear in that the state should provide appropriate protective and support services for victims.<sup>79</sup>

**e. Sexual Violence within the Home, Marital Rape**

The current position as provided in the law is that marital rape is not recognized as a criminal offence. Consultations with women indicated that there is still a veil of secrecy in relation to what happens in marriages behind closed doors. Women consulted disclosed that there are instances when they are forced to sleep with their husbands when they do not want to, but that there is nothing they can do about it since it is a private matter. It is therefore necessary that deliberate steps are taken to engage the masses on marital rape.

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<sup>79</sup> Ibid, Para. 24 (b)

## Appendix 2: Contributing and Participating Organisations

Group	Organisations
<b>Reference Group</b>	Non-Governmental Gender Coordination Network (NGO-GCN) Women Judges Association of Malawi (WOJAM) Women’s Legal Resources Centre (WOLREC) Centre for Human Rights and Rehabilitation (CHRR) Catholic Commission for Justice and Peace (CCJP) Centre for Alternatives for Victimised Women and Children (CAVWOC) Women and Law in Southern Africa- Malawi Chapter (WLSA-Malawi) African Institute for Corporate Citizenship (AICC)

## FOCUS GROUP DISCUSSIONS

Region	District		Target Group
<b>South</b>	Blantyre	Rural	General Group
		Urban	2014 Elections candidates (those who succeeded and those who did not)
	Chikhwawa		General Group- focus on impact of natural disasters
	Chiradzulu		General group
<b>Central</b>	Lilongwe		Women of Action- comprising of widows and other women
	Mchinji		General group Coalition of Women Living with HIV/AIDS (COWLHA)
	Dowa		Coalition of Women Farmers (COWFA)
<b>North</b>	Mzimba	Peri-urban	General group
		Rural	Two General groups in two different localities

**STAKEHOLDER CONSULTATIONS** (Conducted in each of the three regions)

Region	List of Participants (Organisations)		
	Name	Organisation	
South	Joyce Phekani Hlazulani Ziba	Centre for Alternatives for Victimised Women and Children	
	Margaret Ali	Save the Children Fund	
	Anthony Mkupira	Gender Support Project	
	Felix Chikalira Roy Mazibuko	Civil Liberties Committee	
	Grace Kumwenda	Pakachere	
	Saddock Malinda	Department of Immigration	
	Lindirabe Gareta	Blantyre Synod of the CCAP	
	Chikondi Mandala	Judiciary of Malawi	
	Tadala Chimkwezule	Women Lawyers Association of Malawi	
	Frank Adini	Department of Labour	
Centre	Victor Maulidi	Non-Governmental Gender Coordination Network (NGO-GCN)	
	Tisungane Nanthoka	Centre for Youth Empowerment and Civic Education (CYCE)	
	Emma Kalea	Centre for the Development of People (CEDEP)	
	Natasha Namisengo	Women Lawyers Association	
	Anthony Malunga	Oxfam in Malawi	
	Thandizo Mphwiyo	Centre for Human Rights and Rehabilitation	
	Benson Phiri	Malawi Congress of Trade Union	
	Viwemi Chavula Habiba Osman	UN Women	
	Robert Mkwezalamba	Human Rights Consultative Committee	
	Chimwemwe Mungomo	FAWEMA	
	Chikondi Chabvuta	ActionAid Malawi	
	North	Glory Nkuna	Department of Labour
		Lloyd Magweje	Malawi Police Service
Blackwell Lungu Alexander Chilumpha Tiwope Jamali Towera Magawa		Department of Immigration	
Peter Mumba		Added Power and Understanding in Sex Education (APAUSE)	
Peter Mkandawire		Ministry of Education	
Muteya Banda		Youth Watch	
Andrew Mkonda Banda		National Initiative for Civic Education (NICE)	
Lim bani Gondwe		Church and Society Livingstonia	
Beatrice Manda		Mbawemi Women's Association	
Gertrude Mhango		Rumphi Women's Forum	
Nixon Ngwira		Paralegal Advisory Services (PASI)	
Leah Mbizi		Industrial Relations Court	
Austin Msowoya		Malawi Judiciary- Industrial Relations Court	

## VALIDATION MEETINGS

Place	Participants Name	Organisation
Lilongwe	Emmanuel Mlaka	LandNet
	Felistus Kuntunda	
	Habiba Osman	UN Women
	Chikondi Chabvuta	Action Aid
	Loma Mtema	Women's Legal Resources Centre (WOLREC)
	Anthony Malunga	Oxfam in Malawi
	Dowa	Elistine Phiri
Natasha Shela		
Chikumbutso Gondwe		National Association of Business Women (NABW)
Tisungane Nanthoka		Centre for Youth Empowerment and Civic Education
Elita Yobe		Catholic Commission for Justice and Peace (CCJP)
B.W. Molosoni		CARE International
Lucy Silumbu		Coalition of Women Farmers (COWFA)
Ellen Matupi		
Feliya Sikubwenza		
Mary Namalomba		
Chrissy Kennedy		
Andrew Kachaso	PACENET	
Maria Chimkono	LandNet	
Chimwemwe Khozombwe		
Gibson Beza		
Joseph Gausi		

	Tisungeni Mauluka	
	Felistas Kumfunda	
	Symon B. Katundu	
	Grace Kalowa Kaonga	Malawi Human Rights Commission
	Jessie Ching'oma	Malawi Congress of Trade Union
	Peggy Songazaudzu	Malawi Police Service
	Anthony Malunga	Oxfam in Malawi
	Innocent Hauya	Ministry of Gender, Disability, Children and Social Welfare
	Amon Luluhele	Open Society Foundations
	Emily Lungu	Centre for Human Rights and Rehabilitation
	Margaret Ali	NGO-GCN
	Helen Makukula	Women's Hope for Change
	Chimwemwe Mungomo	Forum for African Women Educationalists Malawi (FAWEMA)
	Chrissy Chigawa	National Association of Small and Medium Enterprises (NASME)
	Mable Ngolleka	Women of Action Ministry
	Noel Msiska	NGO-GCN
	Apoche Itimu	Ministry Of Justice
	Mary Kamwendo	Norwegian Church Aid
	Isaa Kanjala	Women's Legal Resources Centre (WOLREC)

### **Appendix 3: Statement by CSOs on the 2015 CEDAW Shadow Report for Malawi**

The Civil Society Organizations (CSOs) in Malawi present the 2015 CEDAW Shadow Report for Malawi to the CEDAW Committee. The Report was compiled through a consultative process involving grassroots women in Malawi, local and international CSOs. The process of gathering data included desk review, key informant interviews, focus group discussions, among others. This helped to capture Malawian women's lived experiences, including the views of the stakeholders who work on various areas as covered in the CEDAW. The CSOs convey their gratitude to the CEDAW Committee for its continued cooperation with both local and international CSOs in shadow reporting processes such as this one.

The 2015 CEDAW Shadow Report for Malawi is comprehensive as it provides information on the status of the implementation of women's rights under articles 1 to 16 of the CEDAW including the issue of violence against women. The CSOs commend the Malawi government for taking positive and great strides in the enactment of laws and development of policies that promote women's rights and gender equality. It is noted that since the sixth State Report for Malawi, the Government has enacted the Child Care Protection and Justice Act of 2010, the Gender Equality Act of 2013, the Education Act of 2013, the Marriage Divorce and Family Relations Act of 2015 and Trafficking in Persons Act of 2015. These laws principally ensure the de jure protection of human rights, specifically women's rights.

The CSOs, however, note that the voices from the women evidencing their lived experiences indicate that women face discrimination and do not enjoy their rights to the full extent in all areas including health, education, employment, family life and marriage, cultural, social and economic benefits. The CSOs, therefore, propose a number of recommendations that highlight areas where intervention is required to ensure that there is realization of gender equality and enjoyment of women's rights, much more in the light of the forthcoming Sustainable Development Goals.