



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

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

**Pre-session working group**

**Thirty-fifth session**

15 May-2 June 2006

**Responses to the list of issues and questions for  
consideration of the combined second, third, fourth  
and fifth periodic report**

**Malawi**

**Constitution, legislation and status of the convention**

1. There is no legislative or judicial definition of “discrimination”. The special Law Commission on Gender-Related Laws which is currently sitting to develop a Gender Equality Statute shall consider defining discrimination.
2. The scope of the Law Reform process currently being undertaken by the special Law Commission on Gender-Related Laws is open-ended. In developing a Gender Equality Statute the Commission is hoping to cover all the issues of gender equality that have not been covered in the previous reviews on inheritance legislation and marriage related laws. This review process will not however involve a review of all the laws of Malawi, it will nonetheless review specifically any that are considered to be gender insensitive and discriminatory. Customary law issues will be considered in the reform as research made available to the Commission conducted by the Human Rights Commission as well as the country’s National AIDS Policy have all made recommendations for the elimination of certain harmful or discriminatory customary practices that the Commission intends to take on board.
3. As noted above, the development of a Gender Equality Statute will incorporate the prohibition or elimination of certain harmful customary practices. Obstacles that may have prevented legislation in this area from being adopted included the “culture of secrecy” that surrounds the practice of these traditions and customs and ignorance about their harmful or detrimental effects as well as ignorance of the law and human rights issues. A lot of civic education initiatives have been undertaken by the Government, the Human Rights Commission and other civil society organizations to remedy the situation.

4. The special Commission on Gender-Related Laws recently completed its review on Marriage and Divorce Laws and has finalized its recommendations and draft Bill on Marriage and Divorce in Malawi called the “Marriage, Divorce and Family Relations Bill”. The current status of the law on marriage is that there is no constitutional age limit as the Constitution merely provides that “the State shall actually discharge marriage between persons where either of them is under the age of fifteen years” (Section 22 (8)).

5. This is not an outright prohibition. Further under the statutory laws on marriage, different rules apply depending on the type of marriage contracted. For marriages contracted under the Marriage Act (which statistically are very rare) there is a minimum age as set out in the Report (para. 16.3.2). For customary marriages however, there is no minimum age requirement, with puberty being the determining factor. However, the law against defilement (statutory rape) makes it unlawful to have carnal knowledge with a girl below the age of thirteen years and therefore consummation of marriage with such a girl is a criminal offence under the Penal Code.

6. The Commission has made recommendations raising the minimum age of marriage to eighteen years and has removed the requirement of parental consent as some parents have been shown to abuse their parental responsibility and marry off their children young. The draft Bill therefore sets the minimum age for marriage at eighteen years and submissions have been made in readiness for the country’s upcoming Constitutional Review also being undertaken by the Law Commission to entrench eighteen as the Constitutional age for marriage.

7. Malawians rely confidently on traditional justice but this is reserved to traditional or local courts. These courts have been under abeyance since 1994 as they were found to be unconstitutional. A special Law Commission is however sitting to review legislation pertaining to their establishment and functions so as to find a way to incorporate these courts under the judicial branch of Government rather than the Executive as was previously the case.

8. On the whole, High Court Judges are well trained in all issues of the law and human rights standards, both constitutional and international. The one judgement cited in the Report (para. 2.6.8) was one off, delivered by a Judge who has since retired. Government makes stringent efforts to offer refresher courses to all Judges and Magistrates on a regular basis and human rights is now a compulsory module in the university law school curriculum.

9. The content of the Gender Equality Statute has yet to be finalized as the Commission developing it is still meeting. It has however already been decided that substantively the statute may have to cover:

- Prohibition of certain cultural practices
- Participation in public life and decision-making
- Health and Reproductive Health
- Education and training
- Poverty eradication and economic empowerment

- Other aspects of human rights
- Sexual harassment

The report and the Bill are to be finalized and presented to the Minister of Justice for tabling in Parliament and Cabinet by May 2006.

10. Impact of the National Gender policy: Raising awareness on Gender issues; Assisted other organizations to come up with gender policies; Assisted in popularization of gender mainstreaming in different sectors of the economy; National Gender Programme was developed as a result of the policy; A number of stakeholders are using the policy in the implementation of activities. The Gender Policy will be reviewed in 2006/07 fiscal year and shall be adopted soon after the review and launch. The current document expired in December 2005. Obstacles included: resource availability. The National Gender Programme was developed a bit later due to the problem of financial resources; Assessment-done partially due to late development of the National Gender Programme; Partnership was not very encouraging among the stakeholders at the onset of implementation.

11. The Poverty Reduction Strategy Paper (PRSP) did not take on board the Millennium Development Goals (MDGs). However, cross-cutting issues of HIV/AIDS, Gender and Environment were covered in the strategy. Although PRSP had a monitoring system, the information captured was not disaggregated by gender. Women priorities were oversummarized under gender as a cross-cutting issue. Consequently, women priorities were not clearly defined in the four pillars of the strategy.

#### **National machinery for the advancement of women**

12. Government decided to make Ministry of Gender, Child Welfare and Community Services a line Ministry because gender is supposed to be mainstreamed in all sectors; The Ministry has conceived powers, it championed the mainstreaming of Gender in all sectors.

13. The National Gender Equality Commission is non-functional because it had not been established by an act of parliament, however, consultations have revealed that there is need to establish a constitutional body which could be called National Gender Equality Commission; Some donors are coming in with assistance on specific plans to implement activities on equality standards for women and training of trainers for non-governmental organizations on women's rights.

#### **Stereotypes**

14. The Gender Equality Statute is addressing the issues referred herein.

#### **Violence against women**

15. The Protection against (prevention of) Domestic Violence Act is going to Parliament for tabling in April 2006, however, the timetable for adoption cannot be accurately predicted but it will be soon after tabling as long as it passes into law. Contents of the Act include Interpretation; Purpose of the Act; Various orders; designation, duties and powers of enforcement officers, police powers of entry; general issues and schedule.

16. There is a national strategy on Gender Based Violence (2000-2006) in which issues of violence against women and the girl child are included; Life skill subjects are taught in primary and secondary schools and teachers abusing pupils are interdicted in a bid to eradicate sexual exploitation of the girl child in schools.

#### **Trafficking and exploitation of prostitution**

17. The Law Commission has scheduled a programme on Human Trafficking Legislation to begin this year. Amendments to the Penal Code were presented to Parliament in 2000 contained certain provisions on promotion of prostitution which include transferring or transporting any person into or out of Malawi with the purpose to engage that person into prostitution. Relevant amended provisions of the Penal Code concentrate on widening indecency offences, incest and other sexual offences so as to afford more protection to victims who are usually female. The issue of prostitutes' rights and protection may be considered in the Gender Equality Statute. However, the Human Trafficking programme is intended to be wide and protect all victims of trafficking not just those trafficked for prostitution.

18. Measures are being taken to have the proceeds of prostitution criminalized. Abused rights of commercial sex workers will be dealt with as provided for in the Gender Equality Statute.

#### **Political and public life**

19. The Gender Equality Statute will consider legislating on affirmative action in the form of quotas in light of the SADC Declaration on Gender and Development. This may include quotas in:

- Public Service
  - civil service
  - constitutional bodies or institutions
  - statutory corporations
  - diplomatic service
- Political Participation
  - Parliament
  - Local Government
  - Political Parties
  - Cabinet
- Private Sector
  - Boards of Directors/Trustees
  - Senior Management
- Traditional Leadership
  - Chieftaincy

**Nationality**

20. The Law Commission in its first ever report on the “Review of certain laws on Defilement, Marriage, Affiliation and Citizenship” 1996 addressed the contradictions between the Constitution and the Immigration and Citizenship Acts. However, these amendments have yet to be passed.

**Education**

21. Adequately covered under the Gender Equality Act; Measures put in place to address the problems faced by female students include the following, among others: Readmission policy — where girls are readmitted into school in the event of withdrawing from school on health grounds, bursary schemes to keep the needy students in school and the school feeding programmes for the areas worst hit by drought. The issue of enrolment quotas in educational establishments will be considered in the development of the Gender Equality Statute.

22. Teachers are being trained in phases because it has been difficult to roll out programmes funded by donors. Therefore, the major obstacle has been the financial resource availability.

23. In the day secondary schools, boarding facilities are being devised for girls; Admission training colleges have been raised for female students from 13 per cent to 31 per cent; Out of the six Divisional Education Managers in Malawi, four are women.

**Employment**

24. The labour laws do not discriminate women let alone people working in the informal sector. Minimum wage enforcement applies in the informal sector just as it is the case with the formal sector. However, the enforcement of minimum wage is difficult in the informal sector where the majority of women are.

**Health: improving access**

25. Interventions currently in place

- Upgrading health centres to provide basic Emergency Obstetric Care (EmOC) services
- Increasing the number of health centres that provide basic EmOC services
- Initiating and strengthening community interventions to provide reproductive health services at community level
- Service Agreements initiated with CHAM to ensure free maternal health-care services in the mission hospitals
- Installation of radio communication.

26. Training health personnel

- Upgrading ENM to provide midwifery services
- Training of health personnel to provide skilled attendance at delivery at health centres.

27. Maternal mortality rate

Recent MDHS preliminary results (2004) show MMR as 984.

Per 100,000 live births. This is only a slight reduction. However, reasons for increase in MMR:

- Weak human resource base
- Lack of other resources
- Problems in accessing available services
- Decision-making problems
- Transport and communication problem
- Lack of availability of essential resources to provide services at health facilities.

28. Measures to reverse deterioration in MMR

- Strengthening reproductive health services
- Development of road map for the reduction of maternal and neonatal mortality
- Emphasis on provision of EmOC
- Emphasis on availability of skilled attendants at delivery.

29. National HIV/AIDS policy available

- ART available to all affected persons
- HIV testing and counselling services available
- Specific programme for PMTCT available and Scale-Up plan to cover the whole country is in progress
- Guidelines for managing sexual assault victims rape developed
- Provision for rape and sexually abused victims to have access to health services without discrimination.

**Malnutrition**

30. DHS 2000 shows that 7 per cent of women of childbearing age were malnourished with body mass index of less than 18.5 per cent.

DHS 2000 shows that 11 per cent of women of childbearing age were overweight with body mass index of greater than 25 per cent.

Micronutrients deficiency based on hospital records showed that 54 to 94 per cent of pregnant women had anaemia (*Ministry of Health* 1998).

Micronutrients Survey 2000 showed that 57 per cent of women of childbearing age had vitamin A deficiency. Of this group 27 per cent had anaemia.

**Impact of food crisis**

31. National Nutrition Survey December 2005 showed that levels of malnutrition were high among children under 5 years and lactating mothers.

Global acute malnutrition among children under 5 years was 5-12 per cent in most districts.

32. Interventions against malnutrition

- Supplementary feeding for pregnant women and lactating mothers
- Nutrition education and counselling for antenatal and post-natal
- Vitamin supplementation for post-natal mothers within eight weeks after delivery
- Iron and folic acids supplements for antenatal mothers
- HIV-positive mothers targeted for nutrition care and support in ART and TB Clinics.

**Rural women and the economy**

33. Consultations involved various groups including rural women in the development of PRSP. Government is also targeting programmes to train women in business with support from donors partners like DFID and GTZ.

34. There is deliberate targeting of vulnerable groups the majority of whom are women in safety-net programmes and other programmes.

35. Most of the credit funds are targeting women, for example the ADB credit fund and the Malawi Rural Development Fund. The land policy and Act are addressing the problems of inequality in the access by men and women to land.

36. The Wills and Inheritance Act was reviewed afresh by the special Law Commission on Gender-Related Laws and has come up with a new inheritance scheme, divorced from the customary one that previously prevailed and has concentrated on immediate family as beneficiaries of deceased estates. There are recommendations for stiffer penalties for property grabbing and less onerous procedures. The new Bill is called the **Deceased Estate (Wills, Inheritance and Protection) Bill** and has already been submitted to Cabinet and Parliament.

**Marriage and family relations**

37. The Marriage Relations Act is paying attention to respecting rights of women in marriage. It provides for a uniform law for various classes of people. Any marriage regardless of where it is officiated has to enjoy the same rights as long as it is registered under the Act.

**Optional Protocol**

38. A response to this question cannot be provided at this point.

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