

against Women

Forty-fifth session

18 January-5 February 2010

Concluding observations of the Committee on the Elimination of Discrimination against Women

Malawi

1. The Committee considered the sixth periodic report of Malawi (CEDAW/C/MWI/6) at its 911th and 912th meetings, on 22 January 2010 (see CEDAW/C/SR.911 and CEDAW/C/SR.912). The Committee's list of issues and questions is contained in CEDAW/C/MWI/Q/6 and the responses of Malawi are contained in CEDAW/C/MWI/Q/6/Add.1.

Introduction

2. The Committee expresses its appreciation to the State party for its sixth periodic report, which followed the Committee's guidelines for the preparation of reports and which provided clear insights into the situation of women in Malawi. The Committee also expresses its appreciation for the written replies to the list of issues and questions raised by the pre-session working group and for the oral presentation and responses to the questions posed by the Committee.

3. The Committee commends the State party for its high-level delegation, headed by the Secretary for Gender, Children and Community Development, which included officials from the Ministries of Education, Health and Justice and the Malawi Law Commission. Furthermore, the Committee acknowledges that the presence of a delegation directly involved in the implementation of the Convention allowed for a fuller assessment of the situation of the rights of women in the State party.

Positive aspects

4. The Committee notes with appreciation the timely submission of the sixth periodic report of the State party, which was prepared through a participatory process involving Government bodies and civil society, including networks and organizations representing women's interests.

5. The Committee welcomes the very self-critical nature of the State party's report, which not only mentions the progress achieved but also identifies the difficulties encountered and makes recommendations for further actions.

Principal areas of concern and recommendations

6. While recalling the State party's obligation to systematically and continuously implement all the provisions of the Convention, the Committee views the concerns and recommendations identified in the present concluding observations as requiring the priority attention of the State party prior to the submission of the next periodic report. Consequently, the Committee calls on the State party to focus on those areas in its implementation activities and to report on action taken and results achieved in its next periodic report. It also calls on the State party to submit the present concluding observations to all relevant ministries and other Government structures at all levels, Parliament and the judiciary in order to ensure their effective implementation.

Parliament

7. While reaffirming that the Government has the primary responsibility and is particularly accountable for the full implementation of the State party's obligations under the Convention, the Committee stresses that the Convention is binding on all branches of Government and invites the State party to encourage its national Parliament, in line with its mandate and procedures, where appropriate, to take the necessary steps with regard to the implementation of these concluding observations and the Government's next reporting process under the Convention.

Previous concluding observations

8. The Committee regrets that most of the concerns raised and the recommendations made in its previous concluding observations (CEDAW/C/MWI/CO/5) in 2006 have been insufficiently addressed. These include, for instance, those related to outstanding bills on gender equality issues, discriminatory laws, persistent stereotypes and traditional harmful practices, the low representation of women in decision-making positions, the high incidence of maternal mortality and the situation of women in the labour market.

9. The Committee urges the State party to make every effort to address previous recommendations that have not yet been implemented, as well as the concerns contained in the present concluding observations.

Legal status of the Convention, the principle of equality, definition of discrimination and discriminatory laws

10. The Committee remains concerned that, despite the ratification of the Convention by the State party in 1987, it has yet to be incorporated into Malawian domestic law. The Committee underlines that, irrespective of the system through which international

conventions are incorporated into the domestic legal order (monism or dualism), the State party is under a legal obligation to comply with an international convention that it has ratified or acceded to and to give it full effect in its domestic legal order.

11. The Committee urges the State party to take immediate steps to ensure that the Convention is given full legal effect in its domestic law, that the rights enshrined in the Convention are made justiciable, and that effective remedies are available to victims of rights violations under the terms of the Convention.

12. While noting the many measures taken that are aimed at identifying laws that discriminate against women, the Committee is concerned that statutory and customary laws that discriminate against women in both purpose and effect remain in force. The Committee is further concerned about the weak public Legal Aid Department, which exacerbates the difficulties faced by women in gaining access to justice and the enforcement of their rights under the Convention.

13. The Committee urges the State party, as a matter of priority, to ensure that all discriminatory laws, including customary laws, are amended or repealed and brought into full compliance with the Convention and the Committee's general recommendations. The Committee also requests the State party to remove all impediments women may face in gaining access to justice and to take appropriate measures to enhance women's legal literacy and awareness of their rights, including their right to seek legal redress in courts. In this regard, the Committee urges the State party to provide the Legal Aid Department with adequate human and financial resources.

14. The Committee regrets the delay in the enactment of a number of outstanding bills, in particular the Gender Equality Bill, the Deceased Estates (Wills, Inheritance and Protection) Bill and the Marriage, Divorce and Family Relations Bill.

15. The Committee calls upon the State party to take all necessary measures to expedite the enactment of outstanding bills, namely, the Gender Equality Bill, the Deceased Estates (Wills, Inheritance and Protection) Bill and the Marriage, Divorce and Family Relations Bill and, within the framework of the legal review process, to ensure women's formal and substantive equality.

16. The Committee is concerned at the limited level of awareness about the provisions of the Convention in the State party.

17. The Committee recommends that the State party strengthen its efforts to disseminate the Convention widely to the general public so as to create awareness of women's human rights and to raise the awareness of legislators and the general public concerning the urgent need to prioritize legal reforms to achieve de jure equality for women. It further urges the State party to ensure that the Convention and related domestic legislation are made an integral part of legal education and the training of judicial officers, including judges, lawyers and prosecutors, law enforcement officers, district officials, chiefs and other traditional and community leaders, so as to create a legal culture supportive of women's equality and non-discrimination.

National machinery for the advancement of women

18. While noting with appreciation the activities carried out by the Ministry of Gender, Children and Community Development for the advancement of women, the Committee remains concerned at the fact that the Ministry lacks sufficient human and financial resources to effectively coordinate the implementation of the gender mainstreaming strategy across all sectors and levels of Government. The Committee is also concerned at the fact that the revised draft National Gender Policy has not yet been adopted.

19. The Committee recommends that the State party strengthen the Ministry of Gender, Children and Community Development and provide it with the human and financial resources necessary for it to effectively coordinate the implementation of the Convention and the use of the gender mainstreaming strategy across all ministries and sectors of Government, at all levels. It further calls on the State party to adopt and implement the revised National Gender Policy without delay. It urges the State party to monitor systematically the impact of its gender mainstreaming efforts, with concrete benchmarks and time frames, and to report to the Committee in its next report on the results achieved, the obstacles encountered and the steps taken to overcome such obstacles.

Stereotypes and cultural practices

20. The Committee reiterates its concern, expressed in its previous concluding observations, in relation to the persistence of harmful traditional practices, patriarchal attitudes and deep-rooted stereotypes regarding the roles, responsibilities and identities of women and men in all spheres of life. The Committee is concerned that such norms, customs and practices continue to justify and perpetuate discrimination against women, violence against women and the persistence of harmful traditional practices, including early and forced marriages and other practices identified, including in the study carried out in 2006 by the Malawi Human Rights Commission. The Committee regrets the lack of a sustained and systematic strategy by the State party to modify or eliminate such harmful traditional practices, patriarchal attitudes and stereotypes.

21. The Committee urges the State party to view culture as a dynamic dimension of the country's life and social fabric, subject to many influences over time and therefore to change. It recommends that the State party adopt without delay a comprehensive strategy, including clear goals and timetables, to modify or eliminate negative cultural practices and stereotypes that are harmful to, and discriminate against, women and to promote women's full enjoyment of their human rights in conformity with articles 2 (f) and 5 (a) of the Convention. This strategy should include the adoption of the relevant outstanding bills and specially designed educational and awareness-raising programmes targeting women and men at all levels of society, including Government officials, chiefs and other traditional and community leaders. The Committee also encourages the State party to put in place monitoring mechanisms to regularly assess the progress made towards the achievement of established goals.

Violence against women

22. The Committee reiterates its deep concern at the high prevalence of violence against women in the State party. Notwithstanding the adoption of the Prevention of Domestic Violence Act, the Committee remains concerned about the lack of adequate services and protection for victims of violence, including the lack of reporting mechanisms available to victims as well as the absence of awareness campaigns to educate women about their rights.

23. The Committee urges the State party to strengthen its efforts to effectively implement existing legislative measures and to address all forms of violence against women, including domestic violence, taking into account the Committee's general recommendation No. 19, and urges the State party to undertake educational and public-awareness programmes, including through the media, to convey the message that all forms of violence against women, including domestic violence, are unacceptable.

Trafficking

24. The Committee reiterates its concern at the extent of trafficking within and outside the country. It is further concerned at the extent to which women and girls are involved in sexual exploitation, including prostitution, and the limited statistical data regarding these issues.

25. The Committee recommends that the State party take the necessary legislative measures, including the effective prosecution and punishment of traffickers. It also recommends that the State party strengthen the provision of assistance and support to women victims, as well as prevention efforts, by addressing the root causes of trafficking and improving the economic situation of women in order to eliminate their vulnerability to exploitation and traffickers. The Committee further recommends that the State party consider enhancing its cooperation with States in the region to prevent and combat trafficking in women and girls, as well as undertake studies on the prevalence of trafficking in Malawi.

Political participation and participation in public life

26. While noting the efforts made to ensure women's participation in public and political life at all levels, including the nomination of a woman at the level of Vice-President and the National Programme on Increasing Women's Representation in Parliament and Local Government, also known as the "50:50 Campaign", the Committee is concerned about the low level of participation of women at all levels of decision-making and the limited steps taken to address the underlying causes, including prevailing social and cultural attitudes.

27. The Committee urges the State party to strengthen its efforts and accelerate the increase in the representation of women in all branches and at all levels of Government, in accordance with articles 7 and 8 of the Convention and taking into account its general recommendation No. 23, and through the use of temporary special measures in accordance with article 4, paragraph 1, of the Convention and the Committee's general recommendation No. 25.

Nationality

28. The Committee reiterates its concern, voiced in its previous concluding observations (CEDAW/C/MWI/CO/5, para. 13), about the contradictions between the Constitution and the Citizenship and Immigration Acts, which provide that upon marrying a non-Malawian man, a Malawian woman loses her nationality, and that a married woman is not allowed to migrate unless she is under the custody of her husband.

29. The Committee urges the State party to remove all discriminatory laws relating to nationality, in accordance with article 9 of the Convention, during the ongoing legal reform process.

Education

30. While recognizing the ongoing efforts aimed at increasing the enrolment and retention of girls in schools, as well as the progress made in reducing the gender gap in primary and secondary school enrolment, the Committee is concerned at the persistence of structural and other barriers to quality education, which constitute particular obstacles to the education of girls and young women. Such barriers include, among others, the lack of physical infrastructure and the limited number of trained and qualified teachers. The Committee is also concerned about the persistence of sexual abuse and harassment of girls in schools; the negative impact of harmful traditional practices, such as early and forced marriage, on girls' education; and the persistent barriers to the ability of pregnant girls to exercise their right to education.

31. The Committee recommends that the State party take steps to improve the educational infrastructure, especially in rural areas, and to raise awareness of the importance of education as a human right and a basis for the empowerment of women. It recommends that the State party implement measures to ensure equal access for girls and women to all levels of education and the retention of girls in school, including through temporary special measures in accordance with article 4, paragraph 1, of the Convention and the Committee's general recommendation No. 25. It urges the State party to enforce a zero tolerance policy with respect to sexual abuse and harassment in schools and to ensure that perpetrators are punished appropriately. It encourages the State party to take steps to overcome traditional attitudes that constitute obstacles to girls' and women's education, to strengthen its policy on the readmission to school of pregnant girls and young mothers and to remove from educational curricula stereotypes that discriminate against women. The Committee calls upon the State party to make strong efforts to improve the literacy level of girls and women through the adoption of comprehensive programmes at the formal and non-formal levels and through adult education and training.

Employment and women's economic empowerment

32. While recognizing the efforts being made by the State party to enhance women's economic empowerment and access to employment, the Committee remains concerned at the direct and indirect discriminatory practices against women in public and private employment with respect to recruitment, equal pay for work of equal value, maternity protection and sexual harassment.

33. The Committee calls upon the State party to introduce without delay specific measures, including an enforcement mechanism, to ensure equal rights for women in the area of employment and their full and equal participation in the labour market. This should include a legal guarantee of equal pay for equal work and work of equal value, better enforcement of laws to protect women from discrimination on the grounds of maternity, as well as the use of temporary special measures in accordance with article 4, paragraph 1, of the Convention and the Committee's general recommendation No. 25. The Committee also urges the State party to enact legislation prohibiting sexual harassment.

Health

34. The Committee is concerned at the limited resources and capacity to implement its health-care policies and ensure the full enjoyment of women's rights under article 12 of the Convention. It is further concerned at the lack of access of women and girls, particularly in rural areas, to sexual and reproductive health services, including skilled birth attendance and adequate post-natal care, and the high incidence of teenage pregnancy. The Committee notes with concern the ban on traditional birth attendants.

35. The Committee encourages the State party to continue its efforts to strengthen its capacity to deliver basic health care and services, including in the area of mental health, and to increase the access of women and girls to those services on an equal and equitable basis. It urges the State party to make every effort to raise awareness of and increase women's access to health-care facilities and medical assistance by trained personnel, particularly with respect to birth attendance and post-natal care, especially in rural areas. The Committee recommends that the State party reconsider the ban on traditional birth attendants and value their role by providing them with adequate training.

36. The Committee reiterates its previous concern about the high incidence of maternal mortality, particularly the number of deaths resulting from unsafe abortions. The Committee regrets that maternal health policies do not include sufficient attention to complications arising from unsafe abortion.

37. The Committee calls on the State party to put measures in place to reduce maternal mortality by identifying and addressing causes of maternal death. The Committee further recommends that the State party review the laws relating to abortion with a view to removing the punitive provisions imposed on women who undergo an abortion, providing them with access to quality services for the management of complications arising from unsafe abortion and reducing maternal mortality rates, in accordance with the Committee's general recommendation No. 24.

38. The Committee is deeply concerned at the high rates of HIV/AIDS infection affecting women and girls in the country. While noting that the State party is finalizing a national policy that regulates the practices of traditional healers, the Committee remains concerned at the fact that some traditional healers are prescribing sexual intercourse with girls as a panacea for HIV infection. While appreciating the highly consultative process in relation to the draft HIV/AIDS Management Bill, the Committee is concerned that compulsory testing for key populations, including sex workers, may result in discrimination.

39. The Committee recommends that the State party ensure the inclusion of human rights principles and international standards in the draft HIV/AIDS Management Bill and in designing and implementing HIV/AIDS prevention policies. In this regard, the Committee recommends that the State party seek technical assistance from the World Health Organization and the Joint United Nations Programme on HIV/AIDS. The Committee requests the State party to provide information on the national policy that regulates the practices of traditional healers and to prosecute traditional healers who prescribe sexual intercourse with girls as a panacea for HIV infection.

Rural women

40. The Committee is concerned about the precarious situation of women in rural areas, as these women constitute the majority of women in the State party and are disproportionately affected by the lack of adequate health services, education, ownership of land and inheritance, economic opportunities and social benefits. The Committee reiterates its previous concern about rural women's access to justice and the enforcement of their rights under the Convention. It is also particularly concerned about the prevalence of harmful traditional practices and the persistence of customs and traditions in rural areas that violate the human rights of women and girls and adversely affect their equality and advancement.

41. The Committee urges the State party to take appropriate measures to eliminate all forms of discrimination against rural women and eradicate harmful traditional practices and those customs and traditions that justify and perpetuate them. The Committee reiterates its recommendation that the State party pay special attention to the needs of rural women and ensure that they participate in decision-making processes, including community decision-making processes and development planning, and have equal access to basic services and infrastructure, as well as economic opportunities, including income-generating projects and credit facilities, on an equal and equitable basis with men and also with their urban counterparts. The Committee urges the State party to remove all impediments rural women may face in gaining access to justice.

Family relations

42. The Committee is concerned about the multiple marriage regimes that exist in the State party and the discriminatory provisions that persist in the laws governing marriage and family relations. It is particularly concerned that customary law allows polygamy. The Committee reiterates its concern that the lack of clarity with respect to the minimum age of marriage allows for child marriage. The Committee is further concerned that the interpretation of the divorce law by the High Court, where a woman's non-financial contribution is not taken into account, results in inequality in property distribution during divorce. The Committee is concerned that, notwithstanding the criminalization of property-grabbing, the practice may still be ongoing.

43. The Committee urges the State party to ensure that the Marriage, Divorce and Family Relations Bill is in compliance with articles 15 and 16 of the Convention and to expedite its enactment into law. The Committee calls upon the State party to implement measures aimed at eliminating polygamy in line with the Committee's general recommendation No. 21 and to set the minimum age of marriage at 18 years. The Committee further urges the State party to take measures to ensure that the distribution of property during divorce provides for equality and equity for both parties, as provided for in article 16 of the Convention. The Committee also urges the State party to enforce the legislation criminalizing property-grabbing.

Data collection and analysis

44. While noting the recent efforts made to improve the collection of sex-disaggregated data, the Committee is concerned at the lack, or limited availability, of data disaggregated by sex in a number of areas covered by the Convention. Such data are necessary for targeted policymaking, the systematic monitoring and evaluation of the progress achieved towards women's de facto equality, and an accurate assessment of the situation of women and of trends over time with regard to all areas covered by the Convention.

45. The Committee calls on the State party to give priority to the systematic collection of comprehensive data disaggregated by sex and of measurable indicators to assess trends in the situation of women and of progress towards women's de facto equality, and calls its attention to the Committee's general recommendation No. 9 in this regard. The Committee invites the State party, as necessary, to seek international assistance for the development of such data-collection and analysis efforts, and to ensure that such efforts are informed by the needs of users of the data. The Committee requests that statistical data and analysis, disaggregated by sex and rural and urban areas, indicating the impact of measures and results achieved, be included in its next periodic report.

Beijing Declaration and Platform for Action

46. The Committee urges the State party to utilize fully, in the implementation of its obligations under the Convention, the Beijing Declaration and Platform for Action, which reinforce the provisions of the Convention, and requests the State party to include information thereon in its next periodic report.

Millennium Development Goals

47. The Committee emphasizes that full and effective implementation of the Convention is indispensable for achieving the Millennium Development Goals. It calls for the integration of a gender perspective and the explicit reflection of the provisions of the Convention in all efforts aimed at the achievement of the Millennium Development Goals, and it requests the State party to include information thereon in its next periodic report.

Ratification of other treaties

48. The Committee notes that States' adherence to the nine major international human rights instruments enhances the enjoyment by women of their human rights and fundamental freedoms in all aspects of life. Therefore, the Committee encourages the State party to ratify the treaties to which it is not yet a party, namely, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the International Convention for the Protection of All Persons from Enforced Disappearance.

Dissemination of concluding observations

49. The Committee requests the wide dissemination in Malawi of the present concluding observations in order to make the people, including Government officials, politicians, parliamentarians and women's and human rights organizations, aware of the measures that have been taken to ensure the de jure and de facto equality of women, as well as the further steps that are required in this regard. It requests the State party to continue to strengthen the dissemination, in particular to women's and human rights organizations, of the Convention, its Optional Protocol, the Committee's general recommendations, the Beijing Declaration and Platform for Action and the outcome of the twenty-third special session of the General Assembly, entitled "Women 2000: gender equality, development and peace for the twenty-first century".

Optional Protocol to the Convention

50. The Committee encourages the State party to ratify the Optional Protocol to the Convention, which it signed in 2000.

Article 20, paragraph 1

51. The Committee encourages the State party to accept, as soon as possible, the amendment to article 20, paragraph 1, of the Convention, concerning the meeting time of the Committee.

Follow-up to concluding observations

52. The Committee requests the State party to provide, within two years, written information on the steps taken to implement the recommendations contained in paragraphs 15 and 37 above.

Technical assistance

53. The Committee recommends that the State party strengthen its cooperation with the specialized agencies and programmes of the United Nations system, including the United Nations Population Fund, the United Nations Children's Fund, the Joint United Nations Programme on HIV/AIDS and the Office of the United Nations High Commissioner for Human Rights.

Date of next report and reporting guidelines

54. The Committee requests that the State party respond to the concerns expressed in the present concluding observations in its next periodic report, in accordance with article 18 of the Convention. The Committee invites the State party to submit its next periodic report in February 2014.

55. The Committee invites the State party to follow the harmonized guidelines on reporting under the international human rights treaties, including guidelines on a common core document and treaty-specific documents, approved at the fifth inter-committee meeting of the human rights treaty bodies, in June 2006 (HRI/MC/2006/3 and Corr.1). The treaty-specific reporting guidelines adopted by the Committee at its fortieth session, in January 2008, must be applied in conjunction with the harmonized reporting guidelines on a common core document. Together, they constitute the harmonized guidelines on reporting under the Convention on the Elimination of All Forms of Discrimination against Women. The treaty-specific document should be limited to 40 pages, while the updated common core document should not exceed 60-80 pages.