



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

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

**Consideration of reports submitted by States parties under
article 18 of the Convention**

Seventh periodic report of States parties due in 2014

Malawi*

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* The present document is being issued without formal editing.



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Foreword

The purpose of the Seventh State Party Report is to honour the commitments undertaken by the Republic of Malawi when it signed and ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

The Report was prepared by the Ministry of Gender Children and Social Welfare (MoGCSW), in its capacity as the coordinating public sector national machinery for gender issues and the Ministry responsible for initiating and implementing public policies for the advancement of women and for ensuring equal rights and opportunities for women and men.

The United Nations Population Fund (UNFPA) provided financial support for the preparation of the Seventh State Party Report. The data used in preparing this Report contains a systematic overview of the main documentary and statistical data produced in Malawi by various State and non-state institutions, the academia and experts. These data were supplemented with information gathered in interviews with experts and key informants. Critical discussion of the draft Report with stakeholders made it possible to incorporate additional information.

The Government of the Republic of Malawi is pleased to submit the Seventh State Party Report to the Committee for its consideration, in accordance with the commitment that it undertook when it ratified the Convention.

Ministry of Gender, Children and Social Welfare

Acronyms

AIDS — Acquired Immunodeficiency Syndrome

ART — Anti-retroviral Treatment

CEDAW — Convention on the Elimination of All Forms of Discrimination against Women

DNHA — Department of Nutrition, HIV and AIDS

ECD — Early Childhood Development

EMIS — Education Management Information Systems

GDI — Gender and Development Index

IHS — Integrated Household Survey

HIV — Human Immunodeficiency Virus

HTC — HIV Testing and Counselling

MDF — Malawi Defence Force

MDHS — Malawi Development and Health Strategy

MPS — Malawi Police Service

PLHIV — Person/People Living With HIV

PMTCT — Prevention of Mother to Child Transmission

SADC — Southern African Development Community

TBA — Traditional Health Attendants

UN — United Nations

UNICEF — United Nations Children's Fund

UNODC — United Nations Office on Drugs and Crime

WMS — Welfare Monitoring Survey

1.0 Introduction

1. This Report was prepared in line with Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women (hereinafter referred to as “CEDAW” or the “Convention”). Malawi ratified the CEDAW in September, 1987. The initial Report on the CEDAW was submitted in 1988, after which the next Report was submitted as the Combined Second, Third, Fourth and Fifth State Report in 2006. The Sixth State Report was prepared and submitted in 2008.

2. This is the Seventh State Report from Malawi and ideally it covers the period between 2008 and 2014. However, in light of the fact that the presentation of the last Report was made in 2009 and concluded in 2010, most information covering 2008 to 2010 has already been made available to the Committee albeit in response to some issues arising in the course of the preparation and discussion over the Sixth State Report.

3. As a dualist State, CEDAW is not directly applicable in the courts of Malawi. However, the courts, civil society and other gender stakeholders have frequently had recourse to the provisions of the CEDAW. Further, the Constitution in section 11 (2) provides that when interpreting the Constitution, courts shall, among other things and where applicable, have regard to norms of public international law and comparable foreign case law. This reference makes relevant international treaties including the CEDAW in the development and evolution of Malawian jurisprudence.

4. The report was prepared by a National Task Force chaired by the Ministry of Gender, Children and Social Welfare (MoGCSW). Members of the National Task Force included the MoGCSW; Ministry of Foreign Affairs; Office of the President and Cabinet; Ministry of Information and Civic Education; Ministry of Education, Science and Technology; Ministry of Lands, Housing and Urban Development, Ministry of Home Affairs; the Law Commission; the Human Rights Commission; and the Anti-Corruption Bureau. Civil Society Organizations, although not represented in the National Task Force, were thoroughly consulted in the process of developing the Report.

5. The CEDAW Committee is hereby referred to Malawi’s Core Document which gives a comprehensive narrative on the country’s demographic, social and economic structure as well as the political, constitutional and legal order. This Report presents information on Malawi’s implementation of the Articles of the Covenant.

2.0 Report on the Convention

Article 1 — Definition of discrimination

6. In February, 2013, the National Assembly passed the Gender Equality Act. The Gender Equality Act was developed in 2011 by the Law Commission. The Gender Equality Act created an opportunity to consider provision for the definition of “discrimination against women”.

7. The Gender Equality Act has, instead of defining “discrimination against women”, opted to define “sex discrimination”, as follows:

“4. __ (1) A person discriminates against another person if —

- (a) on the grounds of sex, he or she treats the other person less favourably than he or she would treat a person of his or her opposite sex; or
- (b) he or she applies to the other person an exclusion, distinction or restriction which applies or would apply equally to both sexes but—
 - (i) which is such that the proportion of one sex who can comply with it is considerably smaller than the proportion of the opposite sex who can comply with it;
 - (ii) which he or she cannot show to be justifiable irrespective of the sex of the person to whom it is applied; and
 - (iii) which is to the detriment of the other person because he or she cannot comply with it, with the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise of the rights and fundamental freedoms of that person.

(2) A person who discriminates against another person commits an offence and shall be liable to a fine of K1,000,000.00 and to imprisonment for five years.”

8. At the time of submitting this Report, the value of K1,000,000.00 contained in the penal provision is equivalent to US\$2,222.22 (February, 2014) while the same amount was valued at US\$6,666.00 when the Report on the Development of the Gender Equality Act was published (February, 2011).

9. Any person who alleges discrimination can, since this enactment, have recourse to the Constitution and the Gender Equality Act in order to have redress against discrimination on account of sex or gender. The Gender Equality Act will come into operation on the 1st day of April, 2014.

Article 2 — Obligations of State Parties

10. The Gender Equality Act is yet another effort to domesticate the CEDAW beyond the constitutional guarantees of equality and non-discrimination on the basis of gender, sex and marital status; and other gender-related legislation. The Act offers a protective mechanism towards violation of rights of females and outlines explicitly the areas under which discrimination is prohibited.

11. The Gender Equality Act looks beyond Government practice in terms of discrimination on the basis of sex, gender and marital status, as it also affects individuals by providing civil and criminal sanctions where practices that are considered discriminatory and harmful are perpetrated.

12. Among other measures adopted by Government to eliminate all forms of discrimination against females, a draft National Gender Policy, although not formally adopted by Government, continues to drive the public sector approach by isolating issues that are relevant, contemporary and in dire need of attention when it comes to issues of discrimination.

13. The first National Gender Policy expired in 2005. While efforts were undertaken to revise it with a view to eventual replacement, this has not yet been done. It must be noted that during the Reporting Period, Government did not review or adopt reviewed policies due to what was termed under-implementation of the existing policies. Government felt that unless and until the policies already in place

were largely or fully implemented, there was no reason to revise or adopt new policies.

14. Some of the programmes undertaken by Government during the Reporting Period include Gender Equality and Women Empowerment which commenced in July, 2012; National Response to Combat Gender Based Violence, running from 2008 to 2013 and is currently under review; Increasing Women Representation in Parliament and Local Government dubbed the “50:50 Campaign” from 2009 to 2014; Women, Girls and HIV and AIDS from 2005 to 2012 (expired); Gender Mainstreaming as an on-going semi-permanent programme; and the Economic Empowerment Programme which is also an established programme.

15. The Penal Code was amended in 2010 and enacted into law in 2010. It has, among other things, extended the definition of ‘sexual activity’ to include practices between or perpetrated by females. The amendments also revised the age under which a girl may be defiled from 13 years to 16 years in line with the constitutional provision of protection of rights of children under section 23.

16. Other gender-related legislation passed during the Reporting Period includes the Child Care, Protection and Justice Act in 2010; the Deceased Estates (Wills, Inheritance and Protection) Act in 2011; the Disability Act and the Education Act in 2013.

17. An inquiry with the National Statistical Office (NSO) reveals that, now, it is a matter of standard practice for the Office to generate data that is sex segregated in order to monitor and inform initiatives that seek to attain gender equality.

Article 3 — Appropriate measures to ensure full development and advancement of women

18. There remain serious challenges with respect to the general situation of females in Malawi in spite of the tremendous and collective efforts of gender players.. In the political arena, visibility of women in decision making positions remains dismal. Notwithstanding the improvement in numbers of women participating during the last general election, there have been a number of factors that have stifled their visibility. Firstly, the failure to conduct Local Government elections during the last 9 years has denied women an opportunity of space to compete for representative positions through elections. Secondly, political institutions remain non-committal to entrenching equality between the sexes within themselves. Most political institutions remain patriarchal and as such, they often practice measures that although seemingly fair, are intrinsically biased. Thirdly, little has been done to eliminate the underlying factors of subordinacy of women in the political field. Factors such as limited, lack or low levels of education; lack of financial and economic prowess; and a generally unfavourable atmosphere towards women continue to undermine their participation in the political space.

19. However, with respect to the Presidency, Malawi, owing to the death of Professor Bingu wa Mutharika in April, 2012, witnessed a peaceful though not entirely seamless transition of power to Her Excellency, Mrs. Joyce Banda, the then Vice President. Her nomination and eventual election alongside the late Mutharika at the 2009 Presidential election, created the first Presidency that reflected gender equality within the SADC region. After overcoming resistance from the ruling party from which she had been expelled in December, 2010, Mrs. Joyce Banda was sworn

in as President on 7th April, 2012. Her appointment of Hon. Khumbo Kachali as Vice President reverted the gender equal *status quo* in the Presidency.

20. However, it must be noted that the situation that Malawi finds herself in terms of the Presidency, does not speak much for posterity in that while the current situation may have tremendous influence of the general welfare of females in Malawi, there are no rules that would entrench the current balance. Neither the incumbent President nor her successors are bound to maintain a balance in the Presidency during their terms. The 2014 elections remain a crucial test of the national response towards female leadership at the level of the Presidency.

21. In the week beginning 10th February, 2014, several political parties presented their Nomination Papers for the election to the office of President. By law, the Presidential hopefuls are required to submit their choice of running mates. Of the four leading parties, the Malawi Congress Party (MCP); the Democratic Progressive Party (DPP); the United Democratic Front (UDF); and the People's Party (PP), the MCP, DPP and the UDF have featured an all-male pair for the Presidency while the PP, headed by the incumbent President features a woman for Presidency and a man as running mate.

22. As was the case in the 2009 elections, the Presidential elections also feature an all-female team of a recently registered political party known as United Independence Party led by Mrs. Helen Singh with Ms. Chrissy Tembo as her running mate.

23. For the 2014 tripartite elections, there shall be Presidential, Parliamentary and Local Government Elections. The Electoral Commission indicates that 7,537,548 people have since registered to vote. Out of this number, 4,056,183 registered voters are female, representing 54% of the voters. The Electoral Commission has not yet¹ provided the statistics regarding the number of female candidates who shall participate in the elections at all levels.

24. The Gender Equality Act, Child Care, Protection and Justice Act, HIV and AIDS (Prevention and Management) Bill and Trafficking in Persons Bill stand out to demonstrate Government initiative against the role of culture and tradition in undermining the position of women and children in society. These proposed and enacted statutes have all recognized the role of culture and tradition and two have proposed prohibition of some harmful practices that have dire consequences especially for women and girls. The delay in enactment of the HIV and AIDS (Prevention and Management) Bill and the Trafficking in Persons Bill continues to exacerbate the precarious position of women and girls in Malawi.

25. With respect to economic development, Government continues to engage programmes that would reduce the population of women stuck in the cycle of poverty. These programmes, undertaken by the MoGCSW, include Training of Women in Economic Activities and Promotion of Women in Micro-Enterprise Development.

26. At international level, it must be noted that during the Reporting Period, Malawi ratified the SADC Gender and Development Protocol in February, 2013 after signing the same in 2009. The Protocol provides for the general development of women and specifies areas such as protection of women and girls rights to

¹ As of February, 2014.

property and land rights; access to water; protection from violence, among others. The Protocol also includes 28 targets that Member States must commit to by 2015 in order to achieve gender equality. By creating common formative standards, the Protocol empowers policy makers, service-delivery institutions, human rights activists and beneficiaries with the legal tools to demand and claim gender equality. Of particular significance is the introduction of the aspiration towards the attainment of equality in the political space. The position of most members to the Protocol remains distant from this aspiration. Malawi is no exception.

Article 4 — Special measures

27. Since the enactment of the Gender Equality Act, the only visible and statutory means of special measures aimed at accelerating the de facto equality between men and women becomes the Gender Equality Act itself. The Gender Equality Act provides for a gender-neutral quota of no less than 40% and no more than 60% of either sex in a number of sectors, including public service and education.

28. According to the special Law Commission that developed the Report on the Gender Equality Act, they considered the matter of inserting a sunset clause in the statute but finally decided against it. Further, in the Report of the special Law Commission, there is a proposal to amend the Parliamentary and Presidential Elections Act and the Local Government Elections (Amendment) Act by introducing the gender-neutral quota in the candidates nominated in all electoral lists in elections. The special Law Commission also recommends the quota in the composition in the executive machinery of political parties. This means that there will never be more than 60% nor less than 40% of either sex, employed in the public service or in education institutions unless the exceptions provided for under the Act are met. As the country prepares for tripartite elections, a number of special measures have been introduced in order to allow more women to participate in the elections as candidates. The Electoral Commission announced that female candidates participating as Presidential candidates shall pay the sum of K1,000,000.00 nomination fees just as male candidates. But for Parliamentary female candidates, they shall pay a nomination fee of K150,000.00 while male candidates shall pay K200,000.00. For women participating in Local Government Elections, they shall pay a sum of K15,000.00 while male candidates shall pay K20,000.00.

29. In education, Government has introduced the Re-Admission Policy in order to allow pregnant students to return to school after delivery. In recruiting students in training institutions for health personnel, Government admits students on the basis of equality. In admitting students into Form 1, which is the entry level for secondary education, Government also admits students on the basis of equality between boys and girls.

Article 5 — Modification of social and cultural patterns

30. Prejudice and stereotyping remain a major challenge in Malawian society. The factors resulting in these are many. Social and cultural factors remain high contributors. Culture is enshrined in the Constitution under section 26 in the following words:

“Every person shall have the right to use the language and to participate in the cultural life of his or her choice.”

31. There are numerous social, religious, traditional, customary and cultural practices that promote the notion of inferiority of women and reinforce the superiority of men. While there is no documented and conclusive evidence that all women who participate in these practices are compelled to participate in such cultures, since in most cases, it is clear that the participation whether by choice or compulsion, does negate the essence of gender rights. Any attempt to eliminate harmful practices must be examined with constitutional lens so that the elimination of any harmful practice should pass the constitutional test.

32. So far, two statutes, the Child Care, Protection and Justice Act and the Gender Equality Act, have clearly provided for prohibition of harmful practices. The former, prohibits subjection of a child to a social or customary practice that is harmful to the health or general development of the child. Any person who violates this provision is liable, on conviction, to imprisonment for 10 years. The latter prohibits commission of, engagement in, subjecting another to and encouraging the commission of a harmful practice with the consequence of a fine of K 1,000,000 and imprisonment for 5 years.

33. The question of modification, prohibition or elimination of certain practices in society also became the subject matter of the special Law Commission on HIV and AIDS. Under this special Law Commission, the approach is to categorize practices of concern as harmful and acknowledge that they may emanate from social, cultural or religious practice. In this case, the special Law Commission, having identified certain practices as heightening exposure to HIV infection, opted to prohibit certain practices classified as harmful and has listed such practices.

34. In Malawian society, matters of maternity are primarily considered as matters for women. Men have a cursory role, if at all, when it comes to taking responsibility over maternity issues. In fact, it remains ironical that while all maternity issues arise from interaction with men, women hardly share responsibilities with the men that contributed to the circumstances in which they find themselves.

35. While the Gender Equality Act was enacted in 2013, the proposal to amend the Employment Act as provided in the Report of the Law Commission on the Development of the Gender Equality Statute in order to introduce the paternity leave has not been adopted yet. The proposal is to the effect that male employees should be entitled to at least 2 weeks paternity leave where applicable.

36. With a limited portion of the population participating in formal education, there is a limitation in terms of exposure to family education which is likely to be covered under formal education. Public primary schools are offering Life Skills as a subject under their syllabus. This continues as Social Studies under higher levels of education and is best placed to emphasize on matters relating to social responsibilities related to maternity and the roles both parents have to play in the upbringing of children. Cases of men who absolutely have nothing to do with pregnancy even in cases where they cohabit with a partner or spouse are plenty but have not been quantified.

Article 6 — Suppression of the exploitation of women

37. The special Law Commission on the Development of Trafficking in Persons Legislation published its recommendations and findings, including draft legislation, in February, 2011. This publication marked the conclusion of a 7 year process of

developing legislation on trafficking in persons. It was an initiative of the Law Commission secretariat exercising its mandate to initiate law reform. The reform exercise, commenced in earnest, at the beginning of 2008.

38. The proposed legislation takes a multi-pronged approach in line with international instruments and the existing legal framework. It aims at achieving suppression of trafficking in persons by providing for an institutional framework that shall be responsible for dealing with matters of trafficking in persons; establishment of a fund which shall finance the initiatives against trafficking in persons; providing for protection of witnesses and victims of trafficking in persons; punishing offenders;; and making provision for specialization within law enforcement in practices and procedures for dealing with trafficking in persons.

39. The legislation has since been discussed by Cabinet. The major hiccup in this process was that the Cabinet, in place during the late President Mutharika's term, discussed the law and made its recommendation for improvement. Before the corrections were effected, the President had died and a new Cabinet was in place. By mid-2012, the Ministry of Home Affairs had undertaken the process of incorporating the comments made by Cabinet with a view to re-submitting the Bill to Cabinet.

40. In September, 2013, the Ministry of Home Affairs made the final queries on obstacles to the enactment of the proposed legislation with a view to recommending the enactment of the proposal. On the part of Cabinet, there is assurance that it intends to complete examining the Bill as soon as is practically possible with a view to having legislation on this matter enacted at the earliest possible time, preferably during the National Assembly meeting before the end of 2014.

41. Government, through relevant Ministries and law enforcement agencies continues its efforts as reported in the Sixth Report. This notwithstanding, there has been renewed effort for liaison between Government and non-state actors, especially through the Malawi Network Against Child Trafficking (MNACT) in trying to combat prostitution and trafficking and the exploitation that comes with these. To this end, Government through the Ministries responsible for Gender and Home Affairs, carries out periodic training for law enforcement agents, judicial officers and social welfare officers to enlighten them on the contents of the proposed legislation and other challenges arising in connection with trafficking in persons and exploitation of women through prostitution. Between 2011 and 2012, through the Law Commission, Government reached out and conducted training on the proposed legislation to almost 540 officers throughout Malawi.

Article 7 — Equality in political and public life at national level

42. Besides the Constitutional provisions on visibility of women in public life, there are statutes that regulate elections. The main statutes are the Parliamentary and Presidential Elections Act and the Local Government Elections Act. The Electoral Commission also has an enabling piece of legislation which governs it as an institution.

43. In Malawi, there appears to be little or no issue surrounding disenfranchisement on the basis of sex. The presence of women in the National Assembly has steadily increased from 5.65% in 1994 to 22.85% in 2009 when the last elections were held. Since 2004, the number of women contesting for electoral

positions has increased from 136 women out of which 27 were elected. In the last General Elections in 2009, 237 women contested for elected positions and 43 were elected. The only female contestant in the presidential race came fifth out of 7 candidates. In the last election, in 2009, the number of female candidates contesting in presidential elections was 3 against a total number of 14 candidates.

44. The reasons that prevent women from participating in public life, especially at decision-making positions remain the same as reported earlier while the number of women participating in elections as voters also remains higher than for men. Since there hasn't been Local Government Elections held since 2000, the term of which expired in 2005, the only measure for elected officer remains the National Assembly. The next Local Government Elections are expected in 2014 where they shall be held alongside Presidential and Parliamentary Elections. Looking back at the last Local Government Elections in 2000, among a total number of 843 Councillors, 76 were female representing 9%.

45. The number of women elected into office at the time of the last General Elections is 43 for a 193-member House which gives a score of 0.287 marking a slight increase in the numbers of female cabinet ministers at 9 females and 21 males representing 30 and 70% respectively. This falls far short of the desired 50% representation laid out under the SADC Gender and Development Protocol by 2015.

46. Despite an improvement from a score of 0.323 in 2010 to 0.429 in 2011, the female MP population falls short of the desired 50% by 20%.

47. This increase may be attributed to the 'Increasing Women Representation in Parliament and Local Government' programme dubbed '50:50 Campaign' which was launched in July, 2008 with a view to increasing the number of female elected members in the 2009 General Elections.

48. The 50:50 Campaign brought together Civil Society and Government Departments and some of the activities included providing financial support to female candidates and offering voter education to the public on the need to engender the election.

49. In Civil Service, higher positions are still dominated by men. The NSO assessed 45 positions using data from 2 Government Ministries and found that by 2011, only 4 positions were occupied by women representing a mere 9% which depicts a large gap with a score of 0.098.

50. The security services comprise the Malawi Police Service (MPS); the Malawi Defence Force (MDF); the Immigration Department; and the Prison Service. In the MDF, women constitute 6.8% and women only started being recruited after 1990. The MPS has the highest number of female service persons at 21.7% and also boasts a high number of women in decision making positions especially at the rank of Commissioner where women comprise 33.3% (2 of out of 6 Commissioners). This notwithstanding, the MPS carries out equal opportunity recruitment exercises where both men and women are subjected to the same processes. The consequence of this has been reduced numbers of females emerging successful after interviews. In response to this, a female Deputy Inspector General of Police has been tasked to operate a Gender desk which will, among other things, look into gender disparities in the institution.

51. The Immigration Department has uniformed and civilian officers. Of the uniformed officers, 219 are male and 55 are female. Of the civilian officers, 71 are male and 44 are female. The Immigration Department is currently recruiting 300 officers, out of whom 200 are male.

52. In the Prison Service, the numbers of personnel reflect the demands of the institution in terms of the number of prisoners. Almost invariably, the number of male prisoners exceeds the number of female prisoners and as such, females constitute 22% of the Prisons staff.

53. In the Judiciary, there are several tiers of judicial officers. Among judges, there has been an increase in the number of female judges during the Reporting Period. Currently, around 30% of judges in the higher courts are female. In the magistracy, which is lower than the High Court, in 2011, 24% of the magistrates were female.

54. The traditional domain remains non-responsive to gender issues due to succession processes where one succeeds as leader following lineage. In 2011, from a total of 265 recognized traditional leaders, 16 were female. Recently, there have been efforts by the Law Commission to review the Chiefs Act in order to address the issue of gender mainstreaming in this area.

55. Table 1 illustrates the gaps that exist in the political block as provided through the Malawi Gender and Development Index. Overall, it is clear that women fare dismally in this sector notwithstanding increasing input of resources and effort.

Table 1
Gender gaps in the Political Block

Component	Indicator	Data			Sub		Block	
		Women	Men	Indicator	Component	Component		
Public Sector	Members of parliament	43	150	0.287				
	Cabinet Ministers	9	21	0.429				
	Higher positions in civil service and parastatals	4	41	0.098				
	Employment in the security forces	0.2	0.8	0.193				
	Judges of	Higher courts	4	25	0.160			
		Lower courts	40	129	0.310			
		Traditional and religious courts	–	–	–			
	Members of local councils	76	767	0.099				
	Number of male/female traditional rulers	16	249	0.064	0.205			
		Political parties	2	39	0.051			
		Trade Unions	24	52	0.462			
	Senior Positions in	Employers' Association	14	63	0.222			
		Heads or managers in NGOs	106	418	0.254	0.247	0.226	0.602

Source: National Statistical Office, 2012.

56. In civil society, generally, the score has declined from 0.270 to 0.247 during the Reporting Period. Only representation of women in leading trade unions has increased and stands at 24 females against 52 men while three senior positions in registered political parties is 41 persons. Out of these, women occupy 4.8% of the positions.

57. When a sample of 16 companies was assessed, it came out that out of 77 senior positions, only 14 were held by women. In some instances, private companies have all senior positions occupied by men.

Article 8 — Equality in political and public life at international level

58. Malawi stands with other countries on the international plane where she sends dignitaries to represent her. Both men and women have been designated as such in various capacities. The number of women is still lower than that of men. The underlying causes of this scenario are quite evident starting from the issue of education, financial and economic empowerment to general reduced visibility of women in decision making positions and lack of political clout.

59. The prerogative to appoint dignitaries to represent Malawi at State level remains with the President. During the Reporting Period, it was noted that out of 18 heads of foreign missions, 4 are women. And out of 11 deputy heads of foreign missions, 3 are women. These representatives are assigned in diplomatic service or special missions for Malawi.

60. Other than the issue of increasing the number of women given an opportunity to represent Malawi, there appears to be no complaints of discrimination recorded in this regard.

Article 9 — Equality under the law with respect to nationality

61. Section 47 of the Constitution follows:

“47. (1) Every person who, immediately before the appointed day, was a citizen of Malawi under any existing law shall continue to be a citizen of Malawi after the appointed day.

(2) An Act of Parliament may make provision for the acquisition or loss of citizenship of

Malawi by any person after the appointed day, but citizenship shall not be arbitrarily denied or deprived.

(3) In this section, the expression

(a) “acquisition of citizenship” includes acquisition by birth, descent, marriage, registration, naturalization or any other means prescribed by an Act of Parliament; and

(b) “loss of citizenship” includes loss by deprivation, renunciation or any other means prescribed by an Act of Parliament.”

62. The enabling legislation on matters of citizenship is the Citizenship Act² of 1966. On the issue of marriage, the Act under Section 9, provides as follows:

“A citizen of Malawi, being a woman, who acquires by marriage the citizenship of some country other than Malawi shall cease on the first anniversary of the date of that marriage to be a citizen of Malawi unless, before that anniversary, she has made a declaration in writing

(a) in the form specified in the Third Schedule, of her intention to retain citizenship of Malawi; and

(b) in the form specified in the Fourth Schedule, renouncing, so far as it lies within her power, citizenship of that other country.”³

63. It is clear from the wording of the two provisions that it is not automatic, in the first instance, that marriage is a ground for acquiring or losing citizenship except in accordance with the provisions of the Citizenship Act. To this end, the law may and does prescribe that marriage under law is a ground for cessation of citizenship only for a woman who has acquired other citizenship, by marriage. The exception to this is that a woman will retain her citizenship, if she announces her intention to retain Malawian citizenship or if she renounces the citizenship of the country whose citizenship she acquires by reason of marriage.

64. This special effect of marriage upon citizenship may not be fully appreciated without considering other constitutional provisions contained in sections 13 (a), 20 and 24. These provisions provide for gender equality and specify as prohibited grounds for discrimination, sex, gender and marital status. The precise text of the Constitution under section 24 provides that women have the right to be accorded the same rights as men in civil law, including equal capacity to acquire and retain citizenship and nationality. It is interesting to note that the Malawi Citizenship Act attempts to prevent a scenario of statelessness by only requiring announcement of retention or renunciation of citizenship where other citizenship has been acquired by marriage.

65. There is no corresponding provision for a man marrying a foreign woman. In the absence of a corresponding provision for a Malawian man, then the distinction is on account of sex, gender and marital status. Section 24(2) of the Constitution proceeds to provide that “any law which discriminates against women on the basis of gender or marital status shall be invalid ...”. If a court were to find the provisions of section 9 of the Citizenship Act discriminatory, it would be nullified. However, no litigation has taken place around the matter and in the absence of a repeal, section 9 of the Malawi Citizenship Act remains the law.

66. The Department of Immigration which administers the Malawi Citizenship Act has taken note of the discriminatory effect of section 9. It has noted that in line with section 47 of the Constitution, as read with sections 13 (a), 20 and 24, there is need to review the Citizenship Act. As an interim measure, the Department of Immigration has taken positive steps to safeguard the nationality of women by not withdrawing the citizenship of women on the basis of their marriage to men; they have only implemented it by restricting the citizenship of men on the basis of their marriage to women.

² Cap. 15:01.

³ Section 9.

67. The Department notes that while it has submitted to the Law Commission a request for a comprehensive review of the Malawi Citizenship Act and the Immigration Act, the matter of women on matters of citizenship and immigration remains of high concern. In an interview with the Chief Immigration Officer, Mr. Mankhala, he emphasized the need for urgency in having the statutes reviewed. Having observed that there has been inordinate lapse of time since the last submission was made to the Law Commission, one of his priorities, is to ensure that the matter is re-submitted to the Law Commission and that the Department of Immigration together with the Law Commission work together towards sourcing of funds for the exercise.

PART III

Article 10 — Education and training

68. Matters of education are sub-divided into literacy, enrolment, survival and dropout of pupils and students depending on the level of education. Literacy has recorded a slight increase from 0.839 to 0.864 indicating that the proportion of women who are able to read and write is increasing towards that of men.

69. On enrolment, there has been a further decline in gender disparities particularly for primary and secondary school education. Gender disaggregated data for early childhood enrolment has been hard to find, therefore it has not been possible to paint a clear picture of progress between female and male children in this area. The scarcity of early childhood enrolment data is currently not available because it is not being collected. The only data available annually is the aggregate number Early Child Development (ECD) Centres and number of children attending ECD centres. The Ministry of Gender, Children and Community Development with support from the World Bank and UNICEF is currently setting up a database which will be able to capture data on early childhood enrolment. In 2010, there were 895,818 children enrolled in 9,780 ECD Centres representing 34% coverage across the country compared to 771,666 children enrolled in 8,890 Centres in 2009 representing 32%.

70. Government developed a policy on ECD in 2003 to provide guidance on how best to prepare future generations for Malawi. Government recognizes that investing in ECD would reduce inequalities rooted in poverty and social discrimination in society by enabling all children a fair and sound start in life. The policy ensures that the provision of care and support is in the best interest of the child and in line with local legislation and international obligations.

71. Government has translated the Policy into two major vernacular languages and distributed copies to stakeholders concerned with ECD. Further, the Government developed a National Strategic Plan (2009-2014), an Advocacy and Communication Strategy and training materials on ECD. Caregivers and Parents Committees have been trained. Incentives have also been provided to caregivers to encourage them in their work.

72. Malawi has achieved gender parity with respect to primary and secondary school enrolments with girls slightly surpassing boys, an indication of improvement in attitudes towards girls' education. The gender parity also creates the picture that Malawi has succeeded in enrolling the majority of its primary school age group with

an overall enrolment rate of 83% which is a very good stride towards the Millennium Development Goal and the Education For All (EFA) goals for 2015. The introduction of Free Primary Education in 1994 has played a significant role in primary school enrolments.

73. In terms of net primary education enrolment, 84% girls as compared to 82% boys were enrolled. Whilst the available statistics shows that the primary school age population of girls has grown faster than that of boys in the recent past leading to the achievement of parity in net enrolment rate, the picture may be slightly different if the issues of repetition at each level of the primary education cycle were to be factored in. The repetition rate between standards 1 and 8 ranges between 12.9% and 25.1% for boys and 13.5% and 24.1% for girls.

74. The Education Management Information System (EMIS, 2010) shows an increasing trend in the survival rate of pupils to standard 8 (the last class of primary education). According to the EMIS, the total survival rate for standard 8 increased from 26.1% in 2005 to 48.8% in 2010. In terms of gender, the trends have also been increasing for both boys and girls during the period. However, the rate of increase for girls has been lagging behind that of boys. For instance, in 2005 the survival rate for girls to standard 8 was 22.9% against 30.1% for boys and in 2010 the rate for girls was 45.0% as compared to 53.1% for boys. It should, however be noted that by 2010 survival rate was higher in lower classes up to standard 5, with a record 74.7% for boys and 72.0% for girls. An increase in the survival rate may partly be attributed to an improvement in sanitary facilities particularly for girls in most schools.

75. Despite the stated discrepancy which has continued over the years, it should be noted that there has been an improvement in the survival rate for both standards 5 and 8 since 2005. In 2005 the aggregate survival rate for standards 5 and 8 were at 49.8% and 26.1% respectively before rising to 51.8% and 30.2% in 2007 before getting to 73.5% and 48.8% in 2010 (EMIS, 2010).

76. A Country Status Report for Malawi (2009) on education highlights both demand and supply factors that influence the low retention and the survival rate in primary schools. On the demand side, families' economic difficulties and behaviour such as pushing girls into early marriage as well as early pregnancy and family responsibilities are cited as the main factors. With regard to economic difficulties, most families would resort to sending their children to engage in child labour either as house workers in towns and/or to work in farms.

77. When girls reach standard 5 and a little beyond, they reach puberty and are often subjected to sexual harassment and assault both on their way to and from school as well as within the classroom walls from their male peers and teachers. This discourages the girls from continuing with school. Their parents would also keep them home from school both to protect them from violence, as well as to help with childcare, food gathering and household chores as they are deemed to be of age. Long distance to schools is also a significant factor leading to school dropout.

78. Malawi still remains without a comprehensive Girl Dropout Policy but has a Re-admission Policy for girls who dropped out of school on account of pregnancy. Other significant policies for retention of pupils in school include the School Feeding Programme in primary schools and a 2 year cash transfer programme for

girls between 13 and 20 years. The girls get a stipend directly to encourage them to attend school and preventing them from dropping out.

79. Since 2007, Government has also intensified efforts to bring civic awareness to the public through the Primary Curriculum and Assessment Reform (PCAR). PCAR promotes both social and academic development of the student by giving the student a more active role in the process of learning.

80. On the supply side, crowded classrooms with a pupil classroom ratio of 101 in 2010 which increased from 85 in 2005, and open air or temporary classrooms mainly due to the introduction of free primary education in 1994 without adequate infrastructure in form of classrooms and sanitary facilities has influenced more pupils, particularly girls who become more aware of their sanitary needs as they get to puberty, to drop out of school. Learning under a tree becomes more problematic during the rainy season when the little available classroom space is preserved for the younger pupils in the lower classes at the expense of the upper classes. This means some classes are frequently disrupted by the rains which then discourages the learners and leads to increased absenteeism and drop out.

81. Whilst the survival rate indicator is used to measure the extent to which the school system is able to retain pupils, with or without repetition, it conversely measures the magnitude of dropout as has been discussed above. Despite the notable progress in reducing school dropout at entry point, the situation is still not good with slow improvement as one goes up the ladder. The EMIS data shows high dropout rates particularly for girls in higher classes i.e. standard 7 and 8 and also in rural as compared to urban areas. The main reasons for girls' dropout continue to be poverty, early marriages, pregnancies and family responsibilities. Dropout at secondary school level is also influenced by lack of fees due to poverty. Generally, the opportunity cost of sending female children to school in rural areas, where girls are married quite early, is high because benefits of girls' schooling seem to be far-fetched for most poor households.

82. The EMIS also shows that in 2005, the general pupil-teacher ratio was at 71 and increased to 80 in 2010. The ratio for pupils to the number of trained teachers was even higher at 83 in 2005 and rose to 91 in 2010. In terms of classroom structures, 15% of the structures in use for the 2009/10 school year were temporary or makeshift structures probably to accommodate the increasing number of pupils. Crowded classrooms, open-air or temporary classrooms, and incomplete classroom blocks and schools have had a negative effect on retention.

83. The Malawi Education Country Status Report (CSR) of 2008/09 found that 16% of pupils were enrolled in a school that did not provide the 8 grades of the primary cycle and giving a high probability of the students to dropout before completion.

84. Among some of the measures that Government needs to undertake to address the decrease in the quality of education include increasing investment in infrastructure development especially classrooms and sanitary facilities; providing adequate teaching and learning materials to schools; and training more teachers by promoting more private sector participation in establishment and running of teachers' training colleges. With regard to infrastructure, as of 2010, there were 36,819 classrooms in the public primary schools against 1,470 classrooms under private schools comprising only 3.8% of the total. Government needs to provide

incentives to teachers like transport and house allowances since many teachers stay far away from the schools where they teach. To ease the problem of shortage of teacher houses, more investment needs to be made in the area. Increased budgetary allocation to the education sector to support private schools would also encourage them to play an active role in the promotion of education.

85. Gender parity has also been achieved in secondary school enrolment. Statistics show that net enrolment rate (NER) for females and males by 2009 were 15% and 12% respectively. With an overall NER of 13%, it shows that fewer students enter secondary education mainly due to less number of spaces in terms of schools and classroom space at the secondary level than in primary. During 2009/10, there were 5,392 primary schools compared to 1,045 secondary schools.

86. Despite this gloomy picture, the private sector and religious agencies under the Association of Christian Educators in Malawi (ACEM) are doing a lot in recruiting girls in secondary schools. They have more girls-only secondary schools than the government. Out of 28 girls-only secondary schools, government only owns one representing a mere 3.6%.

87. At secondary school level, some schools that released the students during the day have been converted into boarding schools by providing hostels for both male and female students.

88. With regard to tertiary education, males (66.4%) continue to dominate females (33.4%). Data on tertiary education was obtained from two public universities, University of Malawi and Mzuzu University, and three prominent private universities, the Catholic University of Malawi, University of Livingstonia and Shareworld University. Of the two categories of providers, the gender gap is higher in the public than in the private institutions. The two public institutions in 2011 together recruited 31.8% females and 68.2% males whereas the private institutions combined recruited 45% females and 55% males in the same year.

89. The major discrepancy in the public institutions emanates from two major factors which border around college accommodation space and university entry requirements. From the time of establishment, both University of Malawi and Mzuzu University have had more bed spaces for male than female students and so could only admit a specified number of females into the universities. The other limiting factor for female admission has been, until recently, the overemphasis on good passes in science subjects including mathematics. In most cases, it has been male students who have had an upper hand in science subjects than females, a fact which has perpetuated the enrolment differences between males and females. On the whole, male students have always enjoyed a higher pass rate than their female counterparts. For instance, in 2010 nearly 58% male students passed their Malawi School Certificate of Education Examinations (MSCE) against 46.5% for females.

90. To mitigate the gender disparities in tertiary education, the University of Malawi introduced non-residential system to increase intake for both males and females and also constructed more hostels for female students. Currently the Ministry of Education is in the process of introducing pool selection system where all tertiary institutions would be given a chance to select students from a pool of school leavers. Additionally, the institutions will also be encouraged to enrol students based on class space and not bed space. These two initiatives will definitely increase the number of females enrolled for tertiary education. For the Teachers

Training Colleges in the country, Government has adopted the 50-50 enrolment policy in order to reduce disparity between males and females.

91. In 2010, the education enrolment sub-component had a score of 0.874 and has gone up to 0.901 in 2011. However, because more girls dropped out of school relative to boys it affected the overall education score leading to a slight decline in the score from 0.872 to 0.864 for the preceding and current years respectively.

92. While it was reported that issues of violence against girls in school are on the increase, the Human Rights Commission, together with the Ministry of Education, Ministry of Gender, the Law Commission, Action Aid International and some media houses, spearheaded the process of developing the Violence Against Girls in School Policy which was earlier in 2012, submitted to Government for possible adoption. The proposed policy identifies causes and instances of violence, including sexual harassment, issues of lack of sanitary facilities that usually drive girls once they reach the age of puberty out of school and other general matters. It is largely hoped that Government will welcome this proposal considering that some of its departments participated in the process.

Article 11 — Employment and work

93. The right to economic activity, to work and pursue a livelihood enshrined in the Constitution is broadly understood to include the right to earn a living through formal or informal employment. With specific reference to employment, section 31 provides that every person has a right to fair and safe labour practices and to fair remuneration. The provision proceeds to guarantee fair wages and equal remuneration for work of equal value without distinction or discrimination of any kind, in particular on basis of gender, disability or race. The State is obliged to ensure the right to withdraw labour.

94. There are several statutes that cover matters of employment. The Employment Act is the principal legislation covering labour related matters in Malawi. Other statutes include the Labour Relations Act, the Occupational Safety, Health and Welfare Act and the Workers' Compensation Act.

95. The Employment Act enacted in 2000 prohibits discrimination against employees or prospective employees in respect of recruitment, training, promotion, terms and conditions of employment or other matters arising out of the employment relationship. Among the grounds listed under section 5 are sex, marital status or family responsibilities. Contravention of this provision may result in a fine and up to 2 years imprisonment. The same prohibition applies to pay which the Employment Act in section 6 guarantees to be equal for work of equal value without distinction or discrimination of any kind.

96. The Employment Act also 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. Termination of employment due to or on account of a reason connected to pregnancy of an employee is an offence punishable with a fine and imprisonment of up to 5 years. Notwithstanding this provision, female employees are per Malawi Public Service Regulations female employees are entitled to 90 days maternity leave.

97. In spite of these provisions, women still continue to lose employment or benefits due to pregnancy. Although the relevant institutions admit to not computing statistics in this regard, reported cases are emerging and on the increase. Often complainants allege that employers will not make it explicit that the reasons for termination are connected to pregnancy. In such cases, women find themselves declared redundant only to be replaced by another woman of equal capacity but without maternity issues.

98. Almost 85 % of households in Malawi are engaged in agricultural activities. Of these households, about 84 % of the households are engaged in crop production whilst 44 % engage in livestock production. It is further noted that 43% of households engaged in agricultural activities are engaged in both livestock rearing and also crop cultivation.

99. In the non-agricultural employment sector, approximately 20% of households operate non-agricultural enterprises. Also in terms of employment, the share of women in non-agricultural wage employment remains the same as the last time it was measured at 21%. The proportion engaged in small scale economic activities in urban areas is at 36%, more than double the figure for rural areas which stands at 17%. In gender terms, 22% of male headed households operate non-agricultural enterprises compared to 15% of female headed households. Ultimately, the percentage of women living under the poverty line is at 51.6%. Table 2 shows more on the gender gaps under economic issues.

Table 2
Gender Gaps under the Economy

Component	Sub-component	Indicator	Data			Sub-Component	Component	Block
			Women	Men	Indicator			
Income	Wages	Wages in agriculture	55 000.00	55 000.00	1.000			
		Wages in civil service	36 802.00	36 802.00	1.000			
		Wages in formal sector (public and/or private)	49 786.00	49 786.00	1.000			
		Wages in informal sector	4 500.00	4 500.00	1.000	1.000		
	Income from informal enterprise	16 243.00	33 091.50	0.491				
	Income from small agricultural household enterprise	16 222.40	20 712.20	0.783				
	Share of women under the poverty line	51.6	48.4	.0938	0.737	0.869		
Time use and employment	Time-use	Time spent in market economic activities (as paid employee, own-account or employer)	18.4	28.0	0.657			
		Time spent in non-market economic activities or as unpaid family worker in market economic activities	13.7	13.8	1.007			

Component	Sub-component	Indicator	Data			Sub-Component	Component	Block
			Women	Men	Indicator			
		Time spent in domestic, care and volunteer activities	7.7	1.2	0.156	0.607		
	Employment	Share of women in non-agricultural wage employment	21.0	79.0	0.266			
		Youth unemployment rate	1.00	1.00	1.000	0.633	0.620	
	Means of production	Ownership of rural land/farms						
		Urban plots/houses	20.0	80.0	0.250			
		Livestock	45.0	55.0	0.818			
Access to resources		Access to credit (commercial and microcredit)	10.7	14.0	0.764	0.611		
	Employers		0.2	0.6	0.333			
	Own-account workers		15.6	19.6	0.796			
	Management	High Civil servants (Class A)	187	628	0.298			
		Members of professional syndicates	585	3,297	0.177	0.401	0.506	0.665

Source: National Statistical Office, 2012.

100. Labour force participation is measured by comparing the percentage of the labour force in the total population. It indicates the population aged 15 years and above engaged in employment or seeking employment. According to the IHS3, the labour force participation is around 88%. In rural areas, the labour force participation is higher than in urban areas. In both urban and rural areas, the labour force participation rate of males is higher than for females. See Table 3.

101. With regard to youth unemployment, there are more boys than girls who are unemployed. Youth unemployment rate, according to the 2009 WMS which is the main source of data for this indicator, is referred to as unemployed persons expressed as a proportion of persons in the labour force. In the same vein, unemployed persons are those not working during the reference period but were looking for and ready to work during the last 4 weeks preceding the survey.

102. As there are more males than females who continue and finish school, there are obviously more male youths than females looking for employment that are not being absorbed in the formal labour market which is not expanding fast enough to absorb all the school leavers. In contrast, most female youth who had dropped out of school and opted for early marriages would not be on the job market as they would already be engaged either in subsistent farming, in the informal sector, or would be mere housewives.

Table 3
Labour force participation rate of population aged 15 years and above by background characteristics, Malawi 2011

<i>Background characteristics</i>	<i>Labour force participation rate</i>		
	<i>Male</i>	<i>Female</i>	<i>All</i>
Malawi	89.4	87.4	88.4
Place of residence			
Urban	86.5	78.7	82.5
Rural	90.1	89.1	89.6
Rural north	89.5	89.9	89.7
Rural central	89.7	87.9	88.8
Rural south	90.6	90.0	90.3
Age group			
15-24	76.2	79.4	77.9
25-34	97.2	94.5	95.8
35-49	97.4	95.3	96.4
50-64	96.9	92.4	94.5
65+	85.8	70.8	77.5
None	89.7	88.8	89.2
Primary	86.2	80.8	83.8
Secondary	89.9	82.3	87.2

Source: National Statistical Office, IHS 3, 2012.

Article 12 — Health care

103. The principal statute on matters of health is the 1948 Public Health Act. Since 2011, the Public Health Act is undergoing comprehensive review by the Law Commission. One of the issues under consideration is the issue of the right to health which has not been provided for in the Constitution. .

104. The completion of the development of the Gender Equality Act has resulted in the proposal for the enactment of the right to adequate sexual and reproductive health under law. The right covers the following areas:

- (a) access to sexual and reproductive health care services;
- (b) access to family planning services;
- (c) protection from sexually transmitted infections;
- (d) self-protection from STIs;
- (e) choice of whether and when to have a child;
- (f) fertility control; and
- (g) choice of contraceptive method.

105. Over and above, the general duties of health service providers, the proposed law provides for additional duties covering issues of respect for sexual and

reproductive health rights; respect for the dignity and integrity of people who access health services; provision of services, including family planning services, without discrimination and irrespective of marital status; promoting informed decisions; record keeping; obtaining written and informed consent from clients and patients.

106. There are a number of policies related to public health and especially with respect to health care for women. The National Sexual and Reproductive Health and Rights Policy, the National Sexual and Reproductive Health and Rights Strategy, the National HIV and AIDS Policy and the Maputo Plan of Action are most visible. Since 2009, Government embarked on a National Safe Motherhood Programme which aims mainly at reducing maternal mortality ratio which stood at 675 per 100,000 births. In 2013, Government announced that as a result of the Presidential Initiative on Safe Motherhood, the maternal mortality ratio has significantly reduced to 460 per 100,000 live births.

107. Broadly, Malawi is still burdened with very poor general health indicators. Main areas of concern are HIV and AIDS, maternal health, neonatal and child health. On maternal health, the Presidency established the Safe Motherhood Initiative which is coordinated under the Office of President and Cabinet and the President has since appointed a new National Coordinator of the initiative. The President has since April, 2012 also been encouraging Traditional Leaders to take their role in preventing maternal mortality and discouraging the use of traditional birth attendants (TBAs). Currently, Government has prohibited the use of TBAs.

108. On child mortality, the figures show a decline of more than 50% from 234 deaths per 1,000 live births in 1992 to 112 deaths per 1,000 live births in 2010. On the basis of sex, the 2010 MDHS estimates lower child mortality at 117 deaths per 1,000 live births for female children under the age of 5 years compared to 138 deaths per 1,000 live births for male children of the same age. The major causes attributed to these statistics are low education levels, low levels of wealth and age of the mother coupled with poor child spacing and birth size of the child.

109. In terms of child health, boys are showing higher levels of stunting; underweight and under-five mortality than girls. In 2010, the scores under this head were equal while in 2011, the score is 1.185 indicating that more girls are less stunted, underweight and are experiencing less under-five mortality.

110. Some reasons attributing to this development include the fact that previously, communities showed more preference towards feeding male children than girls based on the belief that boys are busier than girls. Due to civic awareness on gender equality, although there is dearth of data on this point, most communities have started treating children equally.

111. While general awareness of HIV and AIDS remains almost universal, it is still a large concern and burden to the enjoyment of good health. Currently, the national prevalence rate for HIV infection is at 10.6%, down by 3.4 percentage points from the time of the last Report.

112. Currently, 10.6% of adults are HIV positive. This is a decrease from 2004 when the percentage was 11.8%. Prevalence is higher in women at 12.9% and 8.1% for men. Women in urban areas have the highest prevalence rate at 22.7% while men in rural areas have the lowest rate at 7.1%.

113. During the reporting period, the DNHA which is under the Office of the President and Cabinet (OPC) registered several achievements including the strengthening of governance and coordination structures; the development and conclusion of a new proposed HIV and AIDS Policy; scaling up of HIV and AIDS services; and the decline of HIV prevalence from 14% in 2004 to 10.6% in 2010. It was also noted that mother to child transmission had declined from 21.3% to 12.8% within the same period.

114. The DNHA also managed to spearhead the mainstreaming of HIV and AIDS in national policies and programmes. The number of people starting Anti-Retroviral treatment (ART) rose from 4,000 in 2004 to over 223,437 in 2008. In 2011, the Ministry of Health reports that the actual number of women accessing ART stands at 274,238 representing 61% compared to 177,308 men.

115. The difference is largely attributed to the women's access to programmes supporting Prevention of Mother To Child Transmission (PMTCT) which provides an entry point to accessing ART unlike men who are hampered by their egos and fear of stigmatization and discrimination. Government has since adopted the Elimination of Mother To Child Transmission (EMTCT) through the adoption of the Option B+ where pregnant mothers, upon being diagnosed HIV positive, are put on lifelong ARV treatment.

116. In response to this disparity, Government has introduced 'moonlight' testing for couples at night in order to encourage men to access HTC. 'Door-to-door' testing, community based HIV services and Voluntary Male Medical Circumcision (VMMC) has also been found to be favourable towards encouraging men to go for testing.

117. Government in collaboration with stakeholders embarked on an exercise to review the Policy through a participatory and consultative process. The revised Policy, adopted in 2013, aims at sustaining the National Response to HIV and AIDS; targets key drivers of the epidemic; addresses emerging national and global issues; and aims at achieving targets proposed in the Universal Access Framework on prevention, treatment, care and support. It facilitates evidence-based reprogramming and strengthening of the National HIV and AIDS response while recognizing emerging issues, gaps, challenges and lessons learnt during the implementation of the first Policy; scales up evidence based innovative interventions; and re-aligns the National HIV and AIDS Response to the Government's development agenda.

118. The specific objectives of the Policy are prevention of primary and secondary transmission of HIV; improvement of the quality of treatment, care and support services for PLHIV; reduction of vulnerability to HIV infection among various population groups; strengthening of the multisectoral and multidisciplinary coordination and implementation of HIV and AIDS programmes; and strengthening of monitoring and evaluation of the national HIV and AIDS response. The key thematic areas of the Policy include a Comprehensive multisectoral and multidisciplinary response to HIV and AIDS; Prevention, Treatment, Care and Support; Impact mitigation; Protection, Participation and empowerment of PLHIV and other vulnerable populations; Mainstreaming and Linkages; National HIV and AIDS research; and Capacity development.

119. In December, 2011, Government adopted the National HIV and AIDS Strategic Plan (NSP), 2011-2016 as a follow-up on the NAF, 2004-2009, which was extended

to 2012. The NSP seeks to provide guidance to the national response to the HIV and AIDS epidemic by building on the gains of the previous instruments. It also aims at reducing new infections by 20% through the reduction of child infections by 30% and adult infections by 15%. It aims at reducing AIDS related deaths by 8% generally and to reduce child AIDS related deaths by 50%.

120. The NSP also aims at reducing new infections among people in the 15-24 years age group. The NSP has five priority areas of (a) prevention of primary and secondary transmission of HIV; (b) improvement in the quality of treatment, care and support services for PLHIV; (c) reduction of vulnerability to HIV infection among various population groups; (d) strengthening multisectoral and multidisciplinary coordination and implementation of HIV and AIDS programs; and (e) strengthening monitoring and evaluation of the national HIV and AIDS response. Table 4 below indicates the historical trends in selected HIV and AIDS indicators from 2006 to 2010.

Table 4
Historical trends in selected HIV and AIDS epidemiological indicators 2006 to 2010⁴

<i>Indicator/Year</i>	<i>2006</i>	<i>2007</i>	<i>2008</i>	<i>2009</i>	<i>2010</i>
Estimated new infections					
- # Adults (15+)	61 107	57 535	56 204	56 671	56 477
- # Children (0-15)	26 743	25 966	24 469	23 958	22 863
- Total	87 850	83 501	80 673	80 629	79 340
- Estimated adult incidence (%)	1.05	0.96	0.91	0.89	0.86
Estimated total HIV population					
- # Adults (15+)	760 811	766 080	771 311	778 512	786 603
- # Children (0-15)	155 603	163 247	169 677	174 978	179 844
- Total	916 414	929 327	940 988	953 490	966 447
- Estimated adult prevalence (%)	11.3	11.0	10.8	10.6	10.4
Estimated adult HIV population					
- # Males (15+)	302 204	302 875	303 923	306 149	309 069
- # Females (15+)	458 608	463 205	467 387	472 364	477 534
- Total	760 811	766 080	771 311	778 512	786 603
Estimated AIDS deaths					
- # Adults (15+)	51 812	52 156	52 223	52 068	52 144
- # Children (0-15)	13 495	12 797	11 343	10 723	9 089
- Total	65 307	64 953	63 566	62 791	61 233

121. With respect to family planning, it is clear that knowledge of contraception is almost universal at 98% for women and 99% for men. Modern methods are more known than traditional forms of contraception. Among married women this figure is at 100% while for sexually active women, this is at 99%. According to the MDHS, 65% of all women indicated ever using a method of contraception at some point in their lives. The percentage of use for modern methods is higher at 62% while usage

⁴ NAC Spectrum Analysis, 2011.

of traditional methods is at 18%. Injectable contraceptives rank highest among most widely used methods among married women at 61%; male condoms come second at 20%; the pill at 15%; and female sterilization at the bottom at 10%. For men, condoms are the highest form used at 49% while male sterilization is the least common at 1%.

Article 13 — Economic and social security

122. Access to benefits for women while in matrimony or afterwards remains a challenge. Patriarchy still demands that women access property through men. This is in spite of constitutional provisions which guarantee the right to acquire and maintain rights in property including property obtained by inheritance. The passing of the Deceased Estates (Wills, Inheritance and Protection) Act in 2011 entrenches the protection offered to women and the immediate family more than it was under the Wills and Inheritance Act.

123. At household level, the IHS 3 shows that within 12 months of the Report data collection process, almost 14% of Malawian households interact with the credit market as follows: 8% had successfully obtained a loan; 5% had tried to get a loan and were turned down; and 2% are still waiting for a response. 52% of female headed households are more likely to borrow business start-up capital than male headed households which stand at 37%.

124. The IHS 3 also indicates that most women are unbanked and often lack access to capital. Men (14%) seem to have slightly more access to credit compared to their female (10.7%) counterparts. Limiting factors to accessing credit at banks and microfinance institutions include issues of collateral and security guarantees. Studies in microfinance have found that formal lenders in Malawi including rural banks, savings and credit cooperatives, and special credit programs supported by the government and nongovernmental organizations prefer to give loans to households with diversified asset portfolios and with diversified incomes. This usually put women at a disadvantage compared to their male counterparts. Even in cases where security is provided, some financial institutions still require the involvement of a male reference point in order to give full access to financial facilities.

125. While there appears to be no serious issue with access to recreational activities by women in Malawi, consumption on recreational activities is the lowest among consumption groups in Malawi. In school, both male and female students are encouraged to participate in sport. This has led to the emergence of male and female dominated sports activities. Soccer, for instance, is a male dominated sport while netball remains a female dominated sport. During the reporting period, more women have been engaging in soccer at a slow but steady pace. The problem comes in at sponsorship level. Female dominated sports and male dominated sports done by women enjoy lacklustre sponsorship. Even in the most evident case where the National Netball Team ranks number one in Africa and the National Football Team remains above 70 in the rankings, netball attracts decimal funding. The women's soccer league does not receive much support as the men's. Data on expenditure on the football and netball teams was not readily available.

126. No legislation has touched on this except that this attitude and practice may be challenged under the general discrimination provisions. The Constitution may shed light in this regard and as it prohibits discrimination of all forms.

Article 14 — Rural women

127. Although rural women do not form a specific cadre under legislation or the Constitution, they fall into most of the broad categories of protection under law and policy. Currently, 85% of the total natural population live in rural areas versus 15% urban population. Females head 25% of households in Malawi. Women also head 25% of households in rural areas compared to 18% in urban areas. It appears that most of the initiatives towards women do not disaggregate on account of location but rather other distinctive marks such as age, marital status and family responsibility. In any event, although most of the initiatives cut across the board, rural women bear the brunt of problems faced by women in terms of gender. They still remain the most exploited, vulnerable and abused.

128. There have been land reforms under the proposed Customary Land Bill which aims to protect customary land rights of women including promoting their participation in decision making during customary land allocation.

129. The efforts under the development of legislation on HIV and AIDS and gender equality programmes both propose to prohibit harmful practices. An examination of these proposals shows that they are targeted at protecting rural women who often are subjected to the harmful practices.

130. Of late, elderly women have been subjected to torture and violence on account of suspicion of practising, including teaching children, witchcraft. This has brought severe stigma upon the women and in extreme cases, death has occurred.

131. Since 2006, Government has been operating a Social cash transfer scheme as a means of offering social protection to the ultra-poor. Social protection constitutes the protection and promotion of livelihoods and welfare of people suffering from unacceptable levels of poverty or vulnerable to risks and shocks through identifiable policies and practices.

132. When the scheme commenced, poverty levels were at 52%, out of which 22% were ultra-poor. The ultra-poor comprise the elderly, child-headed households, people with disabilities and the chronically ill. Almost 10% of the ultra-poor is unable to participate on productive activities because they are labour constrained. At the time of inception, it was estimated that the Scheme would reduce the percentage of the ultra-poor from 22% to 12%.

133. The Social Cash Transfer Scheme was piloted in Mchinji with the projection that by 2016, all districts would be covered. Table 5 below illustrates the projection and costs of scaling up the exercise.

134. By the end of 2009, the Social Cash Transfer Scheme had been rolled out to 7 of the 28 districts. It had also influenced economic development by (a) enabling the poor to protect themselves against shocks; (b) increasing the productive capacity and asset base of poor and vulnerable households; (c) encouraging investment by reducing risk through the predictability of transfers; (d) unlocking economic potential; and (e) stimulating demand for local goods and services and supporting enterprises in rural areas. In short, the Scheme was working especially towards reduction of poverty among the ultra-poor.

Table 5
Cost and projection of Social Cash Transfer Scheme

<i>Phase</i>	<i>Time span</i>	<i>No. of beneficiary households</i>	<i>One-off costs for capacity building (in USD)</i>	<i>Annual costs of transfers and operation costs (in USD)</i>
Pilot phase (4 TAs of Mchinji)	Sep 2006 to Dec 2007	3.000	60.000	480.000
1st extension (all of Mchinji plus 3 more districts)	July 2007 to Dec 2008	32.000	180.000	5.380.000
2nd extension (6 additional districts)	Jan 2009 to Dec 2010	80.000	360.000	13.440.000
3rd extension (8 additional districts)	Jan 2011 to Dec 2013	144.000	480.000	24.200.000
4th extension (last 12 districts)	Jan 2014 to Dec 2015	250.000	720.000	42.000.000
All districts covered	From 2016 onwards	250.000	Annual costs of replacement 250.000	42.000.000

Article 15 — Equality before the law in civil matters

135. The Constitution of Malawi is founded upon the principle of equality, among others, whereby “all persons have equal status before the law,” and no institution or person [is] above the law.⁵ This provision of principle is cast in a manner that is inclusive. It is clear that no distinction is made at this stage on account of sex or gender. The Constitution entrenches this statement of principle under Chapter IV on Human Rights in that:

(a) Under section 20, all forms of discrimination are prohibited and all persons, under any law, are guaranteed equal and effective protection against discrimination; and

(b) Under section 41, every person has a right to recognition as a person before the law.

136. Section 24 of the Constitution clearly guarantees women equal capacity identical to that of men in civil matters including, matters of contracts; rights in property; custody, guardianship and care of children; and citizenship and nationality. In addition, the Constitution calls for the enactment of legislation to eliminate practices that promote discrimination in work, business and public affairs. The Gender Equality Act has addressed those problems. To this end, in practice, women are capable of entering into various kinds of contracts, including for employment and commerce without discrimination.

137. A few areas of concern remain however especially in the area of according them equal opportunities in relation to access to justice to enhance their capacity to enforce their rights in civil matters. The Government decided to remedy the situation by the enactment of the Legal Aid Act 2010. This Act provides for the establishment of an independent Legal Aid Bureau, to replace the current Legal Aid Department, which has traditionally been part of the Ministry of Justice. The establishment of the Bureau is geared to address the huge gap of provision of legal

⁵ See section 12.

aid services experienced in Malawi mainly in terms of accessibility by those mostly in need of such services. To that end, the operations of the Bureau shall be decentralised with the establishment of Legal Aid Centres in all Districts in the country, as opposed to the present situation where the Legal Aid Department has offices in the urban centres of Blantyre, Lilongwe and Mzuzu only.

138. The Legal Aid Act, 2010 became operational on 1 May 2013 and the Legal Aid Department (LAD) has been given a transitional year, 2013/14. In this year, Government has taken significant steps to increase funding to the LAD albeit such funding still being inadequate, in order to enhance its capacity to provide quality legal representation to the poor, the majority of whom are women. For example, monthly funding was increased from approximately \$13,500.00 to \$22,500.00 and is expected to increase even more in the 2014/15 financial year. In order to increase women's legal literacy and awareness of their rights, the LAD has conducted awareness and civic education campaigns in selected districts, which has resulted in an increase in the number of cases registered by the Department. Among the cases that have seen an increase are those pertaining to customary land ownership, whereby there is an increase in the number of elderly women who are being dispossessed by young male relatives. In order to address the problem of inadequate funding, the LAD has adopted an approach that prioritises cases for women and children. Nevertheless, it is envisaged that the Legal Aid Bureau once established, will receive adequate funding from Government to enable it to discharge its mandate effectively.

139. Internally, there are no restrictions based on sex, gender or marital status on movement of people. In terms of international travel, the key legislation is the Immigration Act.⁶ An interesting provision is made under section 42 of the Immigration Act as follows:

“(1) Where any woman who is not a citizen of Malawi becomes married to or cohabits with a man in Malawi, and such marriage or cohabitation comes to an end, it shall be the duty of the man concerned, and any other person responsible for bringing such woman into Malawi, to repatriate the woman to the country from which she was brought.

(2) In any case in which a man shall fail to repatriate a woman in accordance with subsection (1), such man may be ordered by an immigration officer, or by any other person authorized by the Minister, to repatriate the woman within such period as may be specified by such immigration officer or other authorized person.

(3) Any person who has been ordered to repatriate a woman under subsection (2) and who has failed to do so within the time specified in the order shall be liable to a fine of K40 and to imprisonment for three months.

(4) Any person convicted under subsection (3) may be required, in addition to any other penalty, to pay to the Government such expenses as may be incurred by the Government in repatriating the woman concerned, and any such sum shall be a civil debt recoverable in the Courts.

⁶ Cap. 15:03.

(5) An immigration officer may, as a condition of entry, require a deposit from any person bringing an alien woman into Malawi against the possible cost of repatriating her to her place of origin.”

140. Not only is there lack of reciprocity with respect to men but the provisions cited above clearly raise matters of concern in terms of residence and movement of foreign women in Malawi. However, the financial burden placed upon a man under subsection (5), requiring that security be demanded in order to secure repatriation of a woman should also be extended to women in the event of an amendment to the law, if the association with the woman who invited him terminates.

141. It is worth noting that the general spirit of the provision assumes that only men can import ‘alien’ women in to Malawi.

Article 16 — Marriage and family law

142. Family and marriage are the subject matter of section 22 of the Constitution and a myriad of legislation. There are currently, over and above customary laws, about 15 statutes that regulate marriage in Malawi. According to the Constitution, the family is the natural and fundamental group unit of society. Statutory marriages — meaning marriages under the Marriage Act compete unfavourably with customary and religious marriages which are by far more prevalent than statutory marriages.

143. The main consideration for entry into marriage under the Constitution is age. Although the Constitution does not use the expression, ‘free and full consent’, it emphasizes that force shall not be used to compel people to enter into marriage. As indicated earlier that most marriages in Malawi are contracted under religion or tradition, the role of parents and guardians cannot be underestimated. In most instances, a couple will seek the blessing of their parents or guardians before matrimony takes place. There are circumstances where parties to a marriage would have their prospective spouse rejected by their families. In such cases, although the other party has a right to proceed with the marriage and in many instances people have proceeded, isolation and ostracization have ensued. This, it must be emphasized, applies to both parties to the marriage. In most instances, family tend to force either a man or a woman to marry a particular person due to economic security.

144. Rights and responsibilities are often determined by the culture under which a marriage is celebrated. If the culture is the same, problems do not usually ensue as parties go into matrimony with full knowledge of the expectations under that particular culture. In the event that the parties are from different cultures, choice of the culture to adopt for the marriage may present problems on entry into marriage. While the man’s culture is likely to be dominant, misunderstandings and fear often lead to compromises as to the exact nature of the culture to be used. While these compromises may be easier to reach on entry, they are, firstly, not determined by the parties themselves with family members dominating the negotiation process, and secondly, it may present problems during the subsistence and upon dissolution of the marriage. For instance, under the matrilineal and patrilineal traditions, children will belong to one parent depending on the culture of that marriage. This right may be challenged especially where the aggrieved party belongs to a different culture.

145. In order to resolve this problem where rights and privileges of parties to a marriage are determined by the culture chosen, the Marriage, Divorce and Family Relations Bill provides that the traditions that are adopted upon entry into marriage will only go as far as validating the marriage but will no longer confer rights on any party whatsoever. Since children are considered wealth and a form of investment, the battles ensuing may, and in most instances, do ignore the best interests of the children.

146. Under all cultures in Malawi, women often do not have a say on the number of children the couple will have and do not have the power to decide when the children will be born. Over and above this, it is often women who suffer discrimination and ridicule if there is a case of infertility. Currently, Government is intensifying efforts to reach out to women in terms of sexual and reproductive health rights including the right to decide whether or when to have children. The National Sexual and Reproductive Health Rights Policy of 2009 has made it a priority that information be generated and disseminated to women regarding this right. The introduction of the female condom is also an illustration of efforts meant to empower women to have a choice when it comes to whether or when to have children.

147. While there is a generation emerging in Malawi which is more conscious of their rights, considering it has been 18 years since the adoption of the rights-based Constitution, progress remains slow when it comes to exercising some rights such as retention of a maiden name, choice of profession and occupation. In most instances, choices on these matters are determined by men whether as parents, siblings or spouses. In many instances, men feel challenged if a woman chooses a profession or career that is largely dominated by men. The Constitution has not been explicit in provision of these rights while as the Gender Equality Act does make provision.

148. On matters of property, the law is severe against women. Even under the Constitution where protection has been guaranteed for women to acquire property alone or in association with others (others meaning parents, siblings and spouses or even strangers of either sex), women are often forced into surrendering their property to men or being allowed to enjoy their property only through men. According to the Constitution, women are entitled, on termination of marriage, to property which was jointly held by the couple. In instances of real estate, the law still stands that if title to the property, in this case a house or land, is in the name of the male spouse, the women usually loses out entirely notwithstanding contribution made to the property, financial or otherwise.

149. The Constitution does not specify the minimum age of marriage. During the reporting period, there were two proposed amendments to section 22 of the Constitution. The first is the issue of minimum age at which parental consent may be required for parties entering into marriage. This has been placed at 15 years. The proposal came from a special Law Commission on the Technical Review of the Constitution, which in 1998 felt that sections 22 and 23, the latter being on rights of children, were inconsistent. Section 22 allowed a fifteen year old to seek consent to enter into marriage while section 23 protected persons below 16 years from hazard and recognized these citizens as children. The National Assembly passed the law, but the President refused to assent to the Bill due to public outrage which considered the age of marriage of 16 to be too low. The special Law Commission also proposed an amendment to section 22 of the Constitution to read as follows:

“(8) The State shall actively discourage marriage between persons where either of them is under the age of fifteen years.”

150. This amendment passed and was assented to. Previously, the law provided for instead of “actively”, the word “actually”. Even after the amendment, it is clear that there is no outright prohibition of marriages for persons below the age of 15 years. This brings out an interesting angle where both parties are below the age of 15 years. The proposed Marriage, Divorce and Family Relations Bill, drawing from the spirit of the Constitution as provided for under sections 22 and 23, provides that the minimum age at which a person shall not be prevented from entering into matrimony is 18 years. While this provision has been welcomed by child protectors, it has the effect of negating the right of people of a certain age from exercising a right that the Constitution grants. This proposal necessitates a prior amendment to the Constitution before it can be effected.

151. Both the Constitution and the proposed Marriage, Divorce and Family Relations Bill do not cover the issue of betrothal. As such, betrothal remains unregulated at statute level although the proposed legislation does provide for compulsory registration of all forms of marriage except for marriages by repute or permanent cohabitation which by their nature cannot be registered.

3.0 Factors and challenges affecting the fulfilment of obligations under the Convention

152. Malawi continues a slow but steady pace in the implementation of the Convention. The challenges in this context are legion and mutant while resources keep dwindling. Initiatives both in the long and short term need upscaling.

153. Discriminatory practices continue to haunt the ever-increasing efforts to eliminate them. It can be anticipated that as economic challenges rage on the population, discrimination would increase since the scramble for resources to survive will need increased and more demanding effort. Women and children are most vulnerable in this regard.

154. Civic awareness remains a critical component of any effort under the CEDAW. Although knowledge on gender is high nearing universal, the response to violation of gender rights remains distant. There is need for a layered approach where those who know must be moved to a higher tier where they can act on violations, while those with limited or wrong knowledge must be moved to the knowledge level. Unfortunately, in many instances, even those with knowledge are slow to act considering social repercussions including stigma and discrimination. Civic education must also be programmed to ensure that there is continuity in the flow of information.

155. Poverty is both a cause and result of gender inequality. This resultant vicious cycle thwarts the efforts to realize enjoyment of gender-related rights for women.

156. At domestic level, there is need to make the legal framework more responsive. This begins by ensuring the timely enactment of critical legislation that affects women. Legislation proposed by the Law Commission takes considerably long to enact and currently there are pending Bills awaiting any of the following: Cabinet consideration; laying in Parliament; and enactment. Efforts to realize gender equality therefore continue without a solid legislative framework for support.

157. The review of the Prevention of Domestic Violence Act is a welcome development which needs to be speeded up in order to improve access to justice for women. The technical challenges identified in the review process, like the definition of 'domestic violence'; lack of certain enabling provisions that would give the Act some efficacy, remain serious obstacles. The continued delay in considering for enactment of the Gender Equality Bill is also a related and unfortunate factor. Legislation enforces and complements other legislation. Another reason for the need for speedy enactment of the legislation is that when legislation is enacted, it is tested by society and changes may be proposed where there are challenges. Failure or delay to enact legislation usually means that at the time of enactment, the challenges have mutated and the solutions offered by way of legislation may be irrelevant.

158. Dependency on foreign resources also affects choice and implementation of programmes. It is difficult to choose and implement programmes that have to be pre-approved by donors.

159. The Ministry of Gender is responsible for the CEDAW implementation but remains below capacity in terms of human and other resources. During the 2012/13 financial year, the Ministry of Gender received the sum of K169,526,904 for Other Recurrent Transactions while for Capital Expenses, Local resources were estimated at K295,000,000 while foreign resources were estimated at K9,153,084,775. This not only shows overreliance on foreign resources but also that challenges of implementation should be natural and expected.

160. Malawi continues to lose personnel to other more competitive labour markets especially in the essential services categories such as health and education. Poor conditions of work including low pay drive skilled labour to more lucrative labour markets. The health and education sectors have lost considerable numbers of personnel to the detriment of delivery of services.

161. Although malaria remains Malawi's major killer, other menacing problems include HIV and other non-communicable diseases such as breast and cervical cancer; diabetes; and hypertension. Problems of HIV and AIDS emanate from the medical angle since it has no cure and transcend to other areas such as stigma and discrimination which are purely social in nature. With women bearing the brunt of the epidemic in terms of care provision, higher vulnerability and infection rates, attrition from HIV and AIDS remains a real challenge to the realization of rights of women as promulgated under the CEDAW.

162. Government has, during the Reporting Period, taken massive steps towards the elimination of Traditional Birth Attendants (TBAs) in order to reduce the alarming levels of maternal and infant mortality. Government sees the reversion to skilled medical personnel as a viable alternative to dealing with complications that often lead to maternal mortality. This decision remains challenging in light of limited medical or trained personnel to fill in the gap.

163. Limited access to capital and property makes women remain in the lower cadres of society. Limited socio-economic empowerment for women elevates men far above women and reduces their negotiating and bargaining power and visibility where it counts. The current legislative framework does not address this challenge in spite of a more progressive constitutional order.

164. Knowledge of laws and policies and relevant information remains a constant challenge. In spite of several initiatives to explain, simplify and teach the law,

knowledge remains low and invoking the law remains isolated and remote. Integration of the law into curriculum for formal education would begin to resolve the problem but excludes a considerable population that does not attend formal education especially in the absence of compulsory education practice. Initiatives are still on-going with institutions dealing with the law deploying radio, civic outreach and television where appropriate to reach out to as many people as possible. Lack of knowledge is not exclusive to rural areas. Urban folk also tend to demonstrate serious lack of basic legal knowledge.

Conclusion

165. Government has developed this Report after a thorough and comprehensive consultative process. It has tried to engage public institutions, including all organs of Government and private and civil society stakeholders in the process of developing this Report. In the process, it made effort that during consultations for the development of this Report, the Concluding Observations made at the conclusion of the last Report be disseminated to all organs for their comments and input. Resource challenges have affected this process. However, the Ministry of Gender, Children and Social Welfare has continually been engaging other stakeholders, including civil society organizations, throughout the Reporting Period by unpacking the Concluding Observations for possible reaction and action from the stakeholders.

166. In terms of finance and resource challenges, Government needs to adopt a clear business plan for financing the gender sector and making the resourcing sustainable. Dependence on non-State partners for resourcing of gender remains a threat to the continuation and realization of gender progress. Government notes the global and national economic challenges and the effect it has on women and children especially and should quickly move to address resource challenges to prevent losing the gains made so far.

167. Government has been engaging with the National Assembly, especially at Committee level, to enlighten Parliamentarians on the Bills pending in terms of process and content. Parliamentarians have since been sensitized on all gender-related Bills including the one enacted into law in 2011, the Deceased Estates (Wills, Inheritance and Protection) Act which repealed the Wills and Inheritance Act. The emphasis from the Ministry has been for Parliamentarians to comprehend the content and speedily enact pending legislation.

168. The Gender Equality Act was enacted in February 2013, The Act addresses the prohibition of sex discrimination, sexual harassment and harmful practices; sexual and reproductive health rights; visibility of women in public life at decision making positions; employment opportunities and conditions of work; education opportunities and practice; and human dignity. Kindly note that the harmful practices considered for elimination include religious and social practices over and above traditional practices.

169. Government has taken the position that it is not only the Gender Equality Act that domesticates the CEDAW. In Government's view, the Constitution long domesticated the CEDAW in 1994 especially in sections 13(a); 19; 20; and 24, among many others. These provisions are on gender equality; dignity; prohibition of discrimination; and rights of women respectively. Other legislation developed as

gender-related laws include the Deceased Estates (Wills, Inheritance and Protection) Act which was enacted into law in 2011, the Marriage, Divorce and Family Relations Bill, and the land related legislation reforms that aim at ensuring equitable access to land by women.

170. The Marriage, Divorce and Family Relations Bill is a codified law on family relations which seeks to harmonize statutory and customary marriages by offering the same constitutional standard of protection to all types of marriages. It also provides for similar rights to parties to a marriage and requires that all marriages be registered. In spite of the constitutional allowance that marriages may be contracted by parties between the ages of 15 and 18 years, the Marriage, Divorce and Family Relations Bill provides for 18 years as the minimum age at which a marriage can be contracted. The Bill also proposes elimination of polygamy. While this Bill was referred back to the Law Commission for further consultations, the Law Commission is currently engaging the Ministry to explain the basis of its proposals after which it is hoped that Cabinet may adopt the Bill for enactment.

171. Government also used the opportunity of developing the Gender Equality Bill to adopt the official definition of 'sex discrimination'. Government has made this an offence punishable by a prison term and also made it a civil wrong against which a victim can claim damages.

172. Government is aware that knowledge of laws is very low. Law is understood to include local legislation. Government is aware that knowledge levels are worse for international instruments on gender including the CEDAW; the African Union Protocol on the Rights of Women in Africa; and the SADC Gender and Development Protocol. Government acknowledges the challenges it must face in order to bring laws to the people. The main problems in this regard are resource based as these international instruments must be simplified and translated in order to reach out to the intended beneficiaries. This problem, in Government's view, is not only confined to the rural masses but even among the elite members of society. As such, Government opines that there is need for extensive civic awareness programmes which addresses the various needs of different classes of society.

173. Government has noted that in spite of the enactment of the Prevention of Domestic Violence Act in 2006, violence against women remains a persistent challenge. Through the Law Commission, Government is reviewing the Prevention of Domestic Violence Act in order to address some of these challenges. . On its part, the Ministry of Gender has throughout the reporting period been conducting awareness programmes targeted at various types of officials including judicial officers; policemen; social welfare officers; child protection officers; community development officers; immigration officers; and civil society organizations. The extent of this exercise is heavily dependent on resources and as such, has only been accomplished to the extent of the resources available from operating partners.

174. The proposed legislation on trafficking in persons has been discussed at Cabinet level and awaits forwarding to the National Assembly for possible enactment. Government acknowledges that problems of trafficking in persons are escalating at an alarming rate including internal trafficking of persons. It has been noted that the usual victims remain women and children. It is for this reason that it wishes to speedily adopt legislation on trafficking to satisfy the inadequacies of the current scenario where there is no law.

175. Government feels that there is need to continue with the 50:50 campaign to ensure increased visibility of women. At the November, 2012 sitting of the National Assembly, Government tabled a Bill on introducing tripartite elections which is yet another window of opportunity for female representation in public life at decision making level. The Constitution (Amendment) Bill to this effect was passed by Parliament. The elections will cover presidential, parliamentary and local government categories. Malawi held the only post 1994 elections for local government in 2000. It is also hoped that the Gender Equality Act which proposes the introduction of quotas in public service will entrench the 50:50 campaign and improve the visibility of women in decision making positions.

176. On citizenship and immigration, Government has proposed to make a formal submission to the Law Commission for the review of legislation in this area in order to align it to the new constitutional order and international practice. Government has noted that the legislation in this area falls short of the standards promulgated by the Constitution and concedes that any legal challenge of the provisions would render the current statutes unconstitutional.

177. Government understands the need to eliminate structural, infrastructural and social-economic barriers to education for all especially girls and women. Government has resolved to address these barriers through policy and legislative interventions. Most legislative interventions are contained in the Gender Equality Act which also addresses issues of sexual harassment in schools. Government also wishes to retain and continue with the Readmission Policy for young mothers in schools.

178. While women on the labour market operate at a de jure level with men, practice remains different. Government therefore wishes to conduct civic awareness on the legal provisions that regulate the labour market rather than pursuing prosecution alone. Furthermore, Government wishes to address issues of recruitment and retention of employees, especially female employees on the labour platform. Legislation therefore is intended to cover these matters and issues of conditions of work especially for pregnant employees.

179. The right to health is not specifically provided for by law. A proposal under the Public Health Act Review programme is considering introduction of this right. Under the Gender Equality Act, a more specialized provision has introduced which will cover the right to sexual and reproductive health. Several entitlements have been listed there. Government would want to guarantee elimination of maternal and infant mortality by promoting engagement of skilled health and birth attendants; increased access to skilled personnel and services and raise civic awareness of services available.

180. In the same vein, Government wishes to address other avenues that promote maternal deaths including unsafe abortion. The position of Government is that abortion remains legal but restrictive and has taken the stand that there is need for specialized expertise to review legislation in this area. Unsafe abortions are illegal but the parameters of legal and safe abortion are also very restricted to only those circumstances where the life of the mother is threatened.

181. HIV and AIDS legislation has isolated four key populations for compulsory testing. The proposed legislation has taken a three pronged approach which includes human rights, criminal law and public health. The recommendations made were arrived at after thorough consultations, comparative studies and general consensus.

Government is constrained to act otherwise since these positions were arrived at after due process. Government is also aware that the lack of regulation of the sex industry is fuelling the spread of HIV and AIDS since the statistics indicate that almost 70% of the sex workers are infected with HIV.

182. Government has noted the establishment in November, 2012, of a National Sex Workers Alliance with assistance of civil society organizations. Government is aware of the moral and social issues that are likely to arise from this formalization and institutionalization of sex work and shall at all times remain committed to providing means of reducing HIV infection and protection of human rights generally.

183. Government encourages initiatives that target rural populations especially in hard to reach and hard to serve areas. The plight of rural populations translates into plight of rural women. Government has taken positive programmatic steps to improve participation and visibility of all women in decision making structures at grassroots' level in all structures. Rural women have been specifically targeted with respect to gaining access to justice.

184. Government understands fully the underlying effect of various international instruments in the attainment and implementation of CEDAW. These instruments at regional, continental and international level reinforce the CEDAW and ultimately, the enjoyment of rights by women and girls.

185. Government remains committed to the full ratification of the CEDAW, its Optional Protocol and article 20 amendments. However, Government is still consulting on this in order to come up with consensus around these provisions. Already Government enjoys a good working relationship with several UN agencies and other international bodies available in the country.

Annexures

1. Malawi Government, 2012. Malawi Growth and Development Strategy II.
2. Ministry of Gender, Children and Community Development, 2012. *Malawi Gender and Development Index, 2011*.
3. Malawi Law Commission, 2011. Report of the Law Commission on the Development of the Gender Equality Act., Zomba, Malawi.
4. National Statistical Office (NSO). 2012. *Integrated Household Survey 2010-2011*. Zomba, Malawi. (IHS III).
5. National Statistical Office (NSO). 2012. *Gender and Development Index, 2011*. Zomba, Malawi.
6. National Statistical Office (NSO). 2011. *Gender and Development Index, 2010*. Zomba, Malawi.
7. National Statistical Office (NSO) and ICF Macro. 2011. *Malawi Demographic and Health Survey 2010*. Zomba, Malawi, and Calverton, Maryland, USA: NSO and ICF Macro.
8. African Child Policy Forum. 2011. *Harmonization of Children's Laws in Malawi*. ACPF.
9. Malawi Human Right Commission. 2011. *The Status of Human Rights in Malawi*. MHRC.

List of institutions participating

A. Civil Society

Local NGOs

1. Non-Governmental Organizations-Gender Coordinating Network
2. Tro-Caire
3. Centre for Alternatives for Victimized Women and Children
4. Women's Legal Resource Centre
5. Find Your Feet
6. Ecumenical Counselling Centre
7. Malawi Human Rights Resource Centre
8. Centre for Human Rights and Rehabilitation
9. Church and Society (Livingstonia Synod of Church of Central Africa Presbyterian)
10. Catholic Commission for Justice and Peace
11. Muslim Association of Malawi
12. Quadria Muslim Association of Malawi

International NGOs/IGOs

13. UNICEF
14. UNODC
15. UN Women/UNDP
16. OXFAM

B. Public Sector

Government Departments

17. Department of Immigration
18. Ministry of Home Affairs
19. Ministry of Education, Science and Technology
20. Ministry of Gender, Children and Social Welfare
21. Ministry of Agriculture and Food Security
22. Ministry of Justice and Constitutional Affairs
23. Ministry of External Affairs
24. Ministry of Disability and the Elderly
25. Ministry of Health
26. Ministry of Youth and Sports
27. Department of Nutrition, HIV and AIDS

28. National Statistics Office
29. Malawi Prison Service
30. Malawi Police Service

Other Public Sector Institutions

31. Malawi Judiciary
32. National Assembly
33. Human Rights Commission
34. Law Commission
35. Anti-Corruption Bureau
36. Malawi Law Society

C. Academia

37. University of Malawi
 38. Mzuzu University
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