

MALAWI HUMAN RIGHTS COMMISSION



END OF CYCLE PROGRESS REPORT

**ON THE IMPLEMENTATION OF THE UNITED
NATIONS HUMAN RIGHTS COUNCIL'S UNIVERSAL
PERIODIC REVIEW RECOMMENDATIONS TO
MALAWI**

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1.0 Introduction

The Government of Malawi presented its State Party Report to the United Nations (UN) Human Rights Council's Working Group on the Universal Periodic Review (UPR) on the human rights situation in Malawi on 1st November, 2010. Following the review, Malawi received 127 Recommendations. 65 of the Recommendations were accepted, 39 did not enjoy the support of the Malawi Government. Malawi deferred 23 Recommendations pending further consultations. Subsequently, Malawi submitted its position on the remaining 23 Recommendations in February 2011, which were adopted during a plenary on 16th March, 2011. In the end, Malawi accepted 71 Recommendations, rejected 44 and provided general responses to 14 Recommendations without taking a clear stand.

In October 2013 the Malawi Human Rights Commission (MHRC) submitted to the Human Rights Council of the UN a "Mid-Term Progress Report on the Implementation of the UN Human Rights Council's UPR recommendations to Malawi". This current report is an end of cycle report and a continuation of the Mid Term report submitted by the Malawi Human Rights Commission.

2.0 Progress Made in the implementation of the UPR Recommendations to Malawi.

2.1 Law Reform

Malawi accepted to implement several recommendations regarding law reform as follows:

Progress Made

- In 2010 the Legal Education and Legal Practitioners Act was amended following a law review by the Law Commission. The Amendment Act established the Legal Education Institute. The Institute is not yet operational. The Amendments left out some of the Law Commission.
- Following the 2010 UPR recommendations, the Legal Aid Act was amended. The Amendment Act overhauled the legal aid system and established the Legal Aid Bureau. The Bureau is not yet to fully operational.
- The Gender Equality Act, 2013 commenced on 1st March, 2014. Under section 8 of the Act, MHRC is mandated to enforce the Act.
- The Marriage, Divorce and Family Relations Bill was drafted in 2006. The Bill is still with the Law Commission.
- Law review of the Witchcraft Act of 1911 has been protracted and on-going since 2010 owing to lack of funds.
- The Law Commission is reviewing the Prisons Act. It is proposed to introduce alternatives to custodial sentencing.

2.2 Police Reform

Malawi received several recommendations regarding improving policing in the country

Progress Made

The Police Service established the Internal Affairs Unit (IAU) in 2007 with the mandate to receive and investigate complaints against Police. IAU is centralised at the Police Headquarters but there are plans to decentralise. IAU has only 3 officers.

Training

The MHRC and the Police has reviewed and redrafted the Malawi Police Training Manual on Human Rights. The goal is to foster a culture of respect for human rights.

The Independent Complaints Commission

Section 128 of the Police Act, 2009 established the Independent Complaints Commission. The Commission is not yet operational.

2.3 Prison Reform

Progress Made

2.3.1. Prison conditions

The 2013 MHRC prison monitoring report shows that prison conditions have not improved much. E.g. prisons are overcrowded and there is poor sanitation and poor health facilities.

2.3.2 Independent prison monitoring

Government is allowing stakeholders like paralegals and registered NGOs to visit and monitor prisons.

2.3.3. Access to justice

There is reduction of pre-trial detention (currently at 16%) owing to camp courts.

2.4 Poverty Eradication

Progress Made

Measures to secure international assistance in the alleviation of poverty

Government through the Ministry of Economic Planning and Development developed the Development Cooperation Strategy (DCS) to guide development cooperation in Malawi. This widens the scope of development cooperation by shifting the focus from aid to development effectiveness. It is guided by international commitments and initiatives on aid and development effectiveness – most notably the Paris Declaration on Aid Effectiveness (PD, 2005), the Accra Agenda for Action (AAA, 2008), and the Busan Global Partnership for

Effective Development Cooperation (2011).

Measures for implementing MDGs especially strategy paper for poverty eradication and Malawi strategy for economic development

In 2012, Government produced a Poverty Reduction Strategy Paper approved by Cabinet on April 17, 2012 which makes an overview of Malawi's development policies like Malawi Growth Development Strategy II of 2011-2016.

It is the overarching medium term strategy for Malawi designed to attain Malawi's long term development aspirations as reflected in Vision 2020. The MGDS aims to continue reducing poverty through sustainable economic growth and infrastructure development.

Strengthening efforts to combat poverty discrimination and promotion of status of men and women

Government, through the Ministry of Gender, Children, Disability and Social Welfare, developed Joint Strategic Plan for the Gender Sector; a national joint gender annual work plan finalized the gender policy, enacted the Gender Equality Act and drafted the Gender Equality Act implementation plan and reporting framework, and supported capacity building activities in the areas of gender and development.

In June 2014, the government pledged to increase efforts in sustainable economic growth in Agriculture and food security by continuing to implement by continuing with Farm Input Subsidy Programme (FISP) to support maize production by subsistence maize farmers with reforms in order to combat challenges faced by the program.

Government also emphasized on increasing efforts in Green Belt Irrigation Development stretching through the whole country to attain production of both household and national food and income security, Mining which has potential to increase the country's GDP which is at 3 percent now to 20 percent by 2016, Tourism, Wildlife and Culture through increased foreign exchange earnings, employment creation and the development of Micro, Small and Medium Enterprises (MSMEs), Natural Resources and Environmental Management through cooperation with neighbouring countries to combat pollution and illegal dumping of toxic wastes and reliable, sustainable and affordable energy among others.

2.5 Children's Rights

Progress Made

National Action Plan for Children and legislation and policies protecting rights of children

- Malawi has enacted various laws:
- Parliament amended Section 23 of the Constitution in 2011; Parliament enacted the Child Care, Protection and Justice Act of 2010 (CCPJ Act). Among other things, the Act criminalises child trafficking and exploitation.

- The Penal Code (Amendment) Act No. 1 of 2011 increased the age of criminal liability.
- Review of the Adoption of Children Act is complete. Review of the Prevention of Domestic Violence Act is in progress.
- There has been little progress on development of the National Plan of Action for children .

Children in conflict with the law

The CCPJ Act has modernised and improved the child justice system. e.g. it has introduced diversion.

2.6 Rights of Women

Progress Made

Development of the Malawi Growth and Development Strategy II

In 2012 Government adopted the second phase of MGDS. It has implemented the above recommendations.

Combating Harmful Cultural Practices, in Particular Female Genital Mutilation

- The Government maintains that FGM is not practiced in Malawi.
- Two Acts, the CCPJ Act and the Gender Equality Act, criminalise harmful cultural practices.

Loss of Citizenship upon marrying a Foreigner

Under the Citizenship Act only a woman loses citizenship upon marrying a foreigner. The law has not yet been challenged in court.

Maternal Mortality

The maternal mortality ratio has declined from 984 in 2004, 807 deaths in 2006 to 675 per 100,000 live births in 2010 but remains high. Although skilled birth attendance increased from 54% in 2004 to 73% in 2010, there is poor access to essential emergency obstetric care services, with only 2% health facilities providing basic emergency obstetric care. Inadequate equipment drugs and supplies has compromised quality of maternal and neonatal health care.

In order to reverse the trend, Government is implementing the Roadmap on Accelerated Reduction of Maternal and Neonatal deaths (2011-2016) and the National Sexual and Reproductive Health and Rights Strategy (2011-2016). Malawi has also developed and

revised several strategies, policies and guidelines to address reproductive health issues such as Community Initiatives for Reproductive Health which have redefined roles of a Traditional Birth Attendant (TBA), Youth Friendly Health Services (YFHS) Standards and Monitoring tools for the standards.

Unsafe abortion is a significant contributor to high maternal mortality. A Special Law Commission has been empanelled to review abortion laws.

[Legislative Mechanisms include enactment of the Deceased Estates, and the Gender Equality.](#)

The Marriage, Divorce and Family Relations is yet to be enacted.

There are programmes to promote gender equality and women empowerment such as Gender Equality and Women Empowerment which commenced in July, 2012; and the National Response to Combat Gender Based Violence, running from 2008 to 2013

[Gender Equality](#)

- The implementation of the National Gender Policy has resulted in several achievements. These include establishment of a Gender Unit at the Department of Public Service Management, development of the Gender Equality Act which has affirmative action provisions.
- 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.
- Female representation in Parliament is still below the required proportion.
- In education, Government has introduced the Re-Admission Policy in order to allow pregnant students to return to school after delivery.

2.7 Rights of Vulnerable Groups such as Persons with Disabilities, the Elderly, Sexual Minorities and Refugees

Progress Made

[Older persons](#)

Malawi is yet to effectively adopt a National Policy for Older Persons to improve the quality of life of older persons.

[Persons with disabilities](#)

The Disability Act, 2012 is not yet operational.

[Sexual minorities](#)

The Penal Code still criminalises homosexual acts. There is need for consultation with the public and review.

Refugees

Malawi ratified relevant international refugee instruments. Malawi is a state party to both the 1951 UN Convention relating to the Status of Refugees (1951 Convention) as well as its 1967 Protocol and the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa (OAU Convention). Malawi is yet to accede to the 1961 Convention on the Reduction of Statelessness.

2.8 Human Trafficking

Progress Made

Section 79 of the Child Care Protection and Justice Act criminalizes child trafficking. The Trafficking in Persons Act is yet to be enacted.

2.9 Right to Food

Progress Made

Government implements the farm input subsidy program (FISP) which is supporting up to 1.5 million poor families.

Government is increasing agriculture production, e.g. through increased investments in agriculture extension.

Grain Reserves

The Malawi Vulnerability Assessment Committee announced that 57,346 metric tons (maize equivalent) in humanitarian food support to vulnerable households would be needed during the 2013/14 consumption period, the national grain reserves had been depleted, raising concerns about their management and the lack of allocation of funds to the Agency to allow the reserves to be replenished.

Politicization of access to food

In the run up to 2014 tripartite elections, at a time when there was food scarcity in the country, the ruling government then distributed maize at its political rallies.

The Commission challenged this practice by seeking a courts' injunction against maize distribution at political rallies as it only benefitted people with affiliation to the ruling party leaving out people from other parties.

Development of green belt

Government commits to accelerate the implementation of the "Green Belt" Initiative and intends to stretch through-out the country.

2.10 Right to Education

Progress Made

- [Equitable Access to higher education](#)

Access to higher education is a privilege of few people. There are few institutions of higher learning.

- [Incorporation of vocational training](#)

The Education Act, 2013 provides for vocational and entrepreneurship skills in students to raise personal income and improve living standards.

- [Integrate School feeding program with local agricultural production](#)

Governments is interested in linking school feeding to locally produced food, for long-term food security, supporting not only beneficiary children but also the development of markets.

- [Promotion of Human Rights](#)

The Education Act also provides for inclusion of human rights in curricula for primary, secondary and college level.

- [Review of teachers work conditions and other challenges](#)

Education standards have declined owing to several factors e.g. poor conditions of service of teachers. Government pledges to improve the same.

Government further commits that, in the next five years there will be 10,000 additional students to the public Universities.

- [Make primary education compulsory](#)

Malawi rejected a recommendation made to make primary education compulsory, in conformity with article 28 of the Convention on the Rights of the Child. However Malawi enacted the Education Act in 2013 which guarantees compulsory, universal and free primary education.

2.11 Right to Health

Progress Made

The government has committed to improve efficiency in the health sector as follows:

- To increase medical staff, drugs, and facilities.
- To Introduce new mobile medical facilities in rural areas;
- To research in medical science and technology

- Government has also committed to introduce a Health Insurance Scheme for all public servants while exploring possibilities of health insurance for all Malawians.
- The Bill on HIV and AIDS Bill has not yet been passed by Parliament.

2.12 Freedom of Religion

Progress Made

There is a conducive legal environment for freedom of religion. Some faith groups have been denying children access to vaccination. The Government prosecuted some in order to protect children's right to health.

2.13 Freedom of Association and Peaceful Assembly

Progress Made

Since 2011 demonstrations have been conducted peacefully.

2.14. Freedom of the Press

Progress Made

- Section 36 of the Constitution provides for freedom of the press.
- Section 46 of the Penal Code, Cap.7:01 of the Laws of Malawi that gave powers to a Minister to prohibit the publication or importation of a publication which he or she believed on reasonable grounds that such a publication would be contrary to the public interest was repealed.
- The Access to Information Bill has not yet been enacted.

2.15 Strengthening Human Rights Awareness

Progress Made

- Programmes of the Ministry of Information and Civic education focus more on political issues than dissemination of human rights information.
- Steps have been taken to incorporate human rights in the school curriculums and human rights courses have been developed in institutions of higher learning, particularly the law faculty of Chancellor College.
- The MHRC and other institutions promoting human rights train and sensitise the public on human rights.

2.16 Strengthening Human Rights Institutions

Progress Made

Government engages more with human rights institutions. It also provides funding, though not adequate. Development partners also support activities of the institutions.

2.17. Ratification of human Rights Instruments

Progress Made

Malawi has not yet ratified any of the Conventions as recommended in the UPR.

The Commission and other human rights institutions shall continue to encourage and emphasize to Government on the need to ratify the Conventions.

2.18 Harmonization and Domestication of Human Rights Instruments

Progress Made

Malawi has made efforts to domesticate its international human rights obligations through the promulgation of Acts of Parliament:

- CRC and the CEDAW have been domesticated through the enactment of the Child Care Protection and Justice Act in 2010 and the Gender Equality Act in 2013;

2.19 Extending Standing Invitation to Special Procedures

Progress Made

Malawi has not yet extended a standing invitation to all special procedures of the Human Rights Council. However, visits by special procedures have been accepted by Malawi such as the Special Rapporteur on the right to food in 2013.

2.20 Strengthening the Malawi Human Rights Commission

Progress Made

The Malawi Human Rights Commission has enjoyed an “A” status since 2007 when it was first accredited. The Commission is undergoing reaccreditation and its enabling statute, the Human Rights Commission Act (Chapter 3:08 of the Laws of Malawi) is undergoing an amendment process in order to strengthen the provisions in the Act to enhance on the independent functioning of the Commission.

3.0 Conclusion

Malawi has made tremendous especially in legal reforms, respect for the rule of law and promoting and protecting human rights especially for the vulnerable groups. However, the Malawi Human Rights Commission notes that Malawi as a nation still need to do a lot in the

areas of poverty alleviation and other related areas of service delivery in order to fulfill the commitments it made to the Council.