MALAWI COMPLIANCE REPORT 2014
The Malawi Economic Justice Network (MEJN) in collaboration with the Eye for Development (EFD) is pleased to present the 2014 Compliance Report, under the auspices of the State of the Union (SOTU) Malawi Project. This report provides insights into the African Union Charters and Protocols relevant for Malawi, and other member countries. It further highlights the successes and challenges specifically facing the Malawi Government, in realising the broader dreams and commitments contained in the African Union charters and protocols. The report continues to make recommendations on how best Malawian citizens can fully benefit from the affairs of the African Union, to say the least. Generally, the Compliance report is part of the SOTU Malawi, Project funded by OXFAM Novib; and it is being implemented by MEJN and EFD on behalf of a broader National Advocacy Platform (NAP). The NAP comprises civil society organisations and coalitions working on different thematic issues related to the affairs of the African Union.

The SOTU Malawi project is therefore set to achieve three results: (a) to empower citizens to claim the rights and entitlements enshrined in AU charters and protocols; (b) lobby the Malawi Government and the African Union to ratify, domesticate and monitor the implementation of the AU decisions; and (c) build the capacity of a civil society platform to effectively engage citizens, the Malawi Government and the African Union on AU charters and protocols.

Sincerest of acknowledges are due to a lot of people, for the support provided in the wake of producing this report. Various stakeholders too numerous to mention are applauded for the immense support, without which this report would not have probably been possible. These include the Malawi Ministry of Foreign Affairs, the African Union Regional Office in Lilongwe and all members of the Research Reference Group (RRG). MEJN and EFD feel greatly indebted to these for the support and job well done in embracing the spirit of the project and giving out information selflessly during the research process. We also individually acknowledge support of the members of the RRG and the NAP for the guidance provided towards the quality of the report. Special mention goes to Mrs Martha Kwataine of the Malawi Health Equity Network (MHEN), Mr. Benedicto Kondowe of the Civil Society Education Coalition (CSEC), Mr. Desmond Mhango of the NGO Coalition for Child Rights (NGCCHR), Miss Tamiwe Kayuni, Ms Linda Harawa, Mr. Ronald Mtonga of CONGOMA, Mr. Aubrey Chikungwa of NAMISA and Mr. Milward Tobias of MEJN. We also feel greatly indebted to the Research Consultants Dr. Boniface Dulani and Associate Professor Happy Kayuni for the great commitment and professionalism exhibited during the research activity.

Finally we would also like to thank the SOTU Continental Secretariat in Nairobi, for the guidance and support provided throughout the research process. We believe this compliance report will help facilitate constructive dialogue and momentum on AU related policies and effective implementation.

Mr. Dalitso KUBALASA
Executive Director
Malawi Economic Justice Network (MEJN)

Mr. Edward CHILEKA-BANDA
Executive Director
Eye for Development (EFD)
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<th>Description</th>
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<td>ACPF</td>
<td>African Child Policy Forum</td>
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<td>AU</td>
<td>African Union</td>
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<td>CAADP</td>
<td>Comprehensive Africa Agriculture Development Programme</td>
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<td>CILIC</td>
<td>Civil Liberties Committee</td>
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<tr>
<td>COMESA</td>
<td>Common Market for Eastern and Southern Africa</td>
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<tr>
<td>CRC</td>
<td>Convention on the Rights of the Child</td>
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<td>CURE</td>
<td>Coordinating Unit for the Rehabilitation of the Environment</td>
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<tr>
<td>DHS</td>
<td>Demographic and Health Survey</td>
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<td>GBV</td>
<td>Gender Based Violence</td>
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<td>GDP</td>
<td>Gross Domestic Product</td>
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<td>GOM</td>
<td>Government of Malawi</td>
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<td>GPI</td>
<td>Gender Parity Index</td>
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<td>IECC</td>
<td>Information, education, communication and counselling</td>
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<td>IHS</td>
<td>Integrated Household Survey</td>
</tr>
<tr>
<td>ITN</td>
<td>Insecticide treated nets</td>
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<td>JSSP</td>
<td>Joint Sector Strategic Plan</td>
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<td>LUANAR</td>
<td>Lilongwe University of Agriculture and Natural Resources</td>
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<td>MACRA</td>
<td>Malawi Communication Regulatory Authority</td>
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<td>MARDEF</td>
<td>Malawi Rural Development Fund</td>
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<td>MEC</td>
<td>Malawi Electoral Commission</td>
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<td>MHRC</td>
<td>Malawi Human Rights Commission</td>
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<td>NEPAD</td>
<td>New Partnership for Africa's Development</td>
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<td>NGOGCN</td>
<td>Non-Governmental Organization Gender Coordinating Network</td>
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<td>NSO</td>
<td>National Statistical Office</td>
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<tr>
<td>OAU</td>
<td>Organization of African Union</td>
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<tr>
<td>PMTCT</td>
<td>Prevention of mother-to-child transmission</td>
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<td>SADC</td>
<td>Southern African Development Conference</td>
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<td>SAW</td>
<td>Society for the Advancement of Women</td>
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<td>TEVETA</td>
<td>Technical Entrepreneurship and Vocational Education and Training Authority</td>
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<td>UEE</td>
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<td>VCT</td>
<td>Voluntary Testing and Counseling</td>
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<td>WOJAM</td>
<td>Women Judges Association of Malawi</td>
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<td>YADEMA</td>
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INTRODUCTION

Malawi: A Biography

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<th>Total Area:</th>
<th>118,484 sq. km. of which 24,404 sq. km</th>
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<tr>
<td>Population:</td>
<td>13 million (2008), currently estimated at 16.6 million in 2014 projected to be 22 million (2023)(^1).</td>
</tr>
<tr>
<td>Population distribution:</td>
<td>0-14 years: 46.9%; 15-24 years: 20.2%; 25-54 years: 27.1%; &gt;55 years: 4%</td>
</tr>
<tr>
<td>Gender:</td>
<td>51% female, 49% male(^2)</td>
</tr>
<tr>
<td>Life expectancy at Birth:</td>
<td>55 (2012)(^3)</td>
</tr>
<tr>
<td>Adult literacy rate:</td>
<td>69 % (2012)(^4)</td>
</tr>
<tr>
<td>Principal Languages:</td>
<td>English is the official language of business while Chichewa is the national language. Other main languages include chiTumbuka; chiYao, chiLomwe, chiTonga, chiSena.</td>
</tr>
<tr>
<td>Main economic Sector:</td>
<td>Agriculture accounts for one third of GDP and 80% of export revenue</td>
</tr>
<tr>
<td>Economic Growth:</td>
<td>5.5%, (2014); 4.5% (2013), 1.9% (2012)(^5)</td>
</tr>
<tr>
<td>GNI Per capita:</td>
<td>$320 (2012, Atlas Method)(^6)</td>
</tr>
<tr>
<td>Absolute National Poverty levels:</td>
<td>50.7 per cent (2011), 52.4 per cent (2005)(^7)</td>
</tr>
<tr>
<td>Distribution of Poverty:</td>
<td>On average, 17 % of the population in urban areas are living in poverty compared to 57% of the rural poor population. The Southern region has the largest poverty rate (63 percent); the Northern region has the second highest proportion of poor people (60 percent) while the Central region has the lowest proportion (49 percent) of poor people</td>
</tr>
</tbody>
</table>

Malawi is a landlocked country bordered by Tanzania to the north, Zambia to the west, and Mozambique to the east and south. The country has one of the smallest economies in Southern Africa and is categorized in the Low Income category of the World Bank and Low Human Development category in UNDP’s 2013 Human Development Index (HDI). Malawi’s HDI score of 0.418, places it 170 out of 186 countries that were ranked in 2013.\(^8\)

Despite the limited size of her economy, Malawi has a well-educated workforce with an adult literacy rate of 69%. The economy relies primarily on primary agriculture, which accounts for one third of GDP and 80% of export earnings.\(^9\) Tobacco is Malawi’s largest export earner, accounting for 40% of all export earnings. Other main export crops include sugar (6.5%) and tea (5.3%). In recent years, the country has started to exploit some mineral reserves, with the largest mining enterprise being Kayelekela Uranium mine in the northern district of Karonga. In 2012, Uranium and Thorium Ore accounted for 12% of all export earnings, placing it second on the list of Malawi’s main exports.

The majority of Malawians earn their living through farming. The country’s agricultural system is highly reliant on a rain-fed system, which leaves it highly vulnerable to climatic changes. Despite the government offering a targeted agricultural subsidy programme to vulnerable groups since 2005, many citizens experience persistent food shortages on a yearly basis.

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\(^1\) National Statistics Office, Malawi
\(^4\) World Bank, ibid
\(^5\) World Bank, ibid
\(^6\) World Bank, ibid
\(^7\) Republic of Malawi, Malawi integrated Household Survey, 2010/11
\(^8\) UNDP, Human Development Report, 2013
\(^9\) World Bank, ibid
Malawi enjoys a very peaceful political environment. In 1994, the country transitioned from almost thirty years of authoritarian one-party rule and embraced competitive multiparty politics. The country has since gone through four electoral cycles that have produced outcomes without violence. The last elections were held in May 2009 and the next one are due on 20 May 2014.

After two decades of democratic politics, Malawi remains one of the most stable democracies in the region and on the continent, with a vibrant civil society, free and largely independent media. However, the country’s nascent democracy faces a number of challenges, including persistent and widespread patronage, nepotism, ethno-regional political organization and behaviour, especially during elections; a weak electoral system; centralization of state power; corruption; donor dependency, widespread poverty, environmental degradation and high population density.

Malawi’s current national development orientation is guided by the Malawi Growth and Development Strategy (MGDS). Currently in its second phase, covering the five-year period from the 2011/2012 financial year to 2015/2016, MGDS seeks to lift Malawi out of poverty to prosperity, by highlighting nine priority areas, including; a) Agriculture and Food Security; b) Transport Infrastructure; c) Energy, Industrial Development, Mining and Tourism; d) Education, Science and Technology; e) Public Health, Sanitation, Malaria and HIV and AIDS Management; f) Integrated Rural Development; g) Greenbelt Irrigation and Water Development; h) Child Development, Youth Development and Empowerment; and, i) Climate Change, Natural Resources and Environmental Management. In pursuit of these priorities government also measures its development agenda against the eight Millennium Development Goals (MDGs) that the United Nations designed for global development.

Malawi is a member of many international, continental and regional bodies. At the international level, Malawi is a member of organizations such as the United Nations and its affiliated agencies, the World Bank, the World Trade Organization to mention but a few. At the continental level, Malawi joined the Organization of African Unity upon gaining independence in July 1964. The country was one of the first to sign and ratify to the Constitutive Act of the African Union in 2000. Malawi is also a member of the Southern African development Community, SADC and the Common Market for Eastern and Southern Africa (COMESA).

Map 1: Malawi and her neighbors

10 The Malawi Growth and Development Strategy (MGDS) is an overarching development strategy for the country; the first MGDS was for the period 2006-2011 and the current one (MGDS II) covers the period 2011-2016.
Purpose and Methodology of Study

The main purpose of this study was to audit and monitor compliance and implementation of selected protocols, conventions, decisions and best practice standards of the African Union (AU) member states. Additionally, the study reviewed the progress of ratification, domestication and implementations made by Malawi and analyzed the impact this has had on the lives of Malawian citizens in terms of accessing the rights contained in the AU standards and instruments. It is expected that the outcomes of this study will be used to engage with AU Member States at national, regional and continental levels. The AU selected protocols, conventions, treaties, best practice and declarations range from governance and human rights, peace and security, the environment to social, cultural and economic development.

The study relied on primary and secondary data sources to develop its findings. Secondary data were collected from multiple sources, including relevant literature such as government publications, book chapters, journal and newspaper articles, press releases, research reports, Internet sources and other unpublished papers. Primary data were derived from interviews with key stakeholders (using a semi-structured interview guide as a tool). The key stakeholders were purposively identified based on an assessment of their expertise (through experience and by virtue of the nature of their jobs) on issues related to this study. Other experts were also selected using a snowballing sample, where additional experts were recommended by individuals that had already been interviewed. The results of these interviews were transcribed and analyzed using a content analysis framework. This involved categorizing issues according to the recurrent themes highlighted in this research study objectives. Special attention was given to patterns, trends, social constructs and themes evolving from the data collected. The Terms of Reference (TORs) are attached as Appendix 1.

KEY FINDINGS AND ACTONS REQUIRED

This study finds that Malawi is one of the most ready countries that has signed most African Union protocols. Of the sixteen policy frameworks and legal instruments under review, Malawi has ratified 14. The two protocols of the sixteen that Malawi has not ratified are the Africa Mining Vision of 2009 and the Revised African Convention to the Conservation of Nature and Natural Resources which was adopted on 11 July 2003. With regard to the Mining Vision, the study failed to find evidence that the country is a signatory. While it is possible that this has been ratified, the study concludes that in the absence of any official confirmation, Malawi has not ratified this protocol and recommends that it should. As for the revised Conservation protocol, Malawi is already a signatory to the predecessor to this new protocol, the African Convention to the Conservation of Nature and Natural Resources of 1968.

Progress towards Popularization of AU protocols, Policy Standards and Frameworks

This report finds that there is a high degree of legal compliance with some of the provisions in the AU frameworks and instruments which this study focuses on. The country’s constitution, adopted in 1995, guarantees a number of democratic freedoms, especially the freedom of expression and nondiscrimination.

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However, there are still important gaps. The report records cases of attempts by government to curtail the enjoyment of certain rights and freedoms; widespread corruption and failure to recover assets and funds obtained through corruption; weak health and economic systems; and ethno-regional voting. In some cases, for example, on gender, the study established that protocols of regional bodies such as SADC, set more ambitious targets than the AU.

While Malawi has been very quick to ratify AU protocols, the report notes that the country has not demonstrated commitment to following up on the commitments, for example, by enacting legislation to domesticate the protocols. This is in part a result of poor coordination among key sectoral ministries; overreliance on existing legislation and a general sidelining of the legislative arm of government from the ratification process. In yet other cases, there is insufficient allocation of funds and other resources to bodies that are supposed to lead in the domestication process. The absence of an information bank also means that it is difficult for many government departments to know what protocols the country has ratified and what action is required towards full domestication.

Poor popularization of AU instruments to which Malawi is a signatory has resulted in poor public awareness and knowledge. Based on the views of key stakeholders interviewed, some sections of the Malawi Government and civil society are relatively more knowledgeable, but most Malawians are not aware of these instruments. Unless there is a large sensitization campaign of these protocols, the legitimacy of the African union, and Malawi’s role in it, will continue to be too remote and distant among ordinary citizens. Consequently, we make the following recommendations for action:

Malawi has made a number of important gains from signing up to several AU protocols. Among the notable achievements has been the country’s two-decade long commitment to democracy, resulting in part from the country’s signing of the African Charter on Human Rights as well as the Charter on Democracy, Elections and Governance. Malawi has also implemented several innovations to revamp the agricultural sector, in part resulting from the country's commitments under NEPAD's Comprehensive African Agricultural Development Plan (CAADP), to which Malawi is a signatory. As part of the CAADP obligations, Malawi has allocated a significant proportion of the national budget to the agricultural sector which have boosted food security. The country has also registered notable achievements by enacting several laws aimed at promoting the rights of women and children as a result its obligations under the AU Protocol on Human and People’s Rights on the Rights of Women in Africa. The most notable outcomes being the passage of the Gender Equality Act (2012) and the Child Care Protection and Justice Act (2010), which establishes, among others, children’s courts.

**Actions Required by the Government**

- Review the ratification and domestication procedures to ensure that all protocols that the country has ratified and signed are fully domesticated.
- Revise all existing laws to bring them in line with all AU protocols and Treaties that Malawi has already ratified.
- Create an information bank on all AU protocols including their status in Malawi.
- Establish an Inter-ministerial forum for AU business that should include the mandate to review all AU protocols.
- Formalize a regular process for the reporting of all AU protocols to Parliament, including follow up on any activities carried out on the existing protocols.
- Consult stakeholders on the merits and demerits of ratifying and signing of the Revised African convention to the Conservation of Nature and Natural resources.
- Consult different stakeholders on the merits and demerit of ratifying the African Mining Vision.
- Provide sufficient resources towards implementation of AU protocols.

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12 Various interviews with government and civil society officials. In addition, findings from an Afrobarometer survey in 2012 showed that more than half of Malawians (55%) said they do not know much about the African Union itself. It can thus be inferred from this that even fewer Malawians will be aware of the AU protocols.
**Actions Required by Civil Society**

- Lobby for the ratification of currently unsigned AU protocols, especially the Revised African Convention to the Conservation of Nature and Natural resources and the African Mining Vision
- Lobby for the involvement of the Legal Affairs and International Relations committees of the National Assembly in the ratification and domestication of AU protocols
- Lobby for the incorporation of the provisions of AU protocols in government policies
- Lobby line ministries to follow up on protocols affecting their ministries and ensure complete domestication where none or only partial domestication exists.
STATUS OF RATIFICATION OF AFRICAN UNION PROTOCOLS
1.1 Status of Ratification of AU Protocols in Malawi

Malawi has been a member of the African Union (AU) and its predecessor, the Organization of African Unity (OAU), since independence in 1964. Since then, Malawi has been a signatory of most AU protocols. Table 1 below summarizes the 16 AU protocols under review and their status in Malawi. From Table 1.1, 13 of the 16 policy frameworks have been ratified, acceded or adopted. The study could not adduce evidence on whether Malawi has ratified two conventions (African Mining Vision, 2009, and Sharm El-Sheikh Commitments). The only standard that we could confirm Malawi has not signed is the Revised African Convention to the Conservation of Nature and Natural Resources.

Table 1.1: Different AU Protocols and Charters and Malawi’s Position (Ratified/Not Ratified).

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<thead>
<tr>
<th>AU Protocol and Charter</th>
<th>Date of Ratification by Malawi</th>
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<tr>
<td>1</td>
<td>African Convention on the Conservation of Nature and Natural Resources (1968)</td>
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<td>4</td>
<td>The Treaty Establishing the African Economic Community (1991)</td>
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<td>6</td>
<td>African Union Convention on Preventing and Combating Corruption (2003);</td>
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<td>7</td>
<td>NEPAD Comprehensive African Agricultural Development Plan (2003)</td>
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<td>10</td>
<td>Abuja Call for Accelerated Action Towards universal Access to HIV/AIDS, Tuberculosis and Malaria by 2010 (2006);</td>
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<td>12</td>
<td>Maputo Plan of Action for Implementing the Continental Sexual and Reproductive Health and Rights Policy Framework 2007-2010 (2006);</td>
</tr>
<tr>
<td>AU Protocol and Charter</td>
<td>Date of Ratification by Malawi</td>
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<td>----------------------------------------------------------------------------------------</td>
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<tr>
<td>14 Africa Health Strategy 2007-2015 (2007);</td>
<td>Ratified, but no date indicated.</td>
</tr>
<tr>
<td>15 Sharm El-Sheikh Commitments for Accelerating the Achievement of Water and Sanitation Goals in Africa (2008).</td>
<td>Malawi attended but no official document exists to suggest Malawi ratified</td>
</tr>
</tbody>
</table>

Sources: African Union, Ministry of Foreign Affairs;

### 1.2 Process of Ratification of African Union protocols in Malawi

The ratification process of AU protocols in Malawi is summarized in Figure 1.1 below:

**Fig. 1.1 Summary of Ratification process of AU protocols in Malawi**

![Diagram of the ratification process]

The ratification and signing process of AU protocols and instruments involves multiple players and ministries. The starting point in the process is the identification of themes for the AU summits by the African Union Secretariat based in Addis Ababa, Ethiopia. The summit themes are developed from an assessment of topical issues based on interactions with various stakeholders, input from member countries as well as periodic national reports and available countrywide data. The draft summit agenda, together with the proposals for the summit themes, are then circulated to member countries for their input and comments. Once proposals garner enough support from member countries, the AU Secretariat proceeds with drafting the relevant protocols which are then shared with member countries through the Ministries of Foreign Affairs for their review and internal consultations.

In the Malawi case, the Foreign Affairs and International Cooperation invites the relevant sectors or ministries to suggest a statement or relevant intervention or improvement to a particular problem highlighted in the theme, protocol, convention or agreement. Afterwards, the relevant line ministry recommends to the Ministry of Foreign Affairs to proceed with the process of ratification. This interaction is based on the assumption that the line ministries interact with their stakeholders to garner public input into the process. However, this is often not done, with officials pointing out that public consultations on draft AU protocols, agreements and conventions are not only costly, but also time consuming.

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13 Various interviews with Malawi’s Ministry of Foreign Affairs and International Cooperation Officials
14 Various interviews with Malawi’s Ministry of Foreign Affairs and International Cooperation Officials
Once the line ministry endorses the AU thematic proposals, the ministry’s political and administrative leadership take the lead to represent the country during the AU summit. In other words, before the issue is finally endorsed by the Heads of States, there are several steps that it has to pass through such as a ministerial summit, the relevant permanent committees and the executive council.

After endorsement by the Heads of States, the relevant sectors are supposed to meet again and review the final decision and then plan for domestication as well as reporting procedure. The domestication involves the Ministry of Justice which scrutinizes the protocols, agreements and conventions and provides a legal opinion on whether Malawi should go ahead with domestication or not. The problem is that the review meeting with relevant sectors normally never takes place hence follow-up of the same is difficult after some time has elapsed. The Ministry of Justice is sometimes overwhelmed with work to the extent that these protocols, agreements and conventions may not be a priority15.

The process of ratification in Malawi, unlike in most other countries, completely leaves out the National Assembly. This means that Parliament is often unaware of the protocols that Malawi has signed or enters into16. Indeed, in the event that the responsible line ministry does not take up the process of initiating the enactment of the necessary legislation, the protocols will not be domesticated. This is because the Ministry of Foreign Affairs sees its primary role as one of a facilitator and that this role ends with the communication to the responsible line ministry that the instrument has been ratified17. Another important ministry that is left out of the ratification process is Finance. This is despite the fact that ultimately, funding for the implementation of all protocols initiated under AU protocols have to come from the Treasury.

In some cases, however, Malawi signs up to protocols on the understanding that existing laws already cover most aspects of the protocol. For example, while Malawi signed the Charter on Democracy, Elections and Governance in 2012, it did not enact any new legislation to domesticate the Charter. Instead, it relied on existing law, including the Constitution, the Electoral Commission Act (1998) and the Presidential and Parliamentary Elections Act (1993). However, one of the challenges of using existing law as a way of domesticating AU protocols is that the laws often do not cover the full aspects of the AU protocols or instruments. As a result, the country ends up with partial domestication.

**Actions required by Government**
- Streamline the ratification of AU protocols by involving the National Assembly from the very beginning to enhance ownership at grassroots level.
- Include the Ministry of Finance in the process of ratifying AU protocols.
- Engage other stakeholders to consult on AU protocols before ratification to get the buy in.

**Actions required by Civil Society Organizations**
- Establish a body that will track the implementation of commitments in AU protocols.
- Work with government to ensure full implementation of AU protocols
- Sensitize members of the public on the AU and its protocols and the value to Malawi
- Identify and justify priority protocols for local monitoring

**Action Required by Donors**
- Provide resources to Civil Society Organizations to lobby for the implementation of AU protocols

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15 Ibid
16 Interview with Acting Clerk of Parliament, Lilongwe, 28th February 2014
17 Various interviews with Malawi’s Ministry of Foreign Affairs and International Cooperation Officials
HUMAN RIGHTS AND DEMOCRATIC GOVERNANCE

Frameworks and Instruments under review:

Key articles and Indicators
The existence and enforcement of legislation concerning arbitrary arrest and detention without trial; Protection against discrimination; Freedom of movement within the borders of the State; Legitimacy of the constitution; Freedom of expression and assembly; Freedom of the Media; Access to Government information; Civil society; Popular participation in planning and budgetary processes; The formal structures of a representative democracy; Performance and independence of the judiciary; electoral administration; Voter registration, education and participation; Participation in elections; Electoral system; Validation of results; Internal party democracy and participation in policy development; Political, economic and social governance, Free movement of persons, rights of residence and establishment; Enabling legislation for combating corruption and abuse of office; Civil society and media; and confiscation and seizure of the proceeds and instrumentalities of corruption.

2.1 Human and People’s Rights

The African Charter on Human and Peoples’ Rights (1981), in. Article 6 states that:
“Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained.”

Article 12 states that
“Every individual shall have the right to freedom of movement and residence within the borders of a State… Every individual shall have the right to leave any country including his own, and to return to his country… Every individual shall have the right, when persecuted, to seek and obtain asylum in other countries… The mass expulsion of non-nationals shall be prohibited”.

2.1.1 The Right to Liberty and to the Security of the Person

Although Malawi ratified the Charter on Human and People’s Rights in 1989, it was not until after 1995 that the Charter was domesticated following the adoption of a new democratic constitution. Chapter 4 of the 1995 constitution outlines and guarantees a number of key human rights provisions and goes further to mandate all three branches of government to respect and uphold these rights.

The importance of human rights in Malawi is further underscored in Section 12, of the constitution, which underlines the fundamental principles of governance. In subsection IV of Section 12, the constitution states that “the inherent dignity and worth of each human being requires that the State and all persons shall recognize and protect fundamental human rights and afford the fullest protection to the rights and views of all individuals, groups and minorities whether or not they are entitled to vote.” The adoption of the new constitution in 1995, with its strong emphasis on protecting human rights, marked an important milestone in Malawi’s legal and political history, as previously, the country’s citizens were regularly deprived the enjoyment of even the most basic rights under the guise of national security and development

Other key human rights provisions enshrined in the Constitution include those that guarantee the right for all Malawians to be treated with dignity. The 1995 constitution prohibits “torture of any kind or cruel, inhuman or degrading treatment or punishment.”\textsuperscript{19} And in a marked departure from the authoritarian one-party era when citizens were regularly and frequently detained without trial\textsuperscript{20}, the 1995 constitution prohibits arbitrary detention (Article 42 - 1) and guarantees all detainees the right to; (a) be informed of the reason for his or her detention promptly, and in a language which he or she understands; (b), challenge the lawfulness of his or her detention before a court of law; and, (c) to be released if such detention is unlawful.\textsuperscript{21}

In addition to the extensive guarantees of human rights provisions, Chapter XI of the 1995 constitution established the Malawi Human Rights Commission (MHRC), whose amongst its primary functions includes the protection and investigation of violations of the rights accorded by the constitution and other laws. Since its establishment in 1995, MHRC has augmented the efforts of civil society organizations in advocating for the promotion of human rights. In the recent past for example, MHRC has spoken out against mistreatment of prisoners; government’s attempts to suppress media freedom; and has supported the right for civil society organizations to organize peaceful demonstrations against government policies.\textsuperscript{22}

In order to promote equality of all Malawians, the Constitution prohibits discrimination of persons in any form and that “…all persons are, under any law, guaranteed equal and effective protection against discrimination on grounds of race, colour, sex, language, religion, political or other opinion, nationality, ethnic or social origin, disability, property, birth or other status.”\textsuperscript{23} Recognizing that the pre-democratic era institutionalized many forms of discrimination, the 1995 constitution further mandated the state to enact legislation aimed at “addressing inequalities in society and prohibiting discriminatory practices and the propagation of such practices and may render such practices criminally punishable by the courts.”\textsuperscript{24} In addition to the Constitution, there also exists legislation that seeks to prevent discrimination of particular groups in society, including persons with disabilities; women and children and other marginalized groups\textsuperscript{25}.

Notwithstanding the existence of anti-discriminatory laws, the country’s media regularly report on cases of discrimination, sometimes perpetuated by the state itself. In 2010 for example, government introduced a controversial selection policy (of High School students) for public universities based on district quotas. This was widely criticized as an attempt to limit opportunities for university education among students from the northern region of the country.\textsuperscript{26} Although the constitution bans discrimination along the lines of sex, Malawi’s Penal Code makes it a crime, punishable for up to 14 years imprisonment, for any individuals engaged in homosexual relationships. At the time of reporting, there were several cases of individuals who had been imprisoned under this law.

2.1.2 Rights of women

The constitution and other existing laws in Malawi criminalize discrimination along the lines of gender\textsuperscript{27}. Thus in principle, Malawian women are supposed to enjoy the same benefits and rights as men. However, in reality, women face numerous challenges compared to men. According to UNICEF data, for every 100 literate males in Malawi, there are only 71 literate females.

\textsuperscript{19} Malawi Constitution, Section 19(3)
\textsuperscript{21} Malawi Constitution, Article 42 (1)(a, e and f).
\textsuperscript{22} For a list of some of the MHRC activities, see Nyasatimes, TAG Archives: MHRC, http://www.nyasatimes.com/tag/mhrc/
\textsuperscript{23} Malawi Constitution, Article 20 (1).
\textsuperscript{24} Ibid, Section 12(2)
\textsuperscript{25} See Malawi Disability Act (2012), Childcare Protection and Justice Act (2010), Gender Equality Act (2012)
\textsuperscript{27} Constitution of Malawi Chapter 4 Section 20(1)
Malawian women also face discrimination at the work place, in homes and in other various forums. For example, in politics, only 22 percent of legislators in the 2009-2010 Parliament were women. This is despite the country being a signatory to the SADC and AU Gender protocols, which require member countries to achieve a women representation of 50% in the National Assembly. The topic of the rights of women in Malawi is discussed in greater detail in Chapter 5 of this report.

2.1.3 Freedom of Movement and Residence within the Borders of a State

Article 12 the African Charter on Human and Peoples’ Rights states that “every individual shall have the right to freedom of movement and residence within the borders of a State provided he abides by the law”.

Freedom of movement in the local context is enshrined in Section 39 (1&2) of the Constitution, which guarantees every person the “freedom of movement and residence within the borders of Malawi” and “the right to leave the Republic and to return.” These rights can only be derogated during a state of emergency – declared in times of war, threat of war, civil war or widespread natural disaster. Since the enactment and adoption of the constitution in 1995, no state of emergency has ever been declared, and hence there has been no occasion when the freedom of movement has been derogated.

While there has been no record of denial of freedom of movement in and outside the country, there have been sporadic cases when the freedom of movement has been hampered, especially during times of high political and economic tensions. During 2011, for example, former President Bingu wa Mutharika sought to limit freedom of movement of the people when Malawian citizens, led by civil society organizations, organized street demonstrations against worsening economic and political circumstances. During this period, many citizens faced major limitations to freedom of movement between 2010 and mid-2012 due to a severe scarcity of fuel that hit the country.

At the regional level, the SADC region has removed visa requirements for citizens wishing to travel within the region. This facility is further extended to all COMESA countries, of which Malawi is a member, thus widening the scope for travel for the country’s citizens without being required to procure a visa in advance.

2.2 Democracy, Elections and Governance

According to the AU Declaration on the Principles Governing Democratic Elections in Africa (2002), democratic elections are the basis of the authority of any representative government; and regular elections constitute a key element of the democratization process. Elections, are essential ingredients for good governance, the rule of law, maintenance and promotion of peace, security, stability and development.

The 1995 Malawi constitution, unlike its 1966 predecessor, champions the goal of promoting democracy in order to ensure that “….the authority to govern derives from the people of Malawi as expressed through universal and equal suffrage in elections ...” The people exercise this power through regular and periodic elections (every five years). Not only does the constitution champion democratic principles, but it also establishes a number of key institutions that are aimed at promoting good governance and the rule of law.

2.2.1 Democracy, Rule of Law and Human Rights

The 1995 Constitution was drafted and enacted as part of the broader set of institutional reforms that Malawi implemented during the transition from authoritarian one-party rule to multi-party democracy. Marking a

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30 Malawi Constitution, Section 6.
break with a history of authoritarianism, the new constitution includes several provisions that seek to advance democratic ideals, protecting human rights, and concretizing the rule of law.

Whereas the 1966 constitution established Malawi as a one party state, the 1995 one introduced guarantees for political pluralism and regular elections for choosing political leaders. Under Section 40 of the constitution, every person is guaranteed the right “to form, to join, to participate in the activities of, and to recruit members for, a political party; [and] to campaign for a political party or cause.” In addition the constitution calls for elections for President, Parliament and Local governments every five years.

While the first thirty years of independence was marked by gross and often blatant abuse of human rights by the state, the 1994 Constitution included a separate and extensive Chapter that laid out fundamental human rights and freedoms. The constitution also provides for clear and effective mechanisms for transition of power. In the event of a presidential death or incapacitation, power automatically transfers to the Vice President for the remainder of the president’s term. This provision was put into effect in 2012 when President Bingu wa Mutharika died suddenly on April 5th, 2012, two years into his second term of office. Although there were attempts to stall and circumvent the transfer of power by the late Mutharika’s loyalists, the constitution ultimately prevailed and the late president’s estranged deputy, Mrs. Joyce Banda was sworn in as Malawi’s fourth president on April 7th, 2012.

Despite the strong constitutional guarantees on human rights and the inclusion of democratic principles, ordinary citizens have never been given sufficient opportunity to influence the content of the country’s constitution. Although the drafters of the Constitution consulted widely and solicited inputs from various stakeholders ordinary citizens were not directly consulted. Unlike other countries, where the adoption of a new constitution is put to the vote in a referendum to allow for popular endorsement, the Malawi constitution was only adopted by the new democratic Parliament in 1994.

By leaving the process of adoption and amendment entirely in the hands of Parliament, there is a general sense that power and discretion was given to politicians to pick and choose only those provisions that suit them. From the onset for example, the 1994-99 Parliament dropped a number of provisions, including those that provided for the recall of non-performing legislators and the establishment of a second legislative Chamber, the Senate. Between 2002 and 2003, then president, Bakili Muluzi, sought to extend his tenure of office by seeking the removal of the term-limit provision from the Constitution. Despite widespread public opposition to the proposal, Muluzi went ahead to persuade his supporters in Parliament to table the amendment proposal, which fell short from passage by only three votes. Notwithstanding the shortfalls in the drafting, adoption and review, and the challenges in adherence to the constitution, Malawi’s Constitution enjoys widespread support. In a survey undertaken by the Afrobarometer in 2005, 58 percent of Malawians agreed with the statement that the Constitution “expresses the values and hopes of the Malawian people.”

2.2.2 The Culture of Democracy and Peace

Malawi is a representative democracy. Elections for Members of Parliament and the President are held every five years on 20 May. To date, the country has held four rounds of presidential and parliamentary elections: in 1994, 1999, 2004 and 2009. The next elections are scheduled for 20th May, 2014.

31 See Section 40(1)(a, b and c) of the Malawi constitution, 1994
33 See Boniface Dulani and Kim Yi Dionne, 2013, Constitutional Provisions and Executive Succession: Malawi’s 2012 Succession in Comparative Perspective,” African Affairs, 112(146), pp. 111-137
35 See sections 49(1) and 64 of the 1994 draft Constitution. Both sections were repealed under the Constitution
37 Stanley Khaila and Catherine Nthinda, 2005, Malawi: Afrobarometer Summary of Results
Citizens elect 193 Members of Parliament at the constituency level based on a universal adult suffrage. The country uses the first past the post electoral system, and the winning candidate gets the highest number of votes, irrespective of the size of the majority. For President, the same first past the post system is used. The winning candidate is the one that gets the highest number of votes, again, irrespective of the size of majority.

The evidence adduced thus far suggests that Malawians have embraced the culture of democracy, especially with regard to voting in national elections. Voter turnout since 1994 has consistently been very high, averaging 79% in the four elections held between 1994 and 2009 (Figure 2.2):

Figure 2.2: Voter Turnout in Malawi Presidential Elections, 1994-2009

![Voter Turnout Graph](image)

Source: International Institute for Democracy and Electoral Assistance.

While the high turnout ensures that elections reflect the true wishes of Malawian citizens, there is widespread concern that once elected, the chain of representation is severed. In particular, Members of Parliament are widely seen to put their own interests and those of their parties above those of voters. In the most recent Afrobarometer survey for example, 64% of Malawians were of the view that once elected into office, “Members of Parliament never try their best to listen to what ordinary people have to say.” During the second term of President Bingu wa Mutharika’s presidency, there were similar concerns that the presidency was ignoring the interests of the people and instead, acting arbitrarily. One such case involved the government’s decision to change the national flag in 2010 despite widespread public opposition. Mutharika’s government was also accused of nepotism, with the president’s co-ethnic co-ethnics given preferential treatment.

While Malawi has held presidential and parliamentary elections every five years as mandated by the constitution, government has been less committed to local government elections which emanates from its lack of commitment to devolution of political power. In the twenty year periods between 19994 and 2014, the country has only held one single local government election in March 2000. On its part, the country’s citizens have demonstrated limited enthusiasm as only 14% of eligible voters cast their votes in those 2000 local government elections, far below the 94% who had voted in the general elections of the previous year. Once the term of office of these councilors expired in 2005, no new elections have been held. As a result, the country has been operating without local government councilors. It is expected that the 2014 elections will include the election of local government councilors.

 Freedoms of opinion, expression, the media, and assembly as with other rights, are guaranteed under Chapter IV of the Constitution. Section 35 provides guarantees for freedom of expression, stating that “every person shall have the right to freedom of expression.” Meanwhile, section 36 institutionalizes media freedom, providing that “the press shall have the right to report and publish freely, within Malawi and abroad, and to be accorded the fullest possible facilities for access to public information.” However, there have been consistent concerns

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39 Maxton Tsoka and Charles Chunga, 2012, Afrobarometer Summary of Results.
that the public media, both radio and television, are often biased towards the ruling party.\footnote{40 Malawi Electoral Commission Press Release, 4th April 2014}

Under Section 37 of the Constitution, every person is guaranteed the “right of access to all information held by the State or any of its organs at any level of Government in so far as such information is required for the exercise of his rights.” However, in reality, access to government information is often a major challenge. A most recent demonstration of the limited access to government information relates to the refusal by government to release documents relating to President Joyce Banda’s asset declaration after she ascended to the presidency in April 2012. Although the nation was informed that these were deposited with the Speaker of Parliament as mandated by law in late 2013, the public has been informed that there is no enabling legislation to compel the Speaker of Parliament to release this information to the public.\footnote{41 Nation newspaper, 3rd August 2013, “Speaker seeks legal opinion on JB asset’s}

Freedom of Assembly is meanwhile guaranteed under Section 38 of the Constitution which states that “Every person shall have the right to assemble and demonstrate with others peacefully and unarmed.” Malawians have often and regularly exercised this freedom, most recently in March 2014 to demonstrate against government’s handling of massive corruption unearthed in recent investigations, locally dubbed “cashgate” and over contradicting information over the proceeds of the sale of the presidential jet.\footnote{42 Voice of America, 2014, “Jet Sale Puts Malawi’s Government Under Scrutiny,” http://www.voanews.com/content/jet-sale-puts-malawi-government-under-scrutiny/1874506.html}

While Malawians have enjoyed freedom of Assembly in the last two decades, government has on occasions tried to limit the enjoyment of this particular freedom. The most glaring example of was arguably on 20 July 2011 when the police shot dead more than twenty unarmed citizens during demonstrations protesting the poor governance record of former President, Bingu wa Mutharika. Indeed, prior to this case, Mutharika had arbitrarily imposed an exorbitant fee of K2,000,000.00 Malawi Kwacha on all groups intending to organize protests, which was widely seen as a way of limiting freedom of Assembly and demonstration.\footnote{43 Nation newspaper, 7th March 2011, “2 million Kwacha for Demo”} Citizens seeking to demonstrate are also often frustrated by a bureaucratic process of seeking permission, which is sometimes denied on flimsy grounds. Successive governments in Malawi have frequently used patronage to entice people from demonstrating or to organize counter-demonstrations as part of their strategies to limit the enjoyment of the freedom of assembly. However, notwithstanding such attempts, Malawians generally enjoy the freedom of assembly and demonstrations.

Malawi has a very vibrant civil society that operates in a very wide portfolio of activities, ranging from advocacy, trade and dialogue and service delivery.\footnote{44 Geomar International, 2005, “Diagnosis And Mapping of Non State Actor Community and its Environment,” Report Prepared for the European Union, mimeo.} Although there is no comprehensive list of the number of civil society organizations operating in the country, the transition from authoritarian one-party rule to democracy in 1994 allowed for the flourishing of civil society organizations in the country. Civil society organizations have taken an active role in engaging government and also organizing demonstrations to pressure change of government policy.

However, there is concern that civil society activism in Malawi is sometimes based on emotion, political loyalties and lacking insufficient facts.\footnote{45 Ibid, Geomar International} CSOs face challenges of funding, so much that several former high profile organizations have either died or become dormant. From time to time, Malawian CSOs also face questions of accountability and are often accused of being dominated by the same personalities to the extent that they are sometimes seen as personalized and lacking internal democracy.

In recent years, government has promoted participatory budgeting, which involves a series of public events to solicit public input into the budget making process. However, these events are often only held in the country’s major cities, thus leaving out the majority of ordinary citizens who live in rural areas. Consequently, the extent to which the budgets reflect the input of ordinary citizens is extremely limited.

40 Malawi Electoral Commission Press Release, 4th April 2014
41 Nation newspaper, 3rd August 2013, “Speaker seeks legal opinion on JB asset’s
43 Nation newspaper, 7th March 2011, “2 million Kwacha for Demo”
45 Ibid, Geomar International
2.2.3 Democratic Institutions

Malawi’s political system embraces a hybrid version of democracy, founded on the principle of separation of powers. Under this system, the executive, led by a President who is directly elected for a five year term, is given the responsibility of “the initiation of policies and legislation and for the implementation of all laws which embody the of the executive express wishes of the people of Malawi...”

The legislature, on the other hand, is given the sole responsibility of enacting laws while the judiciary is assigned the responsibility of “interpreting, protecting and enforcing this Constitution and all laws....in an independent and impartial manner with regard only to legally relevant facts and the prescriptions of law.”

While there is widespread consensus that the judiciary operates independently from the other two branches of government, the constitutional setup gives more powers to the executive, enabling it to influence the activities of the legislature. Members of cabinet, for example, can, and often do, double as Members of Parliament. Under the constitution, it is only the President who has the power to convene the sitting of Parliament and can also prolong parliamentary sessions. This often paralyses the operations of the legislature. For example, in March 2014, there were repeated calls for President Joyce Banda to call for a sitting of Parliament to debate the theft of billions of Kwachas from government coffers, locally known as the ‘cashgate’ scandal. However, government refused to call for the meeting of Parliament. Funding for Parliamentary committees is often erratic, so much that many committees do not meet unless they are externally funded by donors, who in turn influence the agenda. There are several instances whereby the decisions of the executive were overrun by the judiciary. For instance when University of Malawi lecturers were on a sit-in to protest government’s intrusion on their academic freedom, the President directed that all lecturers should immediately report for duties failing which they were to face dire consequences. The lecturers sought relief from the courts and the President’s directive was ignored.

2.2.4 Democratic Elections


In fulfilling and discharging its responsibilities, MEC is legally mandated to operate independently. However, the ability of the MEC to operate independently is often questioned. One major source of this problem arises from the composition of the Commission, whereby Commissioners are appointed by the president “in consultation with the leaders of the political parties represented in the National Assembly.”

Between 1994 and 2004, the tradition was that Electoral Commissioners were nominated by leaders of political parties based on the proportional share of seats the parties held in the National Assembly. However, in February 2007, late Bingu wa Mutharika unilaterally appointed Electoral Commissioners without consulting leaders of opposition parties. This created the impression of a Commission that was perceived partisan and beholden to Mutharika. In late 2011, the independence of the Malawi Electoral Commission was brought to further doubt when Mutharika suspended all MEC operations, including Commissioners after alleging that there was financial mismanagement at the electoral management body.

By stating that MEC Commissioners can only be appointed in consultation with leaders of political parties represented in Parliament, the formula excludes independent legislators, who make a sizeable block in the

46 See Section 7 of the Malawi Constitution.
47 Sections 8 and 9 of the Constitution
49 See Section 4 of the Electoral Commission Act, 1998
National Assembly, as well as political parties that fail to win legislative seats, or are new, thus undermining the independence, and hence, credibility of the commission and the elections that it manages.

Despite previous promises to shift towards rolling registration, voter registration in Malawi is done every electoral cycle. Notwithstanding the relatively higher number of women that are registered to vote, the electoral process in Malawi still predominantly favors men. Despite Malawi being a signatory to SADC’s gender protocol, which proposes a minimum of 50% women representation in elected bodies by 2015, only one fifth (20.8%) of the 2009 Parliament were women.

Although results of the last three democratic elections have been contested by losing candidates and parties, overall, they have been considered valid and have been endorsed as such by most international observers such as SADC and AU elections observer groups. That notwithstanding, there is regular concern that the party in power always enjoys significant advantage over its challengers by benefiting from the use of state resources and enjoying monopoly status in coverage in public media. There is also the additional concern that the electoral system in Malawi can result in the election of leaders that lack sufficient national mandate. This is because winners only need a simple majority. This was the case in 1994 and 2004 elections when the winning candidates secured less than half of the votes.  

Generally, Malawian political parties are run as personal estates of the party leadership and founders. Because the laws currently do not require parties to declare their sources of funds, party leaders are often the sole financiers of the more than fifty registered political parties. Overall, Malawian political parties lack robust internal democracy. Most political parties never hold conventions until when they get close to elections. Even in these circumstances, not all leadership positions are filled at the conventions. Instead, leaders are often given the mandate to handpick members of their executive committees.

In addition to the limited internal party democracy, Malawian political parties lack distinctive ideologies. In the absence of ideological differences, Malawians tend to vote along ethno-regional lines, a factor that perpetuates ethno-regional tensions (This ethnic-regional division can be traced back to the colonial period when similar ethnic groups were divided into specific administrative areas with minimal interaction with other regions). The exception to this trend was the 2009 elections, when late Mutharika and his DPP won a significant share of the vote across all the country’s three regions.

2.2.5 Political, Economic and Social Governance

Following the sudden death of President Bingu wa Mutharika in April 2012, his vice, Mrs. Joyce Banda, was sworn in as Malawi’s fourth president, becoming the country’s first ever female president, and Africa’s second after Liberia’s Helen Johnson Sirleaf.

While it was expected that Joyce Banda’s presidency would motivate fellow women to contest for political office, Malawi political arena remains largely male dominated. In the forthcoming 2014 elections for example, there are only two women presidential candidates, including Banda herself. In the parliamentary race, there has been a marginal increase in the number of women contestants, which has risen from 237 in the 2009 elections to 257 in 2014.

Findings of the 2008 population and housing census revealed that Malawi’s population is predominantly

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56 In addition to President Banda, Helen Singh is contesting on the ticket of her United Independence Party (UIC).
57 Daily Times, 4 March 2014, 'Malawi Electoral Commission endorses 257 female candidates'
young, with a median age of 17\textsuperscript{58}. Despite the country’s youthful population, there are not many programmes aimed at bringing the youth to contribute fully to the country’s development agenda. Education opportunities, especially at secondary and tertiary levels, remain extremely limited while youth unemployment\textsuperscript{59} is high\textsuperscript{60}.

Despite signing up to the AU protocols on governance and democracy, there does not seem to be any direct bearing on the governance process in Malawi. The country’s political leaders otherwise continue to operate within the context of the prevailing political culture, unaffected and not influenced by the country’s AU commitments.

2.3 Preventing and Combating Corruption

Malawi ratified the AU Charter on Corruption in November 2007. However, the fight against graft and corruption in the country remains one of the key policy objectives of government.

2.3.1 Enabling Legislation for Combating Corruption and Abuse of Office

One of the governance pillars outlined in the constitution of 1995 was the introduction of measures aimed at guaranteeing “… accountability, transparency, personal integrity and financial probity and which by virtue of their effectiveness and transparency will strengthen confidence in public institutions”.\textsuperscript{61} As a direct result of this commitment, the government has over time established several institutions aimed at promoting transparency and accountability, notable among which is the Anti-Corruption Bureau (ACB).

In 1995, Malawi passed the Corrupt Practices Act No.18 of 1995. Section 4(1) of this Act established the Anti-Corruption Bureau, mandated to operate independently and to take the lead in the fight against corruption in the country. The Act lists up to 13 different offences that constitute corruption.\textsuperscript{62} On 16th April 2004 the Corrupt Practices Act was amended to give the ACB increased powers and widened the definition of corruption to among other things, include offences for abuse of office and possession of unexplained wealth.

While the Corrupt Practices Act provides the most compressive list of corruption offences, other subsidiary laws also seek to promote a culture of transparency and accountability among public officials. The Constitution, for example, requires that senior public officials, starting with the President, Cabinet members, President and Cabinet Ministers, Members of Parliament and other senior government officials should declare their assets upon assuming office. The Public Procurement Act (2003) introduced principles, procedures and regulations for public procurement of goods, works and services. A new Assets Declaration Bill was also tabled and passed by Parliament in late 2013, which expanded the list of public officials required to declare assets.

Although the ACB has been in existence for nearly 20 years, corruption remains a major obstacle in Malawi’s development. Recent estimates suggest that almost 30% of government revenue is lost through corruption.\textsuperscript{63} Recently, this has been demonstrated by news suggesting that billions of tax-payers money has been pilfered from government coffers in the so-called cashgate scandal. The net effect of these corruption scandals has been to reduce public confidence in the ACB’s ability to eliminate corruption. An Afrobarometer survey\textsuperscript{64} that was carried out in 2012 for example found that 36 percent Malawians lack confidence in the ACB’s ability to act as an autonomous body and that instead, it makes decisions that favour particular people or political parties.

\textsuperscript{59} Youth unemployment refers to the share of the labor force ages 15-24 without work but available for and seeking employment.
\textsuperscript{60} http://www.mrdf.org.uk/images/tackling-youth-unemployment-in-malawi
\textsuperscript{61} See article 13(o) of the Malawi constitution, 1995
\textsuperscript{62} See Part IV of the Corrupt Practices Act for a fill list of corruption offences.
\textsuperscript{63} Nyasatimes, July 2013, ‘Malawi losing 30% of budget money to corruption”
\textsuperscript{64} see www.Afrobarometer.org
2.3.2 Civil Society and Media

Civil society organizations and the media in Malawi have played, and continue to play, a pivotal role in the fight against corruption through investigative journalism. The media for example, has helped to unearth and bring to light several corruption scandals. Civil society meanwhile have been very active in pressuring government to investigate and prosecute individuals accused of corruption.65

The media and civil society’s ability to promote a culture of transparency and accountability in government is however hampered by the legal uncertainty regarding access to asset declaration documents of senior government officials. The media and civil society for example have been demanding the release of the asset declaration documents that were filed by President Joyce Banda, but so far, the Speaker of Parliament has refused to do so by arguing that the current law does not allow him to release these documents to the public.

2.3.3 Confiscation and Seizure of the Proceeds and Instrumentalities of Corruption

Asset recovery is a critical aspect in the fight against corruption, as it renders corruption unattractive to potential practitioners while allowing the state to recover some of the assets lost. Section 23A of the Corrupt Practices Act empowers the ACB to, “At any stage during the investigation of, or the proceedings for, an offence under this Act, a court may issue a warrant authorizing the Director, the Deputy Director or a senior police officer to seize or freeze any document, or other records or evidence or any asset, account, money or other pecuniary resource, wealth, property, or business or other interest.” As part of the ongoing investigations in the cashgate scandal, the ACB has seized various properties, including houses, vehicles, office buildings and other property belonging to suspects in the scandal.66

Actions Required by the Government

- Ensure freedom of information and access to public information for all journalists.
- Fast track the implementation of constitutional reforms as recommended by the Law Commission in 1998 and the Constitutional Review Conferences of 2006 and 2007
- Enact an amended Political Parties Registration Act to replace the 1993 one.
- Introduce legislation that will require political parties to declare their sources of funding as a way of promoting transparency and accountability.
- Pass the revised law on asset declaration and allow media access to the declaration forms
- The Anti-Corruption Bureau to operate independently without any political influence.

Actions Required by Civil Society Organizations

- Lobby for the introduction of a second round system for electing presidents
- Lobby for the enactment of a revised and more comprehensive Political Parties Registration Act.
- Lobby government through citizen mobilization to implement the Decentralization Policy in full by devolving power to local authorities
- Lobby government to enact the new Asset Declaration Law
- Lobby political parties to field more female candidates in order to achieve the 50% women representation as proposed in the SADC gender protocol
- Lobby for the enactment of the Access to Information Bill
- Undertake civic education campaigns to encourage high voter turnout in elections

Action Required by the African Union

- Train the media and civil society organizations on how to track the implementation and domestication of AU protocols

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AGRICULTURE AND CONSERVATION OF NATURE AND NATURAL RESOURCES

Frameworks and instruments under review

Indicators under review
Increase public spending to agriculture to 10 per cent of the national budget; the pursuit of a six per cent average annual sector growth rate at the national level; existence of recent land-use plans based on scientific investigations as well as local knowledge and experience and, in particular, classification and land use capability; Measures taken towards the conservation and improvement of the soil to combat its erosion and misuse as well as the deterioration of its physical, chemical and biological or economic properties; including soil conservation and sustainable farming and forestry practices, and mitigation and rehabilitation measures for areas affected by land degradation; Trends in per capita availability of water for human consumption; conservation of forested and other catchments areas and the co-ordination and planning of water resources; existence and enforcement of effluent and water quality standards to minimize water pollution; trends in forest cover (hectares/percentage of total land area.

Malawi ratified the first Convention on Nature and Natural Resources in 1973, but is yet to ratify the Revised Convention of 2003, which at the time of reporting, had only been ratified by 10 countries. Malawi subscribes to CAADP and has a CAADP focal point within the Ministry of Agriculture. The country submitted its Compact/plan in April 2010.

3.1 The Comprehensive Africa Agriculture Development Programme (CAADP)

The Comprehensive Africa Agriculture Development Programme (CAADP) was established by the African Union’s New Partnership for Africa’s Development (AU/NEPAD) in July 2003. The overall goal of CAADP is to “help African countries reach a higher path of economic growth through agriculture-led development, which eliminates hunger, reduces poverty and food insecurity, and enables expansion of exports.” This is crucial for Malawi, whose economy is highly dependent on agriculture, which accounts for 29% of GDP and generates more than 80% of export revenue.67

Development strategies in Malawi have emphasized the importance of the growth of the agricultural sector in the fight against poverty, since most of the poor are currently engaged in the agricultural sector and mostly involved in subsistence agriculture. The role of agriculture in pro-poor growth is emphasized in the recent development strategy (GOM, 2011) in which it is stated that improving agricultural productivity is critical in improving the welfare of the poor in Malawi.

Malawi is widely accepted as a leading country in the implementation of CAADP. This is largely attributed to the fact that Malawi is one of only two countries (the other is Zimbabwe) that have lived up to the CAADAP commitment to allocate a minimum of 10% of the national budget to the agricultural sector. In the 2013/14 financial year, for example, the ministry of agriculture and food security was allocated a total of MK120 billion, translating to approximately 20 percent of the total national budget68. While this allocation met the CAADP commitments, it is telling that 50% of the agricultural budget (K60.1 billion) was earmarked for the Farm Inputs Subsidy Program (FISP)69. This initiative provides subsidized fertilizers to poor Malawian farmers. By allocating a substantial proportion of the agricultural budget towards the subsidy programme, this leaves very

67 E. Chirwa and M. Muhome-Matita, 2013
limited resources to cover remuneration, and the provision of other essential services, including research and extension services. It is thus important to look beyond the amount allocated to the agricultural sector alone by focussing on the allocations within the sector itself.70

Achieving national food security has been one of the objectives of agricultural strategies since independence. In Malawi, national food security is mainly defined by the government in terms of people's access to maize, the main staple food. In a study of recipients of the free inputs in the 1999/2000 season, 96.4% reported that maize was the staple food for the household, while cassava is a staple food only for 2.8% and rice for 0.5% of the sampled households (NSO 2000).

Notwithstanding the various policy interventions, Malawi's agriculture remains over dependent on rain-fed system, which increases vulnerability to weather related shocks. There is low uptake of improved farm inputs and smallholder agriculture remains unprofitable. This is exacerbated by weak links to markets, high transport costs, few farmer organizations, poor quality control and lack of information on markets and prices. Due to high risks in agricultural production and poor access to credit, investments and re-investments in the sector have been poor.

The net result is that food and nutrition policies have not succeeded in making Malawi food secure, and this remains true even during the periods of high agricultural growth. Although poor rainfall results in low agricultural productivity, inefficient government policies exacerbate the crises. The reduction in per capita food availability due to low production has led to dramatic increases in food prices. One indicator of the food and agricultural policy and nutrition education programmes that the government has pursued over the years is the poor nutritional status of children under five years of age (Table 3.1)

Table 3.1: Malawi: Trends in the malnutrition and growth of children under-five, 1992–2011..

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<tbody>
<tr>
<td>Stunting</td>
<td>48.7</td>
<td>59.1</td>
<td>49.0</td>
<td>43.2</td>
<td>56</td>
</tr>
<tr>
<td>Wasting</td>
<td>5.4</td>
<td>9.3</td>
<td>49.0</td>
<td>4.6</td>
<td>11</td>
</tr>
<tr>
<td>Underweight</td>
<td>27.2</td>
<td>29.6</td>
<td>5.5</td>
<td>22.0</td>
<td>25</td>
</tr>
</tbody>
</table>

Notes: DHS = Demographic and Health Survey, IHS = Integrated Household Survey
Sources: NSO (2002); NSO and ORC Macro (1994, 2001); GOM et al. (2005); GOM, 2011

Although Malawi has several agricultural training and research institutions, recent emphasis has shifted away from research and has focused on training for higher education instead. The country’s three agricultural research stations- Bvumbwe, Makoka and Chitedze, have been progressively deprived of funding to the extent that they have almost halted work on research. However, there has been a marked increase in student intake in education institutions training agricultural staff at the Lilongwe University of Agriculture and Natural resources (LUANAR), which has been paired up with the Natural Resources College (NRC).

However, the emphasis on training agricultural students at degree level has resulted in shortage of extension staff. According to the most recent data, there were a total of 1,887 extension workers in 2011, against 2,880 established posts in the same year, translating to a vacancy rate of 35%. With an estimated total number of 3.5 million farming households, the current official ratio of extension officers to farmers is 1:1,848, about double the recommended ratio of 1:850.

70 Interview, Prof. Blessings Chinsinga.

The main themes of the 2003 Revised Convention on the Conservation of Nature and Natural Resources are land and soil, water, vegetation cover, species and genetic diversity, protected species, trade in specimens and products thereof, conservation areas, processes and activities affecting the environment and natural resources, sustainable development and natural resource, traditional rights of local communities and indigenous knowledge, and establishment/designation of a natural authority empowered to deal with all matters covered in the Convention. Although Malawi has not ratified this Convention, several aspects are highlighted in existing legislation and policies.

3.2.1 Land and Soil

Land use is the interplay of activities and inputs by people on a land cover unit, which may cause change of habitat. Land use establishes direct linkage between the actions of people and their environment. The major uses of land include human settlement, agricultural activities, infrastructure (e.g. transport and communications, energy generation and power distribution, water supply and sewerage systems), conservation of biodiversity and other natural resources, and industrial and commercial activities including mining.

Land use in Malawi is governed by the Land Policy of 2002. The overall goal of this policy is to ensure tenure security and equitable access, and to facilitate the attainment of social harmony and broad based economic development through optimum and ecologically balanced use of land and land based resources.

The pressure on land in Malawi is ever increasing, mainly from pressure to increase food production and unsustainable human settlements. The unsustainable use of land in urban and rural areas is a major area of concern due to the serious impact on the environment. Activities contributing to land degradation include unsuitable agricultural land use, use of agricultural land by big companies and co-operations for purposes other than food production, poor soil and water management practices, deforestation and overgrazing. Natural disasters, including droughts, floods and landslides, contribute further to land degradation.

One of the main challenges in managing land in Malawi is the existence of multiple pieces of legislation that govern land use in the country. Among the key legislative instruments include:

- The Lands Act (Cap. 57:01),
- The Registered Land Act (Cap. 58:01),
- The Deeds Registration Act (Cap. 58:02),
- The Land Acquisition Act (Cap. 58:04),
- The Customary Land (Development) (Cap. 59:01),
- The Local Land Board Act (Cap. 59:02),
- The Adjudication of Title Act (Cap. 58:05), and
- The Local Government Act, etc.

The existence of multiple pieces of legislation governing land use have translated into multiple entities that play various roles, sometimes contradictory and competing, in the administration and management of land. These entities include the Ministries of Lands, Housing and Urban Development; Agriculture and Livestock Development; Research and Environmental Affairs; Natural Resources; Irrigation and the Water Department; Forestry and Local Government. Other actors in the land administration process include traditional leaders, local communities, farmers, NGOs, and the Coordination Unit for the Rehabilitation of the Environment (CURE).

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The Government has established a Presidential Land Commission of 1996 to look into matters related to land tenure as it affects rural and urban communities, the large estate sector, and finally linkages and synergies of land matters in relation to the promotion of initiatives for sustainable development. To date, these initiatives have promoted the pursuit of several land reform initiatives that are expected to culminate in the tabling of a comprehensive law governing land use in the country. When enacted, this Law is supposed to lead to the designation of the entire country as a planning area, with all land administration and management functions decentralized to local councils.

However, when the relevant bill was tabled in the 2013 Parliamentary session, it faced resistance from traditional leaders, who argued that if enacted into law, it would significantly diminish their authority as land custodians. This led to the shelving of the bill until the next Parliamentary sitting.

3.2.2 Water

Malawi has an abundance of fresh water, most of it held in Lake Malawi, which makes up one fifth of the country’s surface area. Numerous rivers and smaller lakes also make water readily available. However, despite this abundance of water, the country faces a challenge in providing ready access to clean water to homes and communities. The Ministry of Irrigation and Water Development, the Water Boards and local Authorities, are the main actors in water services provision.

The water sector is beset by numerous challenges, including the pressure of having to supply water to an ever growing population while using old and outdated equipment, small supply dams that have not expanded to match growing demand. The problem of water shortages is particularly acute in the country’s major urban areas of Blantyre and Lilongwe, where the water boards are not able to provide steady supply throughout the year.

The country also faces a major challenge of water pollution, as government authorities are failing to monitor and enforce laws governing waste disposal.

3.2.3 Vegetation Cover

Malawi has experienced massive over-exploitation of her forests over the past four decades. In 1975, 47% of the territory in Malawi was classified as forest. By 2010, the total forest cover area had been reduced to 36%, of which 15% is under natural woodlands on customary lands, 11% under national parks and game reserves and 10% under forest reserves and protected hill slopes.

Between 1972 and 1990, overall forest cover declined by 41% at the rate of 2.3% per annum; forest cover declined by 5% on public land mainly in protected areas at the rate of 0.03% per annum; and 61% on customary and private land at the rate of 3.4% per annum from increased demands for farmland and wood (Bunderson & Hayes). This is the highest deforestation rate in the SADC region, representing a net loss of some 30,000 to 40,000 hectares per year of (mostly miombo) woodland in Malawi.72

72 Government of Malawi, 2010, Status of forests and tree management in Malawi
3.3 African Mining Vision

The African Mining Vision (2009) aims to consolidate previous “initiatives and efforts made at sub-regional, continental and global levels to formulate policy and regulatory frameworks to maximize the development outcomes of mineral resource exploitation.” This was framed in the context of a major paradox in which a continent blessed with enormous natural resources was also the site of poverty, underdevelopment and low standards of living. The Vision documents the historical context within which this paradox was developed, nurtured and maintained and aims to address these disparities.

The Vision offers specific intervention points including i) a development of clear resource potential data; ii) improvement of the contracts negotiating capacity; iii) growing the capacity for African resources development and governance capacity; iv) improvement of the capacity to manage mineral wealth; v) addressing infrastructure constraints and vi) paying more attention to artisanal and small scale mining operations.

Despite recently discovering mineral resources that are currently being exploited, with export revenue from Uranium and Thorium Ore accounting for 12% of all export earnings revenue, Malawi has not signed up to the Mining Vision. According to Ministry of Foreign Affairs officials, the responsible line ministry - in this case, Mining, did not propose the ratification of this particular protocol. It was thus not possible to track any progress toward implementation of provisions in the Vision. This omission needs to be corrected however, as the country has recently discovered mineral resources that are already being exploited. Given this status as a new player in the mineral arena, Malawi can benefit from sharing experiences with countries that have been exploiting their mineral resources that are also part of the Mining Vision.

Actions Required by the government
- Sign and ratify the Revised African Convention on the Conservation of Nature and Natural Resources
- Sign and ratify the Africa Mining Vision
- Ministry of Lands in consultation with the Office of the President, should expedite the passage of the comprehensive Land reform Bill
- Fast track CAADAP by mobilizing departments of physical planning, lands, agriculture and local government
- Adopt a long term water use policy that factors in the country’s growing population

Actions required by Civil Society Organizations
- Train local authorities and communities managing conservation areas on ways of conserving the
environment and living harmoniously with plants and animal

- Lobby the state to monitor and track the National Land Policy implementation process
- Lobby government and local authorities to enforce water pollution regulations
- Sensitize local communities about the dangers of using dirty and polluted water resources
- Sensitize the public on hygienic ways of disposing waste
- Work with local communities and sensitize them about the environmental effects of deforestation

**Actions Required by the African Union**

- Follow up on why Malawi has not signed up/ratified the Revised African Convention on the Conservation of Nature and Natural Resources and the Africa Mining Vision- and then find ways of assisting the country to overcome the challenges it faces in order for it to sign up.
HEALTH STRATEGY AND ACCESS TO HIV/AIDS, TUBERCULOSIS AND MALARIA SERVICES
HEALTH STRATEGY AND ACCESS TO HIV/AIDS, TUBERCULOSIS AND MALARIA SERVICES

Frameworks and instruments under review:

Indicators Under review:
Promotion of all aspects of human resources for health development and retention, addressing policies, strategic plans, information, training, recruitment, deployment and retention, administration, working and living conditions and the health of staff. Mobilization of local resources for sustainable and predictable financing, including devoting 15% of the national budget to health (measured by the proportion of national budget allocated to health sector ministries); universal access to HIV/AIDS, tuberculosis and malaria services and adequacy and efficiency of the health systems (infrastructure, human resource, financing, supplies etc).

Malawi is a signatory to both the Abuja Call and the Africa Health Strategy 2007-2015. In fact, the country has remained committed to the Abuja Declaration even at a time when other countries have rescinded their commitments.73

4.1 Resource Mobilization and Strengthening Health Systems

Malawi’s health sector has experienced numerous changes in the last two decades, owing to reforms that have been implemented with the general aim of increasing access to health. As a signatory to the Abuja Declaration, Malawi is committed to allocating at least 15% of her budget on the health sector. Between 2003 and 2011, government exceeded the 15% threshold, with the exception of 2007. However, since 2012, budgetary spending in the health sector has declined to below the 15% threshold (Figure 4.1):

Figure 4.1: Malawi Government spending on Health Sector (Percent of Total Budget), 2000-2013

![Graph showing Malawi Government spending on Health Sector](source)

The reduced budgetary allocation to the health sector in 2012 and 2013 is particularly worrisome, as it may arguably demonstrate government slackening on its Abuja commitments. Further evidence of reduced health sector budgetary allocation is reflected in the fact that in the 2013/14 financial year, government allocated

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73 http://pambazuka.org/en/category/comment/63894
74 www.mamaye.org.mw/..../Malawi%20Abuja%20B12%20factsheet_0.pdf
about K4,653 (about $15 at the 2013 exchange rates) per person in the health budget. This is far much lower than the WHO recommendation of a minimum of $54 per person\(^5\).

Although Malawi has for the most part adhered to the 15% budgetary allocation to the health sector, the country still experiences numerous challenges. The country’s hospitals often run out of even the most basic drugs and continue to face personnel shortage. The doctor and nurse-population ratio are among the highest in the world (see Table 4.1); there are inadequate facilities while demand remains very high. In a nutshell, the 15% budgetary allocation on its own has proven to be insufficient.

On the indicator of the proportion of communities living within a five km radius of a health facility, the evidence shows marked differentials by locality. While overall, 46% of villagers are reported to live within a five km radius of a health facility\(^6\), accessibility is better in urban compared to rural areas. In many rural areas of the country, the health infrastructure is absent or dysfunctional; understaffed or not staffed at all. By contrast, health services in urban areas are within easy reach, although sometimes provided by unregulated private providers.

Access to medical personnel remains another major challenge for Malawi. Despite recent investments in training, the numbers of personnel have not kept up with the rapidly growing population. This has been worsened by brain drain, arising from poor work conditions for essential health staff in the country. As a result, the country faces an acute shortage of doctors and nurses, resulting in one of the lowest ratios of physicians and nurses to population in the region (Table 4.1):

**Table 4.1: Physicians and Nurses to Population (100,000) in selected African countries**\(^7\)

<table>
<thead>
<tr>
<th>Category</th>
<th>South Africa</th>
<th>Botswana</th>
<th>Ghana</th>
<th>Zambia</th>
<th>Tanzania</th>
<th>Malawi 2004</th>
<th>Malawi 2009</th>
</tr>
</thead>
<tbody>
<tr>
<td>Physicians</td>
<td>69.2</td>
<td>28.7</td>
<td>9</td>
<td>6.9</td>
<td>2.0</td>
<td>1.1</td>
<td>2.0</td>
</tr>
<tr>
<td>Nurses</td>
<td>388</td>
<td>241</td>
<td>64</td>
<td>113</td>
<td>35.0</td>
<td>25.5</td>
<td>36.8</td>
</tr>
</tbody>
</table>

Source: Malawi Health Sector Strategic Plan, 2011-2016

The low numbers of physicians and nurses has been recognized by the government, which has devised several initiatives aimed at improving the situation. Among the strategies include: (1) improving incentives for recruitment and retention through a 52% salary top-up; (2) expanding domestic pre-service training capacity by 50%; (3) using international volunteer doctors and nurses; (4) providing technical assistance relating to human resource planning and management functions; and (5) establishing robust monitoring and evaluation capacity for human resources for health. Some of these initiatives have already started to bear some fruit, as evidenced by an increase in the total number of professional healthcare workers, which went up by 53% between 2004 and 2009\(^8\). Despite these gains, the health sector is still characterized by a significant number of vacancies, especially among priority healthcare workers such as nurses, physicians, clinical officers, environmental health officers, laboratory and pharmacy technicians.

While the provision of a 52% salary top-up to health sector personnel has helped to incentivize health care personnel to remain in the sector, it has however failed to address the old problem of imbalance in the availability of health staff between urban and rural areas.

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\(^5\) www.mamaye.org.mw/.../Malawi%20Abuja%2B12%20factsheet_0.pdf
\(^6\) GOM, Malawi Health Sector Strategic Plan, 2011-2016
\(^7\) MSH-MSC EHRP Evaluation Report, 2009
\(^8\) GOM Malawi Heath Sector Strategic Plan, 2011-2016
4.2 Universal Access to HIV/AIDS, Tuberculosis and Malaria Services

Like many southern African countries, HIV/AIDS prevalence in the adult population in Malawi peaked in the late 1990s, with an overall prevalence rate of slightly over 16 percent in 1997 (Figure 4.2):

![Figure 4.2: Estimated HIV Prevalence rate in Malawi, 1990-2013](image)

Source: UNAIDS, Various

Over time, however, Malawi has recorded declines in HIV prevalence. From the peak of 16.1 percent in 1998, HIV prevalence rate has progressively declined and stood at 10.6% in 2013, the lowest rate since 1990. The decline in HIV prevalence has further been accompanied by a corresponding reduction in new infections, with UNAIDS figures showing a 73% reduction in new infections between 2001 and 2011. This rate is highest among southern African countries (Table 4.2):

Table 4.2: Reduction in HIV Infection rates among selected Southern African Countries, 2001-2011

<table>
<thead>
<tr>
<th>Country</th>
<th>Reduction in HIV infection rates, 2001-2011</th>
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<tbody>
<tr>
<td>Malawi</td>
<td>73%</td>
</tr>
<tr>
<td>Botswana</td>
<td>71%</td>
</tr>
<tr>
<td>Namibia</td>
<td>68%</td>
</tr>
<tr>
<td>Zambia</td>
<td>58%</td>
</tr>
<tr>
<td>Zimbabwe</td>
<td>50%</td>
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</tbody>
</table>


Despite the reduction in both prevalence and infection rates, HIV/AIDS remains a major health challenge that has a gendered dimension, as infection rates are highest among women (12.9%) compared to 8.1% among men.  

Malawi’s responses to the HIV epidemic have built on a multi-pronged strategy that has focused on expansion of Voluntary Testing and Counseling (VCT) services; prevention of mother-to-child transmission services (PMTCT); condom promotion and distribution; voluntary medical male circumcision; blood safety measures; mass media campaigns and life skills education for young people. The country has expanded the number of sites providing VCT services, with a total of 778 static and a further 614 outreach HTC sites providing testing.

and counselling services across the country by 2011. In the same year, it was estimated that 1.7 million people, representing 28% of the sexually active population, received HIV testing and counselling, with women being twice as likely to test for HIV compared to men. As the second prong of its efforts at reducing HIV prevalence, Malawi has expanded the number of sites providing PMTCT services, which increased from 152 to 544 between 2006 and 2007, translating into an almost universal provision of antiretroviral treatment to all pregnant mothers irrespective of CD4 count. The net outcome of the expansion of PMTCT services has been a substantial reduction of mother to baby transmission, with UNAIDS estimating that if the current trend continues, the transmission rate for mother to child would soon be reduced to zero. In addition to the expansion of PMCTC services, Malawi has scaled up the number of sites providing early infant diagnosis, with 200 sites providing this service by 2011.

The Abuja Declaration calls upon member countries to ensure that 100% of all blood donations are tested for HIV. While many countries have failed to provide recent data on this indicator, Malawi is one of only 18 countries that have done so, showing that the country has almost achieved the Abuja target, with a 99.6% HIV testing for all blood donations. This compares favorably to Mozambique and Tanzania, who have respectively achieved 69.4% and 33.7% HIV testing for all blood donations.

An additional target of the Abuja Declaration obligates countries to expand antiretroviral drug coverage to greater or equal to 80% of eligible recipients. Although Malawi is yet to meet this target, anti-retroviral coverage, has grown progressively from 47% in 2009 to 67% in 2011, with particular emphasis on pregnant mothers. One outcome from the increased antiretroviral therapy coverage has been reduction in the number of AIDS-related deaths, which have declined by a third according to UNAIDS estimates. The Malawi government has also promoted other measures aimed at reducing HIV transmission and prevalence, including promoting condom use among the sexually active population. However, on this score, Malawi is still lagging behind the targets of ensuring 60% condom use by men and 40 percent among women that have more than one sexual partner. Instead, the latest figures suggest that only 25% of men and 27% of women that reported to have had more than one sexual partner used a condom in 2012. The significant strides made in the HIV sector should also not mask the fact that donors are the main source of HIV/AIDS funding, contributing over 70% of total resources.

Although HIV/AIDS has received much attention in recent years, malaria remains the leading cause of morbidity and mortality in Malawi, especially in children under five years old. Malaria accounts for about 40% of all hospitalizations of children under five years of age and 34% of all outpatient visits in the country’s health facilities. Malaria transmission occurs year-round, although it peaks during the rainy season, between November and April. Higher malaria transmission occurs along Lake Malawi and the lowland areas of the lower Shire valley while the lowest risk areas fall along the highland areas. Government’s response to malaria has centered around the Presidential Malaria Initiative (PMI). Under this initiative, Malawi has developed a National Malaria Strategic Plan covering the period 2011-2015, themed “Towards Universal Access.” This strategy builds on the impetus of the National Malaria Control Program

80 See more at: http://www.avert.org/hiv-aids-malawi.htm#sthash.reVidEIB.dpuf
85 GOM, 2012, Global Aids Response Report
86 See Presidential Malaria Initiative Malawi: Malawi ‘Malaria Operational Plan FY 2014’
87 Kazembe, 2006
88 See Presidential Malaria Initiative Malawi: ibid.
and identifies six primary intervention areas: integrated vector management; case management; malaria in pregnancy; social mobilization and advocacy surveillance, monitoring, evaluation and operations research; and program management.\textsuperscript{89}

Malawi has registered some gains regarding availability of insecticide treated nets (ITNs). Household ownership of at least one ITN, has increased from 38% in 2006 to just over half (55%) in 2012.\textsuperscript{90} Among the most vulnerable groups, the Multiple Indicator Cluster Survey that was carried out in 2012 reported ITN utilization rate of 61% among children less than five years old while usage among pregnant women stood at 51%. The usage rate of 61% among under five children is still below the target of 80% set in the Abuja Declaration.

In addition to malaria and HIV/AIDS, Tuberculosis (TB), remains one of the major public health problems in Malawi. Management of TB in Malawi is placed under the National TB Control Programme within the Ministry of Health. The Programme is responsible for all TB control activities, including registration, treatment, management, data analysis, training and technical guidance. It is also responsible for policy formulation, guidance and sourcing of funds to run all TB control activities in the country.

Mirroring the trends in HIV prevalence, the number of TB cases in Malawi are reported to have increased steadily from 1995 until 2003 when they peaked. Since then, the numbers have trended downward, decreasing from nearly 28,000 notified cases in 2003 to an estimated 23,000 in 2010.\textsuperscript{91} This has translated into a decline in TB prevalence, which has gone down from 348/100,000 in 1995 to 174/100,000 in 2010. At the same time, HIV co-infection rate among TB patients has declined from 77% in 2000 to 64% in 2010. Treatment success continues to improve achieving 88% for the 2010 cohort.

4.3 Unsafe Abortions

Abortion in Malawi is only allowed to preserve the mother’s life.\textsuperscript{92} Outside of serving the life of the mother, abortion is illegal and punishable by a minimum of 14 years imprisonment. Among other factors, the strict restrictions on procuring legal abortion forces many Malawian women to seek unsafe abortions, often from unlicensed health personnel, resulting in numerous complications and loss of life.

There are not detailed studies that have been done to get concrete data on the occurrence and consequences of unsafe abortions in Malawi. The Ministry of Health estimates that 31,000 women are treated every year for complications of unsafe abortions and that approximately 17 percent of maternal deaths are attributable to unsafe abortion. Although there has been a push in recent years for the country to amend its abortion law, these efforts are yet to achieve the desired result.

\textbf{Actions required by Government:}

- Increase overall health resource allocation to the recommended minimum of 15% through a wide variety of measures such as specific earmarked taxes
- Promote preventative measures for community and rural health to reduce health care burden
- Promote voluntary testing and counselling for HIV/AIDS. Provide infrastructure and incentives (such as good housing and remuneration) to attract health personnel to work in remote areas of the country
- Promote HIV interventions to address especially infection rates among women
- Fast-track the enactment of the new law for safe abortion by prioritizing the issue for debate in parliament.

\textsuperscript{89} Ibid
\textsuperscript{90} MICS, 2012
\textsuperscript{91} Malawi National TB Programme manual, 2012, Seventh Edition
\textsuperscript{92} See Section 243 of the Penal Code, Laws of Malawi.
Actions Required by Civil Society

- Lobby for government’s adherence to the minimum of 15% budgetary allocation toward the health sector through awareness programmes targeting members of parliament.
- Monitor misuse of resources in the health sector by naming and shaming individuals and facilities indulging in corruption.
- Promote safe sex and behavior that leads to reduction of the HIV/AIDS transmission hence reduced burden.
- Undertake HIV/AIDS interventions that seek to reduce the gender gap in infections rates among women and men.
- Sensitize patients through training programmes on antiretroviral therapy and TB treatment to stick to and complete the treatment regimens.
- Undertake research to track the incidence and consequences of unsafe abortion in the country to inform lobbying efforts for the amendment of the abortion law to reduce the incidence of unsafe abortions.
### Frameworks and Instruments under review


### Some indicators under review:

The legislative, institutional and other measures taken to combat all forms of discrimination against women; including constitutional provisions of the principle of equality between women and men; Express prohibition of all harmful practices that endanger the health and general well-being of women; Attitudes towards domestic violence, prevalence of harmful traditional practices, especially FGC, laws aimed to mitigate against major harmful social and cultural practices like early/forced marriages; Property inheritance rights for orphaned children, raising minimum age of marriage to be 18 years; Commitment to effective access by women to judicial and legal services, and equal representation of women in the judiciary and law enforcement organs; Measures being undertaken to ensure increased and effective representation and participation of women at all levels of decision-making in the specified spheres of public life; The literacy rate for women age 15–24 years reported alongside that of men; Gender parity in primary and secondary school enrolment; Level of retention of girls in school; Policies and legal frameworks to ensure access to comprehensive HIV/ AIDS/STI care and treatment options for pregnant women, mothers and infants (including mother-to-child transmission); Family planning (contraceptive prevalence rate and the unmet need for family planning); Antenatal care coverage, access to skilled delivery care; whether there is a gender perspective in the national development planning procedures; Rights of a widow to an equitable share in the inheritance of the property.

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### 5.1 Elimination of Discrimination against Women

From a legal perspective, Malawi has made substantial progress in eliminating discrimination against women.

Under the theme of ‘Fundamental Principles’, the 1995 constitution provides in section 13(a) that the state shall ensure that there is gender equality for women with men through among other things, “the implementation of policies to address social issues such as domestic violence, security of the person, lack of maternity benefits, economic exploitation and rights to property”.

To reinforce the equality principle, Section 23 of the constitution goes further to state that “Women have the right to full and equal protection by the law, and have the right not to be discriminated against on the basis of their gender or marital status which includes the right: to be accorded the same rights as men in civil law”. The constitution also protects women in case of dissolution of marriage by highlighting that there shall be a fair disposition of property and fair maintenance for the wife and children. The section also mentions that “Any law that discriminates against women on the basis of gender or marital status shall be invalid and legislation shall be passed to eliminate customs and practices that discriminate against women”.

In recent years, Malawi has enacted several laws aimed at curbing bills to curb violence against women, starting with the Prevention of Domestic Violence Act (2006); the Deceased Estates (Wills, Inheritance and Protection) Act (2011), and most recently, the Gender Equality Act (2012), whose passage was largely influenced by the African charter on Human and People’s Rights on the Rights of Women. To make sure that this law is properly interpreted and applied, 120 prosecutors, magistrates and social workers were trained in the gender related laws in 2012.

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93 Constitution of Malawi Section 13(a)

Despite these highly elaborate protective clauses in the Constitution of Malawi, there are still many challenges towards gender equality in the country. In the past five years, however, the government is showing some commitment by embracing gender mainstreaming in policy decisions (such as towards a 50% gender balance in higher education selection of students), legislations, development plans and programs.

5.2 The Rights of Life, Integrity and Security of the Person

Malawi has made several attempts towards eradication of Gender Based Violence (GBV). For instance, the government passed the Gender Equality Bill of 2012 which among other things aims at “prohibition of sex discrimination, prohibition of harmful social, cultural or religious practices and prohibition of sexual harassment”. Despite these positive developments, in late 2011 and early 2012 several incidents of GBV were reported in the Malawian media and included incidents of public undressing of women accused of indecent dressing. Studies clearly demonstrate Malawi’s failure to deal with the cultural practices which perpetuate GBV.

Action Aid International Malawi conducted a baseline study to determine the status of women in five districts of Malawi. In relation to access to justice, the study found out that 58% of the women experienced violence in past six months with 64% suffering in silence (not reporting).

Malawi has enhanced the justice and remedial system to ensure speedy and appropriate assistance to victimized women and children through the setting up of Victim Support Units in various police stations. Specifically Victim Support Units have been established in 34 police stations, 13 police posts and 200 other Support Units in 300 Traditional Authority institutions. Malawi has also established 20 ‘One Stop Centres’ (where victims are counselled and provided health assistance and investigations initiated) in the central and district hospitals. According to recent data, 30% of the reported cases of violence against women and children are almost immediately prosecuted. Currently data is not yet available to ascertain the success of the said initiatives.

5.3 Elimination of Harmful Cultural Practices

Culture is one of the vehicles through which issues of infringement of rights of women and girls have been perpetuated in Malawi. In a 2006 study, the Malawi Human Rights Commission (MHRC) identified numerous cultural practices which impinge on the rights of women and girls. These cultural practices were categorised as follows: practices related to marriage (e.g. Polygyny, Chokolo or wife inheritance, Fisi etc), rites of passage (e.g. Chinamwali, Jando etc), pregnancy, funerals and other related matters. Some of these practices are not necessarily problematic on their own but they are prone to abuse (it is linguistically difficult to translate some of the local names of the practices into English). According to the MHRC study, Female Genital Mutilation (FGM) or Female Genital Cutting (FGC) is very rare in Malawi; in this case only 5% of the respondents said that FGM is practiced in their area (recent data is not available). For the girls who had undergone FGM, 89% of them reported that they had first experienced it when they are 10-15 years while 11% said that it was during the 16-20 age period. Although the Gender Equality Act (2013) does not specifically mention FGM, the practice is outlawed in several legal pieces including the constitution, because it endangers the lives of girls and women.

5.4 Marriage

Early marriage has been one of the core issues under discussion in the country. The NSO survey reveals that 10% of women aged 15–49 marry before the age of 15 and 50% of women aged 20–49 marry before the age of

96 These districts were selected because they were seen as an appropriate representation of the diverse socio-cultural and demographic characteristics of Malawi.
97 Kalinde 2013 op. cit
98 Kalinde 2013 op. cit
18. The Constitution allows marriages between 15 and 18 years of age on condition of parental consent but this is not fully enforced and there have been reports in the media of children in these age brackets getting married without the consent of their parents.

5.5 Access to Justice and Equal Protection before the Law

In 2009, female judicial officers formed the Women Judges Association of Malawi (WOJAM) whose mission is to advance the rights of and access to justice for vulnerable groups especially women and children. Since its formation, WOJAM has played an influential role in several areas of the justice system “through the delivery of service like police and prison visits, camp courts, trainings and civic education on the prevention of Domestic Violence Act, Deceased Estates (Wills, Inheritance and Protection) Act, court processes as well as other cutting edge issues that affect women and children and other vulnerable groups”\(^{101}\). In their visits to police and prisons, it has led to increased number of people on bail.

5.6 Right to Participation in the Political and Decision-making Process

According to Gender Joint Sector Strategic Plan (2013-2017), women occupy 23% of decision-making positions in the civil service\(^{102}\). Notably, for the first time in the history of the country, in 2012 a woman was appointed as District Commissioner and this was followed up by several other women appointments in 2013 including the Secretary to the Office of President and Cabinet, Mrs Hawa Ndilowé. Several lady police officers have also occupied top offices such as Mrs Mary Nangwale who became Inspector General of the Malawi Police Service in 2005.\(^{103}\) Several other women have also severed in senior positions in the police services, including Mrs Doreen Kapanga (Deputy Inspector General, 2012-2013) and Mrs. Chris Ngauma (Deputy Inspector General, September 2013 to date). The judiciary has a relatively good representation of women and for the first time in Malawi’s history, a lady judge, Justice Anastasia Msosa, was appointed in April 2013 as Chief Justice. In October 2012, three female judges were appointed to serve as High Court Judges.

Although there has not been any significant increase in the number of women in key political decision making positions, the situation shows progress rather than regression as shown in Table 5.1:

<table>
<thead>
<tr>
<th></th>
<th>2006</th>
<th>2007</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ministers</td>
<td>27.3%</td>
<td>36%</td>
</tr>
<tr>
<td>Deputies</td>
<td>7.1%</td>
<td>9%</td>
</tr>
<tr>
<td>MPs</td>
<td>14.1%</td>
<td>20.8%</td>
</tr>
</tbody>
</table>

Source: www.malawi.gov.mw

The number of women in senior government positions still remains very low and below the AU and SADC targets. The Ministry of Women and Child Development is mandated to provide policy direction and guidance on issues and programmes relating to Women and Child Development. Its mission is to promote and protect women and children using community based and welfare approaches. One of the roles of the Ministry of Women and Child Development is increasing women participation and representation in politics and other decision making positions and also to coordinate the implementation of the programme activities which are meant to achieve this objective. The Ministry was somehow visible in the preparation for the 2009 general elections through the 50/50 campaign- whose target was increasing the number of women representatives in parliament to 50%.

\(^{101}\) Ibid
\(^{103}\) Mrs Nangwale however did not stay long in the office due to squabbles between the ruling party and the opposition which saw her being rejected by parliament.
On one front, public attitudes are highly supportive of women leadership, with more than three quarters (78%) of Malawians supporting the proposition that “omen should have the same chance of being elected to political office as men”. Civil society organizations were also instrumental in promoting the participation of women in the 2009 elections (as well as the current elections of 2014) mainly through the Non-Governmental Organisation Gender Coordinating Network (NGOGCN). The NGOGCN is grouping of NGOs that work on gender equality issues in Malawi (approximately 8% of registered NGOs in the country are members of the NGOGCN). Probably, the major success of the 50/50 campaign was the publicity and debate that it introduced in the country on gender representation in parliament and this debate has been sustained in the preparation for the 2014 general elections. Although there has been some limited debate on introducing an electoral gender quota through Proportional Representation system, this debate is currently waning.

5.7 Right to Education and Training

From a gender perspective, the education data show a mixed picture in primary and secondary enrolments. For instance only 67% of children of primary school entry age are currently attending grade 1 and the Gender Parity Index (GPI) for primary school is 0.92. 86% of children that enter first grade of primary school manage to reach grade 5 and about 71% reach grade 8. Though 40% of primary school children eventually reach secondary education, the net primary school completion rate is very low at only 9%. Some older children are still found in primary school, for instance forty-nine percent of children of secondary school age (14–17) are currently attending primary school. The Gender Parity Index (GPI) for secondary school is 0.78. In total, 69% of adults in Malawi are literate; but the number of literate men is higher than that of female at 77% and 67% respectively. Other details related to enrolment in schools are discussed in Section 6.2 of this report.

5.8 Health and Reproductive Rights

Legally, women in Malawi have full reproductive rights which are clearly spelt out in the Gender Equality Act (2012). Part VI of the Act focuses on “Sexual and Reproductive Health Rights” and in Section 19 (1) it states that “Every person has a right to adequate sexual and reproductive health which includes the right to: access sexual and reproductive health services; access family planning services”. The Act also mentions that health workers are mandated to provide family planning services to whosoever demands it, whether they are accompanied by spouse or not. A critical analysis of the Act clearly shows that all the essential elements of information, education, communication and counselling (IECC) in relation to reproductive health are covered. In Malawi, there is a relatively reasonable access to skilled delivery services, quality antenatal care and contraceptives but overall the situations remain unsatisfactory. According to UNICEF percentage of contraceptive use between 2008 and 2012 was 46% and institutional delivery between the same periods was 73.2%. This gap is attributed, among other reasons, to socio-cultural practices which do not encourage contraceptive use (see Table 5.8.1).

104 Tsoka and Chunga, 2012, Afrobarometer Summary of Results: Malawi
105 The extent to which the increase in women representation in parliament from 14.4% in 2004 to 22% in 2009 elections can be attributed to the 50/50 campaign is however debatable.
106 NSO 2008 op. cit.
107 The Gender Parity Index (GPI) is a socioeconomic measure which reflects females’ level of access to education compared to that of males. For instance, a GPI of less than 1 indicates that there are fewer females than males in the formal education system in relation to a certain school-age population. On the otherhand, a GPI of more than 1 means that there are proportionately more girls than boys attending school. However, a score of 1 reflects equal enrolment rates for boys and girls.
Table 5.2: Selected Reproductive data in Malawi 2008-2012

<table>
<thead>
<tr>
<th>Reproductive Issue</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contraceptive prevalence (%) 2008-2012</td>
<td>46.1</td>
</tr>
<tr>
<td>Antenatal care (%) 2008-2012, At least one visit</td>
<td>94.7</td>
</tr>
<tr>
<td>Antenatal care (%) 2008-2012, At least four visits</td>
<td>45.5</td>
</tr>
<tr>
<td>Delivery care (%) 2008-2012, Skilled attendant at birth</td>
<td>71.4</td>
</tr>
<tr>
<td>Delivery care (%) 2008-2012, Institutional delivery</td>
<td>73.2</td>
</tr>
<tr>
<td>Delivery care (%) 2008-2012, C-section</td>
<td>4.6</td>
</tr>
</tbody>
</table>

Source: UNICEF, Malawi 2012

5.9 Right to Sustainable Development

As part of the strategy to enhance proper application of the Malawi Growth and Development Strategy (MGDS II), government setup the Sector Working Group (SWGs). This is an institutional framework for the planning, coordination, budgeting, implementation and monitoring of development initiatives in the country. The emergence of SWGs is an offshoot of Sector Wide Approaches (SWAs) to development. This brings together sectors that have similar programmes and interests and promotes the sharing of resources. Based on observations that vulnerable groups such as women, youth and children are normally side lined in the development process\(^{109}\), the government developed the Gender, Children, Youth and Sports Sector Working Group's Joint Sector Strategic Plan (JSSP) covering the period 2013-2017. The plan strategically identifies key institutions in the public and private sector, their role as well as projected indicators/output of achievement within a specified period. For instance one of the output indicators is improved literacy rates for women- which is targeted at 89% by June 2017\(^{110}\) (since the plan has just been launched, it is too early to ascertain its impact).

5.10 Right to Inheritance

Issues of rights to inheritance are covered in the Gender Equality Act (2012) and in the Deceased Estates (Wills, Inheritance and Protection Act) Act No. 14 of 2011. When it was initially tabled, Members of Parliament rejected some clauses in the Deceased Estates bill because some of them felt uncomfortable with the proposal that a spouse and his/her and children must be included in a will as a matter of law. Section 15 of the Act now makes provision for spouse and children to be part of the deceased estates in a case where they are left out of the will. If a person dies without leaving behind a will, the earlier laws had provided for application of customary laws of the areas of the deceased persons. The problem was that in most cases, widows face property grabbing in the guise of customary laws\(^{111}\). Currently property grabbing has been made an offence by section 88 of the Act. Enforcement of the Gender Equality Act is vested in the hands of MHRC but this institution by end of March 2014 had not yet been provided with clear operational directions. Another major challenge of the Act is awareness due to a number of problems such illiteracy, limited government capacity and other related issues. Although there is no explicit clause which mentions that women outside marriage shall be allowed to own property, several legal pieces such as Section 4 of the Gender Equality Act 2012 prohibits gender discrimination of any kind and provides freedom of property ownership for women- irrespective of their marital status.

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**Actions Required by the Government**
1. Closely monitor the implementation of the following important new Acts:
   a. Gender Equality Act (2012)- through provision of operational guidance to MHRC.
2. Strengthen partnership through creation of sectoral committees with Civil Society organisations to enhance awareness of the said Acts.
3. Provide adequate resources for the full implementation of gender related Joint Sector Strategic Plans.

**Actions Required by Civil Society Organisations**
1. Sensitize media, traditional leaders, government officials, law enforcers and other key stakeholders on the above mentioned Acts.
2. Lobby for regular reviews of newly enacted gender laws to address inconsistencies and omissions.

**Actions Required by African Union**
1. Enhance collaboration and sharing of ideas of Malawian women parliamentarians with their counterparts in the region.
CHILDREN’S RIGHTS

### Frameworks and Instruments under review


### Some indicators under review:

- Whether laws exist outlawing discrimination to children born out of wedlock, especially through enactment of an appropriate affiliation law;
- Whether primary education is free and compulsory, and if this is pegged to legal provisions in a children's law;
- Situation analysis of children with disabilities;
- Under the 5 mortality rate, neonatal mortality rate, the proportion of children below 1 year who are fully immunized, percent of children under 5 in malaria prone areas sleeping in Insecticide Treated Nets (ITNs), and percent of pregnant women sleeping under Long Lasting Insecticide Treated Nets (LLITNs);
- Laws that exist to protect children from worst forms of labor, and any estimates of the proportion of children age 5-14 years who are involved in child labor;
- Laws and policies prohibiting corporal punishment and neglect in homes, community and in all public and private alternative care and employment settings;
- Property inheritance rights for orphaned children;
- Whether registration of all marriages in an official registry is compulsory and registration of births;
- The extent to which a country's refugee laws are in line with international human rights and refugee law.

6.1 Non-discrimination

According to the African Child Policy Forum’s (ACPF) 2013 report, Malawi was rated as one of the most child-friendly countries in Africa (14th out of 52)\(^{112}\). In the Malawi Growth and Development Strategy Paper II\(^{113}\), child development is considered as one of government priority areas. Rights of children are specifically mentioned in Section 23(4) of the constitution which states that “children are entitled to be protected from economic exploitation or any treatment work or punishment that is likely to be hazardous”. This includes acts that are likely to interfere with their education and be harmful to their health or to their physical, mental or spiritual or social development. The Childcare Protection and Justice Act (2010) covers all civil, political, social and cultural rights of children. Specifically, this Act conforms to all the African Charter on the Rights and Welfare of the Child (1990) and emphasizes that children are holders of rights, and their rights cover all aspects of their lives.

There are institutions that apply these legal provisions into action, including community based organizations, non-governmental organizations and government itself. The government is constitutionally the guardian of child rights and it ensures that the policies on child rights are developed and that the duty bearers are guided by these policies when they interact and work with children. In this case, the Convention on the Rights of the Child (CRC) is largely being upheld in the country and is one of the main instruments used in monitoring child rights. Further to this, there are no specific laws that safeguard the rights of children born out of wedlock. This is also the case in relation to mentally and physically disabled children, refugees and orphan. Although there is no specific law against discrimination of children born out of wedlock, the Deceased Estates Act 2012 provides equal access to children's inheritance irrespective of whether they were born in or out of wedlock. The responsible agency for children affairs is the Ministry of Gender, Children and Social Welfare but the Social Welfare section has no adequate staff to handle childcare and protection issues as required in the Childcare Protection and Justice Act (2010).

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6.2 Right to education

The constitution of Malawi in Chapter III under on Fundamental Principles obligates the government to “make primary education compulsory and free to all citizens of Malawi”. Under rights of the children, the constitution mentions that it is the right of the child not to be interfered with his or her education. For many years however, the country’s education was not compulsory and the country’s education sector was operating under the obsolete 1962 Act. On 31st October 2013, parliament passed the Education bill which was signed by the president on 2nd December 2013. The new Education Act (2013), apart from reinforcing compulsory primary education, it also talks about remodelling schools, increasing the number of teachers and building more classrooms.

Data from UNICEF\textsuperscript{114} also shows that there is no significant difference between male and female enrolment in primary schools (84\% and 86\% respectively) as indicated in the table below:

\begin{table}[h]
\centering
\begin{tabular}{|l|c|c|}
\hline
Education & Male (%) & Female (%) \\
\hline
Primary school participation, Gross enrolment ratio (\%) 2008-2012 & 138.5 & 144.1 \\
Primary school participation, Net attendance ratio (\%) 2008-2012 & 84.3 & 86.2 \\
Primary school participation, Survival rate to last primary grade (\%), 2008-2012, admin. Data & 81.2 & 50.9 \\
Secondary school participation, Net enrolment ratio (\%) 2008-2012 & 29.7 & 28.8 \\
Secondary school participation, Net attendance ratio (\%) 2008-2012 & 9.7 & 10.4 \\
\hline
\end{tabular}
\caption{Proportion of primary and secondary school participation by gender (2008-2012)}
\end{table}

Source: UNICEF (2012)

Due to limited number of secondary school spaces, very few make it to that level hence the secondary school participation net enrolment for males and females is 29\% and 28\% respectively. Data for private primary and secondary school enrolment is currently not available.

6.3 Handicapped children

Children with disabilities are at high risk of suffering abuse, exploitation or neglect. According to the 2008 Population and Housing Census\textsuperscript{115}, there are nearly 260,000 children with physical impairment. Of these, nearly 70,000 have vision impairment, and 42,000 have hearing impairment. Their access to education is limited more by lack of resources and trained teachers for children with special needs rather than unwillingness of parents to send their children to school\textsuperscript{116} (no data are available on school attendance rates for children with disabilities).

6.4 Health and Health Services

Access to health is not a serious issue, and when asked about being the victims of childhood sexual abuse, the informants did not confirm such experiences.

6.4.1 Child Mortality

According to the 2010 DHS it shows infant mortality rate is estimated at 66 per 1,000 against the MDG target of 45 while the under-five mortality is 112 per 1,000. According to the Malawi Multiple Indicator Cluster Survey\textsuperscript{117}, The neonatal mortality rate stands at 33 per 1,000 live births. Although these figures represent a

\textsuperscript{114} UNICEF 2012. op. cit.
\textsuperscript{115} NSO 2008 National Population and Housing Survey. Zomba
\textsuperscript{117} Ibid
downward trend from previous years and compare favourably in the African region, they are still far from being satisfactory.

6.4.2 Immunisation

Findings of the Malawi Multiple Indicator Cluster Survey\textsuperscript{118} shows that in relation to immunization, the proportion of children aged between 12–23 months who received all the recommended vaccinations stands at 70\%(received 1 dose of BCG, 3 doses of DPT\textsuperscript{HepB}+Hib (Pentavalent), 3 doses of Polio and 1 dose of measles before reaching one year). Similarly, approximately 96\% of children aged 12–23 months receive a BCG vaccination, 86\% of children in the same group get a third dose of pentavalent, and 81\% of children receive their third dose of polio. However coverage for measles is lower than for other vaccines at 84\%. In total, 89\% of pregnant women are protected against tetanus.

6.4.3 Malaria

The comprehensive 2008 Malawi Multiple Indicator Cluster Survey shows that overall, 51\% of households own at least one mosquito net, while 38\% have at least one insecticide-treated net (ITN). Interestingly, only 31\% of children under five sleep under a mosquito net and 25\% sleep under an ITN\textsuperscript{119}. Malawi being malaria infested area, 35\% of children under five become ill with fever and 25\% of children with fever are treated with an antimalarial drug. Among women who gave birth in the two years preceding the 2008 Malawi Multiple Indicator Cluster Survey, 32\% slept under a bed net and 26\% slept under an ITN.

6.5 Child Labour

Laws that inhibit child labour in Malawi are enshrined in Section 23 of the constitution and in other laws such as the Employment Act (2000). Article 21 of the Employment Act states that “(1) Subject to subsection (2), no person under the age of fourteen shall be employed or work in any public or private agricultural, industrial or non-industrial undertaking or any branch thereof”. The Act states further that children aged between 14 and 18 do not need to be exposed to work that is harmful and that which will affect their educational development. Furthermore, sub-section 23 states that “Every employer shall keep a register of any person the age of eighteen years employed by or working for him”. The Childcare Protection and Justice Act of 2010 also comprehensively discusses the issue of child labour.

Despite the existence of the various laws, a number of studies have found that Malawi has one of the highest levels of child labour in the region and the most publicized cases are in the agricultural (tobacco estates) sector. Official data show that 26\% of children aged 5–14 in the country are involved in child labour\textsuperscript{120}. The breakdown of child labour statistics is as follows: 15\% of children are involved in family business and 5\% in household chores. 80\% of children do unpaid work and 3\% are engaged in paid work. However, 86\% of child labourers are able to attend school (Labourer students)\textsuperscript{121}. The government attempts to enforce the laws through interventions and programmes at the levels of the child, household and community to build awareness and support and empower children and their families through civic education programmes.

While the issue of child labour in Malawi has been largely looked at from the perspective of the employment of children in the agricultural estate sector, there are many documented cases of children working as domestic labour in homes and to look after livestock at very minimal pay\textsuperscript{122}. However, these have not received significant attention in the discourse on child labour. There is thus a need to study this particular aspect of child labour in sufficient depth to understand the severity of the problem and propose solutions.

\textsuperscript{118} Ibid.
\textsuperscript{119} Ibid
\textsuperscript{120} NSO op. cit
\textsuperscript{121} NSO op. cit.
\textsuperscript{122} Interview, Mrs. Chasukwa
There is also a dearth of comprehensive studies on child trafficking, prostitution to ascertain the magnitude of the problem but government officials feel that the problem is growing in the country due to high levels of poverty.  

Although child labour is covered in the laws of Malawi, the constitution defines a child as one below the age of 16 while the Employment Act (2000) doesn't come out clearly for those in the age range of 15 to 18. This anomaly creates a lot of misunderstanding of the actual definition of child labour. Another problem is that due to lack of funding, monitoring child labour especially in the agricultural sector is highly challenging. The National Registration Act of 2009 mandates that the Government of Malawi to establish a National Registration System that records births, deaths, and marriages at the village, traditional authority, district, and national levels (Part II, Section 3). Although there is this legislation, it has not yet been implemented due to lack of funding and logistical problems. Consequently the pre-legislation scenario remains whereby there is no automatic registration of children at birth in Malawi hence most of them do not have birth certificates. This causes problems when ascertaining the age of the children for the purposes on inhibiting child labour.

6.6. Protection against abuse and torture

Malawi laws cover protection of the child against abuse and torture. The Child Justice and Protection Act of 2010 states that children receive proper and appropriate attention in relation to the justice system. To ensure that the Act is appropriately interpreted in 2012, 34 Child Justice Magistrates, 37 Probation Officers, 39 Prosecutors and 34 court, clerks were trained in child justice system. More importantly two child friendly courts are operational in Blantyre and Zomba.

Malawi also lacks clear guidelines to government the treatment of children born to mothers in prisons. Currently, children born to imprisoned mothers stay with their mothers without any child-friendly services.

The Employment Act of 2000 specifically mentions that children between 14 and 18 years of age should not be exposed to hazardous and harmful work environments. The Education Act (2013) also specifically prohibits corporal punishment in Malawian schools. However, banning of corporal punishment was introduced before this law, having been introduced as a directive from the Ministry of Education in 2003. A study by the National Statistics Office states that "of more than 4,500 children's experiences of violence at school found that one fifth had experienced something which made them afraid to go to school, including violent corporal punishment (10.9%) and ill-treatment by the head or teachers (20.9%)." The report further mentions that "From teachers' own reports, the study found corporal punishment (including manual labour) to be the most common form of "discipline" (36.3%), despite its prohibition". Currently there is some periodic debate in the local media on whether corporal punishment is completely wrong for children in schools. Legal prohibition of corporal punishment in homes and communities is not clearly spelt out hence the above mentioned NSO report found that up to 40% of the children had experienced corporal punishment by parents.

6.7 Protection against Harmful Social and Cultural Practices

One of the harmful social cultural issues which Malawi has been grappling with is the one related to early marriages. Currently, Section 22 (7) of the constitution says that marriage for people between the age of 15 and 18 years shall only be entered into with the consent of their parents or guardians. Section 22 (8) says the state shall discourage marriages between persons where either of them is under 15. Due to noted effects of early

123 Various interviews with government officials in the Ministry of Gender, Children and Social Welfare
125 Kalinde 2013 op. cit.
127 Ibid
128 NSO 2008op. cit.
marriages such as increase in maternal deaths, government suggested increasing the minimum marriage age from 15 to 16. However this proposal received fierce criticism from civil society organizations, who suggested that it should instead be set at 18\textsuperscript{129}. These groups criticized the proposal on several grounds for instance, that it was at variance with the Convention on the Rights of the Child, which considers anyone under the age of 18 a child, and that pregnancy related risks are high for girls between the ages of 15-19. Due to this outcry, former president, Bingu wa Mutharika refused to sign the bill into law. It is not surprising therefore that recent statistics show that in Malawi, 10 percent of women aged 15–49 marry before the age of 15 and 50 percent of women aged 20–49 marry before the age of 18. One in every three female teenagers is either married or in union. Not surprisingly, early marriage is less common for men than it is for women and this is the case because only 1 percent of men marry before they reach 15 and 7 percent of men in the 20–49 age group marry before age 18.

In 2012, President Joyce Banda, issued a directive to the Ministries of Gender and Justice to make sure that the amendment bill should go back to Parliament but with the marriage age raised from the current 15 to either 18 or 21. This also raised controversy amongst the lobby and rights groups with some arguing that 21 is too high\textsuperscript{130}. Consequently, the minimum of 15 as enshrined in the constitution remains.

6.8 Refugee Children

The historical context of Malawi’s experience in handling refugees is rooted in the wider socio-political developments especially in the southern African region. The 16 year civil war in Mozambique that ended with a peace agreement on 4th October 1992 created a momentous milestone in Malawi’s capability to handle a massive influx of Mozambican refugees. Currently refugees are from far off countries such as Rwanda, Burundi and the Democratic Republic of Congo. The UNHCR in 2014 indicated that there were 17,375 refugees and asylum seekers in the country\textsuperscript{131} - a small number when compared to the previous years during the Mozambique crisis.

Despite this experience in handling refugees, the country does not have a refugee policy (currently it is still in draft form). More importantly, the country does not have laws to deal with the plight of refugee children. All refugees are currently kept in camps which are far from the urban centers. When children complete their camps secondary education, they find it very hard to continue their studies because they are unable to be admitted in the tertiary schools in the country. None-state actors such as Jesuit Refugee Service have in some cases facilitated provision of externally funded scholarships for deserving refugee children to study in European schools.

**Actions Required by the Government**

1. Establish laws outlawing discrimination to children born out of wedlock.
2. Provide adequate funding to ensure that the National Registration Act (2010) is fully implemented.
3. Introduce policy on children born to mothers in prison and provide child-friendly services to such children.
4. Fast track the adoption of the Refugee policy and development of respective internationally acceptable laws.
5. Set up a proper system for the integration of refugee children into the Malawan tertiary education.
6. Ensure that an amendment is made on the minimum marriage age from 15 to 18 or 21.

**Actions Required by Civil Society Organisations**

1. Lobby government for:
   a. Approval of the current draft Refugee Policy.
   b. Development of legislative clauses that outlawing discrimination to children born out of wedlock.

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\textsuperscript{129} Interview with Director of Gender, Ministry of Gender, Children & Social Welfare, Lilongwe, 7th February 2014

\textsuperscript{130} Ibid

\textsuperscript{131} UNHCR. 2014. UNHCR Operation in Malawi, 1st March 2014. available at http://www.unhcr.org/524d85139.html
c. Full implementation of compulsory birth registration.
2. Conduct more research on conditions and factors affecting handicapped children.
3. Fight for complete elimination of child labour especially in the estate sector.
4. Undertake studies to document the extent and consequences of domestic child labour and lobby for its elimination

Actions Required by the African Union
1. Follow-up on the amendment of minimum marriage age.
2. Assist in the local development of a Refugee Policy that meets the international standards
YOUTH

Frameworks and Instruments under review

Some indicators under review:
On measures taken to promote active youth participation in political, economic, social, technological and legal aspects of development, at both community and national levels; existence of a comprehensive and coherent national youth policy, and informed by extensive consultation with young people, and national youth programs that are time bound and accompanied by adequate and sustained budgetary allocation; existence and operations of scholarship and bursary programmes to encourage entry into post-primary school education and into higher education outstanding youth from disadvantaged communities, especially young girls; availability of accurate data on youth employment, unemployment and underemployment – and brief statement of the findings, and youth entrepreneurship, especially access to credit, business development skills training, and mentorship opportunities; Youth sexual practices (age at first sex, teen pregnancy and motherhood, condom use), family planning use, alcohol abuse, and prevalence of current daily smoking among adults; Adolescent birth rate, i.e. the age-specific fertility rate for women age 15-19 years, and early childbearing, i.e. the percent of women in age group 15 -19 who were mothers; Availability and uptake of voluntary counselling and confidential testing for HIV/AIDS, comprehensive knowledge of HIV, and access to treatment for young people infected with HIV/AIDS including prevention of mother-to-child transmission; Prevalence of current daily tobacco smoking.

According to the 2008 Census, 40% of Malawi’s population is in the range of 10-29 years of age. The Malawi’s overarching development plan covering the period 2011 to 2016, the Malawi Growth and Development Strategy Paper II has six thematic areas and from which nine key priority areas are developed. Youth Development and Empowerment is identified as one of the nine key priority areas. Specifically the strategy under Youth Development and Empowerment include: “increased access to capital through the establishment of the Youth Enterprise Development Fund; expansion of the university student intake; construction of secondary school boarding facilities for girls; improving access to sexual and reproductive health, HIV and AIDS services; and establishment of information centers”.

7.1 Youth participation

The extent and quality of youth participation can be best understood from a historical context. From independence in 1964 up to 1994, youth participation in social, political and economic affairs was defined by the then ruling party. After 1994, youth participation has remained largely politicized. The most notable positive development after 1994 has been the emergence of several youth organisations meant to address issues affecting the youth such as HIV/AIDS, unemployment and other development challenges.

Currently there are no laws to promote or safeguard youth participation in decision making processes. However, the National Youth Council of Malawi, the Ministry of Economic Planning and Development and the Ministry of Children, Women and Social Welfare have almost made it mandatory to encourage youth participation in the development or implementation of some of their official programmes. Lately, with the introduction of the Youth Parliament, the National Assembly has also become an important forum for deliberating issues affecting the youth on a national arena.

Government through Malawi Communication Regulatory Authority (MACRA) has among other things facilitated the opening of tele-centres in rural areas as a way of improving access to ICT facilities. This has largely benefitted the youth and enhanced their participation in matters affecting their welfare. Based on interviews with some key stakeholders, the youth in the country mention social media as an important medium through which they are able to voice out their demands. Notably, some youth organizations such as Youth Association for Democracy in Malawi (YADEMA), started off Face-Book Garden pages and ended up using the tool to demand rights from duty bearers. This phenomenon is however not wide-spread but it is growing.

7.2 National Youth Policy

Malawi launched a new National Youth Policy in August 2013. This is a more comprehensive document and replaced an older version that was adopted in 1996. Malawi is a signatory to the African Youth Charter and the Ministry of Youth and Sport, and the National Youth Council of Malawi are the official implementing agencies of Government on youth matters. In the fundamental principles of the current operative national Youth Policy, it clearly aligns itself with the African Youth Charter. The view of the Ministry and the National Youth Council of Malawi is that Youth Policy basically domesticates the provisions of the Youth Charter through the following sections: Social Empowerment; Economic empowerment; Political empowerment and elections; and Institution and Policy Reforms\(^{134}\).

One of the clear shortfalls in the previous and current policy is the struggle to effectively define the youth. In the 2006 Youth Policy, youth were defined as those between 14 and 25 years of age but it went on to state that the policy would “be flexible to accommodate young people under 14 years and over 25 years depending on their social and economic circumstances”\(^{135}\). In fact the 2006 policy even mentioned that those below 35 years of age might also be regarded as youth depending on circumstances. The current policy defines youth as “female and male, from age 10 to 29 years regardless of their sex, race, education, culture, religion, economic, marital and physical status”. However, in the foreword of the policy, it is stated that the definition is flexible because what really categorizes the youth might be dependent on other prevailing factors which are mentioned as social-cultural or economic in nature. This scenario creates an environment of uncertainty of who really are the youth. This is at variance with the National Youth Charter of 2006 which mentions that the youth are those in the age range of 15 to 35. The most quoted definition of youth in official Malawian documents, before launching the current policy, was the UN definition of 15-24 years. Other Malawian official documents such as the government’s Training Manual for Family Life Education for the Youth in Malawi acknowledges the problems associated with coming up with a more exact definition especially from a traditional perspective.

The national youth policy identifies a number of vulnerability areas for the youth as follows: (a) unemployment: labour participation rate in the 15-29 year age bracket is at 9% for males and 10% for females; (b) Early marriage and teenage pregnancy: 53% of 15-24years adolescents will already have begun child bearing making themselves more vulnerable to maternal deaths; (c) It is reported that 46 % of all new HIV infections are occurring in the 10-29 year age group; (d) More than 50% of the drug and alcohol related cases that come before the courts involve young people; (e) Inadequate technical and vocational training centers for youth; (f) In 2008 it was estimated that of the 6,793,986 persons aged below 18 years, 837,300 (12.4%) were orphans\(^{136}\). In order to address these problems, the policy identified the following priority areas: Education, Science Technology and Environment, Health and Nutrition, Social Services, Recreation Sport and Culture, Youth Participation and Leadership, and Youth Economic Empowerment.

The current youth policy was developed in a relatively high participatory manner. The first stage involved a review of continental instruments and local policies and laws which had been passed in the intervening periods. The findings led to the production of a draft version of the Policy. The draft copy was then subjected to discussion and debates by various stakeholders who are active in the sector of the youth empowerment and

\(^{134}\) Interview with District Youth Officer, Zomba, 10th February 2014
\(^{136}\) National Youth Policy 2012
development. These consultations took place at district, regional and finally, national levels. The final draft was then subject to further scrutiny by the selected members of the international donor community. The National Youth Council facilitated the consultations due to its extensive youth membership base. The draft was then taken to the Ministry of Youth and Sports where it was fine-tuned and youth were also involved together with different stakeholders. It was then finally presented to the cabinet for approval. In summary, the youth were extensively involved and they participated in the crafting of the National Youth Policy.

7.3 Education and Skills Development

In relation to tertiary education, government provides a limited number of bursaries and scholarships which covers tuition and upkeep. However, almost half of all the students in the public universities have to fend for themselves. Access into public universities in the country is very low; specifically almost all universities in the country are unable to absorb a quarter of qualifying candidates into its first year programmes hence competition is very stiff. For instance, the biggest public university in the country is University of Malawi and in its press release for the 2013/14 first year intake, it mentions that 11,539 candidates sat for the 2013 University Entrance Examinations (UEE) and of these, 3,805 were females and 7,734 were males representing 33% and 67% respectively. 10,328 candidates passed the 2013 UEE, representing 89.5% pass rate. However due to limited space, only 1,909 candidates were selected to continue their studies at the University of Malawi. Of these 1,143 (584 females and 559 male) are government sponsored and 766 (282 females and 484 male) were self-sponsored. Government sponsored candidates are paid a monthly allowance each semester of an academic year on pro rata basis to cater for their accommodation and meals.

The process of selecting government sponsored candidates uses the national equity policy of admitting students into institutions of higher learning. Under this arrangement, the top ten candidates from each district are offered places first and the rest are selected based on both merit and the size of the population of their districts of origin. As indicated above, the gender aspect is taken into consideration to ensure that there is a balance between male and female number of students.

As mentioned below in section 7.4 skills development through national apprenticeship programmes, is coordinated by Technical Entrepreneurship and Vocational Education and Training Authority (TEVETA) but it has not managed to fully realize its goal due to lack of capacity.

7.4 Sustainable Livelihoods and Youth Employment

According to Chinsinga and Chasukwa\textsuperscript{137}, the overall official unemployment figures in Malawi are estimated at 9.3% and that of the youth is projected at about 15.2%. The majority of the workforce operates mainly in the agricultural and informal sectors. Only 2.5% work for private business; 1.1% work on estates; and 3.6% work in the public sector. Basing on the 2008 Census, the youth unemployment situation in the country is rather bleak.\textsuperscript{138} According to this survey, 82% of the youth (age ranges 15-29) were neither employed nor actively seeking for work while only 18% of the unemployed youth were actively seeking work.

In order to address the youth unemployment problem, TEVETA was established in 1999 to serve as a regulatory body for skills training programmes among the youth. The major problem is that TEVETA does not have the capacity to assist most of the applicants, especially the youth. For instance, the National Youth Policy mentions that TEVETA reported that “out of the 300,000 applications for training it receives every year, it is only able to process 3000- an indication that it is unable to absorb all the qualified applicants”.

The first post 1994 government initiative focusing on the youth was the 1996 Youth Credit Development Scheme (YDCS) which was largely funded by the Commonwealth Credit Initiative totalling MK70 million.

\textsuperscript{137} Chinsinga, B., and Chasukwa, M..2013. Agricultural Policy, Employment Opportunities and Social Mobility in Rural Malawi, Institute of Development Studies (IDS): Brighton, UK
\textsuperscript{138} NSO 2008 op. cit.
The second major initiative introduced by government was the Youth Enterprise Development Fund (YEDEF) which was launched in February 2010 in collaboration between Malawi Rural Development Fund (MARDEF) and Malawi’s Ministry of Education. YEDEF provides loans to youth individuals and groups (normally of ten) that have been carefully selected and trained in various parts of the country. YDCS and YEDEF have, however, not been successful in addressing the needs of the youth. Almost all the programmes were directly under the control of the political party in power through its operations hence were merely seen as institutions for rewarding party loyalists.

7.5 Health

Official data on health related issues in most cases disaggregates the findings into youth and gender. In this case data on sexual behaviour, youth motherhood and pregnancy is mostly available in Malawi. Sexual behaviour amongst the youth is worrisome; as mentioned above under youth policy, early marriage and teenage pregnancy is at 53% of 15-24years adolescents- making themselves more vulnerable to maternal deaths\textsuperscript{139}. The policy also states that of all the reported new HIV infections, 46 % are occurring in the 10-29 year age group. Sexual activity amongst young females is also high. Almost 14% of girls aged 15–19 have had sex before age 15 while 65% of women aged 20–24 have had sex before age 18. In relation to drug abuse more than 50% of the drug and alcohol related cases that come before the courts involve young people\textsuperscript{140}.

According to the World Health Organisation\textsuperscript{141} the current tobacco smoking by the youth is not very high when compared to adults (average of 3.5% for youth and 12.4% for adults). However, it would still be important to completely eliminate cigarette smoking amongst the youth through legal prohibition. In this case, WHO observes that Malawi does not have a robust policies or legislative pieces that would lead towards reduction in smoking in general. This in the process encourages the youth to continue smoking as well. However, this is due to the fact that Malawi’s economy mainly relies on tobacco hence any campaign aiming at reducing cigarette use, whether internationally or local, is perceived as a threat to economic base.

\textbf{Actions Required by the Government}

1. Ensure that adequate funding is provided to projected annual youth programmes.
2. Demonstrate genuine commitment to bring about sustainable youth empowerment and participation beyond their relevance as a voting bloc.
3. De-politicize youth empowerment institutions.
4. Expand tertiary education opportunities for youth.

\textbf{Actions Required by Civil Society Organisations}

1. Train youth to recognize their long-term social-economic goals.
2. Sensitize youth on dangers of alcohol and drug abuse.
3. Come up with specific training programmes that encourage youth themselves to develop realistic solutions to their problems.
4. Intensify youth sensitization campaigns on safe sex
5. Lobby for expansion of high quality tertiary education.

\textbf{Actions Required by AU}

1. Enhance innovative programmes that would bring together youth representatives from different member countries to share ideas on how best to improve their livelihood.

\textsuperscript{139} National Youth Policy 2012
\textsuperscript{140} National Youth Policy 2012
Appendix 1: Terms of Reference

Monitoring of Compliance and Implementation of African Union Protocols, Conventions, Decisions and Best Practices of Member States

Terms of Reference for Country Researcher

Introduction

State of the Union (SOTU) is a coalition of civil society organizations that advocates for the ratification, domestication and implementation of key African Union treaties and legal instruments. They range from governance, political, social and economic rights, to peace and security and development. Sixteen of them – legal instruments and policy standards – if implemented, have tremendous promise for the lives of millions of people in Africa.

As part of its commitment, SOTU conducts bi-annual research to review country compliance and status of implementation of the selected AU instruments. The first State of the Union compliance reports were published in July 2010 and they were well appreciated by the African Union Commission, member states and other interested stakeholders. SOTU Malawi has commissioned the country research to assess level of compliance on AU instruments.

Scope of the Compliance Study:

A Consortium of Malawi Economic Justice Network and Eye for Development (EFD), on behalf of The State of the Union (SOTU) Coalition is seeking to engage a consultant to conduct assessment in Malawi to determine the level of compliance with and implementation of key commitments in AU Protocols, Conventions and Declarations and the impact of implementation on citizens’ quality of life.

Objectives of the study

The objectives of the study are the following:

1. To establish the status of ratification, domestication and implementation of AU instruments at country level
2. To analyze instruments that have been ratified and the extent to which their implementation has improved development outcomes
3. To investigate instrument that have not been ratified, domesticated and implemented and reasons for government not to do so.

4. To project magnitude of benefit or loss to citizens due to failure to ratify, domesticate and implement.
5. To document best practices, available strategies to enhance implementation and monitoring as well as challenges
6. To inform citizens’ engagement campaign in tracking the implementation of the AU standards which can help reduce poverty and suffering.
7. To guide CSO engagement with the Malawi government at national and regional levels:
8. Contribute to the continental compliance report involving all members states targeted by the SOTU coalition.

Scope of the study

- Review relevant literature;
- Familiarise with existing standard research tools for reference as developed by the Lead Researcher for SOTU.
- Carry out primary research and analysis on the implementation of identified standards from selected AU protocols, conventions, declarations and plans of action drawing on credible research by other organisations, both international and local;
- Present draft report to stakeholders in validation workshop
- Finalize the report by incorporating comments at validation workshop and submit final draft to Research Reference Group
- Present findings of the research at the validation and dissemination/launch meetings to provide an opportunity for the report to gain support from a wide section of interested parties;
- Comment on the edited versions of the continental report compiled by the Lead Consultant Researcher to ensure that meanings have not been altered or information lost in the editing process;
### Appendix 2: List of People Met

<table>
<thead>
<tr>
<th>Name</th>
<th>Position/Organization</th>
<th>Phone</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mr J. Msefula</td>
<td>Director of Gender, Ministry of Gender, Children &amp; Social Welfare</td>
<td></td>
</tr>
<tr>
<td>Mr Peter Yelesani</td>
<td>National Director, 50-50 Campaign, Ministry of Gender, Children &amp; Social Welfare</td>
<td>0999140956</td>
</tr>
<tr>
<td>Mr Mukuse Sagawa</td>
<td>International Cooperation Section, Ministry of Foreign Affairs and International Cooperation</td>
<td>0999304572</td>
</tr>
<tr>
<td>Mr Warren Gunda</td>
<td>Deputy Director-Political Affairs, Ministry of Foreign Affairs and International Cooperation</td>
<td>0888875460</td>
</tr>
<tr>
<td>Miss Jane Assani</td>
<td>Desk Officer for AU, Ministry of Foreign Affairs and International Cooperation</td>
<td></td>
</tr>
<tr>
<td>Mr Aubrey Kabisala</td>
<td>Political Affairs Section, Ministry of Foreign Affairs and International Cooperation</td>
<td>0999391522</td>
</tr>
<tr>
<td>Mr Andre Malombera</td>
<td>Political Affairs Section, Ministry of Foreign Affairs and International Cooperation</td>
<td>0888544354</td>
</tr>
<tr>
<td>Mrs Makhumula</td>
<td>Director of Administration &amp; Finance, Ministry of Gender, Children &amp; Social Welfare (formerly AU Desk Officer at Ministry of Foreign Affairs and International Cooperation)</td>
<td></td>
</tr>
<tr>
<td>Miss Monica Chingaipe</td>
<td>Social Worker, SOS Children's Village</td>
<td>0999353392</td>
</tr>
<tr>
<td>Miss Ruth Kandapo</td>
<td>Social Worker, SOS Children's Village</td>
<td>0993946073</td>
</tr>
<tr>
<td>Mr. Ephraim Chinyama</td>
<td>Head, SOS Children's Village</td>
<td>0999455484</td>
</tr>
<tr>
<td>Ms Brenda Kok</td>
<td>Programme Officer, AU Regional Office</td>
<td>0994850386</td>
</tr>
<tr>
<td>Hon. Ephraim Chiume</td>
<td>Minister of Foreign Affairs and International Cooperation</td>
<td></td>
</tr>
<tr>
<td>Mr Mkundiwa</td>
<td>Principal Secretary, Ministry of Foreign Affairs and International Cooperation</td>
<td></td>
</tr>
<tr>
<td>Mr Roosevelt Gondwe</td>
<td>Acting Clerk of Parliament</td>
<td>0881011192</td>
</tr>
<tr>
<td>Mr Suzgo Lungu</td>
<td>Legal Affairs Section, Ministry of Foreign Affairs and International Cooperation</td>
<td>0999953154</td>
</tr>
<tr>
<td>Mr. Chris Moyo</td>
<td>Ministry of Health Headquarters</td>
<td>0888364718</td>
</tr>
<tr>
<td>Mrs. Mvula</td>
<td>Kamuzu Central Hospital</td>
<td>0888103800</td>
</tr>
<tr>
<td>Mr. Robert Phiri</td>
<td>Banja La Mtsoqolo</td>
<td>0881930136</td>
</tr>
<tr>
<td>Mr. Henry Chimbali</td>
<td>Health Education Unit, Ministry of Health</td>
<td>0888890047</td>
</tr>
<tr>
<td>Mr. Luka Mwenyekonde</td>
<td>Kamuzu Central Hospital</td>
<td>0991601161</td>
</tr>
<tr>
<td>Mrs. Nankapa</td>
<td>Social Worker, SOS Children's Village</td>
<td>0888378828</td>
</tr>
<tr>
<td>Mr. Leonard Matanda</td>
<td>Private Lawyer</td>
<td>0993949750</td>
</tr>
<tr>
<td>Godfrey Basikolo</td>
<td>Youth Leader, SOS Children's Village</td>
<td></td>
</tr>
<tr>
<td>Mrs C. Chasukwa</td>
<td>District Youth Officer, Zomba</td>
<td>0999929228</td>
</tr>
<tr>
<td>Dr. B. Chinsinga</td>
<td>Associate Professor, Center for Social Research, UNIMA</td>
<td>0999 836 680</td>
</tr>
<tr>
<td>Prof. W. Chirwa</td>
<td>Professor, Chancellor College</td>
<td></td>
</tr>
<tr>
<td>Mr. J. Chunga</td>
<td>Research Fellow, Center for Social Research, UNIMA</td>
<td></td>
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