

## **THEMATIC ISSUE FOR MALAWI CEDAW SHADOW REPORTING**

### **1. INTRODUCTION**

These thematic issues for Malawi have been prepared in line with the requirements on the Convention on the Elimination of All Forms of Discrimination against Women that Malawi ratified in September 1987.

The thematic areas are based on the recommendations and responses from the Seventh State Report that was submitted on the 15<sup>th</sup> July 2014 by Malawi . The Seventh State Report was prepared by a National Task Force that was composed of Ministry of Gender, Children and Social Welfare (MoGCSW); Ministry of Foreign Affairs; Office of the President and Cabinet; Ministry of Information and Civic Education; Ministry of Education, Science and Technology; Ministry of Lands, Housing and Urban Development, Ministry of Home Affairs; the Law Commission; the Human Rights Commission; and the Anti-Corruption Bureau. Civil Society Organizations, although not represented in the National Task Force.

The thematic issues have been prepared by Civil Society Organisation Task Force; Centre for the Development of People (CEDEP), Lawyers Forum for Human Rights, Coalition of Women Living with HIV and AIDS (COWLHA), Centre for Social Concern and Development (CESOCODE) are working on issues that affect the rights of women in Malawi . These thematic issues have been developed to highlight thematic issues with respect to Women's Rights. This is with regard to the CEDAW text as well as the CEDAW Committee's previous concluding observations, other relevant international laws as well as domestic laws and whatever has happened since Malawi last reported to the CEDAW Committee. Regard has also been had to the report that Malawi submitted on the 15<sup>th</sup> of July 2014 which is yet to be presented orally.

With respect to CEDAW the issues are raised from articles 2 to 16. Save for the issue of ratification and reservations.

### **2. DEMOSTICATION OF REMOVAL OF RESERVATIONS**

Despite Malawi's ratification of the Convention by the State party in September 1987 , it has not yet incorporated into Malawian domestic law as Malawi is a dualist state. The CEDAW convention underlines that the signatory state party is under a legal obligation is to comply with an international convention that it has ratified or acceded to and to give a full effect in its domestic legal order.

Therefore there is a need to make positive steps to have this domestication achieved if indeed women's rights are to be fully protected for it seems whatsoever legislation may be there, it falls short of complete protection.

This concern has also been raised in the previous concluding observations.

In the last concluding observations there was hope expressed that the remaining reservations would be removed. This has not been done. This needs to be done and the question is what steps is the government taking to achieve this desirable status.

### **3. CONSULTATION ON PREPARATION OF REPORT**

The previous report preparation was based on insufficient consultations as the task force members was only composed of Gender, Children and Social Welfare (MoGCSW); Ministry of Foreign Affairs; Office of the President and Cabinet; Ministry of Information and Civic Education; Ministry of Education, Science and Technology; Ministry of Lands, Housing and Urban Development, Ministry of Home Affairs; the Law Commission; the Human Rights Commission; and the Anti-Corruption Bureau. Civil Society Organizations, although not represented in the National Task Force, were thoroughly consulted in the process of developing the Report but there was no involvement of grass root rural women in the task force.

This is for the stakeholders to comment. Was there enough consultation? Were women at grass root level and was the consultation as wide as stated in the report. Indicators part to the contrary and the question is what the government will do to ensure actual wider consultations in the future.

#### **1. Article 1 : DEFINITION OF DISCRIMINATION**

CEDAW defines “discrimination against women” as “any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of women and men, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”

The Malawi National Assembly passed the Gender Equality Act that was developed in 2011 by the Law Commission. The Gender Equality is the only legal framework in Malawi which has attempted to provide a provision for the definition of ‘discrimination against women’ . The Gender Equality Act has , instead of defining discrimination against women , it has opted to define sex discrimination which is very limited as it excludes other women that are based on their sexual orientations such as Lesbians, Transgender women, Intersexual women and prostitutes the while CEDAW definition looks at discrimination against *all* women despite of their sexual orientation Thereby, the CEDAW definition is better and there is a need to either ratify the treaty or adopt the CEDAW definition in our laws.

The question here why wasn’t the CEDAW definition adopted and what steps are being taken to ensure there is a wider definition of Discrimination in our laws

Based on the Gender Equality Act , discrimination is a criminal offence. However the bigger challenge is now on the implementation of these criminal sanctions by the State and also the number of women mainly those at grass root level are aware of this legal protection policy .

## 2. ARTICLE 2

*This requires state parties to adopt legal policy and other measures to eliminate discrimination.*

The Article describes the nature of State obligations, in terms of law and policy, in order to eliminate discrimination.

- 2.1 The Gender Equality Act is a welcome legal development policy mechanism specifically for women protection against all forms of discrimination and gender equality that is aimed at an effort to domesticate the CEDAW but the issue falls on the structures for the implementation of the policy. As there is insufficient structures for the prosecution of discrimination offences under the Gender Equality Act. The issue here is what government is doing to ensure implementation of the Act and making sure that women including grass root women are aware of the Act as well as the Cedaw text and the work of the Cedaw Committee.
- 2.2 The other major issue focuses on the National Gender Policy as another legal mechanism that Malawi adopted in 2005 but has since expired. What is being done to put another one in place the one being used being just in draft form?
- 2.3 The amendment of the Penal Code and enacted into law in 2010 that has among other things, extended the definition of 'sexual activity' to include practices between or perpetrated by females. The issue is there is need of revising the penal code as it discriminates lesbian, trans gender women and inter sexual women without offering them any protection. Therefore there should be amendment of the penal code to provide protection and equal rights for the LBTI community.
- 2.4 Other gender related legislation policy is the Child Care Protection and Justice Act of 2010, which is specifically for children protection in this case a focus is on the girl care protection and justice. In this policy, there has been the amendment of the age under which a girl may be defiled from 13 years to 16 years in line with the constitutional provision of rights of children undeer section 23 this is a contradictory as the marriage act allows girls to get married at 16 years with parents consent therefore the age that defines a child and an adult is a contradiction. The issue here is to revise the marriage age with an aim of empowering women to eduaction that is violated due to early marriages.
- 2.5 The Deceased Estates (Wills, Inheritance and Protection) Act, The Disability Act and the Education Act which have been passed since Malawi last reported.
- 2.6 A further question is what is delaying the tabling of the HIV and Aids Bill and what is being done about the compulsory testing of HIV being suggested in the bill which is discriminatory to some extent?

- 2.7 On the Programmes it appears that some of the programmes are not continuous programmes. i.e. the 50:50 campaign only emerges when elections are close and do not therefore achieve the desired goals. Perhaps the state may consider amending the electoral laws so that each constituency or ward shall have two representatives, one from both sexes. The point being that there is may be a need for the state to use laws more to achieve equality of the sexes.
- 2.8 And what efforts are being done to domesticate the Sadc Protocol which the report admits adds value to the Cedaw text. And more recently what is the government doing about the Addis Ababa Declaration.

### **3. ARTICLE 3**

*This requires state parties to take appropriate measures to guarantee equality of women.*

- 3.1 The report has since been overtaken by events. The first female President has since lost elections and we have a new male president. The local Government Elections have since been held together with the Parliamentary Elections.
- 3.2 The results have actually shown that women representation has even gone down. This is the case even in cabinet.
- 3.3 It seems education; sensitization and the various programmes have not worked. It seems the right way is to use the law to achieve change.
- 3.4 What is the government doing to ensure the enactment of laws that ensure equality for women? i.e. the law as suggested above regarding two representatives for each ward or constituency or indeed a law regarding the composition of cabinet and even a law domesticating the Cedaw Treaty and the Sadc Gender Protocol.
- 3.5 With respect to the passing of the Various Acts the question still remains what is the government doing to ensure implementation of the same for is seems there are very little or no implementation structure in place.

### **4. ARTICLE 4**

*This talks about the state adoptions temporary measures to achieve equality.*

- 4.1 The Gender Equality Act is the only statutory measure here. There is a need of more temporary measures in order to achieve equality and despite the Gender equality Act being in place the issue of its implementation is a great

4.2 MESN /MEC consolidate these proposals Why is the Proposal by the Electoral Commission with regard to the Amendment of the electoral law not being pursued? This is in process-Key the most acceptable means to achieve gender equality.

4.3 On the readmission policy the issue of implementation also arises. Similarly the issue of sensitization. What is the government doing to achieve this?

## **5. ARTICLE 5**

*This obligates the State to adopt measures to address discriminatory social and cultural practices.*

5.1 Admittedly in the report this remains a challenge, culture and language having being afforded constitutional protection.

5.2 Indeed the Child Care Protection and Justice Act and the Gender Equality Act affords some protection with criminal sanctions even but the issues of implementation and sensitization also comes into play.

5.3 The HIV and AIDS Bill has been hanging on the shelves for too long. It is a piece of legislation that would address this. What is government doing to have it presented before parliament?

## **6. ARTICLE 6**

*This one addresses trafficking and prostitution.*

6.1 Why is the draft legislation of the law commission with respect to Trafficking in persons not presented to parliament to date and what is government doing about it considering that it's now the end of 2014 and the reported targeted to have it presented before the end of 2014.

6.2 The report mentions nothing with regard to prostitution. What is the government doing in this respect for though illegal it is very rampant in Malawi? There is also a need to tackle the problem of how the women who are arrested in this respect are treated and as already stated the discriminatory requirements of compulsory testing in the HIV and Aids Bill.

## **7. ARTICLE 7**

*This one addressed equality in political and public life.*

7.1 With regard to the Lesbian, Bisexual Transgender and Intersexual (LBTI) women who are criminalized under the Penal Code in \Section 137 A in the Malawi Constitution there should be a revision of the penal code in section 137A to have a full enjoyment of public life among this sexual minority group .

7.2 The report concedes that there is little disenfranchisement in this area on the basis of sex. Actually after the last elections the percentages have even gone down.

7.3 This is an area that needs affirmative action under article 5 and the initiation of laws to change behavior.

7.4 What is the government doing in this respect?

7.5 And what is government doing about those areas where we have seen change but are still dominated by men. i.e. MPS, MDF, Immigration Department, Prison Service, Civil Service e.t.c.

7.6 And what is it that government is doing to stimulate change even in the private sector?

## **8. ARTICLE 8**

*This one tackles participation of women at international level.*

8.1 It has been conceded in the report that participation is low. Nothing has been said about what is being done to improve this scenario.

8.2 Perhaps this is also an area that required affirmative action as well as initiation of laws that will change behaviors.

8.3 The Government needs to do more here.

## **9. ARTICLE 9**

*This one addresses nationality*

*There is need of more advocacy regarding these issues of women citizenship.*

9.1 The Citizenship Act is discriminatory. Regardless of what is happening on the ground there is a need to remove parts of it that are discriminatory and the question is what is the government doing about the same.

9.2 And why has the Government not given funding to the law commission to review the Citizenship Act?

## **10. ARTICLE 10**

*This addresses equal rights in education.*

- 10.1 Despite there being legal structures that promote right to education and other provisions there is inadequate resources on good sanitation for female students mainly in the public schools in the primary schools and self boarding schools particularly to rural schools in Malawi although there has been some initiative by other NGOs to providing reusable sanitary pads to these girls . There is need of the government to work on the sanitation issue in the public schools to enable girls have equal access to education The report demonstrates lack of data in this respect. What is being done about this?
- 10.2 What is being done to ensure there is a Girl Drop Policy and what implementation and sensitization measures are there with respect to the re-admission policy.
- 10.3 And generally what measures are there to ensure adequate implementation of the relevant laws, programmes and policies in this respect.

## **11. ARTICLE 11**

*This one addresses employment.*

*Issue of gender policy to be presented by the trade unions to enforce gender equality*

- 11.1 Generally the laws as stipulated in the report are quite exemplary. However the issue again is implementation and sensitization.
- 11.2 What is the government doing to ensure implementation of the laws and make sure that women are aware of their rights in this respect.

## **12. ARTICLE 12**

*This addresses healthcare and family planning.*

- 12.1 What is the government doing to ensure the Public Health Act review is finalised and the right to health which is not recognized in the constitution is protected?
- 12.2 What is the status of Sexual and Reproductive health rights more especially the right to safe abortion which has not been adequately dealt with by the Gender Equality Act and has led to an increase in the maternal mortality rate?
- 12.3 What is the government doing generally with regard to the other issues affecting the maternal mortality rate?

- 12.4 The Government while promoting Sexual Reproductive Health Rights for the Men who have sex with other Men (MSM )based on National Aids Commission 2012 research report but nothing was done to research on the SRHR for the Lesbian, Bisexual , Transgendered women and Intersexual women (LBTI) health reproductive needs in Malawi .

### **13. ARTICLE 13**

*This tackles economic and social security.  
Sensitization of acts and laws by government*

- 13.1 The Deceased Estates (Wills, Inheritance and Protection) Act provides protection to women against the patriarchal notion that women access property only through men. A shadow report only one particular issue as it bring depth
- 13.2 What is the government doing to ensure the tabling in parliament of the Marriage, Divorce and Family Relations Bill which was submitted to the Ministry of Justice in 2006 which seeks to give equal rights and responsibilities to parties in a marriage
- 13.3 Ministry of Gender-Disability persons no funding-The joining of the ministry with the ministry of disability.
- 13.4 The issues of sensitization and implementation also come into play here.

### **14. ARTICLE 14**

*This addresses rural women.*

The majority of Malawi's population is composed of women but yet they are the most discriminated at all levels mainly women in rural areas as they are sidelined based on their gender and also subordinate position in the society as a result of the patriarchy system due to the traditions and cultures. The following are the issues that the government needs to address in order to increase the level of rural women's participation at all levels:

- 14.1 Increase women's education level.  
More women, mainly the rural women are illiterate, due to long distances to travel to schools, poor sanitation in schools, early marriages, no access to Sexual Health Reproductive, services and other family planning.
- 14.2 Increase rural women's economic status  
-Malawi is rated as the poorest country in Africa and women are the most affected by poverty in terms of levels of income more especially the rural women.



-despite the government's structures whose emphasis is on promoting cooperatives and equal access to appropriate technology and micro financing. Still there have not been many changes according to the Malawi Development Strategy report.

14.3 Health situation of girl child due to poor school structures such as sanitary structures and class room structures. Lack of family planning services. Malawi has improved on the health indicator but on the other indicators it hasn't done well.

14.4 Rural women participation in decision making in development strategies

We have already questioned whether rural women were involved in the preparation of the report.

14.5 What steps is the Government doing to ensure that they are aware of their rights and are involved in the decisions that affect them?

## **15. ARTICLE 15**

*Equality before the law in Civil matters*

15.1 What is being done to repeal the Immigration Act which only grants the right to men to bring alien women to Malawi by way of marriage and not vice versa?

15.2 The other laws appear to be fine but implementation leaves a lot to be desired. The Legal Aid Department is heavily understaffed such that women's right of access to justice is jeopardized. What is government doing about this?

## **16. ARTICLES 16**

*This addresses marriage and family law.*

16.1 What is government doing to harmonise the minimum age of marriage and to prevent early marriages and GBV.

16.2 The Marriage etc Bill also becomes relevant here.

16.3 What is being done to review and implement the Protection of Domestic Violence Act.

16.4 Issues of implementation and sensitization also come into play here.

## 17. OTHER ISSUES

- 17.1 Funding of the Ministry of Gender Cedaw related Activities (Is there sufficient funding?) and does the Ministry have enough human resources.
- 17.2 Generally the government has tried but there are still areas that need to be addressed which can start with the domestication of Cedaw Treaty and the Sadc Protocol.