

# MALAWI

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## 1 Population indicators

### 1.1 What is the total population of Malawi?

At the time of the latest 2008 National Statistical Office (NSO) Population and Housing Census, the population was estimated at 13 077 160 of which 6 358 933 were males and 6 718 227 were females.<sup>1</sup> The population is currently estimated at 16 777 547.

### 1.2 Describe the methodology used to obtain the statistical data on the prevalence of disability in Malawi. What criteria are used to determine who falls within the class of persons with disabilities in Malawi?

Data on the prevalence of disability were obtained by means of census (decennial). In terms of criteria, persons were asked if they have difficulties with the following: seeing, speaking, hearing, walking/climbing and/or 'any other problem'. Anyone who reported experiencing any difficulties with the abovementioned activities was consequently considered to be within the class of a 'person with a disability'.

### 1.3 What is the total number and percentage of people with disabilities in Malawi?

According to the 2008 NSO Census, the population of persons with disabilities (PWDs) was recorded at 498 122 representing a disability prevalence rate of 3,8 per cent.

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<sup>1</sup> National Statistical Office (NSO) *Population and Housing Census 2008: Main report* (2008) 24.

**1.4 What is the total number and percentage of women with disabilities in Malawi?**

The population of women with disabilities was estimated to be 254 853, representing about 51,1 per cent.

**1.5 What is the total number and percentage of children with disabilities in Malawi?**

The population of children with disabilities up to the age of 14 was estimated to be 274 465, representing 51,1 per cent.

**1.6 What are the most prevalent forms of disability and/or peculiarities to disability in Malawi?**

In terms of the disability statistics, the most prevalent forms of disability/impairment were classified as follows: seeing – 126 110; walking – 103 359; hearing – 76 434; and speaking – 27 585. These four types of disabilities constitute 66,9 per cent of the forms of disability in Malawi.

According to the 2008 census, 1 946 637 people in the country were urban residents and 1 108 286 were rural dwellers. Amongst the urban residents, 45 379 people were classified as PWDs, consisting of 23 544 males and 21 835 females; while 452 743 of the rural residents were classified as PWDs, consisting of 219 725 males and 233 018 females.

## **2 Malawi's international obligations**

**2.1 What is the status of the United Nation's Convention on the Rights of Persons with Disabilities (CRPD) in Malawi? Did Malawi sign and ratify the CRPD? Provide the date(s).**

Malawi signed the CRPD on 27 September 2007, and subsequently ratified it on 27 August 2009. However, Malawi has not signed or ratified the CRPD Optional Protocol.

**2.2 If Malawi has signed and ratified the CRPD, when was its country report due? Which government department is responsible for submission of the report? Did Malawi submit its report? If so, and if the report has been considered, indicate if there was a domestic effect of this reporting process. If not, what reasons does the relevant government department give for the delay?**

The Ministry of Justice and Constitutional Affairs (MoJ) is currently responsible for submitting state party reports and it works together with line ministries. In respect of reports that fall under specific ministries such as the CEDAW and CRPD reports (which fall under the Ministry of Gender, Children, Disability and Social Affairs) the specific ministry takes the lead role and MoJ is part of the task team. In such cases, MoJ is entrusted with the responsibility of drafting and vetting the final

report. The CRPD country report for Malawi was due on 27 August 2011; two years after Malawi ratified the Convention. Malawi has not yet submitted the initial report. The reasons that the government gives (unofficially), have to do with lack of funds.

**2.3 While reporting under various other United Nations' instruments, under the African Charter on Human and Peoples' Rights, or the African Charter on the Rights and Welfare of the Child, did Malawi also report specifically on the rights of persons with disabilities in its most recent reports? If so, were relevant 'concluding observations' adopted? If relevant, were these observations given effect to? Was mention made of disability rights in your state's UN Universal Periodic Review (UPR)? If so, what was the effect of these observations/recommendations?**

#### UN Instruments

- **Convention on the Rights of the Child (CRC)**

Malawi acceded to the Convention on the Rights of the Child (CRC) on 2 January 1991. It submitted its initial state party report in August 2000. In 2002, the Committee on the Rights of the Child (CRC Committee) adopted its Concluding Observations on the report in which it expressed concern at the challenges (such as widespread discrimination; limited facilities and services; and exclusion from society) facing children with disabilities and other vulnerable children in Malawi. In light of these challenges, the Committee made a number of recommendations.

Malawi submitted its second report, which was considered by the CRC Committee in January 2009. In 2009, the CRC Committee adopted its Concluding Observations on the report in which it mentioned issues relating to children with disabilities in several instances. For example, the Committee was concerned at the persistent de facto discrimination against girls and vulnerable groups of children, including children with disabilities. Accordingly, the Committee urged Malawi to, amongst others, strengthen its efforts to eradicate all discriminatory laws. Furthermore, in respect of the rights and welfare of children with disabilities in general, the Committee welcomed the adoption of Malawi's disability specific policy (discussed in 6.1 below) but expressed concern at the inadequate financial resources allocated to the Disability Ministry and the lack of attention with respect to children with mental illness. Consequently, the Committee advised Malawi on the appropriate recommendations.

Some of the observations and recommendations have been given effect to; while action is yet to be taken in respect of the others. For example, Malawi enacted the Child Care, Protection and Justice Act (CCPJA) in 2010,<sup>2</sup> which has two provisions on children with disabilities (discussed in 4.2 below). Secondly, Malawi enacted the Disability Act (discussed in 4.1 below),<sup>3</sup> which provides for a number of rights (such as education) that can be exercised by all PWDs, including children with disabilities. However, the Act does not have a specific provision on children with disabilities. Thirdly, Malawi ratified the CRPD in the same year that the Concluding Observations were adopted. In addition, Malawi recently enacted the Gender Equality Act.<sup>4</sup> In respect of the 2002 recommendations, the Disability

2 Act 22 of 2010.

3 Act 8 of 2012.

4 Act 3 of 2013.

Act recognises the right to 'inclusive education', which requires the education of PWDs to be provided in mainstream/regular schools.

- **Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)**

Malawi ratified/acceded to CEDAW on 12 March 1987. Malawi submitted the combined second, third, fourth and fifth report to the CEDAW Committee in May 2006 for consideration. In 2006, the CEDAW Committee adopted its Concluding Observations on the report. However, the Concluding Observations did not make reference to women and girls with disabilities.

- **International Convention on the Elimination of All Forms of Racial Discrimination (CERD)**

Malawi acceded to CERD on 11 June 1996. The CERD Committee adopted Concluding Observations on Malawi in 2000, which were based on the materials that were at the Committee's disposal since Malawi had not submitted its state party report. However, the Committee did not make reference to PWDs in its Concluding Observations.

### **Regional Instruments**

- **African Charter on Human and Peoples' Rights, African Children's Charter and African Women's Protocol**

Malawi ratified the African Charter on the Right and Welfare of the Child (ACRWC) on 16 September 1999. However, Malawi has not yet submitted any ACRWC state party report. Malawi ratified the African Charter on Human and Peoples' Rights (ACHPR) on 17 November 1989. It also ratified the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (African Women's Protocol) on 20 May 2005. Malawi submitted its first ever combined report on the ACHPR and the Africa Women's Protocol in July 2013. The report includes aspects pertaining to the rights of PWDs. For example, the ACHPR report makes reference to the fact that the Malawi Constitution protects the right of PWDs to freedom from disability based discrimination under section 20; that Malawi ratified the CRPD in 2009; and that Malawi enacted the Disability Act in 2012.<sup>5</sup> On its part, the Women's Protocol report highlights, amongst others, that the adoption of the 2012 Disability Act and 2013 Gender Equality Act seeks to address challenges (such as discrimination on the basis of gender and disability) faced by women with disabilities.

- **UN Universal Periodic Review (UPR)**

Malawi undertook the Universal Periodic Review (UPR) process in November 2010 during the ninth session of the Working Group on the UPR. The Working Group, which falls under the UN Human Rights Council (HRC), released its report in 2010. During the review, a few disability issues were considered. These include the recommendation to adhere to the CRPD Optional Protocol, raised by Argentina; the recommendation to sign and ratify the CRPD Optional Protocol, suggested by Spain; and the recommendation to '[s]trengthen efforts to eliminate discrimination against girls and vulnerable groups such as children with disabilities and orphans', which was put forward by Bangladesh. Some of the observations and recommendations have been given effect to while action is yet to be taken in respect of the others. For example, the 2012 Disability Act, amongst others, prohibits discrimination on the basis of disability in the enjoyment of rights such as education, housing, healthcare and accessibility.<sup>6</sup>

<sup>5</sup> The Act is discussed in 4.1 below.

<sup>6</sup> See 4.1 below for further discussion of the Act's non-discrimination and other human rights provisions.

**2.4 Was there any domestic effect on Malawi's legal system after ratifying the international or regional instruments in 2.3 above? Does the international or regional instrument that has been ratified require Malawi's legislature to incorporate it into the legal system before the instrument can have force in Malawi's domestic law? Have Malawi's courts ever considered this question? If so, cite the case(s).**

As highlighted above, Malawi enacted the Disability Act as its new disability legislation.<sup>7</sup> The Act is based on the social model of disability and as can be appreciated from its provisions discussed in 4.1 below, the passing of the Act has, to some extent, put into effect the provisions of the CRPD. On its part, the CCJPA 'domesticates' the CRC and the ACRWC.<sup>8</sup>

In respect of the legal status of treaties ratified by Malawi, it is noteworthy that the jurisdiction has a dualist legal system which requires ratified treaties to be incorporated by an Act of Parliament to become domestically enforceable.<sup>9</sup> However, the Constitution provides that the treaties that Malawi ratified before the commencement of the 1995 Constitution do not need to be incorporated to become applicable.<sup>10</sup> Above all, Malawian courts have considered the issue relating to 'domestication' of ratified treaties and they have gone further to apply treaties ratified and incorporated by Malawi (in addition to other international instruments) in a number of cases which did not deal with disability matters. For example, in *Chihana v Republic*, the Supreme Court applied the Universal Declaration of Human Rights, which the 1996 Constitution had incorporated.<sup>11</sup> Similarly, in *Kalinda v Limbe Leaf Tobacco Ltd*,<sup>12</sup> the High Court held that the ILO Convention No 158 (Termination of Employment Convention (1983) No 158) is applicable in labour matters through section 211 of the Constitution.<sup>13</sup> Thus, the courts have affirmed the Constitution's position regarding 'domestication'. Therefore, the CRPD has to be specifically incorporated or 'domesticated' by an Act of Parliament.

**2.5 With reference to 2.4 above, has the CRPD or any other ratified international instrument been domesticated? Provide details.**

Malawi is yet to 'domesticate' the CRPD (as discussed above). Nevertheless, the Disability Act incorporates 'verbatim' a number of provisions that are contained in the CRPD. For example, the definition of reasonable accommodation contained in section 2 of the Act is the same as the definition under the CRPD contained in article 2. Furthermore, section 10 of the Act incorporates the CRPD's requirement of inclusive education in article 24(2).

7 Prior to its enactment, disability issues were provided for under the Handicapped Persons Act (HPA) enacted in 1971.

8 See sec 4(c) of Third Schedule.

9 See Malawi Constitution, sec 211(1); *Chihana v Republic* [1992] 15 MLR 86 (Supreme Court).

10 See sec 211(2), which provides that: 'Binding international agreements entered into before the commencement of this Constitution shall continue to bind the Republic unless otherwise provided by an Act of Parliament'. See also DM Chirwa *Human rights under the Malawian Constitution* (2011) 29-30.

11 n 9 above.

12 Civil Cause No 542 of 1995.

13 Malawi ratified ILO Convention 158 on 1 October 1986. See also *Banda v Dimon (Mw) Ltd* [2008] MLLR 92; *Malawi Telecommunications v Makande* [2008] MLLR 35.

### 3 Constitution

#### 3.1 Does the Constitution of Malawi contain provisions that directly address disability? If so, list the provisions, and explain how each provision addresses disability.

The 1995 Constitution of Malawi contains a number of provisions that directly address disability. These are explained in Table 3.1 below.

*Table 3.1 Disability provisions in the Constitution of Malawi*

Section	Provision in words	Explanation
13(g)	The State shall actively promote the welfare and development of the people of Malawi by progressively adopting and implementing policies and legislation aimed at achieving the following goals – (g) Persons with Disabilities To enhance the dignity and quality of life of persons with disabilities by providing – (i) adequate and suitable access to public places; (ii) fair opportunities in employment; and (iii) the fullest possible participation in all spheres of Malawian society.	The courts are expected to have regard to the provisions in section 13 when interpreting the laws or evaluating government decisions. Hence, the state will be expected to ensure the equalisation of opportunities for PWDs and their participation and inclusion in society as required by section 13(g) whenever it takes any action or decisions that affect PWDs.
20(1)	Discrimination of persons in any form is prohibited and 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, national, ethnic or social origin, <i>disability</i> , property, birth or other status or condition. (my emphasis)	PWDs are expressly guaranteed the right to freedom from disability discrimination. This entails that PWDs are entitled to enjoy all human rights on an equal basis with others. In addition, any failure by PWDs to exercise any human rights must not be attributable to disability lest it be considered disability discrimination.
20(2)	Legislation may be passed addressing inequalities in society and prohibiting discriminatory practices and the propagation of such practices and may render such practices criminally punishable by the courts.	The state is also required to take special temporary measures, including affirmative action, designed to achieve substantive equality of PWDs. Hence, the non-discrimination provision offers crucial protection of the rights of PWDs.
23(4)	All children shall be entitled to reasonable maintenance from their parents, whether such parents are married, unmarried or divorced, and from their guardians; and, in addition, all children, and particularly orphans, <i>children with disabilities</i> and other children in situations of disadvantage shall be entitled to live in safety and security and, where appropriate, to State assistance. (my emphasis)	The government is given the obligation to ensure the safety and security of children with disabilities and to provide them with assistance. This obligation is based on the Constitution's perception that children with disabilities belong to category of children that are in 'situations of disadvantage'.

30(1)	All persons and peoples have a right to development and therefore to the enjoyment of economic, social, cultural and political development and women, children and <i>persons with disabilities</i> in particular shall be given special consideration in the application of this right. (my emphasis)	By virtue of section 20(2) of the Constitution the state will be expected to take special temporary measures, including affirmative action, to realise the right to development of PWDs. Hence, the provision would promote the developmental rights of PWDs.
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**3.2 Does the Constitution of Malawi contain provisions that indirectly address disability? If so, list the provisions and explain how each provision indirectly addresses disability.**

Most of the provisions in the Constitution are applicable in the context of disability and would thus indirectly address disability by virtue of the general non-discrimination clause in section 20.

## 4 Legislation

**4.1 Does Malawi have legislation that directly addresses issues relating to disability? If so, list the legislation and explain how the legislation addresses disability.**

(See 2.4 above).

- **Disability Act**

The Disability Act directly addresses disability related issues since, as discussed above, it is Malawi's disability specific legislation. The Act sets out the rights of PWDs in Part 4,<sup>14</sup> which is summarised in Table 4.1 below.

**Table 4.1: The substantive provisions on the rights of PWDs in the Disability Act**

Section	Description of provisions
Sec 6	Right to health care services: Government to provide appropriate health care services to PWDs, including prevention, early identification, intervention and other services designed to minimise and prevent the occurrence of more disabilities
Sec 7	Non-discrimination in health care and rehabilitation services, including sanctions/penalties for violation
Sec 8	Right of/to accessibility: Government to take appropriate measures to ensure that PWDs have access to the physical environment, transportation, information and communications, including information and communication technologies and systems, and other facilities and services available or provided to the public. Government to ensure, amongst others, the development of a Malawi sign language as a national language for persons with hearing impairments and recognising it as an official language.

<sup>14</sup> Part 4 runs from sec 6 to sec 26.

Sec 9	Non-discrimination in accessing premises and the provision of services or amenities, including sanctions/penalties for violation.
Sec 10	Right to education and training: Government to recognise the rights of PWDs to education on the basis of equal opportunity, and ensure an inclusive education system and lifelong learning
Sec 11	Non-discrimination in education or training institutions, including sanctions/penalties for violation.
Sec 12	Right to work and employment: Government to recognise the rights of PWDs to work and employment.
Sec 13	Non-discrimination in work and employment, including sanctions/penalties for violation
Sec 14	Right to adequate standard of living and social protection: Government to recognise the rights of PWDs to an adequate standard of living, for themselves and their families (and ensure, amongst others, access to adequate food, clothing and housing). Government to ensure equal access by PWDs to appropriate and affordable social services and to social support programmes.
Sec 15	Non-discrimination in social services, including sanctions/penalties for violation.
Sec 16	Right of association and representation: Right to form and join any group or association of one's choice, and Right to be represented at any level in such group or association.
Sec 17	Right to participation in political and public life: Through deliberate policies and measures, Government to guarantee participation in political and public life by PWDs.
Sec 18	Non-discrimination in political and public life, including sanctions/penalties for violation.
Sec 19	Right to cultural and sporting activities, and recreational services. Government to recognise the rights of PWDs to take part in cultural and sporting activities, and access recreational services.
Sec 20	Non-discrimination in cultural and sporting activities, and recreational services, including sanctions/penalties for violation.
Sec 21	Right to housing: In its National Housing Programmes, Government to take into account the needs of PWDs.
Sec 22	Non-discrimination in housing, including sanctions/penalties for violation.
Sec 23	Right to economic empowerment: Government to recognise the importance of empowering PWDs economically, without any form of discrimination, and to ensure that the PWDs are able to access loans and credit facilities for purposes of carrying out income generating activities.
Sec 24	Prohibition of disempowerment, including sanctions/penalties for violation.
Sec 25	Right to information and communication technologies: PWDs to have the right to access information and communication technologies at an affordable cost.
Sec 26	Right to benefit from state (disability oriented) research and information and communication technologies: Government to recognise the importance of research and the role that information and communication technologies play in improving the quality of life of PWDs.



- **Mental Treatment Act**

The Mental Treatment Act currently provides for matters relating to the treatment/handling of mental illness and mental health in Malawi.<sup>15</sup> The Mental Health Bill of 2005 has been drafted as Malawi undertakes the process to replace the Act. Amongst others, the Bill makes provision for accessible and comprehensive mental health care services to persons with mental 'illness/disorders' at all levels of care; for the custody of their property or estates; and for the respect of their human rights. The rights are set out in section 55 and they include the right to 'the best available mental healthcare'.<sup>16</sup>

**4.2 Does Malawi have legislation that indirectly addresses issues relating to disability? If so, list the main legislation and explain how the legislation relates to disability.**

Malawi has a number of laws that have disability provisions. The legislation is captured in Table 4.2 below.

15 Chapter 34:02 of the Laws of Malawi.

16 See generally sec 55(1), which provides in part as follows:

'(1) Any person suffering from mental disorder or who suffering from mental disorders is being treated as such, shall be entitled the following rights:

(a) to be treated in a least restrictive environment and with the least restrictive or intrusive treatment appropriate to the patient's health needs, taking into account the need to protect the physical safety of others;

(b) to the best available mental healthcare, which shall be part of the health and social care system;

(c) to be treated in a humane manner and with respect for the inherent dignity of the human person;

(d) to protection from economic, sexual and other forms of exploitation, physical or other abuse and degrading treatment;

(e) not to be discriminated against on the grounds of mental disorder; and

(f) to enjoy all the rights provided in the Constitution and any other written law ... '

**Table 4.2: Legislative provisions on disability**

Name of legislation	Contents/description of pertinent provisions
Child Care, Protection and Justice Act (Act 22 of 2010)	<p>1. Section 72: A local government authority shall keep a register of children with disabilities within its area of jurisdiction and give assistance to them whenever possible in order to enable those children grow up with dignity among other children and to develop their potential and self-reliance</p> <p>2. Section 145(d): The proceedings of a child justice court shall be informal and in particular, the presiding officer shall ensure that – (d) children with disabilities are accorded with assistance to meet their special needs where necessary.</p>
Education Act (Act 21 of 2013)	Section 4(1)(a): Requires the Minister responsible for education to promote education without discrimination on various grounds, including disability.
Employment Act (Act 6 of 2000)	<p>1. Section 5(1): Prohibits discrimination against any employee or prospective employee on various grounds, including disability in respect of recruitment, training, promotion, terms and conditions of contract of employment and in all aspect of employment.</p> <p>2. Sec 5(2): Allows for the taking of special measures to achieve de facto equality in employment. Thus it recognises the need for special measures, including affirmative action.</p> <p>3. Section 6(1): Equal remuneration for equal work without discrimination, including disability discrimination.</p> <p>4. Section 57(a): Prohibits the dismissal of any employee on the ground of disability.</p>
Technical, Entrepreneurial and Vocational Education and Training Authority Act (Act 6 of 1999)	Establishes the Technical, Entrepreneurial and Vocational Education and Training Authority (TEVETA) and its board. In terms of the Act, the TEVETA board must have one person (in its composition) representing PWDs. However, the Act does not have substantive provisions that expressly make reference to disability.

## 5 Decisions of courts and tribunals

### 5.1 Have the courts (or tribunals) in Malawi ever decided on an issue(s) relating to disability? If so, list the cases and provide a summary for each of the cases with the facts, the decision(s) and the reasoning.

There are no known or reported court cases on disability in Malawi. Similarly, there are no reported court cases which have dealt with issues relating to disability. Perhaps the passing of the Disability Act could trigger disability rights litigation.

## 6 Policies and programmes

### 6.1 Does Malawi have policies or programmes that directly address disability? If so, list each policy and explain how the policy addresses disability.

- **National Policy on the Equalisation of Opportunities for Persons with Disabilities**

The National Policy on the Equalisation of Opportunities for Persons with Disabilities (Equalisation Policy) principally seeks to ensure equalisation of opportunities for PWDs in all aspects of society.<sup>17</sup> Its purpose is to promote the rights of PWDs in Malawi and to enable them to play a full and participatory role in society. Its vision is that of 'Malawi becoming a nation where people with disabilities have equal opportunities to participate in various undertakings and realize their potentials and goals in life.' Its mission is to 'promote the inclusion of persons with disabilities at all levels of society through the creation of an enabling environment for the respect of human diversity, human rights and the development of all human potential'. It has 10 guiding principles: Recognition of the diversity of PWDs; advocacy and support to the human rights approach to disability; a twin-track approach to service delivery; ensuring access for PWDs to all public sector activities; ensuring the inclusion of PWDs; participatory approach and community empowerment; monitoring and evaluation of inclusiveness of government programmes; promotion of gender equality and equity in disability programmes; inclusion of PWDs in the workforce; and facilitating and supporting capacity building of DPOs. The overall goal of the Policy is 'to integrate fully persons with disabilities in all aspects of life thereby equalizing their opportunities in order to enhance their dignity and well-being so that they have essentials of life'.

The Policy has seven main objectives: to formulate strategies towards disability prevention, rehabilitation and equalisation of opportunities for PWDs; to support community-based service delivery, in collaboration with local and international development agencies and organisations; to promote efforts that encourage positive attitudes towards children, youth, women and adults with disabilities; to develop programmes that alleviate poverty amongst PWDs and their

17 Malawi Government *National Policy on the Equalisation of Opportunities for Persons with Disabilities* (2005) (the Equalisation Policy).

families; to put in place programmes that create greater awareness and conscientiousness of communities and government relating to disability; to strengthen the National Advisory and Coordination Committee on Disability Issues (NACCODI); and to mainstream disability in the social, economic and political agenda of development programmes. It has a number of policy statements that apply to specific areas or sectors, which include rehabilitation, accessibility, transport, information and communication, education and training, and self-representation and participation.

- **Special Needs Education Policy, 2007**

The Special Needs Education Policy (SNE Policy) provides for the policy approach relating to the education of PWDs in Malawi.<sup>18</sup> The Policy contains relevant concepts and definitions. However, it does not mainly use the concept of inclusive education but special needs education (SNE) in reference to the education of PWDs. The Policy has clear goals, a mission, a vision, and objectives. Its objectives include: Providing education and training to learners with special educational needs (SEN); ensuring equitable access for all learners with SEN; providing educational facilities with needed supportive provisions; ensuring accommodating learning environments for all learners with SEN; and increasing SNE services provisions. The SNE Policy also contains ten guiding principles for its implementation. It identifies eight major components of SNE that include early identification assessment and intervention; advocacy; care and support; management, planning, and financing; access; quality; equity; and relevance. For example, the policy area relating to access is informed by the understanding that 'the education system should encourage all individuals who have special needs to enrol in school and to facilitate the effective participation in all learning activities'. On its part, the policy area of equity seeks to ensure the elimination of gaps between learners with SEN and those without; while the policy area of relevance aims at ensuring that learners with SEN are provided with an education that will adequately prepare them to participate in social and economic activities. The SNE policy further aims at overcoming SNE implementation challenges that include financial constraints, physical environmental considerations, attitudinal barriers, and limited capacity in training specialist personnel.

## 6.2 Does Malawi have policies and programmes that indirectly address disability? If so, list each policy and describe how the policy indirectly addresses disability.

Malawi has few policies/programmes that also address disability despite being adopted for other purposes as opposed to specifically deal with disability. These are usually in form of sectoral policies such as education and youth policies.<sup>19</sup>

- **National Youth Policy**

The rationale for the adoption of the National Youth Policy seeks to provide 'a framework with guidelines for the facilitation of meaningful youth development programs and services with full participation of the young people themselves at all levels'.<sup>20</sup> It mentions youth with disabilities amongst the special groups that will be 'given attention' in implementing the Policy's target areas. However, it does not clarify how this will be done. The Policy recognises the right to freedom from discrimination as one of its eight principles. The relevant principle explicitly recognises the duty to protect the youth from disability based discrimination. It

18 Malawi Government *National Policy on Special Needs Education (Revised)* (2007).

19 The education policies include the *National Education Sector Plan 2008-2017: A statement* (2008).

20 Malawi Government (Ministry of Youth Development and Sports) *National Youth Policy: Youth – The Nation today and tomorrow* (2010).

further provides that the youth are entitled to enjoy all the rights in the CRC and the Constitution of Malawi.

## 7 Disability bodies

**7.1 Other than the ordinary courts and tribunals, does Malawi have any official body that specifically addresses violations of the rights of people with disabilities? If so, describe the body, its functions and its powers.**

Malawi does not have any official body that specifically addresses violations of the rights of PWDs.

**7.2 Other than the ordinary courts or tribunals, does Malawi have any official body that though not established to specifically address violations of the rights of persons with disabilities, can nonetheless do so? If so, describe the body, its functions and its powers.**

The Malawi Disability Act confers power on the responsible Minister to establish institutions and committees for purposes of the proper and effective administration of the Act. It is unlikely that such administrative body would address rights violations. The Act also requires the Minister to establish a National Advisory and Coordinating Committee on Disability Issues (NACCODI), which will be the official body on disability affairs. According to section 5 of the Act, the body will have functions that seek to provide a forum for all key stakeholders on disability issues such as disability mainstreaming; make recommendations to government on best practices regarding disability policies, legislation and programmes; and oversee the implementation, monitoring and evaluation of disability-related programmes.

On its part, the Equalisation Policy requires the Malawi Council on Disability Affairs (MACODA) to regulate the work of disability organisations; implement government policy on disability issues and register NGOs dealing with disability issues.

## 8 National human rights institutions, Human Rights Commission, Ombudsman or Public Protector

**8.1 Does Malawi have a Human Rights Commission, Ombudsman or Public Protector? If so, does its remit include the promotion and protection of the rights of people with disabilities? If your answer is yes, also indicate whether the Human Rights Commission, the Ombudsman or Public Protector of Malawi has ever addressed issues relating to the rights of persons with disabilities.**

The Constitution established the Malawi Human Rights Commission (MHRC) to address the violations of human rights of all persons, including PWDs. There is

also the Human Rights Commission Act,<sup>21</sup> which makes provision for matters relating to the status and functioning of the MHRC. Amongst others, the Act expects the MHRC 'to promote more particularly the human rights of vulnerable groups, such as children, illiterate persons, persons with disabilities and the elderly'.<sup>22</sup>

The Constitution also established the Office of the Ombudsman with similar functions. The Constitution further requires allegations/complaints regarding threats to or violations of human rights to be brought before the courts or the MHRC or the Ombudsman. However, the two institutions are yet to be involved in disability rights litigation.

## 9 Disabled peoples organisations (DPOs) and other civil society organisations

### 9.1 Does Malawi have organisations that represent and advocate for the rights and welfare of persons with disabilities? If so, list each organisation and describe its activities.

At national level, most of the DPOs work under one umbrella organisation known as Federation of Disability Organisations in Malawi (FEDOMA), which was founded in 1999 to provide a unified voice for all persons with disabilities in Malawi. FEDOMA's objectives include promoting and advocating for rights of people with disabilities; coordinating and strengthening the capacity of the affiliated DPOs; and advocating for and monitoring the equalisation of opportunities for people with disabilities as stipulated in the United Nation's Standard Rules. The DPOs listed in this section below work with FEDOMA.

Apart from FEDOMA and its affiliates, there are also a number of community based organisations (CBOs) that deal in disability issues. For example, the Association of Early Childhood Development lobbies district councils, local and international organisations to invest in childhood development. Most CBOs work with the Government Department of Social Welfare to ensure the protection of the interests of PWDs.

Although most DPOs are actively involved in lobbying and advocating for disability rights, their work suffers due to lack sufficient funds. Most DPOs often depend on funds from international partners and work comes to a halt if they are not funded. In addition, the grants are often tied to particular projects and thus there is no flexibility as to what they should do when they get the funds.

The following are the DPOs that are affiliated to FEDOMA:

- **Malawi Union of the Blind (MUB)**

The Malawi Union of the Blind is a non-governmental organisation that deals with the blind and persons with visual impairments broadly. Since its establishment, MUB has opened up more than 19 district-based branches with about seven thousand registered members. The organisation has a diversified range of

21 Act 27 of 1998.

22 See sec 13(1)(c).

programmes in areas such as health, education, rehabilitation of the rural blind women, advocacy on HIV/AIDS, sexual and reproductive health rights.

- **Disabled Women in Development (DIWODE)**

DIWODE was established in 1996 to fight for the rights of women with disabilities so that they may participate in all aspects of development and become self-reliant. It strives to achieve its objectives by conducting training in business skills and helping women write proposals for securing funds. DIWODE also holds awareness meetings meant to encourage growth of self-confidence amongst women with disabilities.

- **Malawi National Association of the Deaf (MANAD)**

MANAD is an organisation of the deaf formed in 1992 and registered with the government in 1996. It aims at promoting the use and acceptance of sign language in interpretation, encouraging education and career opportunities for the deaf and promotion of welfare of the deaf in various social and economic aspects.

- **Malawi Disability Sports Association (MADISA)**

This organisation was established in 1998 to promote sporting activities for (PWDs) in Malawi. For example, it received funds to assist with the training of PWDs to participate in the 2012 Paralympics. MADISA has 562 registered members from Chiradzulu, Mulanje, Blantyre and Lilongwe districts.

- **Parents of Disabled Children Association in Malawi (PODCAM)**

This is an organisation for parents of children with disabilities. It aims at sensitising its members, teachers and other members of the community on disability issues. It accords the parents a platform to share their experiences and promote educational opportunities for children with disabilities. PODCAM is currently working with a total of 3214 children with various disabilities.

- **The Albino Association of Malawi (TAAM)**

The Albino Association of Malawi was registered in 1997 with the aim of addressing the plight of people living with albinism. TAAM lobbies the private sector and government to mainstream albinism issues and to recognise albinism as a disability.

- **Association of the Physically Disabled in Malawi (APDM)**

APDM was established in 1999 to empower people with physical disabilities to become self-reliant and to participate fully in social life at the national level. The organisation has members from Nkhotakota, Mulanje, Balaka, Neno, Lilongwe and Mangochi districts.

- **Disabled Widows Orphans Organizations of Malawi (DWOOM)**

This organisation was formed to promote the rights of widows and orphans with disabilities and also to provide them with skills that will enable them to economically become self-reliant. The organisation has its headquarters in Rumphu in the northern part of Malawi, and it is currently constructing a vocational training centre which will impart artisan skills to its members.

- **Visual Hearing Membership Association (VIHEMA)**

VIHEMA was registered on 10 June 2008 to advocate for the rights of the deaf and blind. Its vision is to see the deaf and blind accepted and given an opportunity to participate in national development. It does this by raising awareness on needs, problems, limitations, potentials and rights of deaf and blind people so as to change society's negative attitude towards them.

## 10 Government departments

### 10.1 Does Malawi have a government department/departments that is/are specifically responsible for promoting and protecting the rights and welfare of persons with disabilities? If so, describe the activities of the department(s).

(See generally section 7.2 above)

Malawi has a specific Ministry that is responsible for disability issues, namely, the Ministry of Gender, Children, Disability and Social Services.<sup>23</sup> The Ministry is responsible for coordinating, monitoring and evaluating the implementation of policies on disability and the elderly, legislation, programmes, and services delivery. Furthermore, the Disability Act establishes NACCODI as the government's official body on disability affairs.<sup>24</sup> There is also MACOHA, which was established under the HPA of 1971 to act as the government's agent in respect of the affairs of PWDs. According to section 10 of the HPA, MACOHA's functions include: administering vocational and special training centres for PWDs; administering rehabilitation services for PWDs; and administering services for the care and welfare PWDs. Malawi Against Physical Disabilities (MAP) is another important government agency, which was formed in 1979. It specialises in providing rehabilitation services to PWDs; the early identification of disabilities and interventions; disability awareness and training for general medical staff and health workers; and the support and training of parents of children with disabilities.

## 11 Main human rights concerns of people with disabilities in Malawi

### 11.1 Contemporary challenges of persons with disabilities in Malawi (for example, in some parts of Africa ritual killing of certain classes of PWDs, such as people with albinism, occurs).

(See 11.2 below)

### 11.2 Describe the contemporary challenges of persons with disabilities, and the legal responses thereto:

PWDs in Malawi experience discrimination from birth or from the moment the person acquired the disability. Discriminatory practices subsist in all aspects of the

<sup>23</sup> Prior to June 2014, disability issues were under the then Ministry of Disability and Elderly Affairs.

<sup>24</sup> See 7.2 above for the discussion relating to NACCODI.



society.<sup>25</sup> In most Malawian societies, the birth of a child with disability is considered a tragedy.<sup>26</sup> PWDs are identified as ill and different from other persons and consequently their prime predicament becomes exclusion which translates into difficulty in accessing fundamental social, political and economic rights.<sup>27</sup> According to the Equalisation Policy, many PWDs make their way through life impoverished, abandoned, uneducated, malnourished, discriminated against, neglected and vulnerable.<sup>28</sup> Being a person with a disability in Malawi entails exclusion from essential services; lack of the protection of the family and community; clear and present risk of exploitation and abuse; and ultimately a daily struggle for survival.<sup>29</sup> Although all disability matters are under the purview of the Ministry of the PWDs, the most comprehensive compilation of the government's commitment to disability issues before the enactment of the Disability Act was the Disability Policy, which seeks to simultaneously respond to the challenges and needs of the PWDs and promote equality of opportunities.<sup>30</sup> With regard to legal responses for addressing discrimination against PWDs, it is regrettable that the Disability Act does not impose the obligation to provide reasonable accommodation in ensuring equality and non-discrimination. This is because, amongst others, the Act (in section 2) does not define discrimination as including the denial of reasonable accommodation. In fact, the Act does not require the provision of reasonable accommodation in any context or in realising any right (such as education or employment). Thus it is unlikely that the Disability Act would provide an adequate legal tool/response for addressing discrimination against PWDs due to this drawback.

### 11.3 Do people with disabilities have a right to participation in political life (political representation and leadership) in Malawi?

The Constitution guarantees political rights to all persons, including PWDs, in section 40. Since the Constitution prohibits disability based discrimination in section 20(1), this right is required to be exercised by PWDs on an equal basis with others. Hence, the Constitution affords every person the right to form, to join, to participate in the activities of, and to recruit members for, a political party; and to participate in peaceful political activity intended to influence the composition and policies of the Government.<sup>31</sup> The Constitution also provides that every person shall have the right to vote, to do so in secret and to stand for election for any elective office.<sup>32</sup>

Above all, the Disability Act in section 17 guarantees PWDs the right to participation in political and public life through deliberate policies and measures. Thus the government is required to guarantee participation in political and public life by PWDs. In addition, section 18 recognises the right to non-discrimination in political and public life, including sanctions/penalties for violation.

However, the drawback is that while PWDs are guaranteed these political rights; when they actually vie for political office in competition with people without disabilities, the electorate tends to favour the latter. This has to do with societal

25 Interview with Naomi Kaluwa, Projects Manager of the Disability Rights Unit for the Federation of Disability Organisations in Malawi (FEDOMA), at FEDOMA head office, Blantyre, 5 June 2013. Naomi Kaluwa stated, amongst others, that she has handled over 40 cases where PWDs were complaining of unfair and discriminatory treatment at the hands of several employees.

26 Equalisation Policy (n 17 above) 4.

27 Equalisation Policy (n 17 above) 1.

28 As above.

29 As above.

30 See Leonard Cheshire Disability & Inclusive Development Centre *Disability policy audit in Namibia, Swaziland, Malawi, and Mozambique: Final report* (2008) 68-70.

31 See sec 40.

32 Sec 40(1)(a), (c) & (3).

negative attitudes towards PWDs. Therefore, it is in the actual voting process that improvements need to be considered given that barriers for PWDs still exist.<sup>33</sup> In the light of these barriers, the Disability Policy intends to facilitate the establishment of mechanisms to improve access to election and polls by PWDs and also empowering the PWDs through counselling, education and training coupled with public awareness campaigns.<sup>34</sup> The Disability Act also envisages deliberate policies and measures by government to guarantee participation in political and public life by PWDs.<sup>35</sup>

#### 11.4 Are people with disabilities' socio-economic rights, including the right to health, education and other social services protected and realised in Malawi?

##### • Education

According to the Equalisation Policy, 98 per cent of children with disabilities receive no formal education and even where schools are physically accessible, many children with disabilities remain excluded. This is because parents may fear that the child will not cope or that disclosure of a child with a disability will stigmatise the whole family and affect the marriage prospects of siblings. Other parents also consider that 'investment' in a child with a disability is not worthwhile.<sup>36</sup> In terms of vocational training, it is estimated that only 5 per cent of PWDs in need of vocational training and welfare services receive the training.<sup>37</sup>

Another obstacle to the education of PWDs in Malawi is the lack of SNE or inclusive education facilities. In view of this, Malawi developed the SNE Policy in 2007 (discussed above).

On its part, the Disability Act recognises the right to education and training of PWDs, which includes inclusive education; prohibits discrimination on the basis of disability in education; and prescribes penalties and sanctions for violation of the right to freedom from discrimination in education (as discussed above).<sup>38</sup> The Equalisation Policy also makes provision for further interventions to facilitate the education of PWDs apart from developing SNE. These include the design and development of appropriate technologies, assistive devices and learning; provision of free appropriate technology, equipment and resources to assist boys and girls, women and men with disabilities with their learning needs; and promoting awareness amongst parents or guardians on the need to send children with disabilities to school.<sup>39</sup> However, the main obstacle to the education of PWDs in Malawi is that despite the Disability Act recognising inclusive education, Malawi continues to utilise integrated and special schools over inclusive schools in practice contrary to the pertinent international standards.<sup>40</sup>

##### • Health

Apart from health centres being physically inaccessible and situated far apart, health workers discriminate against PWDs. Healthcare information is provided in formats which are inaccessible to PWDs, perhaps due to the fact that they are not

33 Equalisation Policy (n 17 above) 6.

34 Equalisation Policy (n 17 above) 17.

35 Sec 17.

36 Equalisation Policy (n 17 above) 1.

37 Leonard Cheshire Disability & Inclusive Development Centre (n 30 above) 66.

38 Disability Act, secs 10 & 11.

39 Equalisation Policy (n 17 above) 14.

40 See generally EM Chilemba 'The right to primary education for children with disabilities in Malawi: A diagnosis of the conceptual approach and implementation' in *African Disability Rights Yearbook* (2013) 3, 18 & 26; A Chavuta et al *Baseline study report on inclusive education in Shire Highlands Education Division in Malawi* (2008) 12.

uniquely targeted for health education.<sup>41</sup> The government seems to be cognisant of this state of affairs and is currently directing the Ministry of Health to ensure the following: promote prevention and occurrence of disabilities; provide early detection and intervention services with regards to disability; provide medical rehabilitation services; and provide specialised training in the area of disability.<sup>42</sup> In addition, the Disability Act guarantees PWDs the right to access healthcare services and the right to freedom from discrimination in healthcare and rehabilitation services, including sanctions/penalties for violation.<sup>43</sup>

- **Social services**

The Disability Act recognises the right of PWDs to an adequate standard of living and social protection in section 14 (as discussed above). The section obliges government to ensure adequate standards of living for PWDs and their families, including ensuring that they have access to adequate food, clothing and housing.<sup>44</sup> Above all, the provision expressly obliges government to ensure equal access by PWDs to appropriate and affordable social services and to social support programmes.<sup>45</sup> In addition, the Act prohibits discrimination on the basis of disability in all matters relating to social support, including access to appropriate and affordable social services in section 15.<sup>46</sup> Therefore, it can be observed that in terms of the Disability Act, PWDs in Malawi have the right to social services.<sup>47</sup>

### 11.5 Specific categories experiencing particular issues/vulnerability:

While disability and its exigencies is a cross cutting issue, women and children remain the most adversely affected. For example, children with disabilities are almost twice as likely not to receive any primary education whatsoever. This problem is further compounded when the gender differentials are taken into account with the effect that 41 per cent of girls with disabilities never attend school compared to 29 per cent of boys with disabilities.<sup>48</sup> Children are further abused in the form of forced imprisonment. For example, a parent who has a child with disability will send the other children to school while she/he locks up and neglects the child with a disability in the house because the parent cannot afford to stay home and look after such child as the parent has to go and fend for the rest of the family.<sup>49</sup> This practice is common in Malawi.<sup>50</sup>

Women in Malawi are generally victims of gender based violence and disability exacerbates the situation as they are more defenceless and vulnerable. In addition, women with disabilities are often regarded as mere 'sex objects' rather than marriage partners. This results in a situation where men will merely be intimate with these women, leaving the probability of pregnancy.. The men fail to formalise the relationship or even support the women (or children) physically, emotionally or socially.<sup>51</sup>

41 Equalisation Policy (n 17 above) 1.

42 As above.

43 Secs 6 & 7.

44 See sec 14(1)(a).

45 See sec 14(2)(a) & (b).

46 Sec 14(1)(b) further requires government to ensure non-discrimination in the realisation of the right to adequate standards of living.

47 It is also noteworthy that the Disability Act provides for the establishment of a disability trust fund by the responsible minister for the purpose of supporting the implementation of disability programmes and services. See secs 28 & 29.

48 Leonard Cheshire Disability and Inclusive Development Centre (n 30 above) 64.

49 Interview with Mrs Botomani, Principal Child Rights Officer, at Malawi Human Rights Commission, Blantyre 5 June 2013.

50 Interview with Mrs Botomani (n 54 above). Naomi Kaluwa of FEDOMA (n 25 above) confirmed this phenomenon.

51 Interview with Naomi Kaluwa (n 25 above).

The other main legal setback is that the Disability Act has not made specific provision in respect of women, children and older persons with disabilities or albinos.

## 12 Future perspective

### 12.1 Are there any specific measures with regard to persons with disabilities being debated or considered in your country at the moment? What legal reforms are being raised? Which legal reforms would you like to see in your country?

Although the Disability Act has been passed (which in itself is a significant milestone considering that it took almost eight years before it was actually enacted into law by Parliament), PWDs in Malawi continue to face multiple challenges. At a general level, it seems the Government of Malawi's commitment to properly and comprehensively respond to the needs of PWDs is not 'deep' and consistent. Indeed, issues of disability tend to be benignly invisible in major Government policy documents. For example, there is no mention of the Government's strategy with regard to disability issues in the Malawi Growth and Development Strategy (MGDS). (The MGDS is the Malawi Government's overarching medium term development strategy for Malawi and it is designed to help Malawi attain its long term development goals as articulated in the Malawi Vision 2020). The vulnerability of PWDs is mentioned under social support and disaster risk management themes but the MDGS does not provide how they will help people living with disabilities as a special group. This can be argued as one of the reasons why the government has not been forthcoming with comprehensive projects that specifically target PWDs.

With regard to legal reforms, Malawi could consider reviewing the Disability Act to, amongst others, make specific provision for the rights of women, children and older persons with disabilities and albinos. As discussed in 11.5 above, the Disability Act fails to make such provision. In addition, (as discussed in 11.2 above) the Disability Act does not currently impose an obligation to provide reasonable accommodation in ensuring equality and non-discrimination for PWDs. This is because the Act merely provides for the definition of reasonable accommodation (in section 2) but it does not recognise the denial of reasonable accommodation as constituting disability based discrimination.<sup>52</sup> Accordingly, Malawi should revise the Act and/to include the denial of reasonable accommodation in the definition of discrimination. This would strengthen the 'legal tools' for ensuring freedom from discrimination and substantive equality for PWDs in Malawi.

Nonetheless, the enactment of the Disability Act presents clear normative standards against which the government can be judged in terms of the steps that it will be taking towards the realisation of the rights of PWDs in the country. Thus the 'appropriate' implementation of the Act coupled with the suggested revisions could offer hope for PWDs in Malawi.

52 See generally Chilemba (n 40 above) 21 & 22.