

Gender Inequalities in Rural Employment in Malawi

Policy Context



Prepared by the Gender, Equity and Rural Employment Division of FAO

2011



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1. GENDER LEGAL AND POLICY FRAMEWORK

During the last two decades, Malawi has made numerous commitments to promote human rights and gender equity by signing and ratifying various international and regional treaties and conventions. Some of the most significant signed treaties and conventions include:

Treaty/Convention	Year
Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)	12 Mar 1987 (Accession)
CEDAW Optional Protocol to the convention on the elimination of all forms of discrimination against women	2000
The International Conference on Nutrition	1992
Convention on the Rights of the Child	1991
Human Rights Conference in Vienna	1993
International Conference on Population and Development in Cairo	1994
World Summit for Social Development in Copenhagen	1995
Fourth World Conference on Women in Beijing	1995
SADC Declaration On Gender and Development and Its addendum	1997
Protocol to the African Charter on Human and Peoples Rights on the Rights of Women In Africa	2005

1.1 Legislation and gender disparities

The Constitution of Malawi was adopted in 1994 and consists of 23 Chapters and 215 sections. It seeks to enshrine the principle of equality not only in general terms but it is also quite specific in mandating gender equality (section 13), promoting women's rights (section 24), and prohibiting any kind of discrimination based on gender (section 20), even though it does not legally define discrimination.¹ The Constitution also prohibits the National Assembly or any subordinate legislative authority from creating any law or taking any action that would abolish or infringe on people's rights and freedoms as enshrined in the Constitution.

To bring law into compliance with constitutional standards, the Malawi Law Commission, an independent legal institution established in 1998, has been in the process of revising national gender-related laws since 2001.² The first phase of this review involved reviewing the Wills and Inheritance Act, while the second phase focused on marriage and divorce laws.³ The final phase focuses on the development of a regulatory statute on gender equity that will, among others, give provisions on gender equity in education, political participation and the promotion and visibility of women in the public sphere.⁴ In the Gender Equality Statute, the Commission aims to cover all issues related to gender equality that were not covered in the previous reviews on inheritance legislation and marriage related laws.⁵

In recent years, the Law Commission has reconstituted the special Commission on Gender Related Law Reforms. The programme for 2009 indicated that the new Commission would finalize the development of the Gender Equality Statute.⁶

¹ CEDAW, Pre-session working group, Thirty-fifth session, 15 May-2 June 2006.

[http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/b77c19be1826815fc1257243005b855a/\\$FILE/N0628662.doc](http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/b77c19be1826815fc1257243005b855a/$FILE/N0628662.doc)

² See: <http://www.fao.org/gender/landrights/report/> and <http://genderindex.org/country/malawi>

³ The first phase ended in 2003 and the second phase was completed by December 2005.

⁴ Malawi Law Commission: <http://www.lawcom.mw/index.htm?http%3A//www.lawcom.mw/gender.htm>

⁵ CEDAW, Pre-session working group, Thirty-fifth session, 15 May-2 June 2006.

⁶ At the time of writing, the Gender Equality Statute had not yet been published. Malawi Law Commission, Notice of Work Programme for 2009: <http://www.lawcom.mw/docs/WorkProg2006.pdf>

Despite the adoption of constitutional and legal reforms that address gender-based discrimination, progress towards gender equality in society has been slow because of the wide discrepancy between formal and customary law and because many Malawians rely much more on traditional justice forums. Customary law – defined and applied by traditional justice forums, which are largely presided over by village heads or chiefs⁷ – often acts to preserve patriarchal cultural and traditional values and practices, which tend to be biased against women (e.g. polygamy, early marriage and wife inheritance).

Though formally suspended since 1994, traditional forums are still an important judicial reference in Malawian society.⁸ The nullification of oppressive provisions in customary laws can only be carried out by the constitutional court. Most rural poor, however, do not have access to the juridical institutions and legal services that would enable them to preserve their rights. This is particularly the case for rural women due to mobility constraints as a result of their productive and reproductive work, lack of economic resources, as well as illiteracy and unfamiliarity with laws. Although poor rural men also face these constraints, rural women are more disadvantaged and face more obstacles in acquiring the rights they are entitled to according to the Constitution and statutory law.⁹

Early marriage and polygamy

Customary law legitimizes discriminatory practices such as polygamy, early marriage and wife inheritance in both matrilineal and patrilineal communities. These customary practices are reinforced by societal gender-stereotyped attitudes that deem women as inferior to men.¹⁰

The Malawi Law Commission developed the Marriage and Divorce Relations Bill in 1996, which recommended the prohibition of polygamy, on account of its discriminatory effect and negative impact on women. While formal civil law defines marriage as a monogamous union and polygamy is prohibited by the Penal Code, polygamous unions are often accepted by customary law and practices. It is estimated that one-fifth of all married women are in polygamous unions¹¹, which is mainly practised in the Northern and Southern regions.¹² The Bill also aims to increase the minimum legal age of marriage from 16 to 18 years. As of March 2010, the Marriage and Divorce Relations Bill had yet to be endorsed by the Government of Malawi.¹³

Land, property rights and Inheritance

Traditional roles of men and women and inequalities in access to land and other physical assets undermine the socio-economic empowerment of women and diminish their competitiveness in the rural economy. According to the National Census of Agriculture and Livestock (NACAL) 2006/07, about 80 percent of land used by agricultural smallholders was customary land.¹⁴ Eighty-three percent of land in the Northern region was customary land, compared to 76 percent in the Central and Southern regions, respectively. The majority of land is inherited, owned and operated by men.¹⁵ Considering that women constitute 52 percent of the total rural population, this is inconsistent with the Constitution and the National Land Policy, which affords equal rights to men and women on joint property and land ownership.

The National Land Policy (adopted in 2002) promotes tenure reforms that guarantee security and equitable access to land for all Malawian citizens without any gender bias and/or discrimination. It calls for changes in inheritance laws to allow the remaining spouse, children and especially orphans to inherit the property of

⁷ CEDAW, Pre-session working group, Thirty-fifth session, 15 May-2 June 2006.

⁸ UN report, 2006 General Assembly WOM/1560, 19 May, UN Department of Public Information.

⁹ Statement of Charlotte-Wezi Mesikano Malonda, Controller of legal services at the Office of the Ombudsman of Malawi, to FAO, February 2010.

¹⁰ CEDAW, Pre-session working group, Thirty-fifth session, 15 May-2 June 2006.

¹¹ See: <http://genderindex.org/country/malawi>.

¹² A cultural approach to HIV/AIDS prevention and care: Malawi's experience. UNESCO/UNAIDS research project, 1999.

¹³ As of March 2010, the Bill was still on the agenda of the Malawi Law Commission. For more information see: <http://www.lawcom.mw/>

¹⁴ Customary land is all land that is held, occupied or used under customary law but does not include public land (The National Census of Agriculture and Livestock (NACAL) 2006/07, main report, National Statistical Office, Government of Malawi, 2010).

¹⁵ The National Census of Agriculture and Livestock (NACAL) 2006/07, main report, National Statistical Office, Government of Malawi, 2010. According to the 1993 Agricultural Census, the percentage of female landholders in 1993 was 32 percent.

their partner or parents even when the deceased does not have a will. To avoid the inequities often associated with property inheritance, and to confer equal rights to men and women, the policy's priority is to promote the registration of individual and family titles to customary land. One of the main guiding principles of the Policy is a gender-sensitive approach that should always be considered in policy planning and implementation strategies.¹⁶

Women face discrimination as a result of customary inheritance practices¹⁷, though statutory laws also contribute to this discrimination. The Wills and Inheritance Act passed in 1967 sought to strengthen widows' rights, particularly against the deceased husband's family. It, however, only awards half of the deceased husband's assets to the wife if the couple was married under the matrilineal system, and merely two-fifths if they were married under the patrilineal system. Information is not available regarding the inheritance rights of daughters. Although this Act made the dispossession of widows and children a criminal offence, property grabbing is still widely practised due to a lack of requisite public prosecutors.¹⁸ The Malawi Law Commission finished the revision of the Wills and Inheritance Act in December 2003.

In 2011, the Deceased Estates Act (Wills, Inheritance and protection Act) was passed by Parliament. This new Act protects spouses' and children's share of the deceased's estate in cases where they were not included in the will. It moreover makes property grabbing an offence, with perpetrators liable to a fine and imprisonment.

More information on women's rights in access to land and gaps between statutory and customary law is available on the FAO gender and land rights database.¹⁹

1.2 Gender-related policies and programmes

National Gender Policy (2007-2011)²⁰

The National Gender Policy for the period 2007-2011²¹ seeks to address a number of areas not covered by the 2000-2005 policy, including HIV and AIDS, gender-based violence, environmental degradation and gender dimensions of poverty. The policy focuses on eight areas: (1) gender and reproductive health; (2) gender, literacy, education and training; (3) food security and nutrition; (4) natural resources and environmental management; (5) governance and human rights; (6) poverty eradication and economic empowerment; (7) gender and HIV/AIDS; and (8) gender based violence.

The policy provides strategies to increase women's economic rights, resources and opportunities; create a favourable environment for equal employment opportunities and benefits for women, men, girls and boys; and integrate gender issues into overall national development strategies and support from development partners. In this respect, the revised gender policy will support:

- the revision of laws and policies for the improvement of women's economic rights to property, inheritance, and labour force participation;
- the creation of a favourable environment for equal employment opportunities and benefits for women, men, girls and boys;
- the formulation of gender responsive policies, rules and regulations that support the development of the informal sector;
- the revision of conditions of service and labour laws to be gender responsive; provision of labour market information in schools and colleges;

¹⁶ Gender and Land Rights Database (FAO, 2010).

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ See: <http://www.fao.org/gender/landrights/>

²⁰ The development of this revised National Gender Policy was guided by the National Constitution, the Malawi Growth and Development Strategy (MGDS), the Malawi Economic Growth Strategy (MEGS), the National Platform for Action, and the Millennium Development Goals.

²¹ The revised National Gender Policy (2007-2011) is not yet operational and is pending the approval of the Cabinet.

- the eradication of occupational segregation and all forms of employment discrimination;
- the adoption of legislative measures that ensure equal pay for equal work and equal remuneration for jobs of equal value for women and men;
- the promotion of provision and dissemination of trade and investment information and backstopping services to female and male entrepreneurs;
- the promotion of adult literacy education for both women and men engaged in small and medium sized enterprises;
- the identification of gaps in information, including in the informal sector, credit, savings and unpaid community and household work;
- the facilitation of women's access to and control over productive resources, financial services, agricultural inputs such as seeds and fertilizer, and business development and support services;
- the setting up technical and financial schemes to support women land-buyers, owners and producers;
- the development of a gendered statistical system and promotion of the collection of sex-disaggregated data.

Although the policy promotes gender mainstreaming in the agriculture, food security and nutrition sectors as a means for economic empowerment, sustainable development and poverty eradication, it does not provide specific strategies for the implementation of gender mainstreaming.

The policy foresees the implementation of a gender-sensitive approach in all relevant sectors. It provides a plan – with a timeframe and specific responsibilities – for the implementation of strategies and emphasizes the need to develop an integrated and effective monitoring and evaluation system with appropriate and efficient feedback mechanisms (e.g. instruments and performance output, outcome and impact indicators).

The policy emphasizes the need to implement internal self-monitoring and evaluation mechanisms for all stages of programming, which will strengthen and enhance gender planning skills for all staff involved. This also includes the assignment of a high level officer to coordinate gender responsive planning and ensure that the gender perspective is reflected in all sectoral activities of policy development and implementation.

It moreover provides directives for the provision of institutional strengthening and capacity development that will advance gender equality in governmental entities, which should be coordinated by the Malawi Gender Trainers Team (MGTT)²². The policy explicitly promotes gender-sensitive training for personnel in the health and education sectors, with reference to human rights and particularly in rural areas. It outlines recommendations for capacity building of women to enhance their effective participation in socio-economic and political arenas and decision-making processes through leadership/management training, gender sensitivity training and increased provision of information.

The policy reaffirms the government's commitment to reach and maintain gender equality as enshrined in the national principles of the Malawi Constitution of 1994. It also promotes the realization of women's rights and aims to ensure equal participation of women and men at all levels of governance.

The Policy does not make provisions for gender sensitization and capacity building of officers in the public and judicial sector or employers in the private sector, nor does it provide any incentives for vocational training of rural women and men.

²² The Malawi Gender Training Team (MGTT) was established in 1996 by the Ministry of Women and Child Development. The MGTT has now become a private consulting firm. The team is multidisciplinary in composition and aims to develop the capacity of various sectors through gender training. Since its inception, the MGTT has conducted training courses in gender sensitization and planning with UN officials, parliamentarians, police, magistrates, religious leaders and NGOs. The MGTT, however, has not been conducting much work in the last three years and members lack effective capacity in cutting edge analytical tools in gender analysis and mainstreaming. In any case, the training that has been conducted has been confined to awareness-raising and not particularly training on how to mainstream gender in the various sectors.

National Gender Policy (2000-2005)²³

The overall goal of the National Gender Policy (2000-2005) was to mainstream gender in the national development process and to enhance poverty eradication efforts. The key policy objectives focused on the provision of support for poverty eradication and economic empowerment, backstopping of gender mainstreaming activities of all key stakeholders, reviewing and engendering laws and policies, promoting gender equality and redressing gender imbalances arising from existing institutional structures and systems. The policy also aimed to support the collection of gender-disaggregated data for use in the planning and implementation of development programmes.

The policy focused on six areas: (1) education and training; (2) reproductive health; (3) food and nutrition security; (4) natural resources and environment management; (5) governance and human rights; and (6) poverty eradication and economic empowerment.

Key constraining factors in the implementation of gender-sensitive policies were inadequate gender sensitization and training for key stakeholders and planners, insufficient gender analysis in implementing activities and the lack of gender-sensitive monitoring and evaluation.²⁴

The Gender Policy also served as the basis and reference material for gender mainstreaming and training activities. Training institutions such as Bunda College of Agriculture, the Malawi College of Forestry and The Malawi Institute of Management (MIM) used the Policy for the integration of gender in their curricula.

National Gender Programme (2004-2009)

The National Gender Programme was launched in December 2004 to support the implementation of the National Gender Policy 2000-2005. One of the main priorities of the programme is to strengthen the role of women in agriculture and institutional capacity building. Other focal areas of the programme include education, health, HIV/AIDS, natural resources and environment, poverty and economic empowerment, and governance and human rights.

The programme adopted a two-fold approach that focused on the integration of gender concerns throughout the development process, and the empowerment of women by increasing their voice and participation. It included gender-sensitive development objectives and indicators applicable to good governance, poverty reduction, economic planning and budgeting, and environment and natural resources management.

There are slight differences in terms of priority areas between the Gender Policy (2000-2005) and the National Gender Programme (2004-2009). In addition to the focal areas covered in the policy, the programme gave priority to the links between the AIDS epidemic and gender, as well as the importance of women's role in the agriculture sector.

In terms of agriculture, the programme aimed to increase women's access to agricultural resources, including strengthening their access to agricultural inputs and markets (both local and international), and promoted gender analysis in agricultural research. The programme also aimed to reduce food and nutrition insecurity among women (especially among pregnant and lactating women) and children.

The National Gender Programme moreover advocated for the increased participation of women in decision making bodies at all levels and higher participation of women in politics, with at least 30 percent female participation in both spheres.

²³ The National Gender Policy was operational until December 2005.

²⁴ African Development Fund: Multi-sector country gender profile (2005).

<http://www.afdb.org/fileadmin/uploads/afdb/Documents/Project-and-Operations/malawi.pdf>

²⁴ Ibid.

Malawi has a potentially useful Constitutional framework and valuable policies and programmes to address discrimination against women and promote gender equity. The implementation of gender and development programmes, however, has been constrained by various institutional and structural problems, including a weak resource base; lack of gender disaggregated data; and cultural practices, beliefs, traditions and social norms. Substantial efforts are necessary in order to ensure effective implementation of policies and programmes and to transform discriminatory traditional values²⁵.

²⁵ CEDAW consideration of reports submitted by State parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women Combined second, third, fourth and fifth periodic report of States parties, June 2004.

2. LABOUR-RELATED LEGISLATION AND POLICIES

Malawi has been a member of the International Labour Organization (ILO) since 1965 and has ratified the eight core ILO Labour Conventions:

Labour Conventions signed by the Government of Malawi	Date of ratification
Forced Labour Convention, 1930 (C029)	19 November 1999
Freedom of Association and Protection of the Right to Organise Convention, 1948 (C087)	19 November 1999
Right to Organise and Collective Bargaining Convention, 1949 (C098)	22 March 1965
Equal Remuneration Convention, 1951 (C100)	22 March 1965
Abolition of Forced Labour Convention, 1957 (C105)	19 November 1999
Discrimination (Employment and Occupation) Convention, 1958 (C111)	22 March 1965
Minimum Age Convention, 1973 (C138)	19 November 1999
Worst Forms of Child Labour Convention, 1999 (C182)	19 November 1999

2.1 Legal framework

Labour rights²⁶ and obligations are emphasized in the Constitution of Malawi, the Employment Act 2000, the Workers Compensation Act 2000, the Occupational Health Safety and Welfare Act 1997 and the Public and Civil Service Act 1994. Malawi has ratified the major ILO Conventions promoting the fundamental principles and rights at work.

Constitution of the Republic of Malawi (1994)

The 1994 Constitution provides for non-discrimination in employment, including equal pay for work of equal value, and prohibits forced labour or slavery. The constitution also upholds gender equality and prohibits sex-based discrimination.

Section 24 elaborates the rights of women and prohibits any discrimination on the basis of gender or marital status. The means of enforcement of these rights are not specified other than in the general provisions of section 46, which make reference to the Ombudsman and Human Rights Commission. Section 29 states that every person shall have the right to engage in economic activity, to work and to pursue a livelihood anywhere in Malawi, and that every person shall have the right to fair and safe labour practices, fair remuneration and fair wages. It emphasizes that for work of equal value, there should be equal remuneration without distinction or discrimination of any kind, particularly on the basis of gender, disability or race. The Constitution, however, does not refer to a right to strike.

The right to freedom of association, which includes the right to form associations, is affirmed in section 32 and this right is extended and clarified in section 40 to include, *inter alia*, the right to form, join and participate in the activities of, and to recruit members and campaign for a political party.

Employment Act (2000)

The Employment Act was adopted in 1999 and is a comprehensive legislative framework regulating the national employment sector. It aims to “establish, reinforce and regulate minimum standards of

²⁶ The enjoyment of these rights, however, depends on rights holders being aware of and exercising their entitlements, and duty bearers being willing and able to fulfil their responsibilities. Regarding duty bearers, the Ministry of Labour lacks the necessary capacity for comprehensive labour inspections, monitoring and enforcement of legislation that falls under it (Final Draft Report on Decent Work Country Programme, Government of Malawi, July 2009).

employment with the purpose of ensuring equity necessary for enhancing industrial peace, accelerated economic growth and social justice and for matters connected therewith and incidental thereto”.

The Act defines an “employee” as: (i) a person who offers his services under an oral or written contract of employment, whether expressed or implied; and as (ii) a person, including a tenant share cropper, who performs work or services for another person for remuneration or reward on such terms and conditions that he is in relation to that person in a position of economic dependence on, and under an obligation to perform duties for, that person more closely resembling the relationship of employee than that of an independent contractor.

This definition of employee limits the field of application of this legal framework as it may apply to only nine percent of the rural labour force that is employed in the formal sector, including the waged and *ganyu* workforce²⁷. The remaining 91 percent of the rural working population who are self employed or *mlimi*²⁸ do not fall under the provisions of this act, as the criteria set by the law – namely reward, position of economic dependence and obligation to perform duties – are not evident.

Part II of the Act prohibits forced labour, anti-discrimination and infringement of fundamental rights, and makes provisions for equal pay (section 5 and 6). Part III regulates the rights and duties of the Labour Commissioner and labour officers. Part IV deals with youth employment, including prohibition against child labour, while Part V deals with provisions on labour contracts. Part VI addresses hours of work, weekly rest and leave, with specifications related to pregnancy and maternity leave. Part VII deals with wage regulations and finally Part VIII makes provisions for discipline and dismissal.

The provision concerning working hours (section 36 [5]) excludes members of the employer’s family who do not earn wages, which means that this provision does not apply to a large share of agricultural workers (mostly women) who work as unpaid family contributing workers. Children, youth and the elderly are also excluded from this provision.

Gender equality and labour

Prior to the adoption of the Employment Act, legislation was concerned with the employment of women at night and in certain types of occupations. Such prescription would now be in contradiction to sections 20 and 24 of the Constitution of Malawi and the general principle stated in section 5 of the Employment Act regarding the prohibition of treating men and women differently. The Employment Act explicitly relates to female workers only in Part VI, section 47, which addresses pregnancy and maternity leave. The Act makes a provision for eight weeks of maternity leave, which is below the standard set by ILO Convention 103 (from 1952) of 12 weeks and Convention 183 (from 2000) of 14 weeks. There are no legal provisions in the Act for addressing night shifts or hazardous work for pregnant women or women in general.

Child Labour

Child labour, such as forced labour in agricultural estates, is prohibited because it is harmful to the well being of a child. The Employment Act should fully comply with the ILO Convention concerning the prohibition and immediate action for the elimination of the worst forms of child labour (C182). The Convention defines “child” as all persons under the age of 18.

Part IV of the Employment Act declares that children under 14 are not allowed to enter into a formal, written and long term employment contract, and restricts the employment of children in some industrial activities or at night. However, the Act only protects children between the age of 14 and 18 from hazardous work, and leaves out younger children who might be even more vulnerable to abuse and exploitation in the working environment. The law does not apply to informal employment arrangements and/or short-term contracts. This is seen as a major gap since the majority of child labour is found in informal and family

²⁷ The Government of Malawi defines *ganyu* as casual/waged labour (Welfare monitoring Survey 2008, NSO, 2009).

²⁸ The Government of Malawi defines *mlimi* as subsistence farmers (Welfare monitoring Survey 2008, NSO, 2009).

settings or within short-term contracts. The Act does not outline any gender-sensitive provisions nor does it take into account the special situation of girl child workers as stipulated in Convention 182.

Worker's Compensation Act (No. 7 of 2000)

The Workers' Compensation Act makes provisions for the compensation of injuries suffered or diseases contracted by workers in the course of their employment, or for deaths resulting from such injuries or diseases. It also provides for the establishment and administration of a Workers' Compensation Fund²⁹ for the purpose of compensating workers and dependants in the event of suffering resulting from work-related injuries and diseases. At present, Malawi has not yet created the Worker's Compensation Fund.³⁰

Technical, Entrepreneurial and Vocational Education and Training Act (TEVET Act, No. 6 of 1999)³¹

The Government of Malawi, through the Ministry of Labour and Vocational Training, established a Technical, Entrepreneurial, Vocational Education and Training Authority (TEVETA) in 1999. This Authority introduced a quota system, specifying a minimum of 30 percent female participation in both formal and informal apprenticeships.³²

The current implementing authority of the Act is the Ministry of Education, which took over the mandate from the Ministry of Labour. This change in implementation authority has contributed to the phasing out of the Industrial Training Unit in the Ministry of Labour and has provided for the creation of an autonomous Technical, Entrepreneurial and Vocational Education and Training Authority to oversee employer-based and informal technical, entrepreneurial and vocational education and training in Malawi.³³

The Malawi Poverty Reduction Strategy Paper 2002 (MPRSP) – which was replaced by the Malawi Growth and Development Strategy in 2006 – identified TEVET as a complementary mechanism to expand limited existing off-farm employment opportunities, and therefore proposed to improve the quality and relevance of TEVET and strengthen its management and financing.

Occupational Safety, Health and Welfare Act (No. 21 of 1997)

The Occupational Safety, Health and Welfare Act makes provisions for, among others, the regulation of conditions of employment in workplaces with regard to the safety, health and welfare of employees, as well as the prevention and regulation of accidents involving employees or persons authorized to enter the workplace.

Malawi does not have an Occupational Safety and Health policy, nor does it have adequate programmes and systems to administer occupational safety and health. HIV continues to be a challenge at the workplace and discrimination and stigmatization of HIV positive workers is common practice. At present, the Government is in the process creating a National Policy on HIV and AIDS in the Workplace.³⁴

Labour Relations Act (No. 16 of 1996)

This Act sets the rules for Associations and Unions, as well as the rules of collective bargaining and dispute settlements. It also empowers the Industrial Relations Court of Malawi (IRC). It provides regulations for freedom of association, stating that every person shall have the right to freedom of association, which shall include the freedom to establish and join organizations of his or her own choosing.

The Act states that trade unions may not discriminate against anyone on the grounds of race, colour, nationality, sex, disability or religion. Provisions for registration of trade unions are also given, including the

²⁹ Final Draft Report on Decent Work Country Programme, Government of Malawi, July 2009.

³⁰ Personal statement of Mr. Robert James D. Mkwezalamba, Secretary General of the Malawi Congress of Trade Unions (MCTU), in a written correspondence on 10 May 2010.

³¹ The TEVET Act replaced the Apprenticeship Act and Industrial Training Act of 1972.

³² See: <http://www.jica.go.jp/activities/issues/gender/pdf/e06malaw.pdf>

³³ http://www.tevetamw.com/index.php?option=com_content&task=view&id=21&itemid=35

³⁴ Final Draft Report on Decent Work Country Programme, Government of Malawi, July 2009.

necessity to include provisions for equitable representation of female officers in unions and associations, which should be either in proportion to the female membership of the union/association or equal to 20 percent of the total positions available.

The Act also provides regulations for collective bargaining, organizational rights and the level of enrolment required to enter into collective bargaining. If employers fail to reply in due time or refuse to enter into collective bargaining, the Minister may establish an industrial council. Disputes shall be settled in the Industrial Relations Court (IRC). Should this fail, parties may engage in a strike or lockout, provided they are not an essential service. Persons engaged in strike or lockout activities in conformity with the Act are immune from civil proceedings. Employers shall not hire a replacement labour force for striking workers. The Act gives provisions for the establishment of a Tripartite Labour Advisory Council³⁵ and sets the operational grounds of the Industrial Relations Court.

The Act does not provide any further gender-related specifications. It does not outline any regulations on trade unions for self-employed agricultural workers, who comprise the majority of the active labour population in rural areas.

Children and Young Persons Act (Cap. 26:03, 1992)

The Children and Young Persons Act provides for procedures to be taken in the case of juvenile offences. A juvenile is defined as a child (under the age of 14) or young person (under the age of 18 but above the age of 14). The Act does not address child labour or youth employment.

The Malawi Law Commission initiated child rights-related law reforms from 2001 to 2005. Under this initiative, the Commission reviewed the Children and Young Persons Act and all other laws affecting children, including the Constitution. The review focused on juvenile justice, child care and protection, and children's socio-economic development. The Commission developed the Child (Care, Protection and Justice) Bill in 2006. The Bill addresses child labour, which had not been addressed in any other legislation. It also stipulates that children under the age of 10 cannot be employed at all. The Bill annulled the Children and Young Persons Act and amends the Employment Act.³⁶ The Bill is currently under revision in Parliament.

Trade Unions Act (No. 32 of 1958)

The Trade Unions Act provides regulations for the registration and operation of trade unions, the formation of employees' associations, the regulation of trade disputes and other related matters.³⁷

2.2 Employment-related policies and programmes

Malawi is currently developing an employment and labour policy, which will be the first such policy for the country. In addition, a number of supportive policies are in the process of being developed, including the Policy on Child Labour and the National Policy on HIV and AIDS in the Workplace. The Labour Inspection Policy is currently under revision.³⁸

National Employment and Labour Policy (2011-2016)³⁹

The National Employment and Labour Policy is guided by and in line with the priorities and strategies of the Decent Work Country Programme (DWCP), which was originally developed in 2009. The policy provides a

³⁵ The ILO's decent work requirement for social dialogue structures is supported in Malawi through the Tripartite Labour Advisory Council (TLAC) and the National Social Dialogue Forum. The law stipulates that the Tripartite Labour Advisory Council should meet at least once a year. The Council, however, has not met regularly and the last meeting was in 2005.

³⁶ UNICEF, Malawi Fact Sheet: Justice for Children. See: http://www.unicef.org/malawi/Justice_for_Children_public.pdf

³⁷ As previously mentioned, Part III of the Labour Relations Act covers registration of trade unions, including the necessity to include provisions for equitable representation of women officers in the unions and associations which is at least in the proportion to the female membership of the union/association or twenty per cent of the total positions available.

³⁸ Final Draft Report on Decent Work Country Programme, Government of Malawi, July 2009.

³⁹ The National Employment and Labour Policy is still in draft form.

framework for the promotion of productive and decent employment, as well as enterprise development. It also addresses of labour standard compliance by employers, investors and workers, in addition to social protection and social dialogue.

The overriding goal of this policy is to promote and attain full employment as a priority of national, macroeconomic, and social policies, and to enable the economically active population to attain and secure sustainable livelihood through full productive and freely chosen employment and work by the year 2020. Within this framework, the main objectives of the policy are to:

- Stimulate economic growth and development, and reduce poverty through job creation
- Promote well educated, trained, skilled and enterprising labour force
- Pursue poverty reduction policies through labour intensive programmes and improvement of the labour environment
- Improve and strengthen existing labour administrative system for promotion of decent work, worker participation in decisions and an efficient industrial conflict resolution mechanism in the labour market
- Support legislation and review of minimum wage in all sectors and trades to ensure a minimum social protection for all and avoid vulnerability of the working poor

The policy has twelve policy priority action areas: (1) macroeconomic policy and employment-intensive economic growth; (2) labour market information system (Imis); (3) education, skills development, and productivity; (4) private sector development and job creation; (5) micro, small and medium enterprise development; (6) labour administration and labour standards; (7) employment of persons with disabilities; (8) gender and employment; (9) youth employment; (10) HIV and AIDS and the workplace; (11) rural-urban migration; and (12) agricultural sector and employment.

Gender and employment is identified as one of the key policy priority action areas. In this regard, the draft policy has two main goals: (i) Opportunities for women for productive and decent employment are created; (ii) Gender is mainstreamed in employment.

Though it is a product of the DWCP, which gives attention to the informal economy, rural areas and agriculture, the draft policy does not explicitly address rural employment.

Due to the cross-cutting and multi-sectoral nature of employment and labour issues, the policy proposes the establishment of a National Employment Commission (NEC) to co-ordinate the implementation of the policy, which includes (among others) the Ministry of Agriculture, Irrigation and Water Development and the Ministry of Gender.

ILO Decent Work Country Programme for Malawi (2011-2016)⁴⁰

The Decent Work Country Programme (DWCP) for Malawi was launched in August 2011 and its implementation will be overseen by a Decent Work Advisory/Steering Committee.

Decent work deficits⁴¹ in Malawi are evident in all four areas of the Decent Work Agenda: (i) employment creation and enterprises development; (ii) rights at work; (iii) social protection; and (iv) social dialogue. The main priority of the DWCP is the creation of more and better employment, self-employment and income generating opportunities, with special emphasis on the most disadvantaged groups (including youth and women), in addition to the elimination of the worst forms of child labour. The DWCP recognizes that equal participation of women in formal employment will contribute towards gender equality and economic empowerment. Further priorities are the enhancement and extension of worker's social protection coverage and building the capacities of the Government and its social partners to improve service delivery.

⁴⁰ Available at: <http://www.ilo.org/public/english/bureau/program/dwcp/download/malawi.pdf>

⁴¹ ILO defines decent work deficit or lack of decent work as "the absence of sufficient employment opportunities, inadequate social protection, the denial of rights at work and shortcomings in social dialogue" (Report of the Director-General: Reducing the decent work deficit – a global challenge, ILO, 2001).

The DWCP will promote the rights and conditions of working women to enhance their economic power and entrepreneurial development. It will also promote gender mainstreaming through ILO's participatory Gender Audit tool, which is already being applied by the UN system in Malawi.

The programme will strive for increased quantity and quality of skills development, business support, advocacy and career guidance. It will benefit from effective linkages with employers' and workers' organizations for vulnerable groups, particularly youth and women. It will also support micro-finance and other appropriate financing mechanisms available and utilized by vulnerable groups either by individual entrepreneurs or through clubs, associations and cooperatives. In addition, it will stimulate the establishment of alliances and networking for broad-based approaches to employment creation between the Ministry of Labour, the Ministry of Education, TEVETA, the Ministries of Youth Development and Sports, Industry and Trade, Women and Child Development, Elderly and People with Disabilities and other relevant ministries, as well as workers' and employers' organizations.

The DWCP gives provisions for the improvement of informal employment and self-employment with particular focus on women and youth. However, it does not foresee specific measures or strategies for the agricultural sector, where the majority of informal employment and self-employed workers (including *mlimi*) are found.

In view of the sizeable informal economy, and its relevance for female and youth employment as well as child labour occurrence, the DWCP should further emphasize how informal employment will be addressed within each of the priority areas. Innovative approaches should be part of the DWCP to identify mechanisms to extend coverage to those most at risk of falling or being trapped in poverty. As more rural women than men are engaged in unstable employment (seasonal or casual work), the DWCP should give provisions to adequately address the factors contributing to this trend.

In terms of rights at work, the DWCP does not specifically mention whether or not there are any legislative gaps for rural work. Within existing national labour law and codes of conduct, special provisions may be needed to address the specific circumstances inherent in rural labour markets. Most rural employment in Malawi is informal, which results in the exclusion of these workers from the rights and protection constituted in the existing labour law.

Child Labour National Action Plan for Malawi (2009-2016)

The Child Labour National Action Plan for Malawi builds on the Child Labour Policy. It provides a means through which the government, social partners, civil society and all other stakeholders can translate the policy assertions into concrete programmes and activities and promotes coordination of the various relevant institutions and their programmes.

The overall goal of the National Action Plan is to eliminate the worst forms of child labour by 2016. In order to achieve this, it identifies the following priorities:

- development and improvement of the policy and legislative framework;
- building the capacity of the education sector;
- creating awareness on child labour;
- bridging the information gap in child labour;
- building the institutional and technical capacity of service providers;
- provision of services to withdrawn and prevented children to enable them achieve their education objectives; and
- mitigate the effects of HIV and AIDS on working and at risk children.

The Plan has four key strategic objectives:

1. To create a conducive legal and policy environment through mainstreaming Child Labour issues in national and sectoral social and economic policies, legislation and programs by 2014
2. To build and strengthen the technical, institutional and human resource capacity of stakeholders dealing with child labour elimination.
3. To directly combat child labour through the prevention, withdrawal, rehabilitation and re-integration of working children and their families.
4. To improve the knowledge base on child labour for informed policy and programme development.

The implementation of the National Action Plan will be coordinated by the Ministry of Labour, through a multidisciplinary approach involving various government departments, NGOs, as well as workers and employers' organizations. It emphasizes the importance of mainstreaming child labour issues into the programmes of key government departments, such as education, agriculture, social welfare and child development. It also stresses the role and strengthening of district and community level structures to fully participate in the implementation of the Plan.

2.3 Workers' Social Security Schemes

Malawi does not have a comprehensive social security system, which is one of the most challenging decent work deficits in the country. Voluntary pension and medical aid schemes are provided by only a few large employers. This means that workers employed in the informal sector, which comprises the majority of Malawi's workers, are left out of these social protection safety nets.

Health Insurance

The Medical Aid Society of Malawi is the only major health insurance provider in the country. It, however, only provides medical insurance to formally employed workers and 95 percent of its members are enrolled through employer schemes. Workers in the informal economy do not have any medical coverage for work-related accidents.⁴²

Pension System

The current workers' compensation system only provides lump-sum payments, hence no pensions. It moreover places liability for compensation with individual employers and therefore there is no pooling of risk across the labour market.⁴³ The pension system leaves out the majority of the Malawian workforce.

⁴² Final Draft Report of the Decent Work Country Programme, Government of Malawi, July 2009.

⁴³ Ibid.

3. AGRICULTURE SECTOR POLICIES AND PROGRAMMES

Agriculture Sector-Wide Approach (2010)

The Agriculture Sector-Wide Approach (ASWAp) was adopted in September 2010 and operates as Malawi's prioritized and harmonized agricultural development agenda. The Malawi Government agreed, with its development partners, to formulate the Agriculture Sector Wide Approach as a means of achieving the agricultural growth and poverty alleviation goals of the Malawi Growth and Development Strategy. The ASWAp is supporting priority activities in the agricultural sector to improve food and nutrition security, increase agricultural productivity and enhance the contribution of agro-processing to economic growth.

The ASWAp has three focus Areas: a) Food security and Risk management, b) Agri-business and market development and c) Sustainable land and water management. In support of these focal pillars, the ASWAp has the following key-support Services: a) Technology generation and dissemination and b) Institutional strengthening and capacity building. Gender and HIV/AIDS were identified as cross-cutting issues that will be addressed in all of the ASWAp pillars.

More specifically, ASWAp will mainstream gender issues within all its focal areas with the aim of reducing gender disparities in agriculture and enhancing the capacity of the youth, women and men with the objective of improving overall agricultural productivity. The ASWAp will address the correlation of the HIV and AIDS pandemic on rural women's time consumption (care for the sick and its impact on agricultural labour).

The ASWAp aims to ensure access to financial markets, agricultural resources, benefits and opportunities for women and the youth, and enhance their participation in decision making processes. It also aims to ensure that gender focal points are established in all departments of the Ministry of Agriculture and Food Security to address gender issues.

Despite the overarching initiative to mainstream gender in the ASWAp, gender is still not integrated within the priority areas. In general, the ASWAp is gender-neutral, except for specific parts particularly addressing gender and health issues. Since gender is one of the cross-cutting issues, the ASWAp should be gender-sensitive throughout and highlight gender disparities within the measures of the thematic focal areas. Further on, it should translate these findings into actions which would in practice translate into gender mainstreaming in the implementation of the ASWAp.

Gender and HIV/AIDS are both identified in the ASWAp as cross-cutting issues and are treated throughout the document in a correlative way. However, gender disparities in relation to labour, income and food security, decision-making power, extension services, etc. go far beyond the HIV/AIDS or other health-related constraints.

The ASWAp, which is designed for the period 2010-2014 provides insight into the major factors which influence gender differentiated rights and exacerbate vulnerability with regards to HIV/AIDS. Most importantly, the ASWAp underlines the discrepancies between legal norms and customary practices, and how women and girls are typically less aware of their human rights and less able to claim these rights. This is particularly the case in rural areas, where law enforcement and the overall level of female literacy are significantly undermined. For this reason the ASWAp specifically envisages the need to ensure that women and youth not only have access to technologies, information, financial markets, but also that women have the opportunity to actively participate in decision making processes. Nevertheless, although the need for additional gender focal points within the individual ministries is addressed, the inclusion of specific measures and mechanisms on gender equity mainstreaming is not sufficiently stressed. As a result, gender issues are not efficiently integrated together other focal areas and are dealt with merely as a component mostly linked to HIV/AIDS, rather than as a primary driving source for the attainment of national food security.

National Agricultural Policy (2011-2016)⁴⁴

The overall goal of the National Agricultural Policy is to contribute to the attainment of national food and nutrition security, poverty reduction and national economic development objectives, as outlined in the Malawi Growth and Development Strategy. The specific objectives of the Policy are to:

1. Facilitate the creation of a conducive and supportive policy environment for effective development of the agricultural sector throughout all stages of the value chain.
2. Strengthen the capacity of the stakeholders in the sector in provision of agricultural services through strengthened partnerships with different stakeholders.
3. Enhance the Ministry's leadership role in coordination and collaboration amongst relevant stakeholders operating in different sub-sectors of the sector.
4. Provide clear strategic policy direction to all stakeholders involved in the sector along the value chain stages.

The policy covers seven main thematic areas, including: (i) input use and markets; (ii) agricultural production; (iii) food and nutrition security; (iv) agricultural markets development; (v) gender, HIV and AIDS and agricultural development; (vi) climate change and environment; and (vii) biofuels and agricultural development. With regard to gender, it emphasizes the need to ensure that gender issues are fully recognized and mainstreamed into the sector's policies and programmes through workplace and farming community interventions, and it outlines several policy actions to achieve this. Many of these actions, however, are linked to HIV issues, rather than being integrated across all of the thematic areas.

Among its guiding principles, the Policy also recognizes the need for gender equality as a fundamental value in the provision of agricultural services to ensure equal participation of all gender categories. It moreover highlights the government's intention for all stakeholders who play a key role in the development of the sector to be fully recognized in the implementation of guidelines laid out in the Policy.

While the Policy recognizes the importance of agriculture as the main employer of the country's workforce, it does not address issues of rural employment and decent work, and it does not make any mention of youth employment or child labour. Minimal reference is made to farm workers, and only in specific contexts.

⁴⁴ The policy is still in draft form and has yet to be adopted.

4. OTHER RELEVANT POLICIES AND PROGRAMMES

Malawi Growth and Development Strategy (2006-2011)

The Malawi Growth and Development Strategy (MGDS) is a single reference document for policy makers in the Government, the private sector, civil society organizations, donors and cooperating partners, on socio-economic growth and development priorities for Malawi, including rural employment. The five broad themes of the Malawi Growth and Development Strategy are: (i) sustainable economic growth; (ii) social protection and disaster risk management, including the protection of the most vulnerable groups; (iii) social development, including gender, health and education as sub-priorities; (iv) infrastructure development; and (v) improved governance.

The gender sub-theme, within the social development priority, foresees the mainstreaming of gender as a long-term goal in the national development process and to enhance equal participation of both men and women in sustainable development. In order to achieve this, the medium-term expected outcome of the Strategy outlines the following aims: (i) the reduction of gender inequality by strengthening the institutional capacity for the effective co-ordination of gender policy implementation; (ii) taking affirmative action to increase the share of senior female decision makers in the public and private sectors; (iii) the promotion of gender equality through advocacy; and (iv) breaking the cultural/traditional factors that create and perpetuate gender inequalities.⁴⁵

The strategy has identified agriculture as the driver of economic growth and it recognizes that food security is a pre-requisite for economic growth and poverty alleviation. Gender is an integral part of national development and poverty reduction and the Strategy provides clear linkages with the National Gender Policy.⁴⁶

UNDAF II (2012-2016)

The United Nations Development Assistance Framework (UNDAF) sets out the specific outcomes that the United Nations and the Government of Malawi will aim to achieve together by 2016. It identifies six main thematic areas, including: (i) sustainable economic growth; (ii) social development; (iii) social support and disaster risk management; (iv) infrastructure development; (v) improved governance; and (vi) cross-cutting issues.

There are four key UNDAF priority areas, including: (i) Sustainable and equitable economic growth and food security; (ii) Basic social services and social development; (iii) HIV and AIDS; (iv) Good governance. Under the first thematic area, the Framework specifies that the UN aims to increase rural household agricultural productivity, especially those headed by women. It also emphasizes the importance of ensuring that disadvantaged groups – women, youth, those who are disabled and from rural households – engage in gainful employment activities and benefit from income generation and employment arising from private sector growth. It moreover addresses support to enhancing incomes, as well as growing employment amongst emerging entrepreneurs and smallholders (many of whom are women) and training for youth.

The UNDAF is founded on key strategies, including the mainstreaming of gender and opportunities for women. Throughout its implementation, focus will be on the most vulnerable groups, with explicit provisions to ensure their active and effective participation in decision making.

While child labour is mentioned as an issue in the country analysis, it is not explicitly mentioned in the priority areas. Under the second key priority area, however, one of the outcomes focuses on boys and girls of school-going age in selected low performing districts enrolling, being retained, learning, and completing basic education by 2016.

⁴⁵ <http://www.imf.org/external/pubs/ft/scr/2007/cr0755.pdf>

⁴⁶ *Ibid.*

National HIV/AIDS Policy (2003)

The National HIV/AIDS Policy (2003) outlines a strategic response to the HIV/AIDS pandemic and aims to promote and protect human rights, including gender equality. The goal of the policy is to prevent the spread of HIV, to reduce HIV vulnerability, to improve the provision of treatment, care and support for people living with HIV and to mitigate its socio-economic impact on individuals, families, communities and the nation. Particular attention is paid to vulnerable groups suffering from discrimination, including women and young girls, orphans, widows and widowers, children and youth.

The Policy explicitly distinguishes the needs of girls and women and commits to protecting their sexual and reproductive health rights, in addition to providing access to female-specific HIV prevention services. It also addresses children and young people, ensuring their access to youth friendly information and equipping them with the knowledge and skills to protect themselves from HIV. The policy also commits to ensuring that both in and out-of-school girls have access to life skills education that addresses gender relations, HIV prevention, positive living, etc. It commits to incorporating sexual and reproductive health into the national curriculum, with information available in both primary and secondary schools.

National Youth Policy (1996)

The overall goal of the policy is to provide a framework for key youth development focus areas, including juvenile unemployment, educational opportunities and youth participation in decision-making. One of its main objectives is to promote gender equity and equality in all youth programmes.

Policy and Investment Framework (PIF) for the Education Sector (2000-2015)

The Policy and Investment Framework spells out the Government's policy on education. It proposes five main objectives for the education system, namely: (i) to increase access to educational opportunities for all Malawians at all levels of the system; (ii) the need for ensuring that Malawi's education system does not intensify existing inequalities across social groups and regions; (iii) to maintain and improve the quality and relevance of education; (iv) to develop an institutional and financial framework that will sustain Malawian schools and students into the future; (v) recognizing that the proposed changes are unlikely to be achieved with the current level of funding from Government and therefore calls on those in society who can afford it to share in the cost of education, thus ensuring that the poorer sections of society are not forced to drop out of school because of inability to pay.

A strong priority of the Education Policy is to redress the gender imbalance and inequity in the education system at all levels. It recognizes the need for gender sensitivity in education through appropriate educational policies and practices.