

**NATIONAL ACTION PLAN FOR THE
PROMOTION AND PROTECTION OF HUMAN
RIGHTS IN MALAWI**

2004 – 2011

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INTRODUCTION

Since 1993 when Malawi adopted a multiparty system of Government, the nation has taken progressive steps in respecting human rights and fundamental freedoms. The country has ratified all the major international and regional human rights instruments¹. The new Constitution that was promulgated in 1994, took cognizance of both national and international human rights requirements. Thus it contains a comprehensive Bill of Rights, and outlines principles of national policy to ensure that human rights and personal freedoms guaranteed in the Constitution are promoted and protected in the broadest sense possible.

However, the challenges facing the young democracy of Malawi are formidable. Most Malawians live in abject poverty and frequently face food shortages. Slowly but steadily, problems of crime, violence, discrimination and related intolerance are pervading the Malawian society. Such vices are incompatible with democracy. Furthermore, socio-economic disparities between the various classes of people in Malawi are widening. These disparities deprive many Malawians of the full and equal enjoyment of their fundamental human rights and freedoms.

The National Action Plan for the Promotion and Protection of Human Rights (NAP) is Malawi's guide and framework for the effective promotion and protection of all human rights at all levels and for building a culture of respect for human rights in Malawi. It is intended to act as a tool for auditing the human rights situation in our country. It is also intended to act as a guide to concrete measures that can be adopted in building a sustainable human rights culture to ensure effective promotion and protection of human rights and to create a peaceful, and humane society based on human rights and fundamental freedoms including the principle of equality for all people regardless of age, sex, religion, political affiliation, ethnic leaning, gender, marital status, social status and disability.

¹ See Appendix 2 for a list of the major instruments Malawi is a party.

The provisions of the international and regional human rights instruments, the Constitution of Malawi and other relevant legislation as well as various national policies such as Vision 2020 and the Malawi Poverty Reduction Strategy Paper (MPRSP), have inspired the development of this National Action Plan. The NAP takes cognizance of the fact that human rights and human development are intertwined and interrelated. As a nation, we need to give concrete meaning to this interrelationship.

CHAPTER ONE

CIVIL AND POLITICAL RIGHTS

1.0 Introduction

Civil and political rights enable the person to exercise his or her civil liberties and political freedoms, and constitute some of the most basic and fundamental human rights. Civil and political rights essentially seek to restrain the State from interfering with the dignity and the freedom of a person. In light of Section 15 (1) of the Constitution, these rights also go as far as restraining, where applicable, both natural and juristic persons from interfering with such dignity and freedom. These rights include the right to life; freedom from torture or other cruel, inhuman or degrading treatment or punishment; right to human dignity, personal liberty and security of the person; freedom of movement and residence; freedom of opinion and expression; freedom of assembly and association; right to administrative justice; and right to privacy.

Civil and political rights in Malawi are guaranteed by a number of international, regional and national legal instruments. At the international level, the Universal Declaration of Human Rights (UDHR) adopted on 10th December 1948 is a common standard of achievement for securing the effective recognition and observance of human rights and fundamental freedoms. However, the most notable binding legal instrument aimed at securing civil and political rights at the international level is the International Covenant on Civil and Political Rights (ICCPR) of 1966 which Malawi ratified in 1994. The ICCPR, inclusive of its Optional Protocols, provides for enforcement mechanisms, reporting procedure, inter-state and individual complaints procedures among other provisions.

At the regional level, civil and political rights are guaranteed by the African Charter on Human and People's Rights (ACHPR) of 1981 that Malawi ratified in 1989. Like the ICCPR, the ACHPR contains enforcement mechanisms to ensure that State parties adhere to its provisions.

At the national or domestic level, these rights are guaranteed and protected under Chapter IV of the Constitution.

The paragraphs that follow highlight the situation in respect of civil and political rights in the country against the background of the existing international, regional and domestic legal instruments as well as national policies. Suggested remedies follow the situation analysis of key issues for each right.

1.1 Right to Life

The right to life entails that every person is entitled to live and that no person should be arbitrarily deprived of his or her life. The growing trend of international human rights law is toward the removal of any State imposed restrictions or limitations on this right. At the international level Article 3 of the UDHR, Article 6 of the ICCPR, and Article 4 of the ACHPR among others guarantee this right.

In Malawi Section 16 of the Constitution guarantees the right to life. However, the proviso to that section clearly shows that the framers of the Constitution intended to preserve the death penalty as punishment for the commission of certain serious crimes. There is growing debate in the country as to whether the death penalty should be abolished or retained. The Law Commission has proposed that the death penalty should be made discretionary for all offences that attract this sentence. However, Cabinet has proposed to Parliament that the present legal position should be maintained such that the death penalty remains mandatory for murder and treason while it should remain discretionary

for the other offences. It is noteworthy that the President has maintained a policy of staying execution of the death penalty and steadily commuting sentences of death to life imprisonment during the past nine years. The retention of the death penalty in the statutes is considered to be a negation of the right to life.

(i) Threat from Diseases

Various diseases including malaria, TB and other opportunistic diseases arising from the high incidence of HIV/AIDS, also threaten the right to life. In respect of HIV/AIDS, children, adolescents and women are particularly vulnerable because of increasing cases of sexual abuse such as rape, domestic violence, and defilement. This vulnerability is also exacerbated by harmful cultural practices such as *Chokolo*², *Kulowa kufa*³, *Kuchotsa fumbi*⁴ and *Fisi*⁵. In addition, reported sodomy in prisons threatens the prisoners' right to life, as it makes them susceptible to contracting HIV/AIDS.

(ii) Threat from Food Insecurity

Food insecurity is a threat to the right to life. Malawi suffers from food insecurity especially at household level. It breeds nutritional problems, poor health, low productivity and leads to death. In a situation of dire food shortage, people resort to eating poisonous roots, herbs and wild fruits that pose a great threat to people's right to life. Food insecurity may also be a catalyst for mob justice as experience has shown that in those years where there is scarcity of food, people

² A cultural practice by which, when a husband dies, a male relative of the deceased takes over the widow for his wife.

³ A practice by which, when a husband dies, the widow is forced to have intercourse with another man in a cleansing ceremony as part of funeral rites.

⁴ A practice which, when a girl becomes of age, is forced to have intercourse with a man as an initiation into adulthood.

⁵ A cultural practice where there is an arrangement for a man to have intercourse with the wife of another man suspected of being impotent so that the wife may conceive.

caught stealing food are often killed through such kind of “justice” thereby violating their right to life.

(iii) Threat from Abortions

Abortions performed without medical advice have serious negative health consequences on both the mother and the unborn child. Such consequences are a threat to the right to life. However, abortions, whether safe or not, continue to be a controversial issue in the context of reproductive health and HIV/AIDS among other issues. A lot of debate is focused on whether it should remain criminalized under Malawian law or should be decriminalized. Such debates have as yet been inconclusive.

(iv) Safety and Security

Malawi is a relatively peaceful country. However, incidences of insecurity as evidenced by increased armed robberies are a threat to the right to life. Arbitrary police shootings are another threat to life. The right to life is also jeopardized by, among other factors, poor road conditions, unroadworthy vehicles, careless driving and ineffective enforcement of traffic rules and regulations that often result in fatal traffic accidents. There is also an increase in reported cases of killings where children and women are killed for ritual purposes. This growing problem is also adversely affecting the right to life of many individuals.

(v) Threat from Genocide

Genocide refers to any act or acts committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group. The Convention on the Prevention and Punishment of the Crime of Genocide to which Malawi is a party prohibits acts of genocide. Acts of genocide are also prohibited under Section 17

of the Constitution. It is noted that although there have been no acts of genocide in Malawi, the prevailing political, religious and other related forms of intolerance and discrimination are potential grounds for genocide. An issue of concern is that genocide has not yet been provided for as a crime under the Penal Code in Malawi.

Suggested Remedial Measures

- Lobby for abolition of the death penalty and advocate for life imprisonment for capital offenders.
- Advocate for ratification of the Second Optional Protocol on ICCPR that deals with the abolition of the death penalty.
- Construct a maximum-security prison for capital offenders serving life sentence.
- Encourage and intensify public debate on the issue of abortion.
- Advocate for abolition of negative or harmful cultural practices.
- Make Malaria, Tuberculosis, Meningitis and HIV/AIDS drugs available and accessible to all infected persons.
- Advocate for intensification of security through strengthening of community policing.
- Advocate for strict enforcement of traffic rules and regulations.
- Ensure regular maintenance of the road network.
- Intensify civic education on food diversification and adoption of various dietary preferences.
- Conduct peace-building programmes.
- Expedite enactment of law on termination of pregnancy.
- Speedily amend the Penal Code to criminalize genocide.

1.2 Personal Liberty, Human Dignity and Security of the Person

The liberty of a person is sacrosanct. No person should be arbitrarily deprived of his or her liberty except in such manner as is prescribed by law and compliant with acceptable international human rights standards. Malawi's international obligations on the right to personal liberty, human dignity and security of the person stem from, *inter alia*, Articles 3 and 5 of the UDHR; Article 1 of the Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment (CAT); Articles 7, 9 and 10 of the ICCPR; Articles 4, 5 and 6 of the ACHPR and also Section 19 (3) of the Constitution. Further, Section 19 (4) of the Constitution prohibits corporal punishment in connection with any judicial proceedings or other proceedings before any organ of the State.

Malawi's record in respect of this class of rights is not very encouraging. There have been reports of police brutality including acts of torture, cruel, inhuman or degrading treatment or punishment. Various reports of the Malawi Human Rights Commission highlight use of torture or degrading treatment by the police or prison warders to obtain information from suspects and prisoners as being relatively common. There have also been reports of certain individuals who subject those subservient to them to such treatment and punishment. Such acts include locking up employees in hazardous conditions and use of abusive language by employers to their employees among others. These acts are an infringement on personal liberty, human dignity and security of the person, as the case may be.

1.2.1 Children Born or raised in Prisons

There are worrisome incidences of violations of rights of children born in prisons while their mothers are serving prison sentences or are on remand. These "baby detainees" are denied the right to a normal growth and development because of hazardous living conditions. The plight of children in prisons can be compared to

that of juveniles in prisons although it is clear that the plight of such children is aggravated. There are reported cases of children or juveniles being sodomized by adult prisoners among other abuses. These circumstances constitute a serious violation of personal security and dignity of the victims.

1.2.2 Other Threats to Personal Liberty, Personal Dignity and Security of the Person.

The tendency by the police of arresting innocent people such as spouses or relatives in order to use them as "baits" for absconding suspects is also common in police centres and this practice violates the right to personal liberty and security of the person. The same is true of domestic violence and cases of people undressed in public as a form of extra-judicial punishment for the commission of crimes such as stealing that are becoming common in Malawi.

Suggested Remedial Measures

- Conduct civic education on human rights for prison administrators and the police.
- Intensify and evaluate the police reform programme with emphasis on the human rights component in the training curricula.
- Improve prison conditions by incorporating provisions from Minimum Standard Rules for Treatment of Prisoners.
- Adequately fund the Prison Service.
- Enact the reviewed Police Act.
- Finalize the review of Prisons' Act.
- Finalize and enact the domestic violence legislation.

1.3 Arrest, Detention and Fair Trial

Persons under arrest or detention fall in the category of vulnerable groups of society because they have their liberty substantially restricted in accordance with human rights compliant prescriptions. Those restrictions notwithstanding, such persons are entitled to some rights. These rights include those guaranteed by Articles 9,10 and 11 of the UDHR; Articles 9,10,11,14,15 and 16 of the ICCPR; Articles 3, 5, 6, and 7 of the ACHPR; and Sections 18, 19 and 42 of the Constitution.

In spite of these guarantees these rights are not fully enjoyed. For instance, Section 42(2)(b) of the Constitution requires that every person arrested for the alleged commission of a criminal offence is to be taken to court within 48 hours to be charged or to be informed of the reason of his or her continued detention. However, the Police frequently fail to comply with this requirement. It is also a requirement under Section 42(1)(b) of the Constitution that every detained person be held under conditions consistent with human dignity such as being provided with adequate nutrition and medical treatment. Furthermore, Section 42(2)(d) requires that convicted persons should be separated from persons on remand. This requirement is seldom met. The UN Common Country Assessment Report for Malawi (2001) highlights sub-human prison conditions as evidenced by overcrowding, poor nutrition, poor sanitation and inadequate amenities including medical care. The Malawi Prisons Inspectorate Report (2001) also echoed these observations.

The conditions cited above have been exacerbated by the fact that the prison population doubled from 4,000 in 1995 to 8000 in 2001 and the warder- prisoner ratio was pegged at 1:14 against an international standard of 1:5⁸. Prison visits by the MHRC since 2001 reveal that the situation is worsening.

⁸ MPRSP, p. 75

It is also noteworthy that Section 15 of the Criminal Procedure and Evidence Code Cap 8:01 of the Laws of Malawi provides for a procedure of confirmation by the High Court of decisions made by subordinate courts. This procedure is frequently flouted. For instance, there are numerous cases of persons who are detained in prisons beyond the prescribed limits without having their cases confirmed by the High Court. The non-compliance with this confirmation procedure by the High Court results in violation of the right of the affected prisoners to personal liberty. It is also observable that recommendations made by the Prisons Inspectorate to improve prison conditions such as closing some dilapidated, uninhabitable prisons, and improving on poor services, among others, are not being implemented.

Suggested Remedial Measures

- Separate remandees from convicts.
- Encourage the High Court to expeditiously confirm decisions from lower courts.
- Intensify training and employment of more prison warders.
- Implement recommendations by the Prison Inspectorate.
- Civic educate Malawians to change their attitude towards convicts.
- Provide professional training for newly graduated lawyers who are employed as magistrates.

1.4 Equality

The right to equality in human rights law is among the most important and highly emphasized. This right entails both equality in law and in fact. It aims at eliminating all economic, social, cultural and any other unwarranted imbalances in society. Malawi's international obligation on equality stems from, *inter alia*, Articles 1 and 10 of the UDHR; Article 9 of the CEDAW; Articles 3, 10, 14 and 26

of the ICCPR; Article 5 of the Convention on the Elimination of Racial Discrimination (CERD) and Articles 3 and 10 of the African Charter on Human and Peoples Rights.

At the domestic level, the right to equality is guaranteed by among others, Sections 20 and 24 of the Constitution. One of the most pronounced forms of inequality in Malawi is inequality on the basis of gender. Section 13 (a) of the Constitution further provides for gender equality as a principle of national policy. In addition, the Malawi Government formulated a National Platform for Action (NPFA) in 1997 and launched a National Gender Policy to promote the rights of women and the girl child in 2000.

Despite these government initiatives, there still persist inequalities based on gender. As an illustration of these inequalities, refer to Table 1 below on decision-making positions held by women in the public sector as at 2001:

TABLE 1

SECTOR	TOTAL POSITIONS	WOMEN HEADS	% WOMEN
Politics:			
Cabinet	33	6	18
Parliament	192	17	8.8
Public Sector:			
Government	48	5	10.4
Statutory corporations	27	1	3.7
Judiciary:			
High Court Judges	22	2	9.1
Magistrates	153	15	9.8
Diplomatic: Heads	20	2	10

Reference: UN Common Country Assessment of Malawi 2000 Report.

The global agreement is to have at least 30 percent female representation in Parliament and decision making positions. SADC member States endorsed this global agreement and committed themselves to achieving the 30 percent representation by the year 2005.

The prevalence of domestic violence is another cause of gender-based inequalities. Apart from these gender-based inequalities, there are other deep-rooted inequalities such as those on the basis of HIV/AIDS infection, disability, age, skin pigmentation, race, ethnicity, political and economic status.

Suggested Remedial Measures

- Advocate for legislation to address gender-based inequalities.
- Institute Affirmative Action to achieve the 30 percent minimum requirement for women representation in Parliament and decision – making positions by the year 2005.
- Advocate for speedy finalization and adoption of the National Disability Policy.
- Enact a domestic violence law.
- Finalize gender laws on marriage, divorce, property, etc.
- Investigate and eradicate discrimination based on beliefs, HIV/AIDS, disability, age and others.
- Conduct civic education on the evils of discrimination.

1.5 Privacy

The right to personal privacy is very important. There remains a realm of private life that should be the exclusive domain of a person and that any intrusion therein or interference therewith should be justifiable in accordance with the law and acceptable international human rights standards. The right to privacy includes the right not to be subjected to unwarranted searches of the person, home or property and interference with private communications including telephone tapping and tampering with mail. Malawi's international obligation in respect of this right derives from, *inter alia*, Article 12 of the UDHR; Article 17 of the ICCPR; and Article 16 of the CRC. On the domestic level the Constitution guarantees this right under Section 21.

The growing tendency by law enforcing agents to carry out searches in private homes and properties, without warrants violates this right. Furthermore, the manner in which some searches are conducted is undignifying and degrading.

Concerns have also been raised in respect of this right with regard to private communication through telephone and post. There are cases where private telephone calls have been tapped and private mail tampered with by unidentified public agents for undisclosed reasons.

The Human Rights Commission established in its 2000 Annual Report that prison authorities at times threaten prisoners who would like to communicate with their family members, relations, friends or otherwise with all sorts of reprisals or even having their mail torn or burnt.

Suggested Remedial Measures

- Apply the principles of the Police Reform Programme.
- Encourage human rights education for law enforcing agents.
- Advocate for equal treatment when conducting searches.
- Intensify civic education on the right to privacy.
- Review prison laws to ensure that they are in line with the Constitution.

1.6 Freedom of Association and Political Rights

Freedom of association and political rights promote the full realisation of democratic principles in society. Freedom of association includes the freedom to form or join an association and participate freely in the activities of the association. This means, among other things, that no person should be compelled to belong to any association. Political rights entail that any person has the right to:

- Freely make political choices.

- Participate in making political decisions that affect one's life.
- Form, join and participate in peaceful political activities.
- Vote and be elected into office at genuine periodic elections that shall be universal and on equal suffrage.
- Take part in the conduct of public affairs or through freely chosen representatives.

Malawi is also bound, at the international level, by the provisions of Article 22 (1) of the ICCPR. Section 40 (1)(a-d) of the Constitution guarantees the right to freedom of association that includes the freedom to form an association or political party and/or belong to it. The Constitution further guarantees the rights to participate in activities of any association or political party, to recruit members, to campaign for its cause and to freely make political choices. Due regard is given to political associations because they have a large bearing on relations between, and among, the governors and governed that are usually sensitive. Nevertheless, this right is not limited to political assembly, but also to all other associations that do not necessarily promote political objectives. So far, there has been minimal limitation of this right.

While freedom of association and political rights are generally guaranteed in the Constitution of Malawi, the situation on the ground is different. The overall assessment by the Human Rights Commission on the by-elections that were held in 2000 in some parts of the country is that they were marred by violence and intimidation during campaign periods. In addition the ruling party took unfair advantage of the public media by monopolising its use during campaign periods. Further, the Commission also observed that under aged persons were registered as voters contrary to electoral law.

It is noteworthy that the three major political parties represented in Parliament are largely regionally based with the United Democratic Front (UDF) having a stronghold in the Southern region, Malawi Congress Party (MCP) in the Central region and Alliance for Democracy (AFORD) in the Northern region. This is a cause for concern in so far as freedom of association is concerned as people from any of the regions who associate with a party from the other regions are subjected to intimidation and other forms of reprisals. Also, the political playing field is distinctively marked by inter and intra- party conflicts which in most cases include violence.

Suggested Remedial Measures

- Intensify civic education on democracy and human rights for politicians and the electorate.
- Intensify civic education on conflict resolution for politicians and other relevant stakeholders.
- Provide institutional systems and mechanisms to promote political participation.
- Promote transparency in voter registration process.
- Review rules governing campaign and use of the public media.
- Address the regional factor in political affiliation.
- Develop an electoral Code of Conduct for leaders of political parties.
- Enhance advocacy on the supremacy of the Constitution and the upholding of the rule of law.
- Build capacity of political parties to stand up to the principles and values of democratic governance.

1.7 Freedom of Conscience

Freedom of conscience is crucial to intellectual development. It entails that every person has the right to think and hold opinions without interference from any one. This right includes freedom of thought, religion, belief and academic freedom. The right to freedom of conscience is guaranteed by Article 18 of the UDHR; Article 18 of the ICCPR; Article 8 of the ACHPR as well as Section 33 of the Malawi Constitution.

Experience shows that there is general lack of knowledge and appreciation of this right at various levels of the Malawian society. For instance, Government's attempt to introduce religious and moral studies in the secondary school curricula in 2000/2001 academic year met resistance from some quarters of the Faith Community because it was perceived as eroding certain religious values. There have also been increased reports of instances of intolerance and conflicts between divergent beliefs in various parts of the country that tend to undermine the freedoms guaranteed under this section.

Suggested Remedial Measures

- Conduct civic education for politicians, organs of the State and religious leaders.
- Promote dialogue among religious groups and other belief systems.

1.8 Freedoms of Opinion, Expression, Press and Access to Information

Freedoms of Opinion, Expression, Press and Access to Information are a class of rights that gives an opportunity for direct interaction between the governed and the governors. Through this class of rights the governed can comment, demand and even propose on how matters of governance should be conducted.

People in Malawi generally enjoy freedom of expression and opinion. Subsequent to the change of system of Government to political pluralism in 1993, the country witnessed big changes in terms of freedoms of opinion, expression, and of the press in that people began to freely express themselves without fear of reprisals from the State. The right to freedom of opinion and expression is guaranteed by Article 19 of the UDHR; Article 19 of the ICCPR; while sections 34, 35 36 and 37 of the Constitution guarantee these freedoms. However, these freedoms are limited by, *inter alia*, an uneven playing field in terms of access to the public media and services. For instance, access to the public television and radio stations is generally more favorable to the ruling party. The print media is also generally aligned to certain political parties. This results in lack of objectivity and neutrality in freedom of opinion and expression.

In addition, freedom of the press is jeopardized by harassment of journalists and publishing houses that hold and promote contrary views to those of the ruling party. Good cases in point were the harassment of a journalist at Chileka Airport in August 2001 when SADC Heads of State and Government were arriving for a SADC Summit. In May 2002 politicians from the ruling party led a team of traditional leaders to Blantyre Print and Publishing House who demanded that Blantyre Print should apologise and retract a story their paper carried alleging that Chiradzulu Chiefs were against the 'Open Terms Bill'. Further, there have been a number of instances in the recent past whereby the Police have arrested journalists for publishing articles that have been perceived to be politically sensitive. As a result, journalists have been forced into unnecessary self-censorship or to report on matters with fear.

In addition, information from the government and other public institutions is not easily accessible to the media and the general public. It is constrained by the tendency among senior public officials to hide behind the Official Secrets Act even on mundane matters that are unrelated to public security. It is also

observable that there is no legislation to provide for the scope of the right of access to public information and the specific mechanisms of enforcing this right by the public.

The Malawi Communications Regulatory Authority (MACRA) that was established in 1999 to regulate the communications system in furtherance of the right to freedom of expression is not as effective as it should be. For instance, it lacks statutory powers to exercise control over public media institutions such as MBC.

The right to freedom of expression and of access to public information is also hampered by the high illiteracy rate in the country where masses are not able to follow events from the print media. This right is further compromised, especially for persons with disabilities, in that most critical public information (e.g. on HIV/AIDS) is not available in accessible formats such as Braille and sign language. Yet another problem in respect to this right is that in an environment of growing politically and religiously motivated intolerance, the majority of people are becoming afraid to freely express themselves. This means that the right to freedom of expression is seriously curtailed, especially where people want to express views contrary to officially held positions.

Suggested Remedial Measures

- Conduct civic education to the public sector and political leaders on freedom of expression, press and access to information.
- Review regulatory framework on communications.
- Conduct civic education and training for media personnel on objective and responsible reporting.
- Encourage MACRA to be more effective.
- Activate and intensify adult literacy programmes to reduce illiteracy rate.
- Intensify peace-building programmes.
- Ensure that critical public information is in accessible formats to persons with disabilities.

- Enact law on access to public information

1.9 Freedom of Assembly

The right to freedom of assembly is very important as it is one way through which people can effectively safeguard their rights by way of collective bargaining. It is also an associated right that furthers the enjoyment of the rights of freedom of expression and freedom of association among others. It is also a very essential right in the context of political rights as it includes the holding of political rallies, meetings, peaceful demonstrations and other peaceful gatherings acceptable in an open and democratic society. Article 20 of the UDHR, Article 21 of the ICCPR, Article 11 of the ACHPR and Section 38 of the Malawi Constitution guarantee this right.

Experience so far shows that political expression through demonstrations is often unduly limited if not denied. This is evidenced by the frequent disruptions by the Police of demonstrations of people holding different political views even in cases where the Police have been given due notice.

Suggested Remedial Measures

- Conduct civic education on the rights and responsibilities that go with freedom of Assembly.
- Enact legislation to guide conduct of political and other assemblies or demonstrations.
- Sensitize the general public on how to stage demonstrations.
- Vest authority and empower local assemblies to issue permission for meetings, rallies, assemblies and demonstrations.

1.10 Freedom of Movement and Residence

One of the attributes of a free, open and democratic society is the prevalence of an environment in which people can freely move and lawfully enjoy residence without let or hindrance. This right is of fundamental importance as it is, among other things, an indispensable precondition for the enjoyment or exercise of other rights. This right is guaranteed by Article 13 of the UDHR; Article 12 of the ICCPR; Article 12 of the ACHPR and Section 39 of the Constitution.

People resident in Malawi generally enjoy this right. However there are certain practices that negate its essential content. For example, there have been instances where people have been forcibly moved from their places of residence on grounds of alleged witchcraft, political differences, economic gain, or pure malice on the part of some traditional leaders. Along the lakeshore, there are instances of undue restriction on villagers accessing the lake by some property owners. Furthermore, there are delays in the issuance of passports, which tend to limit international mobility of Malawians.

Over the years, Malawi has been a host to a number of refugees from various parts of Africa. It is recognized that there are some necessary restrictions that ought to be placed on their movement and residence within the country. However, these restrictions notwithstanding, Malawi has obligations under the applicable international and regional human rights treaties. In this respect it can be said that the Refugees Act (1989) is unduly restrictive.

Suggested Remedial Measures

- Civic education on the importance of the right to freedom of movement and residence.
- Review the Refugees Act.

- Review legislation to regulate land purchase along the lakeshore to ensure that local villagers have access to beach areas.

1.11 Access To Justice And Legal Remedies

The right of access to justice and legal remedies is one of the foundations of an open and democratic society. It is an essential precondition for the protection of the other rights when they have been violated or are under threat of violation. It is therefore the basis for the establishment and sustenance of the rule of Law. This right is guaranteed by, *inter alia*, Articles 6, 7, 8, 9 and 11 of the UDHR; Article 14 of the ICCPR; Article 3 of the ACHPR; Article 40 of the CRC and also Section 41 of the Constitution.

In Malawi, the enjoyment of this right faces several challenges. For instance, the confinement of High Courts to the urban areas of Blantyre, Zomba, Lilongwe and Mzuzu limits their accessibility to a larger proportion of the population of Malawi particularly the rural masses who consequently fail to fully enjoy this right. Furthermore, some of the legal procedures are unduly technical so much so that they make it difficult for people to fully enjoy the right of access to justice and legal remedies. In addition, there is generally shortage of personnel in the justice system and this further limits the enjoyment of this right. Another point of concern is that some of the personnel presiding over magistrate courts are under-qualified and this has a negative effect on the delivery of justice.

To make matters worse, Malawi has a backlog of untried cases both civil and criminal some of which have been pending for years. This has largely been attributed to lack of adequate human resource capacity and financial resources in the justice delivery system. This state of affairs leads to people staying on remand for a long time without knowing their fate, hence ending up being negatively psychologically affected.

Further, *quasi-judicial* institutions such as the Malawi Human Rights Commission and the Office of the Ombudsman have limited accessibility because they are confined to urban areas and as such, are not able to meet the expected demands for their services. They also have an acute shortage of technically qualified personnel.

Suggested Remedial Measures

- Train more legal professionals including paralegals in public legal institutions.
- Review conditions of service for legal and paralegal personnel in the public service.
- Allocate more funds for the operations of the public legal institutions.
- Decentralize the High Court system to the district level.
- Review the rules and regulations that govern case handling institutions.
- Develop proper curriculum for the training of Magistrates to increase their capacity and ability to handle cases.
- Simplify court procedures and rules in order to make them more user friendly.

1.12 Right to Administrative Justice

The right to administrative justice, which includes the right to be heard, requires that administrative authorities must ensure that their actions or decisions are fair and justifiable. This right is another form of the long recognized right to natural justice. This right is provided for in Article 10 of the UDHR and Section 43 of the Constitution.

There are problems that come about because some actions or decisions of some public and private authorities are made in disregard of this right. Instances abound of administrative actions or decisions in which people are suspended, interdicted, forcibly retired or dismissed without giving due regard to the demands of natural justice. In addition, delays by, and limited accessibility to case handling institutions cause undue hardships on the affected persons.

Suggested Remedial Measures

- Strengthen the human resource capacity of case handling institutions.
- Conduct civic education for public authorities and the private sector that handle personnel and administrative issues.

RIGHT	SITUATIONAL ANALYSIS		PROPOSED STRATEGIES	RESPONSIBILITIES
	LEGAL FRAMEWORK AND POLICIES	CHALLENGES		
1. Right to Life	<ul style="list-style-type: none"> • UDHR • ICCPR • ACHPR • Constitution 	<ul style="list-style-type: none"> • Retention of death penalty in the statutes. • High incidences of sexual abuse. • Food insecurity at household level. • Prevalence and illegality of abortion. • Armed robberies and arbitrary police shootings. • Ineffective enforcement of traffic regulations and poor road conditions. • Growing political and religious intolerance. • Threat of HIV/AIDS and other diseases. • No law that criminalizes genocide. 	<ul style="list-style-type: none"> • Advocate for ratification of the Second Protocol to the ICCPR. • Review the Constitution and lobby for removal of the death penalty • Advocate for change in dietary habit. • Enact legislation to prevent the spread of HIV/AIDS. • Subsidise HIV/AIDS drugs • Enhance public awareness on security measures on how to minimize crime. • Review and strictly enforce traffic rules and regulations. • Improve road conditions. • Advocate for abolition of negative harmful cultural practices. • Implement peace building programmes. • Amend Penal Code to criminalize genocide 	<ul style="list-style-type: none"> • Ministry of Agriculture and Irrigation • Ministry of Health and Population • The Police • Ministry of Transport and Public Works • Road Traffic Commission • Civil Society • Parliament • MHRC • NGOs • Law Commission

<p>2. Right to Personal Liberty, Human Dignity and Security of the Person</p>	<ul style="list-style-type: none"> • UDHR • Covenant Against Torture and other forms of cruel inhuman or degrading treatment (CAT) • Prisons Act • ICCPR • ACHPR • UN minimum standard rules for the treatment of prisoners • Constitution 	<ul style="list-style-type: none"> • Use of torture and other inhumane practices to obtain information from suspects and prisoners. • Outdated Prisons Act. • Overcrowding and sub-human conditions in prisons and police cells. • Inadequate human, financial and material resources for prison services. • Lack of compensation for victims of torture and other forms of cruel and inhumane punishment. • Use of human “baits” for absconding suspects. • People taking the law into their own hands. 	<ul style="list-style-type: none"> • Conduct civic education for prison staff and police on human rights. • Lobby for adequate funding and improved conditions of prisons. • Finalize and enact amended Prisons Act. • Construct new prisons and renovate old ones • Review the law of evidence so that confusions should not be regarded as conclusive evidence of guilt on their own. 	<ul style="list-style-type: none"> • MHRC • Civil Society • Ministry of Home Affairs • Law Commission • Parliament • The Police • Malawi Prison Service
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<p>3. Arrest, detention and fair trial</p>	<ul style="list-style-type: none"> • UDHR • ICCPR • CRC • ACHPR • African Charter on the Rights and Welfare of the Child • UN Rules for Juveniles Deprived of their liberty • Constitution • Criminal Procedure and Evidence Code 	<ul style="list-style-type: none"> • Maladministration in the Judiciary i.e. sentencing. • Limited capacity and numbers of juvenile detention institutions. • Sexual abuse of young offenders. • Limited access of juvenile delinquents to parents and next of kin. 	<ul style="list-style-type: none"> • Improve capacity of the Judiciary. • Training for magistrates and other court officials. • Provide human rights education to persons working in Juvenile Reformatory Centres. • Review laws and regulations pertaining to juveniles. • Provide more Juvenile reformatory centers to juveniles. 	<ul style="list-style-type: none"> • Ministry of Justice • Ombudsman • MHRC • Law Commission • Ministry of Gender and Community Services • Ministry of Youth Sports and Culture
<p>4.Right to Equality</p>	<ul style="list-style-type: none"> • UDHR • ICCPR • International Convention on the Elimination of all forms of Racial Discrimination • UN Standard Rules on the Equalization of Opportunities for Persons with Disabilities. • World Programme of Action Concerning Persons with Disability (WPA) • CEDAW • CRC • ACHPR • National Platform for Action and Gender Policy • Constitution 	<ul style="list-style-type: none"> • Inequality and discrimination based on gender, HIV/AIDS, disability age, ethnicity etc. • Lack of awareness of equality as a right and process of claiming the right. • Increased cases of domestic violence. 	<ul style="list-style-type: none"> • Conduct civic education on right to equality. • Advocate for speedy review of gender-based laws. 	<ul style="list-style-type: none"> • MHRC • Ministry of Gender and Community Services • Ministry of Justice • Law Commission • Ministry Responsible for People with Disabilities

5. Privacy	<ul style="list-style-type: none"> • UDHR • Constitution 	<ul style="list-style-type: none"> • Violation of the rights of privacy of prisoners by prison staff. • Unnecessary and/or discrimination at security checks. • Unlawful interference with private communication. • Unlawful searching of people, homes and property by the Police. 	<ul style="list-style-type: none"> • Intensify human rights education for prison warders and others. • Intensify civic education programmes on evils of domestic violence. • Advocate for equal treatment for all persons during searches. • Intensify on going Police and Prisons reform. • Intensify training on lawful conduct of searches by Police. • Civic educate Government agents and other bodies on the need to respect private communication. 	<ul style="list-style-type: none"> • Civil Society • MHRC • Ministry of Home Affairs • Ministry of Justice and Constitutional Affairs
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<p>6. Freedom of Association and Political Rights</p>	<ul style="list-style-type: none"> • UDHR • ICCPR • ACHPR • Constitution 	<ul style="list-style-type: none"> • Intimidation during political campaigns and/or elections. • Unfair advantage and use of public media by party in power. • Victimization and intimidation based on political affiliation. • Regional based political parties. • Inter and intra-party conflicts. 	<ul style="list-style-type: none"> • Conduct civic education for politicians and the electorate on political rights. • Develop and enforce code of conduct for leaders of political parties. • Review rules governing campaign and use of public media. • Address regional factor in political affiliation. • Advocate for revisiting Section 65. • Advocate on the supremacy of the Constitution. • Promote democratic governance in political parties. 	<ul style="list-style-type: none"> • MHRC • Civil Society • Electoral Commission • MACRA • NECOF
<p>7. Freedom of Conscience</p>	<ul style="list-style-type: none"> • UDHR • Constitution 	<ul style="list-style-type: none"> • Harassment of academicians and the clergy by political functionaries. • Lack of knowledge and understanding of this right. 	<ul style="list-style-type: none"> • Conduct civic education for political leaders, police and religious leaders on freedom of conscience. • Promote dialogue among religious groups. 	<ul style="list-style-type: none"> • Religious organizations • MHRC

<p>8. Freedoms of Opinion, Expression, Press, Assembly and Access to Information</p>	<ul style="list-style-type: none"> • UDHR • ICCPR • ACHPR • Constitution 	<ul style="list-style-type: none"> • Monopoly of public media by Government and political party in power. • Ineffective regulatory system on communications. • Lack of objectivity on/or neutrality of the press. • High illiteracy amongst Malawians and limited resources. • Unwillingness of public institutions to release available information. 	<ul style="list-style-type: none"> • Conduct civic education for public sector and political leaders on this right. • Enforce existing regulations by MACRA. • Civic education and training of media personnel on this right. • Institute legislative measures to guarantee protection of the press from intimidation and victimization. • Reduce adult illiteracy rate and enhance economic empowerment. • Revise the Communications Act to empower MACRA. 	<ul style="list-style-type: none"> • MHRC • MACRA • Civil Society • Parliament • Law Commission • Ministry of Information
<p>9. Freedom of Assembly</p>	<ul style="list-style-type: none"> • UDHR • ICCPR • ACHPR • Constitution • Penal Code 	<ul style="list-style-type: none"> • Lack of clear guidelines on the right to assemble. • Disruptions of political rallies or meetings by the police or people holding contrary views. 	<ul style="list-style-type: none"> • Enact legislation to guide conduct of political rallies. • Sensitize the general public on how to hold demonstrations. • Conduct civic education on the rights and responsibilities pertaining to freedom of assembly. 	<ul style="list-style-type: none"> • Law Commission • MHRC • Ministry of Justice • Police • NGOs

<p>10. Freedom of Movement and Residence</p>	<ul style="list-style-type: none"> • UDHR • ICCPR • ACHPR • Constitution 	<ul style="list-style-type: none"> • Outdated Refugees Act. • Escalating crime. • Regionally and politically motivated internal displacements of people. • Delays in issuing passports. 	<ul style="list-style-type: none"> • Review the Refugees Act. • Civic education on the importance of the right to freedom of movement and residence. • Enhance and intensify community policing. • Review legislation to regulate land purchases along the lakeshore. • Improve the system of issuing of passports. 	<ul style="list-style-type: none"> • Law Commission • MHRC • Ministry of Justice • Immigration Department • Ministry of Home Affairs and Internal Security
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<p>11. Access To Justice And Legal Remedies</p>	<ul style="list-style-type: none"> • UDHR • CRC • ACHPR • Constitution • Criminal Procedure and Evidence Code 	<ul style="list-style-type: none"> • Limited accessibility to High Courts and other quasi-judicial institutions. • Complex legal procedures. • Shortage of personnel in the Department of Legal Aid. • Unnecessary delays in the handling of cases. 	<ul style="list-style-type: none"> • Train more legal professionals and paralegals. • Review MPSR and relevant regulations on case handling in the public sector. • Strengthen capacity of the Office of the Ombudsman and MHRC. • Review remuneration package and incentives of lawyers and paralegals in the public service. • High Court judges to move on assize to districts to hear cases. • Improve case management systems in the courts. 	<ul style="list-style-type: none"> • Ministry of Justice • MHRC • DHRMD • Judiciary • Office of the Ombudsman
<p>12. Right to Administrative Justice</p>	<ul style="list-style-type: none"> • UDHR • ICCPR • ACHPR • Employment Act • Constitution 	<ul style="list-style-type: none"> • Limited accessibility of quasi-judicial institutions. • Lack of appreciation of the essence and scope of the natural justice by employers. 	<ul style="list-style-type: none"> • Conduct civic education for employers on the importance of natural justice. • Improve accessibility of quasi-judicial institutions by opening offices in districts. 	<ul style="list-style-type: none"> • MHRC • Office of the Ombudsman • NGOs • Judiciary

CHAPTER TWO

ECONOMIC, SOCIAL AND CULTURAL RIGHTS

2.0 Introduction

Economic, social and cultural rights are designed to ensure the protection of people as full persons, based on a perspective in which people can enjoy rights, freedoms, development and social justice simultaneously.¹

Despite significant progress made over the years in terms of development, with the assistance from multilateral and bilateral co-operating partners, Malawi remains a country in which millions of people live in circumstances of abject poverty, hunger and malnutrition, unemployment, illiteracy and chronic ill-health. Many people lack access to clean drinking water and sanitation, and access to education still remains limited notwithstanding the introduction of free primary education in 1994.

This massive scale of marginalisation of people, in spite of some gains in economic growth made over the years, as well as the global growth and development, raises serious questions not only of development but also of basic human rights.²

In light of the foregoing, the essence of an invigorated commitment to the full realization of economic, social and cultural rights cannot be over-emphasized.

Malawi is a State Party to a number of international human rights instruments that provide for economic, social and cultural rights. Such instruments include the UDHR, ICESCR, CEDAW, the CRC and the ACHPR. At the national level,

¹ See *UN Human Rights Fact Sheet* No. 16, p. 290, compiled by the Raoul Wallenberg Institute of Human Rights and Humanitarian Law

² See the *UN Human Rights Fact Sheet*, No. 16, supra., p. 290

economic, social and cultural rights are part of the Bill of Rights in the Republican Constitution (Sections 22-31). Further, there are principles of national policy enshrined in Section 13 of the Constitution that elaborately make provision for economic, social and cultural rights, albeit being directory in nature. Of particular interest is Section 13 (n) that provides that 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 a sensible balance between the creation and distribution of wealth through the nurturing of a market economy and long-term investment in health, education, economic and social development programs*". This is a clear demonstration of Malawi's commitment to ensuring that these rights are accorded the attention they deserve. However, the Constitution as a supreme law of the land does not extensively provide for economic, social and cultural rights primarily because the framers might mainly have been concerned with civil and political rights, which were grossly curtailed during the past political era.

Economic, social and cultural rights should be core to Malawi's development agenda in order to match with the nation's Poverty Reduction Strategy policy. Poverty is widespread, deep and severe³. This should be the beginning for any assessment of the steps Malawi has taken in fulfilling her obligation under both domestic and international law of ensuring the full enjoyment by all of economic, social and cultural rights, and subsequent execution of the MPRSP.

Realizing that poverty is endemic, and that poverty reduction is the centrepiece of government development policy, rights whose principal aim is to address this problem ought to be given prominence in the supreme law. The right to an adequate standard of living, for instance, should clearly be provided for under the Bill of Rights instead of it being merely inferred from other rights.

³ MPRSP, p.5

Additionally the right to an adequate standard of living demands enjoyment of other rights such as right to food, clothing, housing, health, clean environment, potable water, education and economic activity. Sadly, while the rights to education and economic activity are provided for in the Bill of Rights in Sections 25 and 29 respectively, the other rights, namely, right to food, health and housing are either merely mentioned as means in realizing the right to development in Section 30 (2) or as mere non-binding principles of national policy⁴.

The Constitution is also silent on other fundamental rights such as right to clothing, potable water and adequate sanitation, which are crucial to the full realization of the right to an adequate standard of living. It is being proposed that the Constitution should be reviewed with a view to capturing these very fundamental rights. This will raise the profile of all key economic, social and cultural rights so that they should not be treated as second-class rights

Although there are gaps in the Constitution with respect to economic, social and cultural rights, the Government of Malawi has put in place and adopted a number of policy initiatives to address issues pertaining to these rights. For example, the Agriculture and Livestock Strategy and Action Plan (1995) for food; National Health Plan 1999-2004 for health; National Environmental Policy (1996) for water and sanitation; Vision 2020 and Poverty Reduction Strategy Paper (2002) for an adequate standard of living in general. However, these initiatives would carry more weight if they derived their authority directly from the Constitution in which the rights should be clearly articulated.

⁴ Section 13(b) and (c) of the Constitution

Government has also instituted the Malawi Social Action Fund (MASAF) as a demand-driven initiative, supported by the World Bank, in order to promote community based social and infrastructure development. MASAF is a key Government program that directly addresses the issue of promoting economic and social rights in Malawi. It is, however, observed that this program is sustained through external donor support. It is essential that the program becomes a self-sustaining one within the next few years.

With the preceding observations in mind, the section that follows examines key economic, social and cultural rights that appear in the Constitution, while others have been drawn from international and regional instruments that apply to Malawi.

2.1 Right to Education

The right to education is essential for the enjoyment of all human rights. Education is indispensable for effective political participation and for enabling individuals to sustain themselves. It is the key to preserving languages and religions and is also the foundation for eliminating discrimination. It is the key to unlocking other human rights⁴. Thus, it is generally acknowledged that apart from unlocking the productive potential of people, education is a *sine qua non* for the enjoyment of all human rights especially in today's knowledge-driven society. The Government of Malawi considers education as one of the main catalysts for poverty alleviation and a prerequisite to economic take off⁵. Malawi's obligations on the right to education emanate from Article 26 of the UDHR, Article 17 of the ACHPR, Article 28 of the CRC and Articles 13 and 14 of the ICESCR. Malawi is also a signatory to the 1990 Jomtien Education for All

⁴ Katarina Tomasevski, *Education Denied*, 2003, p.172

⁵ *UN Country Assessment of Malawi 2001 Report*, p. 16

(EFA) Declaration where countries agreed to provide basic education to all without discrimination.

Section 13(f) of the Constitution among other things, puts as a requirement by the State, the provision of adequate resources to the education sector and devising of programmes that will facilitate elimination of illiteracy in Malawi; make primary education compulsory and free to all citizens of Malawi; offer greater access to higher learning and continuing education and promote national goals such as unity and elimination of political, religious, racial and ethnic intolerance.

2.1.1 Primary Education

The right to education in Malawi is guaranteed under Section 25 of the Constitution. That Section provides that education shall consist of at least five years of primary education. While attainment of basic education is a prerequisite for sustainable human development, five years of primary education is on the lower side in terms of attainment of permanent literacy. For example, a study carried out in Tunduru in Tanzania in 1994 showed that 33-57 percent of girls who had completed seven years of primary education reverted to illiteracy after a few years⁶. It is therefore essential that the threshold for compulsory primary education be moved from five years to at least eight years.

Malawi introduced free primary education and abolished compulsory wearing of school uniforms in 1994. This development saw a big increase in the enrolment in the primary education sector from just about 2 million to nearly 3 million. In spite of these seemingly impressive enrolment statistics, there has been a high drop out rate estimated at 17%. It is estimated that only about 20% of the pupils who enroll in standard one finish the primary school education cycle

⁶ *Africa Recovery*, Vol. 14, No. 2, July 2000, p. 19

(Education Report 2000). If this trend remains as it is, Malawi has an uphill task to reduce illiteracy.

While primary education is free, Malawi is still far from achieving compulsory education. In addition, Malawi has not devised a plan yet, detailing the steps it will take towards achieving compulsory primary education, free of charge for all, within a reasonable fixed period as required under Article 14 of the ICESCR. The increase in enrolment in primary schools has put severe pressure on the available facilities. For example, the pupil/classroom ratio is now estimated at 140:1 (Policy Investment Framework 2001). Further, children in Malawi still have to travel long distances to get to school. This acts as a demotivator to most pupils, especially at the lower primary school level.

Although there is free primary education, access is still low when the number is matched with the school age population. By and large, the education management system is inefficient. Inadequate basic teaching and learning materials characterize it. Further, some traditional and cultural practices such as early marriages have negatively impacted on the children's right to education especially for girls.

It is estimated that 65% of the population in Malawi lives below the poverty line⁷. This situation has a negative impact on education as children are driven to engage in economic activities to supplement family incomes when they are supposed to be in school.

⁷ MPRSP Final Draft, April 2002, p. 5

In addition, the HIV/AIDS pandemic, which has led to an increased number of orphans who in some cases have to assume the role of breadwinners for their young siblings, has forced such orphans to shift their efforts from education to survival.

2.1.2 Public Secondary Education

The expansion in enrolment in the primary education sector has led to an increased demand for secondary education without commensurate expansion in the secondary sector. The conversion of Distance Education Centers (D.E.Cs) to Community Day Secondary Schools (C.D.S.S.) in a bid to improve the quality of secondary education in the country has resulted in limiting access to public secondary education and thereby putting a strain on this sector. Unfortunately, most of the public secondary schools do not have adequate infrastructure, which leads to overcrowding. Further, requisite facilities such as laboratories, desks and other essential teaching and learning materials, especially in C.D.S.S.'s, are grossly inadequate. Most teachers in these schools are under-qualified to teach at that level. As a result, performance of students in these schools has been very poor in many cases.

Girls' accessibility to schools was enhanced through programmes like Girls Attainment in Basic Literacy Education (GABLE), which led to significant reduction in gender disparities in secondary school enrolment. However, dropout rates have increased since no alternative scheme was put in place after the cessation of GABLE in the year 2000. The change in policy to allow pregnant girls to go back to school after delivery has also helped to ensure that girls finish their education.

In spite of the various initiatives put in place to encourage girls to continue with their secondary education, there is still a high drop out rate among girls. The Policy Investment Framework (PIF) states that approximately only 39% of Secondary School pupils are female (2001:9).

2.1.3 Private Secondary Education

The expansion in enrolment in the primary sector has led to increased demand for secondary education. The public education sector has been unable to cope with this increased demand. As a result of this demand and in light of the liberalization of the education sector, there has been a proliferation of private secondary schools and this has substantially helped to reduce pressure on accessibility.

Operation of private schools, and other private institutions of higher learning, is permissible under section 25 of the Constitution provided that such schools or institutions are registered and maintain stipulated standards.

The liberalization of the secondary education sector, unfortunately, has not been backed by appropriate regulatory mechanisms and structures. As a result, there has been an uncontrolled mushrooming of private secondary schools. Most private schools operate from places that are not conducive to learning and do not meet the minimum standards for operation of schools. Worse still, the majority of them employ unqualified teachers.

The Ministry of Education, Science and Technology has failed to control the establishment of sub-standard private schools that have proliferated countrywide and has also failed to provide inspection of their operations. This situation has contributed to deteriorating standards of education at the secondary school level.

2.1.4 Tertiary Education

Access to tertiary education has been enhanced with the establishment of Domasi College of Education in 1993 and Mzuzu University in 1997 among other institutions. The introduction of parallel programmes by both the Mzuzu University and the University of Malawi is a positive development that opens up new opportunities at tertiary level.

Despite these developments, less than 0.5% of Malawians aged between 18 and 23 are enrolled in the tertiary education sub-sector and only 28% of these are females. These percentages suggest that the tertiary education sub-sector is too inadequate to absorb all candidates who otherwise qualify to enter into this sector. It also means that the tertiary education sector is yet to overcome gender imbalances. This is a clear challenge on the need for a deliberate, quality driven expansion of this sector⁸.

This sector faces a number of other challenges. For example, the University of Malawi has over the years experienced a high brain drain. The University has of late gone through difficult times financially as uncertainty of Government subventions has become the norm other than the exception. Student's loans have not been disbursed in time, leading to among other things, late openings and intermittent closures of its constituent colleges as a result of student strikes or unrest.

2.1.5 Early Childhood and Development

Access to early learning opportunities for the child in Malawi is offered through Early Childhood Development (ECD) education. This type of education is not part of the public school system. Early childhood education is largely the domain

of individual proprietors and church organizations. The Ministry responsible for Community Services coordinates the activities of this sector of education. Early childhood education centres are concentrated in urban areas and as a result, the majority of children in the rural areas have no opportunities for such services. While attempts have been made to standardize the curriculum for the early childhood education, most centres follow their own syllabuses, which are diverse in nature. This creates problems of linkage between the early childhood development program and the public education system.

2.1.6 Education for Children with Special Needs

The education system does not adequately cater for children with special needs. Government's policy is to integrate children with disability into the education mainstream. Children with special needs have very few opportunities during their childhood as most centres do not have facilities to cater for their needs. In addition, myths and negative attitudes towards children with special needs hinder their education. Such myths include the belief that having a disability connotes carrying evil spirits, and that one would not contract or would be cured of HIV/AIDS if they have sexual intercourse with a person with disabilities. Negative attitudes include regarding persons with disabilities as a burden on the society. These myths and negative attitudes negatively impact on the way persons with disabilities are viewed and therefore on the way they are provided for in education.

2.1.7 General Observations on Right to Education

The quality of education has been of concern to the Government and the public as it has of late deteriorated to disturbing levels. This is due to several factors. The high mortality rate among teachers owing to the high incidence of HIV/AIDS

⁸ PIF:2000

has resulted in severe teacher shortages in some schools. There is also a high turnover of qualified teachers in the education sector because of low morale due to demotivating conditions of service. In response to the shortage of teachers, government has been forced to employ unqualified teachers to engage in teaching. Where young graduate teachers are recruited, they are sometimes considered as youths at par with pupils – a perception that has a negative impact on both teacher and pupil discipline. Further, the abolition of compulsory wearing of school uniform has led to lack of identification of pupils and at times led to indiscipline.

The teacher/pupil ratio at the primary school level is estimated at 1:62, while that at the secondary level is at 1:36. One of the contributing factors to this high teacher/pupil ratio is the 11% attrition rate among teachers. The average staff/ student ratio at university level is at 1:10⁹. A combination of unqualified teachers and high pupil/teacher ratios at primary and secondary school levels coupled with brain drain at tertiary level has resulted in dwindling standards of education in general.

Other factors that affect the quality of education include political interference as well as occasional strained relationships between the State and the Church, a major player in the Malawi education field for a long time.

Suggested Remedial Measures

- Endeavor to make primary education compulsory for all children above the age of 5.
- Ensure that resources committed to the education sector are utilized for intended purposes.

⁹ PIF:2000

- Link early childhood development education curriculum to the public school system.
- Support pre-school education.
- Raise teachers' morale by introducing appropriate incentives and improving their working conditions.
- Establish a governing body to overlook the involvement of the private sector in education.
- Intensify campaign to encourage girl-child education at all levels.
- Improve teacher education programmes.
- Raise awareness on HIV/AIDS and its negative impact on right to education.
- Put in place programmes to reduce drop out rate of girls and boys at all levels of education.
- Strengthen and encourage career-counseling programmes at all levels of education.
- Encourage the provision of life-skills education to both girls and boys.
- Advocate for the development of an integrated educational programme on for adolescents and youths.
- Intensify issuance of certificates of authority to teach to teachers.
- Reintroduce school uniforms.
- Promote equal access to tertiary education for boys and girls
- Re-examine the phasing out of Government Boarding Schools.
- Review the Education Act.
- Lobby for the elimination of all forms of harmful rituals and cultural practices that hinder equal participation of girls and boys in education.
- Intensify training of specialist educators.
- Incorporate special needs education in teacher training curriculum.
- Encourage and support inclusive education.

2.2 Child Rights

Children constitute a vulnerable group of society by reason of their mental and physical immaturity. History reveals that children have often been victims of abuse and exploitation. They have been forced into prostitution or other harmful activities; been put into prisons together with adults under difficult circumstances, and many other children have been refugees or been victims of armed conflict either as civilians or as forced armed combatants. In view of the foregoing, several efforts have been made to protect this vulnerable group.

Malawi's obligations on child rights emanate from Article 25(2) of the UDHR; Articles 10, 12(2)(a) and 13 of the ICESCR; Articles 14(4) and 24 of the ICCPR; Article 18 of the ACHPR and the CRC. These instruments, *inter alia*, highlight the rights of the child to family care, education and protection from economic exploitation. The CRC is the main legal instrument in respect of child rights at the international level that specifically guides Malawi. Malawi ratified the CRC in 1991.

This Convention contains extensive obligations that place emphasis on the survival, protection, development and participation of children in matters affecting them. One of the cardinal tenets of this Convention is the principle of the best interests of the child that entails that in respect of any decision affecting the child, there should be an assessment to ensure that the child always benefits.

Malawi has entrenched rights of the child in the Bill of Rights under section 23 of the 1995 Constitution. The following have specifically been included:

- Definition of a child as a person below the age of sixteen years.
- The right to equal treatment of all children before the law.
- The right to a given name, a family name and a nationality
- The right to know and be raised by parents.
- Protection from economic exploitation or any treatment, work or punishment that is, or is likely to be hazardous, harmful to their health or to their physical, mental or spiritual or social development or interfere with their education.

Section 42(2)(g) of the Constitution also provides that where a child is in conflict with the law, he or she should be accorded treatment consistent with his or her special needs.

Some of the statutes for the protection of children in Malawi are, in some respects, inconsistent with the provisions of the CRC. For example, the Adoption of Children Act defines a child as someone less than 21 years while the CRC defines a child as someone who is 18 years and below. In addition, the Adoption of Children Act does not provide for the post adoption monitoring, while the CRC provides for the monitoring of adopted children to ensure that their best interests are continually protected.

The Wills and Inheritance Act is another piece of legislation that does not conform with the principle of the best interests of the child. This Act, which caters for the inheritance of deceased estates, provides for differential entitlements for children and widows to intestate property on the basis of where the marriage was arranged. In matrilineal societies, for example, children and widows are entitled to 2/5 of the intestate property while in patrilineal societies, children and widows are entitled to 1/2 of the intestate property. It is also noted that where household property is concerned, children do not have a stake. This creates problems where children live with stepmothers as such children are

sometimes chased out of the house after the death of their father. Moreover, although property grabbing is prohibited under Section 84A of the Act, there is little public awareness of this fact. Further, there are no special prosecutors yet appointed by the Director of Public Prosecutions to enforce this provision.

Following the World Summit for Children in New York in 1990, Malawi drew a National Programme of Action for the Survival, Protection and Development of Children in the 1990's. It focused on the thematic areas of health; basic education; food security and nutrition; water, sanitation and environment; children in difficult circumstances; women's health and education. These can primarily be provided for where children live in a family environment that is conducive to their normal growth and development.

In the area of health, there has been an expanded programme of immunization whose coverage has exceeded 80%. Despite these seemingly impressive achievements and despite the substantial inputs that have over the years been invested in the health sector, the health indicators for the under-five children have only shown a slight improvement as illustrated in Table 2 below:

TABLE 2

No	Indicator	DHS 1995	DHS 2000
1	Infant mortality rate per 1,000 live births	134	<i>112.5</i>
2	Under-five mortality rate per 1,000 live births	211	<i>202.7</i>
3	Maternal mortality rate per 100,000 live births.	620	1,120
4	Under-five children stunted	49.7	-
5	Under-five children under-weight	15.5%	-
6	Exclusive Breastfeeding (0 – 4 months)	<i>5.6%</i>	-
7	Children born out of HIV/AIDS infected mothers	33% are HIV infected	-

Source: The Situation of Women and Children 2000; UNICEF, Malawi.

Malnutrition is endemic in Malawi with 50% of children under five chronically malnourished. Statistics indicate that 70% of deaths among in-patients is due to communicable diseases such as malaria, upper respiratory infections, diarrhoea and abdominal diseases. These are further aggravated by malnutrition. The key constraints to the survival of children include poverty and harmful cultural practices.

The following paragraphs will highlight a number of issues that affect the full realization of rights of children in general and more especially those in special circumstances, namely, orphans and abandoned children; street children; trafficked children; abused children; children in conflict with the law and children with special needs.

2.2.1 Orphans and Abandoned Children

By 2001, the estimated number of orphans in Malawi was over 850,000¹⁰. One of the major contributing factors to the prevalence of orphans is the HIV/AIDS pandemic. The extended family system is caring for most of the orphans. However, the extended family system is becoming overstretched partly because of the shift towards nuclear families and high levels of poverty.

Government has put in place Policy Guidelines on the Care of Orphans in Malawi and a Foster Care Scheme. Despite these guidelines, there are inadequate basic necessities and lack of programmes to ensure care of orphans. Many orphans are subjected to exploitation and abuse in orphanages and even in the extended families. There is also lack of legislation to regulate the Foster Care Scheme.

¹⁰ MPRSP, p. 86

Suggested Remedial Measures

- Review the Adoption of Children Act, the Wills and Inheritance Act, Children and Young Persons Act, and the Affiliation Act to make them conform to the CRC.
- Revive the initiatives of enacting Foster Care Act and put up regulations for the operation of children's homes and orphanages.
- Strengthen and intensify monitoring of orphan care programmes.
- Raise awareness on the need to care for orphans.
- Encourage government to ratify the African Charter on the Rights and Welfare of the Child.
- Investigate alleged cases of child abuse.
- Lobby for more foster care families and orient them.
- Lobby for the appointment of special prosecutors by the DPP pursuant to the Wills and Inheritance Act.
- Translate and disseminate to the wider public section 84A of the Wills and Inheritance Act.

2.2.2 Street Children

There is a growing problem of street children in Malawi, both in major urban and semi-urban areas. Most of these street children are exposed to an environment that is conducive to violence and exploitation. The social services for these children are far from adequate partly because Government has not yet acknowledged that street children are a social problem, and hence a priority. In addition there are very few players that work towards addressing the welfare of street children.

Suggested Remedial Measures

- Formulate a clear policy on street children.
- Raise awareness on problems and needs of street children.
- Build the capacity of NGOs working with street children.
- Strengthen rehabilitation programmes for street children.
- Provide counseling to both street children and members of their families to facilitate the children's re-integration into their families.

2.2.3 Trafficked Children

A trafficked child is one who is unlawfully taken out of the custody of his or her parents, guardians or other person having lawful custody for purposes of exploitation. The extent of child trafficking in Malawi is not yet known apparently because there has not been any documentation of the problem. However, there have been reported cases of children who have fallen victim to foreigners who pose as philanthropists. The children and their parents are enticed with gifts such as clothes and promises of a rosy life. Some of these children are taken out of the country under the guise of adoption. These children end up being greatly abused. It is alleged that abducted children are sometimes killed and their body parts are sold for fetish purposes.

Suggested Remedial Measures

- Conduct research to establish the extent of child trafficking in Malawi.
- Intensify awareness on need to ensure safety and security of children.
- Investigate alleged cases of child abduction.
- Put in place programmes to rehabilitate recovered abducted children.
- Introduce stiff penalties for child traffickers under the Penal Code.

- Review the Penal Code to address the issue of kidnapping and child trafficking.

2.2.4 Abused Children

Child abuse in Malawi is manifested in many forms, including child labour, child defilement, cruel, inhuman and degrading treatment of children and social and emotional neglect. The most pronounced form of child abuse is child labour.

Malawi is a party to the ILO Minimum Age Convention Number 138 (1973) and the Abolition of the Worst Forms of Child Labour Convention (1999). These Conventions were ratified in the year 2000. Further, Section 21 of the Employment Act (2000) provides fourteen years as the minimum age for employment or working in any public or private agricultural, industrial or non-industrial undertaking. Section 22 of the Act prohibits any work by persons below the age of 18 years that is harmful to health, safety, social development or which is prejudicial to their attendance at school or vocational or training programme.

Notwithstanding the foregoing, child labour in Malawi is widespread and increasing. A labour force survey by Malawi Congress of Trade Unions (MCTU) done in 2000 showed an estimated total labour participation of 53% for the population between the ages of 10 and 14. Most of these were found to be working on tea and tobacco estates. There is also an increased number of children, particularly girl children working as domestic workers. These children are subjected to various forms of abuses such as working for long and odd hours for little pay. Girl-child workers are frequently sexually abused by their bosses and corporal punishment is meted out on them when they err.

Suggested Remedial Measures

- Intensify awareness campaigns on the dangers of child labor.
- Put in place life skills programmes to empower the girl-child.
- Introduce community night schools for domestic workers and lobby employers to allow domestic workers to attend school.

2.2.5 Children in Conflict with the Law

Children in conflict with the law are usually neglected in our society. The administration of juvenile justice in Malawi is still worrisome despite the provisions in the Constitution and the relevant legislation for the care and protection of juvenile offenders.

Major problems faced by juveniles in conflict with the law include: -

- i. Provisions in the Children and Young Persons Act are rarely followed. For instance, magistrates rarely resort to alternative sentencing that is already provided for in the Act when dealing with cases of juveniles.
- ii. On arrest, children are often abused and insulted, and there is illegal use of handcuffs.
- iii. During confinement, juveniles are often mixed with adults.
- iv. Juveniles are often kept in prisons despite being committed to reformatory institutions.
- v. Conditions in Prisons and reformatory institutions are appalling.
- vi. Juveniles are in most cases not afforded contact with a Social Welfare Officer or Probation Officer.
- vii. Trials for juveniles are in most cases delayed.
- viii. Some provisions of the Children and Young Persons Act are permissive of treating children as adult offenders in some circumstances.

Suggested Remedial Measures

- Review the Children and Young Persons Act.
- Intensify application of the existing provisions of the Children and Young Persons Act.
- Develop crime prevention programmes for the youth.
- Reinforce the implementation of diversion programmes for juvenile offenders.
- Orient and/or train police, magistrates, social welfare officers and youth organizations on child rights.
- Rehabilitate existing Reformatory Centres and introduce new ones for boys and girls.
- Strengthen formal education in all Reformatory Centres and provide them with adequate resources.
- Conduct timely trials for juvenile offenders.
- Reinforce the requirement of separating juveniles from adults during confinement and monitor the situation regularly.
- Encourage law enforcement agencies to apply the required legal procedures when arresting juvenile offenders.

2.2.6 Children with Special Needs¹¹

There are some institutions that provide services specifically for children with special needs such as the Malawi Council for the Handicapped and Cheshire Homes. However, the impact of their work is limited because of a number of reasons including lack of adequate funding and their urban-based location. The Malawi Council for the Handicapped operates the Community Based Rehabilitation programme through detection of disabilities and making quick

¹¹ ‘Children with special needs’ refers to children with disabilities (e.g. the blind, the visually impaired, the deaf, the mentally challenged, and those with mobility difficulties).

referrals. The Malawi Cheshire Homes provides support to children and also carries out training programmes for parents and guardians of children with special needs. Despite such initiatives, and the creation of a Ministry responsible for persons with disabilities under the OPC, there is no disability policy and legislation.

Suggested Remedial Measures

- Expedite the formulation of the disability policy and the enactment of disability legislation.
- Create awareness on the prevention of disabilities especially those from preventable diseases.
- Continue reintegrating children with disabilities in the main stream of education.
- Expand existing community based rehabilitation programmes.
- Allocate adequate resources to existing programmes for children with special needs.
- Encourage Government and District Assemblies to provide special facilities and services for children with disabilities.
- Sensitize parents and/or guardians on their responsibilities as care takers of their children and wards.
- Build capacity of organizations of Persons with Disabilities.
- Promote mainstreaming of disability issues in all programs and services.

2.3 Right to Economic Activity

The right to economic activity is of vital importance as through it a person pursues a livelihood by engaging in gainful activity. Its essence is also underscored by the need to have people in a country free themselves from the poverty trap and reducing their dependence on benefactors. This right has a

strong bearing on the enjoyment of a number of other rights such as the right to an adequate standard of living. In trying to realize this right, Malawi is guided by Article 22 of the UDHR, Articles 6 and 7 of the ICESCR and Article 22 of the ACHPR. At the national level this right is provided for under Section 29 of the Constitution.

Government has developed various policies to give people opportunities to venture into economic activities. These policies have revolved around attempts by Government to create conditions that are conducive for people to engage in economic activities in various sectors such as public sector employment, private businesses and agriculture. These policies have of late been adversely affected by Government's efforts to keep pace with the demands of the global economy, which has forced it to realign some of them. This move has limited the opportunities for most Malawians to engage in economic activity.

2.3.1 Economic Liberalization

Malawi embarked on the liberalization programme in an effort to improve the performance of the economy that had hitherto stagnated due to structural rigidities. The liberalization programme has opened up some opportunities as evidenced by the emergence of various businesses, both large and small. Liberalization was meant to bring with it competition which would in turn lead to increased efficiency in the economy. However, the programme has negatively affected local production, as foreign and often cheaper imports have tended to out-compete locally produced goods resulting in the closure of some industries and in the process leading to job losses.

Malawi is also characterized by large income disparities with gini coefficient of 0.62¹². The situation appears to worsen as the liberalization of the economy makes it easier for the rich to invest thereby becoming richer as the poor become poorer. The problem, which Malawian business people have faced, however, is that most of them lack requisite business acumen. Where an individual has ran a seemingly successful business, rarely have management skills been passed on to prospective heirs. Often times, many business ventures have folded up with the passing away of the original owners.

Suggested Remedial Measures

- Expedite promulgation of Trade Remedies Law.
- Implement urgently the Competition Law.
- Implement a Consumer Protection Law.
- Encourage entrepreneurship and business management training.
- Encourage Malawian investment with an emphasis on shareholding.

2.3.2 Standards

The Malawi Bureau of Standards (MBS) has, as one of its mandates, the promotion of quality and the enforcement of mandatory standards that affect the health and safety of the people of Malawi. In order to fulfill this mandate, the MBS has put in place a number of programmes one of which is the "Imports Quality Monitoring Scheme (IMQS)" whose objective is to monitor the quality of products being imported into Malawi for compliance with national, regional and/or international standards. However, the role of MBS in controlling entry on

¹² Gini coefficient is an income distribution scale which ranges from 0-1, and it entails that the closer the country's coefficient is to 1, the greater the income disparity between the rich and the poor and vice versa.

the markets of substandard imports has been wanting because the legal framework is weak. This trend has slowly turned Malawi into a market of poor quality imported wares and a nation of stifled technological development.

Suggested Remedial Measures

- Strengthen the legal framework of MBS.
- Encourage the MBS to decisively deal with all traders that encourage the dumping of substandard and expired goods on the market.
- Enhance MBS's financial position.

2.3.3 Privatization Programme

Malawi began implementing the privatization programme with the passing of the Privatization Act in 1995. The objectives of the privatization programme were to:

- Increase efficiency in the economy;
- Increase the participation of Malawians in public enterprises;
- Increase competition and reduce monopoly powers in the economy;
- Raise revenue for the government.

Under the programme 58 entities have been privatized. The privatization process has in most cases resulted in the restructuring of the privatized entities. The overall result of the privatization process has been mixed. While number of entities have improved their performance and created many jobs after privatization, the program has had some problems. One of them is that effective participation of Malawians in the program has been hindered by lack of finances. Although Government introduced the Privatization Facility with the help of the European Investment Bank that allowed Malawians to borrow money for purchasing privatized entities, the funds were not adequate.

The other problem that has hampered the participation of Malawians in the program is lack of training in the preparation of bid documents.

Suggested Remedial Measures

- Increase funds for the Privatization Facility.
- Conduct intensive civic education on the implications of privatization of companies, liberalization and globalization of the economy.
- Provide training to Malawians on how to prepare bids.

2.3.4 Micro, Small and Medium Enterprises and Co-Operatives

In order to attract investment, both foreign and domestic, Government put in place various incentives. However, investment flows into the country have been affected by the macroeconomic environment, which has of late not been favorable. Of major concern have been high interest rates and inflation, which have tended to erode business capital. Apart from erosion of people's capital, a narrow production base characterizes Malawi's economy. For example, production for the export market is limited to a small range of goods. There is also a general fear among businesspersons to diversify business activities. This fear to take risks has resulted in over-concentration of businesspersons and capital in very few business areas. In view of these hurdles, the Government has over the years put in place policies for the development of Micro, Small and Medium Enterprises (MSMES).

MSMEs play a crucial role in the development of this country. In this regard, Malawi, with assistance from the United Nations Development Programme (UNDP), embarked on an Enterprise Development and Employment Creation Programme (EDEP) in 1997 whose objective was to create an enabling environment for the development of micro, small and medium enterprises that

would expand opportunities for employment creation. EDEP was a programme under the First Country Cooperation Framework and a successor arrangement to the 5th Country Programme under which the Ministry of Commerce and Industry implemented the Small Enterprise Development Programme (SEDP).

In a bid to increase access to credit and finance to entrepreneurs, Government developed a Micro Finance Policy in 2002. The objective of the policy was to promote the development of a sustainable micro finance industry, which would provide credit, savings opportunities and other financial services to the productive poor including women and persons with disabilities.

In addition to the above, Government has implemented a number of programmes in support of the sector. These include:

- The development of efficient and effective human resources through entrepreneurship and business management training being carried out by Malawi Entrepreneurship Development Institute (MEDI),
- Technical skills training implemented by the Development of Malawian Enterprises Trust (DEMAT).
- Programmes relating to access to markets (buyer-seller linkages) for MSME products have been implemented by the Malawi Export Promotion Council (MEPC)
- Assisting MSMEs with access to technology and productivity improvement activities through the Malawi Industrial Research and Technology Development Centre (MIRTDC).

Such activities have largely focused on those products that are locally grown or available in rural areas. However, the situation on the ground indicates that the above efforts are not adequate if poverty is to be reduced. The infrastructure in most parts of the country is not conducive for MSME Development Programmes.

For example, while there is need to provide MSMEs with sheds, with facilities for production including water and electricity, these are not available in most areas especially rural areas. Another factor that impacts negatively on the growth of MSMEs is lack of an entrepreneurship culture in Malawi. Yet another problem cited by lending institutions is that there is a very poor loan repayment culture among Malawians. This has made it very difficult for many Malawians to access loans for businesses.

Suggested Remedial Measures

- Establish alternative viable economic policies for the majority of Malawians to benefit.
- Encourage and build a culture of timely loan repayment to lending institutions.
- Intensify implementation of investment policies with the view to creating an enabling environment for investment.
- Inculcate an entrepreneurship culture among Malawians.
- Improve infrastructure and the environment for economic activity in rural areas.
- Implement urgently the National Strategy for the Development of Micro, Small and Medium Enterprises (MSMEs).
- Encourage and assist MSMEs as well as smallholder farmers to form co-operative societies.
- Promote sheltered and self-employment schemes.
- Improve a Develop an Economy Growth Strategy in areas of agro-processing, manufacturing, mining and tourism sectors.
- Diversify production base for the export market.
- Access to loans especially for persons with disabilities.

2.3.5 Agriculture

Agriculture employs over 80% of the economically active population in Malawi and accounts for more than 35% of GDP. The sector contributes significantly to foreign exchange earnings¹⁵. However, this sector has a number of problems. For instance, the dependence on rainfall has meant that the poor in society are perpetually at the whims of the vagaries of nature. In fact, while the total potential land for irrigation is 200,000 hectares, only 57,000 hectares is currently under irrigation, of which only 8,000 hectares is by smallholder farmers¹⁶. The agriculture industry is also characterized by low productivity because of lack of inputs, poor access to information on modern methods of agriculture and on the market. Land fragmentation as a result of population pressure and lack of diversification are the other problems that affect productivity in agriculture. Further, the poor road network makes it very difficult for many Malawians in rural areas to fully participate and benefit from the globalized economy since their access to markets, information and technology is greatly hampered.

The agricultural industry is also characterized by dominance of tobacco as the principal export earner. It accounts for about 70% of the total foreign exchange earnings¹⁷. Since the early 1990s the growing of tobacco, especially burley tobacco, was liberalized. This liberalization has seen an increase of smallholder farmers growing tobacco at the expense of food crops. This has negatively impacted on the growing of food crops as farmers' attention is concentrated on tobacco in the mistaken belief that they would buy food from tobacco sales. The liberalization of the tobacco industry has also led to the production of poor quality tobacco that in turn has negatively impacted on foreign exchange.

¹⁵ Ministry of Agriculture, *The Agricultural and Livestock Development Strategy and Action Plan*, 1995, p.1

¹⁶ MPRSP 2000, p.25

¹⁷ Ministry of Agriculture, *The Agricultural and Livestock Development Strategy and Action Plan*, 1995, p.2

Additionally, the future of the tobacco industry is uncertain in the face of the global anti-smoking lobby hence vulnerability of the smallholder farmers is likely to worsen.

Suggested Remedial Measures

- Improve feeder road network in rural areas.
- Improve smallholder farmers' access to farm inputs and encourage use of manure.
- Encourage farmers to diversify agricultural enterprise.
- Harness the vast resources of water for irrigation.

2.3.6 Fishing industry

Fishing is one of the economic activities in which many people along the lakeshore are engaged. This activity is under threat as fish stocks have dwindled to critical levels because of over-fishing exacerbated by liberalized fishing practices where indiscriminate use of nets that sweep everything in their wake is common. Income for people in these areas has therefore been shrinking.

Suggested Remedial Measures

- Develop and intensify fish farming.
- Intensify civic education on sustainable fish resource management.

2.3.7 Employment in the Formal Sector

Government is the major employer in the formal sector, which clearly shows that the private sector is not playing its rightful role as the engine of the economy. This situation obtains probably because liberalization of the economy and

privatisation of companies have not achieved their intended objectives. Sadly, employment in the public sector is sometimes characterized by filling of vacancies without scrupulously observing the requirements of the Malawi Public Service Act and this undermines productivity due to the attendant poor quality staff. While the Employment Act 2000 guarantees equal access to employment opportunities, the situation on the ground is different. Discrimination on grounds such as political affiliation, religion, ethnicity and region of origin, gender, disability and HIV/AIDS status pervades the Malawian society.

Suggested Remedial Measures

- Intensify civic education on evils of discrimination on whatever ground.
- Encourage Government to observe employment procedures under the Malawi Public Service Act.

2.4 Right to Food

The right to food is very basic since the enjoyment of all other rights is dependent upon it. Although the Constitution does not adequately address this right, the provisions of international instruments such as Article 25 of the UDHR and Article 11 of the ICESCR can guide Malawi.

Malawi has been experiencing intermittent food shortages which have been exacerbated by unstable food reserves. Food insecurity at household level is quite wide spread manifested by chronic malnutrition at over 50% of the under fives. Stunted growth, estimated at close to 50% of the children is another manifestation of chronic malnutrition. It is estimated that 60% of smallholder households run out of food some three months before the next harvest¹⁷.

¹⁷ *The Agriculture and Livestock Development Strategy and Action Plan*, 1995, p8

Malawi's agriculture is characterized by enormous resource constraints such as limited access to technology and inputs. Labor shortage for poor households, especially female-headed households, is quite acute during the growing season. During this season most of them offer their labour on fields of the well to do in exchange for food, as this is the lean period when food shortage is critical for the majority of them.

Farmers rarely use and benefit from research findings either because they are skeptical about them or because dissemination of findings is not properly done. Poor staffing levels in the Ministry of Agriculture and Irrigation, currently at one field assistant to one thousand farmers (1:1000), hamper extension services¹⁴. The morale of the existing extension workers is low as a result of which visits to farmers are minimal.

Food production in Malawi is dominated by the growing of maize. It is estimated that 76% of smallholder land is dedicated to the growing of maize. Vulnerability to food insecurity of most households is especially high when maize yields are low. Further, the majority of smallholder farmers (75%) grow low yielding local varieties of maize mostly due to high cost of hybrid seeds and chemicals used to store hybrid maize for long. This practice worsens food insecurity for many households¹⁸.

Lack of appropriate technology for processing foodstuffs makes Malawi vulnerable to food wastage. Most foodstuffs, such as fruits, vegetables and some root crops such as potatoes are often wasted because farmers lack proper and cheap processing and storage technologies. In addition, the livestock sector is poorly developed to the extent that, apart from fish, animal protein is the scarcest component in most people's diets.

¹⁸ The Agriculture and Livestock Development Strategy and Action Plan 1995, p9.

Another important issue of concern under food security is the safety of food that is imported into the country for human consumption. In some cases people are not well advised on the negative implications of foodstuffs such as those that are genetically modified.

There are also apparent contradictions between some policy initiatives in agriculture. For example, the Vision 2020 among others, envisages commercialization of agriculture by enhancing conversion of smallholder land to estates. MPRSP on the other hand, looks at improving agriculture productivity by smallholder farmers through improving their access to credit, to information on technologies and markets among others.

Suggested Remedial Measures

- Sensitize people on benefits of adopting diverse dietary preferences.
- Encourage the diversification of agriculture.
- Intensify campaigns to encourage farmers to use better yielding varieties of maize.
- Subsidise cost of hybrid seed to make them more affordable.
- Intensify research in development of affordable and efficient storage facilities.
- Popularize research findings.
- Revitalize training of frontline agricultural officers, field assistants, extension workers etc.
- Encourage farming communities to form co-operative societies so as to readily access credit and technology among others.
- Intensify research in animal or livestock husbandry.
- Rehabilitate veterinary infrastructure.
- Sensitize the public on the effects of some foodstuffs on the market.
- Train local farmers in water management skills.
- Encourage farmers to use organic manure.

2.5 The Right to Health

The right to health is one of the most important rights to the realization of human development. The state of health of the population in any country has a direct effect on its productivity. The right to health entails that every person has a right to the enjoyment of the highest attainable standards of physical and mental health that is necessary for economic, social and political development. This right also includes access to health care services as well as reproductive health.

Malawi is committed to a number of international and regional instruments that address this right. These include, Article 25 of the UDHR, Article 12 of the ICESCR, Article 16 of the ACHPR, Articles 10 (h) and 12 of the CEDAW and Article 24 of the CRC.

Section 13 (c) of the Constitution provides for adequate health care, commensurate with health needs of Malawian society and international standards of health care as a principle of national policy but does not explicitly recognize it as a right. Furthermore, section 30 (2) of the Constitution provides for the right to development that embraces issues of health services. Therefore, these provisions oblige the State to facilitate the right of all persons to equitably access health services.

Malawi has a Health Policy Framework in place. The overall goal of the health sector is to raise the level of health status of all Malawians. At present it is guided by the 1999 - 2004 Health Plan. The National Health Plan identifies a number of key areas of focus that include: -

- Provision of an Essential Health care Package (EHP).
- Introduction of Sector Wide Approach (SWAP).

- Decentralization of Health Care Management.
- Introduction/Strengthening of cost recovery/user fees.

The Government has implemented specific preventive health programmes targeting major diseases namely: -

- The Malaria Control Programme.
- The Integrated Management of Childhood Illness (IMCI) Programme.
- The National Control of Diarrhea Diseases Programme.
- Tuberculosis Control Programme.
- Acute Respiratory Infection (ARI) Programme.
- The National AIDS Control Programme.

The impact of these programmes has been limited due to resource constraints and high levels of illiteracy within the population, among other reasons.

Other challenges include shortage and poor distribution of trained staff; poor co-ordination and lack of regular monitoring; frequent shortage of equipment, drugs and medical supplies; and inadequate and deteriorating health care infrastructure. In some cases, rural health centers have no medical personnel even when structures exist. The patient medical officer ratios are very high. For example, the average doctor /population ratio is about 1:150,000. In 1995/96, the clinical officer/population ratio was 1:11,000 and 1:50,000 in the urban and rural areas respectively¹⁹. There also have been reported cases of poor attitude towards work by some medical personnel in hospitals and health centers that erodes patients' trust in the public health system.

¹⁹ UN Country Assessment of Malawi 2001, p.19

Malawi has one of the highest HIV infection rates in the world. Estimates put the HIV infection rate in the 15-49 years age group at 15% nationally²⁰. It is further estimated that most of the in-patients in government hospitals are suffering from AIDS related diseases.

The pandemic has put a great strain on the economy. Further, people infected and affected by HIV/AIDS have experienced discrimination and stigmatization. In order to deal with the HIV/AIDS problem, Malawi has developed a National HIV/AIDS Strategic Framework and Agenda for Action that defines the priority areas for action for the period 2000-2004. Plans are under way to develop a National Policy on HIV/AIDS. There is also political will on the part of Government as evidenced by the establishment of a Cabinet Committee on HIV/AIDS to provide overall policy guidelines. The Vice President chairs this Committee.

Malawi's health indicators over the years indicate that there has been improved access to health care with about 84% of the population within 8 kilometres walking distance of a primary health care facility, improved immunization coverage, and awareness rate on HIV/AIDS and family planning increased to over 90%²¹. However, Malawi's health indicators are still among the poorest in the world. Life expectancy at birth has declined from 43 in 1996 to 39 in the early 2000s largely due to the HIV/AIDS pandemic²².

Suggested Remedial Measures

- Improve availability of drugs, medical supplies and equipment in all health centers.
- Provide high quality health care service.

²⁰ MPRSP, p 85 -86

²¹ UN Common Country Assessment 2001:p196

- Train more health workers and increase their availability especially in rural areas.
- Increase access to health care facilities by building and maintaining health centers.
- Implement and monitor the health sectoral policies.
- Finalize and adopt a National HIV/AIDS Policy.
- Monitor, implement and review the HIV/AIDS Strategic Plan.
- Enhance Home Based Care, including care through community IMCI.
- Improve and sustain the high immunization coverage.

2.5 Right To a Clean and Healthy Environment including Access to Sound and Sufficient Sanitation and Access to Potable Water

The right to a clean and healthy environment including access to sound and sufficient sanitation and access to potable water is one of those rights that clearly shows the corresponding nature of one's claim to a right with the duties and responsibilities that come with it. This right entails prevention of depletion of natural resources and degradation of the environment and attainment of a healthy living, learning and working environment. It is also a right that protects local communities from being subjected to effects of dumped pollutants that are deleterious to the environment in which they live. The right further requires conservation and promotion of biological diversity so as to avail future generations with sustainable natural resources. Malawi's international obligations in respect of this right stem from, among others, Article 12(2)(b) of the ICESCR and Article 24 of the ACHPR. Its domestic obligations are spelt out as a principle of national policy in section 13 (d).

²² MPRSP, xv

Malawi's natural resources are threatened by unsustainable levels of usage as manifested by the high environmental degradation. It is estimated that 70 - 80% of Malawi's biomass is destroyed each season from burning of crop residue, bush and forest fires, use of fire for hunting and clearing of grazing pasture, and cutting of trees for fuelwood. This is compounded by the fact that the majority of the population lives in rural areas where their livelihoods heavily depend on drawing from the environment. Lack of affordable alternative sources of energy has led to over-dependence on fuelwood that has in turn accelerated deforestation.

Environmental degradation has also been exacerbated by over population, which has put pressure on land use more especially in the Southern Region. This has led to people cultivating in areas prone to soil erosion and floods. These practices have led to high levels of deforestation; massive loss of topsoil and soil fertility through erosion and degradation; rapid depletion and degradation of water resources; and growing threats to fish resources and bio-diversity.

The waste disposal systems in most urban centres are in poor state such that waste management has become a problem. The Ministry of Health, City and Town Assemblies have public health sections that are supposed to conduct public health education. However, it is noted that personal hygiene is deteriorating at an alarming rate. For instance, in major cities and towns, people have resorted to dumping rubbish anywhere and it is not uncommon to see people answering to nature's call in public places. These practices threaten the existence of a healthy and clean environment. In some semi urban and rural areas standards of hygiene are low as evidenced by the absence of pit latrines, among other things.

Some companies do not follow stipulated waste disposal regulations. Squatter areas do not have proper waste disposal systems. As a result effluent from industries and households end up being deposited in streams and hence posing a health hazard for those people who use water from these streams as few people have access to potable water.

Most companies do not provide a healthy working environment for their workers. The Occupational Health and Safety Act has provisions that require employers to provide employees working in hazardous situations with adequate protective materials. However, some employers do not provide their workers with such protective materials hence put the health of the employees at risk. Some working environments such as factories are poorly ventilated thus creating an environment for the spread of communicable diseases.

Suggested Remedial Measures

- Raise awareness on natural resource management.
- Empower people to engage in economic activities that do not depend much on natural resources.
- Encourage, increase and improve availability of family planning services.
- Intensify rural electrification programme and reduce tariffs.
- Develop efficient solid and liquid waste disposal systems.
- Encourage private sector participation in disposal of wastes.
- Encourage community-based initiatives in waste removal and disposal.
- Initiate recycling of waste and use of waste for gainful purposes.
- Intensify rural water supply through construction of boreholes and small scale piped water systems.
- Encourage water harvesting.
- Encourage Local Government Assemblies to provide easily accessible and user-fee sanitation facilities.

- Conduct civic education on the importance of a clean and healthy environment.
- Advocate for the enforcement of Environmental Management Act, Water Resources Act and Local Assembly By-Laws on hygiene.
- Encourage use of Ventilated Improved Pit (VIP) latrines so as to improve personal hygiene at household level.
- Intensify factory inspections.

2.7 Labour Rights

Labour rights form one of the pillars for the realization of human development. The rights include the right to work, to freely choose employment and to have just and favorable working conditions. As such these rights provide an opportunity to every person to earn a living and enhance their dignity and self-esteem.

Malawi's international obligations in respect of labour rights arise from, among other instruments, Article 8 of the ICESCR, Articles 15 and 22 of the ACHPR and various ILO Conventions such as the Abolition of the Worst forms of Child Labour, and the Minimum Age Convention. Under the Constitution, labour rights are provided for under Section 31. Further, the Employment Act (2000) and the Labour Relations Act (1996) address various issues of labour rights in Malawi.

Minimum wages for labourers were revised upwards in 2000 and housing allowances for labourers were also introduced. However, the revision did not help to address the issue of poverty as the wages are still low. Worse still, there are some employers who pay their employees below the recommended minimum wages. Ministry of Labour has put in place a mechanism that helps it monitor compliance by employers with recommended minimum wages through labour

inspection. However, the Ministry's Labour Officers fail to effectively carry out their mandate on account of inadequate financial and material resources.

The other challenges relating to labor rights include the following: -

- Employee/employer relationships are prone to exploitation due to unequal power relations and bargaining capabilities. For example, although Ministry of Labour has a mechanism for assisting estate tenants by certifying their contracts with the Landlords through attestation of contracts, there is no law that is adequately protecting them.
- Many Trade Unions are not effective partly due to lack of proper guidance by the parent Trade Unions. As at 2002, there were two umbrella Trade Unions - Malawi Congress of Trade Unions (MCTU) and Congress of Malawi Trade Unions (COMATU). Although the existence of these two Trade Unions can be viewed as a healthy sign of diversifying people's choices in terms of freedom of association, the situation on the ground is such that they appear to be pulling at each other thereby greatly undermining the principle of collective bargaining.
- There are also issues of discrimination in accessing employment opportunities due to the disadvantaged status of some prospective employees such as people with disabilities on account of their disability status and women on the basis of gender. Malawi has joined the international community in combating HIV/AIDS related discrimination in workplaces through various programs. However, these interventions are few and their impact is yet to be felt in most workplaces, as discrimination on the basis of HIV/AIDS status is still prevalent.
- Some companies still have conditions of service that do not comply with the provisions of the Employment and Labor Relations Acts.
- Lack of legislation protecting retired persons.

Suggested Remedial Measures

- Investigate unfair labor practices and address the situations accordingly.
- Strengthen the capacity of the Ministry of Labor by allocating adequate resources in order for it to effectively perform its duties.
- Expedite enactment of Tenancy Act.
- Conduct a study on discrimination and exploitation in the employment sector.
- Enact law on retired persons.
- Intensify campaigns against HIV/AIDS related discrimination in the workplace.
- Orient the disadvantaged on the importance of litigation with regard to issues of discrimination.
- Empower tribunals to effectively enforce labor laws.
- Intensify collaboration between Ministry of Labor and investment promotion agents such as MIPA to properly advise investors on the Malawi labor laws.

2.8 The Right not to be held in Slavery, Servitude and Forced Labour

Slavery was the first human rights issue to arouse wide international concern²³. It was a system of holding a human being for forced labour against his/her will and entailed complete lack of recognition of the victim as a person. Slavery also thoroughly robbed him/her of his/her inherent dignity and worth. Despite the fact that it was abolished in its traditional form, slavery persists having taken various subtle forms. The right not to be held in slavery, servitude and forced labour entails that no person should be subjected to conditions that are tantamount to forced labour or required to perform forced or compulsory labour. This right further proscribes slave trade and slave like practices.

²³ UN Fact Sheets, 1-27, Seventh Edition, Lund – 2001, p. 255

Malawi has demonstrated great commitment to the abolition of slavery, slave trade and all slave-like practices and to that end has ratified a number of international instruments. Article 4 of the ICCPR, Article 8 of the ECESCR Article 6 of CEDAW, Articles 32, 34 and 35 of the CRC and Article 15 of the ACHPR outlaw these practices. At the local level, Section 27 of the Constitution does the same.

Generally there is neither slave trade nor direct forced labour in Malawi. However, there are situations that render the circumstances tantamount to either slavery or forced labour. For instance, there is lack of transparency in the manner contracts in the tenancy system are entered into. In most cases, such contracts create conditions that lead tenants to live in some form of bondage to their landlords. There also have been reports of estate owners who get labourers from other districts and dump them without any assistance at the end of the growing season when their services are no longer needed. This borders on servitude.

Some foreigners have managed to traffic young Malawians outside the country over the years. Children are promised a bright future through education while women are promised jobs and a better life. The trafficked women and children end up being at the mercy of the traffickers and are subjected to sexual exploitation and all manner of abuse that border on slavery or servitude. There are also cases of some foster parents who abuse and subject their adopted or foster children to conditions tantamount to slavery or servitude.

Suggested Remedial Measures

- Expedite enactment of legislation on tenancy labor.
- Conduct civic education on the fundamental breaches of freedoms perpetrated by the tenancy system.

- Review the Constitution and other regulations of the Tobacco Association of Malawi (TAMA).
- Investigate alleged cases of forced labor.
- Raise awareness on the trafficking of women and children.
- Enact foster care legislation.
- Put stringent measures on foster care scheme.
- Accelerate the implementation of the Poverty Reduction Strategy.
- Review and enforce legislation to outlaw trafficking of people.

2.9 Family and Marriage

The right to marry and found a family is one of the most essential human rights. It is a right that reflects the due recognition of the person as a social being and the fact that the family is the basic and fundamental social unit within the social fabric.

Malawi fully recognises this right and is subject to several international and regional human rights instruments that have provisions on issues of family and marriage. These include Articles 12 and 16 of the UDHR, Articles 17 and 23 of the ICCPR, Article 10 of the ICESCR, Article 16 of CEDAW, and Articles 18,27 and 29 of the ACHPR.

At the national level, Section 22 of the Constitution guarantees this right. This section provides that the family is the natural and fundamental group unit of society and is entitled to protection by society and the State. Further, the Constitution stipulates that each member of the family is entitled to enjoy full and equal rights and should be protected by law against all forms of neglect, cruelty or exploitation.

2.9.1 Types of Marriages

Section 22 (5) of the Constitution recognizes marriages at law, custom and by repute or by permanent cohabitation. It is noteworthy that in practice, these different types of marriages give rise to different legal consequences that have implications on the rights of parties thereto. For instance, women married at custom do not enjoy the same rights and do not have the same obligations as those married under statutory law. Those married under statutory law have an advantage over the others.

Furthermore, marriages by repute or by permanent cohabitation are on the increase although they do not have a proper legislative framework or procedure under which both spouses can be fully protected. Most women who find themselves in this kind of marriage have in many cases lost out and suffered in the event of the union coming to an end or the other spouse dying. This is because the women are often completely ignored by their deceased husband's family under the cultural guise that they were not recognized wives.

In addition, although church marriages purport to create monogamous unions, they are often not legally binding because most of them are contracted under the African Marriages (Christian Rites) Legislation Act. That Act expressly provides that marriages contracted thereunder do not carry any legal consequences. As such, these marriages are not legally protected. It is apparent though that many people are not aware that this is the legal status of such marriages and are further not aware that churches can celebrate marriages under the Marriage Act that offers legal protection.

Correlative to the right to marry and found a family is the duty of the State and the Society to protect family members within the marriage during its subsistence and dissolution. It is recognized that there are certain circumstances where

marriages have to come to an end. For marriages celebrated under the Marriage Act, the law recognizes five grounds of divorce under the Divorce Act. These grounds are adultery, cruelty, desertion without cause for a period of at least 3 years, insanity and for men the commission of sodomy or bestiality. These grounds must be strictly and technically proved in the High Court. This scenario unduly restricts the freedom of the parties to have their marriage dissolved when the marital relationship has irretrievably broken down but the grounds cannot be technically established in court.

For marriages at custom, however, there are no specific grounds for divorce but a husband's complaint against his wife carries more weight. Further, reasonable chastisement by the husband is deemed to be acceptable. Wives are expected to protect the marriage and their complaints are often disregarded. A wife can leave her husband only when there is complete neglect or the husband has exceeded powers of chastisement.

Upon dissolution of the marriage, issues of maintenance, custody and guardianship emerge for customary marriages. Wives and children return to their natal families without guarantee of support from their former husbands and their fathers respectively. In some cases, men are also in a similar predicament, especially when the wives were the major breadwinners. Further, under the *Chikamwini*¹³ system property rights of men are not respected upon dissolution of the marriage. Consequently, women, and in some cases, men, are left with the responsibility of raising the children with little or no resources at all. For statutory marriages, although the law is quite orderly and definite in respect of what happens after divorce, enforcement of such law is still problematic. The situation is especially difficult for women who do not have remunerative work.

¹³ This is the system whereby the husband goes to live with the wife at her home of origin upon marriage.

A recent development in the country as regards partnerships is that there is an emergence of same sex partnerships among some foreigners living in Malawi and some Malawians. The people involved in this do it discretely. This problem is likely to give rise to a number of problems because as the law currently stands, the practice is illegal.

2.9.2 Capacity to Marry

The Constitution has put the age of 18 at which a person can freely enter into marriage. The law also stipulates that persons between the ages of fifteen and eighteen shall only enter marriage with consent from either parents or guardians. In addition the State is required to discourage marriages of persons under the age of fifteen, as such marriages put the lives of the parties at risk.

There is a common practice, though, among parents and guardians in many parts of the country to marry off their girls at very tender ages sometimes as low as 12 years. The result is teenage mothers who are not physically and mentally prepared for child bearing, taking care of their children and indeed not prepared for the general demands of marital life. Further, such teenage mothers or wives meet multiple problems. For example, they experience early divorce and they fail to appreciate married life and the responsibilities that go with it.

The problem of child bearing has direct links with maternal mortality and infant mortality rates, now at 1120 per 1000,000 live births and 104 per 1,000 live births respectively²⁴. Infant mortality and malnutrition contributes to the country's low position on the human development index where Malawi is ranked 163 out of 174 countries²⁵.

²⁴ NSO:2001

²⁵ UN Human Development Report: 2001

2.9.3 Forced marriages

Section 22 (4) of the Constitution provides that no person shall be forced to enter into marriage. In some cases, children below the age of 18 and in exceptional cases, even adults are forced into arranged marriages. This practice is wide spread in many rural areas of the country and in some instances in urban areas owing to a number of reasons including poverty and culture. This practice is a flagrant violation of the right not to be forced into marriage. Another form of forced marriages is the practice of wife inheritance, which is common in patrilineal societies in the country.

Suggested Remedial Measures

- Harmonize customary law and the Constitution.
- Align legislation with international human rights standards.
- Standardize basic procedural requirements for all types of marriages through legislation.
- Lobby marriage officiating authorities to verify the free will of persons intending to marry.
- Set up specific periods or circumstances by which marriages by permanent cohabitation or by repute are to be legally recognized.
- Create awareness on the dangers of early marriages and teenage pregnancies.
- Lobby for the elimination of all forms of harmful ritual and cultural marital practices.
- Advocate for provision of family planning services.
- Advocate for marriage counseling to those intending to enter into marriage.
- Conduct research on sex marriages and make appropriate recommendations.
- Outlaw marriages of persons under the age of 15.
- Raise awareness on the dangers of forced marriages.

2.10 The Right to Property

The economic survival of every person as well as the general economic development in an open economy such as Malawi largely depends on the effective guarantee to people of their right to own property without fear of being arbitrary deprived of the same. Malawi comes from a recent history where this right was persistently under serious threat particularly with the existence of the now repealed Forfeiture Act. Mindful of this, Malawi does place particular emphasis on this right. To this effect, Malawi has ratified among other human rights instruments, the ICESCR as well as the ACHPR without any reservation in respect of this right. This right is expressly provided for in Article 17 of ICESCR, and Articles 14 and 21 of ACHPR. Further, the right has been effectively guaranteed under Sections 28 and 44 (4) of the Constitution.

2.10.1 Property Grabbing

The Wills and Inheritance Act makes property grabbing a criminal offence under Section 84A. Notwithstanding the existence of this Act, there is high incidence of property grabbing of deceased estates from widows and orphaned children. Property grabbing by relatives is exacerbated by poverty. This is because such deceased property is regarded as the only hope by the remaining relatives. This problem is further exacerbated by the high incidence of joint ownership of property by couples, but in the name of one individual and in most cases the husband. This results in breaches of couples' property rights in their individual capacity at the dissolution of marriage. It should be observed, however, that the Wills and Inheritance Act does not protect men in matters of inheritance of deceased estate. It presupposes that it is only men who will die and leave behind property.

In both patrilineal and well as matrilineal societies, when widows or widowers respectively move out of their deceased spouse's home-stead, they are in most cases not allowed to take with them their property thus denying them their right to property.

2.10.2 Deprivation of Land

Another form of violation of the right to property is the deprivation of customary land by some traditional leaders who take away such land from their subjects without due cause and without any form of compensation.

2.10.3 Crime and Right to Property

There has been an increase lately in the crime rate in the country that includes armed robberies. This increased insecurity is threatening people's right to property as most people have lost their property and live in fear. These armed robberies constitute probably the most widespread form of violation of this right.

Suggested Remedial Measures

- Enact and review laws to create a conducive environment for people to acquire property.
- Review the law of inheritance so as to have a fair distribution of intestate property with a view to protecting the vulnerable.
- Review the Wills and Inheritance Act to make it gender sensitive.
- Conduct civic education on the need for couples to specify joint ownership of property in their title documents.
- Lobby for registration of customary land in the villages.
- Improve provision of security.

2.11 Right to Housing

One of the most cardinal human requirements is the need for housing and shelter. The right to housing is enshrined in Article 25 of the UDHR, Article 11 of ICESCR and the UNCHSS – Global Observatory Programme Habitat Agenda. The Constitution does not expressly provide for this right but only mentions it as a measure towards the realization of the right to development under Section 30 (2).

Malawi has the daunting task of providing decent housing and shelter for its citizens both in urban and rural areas due to a number of negative social factors including poverty and high population growth rate.

2.11.1 Low Income Housing

The majority of people lives below the poverty line and cannot afford to build low cost houses. As a result, some put up housing structures that do not meet the required standards. There has not been any comprehensive programme to address the housing needs of people in the rural areas. Some housing programmes that were introduced in the past to address the housing needs of rural masses were not sustained. Lack of sound monetary policies to reduce the high bank mortgage rates makes it even harder for poor people to at least build low cost houses.

2.11.2 Housing Needs for People with Disabilities

Most of the houses that have been built in Malawi fail to meet the needs of persons with disabilities in terms of their designs.

Suggested Remedial Measures

- Intensify mobilization of resources to build more houses.
- Create an enabling economic environment to encourage private participation in the building of houses.
- Introduce special loans to enable the poor to build low cost houses.
- Lobby for disability friendly housing designs that facilitate accessibility.
- Formulate sound monetary policies to ensure that bank mortgage rates go down.

2.12 Women's Rights

Women in many societies including Malawi generally constitute a vulnerable group in special need of protection by the State. Women with disability are in an even worse situation in that they are discriminated against firstly on the basis of their gender that assigns them a second-class citizenship, and secondly, because of their disability, they are devalued because of how society perceives disability. Malawi has recognized this special need as exemplified by her ratification of CEDAW in 1987. CEDAW was the first international human rights treaty to be ratified by Malawi. Malawi is also committed to several international human rights instruments that uphold non-discrimination and equality of people. These include UDHR, ICESCR, ICCPR, ACHPR and the Southern Africa Development Community (SADC) Heads of States and Governments Declaration including its Addendum on the Prevention and Eradication of Violence against Women and Children. The current low status of women in the country is closely related to

the gender-based socio-cultural and economic barriers that hinder the ability of girls to develop and become full and equal adult participants in society²⁶.

2.12.1 Non- Discrimination

Section 24 of the Constitution of Malawi guarantees women the right to full and equal protection by the Law and the right not to be discriminated against on the basis of their gender or marital status. Women are also accorded the same rights as men in Civil Law which include equal capacity to enter into contracts; acquire and retain custody, guardianship and care of children and to have an equal right in the making of decisions that affect their upbringing; and to acquire and retain citizenship and nationality.

On dissolution of marriage, women are entitled to a fair disposition of property that is held jointly with a husband; and to fair maintenance taking into consideration all the circumstances and in particular, the means of the former husband and the needs of any children resulting from the union.

The Constitution further states in section 24(2) that any law that discriminates against women on the basis of gender or marital status shall be invalid and legislation shall be passed to eliminate customs and practices that discriminate against women, particularly practices such as:

- (a) Sexual abuse, harassment and violence.
- (b) Discrimination in work, business and public affairs.
- (c) Deprivation of property, including property obtained by inheritance.

²⁶ Malawi National Platform for Action, p21

The entrenchment in the Constitution of the principle of non-discrimination is a clear testimony of Malawi's commitment to promote and protect the rights of women.

Since the ratification of CEDAW, Malawi has participated in several international conferences on women and has implemented some of the recommendations made at such fora. As a follow-up to the Global Platform for Action adopted at the Beijing Conference in 1995, the government formulated a National Platform for Action (NFPA) in 1997. The NFPA has four priority areas, namely: Poverty alleviation and empowerment of women; The Girl Child; Violence Against Women and Peace. Malawi has moved further by formulating a National Gender Policy with six thematic priority areas, which is being implemented by all stakeholders. The thematic areas covered under the policy are: education and training; reproductive health, food and nutrition security; natural resources and environmental management; governance and human rights; poverty eradication and economic empowerment.

2.12.2 Right to Economic Activity for Women

Poverty is rampant and widespread among women in Malawi, the majority of whom live in rural areas. Women are less likely to pull themselves out of poverty because their productivity is lower than that of men due to limited access to education, extension services, information, training, health services, credit and other financial services as well as labour-serving technologies.

In respect of credit, some of the factors affecting women's access include prohibitive collateral requirements by lending institutions, low educational levels, limited knowledge and information on lending institutions and long distances to such institutions. With this scenario, women continue to be marginalized in as far as their right to economic activity is concerned.

2.12.3 Labor Rights for Women

Women constitute up nearly half of the labor force and the majority of them are generally unskilled with no formal education. Only 15 percent participate in formal employment while 60 percent are full-time farmers. The former are concentrated in low skilled jobs with little pay whereas the latter, because of limited access to agricultural extension services and their reproductive roles, mainly produce food crops that generate very little income for them.

2.12.4 Access to Justice for Women

There are a number of factors that impede the right of women to access justice. These include high levels of poverty and illiteracy amongst women which make it difficult for women to institute court or other remedial proceedings.

2.12.5 The Right to Property for Women

The enjoyment of women of their right to property is often hampered by a number of factors. For instance, cases of property grabbing are rampant especially where the widow is not gainfully employed. The woman's general contribution in the family is not valued as having contributed to the acquisition of property. Very few men write a Will concerning their property; but sometimes even where the Will is available relatives disregard it and grab the property from the family. Further, the Wills and Inheritance Act that is supposed to guide the distribution of property does not reflect present day circumstances. For instance, customary heirs who did not have any contacts with the deceased sometimes end up getting a larger share of property. Further, the stipulated share percentages for the heirs are in some instances on the higher side as compared to those of widows and the children.

2.12.6 Custody and Care of Children

Women normally accept custody, guardianship and care of children. However, they face many hardships as they provide the care for the children especially where they have inadequate financial resources. In the event of divorce, some men deliberately ignore maintenance of the children despite orders from courts.

2.12.7 Citizenship and Nationality

The Constitution upholds equality on issues of citizenship and nationality. However, women are still being discriminated against because a Malawian woman married to a foreigner loses her nationality unless the husband renounces his citizenship on their first anniversary of marriage. In addition, children born out of such marriage are denied of their mother's citizenship.

2.12.8 Harassment of Women

Girls and women continue to face harassment and violence at work, in the home and in the public places. Cases of rape, defilement, incest, wife beating and other types of violence against women are extensively reported in the media. Cases of domestic violence are on the rise despite the fact that some organizations are working on incidences of domestic violence incidents in order to reduce their occurrence.

Suggested Remedial Measures

- Advocate for equal opportunities with men for the promotion or appointment of women to key decision making positions.

- Grant equal access with men to credit, training and extension services to women.
- Reduce household food insecurity and poverty.
- Review legislation on citizenship and nationality.
- Link the national adult literacy programme to the formal education system.
- Develop and organize the informal sector where majority of women work.
- Train women and girls in life skills.
- Lobby for the elimination of all forms of discriminatory and harmful cultural practices.
- Enact a domestic violence law.
- Promote gender responsive guidelines for selection of persons in decision-making bodies at all levels.
- Promote the provision of equal opportunities for vocational and skills training to women and men, boys and girls.
- Review the Wills and Inheritance Act to reflect gender responsiveness.
- Attach value to the social and economic contribution of women in the family.
- Advocate for active enforcement of the Wills and Inheritance Act by way of prosecution.
- Conduct civic education on the Wills and Inheritance Act.

2.13 Right to Language and Culture

Language and culture are critical elements that ensure that society lives in an organized and orderly manner. Without effective language communication and common cultural identification within social groups, the social structure would disintegrate.

Malawi recognizes the essence of language and other cultural rights and to that extent is subject to various international instruments that guarantee this right. The provisions that guarantee this right include Article 27 of the UDHR, Article 29

(c) of the CRC, Articles 17 and 22 of the ACHPR and Article 15 of the ICESCR. The Constitution guarantees every person the right to culture and language under section 26.

Malawi is in the process of finalizing the development of a National Cultural Policy. However, there is no language policy. The promotion and preservation of culture in Malawi is overseen by the Ministry of Youth, Sports and Culture through the Departments of National Archives, the Museums of Malawi, the Antiquities, the Censorship Board and the Department Arts and Crafts. The Copyright Society of Malawi, a statutory body, also assists in overseeing the promotion and preservation of culture in Malawi.

These departments and the statutory body were set up to operationalise the following laws of Malawi:

1. The National Archives Act (1975).
2. Printed Publications Act (1947).
3. The Museums Act (1989).
4. The Monuments and Relics Act (1990).
5. The Censorship and Entertainment Control Act (1968) to be replaced by Classifications Act.
6. The Arts and Crafts Act (1990).
7. The Copyright Act (1989, Amended 1994)

The various pieces of legislation cited above ensure that every aspect of culture is covered in one way or the other. However, the aspect of language is not clearly covered in these laws. It is therefore, important that when looking at the right to language and culture, a deliberate effort be made to re-examine all these laws to ensure that the aspect of language is adequately covered. This will demand a multi-sectoral approach.

Suggested Remedial Measures

- Create an enabling environment for the respect and protection of cultural and linguistic rights.
- Finalize the National Cultural Policy.
- Develop a Language Policy.
- Enrich our national cultural values with universal cultural values.
- Promote a sense of pride in the national cultural heritage including language and respect for unity in diversity.
- Strengthen and promote positive national cultural values.
- Accelerate the enactment of the Classification Act and revision of other relevant Acts.

RIGHT	SITUATION ANALYSIS		PROPOSED STRATEGIES	RESPONSIBLE INSTITUTION
	LEGAL FRAMEWORK AND POLICIES	CHALLENGES		
2.1 Right to Education	<ul style="list-style-type: none"> • UDHR • ICSECR • ACHPR • Constitution • Education Act • MPRSP • PIF • Vision 2020 • University Act • MANEB Act 	<ul style="list-style-type: none"> • Long distances to school. • Inadequate basic teaching and learning materials. • Cultural barriers to education. • Poverty. • HIV/AIDS. • Gender inequality in education. • Poor quality of education. • Inefficient education management systems. • Poor infrastructure. • High drop out and repetition rates. • Uncontrolled mushrooming of private schools. • Limited enrolment capacity at tertiary level. • Unqualified and under qualified teachers at primary and secondary levels. • Limited opportunities for children with special needs. • Brain drain at tertiary level. • Outdated Education Act. • Inadequacy of 5 years of basic education to eradicate illiteracy. • Misallocation and mismanagement of resources. 	<ul style="list-style-type: none"> • Increase access by building more schools. • Provide adequate teaching/learning materials. • Eliminate cultural barriers. • Respond adequately to problems in education created by the HIV/AIDS epidemic. • Build management capacity. • Recruit and train more teachers. • Revise Education Act and other acts. • Increase access to education for children with disability. • Amend Constitution to replace 5 by 8 years for compulsory education. • Construct and expand tertiary institutions. • Offer competitive salaries and conditions of service for lecturers and staff. • Put in place resource utilization control measures. 	<ul style="list-style-type: none"> • Ministry of Education • MASAF • University of Malawi • MHRC • Private Schools Association of Malawi (PRISAM) • MANEB • MIE • MACOHA • Ministry Responsible for Persons with Disability. • NGOs • Traditional Leaders • Media Organisations • Religious organizations • Parliament

RIGHT	SITUATIONAL ANALYSIS		PROPOSED STRATEGIES	RESPONSIBLE INSTITUTION
	LEGAL FRAMEWORK AND POLICIES	CHALLENGES		
2.2 Rights of Children 2.2.1 Children deprived of family environment (i) Orphans & abandoned children	<ul style="list-style-type: none"> • CRC • Constitution • Adoption Act • Divorce Act • Wills & Inheritance Act (2001) • Policy guidelines on the Care of Orphans (1990) • National Plan for the Survival and Protection and Development of children in the 1990s • Children and Young Persons Act 	<ul style="list-style-type: none"> • Inadequacy of the Acts e.g. differential treatments under the Wills and Inheritance Act. • No follow-up provisions on adopted children in the Adoption Act. • Lack of Foster Care Act • Increased cases of orphans. • Overburdened extended family system. • Lack of adequate care for orphans & abandoned children. • Stigmatization of orphans to HIV/AIDS. • Abuse of orphans. • Lack of regulations for managing orphanages. 	<ul style="list-style-type: none"> • Review Adoption of Children Act. • Enact Foster Care Act. • Introduce regulations for managing orphanages. • Raise awareness on the care of orphans. • Investigate alleged cases of abuse of orphans. • Regular inspection of orphanages and foster care families. • Recruit and train foster care families. • Strengthen orphan care programmes. 	<ul style="list-style-type: none"> • Ministry of Gender and Community Services • Ministry of Youth, Sports and Culture • Law Commission • NGOs • MHRC • Service Clubs e.g. Lions Rotary • Faith Communities • Parliament

RIGHT	SITUATIONAL ANALYSIS		PROPOSED STRATEGIES	RESPONSIBLE INSTITUTION
	LEGAL FRAMEWORK AND POLICIES	CHALLENGES		
(ii) Street children	<ul style="list-style-type: none"> • CRC • Constitution 	<ul style="list-style-type: none"> • Increased number of street children • Issues of violence and exploitation on street children • Lack of comprehensive programmes for street children • Lack of clear Government policy on street children 	<ul style="list-style-type: none"> • Advocate on management of prevention of street children • Build the capacity of NGOs working with street children • Strengthen programmes to rehabilitate street children • Provide counseling to both street children and members of their families • Intensify reintegration of street children into society. 	<ul style="list-style-type: none"> • Ministry of Gender and Community Services • Ministry of Youth, Sports and Culture • NGOs • Town and City Assemblies
(iii) Abducted children/child disappearance	<ul style="list-style-type: none"> • CRC • Penal Code 	<ul style="list-style-type: none"> • Increased reports of child abductions. • Mysterious disappearances of some children. • Killing and using of body parts of abducted children for rituals. 	<ul style="list-style-type: none"> • Intensify awareness on need to ensure safety and security of children • Investigate alleged cases of child abduction • Conduct a study on the magnitude of child abduction • Rehabilitate recovered abductees 	<ul style="list-style-type: none"> • Ministry of Gender and Community Services • Ministry of Youth, Sports and Culture • NGOS • MHRC
2.2.2 Right to be protected from child labor	<ul style="list-style-type: none"> • CRC • Minimum Age Convention no 138 (1973) • Abolition of the worst forms of child labor Convention (1999) • Constitution • Employment Act (2000) • Employment of Women and Children Act. 	<ul style="list-style-type: none"> • Increased number of child laborers on Tobacco and Tea estates. • Increased number of domestic girl workers. • Increased number of child vendors. • Increased school drop out by school going age children. 	<ul style="list-style-type: none"> • Raise awareness on the dangers of child labor. • Intensify implementation of empowerment programmes for the working youth/children (life skills). • Introduce compulsory education. • Introduce role-modeling programme for youth at village level. • Encourage employers of domestic workers to allow them attend night school. 	<ul style="list-style-type: none"> • MHRC • Ministry of Gender and Community Services • Ministry of Youth, Sports and Culture • NGOs • Faith Community • Ministry of Education, Science and Technology

RIGHT	SITUATION ANALYSIS		PROPOSED STRATEGIES	RESPONSIBLE INSTITUTION
	LEGAL FRAMEWORK AND POLICIES	CHALLENGES		
2.2.3 Rights of Children in Conflict with the Law	<ul style="list-style-type: none"> • UDHR • ICCPR • CRC • Children and Young Persons Act (Cap 25:03) • Constitution 	<ul style="list-style-type: none"> • Low age of criminal responsibility. • Inadequacy of the Children and Young Persons Act. • Abuse of children during arrests and illegal use of handcuffs. • Delayed trials for juveniles. • Appalling conditions in prisons and reformatory institutions. • Keeping of Juveniles in prison despite being committed to reform institutions. • Lack of pretrial social inquiry reports. • Failure to implement diversion programmes. • Lack of expertise in handling juvenile cases. 	<ul style="list-style-type: none"> • Orient and train police, magistrates, prison officers and social welfare officers on juvenile justice. • Improve conditions in reformatory institutions and prisons. • Enforce implementation of diversion programmes. • Conduct timely trials • Speed review of relevant Act. • Encourage prevention of crime through provision of recreational facilities. • Expedite the review and enactment of the Penal Code. 	<ul style="list-style-type: none"> • HRC • Ministry of Gender and Community Services • Ministry of Youth, Sports and Culture • Ministry of Home Affairs • Ministry of Justice • Judiciary • HRC • Law Commission • NGOs • Faith Community • Parliament
2.2.4 Rights of children with special needs	<ul style="list-style-type: none"> • CRC 	<ul style="list-style-type: none"> • Limited community based rehabilitation programmes • Limited awareness on the prevention of disabilities 	<ul style="list-style-type: none"> • Create awareness on <i>causes and</i> prevention of disabilities. • Continue reintegrating children with disabilities in the main stream of education. • Expand community based rehabilitation programmes. 	<ul style="list-style-type: none"> • Ministry of Persons with Disabilities • Ministry of Education, Science and Technology • NGOs • MHRC • MACOHA

RIGHTS	SITUATION ANALYSIS		PROPOSED STRATEGIES	RESPONSIBLE INSTITUTION
	LEGAL FRAMEWORK AND POLICIES	CHALLENGES		
2.3 Right to Economic Activity	<ul style="list-style-type: none"> • ICESCR • Reserve Bank of Malawi and Banking Act 1998/99 • Employment Act (2000) • Privatization Act (1995) • Malawi Energy White Paper (2001) • Vision 2020 • MPRSP • Malawi Bureau of Standards Act • Investment Promotion Act (1991) • Integrated Trade and Industry Policy (1998) • Cooperative Societies Act (1998) • Constitution 	<ul style="list-style-type: none"> • Unemployment. • Retrenchment in the name of restructuring and closure of companies. • Heavy tax burden on the few that pay tax. • Poor fiscal policy. • Apparent contradiction of policies e.g. Vision 2020 and MPRSP on agriculture. • Lack of diversification in agriculture. • Reliance of agriculture on rainfall. • Poor business acumen for Malawians. 	<ul style="list-style-type: none"> • Create employment opportunities. • Create an enabling environment for investment by Malawians • Review the tax policy. • Improve Government fiscal policy. • Harmonize Vision 2020 and MPRSP. • Diversify agriculture. • Intensify small-scale irrigation schemes. • Intensify entrepreneur training. 	<ul style="list-style-type: none"> • MIPA • Malawi Entrepreneurship Development Institute • Malawi Confederation of Chambers of Commerce and Industry • Ministry of Commerce and Industry • Ministry of Agriculture and Irrigation • Ministry of Natural Resources and Environmental Affairs • Law Commission • MHRC • Parliament • MACOHA
		<ul style="list-style-type: none"> • Policy dissonance (Vision 2020 vs. MPRSP) • Poorly developed livestock sector. • Dependence on rain for agriculture. • Labor constraints for female-headed households. <p>Right to food is not clearly articulated as a right.</p>	<ul style="list-style-type: none"> • Introduce small scale processing plants through cooperative societies. • Advocate on change of attitude towards research findings. • Harmonies policies. • Increase farmers' access to various animal breeds • Rehabilitate veterinary infrastructure. • Intensify small-scale irrigation schemes and winter farming (Dimba). • Review the Constitution to clearly articulate right to food. 	<ul style="list-style-type: none"> •

<p>2.5 The Right to Health</p>	<ul style="list-style-type: none"> • Constitution • UDHR • ICESCR • CEDAW • CRC • ACHPR • Malawi National Health Plan (1999 – 2004) • HIV/AIDS Strategic Framework and Agenda for Action (2000 – 2004) 	<ul style="list-style-type: none"> • Rampant scarcity of drugs, medical supplies and equipment in the majority of government health centre facilities. • Poor attitude towards work by some government personnel that is eroding people’s trust in the public health system. • Insufficient trained medical personnel. • Inadequate and deteriorating health care infrastructure. • Poor coordination and lack of regular monitoring of health policies. 	<ul style="list-style-type: none"> • Improve availability and adequate use of drugs, medical supplies and equipment. • Provide better quality of health care service. • Train more health workers and increase availability especially to rural areas. • Increase access to health care facilities by building and maintaining health centers. • Implement and monitor the health sectoral policies. • Finalize and adopt a national HIV/AIDS policy. • Monitor, implement and review the HIV/AIDS Strategic Plan. • Enhance Home Based Care, including care through community IMCI. • Improve and sustain the high immunization coverage. 	<ul style="list-style-type: none"> • MHRC • Ministry of Justice and Constitutional Affairs • Ministry of Gender and Community Services • Ministry of Youth, Sports and Culture • NGOs • Faith Communities • Judiciary • Ministry of Home Affairs • Ministry Responsible for Persons with Disabilities. • MACOHA • Ministry of Health and Population Services • MASAF
<p>2.6 Right to a Clean and Healthy Environment including Access to Sound and Sufficient sanitation and Access to Water</p>	<ul style="list-style-type: none"> • ICESCR • ACHPR • Constitution • National Environmental Policy (NEP) • Environment Management Act (EMA) 	<ul style="list-style-type: none"> • Unsustainable use of natural resources. • Dependence on natural resources for rural livelihoods. • Inadequate tangible and affordable alternatives to energy and natural resources for livelihoods. • Over dependence on fuel wood as a source of energy. • Lack of well managed 	<ul style="list-style-type: none"> • Raise public awareness on environment and natural resources management. • Encourage people in rural areas to establish economic activities whose main purpose should be the reduction of dependence on natural resources e.g. agro-processing industries. • Intensify rural electrification programme and reduce tariffs so as to encourage use of this source of energy 	<ul style="list-style-type: none"> • Ministry of Environmental Affairs. • Ministry of Agriculture & Irrigation • Ministry of Tourism • Ministry of Commerce and Industries • Ministry of Local Government and District Administration • MASAF

		<p>waste disposal systems.</p> <ul style="list-style-type: none"> • Over population. • Lack of technology on water conservation. • Unavailability of user-fee disposal facilities in cities and towns. • Lack of knowledge and appreciation of the importance of clean and healthy environment. • Poor standards of hygiene. • Inadequate collaboration and coordination among stakeholders and regulatory agencies. • Inconsistencies among some of the ENRM and related policies and legislation. • Inadequate integration of environmental education into the formal education system. • Insufficient public environmental awareness and commitment to address current environmental problems and prevent new ones. • Inadequate funding for implementing ENRM 	<p>as an alternative to fuel wood.</p> <ul style="list-style-type: none"> • Develop efficient waste disposal systems. • Encourage private sector participation in disposal of wastes. • Encourage community-based natural resources and waste management e.g. wastes reduction, re-use, recycling, removal and disposal. • Encourage family planning. • Intensify rural water supply through construction of boreholes and small scale piped water systems. • Encourage water harvesting. • Encourage City Assemblies to provide easily accessible and user-free facilities in cities and towns. • Conduct civic education on importance of clean healthy environment. • Advocate for the enforcement of City By-laws. • Encourage use of Ventilated Improved Pit (VIP) latrines so as to improve personal hygiene at household level. • Mainstream environmental education into the formal education system. • Enhance compliance of development programs to EIA and EA and other related instruments for regulating 	
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		<p>policies and strategies and enforcement legislation.</p> <ul style="list-style-type: none">• Inadequate co-operation and/compliance to ENRM legislation by developers by developers and the public.• Insufficient capacity of ENRM regulatory and implementing agencies to effectively and efficiently implement relevant policies and legislation.	<p>development.</p> <ul style="list-style-type: none">• Build capacity of developmental regulatory agencies.	
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RIGHT	SITUATION ANALYSIS		PROPOSED STRATEGIES	RESPONSIBLE INSTITUTION
	LEGAL FRAMEWORK AND POLICIES	CHALLENGES		
2.7 Labour	<ul style="list-style-type: none"> • ICESCR • CEDAW • ILO Convention • Employment Act 2000 • Industrial Relations Act • Constitution 	<ul style="list-style-type: none"> • Non-adherence to labor legislation. • Employee/Employer relationships prone to exploitation due to unequal power relations and bargaining capabilities • Discrimination due to the disadvantaged status of an employee or prospective employee e.g. due to disability, gender, HIV status e.t.c. • Lack of legislation for protecting retired persons. 	<ul style="list-style-type: none"> • Investigate unfair labor practices and address the situations accordingly. • Strengthen the capacity of the Ministry of Labour by allocating adequate resources. • Conduct a study on discrimination and exploitation trends in the employment sector. • Orient the disadvantaged on the importance of litigation with regard to issues of discrimination. • Civic education for employers and employees on employer/employee relationships. • Give more powers to tribunals to enforce labour laws. • Enact Retired Persons Law 	<ul style="list-style-type: none"> • MHRC • NGOs • Ministry of Labour and Vocational Training • Trade Unions • Employers Consultative Association of Malawi (ECAM) • MACOHA • Ministry of Justice • Law Commission
2.8 Freedom from Slavery, Servitude and Forced Labour	<ul style="list-style-type: none"> • UDHR • ICCPR • CEDAW • CRC • ACHPR • Employment Act 2000 • Constitution 	<ul style="list-style-type: none"> • Lack of transparency in the agreed contracts of Tenancy Systems. • High prevalence of unequal power relations that disadvantage tenants. • High incidences of trafficking of women and children. 	<ul style="list-style-type: none"> • Enact legislation on tenancy labour • Conduct civic education on the fundamental breaches of freedoms perpetrated by tenancy system. • Review the Constitution and other regulations of TAMA. • Investigate alleged cases of forced labour. 	<ul style="list-style-type: none"> • NGOs • Ministry of Home Affairs • MHRC • Ministry of Gender and Community Services • Ministry of Youth, Sports and Culture • TAMA • MCTU • COMATU • Ministry of Labour and

		<ul style="list-style-type: none"> • Increased reported cases of incidences of child labour/exploitation still rampant. • Widespread poverty. 	<ul style="list-style-type: none"> • Raise awareness on the trafficking of women and children. • Enact foster care legislation. • Put stringent measures on foster care scheme. • Accelerate the implementation of the MPRSP. • Review and enforce legislation to outlawing trafficking. 	<p>Vocational Training</p> <ul style="list-style-type: none"> • Ministry of Justice and Constitutional Affairs
2.9 Right to Family and Marriage	<ul style="list-style-type: none"> • ICESCR • ICCPR • CRC • CEDAW • ACHPR • African Marriages Registration Act • Marriage Act • National Platform for Action • Gender Policy • United Nations Declaration on Marriageable Age • Constitution • Married Women Maintenance Act • Divorce Act 	<ul style="list-style-type: none"> • Non-consonance between legislation and customary law. • Discriminatory practices. • Lack of legislative framework to guide marriages by cohabitation. • Emergence of marriages of same sex persons. • Increased reported cases of forced marriages. • Limited grounds of divorce. • Lack of clear laws on distribution of property at the dissolution of marriage. • Increased reported cases of early marriages. 	<ul style="list-style-type: none"> • Create awareness on issues affecting family and marriage. • Lobby for elimination of harmful ritual and cultural marital practices. • Advocate for family planning services. • Advocate for marriage counseling. • Review the Marriage Act. • Outlaw marriages for persons under the age of 15. • Raise awareness on dangers of forced marriages. • Conduct research into same sex marriages and make appropriate recommendations. • Standardize requirements for all marriages through legislation. • Align legislation with international standards. 	<ul style="list-style-type: none"> • Law Commission • Ministry of Justice and Constitutional Affairs • Ministry of Health and Population • Ministry of Education, Science and Technology • Ministry of Gender and Community Services • NGOs • MHRC • National Aids Commission • National Youth Council of Malawi • Ministry of Youth, Sports and Culture • Faith Communities

			<ul style="list-style-type: none"> • Harmonize customary law with the Constitution. • Lobby marriage officiating authorities to verify the free will of persons entering into marriage. • Specify periods or circumstances by which marriages by permanent cohabitation or by repute are to be legally recognized. 	
2.10 Right to Property	<ul style="list-style-type: none"> • Wills and Inheritance Act • UDHR • ICESCR • Land legislation • Constitution 	<ul style="list-style-type: none"> • High incidence of deprivation of deceased estate. • High incidence of joint ownership of property but not registered as such. • Lack of appreciation by society in cases of joint ownership of property. • Deprivation of land. 	<ul style="list-style-type: none"> • Conduct civic education on property rights. • Lobby for the registration of customary land in the villages. • Review the law of inheritance so as to have a fair distribution of interstate property with a view to protect the vulnerable. • Conduct civic education on joint ownership of property. 	<ul style="list-style-type: none"> • Ministry of Gender and Community Services • Law Commission • Ministry of Justice • NGOs • The Legislature • MHRC
2.11 Right to Housing	<ul style="list-style-type: none"> • Housing Policy • UDHR • UNCHSS – Global Urban observatory Programmes and Habitat Agenda • Constitution • ICESCR 	<ul style="list-style-type: none"> • Inadequate housing. • Limited private participation in provisions of housing. • Limited accessibility to low cost houses by the poor. • Restrictive high bank mortgage rates. • Lack of disability friendly housing. • Lack of a comprehensive programme addressing housing needs of people in rural areas. 	<ul style="list-style-type: none"> • Mobilize of resources to build more houses. • Create enabling environment to encourage private participation. • Introduce special loans for the poor. • Lobby for disability friendly housing designs. • Advocate for improvement of sound monetary policies. 	<ul style="list-style-type: none"> • Ministry of Lands and Housing • NGOs • City, District and Town Assemblies • Banking and lending institutions • Reserve Bank of Malawi • MHRC • Ministry Responsible for Persons with Disabilities

<p>2.12 Rights of Women</p>	<ul style="list-style-type: none"> • UDHR • CEDAW • ICCPR • ICSECR • ACHPR • SADC Declaration on prevention of Violence against Women • Constitution • Gender policy • National Platform for Action 	<ul style="list-style-type: none"> • Existence of discriminatory laws and practices. • Constraints in accessing vital resources. • Limited capacity to enter into contracts. • Lack of economic empowerment. • High illiteracy. • Discriminatory. Citizenship Act. • Ignorance on property distribution laws. • Low representation in key decision making positions. 	<ul style="list-style-type: none"> • Review laws/policies that are discriminatory. • Create gender awareness among employers. • Eliminate barriers to access to resources. • Increase women’s access to economic resources. • Develop entrepreneurial skills. • Increase women’s participation in education. • Make agricultural policies gender sensitive. • Increase agricultural credit provision to women. • Review the Act on citizenship and nationality. • Create enabling environment for women to access the justice delivery. • Advocate for equal opportunities for promotion or appointment to key decision making positions. • Link the national adult literacy programme to the formal education system. • Train women and girls in life skills. • Lobby for the elimination of all forms of discriminatory and harmful cultural sexual practices • Enact domestic violence law 	<ul style="list-style-type: none"> • Law Commission • Ministry of Gender and Community Services • Ministry of Youth, Sports and Culture • NGOs • Ministry of Justice • Lending institutions • Ministry of Agriculture and Irrigation • Ministry of Commerce, Trade and Industry • MHRC • Ministry Responsible for Persons with Disabilities
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			<ul style="list-style-type: none"> • Promote gender responsive guidelines for selection of persons in decision making positions at all levels • Ensure active enforcement of Wills and Inheritance Act 	
2.13 Right to Culture and Language	<ul style="list-style-type: none"> • UDHR • ICESCR • ACHPR • Classifications Act • Constitution • Copyright Act • Printed Publications Act • National Archives Act • Museums Act • Monuments and Relicts Act • Arts and Crafts Act 	<ul style="list-style-type: none"> • Decline in moral and ethnical conduct. • Influence of western culture. • Persistence of harmful cultural beliefs and practices. • Erosion of cultural values. • Destruction of cultural heritage. • Putting culture and language as priorities in the context of Malawi's socio-economic development. 	<ul style="list-style-type: none"> • Create an enabling environment for the respect and protection of cultural and linguistic rights. • Finalize the National Cultural Policy. • Develop a Language Policy. • Enrich our national cultural values with universal cultural values. • Promote a sense of pride in the national cultural heritage including language and respect for unity in diversity. • Strengthen and promote positive national cultural values. • Accelerate the enactment of the Classification Act and revision of other relevant Acts. 	<ul style="list-style-type: none"> • MHRC • Ministry of Youth, Sports and Culture • Religious institutions • Traditional Leaders • Centre for Language and Research • Media • Artists • Classification Board • National Archives • Antiquities Department • Museums of Malawi • Arts and Crafts Department • Copyright Society of Malawi (COSOMA)

CHAPTER THREE

INSTITUTIONAL ARRANGEMENT

3.0 Introduction

Chapters 1 and 2 of this National Action Plan have spelt out the human rights and fundamental freedoms that are guaranteed by the Constitution of Malawi and by International Law; the basic problems that are associated with their enforcement or observance in Malawi; and suggested measures to be put in place in order to ensure that the protection and promotion of human rights is achieved and sustained in Malawi.

In order to effectuate the lofty ideals and standards articulated in this plan of action, there is need for the State to ensure that proper institutional mechanisms exist through which the people of Malawi will be able to either have their rights enforced and protected where the need arises, or otherwise enjoy their rights and freedoms.

The Constitution places great emphasis on the critical national need to ensure that human rights and fundamental freedoms are preserved, protected and promoted. This emphasis is exemplified, *inter alia*, by the establishment of various national institutions vested with the responsibility of ensuring that the said rights and freedoms are preserved, protected and promoted. There are also a number of government departments and/or organs that assist in the promotion protection and of human rights in Malawi.

At the normative level, Malawi has done well in establishing various institutions entrusted with the responsibility of ensuring that human rights are protected, preserved, observed and promoted. However, it has emerged as a general challenge among all the institutions that they lack the requisite financial base to properly discharge their functions. It has also emerged that there is lack of technically qualified staff in the respective institutions.

It is important for Malawi to ensure that the guaranteed human rights norms are not relegated to the status of mere paper work. Government, its various co-operating partners, and other stakeholders in the field of human rights must therefore come up with concerted efforts to build the capacity of these institutions so that they discharge their duties professionally and to the optimum.

Section 15(2) of the Constitution provides that:

“Any person or group of persons with sufficient interest in the protection and enforcement of rights under this Chapter (Chapter IV) shall be entitled to the assistance of the Courts, the Ombudsman, the Human Rights Commission and other organs of Government to ensure the promotion, protection and redress of grievances in respect of those rights.”

There are a number of National Institutions and Government ministries or departments that help in ensuring the promotion, protection and redress of grievances in respect of violations or threats to human rights. Some of these institutions, such as Parliament, the Police and the Prison Service have a long history of existence although their historical record is quite inimical to the promotion and protection of human rights.

There are some statutory organizations that play an important role in the protection and promotion of human rights. Such organizations include the Malawi Communications Regulatory Authority (MACRA), the Anti-Corruption Bureau and the Malawi Law Society. In addition, civil society groups such as the faith community and non-governmental human rights organizations play a very important role in the promotion and protection of human rights in this country.

In this Chapter, some of the institutions that play a crucial role in the promotion and protection of human rights will be discussed in some detail.

3.1 National Institutions

The national democracy consolidation institutions established under the Constitution, namely the Malawi Human Rights Commission, the Office of the Ombudsman, the Malawi Law Commission and the Electoral Commission have among other functions, the responsibility of monitoring and investigating human rights violations and problems, advising Government on administration of justice and conducting human rights education. These National Institutions have an independent status from Government in the discharge of their duties and functions and play an extremely important role in promoting and protecting human rights. It is noteworthy that the Anti-Corruption Bureau is also an important democracy consolidation institution largely focusing on transparency and accountability. However, this institution is not constitutionally established, but a creature of statute. All these institutions have a number of challenges that they face in common in the due discharge of their respective Constitutional or statutory functions.

These challenges include: -

- (i) Perception by the public that they lack the requisite independence from Government as central Government is responsible for their funding.
- (ii) General inadequacy of funding from Government with regard to the huge tasks they have to perform.
- (iii) Insufficient levels of technically qualified staff.
- (iv) Overlapping jurisdictions.
- (v) Insufficient political will.

Suggested Remedial Measures

- Increase Government funding to these institutions.
- Incorporate MPRSP objectives into the institutions' activities.
- Enhance and broaden their partnerships with co-operating donors and work towards building sustainable trust and confidence between them.
- Devise effective internal systems that will ensure financial prudence and probity.
- Develop realistic strategic plans.
- Be more pro-active and openly seen to be discharging their functions independently within the framework of their respective mandates.
- Work towards improving their terms and conditions of service in collaboration with government in order to attract and retain qualified staff.
- Train existing staff to improve their technical skills.

3.2 Mainstream Government Ministries and Departments

There are also Government Ministries and Departments that play specific and substantial roles as duty bearers in ensuring that acceptable human rights standards are observed and effectively implemented in Malawi. Such Government ministries and departments include the Ministries responsible for the following, in no specific order:

- Justice
- Health and Population
- Home Affairs and Internal Security
- Gender and Community Services
- Youth, Sports and Culture
- Education, Science and Technology
- Natural Resources and Environmental Affairs
- Agriculture, Irrigation and Food Security
- Public Service Management
- Lands, Physical Planning and Surveys
- Foreign Affairs and International Cooperation
- Housing
- Labour and Vocational Training
- Relief and Rehabilitation.
- People with Disabilities.

These institutions generally face the following challenges: -

- (i) Inadequate funding from Government for their effective operations.
- (ii) Inefficiency in the management and allocation of financial resources.

- (iii) Lack of co-ordination and collaboration between ministries.
- (iv) Failure to fulfill planned activities due to erratic funding.
- (v) Occasional political influence that affects their effective and efficient service delivery.
- (vi) Over dependence on donor funding.
- (vii) Delays in handling disciplinary and other related cases concerning public employees.
- (viii) Insufficient levels of technically qualified staff.
- (ix) Poor work ethics largely attributed to poor conditions of service.

Suggested Remedial Measures

- Incorporate MPRSP objectives into government's activities.
- Adopt a Human Rights-Based Approach to economic programming.
- Sensitize economic planners on the interconnectivity of human rights with economic and social development.
- Conduct civic education to politicians, particularly those at the cabinet level on the importance of depoliticizing public services.
- Review legislation on and simplify case handling procedures.
- Improve terms and conditions of service of public servants in order to attract and retain more qualified and competent staff.
- Train existing staff to improve their technical skills.
- Explore alternative means of sourcing funds.
- Orient all staff in Human Rights-Based Approach to service delivery.
- Introduce and implement a merit based reward and incentive system for all public servants.
- Observe stipulated cash flows in funding ministries and departments.
- Develop a code of ethics for public officers.

3.3 The Judiciary

The Judiciary is the arm of Government that is vested with the ultimate responsibility under the Constitution or any other law to protect and promote human rights and fundamental freedoms. Further, it needs no over-emphasizing that this institution is very important within the framework of the Poverty Reduction Strategy Policy as its smooth functioning ensures, *inter-alia*, that there is more investor confidence in the available legal framework that guarantees that investments are protected. To ensure that it functions efficiently and effectively, one of the cardinal requirements is that it must be independent.

In the discharge of its functions, it is observable that the Judiciary faces a number of challenges including the following: -

- Inadequate funding that adversely affects its operations.
- Insufficient numbers of judicial officers particularly in the professional levels.
- Lack of specialist training of judicial officers.
- Interference with its independence by the Executive and Legislative organs of Government.

Suggested Remedial Measures

- Increase funding to the Judiciary to enable it function more effectively.
- Ensure that proper legislative and administrative frameworks are set up to enable the Judiciary retain among other things, the court fees recovered by Sheriffs.
- Improve conditions of service for judicial officers.

- Encourage continuing legal education even for judges in order to ensure that they are more up to date with recent developments in the law.
- Advise the Executive and Legislative organs of Government to recognize and uphold the independence of the Judiciary.

3.4 Civil Society

Civil society may generally be defined as all those organizations and individuals who are not directly working for government. Since the advent of democracy in 1993, a number of civil society groups have sprung up in Malawi and have had an increasingly important role in public policy making. Frequently, this group has better contacts with people at grass root level and through its work, the public is now much better informed, better able to organize and better able to express its views. As defined above, civil society has a very broad scope and includes NGOs and the Faith Communities that play a very important role in the promotion and protection of human rights.

Civil Society groups in Malawi also face a number of challenges that include: -

- (i) Unstable financial bases because of unguaranteed long term funding from co-operating partners.
- (ii) Difficulties in extending their services to the rural areas.
- (iii) Lack of proper focus on their missions due to donor dictates.
- (iv) Inability to retain technically qualified staff; and
- (v) Lack of proper coordination and cooperation to strengthen their activities.

Suggested Remedial Measures

- Enhance and broaden their partnerships with co-operating donors.
- Work towards building a sustainable trust and confidence between them.

- Develop effective internal systems that will ensure prudent financial management and probity.
- Develop realistic strategic plans.
- Enhance proper coordination and cooperation in streamlining their activity.
- Review NGO Act in order to improve the independence of the NGO Board members.

INSTITUTION	SITUATIONAL ANALYSIS		STRATEGIES	RESPONSIBLE INSTITUTION
	LEGAL FRAMEWORK AND POLICIES	CHALLENGES		
1. Malawi Human Rights Commission	<ul style="list-style-type: none"> • Constitution • Human Rights Commission Act • Paris Principles 	<ul style="list-style-type: none"> • Inadequate investigative skills. • Lack of enforcement powers. • Inaccessibility to rural masses. • Limited accessibility to persons with disabilities. • Limited capacity to fulfill some of the Constitutional mandate. • Inadequate funding. • Limited publicity. • Limited networking with other stakeholders. 	<ul style="list-style-type: none"> • Train technical staff. • Grant the Commission enforcement powers e.g. prosecution of perpetrators of human rights violations. • Decentralize Commission's operations to regional level. • Establish a Trust Fund. • Develop media strategies. • Enhance networking with other human rights organizations. 	<ul style="list-style-type: none"> • Malawi Human Rights Commission • Law Commission • Office of the Ombudsman
2. Office of the Ombudsman	<ul style="list-style-type: none"> • Constitution • Ombudsman Act 	<ul style="list-style-type: none"> • Inadequate investigative skills. • Constitutional provisions on jurisdiction not clear enough. • Determinations not legally binding. • Inadequate funding. 	<ul style="list-style-type: none"> • Train technical staff. • Intensify civic education. • Review of jurisdictional provisions. • Review the law to grant the Ombudsman enforcement powers. • Lobby for more funding. 	<ul style="list-style-type: none"> • Office of the Ombudsman

INSTITUTION	SITUATIONAL ANALYSIS		PROPOSED STRATEGIES	RESPONSIBLE INSTITUTIONS
	LEGAL FRAMEWORK AND POLICIES	CHALLENGES		
3. Law Commission	<ul style="list-style-type: none"> • Constitution • Law Commission Act 	<ul style="list-style-type: none"> • Inadequate funding. 	<ul style="list-style-type: none"> • Lobby Government to increase funding. 	<ul style="list-style-type: none"> • Law Commission
4. Law Society	<ul style="list-style-type: none"> • Statutory backing • Capacity • Legal education and Legal practitioners Act 	<ul style="list-style-type: none"> • Inadequate funding. • Not audible and visible enough. • Limited accessibility to the public. • Limited capacity to fulfill some its statutory obligations. • Insufficient personnel at the secretariat. 	<ul style="list-style-type: none"> • Lobby Government to fund its use. • Publicize activities. • Enhance operational capacity. • Improve networking system with cooperating partners in the districts. • Employ fulltime lawyer (reorganization). • Liaise with other human rights organizations. 	<ul style="list-style-type: none"> • Law Society
5. Police	<ul style="list-style-type: none"> • Constitution • Police Act • Criminal Procedure • Evidence code 	<ul style="list-style-type: none"> • Limited independence. • Lack of technical materials. • Slow response to demands for their services. • Inadequate human resources. • Lack of knowledge and inadequate internalization on human rights principles. • Poor records management. • Unnecessary and disproportionate use of force and firearms. • Political interference with its operations. • Inadequate funding. 	<ul style="list-style-type: none"> • Depoliticise Police. • Improve mobility communication systems and provision of technical materials. • Conduct regular refresher courses. • Institute appropriate punitive measures for unprofessional conduct. • Increase funding. 	<ul style="list-style-type: none"> • Police • Law Commission and • Ministry of Finance

RIGHT	SITUATION ANALYSIS		PROPOSED STRATEGIES	RESPONSIBLE INSTITUTION
	LEGAL FRAMEWORK AND POLICIES	CHALLENGES		
6. Director of Public Prosecutions	<ul style="list-style-type: none"> • Criminal Procedure and Evidence Code • Constitution 	<ul style="list-style-type: none"> • Lack of direct control over police prosecutors. • Limited independence. • Inadequate funding. • Insufficient number of prosecutors and lawyers. • Inadequate training of prosecutors. 	<ul style="list-style-type: none"> • Harmonize the law governing police and the Director of Public Prosecutions. • Delink operations of Director of Public Prosecution from Attorney General. • Independence of Director of Public Prosecutions of Attorney General. • Lobby for more funding. • Train more prosecutors. • Recruit more prosecutors and lawyers. 	<ul style="list-style-type: none"> • Law Commission • Ministry of Justice • Ministry of Finance • Office of the Director of Public Prosecutions
7. Judiciary	<ul style="list-style-type: none"> • Judicature Act • Courts Act • Supreme Court of Appeal Act • Sheriffs Act • Labour Relations Act • Constitution 	<ul style="list-style-type: none"> • Slow judicial processes. • Questionable independence of some judicial officers. • Poor records management. • Limited human and financial resources. • Lack of training for judicial officers. • Interference with its independence by other arms of Government. 	<ul style="list-style-type: none"> • Improve case management. • Retention of fees for its operations. • Increase funding. • Set up new court structures. • Continue legal education. • Establish and enforce well-defined disciplinary processes for miscreant judicial officers. • Lobby for adequate funding. 	<ul style="list-style-type: none"> • Judiciary • Ministry of Finance and Economic Planning • Industrial Relations Court

INSTITUTION	SITUATIONAL ANALYSIS		STRATEGIES	RESPONSIBLE INSTITUTION
	LEGAL FRAMEWORK AND POLICIES	CHALLENGES		
8. Prison Service	<ul style="list-style-type: none"> • Constitution • Prisons Act • UN Minimum Standard rules for the treatment of prisoner • Juveniles • Various International Law Instruments 	<ul style="list-style-type: none"> • Poorly trained and unmotivated personnel • Outdated Prisons Act • Inhumane prison conditions • Punishment focused and non rehabilitative practices • Non observance of statutory obligations • Inadequate funding • Poor and insufficient infrastructure 	<ul style="list-style-type: none"> • Provide regular training for staff • Review the Prisons Act • Improve Prison conditions • Conduct civic education for prison authorities • Reorganize Prisons to be more reform oriented • Lobby for more funding • Resource mobilization • Improve terms and conditions of service • Rehabilitate and/or construct more prisons 	<ul style="list-style-type: none"> • Malawi Prisons Service • Law Commission • MHRC • Ministry of Finance and Economic Planning

INSTITUTION	SITUATIONAL ANALYSIS		STRATEGIES	RESPONSIBLE INSTITUTION
	LEGAL FRAMEWORK AND POLICIES	CHALLENGES		
9. Parliament	<ul style="list-style-type: none"> • Constitution • Parliamentary standing orders 	<ul style="list-style-type: none"> • Lack of legally entrenched accountability measures for Members of Parliament. • More emphasis on party politics overriding national interests. • Limited contact and consultations between constituents and their Members of Parliament. • Members of Parliament's lack of sufficient knowledge on the scope of their responsibilities. • Low-level minimum education requirement for eligibility. • Lack of knowledge by constituents on roles and responsibilities on their Members of Parliament on roles and responsibilities. 	<ul style="list-style-type: none"> • Re-institute legal mechanisms that entrench accountability measures for MPs. • More training for Members of Parliament on their roles and responsibilities. • Sensitize electorate on the roles and responsibilities of Members of Parliament. • Enhance parliamentary training programmes. • Raise minimum education qualification for MPs to Malawi School Certificate of Education (MSCE). 	<ul style="list-style-type: none"> • Law Commission • Parliament • Malawi Human Rights Commission • University of Malawi • The Civil Society • Electoral Commission • Civil Society Organisations • Electoral Commission and Women Groups

INSTITUTION	SITUATIONAL ANALYSIS		PROPOSED STRATEGIES	RESPONSIBLE INSTITUTION
	LEGAL FRAMEWORK AND POLICIES	CHALLENGES		
10. Anti Corruption Bureau	<ul style="list-style-type: none"> • Corrupt Practices Act 	<ul style="list-style-type: none"> • Perceived bias in handling of cases. • Difficulty in proving corruption. • Likelihood of political interference with its operations owing to the need to obtain consent from DPP. 	<ul style="list-style-type: none"> • Vigorous prosecution of high profile cases. • Provide more training to prosecutors. • Delink office of the DPP from the Attorney General. • Report to Parliament via Ministry of Justice. • Lobby Government to increase funding. • Improve incentives. 	<ul style="list-style-type: none"> • Anti Corruption Bureau • Ministry of Justice • Law Commission
11. Electoral Commission	<ul style="list-style-type: none"> • Constitution • Electoral Commission Act 	<ul style="list-style-type: none"> • Questionable independence of Commissioners • Inadequate funding • Inadequate human resource • Reliance on courts for electoral fraud requiring rapid response • Lack of mechanisms to resolve electoral disputes expeditiously 	<ul style="list-style-type: none"> • Depoliticise Electoral Commission • Lobby Government for more funding • Recruit adequate staff • Establish Constitutional courts or tribunals 	<ul style="list-style-type: none"> • Law Commission • Electoral Commission • Treasury • Parliament

INSTITUTION	SITUATIONAL ANALYSIS		PROPOSED STRATEGIES	RESPONSIBLE INSTITUTION
	LEGAL FRAMEWORK AND POLICIES	CHALLENGES		
12. Ministry of Justice	<ul style="list-style-type: none"> • Legal Education and legal Practitioners Act • Legal Aid Act • Wills and inheritance Act 	<ul style="list-style-type: none"> • Inadequate funding • Inadequate personnel • Poor case management systems • Delays in judicial processes 	<ul style="list-style-type: none"> • Lobby Government for increased funds • Recruit and retain more technical staff • Improve case management systems • Encourage Alternative Dispute Resolution (ADR) 	<ul style="list-style-type: none"> • Ministry of Finance
13. Other Government Ministries and Departments	<ul style="list-style-type: none"> • Relevant domestic law and policies and applicable international law 	<ul style="list-style-type: none"> • Insufficient levels of technically qualified staff. • Poor work ethics largely attributed to poor working and remunerations. • Occasional political interference that affects their effectiveness. • Inadequate funding from Government to effectively perform their tasks. • Poor utilization of available resources. • Inadequate knowledge and understanding and human rights based approach to service delivery. • Lack of effective enforcing mechanisms. Laxity in enforcing existing mechanisms. 	<ul style="list-style-type: none"> • Lobby Government for increased funding. • Improve terms and conditions of service. • Depoliticise service delivery. • Improve a merit based reward and intensive systems. • Train public servants in human rights approach to service delivery. • Strengthen measures for prudent management of resources. • Regular training programmes. • Introduce and strengthen enforcing mechanisms. • Instill sense of commitment and dedication. 	<ul style="list-style-type: none"> • Office of the President and Cabinet, all ministries and Government departments

RIGHT	SITUATION ANALYSIS		PROPOSED STRATEGIES	RESPONSIBLE INSTITUTION
	LEGAL FRAMEWORK AND POLICIES	CHALLENGES		
14. Statutory Organisations	<ul style="list-style-type: none"> Enabling Legislation Acts and relevant policies 	<ul style="list-style-type: none"> Inadequate funding. Perceived Political interference. Inability to fulfill some of their statutory obligations. Legislation that is not in tandem with societal expectations. Imprudent management of available resources. Questionable competence of some members. 	<ul style="list-style-type: none"> Diversify sources of income. Depoliticise activities Review of the Act. Review enabling legislation. Strengthen measures for prudent management of resources. 	<ul style="list-style-type: none"> Statutory Cooperations Office of the President and Cabinet Law Commission
15. Civil Society Organisations	<ul style="list-style-type: none"> Constitution Non Governmental Organisations Act 	<ul style="list-style-type: none"> Limited accessibility to the public. Uncertainty of donor funding. Unstable financial basis Lack of proper focus on their objectives. Lack of proper coordination and cooperation amongst themselves. Some beliefs contrary to human rights norms. 	<ul style="list-style-type: none"> Relocate to more accessible place. Diversify sources of income. Improve financial management systems. Produce realistic strategic plans. Enhance networking. Conduct civic education on human rights and norms and principles. 	<ul style="list-style-type: none"> CONGOMA Faith Community Organisations Office of the President and Cabinet Ministry of Justice