



Malawi
Universal Periodic Review
September 2014

Women's Rights

During its first Universal Periodic Review (UPR) in 2010, Malawi acknowledged that although its Constitution recognizes the right of women to full and equal protection of the law, and non-discrimination on the basis of their gender or marital status, “disparities exist between what is contained in the Constitution, applicable international instruments and what is obtaining on the ground.” The government undertook to take steps to continue promoting equality between men and women, including by working with the Malawi Law Commission to “introduce policies that prohibit harmful social and cultural practices that perpetuate the subservice of women and which invoke exploitative sexual relations.”

While the government has taken some positive steps toward fulfillment of the gender equality pledges it made in 2010, it has failed to live up to most of them -- women's rights in Malawi remain largely curtailed. Violence against women is still widespread, and the government has failed to curb the country's high rates of child marriage, which is one of the highest in the world.¹

On average, one out of two girls in the country will be married by her 18th birthday, according to the United Nations.² The UN Population Fund (UNFPA) ranks Malawi eighth of the 20 countries that are considered to have the highest rates of child marriage, and notes that there has been little to no change in child marriage prevalence in the country in the last decade.³

Malawi's laws do not explicitly prohibit child marriage, and there is no set minimum age of marriage. The laws also fail to consistently define who is a child, to require free and full consent to marriage, and to criminalize marital rape. The government has yet to enact the Marriage, Divorce and Family Relations Bill -- a comprehensive family law developed in 2006 that has stronger protections from child and forced marriage and provides 18 as the minimum marriage age—despite indicating in the 2010 UPR that it was committed to passing the bill. It has also failed to develop and implement a comprehensive national plan to combat child marriage.

Victims of child marriage in Malawi face many barriers in getting help from authorities. Many girls and women do not know what their rights are under the law, or do not know where to look for assistance other than from their own families or traditional authorities, who often fail them. The absence of clear family legislation means that most matters relating to marriage, divorce, maintenance payments, and domestic violence are handled through customary procedures that discriminate against women and therefore fail to provide adequate redress to survivors of gender-based violence.

These problems are compounded and perpetuated by poor coordination among government agencies responsible for responding to violence against women; little or no monitoring of cases handled by officials from these agencies; negligent and dismissive police responses to reports of violence against women; lack of infrastructure, and well-trained personnel in the justice system; and widespread and deep-seated discriminatory attitudes towards women. Moreover, Malawi does not have sufficient specialized safe spaces where victims of forced marriage and other gender-related abuses can find shelter and protection. The 2013 “Cashgate” scandal exposed widespread corruption in government which undermines Malawi’s capacity to deliver essential services and improve people’s lives.

As a result of these serious shortcomings by the government, many women and girls continue to struggle with the long-lasting and often devastating harms of child marriage.

Rights of Lesbian, Gay, Bisexual and Transgender (LGBT) People

During the 2010 UPR, Malawi rejected the recommendation to decriminalize same-sex conduct saying that the wishes of the people of Malawi in this regard should be respected. To are commendation to end incitement to discrimination and homophobia on the basis of sexual orientation, Malawi stated that there was no homophobia or incitement against gay people.

Section 153 of the Malawian criminal code, which criminalizes consensual sexual conduct between adults, violates the right to privacy, non-discrimination and other rights under international law. The Malawian constitution guarantees every person's right to liberty, dignity, and security of person. Article 20 prohibits discrimination on all grounds, and article 21 guarantees the right to privacy.

Arrests on the basis of Malawi’s anti-gay laws have been rare – two men were convicted under section 153 in 2009 and sentenced to 14 years, but were subsequently pardoned. But Human Rights Watch has found that even unenforced anti-gay laws have nefarious consequences, including blackmail, restricted access to health services, and lack of access to justice. While decriminalization is an important first step, it needs to be accompanied by a real government commitment to address public homophobia, and support civil society efforts to promote human rights more broadly.

Recommendations

On Women’s Rights:

- Take the necessary legislative steps for the enactment of the Marriage, Divorce, and Family Relations Bill, and together with relevant ministries and government agencies, promptly carry out its provisions.
- Create a national action plan to combat child marriage, with input from women’s and children’s rights groups, health professionals, and other service providers; coordinate efforts among all relevant ministries; and ensure sufficient resources to implement the plan.
- Provide regular training for police and prosecutors on their legal responsibilities to investigate and prosecute violence against women, including child marriage, under the applicable law.

On LGBT Rights:

- Repeal provisions of the Malawi criminal code that criminalize consensual, adult same-sex conduct (sections 153, 154, and 156) and provide adequate protection to LGBT persons.
- Ensure that the LGBT population is included in government HIV prevention and treatment programs

On the International Criminal Court:

- Malawi should implement the Rome Statute of the International Criminal Court (ICC) in national legislation, including by incorporating provisions to cooperate promptly and fully with the ICC and to investigate and prosecute genocide, crimes against humanity and war crimes before its national courts in accordance with international law.

¹National Statistical Office (NSO) and ICF Macro, "Malawi Demographic and Health Survey 2010," p. 246.

²UNFPA, "Profiles of 10 Countries with the Highest Rates of Child Marriage," undated, http://www.unfpa.org/webdav/site/global/shared/documents/publications/2012/ChildMarriage_8_annex1_indicatordefinition.pdf (accessed July 15, 2013), p. 8.

³United Nations Population Fund (UNFPA), "Marrying too Young: End Child Marriage," 2012, <http://www.unfpa.org/webdav/site/global/shared/documents/publications/2012/MarryingTooYoung.pdf> (accessed January 8, 2014), p. 23 and UNFPA, "Profiles of 10 Countries with the Highest Rates of Child Marriage," undated, p. 8.