
**Committee on the Elimination of
Discrimination against Women
Thirty-fifth session**

15 May – 2 June 2006

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**Concluding comments of the Committee on the Elimination of
Discrimination against Women: Malawi**

Combined second, third, fourth and fifth periodic report

193. The Committee considered the combined second, third, fourth and fifth periodic report of Malawi (CEDAW/C/MWI/2-5) at its 727th and 728th meetings, on 19 May 2006 (see CEDAW/C/SR.727 and CEDAW/C/SR.728). The Committee's list of issues and questions is contained in CEDAW/C/MWI/Q/5, and Malawi's responses are contained in CEDAW/C/MWI/Q/5/Add.1.

Introduction

194. The Committee expresses its appreciation to the State party for its combined second, third, fourth and fifth periodic report, which is in compliance with the Committee's guidelines for the preparation of periodic reports, while regretting that it was long overdue and does not make reference to the Committee's general recommendations. The Committee notes with satisfaction the quality of the report which gives a clear and candid picture of the overall situation of women and the challenges towards realizing equality between women and men. The Committee expresses its appreciation for the responses to the list of issues and questions of the pre-session working group, while regretting that the responses to some of the questions were incomplete or lacking. The Committee expresses its appreciation for the oral presentation and further clarification in response to the questions posed orally by the Committee.

195. The Committee commends the State party on its high-level delegation, headed by the Minister of Gender, Child Welfare and Community Services and which included representatives of other ministries with responsibility for the implementation of the Convention on the Elimination of All Forms of Discrimination against Women, as well as the Chairperson of the Malawi Human Rights Commission. The Committee expresses its appreciation for the frank and constructive dialogue that took place between the members of the Committee and the delegation, which updated developments in the State party since the submission of its report in 2004, and which further clarified the present status of implementation of the Convention.

196. The Committee commends the Government for withdrawing its reservations to the provisions of the Convention concerning traditional customs and practices, and notes that Malawi signed the Optional Protocol to the Convention in September 2000.

Positive aspects

197. The Committee notes with appreciation that the State party has embarked on a constitutional review process. It welcomes the efforts of the Government to review its legislation with a view to amending it and drafting new legislation so as to

comply with its obligations under the Convention, in particular the Marriage, Divorce and Family Relations Bill, the Citizenship Act, the Immigration Act, and the Wills and Inheritance Act.

198. The Committee appreciates the recent adoption of the Prevention of Domestic Violence Act.

199. The Committee commends the State party for having set up the Ministry of Gender, Child Welfare and Community Services as the national machinery for the advancement of women.

Principal areas of concern and recommendations

200. While recalling the State party's obligation to systematically and continuously implement all the provisions of the Convention, the Committee views the concerns and recommendations identified in the present concluding comments as requiring the State party's priority attention between now and the submission of the next periodic report. Consequently, the Committee calls upon the State party to focus on those areas in its implementation activities and to report on action taken and results achieved in its next periodic report. It calls on the State party to submit the present concluding comments to all relevant ministries and to Parliament so as to ensure their full implementation.

201. The Committee is concerned that, although Malawi ratified the Convention in 1987, the Convention's status in the domestic legal system is still unclear. It notes with concern that, short of such full domestication, the primacy of the Convention over domestic law is not clarified, nor is the Convention justiciable and enforceable in Malawian courts.

202. The Committee urges the State party to place high priority on ensuring that the Convention can be invoked and applied in the national courts. It calls on the State party to ensure that the provisions of the Convention and related domestic legislation are made an integral part of legal education and the training of judicial officers, including judges, lawyers and prosecutors, so as to firmly establish in the country a legal culture supportive of women's equality and non-discrimination.

203. The Committee is concerned that although section 12 (v) of the 1994 Malawi Constitution guarantees equal rights for women and men, there is no explicit definition of discrimination against women, in accordance with article 1 of the Convention, which prohibits direct and indirect discrimination, in the State party's legislation.

204. The Committee encourages the State party to incorporate in its Constitution, or the Gender Equality Statute, which is currently being drafted, the full definition of discrimination, encompassing both direct and indirect discrimination, in line with article 1 of the Convention, and explicitly prohibiting discrimination by private actors, in accordance with article 2 (e) of the Convention. It also encourages the State party to include provisions for temporary special measures, in accordance with article 4, paragraph 1, of the Convention and the Committee's general recommendation No. 25, and to set a time frame for the drafting and adoption of the Gender Equality Statute.

205. While welcoming the law reform process currently being undertaken by the special Law Commission on Gender-Related Laws aimed at the elimination of discrimination against women in various fields such as marriage, divorce,

citizenship and inheritance, the Committee is concerned about the continuing lack of compliance of these laws with the Convention and the contradictions between some existing laws and the Constitution. The Committee is particularly concerned about the contradictions between the Marriage Act, which establishes 21 as the minimum age for marriage, and the Constitution, which allows child marriages. The Committee is further concerned about the contradictions between the Constitution and the Citizenship and Immigration Acts, which provide that upon marrying a foreign man, the Malawian woman loses her right to a Malawian citizenship, and that married women are not allowed to migrate unless they are under the custody of a husband.

206. The Committee urges the State party to accelerate its law review process and ensure that its discriminatory legislation is speedily brought into compliance with the Convention so as to establish women's de jure equality. It urges the State party to set a clear time frame for the adoption of the revised Citizenship Act, Immigration Act and the Wills and Inheritance Act and for the new Marriage, Divorce and Family Relations Bill, designed to eliminate discrimination against women. The Committee encourages the State party to develop and implement comprehensive educational measures and an awareness-raising campaign upon completion of the review process, so as to ensure knowledge of the legal framework and its effective implementation.

207. The Committee is concerned that the State party lacks a holistic approach to policies and programmes aimed at achieving women's equality with men, including mainstreaming a gender perspective in all areas. It is also concerned about the limited availability of data disaggregated by sex, which are necessary for effective gender analysis and targeted policy and programmes design for implementation of the Convention.

208. The Committee recommends that the State party ensure that all policies and programmes are part of a holistic approach to achieving equality between women and men. The Committee recommends that gender mainstreaming be introduced in all public institutions, policies and programmes and gender training be provided and focal points be established. The Committee requests the State party to include in its next periodic report sex-disaggregated data in all areas of the Convention and if necessary to secure international assistance for this endeavour.

209. The Committee is concerned that, although women's access to justice is provided for by law, their ability in practice to exercise this right and to bring cases of discrimination before the courts is limited by factors such as lack of information on their rights, lack of assistance in pursuing their rights, practical difficulties to reach courts and legal costs. The Committee is further concerned that most women are still subject to the jurisdiction of traditional courts applying customary law that is discriminatory towards women.

210. The Committee requests the State party to remove impediments women may face in gaining access to justice. It further urges the State party to take special measures to enhance women's awareness of their rights, legal literacy and access to the courts to claim all their rights. The Committee recommends that the State party ensures the constitutionality of the customary courts and that their rulings are not discriminatory against women.

211. The Committee is concerned about the prevalence of a patriarchal ideology with firmly entrenched stereotypes and the persistence of deep-rooted cultural

norms, customs and traditions, including forced and early marriage, wife inheritance, “sexual cleansing” and “initiation” and other such practices enumerated in the State party’s report that discriminate against women and constitute serious obstacles to women’s enjoyment of their human rights.

212. The Committee urges the introduction, without delay and in conformity with articles 2 (f) and 5 (a) of the Convention, of concrete measures to modify or eliminate customs and cultural and harmful traditional practices that discriminate against women so as to promote women’s full enjoyment of their human rights. In particular, the Committee urges the State party to eliminate practices such as forced and early marriages and discriminatory widowhood inheritance practices and other practices enumerated in the State party’s report which constitute violations of women’s human rights under the Convention. It invites the State party to increase its efforts to design and implement comprehensive education and awareness-raising programmes targeting women and men at all levels of society, including village head persons and chiefs, with a view to changing discriminatory social and cultural patterns of conduct and to creating an enabling and supportive environment for women to exercise their human rights. The Committee encourages the State party to implement the necessary efforts, in collaboration with civil society organizations, women’s non-governmental organizations and community leaders. It further calls upon the State party to review periodically the measures taken to assess the impact of those efforts and take appropriate remedial measures, and to report on the results to the Committee in its next report.

213. While welcoming the recent adoption of the Prevention of Domestic Violence Act, the Committee regrets that marital rape has not been criminalized under this new legislation. The Committee continues to be concerned about the high prevalence of violence against women and girls and remains particularly concerned about the persistence of customary law and cultural practices that constitute, or perpetuate, violence against women. The Committee further expresses concern about the increase in the sexual exploitation of young girls in both primary and secondary schools by teachers, and about the lack of information and data in the report on the incidence and forms of violence against women.

214. The Committee urges the State party to accord priority attention to the adoption of comprehensive measures to address violence against women and girls, in accordance with its general recommendation 19 on violence against women and the Declaration on the Elimination of Violence against Women. The Committee calls on the State party to enact legislation outlawing discriminatory customs and practices and criminalizing marital rape, as well as legislation concerning all forms of sexual abuse, including sexual harassment, as soon as possible. Such legislation needs to ensure that violence against women and girls constitutes a criminal offence, that women and girls who are victims of violence have access to immediate means of redress and protection and that perpetrators are prosecuted and punished. The Committee recommends the implementation of training for the judiciary, law enforcement personnel, health-service providers and teachers to ensure that they are sensitized to all forms of violence against women and can respond adequately to it. The Committee urges the State party to take immediate measures to put an end to all exploitation of school girls by teachers and to prosecute offenders effectively. The Committee also urges the State party to take concrete measures, including visible leadership from the highest level of Government,

towards modifying those social, cultural and traditional attitudes that constitute, or are permissive of, violence against women. The Committee requests the State party to provide information in its next report on the laws and policies in place to deal with violence against women and the impact of such measures.

215. The Committee is concerned that prostitution continues to thrive, owing to the poverty of women and girls. The Committee is also concerned about the exploitation of prostitutes, especially of young street girls, and the lack of information about the efforts to combat this phenomenon. It is also concerned at the lack of information about the extent of trafficking in women and measures taken to address this issue.

216. The Committee urges the State party to pursue a holistic approach that aims at providing women and girls with educational and economic alternatives to prostitution, to facilitate the reintegration of prostitutes into society and to provide rehabilitation and economic empowerment programmes to women and girls exploited in prostitution. The Committee further calls on the State party to take appropriate measures to suppress the exploitation of prostitution of women, including through the discouragement of the demand for prostitution. The Committee requests that the State party provide information and data on measures taken to combat this phenomenon in its next report. It also requests the State party to provide in its next report detailed information on trafficking in women and measures taken, including legislation, to prevent trafficking, protect victims and punish traffickers, as well as on the impact of such measures.

217. While welcoming some recent progress, the Committee expresses concern over the fact that the number of women in decision-making positions remains low in political and public life, including in the Parliament, the civil service and the judiciary. It is also concerned at the low representation of women in decision-making positions in the national Foreign Service.

218. The Committee recommends that the State party undertake concrete measures to increase the number of women in decision-making positions in all spheres and at all levels, including in the Parliament, political parties, the judiciary, the civil service and the Foreign Service. The Committee invites the State party to be guided by its general recommendation 23 on women in political and public life. It also recommends that the State party introduce temporary special measures, in accordance with article 4, paragraph 1, of the Convention and the Committee's general recommendation 25 on temporary special measures. Measures should include the setting of clear goals and timetables to accelerate women's equal participation in public and political life. The Committee urges the State party to implement capacity-building programmes to encourage women to participate in public life. It also calls on the State party to implement awareness-raising campaigns to highlight the importance to society as a whole of women's full and equal participation in leadership positions at all levels of decision-making for the development of the country.

219. While acknowledging some progress in the area of education, such as the equal representation of female teachers, as orally indicated to the Committee, and the adoption of a 30 per cent-recruitment policy for female students, the Committee is concerned that there is still a gap between males and females in the educational system. The Committee is especially concerned about the extremely high rate of

illiteracy among women, in particular rural and elderly women, the high drop-out rate of girls owing to early and forced marriage, pregnancy and girls' low enrolment rates in higher education.

220. The Committee urges the State party to raise awareness of the importance of education as a human right and as a basis for the empowerment of women. It also encourages the State party to take steps to overcome traditional attitudes that constitute obstacles to girls' education. It recommends that the State party take steps to ensure equal access of girls and young women to all levels of education, to retain girls in school and to strengthen the implementation of re-entry policies so that girls return to school after pregnancy. The Committee recommends that the State party make every effort to improve the literacy level of girls and women, particularly rural and elderly women, through the adoption of comprehensive programmes, in collaboration with civil society, at the formal and non-formal levels and through adult education and training.

221. The Committee expresses concern about the discrimination faced by women in employment, as reflected in the hiring process, the wage gap and occupational segregation. The Committee is concerned about the difficulties that women face in attempting to engage in viable economic activity in the formal sector, forcing them to work in the informal sector. It also expresses concern at the indirect discrimination against women because they have limited access to credit, owing to their lack of collateral.

222. The Committee urges the State party to ensure equal opportunities for women and men in the labour market, in accordance with article 11 of the Convention, and the full implementation of the provisions of the Employment Act and the Labour Relations Act by the public and private sectors. The Committee further recommends that the State party pay particular attention to the conditions of women workers in the informal sector with a view to ensuring their access to social services. The Committee urges the State party to intensify its efforts to ensure that all employment-generation programmes are gender-sensitive and that women can fully benefit from these programmes. It invites the State party to improve women's access to credit, with special emphasis on rural women. It calls on the State party to provide in its next report detailed information illustrated by data about the situation of women in the field of employment and work, including in the informal sector, and measures taken and their impact on realizing equal opportunities for women.

223. The Committee expresses concern about the lack of access of women and girls to adequate health-care services, including prenatal and post-natal care and family planning information, particularly in rural areas. The Committee is also concerned about the alarming rate of teenage pregnancy and multiple pregnancies, which presents a significant obstacle to girls' educational opportunities and economic empowerment. The Committee is alarmed at the persistent high maternal mortality rate, particularly the number of deaths resulting from unsafe abortions, high fertility rates and inadequate family planning services, especially in rural areas, low rates of contraceptive use and lack of sex education. The Committee is also alarmed at the rising trends in HIV/AIDS infection rates of women and the direct linkage between harmful traditional practices and the spread of HIV/AIDS.

224. The Committee urges the State party to continue its efforts to improve the country's health infrastructure and to ensure sufficient budgetary allocations for accessible health services. It calls on the State party to integrate

a gender perspective in all health sector reforms, while also ensuring that women's sexual and reproductive health needs are adequately addressed. In particular, the Committee recommends that the State party undertake appropriate measures to improve women's access to health care and health-related services and information, including access for women who live in rural areas. It calls upon the State party to improve the availability of sexual and reproductive health services, including family planning information and services, as well as access to antenatal, post-natal and obstetric services to reduce maternal mortality and to achieve the Millennium Development Goal to reduce maternal mortality. It encourages the State party to seek technical support from the United Nations Population Fund in these areas. It also recommends that programmes and policies be adopted to increase knowledge of and access to affordable contraceptive methods, so that women and men can make informed choices about the number and spacing of children. It further recommends that sex education be widely promoted and targeted at girls and boys, with special attention paid to the prevention of early pregnancy and the control of sexually transmitted diseases and HIV/AIDS. It also calls on the State party to ensure the effective implementation of its HIV/AIDS law and policies, to seek technical support from the World Health Organization and the Joint United Nations Programme on HIV/AIDS. It encourages the State party to enhance work with community leaders and health workers so as to decrease and eliminate the negative impact of traditional practices on women's health.

225. The Committee is concerned that widespread poverty among women and poor socio-economic conditions are among the causes of the violation of women's human rights and discrimination against women. The Committee is especially concerned about the situation of rural women, particularly in view of their precarious living conditions and lack of access to justice, health care, ownership of land and inheritance, education, credit facilities and community services.

226. The Committee urges the State party to make the promotion of gender equality an explicit component of its national development plans and policies, in particular those aimed at poverty alleviation and sustainable development. It urges the State party to pay special attention to the needs of rural women, ensuring that they participate in decision-making processes and have full access to justice, education, health services and credit facilities. The Committee also urges the State party to take appropriate measures to eliminate all forms of discrimination against women with respect to ownership and inheritance of land. The Committee invites the State party to place emphasis on women's human rights in all development cooperation programmes with international organizations and bilateral donors, so as to address the socio-economic causes of discrimination against women, including those impacting women in rural areas, through all available sources of support.

227. While commending the State party's efforts to host refugees from neighbouring countries, the Committee expresses concern about the lack of information about refugee women in camps in Malawi. In particular, it is concerned about the alleged cases of trafficking and smuggling of refugee women and that women may be denied the possibility of applying for refugee status as individuals in their own right. The Committee is also concerned at information about inadequate protection from and redress for gender-based violence against women in refugee camps.

228. The Committee requests the State party to provide in its next report comprehensive information on the situation of refugee women in Malawian camps, in particular in respect of the registration process for refugees and the means used to protect refugee women from gender-based violence and the avenues available for redress and rehabilitation in regard to allegations of trafficking and smuggling. The Committee also recommends that the State party seek further support from, and continue to work in close cooperation with, appropriate international agencies in the field of refugee protection, in particular, the Office of the United Nations High Commissioner for Refugees.

229. The Committee is concerned about the low level of coordination among the authorities with non-governmental organizations and women's associations in the implementation of the Convention.

230. The Committee invites the State party to coordinate and collaborate more effectively with non-governmental organizations and women's associations in the implementation of the Convention, including follow-up to the concluding comments. The Committee recommends that the State party consult further with non-governmental organizations during the preparation of the next periodic report.

231. The Committee encourages the State party to ratify the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women and to accept, as soon as possible, the amendment to article 20, paragraph 1, of the Convention, concerning the meeting time of the Committee.

232. The Committee urges the State party to utilize fully, in its implementation of its obligations under the Convention, the Beijing Declaration and Platform for Action, which reinforce the provisions of the Convention, and requests the State party to include information thereon in its next periodic report.

233. The Committee also emphasizes that a full and effective implementation of the Convention is indispensable for achieving the Millennium Development Goals. It calls for the integration of a gender perspective and explicit reflection of the provisions of the Convention in all efforts aimed at the achievement of the Millennium Development Goals, and requests the State party to include information thereon in its next periodic report.

234. The Committee notes that States' adherence to the seven major international human rights instruments¹ enhances the enjoyment by women of their human rights and fundamental freedoms in all aspects of life. Therefore, the Committee encourages the Government of Malawi to consider ratifying the treaty to which it is not yet a party, that is, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

235. The Committee requests the wide dissemination in Malawi of the present concluding comments in order to make the people, including government officials, politicians, parliamentarians and women's and human rights organizations, aware of the steps that have been taken to ensure de jure and de facto equality of women, as well as the further steps that are required in that regard. The Committee requests the State party to continue to disseminate widely, in particular to women's and human rights organizations, the Convention, its Optional Protocol, the Committee's general recommendations, the Beijing Declaration and Platform for Action and the outcome of the

twenty-third special session of the General Assembly, entitled “Women 2000: gender equality, development and peace for the twenty-first century”.

236. The Committee requests the State party to respond to the concerns expressed in the present concluding comments in its next periodic report under article 18 of the Convention, which is due in April 2008.