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Committee on Economic, Social and Cultural Rights

Initial report submitted by Malawi under articles 16 and 17 of the Covenant, due in 1996*

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Introduction

1. The Government of Malawi ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR) on 22nd December, 1993. In accordance with Articles 16 and 17 of the Covenant, which require a State Party to submit a report outlining measures undertaken to implement provisions of the ICESCR. The Government of Malawi is pleased to present its initial report to the Committee on Economic, Social and Cultural Rights (CESCR). The report covers the period from 1994 to 2020.
2. The report was prepared by the National Task Force (NTF) on the ICESCR which is chaired by the Ministry of Justice (MoJ). The NTF comprises Government Ministries, Departments and Agencies (MDAs), governance institutions and Civil Society Organisations (CSOs). The full list of the members of the NTF is attached hereto as Annex 1. Malawi looks forward to further engagement with the Committee during the review of this report.
3. We refer the Committee to Malawi's Common Core Document which gives a narration on Malawi's historical, political, constitutional, legal and social set-up.

Part I

Article 1

The Right to Self Determination

4. Malawi became a sovereign State upon attaining independence in 1964 and a republican status in 1966. Section 1 of the 1994 Constitution recognizes this sovereign status with rights and obligations under the law of nations. One of the Principles of National Policy in section 13 of the Constitution reiterates Malawi's quest to govern in accordance with the law of nations, and the rule of law and actively support the further development in regional and international affairs. Section 3 of the Constitution highlights the territorial integrity of Malawi and the country has, at all times, and respected the borders of other sovereign nations. Where the need has arisen to clarify the borders of Malawi, Government has co-operated with its neighbours in establishing the territorial limits of the countries involved.
5. The transformation of Malawi from a one-party State to a pluralistic democracy, in 1993, through a referendum is evidence of the right of the people of Malawi to determine their political destiny. Since 1994, Malawians have periodically held credible, free and fair presidential and parliamentary elections to choose their Government. The Constitution that emerged from the 1993 transformation was formally adopted in 1994 and provisionally applied for a year, after which it became substantively applicable as the Constitution of the Republic. The Constitution creates a constitutional order based on the need for an open, democratic and accountable government.
6. The Constitution of the Republic of Malawi does not expressly provide for the right to self-determination. However, the contents and essence of the right are guaranteed under several rights, namely, the right to freely determine one's political status under section 40 of the Constitution. The right to freely pursue economic social and cultural development is guaranteed in the Constitution under sections 29, 30 and 26 respectively.

Part II

Article 2

The progressive realization of the rights in the Covenant and non-discrimination

Progressive Realization of Rights

7. Malawi has undertaken steps including using the assistance of its international cooperating partners, both at an economic and technical level, to progressively realise the

rights enunciated under the ICESCR. More details will be expounded later in this report. Specifically, Malawi has adopted various legislative measures. Below are the key laws promulgated during the reporting period:

- (a) Access to Information Act, 2017;
- (b) Child Care, Protection and Justice Act, 2011;
- (c) Citizenship Amendment Act, 2019;
- (d) Courts Amendment Act, 2016;
- (e) Customary Land Act, 2016;
- (f) Deceased Estates, Wills and Inheritance Act, 2010;
- (g) Education Act, 2013;
- (h) Electronic Transactions and Cyber Security Act, 2016;
- (i) Gender Equality Act, 2014;
- (j) HIV/AIDS (Prevention and Management) Act, 2018;
- (k) Land Act, 2016;
- (l) Land Survey Act, 2016,
- (m) Marriage Divorce and Family Relations Act 2015;
- (n) Mines and Minerals Act, 2019;
- (o) National Planning Commission Act, 2017;
- (p) Physical Planning Act, 2016;
- (q) Political Parties Act, 2018;
- (r) Prevention of Domestic Violence Act, 2007;
- (s) Trafficking in Persons Act, 2015.

Non-discrimination

8. Section 20 of the Constitution of the Republic of Malawi guarantees the right to equality and non-discrimination. The section guarantees equal and effective protection against discrimination on grounds of race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, disability, property, birth or other status or condition.

9. Section 24 of the Constitution guarantees women equal protection by the law. Women have the right not to be discriminated against based on their gender or marital status. The section specifically asserts that women will be accorded the same rights as men in civil law, including equal capacity to enter into contracts; to acquire and maintain rights in property, independently or in association with others regardless of their marital status; to acquire and retain custody, guardianship and care of children; to have an equal right in the making of decisions that affect their upbringing and to acquire and retain citizenship and nationality.

10. Additionally, various laws have been promulgated to address various forms of discrimination. For instance, the Gender Equality Act promotes gender equality, equal integration, influence, empowerment, dignity and opportunities, for men and women in all functions of society. Provisions of the Act further prohibit and provide redress for sex discrimination, harmful practices and sexual harassment and mandate the provision of public awareness in the promotion of gender equality.

11. Furthermore, the HIV/AIDS (Prevention and Management) Act, 2018 under section 6, prohibits discrimination of any person on a basis relating to HIV and AIDS and related infections.

12. Part IV of the Disability Act (Cap 33:06 of the Laws of Malawi) guarantees that every person with a disability the entitlement to the same rights and privileges as all other people and in particular, those rights enshrined in the Constitution of Malawi.

13. In addition, section 13(g) of the Constitution mandates the State to develop policies that ensure that persons with disabilities are afforded equal opportunities to ensure they participate in all sectors of life to the fullest extent. To give effect to this subsection of the Constitution, the Accelerating Inclusive Local Governance and Participatory Democracy for Effective Social Economic Development Strategy (2017–2023) has been developed with the aim to mainstream inter alia, disability to enable persons with disabilities (PwD) to effectively participate in governance structures.

14. Section 13(a) (ii) of the Constitution also mandates the State to develop policies to address gender equality to ensure women are accorded equal opportunities as men. These policies will be outlined under Article 3 below.

Article 3

Equal rights for men and women

15. In addition to section 20 of the Constitution quoted under Article 2, above, section 24 of the Constitution quoted in paragraph 9 and the Gender Equality Act guarantee equality of women. Below are the policies that have been adopted to ensure women equally enjoy their rights as men.

16. The Malawi Growth and Development Strategy III (MGDS III) (2017–2022) acknowledges that ensuring that women are treated on equal footing as men are crucial in achieving meaningful national growth. In that regard, the strategy sets gender equality as a goal.

17. Furthermore, A Gender Equality Act Implementation and Monitoring Plan was adopted. The goal of the plan is to provide gender equality, integration, influence, empowerment, dignity and opportunities for men and women in all functions of society. The plan focuses on five thematic areas namely, gender in education and training; gender in health services and sexual reproductive health rights; mainstreaming gender in development sectors; gender in governance and human rights and capacity of the national gender machinery.

18. A woman's right to participate in decision-making is crucial in ensuring gender equality. Participation in decision making begins at the household level. In the 2015-16 Malawi Demographic Health Survey (MDHS), married women were asked about their participation in three types of household decisions, namely, health care, making major household purchases, and visits to family or relatives. The survey concluded that married women in Malawi are most likely to have sole or joint decision-making power about visiting family or relatives (78%) and their health care (68%) and less likely to make decisions about major household purchases (55%). Overall, 47percent of married women participate in all three decisions. Since 2000, married women's participation in decision-making has steadily improved.

19. However, with regard to the advancement of women in the political and the public sphere, female representation remains low. Nevertheless, there has been an increase in female candidature in parliamentary seats. There were 309 female parliamentary candidates in the 2019 tripartite elections which was an increase from the 219 female candidates in the 2014 tripartite elections. Furthermore, there were 660 female candidates in 2019 for local government elections, an increase in comparison to 417 female candidates in 2014. There were also more independent female candidates i.e. about 24% for local government elections and almost 40% for the parliamentary election. From 2014 to 2019, women representation in Parliament has increased from 32 women representing 16.7% in the 2014 elections to 45 women in the 2019 election representing 23.3%. Notably, 66 women have also made it into local government authorities, representing 14.5% compared to 12% in 2014. The improvement in women representation has been possible through the implementation of the 50:50 Campaign. Notwithstanding the improvement in the number of women who participated during the 2014 tripartite elections, there are still several factors that continue to negatively affect the gains made. Firstly, political institutions remain uncommitted to entrenching equality between the sexes within party structures. Secondly, little has been done to eliminate the underlying factors of subordination of women in the political field. Thirdly, the failure by Parliament to pass into law the electoral reform bills contributed in part. It

should also be noted that since 2019, Parliament, for the first time in its history has a female Speaker.

20. Additionally, the 2019 Gender Profile indicates that there are fewer women than men in decision-making positions (per grade) in the civil service, and oversight institutions. The Profile indicates that women occupy 33% of the positions at the head of public service level and 8% at the deputy head level. In the non-decision-making positions, at the principal and senior officer level, the gender profiling statistics show that women hold 33 % and 30% of the positions respectively. Tables 1 and 2 below show the gender profiling in decision making positions and non-decision-making positions in the civil service and oversight institutions as of March 2019.

Table 1
Gender profile in the decision-making positions (per grade)–Civil Service and oversight institutions March 2019

<i>Grade</i>	<i>M</i>	<i>Percent</i>	<i>F</i>	<i>%</i>	<i>Total</i>
A- Head of Public Service Level	2	67	1	33	3
B- Deputy Head of Public Service Level	12	92	1	8	13
C- Principal Secretary level	22	59	15	41	37
D- Director Level	143	77	42	23	185
E- Deputy Director Level	375	72	147	28	522
F- Chief Officer Level	608	77	181	23	789
Total	1 162	75	387	25	1 549

Source: Department of Human Resource Management and Development.

Table 2
Gender profile in the non-decision-making positions (per grade) – Civil Service and oversight institutions March 2019

<i>Grade</i>	<i>M</i>	<i>%</i>	<i>F</i>	<i>%</i>	<i>Total</i>
G- Principal Officer Level	1 050	70	448	30	1 498
H- Senior Officer Level	1 167	67	563	33	1 730
I- Officer level	5 563	66	2 820	34	8 383
J- Senior Assistant Officer Level	7 520	64	4 275	36	11 795
K- Assistant Officer Level	15 074	66	7 792	34	22 866
L- Senior Clerical Officer Level	30 222	58	21 628	42	51 850
M- Clerical Officer Level	8 669	60	5 748	40	14 417
N- Driver Level	2 526	84	474	16	3 000
O- Head Messenger/ Security Guard Level	2 188	64	1 245	36	3 433
P- Messenger/ Security Guard Level	4 528	63	2 614	37	7 142
Q- Cook/Gardner Level	964	82	209	18	1 173
R- Ground Labour Level	2 056	79	532	21	2 588
Total	81 527	63	48 348	37	129 875

Source: Department of Human Resource Management and Development.

Article 4 and 5

Derogations, restrictions and limitations on economic, social and cultural rights

21. The Constitution of Malawi specifically provides for instances where rights and freedoms can be restricted, limited or derogated from. Section 44 allows restrictions or limitations of rights if the restrictions or limitations are prescribed by law; reasonable; recognized by international human rights standards and necessary in an open and democratic society.

22. Section 44(2) of the Constitution further proscribes restrictions and limitations that negate the essential content of the right or freedom in question.

23. Section 45 of the Constitution further asserts that no rights shall be derogated unless there has been a declaration of a state of emergency¹. The section further states that no restrictions to inter alia, the right to equality and recognition before the law and the right to right to freedom of conscience, belief, thought and religion and to academic freedom shall be permissible even in a state of emergency. Such derogations shall also be permissible in a state of emergency only if not inconsistent with obligations of Malawi under international law.

Part III

Article 6

The Right to Work

24. Section 29 of the Constitution of Malawi guarantees the right to development. The content of the right to development includes the right to freely work to earn a living.

25. Ministry of Labour, in collaboration with the International Labour Organization (ILO)'s Fundamentals, engaged the National Statistics Office (NSO) to conduct a survey in 2015. The results of the survey were released in 2017. This survey revealed that the Employment to population ratio (the number of persons who are employed as a percentage of the total working-age population) was at 39.1%. Whereas the unemployment rate was at 28.7%. The youth participation rate in the Malawian working population² was 46.1% and the Youth Unemployment rate was 40.5%.

26. The Malawi Population and Housing Census (MHPC), 2018 revealed that out of Malawi's working population (comprised all persons aged 15 to 64 years), 72 per cent were economically active whereas 28% were economically inactive. Furthermore, out of the labour force of 6,614,065 persons, 81.5% were employed and 18.5% were unemployed.

Table 3
Working age population by sex, 2018

<i>Population</i>	<i>Total</i>	<i>Male</i>	<i>Female</i>
	17 563 749	8 521 460	9 042 289
Working population	9 188 275	4 431 102	4 757 173
Economically active	6 614 065	3 242 280	3 371 785
Economically inactive	2 574 210	1 188 822	1 385 388

¹ A state of emergency may be declared by the President, only in exceptional circumstances expressly provided for under the Constitution, such as where the Defence and Security Committee of the National Assembly has approved the declaration; in times of war, threat of war, civil war or widespread natural disaster; with regard to the specific location where that emergency exists; and that any declaration of a state of emergency shall be publicly announced.

² Data only refers to the population of youth, which should be those persons between the ages of 15 and 24 years.

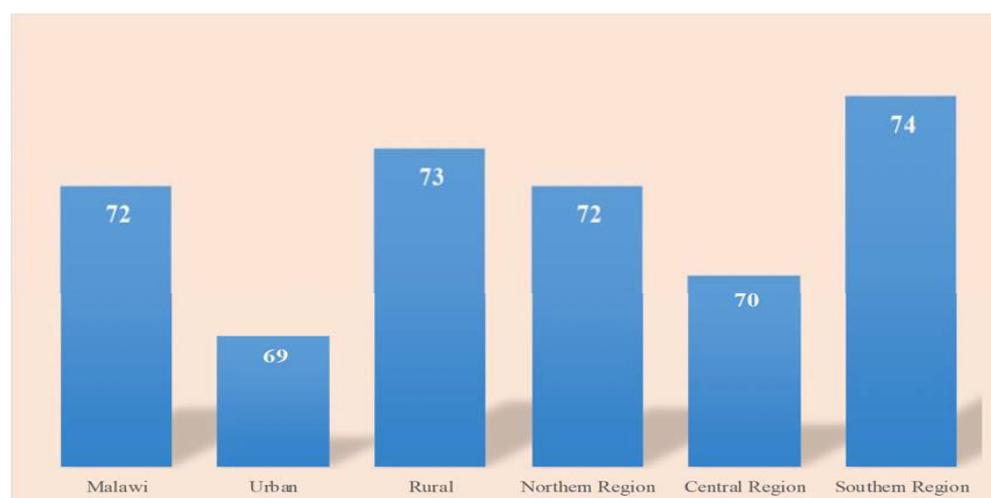
<i>Population</i>	<i>Total</i>	<i>Male</i>	<i>Female</i>
Employed and unemployed			
Labour Force	6 614 065	3 242 280	3 371 785
Employed	5 389 463	2 702 506	2 686 957
Unemployed	1 224 602	539 774	684 828

Source: MHPC, 2018.

27. The MHPC, 2018 also revealed that the labour force participation rate at national level was 72%, 69% for urban areas and 73% for rural areas. At regional level, the Northern Region had 72% of participation rate, 70% for the Central Region and 74% for the Southern Region.

Table 4

Labour force participation rate by urban, rural and region, 2018



Source: MHPC, 2018.

Improving access to Employment Opportunities

28. To improve access to employment opportunities, the Government, through the Ministry of Labour, has developed policies such as the National Employment and Labour policy (NELP). The NELP aims to implement deliberate efforts that promote employment growth both in terms of quality and quantity, and whether directly or indirectly. The policy provides a framework to promote productive and decent employment in the economy and increased compliance with labour standards by employers, investors and workers. It also aims to unleash the potential for Malawi to move to a development path that is more inclusive, pro-poor and job-rich thereby, strengthening the link between economic growth and job creation on one hand and poverty reduction on the other hand. The NELP is designed to be linked to the MGDS III and Agenda 2063 in ensuring job creation to fuel economic growth.

29. In addition, in 2018, the Government through the Ministry of Labour, with support from the African Development Bank (ADB) began implementing a Jobs for Youth Project which seeks to employ graduates from different colleges and universities and vocational training schools as interns in different Government Ministries and Departments. The aim of the project is to equip new graduates with the necessary skills required in the Malawian job market. The second phase ended in January, 2020. The Internship programme employed around 2,227 young people.

Child Labour

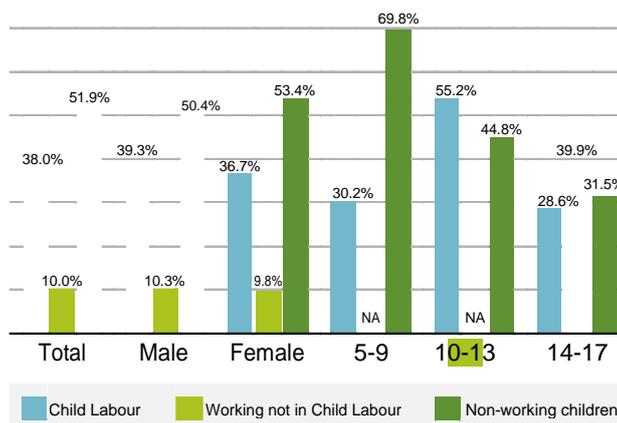
30. In furthering the right to work, the Government of Malawi also ensures that children are not employed. Section 23(4) of the Constitution of Malawi, section 21 of the Education Act (Cap 30:01 of the Laws of Malawi), and the Child Care, Protection and Justice Act (Cap 26:03 of the Laws of Malawi) all prohibit child labour in Malawi. The totality of the law in

the provisions just referred to is that the welfare of children must always be prioritized and children must never be exposed to conditions that are hazardous to their wellbeing.

31. The 2015 Labour Survey, asserted that 38 percent of children between 5-17 years are engaged in child labour.

32. By age-group, child labour was more prevalent among children aged 10 to 13 years (55 percent) followed by children aged 5 to 9 years (30 percent) and children 14 to 17 at 29 percent.

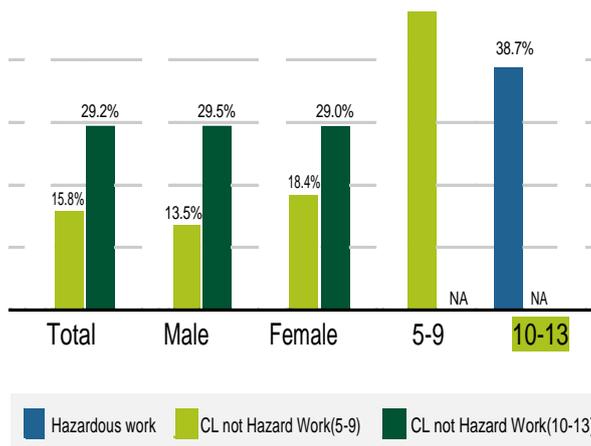
Table 5
Percentages of children engaged in child labour by age group and sex



Source: National Child Labour Survey Report, 2015.

33. The survey also showed that 15.8 percent of children aged 5 to 9 years were engaged in non-hazardous work; 29.2 percent of the children aged 10 to 13 years were engaged in non-hazardous work and 38.7 percent of children age 10 to 13 years were engaged in hazardous work.

Table 6
Percentage of child engaged in child labour by categorization of hazardous and non-hazardous work and sex



Source: National Child Labour Survey Report, 2015.

Table 7
Distribution of children (5-17 years) engaged in hazardous work by industries, sex and age-groups

<i>Industry 5–9 years</i>			<i>10–13 years</i>		<i>14–17 years</i>		<i>Total</i>	
Total	371 112	100.0%	391 191	100.0%	401 336	100.0%	1 163 639	100.0%
Agriculture, Forestry, Fishing	175 354	47.3%	263 967	67.5%	330 606	82.4%	769 927	66.2%
Construction	8 709	2.3%	12 996	3.3%	15 052	3.8%	36 757	3.2%
Wholesale & Retail	3 471	0.9%	13 294	3.4%	15 620	3.9%	32 385	2.8%
Domestic work	180 550	48.7%	99 896	25.5%	38 677	9.6%	319 123	27.4%
Other industries	3 028	0.8%	1 038	0.3%	1 381	0.3%	5 447	0.5%
Male								
Total	189 391	100.0%	223 592	100.0%	211 575	100.0%	624 558	100.0%
Agriculture, Forestry, Fishing	100 848	53.2%	156 669	70.1%	174 818	82.6%	432 335	69.2%
Construction	4 917	2.6%	9 100	4.1%	8 686	4.1%	22 703	3.6%
Wholesale & Retail	2 150	1.1%	6 599	3.0%	9 568	4.5%	18 317	2.9%
Domestic work	79 854	42.2%	51 224	22.9%	17 572	8.3%	148 650	23.8%
Other industries	1 622	0.9%	0	0.0%	931	0.4%	2 553	0.4%
Female								
Total	181 722	100.0%	167 599	100.0%	189 761	100.0%	539 082	100.0%
Agriculture, Forestry, Fishing	74 506	41.0%	107 298	64.0%	155 788	82.1%	337 592	62.6%
Construction	3 792	2.1%	3 896	2.3%	6 366	3.4%	14 054	2.6%
Wholesale & Retail	1 321	0.7%	6 695	4.0%	6 052	3.2%	14 068	2.6%
Domestic work	100 697	55.4%	48 672	29.0%	21 105	11.1%	170 474	31.6%
Other industries	1 406	0.8%	1 038	0.6%	450	0.2%	2 894	0.5%

Source: National Child Labour Survey Report, 2015.

34. To reduce and eliminate the prevalence of child labour, the Government has implemented legislative and policy measures.

35. The legislative measures include the enactment of the Employment Act which provides for fourteen years as the minimum age of entry into employment. This is in line with the ILO Convention on Minimum Age of Entry into Employment No. 138. The Government also developed the List of Hazardous Work for children Order of 2012. The list contains specifications of works that children aged between 5-17 years are prohibited from engaging in. The list is also in compliance with the ILO Convention 182 on the Worst Forms of Child Labour which specifies that the state parties shall domesticate the Convention by listing the types of work that children aged between 5 to 17 years are prohibited from carrying out.

36. The policy measures the Government of Malawi has implemented include the development of the National Code of Conduct on Child Labour. The National Code of Conduct is a tool used to guide the institutions in the elimination of child labour. The Government also developed the National Action Plan on Child Labour. This is an overarching document in the elimination of child labour in Malawi. This Plan of Action was implemented from 2010 to 2016 and it is currently undergoing a review alongside the Malawi Decent Work Country Programme (MDWCP), another important document in the elimination of child

labour. The MDWCP promotes decent work for adults so that they are able to support their children attending school to prevent them from engaging in child labour.

37. Furthermore, the Government through Ministry of Labour has been working with different institutions in implementing various programmes that include the Child Labour Elimination in Action for Real Change (CLEAR) funded by Elimination of Child Labour in Tobacco Growing Foundation. This programme was implemented in the three districts of Mchinji, Ntchisi and Rumphu. The programme targeted the communities through provision of food security, awareness raising and advocacy, improvement in education through rehabilitation of school blocks and construction of new blocks. The programme also made provision for safe spaces to the withdrawn children from child labour for them to be rehabilitated before they could be repatriated back to their homes or back to school. The programme constructed one safe space in Rumphu district. The CLEAR programme is in its third phase and will run for the next four years.

38. Another programme is the Achieving Reduction of Child Labour in Support of Education (ARISE). This programme was funded by Japan Tobacco International (JTI). It was being implemented by two partners which were the ILO and Winrock International. The first phase targeted two districts in tobacco growing areas which are Lilongwe and Ntcheu. In these districts, the programme targeted the communities through the provision of education services, awareness-raising and advocacy, law, policy and regulatory framework among others. These have helped the communities to be economically empowered. The communities were given the services of village savings and loans, goat and chicken rearing and other small scale businesses. The ILO will be implementing another programme on child labour elimination that will target districts growing oil generating crops like groundnuts, soya beans and sunflower.

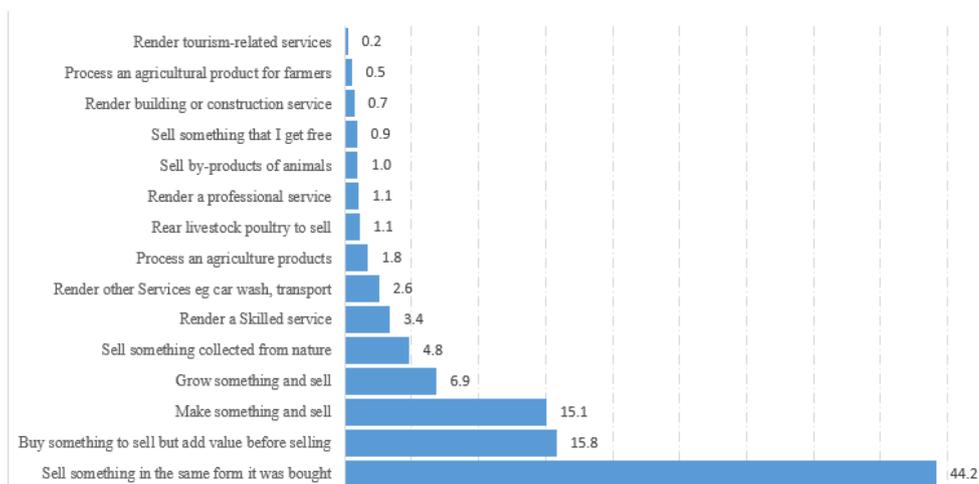
39. The Ministry of Labour has also developed the National Child Labour Policy. The Policy is at an advanced stage, awaiting the Cabinet's approval. Once the Policy is approved then it will be a guiding tool in the elimination of child labour in Malawi.

Informal Economy

40. Informal economy comprises of micro enterprises, home based workers and bare-minimum survival activities such as street vending, domestic work and other such work which is not covered under the established rules and regulations of the formal sector. The informal sector covers a wide range of labour market activities and plays a crucial role in the Malawian economy.

41. The MPHIC, 2018 collected information on small businesses operated by any member of the household. Out of 3,984,981 households in Malawi, 651,357 households operated a business of some kind representing 16.3 percent of all the households. Table 8 shows that 44 percent of the businesses owned by households sell products in the same form that they were bought; 16 percent buy products to sell but add value before selling; 15 percent make products and sell; 7 percent grow and sell while 15 percent household indicated that they were re-selling products after re-packing, re-grading or cooking, which entails light manufacturing especially given that trading in foodstuff is widespread in Malawi.

Table 8
Percentage of households with business by core business activities, 2018



Source: MPHC, 2018.

42. To ensure that the welfare of those working in the informal sector is safeguarded, Trade unions such as the Malawi Union for the Informal Sector (MUFIS), an affiliate of the Malawi Congress of Trade Unions (MCTU), whose membership as of 2012, was approximately 14550. MUFIS's membership comprises home-based workers, street vendors, waste pickers, construction workers, domestic workers and small-scale tea farmers. The Union aims to assist, represent and educate its members to improve their businesses and protect their rights and interests.

Article 7 The Right to Just and Favourable Conditions of Work

43. Section 31(1) of the Constitution of Malawi guarantees every person the right to fair and safe labour practices and fair remuneration. Section 31(3) of the Constitution further asserts that every person shall be entitled to fair wages and equal remuneration for work of equal value without distinction or discrimination of any kind, in particular on basis of gender, disability or race.

44. To give effect to the Constitutional provisions, the Employment Act provides for the minimum standards applicable in work settings. Section 4 of the Act prohibits forced labour. Section 5 proscribes discrimination against any employee or prospective employee on the grounds of race, colour, sex, language, religion, political or other opinion, nationality, ethnic or social origin, disability, property, birth, marital or other status or family responsibilities in respect of recruitment, training, promotion, terms and conditions of employment, termination of employment or other matters arising out of the employment relationship.

45. The Gender Equality Act, under section 7 further mandates the Government to take active measures to ensure that employers have developed and are implementing appropriate policy and procedures aimed at eliminating sexual harassment in the workplace. All persons who have been subjected to sexual harassment in the workplace can raise a grievance about its occurrence and be guaranteed that appropriate disciplinary action shall be taken against the perpetrators. Perpetrators of sexual harassment can be charged with committing a criminal offence liable to a fine of K1,000,000 and a term of imprisonment for five years.³ A person who has been subjected to sexual harassment need not exhaust internal sexual harassment procedures within the workplace before prosecution of the offence can be commenced or civil proceedings can be instituted.⁴

³ Section 6 of the Gender Equality Act.

⁴ Section 7 of the Gender Equality Act.

46. Furthermore, Part III of the Employment Act provides for the establishment of The Labour Commissioner and labour officers whose function is to inspect workplaces to ensure adherence to favourable minimum working standards. The Ministry of Labour, Youth, Sports and Manpower Development through its labour officers, inspect workplaces. Each workplace must be inspected at least twice every financial year.

47. Part V and VI of the Act provides for minimum requirements for concluding just and fair terms of employment such as the provision of severance allowance, leave days including maternity leave. Part VIII of the Act provides for the procedure for disciplining and dismissing an employee who respects their rights. For instance, section 57 of the Act provides that an employee must be furnished with reasons for dismissal. Before dismissal, the employee must be provided with an opportunity to defend themselves.

48. Other laws that provide for the welfare of workers include the Pensions Act, 2011. Which mandates every employer to which this Act applies, to provide a pension for every employee. The Act further ensures that every employee in Malaŵi receives retirement and supplementary benefits as and when due; promotes the safety, soundness and prudent management of pension funds that provide retirement and death benefits to members and beneficiaries; and foster agglomeration of national savings in support of economic growth and development of the country.

49. Where an employee is of the view that their right to fair labour practices has been violated, they can commence a claim before a specialized court established to deal with labour matters, the Industrial Relations Act (IRC). The IRC is composed of a chairperson, deputy chairperson who are both appointed by the Chief Justice on the recommendation of the Judicial Service Commission and such other persons not exceeding twenty to comprise the employees and employers panel.

50. At the policy level, the National Employment and Labour Policy also puts in place measures to ensure that employees enjoy just and favourable working conditions.

Article 8

The Right to Join a Trade Union

51. Section 31(2) of the Constitution of Malawi guarantees every person the right to form and join trade unions or not to form or join trade unions. In addition, Section 32 of the Constitution guarantees every person the right to freedom of association, which includes the freedom to form associations. The right to form trade unions is encompassed in this right. The freedom to join a trade union includes the freedom not to be compelled to join a trade union.

52. The Labour Relations Act (LRA) gives effect to the right to join trade unions. The Act aims at promoting sound labour relations through the protection and promotion of freedom of association, the encouragement of effective collective bargaining and the promotion of orderly and expeditious dispute settlement, conducive to social justice and economic development. The Act applies to both public and private institutions.

53. The LRA also prohibits discrimination of any kind in the constitutions of the trade unions or employers' organizations.⁵ This does not however preclude any provision, programme or activity aimed at ameliorating the conditions of disadvantaged individuals or groups.⁶

54. The LRA also provides remedies to parties who believe their freedom of association and its associated rights discussed above are infringed, the Industrial Relations Court is empowered to make such orders as it deems necessary to secure compliance with provisions of the Act. For instance, in the case of *Trade Union Members v NSCM Milling Division* Matter No. 8 of 1999[2001] the complainants who were involved in a lawful strike were

⁵ Pursuant to section 7(2) of the LRA and Section 20 of the Constitution.

⁶ Section 7 (3), Labour Relations Act.

dismissed by their employer for their participation in a strike. The court held that their dismissal was unfair and ordered the employers to compensate the employees.

55. The MCTU is a crucial player in the vindication of union rights. It aims to promote the growth of union movements in Malawi, resultantly contributing to the realization of workers' rights, social justice and improved working conditions through education, networking, research, organizing, advocacy, and policy engagement.

56. The MCTU has 24 affiliate unions such as the MUFIS, Tobacco Tenants and Allied Workers Union (TOTAWUM), Civil Servants Trade Union (CSTU) etc. The MCTU provides advice to affiliate unions to vindicate their members' labour rights.

57. The 2013 Malawi Labour Survey established that membership to unions and employees' association among workers is low. Overall, 6% and 4% of persons in wage employment are members of trade union and employees' associations respectively. Employed persons whose occupations are managers, professionals and clerical support staff have disproportionately high percentages of membership to employees' associations and trade unions compared to workers in other occupations. Among employed persons who were non-members of trade unions and employees' associations, the most prevalent reason for not joining trade unions or employees' associations is lack of knowledge on the existence of the trade union or employee association (52%) and not aware of any union to join at their work place (22%).

Table 9

Percentage of Trade union and employee association membership by occupation

Occupation	Trade union membership			Employees Association			Collective bargaining		
	Both	Male	Female	Both	Male	Female	Both	Male	Female
Total	5.5	6.8	3.6	3.6	4.1	2.9	18.1	21.6	13.3
Manager	19.9	20.3	17.4	13.9	15.0	7.7	56.1	57.6	47.8
Professionals	22.8	24.4	20.2	22.8	21.0	25.9	56.8	55.8	58.5
Technicians and associated Professionals	3.4	1.0	14.1	1.7	2.1	-	33.6	34.9	28.0
Clerical support workers	23.3	23.2	23.5	6.1	5.6	6.8	44.7	44.8	44.5
Service and sales workers	8.1	7.4	10.5	2.3	2.9	2.1	25.9	26.6	23.4
Skilled agricultural, forestry and fishery workers	0.4	0.0	0.8	0.9	0.7	1.1	4.1	7.6	0.8
Craft and related trades workers	6.9	6.9	6.8	2.8	2.9	2.1	21.7	21.4	24.1
Plant and machine operators, and Assemblers	9.9	11.0	4.2	5.0	5.8	0.4	30.2	33.7	10.7
Elementary occupations	2.2	3.7	0.8	1.4	2.3	0.6	11.8	13.5	10.1

Source: Malawi Labour Survey, 2013.

Article 9 The Right to Social Security

58. The Constitution of Malawi recognizes the right to economic, social, cultural and political development. Women, children and persons with disabilities in particular shall be given special consideration in the effectuation of this right. To this end, the Constitution charges the State with the responsibility of adopting all necessary measures to ensure that every individual has equal opportunity for access to basic resources.

Trends of Poverty in Malawi

59. The Malawi Poverty Report, 2019 provided comparisons in poverty lines for Integrated Household Survey (IHS) 4 and IHS3. For IHS4, the population which had a total

consumption below K137, 428 (approximately US\$ 183) was deemed poor as compared to K37, 002 (approximately US\$49) in the IHS3 while the population that has a total consumption below K85, 260 (approximately US\$ 113) was considered to be ultra-poor in the IHS4 while in the IHS3, this was at K22, 956 (approximately US\$ 30.60).

Table 10

Poverty line in Malawi Kwacha per person per year, Malawi 2017

<i>Poverty line</i>	<i>IHS3 (2011)</i>	<i>IHS4 (2017)</i>
Food	22 956	85 260
Non-Food	14 045	52 168
Total	37 002	137 428

Source: Integrated Household Survey 3 (2010/2011) and Integrated House Survey 4 (2016/2017) Malawi.

60. The Malawi Poverty report, 2020 shows using the IHS4 and IHS5 that the population that had a total consumption below K165, 879 (approximately US\$ 221) were deemed poor in 2019/2020 as compared to K137, 428 (approximately US\$ 183) in 2016/2017. As regards ultra-poverty, the population that had a total consumption below K101,293 (approximately US\$ 135) in 2019/2020 was considered to be ultra-poor in the IHS5 while in 2016/2017, this was at K85, 260 (approximately US\$ 113).

Table 11

Poverty Line in Malawi Kwacha per Person per Year, Malawi 2020

<i>Poverty line</i>	<i>IHS4</i>	<i>IHS5</i>
	<i>(2016/2017)</i>	<i>(2019/2020)</i>
Food	85 260	101 293
Non-Food	52 168	64 586
Total	137 428	165 879

Source: Malawi Poverty Report 2020.

61. The Malawi Poverty Report, 2020 further indicates that the proportion of the population that was poor reduced from 51.5% in 2016/2017 to 50.7% 2019/2020. This means that slightly over half of the population in Malawi lived in poverty.

62. The Malawi Poverty Report, 2020, also shows that 56.6% of people from rural areas were poor compared to 19.2% in urban areas in 2019/2020. The proportion of the population that was poor in urban areas was higher in 2019/2020 at 19.2% than 17.7% in 2016/2017.

63. The Report also makes an analysis of poverty levels by sex of household head. The report shows that 56.8% of people in female-headed households were poor in 2019/2020 compared to 48.5% in male-headed households. The proportion of people that were poor in female-headed households decreased from 58.3% in 2016/2017 to 56.8% in 2019/2020.

64. To alleviate the poverty levels in Malawi, the National Social Support Policy (NSSP) (2012) and Malawi National Social Support Programme (MNSSP) I (2012) set the building blocks of the country's strategy in the field of social protection in Malawi. However, despite having these policies, the approach to implementing social protection programmes has not been harmonised and coordination under a comprehensive guiding vision was not fully achieved. Lack of a comprehensive vision of social development and weak institutional capacities have led to gaps in the delivery of social services and entitlements.

65. The NSSP emphasizes the need to provide a holistic framework for designing, implementing, coordinating, monitoring and evaluating social support interventions. In line with this, crucial measures recommended for implementation to ensure social protection and inclusion include:

- (a) Preparing a comprehensive national social protection framework;
- (b) Strengthening coordination of social sector policies and programmes across sectors;
- (c) Providing adequate resources or social protection;
- (d) Extending social protection coverage to a large number of beneficiaries;
- (e) Improving targeting of existing social protection programmes;
- (f) Mainstreaming social protection into sector and district planning; and
- (g) Strengthening monitoring of social protection programmes.

66. The Malawi National Support Programme II (MNSSP II) (2018-2023) builds on the objectives of the NSSP and MNSSP I. The Programme is organized around thematic priority areas and provides guidance on promoting linkages, strengthening systems and improving monitoring activities. The priority support areas include:

(a) Consumption support – The provision of consumption support through timely, predictable and adequate cash and/or in-kind transfers to poor and vulnerable people throughout their life cycles;

(b) Resilient livelihoods – Promoting resilient livelihoods through tailored packages based on individual, household, and community needs via poverty graduation pathways and inter-programme linkages and by facilitating access to and the utilisation of services beyond the MNSSP II programmes;

(c) Shock-sensitive social protection – The development of a shock-sensitive social protection system that meets seasonal needs, prepares for and responds to unpredictable shocks in cooperation with the humanitarian sector and supports recovery and the return to regular programming.

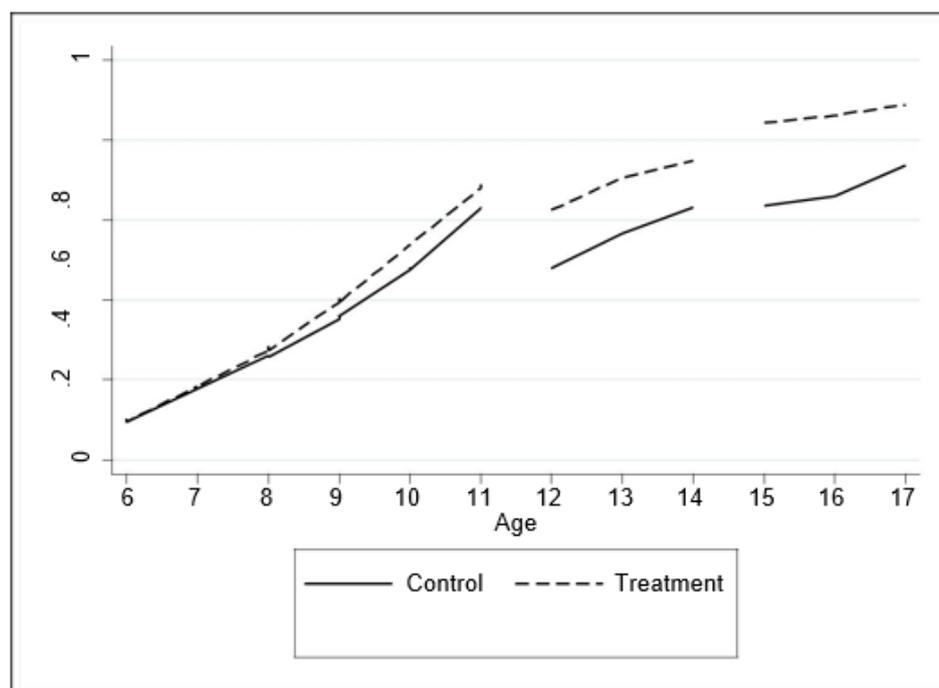
67. Various social protection schemes and programmes exist in Malawi, implemented using a range of different mechanisms. Some of these programmes are embedded in long-term strategic plans, implemented nationwide and financed through the Government's consolidated budget. Quite a few are of a short-term nature, or limited in geographical and personal coverage, and based on a volatile and insecure resource base. The various programmes use different mechanisms to deliver the income transfer or service to different population groups. The following categories may be distinguished:

- (a) Cash transfer programs directed to households or individuals;
- (b) In kind transfers to households or individuals aiming at facilitating access to health and education;
- (c) Active labour market programmes; and
- (d) Subsidies – either to producers or consumers of certain goods or services.

Social Cash Transfer Programme (SCTP)

68. The Government through the Ministry of Gender, Community Development and Social Welfare (MoGCDSW) with the assistance of development partners put in place the SCTP. It is an unconditional cash transfer programme targeting the ultra-poor, labour-constrained households in order to inter alia, alleviate children turning to labour to help support their families. The programme began as a pilot in Mchinji district in 2006. Since 2009, the programme has expanded to reach 18 out of 28 districts in Malawi. The programme experienced impressive growth beginning from 2012 to 2015. By December 2015, the SCTP had reached over 163,000 beneficiary households. According to the SCTP End-line Impact Evaluation Report of 2016, the SCTP has registered positive effects on reducing child labour, reduced school drop-out rate and increased enrolment of children in schools.

Table 12
Effects of the SCTP on Child Labour (by percentage)
Overall effects of SCTP on Child Labour



Source: Malawi Social Cash Transfer Programme Endline Report.

Table 13
Social cash transfer Programme household heads and beneficiaries by gender (July 2015) – Social cash transfer household and beneficiary characteristics

	<i>Beneficiaries</i>	<i>Percentage</i>	<i>Household head</i>	<i>Percentage</i>
Male	295 730	44.1	40 259	26.6
Female	374 752	55.9	111 057	73.4

Source: Ministry of Gender, Children, Disability and Social Welfare, 2015.

Table 14
Social Cash Transfer Programme household head characteristics (July 2015) Social cash transfer household and beneficiary characteristics

	<i>Number</i>
Child headed households	1 371
Elderly headed households	76 343
Household head with disability	42 564
Household head with chronic illness	88 459

Source: Ministry of Gender, Children, Disability and Social Welfare, 2015.

Farmers Input Subsidy Programme (FISP) (Renamed the Affordable Input Programme (AIP))

69. This is a social protection programme aimed at improving food security and income of smallholder farmers by facilitating their access to improved agricultural inputs. The programme commenced in 2005. The Programme is mainly supported by the Government of Malawi with some help from international development partners. The current cost of the programme is an estimated total cost of USD221 million. The programme targets resource

poor Malawian farmers resident in a village and own a piece of land. The programme also specifically targets elderly resource poor household heads; HIV positive resource poor household head with proof of status; resource poor female headed household head; resource poor child headed household head; resource poor orphan headed household head and resource poor physically challenged household head. The programme is implemented by the Ministry of Agriculture in conjunction with the Ministry of Local Government, through District Assemblies.

70. In the 2018/2019 financial year, the beneficiaries of FISP were fulltime smallholder Malawian farmers who are resource poor of all gender categories. In the districts of Dowa, Rumphi, Salima and Mwanza districts only productive small holder farmers were targeted. The fertilizer package targeted 1,000,000 farmers. In addition, these farmers also benefited from hybrid or OPV maize or improved sorghum seed or rice seed based on farmer's choice and legume seed.

71. In the 2018/2019 financial year, a total of 100,000 metric tons of maize fertilizer (50,000 metric tons of NPK and 50,000 metric tons of Urea) were subsidized. In addition to the fertilizer, the Government also subsidized a maximum of 5,000 metric tons of improved maize seed, 90 metric tons of improved sorghum seed, 90 metric tons of rice 2 seed and a maximum of 2000 metric tons of legumes (groundnuts, beans, soybeans and pigeon peas).

72. The Government also subsidized the price of UREA (50 Kilograms) bag of fertilizer. The fixed value of each fertilizer coupon was pegged at MK15, 000 (approximately US\$20). A beneficiary is expected to pay the difference of the coupon value and market price of a 50 Kilograms fertilizer bag.

73. The seed types included in the FISP include:

- (a) Open Pollinated Varieties maize seed;
- (b) Hybrid maize seed;
- (c) Improved sorghum seed;
- (d) Improved rice seed;
- (e) Bean Seed;
- (f) Groundnuts seed;
- (g) Soya beans seed;
- (h) Pigeon peas; and
- (i) Cowpea seed.

74. In the 2018/2019 season, each beneficiary was entitled to a coupon for purchasing improved maize seed packaged in 5kg packs for either hybrid or OPV or 7 kg packs for improved sorghum seed or Improved rice seed. In addition to improved cereal seed, the beneficiaries were given coupons for purchasing legume seeds (beans, ground nuts, soya beans, cowpeas and pigeon peas). Beans and groundnuts were packaged in 1 kg packs while soya beans, pigeon peas and cowpeas were packaged in 2 kg packs. The seed coupon was fixed at a value of MK6,000.00 (approximately US\$8) per cereal package and MK2,050.00 (approximately US\$ 2.73) per legume package. Like in fertilizer, farmers are required to pay the difference between the pack market value and the coupon value.

75. During the years of its implementation, the programme has undergone some changes to address the challenges noted during its implementation. Some the challenges include, insufficient particularity about the criteria to be used to identify beneficiaries; the timely and cost-effective procurement of the farm inputs and malpractices in the distribution of the coupons.

76. To address these issues, the Ministry of Agriculture provides the criteria for selecting beneficiaries every year and as much as possible let the selection of beneficiaries occur at the community level. In addition, to reduce malpractices in the distribution of coupons the office of the Anti-Corruption Bureau and the Malawi Police Service provide an oversight role. The coordination and timing of the procurement of the farm inputs has also improved.

77. The reformed FISP, AIP is estimated will cost K 160.2 billion (approximately US\$ 214 million).

Article 10

Protection and assistance for the family

78. Section 22 of the Constitution stipulates that the family is the natural and fundamental group unit of society and is entitled to protection by society and the State. Each member of the family is entitled to enjoy full and equal respect and protection by law against all forms of neglect, cruelty or exploitation. All men and women have the right to marry and found a family. No person shall be forced to enter into marriage. The Constitution also recognizes marriages all marriages at law, custom and marriages by repute or by permanent cohabitation. The provision further proscribes any person under the age of 18 to be married.

79. Section 13(i) of the Constitution stipulates that the State has the responsibility of promulgating laws and developing policies to recognize and protect the family as a fundamental and vital social unit.

80. To give effect to section 13(i) and section 22 of the Constitution, several laws and policies have been adopted.

81. The principal legislation with regard to marriage is the Marriage Divorce and Family Relations Act (MDFRA) which was promulgated in 2015. The Act replaces the now repealed the Marriage Act(Cap 25:01); African Marriage (Christian Rites) Registration Act(Cap 25:02); Asiatics (Marriage, Divorce and Succession) Act(Cap 25:03); Divorce Act (Cap 25:04; Married Women (Maintenance) Act (Cap 25: 05) and Maintenance Orders (Enforcement) Act (Cap 26:04) which makes provision for marriage, divorce and family relations between spouses and between unmarried couples, their welfare and maintenance, and that of their children.

82. Other laws that have been promulgated aimed at addressing some of the challenges affecting the family unit include the Prevention of Domestic Violence Act (PDVA) which was enacted in 2006 and makes provision for the prevention of domestic violence and for the protection of persons affected by domestic violence in a bid to contribute towards the protection of the family as an important social unit.

Marriage

83. The MDFRA sets the minimum age of marriage at 18. When reviewing marriage related laws, the Malawi Law Commission noted that in the case of the girl child, marriage below the age of eighteen is a health hazard and that early marriage has negative development implications. To harmonise the minimum age of marriage, the Constitution was amended in 2017 to set the minimum age of the child at 18, and removing parental consent for marriages of persons between the ages of 15 and 18.

84. The Act recognizes civil marriages, customary marriages, religious marriages and marriages by repute or permanent cohabitation. All these marriages have equal legal status.

85. The MDFRA makes provision for the registration of every marriage celebrated in accordance with the Act. The Registrar enters into the Marriage Register Book all particulars of certificates of marriage. The Marriage Register Book is made available for inspection during office hours and on application.

86. Polygamy in civil marriages is strictly prohibited under Section 16 of the MDFRA. However, considering that these are still recognised at customary law, the law protects the property interests of a woman in reference to section 24 (1) (b) (ii) and (ii) of the Constitution. However, there is no specific marriage law that protects women in polygamous relationships. Considering that the provisions of the MDFRA apply to all marriages equally, women in polygamous relationships can invoke the same provisions where the need arises. In cases of widowhood, the Deceased Estates (Wills, Inheritance and Protection) Act has specific provisions on the protection of a spouse in a polygamous union.

Protection of Women

87. In recognition that women are disproportionately negatively affected by issues within a family, the Government has made deliberate efforts to protect women and girls from being forced to marry and marry under the age of 18.

88. To proscribe child and forced marriages, the Government of Malawi through its projects has embarked on sensitizing communities to modify societal attitude towards such harmful practices. Firstly, the Government has developed guidelines to standardize by-laws' applicability in the district councils. Through these by-laws, such harmful practices are prohibited. Secondly, many traditional leaders are working hand in hand with Government to challenge community systems that promote harmful practices and are enforcing by-laws within their communities. Many by-laws are addressing child marriage by imposing fines on families that perpetuate the practice, as well as penalizing chiefs that are failing to enforce the by-laws in their communities. Thirdly, there is a clear message from the highest political platform that harmful practices are intolerable. On 25 July 2014, the State President Professor Arthur Peter Mutharika became the first SADC Head of State to sign a commitment to end child marriages, which currently affect 50 percent of girls below the age of 18 years in Malawi.

89. The MoGCDSW in collaboration with a radio station called Zodiak Broadcasting Station and United Nations Population Fund (UNFPA) are running a mass media campaign to end child marriages. The media campaign is aimed at sensitizing the public of the dangers of harmful cultural practices.

90. CSOs and development partners have also assisted in the efforts towards eliminating the harmful cultural practices listed above. For instance, Plan International Malawi, are running a Girls not Brides Campaign aimed at sensitizing the communities and rescuing children from child marriages with the help of community-based structures. The campaigns are showing positive results so far. YONECO also runs radio programmes aimed at sensitizing children and parents on harmful cultural practices particularly, child marriages.

91. In 2019, the Government adopted the National Strategy on Ending Child Marriage (2018–2023). This Strategy provides a blueprint for the coordinated responses towards eliminating child marriages.

Women in Employment

92. Special protection is also accorded to mothers both before and after birth by inter alia, being provided with paid leave. Section 47 of the Employment Act stipulates that a female employee shall be entitled, within every three years, to at least eight weeks maternity leave on full pay. During the period when an employee is on maternity leave, her normal benefits and entitlements, including her contractual rights and accumulation of seniority, shall continue uninterrupted and her period of employment shall not be considered to have been interrupted, reduced or broken. In the event of illness, certified by a registered medical practitioner, arising out of pregnancy or confinement, affecting the employee or her child, the employer shall grant the employee additional leave as the employer may deem fit. Section 48 of the Employment Act further states that upon the expiration of her maternity leave, an employee shall have the right to return to the same job with the same benefits and entitlements as immediately before her absence.

93. Where an employer terminates the employment of an employee because the employee is pregnant or for any reason connected with her pregnancy shall be guilty of an offence. An employer who is convicted of an offence under the subsection shall be liable to a fine of K20,000 (approximately US\$26.67) and imprisonment for five years. In addition to imposing a penalty under subsection (2), the Court may order that the employer reinstate the employee, who shall be treated in all respects as if her employment had not been terminated and award compensation to the female employee. An employer who is ordered to reinstate an employee and refuses to do so shall be guilty of an offence and liable to a fine of MK500 (approximately US\$ 0.66) for each day during which the offence continues.

Protection of Children

94. According to section 23 of the Constitution of Malawi, children are persons under eighteen years of age. The Constitution has guaranteed children additional rights. For example, the Constitution provides that all children, regardless of the circumstances of their birth, are entitled to equal treatment before the law. They have the right to a given name and a family name and the right to a nationality. They also have the right to know, and to be raised by their parents.

95. Regarding the protection of children in the family, Section 48 (5) of the MDFRA charges spouses to severally, or jointly with the other, exercise responsibility towards the upbringing, nurturing and maintenance of the children of the marriage. The Act specifically states that the spouses have a duty to maintain the children of the marriage. Where a party to a marriage neglects to maintain the other party or to provide the needs of the children to such an extent that the health, safety or security, nutrition and education of such other party or such children, as the case may be, is adversely affected, that neglect constitutes notifiable family misconduct and a parent of a party to the marriage, a next of kin or other close relative shall be under a duty to report the neglect to the Minister responsible for social welfare.

96. The Act also charges the court with the protection of children in a marriage that has broken down and is being dissolved by ensuring that minimum distress should be occasioned on the children. The court shall also have the power to award custody in favour of either of the parents based on the best interests of the child. The welfare of children is paramount at all times.

97. Section 3 of the Deceased Estates (Wills & Inheritance) Act (Cap 10:02) makes provision for equal treatment of both children born outside and within wedlock in terms of inheritance.

98. In addition, parents and guardians are also given rights and duties towards children under the Child Care, Protection and Justice Act, 2010. For example, Section 3 provides that a parent or guardian shall not deprive a child of his or her welfare and has responsibilities whether imposed by law or otherwise towards the child which include the responsibility to protect the child from neglect, discrimination, violence, abuse, exploitation, oppression and exposure to physical, mental, social and moral hazards; provide proper guidance, care, assistance and maintenance for the child to ensure his or her survival and development, including in particular adequate diet, clothing, shelter and medical attention; and to ensure that during the temporary absence of the parent or guardian, the child shall be cared for by a competent person.

Article 11

The Right to an adequate standard of living

99. Section 30 (2) of the Constitution, obliges the State to adopt measures to ensure equality of opportunity for all in their access to basic resources, education, health services, food, shelter, employment and infrastructure.

100. The Government has sought to improve the economic and social welfare status of the people of Malawi through strategies such as the MDGS III (2017 -2022). The MDGS identifies five key priority areas some of which are Agriculture, Education and Skills Development, Transport and ICT infrastructure; Energy, Industrial and Tourism Development as areas crucial in ensuring that Malawian citizens enjoy an adequate standard of living. The goals of the MGDS III have been further translated and incorporated into sector specific policies covering the above-mentioned priority areas, discussed throughout the report.

101. Paragraphs 59 to 76 above outlines the national poverty line and the steps taken to address poverty.

The right to adequate food

102. To ensure that Malawians enjoy the right to food, several policies and programmes have been implemented. Firstly, since 2005, the Government has been implementing the FISP, renamed, AIP which is outlined in paragraphs 67 to 75 above. The programme ensures that Malawians have access to farm inputs to *inter alia*, grow subsistence crops to ensure food security. Secondly, the Government through the Ministry of Agriculture developed the National Multi-Sector Nutrition Policy (NMNP) (2018–2022). The Policy is intended to provide a guiding framework for the successful implementation of the national nutrition response; address the existing and emerging national and global issues; and consequently, uphold the Government’s commitment towards eliminating all forms of malnutrition. The Policy shall be operationalized through the National Nutrition Strategic Plan 2018–2022.

103. The Policy has identified eight priority areas which include, the prevention of under nutrition; gender equality, equity, protection, participation and empowerment for improved nutrition; treatment and control of acute malnutrition; prevention and management of overweight and nutrition-related NCDs; nutrition education, social mobilisation, and positive behaviour change; nutrition during emergency situations; creating an enabling environment for nutrition; and nutrition monitoring, evaluation, research and surveillance.

104. Additional supporting operational strategies and guidelines shall be developed to further translate the aspiration into tangible actions. These shall include the following strategies and guidelines: National Nutrition Education and Communication; Infant and Young Child Feeding (IYCF); Micronutrient; Adolescent Nutrition; School Health and Nutrition; Early Childhood Development; Community-based Management of Acute Malnutrition (CMAM); Nutrition Care Support and Treatment (NCST); and prevention and treatment of nutrition-related Non-Communicable Diseases (NCDs).

105. With regard to the IYCF, this programme is normally administered in schools, adopting two modalities. The first is provided with the assistance of World Food Programme (WFP) and Mary’s meals. The second modality is provision of food through home grown school feeding programme. This model empowers communities to manage their own school feeding programme, giving local farmers an opportunity to access and benefit from the school feeding market, and provide students with fresh, nutritious, locally-grown food. Both school feeding programme run by all service providers reaches about 3 percent of all primary schools in Malawi. The WFP programme reaches about 18 percent of the primary school students. The feeding programme targets the poorest and most vulnerable and hard to reach areas in Malawi.

106. According to the preliminary crop estimates from the Ministry of Agriculture, Malawi is expected to produce 3,691,866 metric tons of maize for the 2020/21 consumption year. This is about 25 percent higher than the five-year average and 9 percent higher than the previous year. Production of rice, millet, and pulses is expected to be between 8 to 11 percent above last year. This estimated rise could be attributed to higher-than-normal rainfall and access to wider access to farm inputs.

The right to water

107. The MPHIC found that 85 percent of households used improved sources of drinking water which include piped water, public standpipes, tube/protected wells and boreholes. As Table 15 shows below, about 61.7 percent of the population used boreholes, 8.1 percent used community standpipe, and 10.3 percent used piped water into dwelling or plot as main source of drinking water in the dry season.

Table 15
Number and Percentage of population by main source of drinking water during dry season, 2018

Main source of drinking water	Malawi		Northern Region		Central Region		Southern Region	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Total	17 517 349	100	2 281 105	100.0	7 503 594	100	7 732 650	100
Piped into dwelling	510 986	3	77 218	3.4	196 629	2.6	4	3.1
Piped into yard/plot	1 293 387	7	306 059	13.4	499 771	6.7	487 557	6.3
Community standpipe	1 415 739	8	142 737	6.3	520 949	6.9	752 053	9.7
Protected well	910 668	5	114 547	5.0	550 690	7.3	245 431	3.2
Borehole	10 800 408	62	1 253 283	54.9	4 518 415	60.2	5 028 710	65.0
Unprotected well	1 402 367	8	136 937	6.0	745 593	9.9	519 837	6.7
Spring	96 997	1	15 348	0.7	38 057	0.5	43 592	0.6
River/Stream	870 667	5	193 717	8.5	366 383	4.9	310 567	4.0
Pond/Lake	86 066	1	21 818	1.0	19 008	0.3	45 240	0.6
Dam	64 335	0	9 292	0.4	22 984	0.3	32 059	0.4
Other	118 410	1	10 149	0.4	48 477	0.6	59 784	0.8

Source: MPHIC, 2018.

Table 16
Population without basic access to drinking water (1992–2017)

		Population without basic access to water (%)										% point difference	% change ^a
		1992	2000	2004	2006	2010	2012	2013	2014	2015	2017		
National		57	50	50	49	40	28	44	29	37	22	-35	-62
Region	Northern	60	45	48	40	34	30	37	33	34	31	-28	-48
	Central	60	53	52	49	43	31	41	31	39	23	-37	-62
	Southern	55	49	49	50	38	25	48	26	37	18	-37	-67
Areas	Rural	57	50	57	53	44	31	49	33	41	25	-38	-61
	Urban	63	56	16	21	20	11	15	10	13	5	-8	-63
Wealth Index	Poorest			66	59	52	43	54	37	46	25	-41	-63
	Poorer			61	56	46	31	51	38	42	27	-34	-56
	Middle			56	53	44	31	50	34	41	28	-28	-50
	Richer			50	48	37	28	46	30	38	21	-29	-59
	Richest			19	28	20	9	20	7	17	8	-11	-57
Education Level	None	64	59	58	55	45		50		42		-21	-33
	Primary	58	53	54	51	43		48		40		-18	-31
	Secondary	25	24	28	31	24							

Source: DHS, MICS.

108. As Table 16 shows, access to drinking water has improved since 1992. This rise is attributed to various policies and programmes implemented by the Government in collaboration with development partners.

The right to adequate housing

109. The Government of Malawi recognizes its obligation to ensure that the people of Malawi have access to decent and adequate housing. Adequate housing encompasses legal

security of tenure, including protection against forced eviction; availability of services, materials, facilities and infrastructure, including access to safe drinking water and sanitation; affordability, including for the poorest, through housing subsidies, protection against unreasonable rent levels or rent increases; habitability, including protection from cold, damp, heat, rain, wind and disease vectors; accessibility for disadvantaged groups, including to the elderly, children, persons with disabilities, the terminally ill and victims of natural disasters; location, far from polluted sites or pollution sources but near to health-care, services, schools, child-care centers and other social facilities.

110. There were 4,805,431 housing units enumerated in the 2018 MPHC. Of these housing units, 41.1% were permanent, 23.0 % were semi-permanent and 35.9% were traditional. In the Northern Region, 53.9% of housing units were permanent, 26.3% were semi-permanent and 35.9% were traditional. For Central Region, 33.6% of housing units were permanent, 22.1% were semi-permanent and 44.3% were traditional. Southern Region had 45.1% permanent housing units, 23.1% semi-permanent and 31.8% traditional housing units.

Table 17
Type of housing units

Type of Housing Units	Malawi		Northern Region		Central Region		Southern Region	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Total Housing Units	4 805 431	100.0	565 331	100.0	2 098 353	100.0	2 141 747	100.0
Permanent	1 974 613	41.1	304 588	53.9	704 277	33.6	965 748	45.1
Semi-permanent	1 107 447	23.0	148 691	26.3	463 829	22.1	494 927	23.1
Traditional	1 723 371	35.9	112 052	19.8	930 247	44.3	681 072	31.8

Source: MPHC, 2018.

111. In seeking to achieve adequate housing, Malawi has adopted policies that will broadly raise the economic and social status of the people. These include the MGDS III and the SCTP which aim to economically empower the ultra-poor so that they can be able to have access to housing. In addition, the Malawi Housing Corporation (MHC), a statutory body that was established in 1964 by the Malawi Housing Corporation Act of 1964, is empowered to construct affordable housing for low income and middle-income Malawians. The MHC is currently constructing low to middle-income housing in the cities of Lilongwe and Blantyre.

Article 12

The Right to the attainment of the highest attainable standard of physical and mental health

112. Though the right to health is not expressly espoused under the Bill of Rights in the Constitution of Malawi, sections 13 (b) and (c) stipulate that the State has to actively promote the welfare and development of the people of Malawi by progressively adopting and implementing policies and legislation aimed at providing adequate nutrition for all to promote good health and self-sufficiency and providing adequate health care, commensurate with the health needs of Malawian society and international standards of health care.

113. To give effect to the above-quoted subsections of the Constitution, laws and policies have been promulgated. The laws promulgated include the Public Health Act, The Mental Treatment Act, Anatomy Act, The Pharmacy, Medicines and Poisons Act and the HIV and AIDS (Prevention and Management) Act.

Malawian Health System

114. Malawi's health system is organized at four levels namely: community, primary, secondary and tertiary. These different levels are linked to each other through an established referral system. Community, primary and secondary level care falls under district councils. The District Health Officer (DHO) is the head of the district health care system and reports

to the District Commissioner who is the Controlling Officer of public institutions at the district level.

115. The health system is guided by the Health Sector Strategic Plan (HSSP). The first HSSP run from 2011 to 2016. The goal of the HSSP I was 'to improve the quality of life of all the people of Malawi by reducing the risk of ill health and the occurrence of premature deaths, thereby contributing to the social and economic development of the country. In achieving this, the HSSP I contributed to the attainment of the Malawi Growth and Development Strategy (MGDS II) and the Millennium Development Goals (MDGs). Substantial progress was made during the implementation of the plan. However, there were also challenges in implementing the plan.

Expenditure on Health

116. Public health sector expenditure was 10.8% of total government expenditure in 2016. The 2020 target is 15%. Whereas in 2014-2015 total health expenditure per capita was \$39.2 2018 and 2020 targets are \$43 and \$45.

117. Between 2015 and 2018, there was an increase in the budgetary allocation to the Ministry of Health. In the 2015-2016 financial year, the Ministry was allocated MK77.4 Billion (approximately US\$ 103.2 million), MK95.8 Billion (approximately US\$ 127.7 million) in the 2016-2017 financial year, and MK190 Billion (approximately US\$25.3 million) in the 2017-2018 financial year. However, the MK86.7 Billion (approximately US\$ 115.6 million) allocation in the 2018-2019 financial year is a huge decrease from the previous allocation of MK190 Billion (approximately US\$ 253.3 million). The Government seeks to improve health service delivery with an initiative to employ 10000 health personnel. A Cancer Center is currently being constructed in the country's capital, Lilongwe.

Access to Health Facilities

118. In 2016, 90% of the population were living within 8 kilometres of a health facility. 2018 and 2020 targets are 92% and 94% respectively.

Children's Health

119. We now share key health indicators for the reporting period as well as targets set up for 2020. In terms of child health, as of 2015-16, 64.7% of children under five with diarrhoea in the two weeks before the interview received oral rehydration salts packets. The targets for 2018 and 2020 are 70% and 79% respectively. Only 47.7% of children under 1 had been fully immunized as of 2015-2016 with the targets for 2018 and 2020 being 88% and 90% respectively. According to 2015-16 data, 27 per 1,000 live births died during the first 28 days of life, with the targets for 2018 and 2020 being 26 per 1,000 and 24 per 1,000 respectively.

120. 64 percent of children aged 6 to 59 months received vitamin A supplements in the six months preceding the interview. The targets for 2018 and 2020 are 99 percent. In 2015-2016, 37 percent of children under 5 years of age were found with moderate or severe stunting, targets for 2018 and 2020 are 35 percent and 33 percent, respectively. There were 2.7% wasted children under 5 in 2015-2016, the 2018 and 2020 targets are 2.2% and 1.7% respectively. In 2015-2016 4.5% of children under 5 years were found to be overweight, targets for 2018 and 2020 are 3.9% and 3.3% respectively. In 2015-2016, 12.9% of live births weighed less than 2500 grams, 2018 and 2020 targets are 11% and 9.5% respectively.

121. According to the Ministry of Health and Population 2017 Departments and Programmes self-report, 73.25% of facilities can provide the essential health package. The targets for 2018 and 2020 are 75% and 77%, respectively. In 2015 there were 1046 outpatient department visits per 1 000 populations per year, with the targets for 2018 and 2020 being 1,100. According to the National Pharmaceutical Strategic Plan 2016 – 2020, 20% of health facilities reported out of stock of the essential tracer medicines. The targets for 2018 and 2020 are 5% and 5% respectively.

Healthy Living Environment

122. In terms of environmental health, in 2015-2016, 87% of households had access to an improved water source. The targets for 2018 and 2020 are 87% and 91% respectively. 51.8% of households had access to improved sanitation. The targets for 2018 and 2020 are 65% and 75% respectively. According to the Essential Health Package (EHP) Database, 63% of health facilities had basic WASH facilities. The targets for 2018 and 2020 are 65% and 75% respectively. In 2015, 10.5% of households had access to hand washing facilities with soap and water. The targets for 2018 and 2020 are 35% and 75% respectively.

HIV/AIDS

123. The HIV and AIDS (Prevention and Management) Act were passed in November 2017. The Act ensures that authorities can prevent and manage the HIV/AIDS pandemic. In line with international human rights standards, the Act prohibits compulsory testing for pregnant women, domestic workers and men in uniform. It also establishes the National Aids Commission as a statutory body that facilitates the management of HIV/AIDS response in the country.

124. The courts in Malawi have also risen to ensure that the privacy of persons living with HIV is not violated even in criminal trials. In a 2015 High Court appeal case, eleven commercial sex workers were charged with spreading venereal diseases, contrary to section 192 of the Penal Code. The Court ruled that subjecting commercial sex workers to forced HIV testing was unreasonable and a violation of their rights to privacy, equality, dignity and freedom from cruel, inhuman and degrading treatment. The Court noted that the authorities took advantage of the commercial sex workers being in police custody to force them to undergo the tests. In the case of E.L (Female) v Republic,¹ the court expressed concern over the violation of the appellant's right to dignity and privacy as guaranteed by sections 19 and 21 of the Constitution. In the trial transcript, the appellant's HIV status, as well as treatment, was introduced into evidence in court. The court wondered how the police obtained the information and how the lower court admitted such information into evidence. It was cautioned that such matters need courts to be specially concerned and careful with. In the pursuit of serving and protecting citizens, the police need to ensure that they do not, break the law and violate people's rights.

125. On HIV/AIDS and Other Causes of death, there were 4.1 per 1000 people among adults (15-49) with new HIV infections in 2014-2015. 2018 and 2020 targets are 2.6 per 1,000 people and 2.2 per 1,000 people respectively. According to the Malawi Integrated HIV Program Report 2016 Q4, 85% of HIV-infected pregnant women are already on ART, 2018 and 2020 target is 85%. In addition, 69% of adults and children currently living with HIV are receiving antiretroviral therapy following the nationally approved treatment protocol. The targets for 2018 and 2020 are 68% and 78% respectively. 80% of adults and children were still alive and on antiretroviral therapy at 12 months after initiating treatment. In terms of health personnel, as of 2016, there were 0.4 doctors and 0.7 clinical officers per 10,000 patients. The targets for 2020 are 0.3 doctors and 0.87 clinical officers, respectively.

Provision of Health Care in Prisons

126. Regarding measures taken to address health care provisions in prisons, including prisoners with HIV/AIDS or tuberculosis; the Malawi Prison Service has health personnel, headed by a general practitioner at every prison who gives immediate health assistance to prisoners. Three (3) prison officers were also specifically trained in mental health. If the sickness cannot be dealt with by the medical personnel at the prison, the patient prisoner is transferred to a main hospital in the district or city the prison is located. In addition, the Malawi Prison Service also makes provision for doctors to visit prisons where there are patient prisoners who due to the state of illnesses cannot be transferred to main hospitals immediately. With regard to prisoners with HIV/AIDS, they are provided with the appropriate medication and are put on a special diet. Prisoners suffering from tuberculosis are also provided with the appropriate medication, special diet and have separate accommodation from the rest of the prisoners. There are routine mass screenings done in all prisons with regard to tuberculosis and HIV/AIDS.

Malaria

127. In 2015 there were 304 malaria cases per 1,000. The 2018 and 2020 targets are 302 per 1000 and 260 per 1000, respectively 33% of children aged 6-9 months had confirmed malaria infections in 2014. The targets for 2018 and 2020 are 28% and 24%, respectively. There were 23 per 100,000 inpatient deaths, the targets for 2018 and 2020 are 20 per 100,000 and 17 per 100,000 respectively.

Mortality Rates

128. According to WHO 35 per 100,000 died in road traffic accidents in 2013, the targets for 2018 and 2020 are 33 and 31 respectively. There were 5.5 per 100,000 deaths resulting from suicide in 2012, and later targets are not yet defined. In 2014 there was a 19% probability of death from cardiovascular diseases, cancer, diabetes, or chronic respiratory diseases. The targets for 2018 and 2020 are 15.2% and 11.4%, respectively. In 2009, 19% of adult males were recorded to engage in heavy episodic drinking, the target is an annual decline of 0.2%. Baselines/estimates for “health facilities with functioning water, electricity, communication and HVA” and “percentage of days’ health facilities have functional (working and safe) essential medical equipment in line with the level of care” are not presently available. However, targets for 2018 and 2020 are 80 per cent and 85% respectively.

Maternal Mortality Rate

129. In 2015-2016 the maternal mortality ratio was 439 per 100,000 live births, 2018 and 2020 targets are 380 per 100,000; 345 per 100,000 respectively. The Total Fertility Rate in 2015-2016 was 4.4 children per woman, the 2018 and 2020 targets are 4.0 and 3.5 respectively. In 2015-2016, 50% of women aged 15 to 49 with a live birth in the last two years received antenatal care four or more times, 2018 and 2020 targets are 55% and 60% respectively. In 2015, 121 per 100,000 Tuberculosis cases were detected. The targets for 2018 and 2020 are 196 per 100,000. In 2015 Tuberculosis treatment success rate was 84%, 2018 and 2020 targets are 89% and 90% respectively.

Community Health

130. Recognizing the importance of community health and the opportunity to address these challenges, the Ministry of Health and Population has developed the country’s first National Community Health Strategy (NCHS) from 2017 through 2022. The Community Health Services (CHS) Section has led this work in coordination with the Department for Planning and Policy Development (DPPD). The NCHS ties into the Health Sector Strategic Plan (HSSP II), which underscores primary health care and community participation as core principles. Over 500 stakeholders across the health system were participated in the development of the NCHS.

131. The NCHS aims to improve the livelihoods of all people in Malawi. The mission is to ensure quality, integrated community health services are affordable, culturally acceptable, scientifically appropriate, and accessible to every household through community participation to promote health and contribute to the socio-economic status of all people in Malawi.

132. By 2022, the NCHS aims to contribute to the achievement of two health outcome targets aligned with the HSSP II: a 25% decrease in the under-five mortality rate from 64 to 48 per 1,000 live births and a 20% reduction in maternal mortality ratio from 439 to 350 per 100,000live births. To achieve these goals, the NCHS defines a new community health system for Malawi. Within this system, community health refers to a package of basic preventive, promotive, curative, rehabilitative, and surveillance health services delivered at the community level with the participation and ownership of rural and urban communities. This package consists of the community components of the EHP, as defined by HSSP II, and Community Health Workers (CHWs) will deliver these services through an integrated approach.

133. For the NCHS, integration is defined as the coordinated delivery of multiple health interventions as well as interventions from other sectors that improve health outcomes. The integration will take place at the point of care, which helps to improve health system

efficiencies, reduce fragmentation, and increase access to care. Other key features within the community health system include a team-based structure for CHWs, strengthened supervision, reinforced community structures (e.g., Village Health Committee, Community Health Action Group), and enhanced coordination led by the CHS Section and district-level Community Health Officers. Overall, the NCHS outlines the aspirations for how the community health system should function and puts in place processes and activities to achieve these goals.

134. The NCHS also sets six strategic objectives for the community health system – each with an ambitious target and interventions to implement by 2022:

(a) Health services delivery: deliver the Essential Health Package at the community level through integrated services provided by CHWs in Community Health Teams (CHTs). Key interventions to achieve this goal include scaling up integrated delivery of the EHP at the community level and rolling out CHTs with clear job descriptions for all CHW cadres. The target for 2022 is that 75% of Health Surveillance Assistants (HSAs) deliver the majority of the community components of the EHP.

(b) Human resources: build a sufficient, equitably distributed, well-trained community health workforce. Key interventions to achieve this goal include recruiting a National Community Health Strategy 2017-22 experts of community health. The 2022 target is that 95% of HSAs have a high quality, durable bicycle and that 900 Health Posts are operational and supporting integrated community health service delivery in hard to reach areas. Community engagement: Strengthen community engagement in and ownership of community health.

135. Key interventions to achieve this include generating support for community health (e.g., launching national community health day); building the capacity of prioritized community structures (e.g., Village Health Committees, Community Health Action Groups(CHAGs), and Health Centre Advisory Committees (HCACs)), and rolling out enhanced social accountability mechanisms at community level (e.g., scorecards). The 2022 target is that 70% of Village Health Committees(VHCs) are meeting regularly monthly to support community health activities and that 70% of CHAGs and HCACs are active.

136. Leadership and coordination have also been strengthened ensure sufficient policy support and funding for community health and those community health activities are implemented and coordinated at all levels. Key interventions to achieve this goal include scaling up the coordinating function of the CHS Section at the national level; recruiting a Community Health Officer for each district; strengthening community-level coordination through CHAGs and CHTs; and hosting regular coordination meetings between stakeholders at all levels. The target for 2022 is that community health actors will have completed 80% of all agreed-upon coordination activities and milestones.

137. The five-year implementation plan provides in-depth information on all recommended activities. In addition, six cross-cutting guiding principles – integration, community leadership, equity, gender quality, learning, and transparency and accountability will underpin the success of the NCHS. The first two principles help ensure that existing programmes and initiatives related to community health leverage partnerships and integrate seamlessly across sectors, and that community members have ownership and remain accountable for the health of their populations. The principles of equity and equality demand that all Malawians receive high-quality care from a community health system that promotes gender equality. The NCHS promotes continuous learning and course correction based on strengthened monitoring and evaluation efforts. While transparency and accountability are vital to maintaining the trust and commitment of all stakeholders. These principles are relevant across the full community health system and all NCHS strategic objectives.

138. Over the next five years, implementation of the NCHS will require coordinated efforts from all actors working in the community health system. Implementation will take place across two phases that recognise the necessity of strengthening the foundational elements of the community health system before launching and scaling activities.

139. Phase 1 will focus on setting the community health system up for success by clarifying guidelines and reinforcing structures. In parallel, implementation of high-impact activities,

including procuring transport for CHWs, rolling out CHTs, recruiting CHWs, and setting up coordination mechanisms at all levels, will commence.

140. Phase 2 will focus on scaling activities from Phase 1 and implementing additional activities, including training CHWs on integrated service delivery, ensuring full rollout of the EHP and access to supplies, and constructing CHW housing units, among others.

141. Monitoring and Evaluation will take place at every stage of implementation. The CHS Section of the MoH is responsible and accountable for the successful implementation of the NCHS and must have sufficient resources to carry out this mandate. Specific roles of the CHS Section include coordination and planning across programmes; development of policies and guidelines; monitoring adherence to policies and guidelines; overarching management of CHTs, and support for community structures (VHCs, CHAGs, HCACs, etc.).

142. To fulfil these roles, the CHS Section will require predictable financial resources and additional human capacity, to reach nine full-time employees by the end of the five-year strategy. Effective programme management also hinges on dedicated coordination efforts from all actors to ensure efficient use of resources and consistency across the community health system.

Mental Health

143. The Mental Treatment Act, 1948 (Chapter 34:02 of the Laws of Malawi) makes provision for the care of persons who are suffering from mental disorders, for the custody of their persons and the management of their estates, and the management and control of mental hospitals in Malaŵi. Since its promulgation, it is yet to be reviewed.

144. Mental health services are provided in Government Central Hospitals. There is one hospital dedicated to dealing with psychiatric patients, namely Zomba Psychiatric Hospital. There is also a private psychiatric hospital, namely Saint John of God Hospital. There are five qualified psychiatrists in Malawi.

145. The Ministry of Health, working in conjunction with the MoGCDSW with support from UNICEF has begun implementing a pilot project on Mental Health in Malawi. The project aims to train social welfare officers to provide counselling services at a district level. The project will be piloted in 8 districts.

Articles 13 and 14 The Right to Education

146. The Constitution of Malawi guarantees every individual the right to education under section 25. In addition, section 13(f) of the Constitution 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 providing adequate resources to the education sector and devise programmes to eliminate illiteracy in Malawi; making primary education compulsory and free to all citizens of Malawi and offering greater access to higher learning and continuing education.

147. The Education Act (Chapter 30:01 of the Laws of Malawi) gives effect to sections 13(f) and 25 of the Constitution. The Act provides for the establishment, organization, governance, control, regulation and financing of schools and colleges; provides for the establishment of the Teachers Council of Malaŵi; provides for the establishment of the Malaŵi Institute of Education.

148. The Education Act charges the Minister for Education with the responsibility of promoting education for all people in Malaŵi; irrespective of race, ethnicity, gender, religion, disability or any other discriminatory characteristics; formulating policies, plan and managing information systems at the national level; mobilizing and allocating resources; designing and developing the national curriculum; setting and maintaining national education standards; monitoring, assessing and evaluating the education system; and providing effective mechanisms for a transparent and accountable education system at all levels. Such duties are implemented by the Ministry of Education, Science and Technology.

National Education Standards

149. The Ministry of Education, Science and Technology has adopted the National Education Standards to enhance the quality and access to education in primary and secondary schools. Twenty-six standards specify the expected outcomes for students which should be delivered by all education providers in public and private institutions. They also identify the leadership, management and teaching processes that are essential to the achievement of the outcomes. In addition, the Standards specify targets for effective practice which are both challenging and achievable.

150. The Standards aim to aid policymakers at the national, divisional and district level in the evaluation of the effectiveness of education in their area and across the country as a whole; and to guide individual institutions and practitioners in reviewing and improving their practice.

151. In particular, the National Education Standards identify minimum requirements which all schools in Malawi should aim to achieve. Schools should implement these requirements to promote equality of educational opportunity and remove barriers to achievement.

Primary Schools

152. Section 13 of the Education Act stipulates that the provision of primary education in Government schools shall be free of tuition to all and compulsory for every child below eighteen years of age.

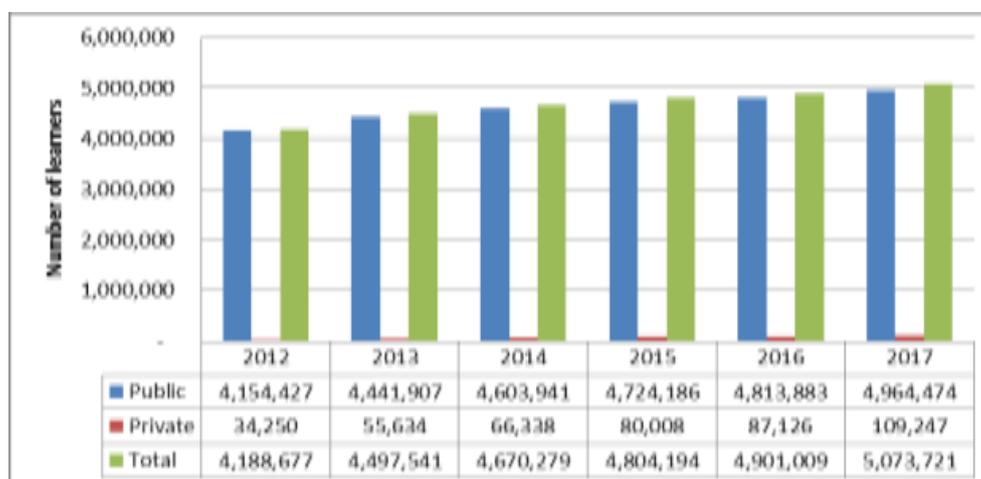
153. The responsibility of providing primary education rests with the local government authority for the area over which it exercises its jurisdiction. Every local government authority appoints an education committee which oversees all matters relating to the performance of such schools.

Student Enrolment status in primary schools

154. Enrollment increased from 4,154,427 in 2012 to 5,073,721 in 2017, representing a 21.0 percentage growth. A total number of 4,964,474 learners were enrolled in public schools, only 109,247 which is 2.15 (1.05 per cent boys and 1.09 per cent girls) were enrolled in private schools. The total enrolment has been growing at an average annual rate of 3.9 per cent. A total of 802,445 new entrants enrolled in the year 2016/17, representing a proportion of 15.8 per cent. ($802,445/5,073,721$) of the total enrollment. Across the age of new entrants, a higher proportion (63.5 per cent) was observed at 6 years, which is the official age of primary school entry.

Table 18

Enrollment in Primary School 2012–17



Source: Ministry of Education Science and Technology.

155. The 2019/2020 Education Sector Performance Report released in 2020 shows that the average number of primary school girls has exceeded that of boys with the gap between the sexes wider each year as shown in Table 18 above. This is a true reflection of the gender gap in the general population, which also indicates the achievement of parity in primary enrolment. The average growth rate for enrolment between 2016 and 2020 has declined for both girls and boys from 2.3% to 1.7% and from 1.7% to 1.1%, respectively.

Table 19

Trend in primary enrolment growth rate by sex (%)

	2016	2017	2018	2019	2020	Average
Male	1.7	3.0	2.0	2.3	1.1	2.0
Female	2.3	4.0	2.4	2.0	1.7	2.5

Source: Ministry of Education.

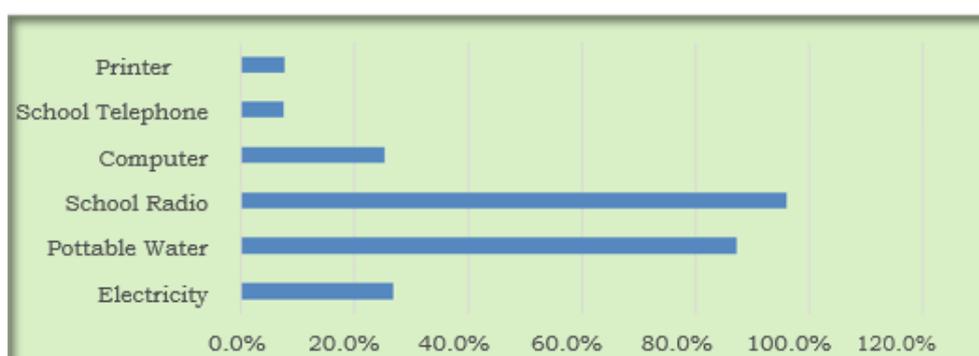
156. If the trend continues, primary education will continue to register more girls than boys, and this may require some policy re-evaluation to ensure that the gender equality interventions are not leaving boys behind.

School infrastructure and basic facilities in primary schools

157. There were 41765 permanent classrooms in use, 6380 complete temporary classrooms in use and 13,189 classrooms requiring rehabilitation. Furthermore, the census revealed a requirement of about 27,113 extra classrooms for the entire primary sub-sector. The number of permanent classrooms has increased from 35,804 in 2013 to 41,765 in 2017, representing a growth of 16.6 per cent.

158. In terms of schools with access to basic facilities, Most schools in 2017 reported boreholes (69 per cent) as their main source of water followed by piped water (17 per cent). About 6 per cent of the schools reported having no water. In 2020 the following is the data on schools with access to basic services.

Table 20

Proportion of schools with basic facilities

Source: Ministry of Education.

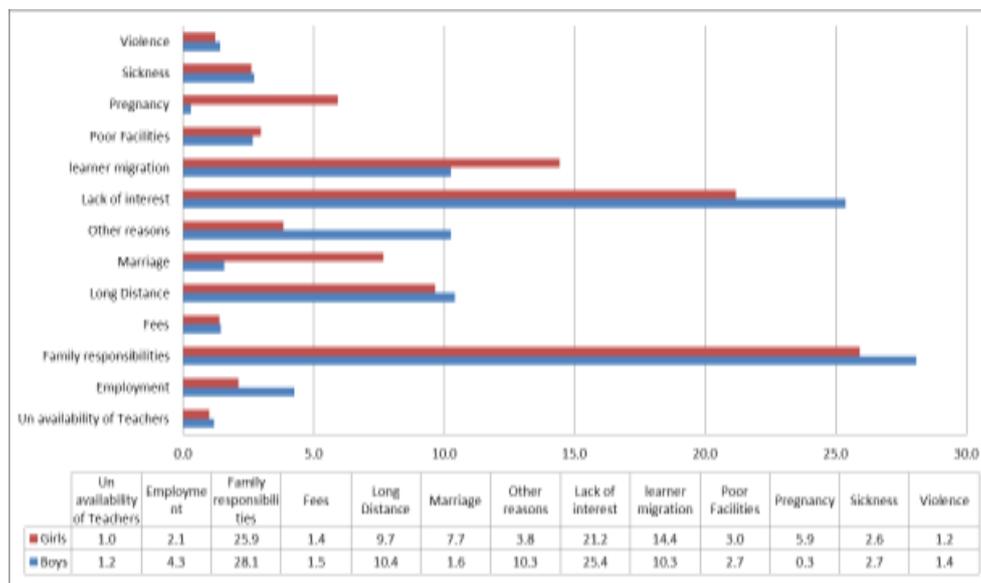
159. The primary education subsector continues to face challenges in the availability of desks to learners. In 2020, the system had only 32,455 desks for its 5,371,563 learners. This shows that the system requires to supply at least 2,653,327 two-seater desks if every learner is to have a desk.

Access indicators for primary schools

160. The overall gross intake ratio for standard one stands at 203; with 202 for girls and 204 for boys respectively. The net intake rate shows a high degree of access for 6-year olds, however, girls have a higher rate than boys. Net Enrolment Rate (NER) is the best way of measuring organized on-time school participation. NER is calculated by dividing the number

of properly aged primary pupils (6-13 years of age) by the population of primary school-going age (6-13 years). NER has been declining from 111 in 2013 to 88 in 2017.

Table 21
Dropouts in Primary Schools

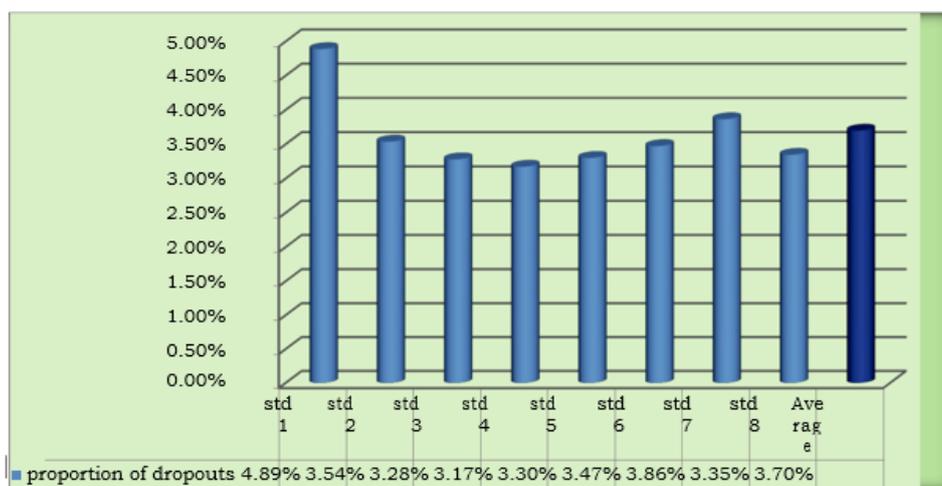


Source: Ministry of Education, Science and Technology.

161. In 2017 there was a total of 97514 males drop outs and 104057 female drop outs. Mangochi district has the highest proportion of school dropouts at 9.3 percent, followed by Machinga with 7.3 percent. Learners drop out of school because of various reasons. Some of them being violence at school, sickness, pregnancy, poor facilities especially for girls, lack of support, lack of interest by the learner, early marriages, traveling long distance to school, lack of fees, family responsibilities, employment and unavailability of teachers.

162. In 2020, the dropout rate was highest in standard 1 and lowest in 3. As the table below shows.

Table 22
Distribution of dropout outs by grade, 2020



Source: Ministry of Education, Science and Technology.

Children with disabilities in primary schools

163. Malawi enacted the Disability Act in 2012. Section 10(a) of the Act provides that persons with disabilities shall not be excluded from the general education system at all levels. In that regard, the Ministry of Gender is currently lobbying for inclusive education in all schools whether public or private. To further strengthen this initiative, the Ministry of Education launched a National Inclusive Education Strategy 2016 to 2020.

164. In 2017, about 2.8 per cent (146,048/5,073,729) of total primary enrollment were learners with special needs. In 2020, the total number of learners with special education needs was 186,422 and this represents 3.4 per cent of all learners. This proportion is higher than the 3.2 per cent that was reported in 2019.

165. While the sector is making some progress in increasing enrolment of special needs education learners, the provision of quality education for learners with special needs is still facing challenges such as inadequate teaching and learning materials; poor access to health services while in school and; poor public perception of special needs education.

166. With regard to access to special needs education resources, in 2020 only 3.4% of schools had special needs education resource rooms and 1.3% of the schools had a preparatory room for special needs education.

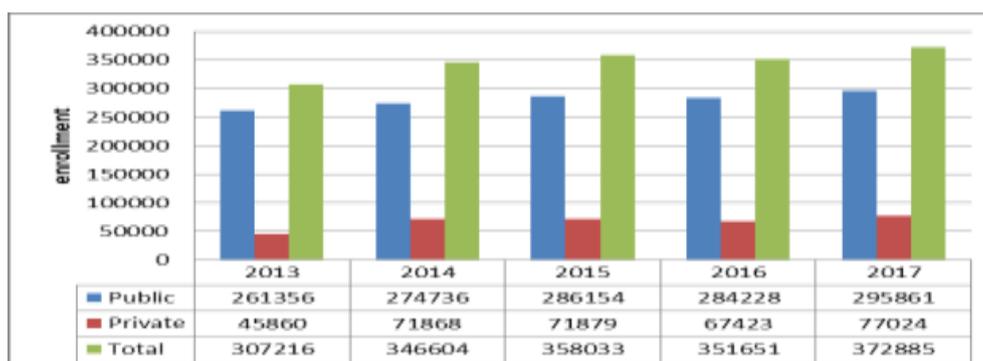
Secondary Schools

Student Enrolment Status

167. Looking at the five years from 2013 to 2017, secondary school enrollment increased from 307216 in 2013 to 372885 in 2017 representing a growth of 21.4 per cent. Enrollment in public secondary schools has been increasing consistently from 2013 to 2015 with an average annual growth rate of 11.4 per cent, but decreased by 1.8 per cent in 2016. The enrollment increased by 6 per cent between 2015/16 and 2016/17. In terms of proprietorship, public school enrollment accounted for approximately 79 per cent of secondary school enrollment in 2016/17, while private schools accounted for 21 per cent. In the 2016/17 academic year, more boys were enrolled (52 per cent) compared to girls (48 per cent). In 2020 the student enrolment increased from 377,731 students in 2019 to 415,013.

Table 23

Secondary School Enrollment 2013–2017



Source: Ministry of Education Science and Technology.

Table 24

Secondary school student enrolment by proprietorship and sex

	Public Schools		Private schools		Total
	Male	Female	Male	Female	
Form 1	47 357	46 179	9 677	10 024	113 237
Form 2	44 599	42 288	8 973	9 261	105 121

	Public Schools		Private schools		Total
	Male	Female	Male	Female	
Form 3	41 659	37 559	9 903	9 697	98 818
Form 4	39 571	34 531	11 692	12 043	97 837
Total	173 186	160 557	40 245	41 025	415 013

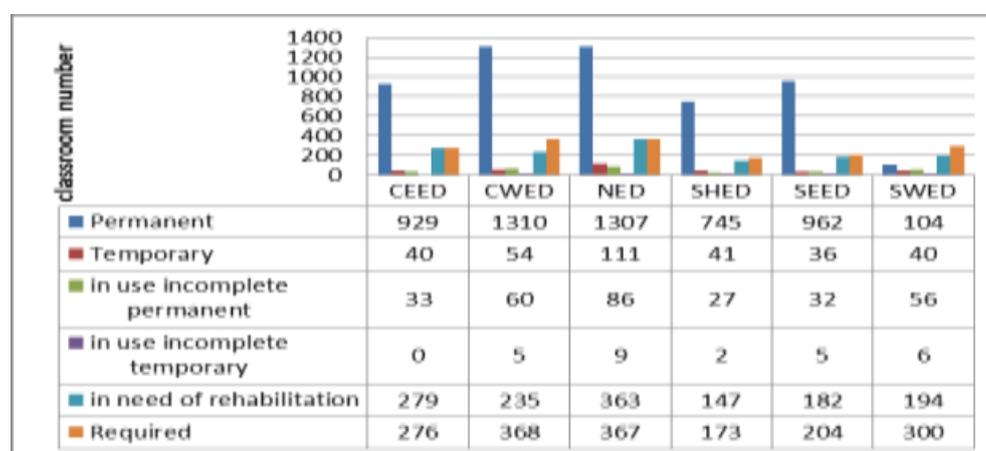
Source: Ministry of Education, Science and Technology.

School infrastructure

168. The following table shows the number of classes available to secondary school students and type of class.

Table 25

Number and type of classrooms



Source: Ministry of Education, Science and Technology.

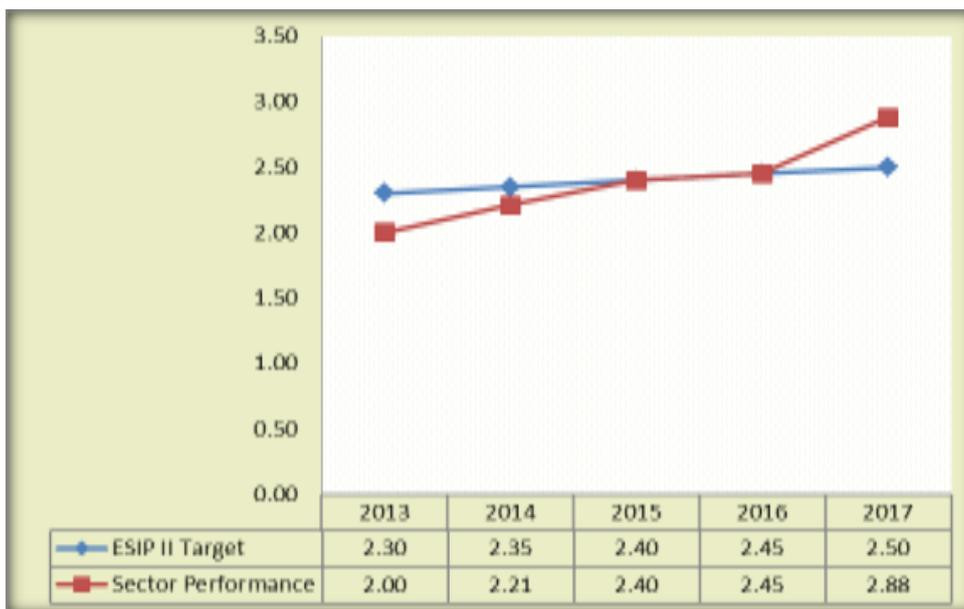
Access indicators for secondary schools

169. The gross enrollment rate has been oscillating from 2013 to 2017. An upward movement was observed from 2013 to 2014 with rates moving from 22.3 to 24.3 per cent. A downward movement was observed from 2014 to 2016 with rates moving from 24.3 to 23. The rate has slightly increased to 23.7 in 2017 from 23 in the preceding year. Overall, the results mean there is very low accessibility of secondary education by the citizenry in Malawi. The NER for the secondary sub-sector has remained below 20 per cent over the last five years. The national rate has remained at 15 per cent for the past 4 years. This indicates low accessibility of secondary education.

Children with disabilities in secondary schools

170. About 1.6 per cent of total secondary school enrollment was students with special needs. This figure has increased from 5289 students in the previous year, representing almost a 16 per cent increase. The sector is doing well in incorporating learners with special needs in its schools as shown by the figure below. In 2015 and 2016, the set targets were met and in 2017, the percentage of special needs learners even surpassed the ESIP II target.

Table 26
Special Needs Enrollment

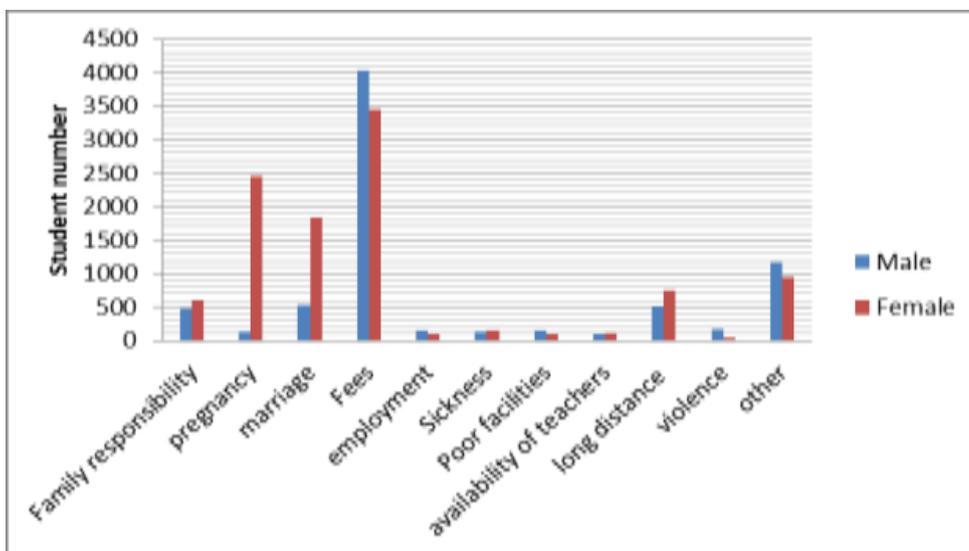


Source: Ministry of Education, Science and Technology.

Dropout rate in secondary schools

171. The total number of dropouts in 2016/17 was 18042. This figure has increased by 754 dropouts from total of 17288 in the previous year. The results indicate that most students, both male and female, dropped out mainly because of school fees.

Table 27
Dropouts in Secondary Schools



Source: Ministry of Education, Science and Technology.

Education Expenditure

172. The Government of Malawi continues to highly value the education sector as demonstrated by allocating 4.2 per cent of the country’s Gross Domestic Product (GDP) to the education sector in the 2017/18 financial year.

Table 28
Education Expenditure 2012–2017

<i>Year</i>	<i>2012/13</i>	<i>2013/14</i>	<i>2014/15</i>	<i>2015/16</i>	<i>2016/17</i>
Education-sector allocation minus Dev Part 1 (MK' billions)	79	102	119	163	179
GDP (MK' billions)	1 717	2 242	2 848	3 521	4 219
% of GDP spent on Education	4.6%	4.5%	4.2%	4.6%	4.2%

Source: Ministry of Education, Science and Technology.

173. In terms of the budget allocation from the recurrent national budget, the table below shows that the education sector has been allocated an average of 25.2 per cent of the recurrent national budget.

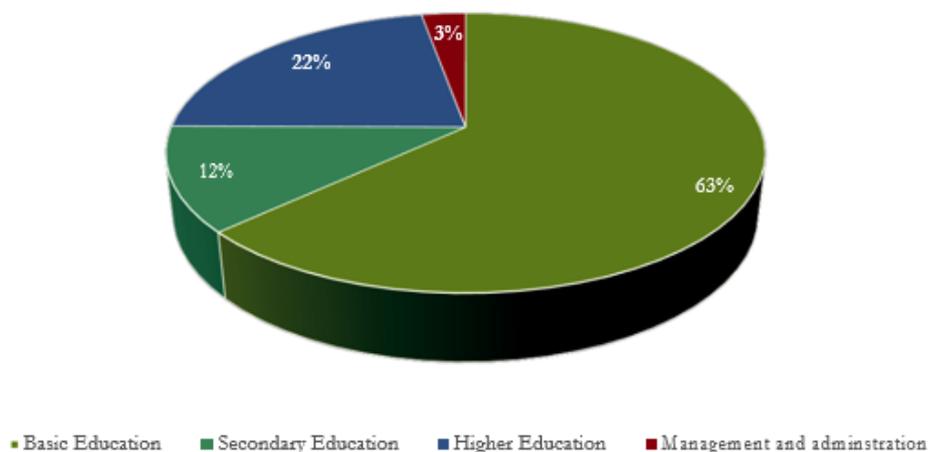
Table 29
Trends in recurrent allocation total government recurrent budget to education in (MK “000,000,000”)

<i>Financial Year</i>	<i>2010/11</i>	<i>2011/12</i>	<i>2012/13</i>	<i>2013/14</i>	<i>2014/15</i>	<i>2015/16</i>	<i>2016/17</i>	<i>2017/18</i>	<i>2018/19</i>	<i>2019/20</i>
Total Recurrent Education	43 750	49 890	73 430	93 400	112 790	157 869	174 690	207 589	224 545	270 985
Total Voted Recurrent Allocation (excludes Statutory Expenditures)	182 580	194 790	321 460	386 220	495 750	582 522	666 255	788 999	840 966	1 054 959
% of recurrent allocation (excluding statutory expenditures) spent on education	24	26	23	24	23	27	26	26	27	26

Source: Ministry of Finance.

174. In the 2015/16 financial year, Malawi Government changed its budgeting system from Output Based Budgeting to Program Based Budgeting. As such, the allocation of resources in the education sector budget is based on programs. The education sector has four programs namely: basic education (primary education), secondary education, higher education, and Management and Administration. Table 30 below shows the total budget allocation by program in the education sector.

Table 30
Education sector recurrent percentage allocation by program for 2019/ 20 financial year

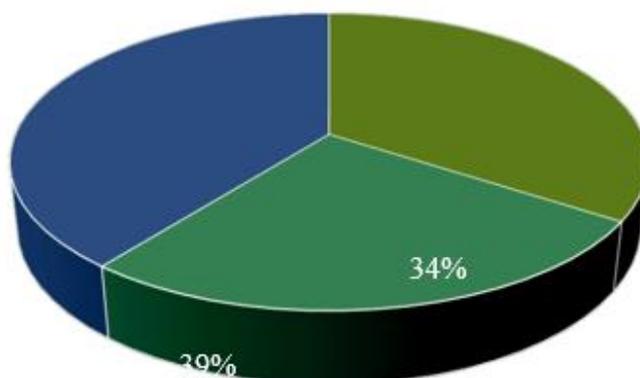


Source: Ministry of Finance.

175. In the 2019/20 financial year approved budget for education sector development projects was MK49.5 billion. The sum includes an approved budget provision of MK18.2 billion for development projects which were implemented under education subvented organizations. The resources under the development budget were allocated mainly to the three core programmes namely: basic, education, secondary and higher education programmes.

176. The table below shows the education sector development budget allocations by programme.

Table 31
Education sector development budget allocations by program 2019/2020 financial year



Source: Ministry of Finance.

Number of schools

177. The number of secondary schools, both public and private, has increased over the last five (5) years. Public secondary schools have increased from 981 in 2013 to 1,105 in 2017 representing a 13 per cent increase. Similarly, private secondary schools have increased by 97, from an initial 209 schools in 2013 to 306 schools in 2017 representing a 46 per cent increase.

Scholarships

178. Access to higher education was enhanced through student loans, scholarships and grants from organizations and individuals. The introduction of Student loans by the Higher Education Students' Loans and Grants Board (HESL&GB) has contributed to access and retention of needy students at risk of University/College drop-out due to financial limitations. During the 2016/17, financial year the Board was allocated a total budget ceiling amounting to MK3.0 billion of which a total of 83% amounting to MK2.449 billion was for student loans and 17% for the operations of the Board.

179. The Tables below indicate a summary of the status of education in Malawi at 2018 in terms of access, quality, efficiency, equity and budgeting expenditure.

Table 32

Access indicators, 2017–2018

	2017	2018
Total Primary Enrolment	5 073 721	5 187 634
Boys	2 513 876	2 565 344
Girls	2 559 845	2 622 290
Total Primary Public-School Enrolment	4 964 474	5 063 917
Boys	2 460 112	2 504 357
Girls	2 504 362	2 559 560
Total Primary Private School Enrolment	109 247	123 717
Boys	53 764	60 987
Girls	55 483	62 730
New Entrants into Primary (standard 1)	802 445	717 277
Boys	409 754	362 225
Girls	392 691	355 052
Total Secondary enrolment	372 885	387 569
Boys	194 537	201 635
Girls	178 348	185 934
Total TTC Enrolment (IPTE)	7 373	
Males	3 402	
Females	3 971	
Total Number of Primary schools	6 065	6 194
Public	5 552	5 611
Private	513	583
Total Number of Secondary schools	1 469	
Public (government and religious)	824	830
Private	383	353
Open day sec Schools	620	304
Gross Intake Rate Primary	147	123
Boys	144	122
Girls	145	124
Net Intake Rate Primary	92	84
Boys	89	82
Girls	95	86
Gross enrolment rate Primary	136	127

	2017	2018
Boys	135	125
Girls	136	128
Net enrolment rate Primary	98	90
Boys	87	87
Girls	89	92
Gross enrolment rate secondary	23.7	25
Boys	25.1	26
Girls	22.7	24
Net enrolment rate Secondary	16.0	16
Boys	15.0	15
Girls	15.5	15

Source: Ministry of Education, Science and Technology.

Table 33
Quality Indicators

	2017	2018
Pupil Teacher Ratio- Primary	71.3	66.8
Pupil Qualified Teacher Ratio- Primary	76.9	70.0
Pupil permanent classroom ratio- Primary	121.4	120.9
Primary Completion Rate	53	52
Boys	55	54
Girls	51	51
Secondary completion rate	24	
Form 2		
Form 4	21.9	
Boys	24.0	26
Girls	20.0	22
Pupil qualified Teacher Ratio (SqTR)- Secondary	45.4	41.0
Pupil qualified Teacher Ratio (SqTR)- Public Sec	42.6	44.3
Pupil qualified Teacher Ratio (SqTR)- Private Sec	61.2	27.6
Pupil permanent Classroom Ratio (PpCR)- Secondary	58.7	58.7

Source: Ministry of Education, Science and Technology.

Table 34
Efficiency indicators

	2017	2018
Drop-out proportion primary	4.1	3.2
Boys	4.0	3.1
Girls	4.2	3.2
Drop-out proportion Secondary	4.8	
Boys	3.8	8.46
Girls	5.9	13.35
Transition rate to secondary	38.4	38.4
Boys	40.9	40.9

	2017	2018
Girls	35.8	35.8
Repetition rate- Primary	23.9	24.5
Boys	24.5	25.1
Girls	23.3	23.9

Source: Ministry of Education, Science and Technology.

Table 35

Equity Indicators

	2017	2018
Gender Parity Index (GPI) for primary enrolment	1.01	1.0
Gender Parity Index (GPI) for secondary enrolment	0.90	0.92
Percentage of SNE students (Primary)	2.9	3.35
Percentage of SNE students (Secondary)	1.6	1.6

Source: Ministry of Education, Science and Technology.

Article 15 Cultural Rights

180. Section 26 of the Constitution guarantees every person the right to use the language and to participate in the cultural life of his or her choice.

181. At the policy level, cultural rights are translated by the National Cultural Policy 2015. This policy aims to identify, preserve, protect and promote Malawian arts and culture for national identity, unity in diversity, posterity and sustainable socio-economic development. With this in mind, the policy wishes to achieve the heritage of Malawi's culture in all its identifiable forms, safeguarded and preserved for national identity and posterity.

182. The Ministry of Tourism and Culture through the Department of Culture is responsible for the provision of policy direction, technical guidance, oversight, mobilizing stakeholder support, coordination and monitoring and evaluation of the implementation of the policy.

Factors and challenges affecting the fulfilment of obligations under the convention

183. Malawi continues to make slow but steady progress in the implementation of the Convention.

184. Significant challenges still remain in fully implementing the provisions of the Convention. The challenges include:

(a) *Weak implementation of laws and policies* – while Malawi boasts of very progressive laws and policies, there remains a huge implementation gap;

(b) *Resource constraints*- with competing interests for resources, programs under human rights have not always made it on the priority list. As such, this has affected progress in the implementation of human rights related programs;

(c) *Slow pace of institutional reforms* – the new constitutional order in Malawi places radical human rights requirements on Government as the primary human rights defender. This has required state institutions to reform in line with the constitutional ideals. Such required reform has not been speedy enough and this has affected the pace of enjoyment and enforcement of human rights; and

(d) *Lack of public awareness of rights* – despite progress in the general awareness of rights in Malawi there is still lack of awareness of rights.

Conclusion

185. The Government reiterates its commitment to ensuring that the economic, social and cultural rights of all persons resident in Malawi are realized. Malawi looks forward to sharing more information on the progress made in implementing the provisions of the Convention, during the review of the Report.

Annex 1

Members of the National Taskforce on the ICESCR

The following are the members of National Task Force on the ICESCR

1. Ministry of Justice (Chair)
 2. Ministry of Gender, Children, Disability and Social Welfare
 3. Ministry of Homeland Security
 4. Ministry of Foreign Affairs and International Cooperation
 5. Ministry of Health and Population
 6. Ministry of Education, Science and Technology
 7. Ministry of Labour and Vocational Training
 8. Malawi Police Service
 9. Malawi Human Rights Commission
 10. Law Commission
 11. National Registration Bureau
 12. National Statistical Office
 13. The Office of the Ombudsman
 14. The Department of Immigration
 15. The Legal Aid Bureau
 16. Malawi Judiciary
 17. University of Malawi, Chancellor College Law School
 18. Article III
 19. Paralegal Advisory Service (PASI)
 20. Centre for Human Rights Education Advice and Assistance (CHREAA)
 21. Centre for the Development of People (CEDEP)
 22. Youth and Society
 23. Saccode Trust
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