

MALAWI POLITICAL SCAN



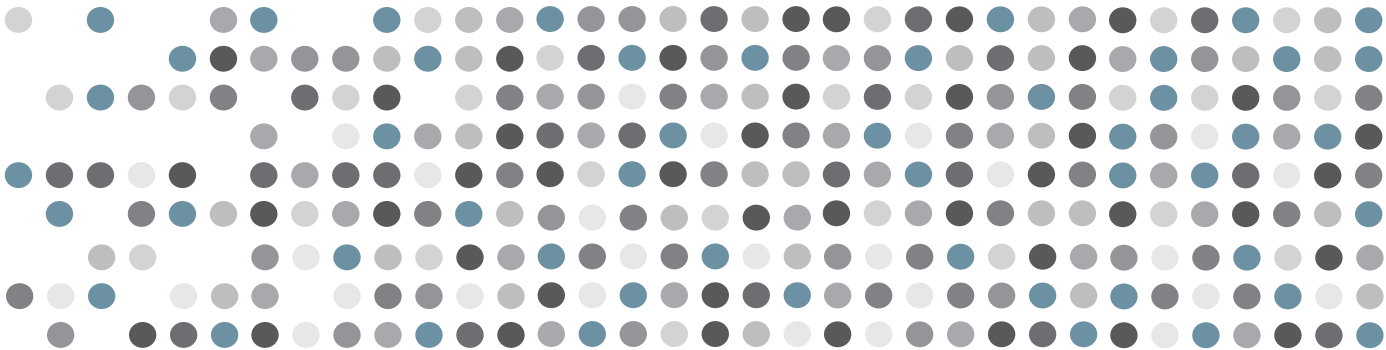


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LEGAL FRAMEWORK AND CONTEXT ¹

The Constitution is the supreme law of the land in Malawi. The Constitution protects a wide range of human rights including the right to life, liberty, human dignity and personal freedoms, equality, privacy, family and marriage, education, economic activity, labour, freedom of association and expression, freedom of movement, the right of access to justice and legal remedies, rights related to arrest and detention and the right to fair trial. The rights to equality and recognition before the law are non-derogable—the rights cannot be limited for any reason. The Constitution includes additional protections for children and women. Section 24 provides: “[w]omen have the right to full and equal protection by the law, and have the right not to be discriminated against on the basis of their gender or marital status...”

Malawi has ratified many regional and international agreements, including:

- African Charter on Human and Peoples’ Rights, 1989
- African Charter on the Rights and Welfare of the Child, 1999
- Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment, 1996
- Convention on the Rights of the Child (CRC), 1991
- Convention on the Rights of Persons with Disabilities, 2009
- Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1987
- International Covenant on Economic, Social and Cultural Rights (ICESCR), 1993
- International Covenant on Civil and Political Rights

(ICCPR), 1993 (individual complaint mechanism also ratified)

- ILO Convention concerning Discrimination in Respect of Employment and Occupation, 1965
- Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa, 2005

Key informants indicate that there is a need for greater transparency with regard to policy and law formulation and reform including, for example, with respect to meeting times and dates. While the Malawi Law Commission and other entities sometimes advertise consultative meetings, this is not always the case. On other occasions there is insufficient notice and as a result not all stakeholders are able to attend important meetings. Insufficient transparency and inadequate communication is a barrier to participation and therefore a barrier to effective advocacy.

¹ This Political Scan and the accompanying Advocacy Opportunities Timeline were written by Drew Aiken, a consultant for the AIDS and Rights Alliance for Southern Africa (ARASA). In addition to desk research, Key Informant Interviews took place in Lilongwe, Malawi from 28 to 30 June 2016.



KEY INSTITUTIONS RELEVANT TO LAW AND POLICY REFORM

The Malawian Parliament is bicameral, composed of the National Assembly and the Senate

A. LEGISLATURE

1. The National Assembly

The National Assembly is composed of one member from each constituency in Malawi.² Their functions are, *inter alia* to:

- receive, amend, accept or reject Government Bills and Private Bills (including those of the Senate);
- initiate Private Member's Bills on the motion of any member and amend, accept or reject all Private Member's Bills;
- debate and vote motions in relation to any matter including motions to indict and convict the President or Vice-President by impeachment.³

2. The Senate

The Senate is composed of eighty members including (1) two Senators from each District one of whom is a Chief; and (2) thirty-two Senators elected by two-thirds majority of sitting members of the Senate.⁴ Notably the Senators elected by sitting members of the Senate must be nominated by the Nominations Committee and from all the following sectors:

i. interest groups, who shall include representatives from women's organisations, the disabled and from health, education, farming and business sectors, and from trade unions;

ii. society, who shall be such persons as are generally recognised for their outstanding service to the public or contribution to the social, cultural, or technological development of the nation; and

iii. religion, who shall include representatives of the major religious faiths in Malawi.⁵

The Senate is responsible for *inter alia*, receiving, scrutinising and amending Bills from the National Assembly; voting motions to confirm or remit Bills passed by the National Assembly; debating issues on motion, initiating bills and voting motions in respect of any matter (including motions to indict or convict the President or Vice-President).⁶

3. Relevant Parliamentary Committees⁷

There are a number of Parliamentary Committees relevant to HIV, AIDS, TB and human rights including (but not limited to):

- a. Budget
- b. Legal Affairs
- c. Health
- d. HIV/AIDS and Nutrition
- e. Social Welfare

B. EXECUTIVE

1. President and Vice Presidents

The President is head of state and there are up to two Vice Presidents. The first Vice President is running mate to the President and the President can appoint

² Constitution of Malawi, Section 62(1).

³ Id, Section 66(1).

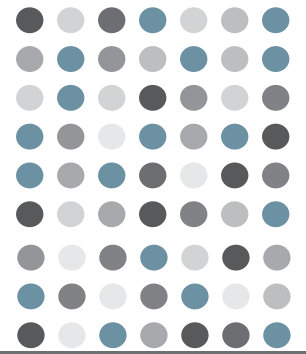
⁴ Id, Section 68.

⁵ Id, Section 68(c).

⁶ Id, Section 70.

⁷ A list of all constitutional and standing committees is available at <http://www.parliament.gov.mw/committees.php?mode=ct>.





a Second Vice President where it is “in the national interest” to do so.⁸

The duties of the President include, *inter alia*, (i) assenting to Bills and promulgating Bills passed by Parliament; (ii) convening and presiding over meetings of the Cabinet; (iii) making necessary appointments; (iv) to refer disputes of a constitutional nature to the Court; (v) to proclaim referenda and plebiscites.⁹

2. Attorney General

The Attorney General is the principal legal adviser to the Government and is appointed by the President.¹⁰ In terms of law reform and amendment, the Office of the Attorney General participates in the drafting process.

3. Director of Public Prosecutions

The Director of Public Prosecutions has the authority to institute and undertake criminal proceedings of any person before any court; to take over any criminal proceedings; and to discontinue criminal proceedings at any stage before judgment.¹¹

4. Cabinet

The Cabinet is composed of the President, the first and second Vice-Presidents, Ministers and Deputy Ministers who are appointed by the President.¹² The Cabinet is responsible for advising the President on policies of the Government and for any other matters referred to the Cabinet by the President.¹³ Ministers and Deputy Ministers are responsible for running government

departments.¹⁴ In addition, Ministers and Deputy Ministers are responsible for *inter alia*, (i) initiating Bills for submission to the National Assembly and to explain those Bills; (ii) to prepare, explain and formulate for Parliament the budget and its economic programmes; (iii) answering queries and participating in any debate pertaining to the content of the policies of the Government (for Parliament); (iv) implementation and administration of laws.¹⁵

The Cabinet has a Committee on Health, with whom CSOs should engage.

Some Ministries relevant to HIV and AIDS include:

a) National AIDS Commission (NAC)¹⁶

NAC was established to lead and coordinate the HIV response in Malawi, including implementation of the strategic framework. NAC has created a prevention working group with a sub-group on key populations. There is a key population representative, a female sex worker, who sits on the prevention sub-group.

b) Ministry of Health

The Ministry of Health has a Department of HIV and AIDS which coordinates and administers HIV programming.¹⁷

c) Ministry of Justice and Constitutional Affairs

The Ministry of Justice is responsible for, *inter alia*, prosecution in criminal cases, advising all Ministries and departments of the government, and providing legal

⁸ Constitution of Malawi, Section 80(5).

⁹ Constitution of Malawi, Section 89(1).

¹⁰ Constitution of Malawi, Section 98

¹¹ Constitution of Malawi, Section 99.

¹² Constitution of Malawi, Section 92(1).

¹³ Constitution of Malawi, Section 92(2).

¹⁴ Constitution of Malawi, Section 93(1).

¹⁵ Constitution of Malawi, Section 96.

¹⁶ National AIDS Commission, available at <http://www.aidsmalawi.org.mw/>.

¹⁷ Ministry of Health, Department of HIV and AIDS, available at <https://www.hiv.health.gov.mw/>.



aid to those who cannot afford private representation. The Office of the Attorney General falls under the Ministry of Justice.¹⁸

d) Ministry of Gender, Children, Disability and Social Welfare

The Ministry of Gender, Children, Disability and Social Welfare promotes gender equality and the protection of women and children.¹⁹ In March 2016, the Ministry launched the 2013 Gender Equality Act Implementation and Monitoring Plan (2016-2020).

e) Additional Relevant Ministries

- i. Ministry of Education
- ii. Ministry of Labour

C. JUDICIARY

The independence of the judiciary is constitutionally guaranteed.²⁰ The Courts Act²¹ consolidates laws pertinent to the High Court and subordinate Courts.

1. SUPREME COURT OF APPEAL

The Supreme Court of Appeal is the highest appellate Court, with jurisdiction over appeals from the High Court and other courts and tribunals.²²

2. HIGH COURTS

The High Court has unlimited original jurisdiction to hear any civil or criminal proceedings; to review any law; and any action or decision of the government for conformity with the Constitution.²³

3. SUBORDINATE COURTS

a. Magistrate Courts

Magistrate Courts have both civil and criminal jurisdiction, subject to the limitations in the Courts Act.²⁴

b. Industrial Relations Court

The Industrial Relations Court is subordinate to the High Court and has original jurisdiction over labour disputes and issues related to employment.²⁵

c. Additional Courts

The Constitution provides that the jurisdiction of traditional and local courts is limited to civil cases and minor common and statutory offenses.²⁶ Additionally Section VI of the Child Care, Protection and Justice Act²⁷ establishes Child Justice Courts.

D. OTHER INSTITUTIONS

1. Office of the Ombudsman

The Constitution and the Ombudsman Act No. 10 of 1996 set forth the duties, powers and structure of the Office of the Ombudsman. The Office of the Ombudsman is an independent investigatory body and may investigate “any and all cases where it is alleged that a person has suffered injustice and it does not appear that there is any remedy reasonably available by way of proceedings in a court or by way of appeal from a court or where there is no other practicable remedy.”²⁸

¹⁸ Ministry of Justice and Constitutional Affairs, available at <http://www.justice.gov.mw/theministry.html>.

¹⁹ Ministry of Gender, Children, Disability and Social Welfare, available at <http://www.gender.gov.mw/>.

²⁰ Constitution of Malawi, Section 103.

²¹ The Courts Act of 1958 (Cap 3:02).

²² Constitution of Malawi, Section 104.

²³ Constitution of Malawi, Section 108(1) and (2).

²⁴ The Courts Act, Chapter 3:02, Part IV.

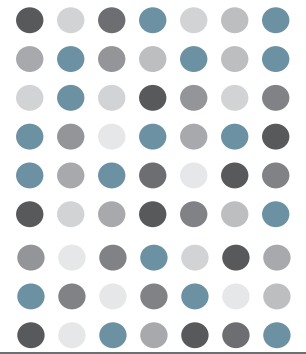
²⁵ Constitution of Malawi, Section 110(2).

²⁶ Constitution of Malawi, Section 110(c).

²⁷ Act No. 22 of 2010.

²⁸ Constitution of Malawi, Section 121, 123.

²⁹ Constitution of Malawi, Section 124.



The Office of the Ombudsman has full powers to: (i) subpoena any person in connection with an investigation; (ii) require disclosure of any information and production of documents of any kind from any public body; (iii) question any person whom is reasonably believed to be connected with an investigation; and (iv) initiate contempt proceedings against any person for non-compliance with its powers.²⁹ Where sufficient evidence of injustice is revealed, the Ombudsman can also direct administrative action be taken, cause an authority to ensure there are practicable remedies to redress a grievance, and refer a case to the Director of Public Prosecutions.³⁰

The Office of the Ombudsman also prepares an annual report.³¹

2. Malawi Human Rights Commission

Section 129 of the Constitution provides that the Human Rights Commission is responsible for the “protection and investigation of violations of rights under the Constitution or any other law.” The Commission has the powers of investigation and recommendation but does not hold a judicial or legislative function.³² The Commission has investigated issues including gender-based violence and non-payment of maintenance on the basis of HIV status.³³ The Commission also monitors prisons, holds sensitisation workshops and engages at the district and national level, including with Parliament and other stakeholders when there are available resources.³⁴ There are also thematic committees which periodically seek input from the public and civil society.

The Malawi Human Rights Commission Act³⁵ outlines the Commission’s duties and responsibilities further.

Some individuals indicated that stakeholders are missing opportunities to engage with the Commission and there is not always sufficient coordination of activities and effective responses to human rights issues within the Commission. The Commission is underfunded, making effective performance of their duties a challenge.

3. Malawi Law Commission

The Malawi Law Commission is independent³⁶ and has the power to review and make recommendations concerning the repeal and amendment of laws. The Law Commission has the powers to:

(i) review and make recommendations regarding any matter concerning the laws of Malawi, their conformity with the Constitution, and applicable international law; (ii) review and make recommendations regarding any matter pertaining to the Constitution; (iii) receive submissions from any person or body regarding the laws of Malawi or the Constitution; (iv) report findings and recommendations to the Minister responsible for Justice who is charged with publishing reports and bringing reports to Parliament.

³⁰ Constitution of Malawi, Section 126.

³¹ Available at <http://www.ombudsmanmalawi.org/annual%20report.html>.

³² Constitution of Malawi, Section 130.

³³ Frank Shimbu, HIV Rights Coordinator, Malawi Human Rights Commission, Lilongwe, June 2016.

³⁴ Ibid.

³⁵ Act No. 27 of 1998.

³⁶ Constitution of Malawi, Section 136.

³⁷ Constitution of Malawi, Section 132.

³⁸ Constitution of Malawi, Section 135.



OUTLINE OF PROCESSES

A. LAW REFORM/ REVIEW AND ENACTING NEW LEGISLATION

There is a need for more transparency with processes and engagement with the public. Engagement with law and policy makers should be encouraged and not deterred.³⁹

The Law Commission provides an overview of its law reform process.⁴⁰ A bill can also be initiated within a Ministry or by a Member of Parliament.

The Law Commission has five phases for law reform:

1. Phase One:

Identification of law reform area.

Law reform areas are identified by (i) submissions from the public, private individuals or bodies; (ii) the Commission itself; (iii) the Attorney General's office.

2. Phase Two:

Investigation by law commissioners (who are assigned as Programme Officers).

- a. Issues paper
- b. Discussion paper
- c. Consultation Paper
- d. Research paper

3. Phase Three:

Appointment of Commissioners with relevant experience.

4. Phase Four:

Consultations with stakeholders and members of the public.

5. Phase Five:

Report for publication and proposed legislation which is submitted to the Minister of Justice (who publishes the proposed legislation and submits to Parliament).

The Chief Law Reform Officer⁴¹ also provided the following information:

- CSOs can make submissions to the Law Commission and if there is funding, the Commission will prepare working documents.
- When bills are sent from a relevant Ministry, each Ministry has its own procedure so it is important for civil society to engage with individual ministries to ensure they are able to participate effectively.
- Ministries can also request the Law Commission to further develop policies and plans into laws.
- CSOs are consulted during the development of laws. Individuals/entities can either be made members of a commission or they can be invited if the Law Commission is aware that they work on relevant issues. It is essential that CSOs forge and maintain relationships with decision makers in relevant ministries and with the Law Commission so that they are invited to participate during consultations. Sometimes consultations are advertised (in the newspaper, etc.) but this is not always the case.

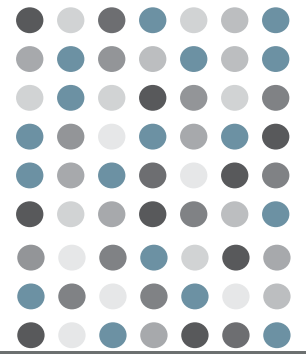
Once the Law Commission sends its report and pre-draft bill to the Minister of Justice, the bill is further developed and the draft bill originates with the Ministry of Justice or the Attorney General's office, who utilise the pre-draft of the Law Commission. The Ministry of Justice then submits the report to Cabinet and if Cabinet adopts the Law Commission's recommendations, the proposed legislation is adopted as a Government Bill and presented to Parliament.

³⁹ In Lilongwe, some individuals were patronising and/or defensive when questioned about legal and related processes. For members of the public and civil society, being made to feel uneducated and/or uninformed could deter information seeking and otherwise engaging with law and policy makers.

⁴⁰ Malawi Law Commission, Law Reform Process, available at http://www.lawcom.mw/index.php?option=com_content&view=article&id=18&Itemid=114.

⁴¹ Interview with William Msiski, Chief Law Reform Officer of Malawi Law Commission, Lilongwe, 28 June 2016.





the protection and enforcement of rights under this Chapter shall be entitled to the assistance of the courts, the Ombudsman, the Human Rights Commission and other organs of Government to ensure the promotion, protection and redress of grievance in respect of those rights.” Section 46(2)(a) provides that any person claiming that a fundamental right or freedom has been infringed or threatened is entitled to apply to a competent court for enforcement or protection of a right or freedom. Malawian courts have interpreted these provisions restrictively and inclusively.⁴⁶

Malawian Courts have maintained narrow requirements for locus standi. In the case *Civil Liberties Committee v Minister of Justice*,⁴⁷ the Supreme Court of Appeal (the highest court in Malawi) ruled that the civil society organisation petitioner did not have sufficient interest in the matter and therefore lacked standing to bring the case. As a result, the case was dismissed. The Supreme Court of Appeal found it significant that in its view, there were organisations who had more direct interest in the subject matter and the outcome of the case.

The Court stated:

We wish to make it very clear that there is no reason to make apology for affirming the standard of sufficient interest for determining locus standi, in the field of public law. It is the standard which the eminent Lord Justices in England use.... It is true that the concept has undergone some reform and what constitutes sufficient interest is liberally interpreted. Nevertheless, according to the World Development Movement case a plaintiff is still required to establish locus standi by meeting the criteria laid down in that case; that criteria includes the absence of another responsible challenger and the role of the plaintiff in relation to the subject matter of the action.

Similarly, in the recent case *The Registered Trustees of the Women and Law (Malawi) Research & Education Trust v Attorney General*, the Malawi High Court also interpreted standing requirements narrowly when it ruled that the NGO filing a case on behalf of a woman plaintiff who had been dispossessed of her property in contravention of the Married Women.

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RELEVANT LAWS AND POLICIES

See 2012 Malawi Legal Environment Assessment (LEA) for comprehensive analysis of laws, policies and recommendations⁴⁸

A. CONSTITUTION

Chapter III of the Malawian Constitution provides many protections relevant in the context of HIV and AIDS, including the right to life, human dignity and personal freedoms, equality, privacy, family and marriage, education, economic activity, labour, freedom of expression and information, the right of access to justice and legal remedies, rights related to arrest and detention, the right to fair trial and the rights of people with disabilities. The rights to equality and recognition before the law are non-derogable - these rights cannot be limited for any reason.

There is no Constitutional right to health but health is recognised as a Principle of National Policy.⁴⁹ The Constitution guarantees progressive adoption of policies and legislation aimed at providing adequate health care, “commensurate with the health needs of Malawian society and international standards of health care.” The LEA found that the State “may wish to consider a constitutional amendment to provide for a clear right to health within the Constitution.”⁵⁰

The LEA also noted that “rights are not exhaustively stated in the Constitution and require interpretation.”

Opportunity:

If and when constitutional reform is appropriate, advocate for an enforceable constitutional right to health. Research and document whether and to what extent a constitutional right to health would address gaps in access to HIV-related and other health services in Malawi.

B. OVERARCHING

Non-Discrimination and Equality

There is no broad anti-discrimination or equality law and no express prohibition against discrimination against people living with HIV. The Constitution does provide protection for the right to equality and non-discrimination on a number of grounds, including “other status” and “condition,” which is generally interpreted as including discrimination on the basis of HIV and AIDS.⁵¹

The *Malawi Growth and Development Strategy (MGDS)* provides a framework for overarching development policy in Malawi by outlining priorities, lessons learned from the previous strategy and challenges. The second MGDS is in effect (2011-2016).

Opportunities:

Hold government accountable for commitments made in the MGDS II, including through identifying successes and gaps.

This can occur during meetings, discussions, and written and oral submissions.

Since development of MGDS III should be underway, participate in this process, including by providing input on how to improve the policy itself and implementation based on identification of successes and gaps.

The not yet published *Malawi National Human Rights Action Plan Priorities (2016-2020)* includes interventions for LGBTI and sex workers as priority issues.

⁴⁸ Available at <http://www.undp.org/content/undp/en/home/librarypage/hiv-aids/legal-environment-assessments.html>.

⁴⁹ Constitution of Malawi, Section 13(c).

⁵⁰ Assessment of Legal & Regulatory Environment for HIV & AIDS in Malawi (2012), at 128.

⁵¹ Assessment of Legal & Regulatory Environment for HIV & AIDS in Malawi (2012), at 69.



⁵² Global Commission on HIV and the Law, Exciting Developments from Seychelles and Malawi, 18 November 2013, available at <http://www.hivlawcommission.org/index.php/blog/246-exciting-developments-from-seychelles-and-malawi>.

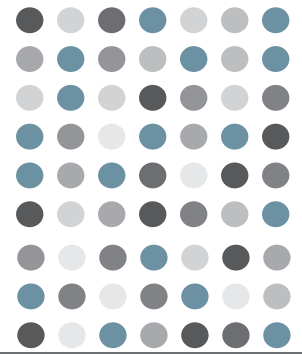
⁵³ Interview with UNDP, Lilongwe, 30 June 2016.

⁵⁴ Interviews with Ellious Chasukwa, NAC; William Msiski, Chief Law Reform Officer of Malawi Law Commission, Lilongwe, June 2016.

⁵⁵ The Global Commission on HIV and the Law recommends that prosecution should be available only in very limited circumstances, when transmission is actual and intentional and prosecutions are pursued with a high degree of evidence. Global Commission on HIV and the Law, Risks, Rights and Health, July 2012, p. 25. There should also be sufficient safeguards in place to protect privacy and other rights during any legal proceedings.

⁵⁶ Act No. 15 of 1988, Cap 35:01.

⁵⁷ LEA, at 128. (citing Guideline 6, UNAIDS and OHCHR, International Guidelines on HIV/AIDS and Human Rights , UNAIDS, Geneva, (2006).



The LEA further recommends:⁵⁸

The law must set out state obligations and responsibilities to provide for the regulation of and access to affordable, quality health care services for the prevention, treatment, care and support of HIV, the details and implementation of which are to be enumerated in policies and operational plans. Legal, policy and/or administrative barriers to the provision of effective health care for HIV should be removed, in order to ensure provision of health services for all, including criminalised populations. State responsibilities should include taking all reasonable measures to provide important goods, services and information including targeted services for vulnerable populations (e.g. prevention of mother-to-child transmission, post-exposure prophylaxis for occupational exposure and sexual abuse) and key populations (e.g. targeted health services for men who have sex with men, criminal laws notwithstanding) and provision for recent and future medical and scientific advancements (such as medical male circumcision).

While the NSP clarifies the structure and roles of duty bearers in the HIV response and Test and Treat (with informed consent) has and will continue to expand access to HIV-related services, state obligations and responsibilities should be further defined in law.

Opportunity:

Many of the LEA recommendations above can also be implemented through the HIV Bill, and reform of the Public Health Act and/or the Pharmacy, Medicines and Poisons Act.

The National HIV and AIDS Policy and Strategic Plan (NSP) (2015-2020)

The previous NSP was intended to be in effect from 2011-2016. However, in 2014, there was revision and the new NSP is in effect from 2015-2020.

NAC indicates that the policy was revised early to (i) address emerging issues including for KPs; (ii) access issues and (iii) to address programme issues.

The new NSP inter alia:

- Establishes a framework aiming to meet the 90-90-90 targets to control the epidemic by 2030 by identifying programme and system gaps and “ensuring those gaps are closed within the next five years”;⁵⁹
- Prioritises the protection and promotion of human rights and gender equality;
- Recognises the need to provide targeted interventions to key populations, which include: female sex workers and their clients, men who have sex with men, fishermen, estate workers, discordant couples, family members of people living with HIV, young women, children and prisoners;⁶⁰
- Mentions transgender persons as distinct from gay men and recognises the issue of inequality, but transgender persons are not included as a key population and there are no specific interventions for transgender persons in the NSP.

Opportunities:

- Hold the government accountable for implementing the NSP, inter alia, by ensuring the needs of key populations are being addressed in a meaningful way. Use the current NSP to push for evidence-based, quality programmes for all key populations.
- Prior to the drafting of the next NSP, collect, document and disseminate specific evidence of the barriers and issues for access to HIV-related services for all key populations to provide information to NAC, MOH and other stakeholders concerning programme and intervention deficits and to promote evidence-based programming for all key populations.

⁵⁸ Assessment of Legal & Regulatory Environment for HIV & AIDS in Malawi (2012), at 129.

⁵⁹ Malawi National Strategic Plan, at 2.

⁶⁰ Key informants also identified tea workers in Cholo as a vulnerable group.



The Clinical Guidelines for the Management of HIV in Children and Adults (April 2014) provides guidance to providers in the provision of anti-retroviral therapy and prevention of mother to child transmission, replacing previous guidelines.

Aligned with the 2015-2020 NSP, the *HIV Prevention Strategy for 2015 – 2020* is a guiding tool for implementing “evidence-based, rights-sensitive, and targeted HIV prevention interventions that will support the achievement of the UNAIDS Ambitious 90-90-90 Treatment Targets.”⁶¹

Public Health Act of 1948

The Public Health Act does not specifically address HIV and AIDS and the diseases dealt with under the Act do not share the characteristics of HIV and AIDS.⁶² The Act includes measures to deal with infectious diseases, epidemic diseases and venereal diseases.

Under Section II, infectious diseases are defined as “any disease that can be communicated directly or indirectly by any person suffering there from to any other person,” and measures include the isolation of people with infectious diseases with the aim of treatment and prevention of spreading the disease.

The LEA provides:

The Public Health Act was enacted in a time when the constitutional order did not provide extensively for the protection of human rights and freedoms. In particular, the Act does not deal with issues such as patient’s rights in the context of HIV and AIDS. It also contains

a range of coercive measures, such as section 54(1) which criminalises the employment of any person suffering from any venereal disease in a communicable form and section 57 which stipulates that “no person shall wilfully or by culpable negligence infect any other person with venereal disease or do or permit or suffer any act likely to lead to the infection of any other person with such disease.”

Section 11 of the Act contains a list of notifiable infectious diseases (such as anthrax, human trypanosomiasis and others). However HIV and AIDS has not been listed as a notifiable disease even with recent reforms to the Act (although the Minister has the power to do so).

The Malawi Law Commission reviewed the Public Health Act in 2012.⁶³ As noted in the LEA and by the Malawi Law Commission, the Public Health Act is inadequate and inappropriate to manage HIV and AIDS.

The LEA also provides:

International guidance recommends that regulation of a number of HIV-related health issues including access to quality prevention, treatment, care and support, information and services (including regulation of false or inaccurate information on HIV and AIDS), rights to food and nutrition and patients’ rights (including rights to voluntary HIV testing and confidentiality) in the context of HIV and AIDS require to be addressed within law. At present, a number of these issues are addressed in the various policies of the health sector, but are not legally binding.....

⁶¹ Malawi HIV Prevention Strategy for 2015 – 2020, at 11.

⁶² Assessment of Legal & Regulatory Environment for HIV & AIDS in Malawi (2012), at 88 (citing Malawi Law Commission, Report of the Law Commission on the Development of HIV & AIDS Legislation, Report No. 20, 2008, p. 15).

⁶³ Malawi Law Commission, Review of the Public Health Act, available at http://www.lawcom.mw/index.php?option=com_content&view=article&id=42:review-of-the-public-health-act&catid=2:general&Itemid=101.

It will be critical to ensure that the review of the Public Health Act is informed by the work of the Law Commission on the review of HIV & AIDS legislation and this report, to include provision for the rights of people in the context of HIV and AIDS and to ensure consistency with the provisions recommended for an HIV and AIDS law.⁶⁴

Opportunity:

- Continue to engage with the Malawi Law Commission, Parliament, Parliamentary Committees, relevant Ministries, the Human Rights Commission, (including through submissions, meetings or other advocacy) on the Public Health Act to ensure that when revised, the Act provides protections in the context of HIV and AIDS consistent with international standards and best practices, including by addressing the issues and gaps identified above.
- Participate in any public consultations on a review of the Public Health Act.

C. LAWS CRIMINALISING HIV AND KEY POPULATIONS

CSOs have conducted outreach and engagement on issues facing MSM and other LGBTI persons, sex workers and other key populations. UNAIDS has also conducted trainings and outreach. There is limited information on transgender and gender nonconforming persons and people who use drugs. There is a need for a baseline study and targeted, evidence-based programming.

It was also mentioned that there is a need to coordinate messaging for Key Population issues as it is not always consistent and/or as effective as possible given the sensitivity of Key Population issues.

Key informants recommended the following activities to address criminalisation issues:

- Holding an annual national human rights training and information sharing event which would include the Malawi Human Rights Commission, CSOs, relevant government decisions makers, regional and international institutions;
- Outreach to and sensitisation of religious leaders;
- Outreach to and sensitisation to the public (it is essential to reach people at the national and district level);
- Outreach to, sensitisation of and engagement with civil society (only a few groups are supportive of key populations and informed about key population issues);
- Additional human rights trainings for health providers, including on key population issues;
- Capacity strengthening, advocacy planning and coordination of civil society activities;
- Additional use of technical working groups (including prevention and others, as well as inclusion of key populations in additional working groups);
- Utilising NSP language and other rights-protecting commitments and policy documents for advocacy; and
- Further engagement and collaboration with NAC, Malawi Law Commission, Malawi Human Rights Commission, UNAIDS, and other stakeholders.

There is a dearth of quantitative (and qualitative) evidence with respect to criminalised populations. There is a need for hard evidence and a mechanism to allow systematic reporting. For example, it was recommended that to document violations systematically, individuals could report violations by SMS to the Malawi Human Rights Commission or other appropriate entity where there is one point-person

⁶⁴ Assessment of Legal & Regulatory Environment for HIV & AIDS in Malawi (2012), at 88.

assigned to address violations issues. The evidence could then be compiled and the specific issues could be more effectively addressed.

Key informants also raised some structural barriers that inhibit access for key populations including:

- Cultural barriers;
- Health systems are not prepared to address key populations; and
- Inadequate skills of health workers to address the needs of key populations.

SEXUALLY TRANSMITTED INFECTIONS (STI) CRIMINALISATION

While not HIV specific, Section 192 of the Penal Code⁶⁵ provides: “any person who unlawfully or negligently commits does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be guilty of a misdemeanor.”

THE CONTINUED CRIMINALISATION OF CONSENSUAL SEX BETWEEN ADULTS OF THE SAME SEX⁶⁶

Studies have found that MSM have a disproportionately high HIV prevalence.⁶⁷

The continued criminalisation of consensual sexual acts between adults of the same sex is stigmatising and is a significant obstacle in accessing health services for MSM and other LGBTI persons due to consequent discrimination.

- Section 156 of the Penal Code prohibits “indecent practices between males” and Section 153 prohibits

“unnatural offences.” Section 154 prohibits attempts to commit unnatural offences.

- “Indecent practices between males” include:
- acts of gross indecency committed in public or private, between males;
- procuring or attempting to procure another male to commit any act of gross indecency.
- “Unnatural offences” include instances in which any person has carnal knowledge of any person or permits a male person to have carnal knowledge of him or her.
- “Indecent practices between males” and “unnatural offences” are felonies and punishable with five and fourteen years of imprisonment, respectively “with or without corporal punishment.” In 2010, a new section was added to the Penal Code which effectively criminalises consensual sexual conduct between adult women.⁶⁸

Context:

Review of the Anti-Sodomy Laws

The 2014 National Commitment and Policy Instrument (NCPI)⁶⁹ report states that there are current proposals to amend the Penal Code in relation to anti-sodomy laws, though the timeline for this process is unclear.

The sodomy law is currently being reviewed under Section 108(2) of the Constitution, which allows courts to use their own jurisdiction to review the constitutionality of existing laws. In December 2015, two adult men were arrested for consensual sexual acts. The government dropped the charges and imposed a moratorium on the prosecution of ‘sodomy’ and similar laws between consenting adults pending the government review of the “colonial-era sodomy laws.”⁷⁰ As of June 2016, the moratorium was still in effect.

⁶⁵ Penal Code of 1930 (Cap 7:01).

⁶⁶ Penal Code, Sections 153, 154 and 157; See also, ARASA, *Identifying Injustice: Law and Policy on Sexual Orientation, Gender Identity and HIV in Southern Africa*, at 112.

⁶⁷ See for example, Wirtz et al, *Journal of the International AIDS Society, HIV among men who have sex with men in Malawi: elucidating HIV prevalence and correlates of infection to inform HIV prevention*; Malawi AIDS Response Progress Report (2015), at 31.

⁶⁸ Outright International, *Sex Between Women Now a Crime in Malawi: New Law Violates Human Rights Obligations of Malawi*, 8 February 2011, available at <https://www.outrightinternational.org/content/sex-between-women-now-crime-malawi-new-law-violates-human-rights-obligationsmalawi>.

⁶⁹ UNAIDS, *Malawi National Commitment and Policy Instrument*, (2014) at 10, available at <http://www.unaids.org/en/dataanalysis/knowyourresponse/ncpi/2014countries>.

⁷⁰ Nyasa Times, *Malawi Drops Charges Against Gay Men: Anti-Homo sexual Laws Suspended*, Says Justice Minister, 20 December 2015.

There are several ongoing legal challenges to sodomy and related laws that are in Court.⁷¹

Several persons in NAC and in the Auditor General (AG's) office were of the view that the sodomy law is not a barrier to access for MSM or LGBTI persons. Some had a very narrow interpretation of what constitutes 'impact of laws' and do not see societal stigma and/or discrimination as related to the continued criminalisation of sodomy. *There is a need to find the right language and method to reach these key decision makers.*

THE CONTINUED CRIMINALISATION OF SEX WORK

Studies indicate that sex workers have a disproportionately high HIV prevalence.⁷²

While sex work is not expressly criminalised in Malawi, a number of provisions under the Penal Code have been used to harass, target and arrest sex workers including Sections 145, 180, 184 and Section 192 of the Penal Code.⁷³ Section 192 criminalises "negligent act[s] likely to spread disease dangerous to life," which has been used to criminalise HIV transmission and non-disclosure. In 2009, seventeen sex workers were arrested for allegedly contravening this provision. While six men were released, eleven women were tried in Court for contravention of Section 192. During trial they were forced to undergo HIV tests without their consent and their HIV status was disclosed in open Court.⁷⁴ In May 2015, the Blantyre High Court awarded damages to the complainants for the forced HIV tests and disclosure of their HIV status in open Court, holding that the proper procedures had not been followed in the case, including the use of the forcibly obtained HIV

results as evidence. However, the complainants have not yet been awarded the compensation due.

Additional Criminal Laws That Impact LGBTI Persons and Sex Workers

LGBTI persons report they have been charged with offences including nuisance, "public disorder" and "breaching the peace." Some individuals are not informed which crime they are being charged with when they are arrested or detained.

Common nuisance is a criminal offence under Section 168 of the Penal Code and is defined broadly as, inter alia, an act not authorised by law which causes "any common injury, or danger or annoyance, or obstruct[ing] or caus[ing] inconvenience to the public in the exercise of common rights."

Section 180 criminalises a number of acts of "idle and disorderly persons" and allows for up to three months of imprisonment.

Additionally, Section 181 of the Penal Code outlaws "conduct likely to cause a breach of the peace." Section 181 provides, "[e]very person who in any public place conducts himself in a manner likely to cause a breach of the peace shall be liable to a fine of K50 and to imprisonment for three months."

Government Commitments to Addressing Human Rights:

The NSP recognises the impact of discrimination on the ability to combat HIV:

Strategies to address the HIV epidemic are hampered by an environment where human rights are not respected. For example, stigmatisation and discrimination against

⁷¹ CHRR, CEDEP and SALC have been involved in several cases challenging the sodomy and related laws.

⁷² Malawi AIDS Response Progress Report, 2015, at 31.

⁷³ See *infra*.

⁷⁴ Southern Africa Litigation Centre, Malawi Sex Workers Win Forced HIV Test Case, 21 May 2015, available at <http://www.southernafricalitigationcentre.org/2015/05/21/salc-in-the-news-malawi-sex-workers-win-forced-hiv-test-case/>.

marginalised groups such as sex workers, and MSM drive these populations underground. This impedes efforts to reach these populations with prevention initiatives, thereby increasing their vulnerability to HIV. Similarly, failure to provide access to appropriate information about HIV, or treatment, and care and support services further fuels the AIDS epidemic.⁷⁵

The NSP further provides:

Human rights will therefore be safe-guarded through promoting gender equity and equality in HIV services along with ensuring a stigma-free environment and protection of patient-rights in facilities.

Additionally, Malawi adopted two Universal Periodic Review (UPR) recommendations on the rights of LGBTI persons including to

(1) “take effective measures to protect lesbian, gay, bisexual and intersex persons from violence and prosecute the perpetrators of violent attacks and access to non-discriminatory health services” and to (2) “guarantee that people of the lesbian, gay, bisexual, transgender and intersex communities have effective access to health services, including treatment for HIV and AIDS.”⁷⁶

In 2014, the UN Human Rights Committee expressed concern that the Human Rights Commission is reluctant to engage in issues related to the rights of LGBTI persons.⁷⁷

Opportunity:

Continue to utilise the NSP, UPR and Human Rights Committee statements/language above to advocate/lobby (through written submissions and oral

communications) for (i) more extensive and high quality services and interventions targeting LGBTI persons and sex workers and (ii) reform of the Penal Code, including repealing the provisions above which stigmatise LGBTI people, sex workers, and people living with HIV and hinder access to HIV-related services.

D. PROTECTION FROM GENDER DISCRIMINATION⁷⁸

The LEA identified “a range of social, economic and cultural issues, including gender inequality, harmful gender norms and gender-based violence as a key issue increasing the risk of HIV exposure amongst women and girls. Thus, women and girls require special legal and social protection to help reduce vulnerability and manage the impact of HIV and AIDS.”⁷⁹

Existing laws and policies that protect against gender discrimination:

In addition to the Constitutional rights to equality and non-discrimination under Section 20, Section 24 of the Constitution provides inter alia, “[w]omen have the right to full and equal protection by the law, and have the right not to be discriminated against on the basis of their gender or marital status...”

Gender Equality Act of 2013

The Gender Equality Act prohibits, inter alia, sex discrimination, sexual harassment and harmful practices. The Act gives the Malawi Human Rights Commission authority to monitor government and private sector practices with respect to the Act, including by conducting investigations, making recommendations, and taking other necessary measures for implementation of the Act.⁸⁰

⁷⁵ At 7.

⁷⁶ Malawi Responses to Recommendations and Voluntary Pledges, Second Review, Session 22, 5 July 2015, para. 110.93 and 110.126. ⁷⁷ Human Rights Committee, Concluding Observations on the Initial Periodic Review of Malawi, CCPR/C/MWI/CO/1/Add.1, 19 August 2014, paras. 6 and 10.

⁷⁸ Refer also to the Violence and Protection Section below.

⁷⁹ Assessment of Legal & Regulatory Environment for HIV & AIDS in Malawi (2012), at 73.

⁸⁰ Gender Equality Act of 2013, available at <http://www.hrcmalawi.org/GEA.html>. In 2014, the UN Human Rights Committee expressed concern that the Commission lacks the resources to implement the Gender Equality Act. The Committee also expressed concern about the reluctance of the Commission to engage in issues related to the rights of LGBTI persons.

In March 2016, the Ministry of Gender, Children, Disability and Social Welfare with UNFPA launched the 2013 Gender Equality Act Implementation and Monitoring Plan (2016-2020).⁸¹

Opportunities:

- Engage with the Ministry of Gender, Children, Disability and Social Welfare, UNFPA, the Malawi Human Rights Commission (gender unit) and other stakeholders on implementation of the law, remaining barriers, and provide input on how to improve addressing gender inequality. Input can include written letters and submissions, in-person meetings with individuals in the Ministry, or group meetings.
- Research and document the extent that the Gender Equality Act and Gender Policy have been implemented and remaining barriers. Disseminate information to relevant decision-makers, policy-makers, lawmakers and programme implementers, including the Ministry of Gender and Malawi Law Commission.

The Marriage, Divorce and Family Relations Act of 2015 bans widow inheritance, sets the minimum age of marriage at 18 (though a constitutional amendment is required to give effect to this provision as the Constitution allows children between the ages 15-18 with parental consent to marry), gives men and women equal rights in marriage and divorce, and consolidates statutory and customary laws on marriage and divorce. Under the Act, polygamy is only prohibited in civil marriages.

While there are a number of positive aspects of the Act, there are also discriminatory provisions which effectively (1) define marriage as between “two persons of the opposite sex,” and (2) define a person’s

sex as the one assigned at birth, thereby denying the right to gender identity. It is not yet known how the law will impact transgender, intersex and gender nonconforming persons outside of the context of marriage.

Opportunities:

- Document whether and to what extent the protective provisions, including the prohibition of widow inheritance and harmful practices are being enforced. Utilise information gathered to make evidence-based recommendations on how to improve enforcement on the ground as well as programmatic recommendations that address the needs of women and girls.
- Document the impact of the restrictive definition of gender and the prohibition of marriage between anyone who is not ‘opposite-sex’ (even if persons are different genders) on the rights of transgender, intersex, gender nonconforming and other LGBTI persons. This includes any impact on access to health services, due to inter alia stigma and discrimination as well as in other sectors such as labour and education.

The Wills and Inheritance (Amendment) Act No 22 of 1998 criminalises property grabbing. The Deceased Estates (Wills, Inheritance and Protection) Act of 2011 further criminalises and increases the penalty for property grabbing.

The Draft Gender Policy (which has been used since 2012 and will expire in 2017)

Policy Priority 7 recognises:

“To effectively fight and mitigate the impact of HIV and AIDS on the population and the economy, promoting gender mainstreaming and addressing harmful cultural practices are critical components for ensuring

⁸¹ UNFPA Malawi, available at <http://malawi.unfpa.org/news/2016-2020-gender-equality-act-implementation-plan-launched>.

⁸² Refer also to the Gender Discrimination Section above.

⁸³ Act No. 5 of 2006.

⁸⁴ Section 27(2).

⁸⁵ See http://www.lawcom.mw/index.php?option=com_content&view=article&id=41:review-of-the-prevention-of-domestic-violence-act&catid=2:general&Itemid=101.

⁸⁶ As mentioned above, while non-consensual sex in marriage is addressed within the Prevention of Domestic Violence Act, it would be more effective if the law expressly prohibits of marital rape.

⁸⁷ Assessment of Legal & Regulatory Environment for HIV & AIDS in Malawi (2012), at 83.

⁸⁸ Act No. 41 of 1963.

⁸⁹ Immigration Act of 1964, Section 4(1)(e), (d) and (g).

⁹⁰ Dangerous Drugs Act, 59 of 1956.

⁹¹ Id, Section 26.

⁹² Act No. 6 of 2000.

⁹³ Act No. 16 of 1996.

⁹⁴ Act No. 21 of 1997.

⁹⁵ Act No. 7 of 2000.

⁹⁶ Employment Act, Act No. 6 of 2000, Section 2(1) and (2).

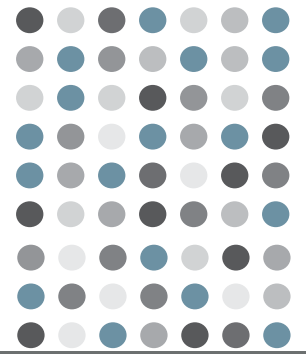
⁹⁷ Employment Act, Section 5(1).

⁹⁸ Assessment of Legal & Regulatory Environment for HIV & AIDS in Malawi (2012), at 72.

⁹⁹ Matter No. IRC 277 OF 2004; [2005] MWIRC 44.

¹⁰⁰ Assessment of Legal & Regulatory Environment for HIV & AIDS in Malawi (2012), at 130.

¹⁰¹ Mwapasa, V. et al (2012). Prevalence and Risk Factors for HIV, Sexually-Transmitted Infections and Tuberculosis in Malawian Prisons. Malawi Prison Services.



The LEA states:¹⁰²

Prisoners (including specific mention of young offenders) were identified as a key population at higher risk of HIV. There was general consensus that sex between men occurs in prisons. Respondents cited the overcrowded conditions, lack of basic necessities, sexual violence and limited access to HIV prevention, treatment, care and support services as examples of human rights violations. Laws criminalising sex between men prohibit the distribution of condoms in prisons and thus act as a barrier to service delivery.

In addition to confirming these issues remain, key informants indicated that most prisons do not have their own health systems and that the scope and quality of care is a significant issue, including in the context of HIV services.

The Prisons Act¹⁰³ is also under review by the Malawi Law Commission, who developed an issues paper and there were consultative meetings scheduled for 2015.

¹⁰⁴ The current Act does not mention HIV.

Opportunities:

- Engage with the Malawi Law Commission on issues identified in the LEA, and follow up on the consultative meetings.
- Gather information on dates and logistics for future consultative meetings and participate by providing submissions and attending meetings.
- Advocate for access to condoms in prisons, comprehensive HIV prevention, treatment, care and support services for inmates.
- Advocate for specific measures to prevent sexual violence in prisons.

K. Intellectual Property and Trips Flexibilities

The Pharmacy, Medicines and Poisons Act¹⁰⁵ does not specifically regulate HIV/AIDS but does regulate the manufacturing of generic drugs. The act also regulates clinical trials.

The Patents Act¹⁰⁶ protects intellectual property rights for patents. Section 10 provides protection for inventions communicated under international agreements. Section 29 provides for patent protection for a period of sixteen years and Section 41 provides for the power to “make, use, exercise and vend” any invention during a “period of emergency” to safeguard the life and well-being of the community.

TRIPS Flexibility

Malawi is a member of the WTO and is a party to the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement). The TRIPS Agreement regulates patents at the international level. TRIPS provides minimum standards of patent protections but also includes ‘flexibilities’ that allow developing countries to access essential medicines at a lower cost. The flexibilities have been extended to 2033.

The 2012 LEA found that in Malawi, flexibilities within the TRIPs Agreement, such as parallel importation and compulsory licensing, are not being utilised to increase access to treatment. The LEA recommends that the Patents Act be amended to comply with the TRIPS Agreement and “include specific directives on utilizing TRIPS flexibilities in relation to public health for increased access to good quality and affordable generic medicines.”¹⁰⁷

¹⁰² Assessment of Legal & Regulatory Environment for HIV & AIDS in Malawi (2012), at 37.

¹⁰³ Malawi Prisons Act, Act 9 of 1955 (Cap 9:02).

¹⁰⁴ Malawi Law Commission, Review of the Prisons Act, available at http://www.lawcom.mw/index.php?option=com_content&view=article&id=38:review-of-the-prisons-act&catid=2&Itemid=101.

¹⁰⁵ Act No. 15 of 1988.

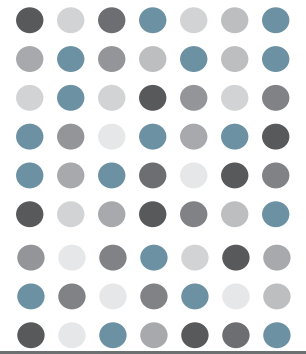
¹⁰⁶ Act No. 13 of 1957.

¹⁰⁷ Assessment of Legal & Regulatory Environment for HIV & AIDS in Malawi (2012), at 128.



¹⁰⁸ Id, at 91.

¹⁰⁹ UNAIDS, Extended TRIPS transition period for pharmaceutical products, 12 November 2015, available at http://www.unaids.org/en/resources/presscentre/featurestories/2015/november/20151112_TRIPS.



disabilities,¹¹⁰ and requires the government to provide persons with disabilities the “same range, quality and standard of free or affordable health care services as provided to other persons, including sexual and reproductive health services and population based health programmes.¹¹¹ Additionally, the government must provide medical personnel specialising in the treatment and rehabilitation of persons with disabilities and develop national guidelines, minimum norms and standards for the provision of assistive devices and personal assistants to persons with disabilities. The Act does not specifically mention HIV or AIDS.

Opportunities:

- Advocate for specific protections for people with disabilities in the context of HIV, in the HIV Bill or otherwise.
- In collaboration with people with disabilities, research barriers to HIV-related and other health services for people with disabilities and the extent to which the Disability Act has been implemented and enforced.
- Based on input and research, make recommendations to decision makers on how to strengthen existing protections and otherwise facilitate meaningful access to HIV-related services for people with disabilities.
- Document violations in the context of health and otherwise, including discrimination on the basis of disability.
- Where violations occur, including discrimination in health care on the basis of disability, utilise existing mechanisms to seek redress, including through complaint mechanisms within the public health system and where appropriate through the Courts.
- Collaborate with the office of the Ombudsman, the Malawi Human Rights Commission and other institutions.

- When Malawi is next under review by the Committee, (date TBD) write shadow reports to the Committee on the Rights of Persons with Disabilities on implementation of the Disability Act of 2012 and any gaps in the law and policies. Include information on:
 - Major barriers and challenges for people with disabilities in accessing HIV-related health services;
 - Recommendations to improve prevention of HIV infection for people with disabilities;
 - Other pertinent information including additional steps Malawi can take to (i) address the health needs of people with disabilities and (ii) create an environment in which health services are accessible in a meaningful way for people with disabilities.

M. ACCESS TO JUSTICE AND LAW ENFORCEMENT

The LEA makes a number of recommendations including:¹¹²

- Stigma and discrimination reduction campaigns should be strengthened amongst communities as well as amongst service providers (e.g. health care workers) and law enforcement officials, to reduce HIV-related discrimination as well as discrimination against vulnerable and key populations at higher risk of HIV exposure.
- Community awareness and education campaigns on HIV, law and human rights (“Know Your Rights” campaigns) should be intensified, including the development of media in local languages on HIV and human rights issues. Programmes should ensure that they also specifically target and include information on issues and laws relevant to all vulnerable and key populations and on new, protective laws and policies (e.g. the Disability Act).

¹¹⁰ Section 7.

¹¹¹ Section 6.

¹¹² See Assessment of Legal & Regulatory Environment for HIV & AIDS in Malawi (2012) at 140-141 for recommendations.



¹¹³ Ibid.

FORMS OF ENGAGEMENT WITH LEGAL, POLICY, POLITICAL AND OTHER PROCESSES

Below is a non-exhaustive list of forms of engagement, in general and for specific processes.

DOMESTIC

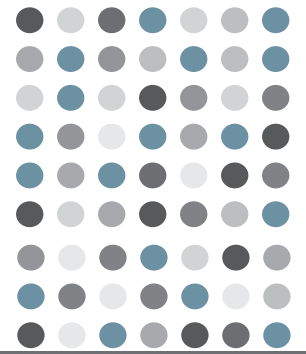
General

- Continue to engage with decision and policy makers and national human rights bodies (ombudsman, human rights commission, law commission) identified in this report.
- Share information and encourage the sharing of relevant dates, upcoming activities (law and policy review, other).
- Request a regular meeting space (town hall or other) where stakeholders (government, CSOs, the community) can come together to discuss HIV, human rights and related issues.
- In meetings of this nature, outline tasks for each person/entity and concrete objectives. Hold everyone accountable for their tasks by reporting back on progress at the next meeting.
- Continue to engage with Malawi Law Commission on laws under review identified in this report.
- Engage with National AIDS Commission on outstanding law and policy reform recommendations.
- Engage with and develop relationships with members of the judiciary and other legal experts including through outreach, sensitisation and information sharing (the office of the Attorney General, private and public practitioners, the Law Society, law schools, other legal institutions).
- Continue to engage with police officers, health providers and other state service providers, including through outreach, sensitisation and sharing of information.
- Remain informed about the legal and policy environment and the situation on the ground.
- Regularly engage with stakeholders, through outreach, knowledge sharing, and other events and activities.
- Regularly engage with the public through outreach and sensitisation, including on human rights and HIV, legal and policy barriers, issues facing key populations and vulnerable groups and other pertinent issues.
- Research, document and disseminate information on the human rights situation on the ground. National and district-specific research to document the impact of laws and policies, including criminal laws and discrimination on the basis of HIV status, sexual orientation, disability, gender, age and other status (sex workers, migrants).
- Utilise the evidence to advocate for law and policy changes and programming that addresses gaps.
- Produce pamphlets and other user-friendly materials to distribute for sensitisation and information sharing.
- Facilitate training programmes on HIV and human rights, including relevant laws and policies.
- Facilitate trainings on human rights and issues facing key populations including LGBTI persons, sex workers, people who use drugs and prisoners, as well as other vulnerable and marginalised groups.
- Implement systems to systematically document HIV-related human rights violations. Write and publish an annual violations report.
- Share documented violations, including through the media, reports and publications at the domestic, regional and international levels.
- Utilise the evidence to push for law and policy reform and programming to address gaps.

Law Reform, Review

- Engage and foster relationships with Malawi Law Commission, Members of Parliament, relevant Ministries, the Office of the Ombudsman, the Executive,





the Office of the Attorney General and other individuals and entities involved in law and policy reform.

- Submissions to decision and policy-making bodies (Malawi Law Commission, Parliament, Ministries) on barriers in access to HIV-related health services. These can be specific or general, including issues facing particular groups.
- Request meetings to follow up after submissions.
- Submissions to the Malawi Law Commission, Office of the Attorney General and other stakeholders on how existing laws and policies impact people living with HIV, key populations and other vulnerable groups.
- Request meetings to follow up after submissions.
- When a pertinent law is under review, collaborate with partner organisations and stakeholders to provide written input on the draft to Malawi Law Commission, Members of Parliament, relevant Ministries, the Executive, the office of the Attorney General and other individuals involved in law and policy reform.
- Attend any public consultations for law review/reform and ensure there is good attendance and meaningful participation.
- Hold government accountable for ensuring law reform is consultative in a meaningful way.
- Make formal law reform and review proposals to Malawi Law Commission, the Office of the Ombudsman, Members of Parliament, relevant Ministries, the Executive, the office of the Attorney General, including on legal and policy issues identified in this report. When appropriate, publicise the proposal including through the media.
- Request meetings to follow up and discuss the proposal(s).

Elections (Presidential, Parliamentary or other)

- Engage with candidates on legal and policy barriers

and gaps in programming for HIV-related services.

- Support and rally additional support for those who are responsive and committed to addressing these issues.
- Request manifestos in which candidates outline their priority issues, including on HIV and human rights. Hold candidates accountable to election promises if elected, including to promises and pledges to address gaps, key population, and other HIV-related human rights issues.

Constitutional Reform

- Engage with and foster relationships with Members of Parliament, Parliamentary Committees, relevant Ministries, the Executive, the Office of the Attorney General and other individuals involved in constitutional reform.
- Research and submit proposals on relevant constitutional reform, for example on the inclusion of the right to health as a fundamental right.
- If constitutional reform relevant to HIV rights and discrimination is proposed, participate in the process including through public consultations and other engagement.

Litigation

- Systematically document individual violations experienced on the basis of HIV or health status or other grounds of discrimination (for example against LGBTI or sex workers) for example, in the context of health, labour or education.
- Keep a list of specific laws and policies that result in discrimination, or are otherwise barriers to access. This should include specific cases in which individuals have experienced discrimination or barriers accessing HIV-related services or have otherwise been impacted.
- For example, if an individual is denied health services because she is thought to be an LGBTI person, this would be a violation.



¹¹⁴ United Nations Office of the High Commissioner for Human Rights, available at http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=104&Lang=EN.

¹¹⁵ African Commission on Human and Peoples' Rights, available at <http://www.achpr.org/>.

¹¹⁶ SADC Parliamentary Forum, available at http://www.sadcpf.org/index.php?option=com_content&view=article&id=74&Itemid=119.

- Advise SADC Summit on matters of overall policy
- Scrutinise and make recommendations on SADC budget and Annual Reports
- Consider and make recommendations on any treaties and draft treaties referred to it by SADC
- Promote objectives and programmes of SADC
- Study, be briefed and make recommendations on all SADC Sectoral Reports
- Observer representation in SADC Summit Meetings
- Consulted by any SADC institution on any major activity
- Exercise power to send for person(s), papers and records of any SADC official or SADC institution
- Debate issues

In its strategic plan for 2011-2015¹¹⁷ (the updated plan is not yet available), the SADC Parliamentary Forum (SADC PF) prioritises the following interventions in the context of HIV:

Intervention Areas

1. Facilitation of Legislation review on HIV/AIDS and key public health issues;
2. Capacity development on HIV/AIDS and key Public health interventions;
3. Oversight on key HIV/AIDS interventions and health systems strengthening;
4. M&E of service delivery on key HIV/AIDS programmes and Public health issues;
5. Strengthening of the institutional capacity of Parliament in mainstreaming HIV/AIDS;
6. Strengthening Constituency interventions as part of representative democracy and political leadership on HIV/AIDS for MARPS (Most at Risk Populations) among others;

7. Demonstrate leadership in holding government to account for Malaria, tuberculosis and other disease outbreaks;
8. Repackaging of relevant information in the form of tool kits, policy briefs among others; and
9. Facilitation of key Prevention, Treatment care and support interventions, towards zero new HIV infections, zero discrimination, and gender sensitive interventions.

Strategic Outcome

Greater Parliamentary awareness and political leadership on HIV/ AIDS management as well as on other public health related issues.

Opportunity:

Engage with SADC PF including through submissions and dialogue to provide updates about key concerns and push for priority interventions. SADC PF priorities in the context of HIV include review of relevant legislation and health system strengthening. As such, highlighting priority law and policy reform areas in this forum may be strategic.

¹¹⁷ Available at http://www.sadcpf.org/index.php?option=com_content&view=article&id=83&Itemid=121, at 15-16.

ADVOCACY OPPORTUNITIES TIMELINE

MALAWI

2016

LAUNCH OF 2013 GENDER EQUALITY ACT IMPLEMENTATION AND MONITORING PLAN

2016 - 2020

Ministry of Gender, Children, Disability and Social Welfare and UNFPA ¹.

In March 2016, the Ministry of Gender, Children, Disability and Social Welfare with UNFPA launched the 2013 Gender Equality Act Implementation and Monitoring Plan (2016-2020)

Opportunities:

- Engage with the Ministry of Gender, Children, Disability and Social Welfare, UNFPA, the Malawi Human Rights Commission (gender unit) and other stakeholders on implementation of the law, remaining barriers, and provide input on how to improve addressing gender inequality. Input can include written letters and submissions, in-person meetings with individuals in the Ministry, or group meetings.
- Research and document the extent that the Gender Equality Act and Gender Policy have been implemented and remaining barriers. Disseminate information to relevant decision-makers, policy-makers, lawmakers and programme implementers, including the Ministry of Gender and Malawi Law Commission.

Note: Dates for political and other events in Malawi are typically not known more than a few weeks in advance. It is essential that this timeline is updated regularly to ensure that identified advocacy opportunities and needs are effectively linked to key dates.

ONGOING REVIEW OF THE DOMESTIC VIOLENCE ACT OF 2010

2010 ONWARD

The Malawi Law Commission has been reviewing the Act since 2010 when the Ministry of Gender made submissions.

Opportunity:

Advocate for the express prohibition of marital rape, through amendment of the Prevention of Domestic Violence Act or other appropriate legislation including through advocacy with the Malawi Law Commission, members of Parliament, Parliamentary committees, Ministry of Health, NAC, and other decision-makers and stakeholders.

- Community outreach and sensitisation on the need for an express prohibition of marital rape. ²

¹ UNFPA Malawi, available at <http://malawi.unfpa.org/news/2016-2020-gender-equality-act-implementation-plan-launched>.

² Malawi Law Commission, Review of the Prevention of Domestic Violence Act (Cap. 7:05), available at http://www.lawcom.mw/index.php?option=com_content&view=article&id=41:review-of-the-prevention-of-domestic-violence-act&catid=2:general&Itemid=101.

2016

PRE-SESSION FOR 5TH PERIODIC REVIEW OF UN COMMITTEE ON THE RIGHTS OF THE CHILD

6 - 10 JUNE

List of Issues available (available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/159/37/PDF/G1615937.pdf?OpenElement>)

Opportunities:

Research and draft a shadow report (if possible collaboratively with partner NGOs) to submit to the Committee on the Rights of the Child prior to the January 2017 review of Malawi.

The Committee has requested information from the Government on (steps taken to address):

- the shortage of drugs and medical supplies;
 - enacting the HIV/AIDS bill;
- preventing sexually transmitted diseases, in particular among girls;
- addressing the high rate of teenage pregnancies; and ensure access to sexual and reproductive health services

Possible information to include in the shadow report:

The law should guarantee meaningful health rights for children (through reform of the Child Care, Justice and Protection Act amendment or otherwise) with respect to HIV-related health care services in line with relevant international guidelines and best practices (including The Committee on the Rights of the Child, UNAIDS and OHCHR International Guidelines on HIV and Human Rights, and SADC PF Model Law on HIV & AIDS).

- Implementation and enforcement of relevant domestic laws, including the Child Care, Justice and Protection Act,³ Gender Equality Act, the Prevention of Domestic Violence Act,⁴ and the Marriage, Divorce and Family Relations Act.
- Gaps in access to health services, particularly in the context of HIV prevention and HIV-related services.
- Information on whether and to what extent there are shortages of drugs and medical supplies, including paediatric formulations of ART.
- The extent to which there is access (and gaps in access) to health-related information, particularly pertaining to HIV and comprehensive information on sexual and reproductive health and rights (SRHR).
- The extent to which adolescents have access to preventative health services and commodities in the context of HIV (including condoms, PEP, other)
- Pertinent information relevant to issues of violence against children, including gender-based violence.
- The extent to which children and adolescents have access to justice in cases of sexual violence, abuse and other violence.

Submission deadline:

15 December 2016

Submission information:

<http://www.ohchr.org/EN/HRBodies/CRC/Pages/InfoPartners.aspx>.

³ Act No. 22 of 2010.

⁴ Act No. 5 of 2006.

2016

HIV BILL IS IN CABINET (UNDER SEAL) AS OF 28 JUNE

Ministry of Gender, Children, Disability and Social Welfare and UNFPA ¹.

In March 2016, the Ministry of Gender, Children, Disability and Social Welfare with UNFPA launched the 2013 Gender Equality Act Implementation and Monitoring Plan (2016-2020)

Opportunities:

- Engage with Members of Parliament, Parliamentary Committees, NAC and other law and policy makers on concerns with and recommendations for the HIV Bill (outlined in accompanying report and in the LEA).
- Provide a summary of key issues and recommendations based on the LEA and other stakeholder input. Disseminate to law and policy makers and members of the public (and otherwise sensitise the public when possible).
- Follow the HIV Bill closely, particularly if there are any public consultations and attend to provide input.
- Prior to the Bill being debated in Parliament, send letters and schedule meetings with individual members of Parliament, including those sitting on the HIV/AIDS Committee.

REVIEW OF THE PRISONS ACT 2015 ONWARD

The Malawi Law Commission has been reviewing the Prisons Act since 2015. ⁵

Opportunities:

- Engage with the Malawi Law Commission on issues identified in the LEA, including access to protective barriers and needs-based programming for inmates. Follow up on the consultative meetings.
- Gather information on dates and logistics for future consultative meetings and participate by providing submissions and attending meetings.
- Advocate for access to condoms in prisons, comprehensive HIV prevention, treatment, care and support services for inmates.
- Advocate for specific measures to prevent sexual violence in prisons.

CONTINUED CRIMINALISATION OF KEY POPULATIONS ONGOING

Opportunities:

Continue to utilise the NSP, UPR and Human Rights Committee statements/language above to advocate/lobby (through written submissions and oral communications) for (i) more extensive and high quality services and interventions targeting LGBTI, people who use drugs and sex workers and (ii) to reform of the Penal Code, including repealing the provisions above which stigmatise LGBTI, people who use drugs, sex workers, and people living with HIV and interfere with access to HIV-related services.

GAPS IN PROTECTIONS FROM SEXUAL VIOLENCE ONGOING

Some gaps include the following:

- The rape provision is gender-specific (that is, it does not protect men or transgender people from rape)
- The rape provision does not specifically criminalise rape within marriage, and courts generally view rape as taking place outside of marriage. Non-consensual sex within marriage is dealt with in the Prevention of Domestic Violence Act. ⁶
- Despite the raising of the age of consensual sex to 16 years, section 22(7) of the Constitution, as the supreme law, still allows for a person of 15 years to marry with the consent of a parent or guardian (and for the state to 'discourage' marriage below the age of 15 years). Note, as mentioned above, although the Marriage Act raised the minimum marriage age to 18, a constitutional amendment is required to give effect to the change.

Opportunities:

- Advocacy to address these gaps in the law including through formal submissions and meetings with relevant stakeholders.

⁵ Malawi Prisons Act, Act 9 of 1955 (Cap 9:02).

⁶ Act No. 5 of 2006. While non-consensual sex in marriage is addressed within the Prevention of Domestic Violence Act, it would be more effective if the law expressly prohibits of marital rape.

2016

**PUBLIC HEALTH ACT
(UNDER REVIEW SINCE FEBRUARY 2012)
ONGOING**

Opportunities:

- Continue to engage with the Malawi Law Commission (including through submissions, meetings or other advocacy) on the Public Health Act to ensure that the Bill/ Act provides appropriate and adequate protections in the context of HIV and AIDS consistent with international standards and best practices.

**AFRICAN UNION ELECTIONS
SCHEDULED FOR JULY BUT POSTPONED**

**AFRICAN COMMISSION 59TH ORDINARY SESSION
21 OCTOBER - 4 NOVEMBER**

Information concerning states to be reviewed should be available a few months prior. If Malawi is under review (now or in future) draft shadow report to the Commission highlighting key human rights concerns and barriers to accessing HIV-related health services in Malawi.

**SADC PF PLENARY SESSION
NOVEMBER**

Opportunity:

Engage with SADC PF including through submissions and dialogue to provide updates about key concerns and push for priority interventions. SADC PF priorities in the context of HIV include review of relevant legislation and health system strengthening. Highlighting priority law and policy reform areas in this forum may be strategic.

**WORLD POPULATION DAY
11 JULY**

Opportunity:

- Advocate for government to address relevant issues concerning HIV and human rights including in the context of law, policy and programming.

**MALAWI GROWTH AND DEVELOPMENT STRATEGY
(MGDS) II ENDS, FORMULATION OF STRATEGY III
UPCOMING**

The Malawi Growth and Development Strategy (MGDS) provides a framework for overarching development policy in Malawi by outlining priorities, lessons learned from the previous strategy and challenges. The second MGDS is in effect (2011-2016).

Opportunities:

- Hold government accountable for commitments made in the MGDS II including through identifying successes and gaps. This can occur during meetings, discussions, and written and oral submissions.
- Since development of MGDS III should be underway, participate in this process including by providing input on how to improve the policy itself and implementation based on identification of successes and gaps.

2016

THE MARRIAGE, DIVORCE AND FAMILY RELATIONS ACT OF 2015 2016 ONWARD

Since this Act was recently enacted, 2016 is an opportunity to push for enforcement of protective provisions and to begin to document the extent to which the harmful provisions are stigmatising and create additional barriers to health services for gender nonconforming persons.

Opportunity:

- Document whether and to what extent the protective provisions, including the prohibition of widow inheritance and harmful practices are being enforced. Utilise information gathered to make evidence-based recommendations on how to improve enforcement on the ground as well as programmatic recommendations that address the needs of women and girls.
- Document the impact of the restrictive definition of gender and the prohibition of marriage between anyone who is not 'opposite-sex' (even if persons are different genders) on the rights of transgender, intersex, gender nonconforming and other LGBTI persons. This includes any impact on access to health services, due to inter alia stigma and discrimination as well as in other sectors such as labour and education.

WORLD AIDS DAY 1 DECEMBER

Opportunity:

- Advocacy for government to address priority issues concerning HIV, AIDS and human rights including in the context of law, policy and programming.
- Disseminate information to the public, stakeholders and decision makers.

UNIVERSAL HEALTH COVERAGE DAY 12 DECEMBER

Opportunity:

- Advocacy to push for universal HIV-related health services, including by removing legal barriers and for ensuring access for vulnerable groups.

PARLIAMENTARY SESSIONS DATES TBD

Typically, there are 3 Plenary Parliamentary sessions each year and 1 budget Committees (HIV, legal affairs) meet during and outside of sessions (depending on budget)

- Dates are sometimes advertised in newspapers but it may be necessary to contact clerk closer to the sessions to get specific dates. CSOs report that typically dates are only known at most one month ahead of time (even by the Committees themselves).

Opportunity:

CSOs have previously made submissions to committees, including to oppose harmful provisions of the HIV bill. In the future, civil society should coordinate and continue to make submissions on draft laws and policies to Committees and individual members of Parliament. Submissions can also highlight issues with existing frameworks and programmes. These submissions should also be made available to the public including by using the media when appropriate.

HUMAN RIGHTS DAY 10 DECEMBER

Opportunity:

- Advocacy for human rights for all, including removing legal barriers to HIV-related services for LGBTI and sex workers.
- Advocacy on other pertinent HIV-related issues.

² See supra, SADC PF Plenary Session.

2017

UN COMMITTEE ON THE RIGHTS OF THE CHILD

CONCLUDING OBSERVATIONS
OPTIONAL PROTOCOL ON THE RIGHTS OF THE CHILD (CRC-
OP-SC). OPTIONAL PROTOCOL ON THE INVOLVEMENT OF
CHILDREN IN ARMED CONFLICT (CRC-OP-AC)
16 JANUARY - 3 FEBRUARY

Opportunity:

Utilise relevant recommendations of the Committee for advocacy.

ADVOCACY FOR INCLUSION OF THE RIGHT TO NON-DISCRIMINATION ON THE BASIS OF HIV STATUS IN EMPLOYMENT LAW

ONGOING

Opportunity:

Advocacy to ensure that legal protections are enacted that protect against HIV discrimination in the context of employment, within the HIV Bill/Law and/or otherwise, in accordance with the recommendations in report. Advocacy for government to do the following: activities:

- Review and amend the Employment Act and Public Service Act to include HIV as a prohibited ground for non-discrimination in the working environment and to prohibit pre-employment HIV testing, denial of employment and unfair dismissals on the basis of actual or perceived HIV status
- Review the Occupational Safety and Health Act and the Worker's Compensation Act to integrate measures to reduce the risk of HIV transmission within the working environment and to provide for compensation in the event of occupational infection with HIV.
- Enact the Workplace Policy on HIV and AIDS, possibly in the form of regulations to the Employment Act and Public Service Act in order to strengthen their legal status, to provide for the management of HIV and AIDS in all working environments in accordance with obligations and recommendations.

SADC PF PLENARY SESSION

MARCH / APRIL

ZERO DISCRIMINATION DAY

1 MARCH

Opportunity:

Advocacy to push for non-discrimination on paper and in practice for HIV-related services, including for key populations and vulnerable groups.

RESEARCH AND ADVOCACY ON PWUD

ONGOING

CEDEP and NAC have received funds for a mapping study which includes PWUD, transgender persons and male sex workers. **Opportunity:**

- Continue to collect information about the situation on the ground concerning PWUD and HIV, including the application of drug laws and policies in Malawi.
- When the study is complete, utilise the findings for evidence-based advocacy.

PARLIAMENTARY SESSIONS

DATES TBD

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Opportunity:

CSOs have previously made submissions to committees, including to oppose harmful provisions of the HIV bill. In the future, civil society should coordinate and continue to make submissions on draft laws and policies to Committees and individual members of Parliament. Submissions can also highlight issues with existing frameworks and programmes. These submissions should also be made available to the public including by using the media when appropriate.

2017

WORLD POPULATION DAY

11 JULY

Opportunity:

- Advocate for government to address relevant issues concerning HIV and human rights including in the context of law, policy and programming.

SADC PF PLENARY SESSION

NOVEMBER

WORLD AIDS DAY

1 DECEMBER

Opportunity:

- Advocacy for government to address priority issues concerning HIV, AIDS and human rights including in the context of law, policy and programming.
- Disseminate information to the public, stakeholders and decision makers.

HUMAN RIGHTS DAY

10 DECEMBER

Opportunity:

- Advocacy for human rights for all, including removing legal barriers to HIV-related services for LGBTI and sex workers.
- Advocacy on other pertinent HIV-related issues.

PARLIAMENTARY SESSIONS

DATES TBD

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Opportunity:

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UNIVERSAL HEALTH COVERAGE DAY

12 DECEMBER

Opportunity:

- Advocacy to push for universal HIV-related health services, including by removing legal barriers and for ensuring access for vulnerable groups.

2018

ZERO DISCRIMINATION DAY

1 MARCH

Opportunity:

Advocacy to push for non-discrimination on paper and in practice for HIV-related services, including for key populations and vulnerable groups.

MID-TERM UPR REPORTING

MAY

Opportunity:

Submit a mid-term shadow report.

WORLD POPULATION DAY

11 JULY

Opportunity:

- Advocate for government to address relevant issues concerning HIV and human rights including in the context of law, policy and programming.

NATIONAL CONSULTATION FOR UPR⁸

NOVEMBER

Opportunity:

- Participate in the national consultations including by attending meetings and making submissions

SADC PF PLENARY SESSION¹¹

NOVEMBER

SADC PF PLENARY SESSION⁷

MARCH / APRIL

NATIONAL HIV AND AIDS POLICY AND STRATEGIC PLAN (NSP) (2015-2020)

ONGOING (HALFWAY POINT OF NSP 2015-2020)

- Establishes a framework aiming to meet the 90-90-90 targets to control the epidemic by 2030 by identifying program and system gaps and “ensuring those gaps are closed within the next five years”;⁹

- Prioritises the protection and promotion of human rights and gender equality;

- Recognises the need to provide targeted interventions to key populations, which include: female sex workers and their clients, men who have sex with men, fishermen, estate workers, discordant couples, family members of people living with HIV, young women, children and prisoners;¹⁰

- Mentions transgender persons as distinct from gay men and recognises the issue of inequality, but transgender persons are not included as a key population and there are no specific interventions for transgender persons in the NSP.

Opportunity:

- Prior to the drafting of the next NSP, collect, document and disseminate specific evidence of the barriers and issues for access to HIV-related services for key populations as defined in the NSP as well as for transgender persons to provide information to NAC, MOH and other stakeholders concerning programme and intervention deficits.

- Hold the government accountable for implementing the NSP including by ensuring the needs of key populations are being addressed in a meaningful way. Use the current NSP to push for needs-based, quality programmes for key populations.

- Utilise information gathered to push for protective language and effective programming in next NSP and other relevant policy documents.

⁷ See supra, SADC PF Plenary Session.

⁸ See supra, SADC PF Plenary Session.

⁹ Malawi National Strategic Plan, at 2.

¹⁰ Key informants also identified tea workers in Cholo as a vulnerable group.

¹¹ See supra, SADC PF Plenary Session.

2018

WORLD AIDS DAY

1 DECEMBER

Opportunity:

- Advocacy for government to address priority issues concerning HIV, AIDS and human rights including in the context of law, policy and programming.
- Disseminate information to the public, stakeholders and decision makers.

HUMAN RIGHTS DAY

10 DECEMBER

Opportunity:

- Advocacy for human rights for all, including removing legal barriers to HIV-related services for LGBTI and sex workers.
- Advocacy on other pertinent HIV-related issues.

UNIVERSAL HEALTH COVERAGE DAY

12 DECEMBER

Opportunity:

- Advocacy to push for universal HIV-related health services, including by removing legal barriers and for ensuring access for vulnerable groups.

PARLIAMENTARY SESSIONS

TBD

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Opportunity:

CSOs have previously made submissions to committees, including to oppose harmful provisions of the HIV bill. In the future, civil society should coordinate and continue to make submissions on draft laws and policies to Committees and individual members of Parliament. Submissions can also highlight issues with existing frameworks and programmes. These submissions should also be made available to the public including by using the media when appropriate.

2019

ZERO DISCRIMINATION DAY

1 MARCH

Opportunity:

Advocacy to push for non-discrimination on paper and in practice for HIV-related services, including for key populations and vulnerable groups.

UPR NGO DRAFTING PERIOD

JULY - 19 SEPTEMBER

Opportunity:

Research and draft a shadow report for the UPR of Malawi. The report should highlight barriers to access, including legal and policy barriers and recommendations to address gaps

NGO submission Deadline for UPR:

19 September 2019

ELECTIONS

TBD

Opportunities:

- Engage with candidates on legal and policy barriers and gaps in programming for HIV-related services.
- Support and rally additional support for those who are responsive and committed to addressing these issues.
- Request manifestos in which candidates outline their priority issues, including on HIV and human rights. Hold candidates accountable to election promises if elected, including to promises and pledges to address gaps, key population, and other HIV-related human rights issues.

SADC PF PLENARY SESSION

NOVEMBER

SADC PF PLENARY SESSION¹²

MARCH / APRIL

WORLD POPULATION DAY

11 JULY

Opportunity:

- Advocate for government to address relevant issues concerning HIV and human rights including in the context of law, policy and programming.

UPR LOBBYING

19 SEPTEMBER – MAY 2020

Opportunity:

- Lobby members of the UN working group for the UPR review.

PARLIAMENTARY SESSIONS

DATES TBD

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¹² See supra, SADC PF Plenary Session.

2019

SADC PF PLENARY SESSION¹³
NOVEMBER

WORLD AIDS DAY
1 DECEMBER

HUMAN RIGHTS DAY
10 DECEMBER

Opportunity:

• Advocacy for government to address priority issues concerning HIV, AIDS and human rights including in the context of law, policy and programming.

- Opportunity:**
- Advocacy for human rights for all, including removing legal barriers to HIV-related services for LGBTI and sex workers.
 - Advocacy on other pertinent HIV-related issues.

- Disseminate information to the public, stakeholders and decision makers.

2020

ZERO DISCRIMINATION DAY
1 MARCH

SADC PF PLENARY SESSION¹⁴
MARCH / APRIL

Opportunity:

Advocacy to push for non-discrimination on paper and in practice for HIV-related services, including for key populations and vulnerable groups.

NEXT UNIVERSAL PERIODIC REVIEW OF MALAWI
MAY 2020

Opportunity:

Research and draft a shadow report for the UPR of Malawi. The report should highlight barriers to access, including legal and policy barriers and recommendations to address gaps

WORLD POPULATION DAY
11 JULY

NGO submission Deadline for UPR:

19 September 2019

Opportunity:

- Advocate for government to address relevant issues concerning HIV and human rights including in the context of law, policy and programming.

SADC PF PLENARY SESSION
NOVEMBER

¹³ See supra, SADC PF Plenary Session.

¹⁴ See supra, SADC PF Plenary Session.

2020

WORLD AIDS DAY

1 DECEMBER

Opportunity:

- Advocacy for government to address priority issues concerning HIV, AIDS and human rights including in the context of law, policy and programming.
- Disseminate information to the public, stakeholders and decision makers.

HUMAN RIGHTS DAY

10 DECEMBER

Opportunity:

- Advocacy for human rights for all, including removing legal barriers to HIV-related services for LGBTI and sex workers.
- Advocacy on other pertinent HIV-related issues.

UNIVERSAL HEALTH COVERAGE DAY

12 DECEMBER

Opportunity:

- Advocacy to push for universal HIV-related health services, including by removing legal barriers and for ensuring access for vulnerable groups.

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