
GENDER EQUALITY BILL, 2012

MEMORANDUM

This Bill seeks to enact legislation aimed at promoting gender equality and equal integration of men and women in all functions of society, prohibiting and providing redress for sex discrimination, harmful practices, sexual harassment and providing for public awareness and promotion of gender equality.

Gender issues are an integral part of the overall national development agenda of the Government of Malawi. Women constitute fifty-one (51%) of the population of Malawi but an analysis of the social situation of women in Malawi has shown that women are disadvantaged in almost every sector of development.

Gender inequality in accessing productive resources, development opportunities and decision making, affects economic growth and development. To eradicate gender inequality, Malawi has ratified key international legal instruments which include the Convention on the Elimination of Discrimination against Women (CEDAW), the African Union Women's Protocol, the SADC Protocol on Gender and Development, the Beijing Declaration and the Beijing Platform for Action.

At national level, Government launched the National Gender Programme which is aimed at implementing gender equality. In addition, the Constitution as supreme law of the land has captured the spirit of the CEDAW and other relevant international legal instruments on gender equality.

To further fulfill Malawi's commitments to international law and policy on gender equality and the empowerment of women, a special Law Commission was empanelled to review the laws of Malawi. One of the recommendations of the special law Commission was the development of a statute on gender equality.

The Bill covers the following key issues—

(a) prohibition of sex discrimination, prohibition of harmful social, cultural or religious practices and prohibition of sexual harassment;

(b) enhancement of the participation of women in public life and decision making positions through the introduction of quotas in public appointments and transparency in public appointments;

(c) equality of access to education and training;

(d) the right to access sexual and reproductive health services which is complemented by a right to information about sexual and reproductive health services to enable users of those services to make informed choices.

In addition the Bill contains provisions on-

(a) the enforcement mechanism of the proposed legislation which will be through the Human Rights Commission;

(b) the need for the Minister responsible for Gender, Children and Social Welfare to ensure that programmes aimed at educating the public on gender equality issues are developed and implemented; and

(c) the power of the Chief Justice to make regulations guiding the practice and procedure of issues arising from the proposed legislation in relation to court procedures.

GENDER EQUALITY BILL, 2012

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A BILL

entitled

An Act to promote gender equality, equal integration, influence, empowerment, dignity and opportunities, for men and women in all functions of society, to prohibit and provide redress for sex discrimination, harmful practices and sexual harassment, to provide for public awareness on promotion of gender equality, and to provide for connected matters

ENACTED by the Parliament of Malawi as follows—

PART I—PRELIMINARY

Short title and commencement

1. This Act may be cited as the Gender Equality Act, 2012, and shall come into force on such date as the Minister may appoint by notice published in the *Gazette* and the Minister may appoint different dates for the coming into force of different parts or provisions of the Act.

Scope of application

2.—(1) Except where it is otherwise expressly provided for by any written law, this Act applies to all persons and to all matters.

(2) This Act binds the Government.

Interpretation

3. In this Act, unless the context otherwise requires—

B. No. 49

“appointing or recruiting authority” means a public office in whose power the decision to appoint or recruit any person lies;

“educational institution” means a school, college, university or other institution at which education or training is provided;

“harmful practice” means a social, cultural, or religious practice which, on account of sex, gender or marital status, does or is likely to—

(a) undermine the dignity, health or liberty of any person; or

(b) result in physical, sexual, emotional, or psychological harm to any person; and

“public institution” means an institution that is part of the public service within the meaning of “public service” under the Public Service Act.

Cap. 1:03

PART II—SEX DISCRIMINATION

4.—(1) A person shall not—

(a) treat another person less favourably than he or she would treat a person of his or her own sex; or

(b) apply to the other person an exclusion, distinction or restriction which applies or would apply equally to both sexes but—

(i) which is such that the proportion of one sex who can comply with it is considerably smaller than the proportion of the opposite sex who can comply with it;

(ii) which he or she cannot show to be justifiable irrespective of the sex of the person to whom it is applied; and

(iii) which is to the detriment of the other person because he or she cannot comply with it,

with the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise of the rights and fundamental freedoms of that person.

(2) A person who contravenes subsection (1) commits an offence and is liable to a fine of one million Kwacha (K1,000,000) and to a term of imprisonment for five (5) years.

5.—(1) A person shall not commit, engage in, subject another person to, or encourage the commission of any harmful practice.

(2) Any person who contravenes this section commits an offence and is liable to a fine of one million Kwacha (K1,000,000) and to a term of imprisonment for five (5) years.

Prohibition
of sex
discrimina-
tion

Prohibition of
harmful
practices

Sexual harassment

6.—(1) A person commits an act of sexual harassment if he or she engages in any form of unwanted verbal, non-verbal or physical conduct of a sexual nature in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that the other person would be offended, humiliated or intimidated.

(2) A person who sexually harasses another in terms of subsection (1) commits an offence and is liable to a fine of one million Kwacha (K1,000,000) and to a term of imprisonment for five (5) years.

Workplace policy for sexual harassment

7.—(1) The Government shall take active measures to ensure that employers have developed and are implementing appropriate policy and procedures aimed at eliminating sexual harassment in the workplace which shall—

(a) entitle all persons who have been subjected to sexual harassment in the workplace to raise a grievance about its occurrence and be guaranteed that appropriate disciplinary action shall be taken against perpetrators;

(b) entitle a non-employee who has been subjected to sexual harassment to lodge a grievance with the employer of the perpetrator where the conduct giving rise to the complaint has taken place at the work place or in the course of the perpetrator's employment;

(c) entitle all employees, job applicants and other persons who have dealings with the workplace to be treated with dignity; and

(d) oblige the person in charge of the work place to—

(i) implement the policy and procedures and impose disciplinary action against employees who do not comply;

(i) deal seriously, expeditiously, sensitively and confidentially with all allegations of sexual harassment;

(ii) protect employees against victimization, retaliation for lodging grievances and from false accusations;

(iv) explain the procedure which shall be followed by persons who are victims of sexual harassment;

(v) communicate the sexual harassment policy and grievance procedures effectively to all employees; and

(vi) designate a person outside of line management whom a person who has been subjected to sexual harassment may approach for confidential advice and counselling.

(2) A person who has been subjected to sexual harassment need not have exhausted internal sexual harassment procedures before prosecution of the offence can be commenced or civil proceedings can be instituted.

PART III—ENFORCEMENT

8. The Human Rights Commission, hereinafter called “the Commission”, shall be responsible for the enforcement of the provisions of this Act.

Enforcement
by the Human
Rights
Commission

9.—(1) In addition to the powers conferred upon the Commission by the Constitution, the Human Rights Commission Act or any other written law, the Commission, shall protect and promote gender equality.

Powers and
functions
of the
Commission
in relation
to gender
equality
Cap. 3:08

(2) The Commission shall perform the following functions in the exercise of its powers in relation to this Act—

(a) monitor and evaluate the policies and practices of—

(i) Government organs, Government agencies and public bodies; and

(ii) the private sector,

in order to promote gender equality and make any recommendations that the Commission deems necessary;

(b) carry out investigations and conduct searches in relation to any gender issues on receipt of a complaint or on its own accord;

(c) consider, deliberate on and make recommendations to the Minister on any gender issues;

(d) provide information to any party in a gender dispute on rights, remedies or obligations;

(e) promote and facilitate access to remedies for any dispute concerning gender issues;

(f) promote ratification by Malawi of any international gender instruments; and

(g) perform any other function as is necessary for the implementation of this Act.

10. The Commission may perform the following duties in the exercise of its powers in relation to this Act—

Duties of the
Commission
in relation
to gender
equality

(a) collaborate with the Minister, in establishing mechanisms aimed at progressively realizing gender equality;

(b) develop working relationships with international partners, civil society organizations and non-governmental organizations devoted to protecting and promoting gender issues; and

(c) do or perform any other duties as are necessary for the implementation of this Act.

PART IV—EMPLOYMENT IN THE PUBLIC SERVICE

Quotas in the
public service
Cap. 1:01

11.—(1) Notwithstanding anything contained in the Public Service Act and subject to subsection (2), an appointing or recruiting authority in the public service shall appoint no less than forty per cent (40%) and no more than sixty per cent (60%) of either sex in any department in the public service.

(2) Subsection (1) shall not apply where—

(a) a member of either sex applying for the post, does not hold the minimum relevant educational qualifications or experience for the post;

(b) a member of either sex offered the post has not accepted the offer; or

(c) a member of either sex with the relevant educational qualifications or experience required for the post was not available or could not be identified for the post.

Compliance
order

12.—(1) Where an appointing or recruiting authority does not comply with section 11, the court shall, on application by the aggrieved person, make an order against the appointing or recruiting authority to ensure compliance.

(2) A compliance order issued by the court under subsection (1) shall be implemented by the appointing or recruiting authority against whom the order is made within such period as specified in the order.

(3) Where an appointing or recruiting authority fails to implement the terms of a compliance order, the authority commits an offence and is liable to a fine of twenty thousand Kwacha (K20,000) for every day the compliance order remains unimplemented.

Transparency
in recruitment
in the public
service

13.—(1) A person who is interviewed for employment by a public institution, shall be entitled, upon request, to—

(a) be furnished with reasons, in writing, why that person was not recruited; or

(b) subject to subsection (2), view records of the recruitment process.

(2) Where a public institution—

(a) requires further information in order to locate the records requested; and

(b) has informed the applicant of that requirement,
it shall comply with subsection (1) only when it is supplied with that further information.

(3) The public institution referred to in subsection (1) and (2) shall comply with a request under subsection (1) (a) and (1) (b) within a period of twenty-eight days.

(4) For purposes of this section, "record" means information held at the time when the request is received.

PART V—EDUCATION AND TRAINING

14.—(1) Every person has the right to access education and training including vocational guidance at all levels.

Equality in
access to
education
and training

(2) Except in the cases of special need, the Government shall take active measures to ensure that educational institutions provide equal access to girls and boys and women and men, to—

(a) the same curricula;

(b) the same examinations;

(c) teaching staff with qualifications of the same standard;

(d) institutional premises and equipment of the same quality, irrespective of sex of students at the same level; or

(e) provision of sanitary facilities that take into account the specific needs of the sex of the students.

15.—(1) Every person has the right to access a scholarship, grant, bursary, benefit or other scholastic endowment without regard to his or her sex.

Equal access
to scholar-
ships, etc.

(2) The Government shall take active measures to ensure that every educational institution has guidelines that facilitate compliance with subsection (1).

16. The Government shall take active measures to ensure the enrollment at tertiary education institutions of either sex to a minimum of forty per cent (40%) and a maximum of sixty per cent (60 %) of students.

Tertiary
education
institutions

17. Sections 15 and 16 shall not apply to equality in access to education, training, the grant of scholarships and bursaries where the educational institution admits students of one sex.

Exception for
single sex
establish-
ments

18.—(1) The Government shall take active measures to ensure that the curricula for all primary and secondary schools—

General
duties in
relation to
curriculum

(a) integrates principles of gender equality within the spiritual, moral, cultural and mental development of students at the school, society and experience of life after completion of school with specifications on gender equality;

- (b) integrates gender issues and human rights at all levels;
- (c) addresses the special needs of female students by incorporating life skills, including sex education;
- (d) addresses issues of environmental care and protection; and
- (e) introduces subjects that enhance the integration of female students in disciplines that are traditionally male-dominated, including sustainable natural resource management.

PART VI—SEXUAL AND REPRODUCTIVE HEALTH RIGHTS

Right to
sexual and
reproductive
health

19.—(1) Every person has a right to adequate sexual and reproductive health which includes the right to—

- (a) access sexual and reproductive health services;
- (b) access family planning services;
- (c) be protected from sexually transmitted infection;
- (d) self-protection from sexually transmitted infection;
- (e) choose the number of children and when to bear those children;
- (f) control fertility; and
- (g) choose an appropriate method of contraception;

(2) Subject to any other written law, every person has the right to choose whether or not to have a child.

Duties of
health officers
in respect to
sexual and
reproductive
health
Cap. 34:01

20.—(1) In addition to the duties imposed or powers conferred on health officers by the Public Health Act or any other relevant law, every health officer shall—

- (a) respect the sexual and reproductive health rights of every person without discrimination;
- (b) respect the dignity and integrity of every person accessing sexual and reproductive health services;
- (c) provide family planning services to any person demanding the services irrespective of marital status or whether that person is accompanied by a spouse;
- (d) impart all information necessary for a person to make a decision regarding whether or not to undergo any procedure or to accept any service affecting his or her sexual and reproductive health;
- (e) record the manner in which the information imparted to the person seeking reproductive health services was given and whether it was understood; and

(f) obtain the written consent of a person being offered sexual and reproductive health services or family planning services before performing any procedure or offering any service.

(2) Any person who contravenes this section commits an offence and is liable to a fine of seven hundred and fifty thousand Kwacha (K750,000) and to a term of imprisonment for three (3) years.

PART VII—CIVIC AWARENESS

21.—(1) The Minister shall design and implement programmes for the public awareness of this Act and, for that purpose, the Minister shall specifically— Civic awareness

(a) develop programmes aimed at promoting gender equality in all spheres of life;

(b) develop programmes that create awareness of fundamental human rights, equality and mutual understanding and respect;

(c) develop programmes that create awareness of sexual harassment and provide assistance and social support for victims of sexual harassment; and

(d) enlist the services of traditional leadership and non-governmental organizations in disseminating information and in the conduct of any other activities connected with such programmes.

(2) The Minister shall appoint, in the public service, officers required to carry out activities for the implementation of the programmes under subsection (1).

PART VIII—MISCELLANEOUS

22.—(1) The Chief Justice may make rules for the purpose of regulating the practice and procedure of the court in proceedings under this Act. Powers of the Chief Justice

(2) The Chief Justice may prescribe the forms to be used and the fees to be paid by a person applying for an order under this Act.

23.—(1) The Minister may, make regulations for the effective carrying out of the provisions of this Act. Regulations

(2) Without prejudice to the generality of subsection (1), the regulations may provide for—

(a) the approval of services or programmes undertaken for the purpose of this Act;

(b) the certification of persons or organizations that may provide services under this Act;

(c) the prescribing of qualifications and experience for persons who may provide services under this Act; or

(d) the collection of data in incidences and causes of discrimination on account of gender and sexual harassment for purposes of policy reform and programming, and any other matter prescribed under this Act.

OBJECTS AND REASONS

The object of this Bill is to introduce legislation for the promotion of gender equality and for equal integration for men and women in all functions of society, to prohibit and provide redress for sex discrimination, harmful practices, sexual harassment and to provide for public awareness on promotion of gender equality.

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