



**Joint Submission to the United Nations Universal Periodic Review: Malawi
Third Cycle**

36th Session of the UPR Working Group to the Human Rights Council

Prepared by: Disabled Women in Africa (DIWA) and Women Enabled International.

With inputs and support from 10 organizations in Malawi that work on issues affecting women with disabilities: Disabled Women in Development (DIWODE); Human Rights for Women and Girls with Disabilities (HRWGDS); Association of Persons with Albinism (APAM); Parents of Disabled Children Association of Malawi (PODCAM); Mental Health Care (MHCA); Forum for Disabled Youth Development (FDYD); National Epilepsy Association (NEA); Malawi National Association of the Deaf (MANAD); Visual and Hearing Association of Malawi (VIHEMA); and Malawi Union of the Blind (MUBU).¹

Disabled Women in Africa (DIWA) is an independent organization of women and girls with disabilities that was established in Tanzania in 2002. DIWA expanded to Malawi in 2012 and is currently headquartered in Malawi. DIWA has 12 member organizations across Africa that work on issues related to women with disabilities, at both the national and regional level. DIWA's goal is to empower African women and girls with disabilities through research, information sharing and networking, partnership and capacity development for unity in diversity. DIWA seeks to create a world in which African women and girls with disabilities enjoy their rights, influence their destiny and are free from any gender- and disability-based discrimination.

Website: <http://www.diwafrica.org/>

Postal Address: DIWA Head Office, P.O. Box 2009, Lilongwe, Malawi

Email: diwa@diwafrica.org and ruthmalawi@gmail.com

Women Enabled International (WEI) is an organization based in the U.S. WEI works to advance human rights at the intersection of gender and disability to respond to the lived experiences of women and girls with disabilities; promote inclusion and participation; and achieve transformative equality. WEI identifies and addresses the violations, abuses, and inequalities women and girls with disabilities experience, amplifies their voices, and jointly advocates for change. We closely collaborate with women with a wide range of physical, sensory, intellectual, and psycho-social disabilities for movement and cross-movement building. WEI was established in 2012.

Website: <https://www.womenenabled.org/>

Postal Address: Women Enabled International, 1875 Connecticut Ave NW, 10th Floor, Washington, D.C. 20009

Email: president@womenenabled.org



Joint Submission to the United Nations Universal Periodic Review: Malawi Third Cycle

I. Introduction

1. Women and girls with disabilities² around the world face discrimination and human rights abuses based on both their gender and disability. In Malawi, data from the 2008 Population and Housing Census indicates that approximately 3.8% of women, or over a quarter of a million people, are women with disabilities,³ although this is likely an underestimate, as Malawi's national surveys have not yet fully incorporated the use of more accurate disability screening questions, developed by the Washington Group on Disability Statistics.⁴ Despite Malawi's international commitments to ensure the rights of women with disabilities, these women experience human rights violations that are distinct from, and more frequent than, those experienced by others. These human rights violations manifest in all areas of their lives but are particularly present in the context of education, healthcare and employment and in their experience of disproportionate rates of violence. Women with disabilities also face barriers to accessing justice in Malawi, compounding these rights violations.
2. During Malawi's previous Universal Periodic Review in 2015, it did not receive any recommendations that specifically addressed the human rights abuses faced by women with disabilities. However, Malawi did accept recommendations to "[g]ive full priority to ensuring the full and effective implementation of the Disability Act" and to "[c]ombat all forms of discrimination, including against albinos and persons with disabilities."⁵ As this submission shows, Malawi has failed to fully implement these recommendations, particularly regarding women with disabilities.
3. This submission first provides some background on Malawi's international human rights obligations and national laws that seek to address discrimination against persons with disabilities. It then highlights key rights violations against women with disabilities in Malawi, including in the context of access to justice, education, the right to health, gender-based violence and employment. Finally, this submission provides suggestions for questions and recommendations to direct towards Malawi during its third UPR.

II. Legal Background: International Obligations and Malawi Legislation

4. Malawi is party to several international and regional human rights treaties that protect the rights of women with disabilities, including the Convention on the Rights of Persons with

Disabilities (CRPD), the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa. However, Malawi has yet to ratify the Optional Protocols to CEDAW and the CRPD, nor has it ratified the Optional Protocol to the African Charter on the Rights of Persons with Disabilities in Africa.

5. Malawi's Constitution explicitly prohibits discrimination on grounds of disability.⁶ In addition, Malawi's Disability Act, 2012, provides "for the equalization of opportunities for persons with disabilities through the promotion and protection of their rights" and, to help achieve those ends, provides "for the establishment of a Disability Trust Fund."⁷ The purpose of the Disability Trust Fund is "to support the implementation of disability programmes and services."⁸
6. Although the Disability Act is a critical step forward, it fails to address the specific needs and concerns of women and girls with disabilities, including around gender-based violence and access to justice, and has yet to be fully operationalized. In particular, seven years after the Act's passage, the government has yet to establish the Disability Trust Fund, which is critical to the Act's effective implementation. Although the government's 2019-2020 proposed budget does allocate funds to operationalize the Disability Trust Fund, at the time of writing, Parliament is still debating the proposed budget and the outcome remains to be seen.

III. Human Rights Abuses against Women and Girls with Disabilities in Malawi

Access to Justice

7. Access to justice is for all—it must not know gender, race, wealth, religion, disability or ethnicity. It must be accessed by all on an equal basis, without discrimination.
8. We commend the government of Malawi for certain efforts to increase access to justice for persons with albinism over the past few years. In particular, we applaud the judiciary for the role they played in delivering justice to persons with albinism, including the Chief Justice's directive requiring that cases concerning attacks, kidnappings, killings and exhumation of the remains of persons with albinism from their graves must be presided over by judges with higher jurisdiction. In mid-2016, the government of Malawi also responded to the rampant attacks on persons with albinism by revising provisions in the Penal Code and Anatomy Act to strengthen criminal law protections for persons with albinism. Most recently, the state accepted demands by rights activists to set up a Commission of Inquiry on Cases of Persons with Albinism. The judiciary has also worked to make changes in accessibility for persons with disabilities, as evidenced by the new Lilongwe court.
9. Nonetheless, current policies and practices in Malawi fail to address the specific barriers persons with disabilities—particularly women with disabilities—face in accessing justice. Principally, the government has failed to implement key provisions of the Disability Act.

10. Although the Disability Act requires the government “to ensure that persons with disabilities have access to the physical environment, transportation, information and communications, including information and communication technologies and systems, and other facilities or services available or provided to the public,”⁹ including by “raising awareness and providing appropriate training on accessibility issues facing persons with disabilities,”¹⁰ this right to accessibility has not been upheld in the context of the justice system.
11. Specifically, the courts in Malawi do not have the appropriate infrastructure to cater for persons with disabilities and transportation barriers present a major hurdle to access to justice. According to the 2008 Census, 85.1% of persons with disabilities in Malawi live in rural areas;¹¹ as such, persons with disabilities must often travel a significant distance to regularly attend court hearings or follow up on their cases. As investigations are often poorly managed and cases are often prolonged, this creates significant transportation burdens and barriers to justice for persons with disabilities in Malawi.
12. Barriers to information accessibility in the context of access to justice are also of serious concern for persons with disabilities in Malawi. For example, legislation and court documents in Malawi are not available in accessible formats. Persons with hearing impairments and the deaf-blind, in particular, have problems accessing justice either as offenders, complainants or witnesses, since court staff and judicial officers are not trained to interpret or use sign language and there is an acute shortage of people with such expertise countrywide. As a result, many persons with disabilities are denied justice. For example, a deaf woman from Lumbadzi reported a rape case after a gender-based violence awareness campaign was conducted in her community. The case went to court; however, it did not proceed because the victim could not provide for a sign language interpreter.
13. In general, the government of Malawi has failed to conduct trainings on disability for the judiciary and judicial actors. This has occurred only where civil society or disabled persons’ organizations (DPOs) have initiated some trainings for a few magistrates, prosecutors or court clerks. As a result, there is a lack of awareness about the protections in the U.N. Convention on the Rights of Persons with Disabilities (CRPD) and Malawi’s Disability Act; hence, the lack of full application of these rights protections during court proceedings. Many actors in the justice system do not know what to do when they are faced with certain types of disability.
14. Some of these barriers to accessing justice stem from shortcomings in the Disability Act itself. There are no provisions in the Disability Act that explicitly address access to justice and ensure that justice actors are trained on the rights of persons with disabilities and provide for the effective participation of persons with all types of disabilities in the justice system, in whatever role they may find themselves.
15. Furthermore, the Disability Act does not address discrimination that women with disabilities may experience in the context of access to justice, including discrimination that women with disabilities who are victims of gender-based violence may experience in courtrooms, such as denial of legal capacity and perceptions and stereotypes that undermine their credibility. Instead, legislation in Malawi perpetuates stereotypes and stigma surrounding persons with

disabilities. For example, Malawi’s Penal Code, in a provision specific to women and girls with certain types of disabilities, criminalizes the “Defilement of idiots or imbeciles.”¹² As a result, the term “imbecile” is widely used by police and other justice system officials; just recently, a police officer called a woman with an intellectual disability who was raped in Chikwawa district an “imbecile.” This language, in addition to being offensive and discriminatory, impacts women’s access to justice. In 2014, a woman with a disability from Chisapo who was called an “imbecile” at the police Victim Support Unit, did not receive the required assistance from police. The failure to articulate specific disability rights or use the term “disability” in legal frameworks often leads to complacency and discrimination.

16. In general, persons with disabilities are routinely denied access to justice in Malawi due to significant shortcomings in the criminal justice system as a whole. Many cases concerning persons with disabilities, including persons with albinism, fail to proceed due to a lack of resources, flawed investigations, a lack of evidence, a lack of training for justice actors on how to prosecute cases involving persons with disabilities, among other issues.¹³ As a result, perpetrators go unpunished.

Inclusive Education

17. Education is key to unlocking all other doors and is a fundamental human right for all, including children with disabilities. Many countries, including Malawi, are making adjustments to promote the idea of inclusive education. We applaud the government of Malawi for putting in place the 5-year National Strategy on Inclusive Education, which was launched in 2017, its commitment to education in the context of the current Malawi Growth and Development Strategy, and its decision to make inclusive education a priority at the Disability Summit in 2018.
18. Despite these commitments, many of these initiatives have not been translated into practice, and the education sector remains inaccessible and excludes many children with disabilities. For example, Malawi’s Early Childhood Development curriculum “is not disability inclusive and has not been mainstreamed at community level . . . which leaves out most learners with diverse learning needs in the instructional and assessment processes.”¹⁴
19. Further, regular teachers are not trained on how to provide inclusive education and materials are not available in accessible formats, many schools are not accessible and assistive devices unavailable, and there is a lack of access to vocational training. In addition, funding is inadequate—while resource centers for students with disabilities have been established in some public schools, many have had to close due to a lack of funding.¹⁵ The distribution of resources is also uneven, and there is unequal access to resources for children with disabilities.
20. As a result, school enrollment among children with disabilities is quite low. Studies show that children with disabilities in Malawi are far less likely to have ever attended school as compared to those without. For example, according to one study, “35% of [people with

disabilities] have never attended school compared to 18% among the non-disabled” and only 19% “were still attending school compared to 41% among the non-disabled.”¹⁶ Girls with disabilities were much more likely to have not attended school (41%) as compared to boys with disabilities (29%) and girls without disabilities (21%).¹⁷ Some families may force girls with disabilities to earn money through begging, or other means, to help support their family, instead of sending them to school. DIWA recently visited one girl with a disability who narrated how much she admired her siblings going to school, explaining that she is not allowed to attend school and is instead used as a means to financially support the household.

21. The lack of appropriate training for primary and secondary school teachers on delivering inclusive education is still a big obstacle to attaining inclusive quality education for learners with disabilities in Malawi. In addition, there is an unequal distribution of the limited number of teachers who are trained and have the capacity to address the needs of students with disabilities; rural areas, in particular, face a lack of special education teachers, despite having a higher prevalence of persons with disabilities than urban areas.

For instance, the whole T/A Ntaja has only 2 special education teachers, while the Lunzu side in Blantyre has 15 teachers. The whole Likuni zone in Lilongwe at first only had 1 special education teacher for over 153 learners with disabilities and, after much noise by organizations, 2 more teachers were added. And, in Salima, a mapping exercise by the Civil Society Education Coalition found that the whole Salima district (in which a study of just 1 zone revealed not less than 100 children with disabilities) has only 3 special needs teachers for 146 schools, of which only 1 is specialized in working with children with hearing impairments, 1 in working with visually impaired children, and 1 for different types of disabilities.

22. Further, although the Disability Act requires the government to develop “a Malawi sign language as a National language for persons with hearing impairments” and to “recogniz[e] it as an official language,”¹⁸ the government has failed to do so. The lack of universal sign language makes it difficult to ensure inclusive education for all, as the sign language taught to children and teachers varies by school. Moreover, as a general matter, not many teachers are trained on how to communicate with children that have hearing impairments. For example, Tionge, a deaf girl in Form 3, decided to drop out of school four years ago because, despite complaining to authorities, the teacher continued to teach her using verbal language, to which she couldn’t respond. There have also been documented reports of children with hearing impairments being dismissed from school because the teachers could not communicate with them.¹⁹
23. The Disability Act further requires the government to “ensure an inclusive education system by taking into consideration the special requirements of persons with disabilities in the formulation of educational policies and programmes, including the provision of assistive devices, teaching aids and learning support assistants.”²⁰ However, there is a pervasive lack of disability-friendly educational facilities and of assistive devices and support aids in schools.²¹

One girl with a disability noted to DIWA that learning in an inclusive setting is good and preferable. However, as she normally has no assistant support teacher around to assist her, and as she does and understands things slowly, she gets left behind while the teacher focuses on those who are able to complete the work within the allotted time. She explains that if she is on good terms with her peers, in the absence of a teaching assistant, they help her understand the schoolwork.

24. In addition, girls with disabilities report stigma, bullying and sexual violence by teachers and fellow students, making them reluctant to attend school.²² One study revealed school girls with visual impairment in Malawi who experience violence and abuse in school resulted in high dropout rates and that “very few girls with visual impairment make it to secondary school.”²³
25. Girls with disabilities also experience specific sanitation challenges in school. During their monthly menstrual period, girls are often unable to attend class for a whole week, due to a lack of access to essential menstruation products and taboos around menstruation—with significant negative impact on their educational experience. Even where they do attend school during menstruation, girls are often distracted due to concerns about hygiene. Although there have been some initiatives taken to address this issue, they are donor-dependent and occur in a few select schools. The majority of schools in Malawi have not addressed this concern.
26. Finally, access to vocational training opportunities for persons with disabilities in Malawi are limited. The Malawi Council for the Handicapped (MACOHA) was initially created to train persons with disabilities in vocational skills. However, due to insufficient funding,²⁴ MACOHA was forced to open up the vocational training to persons without disabilities, in order to generate income. This jeopardizes their mandate to ensure that persons with disabilities are benefiting from this training—at present, not many persons with disabilities are being trained.

The Right to Health

27. Health is also one of the fundamental human rights of all, and any good and sound health system and services must be inclusive of all citizens, including persons with disabilities. Although the Ministry of Health has taken responsibility for ensuring that persons with albinism can receive sunscreen lotion at any government hospital and provides free family planning methods to all, generally, health services in Malawi are not accessible to, and inclusive of, persons with disabilities. This is particularly the case for women with disabilities and access to sexual and reproductive health services.
28. Women with disabilities worldwide face a wide range of unique human rights abuses in sexual and reproductive health care settings, due to both their gender and disability. In its

General Comment No. 3 on women with disabilities, the CRPD Committee recognized that “[i]n practice, the choices of women with disabilities, especially women with psychosocial or intellectual disabilities are often ignored, [and] their decisions are often substituted by third parties, including legal representatives, service providers, guardians and family members.”²⁵ When women with disabilities are deprived of legal capacity, this can “facilitate forced interventions, such as: sterilisation, abortion, [and] contraception...”²⁶ These practices are also frequently based on false and discriminatory assumptions about the sexuality and ability of women with disabilities to parent, or on the desire to control their menstrual cycles,²⁷ and are considered severe human rights violations, including forms of torture or ill-treatment.²⁸

29. In Malawi, women with disabilities experience discrimination in the context of pregnancy and childbirth and contraceptive access, among other areas. In particular, women with disabilities have reported mistreatment during antenatal clinics and delivery and postnatal services, stemming from negative stereotypes about women with disabilities’ ability or right to parent.²⁹ In a 2014 baseline survey conducted by DIWA, 39% of girls and 24% of women with disabilities reported having experienced violence and abuse from health workers.³⁰

In 2017, Tereza, a woman with a disability, went to give birth to her first baby at Kawale Health Centre. Upon arrival, she was confronted with stigma and negative perceptions about her identity as a woman with disability. Instead of attending to her health care and delivery needs, the health worker verbally abused and insulted her, saying things like: “How can you get pregnant without considering your condition?” As a result of the nurse’s negligence, the baby died immediately after birth. The woman’s husband ended the marriage shortly thereafter, due to unfounded concerns that she would be unable to give birth to a healthy child because of her disability.

30. The choices of women with disabilities are also ignored in the reproductive health context and substituted for the decisions of guardians or health care providers.

Recently, a woman with epilepsy who requested contraception at a health care center in T/A Njewa was denied access to contraception. She had experienced sexual violence due to her disability on multiple occasions and already had two children that were conceived following rape. She requested contraception in order to prevent future unwanted pregnancies. It appears that the woman’s guardian and the health care provider conspired to deny her access to contraception.

31. In general, health care personnel in Malawi have inadequate disability-related clinical skills and training. There is no comprehensive, nation-wide implementation of training for providers on sexual and reproductive health care provision for persons with disabilities (VIHEMA in Kasungu, MANAD at Queens’ Hospital and DIWODE, which conducted some pilot trainings for health practitioners, are the few exceptions). Health information, including information on HIV/AIDS, is also not available in accessible formats.³¹

32. The Disability Act requires the government to “provide appropriate health care services to persons with disabilities.”³² This includes the provision of “the same range, quality and

standard of free or affordable health care services as provided to other persons, including sexual and reproductive health services.”³³ Not only has the government failed to do so, but the government’s current sexual and reproductive health policy is not inclusive of women with disabilities or persons with disabilities, more generally. Although the policy was supposed to be reviewed and revised in 2015, the government has yet to do so. In the meantime, there are no specific measures in place to enable women with disabilities—or persons with disabilities more generally—to access sexual and reproductive health information and services.

33. Data collection on health concerns affecting women with disabilities is also poor, limiting the government’s ability to design targeted and effective policy interventions. For example, there are no national studies on sexual and gender-based violence and women with disabilities. There is therefore no data to inform government interventions and ensure that they address the specific needs of women with disabilities.
34. More generally, although the government’s health and disability policies and strategy documents, as well as the Constitution of Malawi, make mention of non-discrimination against vulnerable groups and persons with disabilities, such groups are routinely neglected during the implementation phase. For example, persons with albinism are unable to access quality health care services, including cancer services, and their situations only worsen while they are in the hospital. Further, the last allocation of government-issued sunscreen lotion given to the Association of Persons with Albinism to distribute had expired, showing disregard for the health and well-being of persons with albinism.

Gender-Based Violence and Abuse

35. In Malawi, violence against women is widely acknowledged as a serious concern, not only from a human rights perspective but also from economic and health perspectives. To address this issue, Malawi has enacted a series of laws, including the 2006 Prevention of Domestic Violence Act, the 2011 Deceased Estates (Wills, Inheritance, and Protection) Act, and the 2013 Gender Equality Act. However, Malawi’s legal and policy framework has failed to fully take women with disabilities into account in efforts to address gender inequalities and gender-based violence. For example, although the 2015 Malawi National Gender Policy refers to persons with disabilities, it does so irrespective of their gender, and neglects to adopt an intersectional approach. Similarly, the 2014 – 2020 National Plan of Action to Combat Gender-Based Violence in Malawi refers to the “physically challenged” as part of vulnerable groups, leaving behind persons with other types of disabilities, and fails to recognize the intersectional needs of women with disabilities.
36. Gender-based violence against women with disabilities worldwide takes many unique forms, due to intersectional discrimination based on gender and disability, among other grounds. According to the former U.N. Special Rapporteur on Violence against Women, Rashida Manjoo, violence against women with disabilities can be of a “physical, psychological,

sexual or financial nature and include neglect, social isolation, entrapment, degradation, detention, denial of health care, forced sterilization and psychiatric treatment.”³⁴ Violence against women with disabilities also has unique causes, including violence that is perpetuated by stereotypes “that attempt to dehumanize or infantilize, exclude or isolate them, and target them for sexual and other forms of violence.”³⁵ In its General Comment No. 3 on women with disabilities, the CRPD Committee has found that “[s]ome women with disabilities, in particular, deaf and deaf-blind women, and women with intellectual disabilities, may be further at risk of violence and abuse because of their isolation, dependency or oppression.”³⁶ Worldwide, women with disabilities are also more likely to be in unstable romantic relationships, as due to discrimination they are often considered less eligible for marriage,³⁷ and they also experience domestic violence in all of its forms—physical, sexual, emotional, psychological, and financial—at twice the rate of other women.³⁸

37. Although there is limited data on the prevalence of violence against women with disabilities in Malawi, studies and DIWA’s activities and experience indicate that this violence is widespread. For example, a small, one-year project carried out by DIWA in Lilongwe in 2015 revealed over 100 cases of sexual violence against women with disabilities. A 2018 national study documented that a significant number of women with disabilities reported being “beaten or scolded” due to their disability by family or relatives (44.1%) and others (16%).³⁹

38. Further, a 2014 baseline study by DIWA in Malawi found that, among participants, over 64% of women and 56% of girls had experienced exploitation, violence or abuse.⁴⁰ The most frequent perpetrators were relatives, community members, health workers and people in authority, such as social service providers.⁴¹ Some of the most common forms of abuse were physical abuse, disability-specific abuse (such as being pushed on a wheelchair), and sexual violence.⁴² However, the vast majority of women and girls with disabilities did not report the abuse or violence, often due to stigma or because they lacked access to information about where or how to do so.⁴³

39. Women with disabilities are also particularly vulnerable to financial abuse and property grabbing by family members upon the death of their spouse.

Annie Mandundu, a 62-year old woman with a physical disability from Lilongwe, was left speechless when, following her husband’s death, his relatives came and grabbed all the property she and her husband had accumulated over the years of their marriage. The relatives fought with the kids, while Annie looked on helplessly. She did not know her rights or what to do in response to this behavior.

Economic Empowerment and Employment Discrimination

40. The Disability Act requires the government to empower persons with disabilities economically, including by ensuring that they are “able to access loans and credit facilities

for purposes of carrying out income generating activities,”⁴⁴ and further requires the government to ensure equal access to social support programs and social services.⁴⁵ However, persons with disabilities, particularly women with disabilities, face a lack of access to financial resources and economic development initiatives, including agribusiness programs and loans, and land or other forms of property. For instance, although there is the Malawi Rural Development Fund and the Youth Empowerment Development Fund programs, a very small percentage of persons with disabilities have benefited from these programs.

41. The Disability Act also requires the government to guarantee the right to work and employment,⁴⁶ including by “providing persons with disabilities employment opportunities and career advancement in the labour market, as well as assistance in finding, obtaining, maintaining and retaining employment.”⁴⁷ Yet, persons with disabilities in Malawi face higher rates of unemployment as compared to those without, with women with disabilities facing the highest rates (47%), even as compared to men with disabilities (41%). Although the Disability Act prohibits employment discrimination,⁴⁸ employer discrimination contributes to this disparity, making it difficult for persons with disabilities to find employment.⁴⁹

The Optional Protocol to the Convention on the Rights of Persons with Disabilities

42. The government of Malawi has still not ratified the Optional Protocol to the CRPD, although it has been 10 years since Malawi ratified the CRPD. As such, despite the rights violations faced by persons with disabilities in Malawi, including the rampant killing and kidnapping of persons with albinism, persons with disabilities have been unable to file complaints before the CRPD Committee.

IV. Conclusions and Recommendations

43. As this submission demonstrates, there are still many ways in which Malawi has failed to fulfil its human rights obligations, particularly for women and girls with disabilities. With this in mind, we recommend that states ask the following questions and give the following recommendations to Malawi during its upcoming UPR.

44. Questions for Interactive Dialogue:

- What actions is Malawi taking to ensure that persons with disabilities, and women with disabilities in particular, are aware of their rights and have effective access to justice?
- What is Malawi doing to ensure that girls with disabilities have access to education on an equal basis with others and that they attend school, as mandated by the Education Act?
- How will Malawi ensure effective implementation of the Disability Act and, more generally, that the concerns of women with disabilities are addressed in the content and implementation of laws and policies, including the outdated sexual and reproductive health policy?

45. Recommendations to Malawi:

General Recommendations

- Immediately establish and administer the Disability Trust Fund, as required under the Disability Act, and ensure that it is funded annually. In general, ensure that the annual budget is an inclusive budget.
- Empower the Malawi Human Rights Commission and Ombudsman with adequate resources to ensure that they are able to operate independently.
- Separate the disability portfolio from the Ministry of Gender, Children, Disability and Social Welfare, where it is currently a Department within the Ministry, and, with immediate effect, reinstate the separate Ministry of Disability and Elderly Affairs, to ensure that the issues of persons with disabilities receive adequate attention from the government.
- Ensure that the Gender National Machinery adopts an intersectional approach to its work and takes into account multiple and intersectional forms of discrimination, particularly as it affects women and girls with disabilities, in relevant policies and plans to combat gender inequality and gender-based violence.
- Undertake a public information campaign that addresses stigma and stereotypes and depicts women with disabilities as contributors to society, holders of rights, good parents, and able citizens that can contribute to the economic transformation of the country.
- Improve data collection on persons with disabilities in general, and women with disabilities in particular, including on gender-based violence and sexual and reproductive health care. Ensure that data is disaggregated by both gender and disability, as required by CRPD Article 31.
- Ratify the CRPD's Optional Protocol.
- Ratify the Optional Protocol to CEDAW.
- Ratify the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa.

Access to Justice

- Adopt measures to remove physical, structural, communication, and attitudinal barriers, with a view to promoting full and unrestricted access by persons with disabilities to judicial and court facilities and services. Sign language interpreters must be available at all times in all courts; court officials and prosecutors must possess basic knowledge in sign language and be trained on the CRPD and the Disability Act. Legal information must be readily available, in accessible formats, to persons with disabilities, whether they are witnesses, victims or defendants.
- Strengthen legal representation—both lawyers and paralegal offices—for persons with disabilities. Currently, there is only one lawyer offering services to persons with disabilities in Malawi.

- Urgently investigate cases concerning persons with disabilities and ensure that their cases are heard and justice is delivered, bearing in mind mobility issues and the transportation barriers persons with disabilities face to following up on their case over a long period of time.

Inclusive Education

- Take special measures to provide reasonable accommodations to ensure that girls and women with disabilities can access education, including technical and vocational training, on an equal basis with others. Ensure that all schools have facilities and resources accommodating all types of disabilities.
- Address unequal resource allocation in the education system by targeting under-resourced schools and districts in government budgeting and financing, using EMIS data for decision-making.
- Ensure that families send all children with disabilities to school, as mandated under the Education Act, with special emphasis on girls with disabilities.
- Ensure that all curricula, including the Early Childhood Development curriculum, are inclusive and specific to the needs of children with disabilities.
- Ensure that teacher training colleges offer and require Disability Studies, so that teachers are equipped and trained to offer inclusive education. To that end, speed up the establishment of the Malawi Institute of Special Needs, so that relevant interventions can be identified and teachers are well-equipped to provide inclusive education.
- Ensure that the Malawi Council for the Handicapped (MACOHA) is fully funded so that it can fulfil its mandate to provide vocational training to persons with disabilities.
- Ensure that Malawi Against Physical Disabilities (MAP) is revamped and adequately resourced to meet demands for assistive devices for persons with disabilities.

The Right to Health

- Review health policies, including the current sexual and reproductive health policy, to ensure that they are fully inclusive of persons with disabilities. In particular, the specific needs of women with disabilities must be recognized and addressed, as they face numerous unique and disproportionate challenges in accessing health services, including sexual and reproductive health care.
- Ensure that all pre-service and in-service health provider training curricula include modules on providing health care to persons with disabilities and that persons with disabilities themselves are part of curriculum development and clinic and hospital staffing, so that they can give direction to some of the things that concern persons with disabilities in accessing services.
- Undertake studies on sexual and gender-based violence and health access, focused on women with disabilities, to determine the extent of the problems and make relevant interventions.
- Ensure that facilities, services, and resources are accessible and that health-related information is provided in accessible formats.

Gender-Based Violence and Abuse

- Involve representatives of women with disabilities, in all their diversity, in the revision process for the Plan of Action to Combat Gender-Based Violence in Malawi, to ensure that issues at the intersection of gender and disability are fully addressed.
- Create accessible “know your rights” programs targeted at women with disabilities to ensure that they have the information they need to be confident in accessing justice mechanisms when they are victims of violence.
- Train the police force, other emergency responders, and other justice system actors on how to assist victims of violence who are persons with disabilities. This training should be targeted to ensure that violence and abuse against women with disabilities is appropriately investigated and prosecuted, regardless of the disability status of the victim, and that the needs of women with disabilities are reasonably accommodated in police investigations and in legal proceedings.

¹ DIWA worked in close collaboration with disability advocates in Malawi to gather information for this submission. In all, seventeen women with disabilities, from 11 organizations in Malawi, contributed to this submission, which reflects the lived reality of women with disabilities in Malawi. These organizations and individuals are:

1. **Disabled Women in Africa (DIWA)**, represented by Rachel Kachaje, the newly elected Chair of the Commonwealth, the former Minister of Disability in Malawi, and the Chair of the Southern Africa Federation of the Disabled (SAFOD), and by Ruth Mkutumula, DIWA’s Country Director.
2. **Disabled Women in Development (DIWODE)**, represented by Mrs. Sigere Kasasi, the newly-elected Councilor.
3. **Human Rights for Women and Girls with Disabilities (HRWGDS)**, represented by Lyness Manduwa, Programs Coordinator.
4. **Association of Persons with Albinism (APAM)**, represented by Mrs. Pamela Juma, the Deputy President of APAM.
5. **Parents of Disabled Children Association of Malawi (PODCAM)**, represented by Judith Chaima.
6. **Mental Health Care (MHCA)**, represented by Memory Bismarck.
7. **Forum for Disabled Youth Development (FDYD)**, represented by Fatima Kalima.
8. **National Epilepsy Association (NEA)**, represented by Evelyn Gadama.
9. **Malawi National Association of the Deaf (MANAD)**, represented by Linly Mponda, Sign Language Interpreter, and Edina Makonyola, Project Officer.
10. **Visual and Hearing Association of Malawi (VIHEMA)**, represented by Martha Momba, Project Officer.
11. **Malawi Union of the Blind (MUBU)**, represented by Sandra Chiphonda.

DIWA also received support from Humanity & Inclusion’s “Making It Work: Gender and Disability Project” and acknowledges financial support from the Disability Rights Fund.

² This report will address the situation of women with disabilities throughout the life cycle. Any reference to “women with disabilities” should be interpreted to include girls with disabilities unless otherwise indicated.

³ National Statistical Office, *Population and Housing Census 2008: Disability and the Elderly (Analytical Report: Volume 11)*, pgs. 5, 8 (2010), http://www.nsomalawi.mw/images/stories/data_on_line/demography/census_2008/Main%20Report/ThematicReport/s/Disability%20and%20Elderly.pdf (The 2008 Malawi Population and Housing Census revealed that at least half a million people in Malawi have a disability and that the majority of persons with disabilities in Malawi are women (51.1%).).

-
- ⁴ Arne H Eide and Alister Munthali, *Living conditions among persons with disabilities in Malawi: A National, representative survey 2017*, p. 20 (2018).
- ⁵ Human Rights Council, Report of the Working Group on the Universal Periodic Review, Malawi, Recs. 110.131 & 110.73, U.N. Doc. A/HRC/30/5 (2015).
- ⁶ Constitution of Malawi, art. 20(1).
- ⁷ Disability Act, 2012, arts. 28-29.
- ⁸ Disability Act, 2012, art. 29.
- ⁹ Disability Act, 2012, art. 8.
- ¹⁰ Disability Act, 2012, art. 8(c).
- ¹¹ National Statistical Office, *Population and Housing Census 2008: Disability and the Elderly (Analytical Report: Volume 11)*, p. 5 (2010).
- ¹² Malawi Penal Code, sec. 139.
- ¹³ See, for example, Amnesty International, *Malawi: Beyond elections, authorities should tackle impunity for attacks on people with albinism* (15 May 2019), available at <https://www.amnesty.org/en/latest/news/2019/05/malawi-beyond-elections-authorities-should-tackle-impunity-for-attacks-on-people-with-albinism/>.
- ¹⁴ Arne H Eide and Alister Munthali, *Living conditions among persons with disabilities in Malawi: A National, representative survey 2017*, p. 21 (2018).
- ¹⁵ *Id.* at pgs. 20-21.
- ¹⁶ Alister C. Munthali, Centre for Social Research, University of Malawi, *A Situation Analysis of Persons with Disabilities in Malawi*, pgs.16-17 (2011), available at <https://www.medbox.org/mwi-disabilities/a-situation-analysis-of-persons-with-disabilities-in-malawi/preview?> [hereinafter, Alister C. Munthali, *A Situation Analysis of Persons with Disabilities in Malawi*].
- ¹⁷ *Id.* See also Arne H Eide and Alister Munthali, *Living conditions among persons with disabilities in Malawi: A National, representative survey 2017*, p. 71 (2018).
- ¹⁸ Disability Act, 2012, art. 8(f).
- ¹⁹ Alister C. Munthali, *A Situation Analysis of Persons with Disabilities in Malawi*, *supra* note 15, p. 17.
- ²⁰ Disability Act, 2012, art. 10.
- ²¹ Alister C. Munthali, *A Situation Analysis of Persons with Disabilities in Malawi*, *supra* note 15, pgs. 16-18.
- ²² Disabled Women in Africa (DIWA), *Exploitation, Violence and Abuse Among Women and Girls with Disabilities: Baseline Survey* p. 12 (2014), available at <https://www.womenenabled.org/pdfs/mapping/DIWA%20Exploitation%20Violence%20and%20Abuse%20among%20women%20and%20girls%20with%20Disabilities.pdf> [hereinafter, DIWA, *Exploitation, Violence and Abuse Among Women and Girls with Disabilities: Baseline Survey*].
- ²³ Alister C. Munthali, *A Situation Analysis of Persons with Disabilities in Malawi*, *supra* note 15, p. 17.
- ²⁴ *Id.* at p. 26.
- ²⁵ CRPD Committee, *General Comment No. 3: Article 6: Women and girls with disabilities*, ¶ 44, U.N. Doc. CRPD/C/GC/3 (2016) [hereinafter CRPD Committee, *Gen. Comment No. 3*].
- ²⁶ *Id.*
- ²⁷ UN Special Rapporteur on Violence against Women, *Report of the Special Rapporteur on violence against women, its causes and consequences*, ¶¶ 28 & 36, U.N. Doc. A/67/227 (2012) [hereinafter SRVAW, *Report on women with disabilities*].
- ²⁸ CEDAW Committee, *General Recommendation No. 24: Article 12 of the Convention (women and health)*, (20th Sess., 1999), in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, ¶ 22, U.N. Doc. HRI/GEN/1/Rev.9 (Vol. II) (2008); CRPD Committee, *General Comment No. 1: Article 12: Equal recognition before the law*, U.N. Doc. CRPD/C/GC/1 (2014); Human Rights Committee, *Concluding Observations: Czech Republic*, ¶ 11, U.N. Doc. CCPR/C/CZE/CO/3 (2013); CAT Committee, *Concluding Observations: Czech Republic*, ¶ 12, U.N. Doc. CAT/C/CZE/CO/4-5 (2012); Human Rights Council, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Mendez*, ¶ 48, U.N. Doc. A/HRC/22/53 (2013).
- ²⁹ Alister C. Munthali, *A Situation Analysis of Persons with Disabilities in Malawi*, *supra* note 15, p. 12.
- ³⁰ DIWA, *Exploitation, Violence and Abuse Among Women and Girls with Disabilities: Baseline Survey*, *supra* note 21, p. 10.
- ³¹ Alister C. Munthali, *A Situation Analysis of Persons with Disabilities in Malawi*, *supra* note 15, pgs. 12-14.
- ³² Disability Act, 2012, art. 6(1).
- ³³ Disability Act, 2012, art. 6(2)(c).
- ³⁴ SRVAW, *Report on women with disabilities*, *supra* note 26, ¶ 31.

³⁵ *Id.*, ¶ 32.

³⁶ CRPD Committee, *Gen. Comment No. 3*, *supra* note 24, ¶ 33.

³⁷ World Health Organization and United Nations Population Fund, *Promoting sexual and reproductive health for Persons with Disabilities: World Health Organization/United Nations Population Fund Guidance Note* (2009).

³⁸ SRVAW, *Report on women with disabilities*, *supra* note 26, ¶ 31.

³⁹ Arne H Eide and Alister Munthali, *Living conditions among persons with disabilities in Malawi: A National, representative survey 2017*, p. 85 (2018).

⁴⁰ DIWA, *Exploitation, Violence and Abuse Among Women and Girls with Disabilities: Baseline Survey*, *supra* note 21, p. 10.

⁴¹ *Id.*

⁴² *Id.* at p. 11.

⁴³ *Id.* at p. 10.

⁴⁴ Disability Act, 2012, art. 23.

⁴⁵ Disability Act, 2012, arts. 14(2) & 15.

⁴⁶ Disability Act, 2012, art. 12.

⁴⁷ Disability Act, 2012, art. 12(3)(d).

⁴⁸ Disability Act, 2012, art. 13.

⁴⁹ Alister C. Munthali, *A Situation Analysis of Persons with Disabilities in Malawi*, *supra* note 15, p. 19.