

Key words: Sex workers' rights, criminalization of sex work, HIV and AIDS

Executive Summary

1. This report discusses challenges faced by female sex workers in Malawi in accessing, exercising and realizing their human rights, including sexual and reproductive rights. The report analyses the criminalization of some aspects of sex work in the country and how this further fuels stigma and discrimination towards female sex workers, to the extent that it leads to negative attitudes by health workers towards female sex workers, compromising the sex workers' ability to access sexual and reproductive health services.
2. Using the criminalization of some aspects of sex work, the police often raid bottle stores, pubs, brothels and sex work hotspots and arbitrarily arrest female sex workers. When the sex workers are arrested by the police, they are beaten, their phones and money are confiscated (stolen) by the police, and they are raped by the police themselves, often without using condoms, which puts the female sex workers at a high risk to contract sexually transmitted infections, including HIV, and could lead to the sex workers having unplanned and unwanted pregnancies. When the sex workers are locked up, those that are HIV positive and are on treatment, miss taking their medication and this further violates their right to good health.
3. Not much progress has been made by the government in implementing the recommendations of the previous UPR. While progress has been made on strengthening efforts to eliminate HIV and AIDS, little progress has been made by the government to overhaul the legal system to eliminate stigma and discrimination.
4. This report puts forward a number of recommendations regarding the decriminalization of all aspects of voluntary sex work, strengthening of health systems and health service delivery, empowering marginalized groups such as sex workers, and building capacity of the police and health personnel to respect and protect the rights of sex workers.

Progress and gaps in the implementation of recommendations from 1st cycle of UPR

5. The following are some of the relevant recommendations from Malawi's previous review:
 - 5.1. *Strengthen efforts aimed at eliminating HIV and AIDS and cooperate with WHO in this regard.*

The government has strengthened the efforts aimed at eliminating HIV and AIDS through adopting a multi sectoral approach where all the sectors (public, private and civil society) have a role to play in the HIV and AIDS national response. The government has also strengthened the National AIDS Commission (NAC) as a national coordinating body and has identified a coordinating body for each of the sectors to ensure the national response is well coordinated. The government has also adopted a National Strategic Plan as well as a National Monitoring and Evaluation Plan for measuring the country's performance in the national HIV and AIDS response. What is lacking is for the government to increase its domestic funding towards the HIV and AIDS response as currently over 90% of all the resources that are used for HIV and AIDS in the country are from donors and 98% of the resources for HIV treatment are from donors, which is not sustainable in the long term.
 - 5.2. *Completely overhaul the legal system to ensure the compliance of the Constitution and all other domestic legislation with international human rights obligations and standards and, in this regard, amend and/or derogate all legal provisions, including customary law, which result in discrimination, especially on the basis of sexual orientation.*

The government has not yet overhauled the legal system to ensure the compliance of the Constitution and all other domestic legislation with international human rights obligations and standards. The government is yet to amend and/or derogate all legal provisions, including customary law. As a result of this, there is still a lot of stigma and discrimination, as well as human rights violations especially on the basis of sexual orientation.

5.3. *Develop and strengthen appropriate legislative measures to address the issue of sexual abuse and exploitation, ensure prompt prosecution of perpetrators.*

The government has not developed and strengthened appropriate legislative measures to address the issue of sexual abuse and exploitation and as a result of this, the country experiences increased incidence of sexual abuse and exploitation especially towards children and other marginalized groups such as female sex workers. Perpetrators of sexual abuse and exploitation are not promptly prosecuted as cases continue to drag in the courts, and where convictions are secured the sentences and punishments are too lenient to deter other would-be perpetrators. As such, cases of sexual abuse and exploitation are on the increase in the country.

5.4. *Conduct a public awareness campaign, with engagement at the highest political levels, to strengthen the implementation of the 2006 Prevention of Domestic Violence Act, and highlight the unacceptability of violence against women and address the attitudes and stereotypes that perpetuate discriminatory practices that are harmful and violent towards women.*

The government conducts public awareness campaigns but mainly during the annual campaign, 16 Days of Activism against Gender Violence, and usually the campaigns do not involve leaders at the highest political levels. The implementation of the 2006 Prevention of Domestic Violence Act is very weak such that violence against women and attitudes and stereotypes that perpetuate discriminatory practices that are harmful and violent towards women are still rampant in the country.

5.5. *Undertake more effective measures to address the problems of impunity and violence against women and girls, including through the strengthening of law enforcement and the judicial system and intensive media and education programmes aimed at increasing public awareness and sensitivities on the rights of women.*

No measures have been put in place to address the problems of impunity and violence against women and girls. The law enforcement and judicial systems have not helped to reduce stigma and discrimination towards sex workers; sex workers are denied sexual and reproductive rights; and the police who violate sex workers' rights with impunity have not faced any justice.

Background

6. There is no law penalizing the sale of sexual services in Malawi, but some aspects of sex work are criminalized, such as 'Living on the proceeds of sex work'.
7. There are some laws that relate to sex work which are archaic and use very vague language such as the Penal Code provisions on 'rogue and vagabond', which are open to wide interpretation and abuse, and their implementation negatively and disproportionately affects female sex workers.
8. The Constitution of the Republic of Malawi, which is the supreme Law of the Land, the Public Health Act and the Sexual and Reproductive Health Policy and Guidelines, all emphasize equality and the importance of delivering services without discrimination and guaranteeing human rights.

Problem identification

9. Some aspects of sex work are criminalized such as 'Living on the proceeds of sex work'. Even though this law was intended to protect sex workers from being forced into sex work, as well as preventing individuals from running brothels, there many cases and incidents in all the districts of the country where, when the police invade brothels, they do not arrest the brothel owners but rather the sex workers. This makes the sex workers live in constant fear of the police.
10. The police use the Penal Code provisions on 'rogue and vagabond' to harass and arbitrarily arrest sex workers. The police also violate the rights of the sex workers with impunity. There is a lot of power abuse that is done by the police towards sex workers in the name of this Law. For instance, the police use the rogue and vagabond law

to arrest sex workers, obstruct their work, harass them, or even beat them up. There was a case in Thyolo district where a policeman beat up a sex worker using shock sticks. Once sex workers are arrested and are in police custody, the police might confiscate their cell phones or money or steal any valuables that they find on their person. In some instances the police rape the sex workers, often without condoms, thereby exposing them to sexually transmitted infections, including HIV, and pregnancies.

11. Health facilities are not accessible and friendly to female sex workers. Although the Constitution of the Republic of Malawi which is the supreme Law of the Land, the Public Health Act, and the Sexual and Reproductive Health Policy and Guidelines emphasize on equality and the importance of delivering services without discrimination and guaranteeing human rights, health workers violate sex workers' rights to equality, non-discrimination and health by not treating them in a confidential, respectful and non-judgmental manner, and sometimes actually denying health services. Health workers shout at sex workers in the presence of all other patients, disclose their health conditions to third parties without their consent, and publicly state that they would rather spend their energy, efforts and drugs on 'real people' and not sex workers. The health workers do all this knowing that the sex workers will have nowhere to complain, and even if they complain, their complaints will not be taken seriously by anyone.
12. The Prevention of HIV Transmission from Mother to Child (PMTCT) programme in Malawi, which is considered one of the best in the world, does not take into consideration the needs of female sex workers and unmarried women. The programme demands that every pregnant woman should go with her spouse to her first antenatal visit, which makes it a challenge for pregnant female sex workers as they cannot bring their sexual partners hence they prefer to not attend antenatal services and shun the PMTCT programme altogether. As a result, their sexual and reproductive rights cannot be fulfilled.
13. Sex work in Malawi is heavily stigmatized and discriminated. As a result, sex workers operate and live discreetly, making them harder to reach with essential health services and information.
14. Antiretroviral therapy adherence is very low among sex workers since, by the nature of their job, sex workers are very mobile but also often miss taking their antiretroviral treatment when they have been arrested and locked up by the police.
15. Sex workers also face challenges with some of their clients who, after a sexual encounter, do not give them the full amount agreed. Some clients refuse to use condoms, and others actually beat and steal from sex workers. The clients do this because most of them believe sex workers are lesser beings but most importantly they know sex workers will have nowhere to complain and even if they complain, their complaints will not be taken seriously by anyone.
16. Some landlords impose unwritten rules and regulations that are aimed at barring and evicting sex workers from their premises. Some male landlords have sex with the sex workers without giving them any payment, taking advantage of their position, and others just increase the rent arbitrarily in order to frustrate the sex workers. The landlords do this because they sex workers will have nowhere to complain and even if they complain, their complaints will not be taken seriously by anyone.
17. The police, health workers and sex workers themselves are not aware of the laws and policies that protect the sex workers' rights since knowledge of human rights is generally low in Malawi and not much effort has been put into increasing awareness on human rights in general and rights of sex workers in particular.
18. There is yet to be a court ruling in a case where a group of sex workers in Mwanza district in Malawi were rounded up by the police, forced to take an HIV test in the presence of the police and everybody else, and the results of the tests were announced publicly. This case, where some human rights organizations sued the police, is still dragging in court, but will be a test case to reduce police impunity.

Recommendations for action

19. The following are the recommendations in order to improve the situation:
 20. The government through the Ministry of Justice should start by implementing all the recommendations that were made during the first cycle as a number of them if implemented will solve many aspects of this situation.
 21. The Ministry of Justice, through the Malawi Law Commission should ensure that all the aspects of voluntary sex work, including 'Living on the proceeds of sex work' are decriminalized.
 22. The Ministry of Justice, through the Malawi Law Commission should ensure that the Penal Code provision on 'Rogue and Vagabond' is repealed to avoid the archaic nature and vague language that is prone to wide interpretation and abuse.
 23. The government through the Ministry of Health should put in place effective mechanisms, such as training for health care workers on human rights as well as feedback mechanisms, to ensure that the delivery of public health services is done in a confidential, respectful and non-judgmental manner.
 24. The Ministry of Health should revisit the delivery mode of the Prevention of Mother to Child Transmission of HIV (PMTCT) programme, to remove any access barriers that prevent sex workers and unmarried women from accessing PMTCT services.
 25. The Ministry of Health should collaborate with the police to have referral health facilities that are close to police stations where all arrested individuals, including sex workers, can easily access antiretroviral therapy while in police custody.
 26. The Ministry of Justice and the Ministry of Gender and Social Welfare, with the Malawi Human Rights Commission (MHRC), should embark on awareness programmes to empower all the marginalized groups, including female sex workers, to know their rights, including sexual and reproductive rights, and take action when their rights have been violated.
 27. The Ministry of Justice and the Ministry of Gender and Social Welfare, with the Malawi Human Rights Commission (MHRC), should embark on awareness programmes for the general population so that everyone is aware of the rights of sex workers and respects them.
 28. The Ministry of Justice and the Ministry of Gender and Social Welfare, with the Malawi Human Rights Commission (MHRC), should embark on a training programme for the police, judicial staff, prison staff and health personnel on gender, sexuality, sexual and reproductive rights, including the rights of sex workers.
 29. The Government should put in place and strengthen monitoring and feedback mechanisms so that the police personnel and health service providers who violate sex workers' rights with impunity are identified and punished accordingly once they are found guilty.
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