



**Government of Malawi**

**National HIV/AIDS Policy**

***A CALL FOR RENEWED ACTION***

Office of the President and Cabinet  
National AIDS Commission  
October 2003

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## **Foreword**

HIV/AIDS is by far the greatest development threat facing our nation today. Since the first case of AIDS was diagnosed in Malawi, in 1985, more than half a million Malawians have died of AIDS, and daily many more are infected. The epidemic has affected all sectors of our society, resulting in substantial loss of national productivity and a steep rise in the burden on individuals, households and communities. The increased impact of the epidemic continues to reduce the economic gains of the past, and to spread suffering and grief among people living with HIV/AIDS and affected households.

Malawi has come a long way in responding to the HIV/AIDS pandemic. There is today widespread awareness of HIV/AIDS and how to prevent infection. Institutional frameworks and modalities have been put in place for an effective multi-sectoral response. All sectors have been mobilised in the fight, including the public sector, civil society, faith-based organisations, community groups and the private sector. These groups are playing their part in assisting orphans, caring for the sick, and combatting stigma and discrimination. Programme strategies have evolved over time to address issues of treatment and impact mitigation. At the same time, political commitment has strengthened, resulting in successful resource mobilisation.

But the progress has been slow. Continuing with "business as usual" in addressing the challenges of the epidemic has meant watching scores of Malawians become infected or die every day. Every Malawian and development partner in this fight has a duty to adopt innovative ideas and to revitalise efforts to make a difference. This policy specifically calls for renewed action on the ground, and gives Malawi the opportunity to embark on a new path in this noble fight. The guidelines provided in this policy were not developed in a vacuum, but draw upon the experience and lessons of the past 15 years in combatting the epidemic. The policy balances carefully the issues of rights and responsibilities and public health considerations, and emphasises the continuum from prevention through care to treatment.

The challenge now, especially among all those directly involved in programming, is to reorganise thinking and reorient efforts in this new direction. With less than 3% of adult Malawians currently knowing their HIV/AIDS serostatus, it is difficult to ensure early access to care and treatment or to plan for the future. Only a handful of Malawians in a few urban centers have access to AIDS treatment, and people living positively with HIV/AIDS continue to confront stigma and discrimination in their daily lives. The epidemic is increasingly developing a woman's face in Malawi, accelerated by inequitable power relations between men and women, young girls in particular. There is also an urgent need to strengthen human capacity across all domains of work.

I would like to take this opportunity to acknowledge the excellent work that has been done by the National AIDS Commission and its partners to make this National HIV/AIDS Policy possible. I am well aware that it has been a long journey, but the pleasing outcome has been our own 'home-grown' national policy on HIV/AIDS.

It is my humble duty to personally invite all Malawian individuals, practitioners and development partners to make bold, responsible efforts to implement this robust policy in the face of this national emergency.

**DR BAKILI MULUZI  
PRESIDENT OF THE REPUBLIC OF MALAWI**

## **Preface**

Malawi, like many other countries in Sub-Saharan Africa, is experiencing a serious epidemic, threatening its very survival. Today, despite 15 years of national response, the impact remains devastating and our efforts inadequate, given the pace of spread of HIV/AIDS. Illness and death have increased exponentially, so people have difficulty fulfilling work commitments. AIDS has left about 150,000 children orphaned, quite apart from making other children more vulnerable. At the same time it is pleasing to note that community-based organisations (CBOs), nongovernmental organisations (NGOs), faith-based organisations (FBOs) and public and private sector institutions have all become engaged in various ways in the fight against HIV/AIDS and in activities and interventions that seek to mitigate its impact on individuals, families, communities and institutions.

The National HIV/AIDS Policy has been formulated in major part to consolidate these efforts, to expand interventions that have great promise and to direct the response to new areas that call for our attention. It is a unique policy in that it is 'home-grown', designed to respond to the particular experiences of Malawi, addressing the specific issues by developing appropriate local strategies. Broad consultation and participation during the development of the policy make it a truly shared vision of how Malawi, as a country in the grip of HIV/AIDS, should respond.

The policy provides technical and administrative guidelines for the design, implementation and management of HIV/AIDS interventions, programmes and activities at all levels of the Malawi society. It offers guidance on critical intervention areas, among them social and economic support for people living with HIV/AIDS (PLWAs); their full integration into the response, going beyond the typical token representation; provision of care and support for treatment to achieve a better quality of life for all Malawians living with HIV/AIDS; and protection of their human rights and freedoms.

I hope that the policy will be a source of renewed motivation for a more unified and concerted effort and a basis for diversifying interventions addressing HIV/AIDS and its impact.

**MARY KAPHWEREZA BANDA, MP  
MINISTER OF STATE RESPONSIBLE FOR HIV/AIDS PROGRAMMES**

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The Commission also acknowledges the input and policy guidance of the Technical Working Group (TWG) on HIV/AIDS, the Board of Commissioners of the National AIDS Commission, the Cabinet Committee on HIV/AIDS and the Parliamentary Committee on Health and Population in the development of the HIV/AIDS Policy. Special thanks to all stakeholders, development partners and members of the General Public for their input and contributions during the consensus-building phase of the policy development process. Dr Biziwick Mwale's tireless leadership, direction and guidance throughout the process was commendable.

The National AIDS Commission is particularly grateful for the financial and technical support from USAID funded POLICY Project, UNDP and UNAIDS, without whose support this policy would not have been possible.

## Abbreviations and Acronyms

|        |  |
|--------|--|
| AIDS   | Acquired Immune Deficiency Syndrome        |
| ART    | Antiretroviral Therapy                     |
| ARV    | Antiretroviral                             |
| CBO    | Community-based Organisation               |
| CHBC   | Community Home-based Care                  |
| FBO    | Faith-based Organisation                   |
| HAART  | Highly Active Antiretroviral Therapy       |
| HBC    | Home-based Care                            |
| HIPC   | Highly Indebted Poor Countries             |
| HIV    | Human Immunodeficiency Virus               |
| IEC    | Information, Education, and Communication  |
| M&E    | Monitoring and Evaluation                  |
| MCH    | Maternal and Child Health                  |
| MOHP   | Ministry of Health and Population          |
| NAC    | National AIDS Commission                   |
| NSO    | National Statistics Office                 |
| NGO    | Non-governmental Organisation              |
| OI     | Opportunistic Infection                    |
| PEP    | Post-exposure Prophylaxis                  |
| PLWA   | People Living with HIV/AIDS                |
| PMAPB  | Pharmacy, Medicines and Poisons Board      |
| PMTCT  | Prevention of Mother-to-child Transmission |
| PRSP   | Poverty Reduction Strategy Paper           |
| STI    | Sexually Transmitted Infection             |
| TB     | Tuberculosis                               |
| TBA    | Traditional Birth Attendant                |
| UNDP   | United Nations Development Programme       |
| UNAIDS | Joint United Nations Programme on HIV/AIDS |
| VCT    | Voluntary Counselling and Testing          |

# Chapter 1

## Introduction

### 1.1 Problem Statement

More than 20 years from the onset of the epidemic, HIV/AIDS remains a global challenge. According to the Joint United Nations Programme on HIV/AIDS (UNAIDS), HIV/AIDS has particularly affected sub-Saharan Africa, with 28.5 million people estimated to be living with the virus in the region by 2001 (UNAIDS, 2001). This figure represents approximately 71% of all people living with HIV/AIDS in the world. About 81% of all HIV-infected women and 79% of all HIV/AIDS orphans live in sub-Saharan Africa. In this region, more than half the new infections are occurring in young people aged 15-24 years, with teenage girls being far more likely to be HIV-infected than teenage boys.

Malawi, like its neighbours in sub-Saharan Africa, has been severely affected by HIV/AIDS. The first case of AIDS in the country was diagnosed in 1985. Since then, epidemiological data show an escalating epidemic. For example, in a sample of pregnant women attending antenatal clinics in urban Blantyre, HIV seroprevalence rose from 2.6% in 1986 to over 30% in 1998, decreasing only slightly to 28.5% in 2001. In 2001, Malawi's national adult prevalence (15-49 years) was estimated at 15%, translating into almost 740,000 adults living with HIV/AIDS (National AIDS Commission [NAC], 2001). HIV prevalence is almost twice as high in urban areas, at 25%, as in rural areas, at 13%. Annual deaths due to HIV/AIDS are estimated at over 80,000, amounting cumulatively to 555,000 deaths since 1985.

The epidemic has affected all sectors of Malawian society, especially social services. For example, in the health sector, the maternal mortality rate has more than doubled, in large part due to the HIV/AIDS epidemic. HIV/AIDS patients occupy more than 50% of medical ward beds, and more than 70% of all pulmonary tuberculosis (TB) patients also have HIV infection. In the education and agricultural sectors, teachers and extension workers, respectively, are dying at a faster rate than replacements can be trained. The economic viability of most homes has deteriorated due to loss of breadwinners and the consequent support of orphans by the elderly and older siblings.

### 1.2 The Context of the Problem

In addition to HIV/AIDS, the Country Development Report (UNDP, 2001) highlights poverty and governance as key development challenges for Malawi. These challenges are reciprocally influenced by prevailing political, social, cultural and economic conditions. For example, Malawi is one of the poorest countries in the world, with 65% of the rural and 55% of the urban population living in poverty. Furthermore, its population is characterised by a high proportion of people below 15 years of age (45% of the 9.8 million people, according to National Statistics Office [NSO], 1998), resulting in a high dependency ratio. The poverty situation is further aggravated by recurrent drought, which disrupts food security in an agriculture-dependent economy. Consequently, inflation rates continue to rise and economic productivity decreases. In order to reduce poverty levels, Malawi has established a Poverty Alleviation Programme and developed a Poverty Reduction Strategy Paper (PRSP). Government is being supported in this effort by donor partners and through the use of funds from programmes such as the Highly Indebted Poor Countries (HIPC) Initiative.

Cultural and religious practices further influence HIV/AIDS, governance and poverty. The population of Malawi is diverse in terms of language, religion and ethnicity. There are about nine indigenous ethnic groups, in addition to Asian and Caucasian groups. Moreover, the majority of the African population is Christian, while the Asian population is predominantly Muslim, resulting in a wide range of practices, some of which are detrimental both to development and to an effective HIV/AIDS prevention programme. For instance, certain traditional norms limit access of women to education, thereby increasing illiteracy, decreasing participation in governance and lowering their socioeconomic status.

Thus, HIV/AIDS presents a major challenge to the individual and collective well-being and security of people in Malawi. Malawi's response to the epidemic began in 1986, initially concentrating on preventing further transmission of the virus. A review of the HIV/AIDS control programme and extensive stakeholder consultations led to the formulation of the National HIV/AIDS Strategic Framework for the period of 2000 to 2004. This framework emphasises the need for an expanded and multi-sectoral response to HIV/AIDS and other sexually transmitted infections (STIs). It incorporates care, support and impact mitigation as integral parts of the national response. Malawi has also committed itself to the fight against HIV/AIDS at the regional and international level through the Abuja Declaration and Framework for Action for the Fight Against HIV/AIDS, Tuberculosis, and Other Related Infectious Diseases in Africa (27 April 2001); the United Nations General Assembly Special Session Declaration of Commitment on HIV/AIDS (27 June 2001) and the Millennium Development Goals. These agreements aim to (1) address the development and implementation of multi-sectoral national strategies and financing plans for combatting HIV/AIDS that are resourced to the extent possible from national budgets, without excluding other sources such as international cooperation; (2) confront stigma, silence and denial; (3) address gender and age based dimensions of the epidemic; (4) eliminate discrimination and marginalisation; (5) strengthen partnerships with civil society and the business sector; (6) encourage full participation of people living with HIV/AIDS (PLWAs) and other vulnerable populations, particularly women and young people; (7) fully promote and protect all human rights and fundamental freedoms, including the right to the highest attainable standard of physical and mental health; (8) integrate a gender perspective; (9) address risk, vulnerability, prevention, care, treatment and support so as to reduce the impact of the epidemic; and (10) strengthen the capacity of the health, education, and legal systems.

HIV/AIDS impacts the economy, the social fabric of society and the ability of the political system to effectively and efficiently perform its mandates. The challenge of HIV/AIDS demands a high level of commitment, strong multi-sectoral collaboration and sustained action, which this policy seeks to facilitate.

### **1.3 Goals and Objectives**

The goals of the National HIV/AIDS Policy are: (1) to prevent the further spread of HIV infection; and (2) to mitigate the impact of HIV/AIDS on the socioeconomic status of individuals, families, communities and the nation.

These goals will be achieved by pursuing the following specific objectives:

- To improve the provision and delivery of prevention, treatment, care and support services for PLWAs.
- To reduce individual and societal vulnerability to HIV/AIDS by creating an enabling environment.
- To strengthen the multi-sectoral and multi-disciplinary institutional framework for coordination and implementation of HIV/AIDS programmes in the country.

### **1.4 Preamble**

The Government and people of the Republic of Malawi, note that:

- HIV/AIDS has reached epidemic proportions in the country.
- HIV/AIDS is a public health issue, as it directly affects the health of large numbers of people in society and reduces the overall health status and well-being of the nation; contributing to the rise in maternal and under-five mortality rates, facilitating opportunistic infections and placing further stress on a health care system that is already overburdened.

•HIV/AIDS is a social issue, as it adversely impacts families and communities; affected or infected individuals and/or families are faced with excessive medical expenses, depleting all their savings and even forcing them to dispose of their assets.

•HIV/AIDS is an economic issue, as it leads to a reduction in economic growth, by reducing the productivity of the labour force; it causes an imbalance between the supply and demand for a range of complex public services, by decreasing the former while at the same time increasing the latter.

•HIVAIDS is a development issue, as it is weakening institutions and destroying institutional memory in both the public and private sectors; it is destroying their capacity to formulate, analyse and manage the public policies, development programmes and strategies essential for economic development and growth, thus hindering sustainable development.

•An effective response to HIV/AIDS requires respect for, protection of and fulfilment of all human rights—civil, political, economic, social and cultural—and upholding of the fundamental freedoms of all people, in accordance with the Constitution of Malawi and existing international human rights principles, norms and standards.

•All people are guaranteed freedom from discrimination on grounds of race, colour, sex, language, religion, political or other opinion, nationality, ethnic or social origin, disability, property, birth or other status including HIV/AIDS status, in accordance with the provisions of the Constitution of Malawi and existing international human rights principles, norms and standards.

•Prevention, treatment, care, support and impact mitigation are mutually reinforcing elements on the continuum of an effective response to HIV/AIDS.

•Certain social, political and economic conditions create and sustain vulnerability to HIV infection, including:

–the unequal position of girls and women in society and the fact that, due to biological, social, cultural and economic factors, women and girls are more likely to become infected and can be more adversely affected by HIV/AIDS than men;

–the reality that people living with HIV/AIDS are discriminated against and marginalised, leading to lack of individual and collective well-being, development and human security.

•Culture and religion have a strong influence on lifestyle choices.

Thus, Government commits to:

•Advancing a public health-based response that integrates principles of prevention, treatment, care and support.

•Promoting and protecting human rights in accordance with the Constitution of Malawi and international human rights conventions which Malawi has endorsed to effectively address the social, political and economic factors that increase vulnerability to HIV infection and negatively affect people living with HIV/AIDS.

•Applying resources transparently, accountably and responsibly, including financial, technical and human resources, as well as infrastructure and community contributions—in cash, kind and time.

•Ensuring that decision-making and delivery of this policy is transparent and accountable.

•Ensuring timely and sustained action.

•Implementing a multi-sectoral response where resources are harmonised for maximum impact.

•Ensuring that resources and programmes of government and partners are equitably distributed to all parts of Malawi.

## 1.5 Guiding Principles

This policy shall be guided by, governed by and based on the following principles:

- Political leadership and commitment

Strong political leadership and commitment at all levels is essential for a sustained and effective response to HIV/AIDS.

- Multi-sectoral approach and partnerships

An effective response to HIV/AIDS requires the active involvement of all sectors of society. Thus, a multi-sectoral approach is required that includes partnerships, consultations and coordination with all stakeholders, particularly PLWAs, in the design, implementation, review, monitoring and evaluation of the national response to HIV/AIDS.

- Public health approach

A public health approach reduces the risk of transmission by intensive mass education on modes of transmission and ways to reduce risk, widespread and vigorous use of barrier methods, antibody testing, beneficial disclosure or notification of partners, prevention of mother-to-child transmission (PMTCT) services, and medical treatment and management of infected individuals.

- Promotion and protection of human rights

International human rights law and the Constitution of Malawi guarantee the right to equal protection before the law and freedom from discrimination on grounds, singly or in combination, of race, colour, sex, language, religion, political or other opinion, nationality, ethnic or social origin, disability, property, birth or other status. Discrimination on any of these grounds is not only inherently wrong but also creates and sustains conditions leading to vulnerability to HIV infection and to receiving inadequate treatment, care and support once infected.

Groups suffering from discrimination which makes them vulnerable to HIV/AIDS include women and young girls, orphans, widows and widowers, children and young people, the poor, sex workers, prisoners, mobile populations, persons engaged in same-sex relationships, people with disabilities and PLWAs.

An effective response to the epidemic requires that the rights to equality before the law and freedom from discrimination are respected, protected and fulfilled—in particular, in gender relations among women, men, girls and boys.

- The greater involvement of PLWAs

The greater involvement of PLWAs at all levels is crucial for an effective response to HIV/AIDS.

- Good governance, transparency and accountability

An effective national response to the epidemic requires government to provide leadership, good governance, transparency and accountability to effectively mobilise resources—including, but not limited to, financial resources—and to prudently manage resources at all levels and in all sectors.

- Scientific and evidence-based research

It is essential that the national response to HIV/AIDS be based on sound, current, empirically-based research. As aspects of the epidemic continually change and as scientific, medical and programmatic knowledge of the worldwide pandemic progresses, our understanding of the HIV/AIDS epidemic and how best to respond to it must likewise evolve.

## Chapter 2

### Strengthening and Sustaining a Comprehensive Multi-Sectoral Response to HIV/AIDS

#### 2.1 Rationale

Due to the multi-faceted nature of the HIV/AIDS epidemic, an effective institutional framework for the national HIV/AIDS response requires a multi-sectoral approach, which includes partnerships between government and all relevant stakeholders, including the private sector, community-based organisations (CBOs), nongovernmental organisations (NGOs), trade unions, faith-based organisations (FBOs) and PLWAs. To be effective, proper coordination, management and monitoring and evaluation of all HIV/AIDS interventions are needed.

#### 2.2 Policy Statements

Government, through the National AIDS Commission (NAC), undertakes to do the following:

- finance the operations of the Board and Secretariat of the NAC, which shall:
  - be responsible for advising Government on HIV/AIDS issues based on best practices, taking into account local circumstances.
  - coordinate, monitor and evaluate ongoing and planned interventions in a timely manner to ensure attainment of the goals and objectives of the National Strategic Framework.
  - facilitate the provision of technical expertise to all partners involved in the multi-sectoral response.
- take leadership in the mobilisation of adequate local and international resources for an effective response to the epidemic.
- ensure effective participation of all sectors of society, in particular of PLWAs, women, and vulnerable groups, in the design, implementation, monitoring and evaluation of the national response to HIV/AIDS.
- mobilise, allocate and manage both local and international resources to ensure an effective and efficient national response.
  - locally, allocate resources amounting to at least 2% of the national budget for HIV/AIDS activities.
  - locally, require government ministries, departments and district and city assemblies to allocate resources amounting to at least 2% of their budgets for HIV/AIDS activities.
- ensure that each sector formulates and implements sector-specific HIV/AIDS policies and that there is effective coordination between sectors in a multi-sectoral national response to HIV/AIDS.
- ensure the mainstreaming of HIV/AIDS into all relevant policies, plans and programmes.
- establish and maintain accountability and transparency to each other in the fulfilment of mandates.
- ensure that private sector organisations and NGOs are encouraged and, where necessary, provided with financial, material and technical support to effectively participate in HIV/AIDS activities.
- promote HIV/AIDS support organisations in their role of providing voluntary services.

## Chapter 3

### Promotion of HIV/AIDS Prevention, Treatment, Care and Support

#### 3.1 Introduction

Prevention, treatment, care and support are all mutually reinforcing elements on the continuum of an effective response to HIV/AIDS. If one element is emphasised to the detriment of the others, the impact of the response is not mitigated. Impact mitigation strategies include the evaluation of prevention, treatment, care and support strategies, in addition to the assessment of the economic and social impact of the HIV/AIDS epidemic and the development of multi-sectoral strategies to address the impact at the individual, family, community and national levels.

#### 3.2 Prevention

HIV prevention strategies include the provision of information and education, condoms, sterile injection equipment, voluntary counselling and testing (VCT), antiretroviral (ARV) medicines (e.g., to prevent mother-to-child transmission or to provide post-exposure prophylaxis [PEP]) and, once developed, safe and effective microbicides and vaccines.

##### 3.2.1 *Information, Education and Communication (IEC) for Behaviour Change*

###### 3.2.1.1 Rationale

To tackle the HIV/AIDS epidemic, people must have the ability to adopt risk-reducing behaviour and to make full use of existing opportunities to cope with HIV infection and AIDS. Targeted information delivered within a culturally sensitive context can help to increase awareness and knowledge and to overcome stigma, discrimination, myths, beliefs and prejudices associated with HIV/AIDS and sexuality. Mass media, supported by interpersonal communication, are vital channels to reach the largest number of people with accurate, targeted and relevant messages.

In addition to information and knowledge, adopting and sustaining new behaviour also requires motivation and support, a forum to practice the new behaviour, and an enabling environment in which this new behaviour can take place and be sustained.

###### 3.2.1.2 Policy Statements

Government, through the NAC, undertakes to do the following:

- ensure that all people have equal access to culturally sound and age-appropriate formal and nonformal HIV/AIDS information and education programmes, which shall include free and accurate information regarding mother-to-child transmission, breastfeeding, treatment, nutrition, change of lifestyle, safer sex and the importance of respect for and nondiscrimination against PLWAs.
- support development of adequate, accessible, sound and effective HIV/AIDS information and education programmes by and for vulnerable populations and shall actively involve such populations in the design and implementation of these programmes.
- ensure that behaviour change interventions are guided by the evidence-based needs of the target populations and existing evidence on potential opportunities for and barriers to behaviour change.
- ensure that behaviour change interventions aim at a transition from general awareness to knowledge of one's serostatus and, ultimately, to knowing how to protect oneself and others.

- integrate and promote sound, age-appropriate life skills education, including sexual and reproductive health education and HIV/AIDS information and education, at all levels of formal and nonformal education.
- ensure that life skills education is integrated into school curricula as a subject in which students are regularly assessed.
- support programmes that strengthen the role of parents and guardians in shaping positive attitudes and healthy behaviours of children and young people with regard to sexuality and gender roles in the context of HIV/AIDS and other STIs.
- ensure greater involvement of PLWAs in the design and implementation of HIV/AIDS information and education programmes, as well as activities aimed at influencing and sustaining behaviour change.
- promote abstinence and/or delay of first sexual experience for the youth and mutual faithfulness among adult sexual partners.

### 3.2.2 *HIV Testing*

#### 3.2.2.1 Voluntary HIV Counselling and Testing

##### 3.2.2.1.1 Rationale

VCT is an essential component on the continuum of prevention, treatment, care and support for PLWAs. Through pre- and post-test counselling carried out in a supportive environment, a person undergoing voluntary HIV counseling and testing is motivated towards positive behaviour change. VCT provides an opportunity for a person to ascertain HIV status, and if infected with HIV, to prevent both transmission to others and reinfection. It also offers an opportunity to access care and support programmes, including prophylaxis and treatment of opportunistic infections, access to antiretroviral therapy (ART) and access to PMTCT programmes.

To be effective, VCT services must be of good quality, accessible, affordable and totally confidential. Uptake can be improved when VCT services are organised to take into consideration the special needs of men, women, girls and boys as well as the social status of clients. Since young people between the ages of 13 and 24 are particularly vulnerable to HIV infection, it is crucial that VCT services be designed to accommodate their special needs as well as those of other vulnerable groups, and be widely available. Observations in Malawi and elsewhere have shown that same-day-results VCT services attract high uptake.

##### 3.2.2.1.2 Policy Statements

Government, through the NAC, undertakes to do the following:

- promote and provide high quality, cost-effective, totally confidential and accessible VCT services country-wide, in particular, youth-friendly services and services that are adequate and accessible to other vulnerable groups.
- ensure that:
  - VCT shall only be carried out with informed consent of the person seeking testing, who is provided with adequate information about the nature of an HIV test, including the potential implications of a positive or negative result, in order to make an informed decision as to whether to take the test or not.
  - Children aged 13 or over shall be entitled to access VCT without the consent of a guardian or other adult.
  - VCT shall either be confidential or anonymous. Where it is anonymous, VCT service providers shall not provide written test results to people seeking testing except with the consent of such people for referral to other HIV/AIDS-related services.

–The results of any HIV test shall not be disclosed to a third party without the consent of the person seeking testing, except as may be provided in this Policy.

- promote and encourage couple-counselling and partner-disclosure of HIV test results.
- ensure that VCT services are staffed by adequate numbers of trained counsellors.
- coordinate and ensure the links between VCT services and other HIV/AIDS-related services to provide a continuum of prevention, treatment, care, support and impact mitigation.

### 3.2.2.2 Diagnostic Testing

#### 3.2.2.2.1 Rationale

Experience has shown that people fearing HIV infection have difficulty making an informed decision to have an HIV test. The fact that a patient presents voluntarily with a health problem allows the assumption that he or she would be grateful to be guided by a qualified health care worker in diagnosis and management. In such instances and where HIV infection is suspected, HIV testing should be part of the diagnostic process. As with all tests, the patient has the right to refuse the test.

#### 3.2.2.2.2 Policy Statements

Government, through the NAC, undertakes to do the following:

- ensure that adequate facilities and staff for HIV diagnostic testing are available in all health facilities, hospitals and clinics, with the right for the patient to opt out.
- permit testing without consent for diagnosis of an unconscious patient in the absence of a parent or guardian, where the same is necessary for purposes of optimal treatment.

### 3.2.2.3 Routine Testing

#### 3.2.2.3.1 Rationale

Routine testing is necessary for tracking HIV/AIDS, informing the nation on the progression of the the epidemic and ensuring the safety of blood and blood products. Routine testing is also vital for the prevention of HIV transmission from mother to child.

#### 3.2.2.3.2 Policy Statements

Government, through the NAC, undertakes to do the following:

- permit HIV testing without consent in the following circumstances:
  - Sample screening of pregnant women through anonymous unlinked testing for surveillance.
  - Testing of blood, body fluids and other body tissues for transfusion and transplants.
- ensure that HIV testing is done routinely for all pregnant women attending antenatal clinic unless they specifically choose not to be tested.

### 3.2.2.4 National Security Forces

#### 3.2.2.4.1 Rationale

For national security reasons, it is important that the Army, Police, Prisons and Immigration be permitted to carry out HIV testing as part of their pre-recruitment and periodic general medical assessment of staff for purposes of establishing fitness.

#### 3.2.2.4.2 Policy Statement

Government, through the NAC, undertakes to do the following:

- permit HIV testing in the Army, Police, Prisons and Immigration as part of a broader assessment of fitness for work.

### 3.2.2.5 Beneficial Disclosure

#### 3.2.2.5.1 Rationale

Refusal to notify sexual partners of one's positive serostatus can result in the onward transmission of HIV, therefore HIV post-test counselling programmes should involve strong professional efforts to encourage, persuade and support HIV-positive persons to notify their partners. In exceptional cases where a properly counselled HIV-positive person refuses to disclose his or her status to sexual partners, it is important that the health care provider be permitted to notify those partners without the consent of the source client.

#### 3.2.2.5.2 Policy Statements

Government, through the NAC, undertakes to do the following:

- promote voluntary disclosure of his or her HIV serostatus by a PLWA to his or her sexual partner.
- ensure that voluntary disclosure of HIV status by the infected person to his or her sexual partner is explained and encouraged during counselling.
- ensure that professional and lay counsellors are trained on how to advise and assist PLWAs on how best to disclose their HIV serostatus to their partner.
- develop appropriate and explicit guidelines outlining how, when and to whom beneficial disclosure by a health care worker may be made, in accordance with UNAIDS and the Office of the United Nations High Commissioner for Human Rights.

### 3.2.3 *Condoms for HIV Prevention*

#### 3.2.3.1 Rationale

Male and female condoms can prevent both unwanted pregnancies and STIs, including HIV. To be effective, condoms must be of good quality, and properly and consistently used. Providing women with support to participate fully in the decision to use a condom during every sexual encounter and involving men to promote condom use will enhance more consistent condom use.

#### 3.2.3.2 Policy Statements

Government, through the NAC, undertakes to do the following:

- ensure that affordable male and female condoms and other barrier methods of good quality are made available to all those who need them, in particular, to prisoners.
- promote the proper use and disposal of both the male and the female condom and other barrier methods to prevent HIV and STI transmission.

- promote the implementation of programmes aimed at providing women with support to participate fully in decision-making regarding the use of condoms.
- periodically review and revise fiscal and other measures to ensure equitable access to and affordability of socially-marketed condoms.

### 3.2.4 *Prevention of Mother-to-Child Transmission (PMTCT)*

#### 3.2.4.1 Rationale

HIV can be transmitted from a mother to her child during pregnancy, during delivery, and through breast milk. The desire of HIV-infected couples to have a child must therefore be balanced with the possibility of having an HIV-infected baby who has a high risk of dying in early childhood, after suffering extended periods of illness.

In addition, the death of a parent, especially the mother, drastically reduces the baby's chances of survival, regardless of the baby's HIV serostatus. It is important, therefore, that interventions address treatment for parents, in addition to PMTCT, so as to minimise orphanhood and improve the chances of child survival.

#### 3.2.4.2 Policy Statements

Government, through the NAC, undertakes to do the following:

- promote VCT for couples planning to have a child, and early attendance at an antenatal clinic.
- ensure that HIV testing is done routinely for all pregnant women attending antenatal clinic unless they specifically choose not to be tested.
- ensure the availability of quality infrastructure, skilled staff and supplies for maternal and child health (MCH) care, and proper management of MCH services to increase women's access to PMTCT interventions.
- provide accurate and accessible information on PMTCT and infant feeding options to all pregnant women and their partners.
- provide access to affordable antiretroviral treatment (ART) to prevent HIV transmission from mother to child. PMTCT programmes shall also provide treatment, care and support for both parents.
- provide an enabling environment for women to participate in PMTCT or other preventive care or support programmes without the consent of their husbands, sexual partners or family.
- ensure baby-friendly hospital initiatives to support HIV-positive lactating mothers who choose to exclusively breastfeed for six months.
- ensure that women who act as wet nurses are encouraged to undergo VCT prior to breastfeeding and are discouraged from breastfeeding if they are HIV-positive.

### 3.2.5 *Treatment of Sexually Transmitted Infections (STIs)*

#### 3.2.5.1 Rationale

STIs significantly increase the risk of HIV infection and their effective control has been shown to decrease the risk of HIV transmission. Women are particularly vulnerable to STIs because of biological and sociocultural factors.

#### 3.2.5.2 Policy Statements

Government, through the NAC, undertakes to do the following:

- ensure that every person has access to appropriate, nondiscriminatory, comprehensive, confidential and client-friendly sexual and reproductive health services, including syndromic STI management and care in accordance with existing reproductive health policies.
- ensure that partner referrals are encouraged during the management of STIs.
- ensure that STI services are appropriate for and accessible to women, young people and other vulnerable groups.
- ensure that health care workers at all levels are adequately trained in syndromic STI management.
- encourage HIV testing among STI clients.

### 3.2.6 *Blood and Tissue Safety*

#### 3.2.6.1 Rationale

Transfusion of infected blood and transplants of infected tissue lead to the transmission of blood-borne diseases, including HIV, hepatitis and syphilis. It is essential that blood transfusion and tissue transplant services ensure safety at the time of donation, during storage and during transfusion and/or transplant.

#### 3.2.6.2 Policy Statements

Government, through the NAC, undertakes to do the following:

- establish efficient and effective blood transfusion services that include safe and reliable blood banking and transfusion.
- ensure that all blood and tissue products are screened for HIV.
- ensure the constant availability of trained personnel and safe blood and tissue supplies at all secondary and tertiary health care institutions.

### 3.2.7 *Universal Precautions*

#### 3.2.7.1 Rationale

Universal precautions for infection control include the use of gloves and appropriate cleaning techniques when dealing with open wounds and blood spills, and the safe disposal of needles and medical waste. Failure to observe these can increase the risk of accidental exposure to blood-borne infections, including HIV. A high prevalence of HIV/AIDS in the general population exacerbates the risk of accidental exposure to HIV infection through needlestick injuries and other contact with blood and blood products in health care, workplace and other settings.

#### 3.2.7.2 Policy Statements

Government, through the NAC, undertakes to do the following:

- ensure that health care providers, home-based care providers, traditional healers and traditional birth attendants (TBAs) are adequately trained in the application of universal precautions and are provided with the equipment necessary to implement these precautions in the course of their work.
- promote adherence to universal precautions to reduce the risk of HIV infection through accidental exposure to HIV and shall ensure that appropriate and accessible information on the application of such precautions is widely disseminated.

### 3.2.8 *Clean Injecting Materials and Skin-piercing Instruments*

#### 3.2.8.1 Rationale

Unsterilised dental, surgical and cosmetic instruments and equipment pose a risk of HIV transmission. A similar risk is posed by the use of unsterilised skin piercing and/or cutting instruments, for example, for cultural practices such as scarification and circumcision. Use of disposable materials and proper sterilisation of reusable materials can reduce the risk of HIV infection.

#### 3.2.8.2 Policy Statements

Government, through the NAC, undertakes to do the following:

- ensure the availability of adequate disposable materials as well as sterilising equipment for nondisposable materials at all health care facilities.
- ensure that adequate facilities are provided for the appropriate disposal and removal of used disposable materials at all health care facilities.
- ensure the dissemination of appropriate information on the dangers associated with the use of unsterilised skin-piercing materials.
- ensure that guidelines for the use and disposal of disposable materials and the sterilisation of nondisposable materials are regularly updated and communicated to all health care facilities.
- ensure that traditional healers, TBAs and traditional initiation counsellors use sterile skin-piercing materials.

### 3.2.9 *Post-exposure Prophylaxis (PEP)*

#### 3.2.9.1 Rationale

If initiated within 72 hours of suspected exposure to HIV, PEP (short-term antiretroviral treatment) can reduce the risk of HIV infection. Accidental exposure to HIV infection can occur in institutional, workplace and home care settings and in situations involving trauma, such as rape.

#### 3.2.9.2 Policy Statement

Government, through the NAC, undertakes to do the following:

- ensure access to affordable short-term ARV prophylaxis for people who have experienced occupational exposure to HIV, as well as for victims of rape.

### 3.3 Treatment, Care and Support

Comprehensive treatment, care and support include the provision of ART and other medicines; diagnostics and related technologies for the care of HIV/AIDS, related opportunistic infections (OI) and other conditions; good nutrition; social, spiritual and psychological support; and family or community home-based care.

#### 3.3.1 Rationale

HIV infection results in serious medical, emotional, psychological, social and economic consequences for the affected individual and family. There is no known cure for HIV infection, but ART can prolong and improve the quality and length of life of PLWAs. Use of ART significantly reduces viral load, arrests immune destruction and may render the infected person less infectious. Boosting the immunity also reduces the occurrence of OIs.

In addition, most OIs associated with HIV infection can be treated with affordable drugs; others can be prevented or delayed through drug prophylaxis. Proper nutrition and psychosocial support, including support counselling, as well as community home-based care (CHBC), can help to improve the quality of life of a PLWA.

#### 3.3.2 Policy Statements

Government, through the NAC, undertakes to do the following:

- progressively provide access to affordable, high quality ART and prophylaxis to prevent OIs, but only to individuals who have tested HIV-positive and are medically deemed to be in need of this drug therapy.
- ensure the active participation of PLWAs and vulnerable groups in the design, development and implementation of a national plan for the progressive realisation of universal access to treatment.
- ensure that every person has access to accurate information regarding HIV treatment options and shall promote widespread treatment literacy campaigns, with access to information on where and how to access treatment, care and support.
- promote the delivery of quality CHBC as an essential component on the continuum of care for PLWAs.
- ensure that the prescription and sale of ART drugs is adequately regulated to guarantee quality control and to reduce the risk of drug resistance developing through inappropriate use of the drugs.
- ensure that health care workers are adequately trained in the use and management of ART as well as in the treatment of OIs.
- promote the establishment of effective referral and discharge plans by the providers of HIV/AIDS-related services as an integral part of the continuum of care.
- ensure that the national Essential Drug List is regularly updated to incorporate essential drugs for HIV/AIDS treatment in accordance with the World Health Organisation Essential Drugs List.
- ensure that management of drugs and medical supplies, including procurement, storage and distribution of essential and ARV drugs, is constantly monitored and improved as necessary.
- ensure that treatment of HIV/AIDS-related infections is provided according to the Essential Health Package.

## Chapter 4

### Protection, Participation and Empowerment of People Living With HIV/AIDS

#### 4.1 Rationale

In its Declaration of Commitment on HIV/AIDS, the United Nations General Assembly noted that the realisation of human rights and fundamental freedoms for all, especially PLWAs, is an essential component of an effective response to HIV/AIDS. Discrimination against PLWAs violates their rights and is counterproductive to HIV/AIDS efforts in that it threatens voluntary disclosure of HIV serostatus, thus increasing vulnerability to HIV infection. However, PLWAs also have a responsibility to respect and protect the rights and health of others. Therefore, active participation of PLWAs in the design and implementation of HIV/AIDS programmes is integral to national efforts.

#### 4.2 Policy Statements

Government, through the NAC, undertakes to do the following:

- ensure that the human rights and dignity of those affected and infected by HIV/AIDS are respected, protected and upheld in a conducive legal, political, economic, social and cultural environment.
- ensure the effective participation of PLWAs in all decision-making on the design, implementation, monitoring and evaluation of HIV/AIDS-related policies and programmes.
- ensure that PLWAs are not discriminated against in access to health care and related services and that respect for privacy and confidentiality are upheld.
- ensure that HIV/AIDS, whether suspected or actual, is not used as a reason for denying access to social services, including health care, education, religious services, or employment.
- ensure that sector policy-makers, including those in labour, corporate and social service sectors, put in place sectoral policies that effectively address discrimination on the basis of HIV/AIDS and take steps to effectively eliminate stigma and discrimination in their institutions and in the implementation of their sectoral mandates.
- ensure that PLWAs whose rights have been infringed have access to independent, speedy and effective legal and/or administrative procedures for seeking redress.
- establish mechanisms and services at family, community or national levels to protect those who choose to disclose their HIV serostatus, as well as their families and communities.
- ensure that orphans living with HIV/AIDS are not discriminated against in access to health care; in education; or in access to fostering, adoption or placement in institutions.
- ensure that PLWAs are aware of and take responsibility for protecting themselves from reinfection and protecting others from infection.

## Chapter 5

### Protection, Participation and Empowerment of Vulnerable Populations

#### 5.1 Introduction

Vulnerable populations include women, children, orphans, widows, widowers, young people, the poor, persons engaged in transactional sex (sex in exchange for cash or in-kind benefit), prisoners, mobile populations, persons engaged in same-sex relations and people with disabilities. These people, who are often underprivileged socially, culturally, economically or legally, may be less able to fully access education, health care, social services and means of HIV prevention; to enforce HIV prevention options; and to access needed treatment, care and support. They are thus more vulnerable to the risks of HIV infection and suffer disproportionately from the economic and social consequences of HIV/AIDS.

#### 5.2 Women and Girls

##### 5.2.1 Rationale

Woman and girls are frequently socially, culturally, economically and legally vulnerable. Socio-culturally, in particular, they are taught to be subservient to men and boys, so are much more vulnerable to physical abuse, including sexual abuse. Economically, they generally have lower levels of education, so have less access to highly-paid employment, meaning they are less likely to be able to avoid abusive situations. Often, women and girls are less aware of their human rights.

##### 5.2.2 Policy Statements

Government, through the NAC, undertakes to do the following:

- ensure that women and girls, regardless of marital status, have equal access to appropriate, sound HIV-related information and education programmes, means of prevention and health services (i.e. woman-specific and youth-friendly sexual and reproductive health services for all women of reproductive age, including women living with HIV/AIDS).
- protect the rights of women to have control over and to decide responsibly, free of discrimination or coercive violence, on matters related to their sexuality, including sexual and reproductive health.
- ensure that women and girls are protected against violence, including sexual violence, rape and other forms of coerced sex, as well as against traditional practices that may negatively affect their health.
- ensure women's legal rights and equality within the family, in matters such as divorce, inheritance, child custody, property and employment rights, recognizing, in particular, the right to equal remuneration of men and women for work of equal value, equal access to responsible positions, measures to reduce conflicts between professional and family responsibilities, and protection against sexual harassment in the workplace.
- ensure that women enjoy equal access to the benefits of scientific and technological progress so as to minimise the risk of HIV infection.
- develop and implement gender-sensitive HIV/AIDS care programmes that ensure continuity of care among hospital, clinic, community care, family or household, and hospice.
- ensure that young girls and boys, both in and out of school, have access to life skills education which addresses unequal gender relations, to enable them to protect themselves from HIV infection or live positively with HIV/AIDS if they are already infected.

## **5.3 Orphans**

### *5.3.1 Rationale*

Orphans are generally underprivileged, but AIDS orphans are particularly vulnerable. The older child(ren) may have had to nurse one or both parents through numerous periods of illness prior to death, thus preventing them from attending school and/or helping cultivate the land. At the same time, the youngest orphan(s) within a family may also be HIV-positive. Furthermore, whatever financial resources were available when the parents were healthy may well have been used up for drugs and funeral expenses, leaving the children with nothing to fall back on. Many AIDS orphans are now dependent on elderly grandparents, but others have no one to turn to, so in both cases they are disempowered.

### *5.3.2 Policy Statements*

Government, through the NAC, undertakes to do the following:

- ensure that communities and extended families caring for orphans are assisted and empowered with resources, services and skills to help them cope with the extra burden.
- ensure that orphans are not denied access to primary education, whether by virtue of their inability to pay, their age or their gender.
- put in place mechanisms for the registration of births and deaths at a local level, including by chiefs, to facilitate and inform the monitoring of and planning for the orphan situation.
- ensure that child-headed households are supported, in order to safeguard the best interests of children.
- put in place mechanisms to ensure the protection of inherited property of orphans until they attain the age of majority.

## **5.4 Widows and Widowers**

### *5.4.1 Rationale*

All those who lose their spouse, but particularly women, are vulnerable to exploitation at their time of greatest grief. At this time, they often forget their rights, if they were already aware of them. Culturally, they may be expected to perform ceremonies which expose themselves or others to HIV/AIDS (see Chapter 6). Economically, they have lost a source of support.

### *5.4.2 Policy Statements*

Government, through the NAC, undertakes to do the following:

- ensure that communities, especially women and the elderly, have access to accurate and comprehensive information, both about laws protecting the legal rights of a surviving spouse to inherit property and about ways to enforce these rights.
- ensure that victims of property grabbing and custody disputes have access to affordable legal support services to enforce their rights.

## **5.5 Children and Young People**

### *5.5.1 Rationale*

Children and young people are socially and culturally disadvantaged because they cannot make their voice heard if they are being exploited or abused. The power relations in school settings may make them particularly vulnerable.

### *5.5.1 Policy Statements*

Government, through the NAC, undertakes to do the following:

- strengthen and enforce existing legislation to protect children and young people against any type of abuse or exploitation.
- ensure that children and young people have access to youth-friendly sexual and reproductive health information and education, including HIV/AIDS and STI information, appropriate to their age and needs, to equip them with knowledge and skills to protect themselves, in particular from HIV and other STIs.
- incorporate life skills education, including reproductive and sexual health education, into the school curricula as a subject in which students are regularly assessed (cf. Chapter 3). Peer education will be one of the possible modes of teaching.
- ensure that similar life skills education, including reproductive and sexual health education, is made accessible to out-of-school youth to protect themselves, in particular from HIV and other STIs. Peer education will be one of the modes of teaching.
- ensure that all counsellors, including career, traditional and faith- based counsellors, are trained to offer counselling to youth on ways of delaying sex, protecting themselves from unwanted pregnancies, and preventing infection and/or reinfection with HIV and other STIs.
- ensure that traditional initiation counsellors incorporate sound, appropriate sexual and reproductive health education into traditional and cultural rites of passage and/or initiation processes.
- in partnership with institutions offering education and youth services, provide multi-purpose youth centres to ensure the well-being and development of young men and women, while at the same time protecting them from HIV and other STIs.
- ensure that all educational institutions have appropriate systems and safeguards in place that are enforced to prevent sexual abuse, harassment, or exploitation of students by peers or education sector employees. These safeguards shall prohibit education sector employees from engaging in sexual relations with students.

## **5.6 The Poor**

### *5.6.1 Rationale*

Anyone who is so poor that he or she cannot meet the basic needs for food, clothing and shelter is vulnerable to exploitation by others merely because of his or her efforts to survive. Poor people sometimes find themselves engaging in behaviours they know can be detrimental to their health because they have no alternative source of income.

### *5.6.1 Policy Statements*

Government, through the NAC, undertakes to do the following:

- ensure that HIV/AIDS prevention services are accessible to the poor, in terms of physical location, cost and the appropriateness of information and interventions.
- ensure that essential health care, treatment and support for HIV/AIDS and opportunistic infections is accessible to the poor, in accordance with the Essential Health Package and the PRSP.
- promote effective partnership with nongovernmental and private health providers who offer essential HIV/AIDS care and support to the poor and hard-to-reach populations.
- ensure that mechanisms and national guidelines are developed for the delivery of ART. These mechanisms and guidelines shall not hinder access by the poor and people in remote places.

- engage civil society, particularly organisations that serve or represent the poor, in designing, implementing and monitoring the national response to HIV/AIDS.
- ensure that HIV/AIDS prevention is mainstreamed into strategies and programmes to reduce poverty.
- allocate an increasing proportion of its resources to specifically target HIV/AIDS under the PRSP.

## **5.7 People Engaged in Transactional Sex**

### *5.7.1 Rationale*

Very often, people who engage in transactional sex do so because they perceive that they have no alternative if they wish to survive (cf. 5.6 above). They are particularly vulnerable economically.

### *5.7.1 Policy Statements*

Government, through the NAC, undertakes to do the following:

- ensure that people engaged in transactional sex have access to confidential and respectful health care, particularly sexual and reproductive health services, female and male condoms, and treatment and care of sex workers who are living with HIV/AIDS.
- ensure that young women and men who are approaching adulthood, and who are engaged in transactional sex, are supported through multi-disciplinary interventions with life skills and sexuality education, so that they may make informed decisions about their lives, particularly how to prevent HIV infection.
- ensure that people engaged in transactional sex (including commercial sex workers and their clients) are aware of and take responsibility for protecting themselves and their sexual partners.

## **5.8 Prisoners**

### *5.8.1 Rationale*

Prisoners are particularly vulnerable to exploitative and abusive sexual relations because of the environment in which they are living. They, therefore, need to be empowered to make informed decisions in the same way as other vulnerable groups.

### *5.8.1 Policy Statements*

Government, through the NAC, undertakes to do the following:

- ensure that prisoners are not subjected to mandatory testing, nor quarantined, segregated, or isolated on the basis of HIV/AIDS status.
- ensure that all prisoners (and prison staff, as appropriate) have access to HIV-related prevention information, education, VCT, means of prevention (including condoms), treatment (including ART), care and support.
- ensure that prison authorities take all necessary measures, including adequate staffing, effective surveillance, and appropriate disciplinary measures, to protect prisoners from rape, sexual violence and coercion by fellow prisoners and by warders. Juveniles shall be segregated from adult prisoners to protect them from abuse.
- ensure that prisoners who have been victims of rape, sexual violence or coercion have timely access to PEP, as well as effective complaint mechanisms and procedures and the option to request separation from other prisoners for their own protection.

## **5.9 Mobile Populations**

### *5.9.1 Rationale*

Mobile populations, especially refugees, are often vulnerable to social, cultural, economic and legal discrimination precisely because of their mobility.

### *5.9.1 Policy Statements*

Government, through the NAC, undertakes to do the following:

- identify, address and reduce the vulnerability to HIV/AIDS of all mobile groups, including modification of their living and working conditions.
- collaborate with regional institutions, such as the Southern African Development Community and the International Organisation on Migration, in developing regional responses to HIV/AIDS that are rights-based and meet public health imperatives.
- ensure that the rights of refugees in Malawi are respected, protected and upheld, including their rights with respect to HIV prevention, treatment, care and support.

## **5.10 People Engaged in Same-sex Sexual Relations**

### *5.10.1 Rationale*

People who engage in same-sex sexual relations are socially and culturally vulnerable to prevailing attitudes. If they are not accorded access to HIV/AIDS prevention education, treatment, care and support, they may endanger others as a result of their ignorance.

### *5.10.1 Policy Statement*

Government, through the NAC, undertakes to do the following:

- put in place mechanisms to ensure that HIV and STI prevention, treatment, care and support can be accessed by all without discrimination, including people engaged in same-sex sexual relations.

## **5.11 People with Disabilities**

### *5.11.1 Rationale*

People with disabilities are disadvantaged because they frequently have little, if any, access to formal education, and often also experience lack of opportunities for informal education. Without education, they become more vulnerable to abuse, whether physical, psychological, or sexual.

### *5.11.1 Policy Statements*

Government, through the NAC, undertakes to do the following:

- ensure that HIV-related prevention information, education, treatment, care and support strategies are tailor-made for and accessible to people with disabilities.
- ensure that all decision-making fora and structures provide for the full and active participation of people with disabilities.
- ensure that all responses to HIV/AIDS consider the implications for people with disabilities and plan for more effective responses based on models of national and international best practice.

## Chapter 6

### Traditional and Religious Practices and Services

#### 6.1 Customary Practices

##### 6.1.1 Rationale

Some customary practices increase the risk of HIV infection. Among these are polygamy, extramarital sexual relations, marital rape, first aid to snakebite victims, ear piercing and tattooing (*mphini*), and traditional practices such as widow- and widower- inheritance (*chokolo*), death cleansing (*kupita kufa*), forced sex for young girls coming of age (*fisi*), newborn cleansing (*kutenga mwana*), circumcision (*jando* or *mdulidwe*), ablution of dead bodies, consensual adultery for childless couples (*fisi*), wife and husband exchange (*chimwanamaye*) and temporary husband replacement (*mbulo*).

##### 6.1.2 Policy Statements

Government, through the NAC, undertakes to do the following:

- in partnership with civil society, including traditional and religious leaders, promote and encourage monogamous marriages and fidelity within any type of marriage, to prevent HIV and other STIs.
- promote correct and consistent use of condoms in marital sex where there is real or perceived risk of HIV infection and other STIs.
- ensure that support services are available for spouses who assert their rights to safer sex with their partners and are abused or thrown out of the home.
- ensure that traditional and religious leaders sensitise their communities to the dangers of, and discourage, customary widow- and widower-inheritance practices.
- ensure that men and women are empowered to make independent and informed decisions and choices regarding widow- and widower-inheritance to reduce the risk of HIV transmission.
- in partnership with civil society, religious and traditional leaders, promote VCT for men and women who willingly choose to practice widow- and widower-inheritance.
- ensure the provision of support services and access to PEP for people who reject the practice of widow- and widower-inheritance and are victimized as a result.
- in partnership with civil society including religious leaders, sensitise traditional leaders and their subjects on the dangers of customary practices such as death cleansing (*kupita kufa*), forced sex for young girls coming of age (*fisi* or *kuchotsa fumbi*), newborn cleansing (*kutenga mwana*), consensual adultery for childless couples (*fisi*), wife- and husband-exchange (*chimwanamaye*), temporary husband replacement (*mbulo*), and sucking of blood (to help snakebite victims), all of which practices may lead to HIV infection.
- ensure that traditional leaders stop or modify unsafe customary practices to make them safer in order to prevent HIV transmission, or promote alternative customary practices which do not place people at risk of HIV infection.
- in partnership with civil society, traditional and religious leaders, sensitise childless couples and HIV-positive partners on available options, such as fostering, adoption and medical treatment.
- ensure that risky practices like circumcision, tattooing and ear piercing are done safely to prevent HIV infection.

## **6.2 Traditional Healers and Traditional Birth Attendants**

### *6.2.1 Rationale*

The majority of Malawians rely on traditional healers and TBAs for many of their health care needs. It is thus imperative to include these health workers in the fight against HIV/AIDS.

### *6.2.2 Policy Statements*

Government, through the NAC, undertakes to do the following:

- ensure that traditional healers and TBAs have access to and training in HIV-related prevention information and education, as well as care and support for PLWAs.
- in partnership with civil society, traditional and religious leaders and traditional healers, sensitise communities on the role of traditional healers and TBAs in the context of HIV/AIDS.
- in partnership with civil society, traditional and religious leaders, sensitise and discourage traditional healers from making false claims about HIV/AIDS cures and prescribing practices that increase the risk of HIV infection.

## **6.3 Religious Practices and Services**

### *6.3.1 Rationale*

Religious groups have an important role to play in promoting behaviours that reduce the risk of HIV infection, such as abstinence before and faithfulness within marriage, and the use of VCT prior to marriage and during marriage reconciliations (after divorce or separation). These groups can also provide care and support for PLWAs. However, certain religious practices, such as refusal to seek medical care and treatment or belief in miracle cures, increase vulnerability to HIV infection.

### *6.3.2 Policy Statements*

Government, through the NAC, undertakes to do the following:

- work closely with religious leaders to facilitate the provision of accurate HIV-related prevention information and education, as well as care and support for PLWAs.
- sensitise religious leaders to HIV/AIDS and discourage them from making false claims of miracle HIV/AIDS cures.

## Chapter 7

### Responding to HIV/AIDS in the Workplace

#### 7.1 Rationale

The impact of HIV/AIDS in the workplace is increasingly being felt. Among other factors, absenteeism and death result in low productivity, premature payment of employee benefits and low workplace morale. Discrimination against PLWAs has also been perpetuated through practices such as pre-employment HIV testing, dismissal as a result of being HIV-positive and the denial of employee benefits if known to be infected.

One of the most effective ways of reducing and managing the impact of HIV/AIDS in the workplace is through implementation of an HIV/AIDS policy and a prevention, treatment, care and support programme.

#### 7.2 Policy Statements

Government, through the NAC, undertakes to do the following:

- ensure that all public and private sector workplaces shall develop and implement an HIV/AIDS workplace policy and an HIV prevention, treatment, care and support programme.

- ensure that all public and private sector workplace policies provide that:

- No employer shall require any person, whether directly or indirectly, to undergo testing for HIV as a precondition for employment. The criterion for employment shall be fitness to do the job for which employment is sought. No person shall be denied employment solely on the basis of HIV serostatus.

- No employee shall be compelled to disclose his or her HIV serostatus to the employer or other employees. Where an employee chooses to voluntarily disclose his or her HIV serostatus to the employer or to another employee, such information shall not be disclosed to others without that employee's express written consent.

- No employer shall terminate the employment of an employee solely on the grounds of HIV serostatus or family responsibilities relating to HIV/AIDS.

- Employees living with HIV shall continue working in their current employment for as long as they are medically fit to do so. When, on medical grounds, they cannot continue with normal employment, verifiable efforts shall be made to offer them alternative employment or accommodate them without prejudice to their benefits.

- ensure that all public and private sector employees and employers understand that:

- where an employee becomes too ill to perform any work, an employer may terminate his or her employment for reasons of incapacity in accordance with the procedures set out in the law.

- an employee living with HIV shall not be unfairly discriminated against or in any way prejudiced within the employment relationship or within any employment policies or practices.

- the HIV serostatus of an employee shall not affect his or her eligibility for any occupational insurance or other benefit schemes provided for employees by an employer. Where in terms of any law the eligibility of a person for any occupational or other benefit scheme is conditional upon an HIV test, the conditions attaching to HIV/AIDS shall be the same as those applicable in respect to comparable life-threatening illnesses.

- an employee living with or affected by HIV/AIDS shall be subject to the same conditions relating to sick or compassionate leave as those applicable to any other employee in terms of the law or of the conditions of service applicable.

- both employers and employees shall be proactive in safeguarding their health and that of their families by actively participating in HIV/AIDS programmes and sharing the lessons learnt in their homes and communities.

## Chapter 8

### Establishing and Sustaining a National HIV/AIDS Research Agenda

#### 8.1 Rationale

HIV/AIDS research is required to address gaps in existing knowledge about HIV/AIDS and to inform policy, practice and HIV/AIDS-related interventions. While research continues worldwide, it is particularly important for local research to inform local policies, practices and interventions.

#### 8.2 Policy Statements

Government, through the NAC, undertakes to do the following:

- promote both biomedical and social science research in order to provide sound, scientifically reliable information to guide national HIV/AIDS policy, practice and interventions.
- ensure that all HIV/AIDS-related research involving human subjects satisfies the ethical and human rights considerations of both partner and Malawi-based institutions, according to international best practice, while respecting national cultural sensitivities and norms.
- strengthen the capacity of the National Research Council. Council representation shall include individuals from government, academia and the community to advise and monitor HIV/AIDS-related research.
- ensure that the National Research Council establishes an HIV/AIDS-prioritised research agenda, which shall be reviewed periodically to guide all research activities.
- ensure that the National Research Council keeps an inventory of past and ongoing HIV/AIDS research undertaken in Malawi.
- ensure widespread and timely dissemination of national and international HIV/AIDS research results.
- ensure that researchers genuinely involve the community in the planning and execution of research involving human subjects.
- ensure that the results of HIV/AIDS research are widely disseminated for the benefit of participating communities.
- ensure that international HIV/AIDS researchers in Malawi collaborate with and develop the research capacity of existing institutions.
- foster collaboration with traditional healers to conduct research on traditional medicine for the management of HIV/AIDS.
- mobilise and ensure availability of adequate resources for HIV/AIDS research.

# Chapter 9

## Monitoring and Evaluation

### 9.1 Rationale

Monitoring and evaluation is essential to assess the success of the national response to HIV/AIDS and guide future strategies and interventions. Public health surveillance is particularly important to monitor the progression of the epidemic so as to inform new policies, strategies and plans. Unlinked anonymous testing is an effective method of HIV-screening for public health surveillance. Using a variety of social science methods, behavioural data can also be collected to monitor behaviour change in communities regarding HIV/AIDS. Easily accessible populations, such as women receiving antenatal care and voluntary non-remunerated blood donors, are a good source of surveillance data on HIV prevalence.

### 9.2 Policy Statements

Government, through the NAC, undertakes to do the following:

- implement a national HIV/AIDS Monitoring and Evaluation (M&E) plan to assess the success of the national response to HIV/AIDS and to inform and guide future strategies and interventions. In particular, M&E shall assess:
  - prevention of HIV infections.
  - improvement of delivery of prevention, treatment, care and support services.
  - mitigation of the impact of HIV/AIDS on individuals, the family and communities.
  - reduction of individual and societal vulnerability to HIV/AIDS.
  - strengthening of the multi-sectoral and multi-disciplinary institutional framework for co-ordination and implementation of HIV/AIDS programmes in the country.
- ensure that any necessary capacity building is carried out so that all partners are able to provide required information for the national M&E system.
- promote efficient use of data and resources by making sure that indicators and sampling methodologies are comparable over time.
- conduct anonymous, unlinked HIV/AIDS/STI sentinel surveillance.
- carry out periodic behavioural surveillance among target groups.
- improve surveillance data management and use, including regular dissemination of relevant surveillance data to its partners and to the general public.

## References

- Malawi National AIDS Commission. 2001. *National HIV Prevalence Estimates Report*. Lilongwe: Government of Malawi.
- National Statistics Office. 1998. *National Population and Housing Census*. Zomba: NSO.
- UNAIDS. 2001. *Report on the Global HIV/AIDS Epidemic*. Geneva: UNAIDS.

## **Appendix**

### **Proposals for Legislative Reform**

#### **A.1 Rationale for the Proposed Reform**

Certain legislative changes are necessary to facilitate the effective implementation of the HIV/AIDS policy.

#### **A.2 Proposed Legislative Reform**

##### *A.2.1 The Constitution*

- Section 20(1) of the Constitution, which provides for general protection against discrimination, shall be amended to include HIV/AIDS among the list of grounds on which discrimination is prohibited.
- Section 30(1) of the Constitution, which provides for affirmative action or positive discrimination in favour of women, children and the disabled, shall be amended to include PLWAs among those to receive special consideration for the right to human development.
- Section 22 of the Constitution shall be amended to provide that the minimum age for marriage is 16 to ensure that children under the age of 16 may not marry, even with parental consent.
- Section 31(c) of the Constitution, dealing with fair labour practices and equal remuneration for work of equal value, shall be amended to include HIV/AIDS.

##### *A.2.2 Labour and Labour-related Legislation*

- Section 5(1) of the Employment Act shall be amended to include HIV serostatus as grounds on which discrimination is prohibited.
- Sections 57(1) and (3) of the Employment Act shall be amended to include HIV serostatus among the list of reasons that do not constitute valid grounds for dismissal.
- In the definition section of the Employment Act the words "family responsibilities" shall be defined to include taking care of a sick spouse, child or parent, in order to protect employees who have obligations to care for sick family members.
- Sections 6(1) and (2) of the Employment Act, which make provision for equal pay for work of equal value without distinction based on the grounds set out therein, shall be amended to include HIV serostatus.
- The severance allowance schedule shall be reworded to make provision for graduated payments; i.e., irrespective of length of service, the first ten years will be at the rate of 2 weeks pay for every year of service and any additional years in excess of 10 years service will be at the rate of 4 weeks pay for every such additional year of service. This is necessary as the present system causes grave disparities in the amounts payable, particularly on the threshold.
- Section 35 (7) of the Employment Act shall be amended to make it clear that severance allowance in case of death should be paid to the surviving spouse for the benefit of such spouse, children and parents, as at present it is not clear whether or not severance pay is part of the estate for normal distribution to the extended family.
- Section 46 of the Employment Act shall be amended to include Registered Traditional Healers/Herbalists as being authorised to issue a certificate of incapacity to work in order to cater for the many Malawian employees who attend traditional healers for relief of HIV/AIDS symptoms.

- The Schedule to the Estate Duty Act shall be amended by increasing the estate duty free limit from MWK30,000 to MWK2,000,000 and to provide that for any value in excess of MWK2m the estate duty shall be 2% of the excess value thereof (and not the present 10%) in order to ensure that the dependants remain with a sizable amount of assets for their upkeep.
- The Taxation regulations shall be amended to allow for optional early retirement at age 45 and above or after a minimum service period of 20 years (as in the Civil Service) to ensure that employees living with HIV are afforded the opportunity to retire early.
- The Taxation regulations shall be amended to increase the allowable pension commutation from 1/3 to 1/2 of the total accrued pension to ensure a sizable gratuity for, inter alia, the HIV/AIDS retiree's resettlement and medical expense coverage.
- The Occupational Health Safety and Welfare Act shall be amended to include HIV/AIDS as an occupational disease for certain occupations.
- The Workers Compensation Act shall be amended to include HIV/AIDS as a scheduled disease and the part that deals with scheduled diseases should be put into force urgently.
- Section 16(1)(b) of the Workers Compensation Act shall be amended to delete the time limit of 24 months within which an infected employee can be allowed to claim compensation from the date of contracting a disease resulting in incapacity or death, since the time for progression from infection with HIV to incapacity (full-blown AIDS) is almost invariably longer than 24 months.
- Labour legislation shall be enacted to provide that:
  - Pre-employment HIV testing shall be prohibited.
  - HIV serostatus shall not affect job status or benefits.
  - No employer shall be permitted to disclose the HIV serostatus of an employee without the consent of the employee concerned.
  - HIV serostatus alone shall not be valid grounds for dismissal, termination of employment, or denial of entitlements

### A.2.3 *Criminal Laws*

#### A.2.3.1 Prostitution, Sodomy and Same-sex Sexual Practices

- Government shall engage in education and sensitisation campaigns with all stakeholders, including traditional leaders and religious groups, with a view to decriminalising prostitution, sodomy and same-sex sexual practices in the long term, for more effective management of the epidemic.
- The laws shall be revised to decriminalise aiding and abetting for all those who take HIV/AIDS intervention strategies to people engaged in prostitution, sodomy and same-sex sexual practices.

#### A.2.3.2 Sexual Intercourse with Children

- The Penal Code shall be revised to provide that sexual intercourse by an adult person with a child below the age of 16, whether or not there was consent, shall be a criminal offence.
- The Penal Code shall be revised to remove the defence of genuine belief in higher age in order to protect children from sexual abuse.

#### A.2.3.3 Rape, Attempted Murder, Assault Occasioning Actual Bodily Harm, Indecent Assault and Criminal Recklessness

- The Penal Code shall be revised to make marital sexual abuse a criminal offence.

- The Penal Code shall be revised to make the criminal offence of rape gender-neutral, thus covering the situation where a woman or a girl indecently assaults or rapes (seduces) a man or boy.
- The Penal Code shall be revised to provide that:
  - sexual intercourse through the anus without consent constitutes the crime of rape.
  - penetration of the anus or vagina using instruments, finger, tongue, penis and other objects or limbs without consent constitutes rape.
- The Penal Code shall be revised to criminalise female genital mutilation.
- The Penal Code shall be revised to make the prescription of sexual intercourse by traditional healers a criminal offence.

#### *A.2.4 Public Health*

##### *A.2.4.1 Testing*

- The Insurance Act shall be revised to regulate testing with informed consent for insurance purposes and regulations shall be promulgated to provide for and regulate the practice and procedure for such tests to ensure pre- and post-test counselling.
- Legislation shall be revised to regulate pre-employment testing for the Army, Immigration, Prisons and Police as part of a broader assessment of fitness for work.
- Legislation shall be enacted to permit HIV testing without consent in the following cases:
  - Anonymous unlinked testing for surveillance.
  - Testing of blood, body fluids and other body tissues for transfusion or transplant.
  - Diagnosis of an unconscious patient in the absence of a parent or guardian, where same is necessary for purposes of optimal treatment.
- Legislation shall provide that, in the case of HIV testing for diagnostic purposes, informed consent and confidentiality is maintained at all times.
- Legislation shall regulate home-based care.
- Legislation shall provide for 13 as the age of consent to voluntary HIV testing and 16 for other medical tests and treatment without parental consent.
- Legislation shall regulate blood-safety and tissue-transplant standards to ensure safety.

##### *A.2.4.2 Patient Rights and Confidentiality*

- The Public Health Act shall be revised to make specific provision for the protection of the rights of patients for better protection in health-care settings for all patients, including PLWAs.
- The Public Health Act shall be revised to make provision for prevention, treatment, care and support strategies for STIs and HIV/AIDS.
- A Patients Rights Charter shall be developed, promulgated and enforced to ensure the protection of patients' rights.

#### *A.2.5 Enforcement of Rights*

- The procedural rules for the courts shall be revised to provide for the suppression of plaintiff's identity in litigation launched to enforce the rights of PLWAs.

#### *A.2.6 Regulation of HIV/AIDS Related Goods and Services*

##### A.2.6.1 Condoms and Medicinal Products

- Regulations shall be promulgated that regulate adverts for condoms to ensure accurate and targeted information and promote wide availability of quality condoms throughout Malawi.
- Regulations shall be promulgated giving power to the Pharmacy, Medicines and Poisons Board to regulate advertisements for medicinal products to protect the public from bogus or dangerous drugs.
- Regulations shall be promulgated to more clearly define medicinal products and review the list of drugs requiring a doctor's prescription and dispensing by different cadres of health-care professionals.

##### A.2.6.2 HIV Test Kits

- Regulations shall be promulgated to govern:
  - the licensing, procurement, quality-assurance testing, distribution and use of HIV test kits.
  - the type and purpose of technologies permitted and the application of HIV testing technologies and testing algorithms.
  - the designation of an institution to be responsible for all quality-assurance testing of HIV test kits before such HIV test kits are put to routine use.

##### A.2.6.3 Voluntary HIV Counselling and Testing Services

- Regulations shall be promulgated:
  - designating the Ministry of Health and Population as the regulatory body for all HIV testing services.
  - licensing of HIV testing facilities, including criteria for qualification (1) for the license, (2) for the standardization and certification of VCT service personnel, (3) to regulate the certification and accreditation of counsellor training.
  - providing for principles and rules for types of counselling, the VCT procedures, quality assurance and supervision and monitoring.

##### A.2.6.4 Traditional Medicine, Traditional Healers and Traditional Birth Attendants

- Government shall, in consultation with traditional healers and TBAs, enact legislation:
  - to regulate the practices of traditional healers and TBAs.
  - to establish a regulatory body for traditional healers and TBAs.
  - to establish a Board regulating traditional medicine.
  - to regulate research in traditional medicines.
  - to provide for minimum precautions related to HIV transmission to be employed, in terms of traditional healers' tools and methods.
  - to establish the health care consequences of breach of minimum precautions related to HIV transmission.

–to set up a monitoring mechanism to ensure that minimum precautions related to HIV transmission are employed.

–to regulate public advertisements by traditional healers to ensure that they do not mislead the public.

#### *A.2.7 Workers' Laws and Ethics*

- Regulations shall be promulgated to govern the professional conduct of health care workers, including the definition of professional misconduct and consequences of breach thereof.

- The Medical Practitioners and Dentists Act shall be revised to clarify the services that may be rendered by different health care workers, including paramedics, based on international standards and taking into account local resource constraints.

- The legislation shall be revised to provide that any person dissatisfied with the decision of a professional body may appeal to the High Court.

### **A.3 Miscellaneous Legislative Changes**

#### *A.3.1 Customary Laws*

- All customary laws that help to spread HIV, or have become abhorrent, or that discriminate against women in marriage relationships shall be modified or banned after consultation with traditional leaders and the people.

#### *A.3.2 The Legal Aid Act*

- The Legal Aid Act shall be revised to ensure that the needy (including HIV/AIDS claimants) have expanded access to legal aid.

#### *A.3.3 Children*

- Laws for the protection of children shall be revised or enacted for greater protection of children in order to reduce vulnerability to HIV/AIDS.

#### *A.3.4 Marriage and Divorce*

- The Divorce Act shall be revised to provide for irretrievable breakdown of marriage as grounds for divorce, to take account of a situation where there is real risk of infection with HIV.

- Legislation shall be enacted to recognise marriage by repute and permanent cohabitation to provide for custody of children and inheritance in such households.

- Legislation shall provide for the minimum rights of women in any type of marriage to ensure their protection from abuse and exploitation in order to reduce their vulnerability to HIV/AIDS.

- The African Marriages (Christian Rights) Registration Act shall be re-enacted as the Christian Marriages and Divorce Act to ensure that Christian marriages are governed by Christian principles and civil laws, rather than as at present, where they are governed by customary laws.

- The Islamic Marriages and Divorce Act shall be enacted to govern Islamic marriages, rather than as at present, where they are governed by the Asiatic Marriages Act, which is an Act for people of Asiatic origin. [M16]

#### *A.3.5 Orphans*

- The legislation shall define an orphan as a person under 18 years of age who has lost one or both parents.

- Legislation shall be enacted to protect the welfare of orphans in orphanages, transit care centres, and both formal and informal foster care.
- Legislation shall be enacted to ensure that orphans are protected from any form of abuse, violence, slavery, exploitation, discrimination and trafficking.
- Legislation shall provide for the registration of orphans for better care, follow up and planning of their welfare.

#### *A.3.6 The Disabled*

- A Disabilities Act shall be enacted to ensure the protection of the rights of the disabled.

#### *A.3.7 Taxation*

- Tax legislation shall be revised to provide incentives for employers who provide comprehensive HIV/AIDS programmes in their organizations.

#### *A.3.8 The Wills and Inheritance Act*

- The Wills and Inheritance Act shall be revised to provide for the following:
  - To increase the punishment for property grabbing.
  - To allow both widows and widowers to inherit property.
  - To ensure that the formula for distribution of deceased property provides for a larger share to be inherited by the surviving spouse and children than by customary heirs.