

# ASSESSMENT REPORT

of the  
alternative care system  
for children in  
**MALAWI**





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## ACRONYMS

ACRWC	African Charter on the Rights and Welfare of the Child
AIDS	Acquired Immunodeficiency Syndrome
CCPJA	Child Care, Protection and Justice Act
CCI	Child Care Institution
CONGOMA	Council for Non Governmental Organisations in Malawi
CSO	Civil Society Organisations
DSWO	District Social Welfare Officer
EFA	Education for All
HIV	Human Immunodeficiency Virus
IHS	Integrated Household Survey
ILO	International Labour Organisation
MCC	Malawi Council of Churches
MGDS	Malawi Growth and Development Strategy
MHRC	Malawi Human Rights Commission
MoGCSW	Ministry of Gender, Children and Social Welfare
NAC	National Aids Commission
NGO	Non-Governmental Organisation
NSO	National Statistical Office
PDVA	Prevention of Domestic Violence Act
PSCCPCP	Protocol on the Sale of Children, Child Prostitution and Child Pornography
UNCRC	United Nations Convention of the Rights of the Child
UNGASS	United Nations General Assembly Special Session on HIV and AIDS
UN	United Nations
UNICEF	United Nations Children Fund
WMS	Welfare Monitoring Survey

## EXECUTIVE SUMMARY

The report focuses on the range of measures to prevent family separation, the various living arrangements for children in alternative care and the administrative arrangements managing those services. It also explores the national legal and policy framework which governs the delivery of all of these services.

### Key findings:

- Malawi has adopted key international and national instruments including alternative care, which - though robust - are not sufficient for offering child protection. And while Malawi has enacted and ratified legislation, instruments or conventions that protect and promote children's rights, there are gaps on some policy instruments at national level which pose a challenge in the implementation of the alternative care system in the country.
- The number of children in alternative care facilities cannot really be ascertained largely due to the fact that a number of such facilities are not properly registered with the Government. Largely, bureaucracy is to blame considering that the registration process takes long as reported by some care facilities. This problem is coupled with unavailability of data on the ground to sufficiently disaggregate the different population groups of children for identifying the group specific needs.
- Children are placed in alternative care for various reasons including the decision by the authority as a result of neglect or maltreatment of the children's parents or guardians, the decision by the court, request by both or either parent/care giver or by having the child certified as an orphan.
- Over the years, funding of public care facilities has been inadequate thereby affecting the operations of the Ministry at both national and district level. In addition, it is difficult to establish a very clear picture of funding levels for alternative child care among non-state actors due to the absence of such information records.
- Most care facilities including the Ministry of Gender, Children and Social Welfare (MoGCSW), do not provide after care support to children when they leave the centres due to inadequate funding.
- The Prevention of Domestic Violence Act (PDVA) mechanisms for registration of complaints of domestic violence is viewed as very broad because it does not specifically apply to matters of children in alternative care facilities. In addition, care facilities are mostly understaffed and with underpaid care workers,
- Some other key findings of this report are: a lack of national figures on pertinent areas in alternative child care, weak monitoring and enforcement of legislation, inaccessibility of legal representation, financial constraints, ignorance of the masses, low levels or lack of education, and unfamiliarity with legal procedures.

### Key recommendations

- There is a need to establish a robust data bank for alternative care systems with adequate information on groups of children in various alternative care forms. The National Statistical Office should also assist in collecting data from different forms of alternative care in addition to the data they collect for those children under the care of guardians.





- The Government should take a leading role in strengthening the monitoring mechanisms in order for the centres to be frequently monitored for quality control purposes as well as to timely address any challenges being experienced by the centres.
- There is a need to increase financial resources for child care in Malawi both within Government institutions and non-state actors. The national budget should increase allocations to programmes related to child development. Serious efforts should be made towards increasing funding to the districts for Gender, Children and Community Services, to match with the heavy workload in this area of work.
- There is a need to develop and implement a training program for care givers. The initiative should be complemented with sound recruitment mechanisms and well clarified career paths for such personnel.
- The general public as well as institutions should be made aware of the procedures for registering and running an approved alternative care centre for the provision of quality services.
- There is a need to ensure that the standards for child protection are harmonized under all legislation. To achieve this, there is a need for codification of laws in order to create a uniform landscape for child protection. A *Child Code* would address various issues affecting children under one law and would cover all issues affecting children such as violence, adoption, matters of disability, domestic violence and general child protection.



## INTRODUCTION

### a. Background to the study

SOS Children's Villages Malawi is a non-governmental child development organisation established in Malawi in 1991. Its mission is to build families for children in need, help them shape their own futures and share in the development of their communities. It is a member of SOS Children's Villages International which is currently working in 133 countries. In Malawi, SOS Children's Villages is implementing various child and youth development interventions focusing on the provision of direct essential services; capacity building of child care givers, government and community partners; as well as advocacy in the areas of care, health and education.

On 18 October 2010, SOS Children's Villages International unanimously adopted the UN Guidelines for the Alternative Care of Children (hereinafter referred to as UN Guidelines) as a key framework for its work. SOS Children's Villages has therefore dedicated itself to implement the UN Guidelines in its work as well as to advocate for their application around the world. SOS Children's Villages believes that the UN Guidelines have the potential to promote children's rights and improve the lives of millions of children, their families and communities around the world.

It is against this background that SOS Children's Villages Malawi conducted a national care assessment to ascertain the extent of how far the current policy and legal framework in the country is aligned to the UN Guidelines. It is expected that the results of this assessment will serve as a baseline study for an advocacy campaign which the organisation intends to undertake on quality care in the country.

The main purpose of the assessment is to...

- ... provide an assessment of the country legal and policy framework related to child care systems in the country.
- ... provide an assessment of the current child protection and child care system in the country.
- ... assess whether or not current preventative services to avoid family break up are effective and efficient.
- ... provide an assessment of the existing informal care system in Malawi
- ... assess whether or not the current policy environment provides a clear framework for care providers to document circumstances and motives that lead to the placement of children in formal care.
- ... provide an assessment of the current child care admission processes and placements in formal care.
- ... document and assess the current range of child care options in the country.
- ... provide an assessment of the country's policy framework in terms of support offered to children leaving care.
- ... provide an assessment of the country's national monitoring and follow-up systems for care institutions. This should include an assessment of the current national capacity to provide quality alternative care services for children.



- ... review current funding systems for alternative care institutions in the country. This should include a review of funding trends towards care institutions.
- ... assess the country's policy framework in terms of provision of an efficient and effective protection and complaints mechanism within different forms of child care.
- ... make recommendations on each of the issues raised under each of the above mentioned points. The recommendation should address gaps in the country's policy and legal framework.

#### **b. Assessment limitations**

The study experienced the inherent research limitations of time and resources to gather almost all possible sources of information. This research was also hindered by the lack of information being available on the ground even at the MoGCSW which led to leaving some aspects of the analysis incomplete. There is a need to develop a one stop shop on access to information on child development in Malawi as information currently is kept personal to the holder even though it is public information. Technicians in government departments as well as international organisations should be flexible enough to release information so that it can be used for general programming, monitoring and improving the welfare of a child. Furthermore, there was untimely provision of information by those willing to give information.

#### **c. Research methodology**

This study used qualitative research design. Both primary and secondary data was collected. The secondary data was collected through **desk research** that involved document reviews. A number of documents including reports from the Ministry of Gender, Children and Social welfare, UNICEF, PLAN International, Eye of the Child, Every Child, Youth Net and Counselling, Child Policy Forum, Better Care Network and SOS Children's Villages Malawi were reviewed. Further to these documents, all acts highlighting child issues in Malawi including the Child Care Protection and Justice Act (CCPJA) but also the Constitution of Malawi were reviewed. International child care instruments including the United Nations Guidelines for the Alternative Care of Children, UNCRC, Education for All (EFA), UNGASS, PSCPCP and ACRWC were reviewed. The document reviews provided more basis for field research.

**Field research** involved key informant interviews. These included Officers from the Ministry of Gender, Children and Social Welfare among them the District Social Welfare Officers, the Malawi Human Rights Commission, but also from various non-state actors. Personnel involved in training Social Welfare Officers were also gathered. (These were lecturers from the Catholic University but also tutors from Magomero Training College.) In total, the study involved 27 key informants.

The Key informant interviews used interview guides with both structured and semi-structured questions. The semi-structured questions allowed some level of flexibility which accommodated explanations where needed but also clarifications thereby enriching the data. Further to key informant interviews, **focus group discussions** were conducted with orphans. Firstly, nine orphanages were chosen. Three orphanages were chosen randomly from each of the three regions of Malawi. In each of these orphanages one focus group discussion was conducted. In total **nine focus group discussions** were conducted. Each of



the focus groups had those children that had stayed longest in child care institutions (CCIs). These focus groups were made up of 10 children for the sake of better management of the focus groups. Members of the focus groups included five girls and five boys. In addition, one focus group was conducted in one safety home. It also included five boys and five girls.

## COUNTRY LEGAL AND POLICY FRAMEWORK

### a. General country overview

Malawi is one of the poorest countries in the world with a gross per capital income of US\$ 320 (World Bank, 2012). The 2013 Human Development Index ranks Malawi 170 out of the 187 countries (UNDP, 2013). UNICEF Malawi's Child Protection Strategy 2012-2016 reports that an estimated 2.4 million children are either growing in abusive homes, witnessing domestic violence or its effects. 23% girls aged between 15 to 19 years are married as compared to 2% of the boys of the same age group. This has prompted the MoGCSW to settle for a marriage age of 18 years (as referred to in the UNCRC). The National Assembly in 2009 amended section 22 of the Constitution revising the minimum marriage age from 15 to 16 years (UNICEF, 2011, Mthawanji 2013, Jali 2013).

It is also reported that one in every four children are involved in child labour (ibid). The Mpherembe district in Mzimba has the highest number of child labour and child marriage cases. Most of these child labour cases happen behind closed doors posing a monitoring challenge. In an interview, Doreen Gaura, a child labour activist shares that there is a great connection between child marriages, child labour and child trafficking especially in cases of forced marriages.

**Table 1 Number of Orphans in Malawi**

Number of Children less than 18 years old	6.750.186
Number of Orphans less than 18 years old	837.300
Father dead	508.967
Mother dead	138.394
Both parents dead	189.939

Source: [http://www.nsomalawi.mw/images/stories/data\\_on\\_line/demography/census\\_2008/Main%20Report/Statistical%20tables/Population%20Characteristics.xls](http://www.nsomalawi.mw/images/stories/data_on_line/demography/census_2008/Main%20Report/Statistical%20tables/Population%20Characteristics.xls)

In Malawi, 13% (610,000) of children have lost one or both parents, half of these children lost them due to HIV related illnesses ([www.unaids.org](http://www.unaids.org)). Many of these children are living in dire situation with hardly any form of protection and care thereby being exposed to abuse, exploitation and neglect. There are currently 12,000 children living in child headed households and 6,000 children living in institutional care (ibid). There is scanty data on children living with disabilities for both formal and informal care but most of them experience social exclusion (UNICEF, 2011, Mthawanji 2013, Jali 2013).

**Table 2 Data on Alternative Care in Malawi**

Indicator	2000	2009	2010	2011	Data Source
Children entering formal care in 12 months (per 100,000 child population)	-	55	-	-	Better Care Network and UNICEF
Children living in formal care (per 100,000)	-	211	-	-	Better Care Network and UNICEF





Indicator	2000	2009	2010	2011	Data Source
population)					
Children leaving residential care for family-based placement	-	0.2	-	-	Better Care Network and UNICEF
Ratio of children in residential versus family-based care	-	-	-	-	Better Care Network and UNICEF
Number of child deaths in formal care (per 100,000 population)	-	0.01	-	-	Better Care Network and UNICEF
Contact with parents and family (%)	-	0.31	-	-	Better Care Network and UNICEF
Existence of individual care plan (%)	-	0.09	-	-	Better Care Network and UNICEF
Use of assessment on entry to formal care (gate keeping)	-	-	-	-	Better Care Network and UNICEF
Review of placement (%)	-	0.02	-	-	Better Care Network and UNICEF
Children in residential care attending local school	-	-	-	-	Better Care Network and UNICEF
Staff qualifications	-	-	-	-	Better Care Network and UNICEF
Adoption rate (per 100,000 population)	-	1.68	-	-	Better Care Network and UNICEF
Existence of legal and policy framework for formal care	-	Yes	Yes	Yes	Better Care Network and UNICEF
Percentage of CCIs with complaints mechanisms for children in formal care		86			Better Care Network and UNICEF
Existence of system for registration and regulation		Yes	Yes	Yes	Better Care Network and UNICEF
Total Population				15,380,888	World Bank <sub>b</sub> ; NSO
GDP (current (US\$))	-	-	-	\$5.621 billion	World Bank <sub>b</sub>
Poverty Head count	-	-	50.7%	-	World Bank <sub>b</sub>
Life Expectancy	46	52	53	54	World Bank <sub>b</sub>
Ratio of girls to boys in primary education	48.3	-	0.99	-	Malawi National Human Development Report, 2010
Ratio of girls to boys in	40.3	-	0.77	-	Malawi National

Indicator	2000	2009	2010	2011	Data Source
secondary education					Human Development Report, 2010
Under-five mortality rate (per 1,000)	189	-	122	-	Malawi National Human Development Report, 2010
Infant mortality rate (Per 1,000)	104	-	69	-	Malawi National Human Development Report, 20
HIV prevalence among 15-24 year old pregnant women (%)	15	-	12	-	Malawi National Human Development Report, 2010
Estimated HIV prevalence (15-49 years) (%)			10.6		MDHS, 2010
Number of people living with HIV				917,000	MoH, 2012
Death due to AIDS				46,172	MoH, 2012
Children orphaned by HIV and AIDS				597,000	MoH, 2012

## b. Constitution

Within the context of the law, the Constitution of Malawi ranks as supreme law. A number of amendments have been undertaken or proposed regarding provisions on children in the Constitution. The most recent amendments to the Constitution were undertaken in 2010.

The Constitution provides for children under *Principles of National Policy*. *Principles of National Policy* are non-binding pronouncements which are directory in nature and courts are entitled to consider them in applying or interpreting the Constitution or any other law or when determining the validity of decision of the executive branch of the Government. In section 13 (h), the Constitution provides that:

[The State shall actively promote the welfare and development of the people of Malawi by progressively adopting and implementing policies and legislation aimed at achieving the following goals—] *To encourage and promote conditions conducive to the full development of healthy, productive and responsible members of society.*”

In the current context, the State has an obligation to adopt and implement policy and legislation dealing with children. At hand, the context is alternative care. It is worth noting the varying circumstances of children living in alternative care are not clarified. However, it is



clear that the challenges (such as the lack of a care plan) that children face in alternative care would compromise their full personal development.

The Constitution has not necessarily embraced the right to health as espoused in relevant international human rights instruments. Under section 30 of the Constitution the right to health is not guaranteed in its own right but is provided for as a subset of the right to development.<sup>1</sup> The provisions in the Child Act discussed in the next sections also contribute to the reaching an adequate standard of health for children.

Children constitute a marginalized group in the Malawian society. Some children are often exposed to harsh conditions of life and do not enjoy certain aspects of childhood such as family, education and health. The absence of these aspects places a challenge in the realization of rights individually and generally. The Constitution provides rights in the context of a framework that encompasses an institutional enforcement mechanism, listing of actual rights and the limitations and restrictions that surround those rights. Chapter IV of the Constitution identified the institutions that may be approached for redress in case of violation. The courts, the Human Rights Commission, the Office of the Ombudsman and other pillars of Government (meaning the executive and the legislative power) for the promotion, protection and enforcement of the rights and redress of any connected grievances. The Constitution, however, introduces a caveat by requiring sufficient interest as a prerequisite for any person intending to promote, protect or enforce rights under Chapter IV.

In terms of actual rights in the context of children, the relevant rights include the following:

### **Right to life**

The right to life<sup>2</sup> is fundamental to the enjoyment of all rights. When considering the absence of conventional institutions of child protection, the hazards that attend to their lives are self-evident. It is also through respecting their right to life that the enjoyment of the rest of the rights becomes relevant. It is therefore critical that primary consideration should be given to the basic survival of children in terms of their right to exist be it under ordinary or alternative care in order for the children to enjoy the rest of the rights that are enshrined by national and international instruments.

### **Dignity**

In some cases of alternative care, there are no conventional parameters of dignity such as a home, a family and protection they offer. Some cases of alternative care include institutionalization of children from very tender ages. The mere absence of the dignifying factors contradicts the provisions of section 19 of the Constitution which declares the dignity of all persons, including children, inviolable.

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<sup>1</sup> “(1) All persons and people have the right to development and therefore to the enjoyment of economic, social, cultural and political development and women, **children**<sup>1</sup>, and the disabled in particular shall be given special consideration in the application of this right.

(2) The State shall take all necessary measures for the realization of the right to development. Such measures shall include, amongst others things, equality of opportunity for all in their access to basic resources, education, health services, food, shelter, employment and infrastructure”.

<sup>2</sup> Section 16 of the Constitution



Section 19 also provides that no person shall be subjected to torture of any kind or to treatment or punishment that is cruel, inhuman or degrading.<sup>3</sup> This provision raises the question of how children find themselves in alternative care. It is imperative that there should be an inquiry into the question whether being placed in alternative care is a decision that is self-made or thrust upon them. This provision also invites the question as to the circumstances and conditions under which children in alternative care live in order to ensure that their treatment is not inhumane or degrading.

### **Equality**

The Constitution prohibits discrimination of all forms and guarantees protection from discrimination on account of listed circumstances. The Constitution makes reference in section 20 (1) to “other status”. Although the Constitution does not specifically mention prohibition of discrimination on account of placement in alternative care, it cannot be envisaged that this circumstance is excluded from the definition of “other status”, as provided for by the Constitution. The Constitution provides that legislation may be passed to address inequalities in society and prohibiting discriminatory practices and their propagation. Discriminatory practices may be criminally punishable.

### **Family and marriage**

In the absence of a conventional social order in alternative care, the issue of family life comes to the fore. Children are entitled to the enjoyment of familial and marital rights. The family unit is entitled to State and social protection against, among other things, neglect, cruelty or exploitation. The dimensions of family life include entry, subsistence and exit from marriage. The Constitution emphasizes personal choice when it comes to family and marriage. In the absence of conventional family protection, children in alternative care may be coerced into marriage and to remain there. The State, under the Constitution, shall actively discourage marriage between persons where either of them is under 16 years. Alternative care is, therefore, an avenue which should be considered as a means of protecting children, especially the girl child from child and forced marriages.

### **Children**

*The Constitution* provides for rights of children in an exclusive provision that identifies children, as persons below the age of 16 years. The protection conferred by the Constitution, is comprehensive especially at the level of the supreme law of the land. The Constitution urges equal treatment of children before the law regardless of circumstances of their birth. The Constitution, however, omits to define the other circumstances of life that arise on their path to adulthood.<sup>4</sup>

The cardinal principle espoused by the Constitution in section 23 is that “the best interests and welfare of children shall be the primary consideration in all decisions affecting them”. This principle was introduced in the Constitution in 2010. However, in the absence of clarity

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<sup>3</sup> Subsection (3) of the Constitution

<sup>4</sup> Constitution of the Republic of Malawi, Section 23

[http://www.africanchildforum.org/clr/Legislation%20Per%20Country/Malawi/malawi\\_constitution\\_1994\\_en.pdf](http://www.africanchildforum.org/clr/Legislation%20Per%20Country/Malawi/malawi_constitution_1994_en.pdf)



on the reasons which lead to children being placed in alternative care, the principle becomes of limited application.

At statutory level, the *Adoption of the Children Act*<sup>5</sup> espouses the principle of the best interest of a child. It is through the guidance by this principle that the High Court of Malawi in the case of “In the Matter of the Adoption of David Banda (a male infant)”<sup>6</sup> interpreted the residence requirement in the Act liberally and granted an inter-country adoption to the applicants, having sought guidance from among other things the provision in article 21 of the UNCRC which provides for permission of adoption including inter-country adoption.

Section 23 of the Constitution of Malawi has also singled out protection to children from economic exploitation. It is clear that under various forms of alternative care, children may face economic exploitation. The Constitution, in a way, compensates for this hazard by offering further protection against treatment, work or punishment that is or is likely to be hazardous; interfere with their education; or be harmful to their health or physical, mental or spiritual development.<sup>7</sup>

The possibility of other forms of exploitation such as verbal, sexual, physical and emotional abuse has been ignored. The *Penal Code* sets the minimum age of sexual consent at the age of 16 years under section 138 where the offence of defilement has been created. The offence is reiterated under section 160B(1) under which sexual activity with a child is prohibited. Section 160B differs from section 138 as the definition of sexual activity under section 160B covers a wider range of activity beyond mere sexual intercourse which is the only thing covered by section 138. Section 160B also prohibits sexual activity with a child under what is called “aggravating factors”, such as use of an offensive weapon; relationship with a child victim and use of threats.

The Constitution, since 2010, also provides for the right to children to live in safety and security especially, among others, disadvantaged children. In appropriate cases, these children are entitled to State assistance. Children in alternative care clearly qualify as disadvantaged children and thereby in need for safety and security. This obligation is placed on the State but may be fulfilled in collaboration with other stakeholders.

One of the main shortcomings of section 23 arises in all the comprehensive protection it offers applying only to persons under the age of 16 years. International conventions for persons entitled to such protection extend this protection to 18 years. This gap of protection at the level of the Constitution is likely to place children above the age of 16 years and below the age of 18 in a hazardous position as they would be considered adults.

### **Rights of women**

Section 24, as read with section 22 (on family and marriage) of the Constitution, include girls who may enter into marriage, and as such, if these girls are without the protection of the

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<sup>5</sup>[http://www.africanchildforum.org/cfr/Legislation%20Per%20Country/Malawi/malawi\\_adoption\\_1949\\_en.pdf](http://www.africanchildforum.org/cfr/Legislation%20Per%20Country/Malawi/malawi_adoption_1949_en.pdf)

<sup>6</sup> High Court of Malawi, Adoption Cause Number 2 of 2006

<sup>7</sup> Compare with Article 32 of the CRC on child labour





greater family may be subjected to the vices that section 24 seeks to protect women from. These vices include denial of custody or guardianship of children of the union; unfair disposition of property held jointly with the spouse; unfair or no maintenance; or limitations on property ownership.

Section 24 also provides for extra ground for non-discrimination – gender and marital status and urges the State to introduce laws against practices such as sexual abuse, harassment and violence;<sup>8</sup> discrimination in work, business and public affairs; and deprivation of property.

### **Education**

One of the possible consequences of living in alternative care is limited access to education. In kinship care for instance, there is information that children are prevented from accessing education in favour of performing domestic chores or other economic activity in order to assist the care givers. The Constitution, on the other hand, provides for the right to all persons to education. The reality of providing for education to children then becomes a daunting task.

Beyond guaranteeing education as a right for every person, the Constitution has not harmonised its provision with the stipulation for the right to education in the UNCRC and African Charter on the Rights and Welfare of the Child (ACRWC). The only reference to the requirement of education to be free and compulsory is made in the Constitution's provisions on Principles of National Policy under section 13(f) (ii). However, this provision has only been made at the level of principles that should guide national policy. It does not create a right.

### **Economic activity and labour**

The right to economic activity is mentioned in section 29 while labour-related rights are mentioned in section 31. The interpretation of these rights might be difficult when it comes to the situation of children. On the one hand, children are entitled to economic activity which includes the right to engage and offer labour as a service to willing employers. At the same time, children also need protection from exploitation in the employment relationship. The Constitution, under section 31, offers entitlement to fair labour practices and fair remuneration. It further entitles workers to fair wages and equal remuneration for work of equal value without distinction or discrimination of any kind. The Employment Act<sup>9</sup> in section 21 makes reference to the minimum age of employment as 14 years. The restriction does not apply to work done in homes, vocational technical schools or other training institutions provided certain conditions are met.

### **Participation, Expression and Association**

The Constitution guarantees children's rights to associate freely including the right to form associations. In this regard, children are free to hold, receive and impart opinions without interference<sup>10</sup> and discrimination. Freedom of expression is a constitutional right of every

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<sup>8</sup> The CRC augments this position through the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography. Articles 35 and 36 of the CRC also urges Governments to take measures to proscribe child abduction, sale and trafficking and other forms of exploitation.

<sup>9</sup> Cap. 55:02

<sup>10</sup> Section 34



person.<sup>11</sup> Expression may also take the form of peaceful and unarmed assembly or demonstration.<sup>12</sup>

The contemporary discourse on child rights recognises the principle of evolving capacities of children, which responds to the pertinent question as to which extent children are able to meaningfully participate in decision making over issues that affect them<sup>13</sup>.

In terms of these articles, the UNCRC allows for the recognition that children in different environments and cultures and faced with diverse life experiences, will acquire competencies at different ages. Evolving capacities recognise that as children acquire enhanced competencies there is less need for protection and a greater possibility that they can take over responsibility for decisions affecting their lives. However, the various pieces of legislation have not made a comprehensive recognition of children's evolving capacities with the exception of the *Child Care, Protection and Justice Act* (see below) which provides for children's rights to participation in civil issues such as determination of a child's parentage, custody, and maintenance.<sup>14</sup> The Constitution does not expressly articulate the issues of evolving capacities and participation specifically with respect to children.

### **Arrest, detention and fair trial**

The Constitution has provisions related to how children who are in conflict with the law. Section 42 of the Constitution therefore is relevant in terms of how children are treated when they run counter to the law. However, matters such as entitlement to bail become a challenge where children (and their families) may not be in a position to find a reliable surety to ensure their attendance of court when called upon. As such, they are likely to remain incarcerated in lieu of sureties.

Another obvious challenge is legal representation for children in conflict with the law as in most cases private legal representation is expensive. While Section 23 of the Constitution provides that children in position of disadvantage are entitled to State assistance, in the absence of a parent or guardian to enforce some of these rights, children under alternative care are likely to suffer non-representation. This position is exacerbated by the limitation under Section 23 to recognise children as person under the age of 16 years and not 18 years. This means that a "child" between 16 years and 18 years would not enjoy the protection conferred by the Constitution to children in a position of disadvantage.

In any event, the Constitution puts it succinctly under section 42(g), that if the person is under the age of 16 years, they shall be treated consistently with the needs of children including the right not to be sentenced for life without possibility of parole; to be imprisoned only as a last resort and for the shortest period of time; to be separated from adults when imprisoned; to be treated with dignity; and to conduct the proceedings in a manner that takes into account the vulnerability of children, among others.<sup>15</sup>

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<sup>11</sup> Section 35

<sup>12</sup> Section 38

<sup>13</sup> See UNCRC article 5 and 12

<sup>14</sup> See section 8 of the Child Care, Protection and Justice Act

<sup>15</sup> Article 37 of the CRC



It must be noted that under the Penal Code, there is absolutely no criminal liability for persons below the age of 10 years. For a person between the age of 10 and 14 years, there is no criminal responsibility unless it is proven that at the time of committing the offence the offender had capacity to know that they ought not to commit the offence.<sup>16</sup>

In conclusion, while Malawi is a dualist State in terms of national and international instruments, it is clear from the exposition above that some of the main tenets of the major international instruments on children have been espoused and domesticated taken up into domestic law not at statutory level but at constitutional level.

### c. Child Care, Protection and Justice Act, 2010

#### **Overview**

The Child Care, Protection and Justice Act (hereinafter referred to as *Child Act*) came into force in 2010 and has become the principal piece of legislation on matters concerning children. The Child Act repealed the Children and Young Persons Act which only concentrated on the issue of child justice. The Child Act therefore consolidated matters of care, protection and justice under one umbrella. The Child Act has remained consistent with the Constitution in providing for the definition of a child as a person below the age of 16 years.

The Child Act has maintained the constitutional principle of the best interests and welfare of the child at legislative level. The Child Act has several provisions where persons or authorities handling children's issues are obliged to take the best interests and welfare of the concerned child into consideration.

The Child Act has put in place measures for furthering rights and responsibilities of children. It outlines duties and responsibilities of parents to their children in section 3. Under Division 3, and 6 of Part II, the Child Act has put in place mechanisms for children in need of care and protection; and protection of children from undesirable practices such as child abduction, child trafficking, harmful cultural practices, and forced marriage or betrothal, respectively. These two Divisions are most relevant for children in need of care and protection.

Part III of the Act draws on the provisions of section 42 of the Constitution and introduces comprehensive measures for dealing with children suspected to have committed offences, including measures for diversion, legal representation and establishment of Child Justice Courts.

#### **Family institutions**

Children may or may not have a family in the conventional sense. The Constitution has entrenched standards for the protection of the family environment through the recognition in section 22(1) of the family as "*the natural and fundamental group unit of society that is*

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<sup>16</sup> Section 14 of Malawi's Penal Code



*entitled to protection by society and the State". Section 22 (2) goes on to provide that "each member of the family shall enjoy full and equal respect and shall be protected against all forms of neglect, cruelty or exploitation".*

In addition, the Child Act in section 3 imposes duties on parents or guardians, in the case that the child has a family, not to deprive a child of his or her welfare and in particular to offer protection from neglect, discrimination, violence, abuse, exploitation, exposure to physical, mental, social and moral hazards and oppression; Also to provide proper guidance, care, assistance and maintenance for the child to ensure his or her survival and development, including in particular adequate diet, clothing, shelter and medical attention; Additionally, to ensure that during the guardian's temporary absence, the child shall be cared for by a competent person, exercise joint primary responsibility for raising their children (except where the parent or guardian has surrendered his or her rights and responsibilities in accordance with the law) and to be responsible for the registration of the birth of his or her children.

Furthermore, section 4 (3) of the Child Act obliges persons that do not have parental responsibility for a particular child, but do care for the child, to do what is reasonable in all the circumstances for the purposes of safeguarding or promoting the child's welfare.

### **Alternative care**

In terms of alternative care, the Act has put in place elaborate measures for the determination of children in need of care and protection in Division 2 of Part II. As noted earlier, children are naturally in a situation that would warrant care and protection. Section 23 of the Child Act identifies several situations, among others, where the child has been or there is substantial risk that the child will be physically, psychologically or emotionally injured or sexually abused by the parent or guardian or a member of the family or any other person; the child has been or there is substantial risk that the child will be physically injured or emotionally injured or sexually abused and the parent or guardian or any other person, knowing of such injury or abuse or risk, has not protected or is unlikely to protect the child from such injury or abuse; where the parent or guardian of the child is unfit, has neglected, or is unable, to exercise proper supervision and control over the child and the child is falling into undesirable association; where the child: (i) has no parent or guardian; or (ii) has been abandoned by the parent(s) or guardian(s) and after reasonable inquiries the parent(s) or guardian(s) cannot be found, and no other suitable person is willing and able to care for the child; where the child is in the custody of a person who has been convicted of committing an offence in connection with that child; where the child frequents the company of immoral, vicious, or otherwise undesirable persons or is living in circumstances considered to cause or induce his or her seduction, corruption or prostitution; where the child is allowed to be on a street, premises or any place for the purpose of: (i) begging or receiving alms, whether or not there is any pretence of singing, playing, performing or offering anything for sale and as a result the child becomes a habitual beggar; (ii) carrying out illegal hawking, illegal lotteries, gambling or other illegal activities detrimental to the health and welfare or which may retard the educational advancement of the child; or if the child is assessed by the Social Welfare Officer to be in need of care and protection.

Section 24 of the Act obliges police officers, social welfare officers, chiefs or any member of the community who finds on reasonable grounds, that a child is in any of the situations outlined above, to take such child and place him or her into his or her temporary custody or a place of safety. In terms of sections 25 and 26, a child taken into a place of safety or temporary custody has to be brought before a Child Justice Court or any Magistrate Court within 48 hours. Sections 26 and 28 provide for situations where such children may be taken for medical examination and procedures for their hospitalisation respectively.

Division 3 of the Act puts in place provisions for the appointment of persons that may assume guardianship over any child who is resident in Malawi, either through a will or choice of parent, an order of the court, or family of the child. Division 4 covers the issue of fosterage through public foster homes as well as private foster homes, the management of such homes, procedures for applications to foster a child, persons qualified to foster children, and responsibilities of foster parents.

Division 5 of the Act has given power to local assemblies to safeguard and promote the welfare of children, through: undertaking mediation in any situations where the rights of children are infringed, provision and maintenance of sufficient recreational facilities; conducting inspection of child care facilities to ensure maintenance of standards, undertaking inspections of structures, places and activities that impose potential or actual harm to children; registration of children with disabilities; provision of accommodation to abandoned or lost children; and tracing of parents or guardians of lost or abandoned children.

These provisions are pertinent when the extended family is taken into consideration, as the safeguards outlined in these provisions may afford protection to children in child headed households within the confines of the extended family system. However, the sections go on to identify other duty bearers and have put in place mechanisms that respond to the situation of children in child headed households in the event of failure by the extended family system to safeguard their interests.

#### **CASE STUDY**

The Child Care, Protection and Justice Act (CCPJA) was enacted in 2010 but there have been delays in its implementation. Regulations to provide process support to the implementation are yet to be developed and disseminated. Section 71 provides for the establishment of a Child Case Review Board. During the time of the study, the Government was still utilizing the Board of Visitor which was established by the 1947 Children's & Young Persons Act (which preceded the CCPJA). The study was informed that MoGCSW has written several stakeholders for the nomination of the names but it is yet to formalize the setup, three years after the law was enacted. As it stands, it means a lot of innovations which were incorporated into the new legislation in order to improve the welfare of the child are not in use. For example, Section 77 of the CCPJA requires that local authorities register children suffering from HIV/AIDS. It was also noticed during the discussion with key informants especially District Social Welfare Officers (DSWOs) as drivers of the Act that most of them have scanty knowledge on the contents of the CCPJA and it is yet to be released subsidiary legislation (Institutional Care Regulations). Copies of such relevant documents were also not readily available in the districts during the visit.



## Violence

The Malawian Constitution specifically protects children from violence through section 23(4). Section 23 of the Child Act puts in place elaborate measures for the prevention of all forms of physical, sexual mental violence injury and abuse and protection of children from violence through making provision for mechanisms where children exposed to the risk or to the actual subjection to these forms of violence can be put under care and protection. In terms of section 23(2) there is a wider definition of circumstances in which children may be deemed to be exposed to the risk or the actual subjection to these forms of violence. The section covers physical, emotional, psychological and sexual abuse.

The proscription of the following vices by the Act also protects children from violence: child trafficking; forced or child marriages; child prostitution; child abduction; subjection to harmful cultural practices; and child labour. Under sections 84(3) and 85 of the Act, a Child Justice Court can commit such a child to a foster home or order the recovery of a child by a person having lawful custody of the child, respectively.

The assessment found that exposure to violence for children in alternative care becomes exacerbated owing to the fact that children in these situations often live without parental care. The Prevention of Domestic Violence Act, 2012 (PDVA)<sup>17</sup> also has mechanisms that protect children from violence that occurs in the domestic arena. Children may end up in alternative care as a result of the domestic environment which they are fleeing or which has become hostile to the attainment of their basic rights. Violence in the home, for instance, between parents where the child is not directly affected, may contribute towards placing the child in alternative care. Section 3 of the Act stipulates the purpose of the Act in the following terms:

*“The purpose of this Act is to ensure commitment of the State to eliminate gender-based violence occurring within a domestic relationship and to provide for effective legal remedies and other social services to persons affected by domestic violence.”*

Section 2 defines domestic violence as “any criminal offence arising out of physical, sexual, emotional, psychological, social, economic, or financial abuse committed by a person against another within a domestic relationship.” Remarkably, violence is widely defined by the Act to cover physical, emotional, psychological as well as economic abuse. Section 2 basically defines a domestic relationship as a relationship between persons who are family members and share a household, residence or are dependent on each other socially or financially.

Under the PDVA, persons affected by domestic violence can apply for protection orders, tenancy orders or occupation orders for relief.<sup>18</sup> Under the PDVA, the court can order compensation for child victims of violence from the perpetrator. In addition, the court may also order that the victim be referred for counselling or other therapy alternatives.

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<sup>17</sup> [http://www.africanchildforum.org/clr/Legislation%20Per%20Country/Malawi/malawi\\_children\\_2010\\_en.pdf](http://www.africanchildforum.org/clr/Legislation%20Per%20Country/Malawi/malawi_children_2010_en.pdf)

<sup>18</sup> Sections 5, 11, and 15 respectively

Various statutes prescribe penalties for perpetrators on violence against children. The Penal Code punishes sexual abuse such as rape, which is of the highest order, and others of varying degrees such as defilement, indecent assault and incest. The Penal Code also criminalizes common assault as well as assaults causing grievous harm, unlawful wounding, abduction, kidnapping, murder and manslaughter.<sup>19</sup> The Penal Code also has penalties for failure to provide for a child.<sup>20</sup> All these are seen as forms of violence.

As already pointed out, the Child Act has also put in place penalties for child abduction, subjection of children to harmful cultural practices, child trafficking, subjection of children to forced marriages and subjection of children to prostitution.

Another key development following the enactment of the PDVA, the Malawi Police Service has established Victim Support and Child Protection Units at district level in order to provide child-friendly services to child in need of support or in conflict with the law. The Police, in collaboration with other stakeholders have also offered specialist training to officers in charge of these Units. On the part of the Government, there are plans to develop an integrated community-based victim support system to complement the efforts of the Police.

The effective implementation of laws and good practices may contribute to a protective environment for children where the issue of subjection to violence in various forms is concerned.

#### **d. International Instruments**

##### **United Nations Convention on the Rights of the Child (UNCRC)**

The United Nations Convention on the Rights of the Child (UNCRC) is an international human rights treaty which was adopted by the United Nations in 1989. The Convention, which was ratified by Malawi in 1991, spells out the basic human rights to which children (below the age of 18 years) are entitled. Some of the provisions of the UNCRC have already been referred to in this report and this part shall emphasize the other provisions relevant to the issue of children.

The Convention in Article 1 defines a 'child' as a person below the age of 18, unless the laws of a particular country set a lower legal age. The Convention applies to all children, regardless of their race, religion or abilities; or in the present context, the circumstances of their life. The Convention emphasizes that the best interests of children must be the primary concern in making decisions that may affect them. This includes thinking about how adults' decisions will affect children. This particularly applies to budget, policy and laws.

The Convention places a responsibility on Governments to take all available measures to make sure children's rights are respected, protected and fulfilled. This involves assessing their social services, legal, health and educational systems, as well as levels of funding for these services. In some instances, this may involve changing existing laws or creating new

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<sup>19</sup> See sections 253, 238,241, 259, 260, 209 and 211

<sup>20</sup> See sections 218 and 219

ones. Such legislative changes are not imposed, but come about through the same process by which any law is created or reformed within a country.

Article 19 protects children from all forms of violence including physical or mental harm and mistreatment. It is incumbent upon governments to ensure that children are properly cared for and protect them from violence, abuse and neglect by their parents or guardians. The Convention, however, does not prescribe what form of discipline parents should use on their children. Nonetheless any form of discipline that involves violence is unacceptable under the Convention.

Article 39 provides that children who have been neglected, abused or exploited should receive special help to physically and mentally recover and to reintegrate into society. Particular attention should be paid to restoring the health, self-respect and dignity of the child.

Children who are in conflict with the law have the right to legal representation and fair treatment in a justice system that respects their rights. Governments are required to set a minimum age below which children cannot be held criminally responsible and to provide minimum guarantees for the fairness and quick resolution of judicial or alternative proceedings.<sup>21</sup>

Article 42 provides that Governments should make the Convention known to adults and children. It is the responsibility of adults and society at large to help children learn about their rights.

### **African Charter on the Rights and Welfare of the Child**

The African Charter on the Rights and Welfare of the Child (ACRWC) entered into force on 29 November 1999 under the auspices of the Organization of African Unity, as it was called then. The ACRWC succeeded its predecessor, the Declaration on the Rights of the African Child which was adopted in Monrovia in 1979. The ACRWC is largely a replica of the UNCRC and replicates the listed rights under the UNCRC. One marked distinction between the UNCRC and the ACRWC is in Article 31 which provides for the responsibilities of the child towards his family and society.

Among others, Article 25 of the ACRWC calls on states to ensure measures that children deprived of a family environment are provided with alternative family care. The following ACRWC articles further expand on these entitlements:

- Protection of the Family (Article 18)
- Parent Care and Protection (Article 19)
- Parental Responsibility (Article 20)
- Adoption (Article 24)

All the above mentioned international and regional instruments of which Malawi is party to comment on the need for Malawi to develop measures to protect children and put a child's

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<sup>21</sup> Article 40

interests at the centre of any decision that will result in a child being separated from their biological parents.

### International Adoption

Globally, the Convention of 29 May 1993 in Hague enabled protection of children and co-operation in relation to inter-country adoption. However, Malawi is not party to the Hague Adoption Convention. The 1949 Malawi Adoption Children Act does not address inter country adoption.<sup>22</sup> Although the law is under review, currently in Malawi there is no post adoption reporting required.

Though there is no data available on inter country adoption, the study found the following adoption statistics from Malawi to the USA.

**Table 3 Inter country adoption between Malawi and the USA**

Year	Number
2012	6
2011	3
2010	4
2009	3
2008	2
2007	1
2006	1
2005	1
2004	No data
2003	3
2002	No data
2001	No data
2000	2

Source: [www.adoption.state.gov](http://www.adoption.state.gov) , 2012

Between 1999 and 2012, there were a total of 26 children, 10 male and 16 female ranging from the age of 1 to 17 years who were adopted from Malawi to the USA.

### e. The policy environment

The Malawi Growth and Development Strategy (MGDS) is the overarching framework for policy for Malawi. The MGDS has set out priorities for the Government to implement within a specified period. The first MGDS operated between 2006 and 2011. Sectorial policies promote the achievement of the MGDS. The MGDS under theme 2 on *Social Protection and Disaster Risk Management* provides for protection of the vulnerable which includes children. Without making reference to specific circumstances in which children live, the MGDS provides for:

<sup>22</sup> [www.adoption.state.gov](http://www.adoption.state.gov)



“Protection of the vulnerable is designed to ensure that the most vulnerable people with limited factors of production are sufficiently cushioned through programmes to improve health and nutritional status of under-five children, school-age children, orphans, pregnant and lactating mothers and destitute families.”(MGDS, 2007:xxi)<sup>23</sup>

Its successor, the MGDS II operates since 2012. There is no concrete policy that deals with children broadly. There are a number of policies that are guiding the national response to orphans and other vulnerable children. The major policies and legal instruments that are providing direction in the national response include:

### **National Policy on Orphans and Other Vulnerable Children (2003)**

The Government developed the National Policy on Orphans and Other Vulnerable Children in 2003 to show its commitment to orphans and other vulnerable children (OVC), as well as to act as an instrument in providing policy direction in addressing the needs of OVC. The overall goal of the National OVC Policy is *to facilitate support for care, protection and development of orphans and other vulnerable children in a coordinated manner in order to provide them with an environment in which they realize their full rights and potential*. The National Policy is aligned to a number of key international treaties on children, including the UNCRC; the ILO's Convention on Child Labour; and the ACRWC; among others. The Government developed the National Plan of Action for OVC to guide the implementation of the National OVC Policy for the period 2005-2009.

### **National Social Support Policy (2012)**

The National Social Support Policy (NSSP) was developed as a medium term policy with the ultra-poor and vulnerable in mind. The policy notes that this group includes the elderly, the chronically sick, orphans and other vulnerable children, persons with disabilities and destitute families. The policy is therefore aimed at facilitating implementation of programmes that will provide income or consumption transfers to the poor, protect the vulnerable against livelihood risks and enhance the rights and social status of the marginalized. The four themes of the policy are welfare support; protection of assets; promotion through productivity enhancement; and policy linkages and mainstreaming.

### **The Malawi Social Cash Transfer Programme**

The program was initiated in 2006 as a pilot in Mchinji with the aim of providing small cash grants to ultra-poor households without any able-bodied adult household members (labour constrained households). It is currently operational in 7 districts only and reaches over 26,000 ultra-poor and labour constrained households. The programme at local levels is executed by Social Welfare Officers with the programme secretariat at national level located in the Ministry of Gender, Children and Social Welfare (Weekend Nation, 2013:38).

### **Prevention of family separation**

There are several pieces of legislation that provide for various measures aimed at, directly or indirectly, prevention of family separation. The CCPJA provides for registration of birth of all children born in Malawi. This process helps to identify parents of children and also to assist

<sup>23</sup> <http://www.imf.org/external/pubs/ft/scr/2007/cr0755.pdf>





in the tracing process. The CCJPA also provides for a process of diversion for child offenders in order to increase the opportunity for the errant child to spend time with the child. The CCJPA also provides for counselling, a process which is likely to provide for parents and children an opportunity to undergo counselling in order to avert any separation or indeed reverse it in the event that it has already occurred.

Another statute that provides for counselling is the PDVA which also provides for the promotion of use of alternative mechanisms for resolving disputes. Family separation is provided legislatively. The CCPJA requires that when a child is placed in a place of safety, the child should be brought before the court within 48 hours.

### **Inter-country adoption**

The Adoption of Children Act is currently under review by the Law Commission in order to address the contemporary legal challenges and comply with the prevailing constitutional climate. As shared in this report, the 1949 Malawi Adoption Children Act does not address inter-country adoption.<sup>24</sup> It is the courts to decide on whether a child should be adopted or not. In essence, the system is bound to be abused. Nevertheless, the restrictions on international adoption rationalise the process of separating members of the family beyond international borders.

### **De-Institutionalisation**

In general, there is no such strategy in place that would promote de-institutionalization of alternative care. The Government appears to be promoting the use of alternative care in light of the challenges the country is facing with child headed households and children living or working on the streets. As such, it appears most unlikely that when the Government is making efforts to strengthen institutionalisation of alternative care, it would quickly be moving towards de-institutionalisation.

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<sup>24</sup> [www.adoption.state.gov](http://www.adoption.state.gov)



## CHILD PROTECTION AND CHILD CARE SYSTEM

### a. Overview of the child care system

The principal legislation on child care and protection is the Child Care, Protection and Justice Act, 2010 (CCPJA). It is anchored on the Constitution which provides for basic rights of the child. As such, the protection and care mechanisms do not only have legislative force but are constitutional in nature. The primary player in the system is the Government through the Ministry responsible for children. The Ministry has a department responsible for children headed by a Director of Child Affairs.

Under the Director, there are officers who all participate in various roles in child care and protection. Some of them are Social Welfare Officers; some are Probation Officers; and others are Child Protection Officers. Their mandate is defined by the legislation.

Owing to the overlap on the definition of the child (as mentioned above), some mandate over the children is exercised under the Ministry responsible for youth.

The Child Care, Protection and Justice Act is also supported by the Judiciary. The CCPJA creates specialist courts for children. These courts are subordinate to the High Court but exercise jurisdiction under the CCPJA.

The reach of public sector institutions is national in nature while most civil society groups are working on local level. Only in some cases, civil society groups do operate in more than one district.

The law has also given space to civil society in the protection and care of children. Civil society organizations (CSOs) or groups may be recognized in the various activities in the child care and protection chain. UNICEF reports that there are 7 CSOs per district providing protection services and the national child helpline is providing information, advice and counselling to thousands of children annually. (UNICEF, 2011:4)

The alternative care system therefore extends beyond the ministries responsible for children and also involves the police, prisons; families, and individuals. Other ministries that are involved include the Ministries of Youth, Justice and Finance. In civil society, players in the alternative care system include faith based organizations; human rights organizations; child rights organizations; UN Agencies, the MoGCSW and generally other loosely connected networks with or without formality. The Constitution of the groups or organizations is diverse with the children or the youth themselves involved in some instances.

Partners that operate at international level also participate in various activities related to alternative care of children. These partners include the United Nations agencies such as UNICEF; UN Women, UNODC and UNAIDS.

Most network groups, foster parents associations and associations of parents with children, look into institutional development of their members as a primary function. They also

coordinate the activities around provision of alternative care. Members of these networks also engage in psycho-social counselling activities for children and where applicable, towards parents whose children are placed in alternative care. Some members also provide for lobbying and campaigning for legislation and policies that favour children generally and in particular, towards children in alternative care.

### b. Established child care facilities

The availability and content of information on children in alternative care naturally determine to a large degree the extent to which policies and responses are likely to be appropriate and adequate. The UN Guidelines paragraph 69 specifies that: “coordinated policies regarding formal and informal care for all children who are without parental care should be based on sound information and statistical data.”<sup>25</sup> However, in many countries, much of the required or desirable data may not exist at national level, and this in itself is of course telling and should be noted.

Data on proportion of children in formal care settings before 2010 is scarcely available although the respective institutions were operating in the country at that time. It seems also that there is poor record keeping in these institutions as the baseline of the children in institutional care that was carried out in 2011 failed to access these records. On the other hand, data on foster care, place of safety as well as safety home are not available. UNICEF estimates that there are currently 12,000 children living in child-headed households and 6,000 children live in institutional care facilities (Government of Malawi/UNICEF 2011:3).

**Table 4 Table 4 Number of children in CCIs by region and gender**

Number of children registered in CCIs				No. of children that entered CCIs over a period of 12 months in 2010 and 2011		
Region	Boys	Girls	Total	Boys	Girls	Total
Northern	378	334	712	58	48	106
Central	1277	1070	2347	289	201	490
Southern	1667	1121	2788	559	293	852
<b>TOTAL</b>	<b>3322</b>	<b>2525</b>	<b>5847</b>	<b>906</b>	<b>542</b>	<b>1448</b>

Source: MoGCCD; All Children Count: A Baseline Study of Children in Institutional Care in Malawi, 2011

According to the aforementioned study, orphans are the majority in the alternative care system which makes up of 71% of the total children in all care facilities which translate to 4301 children. According to the Welfare Monitoring Survey, 13% of persons aged 20 years and below were orphans. The survey also shows that of these orphans, 8% had lost their father, 2% their mother and another 3% had lost both parents. Results also show that orphan

<sup>25</sup> <http://www.sos-childrensvillages.org/getmedia/c3c7c474-8a11-4f5c-a6bf-535579b9f7fe/UN-Guidelines-EN.pdf?ext=.pdf>

hood increased with age. The largest proportion of orphans (27%) is found among persons between 15 and 20 years of age. There are more orphans living in female-headed households (46%) than male-headed households (37%). Households headed by a separated or divorced person had the largest share of orphans (33%). (GoM, Welfare and Monitoring Survey, 2012:26)

**Table 5 Proportion of persons below of 20 years classified as orphans**

		Orphans	Mother dead	Father dead	Both dead
<b>Table 2.4: Proportion persons aged 20 years and below that are orphans by type of orphan hood according to background characteristics</b>					
	<b>Malawi</b>	<b>9.8</b>	<b>2.1</b>	<b>8.1</b>	<b>2.0</b>
<b>Sex</b>	Male	9.8	2.1	8.1	2.1
	Female	9.7	2.2	8.2	2.0
<b>Age</b>	0-4	2.4	0.4	2.5	0.2
	5-9	7.1	1.4	6.5	1.1
	10-14	13.2	2.9	10.9	2.8
	15-20	19.2	4.7	15.0	4.8
<b>Sex of household head</b>	Male	5.7	1.9	3.5	1.6
	Female	25.3	3.0	25.4	3.9
<b>Highest level of education completed by household head</b>	None	8.7	1.4	6.1	1.5
	Primary 1-5	13.1	2.5	9.8	2.8
	Primary 6-8	17.4	4.5	13.9	3.8
	Secondary and above	14.9	4.7	15.8	3.9
<b>Marital status</b>	Never married	6.0	1.9	6.5	1.7
	Married	6.3	1.7	3.7	1.7
	Divorced/Separated	58.3	7.8	52.8	8.3
	Widowed	14.2	3.4	11.5	2.0
<b>Place of residence</b>	Urban	11.9	2.7	7.9	2.9
	Rural	9.6	2.1	8.1	2.0
<b>Region</b>	Northern	7.5	1.9	7.5	1.3
	Central	8.3	1.7	6.8	1.7
	Southern	11.9	2.5	9.4	2.7
<b>District</b>	Chitipa	10.4	2.3	5.9	2.4
	Karonga	8.4	1.6	9.9	1.1
	Nkhata Bay	9.4	0.8	10.2	1.6
	Rumphi	6.7	2.3	7.6	1.1
	Mzimba	5.5	2.1	5.5	1.1
	Mzuzu City	11.5	2.2	7.8	1.7
	Kasungu	6.6	1.9	4.7	2.1
	Nkhotakota	12.5	1.2	9.4	2.3
	Ntchisi	8.5	1.4	6.3	0.7
	Dowa	6.1	0.9	5.9	0.3
	Salima	6.1	0.7	7.6	0.6
	Lilongwe Rural	7.1	2.1	4.6	1.7
	Mchinji	8.4	1.9	7.0	2.3
	Dedza	7.4	0.6	9.2	1.1
	Ntcheu	11.9	2.3	10.3	2.2
	Lilongwe City	15.8	3.2	8.8	3.9
	Mangochi	10.1	2.3	7.6	1.7
	Machinga	10.6	2.4	8.1	1.4
	Zomba Rural	14.9	2.4	9.4	3.5
	Chiradzulu	11.7	2.2	10.9	2.0
	Blantyre Rural	14.2	4.5	9.6	2.5
	Mwanza	9.8	2.6	9.4	2.9
	Thyolo	12.8	3.2	10.4	1.8
	Mulanje	14.4	2.7	9.9	5.3
	Phalombe	10.9	2.9	11.4	2.6
	Chikwawa	11.7	2.1	9.1	3.2
	Nsanje	9.8	1.5	11.8	2.5
	Balaka	16.8	3.2	9.4	4.0
	Neno	10.9	1.7	9.0	2.8
	Zomba City	8.8	2.4	7.8	2.2
	Blantyre City	12.3	2.8	7.0	3.7

*Source: Welfare Monitoring Survey 2011, National Statistical Office*

It is a requirement under the MoGCSW institutional care regulations that all care facilities should have registers for the children in their care. The registers provide such information as the status of children in a care facility and the records have to be kept up-to-date. However, not all care facilities have the registers of children in their facilities. It has been established that only 79% of the alternative care institutions (104) have specific information of children related to the disabilities of the children (MoGCSW, 2011). The social welfare officers also have difficulties to know the number of children in alternative care facilities in their districts. One DSWO summed up the scenario in the following statement: *“when they are placing the child into the institution, the DSWO is informed but when the children are leaving, that information is never shared”*.

An additional problem arises with the prevalence of HIV/AIDS in the country. The orphanage status has been exacerbated by the impact of HIV/AIDS on the population as in most cases the bread winners are the ones infected. The Government, through health personnel and National Aids Commission and Civil Society Organizations, is striving hard to sensitize the population on the effects of the disease and how to prevent infections. Poverty as well increases the number of children in alternative care centres as the remaining single parents as well as the guardians fail to look after the children.

The table herein highlights the UNAIDS<sup>26</sup> data about HIV / AIDS data in Malawi illustrating the scale of the problem.

**Figure 1 Summary of the 2011 HIV & AIDS infection and prevalence rate**

HIV AND AIDS ESTIMATES (2011)	
Number of people living with HIV	910,000 [850,000 - 970,000]
Adults aged 15 to 49 prevalence rate	10% [9.50% - 10.60%]
Adults aged 15 and up living with HIV	740,000 [690,000 - 790,000]
Women aged 15 and up living with HIV	430,000 [410,000 - 470,000]
Children aged 0 to 14 living with HIV	170,000 [150,000 - 200,000]
Deaths due to AIDS	44,000 [38,000 - 50,000]
Orphans due to AIDS aged 0 to 17	610,000 [550,000 - 660,000]

Source: <sup>1</sup> <http://www.unaids.org/en/Regionscountries/Countries/Malawi/>

<sup>26</sup> <http://www.unaids.org/en/Regionscountries/Countries/Malawi/>



Generally, there is no data on the minority groups in the facilities. This just confirms the findings of the many studies conducted on children in Malawi. There is insufficient disaggregated data of the different population groups of children. There is no regular data for children living outside of their original families (MoGCSW, 2011).

### c. Length of stay in alternative care facilities

Data on the national average length of stay in formal alternative care settings is missing but the following 3 institutions shared their experiences below. The study also revealed that this gap in data is due to the lack of care plans. And this scenario is further exacerbated by the lack of enforcement and knowledge of details of the CCPJA and its subsidiary regulations. None of the DSWOs interviewed had a clearly outlined plan for enforcement and the knowledge of the contents of the legislation also differed with those in the district having sketchy information as compared to the centre.

Samaritan Trust shares that those in the age group of 6-11 on average spend 3 years whilst those above 11 years spend at least one year as within this year they could have acquired vocational skills (brick laying, carpentry, tailoring, welding, and fabrication amongst others). At Samaritan Trust, they shared that neglected children tend to stay longer at the facilities because their parents hardly visit them.

It has to be noted that a number of care facilities do not have a system that stipulates the length of stay of children in care facilities. For instance, in a face to face interview conducted for this study, the Malawi Council of Churches (MCC) indicated that most care facilities, especially private ones, do not release the children simply on financial reasons. The presence of more children at the centre is on its own an incentive for donors to provide more financial resources.

At SOS Children's Villages Malawi, they would take care of the child until they child graduates at the university unless otherwise, and these should really be extreme cases. Other care facilities, like Chiuta Children's Home have tertiary support programme with institutions such as Development Aid from People to People (DAPP) that provides training to children in plumbing and carpentry among others. During the tertiary programme, the children are also provided with accommodation for 2 to 3 years.

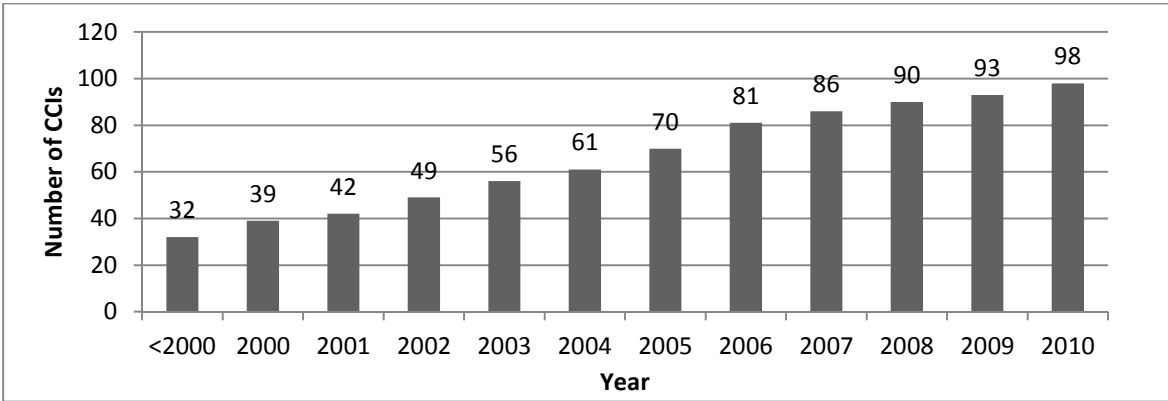
At a transitory centre in Lilongwe (Social Rehab), it has been established that the length of stay in alternative care depends largely on the development of the child at the centre. For instance, there are children that have stayed there for more than 5 years, because they attend primary school and now they are sitting for Junior Certificate Examination. On the other hand, at Chisomo Children's Club, another transitory centre under the Living Waters Church, reported that the longest a child has stayed with them was 4. The child was trafficked from Mozambique and was placed at the facilities whilst the case was in court awaiting formalities to transfer her to her home country.

The study finds that most care facilities have no capacity to handle the number of children that are being placed at such facilities. According to the MCC officials most of them have

reduced their tasks to make money from taking care of children, a view that almost all DSWO interviewed shared.

According to the MoGCCD (2011) report, “the oldest CCI was established in 1946 in Zomba District.” (MoGCCD, 2011:5) Between 1946 and 1970, 5 CCIs were established in the southern region. The oldest CCI in the central region was established in 1952. In the northern region, the first CCI was established in 1972. A total of 23 CCIs were established between 1974 and 1999. “In total there were 31 CCIs in Malawi by the year 2000.” (MoGCCD, 2011:5) The number of CCIs in Malawi has been increasing. By the end of 2000, there were a total of 39 CCIs. By 2010 at the time of the survey the number of CCIs in Malawi had more than tripled to 98. The total number of CCIs surveyed was 104 but 6 of them did not specify the year when they were established”. According to the report, this explains why there are 98 CCIs as shown in the figure below.

**Figure 2 Cumulative numbers of CCIs in Malawi 2000-2010**



Source: MoGCSW, 2011

## PREVENTATIVE SERVICES

After 2010, guidance on parenting and quality of parental care became a matter for legislative intervention. The Child Care, Protection and Justice Act (2010) and the Prevention of Domestic Violence Act (2011) have made clear provision for duties and responsibilities for parents and guardians under which the law would intervene in order to protect children from parents and guardians who have abdicated their responsibility. The PDVA has also listed the circumstances under which criminal sanctions may be imposed towards parents if harm and danger beset children as a result of compromised parenting and below standard parental care. The above-captioned legislation does foresee appropriate action for support and strengthening of families but no structures are in place for resourcing, targeting and implementing such measures. This might be attributed to the novelty of the legislation.

*The Government has proposed the Family Counselling Panels and Notifiable Party Misconduct under the Marriage, Divorce and Family Relations Bill (2013).* The church reported that normally, counselling seminars are held for couples among its membership base which is being envisaged as one way of strengthening family with the end result of reducing family breakdown. The counselling also takes place prior to taking marriage vows. The church has developed a curriculum and training manuals in order to assist information sharing to small community level (Limana/Mphakati)<sup>27</sup>

The state does not offer any services aimed at preventing family breakdown. This is attributed to general lack of guidelines and policy on this topic. However, the Social Cash Transfer programme or other social net programmes could play a pivotal role if only linked. However, some non-profit organisations do have programmes towards the families whose children have been re-integrated. Such programmes are aimed at financially supporting the family to be able to accommodate the child when he/she returns. These programmes have indirectly been found to further strengthen the families.

The Malawi Council of Churches<sup>28</sup> indicated that the marriage counselling programme is so far being implemented and has paid dividend especially in areas where such programmes are being implemented. The Council reported of positive results from areas where counselling seminars have been conducted and that marriage disputes have declined, even though the extent of such decline could not be quantified.

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<sup>27</sup> Limana/Mphakati is the lowest community level of church structure both for the presbyterians and Catholics what only differs is the naming. Limana is for presbyterians whilst Mphakati is for the Roman Catholics.

<sup>28</sup> Malawi Council of Churches is a 27 member affiliation institution: CCAP Blantyre/Livingstonia/Nkhoma; Anglican Diocese of the Upper Shire/Lake Malawi/Northern Malawi, providence industrial mission, independent Baptist convention, African Methodist Episcopal church, Evangelical Lutheran Church in Malawi, Free Methodist Church, Churches of Christ, Church of Nazarene, Zambezi Evangelical Church, African Evangelical church of Malawi, central African Conference of Seventh Day Baptists; Baptist Convention of Malawi, Salvation Army, Church of Africa Presbyterian; Moravian Church in Malawi, Pentecostal Assemblies of Malawi, United Methodist Church.



Thus, the most formal and notable marriage strengthening services in the country is through the church system. This is attributed to the fact that most Malawians belong to a religious grouping. Thus, there is adequate family strengthening services readily available across the country. On the other hand, the informal service available is through the marriage counsellors which exist traditionally. Despite this set-up not being well coordinated and organised, it has traditionally being considered as a condition for each and every person to have before getting married.

It is however not certain as to what extent traditional systems strengthen families as there is no data available at the moment. The day care centres are available nationwide but are congested in the urban areas and are mostly run by the private sector (UNICEF, 2011). The State only plays supervisory role to these day care centres. Mainly in urban areas the day care centres are close by and are numerous whilst in the rural areas, the day care centre are sparsely found.



## INFORMAL CARE

Traditionally, when one parent dies the surviving parents takes care of the children. And when both parents die it is the relatives who take care of the children. According to Cook (2000), in a matrilineal home, it is the uncle locally known as '*mwini mbumba*' who is empowered to make decisions on how the children will be looked after. In patrilineal society, though on the decline, the husband's young brother married the widow. Presently, there has been an influx of child headed households arising from death of both parents and as such children have to survive on their own and it is these children who are subjected to all sorts of exploitation, abuse and human rights violations (Mastwijk, 2000). The DSWO also shared that some children are running away from homes due to poverty.

In Malawi, there are a lot of gaps in registering informal carers as this is still done on voluntary. The MoGCSW shared that when it comes to informal care - which is not often encouraged - they often refer to the guardianship section in the CCPJA for guidance. The MoGCSW (2011) report sums up the scenario on the ground as follows: "there is a lack of regularly collected and analysed data on the numbers or circumstances of children being cared for outside of their original families, which makes it difficult for the Ministry of Gender, Children and Community Development and other stakeholders to effectively monitor progress in preventing separation, promoting family re-unification and ensuring the provision of appropriate alternative care for children who have lost parental care" (MoGCSW, 2011:1).



## MOTIVES FOR PLACEMENT

The CCPJA allows a police officer, social welfare officer, a chief or any member of the community to have reasonable grounds for determining that a child is in need of care and protection and place the child in a temporary home or place of safety. Since 2010, when the Constitution was amended and the CCPJA was enacted, the principle of the “best interests of the child” was introduced into national instruments. Poverty can no longer be used as the only reason for which a child may be removed from the family and be placed in alternative care. This is also a matter of law more than of policy. The CCPJA has provided for mechanisms for monitoring children at risk. However, this depends on resources available and it remains to be seen whether the legislative interventions will be implemented effectively.

The guarantee that parents and children fully participate in the decision-making process and are kept informed of their rights, particularly their right to appeal against a decision to remove a child is a measure provided for under legislation. It appears that the law, to a great extent, is not in favour of family separation and promotes family unity. While the legislation does recognize and give weight to the principle of the evolving capacities of the child, it must be recognized that under the current constitutional order, parents and guardians have the opportunity to appeal against any decision they do not support. To some extent assessment processes are informed by multi-disciplinary perspectives on, for example, education, health, and other relevant areas of concern.

In some cases, the children are placed in alternative care after being abandoned by parents. Apparently, the procedure to be followed in placing children in alternative care is not being adhered to as reported by a number of stakeholders consulted. In principle, the situation of the child is supposed to be assessed by the social welfare before being taken into alternative care. On the contrary, the report finds that some care centres visit the communities around them looking for children to take them into their care facilities, largely for an increased financial assistance from their donors. This is mostly common in institutions which are not registered<sup>29</sup> with Government.

In general, children are placed in alternative care on short term basis for various reasons which include the decision by an authority due to neglect or maltreatment of parents or guardians, decision by the court, request by both or either parent / care giver or indeed by having the child certified as orphan.

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<sup>29</sup> 32 care facilities sampled between August and September 2012 (by the Malawi Human Rights Commission), only 10 care facilities were registered, representing 31% of the institutions sampled



## ADMISSION PROCESS AND PLACEMENT/REVIEW PROCEDURES

The law requires the care and protection officer to conduct a gate keeping process under the CCPJA. Since the law nearest to the provisions of the CCPJA only dealt with matters of child justice, it is most apparent that if, in existence, gate keeping was only a matter of policy. The main authority is the court. Other players include the social welfare officers, child protection officers, police officers, and chiefs among others.

### a. Decision making regarding admission

However, the role of officers is meant to be guided by the decisions of the court. It appears that gate keeping measures, under the law, are meant for all forms of alternative care available and recognised by the law. In terms of the personnel involved, a mixed team is in charge of gate keeping. The courts, the care providers and social welfare officers are all involved in gate keeping exercises. In some instances, the police may be involved. The parents of the children are required to take an active role in making decisions about the children being admitted into foster care, public care or private care. The law does not mention the development of a care plan but it has set minimum standards of what might be needed to provide for each child.

### b. Operational modalities

As to whether the law guarantees that assessment policies identify and seek to address root causes for the unnecessary separation for children, such as discrimination, poverty or disability, the law does not make provision for this. The law, however, requires that periodic reviews should be undertaken to assess, among other things, the continuing necessity for a placement outside the family and possible reunification with the family. An initiative was undertaken by Malawi Human Rights Commission (MHRC) and the Ministry of Gender in training institutions in various areas one of which is the preparation of care plans in December 2011. The institutions were also sensitised on the need of creating management committees, handle complaints, registration for the institutions as well as de-institutionalisation. Still, a number of institutions do not have care plans even though they were supposed to prepare them. At Samaritan Trust they shared that they are responsible for developing the care plan.

Even though the regular placement reviews are supposed to be done periodically, this has not been the case because of limited funding to the Ministry of Gender and importantly the lack of subsidiary guidelines is crippling the effectiveness of the system.

This notwithstanding, about 17% of care facilities have management committees in place while the rest do not. Of these 17%, 15% have had committees made up of just the top management. The MHRC indicated that the care facilities were advised only later to re-constitute the committees by including members of the local community and representatives of the children. This arrangement is envisaged to improve the capacity to effectively provide the necessary services for the children.



In the past two year, at Samaritan Trust (after conducting 80 home assessments in the southern region and 14 home assessments in the central region of Malawi) 29 street children have been reintegrated in the southern region and 4 in the central region. They have a follow-up visit planned every three months though the monitoring visits have not been consistent.

Ideally, every child in a care facility is supposed to have a care plan which is formulated by the facility but the reality on the ground is totally different as shared in this report. However at SOS Children's Villages, it was reported that for children of less than 10 years, the care plans are formulated in their absence since they are considered not to know what they want in life. But when they get older, the care plans are reviewed and the child is given an opportunity to contribute to the formulation of the plan. The procedure is the same at Chisomo Children Club where a child is involved in the preparation of the care plan. Most importantly, there is the need to improve the establishment of individual care plans in all the care facilities so that children's development can easily be monitored.

### **c. Review and monitoring procedures**

As one way of monitoring progress of children in care facilities, it is a requirement that a child's placement is reviewed periodically in accordance with the rules and regulations for children's homes and orphanages of 2006. During the period under review, it has been found that the reviews of placement are conducted every three months, though not for all the children. This is confirmed by a similar report under the Ministry which indicated that only 2.3% children had their placement reviewed within the last three months.

It is envisaged that the yet to be established Child Care Review Board will be mandated to undertake regular reviews. Additionally, the yet to be released subsidiary regulation (Institutional Care Regulations revised) mandates the DSWO and other authorities to visit institutions twice a year, with or without notice to the registered provider

A team of experts is involved in the decision making on whether a child should remain or be moved to another placement. For instance, some children were violent during their stay at Social Rehabilitation and thus were transferred to Mpemba Reformatory Centre. This decision was made by a team of experts. To a large extent, the courts are involved in deciding the placement of a child from one facility to another. For instance, Chisomo Children Club had a trafficked child and a decision to move her from the facility took four months because of the court process.

For other care facilities, it was not possible to establish the number of children that have changed care facilities. Most of them reported that they have not changed care facilities, except on undesirable behaviour purposes.

On monitoring systems for the situation of reintegrated children after a placement in alternative care there are mixed responses. The MHRC reported that there is no system to monitor reintegration of children after placement of alternative care simply because the



Government does not have any system in place. At Samaritan Trust, it was mentioned that a DSWO will follow up on the street children that they have brought to the trust to check their progress. Possibly it is also because the Samaritan Trust is funded; DSWO visits are covered within the safety homes budget.

There is no proper support services offered to children as reported by the MHRC. It was further reported some care facilities such as SOS Children's Villages Malawi do provide adequate support to children as they leave alternative care. SOS Children's Villages Malawi provides tertiary skill-trainings to children and those that graduate from university. They are accommodated for a further period of 6 months during which they to look for employment. Other forms of support include social protection being offered to the family of the child. However, at Samaritan Trust, they provide school fees. They also offer psycho-social support as part of continuing measures to facilitate reintegration.

A child's reintegration is supposed to be facilitated through the Ministry of Gender which - among others. However, the procedures are not being followed under normal circumstances due to alleged lack of financial resources. At Samaritan Trust, they carry out home assessments and eventually reintegrate the children.

Chisomo Children's Club reported that it takes care of over 120 children in a year and of these, 75% are successfully reintegrated in their families and relatives. Of the children who are reintegrated, 90% are boys while most girls find themselves in other vulnerable places such as bars. This corresponds to the report by Ministry of Gender which found that more boys (68.3%) are reintegrated than girls (32.1%).



## RANGE OF CARE OPTIONS

The assessment shows that there are guaranteed practices that ensure regular contact between the child in alternative care, his/her parents, other family members, friends, and their community. The policy foresees the need to challenge social attitudes and the stigmatisation of children with alternative care backgrounds and specifically prohibit discrimination, for example, on access to education, health care, and employment. The policy ensures the availability of a suitable range of alternative care options appropriate to the individual needs of children requiring care and protection. The policy obligates care providers to conduct appropriate background checks to ensure the suitability of potential carers and care options. The policy obligates care providers and carers to ensure the full participation of the family and the child in planning, reviewing, and other decision-making processes regarding the alternative care placement. As a legislative measure, there is a rights-based framework that provides a holistic approach to ensuring the rights of the child. Under the CCPJA, there is emphasis on care and protection which guarantees, to a large extent, that basic rights are fulfilled.

The CCPJA obligates care providers; to ensure the implementation of rigorous, multi-disciplinary approaches to decision-making that includes the informed participation of children and their families. It obligates care providers to ensure that comprehensive records are kept from the outset so that, for example, the initial decision-making process provides a solid foundation for future care planning and regular reviews. It further dictates periodic reviews of the care placement with special consideration to the general conditions of care experienced by the child, the continued necessity of the placement, and the views of the child.

Legislation does not specify alternative care option but has created an open environment for different care options to be in place. These include: **Social Rehabilitation Centres** are considered as short-term care, **transit centres** are considered emergency centres where children stay waiting for a decision on their future placement, while **reformatory centres** are considered long-term simply because children would stay there up to the time they considered reformed.

The general picture in most alternative care facilities is that there are more children than the recommended number per care giver. For instance, reports indicate that Tiyamike Care Centre in Mulanje has over 100 children and the ratio of care giver to children is 1:15. In SOS Children's Villages Malawi, there are 12 houses each house has a capacity of 10 children and this implies that there is capacity for 120 children. During the period under review, the organisation cared for 107 children which is below its capacity. Nevertheless, it should be noted that most care facilities are operating with more than what they can accommodate.



## CHANGE OF PLACEMENT AND LEAVING CARE

It is mandatory, in national law and policy to ensure that children who move out of alternative care are fully informed of, and involved in, preparations for their departure and future life. Though the numbers are not available, alternative care facilities reported of care leavers giving advice to other children in these facilities as mentors. For instance, at the Social Rehabilitation Centre in Lilongwe, a girl who went to secondary school from the facility later on visited the centre to provide emotional support to other children at the centre.

According to the MoGCSW official, a DSWO will carry out an assessment before taking the child back to their original homes. In the assessment, among others they also assess issues of child safety including food security in their home. The relatives, especially those who are going to be looking after the child, are also encouraged visiting the child at the care facility. Older children are encouraged to visit their relatives during the holidays.

One major problem regarding after care was shared by a MoGCSW officer *"The only problem I see with the programme is that it only supports the family with a starter-up support and what happens thereafter is the child's family business "*

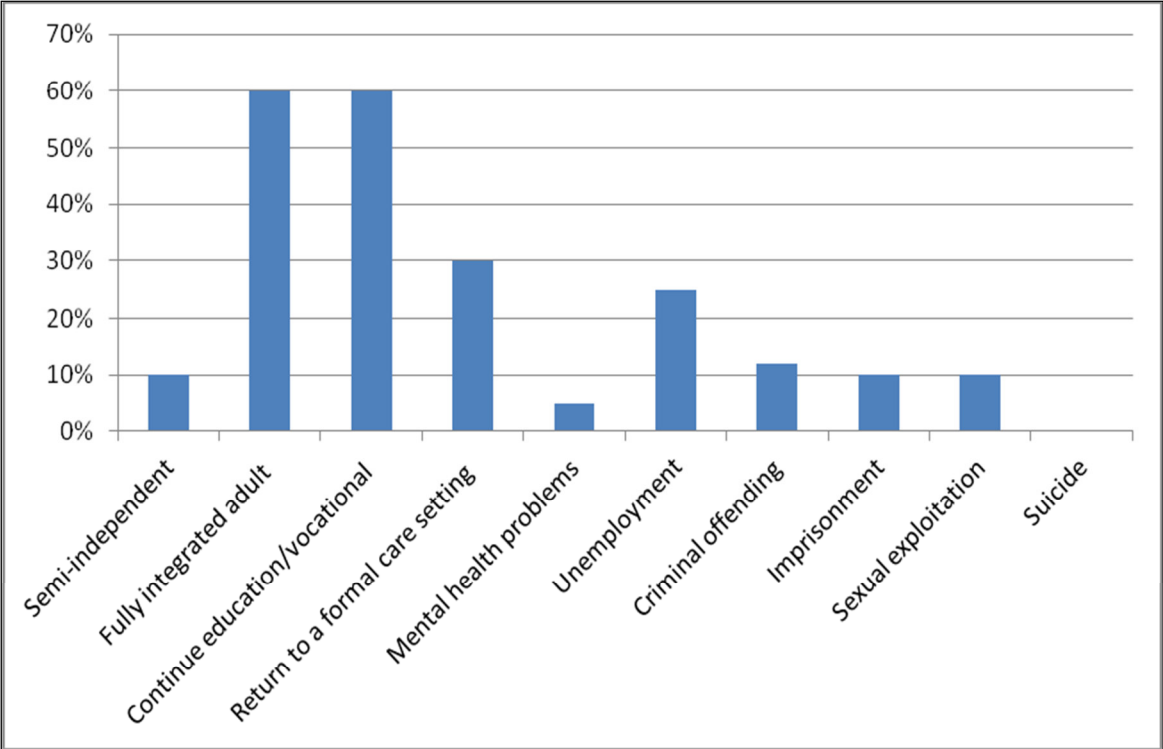
Except for private institutions, most public alternative care facilities do not provide after care support to the children as they leave the centres except for SOS Children's Villages among other few care facilities that provide grants to children. SOS Children's Villages provides tertiary training to children and during the 2012/2013 academic year, 144 students were enrolled in vocational competence-based training programmes (Construction, Tailoring, Hotel & Catering Management, Agriculture and Entrepreneurship). Such programmes are aimed at preparing students for life outside the care facility and enable them become independent adults. In other care facilities, such as Samaritan Trust, there are no fora to exchange notes or assisting in improving the status-quo, as reported by an official there.

Very limited support is available for after care support due to inadequate financial support. For instance, at Samaritan Trust, they provide fees, uniform and farming inputs if funds are available but not most of the times. This also leads to the question as to what happens to this support if the family has no access to land especially in the urban areas.

The aftercare support system is not of good quality because of lack of funding even though the plans of aftercare support are well articulated. At Samaritan Trust, they shared that children that have been in their care can come back only to seek advice.

At Samaritan Trust, for new timers it is up to 18 years and old timers they go up to 21 years. NB: New timers are children who Samaritan Trust has just started working with the safe home since the new project (October 2012).

**Figure 3 After care services**



Source: Samaritan Trust

The review finds that children are engaged in various activities after leaving a care facility. For instance, a study at Samaritan Trust finds that 60% of the children leaving the care facility were fully integrated within their biological families while others continued with their formal education or vocational training. About 30% of the children had returned to the care facility as they could not manage to live independently outside the facility.





## **AUTHORISATION/INSPECTION/ACCREDITATION/LICENSING**

The CCPJA (2010) mandates the Ministry responsible (in this case the Ministry of Gender, Children and Social Welfare) to authorize establishment of a child care institution. The Act further states that authorization shall be granted upon the satisfaction of necessary requirements. However, following the enacted of the Act, regulations for the establishment of child care institutions have not been put reviewed.

On its part, the MHRC undertakes the assessment of alternative care facilities in the country and the recent assessment revealed that there are only 11 care centres that are registered with the Ministry of Gender as a requirement, representing 34% of the alternative care centres sampled. It must be mentioned though that a number of care centres exist on the guise that they registered the centre with the NGO Board and the CONGOMA and not with the Ministry of Gender Children and Social Welfare. The DSWO interviewed shared that this scenario puts them in a very difficult position as owners of private care facilities use these certificates to proof they are licensed and yet CCPJA only mandates MoGCSW.

The Ministry has therefore in some districts experienced difficulties to determine the actual number of children in such care facilities because the social welfare officers do not have a record of the number of children placed there. The registration of such provides the Ministry authorities an opportunity to establish the number of children in all alternative care facilities in the country. The authorities would also be able to monitor activities and treatment of children in these facilities.

Once registered, each care facility is required to renew its registration every 2 years. However, at Samaritan Trust it was shared that they are never required to renew but this could be due to lack of knowledge on what institutional care regulations stipulate. At the time of this study, the MoGCSW shared that the regulations are still in draft form. In the revised institutional care regulations, it clearly outlines a system for assessing suitability of private providers of alternative care.

At district level, a team is supposed to assess suitability of every new place requiring registration or renewal of its license. Among other things that are being looked into include food provisions, bedroom, toilets and provision of other amenities. The team then is expected to make recommendations on their findings as to whether to register the care facility or indeed renew its license. When the licence has been granted, the care facility is closely monitored on its activities and further reviews are expected to be undertaken regularly. However, this is not being followed on the ground according to reports from the MHRC. There are no records to indicate such practice is taking place in most districts.

The social welfare offices are mandated to conduct inspection tours to alternative care facilities though not all of them do so. The team to undertake the assessments comprise, among others, of the DSWO, the police, the district commissioner, the Ministry of Health and the Ministry of Labour officials. Civil society and nongovernmental organisation operating in the district are also included in the team. Following the inspection, some private facilities are

advised to improve their care provision. However, there are others that do not improve their services and the law requires that they should be closed down.

There is no annual data indicating that some applications have been rejected after applying to operate an alternative care facility in the country. The Chisomo Children's Club reported that an alternative care facility needs to register with local authorities such as the City Council, register with the CONGOMA and also register with the Ministry through the District Social Welfare Officer. Thus, there is the need to streamline the registration system for all alternative care facilities in the country.

Below are licence and premises registration fees as provided in the yet to be released institutional care regulations:

**Table 6 Registration fee categorisation**

	Matter	Fee
1.	For an application for a private care institution	
	(a) upon issue	K500,000 <sup>30</sup> non-refundable
	(b) every renewal	K675,000 non-refundable
2.	For registration of premises for a private care institution	
	For those with not more than 10 beds	
	Upon issue	K20,000
	Upon every renewal	K25,000
	For those with 11 to 25 beds	
	Upon issue	K30,000
	Upon every renewal	K35,000
	For those with 26 to 50 beds	
	Upon issue	K40,000
	Upon every renewal	K45,000
	For those with more than 50 beds	
	Upon issue	K50,000
	Upon every renewal	K55,000

Source: MoGCSW, 2013 - Institutional Care regulations revised

<sup>30</sup> As of August 2013, US\$1=325 MWK

## FINANCING ALTERNATIVE CARE

The funding of alternative care rests with the Ministry of Gender, Child and Community Development whose budgets, just like other Government Ministries and Departments are approved by the National Assembly. The Mission of the Ministry of Gender, Child and Community Development is “to promote and protect women and children using community-based and welfare approaches”.

The study undertook an analysis of the financial allocations to the Ministry aimed at assessing the Government’s financial commitment towards alternative care facilities in the country. It has been found that the allocations to the Ministry have been fluctuating over the past four years both at both central level as well as district councils. For instance, in the 2011/2012 national budget, the Ministry was allocated MK1.7 billion representing 0.6% of the national budget of MK303.7 billion. The allocation to the Ministry however increased to MK10 billion which represents 2.5% of MK408.4 billion in the 2012/2013 financial year. In the recent budget, the allocation to the Ministry has however been reduced to MK4.8 billion against a further increase in national budget to MK630.5 billion. Thus, there is a further reduction in resource availability to the Ministry despite an increase in the overall national budget as presented in Table 9 below.

**Table 7 Central funding and Social Welfare funding**

<b>Sector Description</b>	<b>2010/2011 Approved Budget</b>	<b>2011/2012 Approved Budget</b>	<b>2012/2013 Approved Budget</b>	<b>2013/2014 Estimates</b>
<b>Social Welfare Services</b>	243,960,000	269,280,000	347,820,000	540,250,000
<b>Community, Youth and Sports Development</b>	298,970,000	334,310,000	431,450,000	607,940,000
<b>Ministry budget</b>	617,620,000	1,675,870,000	10,033,330,000	4,756,070,000
<b>National Total</b>	297,000,000,000	303,700,000,000	408,390,000,000	630,535,000,000
<b>Ministry allocation of National budget</b>	0.2%	0.6%	2.5%	0.8%

Source: GoM, Financial Statements – Budget Document NO 3

### Box 3: The Decentralisation Framework

Since 1998 the Government has been working on devolving decision making, finance and management of functions to quasi-autonomous units of local government. The Social Welfare department is part of this set-up. The following social development services have been devolved: Early Childhood Development and Family and Children Welfare and Rehabilitation Services. On specific allocations to Social Welfare Services which is responsible for coordinating alternative care in the country, among other functions, A discussion with one of the DSWOs revealed that on average they receive MK 130,000.00 per month to oversee the implementation of over seven activities namely: family and child



welfare; probation and after care; hospital social care; school social work; destitution; NGO coordination; integration and rehabilitation. “Ideally, MK500, 000 to Mk 600,000 per month would cater for all activities. Under destitution we normally get daily requests for transport to take children to their original homes but with this kind of funding we cannot manage”, bemoaned a DSWO.

### **District funding**

Considering that a number of activities take place in the district, and further that most alternative care facilities are in the districts and villages, the report undertook an analysis on the funding allocations on Gender, Children and Community services. Over the 6 years, the report finds that the as a result on devolving functions to the districts, the Ministry of Gender, Children and Social Welfare has had its budgetary allocations transferred to the districts following the enactment of the Local Government Act of 1998. The Act provides for the legal framework for the implementation of the Decentralisation Policy. Among other functions under the Gender, Children and Community Services, the councils are expected to implement activities to achieve outputs of economic empowerment and social welfare. These include provision of bursaries to OVCs, training of business groups, training of care givers and training of communities on avoiding harmful cultural practices.

The implementation of such activities has largely been affected by the minimal funding the Gender, Children and Community Services received in comparison to funding of other sectors in the district. The report finds that the Gender, Children and Community Services between 2007/2008 to 2011/2012 financial years received less than 1% of the total funding allocated to all district councils across the country, except for the 2012/2013 financial year where funding rose to only 1.24%.

It is therefore not surprising that most DSWOs interviewed indicated a very low and inadequate funding for effective implementation of child care activities in the districts as compared to other sectors such as education and agriculture which largely enjoy the lion's share of the budget. It should be mentioned that the allocations towards the Ministry of Gender at district level seem to have doubled from 0.68% in 2011/2012 to 1.24% in 2012/2013 simply to accommodate the devaluation of the local currency against the major trading currencies.

The profound observation is that an average of less than 1% of the total Central Government Fiscal Transfers for the district is budgeted for activities having direct impact on gender, children and community services. The status quo creates a significant variance between the level of budget allocation and the desired policy, especially focusing on the status and welfare of children in alternative care facilities.

A 2011 African report on child well-being focusing on child budgeting<sup>31</sup> reveals that Malawi was one of the countries that performed fairly well in allocating resources in sectors that

<sup>31</sup> [http://www.ancefa.org/IMG/pdf/African\\_Report\\_on\\_Child\\_Wellbeing\\_2011.pdf](http://www.ancefa.org/IMG/pdf/African_Report_on_Child_Wellbeing_2011.pdf)



benefit children and recommended on Malawi to act on three priority areas<sup>32</sup> but now it remained to be seen whether the forthcoming report will carry the same assessment as the 2013/14 budget for MoGCSW has been slashed as highlighted above.

During the period under review, it has been found out that the Government does not have programmes being implemented to prevent family breakdowns. Likewise, the national budget has no provision of resources for this cause. However, care facilities such as SOS Children's Villages have indirect programmes that support families and in turn help in strengthening families of children that are being looked after in the facility.

For private care facilities, they have different sources of funding ranging from well-wishers, donors, local communities and churches while others are also funded by the founders of such care facilities. In most cases, funding is controlled centrally.

The Adoption of Children Act is the principal legislation on matters of adoption. The current law has imposed restrictions on inter-country adoption which has been a subject matter to litigation. One of the most perplexing requirements for international adoption is the requirement for residence within Malawi for a certain period prior to the adoption. However, in a number of cases disposed in front of the courts, the residence requirement has been waived and an order of adoption has been granted.

The law does provide for sufficient guidance in terms of what should be taken into account before an order of adoption is granted. The challenge might be whether the law is modern enough to take into account the contemporary issues in adoption and child rights in general. On this, the MoGCSW officer shared that the Adoption Act is undergoing a review after the general outcry over its noticeable gaps. Neither the law nor policy encourages adoption of sibling groups despite this being one of the best methods of de-institutionalisation of alternative care, adoption is not seen as a quick route to this end. It was also shared at MoGCSW that courts, DSWOs and the ministry itself keep records.

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<sup>32</sup> (1) Malawi to prioritise budget allocation and implementation to the realisation of children's rights and well-being; (2) Malawi to ensure efficient use of resources through transparent budgetary frameworks and processes; (3) Malawi to ensure adequate support for, and investment in, early childhood development.



## STAFF CAPACITY

The issue of capacity is being addressed in most care facilities. The level of capacity varies from private to public care facilities and mainly depends on the owners of the facilities as most facilities in reality have not trained social workers. The MoGCSW has conducted CCPJA orientations in 17 foster homes in the southern region, 12 in the eastern region and 21 in the central and northern region. It was also shared that out of 28,000 caregivers, the Government so far has trained 14,000.

SOS Children's Villages revised the minimum entry qualification for care mothers from Junior Certificate to Malawi School Leaving Certificate of Education (equivalent of A level). Once they are identified, the SOS Children's Villages mothers are given a 6-months training on care-giving. At Chisomo Children Club, the carers are also given specialised training which includes the following:

- Integration of children into family and community
- Education
- Income generating activities (family empowerment, access to loans etc.)
- Child rights and advocacy
- Psycho-social support.

The competence, suitability and motivation of care staff are clearly important determinants of the "quality of care" provided. This section examines some of the basic issues that can influence those factors. Samaritan Trust has a child protection policy that protects children from all forms of abuse hence every worker has to follow these rules. In addition, volunteers are monitored on a regularly basis to make sure they work in compliance with these rules.

Despite the Government of Malawi setting standards on the qualification and adequacy of staff in care facilities, the study's findings show that there are generally low staffing levels in most facilities. Most facilities, especially public ones have more children than in private institutions. At SOS Children's Villages, the ratio of children to care giver, setting is 10 children to 1 while at Social Rehabilitation the ratio is 15 children to 1. It has been established that high staff turnover in most public facilities is affecting the ratio of children to care givers. The review further finds that most care givers have undergone hands-on training when they are recruited, especially in public care facilities due to limited funding. This was also reported by the Ministry of Gender where it was noted that 71% of the caregivers in care facilities have not been trained in child care or related issues. Thus, this reflects on the quality of care children receive in such facilities.

The alternative care facilities in the country have developed over the year. In distant past, it was noted that some care facilities existed but not as organised as they are at the moment. With each passing time, a number of care facilities mushroomed across the country to 104 at the moment. The capacity to adequately accommodate all the children in need of care and support has equally developed. There are guidelines expected to be followed each time a care facility is being established.





It has been reported that in some care facilities, such as SOS Children's Villages, the Social Workers should have a minimum qualification of the Malawi School Leaving Certificate of Education (O level) whereas in the past, the minimum was Junior Certificate. This simply shows that the capacity is developing in view of the dynamic world with the ever changing demand of living conditions. In addition, it has been reported by both SOS and Chisomo Children's Club that the Social Workers undergo training where issues of psychology, socio-economic support among others are covered. However, it must be mentioned that the number of care facilities generally accommodate more children than the capacity due to increased demand for such.



## PROTECTION; HUMAN RIGHTS VIOLATIONS, VIOLENCE AND COMPLAINTS

As a matter of law, all forms of corporal punishment are illegal and unconstitutional. However, it is still practised. The regulatory framework that oversees an open and impartial complaints procedure is established by law. But it is not implemented on the ground and needs to be rolled out in order for children to benefit from it. The introduction of Child Protection Officers under various titles and designations (*Enforcement Officers* or *Social Welfare Officers*), probably means that there will be a clear monitoring mechanism for complaints from children. These officers under some legislation like the CCPJA have been mandated to even make court applications on behalf of the children. The officers, upon hearing or noticing a matter of concern or a complaint, becomes the “person of trust” who can pursue the complaint to its end.

The law also prohibits violence in all its manifestations and ensures that children, especially those living in special circumstances, like those in alternative care are offered this protection. The law, for instance, the CCPJA also makes provision for training and raising awareness for care givers.

The requirements for recording incidents of violence apply to some officers. For instance, the PDVA provides that all complaints of domestic violence should be recorded in a special register maintained at a police station. But this provision is a broad one which does not specifically apply to matters of children in alternative care. There is a need for specific guidelines to provide for children in alternative care due to specific challenges these children face which distinguish them from those living with their biological families.

The law does not prescribe the content of the curriculum for the training of care givers regarding violence against children but while researching for this assessment a MoGCSW official assured that this issue will be addressed in the revised institutional care regulations. There is also a gap in the legal and policy framework regarding the prevention of abuse and maltreatment of children in alternative care. The CCPJA and the PDVA offer the opportunity as there is room in the legislation to develop these guidelines by way of rules and regulations. The CCPJA provides for mandatory training for care givers in child protection and the law has clearly made provision for guidelines and regulations to be developed in this regard. UNICEF (2012) summarised the following baseline information around child:

**Table 8 Child protection systems targets by the Government**

<b>Results for women and children</b>	<b>Baseline</b>	<b>Target</b>
1. A Child Protection Information Management System (IMS) that tracks victims and survivors of violence, abuse, exploitation and neglect in place by 2014	0	1
2. Number of children and women benefiting from a comprehensive child protection package (IMS is tracking the child, case management in place and protection services provided)	0	37,500
3. Number of children accessing Community-Based Childcare Centres	600,000	830,000
4. Proportion of children under two whose births have been registered	<1%	60%
5. Reduction in violence against women	41%	36%
6. Reduction in violence against children	** 27	-
7. Reduction in child labour (children aged 5-14)	25%	20%
8. Reduction in the number of children in custody	** 28	90%
9. Number of communities adopting protective child protection practices	0	2,500
10. Reduction in the number of children in alternative care institutions	6,000	4,500
11. Number of districts with operating comprehensive child protection model	0	7
12. Number of children on ARVs (anti-retroviral) with a case plan linking up the health and welfare sector response	0	40,000
13. Number of vulnerable children aged 6-18 utilising Children's Corners annually	187,500	375,000
14. Number of district child protection committees that have in place contingency plans for child protection in emergency preparedness and response	6	28
15. Annual government allocation for child protection increased	**29	500%

\*\*baselines are being established

Source: UNICEF (2012)

According to Mpaka (2013:42), Malawi has over 100 victim support units in the police system, one stop centres in some hospitals and DSWOs in all the 28 districts. There is also a number of community-based organisations, local and international organisations that are safeguarding the welfare of a child. Despite the presence of such structures a Malawi child is unsafe. The assessment has found that both boys and girls are subjected to various forms of mistreatment. The children face various forms of abuse be it in their original homes, at care facilities even at school.

## CONCLUSIONS AND RECOMMENDATIONS

The study has therefore made key findings and drawn recommendations that need attention if alternative care in the country should operate adequately for the benefit of the children in alternative care as summarised below.

### Key findings:

- Malawi has adopted key international and national instruments sufficient for offering child protection, including alternative care which - though robust - are not adequate. And while Malawi has enacted and ratified legislation, instruments or conventions that protect and promote children's rights, there are gaps in some policy instruments at national level which pose a challenge in the implementation of alternative care in the country.
- The number of children in alternative care facilities cannot really be ascertained largely due to the fact that a number of such facilities are not properly registered with Government. Largely, bureaucracy is to blame considering that the registration process takes long as reported by some care facilities.
- Children are placed in alternative care for various reasons including the decision by the authority as a result of neglect or maltreatment of parents or guardians, the decision by the court, the request by both or either parent / care giver or indeed by having the child certified as an orphan.
- Funding of public care facilities has over the years been inadequate thereby affecting the operations of the Ministry at both national and district level. In addition, it is difficult to establish a very clear picture of funding levels for alternative child care among non-state actors due to the absence of such information records.
- Most care facilities including the MoGCSW, do not provide after care support to children when they leave the facilities due to inadequate funding. The Prevention of Domestic Violence Act (PDVA) mechanisms for registration of complaints of domestic violence is viewed as very broad because it does not specifically apply to matters of children in alternative care facilities.
- In general, the study finds that despite the ratification of international, regional and national instruments, there are gaps on the ground when it comes to implementation. Some notable examples include: lack of national figures on pertinent areas in alternative care, understaffed and underpaid care workers, weak monitoring and enforcement of legislation, inaccessibility of legal representation, financial constraints, ignorance of the masses, low levels or lack of education, and unfamiliarity with legal procedures. There are limited resources for the gathering of data on the ground to disaggregate the different population groups of children to sufficiently identify the group-specific needs and addressing them by providing the necessary policy direction.

### Key recommendations

- The MoGCSW should issue a statement that it is only the office of the Director of Social Welfare who is mandated to regulate care providers. The CONGOMA and the NGO Board should also be part of the discussion.

- Conducting baseline studies to establish national figures on child alternative care as part of the Care for Me campaign<sup>33</sup> implementation. (The 2009 Better Care Network Indicators for children in formal care report<sup>34</sup>), which include children living in institutional care or formally arranged foster families offers an important entry point.)
- Maximising information sharing between civil society organisations and the Government through the existing synergy meetings like the Sector Working Groups being championed by the Ministry. The meetings should offer the platform for improving the rights and well-being of children in alternative care, and other necessary information relating to children like the number of children with disabilities and measures for rectifying some of the current challenges being faced by these children. Further efforts should aim at bringing the ministries of Finance and Disabilities fully on board as part of key stakeholders to addressing the challenges.
- Developing a road map for operationalizing the CCPJA so that the benefits of the new law can be felt on the ground. Some of the standards and requirements are not known by officials running the care centres, which is a major challenge to effective management of alternative care facilities in Malawi.
- Put in place mechanisms for regular monitoring visits to care centres for quality control. Regular and unannounced visits by DSWOs to CCIs need to be encouraged. Synergies with the MHRC and SOS Children's Village should be further strengthened so that an alternative form of supervision can be explored.
- Ensure adequate resources for the implementation of a range of appropriate family support services to ensure children are cared for within the family. In this respect, the Ministry and partners should:
  - Intensify resource mobilization, in addition to what at present is obtained from both, the Government and the traditional leaders. Initiatives should include strong engagement with the Ministry of Finance so that the national budget is consistent with the pillar principles of the UNCRC and ACRWC: budget for the health of children, budget for the education of children, budget for social protection and budget for child development.
  - Lobby for more resources into social protection programmes that benefit vulnerable children and ensure a proper link between programmes like the Social Cash Transfer and children in alternative care. Poverty alone should never justify admission into alternative care facilities but also focus should be put on the principle of keeping the family together.
- Establishing a mechanism for monitoring the reintegration of children after placement in alternative care facilities. The - yet to be released - Institutional Care Regulations provide a good starting point and SOS Children's Villages should explore how to support the MoGCSW in setting up such a mechanism.
- Reviewing the current process of issuing licences more specifically considering that the period between the time an application is submitted and the time a licence is issued is quite long. As a result most institutions are operating illegally using the farce that they are still waiting for a response from MoGCSW on the status of their application. SOS Children's Villages and other concerned partners can support the review process.

<sup>33</sup> <http://www.care-for-me.org>

<sup>34</sup> [http://www.unicef.org/protection/Formal\\_Care20Guide20FINAL.pdf](http://www.unicef.org/protection/Formal_Care20Guide20FINAL.pdf)

- Ensuring that the minimum standards (minimum qualification, ratio of child to care givers etc), as stipulated in the revised care regulations for staff working in care facilities are adhered to.
- Ensuring that a commitment to children's rights is reflected in all legislation, policy and practice relating to children in alternative care.
- Promoting and facilitating appropriate contact of a child in alternative care with his/her parents and other family members.
- Set in place mandatory registration and authorisation of all care providers and ensure that regulations are adhered to.
- Ensuring that children's views are sought for decisions regarding their placement, care plans and subsequent reviews. Use age appropriate means of participation. Putting in place a clear mechanism for formal complaints including abuse and exploitation. Children should receive feedback on how their concerns were dealt with.
- Supporting and strengthening families while the child is in alternative care, in order for the child to be reunified durably and sustainably. DSWOs should also be encouraged to visit such families and update records related to such cases.
- Ensuring that children are not placed for adoption without the free and informed consent of parents (or in their absence a legally mandated body) and ensuring they are not separated from their families.
- Ensuring that the systematic processes to determining a child to be placed in alternative care are in line with the UN Guidelines.
- Link gate keeping to licensing, regulation, monitoring and inspection services with enforcement measures for these requirements.
- Ensuring that inspection is undertaken on the suitability of potential care givers and ensuring that care givers are trained to meet the needs of children.
- Establishing and enforcing clear instructions throughout alternative care facilities regarding acceptable behaviour management techniques and disciplinary measures.
- Ensuring that different bodies and organisations with, for example, responsibility for housing, welfare, health and education are involved in planning for new support and managing the existing support for children leaving/entering care. For instance, unless approved by the Ministry of Education, CCIs should leave running of schools to those who have expertise.
- Supporting opportunities for young people to maintain contacts with their previous care facilities, care givers and friends.

**SOS Children's Villages and other stakeholders should take a lead in:**

- Strongly supporting the MoGCSW as the mandated institution to operationalise the CCPJA. Three years after enactment of the act, supportive subsidiary legislations (guidelines/systems) to guide the implementation of the Act are not yet in force.
- Ensuring stronger stakeholder collaboration to develop a tool for regularly collecting and analysing data on the numbers or background of children in alternative care.
- SOS Children's Villages should consider supporting the Government to raise awareness of the new adoption bill.
- Ensuring that the yet to be enacted legislation should ensure that children are cared for within the family environment which the Malawi Government must undertake to fulfil as



an obligation and only in exceptional circumstances (guided by children's interests) should intercountry adoption take place.

- SOS Children's Villages should champion advocacy for Malawi to ratify the "Convention on the Protection of Children and Co-operation in respect of Intercountry Adoption"<sup>35</sup>.
- Support a study to track the number of children with disabilities and other special needs, the number of siblings being separated without considering their best interests, and numbers on country and intercountry adoption.
- Support core function analysis exercises with the Ministry. Open questions to the exercise could include:
  - How can non-state actors support fill the gap that MoGCSW fails?
  - What is the support that non-state actors require from MoGCSW to deliver the services?
  - To what degree can non-state actors take up the watch dog function for alternative care?
- Supporting the elaboration of the national strategic plan to de-institutionalise the alternative care system. Ensure that issues of children with disabilities and other special needs are considered.
- Supporting the hosting of symposiums to explore the problems associated with institutional care for children with providers and funders of CCI to build consensus and get national support especially among decision makers.
- Supporting the public awareness campaigns with media on the damaging effects of institutional care over time.
- Supporting the government to develop a plan on how to implement and monitor provisions contained in the guidelines.
- Support government to provide training, guidance and support to care givers so that they can support the participation of children and their families. It should also include teaching care givers using non-violence and de-escalation techniques.
- Supporting a research to gain a better understanding of what contributes to family breakdowns. Use this information to inform policy and improve service delivery.
- The church's family strengthening services are a positive strength that should be considered as a springboard to strengthen preventative services.
- Support the MoGCSW to develop a template on keeping records and the use of discipline in CCIs.

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<sup>35</sup> [http://www.hcch.net/index\\_en.php?act=conventions.text&cid=69](http://www.hcch.net/index_en.php?act=conventions.text&cid=69)



## GLOSSARY<sup>36</sup>

**Alternative care** is the provision of residential care, protection and all other welfare needs for a child temporarily or permanently deprived of their family environment, or in whose own best interests cannot be allowed to remain in that environment, outside his/her family by either another family in terms of foster care and adoption or by an institution.

**Child** means a person below the age of sixteen (16) years (CCPJA, 2010).

**Child Protection** is preventing and responding to specific situations where children are at risk of or subject to abuse, violence, torture, armed conflict; physical, sexual, mental and emotional abuse, exploitation, discrimination, persecution, exclusion, neglect or deprivation of parental or other family care, with a view to ending the abusive situation and securing those children's full integration or re-integration to their families and communities or as a last resort, other protective environments where all their rights can be met and protected.

**Child headed households** is a group of children who live together to the extent that the eldest sibling is willing and capable of acting as the head of the house.

**Church home** is a place under the administration or having originated from a religious institution.

**Community-Based Care** is the direct care role assumed by the community leadership or its members in their own homes.

**Foster Care** is the placement of a child in a foster home or with a foster parent.

**Foster Home** means a home approved by the minister for the purposes of foster care placement.

**Foster Parent** means a person who has lawful or legitimate custody, care and responsibility over a child in place of a parent.

**Kinship care** is a private arrangement whereby the child is looked after on an ongoing or indefinite basis by relatives or friends.

**Institutional care** means residential care, protection and all other welfare needs for a child temporarily or permanently deprived of their family environment, by an institution licensed under these regulations.

**Place of safety** is an appropriate place where a child in need of care and protection can stay temporarily and includes a safety home or a foster home.

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<sup>36</sup> Sources of definition: Malawi Government. 2010. Child Care, Protection and Justice. Lilongwe: Government Printers; National OVC Policy, 2003, Ministry of Gender, Children and Community Services and UNICEF (undated) Child Protection Training Manual, MoGCSW, 2009. An extended National Plan of Action. MoGCSW (undated). Institutional Care Regulations Revised



**Primary caregiver** means the parent or relative or other person responsible for the welfare of the child prior to the admission into an institution and who will maintain contact with the child.

**Safety home** is a place for the purposes of reception, education, counselling and safety of children before conclusion of trial or in circumstances requiring placement of a child for care and protection.

**Reformatory centre** is a home or institution or part thereof established for purposes of (a) reception, education and vocational training; and (b) counselling of children in accordance with law.

**Orphanage** is a [residential institution](#) devoted to the [care](#) of [orphans](#) – children whose biological parents are deceased or otherwise unable or unwilling to care for them.

**Orphan** is “a child who has lost one or both parents and is under the age of 18 years”; (GoM, 2003; GoM 2005).

**Special Needs Centre** is an institution/centre that provides the educational requirements of pupils or students suffering from any of a wide range of physical disabilities, medical conditions, intellectual difficulties, or emotional problems, including deafness, blindness, dyslexia, learning difficulties, and behavioural problems.

**Transit Care centre** is a temporary placement of children awaiting further placement in a short and/or long term care centre.

**Vulnerable child** is “a child who has no able parents or guardians, staying alone or with elderly grandparents or lives in a sibling headed household or has no fixed place of abode and lacks access to health care, material and psychological care, education and has no shelter.” (GoM, 2003; GoM 2005).



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## ANNEXES

### Annex 1

<b>SUMMARY OF CENTRAL GOVERNMENT FUNDING TRANSFERS TO ASSEMBLIES - MINISTRY OF GENDER, CHILDREN AND SOCIAL WELFARE</b>					
	<b>2007/08 budget</b>	<b>2008/09 budget</b>	<b>2009/10 budget</b>	<b>2010/11 budget</b>	<b>2011/12 budget</b>
Balaka District	1,100,006	1,177,006	1,284,114	2,193,310	4,358,522
Blantyre District	1,035,923	1,108,438	1,209,306	2,528,921	5,034,016
Chikwawa District	1,270,162	1,359,073	1,482,749	2,546,102	5,053,147
Chiradzulu District	648,065	693,430	756,532	2,066,784	4,100,038
Chitipa District	965,633	1,033,227	1,127,251	1,911,007	3,795,759
Dedza District	1,280,048	1,369,651	1,494,289	2,534,962	5,036,678
Dowa District	1,178,582	1,261,083	1,375,842	2,332,567	4,635,093
Karonga District	956,464	1,023,416	1,116,547	1,856,516	3,683,536
Kasungu District	1,272,460	1,361,532	1,485,431	2,518,854	5,006,465
Likoma District	869,784	930,669	1,015,360	1,766,330	3,505,836
Lilongwe District	1,449,394	1,550,852	1,691,980	3,230,987	6,412,959
Machinga District	1,273,374	1,362,510	1,486,498	2,515,499	4,999,880
Mangochi District	1,381,479	1,478,183	1,612,698	2,729,769	5,423,718
Mchinji District	1,800,861	1,926,921	2,102,271	2,238,449	4,447,001
Mmbelwa District	1,360,616	1,455,859	1,588,342	2,766,754	5,491,255
Mulanje District	1,162,903	1,244,306	1,357,538	2,318,802	4,603,517
Mwanza District	1,036,220	1,108,755	1,209,652	2,042,963	4,046,673
Neno District	1,059,954	1,134,151	1,237,359	2,097,638	4,156,288

<b>SUMMARY OF CENTRAL GOVERNMENT FUNDING TRANSFERS TO ASSEMBLIES - MINISTRY OF GENDER, CHILDREN AND SOCIAL WELFARE</b>					
	<b>2007/08 budget</b>	<b>2008/09 budget</b>	<b>2009/10 budget</b>	<b>2010/11 budget</b>	<b>2011/12 budget</b>
Nkhata Bay District	1,004,317	1,074,619	1,172,409	2,012,770	4,005,638
Nkhotakota District	1,089,908	1,166,202	1,272,326	2,175,616	4,325,275
Nsanje District	1,166,301	1,247,942	1,361,505	2,365,417	4,699,319
Ntcheu District	1,203,190	1,287,413	1,404,568	2,402,616	4,769,259
Ntchisi District	1,017,252	1,088,460	1,187,510	2,030,448	4,036,178
Phalombe District	1,065,472	1,140,055	1,243,800	2,119,711	4,210,980
Rumphi District	972,296	1,040,357	1,135,029	1,943,656	3,873,288
Salima District	1,115,381	1,193,458	1,302,063	2,195,085	4,357,407
Thyolo District	1,172,274	1,254,333	1,368,477	2,322,044	4,613,121
Zomba District	1,101,682	1,178,800	1,286,071	2,235,763	4,439,250
<b>GENDER DISTRICT FUNDING</b>	<b>32,010,001</b>	<b>34,250,701</b>	<b>37,367,517</b>	<b>63,999,34 0</b>	<b>127,120,09 6</b>
<b>OVERALL DISTRICTS BUDGET</b>	<b>9,124,846,9 83</b>	<b>10,852,141,3 91</b>	<b>12,522,098, 633</b>	<b>13,897,16 8,748</b>	<b>18,719,739, 230</b>
<b>% OF TOTAL DISTRICT FUNDING</b>	<b>0.35%</b>	<b>0.32%</b>	<b>0.30%</b>	<b>0.46%</b>	<b>0.68%</b>

#### **Annex 2: Stakeholders consulted**

<b>Name</b>	<b>Title/organization</b>
Mr. Kalanda	Director, Ministry of Gender, Children and Social Welfare
Mr. Robert Munthali	M&E Officer-Samaritan Trust



Name	Title/organization
Mr. Godfrey Munthali	Programme Officer-Malawi Council of Churches
Mr. Phiri	District Social Welfare Officer (Lilongwe)
Mr Kalelo	District Social Welfare Officer (Zomba)
Mr. Ronald Edward Phiri	Assistant Director, Ministry of Gender, Children and Social Welfare
Mr Harry Satumba	OVC Coordinator-Ministry of Gender, Children and Social Welfare
Mr. Godfrey Mkandawire	Programme officer-Malawi Council of Churches
Ms. Norris Mangulama	Director-Child Rights-Malawi Human Rights Commission
Steve Sapita	Director, Chisomo Childrens Club, Lilongwe
Mrs. Rosemary Masiye	Director, SOS Children's Villages, Lilongwe.
Ms. Doreen Chapola	Social Rehabilitation Centre, Lilongwe
Mr. Chosa Sakwiya	Social Rehabilitation Centre, Lilongwe
Mr. Yolam Chiwanda	District Social Welfare Officer, Kasungu
Mr. N. Salamu	District Social Welfare Officer, Phalombe
Mr. N. Chawinga	District Social Welfare Officer, Balaka
Ms. Nellie Kumalele	Assistant DSWO (child protection officer)-Balaka
Mr. Victor Pindikani	District Social Welfare Office, Mzimba
Mr. Henry Chumba	Chiuta Childrens Home, Mulanje
Mr. Enock Nkhoma	JAK Nkhoma Orphan Home, Salima
Mr. Harold Chafuwa	Assistant District Social Welfare Officer, Zomba
Mr. Victor Mkolongo	Youth Net and Counseling