

Measuring government efforts to protect girls and boys





The Child Rights Network for Southern Africa (CRNSA)

The Child Rights Network for Southern Africa (CRNSA) was established in 2012 and was then registered in South Africa in 2015 (NPC (2015/171797/08). The vision of the Network is 'A Southern Africa where children's rights are respected, protected and fulfilled. For this vision to be realised, the network promotes practices and policies that fulfil children's rights and welfare through national child rights networks. It also engages with regional and international institutions such as SADC and the AU for improved quality of life for children.

World Vision International

World Vision International is a Christian relief, development and advocacy organisation dedicated to working with children, families and communities to overcome poverty and injustice. World Vision International's Middle East and Eastern Europe Office is the official partner for the Child Protection Index. www.wvi.org/meero

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Foreword

World Vision rejoices in the significant progress Malawi has made towards achieving global and national targets in key areas of child well-being. Children account for over half of the country's population, yet their rights and needs are often seen as peripheral to development efforts.

Despite the progress, some challenges still remain. Poverty and child rights violations remain entrenched and threatens the gains made. About 42 percent of children are married before age 18, giving up on their dreams. At the same time, 60.5 percent of the children in Malawi face poverty of different forms. The proportion of children living in ultra-poverty is at 24 percent, slightly higher than the national average at 20 percent. This is hard to accept, but the reality for the majority of children in Malawi, life is tough, full of violence, and for some, exploitation.

This is why World Vision's strategy in Malawi, as guided by the Sustainable Development Goals (SDGs) and Malawi Growth and Development Strategy (MGDS 3), aims at bringing measurable impact in the lives of 4.5 million children in the hard to reach areas.

The goal of World Vision's Child Protection interventions is to work with partners to establish a child protection system that improves the prevention of and response to violence, abuse, exploitation and neglect of children, as well as the impact of HIV and AIDS. World Vision also supports the Malawi government's efforts to improve services for children affected by violence. We hope this report will trigger policymakers to develop comprehensive responses to address all forms of poverty affecting children. And that the evidence and analysis presented here will encourage a national debate about what constitutes child poverty in Malawi and how to address it holistically.

Violence destroys everything World Vision hopes to achieve in a child's life. And for this reason, ending violence against children in all its forms is one of our highest priorities.

This document is proof of our commitment to make life better for the Malawian child. Our work with families, local leaders, and children themselves to identify solutions seeks to bring in as many people as possible to touch hearts and souls. And it is our commitment, not to rest, until all children are transformed — equipped and empowered to protect themselves and one another.

MALAWI 2018

Abbreviations

ACRWC	African Charter on the Rights and Welfare of the Child
AIDS	Acquired Immune Deficiency Syndrome
ART	Anti-Retroviral Therapy
СВО	Community Based Organisation
CDC	Children in Difficult Circumstances
DSW	Department of Social Welfare
DWACs	District Welfare Assistance Committees
HIV	Human Immuno-deficiency Virus
ICT	Information and Communication Technology
ILO	International Labour Organization
NCCC	National Coordinating Council for Children
NGO	Non-Governmental Organisation
LAB	Legal Aid Board
CoR	Commissioner for Refugees
MCDMCH	Ministries of Community Development, Mother and Child Health
NCLSC	National Child Labour Steering Committee
NCJF	National Child Justice Forum
OECD	Organisation for Economic Co-operation and Development
OVC	Orphans and Vulnerable Children
TEVETA	Technical Education, Vocational and Entrepreneurship Training Authority
UNICEF	United Nations Children's Fund
UNCRC	United Nations Convention on the Rights of the Child

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Introduction

Malawi got independence from Britain in 1963, with liberation struggle leader Hastings Kamuzu Banda as the Prime Minister. The country stretches for 840 km from north to south. It is bordered by Tanzania to the north, Lake Malawi to the east, Mozambique to the east and south, and Zambia to the west. Approximately 90 percent of Malawians belong to the Chewa ethnic group with the remaining 10 percent belonging to the Nyanja, Lomwe, Yao, Nguni, Tumbuka, Sena, Tonga, Ngonde, and other ethnic groups. The population of Malawi is predominatly rural as a result the country can be defined as overly conservative.

The country ratified the Convention of the Rights on the Child in 1991. Further, the country signed and ratified the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography as well as the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict.

At the continental level, Malawi signed the African Charter on the Rights and Welfare of the Child (ACRWC) in 1999. This was five years after adopting a new Constitution in 1994. While the obligation to recognize the rights, freedoms and duties enshrined in the ACRWC are post-dated to the Constitution, the Constitution has recognized, as supreme law of the land, some of the rights, freedoms and duties set forth in the ACRWC. The Constitution recognizes the rights of children in two ways, first as a matter of national policy and secondly as a matter of enforceable and binding rights. The Constitution in section 13 (h) obliges the State to promote the welfare and development of Malawians by progressively adopting and implementing policies and legislation aimed at encouraging and promoting conditions conducive to the full development of healthy, productive and responsible members of society.

CHILD RIGHTS BAROMETER METHODOLOGY

Methodology

The CRB is designed to encourage regional cooperation, stimulate more robust implementation of the UNCRC, and serve as a policy analysis tool for civil society, governments and donors. It consists of 861 main indicators that together measure a state's policy and actions to protect and care for girls and boys under their jurisdiction. The CRB framework of indicators heavily relies on the Implementation Handbook for the Convention on the Rights of the Child, published by UNICEF. The Handbook provides a series of yes, no and partially-implemented checklists to create an understanding of each UNCRC article's significance. The CRB uses these checklists as core indicators to measure state performance.

To read the CRB, a score of one is a perfect score; the lower the score, the weaker the action; the higher the score, the stronger the action for children.

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Dimensions of Government Action

The CRB measures five dimensions of government action for each of the articles of the UNCRC that refer to child protection. These five dimensions are: policy and law, services, capacity, coordination and accountability.

Policy & Law

The dimension of policy and law scores a country's efforts to create policy, laws and regulations that protect and care for children in situations of violence and vulnerability.

Services

The dimension of services measures a country's efforts to provide services that respond to children at risk or experiencing exploitation or in need of special care.

Capacity

The dimension of capacity scores a country's efforts to provide resources, staff, infrastructure and equipment necessary to adequately implement its policies and services for children.

Coordination

The dimension of coordination scores a country's efforts to effectively coordinate between different ministries, agencies and levels of government.

Accountability

The dimension of accountability measures a country's efforts to create accountability of public sector actions and formalise responsibilities so that public sector actors know their roles and limits of responsibility.

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Methodology

CRB framework

The framework includes a series of 861 main indicators that together measure a state's policy and actions towards greater child protection. The indicators are drawn from four sources.

The first set of indicators comes from Article 4 of the UNCRC. This Article requires that states apply all appropriate measures within the toolbox of government action to achieve child protection. The CRB refers to this category as "the governance environment" for child protection. An example of the governance environment indicator is: has a consolidated law on the rights of the child and child protection been adopted?

The second set of indicators is based on Article 2 of the UNCRC. This Article requires that states respect and ensure the rights set forth in the Convention to each child within their jurisdiction without discrimination of any kind, and take all appropriate measures to ensure this requirement.

The third set of indicators comes from Article 7 of the UNCRC. This Article requires that children are registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by their parents. Article 7 requires all State Parties to ensure the implementation of these rights. Birth registration is considered to be a fundamental child protection right.

The fourth set of indicators uses specific child protection articles from the UNCRC and principles from the systems approach to child protection as the common foundation and matrix for its qualitative indicators. To unpack each Article's requirements, the CRB framework relies on the Implementation Handbook for the Convention on the Rights of the Child published by UNICEF. The Handbook offers analysis on each UNCRC Article from the Committee on the Rights of the Child's Concluding Observations in over 300 different opinions.3 The Handbook provides a series of "yes", "no" and "partially-implemented" checklists to create an understanding of each Article's significance. The CRB uses these checklists as core indicators for the framework. The qualitative indicators are "yes", "no" and "partially-implemented" questions that measure a state's (i) Policy/ legal and regulatory framework; (ii) Services, processes, mechanisms; (iii) Capacity; (iv) Accountability; and (v) Coordination and cooperation in relation to the UNCRC articles on child protection. These key elements are necessary to achieve a functional child protection system.4 UNCRC articles chosen are those associated with every child's right not to be subjected to harm and a state's duty to protect and care for children vulnerable to harm.

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Data collection & validation

The Malawi national data collection team included seven child protection experts, and two legal experts selected in order to acquire a variety of expertise. A training workshop led by the CRB Data Manager (and co-author of the CRB framework) provided training to the team prior to collection. In the first stage of collection, groups of two experts collected data independently on selected sections of indicators (using reports, studies, articles, statistics data, etc.) to validate a "yes", "no" and "partially-implemented" responses to each CRB indicator. In this way, two experts reviewed the same indicator separately. Where such evidence-based information was not available, interviews with relevant stakeholders and information based on the personal experience of professionals with relevant expertise in that particular field were taken into account.

After the completion of individual review and validation, responses provided for the same indicator

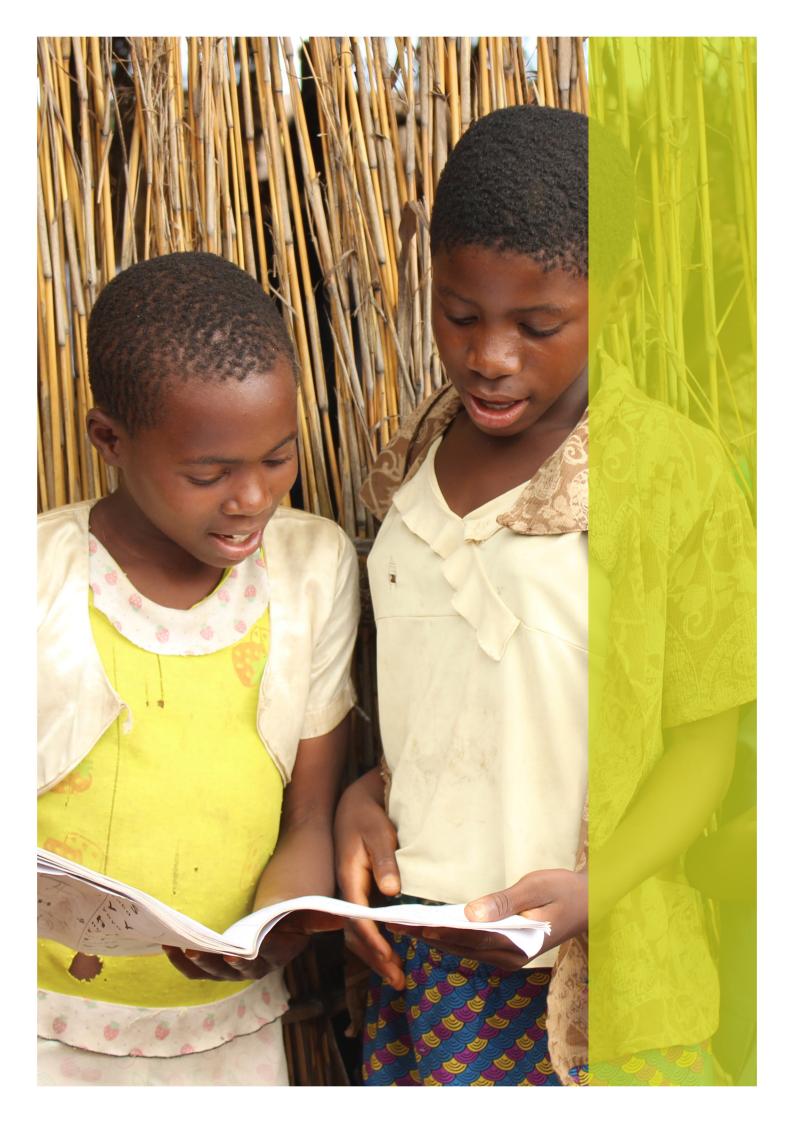
by two different experts were considered and compared sideby-side by the CRB Data Manager. Responses found to be inconsistent between the two experts or that lacked sufficient validation required further review and evidence gathering. The two experts assigned to the same indicator again in group work reviewed and discussed the evidence and sought additional information when needed. Joint answers provided by each sub-team were further reviewed by the CRB Data Manager. Three to four reviews were required for the entire review process, in order to reach final agreements on each indicator considered.

A final cross-check of information provided under the various sections of the CRB framework was performed by the CRB Data Manager before finally validating the National CRB, with the support of the National Coordinator and the team of experts.

Scoring

Each qualitative indicator required a "yes," "no," or "partially-implemented" answer. To score the results, "yes" = 1, "no" = 0, and "partially-implemented" = 0,5. In situations where several sub-indicators contributed to one main indicator, the final main indicator score is calculated as an average of the scores of its sub-indicators (e.g. 1+0,5+0+1+0,5 = 3:5 = 0,6).

An average score was calculated for three of the four sources of indicators, 1) Governance Environment, 2) Birth Registration, and 3) Non-discrimination. In the case of the main source (UNCRC Articles analysed with the Child Protection Systems Approach), each UNCRC article and its indicators is scored separately (to create one average score per article). The final (overall) CRB score is calculated as an average of all the main indicators included under all the components of the CRB framework: this way, each main indicator is equally contributing to the final (overall) CRB score.



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ZAMBIA .510



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Overview of Performance

For all the child protection indicators that this study focused on, Malawi consistently scored relatively high on establishment of coordination structures for child protection.

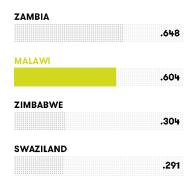
This high score shows general political commitment by the government in protecting children's rights. It is worth noting that the second highest area of ranking is promulgation of laws and policies for children's rights. This affirms the government commitment to ratifications and domestication of international and regional child rights instruments. The challenge however is quality of service delivery. This means that the quality of services that are provided need to be improved. Low capacity speaks to limited resources (financial, human, infrastructure) allocated by the state party to ministries relevant to children.

A comparison of the four CRB countries' overall performance shows that Eswatini scored the least of these countries. The highest-ranking country is Zambia followed by Malawi. Zambia is the only country that exceeded the fifty percent mark since the highest attainable score is 1. The other four countries are below this threshold meaning that whilst mechanisms are in place to protect children from abuse.

Malawi promulgated the Child Care, Protection and Justice Act No. 22 in September 2011. This is an important step towards aligning the legal and regulatory framework for children's rights in the country. What remains now is to ensure that adequate resources are allocated to the relevant ministries so that all children in the country can be reached with services. Currently, the quality of services is not the same for all districts of the country, as shall be deciphered in the proceeding chapters.

Analysis and Policy Recommendations

Governance



Governance refers to the process of rulemaking and enforcement, and the CRB reviewed whether a government has pursued aspects of good governance in its implementation of the UNCRC and the ACRWC. Good governance upholds citizen rights, provides transparent access to information, relies on consistent decision making and rule of law and pursues furtherance of the public good.

Malawi scores 0,604 out of a possible 1,0 and ranks second out of the four CRB countries considered for this exercise. Malawi has only partially reviewed its legislation to align it with the Convention, and there is no mechanisms in place to ensure that any new pieces of legislation adopted are in compliance with the UNCRC and ACRWC requirements.

The Child Care, Protection and Justice Act No. 22 of 2010 that came into force on 1 September 2011, represents however an important step towards aligning the legal and regulatory framework with the UNCRC requirements. It also provides a consolidated law on the rights of the child and child protection.

The general principles of the UNCRC and the ACRWC are reflected by the legislation in the country, and it is possible to invoke these principles before the courts, as the Convention does take precedence over the domestic law where there is a conflict. According to the Child Act, a court, when dealing with a child who is brought before such court either as an offender or in need of care or protection, shall give primary consideration to the rights of the child as recognized by the Convention on the Rights of the Child.

Malawi established a government mechanism to ensure coordination of policies related to children. The Ministry of Gender, Disability, Women and Child Welfare is entrusted to coordinate policies related to Child Welfare and Protection issues in the country. However, no permanent and effective mechanisms have been established for budgetary analysis to ascertain the proportion of overall budgets devoted to children and eventual disparities related to particular groups of children or regions in the country.

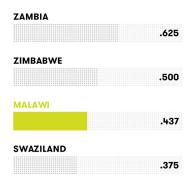
Regular conversation between finance and social protection authorities is recommended. Without an established mechanism to review budget and expenditure on a yearly basis, officials may be limited in their ability to set accurate and aligned budgets. Budget analysis for all child protection issues should review the proportion of overall budgets devoted to children and identify any disparities between Malawi's regions, rural/urban areas and particular groups of children. It is important that officials are able to verify that sufficient funding reaches the most disadvantaged groups of children.

Malawi should also consider establishing a permanent Government mechanism at national level for consulting on matters relating to policy development and implementation related to child protection with relevant NGOs (not limited to juvenile justice as the NCJF is) and with children themselves.

It is encouraging to note that the Parliament has established a formal body (the Children and Women affairs sub-committee of Parliament) which has the mandate to address child protection issues. The sub-committee does not have, however, scheduled regular meetings. Meetings are only needsbased.

Also Malawi has established the Malawi Human Rights Commission which has a Children's Directorate. The Human Rights Commission complies with the Paris Principles on the status of national human rights institutions. However, the Children's Directorate is not constitutionally mandated. Consideration should be given to increasing the human and financial resources for the Human Rights Commission in order to broaden its activities in this field. Otherwise it may be difficult to lodge complaints against various government bodies when there are allegations of child rights violations.

Non-discrimination



Article 2 of the UNCRC and Article 3 of the ACRWC require State Parties to respect and ensure the rights set forth in the Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status. It also requires States Parties to take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

On the Article 2 related indicators, Malawi scored 0,437 out of a maximum possible of 1, pointing to the fact that further action is needed to fully align Malawi's legal and regulatory framework provisions with the UNCRC requirements. Out of the four CRB countries, Malawi is ranking third, following Zambia (0,625), Zimbabwe (0,5), and followed by Swaziland (0,375). Further development of appropriate priorities, targets and programmes for affirmative action to reduce discrimination against disadvantaged and vulnerable groups is required.

Malawi has not yet fully developed (in relation to girls) a comprehensive implementation strategy for the Platform for Action adopted at the Fourth World Conference on Women, taking into account the recommendations of the 2000 and 2005 Reviews. Also measures and programmes, relevant to the Convention, in order to follow up on the Durban Declaration and Programme of Action adopted at the 2001 World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance have not been developed yet.

Another area requiring further attention is the fact that Malawi is not properly monitoring the realization of each right guaranteed in the Convention (to include consideration of the principle of non-discrimination), and that it is not collecting and reporting disaggregated data to enable effective monitoring of potential discrimination against various vulnerable categories of children. While, for instance, children with disabilities are identified and recognized as a particularly vulnerable group, lack of data collected by Malawi for this group of children does not allow for an adequate strategic planning for developing support and response mechanisms (reflected by the low score recorded on this particular CRB component – see article 23), and potential discrimination cannot be properly monitored.

ZAMBIA .833 MALAWI .777 ZIMBABWE .777

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SWAZILAND

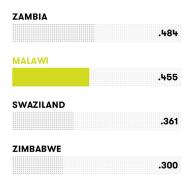
Birth Registration

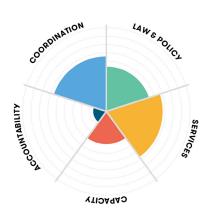
A name and nationality are every child's right, enshrined in the Convention on the Rights of the Child and other international treaties. Registering children at birth is the first step in securing their recognition before the law, safeguarding their rights, and ensuring that any violation of these rights does not go unnoticed. Universal birth registration is also part of a system of vital statistics, which is essential for sound economic and social planning. Birth registration is therefore is not only a fundamental human right, but also a key to ensuring the fulfilment of other rights.

Malawi's birth registration rate of 67 percent is higher as compared the average of the region (41%). It is also higher as compared to the other three countries included in the CRB (Swaziland - 54%, Zimbabwe - 44% and Zambia - 11%). Non-registered children may be at risk to be excluded from receiving elementary education, health care and social assistance. Birth registration is also essential in protection efforts, including: preventing child labour by enforcing minimum-employment-age laws; ensuring that children in conflict with the law are not treated (legally and practically) as adults; countering child marriage; and reducing trafficking, as well as assisting children who are repatriated and reunited with family members.

Malawi's 0,777 CRB score on Article 7 (identical with that of Zimbabwe) reflects the fact that the country has taken important steps towards aligning its birth registration policies with the UNCRC requirements. Further steps would be required to increase accessibility to birth registration through a more proactive approach of the state authorities to identify unregistered children and secure their registration, including (if the case) through dedicated mobile registration units.

Preventing Child Family Separation: Helping Families Stay Together





Malawi's actions on ensuring that parents and children are separated against their will by State authorities only when it is necessary to protect the best interests of the child present both some positive but also negative scenarios. In terms of policy, Malawi is at 0.544, services at 0.681 and coordination at 0.666. Accountability presents huge gaps at 0.166 while capacity is at 0.3995. Out of the four CRB countries, Malawi (0,455), ranks second, with Zambia (0.484) being first, Swaziland (0,323), and Zimbabwe (0,300).

The score for policy is at 0.544 because the provisions of Article 9 of the UNCRC shows that Malawi as a country has a basis for establishing the conditions that would facilitate parental and child separation including in the case of trafficking, abduction, subjection to harmful cultural practice or prohibited practices and use in prostitution or immoral practices. However, there is no provision for separation as a last resort and this is an area where the country needs to take action by making room for separation of parents and children as a last resort. Malawi's laws are compliant regarding the application of the best interest of the child for guardianship of the child within reasonable grounds, and by those with competent authority to decide in such cases. Nevertheless, the District Social Welfare Office's functions and structure regarding their responsibility to oversee parents and child separations are not regulated through quality or financial standards.

Regulation in terms of psycho-social counselling and support services is not provided for within the legal and regulatory frameworks both in terms of financial and quality standards. Licensing of some of the services applies for the private players and not necessarily the government provided services. Malawi needs develop standards on quality and financing for District Social Welfare Services' functions and structure for effective funding, staffing, case management and procedures for decision making at the national level. Licencing of the services whether provided by the public and private institutions would ensure quality and effective service delivery especially if the licence is renewed on a regular interval and incorporates financial and quality standards. Provision of child friendly complaints mechanisms with ease of access to children and developed with input from children is critical.

Although presenting a high score for Malawi at 0.681, services in Malawi on parent and child separation need to be enhanced by ensuring that the state has adequate funding to enable it to provide material support to parents that are confronted with crisis situations to prevent unnecessary separation. Adequate funding would also enable the state to handle cases expeditiously.

The score for Malawi on capacity is low, at 0.399. This demands the subsequent capacity strengthening for service providers which is currently scored poorly. While the role of counselling in Malawi lies with the Ministry of Gender, Children, Disability and Social Welfare, the District Social Welfare Office at district level although the DSWOs are among the least funded offices; their numbers not adequate to cover roles adequately. Limited funding is also a hindrance to effective supervision. According to SOS Children's Village Malawi survey, 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. It should

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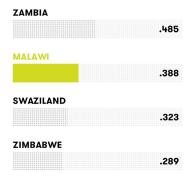
be mentioned that the allocations towards the Ministry of Gender, Children, Disability and Social Welfare at district level seem to have doubled from 0.68% in 2011/2012 to 1.24% in 2012/2013 simply to accommodate the devaluation of the local currency against the major trading currencies. Developing financing standards is one way of ensuring that there is an improvement on funding for such a sector. Such financing would call for deliberate actions by the state to facilitate transparency but also creating a reliable but also sufficient funding package for the issues. Some districts submit budgets and are allocated funds according to the requirements budget. Budgeting, in these cases, is based on the budget requirements submitted by the officers. However, it is not clear how much specifically goes towards funding particular type of services. All funding allocated to the Ministry of Gender, Children and Social Welfare which is responsible of providing these services is fully recorded in a transparent manner in the Annual Economic Report. The Financial Management Information System (FMIS) that is used at the Ministry of Gender tracks and records all the funds which are allocated to the Ministry and in turn all the different service providers within the ministry.

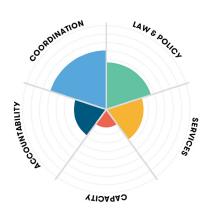
Accountability is a serious gap for Malawi scoring at 0.166. This is demonstrated through serious gaps in licencing counselling and support services. Quality standard requirements are absent. External monitoring and assessment is also not provided by the government. Complaint mechanisms that easily accessible for children, child friendly and developed through direct consultation and input of the children themselves are also absent. National studies have never been commissioned or sponsored to understand among others, the causes, consequences of child-family separation during the last 3 years.

Coordination is guite strong in Malawi at 0.666. This is evidenced by a national technical working group at the national level although it is reliant on external funding. Similarly, there are some linkages between the national and district level mechanisms. Case management has also ensured that the social welfare, justice, health and education coordinate but only in districts where case management is being implemented. The state therefore needs to address these gaps.

While the country seems to be doing quite well in policy, services and coordination, there is a gap between policy (0.544) and implementation at 0.421. Effort should go towards enhancing capacity and accountability. It is recommended therefore that Malawi takes steps to address all these elements. This would close the gap between policy and implementation (0.122).

Prevention And Response To Violence Against Children





Article 19 of the UNCRC provides for protection of children from all forms of physical or mental violence, from any form of corporal punishment and any other form of cruel or degrading treatment in any setting. Malawi has taken steps to enhance policy provisions (0.571) regarding the protection of children from all forms of physical or mental violence, from any form of corporal punishment and any other form of cruel or degrading treatment in any setting. This is also the case with coordination (0.714). Unfortunately, it is different with services (0.453), capacity (0.224) and accountability (0.395) which have serious challenges.

Malawi's score for policy at 0.571 is evidenced with Malawi's legal and regulatory framework has a number of provisions that prohibit some forms of violence against children although others are not explicit enough. This includes the Malawi Constitution which does not expressly prohibit corporal punishment; it stipulates no person shall be subject to corporal punishment in connection with any judicial proceedings or in any other proceedings before any organ of the State (public institutions). The 2013 national study on violence against women and girls indicates that 2 out 3 Malawians have suffered from physical violence which calls for the urgent need for revision of the constitutional provision to make it expressly prohibitive; and also opening its application to both public and private settings including in alternative such as foster care, kinship care and child care institutions. Without this provision, children in these other settings continue to face violence with the culprits going unpunished. The regulatory framework on reporting, assessing and facilitating response to cases that are identified proposing a penalty for failure to report an offence is a great value add to the law and this needs to be utilised by both government and CSOs. Malawi's legal and regulatory framework obliges compulsory reporting on cases of violence to the district social welfare office and the police. The national helpline has facilitated support for children victims of abuse and currently under YONECO and not fully taken over by the Ministry of Gender, Children, Disability and Social Welfare, which has facilitated linkages for the children. The state is currently not able to facilitate funding towards the national helpline. The takeover of the national helpline by the state needs to be planned and implemented progressively. Awareness of the reporting mechanisms such as the national helpline including sensitisation on violence needs to be part of the comprehensive package of facilitating reporting.

The regulatory framework has no provision on financial standards for all state-run or sponsored services with regard to local child protection services, confidential helplines, and protection placement for foster care or residential care, physical and psychological rehabilitative and social reintegration services. In order to effectively address violence against children issues, financial standards have to be developed and disseminated. Similarly, there is no legal or regulatory framework to define complaint mechanisms for children victims that relate to services provided, which calls for the need for the state to develop child friendly complaint mechanisms regarding the services provided to victims of abuse.

Malawi scores 0.45367 on services and currently, state provided services are not accessible in all areas and are not covering the national spread. The State through its Case Managers conduct identification process before doing any initial assessment to determine forms of violence for the victims.

However, currently, the government only has case management and One Stop Centres in select District, which means the identification and referrals are not done with full national coverage. The services are supposed to be standard, but due to lack of resources, some districts are better equipped than others. It is recommended that Malawi extends state-sanctioned case management in partnership with the civil society organisations considering that resources may still be an issue for some time and that currently a number of organisations are implementing case management and state capacity to reach every district is currently limited and largely reliant on donor support. This should include development of standard packages which the civil society organisations should adhere to, for maximisation of resources. This should address gaps regarding assessment processes for violence cases, protective placement of children victims as well as the psychological rehabilitation of children which currently is not done for all cases of violence due to resource constraints. It would also cover gaps on numbers of social workers. Another implication is that the state is not able to facilitate the respect of the views of child victims when planning and implementing programmes for recovery and reintegration, including in individual cases. Only a few children are covered. It is recommended therefore that Malawi strengthens the provision of social welfare services and standardises case management for civil society organisations to enhance a stronger recovery and reintegration programme for child victims.

The process also needs to go together with licencing with provisions of regular renewal to ensure quality implementation and effectiveness and exclusive monitoring and evaluation processes based on the quality standards. The state needs to expedite the establishment of national information management system for child protection with data disaggregation provided and based on age, gender and disability. Addressing these would enhance accountability for preventing

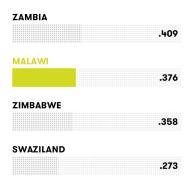
Capacity at 0.224 score for Malawi is serious hampered by funding challenges including limited funding, staffing, failure to run a state-provided and state-sponsored national helpline, failure to run or sponsor foster or residential emergency protection and physical rehabilitation services. Malawi therefore needs to enhance funding in order to ensure the capacity gaps are addressed.

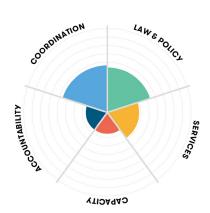
Accountability for protection of children has Malawi lowly scored. This is evidenced by failure for the judiciary to decide over violence against children, similarly failure by the judiciary to review the decisions over the violence against children. Licencing of services is not being done for all protection services for children. Centralised data is not available on protection for children. Accountability is critical for Malawi to fully curb violence against children.

Coordination needs strengthening although Malawi scores 0.714. The state needs to sponsor the national technical working group and similarly strengthen coordination among the social welfare, health, justice and education services and national and district level mechanisms.

With capacity gap of 0.219, Malawi still needs to strengthen effort in implementing policies and the implementation of services that deal with the protection of children. The big gap can also be reduced strengthening service provision and accountability for the protection of children.

Alternative Care





Article 20 of the UNCRC outlines that states take appropriate measures respond to the needs of children deprived of their family environment. Malawi has taken some strides in facilitating appropriate measures to respond to the needs of children deprived of their family environment although at a slow pace. This is evidenced in terms of policy (0.546) and coordination (0.571). However, the country is under-performing in terms of service delivery (0.389), capacity (0.264) and accountability (0.266).

Policy scores for Malawi are quite strong and demonstrated through a legal framework requires the state authorities to provide appropriate care for children deprived of their family environment safety. This is combined with the judicial powers through the Child Justice Courts powers to make decision for placing a child under safety as well the testamentary will of a parent, an order of the court or family of the child to appoint a guardian. Despite the strong scores, reports suggest that many children in alternative care are not provided with care plans, mainly due to the lack of knowledge and enforcement of the regulations attached to the Child Care, Protection and Justice Act. Malawi also does not score high enough because, no legal or regulatory framework defines the services the state needs to provide to appropriately care for children deprived of their family environment regarding kinship or guardianship care and foster care. Similarly, psycho-social counselling and support services, both state-run or private, are not regulated by state-sanctioned quality standards or financial standards although government has front line staff that have been trained to facilitate the psycho-social and counselling services. It is recommended that the state's legal and regulatory frameworks are reviewed to include definition of appropriately care of children as well as quality and financial standards including for psycho-social and support services

Capacity has also been scored poorly for Malawi in terms of funding for the counselling and support services, and residential care services among others. The CCPJA obligates care providers; to ensure the implementation of rigorous, multidisciplinary approaches to decision-making that includes the informed participation of children and their families. But there is very limited support available for after care support due to inadequate financial support. Plans to grow and capacitate the social welfare workforce should be aligned with adequate funding that should ensure effective and efficient capacity to handle counselling and support services and residential care services.

Malawi's score on services is very poor. There is no clear provision of licencing for services that government is running. Although residential care facilities have certification that can be revoked where standards are not met, the absence of legally established strategies for ensuring that numbers of children under institutional care are reduced, is a threat to successfully reducing numbers of children growing up in institutional care. It is recommended that the state should ensure that licencing is provided both for public and private institutions. Psychosocial and support services are not fully provided by the state and therefore accessible for families and children while children in alternative care plans do not have individual care plans which are assessed and monitored on a regular basis. Malawi needs to enhance its funding towards psycho-social and support services

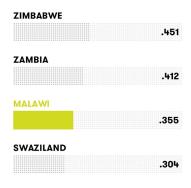
including strengthening follow up mechanisms for children in alternative care using individual care plans whose development should involve the views of children; ensuring that services allow for investigating, training and authorising as appropriate kinship and guardianship care as well as foster care. Some NGOs have programmes towards the families whose children have been re-integrated with the aim of 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 state provides some material support towards families to address vulnerabilities although there is need for the state to strengthen efforts aimed at utilising existing programmes as well as boosting funding for its own programmes.

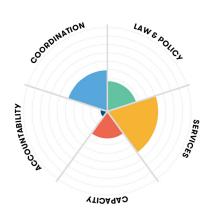
Accountability is also very poor demonstrated through non-licencing of services and poor monitoring and evaluation mechanisms. Further, there is no centralised information or a national data base with reports of children victims of child labour and economic exploitation. Malawi needs to ensure that a centralised database is created, with data disaggregated according to age, gender and disability monitored on a regular basis would facilitate effective policy formulation and implementation.

Coordination scores reasonably but the state can do better in terms of engagement among authorities, agencies and issues, services dealing with alternative care including police, social welfare, education and justice and those at various levels from the national to the lowest level in the community.

The slow pace of the responsiveness of government in providing care for children deprived of family care implies that the state will not be able to minimise or stop children from growing up under institutional care in the immediate future. This is clearly evidenced by the gap between policy, at 0.546 and implementation at 0.326.

Child Adoption





Article 21 of the UNCRC The State provide adequate legal, administrative and other measures on child adoption. Malawi's actions regarding the provision of adequate legal, administrative and other measures on child adoption are not fully effective. The state's score on policy (0.369) is weak. Similarly, capacity to implement programmes on child adoption is weak, at 0.331 as well as accountability at 0.088. On the other hand, services are quite strong at 0.615 and coordination at 0.5.

Malawi's score on policy is very poor due to the outdated Adoption Act (1949) which is the one currently in use for all adoption procedures in the country. Among other provisions, the Act states that the court before making an adoption order shall be satisfied that the order if made will be for the welfare of the infant, due consideration being for the purpose given to the wishes of the infant, having regard to the age and understanding of the infant. Nevertheless, the best interest of the child is not specifically mentioned. It is therefore recommended that the state expeditiously facilitates the finalisation and adoption of the new law. It is also recommended that new law incorporates the principle of the best interest of the child. The Adoption Act does not however offer any definition or interpretation to the meaning or what constitutes 'the welfare of the infant', especially where the infant has no capacity to make any decision of its own. It is therefore recommended that the state ensures that the new law incorporates an explicit definition of the term welfare of an infant. The state should also ensure that the new law provides for state-run or private, regulated by state-sanctioned quality standards, regulated by state-sanctioned financial standards, the compulsory licensing of adoption service provided by government entities or by NGOs/ private entities; with case management regulations, standards, protocols or other regulatory framework outlining cross-sectoral cooperation and coordination mechanisms among main stakeholders.

Malawi seems to be doing well in terms of the scores for services. But, there are no state-provided specialised services for the identification, recruitment and screening of potential adoptive parents, counselling, training of potential adoptive parents, adoptive family adopted child matching procedures and monitoring of adoption placements. The state is not able to effectively implement mechanisms and processes to ensure the preservation of the child's identity and the desirability of continuity in the child's background and according to ethnicity, religion, cultural and linguistic background. These gaps need to be provided for by state sanctioned funding as well as quality standards bolstered within the new law.

Capacity presents negative score for Malawi due to a number of challenges such as mobility, limited office space and communication gaps created due to limited resourcing which are a real and major constraint. Another challenge is the non-specialisation of the function which has not been contracted out to NGOs or the private sector. Capacity also affects monitoring as a result of the limited resources. No statistics, if they exist, are available, on frequency, profile and other data on adoptions. This is huge task amongst the many tasks already assigned. The state needs to enhance funding to ensure that the adoption function is implemented effectively and efficiently. It is

also recommended that the state considers specialised adoption services in order to have effective service delivery other than having the social welfare department in the Ministry of Gender, Children, Disability and Social Welfare services handle the function alongside multiple other functions. The state needs to take deliberate action in establishing and strengthening data management on adoptions.

Malawi also scores poorly for accountability, at 0.08887 demonstrated by serious gaps on licencing the adoption services which currently are only implemented by the government; lack of complaints mechanisms for children and partial provision of the complaints mechanisms for biological and adoptive parents; and the absence of centralised database on adoption. It is recommended that the Malawi government opens up adoption services to both public and non-public service providers with licencing which would be reviewed on a regular basis; and also establishes complaints feedback mechanisms for parents and children as well as a centralised database for all adoption cases.

The score for coordination is quite strong (0.5) evidenced by some coordination amongst various services including the social welfare services plus the justice and adoption services and among some stakeholders. However, the adoption services run fully by government are not well coordinated with other players such as the NGOs and private sector. It is recommended that the state deliberately takes action to strengthen the coordination of adoption services with the NGOs and private sector.

With the above state of affairs regarding article 21, and although the gap between policy (0.36975) and implementation (0.35013) seems minimal (0.01962), Malawi needs to take deliberate steps in finalising the new adoption law which will demand implementation as well as enforcement which will subsequently improve the capacity and accountability scores.

Protection Of Children With Disabilities

ZAMBIA .460

MALAWI .442

SWAZILAND .352

ZIMBABWE .304



Article 23 of the UNCRC recognises that children with disabilities often need additional resources and care to enjoy a full and decent life. Therefore, Article 23 creates a special duty to protect and promote the welfare of children with disabilities and their families. Malawi scores a low 0.442 out of a possible 1,0 on its actions to protect children with disabilities. Malawi ranks second out of the four CRB countries, Zambia having the highest score of 0.46.

The article requires States Parties to protect children with disabilities as a special class of children who require specific and/or additional protection to achieve a level of well-being equal to other children. The Index compares each dimension of government action as it relates to children with disabilities: policy, services, capacity, coordination and accountability. Malawi's highest scores on disability are in the areas of accountability (0.564) and law and policy (0.507), followed by coordination (0.458). The capacity and services scores on disability are quite low at 0.343 and 0.250, respectively.

Malawi's policy score is average. Discrimination of persons in any form is prohibited and all persons are guaranteed equal and effective protection against discrimination on various grounds including disability. The Constitution entitles all children to live in safety and security where appropriate, with State assistance if such children have disabilities or are in situations of disadvantage. Malawi has an inclusive education policy. In terms of play and recreation, the law requires the government to ensure that persons with disabilities take part in sporting and cultural activities and to have access to recreational facilities. Local government authorities are required to keep a register of children with disabilities in their jurisdictions and give assistance to them whenever possible in order to enable those children grow up with dignity among other children and to develop their potential and self-reliance. However, the law does not provide for full inclusiveness in institutional care as the Constitution provides for separate accommodation for persons with disabilities. However, some key policy documents have limited provisions on children with disabilities. It is therefore recommended that children with disabilities are placed as a priority in all policy documents and that inclusiveness extends to all forms of institutional care.

The accountability score for children with disabilities in Malawi is higher than the rest because of institutions like National Advisory and Coordinating Committee on Disability, the Malawi Council for the Handicapped (MACOHA) which are channels for people with disabilities to register complaints or seek assistance. In addition, a National Steering Committee on Children was set up to monitor all the activities carried out to help vulnerable children. The Child Case Review Board is required to undertake visits and to monitor alternative care institutions to ensure compliance, twice a year. The Courts, Police Victim Support Units and the Federation of Disability Organisations of Malawi (FEDOMA) also act as accountability mechanisms, and at the local level there are established Community Victim Support Units which can be accessed by persons with disabilities, including children. The physical, psychological and social rehabilitation services are duly licensed by the Medical Council of Malawi yearly, for providing clinical care, upon meeting certain standards,

while vocational rehabilitation services only have to be registered with the relevant government department. In practice though, there is no effective follow up on licensing and there is no centralised and disaggregated data on children with disabilities. Malawi needs to work on this so that the children can be identified and counted, thereby receive appropriate support.

Access to public services for children with disabilities in Malawi varies depending on the context hence the score on services is very poor. Public institutions, infrastructure and services, including schools, health centres, public transportation, do not provide adequate accessibility to people with disabilities. Limited education facilities for children with disabilities are available, including special needs schools with boarding facilities, but functionally, schools generally maintain physical barriers. There is need for Malawi to promote the incremental conversion of schools into inclusive environments in line with the inclusive education policy from elementary to tertiary education levels. Public infrastructure should have ramps for wheel-chairs or elevators and public transportation should be adapted to facilitate access to people with physical disabilities.

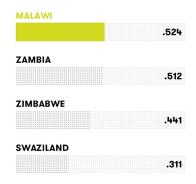
In terms of capacity, Malawi does not generally offer with national coverage, standard assistance and support services accessible to all children with disabilities as certain services are only accessible in specific areas, except for assistance like cash transfers, bursaries, education materials, and sanitary facilities, which are offered across the country. Although Malawi has adopted a law on inclusive education for children with disabilities, and the government provides a budget for inclusive education at national and local council levels, currently there are not enough specialists trained to integrate children with disabilities. It is recommended that Malawi should follow through its plans to extend training on special needs education to regular teachers as well. Capacity to care for children with disabilities is generally hampered by lack of funding. Residential institutions caring for children with disabilities are not adequately equipped to perform their duties and respond to the needs of the children, and there is inadequate availability of space for the everyday needs of the children to rest, play, learn, eat, hygiene, and operate in privacy. The Ministry of Gender, Children, Disability and Social Welfare receives funding which is fully recorded in the Annual Economic Report, but it is not clear how much specifically goes towards children with disabilities (as there are no specific financial standards developed). There is need for Malawi to invest in financial and human resources for children with disabilities.

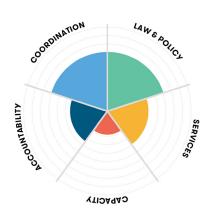
There is no effective coordination for all engagement between various authorities on disability matters, hence the relatively low score on coordination. Apart from the Ministry of Gender, Children, Disability and Social Welfare which is the coordinating body of all things regarding disability, the National Coordination Committee established under the Disability Act is not functional due to organizational constraints. The Ministry has plans and guidelines to ensure that social services are in response to the needs of the children with disabilities but follow up/monitoring is not regularly conducted at local level. There is lack of sharing of reports and planning of activities on the ground. The Ministry of Gender however effectively coordinates services and processes with NGOs in response to the needs of children with disabilities but this is subject to availability of resources. It is recommended that the National Coordination Committee should be sufficiently funded and constituted with a specific mandate for children with disabilities so that

their issues are not subsumed within other child protection issues.

The total implementation score on policies for children with disabilities in Malawi is 0.427, creating a very small gap of 0.079. To facilitate full commitment to its international and regional obligations towards children with disabilities, Malawi first needs to establish a system for continuous data collection on children with disabilities, disaggregated by age, gender, and types of disability, centralised and updated at regular intervals for proper case management of individual children. Furthermore, Malawi needs to invest enough human and financial resources on children with disabilities.

Protection of Children from Economic Exploitation





Article 32 of the UNCRC prohibits child labour that interferes with a child's education and is hazardous or harmful to a child's development. The Article requires that States Parties set a minimum age for employment, define hours and conditions for acceptable employment of youth and create enforcement mechanisms to motivate compliance by all potential actors. Malawi scores 0,524 out of a possible score of 1,0 and ranks first out of the four CRB countries in its actions to prohibit economic exploitation. Zambia is closest in rank with a score of 0,512, followed from a distance by Zimbabwe (0,441) and Swaziland (0,311).

Malawi's response on prevention of the exploitation of children through labour is quite strong only in terms of policy provision (0.715) and coordination (0.714). The country's scores are weak with regard to implementation of services (0.4999), capacity (0.289) and accountability mechanisms (0.454).

Malawi has a high rating for the legal and regulatory framework due to its ratification of the ILO Conventions on the minimum age, the worst forms of child labour and forced labour. In addition, the Malawi Constitution embraces a strong definition of child labour: Children are entitled to be protected from economic exploitation or any treatment, work or punishment that is, or is likely to (a) be hazardous; (b) interfere with their education; or (c) be harmful to their health or to their physical, mental or spiritual or social development. The Employment Act stipulates that no person between the age of fourteen and eighteen years shall work or be employed in any occupation or activity that is likely to be - (a) harmful to the health, safety, education, morals or development of such a person; or (b) prejudicial to his attendance at school or any other vocational or training programme. Further, the employment order of 2012 encapsulates prohibitions on hazardous work for children.

However, the legal or regulatory framework does not clearly define a minimum age for employment that is equal to the age of completion of compulsory education and not less than 15. The Constitutional provision on making primary education compulsory and free for all citizens of Malawi needs to be aligned with the provisions on the minimum age of employment. The state should work on explicitly prohibiting all work that obstructs children's education. There is also need for a legal and regulatory framework on the structure, operations, functions and equipment for the Labour Commissioner's Office responsible, in terms of quality standards, case management and other state-sanctioned requirements apart from the roles and responsibilities provided.

Malawi scores poorly for services. The Ministry of Gender, Children, Disability and Social Welfare has Community Child Protection Workers (CCPWs) who are grassroots level extensions of the formal government sector engaged in "a coordinated service delivery approach at the individual and household levels involving the identification of vulnerable children, assessment and planning, referral to services and follow up, in collaboration with the extended family, community and other service providers." The CCPWs form part of the complaints mechanisms for child labour cases. The national helpline but also various structures on the ground have served the same role. The state needs to improve the inspection services of situations of work or

employment, and ensure that reporting and referral mechanisms for and penalties or other sanctions for non-compliance are implemented. Malawi needs to ensure arrangements for free of charge medical examinations in connection with child employment to determine fitness for employment prior to engagement and continued medical supervision until the age of 18. Complaints mechanisms should be publicised, and consideration should be given to making them more accessible to children and child friendly. The process would need meaningful child participation.

Capacity score for Malawi is also very poor as indicated above. This is demonstrated through serious challenges regarding the funding, staffing and infrastructure of the labour inspection services, and also of the support, protection and rehabilitation services provided to child victims. The provision of financial standards through transparent and reliable mechanisms would enhance funding for the local child protection services; facilitate and strengthen physical and psychological rehabilitation as well as social reintegration and protective care response. Funding challenges has led to high workloads particularly for the local child protection workers; capacity to train adequate numbers of staff as well as the volunteers supporting the work; and the capacity of district-based officers to provide supervision to and inspection of the local level players. The development of funding standards would help improve funding levels for the services in question.

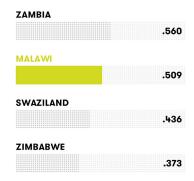
Accountability for preventing exploitation through child labour in Malawi also scores poorly with hampered monitoring systems for state-provided services. Licensing of services applies for some services (physical and psychological rehabilitation provided through the health care system, and residential care facilities). It is recommended that Malawi's services whether public or private are licensed under minimum quality standards. The monitoring of the quality of service provision by both state and private service providers should also be enhanced.

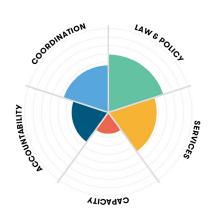
The National Action Plan for Child Labour in Malawi refers to the role of the Child Justice Courts in dealing with child labour cases including facilitating the speedy trial of such cases. However, there is no centralised information or a national data base with reports of children victims of child labour and economic exploitation. Creation of a national (centralised) database, with data disaggregated according to age, gender and disability updated on a regular basis would facilitate a more effective planning and response for child labour.

Coordination although with a high score, needs to be strengthened. Adequate funding by the state would allow it to facilitate national technical working group, enhance linkages among national and district level players as well as coordination among justice, social welfare, health and education departments during case management on violence against children.

The gap therefore between policy and implementation for Malawi, at 0.280, in preventing exploitation through child labour indicates the need for the country to strengthen capacity to deliver effective and efficient services through strong accountability mechanisms and improved service delivery across at all levels.

Protection Of Children From Sexual Exploitation





Article 34 of the UNCRC requires that States Parties protect girls and boys from sexual exploitation and sexual abuse. Malawi scores 0.509 out of a possible score of 1,0 putting it on position two out of four CRB countries, in its actions to prevent the sexual exploitation of girls and boys, after Zambia which has the highest score at 0.560. The country scores relatively high on law and policy (0,7) to end and prevent sexual exploitation and fairly high on services (0,571) and coordination (0,586), while accountability is relatively low at 0.446. The score on capacity is very low at 0.263.

There is some evidence of advanced efforts in Malawi's legal and policy framework to legislate its obligations under the UNCRC on protecting children from sexual exploitation. Malawi has ratified all relevant treaties except for the 2001 Budapest Convention on Cybercrime and the 2006 Additional Protocol to the Convention on Cybercrime. The law in Malawi protects children from unlawful sexual practices, prostitution and pornographic materials and performances including via communication technologies. The Penal Code prohibits sexual intercourse with a child against which there is a sanction of 14 years imprisonment. Special protections exist to protect child witnesses in criminal proceedings as all matters involving children have to be held in camera, without revealing identities of the children. This protection is however limited to the privacy of the child witness and no other forms of protection or support are specifically mentioned in the Act. Nonetheless, at all levels, such as at Police Victim Support Units, children are interrogated in a friendly manner by child friendly trained officers. The law also allows for criminal proceedings in other sovereign jurisdictions when citizens of Malawi have been accused of sexually exploiting children. However, no clear mechanisms are put in place and clearly spelt out in the legislation regarding complaint mechanisms for child victims that relate to services provided.

The score for Malawi on services suggests that there is some considerable effort to align the UNCRC obligations with implementation. Through Child Protection Workers, Child Magistrates and Victim Support Units, the privacy and confidentiality for child victims of sexual exploitation is maintained. For easy access to Child Justice Courts, child-friendly procedures are in place in the criminal justice system to assist child victims and witnesses. For example, the child victim is required to appear in court with a parent or guardian unless the same is prejudicial to the matter at hand and not in the best interests of the child; the media attendance is restricted and they are not supposed to disclose the identity of the child to maintain their privacy; and the proceedings of the court are supposed to be informal. Protective care placement is available for child victims of sexual exploitation at institutions which are subject to Reformatory Centre and Safety Home (Management) Rules provided for in the Child Act. The Trafficking in Persons Act (TIP) which also caters for children trafficked for sexual purposes, provides for care and protection of victims and witnesses and has introduced special methods of conducting investigations and proceedings. A nationwide avenue exists called Tithandizane Helpline with a toll-free number 116 which is accessible in all the districts and available to all mobile network operators in Malawi, for the safe and confidential reporting of sexual abuse in Malawi. The state has well-articulated plans and programmes for recovery and reintegration

of children who are victims of sexual exploitation but such services and programmes have not fully rolled out country wide to ensure access to everyone. Victims of sexual exploitation are always referred to One Stop Centres where they are supported physically to recover from trauma. Scaling of safe zones for reporting is however needed and should include schools as venues for awareness-raising activities and promotion of reporting mechanisms. To allow for ownership and offer a stronger chance for the services to respond effectively to children, there is need for greater participation of children when developing other mechanisms for reporting.

In terms of coordination, the Ministry of Gender, Women and Child Welfare is responsible for all matters relating to children. The government has set up various structures to strengthen protection and care of children such as the Child Case Review Board, Child Panels and Child Magistrates. Further to these structures, there are also District Child Committees to coordinate child protection and justice issues in each district. However, these are general coordination mechanisms for matters relating to children and there is need to ensure that they effectively also cater for issues of sexual exploitation of children.

The capacity score for Malawi is very poor. Physical rehabilitation services are provided freely by Government only at the main district but the number of staff employed are usually not adequate to perform their duties and respond to the needs of children. The centres also do not have adequate equipment. Government run services are particularly under-resourced with often out-dated equipment. Heavy reliance on donated equipment and voluntary expatriate physiotherapists often means that provision of care is inconsistent and is currently not sustainable. There is a lack of specific/tailored services for child victims of sexual abuse and exploitation. The Government has got some social rehabilitation centres which serve as transition centres where children are kept for rehabilitation services. However, these facilities are neither enough nor geographically positioned to meet the demand and most children are referred to centres operated by NGOs. Case management is not fully developed to handle the coordination between officials and levels or recovery and reintegration services. Identification and referrals are not done with full national coverage. Case management is supposed to be standard, but due to lack of resources, some districts are better equipped than others. There is need to continuously train social workers on how to respond to and document situations of sexual exploitation. The government needs to provide more rehabilitation services and measures to promote the physical and psychological recovery and social reintegration of all child victims of sexual exploitation, instead of living this primarily to civil society organisations which also do not provide enough services, depending on their budgets.

For accountability, licensing of services directly provided by the state authorities is generally not required, with the exception of institutions which provide medical care in addition to any other form of care as these institutions need to be licenced by the Medical council of Malawi and or the any Government. Other centres operate under the misapprehension that registration with the Council for Non-governmental Organisations is adequate, and the system still relies on the voluntary registration of informal carers. The Ministry of Health does supervision every quarter through Coordinators that are available in the region, depending on availability of funds to conduct such visits. The Coordinators evaluate performance of staff involved

in psychological rehabilitation at every year or at times on a quarterly basis. Decisions and interventions concerning child victms of sexual exploitation are subject to judicial review through a Special Law Commission which is set up to respond to emerging issues as need arises. However, accountability to citizens needs to be enhanced. There are no laws that require criminal background checks for people that want to work with children. Similarly, there is no law that prevents persons convicted of violent offences and sexual abuse of children from working with children and there are no sensitive complaint mechanisms available for children with disabilities. A nationwide database of convicted sex offenders should be available and accessible to employers.

The gap between policy and implementation is 0.254, the total implementation score being 0.445. To reduce the risk of sexual exploitation, the gaps in policy need to be covered to enhance services, capacity, coordination and accountability for child victims of sexual exploitation. Malawi needs to have a system of criminal record investigations for persons wanting to work with children or in spaces with access to children. Available monitoring mechanisms should not just mainly be focused on child care facilities, but also health care services. There is need for proper monitoring and oversight of recovery and reintegration facilities with regular reviews and licences should be renewed every two years.

0.428, while Swaziland scores lowest at 0.300.

Protection Of Children From Abduction, Sale And Trafficking

ZAMBIA .556

MALAWI .539

ZIMBABWE .428

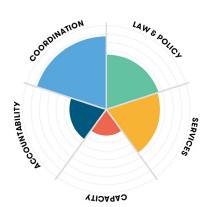
SWAZILAND .300

this type of exploitation.

Malawi scores 0.539 out of a possible score of 1,0 and ranks second out of the four CRB countries in its actions to prevent the abduction, sale or trafficking of children. Zambia scores highest at 0.556 and Zimbabwe scores

Article 35 of the UNCRC requires that States Parties protect girls and boys

from the abduction, sale or trafficking of persons. States Parties must take all necessary action, including joint action with other States Parties to prevent



The Index compares each dimension of government action to end and prevent the abduction, sale and trafficking of children: policy, services, capacity, coordination and accountability. Malawi's highest score is coordination at 0.881, followed by law and policy formulation at 0.664, then services at 0.650, after which there's accountability at 0.449, and lastly, the capacity at 0.321.

Malawi has made considerable progress to align its laws and policies to UNCRC obligations on trafficking. Malawi has ratified all major international treaties on the prevention of trafficking in persons and slavery, except the Hague Convention on Civil Aspects of International Child Abduction, and it extends criminal prosecution to trafficking and/or the sale of human organs and tissue. The Trafficking in Persons (TIP) Act defines trafficking in persons as recruiting, transporting, transferring, harbouring, receiving or obtaining a person within or beyond the territory of Malawi. The Child Act specifically defines child trafficking as the recruitment, transaction, transfer, harbouring or receipt of a child for the purposes of exploitation, and goes further to impose a sanction of life imprisonment for engaging in child trafficking. This prohibition is without exception, including when perpetrated by parents, and consent is not an excuse. The Child Labour National Plan of Action classifies child trafficking for labour exploitation as an emerging form of unconditional worst forms of child labour. Policy documents have been adopted that outline operational standards for recovery of children from trafficking and their reintegration into society. However, case management regulations, standards, protocols outlining cross-sectoral cooperation and coordination mechanisms between various stakeholders are not provided for under the legal or regulatory framework, even though case management is applied in practice in some districts, and there's need for the laws to specifically provide for this. Also, selling children to bonded labour is not expressly prohibited and the law needs to specifically prohibit this.

The accountability score is relatively low even though the quality of services is monitored by the National Steering Committee on Children and the Child Case Review Board undertakes visits to monitor reformatory centres, safety homes and foster homes to ensure compliance. This could probably be because these institutions are not specifically on trafficking. At district level, DSWO, health, education, police are expected to monitor child care institutions - although funding is a major challenge. The NGO Board monitors and assesses the activities of the NGOs/private providers. Compulsory licensing is required only in connection to health care service providers

but not social services providers. For residential care facilities (protective care) provided by NGOs or private entities, licensing and renewal every two years is required, but this is not effectively followed in practice. Access to the court system by child victims is available in the Child Justice Courts and child-friendly procedures are in place to assist child victims and witnesses. The Malawi National Plan of Action against Trafficking in Persons embraces a Victim Centred approach by empowering survivors as engaged participants in the process, and the state plans programmes for child victims of trafficking, with a specific indicator for district social welfare offices to report on every month, but this requires adequate funding. There must also be compulsory licensing for social services providers including those provided by government.

For coordination, Malawi's score is high mainly because the Trafficking in Persons Board has been set up, and for central coordination intervention responsibilities of trafficking issues, there is the National Coordination Committee against Trafficking in Persons. The State has been known to work with other states to ensure that cross-border victims are repatriated. The Malawi Network against Trafficking is also an active forum comprising stakeholders from state and non-state actors, which has been doing a great job in coordinating activities on trafficking in persons including children. Coordination is also strengthened by the fact that data is at least collected albeit severally, as there is no central database on child trafficking. District Social Welfare offices, the Malawi Police Service (MPS), the Ministry of Social Welfare HQ, NGOs, all maintain their own databases, much as this data is shared with other stakeholders.

In terms of services, one stop centres, with multidisciplinary teams which include members from the relevant Ministries have been established in most districts and the teams coordinate and jointly handle the cases. At the national level, the Malawi Network against trafficking (MNAT) has chapters at district level which bring together state authorities and CSOs to share implementation reports and these reports are submitted to the national level network. Police Victim Support Units (VSUs) are available in every district which also handle cases of child trafficking and facilitate the child's reintegration by referring them to relevant authorities. Local authorities in each district have a 'Public Assistance and Emergency Relief' program that covers the provision of psychosocial support, protective care, and repatriation of victims of child trafficking, though reports from these authorities indicate that they are sometimes unable to implement due to resource constraints.

Once a district social welfare office has identified a child victim of trafficking (either through the police or another means), they refer that child to state run Mpempa Reformatory Centre, Chilwa Reformatory Centre, or the government social rehabilitation centre in Lilongwe, as well as non-state care centres, for rehabilitation and reintegration. There is no helpline that is dedicated specifically to issues of missing children. The child helpline that is available in Malawi is '116' and this line can be used for varying child protection issues including cases of trafficked children. The TIP Act establishes the Trafficking in Persons Fund to which funds appropriated by Parliament and proceeds of confiscation, seizure, or sale of property connected with trafficking in persons after conviction of the offence under the Act. However, it is important that resources are made available to ensure effective execution of national guidelines and services at all State institutions for recovery

and reintegration of trafficked children.

On capacity, the Malawi Police Services has an anti-trafficking training in its curricula for the Limbe, Mtakata and Mlangeni Police Training School and Zomba Police College. This is however not sufficient and there is need for continuous training of Police Officers as trafficking in persons is an evolving area that also moves with developments in technology. While a training manual for judicial officers and police prosecutors, justice officials and investigators on issues of human trafficking in Malawi has been developed there is need for consistency in training on child justice competencies with a focus on the Child Care, Protection and Justice Act, which includes provisions on child trafficking. There is an Anti-Trafficking Fund which is managed by the National Coordination Committee against Trafficking, with clear guidelines for management of the fund which includes annual Audits. Despite this, human and financial resources remain a challenge for protecting children from trafficking. Staff employed at the social rehabilitation centre and other State institutions are usually not adequate to effectively respond to the needs of children.

The gap between policy and implementation is 0.162, the total implementation score being 0.502. This is not as bad as in other sectors for children mainly because of the strong coordination mechanisms available and the strong legal and policy framework on trafficking in persons in Malawi.

Protection Of Children From Torture And Other Cruel, Inhuman Or Degrading Treatment



Article 37 of the UNCRC recognises that children ought to be protected from all forms of cruel, inhuman, and degrading punishment. Therefore, Article 37 creates a special duty to protect and promote the welfare of children in conflict with the law.

Malawi scores 0.519 out of a possible 1,0 on its actions to protect children from torture and all other cruel, inhuman or degrading treatment or punishment. Malawi ranks second out of the four CRB countries, Zimbabwe having the highest score of 0.574, while Swaziland scores 0.461, and Zambia's score is 0.415.

The CRB compares each dimension of government action as it relates to protecting children from torture and all other cruel, inhuman or degrading treatment or punishment: policy, services, capacity, coordination and accountability. Malawi's highest scores on this are in the areas of law and policy (0 .606) followed by services (0.59), then accountability (0.357). The lowest scores are on capacity (0.272) and coordination (0.25).



At the law and policy level, Malawi has ratified the relevant treaties. All persons under the age of eighteen years, are required to be accorded treatment consistent with the special needs of children. The law in Malawi specifically prohibits torture and all other cruel, inhuman or degrading treatment or punishment towards all persons, which includes children, and this prohibition cannot be derogated from. However, the law does not define torture and cruel, inhuman or degrading treatment or punishment. Capital punishment is prohibited for offences committed by persons who, at the time when the offence was committed were under the age of 18 years, but the law provides for an indeterminate sentence, in that the child can be detained at the President's pleasure. Corporal punishment is not prohibited in all settings, like the family or private institutions, but it is prohibited as a form of sentence and before any organ of the State. No sanctions are stipulated in the law against those who administer corporal punishment, except in the Teachers Code of Conduct which provides for dismissal of the perpetrator. Deprivation of liberty as a measure of last resort and for the shortest period of time does not apply to all situations of deprivation of liberty, except for imprisonment, but the law provides that a child is entitled to treatment consistent with the special needs of children. The law does not define the minimum age below which a child cannot be arrested, but the minimum age of criminal responsibility is 10 years, with a rebuttable presumption for those aged between 10 and 14 years. Even though the Constitution does provide for imprisonment of children, this is prohibited by the Child Act, which instead, provides that the child be subjected to alternative measures. Periodic review of the situation and treatment of children deprived of liberty is required by law through the functions of the Child Case Review Board. The law provides for separation from adults while in prison or in detention in a safety home or reformatory home. Once detained, children are entitled to the right to prompt legal and other appropriate assistance, to be brought before a court for a preliminary inquiry and to challenge the deprivation of liberty before a court or some other competent authority. It is recommended that Malawi should prohibit corporal punishment in all settings and provide for relevant sanctions against perpetrators. Further, Malawi needs to harmonize its laws on imprisonment of children and also raise the minimum

age of criminal responsibility to no less than 12 years.

In terms of services, care and individual rehabilitation plans are hardly developed for the children in detention facilities, mainly due to the lack of knowledge and enforcement of the regulations attached to the Child Act, and District Social Welfare Officers are usually not conversant with the contents of the applicable legislation. The views of the children deprived of liberty are hardly considered when planning and implementing individual rehabilitation and reintegration programs. The law does not specifically provide for separation of children detained pre-trial from convicted children and in practice such separation does not always happen. Separation from adults does happen in prisons where juvenile wings are created in adult prisons in districts where there are no juvenile prisons. Information on detention or release is not consistently provided to parents or guardians and contact with the family through correspondence and visits. Legal aid is provided mainly with regard to serious offences.

On coordination, the Child Act establishes the Child Case Review Board, comprising members of different government departments and NGOs, as the central coordinating body for all engagement between various agencies and issues on juvenile justice. There is also the National Child Justice Forum - NCJF - which is not established by law but falls under the judiciary and coordinates child justice matters. However, there is no effective coordination in practice to facilitate the social reintegration of juveniles leaving detention and this needs to be looked into to avoid recidivism. Both the Board and the NCJF also lack sufficient funding to carry out their duties hence coordination is poorly implemented.

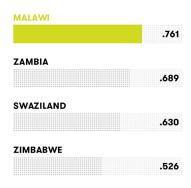
On capacity, the personnel interacting with children in juvenile detention facilities do not always receive the relevant tailor-made training. Likewise, the detention centers do not have specific professionals. The best that reformatory centers have are social workers. As for juvenile prisons (Kachere, Byanzi and Byumbwe), there are a few teachers who are not enough and all other duties are attended to by prison officers. Fellow prisoners are used to offer both classroom and vocational education to others. Young offenders' wings in adult prisons operate under the same conditions as adult prisons. Health clinics are greatly understaffed. The detention centers are understaffed and congested. The detention conditions are deplorable and the children usually eat one meal per day. In addition, chronically ill inmates are kept together with the rest and have no specific caregivers so they are cared for by other inmates. At Byanzi Juvenile Centre, there is no clinic and nearest hospital is located 10 kilometers away, yet there is no vehicle to take the children to the hospital when they fall ill. At all juvenile centres, there are no proper sanitary facilities. Buckets are used as toilets and sometimes, plastic bags. This is so mainly because there is no sufficient funding for the detention facilities to perform their duties.

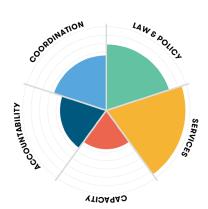
To ensure accountability, the quality of services is monitored by the National Steering Committee on Children, which was set up to jointly monitor all the activities carried out to help vulnerable children and it comprises Principal Secretaries, Directors and representatives of stakeholders including line ministries and departments, UN agencies, donors, international and local NGOs, and faith and community-based organizations. In addition, the Child Act requires the Child Case Review Board to undertake visits and to monitor reformatory centers, safety homes and foster homes to ensure compliance.

Furthermore, the Malawi Human Rights Commission is also mandated to monitor all institutions of care including public ones. At the district level, DSWO, health, education, police are expected to monitor child care institutions - although funding could be a major challenge, hence monitoring is irregular. However, detention facilities provided by government or private entities are not required to be licensed, and there is no national database on children deprived of liberty that is disaggregated on age and gender.

The total implementation score on policies for protecting children from cruel, inhuman and degrading punishment in Malawi is 0.43837, creating a relatively small gap of 0.1678 between policy and implementation. To bridge this gap and effectively deliver on its obligations under international and regional instruments on protecting children from cruel, inhuman and degrading punishment, Malawi has to legally prohibit corporal punishment in all settings and promote positive discipline as well as alternative measures to punishment; provide enough financial and human resources to institutions that provide for services for children in conflict with the law; and establish a national database with disaggregated data for children deprived of liberty.

Child Justice





Article 40 of the UNCRC creates a special duty to protect and promote the welfare of children in the administration of juvenile justice. Malawi scores 0.761 out of a possible 1,0 on its actions on administration of juvenile justice. Malawi ranks first out of the four CRB countries, followed by Zambia with a 0.689 score, then Swaziland at 0.630. Zimbabwe's score is the lowest at 0.526.

Article 40 of the CRC requires States Parties to recognize the rights and protection of every child in juvenile justice administration. Malawi scores an impressive 0.953 on services in juvenile justice administration and it's score on law and policy is 0.797. On coordination and accountability, Malawi scores 0.666 and 0.562, respectively. The lowest score in this regard is on capacity, at 0.472.

The high score on policy is due to the fact that Malawi has a separate justice system for children in conflict with the law, governed mainly by the Constitution and the Child Care, Protection and Justice Act of 2010 (The Child Act). Due process rights apply to children in the juvenile justice system. Children in conflict with the law have the right to treatment consistent with the special needs of children; to be informed of the charges promptly; to be presumed innocent; to be provided with legal representation; to remain silent; to have the matter determined by a competent authority, without delay; to appeal; and to privacy including not to have their identity revealed by the media, except as specified by an order. However, the minimum age of criminal responsibility is 10 years (with a rebuttable presumption of criminal capacity for children aged between 10 and 14 years), and this needs to be revised to no less than 12 years as recommended by General Comment No 10 of the UN Committee on the Rights of the Child. Malawi needs to harmonise its law on imprisonment of children as this is provided by the Constitution but prohibited by the Child Act.

In terms of services, Malawi is doing very well because Child Justice Courts are available throughout the country. There are designated Magistrates and Judges who deal with children's matters. The child is allowed to adduce and challenge evidence, and to examine or have examined adverse witnesses. Free interpretation services are available for the child and his or her parents or guardian and cases involving children are heard in camera as a practice and as required by the law. Measures for dealing with children without resorting to judicial proceedings are undertaken as diversion is a key feature of Malawi's child justice system. Paralegals services are available where children are screened using a form agreed with the police and judicial authorities before recommending a diversionary option if the young person satisfies the criteria. Diversionary measures include guidance and supervision orders, victim reparation/restitution, counselling or therapy, probation, foster care, compulsory education, vocational training courses, mentoring, family monitoring, restrictive order. There are two reformatory centres in Malawi (Chilwa Approved School and Mpemba), one of which also hosts girls. Malawi has three juvenile prisons, even though the conditions are deplorable and there is need for funding and personnel in the juvenile prisons.

With regard to capacity, Malawi's score is low because there is no sufficient

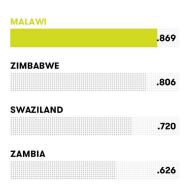
cadre of specially trained police workers to address juvenile offenders even though almost all police stations have trained prosecutors/police officers to handle children's cases. Child Justice Courts are presided over by a professional Magistrate or a First Grade Magistrate. Practically, training in juvenile justice administration is not a prerequisite for appointment as a Child Justice Court Judge or Magistrate. However, those appointed as well as other child justice personnel do get exposed to ongoing child justice capacity building trainings, workshops and conferences including on application of extra-judicial measures. The challenge with professionals whose capacity on child justice administration has been built is that they are moved to other sections, especially at the Police, hence there is no sustainability. It is recommended that Malawi should ensure sustainability by keeping specialised personnel in the child justice departments. There is also need to train more personnel and to have specialised courses on child justice at tertiary level.

On accountability in juvenile justice administration, Malawi provides for the right of review by a higher, competent, independent and impartial authority or judicial body. There are sanctions of a fine and imprisonment for not observing limits on media reporting on hearings involving children, even though there are no known cases where the same has been enforced. Confidentiality of records is however observed as access is limited to authorised officers only. There is nonetheless no centralised information or a national database on all children in conflict with the law but this is kept at institutional level. Malawi needs to have a centralised database with disaggregated data on children in conflict with the law.

Coordination for all engagement between various agencies and issues on juvenile justice administration exists at national level, through the Ministry of Gender, Children, Disability and Social Welfare, by virtue of its mandate as the primary ministry responsible for children's affairs, but the Ministry receives limited funding. The Child Case Review Board as well as the National Child Justice Forum play an important role in facilitating coordination. The Board is the central coordinating authority on juvenile justice and it consults with relevant civil society organizations on policy development addressing juvenile offenders. CSOs were also greatly involved in the development of the Child Act. Funding for the Board is however its greatest limitation and it is recommended that the government provides enough funding for the Board to execute its monitoring and other roles effectively.

The total implementation score on policies for juvenile justice administration in Malawi is 0.738, creating a minimal gap of 0.058. To facilitate full commitment to its international and regional obligations on juvenile justice administration, Malawi first needs to provide enough funding to relevant institutions for services to be carried out effectively. There is also need to establish a system for continuous and centralised data collection on children in conflict with the law, disaggregated by age, gender, and types of offences, measures undertaken.

Protection Of Refugees And Asylum Seekers



Articles 22 and 38 of the UNCRC create a special duty to protect every child who is seeking refugee status and to respect the rules of international humanitarian law applicable to children in armed conflict.

Malawi scores 0.869 out of a possible 1,0 on its actions on protecting children from involvement in armed conflict. Malawi ranks first out of the four CRB countries, followed by Zimbabwe which scores 0.806, then Swaziland at 0.741, and finally Zambia scores lowest at 0.626. All the scores for Malawi on protecting children from armed conflict are above 0.6, the highest score being on coordination at 0.983, followed by services (0.896), then accountability (0.895). on law and policy, Malawi scores 0.870, and the lowest score is on capacity at 0.678.

The legal and policy framework in Malawi generally protects involvement of children in armed conflict, and it also protects child refugees or those seeking asylum from having their rights infringed. Malawi has ratified the relevant treaties in this regard. Malawi has enacted the Refugee Act of 1989 to regulate asylum. However, the Refugee Act does not necessarily include provisions relating to refugee children except in the definition of a family member. The 1989 Refugee Act is outdated and there has been review but the new Refugee Bill of 2011 has not yet been promulgated into law. According to section 126 of the Child Act, children have the right to legal representation and this implicitly includes refugee children. Unaccompanied or separated children seeking asylum are required to be provided with a guardian, professional interpreters, a Social Welfare Officer, and the benefit of doubt in relation to their claim for refugee status. The minimum age of recruitment into the armed forces is 18 years. Malawi has a Disaster Risk Management Policy, adopted in 2015, which is linked to other policies, including the Child Protection Policy and the Education Policy.

In the provision of services, children's views are heard and acted upon by the Authorities at the Temporary Transit Shelter and in the Refugee Camps. The UNHCR's case management system for children, which outlines all main stakeholders, is used by the state authorities and its partners. Malawi Disaster Preparedness Team/Department has clear roles and responsibilities defined at all levels. Refugee Status Determination (RSD) officers have been trained to undertake Best Interest Assessments when they are dealing with a case of a minor. They ensure the designated adult representative must be someone who is trusted by the child, and in the case that a child wants to present their own claims, the RSD officer can make a decision to allow this depending on the apparent maturity and capacities of the child. The RSD procedure in Malawi does not provide for any asylum seekers (whether adult or child) to have legal representation in their RSD interview.

Where children are concerned, RSD interviews are conducted first in a child-friendly manner. Unaccompanied and separated children (UASC) are provided with a guardian/foster family. The guardian is selected based on their familiarity with the child's country, language, culture, etc. Family Tracing is conducted and using the restoring family links program, which ensures that the child and the child's family members are not endangered. Applications by UASC or families with a minor are treated in an expeditious

manner only at the first stages of RSD. Preservation of family unity in the living arrangements is always prioritised. Unaccompanied children are paired with a suitable foster family. However once the interviews are done, these families must wait alongside all other applicants for the high level Refugee Committee to meet to finalise their RSD process. The State however, does not employ professional interpreters at either temporary transit shelters or in the camps, and instead they use proxy interpreters from already registered refugees.

On capacity, the schooling system does recognise children's need for social integration hence refugee children learn together with Malawian children, and the school is outside the camp. Schools attended by refugee children sometimes recruit teachers from among the refugee population to support the teaching capacity. However, the schools generally have a low pass rate due to, among other things, the language barrier experienced especially by those from Francophone countries. The Ministry of Health has an established health care centre at refugee camps with Primary Health Care facilities, which serves both the refugee community and the surrounding villages, but there are challenges with human and financial resources. The police academy curriculum as well as the military training curriculum in Malawi contain child protection components. Case management community structures are established and capacity building of the community to prevent and respond to issues of human rights, and child protection is done.

In terms of coordination, at highest level, the Principal Secretary in the Ministry of Home Affairs is also the Commissioner for Refugees while the Chief Secretary is the Chairman of the Eligibility Committee with government officials from various Ministries and departments such as Foreign Affairs, Defense, Health, Justice Immigration and Police as members. The law mandates UNHCR to determine refugee status, and establishes the Refugee Committee to administer the granting of refugee status and it is the central coordinating authority on refugee matters. The Committee operates on standards that outline cross-sectoral cooperation and coordination mechanisms between various stakeholders, but unfortunately, the Committee does not meet often. In addition, there are Child Protection NGOs working with refugee children in the camps and in the schools and these NGOs have interventions that raise awareness of refugee and child rights. Emergency response is coordinated by the Department of Disaster Management Affairs (DODMA), which has adopted the cluster system in emergency response. For the Protection Cluster, activities include, conducting trainings for service providers in disaster prone and affected areas in psychosocial support and the one stop centre approach. However, border agents who interact with children in the initial registration have not been provided with training or guidelines on the treatment of minors.

On accountability, any applicant, including children, who has received a negative RSD decision and wishes to appeal, is free to do so. Applicants are informed of their right to appeal during the initial RSD interview as well as when they receive their negative RSD decision. To ensure external monitoring, there is an annual participatory assessment jointly conducted by the Malawi UNHCR country operation and partners that evaluates the conditions of people of concern in refugee camps in Malawi.Complaint mechanisms relating to the services provided are available via email, complaints box and face to face meeting with the camp manager and UNHCR. With support from World Food Programme, an accountability framework was rolled out of the

toll-free hotline ensuring that complaints (including those from Children) are timely received and regular feedback is provided.

The total implementation score on policies for protecting children seeking refugee or asylum status is 0.869, creating a minimal gap of 0.001. This is so because Malawi has done well in areas of policy, services, accountability and coordination on protecting children from involvement in armed conflict. To facilitate full commitment to its international and regional obligations in this regard, one of the key things that Malawi needs to do is to build the capacity of the education and health sectors to adequately provide services for refugee children.

CHILD RIGHTS BAROMETER

POLICY CONCLUSIONS

Policy Recommendations

In view of the foregoing analysis of child protection indicators of Malawi, the following is a consolidation of the policy recommendation primarily for the state party, being the primary duty bearer to rights:

[Public spending in children]

In the light of general comment No. 19 (2016) on public budgeting for the realization of children's rights, the government is recommended to ensure that public spending on child focused sectors and programs is adequate, equitable, efficient and effective and is undertaken within transparent and inclusive public finance management processes. It is only through increased and improved quality of public spending that the Government of Malawi can sustainably deliver essential services such as health, child protection, education, nutrition and social assistance to all children. Further, the government should strengthen efforts to improve the efficiency of resource usage in all sectors, particularly in for service delivery as this is one of the areas where the government scored relatively low throughout this report.

The allocation of resources should take note of target 16.5 of the Sustainable Development Goals on substantially reducing corruption and bribery in all their forms, take immediate measures to combat corruption and strengthen institutional capacities to effectively detect and investigate cases of corruption and prosecute the perpetrators, including by strengthening the public financial management system in order to avoid diverting resources from the implementation of the Convention.

[Data collection]

To address the aspect of data collection, disaggregation and dissemination, the government of Malawi should observe the dictates of general comment No. 5 (2003) on general measures of implementation by undertaking the following:

i. Extend the pilot of the Management Information System at the MGCDSW to all districts and build the capacity of the District Social Welfare Offices and staff for its efficient and effective use:

ii. Collect in real time and share data amongst all relevant ministries and agencies on all areas of the child protection, disaggregated by age, sex, disability, geographic location, ethnic and national origin and socioeconomic background to facilitate analysis of the situation of all children, particularly those in situations of vulnerability;

iii. The government needs to strengthen its human rights education to embed it into the formal education curriculum. Translation of children's rights should also be done into local languages.

iv. All professionals working with and for children should systematically be trained. This is important because one of the lowest scores throughout this barometer is capacity. The training should include policy makers, child protection workers and local government officials.

[Accountability institutions]

The government should observe provisions of general comment No. 2 (2002) on the role of independent human rights institutions in the promotion and protection of the rights of the child. In view of this, the government should ensure that the Malawi Human Rights Commission (MHRC) is provided with adequate human, technical and financial resources to carry out its mandate effectively, fully in line with the Paris Principles including, making the Commission accessible for all children in all 28 districts of the country. Further, the government should ensure that the mechanism for monitoring children's rights is able to receive, investigate and address complaints by children in a child-sensitive manner.

[Coordination]

The Ministry of Gender, Children, Disability and Social Welfare (MGCDSW) should also be equipped with adequate human, financial and technical resources the to carry out its coordination mandate effectively through its National Technical Working Groups and network meetings. It is commendable that Malawi was scoring consistently above average in this area suggesting that it is one of the areas where the government excels.

[Leaving no child behind]

The government should intensify its efforts to eliminate discrimination against groups of children in the most vulnerable situations, such as girls, children with disabilities, children with albinism, children living with HIV/AIDS, and children in rural areas. For this to happen, a multi sectoral approach is needed, especially the judiciary, through the local structures, including children, community and traditional leaders, and all sectors of society, to promote social and cultural change and create an enabling environment that promotes equality among children. For children with albinism the government should strengthen its enforcement of the laws and policies aimed at protecting the rights of children with albinism. There should be efforts earmarked on reducing the number of abductions, ritual killings and exhumation of remains of children with albinism.

[Birth registration]

The government should ensure enforcement of the National Registration Act (2015) in all the districts of the country. In line with target 16.9 of the Sustainable Development Goals on providing legal identity for all, including birth registration, the government should effectively implement the National Registration Act, enforced as of 2015, making the birth registration compulsory and universal.

i. The government can invest in developing mobile registration structures and creating mechanisms for registration at the Traditional Authority level, to ensure that the registration service is accessible to all.

ii. The government can also expedite the scaling up of the health facility-based birth registration;

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[Abuse and neglect]

In the light of target 16.2 of the Sustainable Development Goals on ending abuse, exploitation, trafficking and all forms of violence against and torture of children, the government should undertake the following:

i. Scale up and implement programmes aimed at preventing violence against children;

ii. Ensure that more services are available by strengthening the technical and operational capacities of the Police and Community Victim Support Services, as well as child protection workers, to increase their accessibility and outreach, especially at the community level;

iii. Strengthen mechanisms for the early detection and prevention of child abuse at the community level and raise awareness on their existence and procedures;

iv. Take the necessary measures to ensure that child victims of violence receive psychological and recovery support and encourage them to report cases of abuse, violence and neglect;

v. Establish a national database on all cases of violence against children, including ill-treatment, sexual abuse, child abuse and neglect and domestic violence and develop and implement a monitoring and evaluation system to help determine how child protection systems can best address violence against children;

vi. Address the police violence against children through special training of police on child-friendly techniques for dealing with children generally, and crowd control and dispersal in particular, and introducing guidelines governing the use of police "deadly force".

[Sexual exploitation and abuse]

In addressing this aspect, the government should:

i. Prioritize and ensure adequate resources for the full implementation of the CCPJA and other relevant legislation, ensure the development of programmes and policies for the prevention, recovery and social reintegration of child victims and adopt comprehensive measures to address such violence:

ii. Scale up services for child victims of sexual violence, such as psychosocial medical support and access to post-rape health services, scale up support for the One Stop Centres, so as to make them easily accessible to all victims, especially those from the rural areas, and pay special attention to vulnerable groups, such as girls with mental disability;

iii. Ensure that there are effective mechanisms, procedures and guidelines in place for mandatory reporting of cases of sexual abuse and exploitation and ensure accessible, child-friendly and effective reporting channels for such violations:

iv. Take all necessary measures to investigate reported cases of sexual violence and prosecute and punish the perpetrators without any exception;

[Alternative Care]

The government should implement, disseminate, enforce and raise awareness on the Children Homes and Orphanages Rules and regulations of 2005. The UN Alternative Care Guidelines should be domesticated. Further, the government should ensure the registration and inspection of existing alternative care centres for children and ensure that they operate in accordance with at least the minimum standards.

[Adoption]

The government should expeditiously pass into law the revised Adoption Act, raise awareness about the new adoption procedures and regulations, promote and encourage domestic adoption.

[Children with disabilities]

General comment No. 9 (2006) on the rights of children with disabilities urges member states to adopt a human rights-based approach to disability, set up a comprehensive strategy for the inclusion of children with disabilities. The government of Malawi is recommended to cost and implement the Disability Act 2012, including the corresponding national action plan. Further, there should be a Disability Trust Fund meant to ameliorate the challenges experienced by children with disabilities. Also, the government should collect and analyse data on the situation of all children with disabilities, disaggregated by, inter alia, age, sex, type of disability, ethnic and national origin and geographic location.

[Economic exploitation, including child labour]

It is commendable that the government ratified the Minimum Age Convention, 1973 (No. 138) and the Worst Forms of Child Labour Convention, 1999 (No. 182) of the International Labour Organization and went further to develop a National Action Plan on Child Labour 2010-2016. In spite of these, the government should finalise and implement the Child Labour Policy and the Child Protection Policy protecting children from the worst forms of child labour. To complement these, there should be a National Child Labour Data Base fed from a referral mechanism between Ministry of Labour and Ministry of Gender.

[Sale, trafficking and abduction]

The government should harmonise the punishment for the offence of child trafficking under the Trafficking in Persons Act and CCPJA. It should further establish mechanisms of collecting data on cases of internal and cross border trafficking of children, as well as investigation, and cases of prosecution of perpetrators. There should also be mechanisms for ensuring that child victims of trafficking are compensated, and provide adequate resources for social and rehabilitation services for victims.

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[Administration of juvenile justice]

In the light of general comment No. 10 (2007) on children's rights in juvenile justice, government of Malawi should bring its juvenile justice system fully into line with the provisions of the general comment and other relevant standards. The following specific recommendations should be considered:

i. Raise the age of criminal responsibility to an internationally accepted standard and give the child the benefit of the doubt in the context of punishment, when their age is in dispute;

ii. Ensure that juveniles, who are deprived of liberty, are detained separately from adults, and separate males and females;

iii. Ensure that children who are awaiting trial, if detained, are not held together with those who are convicted;

iv. Operationalize the Child Justice Courts and ensure that conditions in Reformatory Centres and other facilities used to detain children meet children's health, educational, and other needs;

v. Use in practice the diversion mechanisms and alternatives to punishment provided by the CCPJA and that judges, police officers, prosecutors, court staff, social workers and other relevant officials are duly trained in such processes;

vi. Improve the conditions in pre-trial and post-trial detention and juvenile justice facilities and rehabilitation and integration programmes for children in conflict with the law.

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End Notes

1 http://thecommonwealth.org/our-mem-Report, p33 Table 2.10 ber-countries/malawi/history 30 Malawi Child Care Institution Report, 2011, p 2 Malawi - History Background - Schools, 35, Table 3.29. Percent, African, and Education - StateUniver-31 Annual Economic Report, 2016, p174. Table 19.5, Social Security and Welfare Affairs sity.com http://education.stateuniversity.com/ pages/912/Malawi-HISTORY-BACKGROUND. Services. html#ixzz5fJQzh0J8 32 ILO Convention 138 3World Bank at http://web.worldbank.org/ 33 ILO Convention 182 WBSITE/EXTERNAL/COUNTRIES/MENAEXT/ 34 ILO Convention 29 EXTMNAREGTOPGOVERNANCE/O,,content-35 Malawi Constitution Section 23 Subsection MDK:20513159~pagePK:34004173~piP-K:34003707~theSitePK:497024,00.html 36 No 6 of 2000 4 https://data.unicef.org/topic/child-protection/birth-registration/# 37 Government of Malawi, 2015: Child Protection Case Management Framework, 5 Assessment Report of the Alternative Care Pg49, paragraph 2 System for Children in Malawi, 2014, Page 48, 38 National Action Plan for Child Labour paragraph 4 39 These include The Penal Code of Malawi (as 6 Annual Economic Report 2016. Page 174. Table amended in 2011); The Child Care Protection and Justice Act of 2010; The Trafficking in Persons Act of 2015; The Malawi Electronic Transactions Act of 2016; The Employment 7 Report Violence Against and Young Women in Malawi 2013 8 Case Management Summary Analysis 2016 (Prohibition of Hazardous Work for Children) Page 2 Final paragraph Order of 2012. The law is in conformity with 9 Thyolo case management report; page 6. various international conventions, including the 10 Child Care, Protection and Justice Act AU Convention on Cybersecurity and Personal 11 Assessment Report of the Alternative Care Data Protection even though Malawi has not yet ratified the treaty.
40 See ECPAT International, Global Monitoring: System for Children in Malawi: SOS Children's Village, 2014, Page 35, paragraph 12 Thyolo Case Management Report. Page 6. action against sexual exploitation of children: And Mzimba North Quarterly Report Malawi, 2016, p39-49 and Malawi Human Rights 13 Malawi Child Protection Systems Mapping Commission (2016) p39-40, "Concept Paper on and Assessment Report, 2012, page 73 the '25 Years of CRC in Malawi' Conference", 6. 14 S20(1) Constitution as amended by Act No. 11 of 2010. 41Optional Protocol to the Convention on the 15 Ibid, S20(4). Rights of the Child on the sale of children, child 16 S10 Disability Act No. 8 of 2012. In addition, education policies, such as the National Education Strategic Plan (NESP) promote an enabling environment for children with disabilities in conventional schools. 17 S19(a) Disability Act No 8 of 2012. This is further strengthened by the National Sports Policy and the National Youth Policy, which, among other things, promote the participation of all people in sport regardless of disability and encourage the provision of sporting facilities to young people with disabilities. 18 S72 Child Act No. 22 of 2010. 19 S42(2)(h) Constitution, 1994. 20 Like the Malawi Growth and Development Strategy (MGDS II), the National Policy on

Orphans and Other Vulnerable Children and the

National Policy on Equalisation of Opportunities for Persons with Disabilities.

22 http://www.osisa.org/education/malawi/

23 Situation Analysis for Vulnerable Children

24 In terms of access to justice, the Legal Aid Department is mandated to provide legal

representation to those who cannot afford.

25 http://www.fedomamalawi.org/about-us

Malawi, 1st Edition 2013; National standards Youth Friendly Health Services, 2007.

27 Malingunde School for the Deaf, Chilanga

School for the Blind, Mua School for the Deaf,

28 From Exclusion to Inclusion - Malawi Report,

29 Training of teachers on special needs education is only offered at Montfort College.

See, From Exclusion to Inclusion - Malawi

See Malawi Child Protection System Mapping

26 Minimum Standards of Clinical Services for

malawi-council-handicapped-macoha

and Assessment Report, 2012, p82.

Embangwein School for the Deaf.

p48 Table 2.15.

21 S5(2) Disability Act of 2012.

Report, Malawi, 2015, p3.

prostitution and child pornography, ratified in 2009; Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, ratified in 2005; Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, ratified in 1965; Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, ratified in 1965. 42 Trafficking in Persons Act; Child Justice Act; The Penal Code. 43 Through: a) Threats or use of force or coercion; b) Abduction; c) Fraud or deception; d) Abuse or threats of abuse of power or position; e) Abuse or threats of abuse of position of vulnerability; f) Abuse or threats of abuse of the law or legal process; or g) Giving or receiving of payments to obtain consent of a person having control of the trafficked person for the purpose of exploitation of that person. 44 S14, 15 and 21 of Trafficking in Persons Act 45 Minimum Standards of Clinical Services for Malawi, 1st Edition 2013: National Standards Youth Friendly Health Services 2007; and Eighth Schedule, Child Act - Reformatory Centre and Safety Home (Management) Rules. 46 Assessment Report of the Alternative Care System of Children in Malawi, p45. 47 ECPAT International, CSEC CMR 2016, p46. 48 S4 Trafficking in Persons Act. 49 Like the Ministry of Health (MOH); Ministry of Gender, Children, Disabilities and Social Welfare; Ministry of Home Affairs and Internal Security; and the Ministry of Justice and Constitutional Affairs. 50 There are 20-hospital based centres across the country and services accessed depend on whether it's a central hospital with a

designated building, or a health centre with a designated room. Malawi National Guidelines for Provision of Services at One Stop Centres,

51 ECPAT, Eye of the Child & YONECO, 2016 52 Malawi Trafficking in Persons Act 2015, 53 Such as the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, on 11/6/1996; and the Optional Protocol to the Convention against Torture, on 24/09/2008.

54 42(2)(g), Malawi Constitution (As amended by the Constitution (Amendment) Act 11 of 2010).

55 S19(3) Constitution.

56 S44(1)(b) Constitution - There shall be no derogation, restrictions or limitation with regard to the prohibition of torture and cruel, inhuman or degrading treatment or punishment.

57 S26(2) Penal Code; S141, Child Act; Sixth Schedule, para 1, Child Act. Also see Moyo v Attorney General (2007) Cons. Case No. 12 (Malawi).

58 S19, Malawi Constitution prohibits corporal punishment in connection with any judicial proceedings or before any organ of the State. 59 S42(2)(g)(ii), Constitution -as amended by Act No 11 of 2010).

60 S14, Penal Code Amendment Act No. 1 of 2011

61 Section 140.

62 Such as a parenting order, a hospital order, home confinement order or reformatory centre order - S96, Child Act.

63 S168, Child Act.

64 S158, Child Act.

65 S42(g)(iii) Constitution.

66 S97. Child Act.

67 S42(1)(c)) Constitution; S127(1) Child Act; S126(1) Child Act.

68 s95(2) Child Act; S42(2)(b) Constitution. 69 S42(1)(e) Constitution.

70 A snapshot of alternative care arrangements in Malawi, SOS Children's Village, 2013, P7.

71 S150, Child Act. 72 2016 Malawi Prison Inspectorate Report. 73 For example, in 2016, Kachere Juvenile Centre recorded 27 members of staff against

258 inmates - representing a ratio of one warder to about 10 inmates. See the 2016 Malawi Prison Inspectorate Report

74 Ibid.

75 Situation Analysis for Vulnerable Children Report, 2015, p32.

76 S157(1) & 158, Child Act 77 S42(2)(g) Constitution.

78 S90, Child Act; S42 (1), Constitution.

79 S42(2)(f)(iii) Constitution

80 S126(1), Child Act

81 S42(2)(iii) Constitution

82 Third Schedule Child Act, para 2; S91(a) Child

83 S154(4) Child Act.

84 S138(4) & 139, Child Act.

85 S14. Penal Code.

86 S42(2)(f)(iv) Constitution; Section 144(11) Child Act.

87 S94; Also see Division 5 of the Child Act. 88 Applied in practice, in line with Part Five of the Child Act.

89 Malawi Prison Inspectorate Report, 2016.

90 S131(2)(c), S149((1), S154(4) Child Act. 91 S139(3) Child Act - (in the case of a company or organization, a fine of K100.000; and if such person is a reporter, a fine of K20.000 and

imprisonment for six months 92 Assessment Report of the Alternative Care

System of Children in Malawi, p39,

93 Except for the Convention relating to the Status of Stateless Persons (1954).

94 Which includes unmarried children under

the age of 21 years.

95 UNHCR UPR, September 2014, P2

96 S126(5) Child Act. 97 Ibid.

98 S23(1)(m) Child act.

99 S10(2) Refugee Act. 100 S19(2) Defence Force Act 2004. 101 Refugee Status Determination Standard

Operating Procedures. 102 UNHCR UPR 2014, p3 RSD SOPs

103 S3(1) & S6, Refugee Act.

104 i.e. Refugee Status Determination Standard Operating Procedures.

105 Food Assistance to Refugees in Malawi, Standard report 2016, p19

106 Food Assistance to Refugees in Malawi, Standard report 2016, p18

107The minimum age of criminal responsibility is 10 years (with a rebuttable presumption of criminal capacity for children aged between 10 and 14 years), and this needs to be revised to no less than 12 years as recommended by General Comment No 10 of the UN Committee on the Rights of the Child.