



GOVERNMENT OF MALAWI

PROTECTING CHILDREN IN MALAWI

A report on the major findings of the mapping and assessment of the
National Child Protection System

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Manolo CABRAN

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Contents

Acknowledgements.....	1
1. Foreword by Ministry of Gender, Children and Social Welfare.....	5
2. Foreword by UNICEF.....	6
3. Acronyms.....	7
4. Executive summary.....	10
5. Introduction.....	14
5.1. Rationale and background.....	14
5.2. What is a child protection system.....	15
5.3. Adopting a systems approach to child protection in Malawi.....	18
5.4. Purpose of the mapping and assessment exercise and structure of the report.....	19
6. Malawi context.....	21
6.1. Situation analysis of children.....	21
6.2. Protection issues affecting children.....	23
7. Methodology.....	30
7.1. The toolkit.....	31
7.2. Data collection.....	32
7.3. Limitations and constraints.....	33
8. Mapping and assessment findings.....	34
8.1. The normative framework.....	34
8.1.1. International Juridical instruments.....	34
8.1.2. National legislation.....	37
8.2. Coordinating child protection actors.....	42
8.2.1. National level coordination.....	42
8.2.2. Local level coordination.....	45
8.3. Capacities.....	49
8.3.1. Human resources.....	49
8.3.1.1. Key Ministries.....	50
8.3.1.1.1. Ministry of Gender, Children and Community Development.....	50
8.3.1.1.2. Ministry of Justice and Constitutional Affairs.....	56
8.3.1.1.3. Ministry of Education, Science and Technology.....	57
8.3.1.1.4. Ministry of Health.....	58
8.3.1.2. Civil Society.....	60
8.3.1.3. Development Partners.....	64

*Malawi Child Protection System
Mapping and Assessment Report*

8.3.1.4. Training Institutions	65
8.3.2. Financial resources.....	69
8.4. Services and other interventions to protect children.....	69
8.4.1. Children in need of care and protection.....	70
8.4.1.1. Prevention services and interventions	70
8.4.1.2. Response services and interventions.....	71
8.4.1.3. Key systemic issues	73
8.4.1.4. Child Protection and other cross-cutting issues: HIV and AIDS and Social Protection .	75
8.4.1.5. Process of care	77
8.4.2. Children and Justice	79
8.4.2.1. Formal mechanisms for Child Justice.....	80
8.4.2.2. Community Mechanisms for Child Justices	83
8.4.3. Child protection in emergencies.....	85
8.5. Accountability mechanisms	87
8.5.1. Constitutional bodies.....	87
8.5.1.1. The Office of the Ombudsman.....	88
8.5.1.2. The Malawi Human Rights Commission.....	89
8.5.1.3. The National Child Helpline.....	91
8.5.2. Knowledge generation and management	92
9. Conclusions	95
9.1. Resume of recommendations.....	95
9.2. Implementing recommendations	95
1. Annexes.....	97
a. Annex A: List of participating agencies	98
b. Annexe B: List of consulted documents.....	100

List of Figures

Figure 1: Administrative map of Malawi.....	9
Figure 2 Child Protection Systems: Actors, Context and Components.....	17
Figure 3 Child labour per economic sector	24
Figure 4 Living arrangements of children	28
Figure 5: Reasons for arrest of children.....	29
Figure 6: Distribution of offences reported to Police in 2011.	30
Figure 7: Child Protection coordination arrangements at the national level	43
Figure 8: Child Protection coordination arrangements at the district Level	46
Figure 9: Geospatial distributions of Social Welfare Officers across the districts.....	52

Figure 11: Geospatial distribution of Non-Governmental Organizations across the districts..... 61
Figure 12: Preventive and responsive interventions by NGOs 61

List of Tables

Table 1: Health indicators for children 22
Table 2 Population of school-age by school level 22
Table 3 Education sector indicators..... 23
Table 4 Per cent distribution of person aged under 18 with birth certificate 25
Table 5: Malawi status concerning international juridical instruments 36
Table 6: List of most relevant child protection legislation..... 38
Table 7: Social Welfare Officers distribution per population and area 51
Table 8: UN agency involved in child protection 64
Table 9: Bi- and multi-later partners involved in child protection..... 65
Table 10: Good practices from the "Models of care study" 73

List of Recommendations

Recommendation 1: Legislation reform 39
Recommendation 2: Law enforcement 41
Recommendation 3: Coordination at the national level 44
Recommendation 4: Coordination at the sub-national..... 49
Recommendation 5: Ministry of Gender, Children and Community Development capacities 56
Recommendation 6: Other line Ministries capacities..... 59
Recommendation 7: Civil Society capacities..... 63
Recommendation 8: Media capacities..... 64
Recommendation 9: Development Partners capacities 65
Recommendation 10: Child Protection workforce strengthening..... 69
Recommendation 11: Services and other interventions for children in need of care and protection. 79
Recommendation 12: Services and other interventions for children and formal justice..... 82
Recommendation 13: Services and other interventions for children and community justice..... 84
Recommendation 14: Child Protection in emergencies 87
Recommendation 15: Accountability mechanisms 92
Recommendation 16: Knowledge generation and management..... 94

1. Foreword by Ministry of Gender, Children and Social Welfare

To be inserted

2. Foreword by UNICEF

On behalf of UNICEF Malawi, I am pleased to share the report on the mapping and assessment of the child protection system that was undertaken by the Government of Malawi. UNICEF and the other United Nations agencies are committed to supporting the Government of Malawi in achieving its goals stated in the Malawi Growth and Development Strategy II (2012-16) of operationalizing the national child protection system to protect children from violence, abuse, exploitation and neglect. UN agencies have harmonized their interventions aligning them to the implementation of the MDGS II to ensure the maximum effect. In this sense, a protection cluster has been created under the new United Nations Development Assistance Framework (2012-16) to assist the Government in creating a safer environment of Malawian children. UNICEF Malawi developed of a Child Protection Strategy aimed at supporting Government efforts in strengthening national child protection system to effectively prevent and respond to violence, abuse and exploitation of children.

This report constitute the foundations upon which the Malawi child protection system will be strengthened. It depicts the situation of child protection as of 2011 and the achievement already accomplished by the Government and its partners in preventing and responding to violence, abuse, exploitation and neglect against children. Starting from these linchpins, it presents the way forward for a further strengthening of the system for improved performances through an effective enforcement of the national legislation. In this sense, the costed implementation plan of the Child Care, Protection and Justice Act (2010) will detail all interventions that ensure the functionality, effectiveness and efficiency of the national child protection system.

The significant results already achieved in Malawi, and the way the Government and its partners are planning to reach the goal of a safer environment for their children, made many actors in the region to look with attention at the development of the child protection system in Malawi. Malawi experience in child protection is becoming a reference for practitioners in the region. This report moves in the same direction.

UNICEF Malawi reiterates its on-going support to the Government of Malawi in all its efforts for a sustainable and equitable development of the Country and of all its citizens, including children. I am delighted to extend my grateful thanks to the Ministry of Gender, Children and Social Welfare, the National Technical Working Group on Child Protection and all the stakeholders that, in various ways, contributed to this high quality report.

Mahimbo Mdoe

Lilongwe, October 29th, 2012

3. Acronyms

Disclaimer: acronyms have been avoided as much as possible. Nevertheless, in the following table the reader can find a list of most used acronyms in the domain of child protection as a reference for further readings.

ADC	Area Development Committee
AEC	Area Executive Committee
AIDS	Acquired Immune Deficiency Syndrome
CBCC	Community Based Childcare Centre
CBO	Community Based Organization
CC	Children's Corner
CCPJA	Child Care, Protection and Justice Act
CCPW	Community Child Protection Worker
CJC	Child Justice Courts
CSO	Civil Society Organisation
CVSU	Community Victim Support Unit
DA	District Assembly
DC	District Commissioner
DEC	District Executive Committee
DHO	District Health Officer
DHS	Demographic and Health Survey
DLO	District Labour Officer
DoDMA	Department for Disaster Management Affairs
DSWO	District Social Welfare Officer
ECD	Early Childhood Development
EU	European Union
FAO	Food and Agriculture Organization
FBO	Faith Based Organisation
GBV	Gender Based Violence
GIZ	Gesellschaft für Internationale Zusammenarbeit
GoM	Government of Malawi
HIV	Human Immunodeficiency Virus
ILO	International Labour Organization
IMS/CP	Information Management System on Child Protection
IPEC	International Programme on Elimination of Child Labour
LAD	Legal Aid Department
MGDS	Malawi Growth and Development Strategy
MHRC	Malawi Human Rights Commission
MICS	Multi Indicator Cluster Survey
MoGCCD	Ministry of Gender, Children and Community Development
NAC	National AIDS Commission
NCJF	National Child Justice Forum
NGO	Non-Governmental Organisation
NRB	National Registration Bureau
NTWG/CP	National Technical Working Group on Child Protection
OPC	Office of the President Cabinet
OSC	One Stop Centre
OVC	Orphans and Vulnerable Children
SGBV	Sexual and Gender Based Violence
TA	Traditional Authority
UNCEDAW	United Nations Convention on Elimination of Discrimination Against Women

*Malawi Child Protection System
Mapping and Assessment Report*

UNCRC	United Nations Convention on the Rights of the Child
UNDAF	United Nations Development Assistance Framework
UNDP	United Nations Development Programme
UNFPA	United Nations Population Fund
UNHCR	United Nations High Commission for Refugees
UNICEF	United Nations Children's Fund
USAID	United States Agency for International Development
VAC	Violence Against Children
VDC	Village Development Committee
VEC	Village Extension Committee
VSU	Victims Support Unit
WFP	World Food Programme
WHO	World Health Organization

4. Executive summary

In recent years, there have been significant improvements in prioritizing child protection in Malawi. The development agenda included a child protection system approach in the Malawi Growth and Development Strategy II (2012-16), setting a strengthened child protection system as one of its expected results. United Nations Agencies aligned with the Government agenda, incorporating child protection systems in the United Nations Development Assistance Framework (2012-16). The Ministry of Gender, Children and Community Development, the Government branch mandated of coordinating and implementing child protection, established a Child Protection Division within the re-established Social Welfare Department.

This evolution, rather than departure from previous experiences, was developed from the domain of Orphans and other Vulnerable Children. With an HIV and AIDS prevalence rate of 11%, Malawi has been hit hardly by this pandemic and interventions to mitigate the impact of the disease date back more than a decade. In 2003, a National Policy for Orphans and other Vulnerable Children (NPA/OVC) was adopted, eventually followed by a National Plan of Action (2005-2009) which was extended to 2011. The NPA/OVC already covered child protection concerns, among others, birth registration, community caring mechanisms, children in institutions, protect from abuse, exploitation and property dispossession. Implementation is a frequent challenge.

Malawi has a good **normative framework for child protection**, which in mostly aligns with international standards. Malawi is party to almost all international conventions, protocols and conventions applicable to child protection. The Constitution (1994) states citizen's rights are in line with the Universal Declaration of Human Rights; children also have these rights. In 2010 the Parliament passed the Child Care, Protection and Justice Act (CCPJA), constituting the backbone of the new normative framework for child protection. Other laws accompanying this important piece of legislation include: the Prevention of Domestic Violence Act (2006), the National Registration Act (2010), the Will and Inheritance Act (2011), the Employment Act (2000) and the list of Hazardous Works for Children (2012), the Probation Act and the Penal Code. Other child protection laws are being developed, namely the Adoption Bill and the Trafficking in Person Bill.

Law enforcement is still a challenge due to scarce material and human resources. Policies and action plans are available for Orphans and other Vulnerable Children, Early Childhood Development, and child labour, but implementation plans do not define responsibilities, deadlines and costs. The CCPJA needs clear links with other relevant child protection legislations, and, in order to be fully enforced, will need implementing rules and regulations, clear guidelines for all child protection actors and a costed implementation plan.

Coordination is one of the most important challenges. Coordination mechanisms exist at both national and sub-national levels, but the mandate is not clearly articulated. At the national level, the National Technical Working Group on Child Protection (NTWG/CP) is available. However, it requires specific terms of reference that details its roles and responsibilities. The NTWG/CP gathers representatives from the Government and Civil Society, and draws from the experience of the National Technical Working Group on Orphans and other Vulnerable Children. The NTWG/CP does not meet regularly and its meetings are costly, due to involvement of members from the sub-national level.

*Malawi Child Protection System
Mapping and Assessment Report*

At the district level, a variety of coordinating mechanisms are available. Some bodies are from the National Plan of Action on Orphans and other Vulnerable Children; others are based upon child protection issues, like child labour, child trafficking, or broader child rights. This is composed of representatives from Government and Civil Society. Members often sit on more than one coordinating body, within the same district; duplicate efforts and lack of resources need to be addressed to have clearer outcomes for children. The District Social Welfare Officers chair these bodies across the country. Most of these coordinating mechanisms have plans of actions for children but not for child protection.

The different coordinating mechanisms need to harmonize, working with other social services sectors, such as Education, Health, and Social Protection. In this sense, the Child Friendly District Initiative could create the framework for this. Coordination in child protection is overall at the case management level but needs improvements at the programmatic level.

Capacities need increasing investment across all sectors in number of staff, training and infrastructures. The Ministry of Gender, Children and Community Development currently deploys seven Social Welfare Officers (SWOs) at the National level and nearly 140 at the district level. Forty-four SWOs also serve as probation officers. The ratio of SWOs is 0.98 per 100,000 people. There are inequalities in the distribution at the district level, where the Northern Region has a higher concentration of SWOs. Inequalities are also present within districts, where rural and urban settings can affect SWOs' deployment, as well as gender considerations. The SWOs' role is to lead Social Welfare management at the district level, to identify, assess, and follow up on child protection cases, inspect and supervise child care institutions at the district level, chair child protection coordination mechanisms at the district level, liaise with the justice sector (probation), and liaise with communities through the Community Child Protection Workers. At the Traditional Authority level, 800 Community Child Protection Workers (CCPWs) are present, 300 are on the Government payroll and the rest receive a stipend funded by the Global Fund. CCPWs play an essential role to liaise the community level with the district level, reporting on child protection cases, offering mediation and counselling, and supporting the SWOs in investigations and assessments. The Malawi Police has 51 Police Officers that received training on child protection. The Police manage nearly 400 Victims Support Units (VSUs) across the Country. Four hospitals in Lilongwe, Blantyre, Mzuzu and Zomba host One Stop Centres (OSCs), specialized in violence against children and women and offer different services (health, social welfare, and police) to increase access from victims and reduce the risk of victimization. Communities run 300 Community Victim Support Units (CVSUs) to provide services closer to victims; more than 10,000 Community Based Childcare Centres (CBCCs) and nearly 3,000 Children's Corners (CCs) offer interventions for young children and youth. Nearly 100 Non-Governmental Organizations that provide child protection interventions across the country were inventoried. Four Child Justice Courts in the cities of Lilongwe, Blantyre, Mzuzu and Zomba were established. To date, there are not magistrates dealing exclusively with children in conflict with the law, but 28 of them (one in each district) have been designated child justice magistrates and receiving training on the CCPJA.

Many service providers, from public and private initiatives, are understaffed, whether it be from the Social Welfare sector or the Justice sector. There is a high demand for training on child protection, especially in-service training focussing on dealing with children in need of care and

*Malawi Child Protection System
Mapping and Assessment Report*

protection. In-service training tends to be project oriented and not competency based. Often, professionals and volunteers in the field do not have of the necessary logistic means to carry out their responsibilities. Resource mobilization rarely happens based on a sound evidence base; this leads to few long term investments with economies of scale. Malawi is a resource constrained Country; this makes strengthening capacities a challenge.

Malawi has developed an array of **services and other interventions** to protect children. There are nearly one hundred NGOs across the Country, with an average of four per district. The whole spectrum of care is covered, from primary prevention to tertiary prevention. Nevertheless, they need joint planning, implementation, and monitoring, to ensure that children are protected by a continuum of care, reducing gaps amongst services. Primary prevention for families and communities have to be strengthened to combat the high rate of violence in Malawi, especially against women and girls (41% of women experience physical or sexual violence, one million children is growing up in violent homes, witnessing domestic violence and experiencing its negative effects, and 65% of girls experience some form of child abuse during their lifetime, compared with 35% of boys). Together with those mentioned above (VSUs, OSCs, CVSUs, CBCCs, and CCs), Civil Society Organizations offer interventions to provide children with life skills, but there needs to be more focus on child protection skills. These interventions are evenly distributed geographically, but information is not sufficient, to indicate if deployment responds to equity concerns. Services are too often issue-oriented, requiring a shift to consider the child holistically. Most agencies have their own process of care; this requires harmonization and standardization of identification, case management, and referral mechanisms to ensure quality service provision.

Access to justice is still a challenge for most children. Four new Child Justice Courts (CJCs) were established in Lilongwe, Blantyre, Mzuzu, and Zomba. The staff of CJCs received training on children and justice from the National Child Justice Forum (NCJF). Due to understaffing at the Ministry of Justice, prosecution by the Department of Public Prosecution is only possible for major cases; minor cases are prosecuted by the Malawi Police. Legal representation is a Constitutional right but is still a challenge to enforce, due to the understaffing of the Legal Aid Department within the Ministry of Justice. Probation officers face a heavy workload; this negatively impacts the effectiveness of their intervention. Para-legal services are available and can offer legal advice to children and their families but cannot appear in court as legal representatives or probation actors.

Malawi's Constitution has two important **accountability mechanisms**, the Office of the Ombudsman and the Human Rights Commission. The two bodies are currently establishing child desks, to monitor children's situations in a more effective way. Complaint mechanisms needs to be established, or strengthened where they already exist, internally in each organization but also systemically improving access to restorative justice. A third accountability mechanism will be the Child Case Review Board; the Board will be created by the CCPJA but is not yet in place.

Data collection is still a challenge, especially for child protection cases. Statistics are often available but scattered amongst all child protection actors. Data collection relies on expensive and time-consuming surveys and studies. Knowledge management mechanisms exist at the organizational level, but they poorly implemented at the systemic level. Information management systems need to be strengthened in case management as well as at the programmatic level. There are no incentives or reward mechanisms that encourage successful and good practices. Efforts are

*Malawi Child Protection System
Mapping and Assessment Report*

underway to strengthen information management system to collect data on child protection in a reliable and timely manner.

The mapping and assessment exercise allowed to identify key recommendations to strengthen the child protection system.

- i. Legislation needs to be enforced through specific rules, regulations and guidelines and appropriate costed implementation plans, using the Child Care, Protection and Justice Act (2010) as entry point.
- ii. Effective coordination mechanisms at programmatic and case management level needs to be addressed to make sure the system is working as a whole at both national and sub-national levels and it is able to achieve results for children and families. Coordination should be built around clear division of roles and responsibilities and with costed plan of actions.
- iii. Higher investments are required to address the capacity gaps for human resources, infrastructures and facilities. Staffs in Social Welfare and in Children and Justice have to be deployed according to agreed standards; pre-service and in-service trainings shall fit to adequate job descriptions; cost-effective investments for buildings, logistics and other means needs to be done. There is need to strengthen capacities also in sectors that not have child protection as a primary mandate, i.e. health and education sectors.
- iv. Quality child protection services and other interventions have to be harmonized, expanded and improved to cover the whole spectrum of continuum of care. Duplications are to be avoided and geographical coverage have to be ensured according to population ratios and workloads. Linkages, intersections and overlaps between primary, secondary and tertiary prevention interventions have to be monitored. Thresholds for these three levels have to be agreed upon. The process of care have to be standardized and implemented through appropriate case management arrangements.
- v. Accountability mechanisms have to be strengthened to demonstrate the degree of functionality of the system at the individual case level, at the program level and at the system level. Designated bodies like the Office of the Ombudsman, the Malawi Human Rights Commission, and the Child Case Review Board shall monitor the system's effectiveness and efficacy. An information management system shall collect data in a reliable, timely and cost-effective manner to show results for children, to create an evidence base, and to improve the knowledge on child protection in the country. Complaint mechanisms need to be put in place to address the system's malfunctioning.

5. Introduction

The Government of Malawi committed to the Social Development of its people, as presented in the Malawi Growth and Development Strategy II (2012-16). With more than half of its population younger than 18 years old, and children confronted by serious and continuous protection risks, child protection becomes a clear priority in the policy agenda. For this reason, the Malawi Growth and Development Strategy II (2012-16) sets out, as one of its expected outcomes, the strengthening of the national child protection system. In order to achieve this challenging objective, a general consensus on the way forward has to be constructed.

A starting point, a direction, and a destination are all necessary for each trip. The Government policy document addresses the destination, as mentioned above: the strengthening of the child protection system. This mapping and assessment tells the current situation, i.e. the starting point. In a synthetic way, it presents all that is known about child protection in Malawi, strengths and weaknesses of the work, and priorities to address to bridge the gap. The mapping and assessment of the existing child protection system is the first step of the way forward.

The enforcement of the Child Care, Protection and Justice Act (2010) will give the direction, through an implementation plan that will be developed and costed, informed by the findings of this mapping and assessment, and supported by the Child Protection Strategy (2012-16) adopted by the UNICEF Malawi.

5.1. Rationale and background

The UN Convention on the Rights of the Child, the African Charter on the Rights and Welfare of the Child and the Child Care, Protection and Justice Act (2010) of Malawi proclaim that children are to be protected from any kind of harm, violence, abuse and exploitation. Despite these legal provisions and the effort to reduce and eliminate violence against children, particularly against girls, violence and abuse against children is widespread in Malawi- taking place at home, in school and in the community at large.

Over the last decade, the Government of Malawi has made significant strides in developing a strong legal and policy framework for protection of children. In addition to ratifying the Convention on the Rights of the Child (1991), it has also enacted laws, guidelines and policies addressing child care and protection issues including the Prevention of Domestic Violence Act (2006), National Registration Act (2009), the Extended National Plan for Orphans and Vulnerable Children (2010) and the National Policy and Action Plan on Child Labour (2010).

In June 2010, the Government also enacted a comprehensive Child Care, Protection and Justice Law. This landmark legislation provides a strong normative foundation for the strengthening the national child protection system and improving the protection of children in Malawi. Translating this legislation into a practical reality for vulnerable children and their families requires: (a) the mapping of the existing child protection system, (b) the development of a costed implementation plan and resource mobilization strategy (c) implementing regulations, and (d) standard packages of services, training and protocols.

The Government and civil society partners undertook the mapping and assessment of Child Protection Systems, utilizing a Toolkit that was developed with support by UNICEF. A Child Protection System is a set of laws, policies, regulations and services, capacities, monitoring, and oversight needed across all social sectors—especially social welfare, education, health, security, and justice—to prevent and respond to protection-related risks². This mapping and assessment is a contribution to the Government’s efforts in protecting children; it has been overseen by the National Steering Committee on OVC/Child Protection through the National Technical Working Group on OVC/Child Protection. The final output of the mapping and assessment process will lead to the development of a costed implementation plan for strengthening the Child Protection System. In addition, it will contribute to the definition of the Strategic Plan for the Implementation of the Child Care, Protection and Justice Act (2010), which provides the overall framework for the National Child Protection System in Malawi.

Child protection actors have increasingly been paying attention to the effectiveness of their interventions for children. A system approach has been identified as the way to improve national responses to child protection risks. UNICEF, World Vision, Save the Children, and Plan International are developing their definitions of a child protection system and how it should work. In sub-Saharan Africa, a number of countries³ have started mapping and assessing their national child protection system to collect information to develop multi-years national child protection policies, strategies, plans of action, to strengthen areas where their system faces child protection risks, to reduce the impact of risks on children.

Around the world, child protection invests more in advocacy for laws than in implementation and enforcement of them⁴. Most interventions do not sufficiently emphasize investments in the mechanisms of enforcement and in support to community level Child Protection advocates. Strengthening the capacity of professionals and community level workers contribute to a stronger foundation for the child protection system⁵. This would help develop and institute policy and legislation. The findings from the UNICEF Child Protection Meta-Evaluation (2008) suggest that investments should create both the mechanics and the political possibility of compliance with laws. Similarly, enforcing legislation requires supporting duty bearers in developing protection arrangements and also building the capacities of rights holders to know and claim their rights. In order to effectively enforce the Child Care, Protection and Justice Act (2010), it is necessary to develop and strengthen capacities at all levels to effectively implement national, district and local plans of action.

5.2. What is a child protection system

The right of a child to be protected is sanctioned by several international juridical instruments, mainly the United Nations Convention on the Rights of the Child and the African

²UNICEF Child Protection Strategy, 2008

³ Angola, Botswana, Ethiopia, Ghana, Côte d’Ivoire, Kenya, Malawi, Mozambique, Namibia, Niger, Puntland, Senegal, Sierra Leone, Somaliland, South Africa, South Sudan, Swaziland, Tanzania, Uganda, Zambia, Zimbabwe.

⁴ See UNICEF Child Protection Meta-Evaluation, 2008

⁵ Heavy bureaucratic procedures, for example, play a major role, see UNICEF Child Protection Meta-Evaluation, 2008

*Malawi Child Protection System
Mapping and Assessment Report*

Charter on the Rights and Welfare of the Child. Article 19 of the United Nations Convention on the Rights of the Child states that “States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.” By the same token, Article 5 of the African Charter on the Rights and Welfare of the Child affirms that “States Parties to the present Charter shall ensure, to the maximum extent possible, the survival, protection and development of the child.” Both instruments further develop these concepts, providing guidance on child protection issues, like birth registration, child labour, harmful cultural practices, administration of juvenile justice and so on. By this, child protection can be defined as all measures to prevent and respond to abuse, violence, maltreatment, exploitation and neglect against children.⁶

In the recent past, and throughout developing countries, child protection has moved from issue-based interventions to a more comprehensive, integrated and global approach. Vertical and silo-based interventions did not have maximum impact in addressing protection concerns for children. Dispersion of resources, lack of coordination, duplication of programmes, or insufficient access to quality protection services for children are common features in the majority of contexts, in developed and in developing countries. In 2009, UNICEF commissioned a study by Chapin Hall at the University of Chicago to review the literature on systems approach in order to develop a conceptual framework for a global and comprehensive systems approach to child protection. According to the findings, “the systems literature defines a system as a collection of components or parts that are organized (i.e., connected to each other) around a common purpose or goal.”⁷ Chapin Hall defined a child protection system around six major components: structures, functions, capacities, a process of care, a continuum of care and accountability. The figure below presents how they are articulated.

⁶ See UNICEF Child Protection Strategy, 2008

⁷ UNICEF, Adapting A Systems Approach To Child Protection: Key Concepts And Considerations, Working paper, 2010

*Malawi Child Protection System
Mapping and Assessment Report*

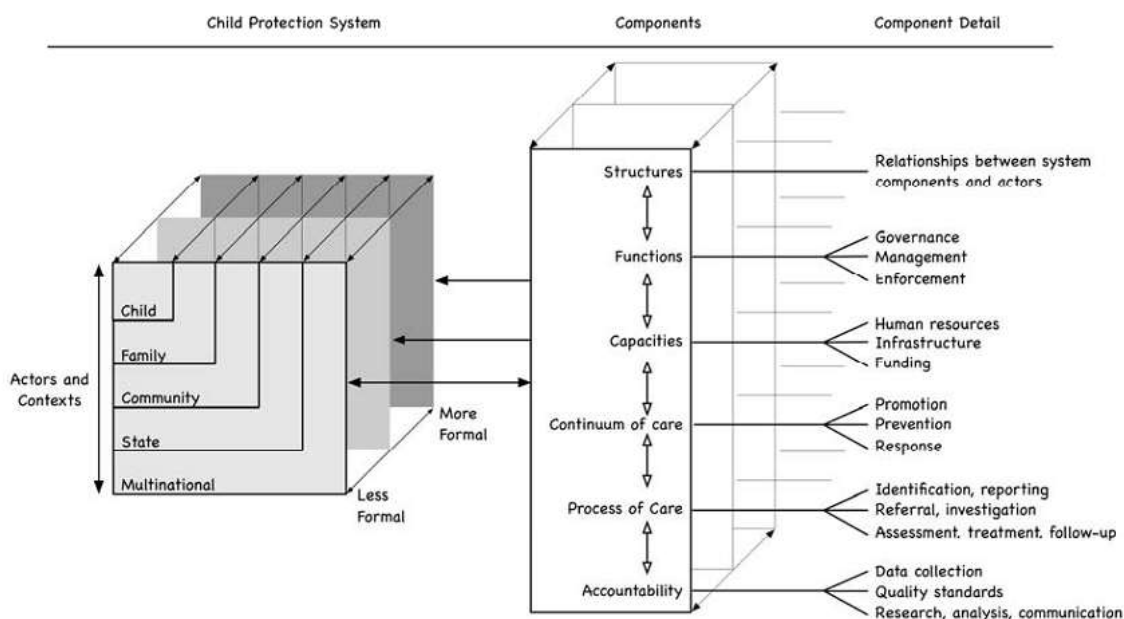


Figure 2 Child Protection Systems: Actors, Context and Components⁸

According to the systems approach to child protection as developed by Chapin Hall, capacity refers to the facilities, material resources, skilled personnel, and funding needed to operate the system. Capacities have to be allocated in relation to the purpose of the system, which is identified by the way the system deals with children, i.e. the way it manages cases related to child protection along the whole continuum of care (promotion, prevention and responsive interventions). As shown in figure 2 above, capacities can be divided in human resources, infrastructures and funding.

Systems approach to child protection is expected to have a range of benefits when compared to older approaches based on target groups (street children, child labour, birth registration, and so on) or based on programmes (social protection, early childhood development, etc.). First, it is a holistic approach that links and promotes integration with other systems, creates consensus, and clearly defines roles and responsibilities of all stakeholders. Additionally, systems approach increases visibility of child protection within the development agenda, underpinned by better information and data availability for a more promising approach to donors. Better outcomes for children and families are expected due to increased access to higher quality services, improved coordination, performance, efficiency (at national, sub-national and community level, and between Government, partners, civil society/NGOs). Finally, child protection systems promote sustainable programmes that are nationally owned, reduce the risk of duplication of efforts, and enhance a better use of limited resources⁹.

⁸ UNICEF, *Adapting A Systems Approach To Child Protection: Key Concepts And Considerations*, Working paper, 2010

⁹ Adapted from *Child Protection Systems Mapping and Assessment Toolkit Users' Guide*, Maestral International for UNICEF, 2010.

5.3. Adopting a systems approach to child protection in Malawi

For the development of new Malawi Growth and Development Strategy II (MGDS II) for the period of 2012-2016, UNICEF Malawi worked closely with various sectors to help strengthen the government's response to the protection needs of women and children. For each of the 16 Sector Working Groups, the current situation of Child Protection was analysed and key protection issues and possible government interventions identified. This step was useful in demonstrating the cross cutting nature of child protection, as it intersects with all 16 Sector Working Groups. After identifying Child Protection issues and the priorities of each Sector Working Group, seven sectors were prioritized namely, Agriculture (for child labour), Lands (for inheritance for children affected by HIV and AIDS), Tourism and Culture (for exploitation of children and harmful cultural practices), Health (for rape, violence, etc.), Education (for child friendly schools initiative), Gender/Youth (for social welfare), and Democratic Governance (for justice for children). Demonstrating various vulnerabilities could affect one child at the same time, UNICEF Malawi presented a strong case to the MGDS Secretariat that any investment from the government in child protection would be best utilized by adopting a systems approach. Having understood the benefits of the systems approach to child protection, including efficacious use of administrative expenses and elevating the visibility of child protection as a sector, the Government set the establishment of a national child protection system as one of the key mid-term expected outcomes for sub-theme 3 "Child Development and Protection" under the second theme of the MGDS "Social Development."¹⁰

The Ministry of Gender, Children and Community Development, in charge of children and child protection, started a new process of internal restructuring to adopt adequate arrangements to respond to these urgencies. Social Welfare Services in Malawi date back to the colonial era, and were provided by colonial administrators, and through the efforts of voluntary, charitable non-governmental organisations. Since then the Ministry of Gender, Children and Community Development has gone through a number of structural changes expanding its operations from providing remedial, rehabilitative, preventive and curative services to developmental social welfare using community-based approaches. Due to HIV and AIDS, poverty and other social problems, the demand for Social Welfare Services has increased, requiring the strengthening of the institutional capacity of the Departments for effective delivery of services.

The latest version of the restructuring document¹¹ shows that child protection interventions should be covered by the Department of Social Welfare within the Ministry of Gender, Children and Community Development as follows: a new division for Probation and Child Protection Services shall be created and in charge of: a) probation and child justice (child justice, crime prevention, institutional care (reformatory), diversion programmes, prison social work, court enquiries, and supervision of young offenders, b) rehabilitation services (rehabilitation of children living on the streets, community victim support, rehabilitation of drug & substance abusers, and skills development & resettlement), c) policy & legislation (enforcement of protection systems, promotion of child participation, protection against abuse, case management, NGO coordination, research & information system, supervision of child care

¹⁰ Malawi Growth and Development Strategy II 2012-2016, the Government of Malawi, draft 2011.

¹¹ Dating May 2011.

institutions, and capacity development), and d) care and support services (coordination of OVC programmes, psychosocial support, impact mitigation of HIV & AIDS, child helpline services, and One-Stop Centres).

Child protection practitioners are present and very active in Malawi, whether they belong to the Government, to Civil Society or to Development Partners. Their presence and activities, while providing important interventions for protecting children, does not necessarily mean that these work as a system. While the concept of system is present, and straightforward in the education and health sectors, child protection actors currently work in silos and look like a “mathematical set”, rather than a system. “A set is a gathering together into a whole of definite, distinct objects of our perception [Anschauung] and of our thought - which are called elements of the set.¹²” It is evident that the definition does not imply any relationship between the elements, whose only feature is belonging to the set. On the other hand, in general terms, a system is a set of interacting or interdependent components forming an integrated whole. When compared to a set, a system has two other different characteristics, i.e. the interconnectivity and, hence, behaviour. Establishing a child protection system in Malawi can be compared to passing from a mathematical set to a system by creating relationships among the elements, to induce a behaviour responding to a specific identity that elements themselves have to develop. Operationally, a child protection system can therefore be defined as child protection stakeholders working together with the common and shared goal of protecting children of the community.

5.4. Purpose of the mapping and assessment exercise and structure of the report

In its commitment to establish a national system for child protection, the Government of Malawi, with technical support from UNICEF Malawi, undertook a mapping and assessment of the main initiatives of actors intervening in child protection domain in the country. The mapping and assessment exercise, led by the Social Welfare Department in the Ministry of Gender, Children and Community Development, will allow the Government and its partners to dispose of relevant information to take the necessary measures to enforce with stronger efficacy child protection.

The findings from the mapping and assessment exercise will be used to enforce the national child protection system using the implementation of the child protection legislation as entry point. As mentioned above, in 2010 Government of Malawi passed a new law for an improved protection of children from abuse, violence, maltreatment and neglect, the Child Care, Protection and Justice Act. The new legislation provides a new framework for an improved protection of children in Malawi. The new Act is the latest juridical tool among several addressing protection of children in Malawi: in 2006 the Prevention of Domestic Violence Act was passed, in 2009 it's been the turn of the National Registration Act, and in 2010 the Extended National Plan for Orphans and Vulnerable Children and the National Policy and Action Plan on Child Labour. Malawi also ratified or accessed nearly all the international juridical instruments

¹² Cantor, Georg (1955) [1915], Philip Jourdain, ed., Contributions to the Founding of the Theory of Transfinite Numbers, New York: Dover,

*Malawi Child Protection System
Mapping and Assessment Report*

adopted in the child protection arena worldwide¹³. Nevertheless, law enforcement remains a big challenge.

For this reason, the Government of Malawi strengthened its efforts in child protection. The first effort is demonstrated in the Malawi Growth and Development Strategy II (2012-16) which will provide guidance for the development of all policies for the progress of the country. The draft of this document foresees the establishment of a National Child Protection System as one of the Medium Term Expected Outcomes to “reduce children’s vulnerability to violence, abuse and exploitation”¹⁴.

To plan all specific interventions and actions for the benefit of children, it is necessary to have a clear picture of what the situation is in the domain of child protection. This led the Government of Malawi and its partners to undertake the mapping and assessment of the child protection system. The findings will constitute the evidence-based starting point for strengthening the child protection system. This will also be the foundation for planning, implementing and monitoring all child protection efforts.

An implementation plan for the Child Care, Protection and Justice Act (2010) will eventually be developed in 2012, and will serve as the base for the child protection system. The implementation plan will be linked to all relevant legislation in the domain of child protection. It will consider both formal and informal sides of the system, and shall determine the costs for all expenses of the implementation phase¹⁵.

The mapping and Assessment Toolkit and the Child Care, Protection and Justice Act (2010) have two different structures. To combine the findings of the Mapping and Assessment and the actions in the costed implementation plan of the Child Care, Protection and Justice Act (2010), a common structure has been developed, combining elements present in both. The proposed structure was constructed based on adaptation of the Chapin Hall model of a child protection system. As presented in the previous chapter 2.2 “What is a child protection system”, a child protection system is composed of six elements: i) structures, ii) functions, iii) capacities, iv) process of care, v) continuum of care, and vi) accountability mechanisms. Starting from the theoretical model by Chapin Hall, the following framework has been developed:

- a) normative framework: laws, rules, regulations, policies and plans of actions;
- b) coordination: the way different stakeholders organize their common way of working to cooperate and collaborate;
- c) capacities: human resources, infrastructures, funding mechanisms;
- d) services and other interventions for children: provision of services and any other direct action for an improved and broad protection of children; and

¹³ See Chapter 5.1 “Normative Framework” for an exhaustive and detailed presentation.

¹⁴ Theme 2 Social Development, Sub-theme 4 Child development and protection, Key priority area 8.1 Child Development, Youth Development and empowerment, Malawi Growth and Development Strategy II (2012-16), Government of Malawi, draft as of March 2011.

¹⁵ More details are provided at the end of the report, under the Chapter 9.1 “Implementing recommendations”.

- e) accountability mechanisms: information management and data collection, complaint mechanisms, system monitoring.

6. Malawi context

Malawi is a Presidential Republic; its size is over 118,000 km² (45,560 square miles) with an estimated population of about 13,900,000. The capital is Lilongwe, the second largest city is Blantyre and the third largest city is Mzuzu. The Country is divided into four regions (Northern, Central, Eastern, and Southern) and 28 districts (Dedza, Dowa, Kasungu, Lilongwe, Mchinji, NkhotaKota, Ntcheu, Ntchisi, Salima, Chitipa, Karonga, Likoma, Mzimba, Nkhata Bay, Rumphu, Balaka, Blantyre, Chikwawa, Chiradzulu, Machinga, Mangochi, Mulanje, Mwanza, Nsanje, Thyolo, Phalombe, Zomba, and Neno). It is one of the most densely populated countries (nearly 118 individuals per square kilometre).

Malawi is among the world's least developed countries ranking 153 in the Human Development Index. Around 85% of the population live in rural areas. The economy dependent on agriculture, more than one-third of GDP and 90% of export revenues come from this. In the past, the economy has been dependent on substantial economic aid from development partners. The Country has done important improvements towards the achievement of the Millennium Development Goals, being “on track” on five Goals (#1 – end poverty and hunger, 4 – reduce child mortality, 6 – improve maternal health, 7 – ensure environmental sustainability, and 8 – develop a global partnership for development), “possible if changes are made” for Goal 2 – achieve universal primary education, and “off track” for Goals 3 – promote gender equality and empower women, and 5 – improve maternal health.

Out of the nearly fourteen million people, 48% are males and 52 females; children under 18 and children under 5 are respectively 52% and 18% of the overall population. The annual growth rate of population is 2.8%; life expectancy at birth is 53 years (52 for men and 54 for women). More than 15.3% of the population live in urban setting. Malawi is a low-income country, and poverty is widespread, per capita Gross National Income is 280.00US\$ (760US\$ at PPP); nearly 75% of people live with 1.25USD a day or less. Income distribution is unequal (Gini index is 39).

6.1. Situation analysis of children

Children suffer most from the poverty that impacts the Country. From a health perspective, 87.6% of population is using improved sanitation facilities, health indicators for children are illustrated in the table below:

Infant mortality rate (under 1)	72‰
Under 5 mortality rate	122‰
Maternal mortality ratio per 100,000 live births, reported	807
Per cent under-5 suffering wasting: moderate & severe	3,5%

*Malawi Child Protection System
Mapping and Assessment Report*

Per cent under-5 suffering stunting: moderate & severe	46,0%
Per cent under-5 underweight: moderate & severe	20,5%
Per cent infants with low birth weight	13,0%
1-year old children immunized against TB	95,7%
Per cent of under 5 with diarrhoea receiving oral rehydration and/or continued feeding	26,5%
Per cent of under 1 receiving measles vaccinations	84,4%
Per cent of population using improved sanitation facilities	87,6%

Table 1: Health indicators for children

Situation is quite difficult for children also when looking at Education Sector. According to estimates done by the National Statistical Office, mid-year projections made in February 2009, population of school-age by school level is:

School Level	Age group	Both sex	Male	Percentage	Female	Percentage
Primary	6-13	3,150,722	1,544,972	49.03%	1,605,750	50.96%
Secondary	14-17	1,193,326	563,465	47.22%	629,861	52.78%

Table 2 Population of school-age by school level

Table 3 below shows that, while there are no substantial differences in the patterns for boys and girls, few children starting the primary cycle end it successfully and access and complete the secondary cycle.

Primary school enrolment ratio, net	91,0%
Primary school attendance ratio, net	86,2%
Gender Parity Index for Primary School	1,02
Primary school completion rate, net	9,1%
Secondary school enrolment ratio, net	25,0%
Secondary school attendance ratio, net	13,1%
Gender Parity Index for Secondary School	0,97
Secondary school completion rate, net	NA

Survival rate to last primary grade	71,0%
Youth (15-24) literacy rate	69,2%

Table 3 Education sector indicators

The “Child poverty and disparity” study was the only study done in detail that analysed children in an equity perspective. The study was a component of the Global Study on Child Poverty and Disparities that was commissioned in forty countries by UNICEF. Data were collected on these seven dimensions: shelter, sanitation, water, information, food, education and health. The analysis was aimed at estimating the proportion of children experiencing severe deprivations in at least two of the seven dimensions. The study found that about 14 per cent of the children in the samples experienced two severe deprivations in 2005, compared to 22 per cent in 1998 suggesting that the proportion of children experiencing two severe deprivations declined in relative terms, between the timeframe.

6.2. Protection issues affecting children

The HIV and AIDS pandemic hit Malawi hard since the beginning of the ‘80s. The impacts of the disease have been severe. Evidence shows that orphans living with extended families or in foster care are frequently subject to discrimination and are less likely to receive health, education, and other services. The situation is more desperate for child-headed households or those living on the streets. The vulnerability of these children puts them at higher risk for exploitation and abuse, and therefore exposure to HIV. To date, there is an estimate of nearly one million orphans¹⁶ in Malawi, 650,000 due to HIV and AIDS. One hundred and twenty thousand children aged 0-14 are currently living with HIV and AIDS, while the HIV prevalence among young people (people aged 15-24 years) is 5.1%.

Children with disabilities are at high risk of suffering abuse, exploitation or neglect. There is only data available on the situation of children with physical impairment, very little information is available on mental and psychological impairment. According to the last Population and Housing Census (2008), there are nearly 260,000 children with physical impairment. Of these, nearly 70,000 children have a vision impairment, and 42,000 have an hearing impairment. The study on violence and abuse against women with disabilities in Malawi (2006) indicated that children with disabilities are not discriminated from other children by adults. Their access to education is limited more by lack of resources and trained teachers for children with special needs rather than unwillingness of parents to send their children to school (no data are available on school attendance rate for children with disabilities). Access to health is not a serious issue, and when asked about being the victims of childhood sexual abuse, the informants did not confirm such experiences.

¹⁶ Both single and double orphans.

Child labour is a major problem in Malawi. Official figures indicates that there are 25.7 per cent of children employed as child labourers¹⁷. Their presence in the different sectors of the economy is as follows:

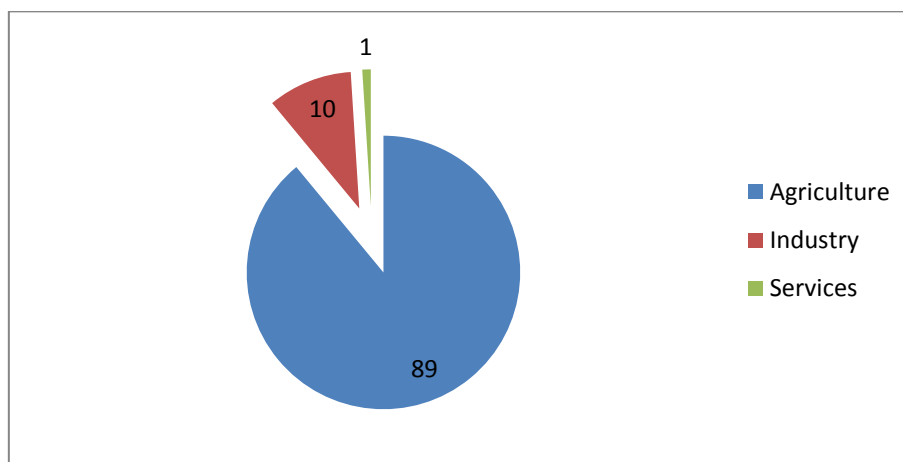


Figure 3 Child labour per economic sector

The last Child Labour Survey dates 2002; Multiple Indicator Cluster Survey 2006 provides with more recent data, showing that child labour is more common in rural (28 per cent) than urban areas (14 per cent), although very little is known about child domestic workers. The majority of children are engaged in unpaid rather than in paid work. The results indicate that child labour prevalence declines as the age of the child increases. Children aged 5–11 are more likely to be involved in child labour (28 per cent) than those aged 12–24 (21 per cent). Children aged 5–11 are more likely to be engaged in a family business and doing unpaid work outside of the home, while older children often work in a family business and perform household chores. Surprisingly, school participation increases the likelihood of child labour. Twenty-eight per cent of children who participate in school are involved in child labour compared to 18 per cent of those who have never participated in school.

According to the John Hopkins Protection Project, Malawi is a country of origin for trafficking of women and children. The University of Malawi released a study¹⁸ reporting a rise in child slavery and prostitution in Eastern and Southern Africa. Children between the ages of 12 and 13 are typically lured into trafficking with promises of jobs in the United Kingdom and South Africa. The researchers concluded that the organized sex and slave trade is run by businesswomen from Malawi, Zambia, and Tanzania. According to news reports, Malawian women and children are being trafficked to South Africa and to other African countries for prostitution. Many orphaned and poor girls are recruited on the pretence of babysitting jobs and come from rural areas to larger towns where they are then employed as barmaids with the expectation that they will provide sexual services to the customers. According to The Protection Project Review of the Trafficking in Person Report 2009 by the John Hopkins University, despite the lack of precise statistical data, Malawi is:

¹⁷ Children aged 5-14 years old.

¹⁸ It has not been possible to have a copy of this study.

*Malawi Child Protection System
Mapping and Assessment Report*

- a country of origin, transit and destination for trafficking of children for forced labour and child labour exploitation,
- a country where trafficking of children for forced labour and internal child labour exploitation also occurs internally,
- a country of origin, transit and destination for trafficking of children for commercial sexual exploitation, and
- a country where trafficking of children for commercial sexual exploitation also occurs internally.

Birth registration remains a big challenge in Malawi. The Children and Youth Thematic Report of 2008 Population and Housing Census states that at national level, 16.6 per cent of the children aged less than 18 years indicated to have their births registered, with no significant differences between boys and girls. Noted are significant differences, on the contrary, at regional level, as shown by the table below:

	<i>Total</i>	<i>Male</i>	<i>Female</i>
Malawi	16.6	8.2	8.4
Northern Region	11.2	5.6	5.7
Central Region	47.3	23.5	23.8
Southern Region	41.5	20.4	21.1

Table 4 Per cent distribution of person aged under 18 with birth certificate

Nevertheless, a baseline survey¹⁹ carried out by UNICEF in September 2011 added more information. The manual tallying of the birth certificates issued in 2009 and 2010 for children aged zero to two years amounted to 746 in 2009 and 556 in 2010. Hence 0.05 % of the children zero to two years old had a birth certificate in 2009 and 0.03 % in 2010. The births are mainly registered in Blantyre (42%) and Lilongwe (23%) and most of the other districts do not go beyond 5%.

Among the challenges for children having their birth registered there are also problems with a lack of awareness of parents on the right to have children's birth registered; according to the legislation into force birth registration is not compulsory²⁰ and is not asked for to receive services later on (like school enrolment, access to health services, issuing of a passport, and so on); costly procedures in terms of accessibility (children can be registered only in their mother district of belonging, fees are due²¹, deadline for registration is short). The new National Registration Act, passed by Parliament in 2009, would overcome these problems but is still awaiting implementation.

¹⁹ Baseline report for children aged zero to two years with birth certificates issued by the office of the Registrar's General, UNICEF Malawi, 2011.

²⁰ A National Registration Act has been passed by the Parliament in 2010, but it has not yet come into force. According to this new legislation, parents have the duty to register their child born alive within six weeks of the birth.

²¹ To date, parents have to pay 1,200 MKW to register on time their children (nearly 7,4 USD).

*Malawi Child Protection System
Mapping and Assessment Report*

Marriage before the age of 18 is common for many young girls. According to MICS 2006, 10 per cent of women aged 15–49 report to be married by the age of 15 and 50 per cent of the women aged 20–49 marry before the age of 18. Early marriage is less common for men than it is for women: only 1 per cent of men marry before reaching age 15 and 7 per cent of men aged 20–49 marry before reaching 18 years. Among men aged 15–19, only 2 per cent were married or in union at the time of the survey, as compared to 33 per cent of women within the same age group. The DHS 2010 findings show that one of every five teenage girls (20 per cent) age 15-19 is in a formal marriage, and another 4 per cent are in an informal union. Teenage boys are less likely to be married (2 per cent).

According to the study on "Cultural Practices and their Impact on the Rights of Women and Children", by the Malawi Human Rights Commission, only 5% of the survey respondents²² said that Female Genital Mutilation is practiced in their area, and 89% of them reported that the girls experienced Female Genital Mutilation when they are 10-15 years while 11% said that it was for 16-20 year olds. Female Genital Mutilation was said to take place in Traditional Authority Mthiramanja's in Mulanje, which involves the cutting off of the tips of the girls' clitoris by the *namkungwi* (administrator of the ceremony) who use finger nails. Some communities stopped practicing genital mutilation after they had witnessed deaths of some girls due to this practice. Many respondents in the area were for its total abolition because of the risk to the life of the girls that the practice poses. Jando refers to circumcision for boys. About 17% of the respondents said that Jando was a practice that was prevalent in their area. In some of the areas, focus group participants observed that sometimes boys as young as 6 years of age underwent this initiation rite. Once the boys undergo circumcision they are considered mature and are advised to have sexual intercourse with any girl as soon as they go back home from the place of the ceremony.

Not much recent data are available on physically, sexually and psychologically abused children²³. The 2005 study "Suffering at school" presents findings about safety and perceptions by children of safety in the education environment by children: 23.8% of school children in Malawi are scared of walking to school, (71.1% of children fear being attacked, or being bullied (12.5%) while travelling to school, 26.5% of children personally know someone who has experienced a problem on the way to school, 19.4% of children have themselves encountered problems on the way to school, resulting in high levels of fear, and 30.3% of children fear specific places in their school, most notably the grounds, toilets and bathrooms). Children's experience of violence is worrying: 99% of the school children surveyed report being bullied, 23.8% report having been forced to have sex against their will, 14% report having been touched on their genitals or breasts against their will, 3.9% of children over 13 years report being forced to engage in some form of oral sex. Girls are most commonly the victims of violence; boys experience significant levels of both sexual violence and bullying; levels of all forms of violence are higher among children over the age of 13

²² The study had covered ten districts, namely Chitipa, Mzimba and Nkhata Bay in the Northern Region, Dowa, Lilongwe, Mchinji and Ntcheu in the Central Region, and Mangochi, Mulanje and Nsanje in the Southern Region.

²³ A part from girls and boys aged 15 and above, who are included in the violence questionnaires in Demographic and Health Surveys and in the Multi Indicator Cluster Surveys, mentioned in the next paragraph.

*Malawi Child Protection System
Mapping and Assessment Report*

Children of all ages living in rural areas are more likely to be victimised than those living in urban areas. Location is particularly significant in the case of bullying and unwanted touching of the genitals and breasts. Bullying (55.3%) and forced touching (52.5%) is most likely to occur at school, while forced sex (57.3%), and in the case of older children, oral sex (53.5%), is most likely to occur at home. 70.6% children who had been bullied experienced incidents on more than one occasion; 57.6% of the children who had been forcibly touched had been victimised more than once, and 54.0% of all the children who had been forced to have sex had gone through the experience on more than one occasion. In total 93.5% of bullied children knew the bully; 88.7% of those who had been touched knew the offender; and 89.4% of those who had been forced to have sex knew the offender. 18.7% of those who had experienced some form of violence reported being offered, or receiving, a gift or services as compensation for, or in return for, sexual favours. This most commonly took the form of money or food.

According to the DHS 2010 preliminary findings²⁴, 28.2% of women aged 15-49 ever experienced physical violence since the age of 15; one out of four girls aged 15-19 ever experienced violence since the age of 15. Fourteen per cent of girls aged 15-19 who have ever had sexual intercourse say that their first experience of sexual intercourse was forced against their will (17.7% for girls less than 15); 17.8% of girls aged 15-19 ever experienced sexual violence. Women aged 15-49 are more likely exposed to violence in urban settings rather than in rural settings (34.9% vs. 26.6%). There are no significant variations between the regions, neither across the wealth quintiles.

Due to poverty and the HIV and AIDS pandemic, the situation for children without adequate family care or in alternative care is quite dire. Of one million orphans²⁵, 650,000 children are orphans due to HIV and AIDS. Orphans' school attendance ratio is very high, reaching 88.8%. Children's living arrangements can vary considerably, as shown by the following figure:

²⁴ As mentioned, DHS 2010 has been presented in November 2011. This falls out of the data collection period, but given the importance of information, it has been included.

²⁵ Both single and double orphans are considered here.

*Malawi Child Protection System
Mapping and Assessment Report*

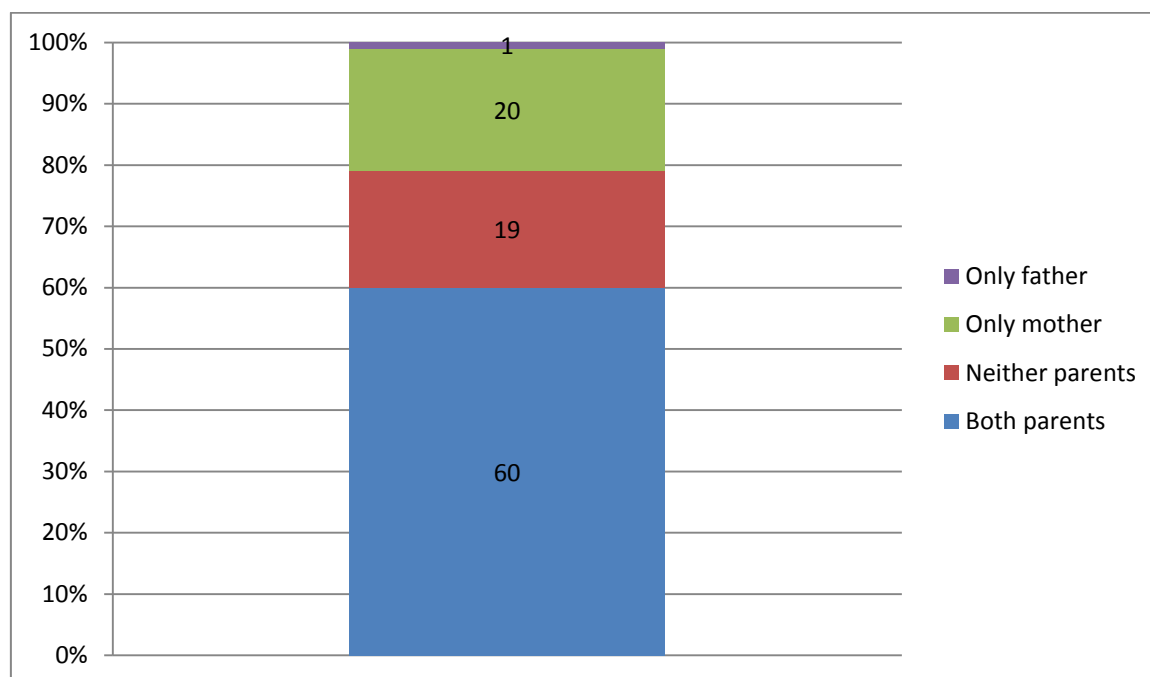


Figure 4 Living arrangements of children

There are 104 institutions for alternative care in Malawi and 61% of these are in the southern region. There are five types of institution for alternative care: orphanages, special needs centres, church homes, transit care centres and reformatory centres, the most common type being the orphanage (60.6%) of all institutions for alternative care. A total of 6,039 children are currently living in institutions for alternative care in Malawi and 48.2% of these are in the southern region, 40% are in the central and 12% in the north. There are more boys (55%) than girls (45 %) in these institutions. Nearly two thirds of the children are in orphanages. While the rules and regulations require that a child in an institution for alternative care should have an individual care plan, only 9% of these children have such plans and the northern region had the highest proportion of children with an individual care plan at 39.2% compared to about 5% in the central and south. Only 2.6% of the children in institutions had their placement reviewed within a three-month period preceding the study. Seventy one per cent of the children in institutions for alternative care were orphans (who have lost one or both parents). No disaggregated data are available on single parent orphans to encourage reintegration of children with their biological families or other relatives. Just more than half of the children in the south were orphans. There were more boys who were orphans (52.2%) than girls (43.4%). Seventeen per cent of the children were with special needs. A total of 1,139 children aged less than 15 years left institutions through family placement including reunification; this corresponds to less than 16% of all children in alternative care institutions. More boys than girls left the institutions for alternative care through family placement or independent living arrangements, (68% vs. 32%).

In terms of admission of children into institutions for alternative care, 51.9% of institutions recruited the children themselves. District Social Welfare has brought fifty-one per cent of children in alternative care and 38.5% were brought by their parents. The death of parents especially the breadwinner and the failure of the surviving parent (including

grandparent) or guardian to adequately care for the child is one of the main reasons children go into institutions. Endemic poverty is therefore one of the reasons children go into institutions. The absence of special needs schools in communities is a major cause for children with special needs to be admitted into institutions for alternative care; these are often situated far from natal homes. Some children who commit offences are too young to go into prison so they are committed to reformatory centres. In general, visiting children is allowed to parents and caregivers, even though a preliminary permit should be asked to principal. The most common activities for children in institutions are playing games, spiritual activities, free play, storytelling and singing. In terms of infrastructure, 90% of the institutions owned the buildings they were operating from but less than half of these had a resting place for children²⁶, with a kitchen, safe water sources, toilets and bathrooms. Institutions provide health services (of their own or they bring children to the nearest health facility) and meals (mainly nzima with beans and vegetables or rice with meat or beans and vegetables). While studies in other countries show that children outside of family care, especially in institutional care, suffer cognitive, emotional, social and physical hindrances, often significant, there is not yet such an evidence in Malawi demonstrating the harm caused to children.

Children and justice data also reveal a worrying situation. In 2010 the total number of children arrested by the police was 2,218 (92% of them were boys) and for 2011 was 2,295 and the total number of children diverted by Police in 2010 and 2011 was 827 and 330 respectively representing 37.3% and 27.4% of all cases. The median duration spent in holding cells after arrest was 2 days in 2010 and 3 days in 2011. The most common type of offences are economic hardship related offences (64%), followed by physical violence related offences, as shown in the graph below:

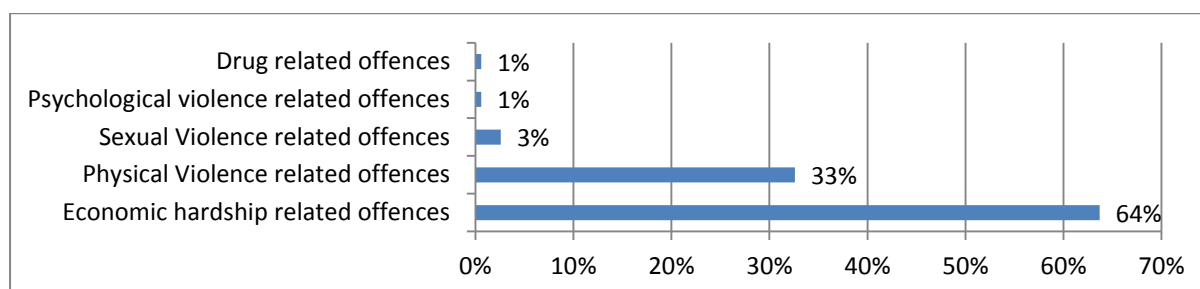


Figure 5: Reasons for arrest of children

There is no formal separation of adults and children in holding cells in 32 out of the 34 sampled police stations implying that 94% of the police stations hold the arrested or detained Children in the same rooms, wards or cells with adults in the holding cells/custody. Only 6% of all victims who reported to Police Victim Support Unites were 17 years old or less. Following is the distribution of cases reported to Police:

²⁶ Data are not specific if the institution is only for day care or is lacking adequate arrangements for children to sleep.

*Malawi Child Protection System
Mapping and Assessment Report*

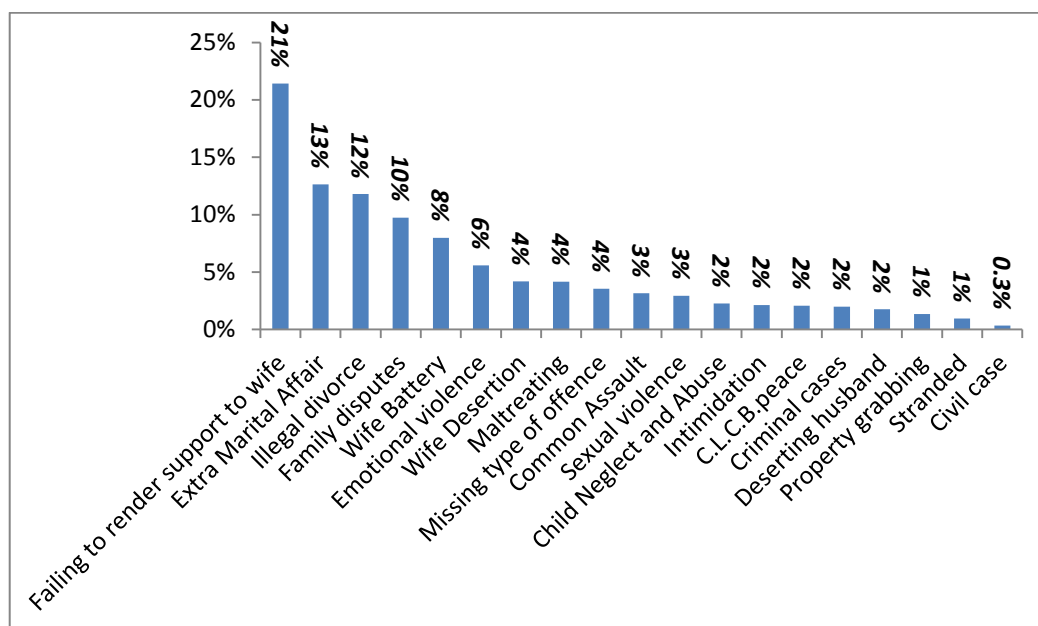


Figure 6: Distribution of offences reported to Police in 2011.

Over 1,270 children passed through the four child justice courts (Lilongwe, Zomba, Mzuzu, and Blantyre) over the period 2009-2011, most of them boys (93%). This figure corresponds to half of children arrested by Police; Police diverted 837 children, meaning that data are missing for more than one hundred and twenty children that were arrested but never showed up to courts. During the period, 7 per cent of the children were diverted by child justice courts (88 children) and 19 per cent of the children were sent to reformatory centres or to young offenders prisons (240 children). At the time of conducting the baseline assessment in reformatory centres, there were 86 children residents at Chilwa Reformatory Centre and 65 children residents at Mpemba Boys Reformatory Centre, amounting to 151 children.

Very little is known on children in emergencies. No database was made available during the mapping and assessment exercise. In recent years, an earthquake (2008) has hit Malawi and floods hit in the South of the Country almost every year.

7. Methodology

This mapping and assessment was carried out utilizing the Child Protection Systems Mapping and Assessment Toolkit developed by Maestral International for UNICEF²⁷. In line with the new Child Protection Strategy adopted by UNICEF in June 2008, the systems approach was identified as the new methodology allowing child protection practitioners overcoming bottlenecks, challenges and duplication to improve the effectiveness and efficacy of their interventions. The Strategy described child protection systems as “a set of laws, policies, regulations and services, capacities, monitoring, and oversight needed across all social sectors – especially social welfare, education, health, security, and justice – to prevent and respond to protection related risks.”

²⁷ A copy of the Toolkit and the Users’ Guide can be downloaded from this address http://www.unicef.org/protection/57929_58020.html

The Toolkit aims to provide a practical and user-friendly method to enable stakeholders to identify the country's main child protection risks within the rights framework, and to examine the scope and capacity of the existing child protection system (ranging from formal to informal), accountability mechanisms, and resource mobilization approaches. After a test phase in seven countries²⁸, from September 2009 to January 2010, the Toolkit was adapted to reflect the differences and the concerns in each country coming from UNICEF child protection teams and their governmental and non-governmental counterparts²⁹.

7.1. The toolkit

The ultimate objective of the Toolkit is to provide a structure to collect information on existing child protection systems and to inform a child protection strategy to support the development of country-level comprehensive child protection systems, appropriately structured and resourced. The Toolkit helps users to identify and prioritize actions that will contribute to building an integrated and strengthened child protection system. A successful mapping and assessment should:

- Provide key stakeholders with a clear picture of the structure, capacities and functions of the current child protection system;
- Describe the current legal and normative framework, noting strengths as well as outlining the country's future policy agenda in child protection;
- Highlight the key risks facing children, and prioritize data requirements for monitoring and evaluating child protection in the country; identify additional data needs on less visible themes.
- Drawing on global best practices, assess the capacity of key formal and informal structures (ministries, agencies, partners, communities, etc.) to develop, administer and implement effectively, monitor and evaluate their child protection responsibilities;
- Identify and prioritize opportunities to improve service delivery;
- Bring key players together to support the development of the child protection system; and
- Establish the financial and human resources required to implement the program.

The Toolkit is in Microsoft® Excel 2007 spreadsheet, it consists of “20 interrelated tools with a number of questions embedded in each tool. (...) Those sections include (1) General Country Information, which establishes a context within which the system operates including the global legal and policy frameworks, the policy and legislative framework, and the specific risks that children face within a country; (2) System Overview, including system structures, functions, capacities, and the children and justice sector, with tools assessing the community context and role of civil society; (3) Continuum of Care, which assesses the protective environment, including norms and attitudes; (4) Resource Mobilization and Fiscal Accountability,

²⁸ Bangladesh, Cambodia, Democratic Republic of Congo, Guatemala, Kenya, Kyrgyzstan, and Tunisia.

²⁹ The Toolkit is now under revision based on feedback and lessons learnt from its use in different parts of the world.

which assesses the human and financial needs of the system and how well child protection is reflected during the budget process, and (5) Moving Forward on System Development, which allows users to frame and cost a program to develop the child protection system drawing on the results of the mapping and assessment.”³⁰

7.2. Data collection

The mapping and Assessment exercise has been launched at Pacific Hotel in Lilongwe on January 25-27th 2011. At this workshop, organized by the Ministry of Gender, Children and Community Development, attended by the National Technical Working Group on Child Protection and facilitated jointly by UNICEF Malawi and Maestral International, the process was presented and participants took the chance to become familiar to the toolkit. A Mapping and Assessment team was established, led by Ministry of Gender, Children and Community Development, with the technical support from UNICEF Malawi.

The process of gathering information and collecting data to complete the Toolkit was discussed and agreed with the National Technical Working Group on Child Protection during a two-day workshop. The workshop took place at Kalikuti Hotel in Lilongwe on May 24-25th, 2011. During the workshop, participants went through the toolkit and, analysing it question by question, could identify sources of information according to the following categories: a) individual interviews, b) group meetings, c) focus group discussions, d) field visits, and e) desk review.

Sources of information, indicated by the National Technical Working Group on Child Protection, were analysed by the Mapping and Assessment Team. Sources were identified into primary and secondary sources, according to their relevance and availability. It was decided to hold group meeting for the tools regarding Continuum of Care, Children and Justice, and Civil Society. Selected participants were invited according to their expertise in these three domains of analysis.

For Community level, analysis will occur on field visits in six districts responding to three criteria: 1) setting (two urban districts and four rural), 2) geographic location (two in the northern region, two in central and two in southern), and 3) equity performance (based on UNICEF Malawi internal elaboration, not only on child protection). The following districts were identified: Karonga and Chitipa in the northern region, Lilongwe and Nkhokota in the central region, and Phalombe and Blantyre on the southern region). During district missions, individual interviews and focus group discussions were identified as data collection methods. As presented in the next section, field visits to the districts could not happen, and an alternative data collection method was used.

To gather information on the rest of the Toolkit, individual interviews were organized and conducted with key informants³¹. Finally, all minutes of meetings were reviewed and integrated based on relevant documents on child protection in Malawi, collected during the

³⁰ Mapping and Assessment Toolkit Users' Guide, UNICEF, 2008

³¹ See 1.a for a complete list. CTRL+Click on the chapter number to be directed to the chapter.

process³². A data collection plan was developed accordingly and the data collection took three months, from July to September 2011.

7.3. Limitations and constraints

The process was managed by the Mapping and Assessment Team, composed of a Chief Social Welfare Officer from Ministry of Gender, Children and Community Development, a UN Volunteer with a social work profile based at Ministry of Gender, Children and Community Development and a Child Protection Specialist consulting for UNICEF Malawi. Due to understaffing the Ministry of Gender, Children and Community Development assigned its staff to several other initiatives involving Child Protection and Early Childhood Development; this led to overburden of the designated focal person.

Two events also negatively affected the mapping and assessment exercise. The first is due to difficulties to disbursing funds to the Ministry of Gender, Children and Community Development to fully implement the process. Administrative procedures delayed the transfer of funds from UNICEF Malawi to Ministry of Gender, Children and Community Development. This led to postponing the district missions; there was no alternative for paying the participants in the districts. Consequentially there were no field missions to the districts; information from local level was gathered in an extended meeting on Continuum of Care tool, District Social Welfare Officers were invited from all districts. This limited the scope of the mapping, because field missions allow information to be double-checked from children and communities perspective.

The second event is the chain of protests that occurred on July 20th, 21st, on August 17th (scheduled but did not happened), and on September 21st 2011. During the weeks of the protests, or planned protests, it was impossible to travel and organize meetings, for security reasons. This was nearly a quarter of total time devoted to data collection.

Child, parents and local actors' participation has been non-existent, as well as participation of parents and local actors. There are two causes for this. The first one, as already mentioned, is the inability to undertake field missions to the districts, where focus groups were planned. The second one is the fact that the Toolkit is heavily unbalanced in the supply side of child protection interventions (i.e. what child protection practitioners are currently doing), there are few questions on the demand side (what beneficiaries are currently needing). To overcome this limit, negotiations were started with Plan Malawi, Save the Children and World Vision Malawi to integrate the mapping and assessment exercise with a beneficiaries survey targeting children, parents and local child protection gate-keepers (e.g. Chiefs, Traditional Authorities, Religious Authorities, Community Child Protection Workers, and so on). Terms of reference have been developed and shared, but due to lack of time and people who could devote a significant amount of time to oversee the process, this could not happened.

Finally, since the systems approach to child protection is new in Malawi, the dynamics involved in it require additional time to become more clear for people to fully understand. While there is strong recognition that a systems approach to child protection is needed, the silo

³² See 1.b for a complete list. CTRL+Click on the chapter number to be directed to the chapter.

vertical approach is still present. In most cases, the very concept of child protection is fuzzy and not clearly understood. This does not mean that practitioners do not implement child protection interventions, rather they see them under the light of Orphans and Vulnerable Children approach (given the HIV and AIDS epidemic in Malawi, this approach is widely implemented) or within the boundaries of Early Childhood Development (where Malawi is a forerunner).

8. Mapping and assessment findings

The presentation of the mapping and assessment findings is structured around five axes, the normative framework, coordination, capacities, services and other interventions for children, and accountability mechanisms. This framework was chosen to support the development of the Costed Implementation Plan of the Child Care, Protection and Justice Act (2010) which follows the same structure.

8.1. The normative framework

Malawi has developed a wide range of laws and policies regulating child protection issues. This section presents an overview of international juridical instruments that the Government of Malawi is party to and the national corpus of laws, rules, regulations, and plans of action developed and adopted within the country.

8.1.1. International Juridical instruments

Malawi is party to almost all international and regional treaties and conventions on human rights and on child rights specifically, as the table below illustrates. A single example illustrates Malawi's positive attitude towards acceding international treaties. The process of acceding to the Hague Convention on Inter-country Adoption is on-going in Malawi and it is strictly linked to the development of new legislation on adoption. Even though Malawi is not yet party to the Hague Convention, all its principle and procedures have already been acknowledged in the new Adoption Bill, to ensure compliancy between national and international legislation since coming into force.

Instrument	Status	Date
Convention on the Rights of the Child (CRC, 1989)	Acceded ³³	2-Jan-91
Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW, 1979)	Acceded	12-Mar-87
Optional CRC Protocol on Sale of Children, Child Prostitution and Child Pornography	Ratified ³⁴	7-Oct-09

³³ 'Accession' is an act by which a State signifies its agreement to be legally accession* bound by the terms of a particular treaty. It has the same legal effect as ratification but is not preceded by an act of signature. The formal procedure for accession varies according to the national legislative requirements of the State. To accede to a human rights treaty, the appropriate national organ of a State – parliament, senate, the crown, head of state or government, or a combination of these – follows its domestic approval procedures and makes a formal decision to be a party to the treaty. Then, the instrument of accession, a formal sealed letter referring to the decision and signed by the State's responsible authority, is prepared and deposited with the United Nations Secretary-General in New York.

*Malawi Child Protection System
Mapping and Assessment Report*

Optional CRC Protocol on Involvement of Children in Armed Conflict	Acceded	21-Sep-99
Optional Protocol to CEDAW (1999)	Signed ³⁵	7-Sep-00
Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (1962)	Non-Party	
Hague Convention on Protection of Children and Intercountry Adoption	Non-Party	
Hague Convention on Civil Aspects of International Child Abduction	Non-Party	
Hague Convention on Jurisdiction, Applicable Law... in Respect of Parental Responsibility and Measures for the Protection of Children (1996)	Non-Party	
Convention on the Rights of Persons with Disabilities (2007)	Ratified	27-Aug-09
Convention Against Discrimination in Education (1960)	Non-Party	
Minimum Age Convention (ILO Convention #138, 1973)	Ratified	19-Nov-99
Worst Forms of Child Labour Convention (ILO #182, 1999)	Ratified	19-Nov-99
Convention Against Transnational Organized Crime (2000)	Ratified	17-Mar-05
(Palermo) Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (2000)	Acceded	17-Mar-05
Convention Relating to the Status of Stateless Persons (1954)	Acceded	7-Oct-09
Convention on the Reduction of Statelessness (1961)	Non-Party	
Rome Statute of the International Criminal Court	Ratified	19-Sep-02
International Covenant on Civil and Political Rights (1966)	Acceded	22-Dec-93
International Covenant on Economic, Social and Cultural Rights (1966)	Acceded	22-Dec-93
SADC Protocol on Gender and Development (2008)	Signed	20-Oct-09
Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)	Acceded	11-Jun-96
Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (2002)	Non-Party	
Indigenous and Tribal Populations Convention (1957)	Ratified	22-Mar-65
Convention Relating to the Status of Refugees (1951)	Acceded	10-Dec-87
Protocol to the Convention Relating to the Status of Refugees (1967)	Acceded	10-Dec-87
African Charter on Human and People's Rights (1981)	Ratified	17-Nov-89

³⁴ 'Ratification' is an act by which a State signifies an agreement to be legally bound by the terms of a particular treaty. To ratify a treaty, the State first signs it and then fulfils its own national legislative requirements. Once the appropriate national organ of the country – parliament, senate, the crown, head of state or government, or a combination of these – follows domestic constitutional procedures, it then makes a formal decision to be a party to the treaty. The instrument of ratification, a formal sealed letter referring to the decision and signed by the State's responsible authority, is then prepared and deposited with the United Nations Secretary-General in New York.

³⁵ 'Signature' of a treaty is an act by which a State provides a preliminary endorsement of the instrument. Signing does not create a binding legal obligation but does demonstrate the State's intent to examine the treaty domestically and consider ratifying it. While signing does not commit a State to ratification, it does oblige the State to refrain from acts that would defeat or undermine the treaty's objective and purpose.

*Malawi Child Protection System
Mapping and Assessment Report*

African Charter on the Rights and Welfare of the Child (1990)	Ratified	16-Sep-99
African Youth Charter (2006)	Non-Party	

Table 5: Malawi status concerning international juridical instruments

Regarding the United Nations Convention on the Rights of the Child, Malawi presented its second report on the implementation of the Convention in 2008 and received the Final Recommendation in 2009³⁶. The following are some of the general and specific recommendations:

- the harmonization and implementation of child rights legislation,
- more efficient coordination at both national and local levels,
- the independent monitoring of child rights and data collection and analysis, and
- the reinforcement of adequate and systematic training of policy makers and local government officials as well as all professional groups working for and with children.

Specific recommendations relating to child protection are:

- establish the definition of child in accordance with the Convention of the Rights of the Child (#27),
- strengthen efforts to ensure birth registration of all children (#37),
- prohibit by law corporal punishment in all settings (#39),
- provide a follow-up to the United Nations Study on Violence against Children (#40),
- Promote and support family-type forms of alternative care for children deprived of a family environment (# 44)
- review and ensure legislation on adoption in conformity with article 21 of the Convention and ratify the 1993 Hague Convention on the Protection and Cooperation in Respect of Inter-Country Adoption (# 46),
- enforce the Prevention of Domestic Violence Act and the National Strategy to Combat Gender Based Violence and ensure that perpetrators are brought to justice (# 48),
- ensure the implementation of legislation providing protection for children with disabilities and consider adopting specific legislation on the issue (# 50),
- prohibit harmful traditional practices affecting children by law, with appropriate penal sanctions for perpetrators; strengthen awareness-raising and sensitization activities to encourage the dissemination of a culture of respect for the child; take concrete measures to eliminate harmful customs, cultural and traditional practices (# 57),
- collect data on refugee and asylum-seeking children, ensure refugee children greater access to education and health-care facilities; facilitate family reunification for refugee children (# 65),

³⁶ For the specific content of the recommendations, please see CRC/C/MWI/CO/2, 27 March 2009, available at <http://www2.ohchr.org/english/bodies/crc/docs/co/CRC-C-MWI-CO2.pdf>

*Malawi Child Protection System
Mapping and Assessment Report*

- adopt and enforce the National Plan of Action to Support the Child Labour Policy, expedite the operationalization of the National Child Labour Database (# 67),
- remove street children from reformatory institutions, provide all street children with adequate care to support their full social development; promote their social reintegration within their families and communities (# 69),
- develop and strengthen appropriate legislative measures to address the issues of sexual abuse and sexual exploitation; prosecute perpetrators of sexual offences against children; ensure child victims have access to free, child-sensitive complaints mechanisms and are not criminalized or penalized; and implement appropriate policies and programmes for the prevention, recovery and social reintegration of child victims (# 71),
- take all measures to ensure the protection of children from trafficking and to bring perpetrators to justice sale (# 73),
- consolidate the different child helplines into one; ensure that the national child helpline is allocated a 3 to 4 digit telephone number, easy to remember, operates 24 hours a day and is toll-free for the child and the child helpline; ensure that the child helpline has an outreach component for the most vulnerable and marginalized (# 74),
- ensure juvenile justice standards are fully implemented; implement alternative measures to deprivation of liberty; make sure children in need of care are not treated as children in conflict with the law; ensure that cases involving children in conflict with the law are brought to trial as soon as possible; ensure that all children in conflict with the law have access to free legal assistance and to an independent and effective complaints mechanism; ensure that deprivation of liberty is used as a sentence of last resort and for the shortest period possible (# 76), and
- ensure that all children victims and or witnesses of crimes are provided with adequate protection (# 77).

Malawi is expected to submit its combined third, fourth and fifth periodic report in a unique consolidated document by 31 October 2013.

8.1.2. National legislation

Malawi disposes of a broad corpus of national laws ruling different aspects of child protection. The table below presents all laws that are into force and those that are forthcoming. Most of the laws are outdated and came into force long before the UN Convention on the Rights of the Child became effective. Nevertheless, since its access to the Convention, Malawi has deployed considerable efforts to update all laws, in order to have provisions compliant with all international standards.

*Malawi Child Protection System
Mapping and Assessment Report*

Legislation	Date Passed	Child Protection Areas Covered
Children and Young Persons Act ³⁷	1-Aug-69	Children and Justice, in need of care, control and supervision
Birth and Death Act	1-Jul-04	Birth Registration
Employment Act	14-May-00	Child Labour
Affiliation Act ³⁸	28-Dec-46	Affiliation
Adoption Act	16-Jun-49	Adoption (under revision)
Prevention of Domestic Violence Act	19-May-06	Domestic violence
Child Care, Protection and Justice Act (NOT YET GAZETTED)	30-Jul-10	Care, protection and justice for children
National Registration Act (NOT YET GAZETTED)	14-Jan-10	Birth Registration
Will and Inheritance Act	2011	Wills and inheritances
Adoption Act	Forthcoming	Adoption
Trafficking in Person Act	Forthcoming	Human trafficking with special focus on women and children
Probation Act	Under revision	Probation also of young offenders

Table 6: List of most relevant child protection legislation

In this on-going process of development and adoption of new child protection legislation, coherence and harmonization are two aspects Malawi is currently investing in. Malawi Constitution (1994), in its Chapter IV on Human Rights, paragraph 23, sets specific provisions on child protection regarding:

- equal treatment in front of the law,
- right to name, family name and nationality,
- right to know and be raised by their parents,
- right to be protected from economic exploitation or any treatment, work or punishment that is, or is likely to:
 - be hazardous,
 - interfere with their education; or
 - be harmful to their health or to their physical, mental or spiritual or social development.

Provision on the definition of the child is not consistent with the UN Convention on the Rights of the Child, since, according to Malawi Constitution, all individuals under the age of sixteen years are considered children.

³⁷ At the time of data collection, the Child Care, Protection and Justice Act (2010) was not yet into force. This happened in November 2011, and consequently repealed the Children and Young Persons Act (1964).

³⁸ The Affiliation Act will be repealed by the coming into force of the Child Care, Protection and Justice Act (2020)

RECOMMENDATION 1

Legislation reform process should continue in order to:

- harmonize all provisions included in the different laws (for example, this could take the form of a Children Code gathering all text ruling children issues),
- ensure compliance of national legislation with international standards,
- accompany legislation with all regulatory implementing measures that are deemed as necessary, and
- include in the national legislation all international child-protection-relevant treaties, conventions and protocols Malawi is not yet party to.

Legislation reform should be accompanied by mass communication campaigns on the content of each law to raise people awareness on protection of children and on available procedures and mechanisms to access child protection services.

Recommendation 1: Legislation reform

The main law enforced on child protection is the Children and Young Persons Act (1964), which focuses on children in conflict with the laws, not providing specific measures on broad child care and protection. This gap was filled in 2010 when the Government adopted the Child Care, Protection and Justice Act³⁹. This new law took the UN Convention on the Rights of the Child and other international standards into consideration, set a new benchmark in regulating child protection in Malawi and provided all child protection workers with an advanced law with clear provisions to be enforced. Yet the Act, not in force at the time of data collection, defines a child as a person below the age of sixteen years; this standard needs to be addressed to make the Act compliant with agreed international definition of a child.

The Act is divided into two main parts, the first one dealing with children in need of care and protection, and the other one ruling procedures to be applied with children suspected of having committed offences. The first part rules on how children should be protected and cared for by their families, how to identify and what to do with children in need of care and protection, on guardianship, on fosterage, on the support children should receive from local authorities, and on protection of children from undesirable practices. The second part provides details on how children should be arrested and brought in front of courts, on detention of children, on preliminary inquiry, on diversion, and on legal representation.

The guiding principle of the best interest of the child informs all provisions of the Child Care, Protection and Justice Act, where social aspects of rehabilitation of children, whether in need of care and protection or suspected of having committed offences, are central. Social welfare offices and police are given a primary role with clear responsibilities in dealing with cases involving child protection.

³⁹ While being passed by the Parliament and signed by His Excellency the President of the Republic, the Child Care, Protection and Justice Act (2010) is not yet into force because it shall come into operation on such date as the Minister (of Gender, Children and Community Development) shall appoint by notice in the Gazette, as provided by section 1.

*Malawi Child Protection System
Mapping and Assessment Report*

The Act also includes three new bodies that will support enforcement: the Child Justice Courts, the Child Panels, and the Child Case Review Board.

- The Child Justice Courts, subordinated to High Courts, are presided by a professional magistrate or a magistrate of the first grade. They have a central role, since they have to rule on all decision making processes regarding the protection of children (e.g. declaring a child in need of care and protection, appointing a legal guardian, fostering, diverting children, and implementing criminal procedures for children).
- The Child Panels are established “within the jurisdiction of each second grade magistrate court which shall be responsible for: devising diversion option(s); and implementing the diversion option(s), for child offenders in that area. A child panel shall be composed of persons nominated by the probation officer from the community representing the following: the faith community; the local government; chiefs; teachers; and health workers”⁴⁰.
- The Child Case Review Board, chaired by a judge of the High Court, nominated by the Chief Justice, and with a deputy chairperson who shall be a Resident Magistrate appointed by the Chief Justice, consists of members appointed by the following: “the Secretary for the Ministry responsible for health; the Secretary for the Ministry responsible for education; the Secretary for the Ministry responsible for labour; the Secretary for the Ministry responsible for children affairs; the Secretary for the Ministry responsible for justice; the Secretary for the Ministry responsible for youth; the Secretary for the Ministry responsible for home affairs; the Malawi Human Rights Commission; a non-governmental organization that is directly concerned with children matters; the Malawi Police Service; reformatory centres; and religious organization”⁴¹. The functions of the Board are “to consult with and advise on the administrators of reformatory centres, safety homes and foster homes; to undertake visits and to monitor reformatory centres, safety homes and foster homes to ensure compliance with this Act; to keep a register of detained children; to review cases of child offenders and matters of children kept for the purposes of care and protection; to facilitate the designing and implementation of rehabilitation programmes and curriculum for the proper reintegration of children into society; to coordinate with civil society organizations and other organizations dealing with children; to facilitate relations between communities and places of detention; to facilitate and supervise recruitment of staff in reformatory centres, safety homes and foster homes; to carry out any other duties imposed upon it under this Act; and to do all the functions that are necessary in order to promote the development of children”⁴².

As acknowledged by almost all actors involved in the mapping and assessment, law enforcement constitutes a major concern in Malawi. This was recognized for child protection

⁴⁰ Child Care, Protection and Justice Act (2010), section 116

⁴¹ Child Care, Protection and Justice Act (2010), section 150

⁴² Child Care, Protection and Justice Act (2010), section 153

legislation as well, for two main reasons: the first is the absence of a clear plan of action for protecting children, and the second is the lack and/or weakness of a costing plan attached to programme documents. For this, the Ministry of Gender, Children and Community Development, through the Social Welfare Department and with the collaboration of Civil Society and Development Partners, is developing a Costed Implementation Plan for the Child Care, Protection and Justice Act (2010). This process is already started, and will be supported by the findings of this mapping and assessment and its operational recommendations.

RECOMMENDATION 2

Implementation of national legislation should be supported by the development and adoption of the Costed Implementation Plan of the Child Care, Protection and Justice Act (2010). This Plan should:

- identify roles and responsibilities of each actor,
- develop rules and regulations delineating procedures and standards of quality,
- be accompanied by the implementation of a capacity strengthening strategy for child protection workforce,
- establish a clear link with all other child protection laws,
- identify mechanisms for enhanced coordination, collaboration and cooperation,
- improve quality service provision to prevent and respond to protection risks faced by children, and
- strengthen accountability of the system with appropriate accreditation procedures, complaint mechanisms, and an information management system.

The Costed Implementation Plan for the Child Care, Protection and Justice Act should be guaranteed with appropriate budget to ensure its execution.

Recommendation 2: Law enforcement

Finally, to show how the adoption of a system approach in child protection in Malawi is underpinned by previous experiences, it is worth mentioning the National Plan of Action for Orphans and Vulnerable Children (NPA/OVC). The Extended National Plan of Action for Orphans and other Vulnerable Children in Malawi (2010-2011), already included child protection issues like child trafficking, juvenile justice, street children, children with disabilities, sexual abuse and violence, and child labour⁴³. Additionally, system strengthening interventions are identified to address issues like: i) increasing OVC access to essential services, ii) strengthening family and community capacity to care for OVC, iii) policy, legislation and coordination, iv) strengthening and building the technical, institutional and human resource capacity, v) creating awareness and understanding of the magnitude of the OVC problem, and vi) monitoring and evaluation⁴⁴.

⁴³ Extended National Plan of Action for Orphans and other Vulnerable Children in Malawi (2010-2011), Government of Malawi, 2011, pg. 2-4

⁴⁴ Extended National Plan of Action for Orphans and other Vulnerable Children in Malawi (2010-2011), Government of Malawi, 2011, pg. 12-21

8.2. Coordinating child protection actors

There is broad agreement among all stakeholders involved in the mapping and assessment that coordination is a central point for strengthening the national child protection system. Several coordinating bodies are in place, most of them on thematic issues and different levels of efficiency and effectiveness. Government, civil society and development partners are currently joining efforts in trafficking with the Malawi Network Against Child Trafficking; on improving care of children, a national branch of the Better Care Network was just established; a National Technical Working Group is operational on child labour; on orphans and other vulnerable children another National Technical Working Group is in place to implement the National Plan of Action, and on early childhood development another National Technical Working Group is in charge of put into action the national policy.

8.2.1. National level coordination

To improve coordination in child protection, the Government and its partners are establishing a National Technical Working Group on Child Protection, an inter-agency body that is drawing from the experience gained in the recent past. The National Technical Working Group on Child Protection reports to the National Steering Committee on Children, a political body that is composed of the Principal Secretaries from Ministries of Gender, Education, Health, Home Affairs and Justice. At the top of the coordination mechanism, the National Steering Committee on Children exists on paper, but due to weak leadership, and unclear understanding of roles and responsibilities, and operational challenges, it very rarely met⁴⁵.

Although membership criteria are not yet clearly defined in a document or terms of reference, the National Technical Working Group on Child Protection includes representatives from Ministry of Gender, Health, Education, Justice, Home Affairs, Labour, National Registration Bureau, the Judiciary, the National Child Justice Forum, Malawi Police, Malawi Human Rights Commission, and NGOs like Youth Net and Counselling, Plan Malawi, Eye of the Child, Active Youth Initiative for Social Enhancement, Network of Organizations for Vulnerable and Orphan Children, Save the Children, Every Child, Child Rights Information Documentation Centre, Malawi Human Rights Youth Network, Chisomo Children's Club, NGOs Coalition for Child Rights, Malawi Human Rights Resource Centre, Civil Society Coalition for Quality Basic Education, Youth Watch Society, World Vision, Centre for Human Rights and Rehabilitation, Centre for Youth and Children Affairs, Creative Centre for Community Mobilization, Paralegal Advisory Service Institute.

The role of the National Technical Working Group on Child Protection is not specifically defined by some terms of reference. To date it provides broad support to the Ministry of Gender in establishing the child protection system in the Country and was conveyed four times during implementation of the mapping and assessment. The National Technical Working Group on Child Protection does not have clear terms of reference and does not have a clear mandate with roles and responsibilities; nevertheless, its current

⁴⁵ In 2011, during the whole process of mapping and assessment, the National Steering Committee on Children was unable to meet.

members agree that the mandate should support the Government in establishing a child protection policy, to monitor the enforcement of the costed implementation plan of the Child Care, Protection and Justice Act (2020), to coordinate all actions to respond and to prevent protection risks for children.

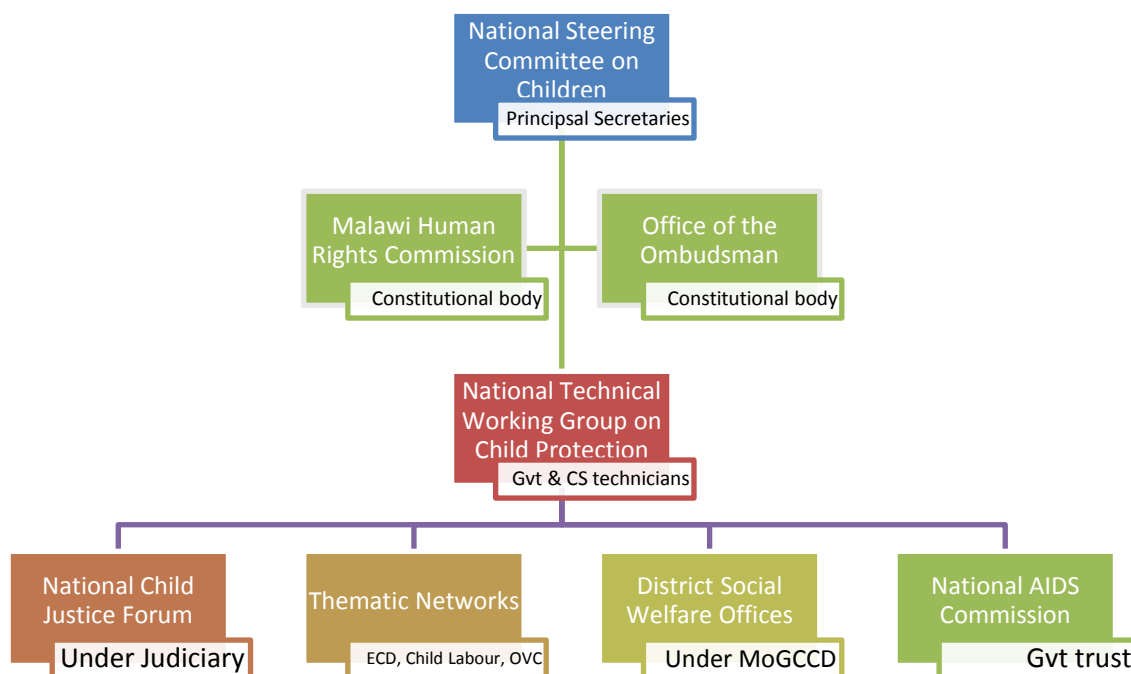


Figure 7: Child Protection coordination arrangements at the national level⁴⁶

It is too early to assess the impact of the National Technical Working Group on Child Protection. Nevertheless, its members have identified these strengths: the high level representation, with nearly 40 members composing it, and the leadership role that all actors confer to the Social Welfare Department of Ministry of Gender. These are the major weaknesses: high costs of the meetings, where allowances and transport refund play a big role, and lack of clear plan of action to deliver for children. In addition to that, the high number of members could also lead to little efficacy.

There is no overall coordination among civil society organizations on child protection. Thematic coordination on issues of child trafficking, child labour, street children, disability and birth registration, is done through Technical Working Groups which gather governmental and non-governmental actors. All these coordinating bodies report to the National Technical Working Group on Child Protection. This fragmentation makes it more difficult to share information. The creation of the Non-Governmental Organizations Coalition for Child's Rights was going in the direction of ensuring coordination among Civil Society Organizations (through coordination on thematic area, i.e. putting the different networks together), but so far it is more focused on advocacy (e.g., the Coalition played a big role in the adoption of the Child Care, Protection and Justice Act in 2010).

⁴⁶ There is no formal hierarchy to date set in any available document. The presented hierarchy only responds to functional purposes.

RECOMMENDATION 3

The National Technical Working Group on Child Protection should elaborate and adopt its own terms of reference. The document shall present a common and shared vision of its mandate and shall delineate its role and responsibilities, which should include:

- clear criteria for the identification of its members,
- provision of support to the Government to elaborate a national policy for the protection of children,
- monitoring of the enforcement of child protection legislation, which will happen mainly through the costed implementation plan of the Child Care, Protection and Justice Act (2010),
- overseeing the process of data collection and analysis on child protection, through the validation of studies, surveys, situation analysis, and any other document that will contribute to the improvement of knowledge in Malawi.

The terms of reference should also present working modalities that shall enhance efficiency and efficacy of the technical working group, addressing the challenge of limited funding, while ensuring participation and representation of all stakeholders. It is strongly recommended that the technical working group shall not have an implementation role and shall make sure that children's voices and views are taken into consideration to the maximum possible extent.

The National Technical Working Group on Child Protection could organize its work in two sub-committees, one in charge of children in need of care and protection and the other in charge of children and justice. This could help establish a National Child Protection System following the pattern provided by the Child Care, Protection and Justice Act (2010). More thematic working groups could also be put in place, if not yet existing, but their scope of work should be strictly linked and overviewed by the National Technical Working Group on Child Protection. This should also identify new working modalities to enhance coordination with other child protection relevant social sectors, namely Education and Health Sectors.

Recommendation 3: Coordination at the national level

To support the Government of Malawi achieve the outcomes stated in the Malawi Growth and Development Strategy (2007-11), several development partners are providing resources and technical assistance. Since child protection was not a priority in the old Malawi Growth and Development Strategy, their support is more based on projects and/or programmes and common areas of interventions identified bilaterally.

The following United Nations agencies partner the Government of Malawi: WHO (violence and HIV and AIDS mitigation), UNAIDS (HIV and AIDS mitigation), UNFPA (gender based violence), UNICEF (broad child protection), FAO (child labour), ILO (on child Labour), UNDP (on rule of law and justice sector reform), UNHCR (managing a refugee camp), and WFP (on social protection).

From bi-lateral donors, the British Department for International Development (on children and justice), the Royal Norwegian Embassy (on gender based violence, child witchcraft, women in prison, human trafficking), the European Union (violence against children, democratic accountability, good governance, and birth registration).

To date, most of these collaborations happen bilaterally, without effective and on-going coordination⁴⁷; under the new United Nations Development Assistance Framework 2012-16 a protection cluster has been established recognizing child protection as an area of work, supporting the Government of Malawi in establishing a child protection system as per the Malawi Growth and Development Strategy II (2012-16)⁴⁸ and in enforcing the Child Care, Protection and Justice Act (2010) through its costed implementation plan.

8.2.2. Local level coordination

Coordination at decentralized level was analysed at two levels: district and area. Though presenting similar patterns, those two levels vary for the different actors involved and the different roles they actually play. While the district level is more associated with formal service provision to respond to child protection risks, the area level, which is closer to communities, is more apt for prevention and alerting child protection cases⁴⁹.

There are 28 Districts in Malawi⁵⁰. The Districts are headed by a District Commissioner who is employed by the Central Government along with the other senior Secretariat directors (Finance, Planning and Development, Administration, Public Works). The full Assembly includes elected Councillors from the wards and ex officio Chiefs from the TAs plus Members of Parliament and five representatives from special interest groups. One Councillor is elected the Chairperson. The Technocrats at District level have their own coordinating and planning body – the District Executive Committee. This is comprised of all district heads of ministries, some NGOs and heads of planning departments in the District Assembly, and is chaired by the Assistant District Commissioner. Its principal role is district and project planning functions in particular vetting projects submitted by Area Development Committees to the DEC/District Assembly. There were not any local election in the recent years⁵¹, so there are no elected councillors; this role is played by the ‘District Consultative Group’ - appointed members who include Members of Parliament, traditional leaders and other important and/or influential district citizens.

At the district level different coordination mechanisms are available. Names can change (child protection committees, district technical working groups), and focus can vary (some are working on broad child rights, others on child protection, others on thematic issues like child labour, trafficking, sexual exploitation, and so on). Historically, the majority is coming from the District technical Working Groups on OVC, established to implement the Extended National Plan of Action on OVC, which, as already presented in chapter 7.2 covered a big portion of child protection. Despite the differences, the composition is similar

⁴⁷ For example, there is nothing similar to a “donor group” in child protection domain.

⁴⁸ This document has not yet been finalized and adopted. Its latest draft version made available, dating April 2011, states the establishment of a National Child Protection System as one of the Medium Term Expected Outcomes for Social Development.

⁴⁹ This is to be considered more as an empirical trend rather than a planned division of labour.

⁵⁰ These are: Balaka, Blantyre, Chikwawa, Chiradzulu, Chitipa, Dedza, Dowa, Karonga, Kasungu, Likoma, Lilongwe, Machinga, Mangochi, Mchinji, Mulanje, Mwanza, Mzimba, Neno, Nkhata Bay, Nkhotakota, Nsanje, Ntcheu, Ntchisi, Phalombe, Rumphu, Salima, Thyolo, and Zomba.

⁵¹ Their previous term of office expired in March 2005 and no new elections were called.

*Malawi Child Protection System
Mapping and Assessment Report*

across the districts, comprising at least the District Social Welfare Offices, District Community Development Offices, District Health Offices, Police, and active NGOs and CBOs in child protection. Some of the Districts also reported having also child magistrates within the coordinating body. Normally, the coordination mechanism is chaired by the District Social Welfare Officer. Most of the coordination mechanisms have a plan of actions, or are currently developing one. Almost all are shaped around Orphans and other Vulnerable Children and/or Early Childhood Development national plans of actions and translated into specific districts' context; this means that some issues of child protection can be well articulated, while lacking a comprehensive child protection plan, but elsewhere child protection could not be touched. Almost all suffer a lack of financial support and on-going interest and commitment.

The analysis of district coordinating bodies reveals several strengths and challenges. There are coordinating bodies in all 28 districts, that is a strength. This proximity guarantees contact to local communities. Nevertheless, less than half of the committees are active. They are highly representative, with of both state and non-state actors. Large efforts to tackle HIV and AIDS and the consequences on children has provided experience that is useful for efforts in OVC. This is stable, and there is much agreement on the pre-eminent role that the District Social Welfare Offices have ensuring the permanent secretariat. As for challenges, inadequate financial and material resources lead to non-periodic meetings, where partners would often respond to the meetings if financial incentives are provided. According to most actors interviewed, the mandate of these coordinating mechanisms is not clear, due to no standardized terms of reference, and with a narrowed focus on OVC and not broad child protection. Finally, members of the coordinating bodies need child protection in-service training. For these reasons, district coordinating mechanisms are not effective, and programme and project collaboration among actors is inadequate and weak.

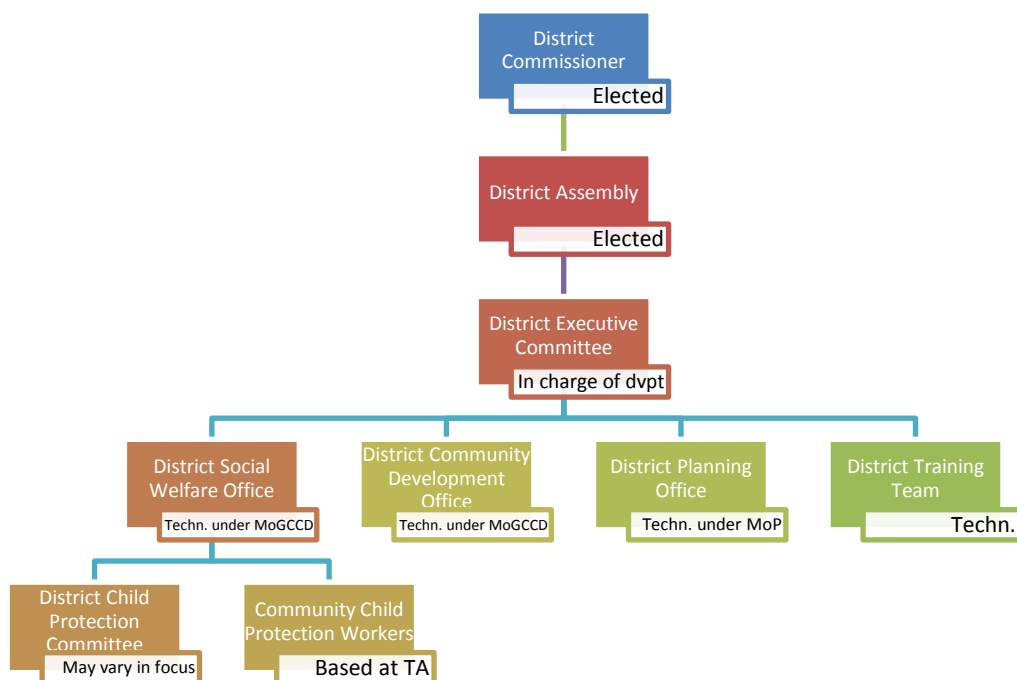


Figure 8: Child Protection coordination arrangements at the district Level

*Malawi Child Protection System
Mapping and Assessment Report*

In 2008, the NTWG on CP travelled to most districts to harmonize the different district structures (previously that it was strongly shaped around a donor or by the organization leading the project). Still, the situation can vary significantly. Some committees at the districts level are “dormant” while others are active if a programme with adequate resources is participating. Insufficient funding is an important issue almost everywhere, as well as the absence of specific policies or guidelines on child protection, ending in heterogeneity of approaches.

A weakness of the coordinating mechanisms at the district level is that, when different committees are present in the same district (e.g. child’s rights, education, child protection or thematic ones), the same people are attending the meeting for the most part. There needs to be better coordination and harmonization with other sectors. Their capacity to operate also depends on how active the district commissioner is.

Committees are organized around a variety of issues, some of which can be the object of coordination at the time. Child abuse (mainly sexual) is the main intervention for the committees (capacities at district level have been built around the “Stop child abuse” campaign), but coordination can happen in both case management and specific child protection issues. Coordination meetings are held on child protection issues updates, sharing information, and field visits, though this can slightly vary per situation. To some extent, district committees can provide a referral system for child protection actors at district level. Some districts (Kasungu, Lilongwe, Salima, and Dedza have been mentioned) have a good capacity for understanding and defining child protection.

The Child Friendly District Initiative offers a good opportunity, following the decentralization process shall establish child’s rights committees, to mainstream children in the district. According to the Initiative, a district Action Plan will be developed, articulating activities Districts’ actors will focus on in order to improve services for children under the following four key focus areas: (i) Health & Nutrition, (ii) Child Protection, (iii) Water and Sanitation, and (iv) Education.

The level below district is the Traditional Authority; there are 300 Traditional Authorities across the country. To rule the Traditional Authority, the decentralization process established the Area Development Committee which is the next level of representation below the district level and it consists of Village Development Committee chairpersons and their secretaries, councillors, representatives of religious groups, youth and women as well as the business community and chairperson of the Area. The Area Development Committee functions include:

- identification of projects, setting up of priorities and preparation of project proposals
- addressing community needs that cover more than one Village Development Committee;
- organising monthly meetings together with Village Development Committees from their area;
- supervision, monitoring and evaluation of the implementation of projects;

*Malawi Child Protection System
Mapping and Assessment Report*

- mobilising resources for self-help projects; and
- improving and prioritising project proposals for Village Development Committees for submission to the district.

The Area Executive Committee provides the links between the District Assembly and Communities in terms of development, and it consists of extension workers, teachers and NGOs operating in the area. Their main responsibility is to advise Village Development Committees and the Area Development Committees on all aspects of development. Specifically their role is to:

- train Village Development Committees and Area Development Committees members;
- prepare operational guidelines for Village Development Committees and Area Development Committees;
- assist and advise the Village Development Committees and Area Development Committees to identify and prepare project proposals;
- review/appraise project proposals before submission for funding;
- assist Village Development Committees and Area Development Committees in the preparation of project implementation plans; and
- set up and help run monitoring and evaluation systems.

At the basis of the decentralised Administration is the Village level. At this level, the Village Development Committee is the lowest level development structure. Members come from the village or villages making up the VDC and consists of elected persons, women representatives, councillors and extension workers. Their main functions include:

- identify and prioritize community needs;
- prepare project proposals and submit these to Area Development Committees;
- communicate community-based issues with the Area Development Committees and district level and vice-versa;

There are no harmonized and widespread coordination mechanisms at Area and Village level. Where available, consideration similar to those for the district level are applicable. Nevertheless, it is important to present this level for two main reasons. The first is that this level, already existing and given its role, could be an important asset for planning and implementing child protection interventions, for training Village actors, strengthening their child protection capacities, and for monitoring progresses and challenges in child protection areas at community level.

The second reason is that an important actor operating at Traditional Authority level reports to the Area Development Committee: the Community Child Protection Worker. Eight hundred Community Child Protection Workers across the country (300 on Government payroll, 500 on voluntary basis with a stipend funded by the Global Fund), play a valuable role in bringing government services to children and through the establishment of community child protection committees that can enhance the protection of children. They

constitute⁵² the link between the district and the community, referring up to the District Social Welfare Office cases of abuse, collecting information for probation reports, following up on issues of child labour, and following up with parent tracing.

RECOMMENDATION 4

Coordination at District and Area level should be harmonized around terms of reference in line with those to be developed for the National Technical Working Group on Child Protection. At District and Traditional Authority level, coordination should revolve around service provision and case management. Coordinating bodies at those levels could be called District and Area Technical Working Groups on Child Protection to reflect homogeneous labelling with the national level. Coordination at the decentralized level should shift from the issue approach towards a more comprehensive and systemic dynamic. Direct participation, or representation, of children should be encouraged and promoted at the Traditional Authority level and at the Village levels.

To ensure coherence of broad social policies implemented at the district level, enforcing a child protection system should be mainstreamed together with the Child Friendly District Initiative, which, incidentally, is led by the same department in charge of child protection in the Ministry of Gender, Children and Community Development, i.e. the Department of Social Welfare.

To strengthen coordination at more decentralized level, there should be a strategic use of available resources and structures already in place and having a formal mandate in administering local communities. Child protection actors, especially those with coordination responsibilities like the Social Welfare Officers operating at District level and the Community Child Protection Workers operating at Traditional Authority level, should be given resources and in-service training to perform at best their duties.

Recommendation 4: Coordination at the sub-national

8.3. Capacities

This chapter presents which capacities are available in Malawi in child protection domain in terms of human resources, and financial resources. It is not a proper capacity assessment of child protection actors, which would require another type of methodology⁵³, though many elements have been considered in the mapping and assessment of the child protection system in Malawi. Considerations on capacities as referred to infrastructures and facilities are given in the chapter 8.4.1 on services and other interventions for children.

8.3.1. Human resources

In this part, findings of four subjects are depicted: i) key Ministries involved in child protection, ii) Civil Society, iii) Development Partners, and iv) child protection trainings institutions.

⁵² An overall presentation of Community Child Protection Workers capacities is presented in chapter 8.3.1.1.

⁵³ See for example UNDP Capacity Assessment at <http://www.undp.org/capacity/assess.shtml>

8.3.1.1. Key Ministries

The Ministry of Gender, Children and Community Development is the lead Government branch of Child Protection. The Ministry of Gender, Children and Community Development is mandated to provide policy guidance for women and child development services. The Ministry was instituted aiming to promote the welfare and protection of women and children. The Ministry is responsible for placing systems to develop instruments, structures, policies, guidelines and programmes whose impact will culminate into the ministry's goals and objectives.

8.3.1.1.1. Ministry of Gender, Children and Community Development

Within the new Social Welfare Department, the newly established Probation and Child Protection Division is in charge of child protection, the Department of Child Development of early child development, the Department of Gender for Gender equality. In general, though understaffed, the Ministry disposed of officers who have good child protection knowledge and skills. The re-structuring of the Ministry is not yet finalized and operational. There are no implementation guidelines. Through the newly established Social Welfare Department, the Ministry is primarily responsible for implementing child protection interventions. The Department shall have a Division of Child Protection and Probation which will be the frontline actor for overall child protection.

The Ministry is present at the district level with 28 District Social Welfare Offices, and 130 Social Welfare Officers (4 per district on average⁵⁴). Of them, 57% are Social Welfare Officers, 21% are Assistant Social Welfare Officers, and 22% are Social Welfare Assistants. Differences between the three positions depends on seniority of services. Social Welfare Officers can be appointed probation officers: there are 44 of them (2 per district). Following is the table presenting the distribution of Social Welfare Officers.

<i>Area</i>	<i>Population</i>	<i># of TAs</i>	<i>Surface Area</i>	<i># of SWO</i>	<i>Ratio per 100.000 pop</i>	<i>Pop. per 1 SWO</i>	<i>Ratio per TA</i>	<i>Ratio per 10.000 sq.km.</i>
Malawi	13.077.160	244	94.276	128	0,98	102.165	0,52	13,58
Northern Region	1.708.930	52	26.931	29	1,70	58.929	0,56	10,77
Chitipa	178.904	6	4.288	4	2,24	44.726	0,67	9,33
Karonga	269.890	6	3.355	5	1,85	53.978	0,83	14,90
Nkhata Bay	215.789	14	4.071	4	1,85	53.947	0,29	9,83
Rumphi	172.034	12	4.769	4	2,33	43.009	0,33	8,39
Mzimba	861.899	12	10.430	11	1,28	78.354	0,92	10,55
Likoma	10.414	2	18	1	9,60	10.414	0,50	555,56
Central Region	5.510.195	89	35.592	47	0,85	117.238	0,53	13,21
Kasungu	627.467	16	7.878	6	0,96	104.578	0,38	7,62
Nkhotakota	303.659	7	4.259	5	1,65	60.732	0,71	11,74

⁵⁴ No information has been made available for Chikwawa and Machinga districts.

*Malawi Child Protection System
Mapping and Assessment Report*

<i>Area</i>	<i>Population</i>	<i># of TAs</i>	<i>Surface Area</i>	<i># of SWO</i>	<i>Ratio per 100.000 pop</i>	<i>Pop. per 1 SWO</i>	<i>Ratio per TA</i>	<i>Ratio per 10.000 sq.km.</i>
Ntchisi	224.872	6	1.655	3	1,33	74.957	0,50	18,13
Dowa	558.470	8	3.041	4	0,72	139.618	0,50	13,15
Salima	337.895	11	2.196	5	1,48	67.579	0,45	22,77
Lilongwe	1.905.282	15	6.159	9	0,47	211.698	0,60	14,61
Mchinji	456.516	7	3.356	5	1,10	91.303	0,71	14,90
Dedza	624.445	9	3.624	4	0,64	156.111	0,44	11,04
Ntcheu	471.589	10	3.424	6	1,27	78.598	0,60	17,52
Southern Region	5.858.035	103	31.753	52	0,89	112.655	0,50	16,38
Mangochi	797.061	12	6.273	6	0,75	132.844	0,50	9,56
Machinga	490.579	13	3.771	0	0,00		0,00	0,00
Zomba	667.953	7	2.580	4	0,60	166.988	0,57	15,50
Chiradzulu	288.546	7	767	5	1,73	57.709	0,71	65,19
Blantyre	1.001.984	8	2.012	9	0,90	111.332	1,13	44,73
Mwanza	92.947	3	826	4	4,30	23.237	1,33	48,43
Thyolo	587.053	13	1.715	4	0,68	146.763	0,31	23,32
Mulanje	521.391	7	2.056	1	0,19	521.391	0,14	4,86
Phalombe	313.129	4	1.394	3	0,96	104.376	0,75	21,52
Chikwawa	434.648	9	4.755	0	0,00		0,00	0,00
Nsanje	238.103	11	1.942	2	0,84	119.052	0,18	10,30
Balaka	317.324	3	2.193	6	1,89	52.887	2,00	27,36
Neno	107.317	6	1.469	8	7,45	13.415	1,33	54,46

Table 7: Social Welfare Officers distribution per population and area

Participants to data collection reported that there are huge disparities in geographical deployment of staff; the disparities are between rural/urban areas. This is confirmed by the above table. The table above indicates that there is one district social welfare officer for every 100,000 people, each of them could cover nearly two Traditional Authorities, with disparities between the Northern Region (less populated) and the Central and Southern Regions. There are more than 13 of them serving an area of 10,000 square km (which is, approximately, a circle of 110 km of diameter)⁵⁵. Gender differences are present as well. Malawi is basically a rural country, more female social workers are found in towns, and concentration of funding is higher in urban centres.

⁵⁵ This indicator can help capturing mobility challenges for Social Welfare Officers and/or further deployments within each districts.

*Malawi Child Protection System
Mapping and Assessment Report*

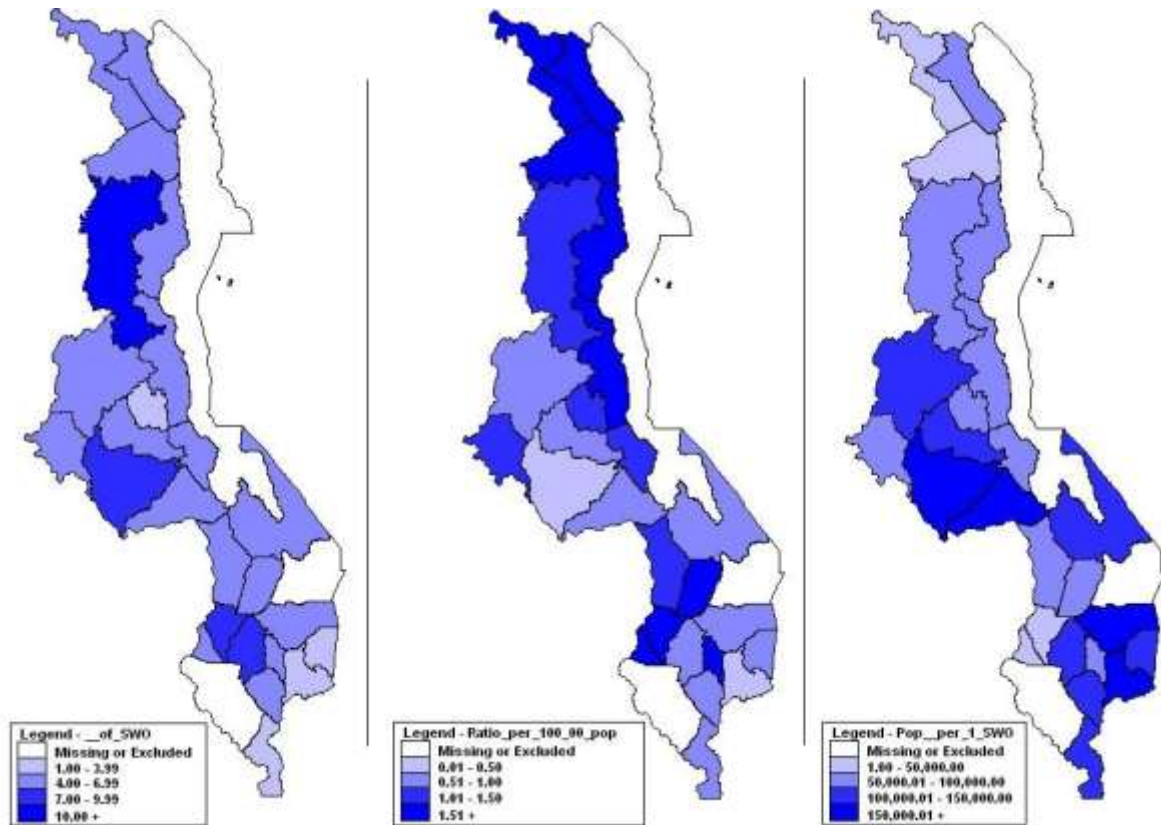


Figure 9: Geospatial distributions of Social Welfare Officers across the districts

Traditional thinking links social work to urban areas. Better workers are likely to be found in more desirable districts, hence central districts are more effective in dealing with problems (even though Neno, Mwanza, Chitipa, Rumphi districts have higher DSWO/population ration). The amount of work can be different, in rural areas people could be waiting in the office for people reporting cases, while the caseload is heavier in urban areas. This is dependent on the accessibility of services and on propensity to report to: people do not know social welfare services and do not trust social work.

The Social Welfare Officers appointed as Head of the office is titled District Social Welfare Officer, and assumes the secretariat of the District coordination body on child protection. The District level is to submit quarterly reports to the national level, on activities taking place at district level, on child protection, early childhood development, and community services. The report normally focuses on information on case managed and other preventive or responsive activities carried out.

The Ministry manages two Reformatory centres (Mpemba, Chiwa) and the Social Rehabilitation Centre in Lilongwe. At the Traditional Authority level, Community Victim Support Units are established to tackle Gender Based Violence and report to the Department of Gender and not to the Social Welfare Department.

Performance accountability mechanisms were introduced in 2010, using performance appraisal, supervision system (internally and externally to human resources for a final check). Work is performance based, everything is reported and people are held accountable for their work. The system is new and will require time to

*Malawi Child Protection System
Mapping and Assessment Report*

be fully implemented. Reports are expected at the end of each activity, a good practice that is implemented generally, even though the quality of the reports needs to be further assessed.

The Government will have an internal auditor, but the Ministry of Gender may have external auditors as well. The Public Account Committee in the National Assembly can summon the Ministry staff asking for explanations on expenditure and financial management.

Beneficiary participation is encouraged, but to date, it is implemented mostly through personal initiative. The idea of identifying available capacities within communities, and not work for them but with them, is very present. This approach is challenged by the idea of public servant not fully rooted, and culturally, people do not argue with those with a higher social status. The same is particularly true for child participation. Ministry representatives consider a matter of professionalism to involve the client and agree on what is to be done, but both parties need technical skills and education.

Two figures within the Ministry of Gender, Children and Community Development are central at district and Traditional Authority level: the Social Welfare Officer in the former, and the Community Child Protection Worker in the latter.

Social Welfare Officers are responsible for social welfare at the district level and they conduct social assessments of communities to determine the service needs for children and families. This mainly occurs when District Implementation Plans will be discussed at the District Executive Committee, including children in the plan is a challenge. Assessment can revert around issues affecting children, but mostly happens when something happens to a child. Scarce available resources negatively affect assessments and follow ups because they require a lot of movement.

Children who need of care and protection are reported to Social Welfare Officers after they are identified via self-reporting or public referral (by communities leaders, teachers, extension workers, etc.). There is not a uniform way to investigate and assess children, with standard forms of reporting and assessing. A checklist of aspects for consideration during assessment and investigation is available, and is adapted for each case (foster care, in conflict with the law, etc.).

Codes of conduct are available for Social Welfare Officers engaged in child protection. During training at Magomero College, students receive a code of conduct and ethics. Social work is not established as a separated occupational point of view in Government, so staff follow Government regulations (i.e. the Public Service Regulations). These codes are not specific to child protection, so ethics are derived from existing laws to protect children and the client. Copies of codes of conduct were not made available, so it was not possible to assess thoroughly the contents.

*Malawi Child Protection System
Mapping and Assessment Report*

Most of the staff turnover is due to death, retirement, and job change after frustration for few gains and a lot of work. The Government stopped recruiting social workers after 2005 due to a change in priorities. The Government has not increased the number of social workers to compensate for the turnover. Salary levels are still low and there are no incentives for good performers. The Ministry plans to increase the number of social workers to 280 (160 more staff) and the number of Community Child Protection Workers to 1.000 (two hundreds in addition) and social workers at each planning area development committee at TA level (244), to have a minimum of 6 DSWO per districts and 15 at central level. The plan is ambitious considering the available resources, workload and time for training could require more time than planned. Also, standards should be set according to population and workload, not only on average number of DSWOs per district. The number of probation officers is also expected to increase with the appointment and publishing into the Government Gazette of Social Welfare Officers that are appropriately skilled. The State Budget Law has a cost line to recruit new staff at the district level, but the effective expenditure has been postponed each year. Time for training is another major factor (for both social work and probation officers) which will be deployed within the next year, this would require temporary measures to fill the gap.

At the Traditional Authorities level, there are 800 Community Child Protection Workers across the country (300 on Government payroll, 500 on voluntary basis with stipend funded by the Global Fund). They play a valuable role in bringing government services to children. Throughout the establishment of community child protection committees they can enhance the protection of children. They are the link between the district and the community, referring cases of abuse, collecting information for probation reports, following up on issues of child labour, and following up with parent tracing.

The benefits of the Community Child Protection Workers as reported by Communities, Civil Society Organizations, Ministry Officials and the District Social Welfare Officers are as follows:

- Community Child Protection Workers have helped establish and provide on-going support to community child protection committees in conjunction with the village headmen and other traditional leaders.
- Increase awareness at community level on the importance of education and the right of children to go to school.
- Receive reports from communities when children are brought to the police and engage in follow-up including advocacy for restorative justice and monitoring the situation of the child while in custody.
- Act as mediators and child advocates at the community level and try and divert child from the formal judicial system when possible.
- Increase awareness on the harmful effects of child labour including children working as domestic workers, on plantations, as cattle herders or as porters in urban areas.

*Malawi Child Protection System
Mapping and Assessment Report*

- Act as a first point of contact for cases of serious forms of child abuse, including corporal punishment, defilement and sexual abuse.
- Provide support and guidance to the Community Based Childcare Centres especially in Early Childhood Development (ECD).
- Work with the communities to support the registration of OVCs.
- Provide technical advice and guidance to CBOs involved in child protection.
- Help to create awareness about the negative effects of early marriage.
- Provide the District Social Welfare Office and the Ministry of Women and Child Development with a community level presence.
- Ensure that cases of child rights violations are brought to the attention of the District Social Welfare office and the Police.
- In some cases the Community Child Protection Workers are helping community child protection committees access resources from NGOs and other service providers.

The following are challenges in Community Child Protection Workers performance:

- Lack of motivation and incentives
- Problems with the circulation of job descriptions or terms of reference for the community child protection workers.
- Large territories covered by the Community Child Protection Workers. Many of the CCPWs and especially those located in rural areas are covering large areas with limited access to transportation or other logistical support.
- Lack of mentoring, refresher training or follow-up after the initial block of capacity building.
- Status/legitimacy of child protection workers who are sometimes not seen as being as professional or as legitimate as other government extension workers.
- Lack of Networking Co-ordination. In some areas the Community Child Protection Workers reported that they are often overlooked when it comes to co-ordination meetings or linked to projects being implemented by other partners.
- Capacity of Community Child Protection Committees / Protection Committees of CBOs. Having established many community child protection committees, the CCPWs now face challenges of how to build the capacity of these groups. Expectations from Community Child Protection Committees. For their part the CCPWs have considerable expectations in terms of access to resources, capacity building opportunities and other forms of material support. However, there is no provision to provide such materials.
- Capacity Building of the Community Child Protection Workers. While their initial training was very comprehensive the CCPWs still require refresher trainings and for additional skills to increase their understanding of their impact and effectiveness.

- Reporting Structures. The current reporting structures are not working effectively, with delays in completion of reports, absence of standardized reporting formats and limited feedback being provided. This situation is blocking the flow of important information from the community to District and Central levels.

RECOMMENDATION 5

Train all child protection actors on standard guidelines on case management, developed around the format of the Child Care, Protection and Justice Act and the principle of the best interest of the child.

Strengthen the leadership role of the Ministry of Gender, Children and Community Development in coordinating all actors involved in the child protection system at the national and district level.

Increase the number of trained and skilled social worker (within different Ministries, not only Gender, also in Civil Society Organizations) to adequately face the workload in child protection interventions.

Identify the best mechanisms to expand services and other interventions provision that have to be of quality, accessible, child friendly and non-discriminatory, based on the experience accumulated with Victim Support Units, One Stop Centres and other community mechanisms.

Collaboration with the Ministry of Information to mainstream child protection in the communication campaigns of the Government.

Increase accessibility and effectiveness of complaint mechanisms in case of mis-provision of child protection services and interventions to enhance actors' accountability.

Recommendation 5: Ministry of Gender, Children and Community Development capacities

There are three other Ministries that play a role in child protection in Malawi: the Ministry of Justice and Constitutional Affairs, the Ministry of Education and the Ministry of Health.

8.3.1.1.2. Ministry of Justice and Constitutional Affairs

The Ministry of Justice is mandated to provide legal services to the Government and citizens, act as prosecutor, act as defendant on behalf of Government, and promote the rule of law. There is no specific mandate in relation to children, the mandate is general and children are covered as citizens. The only direct intervention in this sense is that the Ministry of Justice has to publish the names of probation officers that are appointed by the Ministry of Gender, Children and Community Development in the Gazette. According to the Child Care, Protection and Justice Act (2010), the Ministry of Justice is *de iure* part of the Child Care Review Board which is mandated, inter alia, of visiting and inspecting reformatory centres and foster homes. To date, the Child Care,

Protection and Justice Act (2010) is not yet entered into force⁵⁶, so the Board is not yet in place neither operational. According to the previous Children and Young Persons Act (1964), a Board of Visitors should exist with similar tasks, but due to a lack of resources it has not been fully operational in past years.

There are no specific units or officers in charge of children at the national level. Personnel in the Ministry share all of the responsibilities, but there is a focal point designated to attend the National Technical Working Group on Child Protection meetings. The arrangement is deemed satisfactory, even though there have been discussions within the Department of Public Prosecution on whether to establish a child justice unit specifically working on children and gender-based violence. The Legal Aid Department handles more serious cases of juvenile justice, to defend children who have committed offences and his/her family cannot afford a lawyer.

The Ministry of Justice coordinates activities on child protection at two levels. The first is on a programmatic level, based on specific interventions that the Ministry is carrying out with other ministries or governmental agencies. The Ministry shares responsibilities with the Malawi Police in prosecuting criminal cases involving children. Crimes are reported to Victims Support Units (in each police station and post), Police Officers investigate and compile a case docket and in the most serious cases send it to the Director of Public Prosecutor; minor cases are prosecuted directly by Police. Serious cases can result in 7 years of prison or more. The Ministry of Justice collaborates with Ministry of Gender, Children and Community Development in juvenile justice: probation officers provide social inquiry reports during the court's process, to inform decision of prosecutors and judges. In these cases, coordination is case by case, done on the spot. The second level of coordination, on a policy level is through the National Technical Working Group on Child Protection, which has no specific mandate or terms of reference detailing its tasks and role thus far. At a programmatic level, the Ministry carries out specific interventions with non-governmental partners. Juvenile justice is also considered a part of the Extended National Plan of Action for OVC 2010-11, even though the plan does not detail those responsible for each activity. The Ministry of Justice is currently working with Paralegal Advisory Services Institute who acts as advisor and counsellor to families and children without any probation officers available. The Ministry also collaborates with the Youth Network Council to implement the National Child Help Line; there is no formal collaboration and linkages are stronger between The Helpline and the Police Services.

8.3.1.1.3. Ministry of Education, Science and Technology

Another Ministry involved in child protection is the Ministry of Education. Its mandate is to promote quality and relevant education in Malawi. It is also mandated to implement the National Education Sector Policy 2008-17 and the Education Sector Implementation Plan 2009-13. The Ministry of Education does not have a formal specific

⁵⁶ As mentioned above, the Child Care, Protection and Justice Act (2010) came into force in November 2011, after data collection was completed.

mandate on child protection. Like the Ministry of Justice, and according to the Child Care, Protection and Justice Act (2010), the Ministry of Education is *de iure* part of the Child Case Review Board. The National Education Sector Policy 2008-17 to promote access and quality for early child development (the first priority for early child development) has a strategy to promote early childhood care for orphans and vulnerable children. The abolition of school fees for primary education is a response to this priority. At the same time, The National Education Sector Policy 2008-17 to enhance governance and management for primary education (the third priority for primary education) has a strategy to introduce policy measures to encourage and reinforce HIV and AIDS awareness, girls' empowerment, and safe schools. The child friendly schools initiative is a response to this priority.

Within the Ministry of Education, all departments share child protection responsibility, since the best interest of the child is the paramount principle informing and guiding all activities of the Ministry. With a top-down approach, child protection is becoming a priority, mainly through advocacy and sensitization for the establishment of a conducive learning environment. Within the Ministry of Education, at the national level, there are two focal points on two child protection issues: one on gender and one on guidance and counselling. The Inspectoral Department is in charge of conducting inspections in schools to verify the level of compliance with standards. The Ministry disposes of a data collection system Education Management Information System (EMIS) within the Department of Planning. The system does not collect specific data on child protection, but analyses identifies early employment and early pregnancy as main reasons for school dropout (sometimes consequence of trade for sexual services).

8.3.1.1.4. Ministry of Health

The third Ministry that shares a role in child protection is the Ministry of Health. Its mandate is to provide health services to the Malawian population and prevent premature death. The Ministry of Health does not have a specific mandate on child protection. The Ministry of Health is responsible for the development, review and enforcement of health and related policies for the health sector; but since violence and abuses threaten people, and children's, lives and have a direct impact on their health and well-being, the Ministry of Health share responsibility in child protection domain. According to the Child Care, Protection and Justice Act (2010), the Ministry of Health, together with, *inter alia*, Ministry of Justice and Ministry of Education, is *de iure* part of the Child Care Review Board. Nevertheless, through its prevention, promotion, and curative services (e.g. the polio programme), health workers are able to visit the disabled and disadvantaged households with children vulnerable to child protection risks.

There are no specific departments in the Ministry of Health working on Child Protection. Nevertheless, in child maltreatment prevention there are two focal points, one in the Nursing Department and the other one in the Clinical Department. There have been not any activities yet, because the intervention has not started. A situation analysis

and some orientations in the districts of implementation (Mzimba, Chiradzulu and Mchinji) are the extent of the program at this point. Violence against children is dealt by the Mental Health Division within the Non Communicable Diseases Unit; the Division is responsible for developing policies, guidelines and standards on screening and is also working to establish a referral system for trauma.

In the actual curricula for in-training of health workers, the Ministry of Health included a component on child abuse/maltreatment, neglect and exploitation. The curricula teach health workers about definitions, causes, forms of, consequences, identification of victim children, role of families and the environment, importance of prevention. The curricula have dedicated a part to sexually abused children. Finally, thanks to its coverage, the Ministry of Health can provide information and/or counselling on child protection issues. The Health Sector will also mainstream and enhance birth registration in the country.

Within the Ministry of Health, relationships between the national and sub-national level are based on working collaborations and implementation. The District Health Officers are not working specifically on child protection, but they can meet children that are in need of care and protection, during clinic visits at the hospital. Children maltreated or abused pass, or at least should, through health services. The four One Stop Centres⁵⁷ (Blantyre, Zomba, Mzuzu and Lilongwe) operate reporting to the Clinical Department.

RECOMMENDATION 6

Mainstream child protection within the Departments with responsibilities in dealing with children through pre-service and in-service training. Mainstreaming should be evident throughout planning, implementing and reporting phases of each Department.

Strengthen coordination mechanisms at the internal organizational level and with other stakeholders in the domain of child protection.

Establish child protection focal points to liaise with other social sectors, to represent the Ministry at the National Technical Working Group on Child Protection, and to ensure child protection is mainstreamed and included in the Ministries' planning, implementing and monitoring activities.

Train staff at the national and sub-national levels on child protection and systems approach.

Disseminate lessons learnt from Ministries' experiences in enforcing systems (especially Ministry of Health and Ministry of Education)

Recommendation 6: Other line Ministries capacities

⁵⁷ See chapter 7.4.1 on services and other interventions for children for more details on the One Stop Centres.

8.3.1.2. Civil Society

Civil Society Organizations are very active in Malawi; their activism comes from a long history and expertise in the domain of HIV and AIDS, having focussed on Orphans and other Vulnerable Children.

There are not precise data on the number of Civil Society Organizations actually working on child protection issues. The Government of Malawi produced a compendium on Community Based Organizations working with Orphans and other Vulnerable Children in 2005, but it has not been updated since. Some inventories are available, for example at the NGO board, in the registration office, or at the district level. In addition, CONGOMA reported having a directory based on self-reporting (updated to 2010). The NGO Board list of active registered NGOs in Malawi reports 165 NGOs⁵⁸, with one third working in child protection related areas (no NGOs has reported working on child protection strictly, i.e. child protection is never mentioned in the sector of intervention column). There are some attempts to create an inventory of organizations working on child protection, with new technologies (e.g., “Feed the children”, with support from USAID, is taking inventory of Community Based Childcare Centres in selected districts using Geographic Information Systems).

Among Civil Society Organizations, during the mapping and assessment exercise, 98 Non-Governmental Organizations have been identified, with an average presence of 7 organizations⁵⁹ per district⁶⁰. Ninety-one Non-Governmental Organizations are present in 1-3 districts, five are present in 4-6 districts, and only two in more than 7 districts. This shows a big fragmentation of response to child protection risks, where the great majority of NGOs are small and based in few districts. Far from claiming bigger organizations to be present in more districts, this consideration raises issues of coordination, coherence and resources. All districts coordinating bodies reported to have Civil Society represented and contributing to activities in the district.

⁵⁸ The document analysed says “currently”, but there is no date of its last update.

⁵⁹ Some organizations are present and working in more than one district at the same time.

⁶⁰ No information has been made available for two districts.

*Malawi Child Protection System
Mapping and Assessment Report*

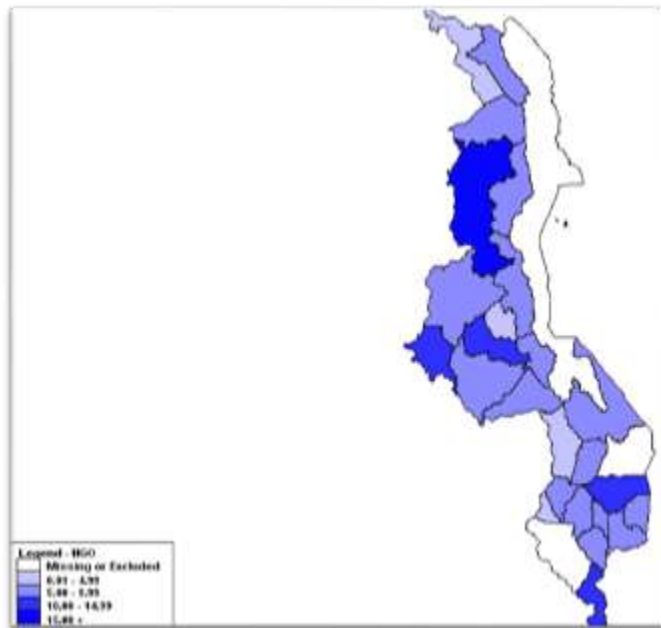


Figure 10: Geospatial distribution of Non-Governmental Organizations across the districts

The main domains of interventions are in the field of alternative residential care, violence against children and sexual abuse, and child labour. In terms of the number of interventions carried out in child protection, there is an almost equal distribution between prevention and response activities.

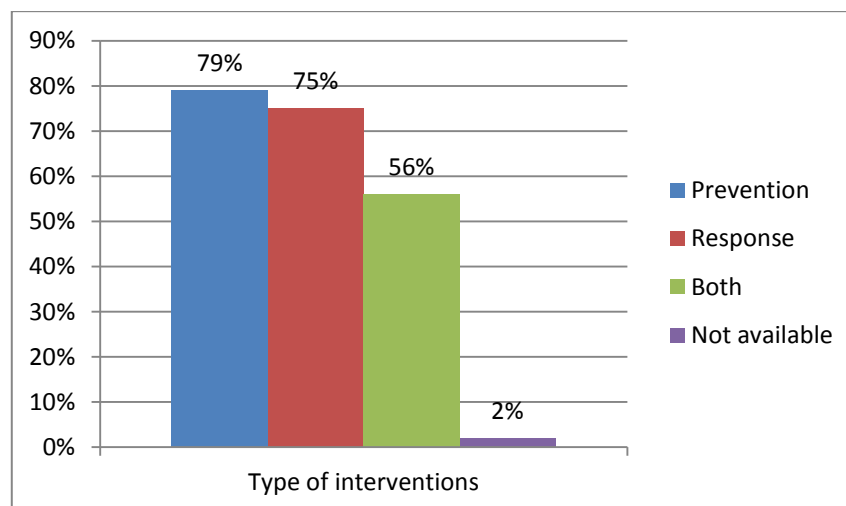


Figure 11: Preventive and responsive interventions by NGOs

There is not functional oversight mechanisms, within Government or independent, for Civil Society Organizations, except for orphanages (many of them are run by Community Based Organizations), for which the Ministry of Gender, Children and Community Development has a mandate of oversight and monitoring. This means that there are no provisions in place, nor entities, to close a Civil Society Organization, whether a Community Based Organization, or a Faith Based Organization, or Non-Governmental Organization, for ethical or other responsibilities. According to the Non-

*Malawi Child Protection System
Mapping and Assessment Report*

Governmental Organization Act, the Ministry of Gender, Children and Community Development has the responsibility to monitor Non-Governmental Organizations dealing with children issues, but due to lack of resources, this monitoring activity is done mainly through self-reporting from NGOs. Section 153(f) of Child Care, Protection and Justice Act (2010) on the Child Case Review Board, states that the Board should coordinate with civil society and other organizations dealing with children, but does not specify on what subjects.

Registration of Civil Society Organizations is an important issue, to be able to carry out effective monitoring and oversight, even though such oversight and monitoring mechanisms, where available, are weakly implemented due to scarce resources. Normally, at the district level, Communities Based Organizations, Faith Based Organizations and Civil Society Organizations are registered at the District Council, after applications have been submitted to the District Social Welfare Office; to present a CBO to the District Council the legal registration is necessary. Non-Governmental Organizations are registered at the national level at the Office of the President – Cabinet in the central government. The registration process is complex and slow, though provisions are supposed to ensure transparency and accountability; nevertheless shortcuts are especially used to register Community Based Organizations (e.g. some of them ask for registration under the Company Act, which takes less time). No registration arrangements are in place, nor is follow up, for staff or people alleged of offences against children.

There has not been an assessment of the performance of civil society organizations, and the NGO Board, which should be in charge of monitoring the respect of standards of quality, is not functional. There are no agreed standards of quality that are in force and applicable to Civil Society Organizations (except for orphanages and foster homes according to the new Child Care, Protection and Justice Act, 2010).

Among Civil Society Organizations, a large portion think that the child protection agenda is donor driven, with scarce local ownership and little involvement of the organizations themselves. This is due to several different reasons.

Between Civil Society, Government agencies and Development Partners, there are several inequalities in negotiating power and information (i.e. Civil Society Organizations do not know what donors' priorities are), gaps in terms of knowledge of what the priorities are (i.e. Civil Society Organizations assume that the Government has already identified priorities with donors) and asymmetries in the information access (mainly from donors). These priorities are established within the National Technical Working Group on Child Protection, as a result of bilateral agreement between Government and Development Partners. Once priorities are established, they look for someone to support and be in charge of coordination and implementation (donors assist those who are working in an impact district or in specific thematic working areas). Non-Governmental Organizations should be more involved, since they have a lot of information. Non-Governmental Organizations have often some negotiating skills, but do not know the extent of donors' flexibility; the result is closer to begging for funding

rather than requesting financial support. Nevertheless, there is a difference between United Nations agencies and other donors, i.e. bilateral donors are more flexible, and they involve Civil Society Organizations (mainly Non-Governmental Organizations) in the consultation process: as does the Department for International Development; on the contrary, UNICEF has used discretion in the way of choosing partners for its Annual Work Plan (also because Non-Governmental Organizations are not working together or have a common plan of action) so there is not a real negotiation. The Government could work to put all parties together in the frame of the National Technical Working Group on Child Protection.

RECOMMENDATION 7

Government and Civil Society jointly should review the Non-Governmental Organizations Act, developing appropriate implementing rules and regulations, to ensure uniformity and compliance to nationally set standards, to avoid duplications, and to guarantee harmonization and coherence in the mandate and composition of child protection coordination structures at national down to local level.

The position of civil society inside the National Technical Working Group on Child Protection should revitalize existing structures (e.g. an NGO Board, or CONGOMA, or NGO Coalition for Child Rights) to increase effectiveness in the decision making process, and to constitute a more independent party in the dialogic interaction with the Government.

Capacities of civil society organizations of understanding child protection laws, policies and regulations to support advocacy actions on the Government, and to mobilize resources for direct support of service delivery and research, should be increased and broadened.

A system, complementary to the formal one and informed by the subsidiarity principle, for provision of child protection services and other interventions by Civil Society, with adequate resources (based on incentives for good performances), standards of quality, accreditation and registration mechanisms, should be put in place.

Recommendation 7: Civil Society capacities

Finally, even though they belong more properly to the private sector, it is worth mentioning media contribution to child protection. Media in Malawi broadcast news on child protection. Messages are present in newspapers and on TV, but the outreach is not clear. Media broadcast news from courts involving children, but child protection issues (e.g. child labour) are not covered, only specific child cases are. Some media are working towards behavioural change, for example, NGO coalition on child's rights is working with some media organizations, Radio Zodiac dedicate programmes to women and children, Theatre for a Change works in partnership with media organizations, and the newspaper The Nation also covers child protection news. There is some agreement to develop strategic partnerships (e.g. NGO coalition on child's rights already has agreements with some editors, and concerning child trafficking, media houses are members of the Malawi Network Against Child Trafficking). News of child sexual exploitation are often reported, newspapers' editorial line clearly does not approve of such exploitation and this can

influence public opinion. The way issues are presented is challenging, some privacy is guaranteed, depending on the gravity, but often sensationalism can work against the child’s right. Among the challenges in publishing child protection messages and campaigns, is the cost of buying sections in newspapers or broadcast time on radio or television which is very expensive; this can prohibit civil society from publishing news in the media and some journalist will not participate unless allowances are provided (so called “motivation”).

RECOMMENDATION 8

The media should be actively involved in child protection, especially in making people aware of the existence of child protection legislation, or to improve the access to quality child protection services.

Recommendation 8: Media capacities

8.3.1.3. Development Partners

Several Development Partners, both bi-lateral and multi-lateral, are supporting the Government on child protection. Their overall role is to support the Government of Malawi in achieving the outcomes stated in the Malawi Growth and Development Strategy (2007-11). On child protection, since this was not a priority in the old Malawi Growth and Development Strategy, their support is based more on programmes and common areas of interventions identified bilaterally.

United Nations agency	Child protection issue
WHO	Violence, HIVD and AIDS mitigation
UNAIDS	HIV and AIDS mitigation
UNFPA	gender based violence
UNICEF	broad child protection
FAO	child labour
ILO	child Labour
UNDP	rule of law, justice sector reform
UNHCR	refugee camp
WFP	social protection

Table 8: UN agency involved in child protection

To date, there is no effective coordination among Development Partners involved in Child Protection, but under the new UNDAF 2012-16 a protection cluster was established and this will cover child protection.

Bi- and multi-lateral donors	Child protection issue
British Department for International Development	children and justice
Royal Norwegian Embassy	gender based violence, child witchcraft, women in prison, human trafficking
European Union	violence against children, democratic accountability, good governance, and birth registration

Table 9: Bi- and multi-later partners involved in child protection

RECOMMENDATION 9

Support the Government of Malawi and its partners in the process of mainstreaming child protection and its systems approach.

Reinforce coordination in child protection system strengthening amongst development partner to ensure the whole continuum of child protection is covered.

Recommendation 9: Development Partners capacities

8.3.1.4. Training Institutions

Social work training and law training are considered in this chapter. Two main institutions were contacted to collect information on child protection workforce capacity development: for social work, Magomero College⁶¹, and for legal training, the Department of Law in Chancellor College⁶².

To date, there are no degree programmes in social work in public university⁶³. Nevertheless, Magomero College offers two certificate programmes, one on social welfare, and one on community development. Magomero College was established in 1963 by the Ministry of Gender, Children, and Community Development as one of the training institutions operating to fulfil its mandate. It is the only college in the country that offers basic and upgrading courses for frontline staff in social work and community development. Attending Magomero College is compulsory to be Welfare officer and Community Development Officer. The certificate programme is divided into two parts, the first part is a 12 month programme (3 of months are spent doing practical field work in a district social welfare office) and the second part is 6 months. The practical field

⁶¹ There are two other private institutions that provide social work training, Catholic University and Saint John of God. Unfortunately, it has not been possible to arrange meetings to gather information from them.

⁶² Other legal trainings are provided by Mpemba Reformatory School (on paralegal services). University in Mzuzu shall also open in the next future a law department.

⁶³ Catholic University, a private university, offers a degree programme in social work in Chiradzulu.

*Malawi Child Protection System
Mapping and Assessment Report*

placement is supervised by a qualified professional (normally the District Social Welfare Officer under the supervision of a social welfare officer); students are asked to carry out a social assessment as a part of an internship, to improve their skills and start connecting with the stakeholders they will deal with once appointed to a duty station; then, students have to submit a final report on their experience and the supervisor also gives a feedback on the internship. The goal of the internship is to teach students how to interact with different stakeholders within their job.

The curriculum for basic social welfare courses is composed by: social work, social case work, social group work, social research methods, disability, child rights protection, child rights, psychosocial support, community based rehabilitation, nutrition, communication skills, counselling, sociology, psychology, population and development, gender and development, community development, enterprise development management, government administration, programme planning, economics, and fieldwork.

The curriculum for basic community development courses is composed by: adult education, reflection, home management, food processing, economics, enterprise development management, functional literacy, computer skills, government administration, community based rehabilitation, programme planning, introduction to social work, social research methods, nutrition, community construction technology, population and development, gender and development, social psychology, sociology, community development, communication skills, fieldwork.

To improve Magomero College training, an assessment was done in 2008, indicating that the majority of stakeholders consulted suggested Magomero College needed to grow and update its curriculum in addition to offering diplomas and degrees. These options are currently examined as directions to walk: a) affiliate Magomero College with another training institute (Catholic University, Mzuzu University, Banda College, and Chancellor College), b) make Magomero College an independent institution (two options are available here, the first is Magomero as a department of the Ministry and the second is as an autonomous college with a board), and c) accreditation could be awarded by the Ministry of Education after its Department of Human Resources Management had verified qualifications.

While waiting for a decision, the structure of Magomero College was reviewed, foreseeing now a principal, a deputy principal (new figure still vacant), two heads of departments (community development and social welfare) and ten lecturers (currently only five are available). Magomero College was previously under the Department of Community Development in the Ministry of Gender, now it is under the Principal Secretary of the Ministry of Gender to be more comprehensive with the its Social Welfare mandate.

Magomero College only offers a one-year certificate course on social welfare, this is its only social work programme. The course is not held regularly, rather it is held upon the Ministry of Gender's request. The last course was held in 2005, when about

*Malawi Child Protection System
Mapping and Assessment Report*

forty social workers graduated. To date, there is no research programme. Magomero College is supposed to have a research programme as a supplement to teaching, but due to financial limitation and understaffing, it is not working. Given the lack of autonomy of Magomero College, a potential research programme needs to be endorsed by the Ministry of Gender.

The Assessment report for upgrading Magomero College also indicates that:

- References used in all the curriculum material are very old which is indicative of old theoretical framework and teaching content.
- There is no system to identify core, foundation or elective courses in the curriculum offered
- Sequencing and timetabling of lessons is very intensive: three lessons are offered in blocks of two hours per session each day. This is intensive and not conducive to good learning practice.
- Sequencing of topics/concepts in most cases is not well integrated in terms of flow of courses. The current structure of lessons does not allow for time for reflection.
- There are currently no structured tutorials to allow for mastery of learning. Tutorials offer students opportunity to reflect upon learning and to bridge the gap between theory and practice.
- There is no definite academic calendar for Magomero College. Currently, courses are ad-hoc depending on the availability of donor funds.

To overcome these challenges, the Ministry of Gender, Magomero College, UNICEF and other development partners are currently developing a diploma in social work. Students will be awarded a diploma qualification after completing the first three years. Those that proceed to the fourth year will then be awarded a degree in Social work. The draft curriculum foresees: a) foundations courses (Communication skills, Introduction to Psychology, Introduction to Social Anthropology, Introduction to Sociology, and Social psychology), b) core courses (Case work, Group work, Community work, Introduction to Social Policy and Social Administration, Socio-economic development, Social Policy, Social Planning, Community health and nutrition, Social Research Methods, Gender and Development, Early Childhood Development, Child Justice and child protection, Community development in Malawi, Human Rights and the Law, Vulnerability and special needs, Entrepreneurship, Management and Supervision, Research project/dissertation, Social Protection, Social development, Project planning and management, Psycho-social counselling, Introduction to Social Work, and Social Development), and c) elective courses (Organization theory, Nutrition and Food Security, Youth and development, Population Dynamics, and Functional adult literacy). Foundational courses offer the broad framework of knowledge within which social workers operate. This is important because it builds a foundation of knowledge, skills and attitudes that allow for a transfer of knowledge within the profession. They also enable professionals to apply knowledge of their discipline in their day to day work experience. Core courses represent the generic areas of study in social work. These are compulsory courses for all social work students. Elective courses are optional courses.

*Malawi Child Protection System
Mapping and Assessment Report*

Students in the final year will have the option of selecting some courses depending on their specific areas of interest. Elective courses are only taken in the final year (Year 4).

Finally, Magomero has been identified as the Malawian partner in the distance-learning programme for in-service training on children at risk offered by Kwa-Zulu Natal University in collaboration with the Regional Psychosocial Support Initiative and UNICEF. The programme is offered in eight countries and functions to improve the skills of social work assistants, child protection workers, community-based leaders and volunteers, who work with children. The programme started in 2011, so it is too early to properly evaluate this partnership and the level of satisfaction of participants to the training course.

Chancellor College, based in Zomba, has a Legal Department that trains individuals who wish to become law practitioners and offers a degree in law. The College is an independent body with a self-governing board. It does not offer a specific course on child protection; rather children's issues are covered under the Family Law Course.

Quality assessment is done from time to time, students are asked to evaluate the quality of teaching. Other stakeholders are also involved in assessing training quality. The Council for Legal Education, established according to the Legal Education and Legal Practitioners Act is supposed to supervise the quality of training of the Law Department in Chancellor College. Unfortunately, it was impossible to collect information on the outcomes of the various assessments.

Internships are not a formal part of the courses at the bachelor degree level. Nevertheless, under the umbrella of a project on governance funded by the European Union, the Law Department managed to connect some students with ministries during vacation period for a three-month maximum internship. Interns are supervised by staff from the faculty.

Graduates from Law Faculty in Chancellor College can secure employment from both the Government and private sector. After graduating, students must have an apprenticeship, this is done before the Malawi Law Bar examines the candidate for professional registration and then becoming a legal practitioner. An apprenticeship is not necessary if the graduate joins one of the Ministries. The evaluation is done through examination of documentation, there is not a test to assess a candidate's suitability to become a law practitioner. Law practitioners can choose their career (private or public sector) after they have been registered with the Malawi Law Bar.

Child protection is partially covered by the Family Law Course at Chancellor College. The course covers the following topics: Introduction to Family, Society and Law, Constitutionalism and Internationalisation of Family Law, Domicile and Residence, Nature and Formality of Marriages, Nullity of Marriages, Presumption of Marriage, Legal Incidents of Marriage, Separations and Divorce, Maintenance, Custody, Care and Control of Children, Adoption of Children, Affiliation Proceedings, Guardianship, Matrimonial Property, and Financial Provision on Death of a Spouse. The part on children has three

sub-parts: 1) Definition and Rights of the Child, 2) Parental Powers and Duties, and 3) Guardianship and adoption of children. Hence, there are no specific courses on child law either core or optional.

The child law that is taught is out-dated, since the new Child Care, Protection and Justice Act (2010) has not yet come into effect. The Children and Young Person Act is presented in the criminal procedures course, while the issues of violence and abuse are taught in criminal law and not in family law. The curriculum itself is out-dated, the actual in use dates back to 2001, and the one before was developed in the 1980s, there are plans to re-write the curriculum within the next two years. Nevertheless, some information on the new legislation is given, but cannot be the object of a specific course.

RECOMMENDATION 10

A capacity development strategy for Child Protection workforce should be developed and adopted to address the gaps in training. The strategy should include training opportunities for actors from both formal system and communities. The strategy should pass through the strengthening of existing training institutions to ensure sustainability, ownership and knowledge generation and management. The strategy should also cover both pre-service and in-service trainings. Collaborations and partnerships among training institutions should be foreseen to ensure broad child protection is covered.

Recommendation 10: Child Protection workforce strengthening

8.3.2. Financial resources

(Information on this topic will come from the child protection sector budget review)

8.4. Services and other interventions to protect children

This chapter tries to present the most significant experiences and lessons learnt in services, or any other intervention, provision to prevent and/or respond to child protection risks. Different perspectives could have been used; one of them could have been presenting all services and interventions through the whole continuum of care, analysing promotion of child rights to protection, and prevention and response to child protection risks. Another could have considered different actors to see the services and other intervention for children protection they provide. Another one could have been according to child protection issues (child labour, birth registration, child trafficking, and so on).

The approach chosen is different to the more “traditional” approaches, to be more consistent with the approach followed so far in the report. The approach is dividing all services and other interventions for the protection of children into three parts: a) children in need of care and protection, b) justice for children, and c) child protection in emergencies. The choice responds to different reasons. First of all, and more importantly, it is intended to provide information according to the frame of the Child Care, Protection and Justice Act (2010) to better inform the development of its Costed Implementation Plan. Secondly, the continuum of care is more a theoretical idea, whereas in reality, all services and interventions are discretionary entities

rather than in a proper range of continuity. Third, issues approach is more centred to the problems rather than on children. Finally, the approach chosen is more responsive to the expected goal of a child protection system, which is to establish, or re-establish, all conditions to ensure good and sound growth and development of children confronted to child protection risks.

8.4.1. Children in need of care and protection

The definition of children in need of care and protection refers to the very nature of the child protection system, its final goal, its scope, and its boundaries. For this reason, any definition can be seen as very debatable and a consensus is needed amongst all actors involved in the system, since the object of their work comes out by the definition. In Malawi, the definition is provided by the Child Care, Protection and Justice Act (2010), section 23 addresses which children are to be considered as in need of care and protection. The definition in the law is comprehensive, including children already suffering from child protection risks but also those at risk of suffering from them. This will require precise rules and regulations to not overburden the system.

Due to the actual way protection services and other interventions are provided, it is not possible to follow a strict separation for primary, secondary and tertiary prevention interventions. Far from being a complete inventory, below are some of the most widespread and active services, where child protection practitioners recently gained experience. The following chapters present prevention and response services, key systemic issues and the link between child protection and HIV and AIDS and social protection. For most of them, the limit between prevention and response interventions is hard to determine; when possible, this difference is stated.

8.4.1.1. Prevention services and interventions

Community Based Childcare Centres. Created to promote early childhood development in Malawi, and to provide and external support to children aged three to eight coming from vulnerable households affected by the HIV and AIDS pandemics, they amount to 10,464 structures, with 402,915 children enrolled (33% of them are orphans), employing 46,772 caregivers, 25% of them are trained. Given their diffusion, they also play a role in child protection, especially in providing information, sensitizing, and identifying vulnerable children.

Children's corners. Nearly 3,000 have been established since 2007 all over the country, it is unknown how many are functional right now. The Children's Corner are for children aged eight years old or older, they offer sport activities, education, skills, training; child protection is covered by broad child's rights. In 2010 891 Children's Corners provided support to 110,659 children who received psycho-social support from 11,798 volunteers, 13% of whom are trained.

National Child Help Line. Managed by three different non-governmental organizations, they cover the whole country: the Youth Network Council is working in the

Southern region, the Centre for Youth and Children Affairs in the Central region, and the Youth Watch Society in the Northern region. The helpline is used to report and address immediate issues⁶⁴ that may need psychosocial support, e.g. violence, defilement, rape. This toll-free service has great potential: providing direct feedback from communities, it can also link victims and survivors of violence and abuse to services available in the district for direct follow up by the District Social Welfare Office or by the Community Child Protection Workers.

Finally, 19 districts reported 160 interventions to prevent the occurring of child protection risks in the domain of violence and abuse, HIV and AIDS, participation, witchcraft, and child labour. Such interventions coincide with interventions to increase capacities and life skills of children, their families and communities to deal with child protection risks. These interventions can take the form of projects to raise awareness on child rights, children's clubs, community sensitization (on child labour, birth registration, violence), peer education to encourage youth complete primary education, children Parliament, sponsorship, counselling, mother groups to discuss issues on family planning, HIV and AIDS, and parenting skills, and role models (parrains people who have succeeded in education within the community to school-going children as a motivation to continue with education). In 2009-2010, the mass communication campaign "Stop child abuse" was held to sensitize people in combating violence and abuse against children.

While globally it is widely acknowledged that prevention interventions are cost effective, reduce the impact of adverse episodes on children, create a safer environment, and facilitate early interventions for secondary prevention, there was no impact evaluation of service provision in Malawi.

8.4.1.2. Response services and interventions

One Stop Centres. There are three functional One Stop Centres, one in Blantyre, Zomba, Mzuzu, and one Lilongwe (which is not yet organized). The One Stop Centre provides all necessary services for physical and emotional abuse. At the Centres, survivors and victims can find health care (e.g. post-exposure prophylaxis, morning after pill, psycho-social support, medical support), a police officer, and legal support services,); a link with the child help line service managed by the non-governmental organization Youth Network Council is provided. The One Stop Centres intervene as a response mechanism with the goal of limiting survivors' suffering re-victimization, coming from services that are insufficiently connected. The four One Stop Centres handled 1,107 cases in the last three years corresponding to 205 in 2009, 353 in 2010, and 549 in 2011. This trend needs to be interpreted, since it could show an increase of the rate of violence, but also an increase of trust towards this type of services.

Victim Support Units. There are two different types of Victim Support Units: one managed by the Police Department and one by Communities, referring to the Ministry of Gender, Children and Community Development. There are 300 Community Victim Support

⁶⁴ Data on Child Helpline access can be found in section 8.5.1.3

*Malawi Child Protection System
Mapping and Assessment Report*

Units while (Police) Victim Support Units amount to nearly 400 (of which 101 received specific training on child protection by UNICEF). They are response structures for survivors of Gender Based Violence, sexual violence, set up for women and children. The Police Victim Support Units are offering services to their clients such as counselling (69% of the cases), mediation (21%), court referrals (2%), Criminal Investigation referrals (2%), and Hospital referrals (1%). The other services offered which are less than 1% of the cases reported include: (1) referral to Village Heads, (2) Social Welfare, (3) Labour Office, (4) Advocates and Home Districts, (5) confrontation session, (6) provision of accommodation and transportation. Community Victim Support Units include the Traditional Authority, four community members and six extension workers from different sectors; they do prevention interventions as well, providing people with counselling on HIV and AIDS, violence, and other protection-related issues. Reality can vary considerably: in some cases the Unit has a proper infrastructure, with spaces for temporary shelters and separated rooms for victims' reporting; in other is a more a system, i.e. people working together but lacking appropriate facilities, in other the Unit can be just a desk at the Police office. In 2011, 30 police stations were able to manage nearly 8,000 cases, while 4,800 cases were handled by nearly 300 Community Victim Support Units.

Social Rehabilitation Centre. Based in Lilongwe, it is managed by the Ministry of Gender, Children and Community Development. Local Non-Governmental Organizations are also involved in its management and provision of interventions. At the time of data collection, 26 children (4 girls, 22 boys; ages 8-17 years) were hosted at the transit centre working towards reintegration and receiving vocational training and play therapy; another 41 children live at home but receive psychosocial services at the centre.

Below is a table presenting good practices from Civil Society, Non-Governmental Organizations, Community Based Organizations and Faith Based Organizations according to child protection related areas of intervention:

Domain of intervention	Good practices
Community-Based Care and Support	<ul style="list-style-type: none"> - Consol Homes Orphan Care (12,000 children, youth and adults in almost 50 communities in the districts of Lilongwe and Ntcheu) - Kajoni Orphan Care (it operates in 40 rural villages in the Northern region, about 300 beneficiaries)
Residential and Community-Based Care	<ul style="list-style-type: none"> - Malawi Children's Village (a community-based organization serving approximately 3,000 orphans and vulnerable children in 37 villages in Mangochi district) - SOS Children's Village (their programmes serve approximately 80,000 beneficiaries in Lilongwe, Mzuzu and Blantyre)
Health and Nutrition	<ul style="list-style-type: none"> - I-LIFE: Improving Livelihoods through Increased Food Security

*Malawi Child Protection System
Mapping and Assessment Report*

Street Children and Other Special Needs	<ul style="list-style-type: none"> - Protecting & Improving Food and Nutrition Security (982 households in 5 villages in Mzanza, and to 1904 households in 12 villages in Mangochi) - Chisomo Children’s Center (Lilongwe, Blantyre and Limbe. The Lilongwe centre reintegrates 2-4 children per month but delivers services to approximately 420 children) - St. John of God Community Services (community-based mental health provider offering services both for children and adults in the Mzuzu area, nearly 500 beneficiaries)
Child Rights and Protection	<ul style="list-style-type: none"> - Eye of the Child (no direct services for children) - Victim Support Unit
Economic Strengthening	<ul style="list-style-type: none"> - Village Savings and Loan Microfinance Program (1168 beneficiaries in Livingstonia) - Social Cash Transfer Scheme (in Mchinji District reaching 3,000 households)
Community Mobilization and Capacity Building	<ul style="list-style-type: none"> - CRECCOM: Creative Centre for Community Mobilization (in 2007, 3322 participants in 1408 schools benefited through scholarship, implemented nationally) - Pamodzi OVC Project (within each district, they work with approximately a dozen CBOs serving almost 3,000 OVC) - Tisamalirane (operates in five TAs, covering 50 villages)

Table 10: Good practices from the "Models of care study"

8.4.1.3. Key systemic issues

The mapping and assessment exercise also allowed information to be gathered on some key systemic issues: adoption, fosterage, and kinship care.

Adoption in Malawi is done according to the Adoption Act which dates to 1949 (with later revisions). The Act is currently under revision by the Law Commission, but it is not yet clear what date the National Assembly will enact it. The principle of the Best Interest of the Child is considered when the child is assessed, as well as his/her situation and environment, and prospective adoptive parents. The framework the old Act provides has many gaps, and there are not implementing regulations. Adoption is considered as a viable option only after it is recognized that there is nobody that could care the child. In general, preference is given to relatives. In Malawi, a child can be adopted only after at least 18 months of foster care. Social workers are not able to monitor the adopted children in the majority of cases due to understaffing and a lack of resources. No statistics, if they exist, are available, on frequency, profile and other data on adoptions.

*Malawi Child Protection System
Mapping and Assessment Report*

Adoption by relatives is the first considered option, followed by adoption by community of belonging, this is encouraged. As already stated, Malawi is not yet party to the Hague convention on inter-country adoption. More, the old Adoption Act prohibits adoption when applicants are not resident of Malawi. According to the Adoption Act, High Courts, a Court of a Resident Magistrate or a magistrate of first grade have jurisdiction to issue adoption orders (section 9). Since the law is out-dated, a new practice has emerged, Social Welfare Officers assess the case of children to be declared adoptable in their best interest. Based on findings coming from the social assessment, the Court may approve or reject the application from the adoptive parents. No evidence is available to determine the quality of assessments and to see if all decisions made were in the best interest of adopted children. Principal Social Welfare Officers at National level are often involved in these cases, which increases their workload. Based on the actual law in force, inter-country adoption is neither legal nor possible.

Foster care in Malawi is largely informal; because of this, case planning, monitoring and follow up is extremely difficult. Data on family fostering are not available, since most of it happens informally and state actors, mainly Social Welfare Officers, are not involved in decision-making or in follow up. The only figure available comes from the Ministry of Gender, Children and Community Development, which reported 182 foster homes available in the Country, of which 13% received some form of trainings. Children often become institutionalised because of this, since, once the child is placed, case managers think they have solved the problem. The Children and Young Person Act did not foresee the possibility of fostering. This largely explains the scarce formality of foster care to date. This possibility has been introduced by the new Child Care, Protection and Justice Act, which devotes one entire Division, (n. 4, 25 sections), to foster care.

There is not a national register, registers are at the district level and managed by District Social Welfare Officers. Despite the gap in legislation, prospective foster families directly apply to District Social Welfare Officers, an assessment is conducted and, if eligible, they are put in a waiting list. When a child in need for an out-of-family placement is identified, if he/she fits the preferences expressed by the prospective fostering parents, the placement is done; applicants are allowed to give preferences in terms of age and sex of the child. The gap in the legislation is filled by the Child Care, Protection and Justice act (2010). In the intentions, foster care is a temporary measure, but, the risk of becoming permanent and/or institutionalize is high. Social workers concentrate on other urgencies or cases when there is a lack of case plans, not enough Social Welfare Officers and scarce monitoring. There was no available data on the average length of placements, nor on their quality.

Despite the section 23.2 of the Guidelines for children's homes and orphanages (2006) states that "In the absence of the parents of a child, a home or orphanage in liaison with the District Social Welfare Officer shall make every effort to look for a foster parent for the child at the earliest time possible" placements in institutions are done very often. More, it is easier to intervene through structures that are there, placing the child in the foster home and taking the burden off the family. Non-systematic support for the family is sometimes available, as well as counselling and parenting, mainly from Community Based

Organizations. Children are more likely to be fostered when abandoned or when their mothers die during delivery and relatives cannot be traced, or relatives are unable or unwilling to take the child.

Kinship care is an important option for taking care of children. The OVC policy emphasises the importance of family caring for children (extended family, when biological family is unable or unwilling to provide care) but there are not specific guidelines. Kinship care in Malawi is informal fostering. The new Child Care, Protection and Justice Act (2010) does not explicitly recognize kinship. This could leave some space for confusion between the two caring choices.

8.4.1.4. Child Protection and other cross-cutting issues: HIV and AIDS and Social Protection

HIV and AIDS and Social Protection are the other cross-cutting aspects of child protection.

The National AIDS Commission is a Government Trust in the Office of the President and Cabinet providing leadership and coordination of the national response to HIV and AIDS. It is a semiautonomous body responsible for coordinating resource mobilization, allocating and tracking its utilization and accountability by stakeholders benefiting from resources disbursed through the Commission. The Commission is mandated to engage in capacity development, continued advocacy among stakeholders at different levels, and monitoring and evaluation of the various components of the National Response. The National AIDS Commission received funding from the Global Fund to coordinate HIV/AIDS response in Malawi. Through the grant, the following activities are covered: 400 additional Community Child Protection Workers were trained and paid incentives, 29,000 vulnerable children and youth obtained health, educational and material support through the social cash transfer pilot program. Currently the grant is ending.

On OVC, a Steering Committee and a Technical Working Group exists. Its main functions include provisions of technical assistance and coordination in domains related to and in support of the implementation of the National Plan of Action for OVC 2005-09 (now extended to 2010-11).

The extended National Plan of Action for OVC (2010-11) covers almost all the relevant aspects for child protection, also under a system approach (objective 1: to enhance access for OVC to essential quality services such as education, health, nutrition, water and sanitation and birth registration; objective 2: to strengthen family and community capacity to protect and care for OVC; objective 3: to ensure that improved OVC policy, legislation and leadership are put in place to facilitate equal and meaningful participation of both boys and girls; objective 4: to strengthen and build the technical, institutional and human resource capacity of key OVC service providers; objective 5: to raise awareness of the plight of OVC at all levels (community, district, national) to create a supportive environment for children and families affected by poverty and HIV/AIDS; objective 6: to continuously monitor and assess

the situation of OVC and measure the gaps between what is being done and what must still be done to adequately fulfil the rights and needs of OVC).

Coordination between child protection and Interventions on children affected or infected by HIV and AIDS needs to be improved. The “Zero draft HIV and AIDS Policy 2010-15” specifically says that linkages should be created with the OVC Policy. The same states that in order to improve provision of impact mitigation services to individuals and households infected and affected by HIV and AIDS, the provision of material support including education support to OVC and other vulnerable groups shall be strengthened. Nevertheless, in practice, programmes are not well coordinated (coordinating mechanisms have been well established but the challenge is that programmes are vertically implemented). First, the HIV/AIDS policy is still a draft (the old policy still applies); second the coordinating mechanisms (the National AIDS Commission and the National Technical Working Group on OVC) do not have a mandate with a clear division of labour. Yet, active participation remains a challenge.

The National AIDS Commission would like to coordinate through existing structures, using districts Village AIDS Committees and Community AIDS Committees. These bodies are registered at the District Social Welfare Office. Nevertheless, there is a failure at community level, with much interferences, and registration is discretionary; this makes enforcement a challenge. This failure reinforces the weakness in child protection. The concept of Orphans and Vulnerable Children also includes most of child protection; this overlapping can be confusing.

A big concern for orphans also derives from access to their parents’ properties. Wills and inheritance arrangements are not part of Malawi culture. Even if available, wills might not be respected, except for wealthy families, who have a lawyer to intervene. The “Will and Inheritance Bill” drafted by the Law Commission, states that “disposal of property by Will may be made to any person and subject to any condition other than special provision” which also includes a minor child Section 5(3). Section 5(4) specifies “A parent may, by his will, appoint a guardian of his or her minor child for the administration of the benefits of such child under the will.”

A 2002 study on the Will and Inheritance Act found that only 7% of children (defined as less than 18 years old) have heard of a Will. The same study found: (a) the majority of people in Malawi do not know their own death benefits. Spouses and orphans do not know the death benefits of their spouses and parents respectively and that widowed persons more often than do not know about their entitlement to deceased person’s death benefits. In the administration of death benefits of the deceased persons, the widowed persons, children and relatives are usually grouped together irrespective of what role the relatives played in the welfare of the family prior to the death of the spouse. (b) Current practices in the distribution of property and death benefits are generally detrimental to the lifestyle of both the remaining spouses and orphaned children. (c) The existing custodial arrangements for orphans in Malawi are generally favourable. The remaining parent or relatives on the maternal or paternal side of the children usually take custody of the children. Furthermore, alternative guardianship arrangements do exist within the extended family unit.

Social protection in Malawi is advanced, and this may play a major role in child protection. A draft Social Support Policy is awaiting endorsement at the Cabinet level, which covers many social protection interventions including a social cash transfer programme, school feeding programmes, a public works programme, and microcredit interventions (village savings and loans). The delayed endorsement is affecting the scale up of the pilot projects of social cash transfer (e.g. some development partners cannot step in without a policy endorsed by the government). The pilot started in 2006 in Mchinji, and spread to Likoma, Salima and Machinga in 2007 and Mangochi, Chitipa and Phalombe in 2008. Given its success, the Cabinet decided to continue its implementation; as of April 2011, 26,197 households were in the programme and 103,000 individuals benefitted from it, 67,863 of who were children. The actual annual budget is estimated to be US\$ 4.5 million. The scale up, as presented in the National Social Support Programme 2011-16, will target 215,000 households in 28 districts, for a total budget of more than 21 billion kwacha (nearly 130 million US\$).

The draft documents are not specific to child protection coverage; the focus is more on well-being of vulnerable households, groups, and communities. This means that social cash transfers strive for multiple outcomes in the areas of education, nutrition, and health. One important outcome of social cash transfers is that they improve social cohesion at the community level: this can have a spill over effect on child protection, improving community supervision of vulnerable children. Although social cash transfers do not directly reduce abuse, violence and neglect, with a focus on the economic aspect of poverty, economically-related child protection issues (child labour, commercial sexual exploitation, trafficking, for example) can be affected.

8.4.1.5. Process of care

In Malawi different organizations have been handling cases but not in a coordinated and systematic manner. Best practices, existing knowledge, and lessons learnt from both government and non-governmental interventions are often not shared among actors. There is not a harmonized and systemic approach to the process of care; this, combined with weak coordination and inadequate resources, limits the scope of interventions to handle cases of children hit by child protection risks. In Malawi, the child protection process of care is understood having three components: identification, case management, and referral mechanisms.

- ✓ *Identification*. Identification of children in need of care and protection, or of children in contact with the law, can come from any of the community member; Community Child Protection Workers, One Stop Centres, Victim Support Units and Community Victim Support Units play an important role in this. In Malawi, the propensity of reporting cases of abuses and violence is very low; the consequences of this is that most children that suffered from violence, abuse and neglect remains unidentified. Praxis among practitioners arose that when people are willing to report child protection cases, they go to it to the nearest Police station or to the District Social Welfare

*Malawi Child Protection System
Mapping and Assessment Report*

Office. This praxis has been received by the Child Care, Protection and Justice Act (2010) that provides for the duty to report to the District Social Welfare Officer or to the Police. Nevertheless, report from community members remains a challenge.

- ✓ Case management. Case management is widely implemented but often in a non-effective way. Some case managers lack adequate training and proper comprehension of their roles and responsibilities, confusing service mobilization with service provision. As it has been mentioned above, staff in the District Social Welfare Office are widely recognised as the pivotal players in handling child protection cases. Social Welfare Officers (in their capacity of Probation Officers if the case is about a child in contact with the law) are asked to investigate and assess the situation; lack of resources and mobility constraints negatively affect the scope of these investigations and assessments. There are not standard assessment procedures, with appropriate tools. Follow up for dismissed cases is mostly non implemented due to understaffing and lack of resources; this can lead to children suffering again violence and abuse. The Child Care, Protection and Justice Act (2010) provides for the duty to investigate and assess for the District Social Welfare Officer (or the Probation Officer if the case is about a child in contact with the law).
- ✓ Referral mechanisms. Weak coordination mechanisms on case management negatively affect the establishment of effective referral mechanisms. Quality standards for services and other interventions provision are not yet in place. Lack of funding makes difficult even transfer a child into a safety place. Referral is often done on personal contacts rather than a repository of available services at the district level. All these conditions combined limit service mobilization and make institutionalization of children happening too often.

To address this gap, in 2011, the Ministry of Gender, Children and Community Development developed a framework that outlines Child Protection Case Management. The framework articulates its process, and describes the roles and responsibilities of duty bearers at all levels. It is also based in part on international knowledge and research. According to the framework, Child Protection Case Management is “A service delivery approach to arranging and coordinating care, protection and justice for a child vulnerable to violence, abuse, exploitation and neglect. It is a collaborative process of assessment, planning, facilitation, coordination and advocacy for options and services to meet individual care, protection and justice for children vulnerable to violence, abuse and exploitation and neglect and the impacts of HIV and AIDS.” The strategies to implement the framework revolve around

- Strengthening networking among service providers.
- Strengthening community capacity to promote childcare, support and protection through early identification, Child Protection Case Management, and response.

- Enhancing the provision of holistic and quality child care services,
- Strengthening referral networks across all levels.

RECOMMENDATION 11

For effective and efficient service provision, quality standards, with proper guidelines, training, procedures, and accreditation mechanisms have to be developed, adopted and disseminated among all child protection workers.

All services and interventions have to consider children holistically to make sure that the system is working to establish, or re-establish, all conditions leading to good and sound child growth and development.

Standardized case management principles and procedures have to be adopted and implemented, from identification to follow up.

Impact evaluations for service and other interventions provision have to be done.

Adequate resource allocation and disbursement has to sustain quality service provision.

Beneficiaries, children, families and communities, have to be involved in the planning, implementation, monitoring and evaluation of child protection interventions.

Recommendation 11: Services and other interventions for children in need of care and protection

8.4.2. Children and Justice

The mapping and assessment allowed information to be gathered on how the justice system responds to child protection risks, from formal and community perspectives.

The new Child Care, Protection and Justice Act (2010) is compliant⁶⁵ with the principles of the Convention on the Rights of the Child and other relevant conventions; it explicitly reference these principles in the Third Schedule (Guiding principles in matters concerning children). The old Child and Young Persons Act (1964), which still provides the main frame for children and justice, is not compliant, neither has it made reference to international legal instruments on the subject. Nevertheless, the new act is not yet in force, Ministry of Gender will send formal communication to Ministry of Justice for official commencement, and this communication will be published in the Gazette. This communication was sent to Ministry of Justice and the Child Care, Protection and Justice Act (2010) was expected to commence on October 1st, 2011.

The National Child Justice Forum was established to improve children's access to quality justice. The Forum, established under the Judiciary, is mandated to strengthen capacities of child justice actors, and to coordinate the establishment of the child justice courts provided by the Child Care, Protection and Justice Act (2010).

⁶⁵ Except for the above-mentioned definition of a child.

8.4.2.1. Formal mechanisms for Child Justice

Presented below are core children and formal justice functions.

Courts system. At the moment the Judiciary has designated specific magistrates for cases involving children in each of the 28 districts, but there are no specific judges in High Court to review such cases. Only four child justice courts (as provided by the new Child Care, Protection and Justice Act) are operational because of piloting of the child friendly justice courts (which are in line with the provisions of the new Child Care, Protection and Justice Act (2010)⁶⁶ about the Child Justice Courts). Under the old act, there was no distinction, nor special treatment for children. In general, courts are not child friendly except in Lilongwe, Mzuzu, Zomba and Blantyre (they are facilities to deal with children, as well as Closed Circuit Television, and their personnel have received some trainings).

Prosecutors. The Ministry of Justice is responsible for prosecution. Due to understaffing, the Ministry of Justice handles prosecution for serious cases and the Police handles minor cases (defilement is considered a serious case but it is prosecuted by the Police). Many of the prosecutors have not been trained specifically in children and justice but are able to implement what the law requires (even though some discrepancies on wearing uniforms during hearings and on the on-going use of handcuffs are noted). They were included in piloting the Child Justice Courts..

Public defenders. The legal representation right is stated in the Constitution (Section 41). Unfortunately, access to legal representation is limited for children and other population's groups. The State is only able to provide legal representation for serious cases, like homicides. This assistance is through the Legal Aid Department, a body within the Ministry of Justice. The Legal Aid Department provides legal representation to those who cannot afford it. The Legal Aid Department is understaffed, and most of people are unaware of their available services and how to access these services (Legal Aid Department is present in Blantyre, Lilongwe and Mzuzu). If the Legal Aid Department is already at courts for other hearings and hear of a case involving a child, they can provide legal representation (they are not mandated to, it is more a practice of good hearted people). The absence of an information management system makes it almost impossible to estimate the proportion of the youth who need defenders that are covered by Legal Aid Department interventions. Otherwise, there are few law practitioner in Malawi and knowledge of the right to their services (together with specific training on child's rights) is very limited; the high cost to hire a lawyer in Malawi discourages people from seeking legal aid.

Police. They gained good experience with the Victim Support Units⁶⁷, they are available on demand to questioning parents. Child protection trained officers are available. They have data and statistics on arrested children, on diverted children and children sent to courts; the system relies on paper format, and this constitutes a challenge in elaborating analysis. Very often they do not have cells for children, so children are held with adults according to their sex or stay in the corridor. The Police is at the centre of the network to

⁶⁶ As already mentioned, the Child Care, Protection and Justice Act (2010) is not yet into force and operational.

⁶⁷ See chapter 8.4.1 for more details on Victims Support Units.

refer children along the path of justice. In 2010, UNICEF gave specific child protection training to 51 Police officers.

Remand homes. There are no centres working exclusively as remand homes, but the two juvenile centres (i.e. prisons for children, Kachere in Lilongwe and Bvumbwe in Thyolo) and the two reformatory centres (Chilwa in Zomba and Mpemba in Blantyre), can operate as remand homes. In these facilities, children in need of care and protection, those in conflict with the law and those on remand are regularly mixed. Legal representation is not accessible (they have the right to legal representation but understaffing and underfunding of the Legal Aid Department means that legal representation is only available for major crimes, i.e. homicide). The two reformatory centres of Chilwa and Mpemba are the only centres that offer social rehabilitation services, mainly vocational training –they are approved schools because of this. UNICEF officers report that these vocational skills training courses are essentially non-operational (at least at Chilwa); the programmes are done on theory only as there are no funds for the boys to put knowledge into practice.

Incarceration. Of 32 prisons, only three have a juvenile wing (Mzuzu, Mzimba and Byanzi), with cells specifically for children. The children are only separated from the adults at night, during the day they share the space with adults. Oversight bodies are the Prison Inspectorate (under Ministry of Home Affairs), Board of Visitors, and some Non-Governmental Organizations to some extent. Oversight is not complete due to a lack of resources. In areas where there are no juvenile wings (nearly thirty prisons), children are mixed with adults. The following facilities are for children only: two reformatory centres (Chilwa in Zomba and Mpemba in Blantyre, both in the southern region) which also offer social rehabilitation, trainings and vocational activities; they were formerly known as approved schools. There are two prisons for children only (Kachere in Lilongwe and Bvumbwe in Thyolo), where there are no social rehabilitation interventions, and two prisons for young offenders, i.e. 17-21 years old people (Byanzi and Mikuyu).

Probation. The probation system is not too effective, it exists on paper, but there is no overall effective coverage all over the country due to understaffing and a lack of resources. To become a probation officer, experienced and skilled social welfare officers can be appointed as probation officers by the Ministry of Gender, Children and Community Development. For the appointment to become effective, the names of appointed probation officers are sent to the Ministry of Justice to be published in the Gazette. The Ministry of Justice has not published probation officers in the Gazette for almost ten years, because they have not received names from the Ministry of Gender. The reasons for this is unknown. There are some probation officers where the Child Justice Courts were piloted. The limited number of probation officers is seriously and negatively affecting children dealing with the justice sector. For this reason, associations like Paralegal Advisory Service Institution have been asked to provide advice and counselling to children and families.

Diversions. Diversion is not an option under the Children and Young Persons Act (1964). Nevertheless, Police started to implement some diversion. There are no common practices at police level on diversion, thus diversion can be understood and interpreted in different forms. Appropriate structures to operate diversion are mostly absent, so diversion

very often takes the form of simply sending a child home with a strict warning. The Child Care, Protection and Justice Act (2010) address these gaps and foresees that both Police and Courts can divert children before trial. Procedures to be applied for diversion are found under Part III - Division 5 of the Act. The Fourth Schedule of the Act specifies the offences by which a child cannot be considered for diversion. A specific list of diversion possibilities is provided in the Fifth Schedule. Even if the Act is not yet into force⁶⁸, diversion is implemented at Court level where the four piloted Child Justice Courts and some Police units have received training on the matter and are already.

Legal aid societies. Due to insufficient numbers of lawyers, these actors are not effectively implementing justice for children. Malawi Law Society could not attend the meeting, so we could not dispose information on their activities. Legal Aid Department, which depend on the Ministry of Justice, is understaffed and present only at the regional level in three districts (Lilongwe, Blantyre, and Mzuzu). Having access to Legal Aid Department is extremely difficult for people living in far district. Also due to understaffing, Legal Aid Department can only provide legal representation for very serious criminal cases (e.g. homicides).). Legal Aid Department is mandated to provide legal representation to those who cannot afford it and therefore focuses more on legal aspects of justice for children than social rehabilitation.

RECOMMENDATION 12

Access to formal justice for children should be enhanced.

Standards of quality for all stakeholders working in child justice sector shall be developed, adopted and implemented, at all stages of the justice process, informed by the best interest of the child principle.

The right to legal representation in front of child justice courts should be fulfilled with appropriate resources.

Capacities of justice practitioners in matters affecting children have to be strengthened in the knowledge of juridical procedures and instruments, methods to deal with children, social rehabilitation.

All entities foreseen by the Child Care, Protection and Justice Act (2010) have to be established and made operational with adequate resources.

Facilities and programmes to implement diversion and detention for children according to international quality standards have to be established.

The leadership role, and its coordination capacities, of the National Child Justice Forum to mobilize and coordinate all child justice actors are to be strengthened.

Recommendation 12: Services and other interventions for children and formal justice

⁶⁸ As already mentioned, the Child Care, Protection and Justice Act (2010) came into force in November 2012.

8.4.2.2. Community Mechanisms for Child Justices

Concerning community mechanisms for children and justice, Malawi currently has two types of informal justice system with relevance to the present study: the first is that of “Pabwalo” or “Mphala” (in the north of the country), or dispute resolution by customary leaders known as Traditional Authorities and their subordinate headmen. The second broad category is composed of mediation schemes that were introduced at the village level, trained mediators assisted people in solving their own disputes, primarily those with a civil character. Unlike neighbouring Mozambique and Zambia, Malawi does not currently have a system of para-judicial state customary courts. Malawi had a system like this previously so it could be reintroduced in the Country (see below on Traditional Courts).

While the Chiefs Act does not explicitly mention an adjudicative function, in practice this is under “traditional functions of [his] office under customary law”. In practice, these functions are recognized by community members, magistrates, police and local authorities. Chiefs deal with minor disturbances of the peace, Police deals with cases involving criminal behaviour. Chiefs also settle disputes in marital and family law matters and a variety of civil disputes. A 2009 study found that town chiefs were dealing with the following kind of cases: (a) boundary disputes and minor damage to property, (b) inheritance cases, (c) attempting to reconcile partners in domestic violence cases, (d) disputes between domestic servants, (e) quarrelling neighbours and ex-lovers. They also deal with family problems, including disputes arising from teenage pregnancy by a neighbouring boy, or a boy trying to get a girl to marry him without her family’s permission.

Until 1994 Malawi had state controlled customary law courts (known as Traditional Courts), pursuant to legislation. These courts were under the authority and control of the executive rather than the judiciary. Some chiefs sat in these courts, while simultaneously adjudicating disputes in their own informal chief’s courts. Under the Banda regime, the state Traditional Courts had competence even in capital cases. his system became highly discredited and was effectively discarded when the Attorney General suspended operation in 1994, due to misuse against political opponents by the President under the one-party state. As a result, most of the functions and officers of these courts were integrated into the lower tiers of the judiciary. Nevertheless, the legislation on these courts remains on the statute book and the 1994 Constitution, in Article 110 (3) notes: “Provided that the jurisdiction of such courts shall be limited exclusively to civil cases at customary law and such minor common law and statutory offences as prescribed by an Act of Parliament.”

Village courts are presided by chiefs and are present all over the country. In the form of councils, they are the true custodian of culture. These village courts normally deal with petty crimes, cultural related and violence and inheritance-land issues. They are effective since those who use the traditional courts recognize their legitimacy and power. The courts are easily accessible and available, given their proximity to the community. More, the decision made by village courts are broadly accepted. No specific assessments have been done on the community mechanisms to exercise justice. Generally, village court members lack training on the Constitution and on human rights. As a good practice, in Mzimba chiefs act as gatekeepers for sorting people to formal or informal justice.

*Malawi Child Protection System
Mapping and Assessment Report*

The Village Mediation Programme (Feb 2008 – September 2009) was a pilot programme with the objective to promote access to justice at the village level. This built the capacities of Village Mediators in each village cluster, to mediate in minor cases in a way that complies with human rights standards and gives the parties the space to come up with the best solutions. It also aims to support a diversion process and ensure that serious criminal cases go to the police and the courts. The programme draws on experiences of community mediation from around the world.

The largest programme for training headmen and chiefs is the Malawi Primary Justice Programme of the Catholic Commission for Justice and Peace, sponsored by the Department for International Development. The programme (July 2007 to June 2010) is based on the lessons learned in the prior Malawi Safety, Security and Access to Justice's Primary Justice Pilot Project from 2004 - 2006. A number of implementing agencies in all districts of Malawi, mostly from local government, but also from faith based organizations or other Non-Governmental Organizations are responsible for activities under the programme at the district level, with overall national coordination by Catholic Commission for Justice and Peace. Traditional leaders are the major providers of primary justice. The Programme developed a manual for training purposes (in English and Chichewa) and a case record book by traditional adjudicators to use. A revised version of the training manual was reportedly developed in 2009 – 2010, though (as of April 2010) this was only available in Chichewa. In addition to targeting traditional leaders, the programme also seeks to increase knowledge of legal rights among individual men, women and children in the targeted communities through meetings twice a month. Community Based Educators facilitate these meetings. The programme is widely recognized and accepted by communities. The primary justice programme also facilitates opportunities for cooperation and coordination amongst chiefs and other primary justice actors, including through interaction with court users' committees. Nevertheless, the programme suffers from inadequate resources, and to date it is not able to cover all areas within a district.

RECOMMENDATION 13

Access to primary justice for children should be enhanced supporting and strengthening community mechanisms.

Standards of quality for community leaders having child justice responsibilities shall be developed, adopted and implemented, at all stages of the justice process, informed by the best interest of the child principle.

Capacities of justice practitioners at the community level in matters affecting children have to be strengthened in the knowledge of juridical procedures and instruments, methods to deal with children, social rehabilitation.

Coordination mechanisms between formal justice sector and community mechanisms have to be established (including reporting, investigation, referral, social rehabilitation, social reinsertion, and follow up)

Recommendation 13: Services and other interventions for children and community justice

8.4.3. Child protection in emergencies

In case of any emergency, the Department of Disaster Management Affairs within the Office of President Cabinet is responsible for responding to all types of disasters that occur in the country through a multi-hazard contingency plan. The Ministry of Gender, Children and Community Development is the lead ministry responsible for overall preparedness and emergency response for the Protection of Women and Children operation.

The following is a summary of planned co-ordination arrangements and activities between Government, UN agencies, Malawi Red Cross Society and Non-Governmental Organizations:

- As the ultimate coordinator of all actors involved in an emergency response, the Government of Malawi through the Department of Disaster Management Affairs is responsible for disaster prevention, mitigation, preparedness, response and recovery.
- Emergency response is led by the Department of Disaster Management Affairs, assisted by the relevant line ministries. District Commissioners are mandated to coordinate any emergency-related activities in their districts through the Civil Protection Committees with the assistance of Non-Governmental Organizations in the districts. Following the end of the rainy season, Department of Disaster Management Affairs will conduct a post-mortem with all stakeholders to assess the overall effectiveness of the plan, and preparedness and response activities executed. This feedback will serve as input to future contingency plan preparation, response and early recovery.
- A National Epidemic Committee under Ministry of Health has been established with membership from key stakeholders including the donor community and government departments, to coordinate all activities on all levels for epidemic prevention and control, through which service delivery, surveillance, monitoring, data collection, analysis and dissemination are coordinated. The responsibility for cholera surveillance falls under this committee.
- Donor Coordination can facilitate an effective and timely response. For example, DFID's role as the coordinator in 2007/08 was instrumental in harmonizing and aligning efforts by creating a conducive environment for a collaborative effort, strengthening the relationship between Government, UN and the donor community around disasters.
- The United Nations Resident Coordinator is responsible for coordinating the UN emergency response. Under the guidance of the United Nations Resident Coordinator, the United Nations Country Team is responsible for the effective and efficient implementation of inter-agency disaster management activities in Malawi through UNDAF Cluster II which focuses on Social Protection and Disaster Risk Reduction. UNDAF Cluster II team comprises the emergency focal points from each UN agency, Malawi Red Cross Society and World Bank.
- Malawi Red Cross Society, as a member of the International Federation of Red Cross and Red Crescent Societies, embodies the work and principles of the Red

*Malawi Child Protection System
Mapping and Assessment Report*

Cross Movement. IFRC directs and channels its international assistance to victims of natural and technological disasters through National Societies, in this case the Malawi Red Cross Society. IFRC acts as the official representative of its member societies and works to strengthen their capacity to carry out effective disaster preparedness, health, and social programmes. This is accomplished through provision of financial, technical and human resource assistance.

- In accordance with UN Humanitarian Reform and the cluster directions of the Inter-Agency Standing Committee, Cluster Lead agencies will ensure a coordinated action among partners in their respective sectors. This responsibility requires coordination with Government, other agencies and NGOs to ensure that the needs of these sectors are addressed, that information is shared and that reporting is carried out.

An overall emergency contingency plan is available in Malawi. The contingency plan, established for the timeframe 2010-11, identifies five major risks: floods, droughts, strong winds, earthquakes, and diseases outbreaks. For each of them, the contingency plan analyses the risk itself, its consequences, possible scenarios and planning assumptions, a vulnerability analysis, and some early warning indicators with a monitoring system. While at the national level the contingency plan is available, it needs operationalization at the local level with districts emergency preparedness plans.

In the contingency plan, Protection of Women and Children is a cluster that a preparedness, response and early recovery plan has been developed for. Its overall Objective is “To protect children and women from exploitation, violence, abuse and neglect resulting from an emergency situation caused by floods, droughts and other disasters”. Specific objectives are:

- To put in place measures for prevention of sexual, emotional, physical and economic abuse and exploitation of all women and children, especially for orphans and other vulnerable children in affected areas.
- To facilitate the protection, care and well-being of children displaced and/or separated from caregivers as a result of the emergency.
- To facilitate access for orphans and other vulnerable children to basic social services and relief interventions.
- To ensure all government ministries, UN agencies and Non-Governmental Organisations involved in the emergency operations adhere to the Zero Tolerance Clause (Code of Conduct on Protection from Sexual Abuse and Sexual Exploitation).
- To assist in the provision of psychosocial care and support to traumatised children and women.
- To train perpetrators of violence as change agents in Gender Based Violence.
- To provide safety and security and victim support services to affected women and children and ensure adherence to human rights in times of emergencies

Together with Ministry of Local Government, Ministry of Internal Affairs, Districts Assemblies, NGOs, UNICEF, it has the mandate to coordinate all activities in: a) Emergency Preparedness and Capacity Building Activities, b) Emergency Response Activities, and c) Early Recovery Activities. The National Contingency Plan does not set out the strategy for service delivery in case of emergency. Social Welfare Officers throughout the country are tasked to conduct rapid assessment in case of disaster occurrence to identify most vulnerable among children, elderly and other vulnerable people. The assessment is also used to seek assistance from relevant partners and mobilize resources. In case a disaster happens in a district, the Ministry of Gender is alerted and can deploy additional professionals to the district in support. There is no roster of people that can be immediately deployed, anyone could be. When deployed, Social Workers cover all social welfare aspects, but especially those who require little material, since the Ministry has chosen not to store required material. Social workers provide direct assistance to manage cases, looking into each case to see what is needed immediately and urgently (especially counselling and psycho-social support.). UNICEF supported, at the beginning of 2011, the Ministry of Gender for having all districts elaborate emergency preparedness plans, but no information is available indicating if they have been developed.

Emergency preparedness is a new field of work. Policy and Contingency plans have just been developed and actors in some districts have been trained to draft local plans of actions in case of emergencies. Therefore, no activities on children, like skills and awareness raising and pre-emergency training, are taking place.

RECOMMENDATION 14

Develop emergency preparedness and disaster risks reduction plans at the district level.

Strengthen local actors' capacities for early interventions in cases of emergencies (identification, establishment of child friendly spaces, monitor child protection risks).

Develop an information management system to register and track children that are unaccompanied or separated from their families/caregivers in case of emergencies occur.

Recommendation 14: Child Protection in emergencies

8.5. Accountability mechanisms

In this section, two formal monitoring bodies with their complaint mechanisms are presented, the Office of the Ombudsman and the Malawi Human Rights Commission. In addition to that, data collection and analysis mechanism have also outlined. Regarding complaint mechanisms internal to organizations, none has been identified during the data collection process.

8.5.1. Constitutional bodies

There are two accountability mechanisms children can access for protection of rights' questions: (a) the Office of the Ombudsman, and (b) the Malawi Human Rights

Commission. Both bodies were established by the Constitution (1994), respectively under Chapter X (sections 120-128) and Chapter XI (sections 129-131). The Human Rights Commission Act, n. 27 of 1998, also regulates the Human Rights Commission. Other available accountability mechanisms are the Law commission (constitutional), the Anti-corruption Commission, and the Industrial relations courts (non-constitutional).

8.5.1.1. The Office of the Ombudsman

The functions of the Office of the Ombudsman are to “investigate any and all cases where it is alleged that a person has suffered injustice and it does not appear that there is any remedy reasonably available by way of proceedings in a court or by way of appeal from a court or where there is no other practicable remedy”⁶⁹. In practice, the Office of the Ombudsman has a specific mandate to deal with complaints against any public officer (for any case of maladministration). Secondly, it can advise the Government on mal-governance issues. Finally, the Office can advise the Government on laws that need to change, connected to Public Administration. The Office of the Ombudsman can receive any type of complaint regardless of the kind of offences, while specific complains on Human Rights go to the Malawi Human Rights Commission. Interviewees from both institutions reported that people are mostly unaware of this division; therefore, there is a need for a civil education campaign to inform the public at large and the Ombudsman’s respondents (i.e. all Government’s departments). In the Office of the Ombudsman, there is a chief of investigations, a chief of legal services, and controllers.

At the time of the assessment, there was not one specifically in charge of children’s issues. The Ombudsman is launching an initiative to fill this gap by establishing a desk officer for children (as there are desk officers for Police or for Ministry of Education), to deal with complaints against Public Administration from children relatives of dead victims. The desk officer shall be someone already working in the Office of the Ombudsman, and will be specifically trained on child’s rights. This initiative is expected to be launched in September 2011. Eventually, a Child Ombudsperson could be created, even though the Ombudsman is aware that all officers need a child’s rights background. There are nearly 65 employees (at all levels) in the Office of the Ombudsman. There is no information or statistics available on the Office work on children’s issues.

The Office of the Ombudsman has three regional offices: in Blantyre, in Lilongwe and in Mzuzu. The Chair of the Office of the Ombudsman took her functions during data collection time, and is currently undertaking some initiatives to strengthen the Office. The relations between national and subnational levels are sporadic and weak at this point in time. The Office of the Ombudsman has to present an annual report to the National Assembly (and shared with the President of the Republic), “which shall include a record of all complaints and applications to the office of Ombudsman, a record of the exercise of powers in relation to applications, of the remedies afforded to applicants in respect of grievances and shall also include a record of the general recommendations of

⁶⁹ Section 122 of the Constitution of Malawi.

the Ombudsman in respect of grievances”⁷⁰. Unfortunately, it has not been possible to dispose of the latest report of the Office.

The independence of the Office of the Ombudsman is explicitly expressed by section 122 of the Constitution (1994). It is funded by Parliament, with allocations from the Annual Budget Law. The Ombudsman is appointed by Public Appointments Committee after candidatures have been presented to the Clerk of the National Assembly (section 122). The President of the Republic is informed of the appointment. Independence is formal, Ministers and Principal Secretaries can be summoned and even brought to court.

According to section 124 of the Constitution (1994) “The Ombudsman shall have full powers to: (a) subpoena the attendance of any person who the Ombudsman reasonably believes to be connected with any investigation being undertaken by that office; (b) require the immediate disclosure of information and the production of documents of any kind, from any public body; (c) question any person who the Ombudsman reasonably believes to be connected with an investigation that is being undertaken by that office; and (d) initiate contempt proceedings before the High Court against any person or authority in connexion with non-compliance with the powers conferred in this section”. A chief of investigator is in charge at the Office, but it has not been possible to assess its capacities.

8.5.1.2. The Malawi Human Rights Commission

The primary functions of the Human Rights Commission are to protect and investigate of violations of the rights accorded by this Constitution or any other law (section 129 of the Constitution of Malawi). The Human Rights Commission is accountable to the Parliament (it submits an annual report) and to the general public (who monitors its performance). The Human Rights Commission is composed by 9 Commissioners, two are *ex-officio* the Ombudsman and the Law Commissioner (as provided by the Constitution). Within the Office of the Human Rights Commission there is one Executive Secretary, one Deputy Executive Secretary and just adopted a new internal structure based on seven Directors, five of which are thematic: (i) children, (ii) women and gender, (iii) disability and elderly people, (iv) civil and political, and (v) economic-social, and two are administrative (administration and finance). The Directorate of Child’s Rights has five staffs. The mandate of the Human Rights Commission is to protect and promote human rights in Malawi. It can handle complaints coming from individuals and also address systematic issues through public enquiries. Finally, it can intervene to facilitate alternative dispute resolutions. Most of the individual complaints concerning children are cases on maintenance orders that are not enforced, where fathers left their children without support; few cases are on child labour and other child protection issues.

⁷⁰ Section 127 of the Constitution

*Malawi Child Protection System
Mapping and Assessment Report*

The Human Rights Commission has one regional office in Blantyre, while the national level, based in Lilongwe, is also currently serving the central, northern and eastern regions. The Commission had planned to open a regional office in the Northern region, but to date lacks the appropriate funds. The regional offices report to the national office, and each officer reports to the Executive Secretary (plans, reports, etc.) on a monthly basis. There is no provision of compulsory reporting to any Constitutional body or others. At the district level, the Human Rights Commission has thematic committees (on child's rights, on gender, on prisoners' rights, on person with disability, on civil and political rights and on socio-economic rights). Members of these Committees are NGOs and CSOs working on human rights; there is no uniformity in membership and structure (the District Social Welfare Officer is partly present but only on issues affecting children and gender). The district level reports to the national level on a quarterly basis. At the local level there are child's rights monitoring committees which report directly to Director of child's rights. Based on the number of complaints received, there are plans to scale up and consolidate the presence of these committees, using already existing structures (e.g. the Community Child Protection Workers).

The Human Rights Commission is fully independent. Its independence is sanctioned by the Constitution where it says that the Commission can investigate or make recommendations on its own motion. Its independence is also apparent in everyday business where it took critical positions against the Government. Nevertheless, the Human Rights Commission is not adequately resourced (financially and with human and equipment endowments) and since the main source of funding comes from the Government, this could limit its independence.

The Constitution confers the Commission power of investigation with respect to the applications of an individual or class of persons, or on its own motion (section 130). After a complaint is received, (by phone or writing or through reports on media), the department in charge goes and screens the case. Depending on the nature of the case the initiatives vary from referral to advice of further investigations. Collaboration on investigations (e.g. with Police) is very strong, even if sometime an investigation letter is needed to serve as an introduction. No collaboration is in place with the National Child Help Line, but there are plans to link up with the service. Collaboration with civil society is long lasting but on child's rights is weak since the new directorate on child's rights has been in existence for one month.

The Commission receives approximately one-to-two children-related complaints per day, after screening officers decide which ones are investigated. Sixty per cent of all calls from children since 2008 came from Lilongwe Urban Area, the rest were scattered amongst the rest of the country, and 25% of calls did not report a location. In 2008, 40 children called to report to the Human Commission, 30 in 2009, 31 in 2010, and 10 in the first seven months of 2011. One-to-two proper investigations are done on a monthly basis, and the follow ups are a couple per quarter, accordingly to available resources.

People are largely unaware of the services available at Office of the Ombudsman and the Human Rights Commission. Self-reports from interviewees highlight that

awareness is positively correlated with the level of education and urban setting. At the same time, the self-reports from interviewees highlight that the system is effective, but there is little evidence to prove it. There is also an endemic lack of follow up in the cases investigated. Age and gender are major factors that prevent people from reporting violations.

An awareness campaign and more resources (human, financial and equipment) could improve effectiveness. The link up with the National Child Help Line could have a positive effect on the effectiveness of the complaint mechanisms, as well as the link up with District Social Welfare Offices for referral and follow up.

8.5.1.3. The National Child Helpline

In May 2010, Malawi decided to harmonise the Child Helpline Services establishing a group of core partners in the implementation of the Child Helpline Services. The partners include the Ministry of Gender, Children and Community Development (as the main implementer of the project), Youth Net and Counselling (YONECO) managing the Southern Region Call Centre, CEYCA (Central Region Call Centre) and Youth Watch Society (Northern Region Call Centre). Other development partners include PLAN – Malawi and UNICEF. Youth Net and Counselling are currently providing the secretariat to the Helpline Services.

The overall objective of the Establishing National Child Helpline Services in Malawi is to contribute to the progressive elimination of child abuse, violence against children and exploitation of children in schools and communities in Malawi through the expansion of the Child Helpline Services in Malawi. The project purpose is to increase access to the Child Helpline Services for both rural and urban young people (children) through the creation of sustainable formal and informal systems, structures, and facilities for the prevention of violence and abuse against children in Malawi at community and school levels.

The report of activities for the first quarter of 2011 (data made available only for the Southern region) shows that 14,250 calls have been received, of which 9,933 were complete. Out of the complete calls, children did 3,311 (34%). No gender-disaggregated data are available on children. The subjects of the phone calls regard very little of protection: abuse and violence (1.62%), child labour (0.22%), and commercial sexual exploitation (0.02%); the report does not say if the first and the third issues are regarding children or are global statistics (which would mean that the proportion for child protection would be even smaller). Nearly three quarters of all calls are related to HIV/AIDS or to sexuality and relationships.

RECOMMENDATION 15

Complaint mechanisms (Office of the Ombudsman, Human Rights Commission, and others) should be strengthened to ensure accountability in case of non-implementation

or mis-implementation of the normative framework.

Accountability bodies (like the Office of the Ombudsman and the Malawi Human Rights Commission), as well primary responsible (e.g. Ministry of Gender, Police, Child Justice Courts) shall publish yearly reports on child protection to increase knowledge of child protection in the Country and provide a base of evidence for decision making.

Enhance the mandate of the Office of the Ombudsman and of the Malawi Human Rights Commission in their role of monitoring and promoting child rights, with adequate resources to investigate violations and abuses.

Increase accessibility and effectiveness of complaint mechanisms in case of mis-provision of child protection services and interventions.

Accountability actors (Office of the Ombudsman, Malawi Human Rights Commission and Child Case Review Board, mainly) should carry out studies and publish an annual report on the children and justice sector

Establish the bodies foreseen by the Child Care, Protection and Justice Act (Child Case Review Board, Child Panel, Child Justice Courts, Secretariat) and make them operational with adequate resources

Strengthen existing reporting mechanisms at the community level with clear guidance on standards and best interest of the child

Increase the access to complaint mechanisms for children who could not access quality services and interventions when needed.

Recommendation 15: Accountability mechanisms

8.5.2. Knowledge generation and management

Data collection and analysis need to be addressed. Several institutions are currently collecting data on child protection aspects. As primary government responsible agencies, there are the Ministry of Gender, Children and Community Development with its Monitoring and Evaluation department and the National Statistic Office, and the Ministry of Development Planning and Cooperation (which allocated one person per each M&E unit of each Ministry), the Malawi Police, the Department of Disaster Management Affairs, the Registrar General (for birth registration) and the National Juvenile Justice Forum. Among domestic organizations or agencies responsible, including universities and civil society organizations there is the University of Malawi, the Centre for Social Research, EveryChild, the National Child Helpline, Save the Children, Catholic Relief Service, Plan, World Vision Malawi, World Relief, and Norwegian Church Aid while among international development partners we have UNICEF, ILO, UNHCR, the Department for International Development, and the Centre for Disease Control. In general, almost all child protection actors involved in the mapping and assessment have developed some sort of data collections mechanisms, mainly related to M&E programming. Capacities to collect and analyse data are generally limited, but there is great consensus on the importance of investments.

*Malawi Child Protection System
Mapping and Assessment Report*

Currently there are not well-developed systems to collect available data. All statistics are mainly from surveys and studies like the Malawi Population and Housing Census (latest on 2004), the Malawi Demographic and Health Survey (latest on 2010), the Multi Indicator Cluster Survey (latest on 2006), the Welfare Monitoring Survey (latest on 2009). Among the major studies and surveys on child protection there are the Child Labour Survey (2002), Child Headed Household Study (2010), Violence against children Survey (expected 2012), Welfare Monitoring Survey⁷¹ (expected 2012), Suffering at School - Results of the Malawi Gender-Based Violence in Schools Survey (2010), All children count – A survey on Children in residential alternative care (2011), Children Accused of Witchcraft Study (expected 2012), Child Poverty and Disparities (2010)⁷². Information management systems exist in both the education and health sectors, but do not provide any data related to child protection.

Policy and practice development are based on evidence from research, evaluation and other forms of learning. Given the absence of an articulated system for reliable and timely data collection, evidence comes mainly from studies and surveys that are expensive and time-consuming. Nevertheless, all documents like Plans of Actions and policies present some kind of situation analysis based on the most recent findings and statistics (e.g. the Extended Plan of Action for OVC, the Plan of Action for Child Labour, the draft HIV and AIDS Policy, the draft of the Social Protection Policy, and others).

There is not yet a national research agenda on child protection. UNICEF is supporting the Ministry of Gender, Children and Community Development in its effort to establish a national child protection information management system. A reference group is established to develop the framework and key national child protection indicators. The reference group reports to the National Technical Working Group on Child Protection. The reference group is looking at: a) reasons for needing a defined comprehensive child protection information management system; b) review of how the information is managed in the organisations that provide child protection services and interventions; c) repositories location; d) ways to organise child protection information; e) impact of the establishment of child protection information system on the different organizations; and f) what technical architecture is required to drive the Child Protection Information Management System.

There are not impact evaluations on child protection, but the National Plan of Action for OVC was evaluated in late 2009 and this led to its extension for an additional two years. A proper impact evaluation of the National Plan of Action for OVC is expected to happen in 2012. At the same way, there is no systematic cost effectiveness assessment of the various child protection interventions. UNICEF is planning to assess of the Stop Child Abuse campaign that took place in 2008.

Gender analysis is included in child protection interventions to some extent, but more needs to be done. For example, interventions on violence in domestic settings do

⁷¹ This survey is normally not specific to child protection but Malawi has included several child protection indicators to be measured.

⁷² See 1.b for a complete bibliography of child protection related documents specific to Malawi.

*Malawi Child Protection System
Mapping and Assessment Report*

consider gender aspects (e.g. reports “Intimate Violence” and “Suffering at school”). In another case, during data collection for the institutional care for children study, some institutions were not able to provide gender disaggregated data on children sheltered; this showed the lack of awareness on gender issues.

RECOMMENDATION 16

A Child Protection Information Management System has to be established to collect data and information on the situation of children concerning child protection.

Capacities to collect and analyse disaggregated data have to be strengthened among all child protection workers, especially for monitoring and evaluation, and programme officers.

New IT technologies can be used to facilitate the work of data collection.

Data analysed shall be used to inform planning, to publish reports, to monitor the effectiveness and impact on children of the child protection system.

Recommendation 16: Knowledge generation and management

9. Conclusions

The mapping and assessment of the child protection system came at a strategic moment for Malawi. The shift towards a systems approach is not just a matter of debate, but it is a decision made by the Government of Malawi to improve effectiveness of preventing and responding to child protection risks. A consensus has spread amongst stakeholders, constituting an appropriate moment for long-term investments planning. The mapping and assessment provides a comprehensive document, presenting in a concise way the state of the art of child protection in Malawi under a systems perspective. This is the first step of a long journey that will lead to an effective child protection system. Constant dialogue, collaboration and coordination are the linchpin of such a process.

The exercise presented several initiatives to build and strengthen the national child protection system. Malawi has a good experience from the OVC approach, where, to reach the most vulnerable, several efforts have been deployed to cover child protection interventions. Many pieces of the system are already in place but they need to develop a unique vision of what a protected child is, and what the boundaries of the child protection system are in Malawi. Fragmentation is being addressed, and, when considering that child protection has just been prioritized, there have been considerable steps forward.

Creating a child protection system is a priority for the Government of Malawi; it is one of the expected outcomes in the Malawi Growth and Development Strategy II (2012-2016) for the Social Development theme. UN agencies welcomed this priority, including child protection system in the United Nations Development Assistance Framework (2012-16), aligned with the Government planning, and putting in place a protection cluster.

The process of mapping and assessment revealed a considerable level of commitment from the Government of Malawi and all other stakeholders at all levels. This commitment needs to be accompanied by an increasing understanding of the child protection and systems approach, deriving from everyday field experience of child protection actors, and from a systemic utilization of the great quantity of information available, whether from existing documents, or, and especially, from the professional skills of people.

9.1. Resume of recommendations

9.2. Implementing recommendations

During the mapping and assessment process, a number of recommendations were identified and agreed upon, the implementation of which should happen in the frame of the Child Care, Protection and Justice Act (2010) enforcement. While not covering the whole system, the Act constitutes a corner-stone of the system. A recommendation is that an Act's implementation plan be developed, costed and used as the entry point to strengthen the Malawian system, keeping in mind that the Act rules in mostly formal mechanisms, and the creation of linkages between the implementation plan and community mechanisms have to be explored and implemented as well.

*Malawi Child Protection System
Mapping and Assessment Report*

In order to ensure the greatest effect, the development of the Child Care, Protection and Justice Act (2010) the costed implementation plan should go by the following guiding principles⁷³:

Coherence: the system should revert around a common and shared vision of a child and his/her protection, underpinned by values and beliefs. Contradictory responses have to be avoided at all levels and among different sectors. The system should work, and has to be perceived as a whole. The system should be linked with other sectors, like Social Welfare, Justice, Health and Education Sectors. Child protection respectful social norms and common behaviours should be a part of the enforcement of the system, underpinned by protective and contextualized set of values

Relevance: this involves establishing clear boundaries of the system. There needs to be a division of labour amongst all stakeholders from all sectors that have any child protection responsibility. There need to be appropriate responses to address protection risks that children face. Resource mobilization should happen according to priorities identified. Equity should be prioritized in order to reach the hardest-to-reach children. Effective monitoring mechanisms should be in place, to ensure that the right things are done in the right way.

Impact: The most effective interventions need to be prioritized, especially those focussing on primary prevention, which is the best investment. If necessary, cost-benefit analysis should be done to inform decision making. Planning and programming should be child-centred and informed by a sound evidence base. Higher positive social return rates of investments should be a paramount criterion for priorities identification. Measurable results for children have to be the sign of successful achievements of a strengthened child protection system. To strengthen the system, procedures and technicalities must be accompanied by a vision where meaningful relations between children in need of care and protection and their caregivers become the litmus of efficacy of the system.

⁷³ See the “Five Country Analysis Paper” on Mapping And Assessment of the Child Protection Systems in West and Central Africa, Child Frontiers, June 2011.

1. Annexes

a. Annex A: List of participating agencies

Active Youth Initiative for Social Enhancement
AusAid
Centre for Human Rights and Rehabilitation
Centre for Youth and Children Affairs
Chancellor College, Law Faculty
Child Labour Network
Child Rights Information Documentation Centre
Child Trafficking Network
Chisomo Children's Club
Civil Society Coalition for Quality Basic Education
Creative Centre for Community Mobilization
Department for International Development
Department of Disaster Management Affairs, Office of the President, Cabinet
Early Childhood Development Network
European Union
Every Child
Eye of the Child
Food and Agriculture Organization
International Labour Organization – IPEC Programme
Legal Aid Department, Ministry of Justice
Magomero College, Ministry of Gender, Children and Community Development
Malawi Human Rights Commission
Malawi Human Rights Resource Centre
Malawi Human Rights Youth Network
Malawi Law Society
Malawi Police, Ministry of Home Affairs
Ministry of Education, Science and Technology
Ministry of Gender, Children and Community Development
Ministry of Health
Ministry of Home Affairs
Ministry of Justice and Constitutional Affairs
Ministry of Labour
Ministry of Local Government
National AIDS Commission
National Child Justice Forum
National Registration Bureau
Network of Organizations for Vulnerable and Orphan Children
NGOs Coalition for Child Rights
Office of the Ombudsperson
Paralegal Advisory Service Institute
Plan Malawi
Royal Norwegian Embassy
Save the Children
The Judiciary
Joint United Nations Programme for HIV and AIDS
United Nations Development Programme
United Nations Population Fund
United Nations High Commission for Refugees
United Nations Children's Fund
United States Agency for International Development

*Malawi Child Protection System
Mapping and Assessment Report*

The World Bank
World Food Programme
World Health Organization
World Vision
Youth Net and Counselling
Youth Watch Society

b. Annexe B: List of consulted documents

LAWS AND REGULATIONS

Malawi Constitution, Government of Malawi, 1994

Child Care, Protection and Justice Act, Government of Malawi, 2010

Employment Act, Government of Malawi, 2000

Employment Order (Prohibition of Hazardous Works for Children), Government of Malawi, 2010

Births and Deaths Registration Act, Government of Malawi, 1904

National Registration Act, Government of Malawi, 2010

Children and Young Persons Act, Government of Malawi, 1964

Marriage Act, Government of Malawi

The African Marriage (Christian Rites) Registration Act, Government of Malawi

The Asiatics (Marriage, Divorce and Succession) Act, Government of Malawi

The Divorce Act, Government of Malawi

The Married Women (Maintenance) Act, Government of Malawi

The Affiliation Act, Government of Malawi

The adoption of children Act, Government of Malawi

The change of name act, Government of Malawi

The Maintenance Orders (Enforcement) Act, Government of Malawi

Marriage, Divorce and Family Relations Bill (draft, not yet passed), Government of Malawi

Marriage, Divorce and Family Relations (Procedures) Rules (draft, not yet passed), Government of Malawi

Report of the law commission on the review of the Children and Young Persons Act, 2005

Wills and Inheritance Act, Government of Malawi

Deceased Estates (Wills, Inheritance and Protection) Bill, (draft, not yet passed), Government of Malawi

The Penal Code, Government of Malawi, 2011

Prevention of Domestic Violence Act, Government of Malawi, 2006

Report Of The Malawi Law Commission On The Development Of Trafficking In Persons Legislation, 2009

*Malawi Child Protection System
Mapping and Assessment Report*

Report Of The Law Commission On The Review Of The Wills And Inheritance Act, 2010

Budget Statement, Ministry of Finance, 2010/11

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