MALAWI CSOs JOINT STATEMENT ON CHILDREN’S RIGHTS SITUATION

1. PRESENTATION OF NGO CCR

This statement is delivered on behalf of NGO Coalition on Child Rights (NGO CCR) - a national Coalition of Civil Society Organisations and Networks whose goal is to coordinate child rights programming and governance in development processes in Malawi anchored under the four fundamental principles of the rights of the Child. It was founded in 2010 and has core membership of eight national CSO networks and individual Organisations. Its mission is to contribute towards the promotion, respect, protection and fulfilment of children’s rights through evidence based Advocacy, Coordination, Capacity building and Research. The NGO CCR provided leadership of the CSO/NGOs in Malawi in preparation and submission of the Shadow Report, and such has been the case since the UPR 2nd Cycle Submission in 2014.

2. PROCESSES UNDERTAKEN IN DRAFTING THE CHILD RIGHTS SHADOW REPORT

National consultations were conducted through regional meetings and workshops in Mzuzu, Blantyre and Zomba. A total of 134 representatives of CSOs/NGOs and Children participated. A drafting team was set up from members organisations of the Coalition which led the documentation process. The following organisations participated in the drafting of Malawi joint CSO Shadow report: Malawi Economic Justice Network (MEJN); Family Planning Association of Malawi (FPAM); Malawi Health Equity Network (MHEN); NGO Gender Coordination Network (NGO GCN); Centre for Youth and Children Affairs (CEYCA); Centre for Youth Empowerment and Civic Education (CYECE); Malawi Human Rights Youth Network (MHRYN), and Human Rights Consultative Committee (HRCC).

3. PLAN OF THE STATEMENT

This statement highlights five Child Rights Issues: (1) Legal and Policy Frameworks; (2) Equitable access to Education; (3) Resourcing for Children; and (4) Sexual, Reproductive Health and Rights

4. ISSUE 1: LEGAL AND POLICY FRAMEWORKS

A. Follow-up to the second review: As per recommendations from Slovakia, Egypt, Iceland, Chile, Mexico, The Holy See, Sri Lanka, Cape Verde, Costa Rica, Algeria, Netherlands, and Togo, the State Party amended section 23 of the Constitution of the Republic of Malawi in 2017 to define a child as any persons below the age of 18 years. Besides, a couple of subsidiary legislations have been enacted by Parliament and are enforceable. Amongst the new legislations include: the Marriage Divorce and Family Relations Act and the National Children’s Commission (NCC) Act 2019. In addition, the state party put in place child related policies and programmatic strategies like the National of Action for Vulnerable Children, Ending child Marriage Strategy and the National Children’s Policy.

B. Remaining gaps: The Marriage Divorce and Family Relations Act falls short of relating to the Penal Code so that marriage of any persons being a child attracts stipulated penalties, and directs rehabilitation of the child. Section 58 of the Marriage Divorce and Family Relations Act provides for penalties to any marriage involving persons below 18 years of age. In addition, Sexual abuse cases are not yet statutory
offences and the Penal Code does not recognise them as punishable criminal offences. In addition, enforcement of the legislation on child with child rights lenses is very weak. The child related laws conflict against each other therefore applied by law enforcers and judicial staff inconsistently.

C. Recommendations:
   i. Ministry of Justice to expedite harmonisation of children and women related laws and policies by June 2021.
   
   ii. Parliament to amend the Penal Code to criminalise child marriages, Child abuse and child neglect by 2023 in order to allow rehabilitation of victims or surviving abused children, particularly girls who are the worst victims.

5. ISSUE 2: EQUITABLE ACCESS TO EDUCATION

A. Follow-up to the second review: A couple of countries like United Sates of America, Congo, and South Africa made recommendations on equitable access to Education. Progressively Malawi Government continued implementing a Free Primary education Policy, and Community Day Secondary Schools.

B. Remaining gaps: Introduction of free primary school minus enforcement mechanisms of compulsory education has compromised accessibility and quality of education in Malawi. Children in primary school are being asked to pay what is called USER-FEES in categories of Registration Fee, Examination Fee, Development Fee, and many others costs charged as it pleases authorities of a school. As a result thousands of children fail to attend examinations at the end of a school year so that they may transit to the next class. Thousands of children fail to register to start standard one because their parents failed to pay registration fees. The case of Nankumba II Primary School in Mangochi district, which led to children withdrawing from school for non-payment of user fees, or moved to a school 12km away.

C. Recommendation:
   i. Ministry of Education to facilitate formulation and implementation of Compulsory free Primary Education Policy by 2022
   
   ii. Ministry of Education to abolish user fees in Primary and Secondary Schools by 2023

6. ISSUE 3: RESOURCING FOR CHILDREN

A. Follow-up to the second review: Countries like Morocco, Luxembourg, Nicaragua, Canada, China and Cuba recommended for resourcing for implementation of the National Plan of Action for Orphans and Vulnerable Children and the National Action Plan on Gender Based Violence. Progressively, domestic resources for children have increased; for instance budgetary allocation for Early Childhood Development (ECD) increased six times from 2015/2016 national budget to 2019/2020 national budget.

B. Remaining gaps: Public budget allocation in child-focused sectoral ministries such as education, health and local government has been inadequate. The 2018/2019 National Budget indicates 800 community based Child Protection Workers in Malawi. Only 300 out of the 800 Child Protection Workers are on government pay roll and the rest work as volunteers without any remuneration or motivation. Due to the very small size of budget especially to the parent Ministry of Gender, Children, Disability and Social Welfare, it is difficult for the Ministry to allocate sufficient resources for child programmes into all the 28 District.
C. Recommendations:

i. The National Local Government Finance Committee should increase budget allocations to Programme 99 (Primary Child Protection Services) of 28 District Councils and 4 City Assemblies to cater for emoluments of the 500 currently child protection volunteer workers, Children Corners and children play spaces by 2022.

ii. Ministry of Gender, Children and Community Development to allocate or programmes, budget monitoring, providing honorarium to Child Care Givers in Community based Child Care Centres (CBCCs) from 2022.

iii. Establish child rehabilitation centres or safety homes and shelters for victims of violence against Children and women; and transit homes for victims of trafficking in all the 28 districts and 4 cities and ensure availability of the required services for rehabilitation such as psycho-social support services. By 2023.

7. ISSUE 4: SEXUAL REPRODUCTIVE HEALTH AND RIGHT

A. Follow-up to the second review: As recommended by Honduras, Togo and the Holy See, the State party draft ‘termination of Pregnancy Bill’ 2018 which is at Ministerial level. Sexual Reproductive Health Policy is in place but not resourced. Youth friendly Health Services Programme is not resourced. Around 70,000 women and girls procure unsafe abortion per year and 31,000 women develop complications.

B. Remaining gaps: Malawi legal framework does not legalise safe abortion even in cases of sexual assault e.g. rape, defilement or, make it explicit for legal abortion to be procured in situations where the pregnancy endangers the mental or physical health of the mother or the life of the foetus. Consequently, girls and women resort to unsafe abortion risking legal penalties of between 7 years and 14 years imprisonment with hard labour. This is a contravention of article 14 (2) of the Maputo Protocol which guarantees the right to safe abortion and for which Malawi is a signatory. Increasing the exceptions helps to increasing the number of women who would qualify for safe abortion, thereby reducing the number that would resort to unsafe abortion.

C. Recommendations:

i. Parliament to enact the Termination of Pregnancy draft Bill which is already aligned to the provisions of the Maputo Protocol i.e. extend the legality of safe abortion to cases of sexual assault, rape, incest by 2022.

ii. Ministry of Finance to allocate financial and Human resources for implementation of the National Strategy on Ending Child Marriage; including welfare support of girls withdrawn from Child marriages; and psychosocial support of Victims of Child sexual abuse by 2023.

iii. Ministry of Health should enforce implementation of WHO approved recommendations to set up SRHR user-friendly services in all the health facilities by 2023.

Thank you all for your attention