

UNIVERSAL PERIODIC REVIEW REPORT



FOR MALAWI NGOS

**SEPTEMBER 2014 SUBMISSION ON CHILDREN'S RIGHTS
BY THE NGO COALITION ON CHILD RIGHTS (NGO CCR), IN
MALAWI**

NGO CCR

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1. INTRODUCTION

The NGO Coalition on Child Rights (NGO CCR) which is also known as a *Coalition*, in Malawi has facilitated the production of a NGO report on Universal Periodic Report focusing on the United Nations Special Committee on the Rights of Children for Malawi. As a coalition of non-state organisations with special target for children, it has been of keen interest for the NGO CCR to express its understanding of progress Malawi has made in achieving the enforcement of respect for the rights of its children. This is based on observations and recommendations of the previous Universal Periodic Review (UPR).

The Coalition has picked up eighteen (18) recommendations only for its assessment. The reporting process involved a consultative exercise through its member networks and the subsequent member NGO/CSOs of the networks. All the networks are amongst the most influential NGO/CSO networks in Malawi therefore the report is partly informed by that process. The writing has been by a core Taskforce Team put in place for this purpose divided to primarily handle sections of the recommendations, and then individual writings were consolidated into a compound of this report.

While there might be other alike reports in the country on the UPR, the view of the NGO CCR is that this report is a good representation of the views of the NGOs in Malawi which is what the Coalition should stand for on matters of promotion and protection of the rights of children especially in reporting to international bodies as government is obliged to. Development partners have supported the process technically and financially which enabled the Coalition to assemble and work on the reporting exercise. This is sincerely acknowledged. They include UNICEF Malawi, Save the Children International, and Plan International (Malawi). It has been the first time for the Coalition to write a periodic report hence it has equally learnt a great deal erring but also perfecting in the process.

1.1 Country background

Malawi is a landlocked country located in South-Eastern Africa. The country borders Tanzania to the north, Zambia to the West, and Mozambique to the South, South East and South West. Malawi's Population was, as at the last census in 2008, estimated at 13.1 million.

1.2 The NGO Coalition on Child Rights (NGOCCR)

The NGO Coalition on Child Rights (NGO CCR) is a network of eight national networks¹ with interest in promoting and ensuring the protection of the rights of children in Malawi. The NGO CCR is a child rights coalition with a mission of strengthening the role of NGOs and civil society alliances in the promotion and protection of child rights in Malawi. The member networks were a core part of this reporting that actively participated in the consultations and the writing of the report.

The National CSO Report for the Universal Periodical Review (UPR) is a product of a consultative review process on the recommendations that were made to Malawi during the first cycle of the UPR. The review process involved reviewing of reports from various organizations and the different pieces of law national, regional and international regarding children's rights.

During the review process, six priority areas of children's rights issues in Malawi were identified:

- Child Rights Legal Framework
- National Action Plan for Children
- Violence against children
- Child Justice
- Child trafficking and exploitation

¹ [The Coalition has eight member CSO networks namely; NGO Gender Coordination Network \(NGO GCN\), Water and Sanitation network \(WESN\), Malawi Human Rights Youth Network \(MHRYN\), Human Rights Consultative Committee \(HRCC\), Network for Orphaned and Vulnerable Children \(NOVOC\), Malawi Health Equity Network, Malawi Economic Justice Network \(MEJN\), and the Civil Society Education Network \(CSEC\)](#)

➤ Child poverty

2.0 CONTENT

2.1 Child Rights Legal Framework

The government has enacted several laws pertaining to women and children such as the Child Care, Protection and Justice Act 2010, the Wills and Inheritance Act 2011, and the Gender Equality Act 2013. However, there are still some sections in the new legislations which curtail the protection of children's rights and in addition, the government is yet to harmonise laws that are in conflict with each other. The Constitution of Malawi does not provide for a definition of a child but it has provisions on child rights in the Bill of Rights which apply to persons aged below 16 years. The Child Care, Protection and Justice Act of 2010 in section 2, defines a child as a person aged below 16 years. This leaves out those aged 16 and 17 years from the special protections and rights provided by both the Constitution and the Child Act.² Under section 22 (7) of the Constitution of the Republic of Malawi, persons of between 15 and 18 years can enter into marriage with the consent of their parents or guardians. This is in way a driver of child marriages as parents or guardians use this provision to allow their children enter marriage at the expense of education.

This is a serious step back for the protection of children's rights and is a breach of the CRC and the ACRWC which prohibits child marriage in its article 16(2) and article 21(2) respectively.³

Malawi is yet to enact the Trafficking in Persons Bill and the Marriage, Divorce and Family Relations Bill. Passing of these bills into law will require a harmonization approach so that provisions for children are in line with other pieces of legislation such as the Child Care Protection and Justice Act 2010.

Moreover enforcement of available laws related to children's rights needs to be enhanced and acted upon with seriousness. Among the laws is the National Registration Act. Malawian children are not registered at birth and therefore lack of registration and without national identities put them in a situation of statelessness where they are deprived of their basic rights.

2.2 National Action Plan for Children

It remains unclear whether the draft Action Plan of Action for Children is finally in place and being implemented. The Coalition notes that, the government has put in place pieces of National Action Plans in specific areas, for example; the National Action Plan for Orphans and Vulnerable Children, National Action Plan for Child Labour, and National Plan of Action for Gender, Children and Youth have now been concluded. However, since these are thematic plans of action, they do not offer a comprehensive and holistic plan to ensure cross-sectoral coordination for the implementation of the CRC and its Optional Protocol, the ACRWC and all child rights related instruments, at all levels.

³ The ACRWC and the CEDAW Committee in its General Recommendation No. 21 on equality in marriage and family (1994), specifically provide for 18 years as the minimum age of marriage in Africa and Malawi should adhere to this.

2.3 Violence Against Girls

Measures such as the Child Protection Systems have been put in place through the various technical working groups under the Ministry of Gender, Children, Disability, and Social Welfare to promote protection of children from all forms of abuse, and enhance their well-being. The Malawi Police Service has a Community Policing Department which handles cases of violence against women and girls so long as the cases. A Victim Support section under the department resolves gender related case but also conducts preventive activities in the communities through their widely spread police stations and police units. The media has been recently awash with cases of violence against girls and women being reported almost daily resulting from awareness being raised in the country.

Despite the aforementioned progress, girls in Malawi are still being subjected to violence, particularly sexual violence. There is weak enforcement of laws, coordination, and case handling through the judicial system. Numerous reported cases of violence against children, especially girls, and women remain unconcluded under the judicial process.

Perpetrators of violence against girls are easily released on bail. Communities have been dissatisfied with seeing suspects of abuse of girls and women walking free by either police or courts, making them suspicious of corruption among public officers. Case reporting mechanisms are not functioning properly.

The enactment of a Child Care Protection and Justice Act 2010 should have given more protection to children, especially the girl child but it is not implemented effectively across the country. Only a few members of the child justice institutions such as Police officers, Social Welfare officers and Magistrates_ have the knowledge and skills to enforce the child law. Further, there is little awareness on the social provisions of the law among the State and Non State Actors. This is compounded by the fact that there are no programmes in place to support the enforcement of the law. Despite the presence of child magistrates in the districts, there are instances when cases in the Child Justice Courts are heard in an open court.

Furthermore, the Government has failed to pass a bill on Access to Information which would have provided room for accountability to duty bearers on issues of children.

2.4 Child Justice

The minimum age of criminal responsibility for children is 10 years, which is against international and regional standards. Malawi ought to adhere to the international standards on this issue. The UN Committee on the Rights of the Child, in General Comment No 10 of 2007, recommends a minimum age of no lower than 12 years⁴ and the African Union recommends 15 years in its 2003 Principles and guidelines on the right to a fair trial and legal assistance in Africa.⁵ Malawi is one of sixteen countries in Africa with a low minimum age of criminal responsibility that does not adhere to international standards.⁶

⁴ Paragraph 16, General Comment No. 10 on Children's Rights in juvenile Justice, 2007.

⁵ Paragraph O(d)

⁶ for a full list of the other countries, see Odala V 'Childhood denied: Examining age in Malawi's Child Law, as the Constitution 'becomes of age' *Malawi Law Journal*, Vol. 6 Issue 1 (2012), p113.

A comprehensive child justice system is in place through the National Child Justice Forum (NCJF) chaired by a High Court Judge. NCJF is composed of institutions that deal with issues of administration of justice on child rights issues. These include State institutions as well as Non State Actors. Despite such a structure being in place, justice on issues of children remain a challenge. Notable weaknesses include delay in concluding cases of children, particularly as victims and lenient court sentences on perpetrators of violence against children.

2.5 Child trafficking and Exploitation Children in Malawi face a myriad of challenges as far as trafficking is concerned. Children are trafficked within the country and across the border to neighbouring Zambia and Mozambique where they are engaged in child labour, and prostitution. In the pretext of religious connections, children are trafficked to other countries in Africa and beyond where they are sold and held like slaves.

Malawi does not have a specific law on human trafficking but has a provision in section 79 of the Child Care Protection and Justice Act 2010 addressing child trafficking. Orientation of agents of child justice is paramount in ensuring enforcement of the law in the context of child trafficking which has high for purposes of labour and sex work. Children are also employed for hazardous work such as working in bars to serve collect bottles and serve customers, and this is common with the girl child.

Cases of child trafficking do not attract sufficient interest for investigations by responsible institutions arguing no law exists to reprimand traffickers. Unfortunately, the child trafficking provision in

the Child Care Protection and Justice Act 2010 is unnoticed by these agents. Lack of child justice courts to deal with child cases and lack of popularization as well as enforcement of such cases and laws is one of the factors affecting attainment of the children not to be enjoying their rights fully. Children as young as young as 12 years are trafficked for commercial sex work in informal designations because sex, commercial it may be, is prohibited by national statutes.

In Malawi, child trafficking is commonly understood to be influenced by the want for cheap labour force in farms and estates, and that children can be overworked without or with little complaints, again that children can be cheated so as to be paid less if compared to adults. Trafficking of children happens in a systematic and tricky ways that any ordinary person would not spot it. This is where the absence of a responsive national system falls short of an effective counter action to end trafficking of children. A national network of government and civil society has focused so much on pushing for legislation. A trafficking in person's bill is now before Parliament for discussion and possible passing into law.

2.6 Child Poverty

Many children in Malawi still live under poverty Programmes to address poverty and discrimination of women and children have been put in place Income Generating activities taking different shapes. Access to money services has improved with the presence of more banks and money lending institutions. The social cash transfer programme responds to the need to address poverty and discrimination of women and children, especially the girl child.

Despite the good initiatives, the initiatives are disintegrated, as is the case with the social protection programme policy which is unclear about linking the social cash transfer programme, the farm input subsidy programme, the food for work programme, the school feeding programme and any financial incentives programme.

The government is highly commended for the school feeding program which was introduced. However, Government is yet to roll out the programme to all the schools as the programme is highly dependent on donors. Government has not taken a deliberate step to appropriate adequate funds in the national budget for the programme to be rolled out in all the schools in Malawi Further, there is high teacher-pupil ratio and dwindling education standards. Furthermore, public health facilities remain adequately understaffed and run with shortages of essential drugs and equipment.