



## MALAWI

APRIL 2016

### ANALYSIS OF THE SITUATION

#### A. General situation

The Republic of Malawi is a landlocked country in southeast Africa, bordered by Zambia to the northwest, Tanzania to the northeast, and Mozambique on the east, south and west. It has an estimated population of 16 million inhabitants, of which over eight million are under the age of 18 years (estimated 2012).

Malawi is amongst the least developed countries in the world, ranks very low on the Human Development Index, and depends heavily on foreign aid to meet its development needs. Indeed, poverty is a key driver of child protection issues, posing a significant risk for the 1.2 million children living in the lowest quintile of extreme poverty. Furthermore, the HIV/AIDS epidemic has had a profound impact on child protection.

Whilst in 2010, the Child Care, Protection and Justice Act was approved and a Division of Child Protection was created within the Ministry of Gender, Children, Disability and Social Welfare (MoGCDSW)\* to lead relevant responses, considerable and widespread challenges remain, including violence against children, early marriage, child labour, and children without any form of protection or support. In this regard, for 2012-2016, a Child Protection System was made a priority under Malawi's Growth and Development Strategy.

*\*According to our understanding, prior denominated Ministry of Gender, Children and Community Development.*

#### Sources:

- Wikipedia, Malawi, <https://en.wikipedia.org/wiki/Malawi>;
- UNICEF Malawi, [http://www.unicef.org/malawi/protection\\_3967.html](http://www.unicef.org/malawi/protection_3967.html);
- UNICEF Malawi, *Investing in Malawi's National Child Protection System to support national social protection goals – The business case*, November 2011, [http://www.unicef.org/malawi/MLW\\_resources\\_investchildprotect.pdf](http://www.unicef.org/malawi/MLW_resources_investchildprotect.pdf);
- Care for Me! SOS Children's Villages International, *A snapshot of alternative care arrangements in Malawi*, 2013, <http://www.sos-childrensvillages.org/getmedia/Ofa0e001-c9a8-4f91-8fc0-6cf7d9f0d25d/MALAWI-FINAL-to-upload.pdf>.

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## B. The situation of children without parental care and alternative care options

Malawi adopted a new legal framework for child protection in 2010: the Child Care, Protection and Justice Act, which has become the main legal instrument on children's rights, including provisions relating to care, protection, juvenile justice and mechanisms for children in need of care. However, despite considerable efforts to implement it, including in relation to alternative care, there is still a need for a comprehensive policy in this regard.

As for the institutional structure in charge of child protection and care issues, according to UNICEF Malawi's report (see UNICEF, *Investing in Malawi's National Child Protection System to support national social protection goals – The business case*), the latter is coordinated by mechanisms at both national and district level. At national level, these are the National Technical Working Group for Child Protection, a corresponding technical working group for orphans and other vulnerable children, and the National Child Justice Forum. There is strong representation from Government and civil society, and some of the mechanisms have action plans to guide their work. These groups are supported by specific technical committees covering trafficking, child labour, children with a disability, and children in alternative care. However, there have been difficulties in their functioning given the fragmentation of the child protection sector, a lack of harmonisation in these mechanisms' mandates and weak coordination between national and district-level mechanisms. Additional financing and increased human resources are now contributing to strengthening these mechanisms.

### Causes for family separation and abandonment and potential support to families and prevention of separation:

Similarly to other countries in the region (see UNICEF ESARO, *Alternative Care for Children in Southern Africa: Progress, Challenges and Future Directions*, 2008), in Malawi, many issues have had an impact on family separation and the subsequent need for alternative care, including widespread poverty, high HIV/AIDS prevalence, poor access to services, violence and crime and limited access to education and health care. Indeed, as mentioned above, poverty rates are high in Malawi, and the *Drumming Together for Change* report states that 59% of all orphaned children are due to HIV/AIDS, resulting in 12,000 children living in child-headed households.

According to the latter, however, the social cash transfer programme has provided small cash grants to ultra-poor households without any able-bodied adult household members, whilst increasing its coverage, as part of its National Social Support Policy. UNICEF (see *Investing in Malawi's National Child Protection System to support national social protection goals – The business case*) has considered the latter to proving successful on many levels. It appears that accelerating social protection programmes is a governmental priority.

Other initiatives aimed at preventing family separation have included: marriage counselling programmes and informal counselling services through traditional marriage counsellors provided by the Malawi Council of Churches, other supportive services such as day-care centres (although mainly in urban areas and provided by the private sector), conflict-resolution services and mediation. Indeed, the Child Care, Protection and Justice Act has provided parents and children with the opportunity to undergo counselling in order to prevent separation or, indeed, reverse it where it has already occurred. Finally, family reintegration is supposed to be coordinated through the Ministry of Gender; although non-governmental organisations have carried out home assessments to assist in the reintegration of children, there is no system to monitor this.

There is, however, a lack of exact, updated and reliable data on the numbers and circumstances of children in institutional care, which makes it difficult not only to quantify this issue but also to monitor any efforts to prevent it (see Ministry of Gender, Children and Community Development and UNICEF Malawi, *All Children Count: A Baseline Study of Children in Institutional Care in Malawi*, September 2011) and to plan and provide the needed services.

### Alternative care:

As stated in *Drumming Together for Change*, there are over eight million children in the country, of which 1,300,000 were orphans in 2012 and only 6,000 were in formal care. Indeed, it appears that both formal (children's homes/orphanages) and informal alternative care practices (kinship care) exist in the country. In this regard, several



materials in this field have highlighted the current challenges in the provision of formal and informal alternative care: a lack of care standards that are compliant with international principles and standards, weak registration and monitoring mechanisms of care providers, weak processes for admission, care plans and reintegration, low funding and knowledge of existing legislation and policies amongst professionals in this field.

**Informal care:** With regards, in particular to informal care, the latter appears to be widespread and well accepted, even when the parents are still alive – an approach shared with other countries in the region – with some difficulties for the country to manage informal care. Even though it appears that, in Malawi, there was a mechanism for the voluntary registration of informal carers, the latter does not appear to be actively encouraged by the state (see *Drumming Together for Change*). It is worth mentioning, however, that a state cash transfer system has been available for families providing informal care where they met the application criteria.

**Formal care:** On the other hand, residential care is the most prevalent form of formal alternative care. However, as mentioned above, many placements occur in non-registered facilities, with a lack of monitoring and supervision. Indeed, it appears that children are entering residential care through a variety of channels, 52% of the homes would look for children, 51% were referred by the district authority and 39% were brought by their parents (see Ministry of Gender, Children and Community Development and UNICEF Malawi, *All Children Count: A Baseline Study of Children in Institutional Care in Malawi*, September 2011), whilst it appears that 71% of the children in institutions were orphans (having lost one or both parents).

According to *Drumming Together for Change*, there is currently no clear picture of funding levels for alternative care due to a lack of information. In this regard, financial allocations to the responsible Ministry have fluctuated. In addition to overall budgets for alternative care, identified limited resources for specific alternative care options were identified, such as residential care, foster care, aftercare and family support. For example, there was no budget allocation to prevent family breakdown and inadequate financial support for aftercare with most publicly-funded facilities not providing post-care support.

#### **Foster care:**

Formal foster care by non-relatives appears to be rare, and could in fact only be limited to pre-adoption foster care, as suggested by UNICEF in its 2008 report on *Alternative Care for Children in Southern Africa: Progress, Challenges and Future Directions*. Indeed, even foster care with relatives is not formalised, and there is therefore a need to have further data on foster care in the country.

#### **Residential care:**

In 2014, the Malawi Human Rights Commission published an assessment report of children in residential care and aimed at monitoring all known child care institutions (CCIs). It confirms that child care institutions are now providing alternative care for a significant number of orphans and other vulnerable children. The legal framework for the functioning of these institutions is the Minimum Standard Rules and Regulations for the Establishment and Management of Children's Homes and Orphanages in Malawi.

According to this report, 'the current monitoring exercise established that government's oversight functions with regard to children in alternative care continue to be weak, its mandate to process and verify registration statuses for CCIs is largely non-functional and 'District Social Welfare Offices (DSWOs) capacity to conduct regular monitoring of CCIs within their districts is low. In addition, the 2013 monitoring exercise made recommendations to the government for the closure of certain CCIs that are operating below the minimum rules and this has not been adhered to. The Commission thus notes with concern that the quality of care provided by CCIs to children therein has not significantly changed. Of significant concern was the fact that most CCIs remained unregistered'.

It appears that DSWOs do not have comprehensive information regarding the number of children admitted to a particular CCI. Some CCIs continue to recruit children from outside the CCIs districts without authorisation from the DSWO and thus exposing children to possible trafficking as well as limiting their contact with relations in their respective communities. Institutions also did not have up-to-date information on the number of children therein or have individual child care plans for each child. (...) [P]rocesses aimed at de- institutionalization and re-integration



were less functional’.

The report, based on a previous mapping exercise, reports 168 CCIs and, according to a local contact, the latest numbers estimate that there are 10,136 children placed in the latter. The types of child care institutions are: orphanages (the most common form), special needs centres, church homes, transit care centres and reformatory centres (the report puts special emphasis on the fact that some CCIs operate as *madrassas*).

The challenges faced by these institutions included lack of funding, lack of training for caregivers, lack of food and insufficient buildings, as well as a lack of play materials, lack of medicines, lack of bathrooms and toilets and lack of community involvement. Furthermore, nearly a third did not have management committees and a significant proportion of the caregivers were not trained, thereby not complying with the regulations in this regard. This reflects the general lack of awareness or knowledge of the regulations governing the registration and functioning of childcare institutions, including the effective monitoring and supervisory system that should be implemented. Indeed, as mentioned in *Drumming Together for Change*, there were serious concerns over the frequency of inspections, despite regulations that require the authorities to visit registered facilities twice a year – with or without prior notice. Finally, this material also stated that, in Malawi, cases were reported of facilities failing to release children from their care on financial grounds, and unregistered facilities ‘recruiting’ children from local communities to increase the donor funds allocated to them.

The Government has drafted Regulations and Guidelines on alternative care, which are hoped to be gazetted this year, and is also in the process of gazetting a public notice to call for the registration of all CCIs.

#### Leaving care:

According to *Drumming Together for Change*, there is a lack of data on why children’s placements are changed although evidence from the children suggested that it was often due to behavioral problems. There was also evidence that registers were not adequately kept on children leaving care, making it impossible for the authorities to keep track of the number of children in alternative care at any one time, including the above-mentioned concern that children remained in care due to the financial objectives of the institution.

In Malawi, support for the reintegration of children to their families is supposed to be planned and managed by the Ministry of Gender, Children and Social Welfare, but procedures were not followed due to lack of financial resources. However, some care providers reported that mentoring schemes were in operation, with children previously in alternative care providing advice for children leaving the care system. In this regard, SOS Children’s Villages (see *A snapshot of alternative care arrangements in Malawi*, 2013) also stated that there is no system to monitor the reintegration of children after alternative care placements and that very little support is offered to them. Most alternative care facilities do not provide aftercare support, and any support that is provided is often of a poor quality due to lack of funding. However, some non-governmental alternative care providers, such as SOS Children’s Villages, provide adequate aftercare support, such as assistance with education and six months’ accommodation while looking for employment.

### Comments of the ISS/IRC

Malawi has faced multiple factors leading to potential family separation, including poverty and the HIV/AIDS epidemic, and has made efforts to address the latter as part of its social protection actions and policies. The adoption of new legislation on children’s rights was also intended as an additional framework within which to operate child protection measures.

However, many challenges remain and a high number of children remain in informal and formal care, although the lack of exact data is an issue in itself. Indeed, there are currently difficulties to quantify and assess the extent of the situation, *i.e.* how many children, in which forms of care, the monitoring of their situation and the registration of care providers, which also affects their protection and rights.

Despite kinship care having been a traditional form of care for children separated from their family – and even those



with one or both parents - current conditions in the country are having an impact on the ability and availability of relatives to care for these children, and residential care has therefore become the most prevalent form of alternative care for children, despite its quality not always being compliant with the relevant regulations.

In addition, formal foster care with non-relatives – and domestic adoption – appear to remain very rare and should therefore be considered as potential options to be further developed and strengthened, with an adequate mechanism for its operation and suitable support to the carers and the children.

Indeed, there is a need to further allocate financial, material and human resources as much to prevention and gatekeeping mechanisms (support to families and children, services and programmes) as to quality alternative care measures (compliance with regulations, development of family-type care, effective monitoring and supervision mechanism).

#### Sources:

- Malawi Human Rights Commission.
- Malawi Human Rights Commission, Monitoring Report on Child Care Institutions in Malawi, September 2014.
- Ministry of Gender, Children and Community Development and UNICEF Malawi, *All Children Count : A Baseline Study of Children in Institutional Care in Malawi*, September 2011, <http://www.bettercarenetwork.org/sites/default/files/attachments/All%20Children%20Count%20-%20A%20Baseline%20Study%20of%20Children%20in%20Institutional%20Care%20in%20Malawi.pdf>;
- Better Care Network Forum, Alternative Care Assessments, 19-20 August 2014, <http://www.bettercarenetwork.org/sites/default/files/Alternative%20Care%20Assessment%20in%206%20Countries.pdf>;
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- SOS Children's Villages International, Centre for Excellence for Looked After Children in Scotland (CELCIS) at the University of Strathclyde, University of Malawi, *Drumming Together for Change – A child's right to quality care in Sub-Saharan Africa*, 2014, <http://www.sos-childrensvillages.org/getmedia/32ef3dec-cad1-4337-9c2f-b54ead86ec75/SOS-ERTL-Brochure-low-res.pdf>;
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- Retrak, *Making the invisible visible: An Enumeration of Children on the Streets of Malawi*, July 2015, <https://www.retrak.org/content/uploads/2015/10/Retrak-Making-the-invisible-visible-Malawi-Enumeration-2015.pdf>;
- Care for Me! SOS Children's Villages International, *A snapshot of alternative care arrangements in Malawi*, 2013, <http://www.sos-childrensvillages.org/getmedia/0fa0e001-c9a8-4f91-8fc0-6cf7d9f0d25d/MALAWI-FINAL-to-upload.pdf>;

## C. Adoption

THEMES	INFORMATION
<b>CENTRAL/ COMPETENT AUTHORITY</b>	<p><b>Ministry of Gender, Children, Disability and Social Welfare (MoGCDSW)</b> Gemini House, City Centre, Private Bag 330, Lilongwe 3, Malawi</p> <p>Tel: +265 1 770 411 / 736 Fax: +265 1 770 826 / 774 105 E-mail: <a href="mailto:gender@malawi.gov.mw">gender@malawi.gov.mw</a></p> <p style="text-align: right;"><i>Source:</i> Malawi Government, List of Ministries <a href="https://www.malawi.gov.mw/index.php?option=com_content&amp;view=article&amp;id=32&amp;Itemid=2">https://www.malawi.gov.mw/index.php?option=com_content&amp;view=article&amp;id=32&amp;Itemid=2</a>.</p>
<b>FULL/ SIMPLE ADOPTION</b>	<p><b>Full adoption.</b> See <i>Adoption effects</i> below.</p> <p style="text-align: right;"><i>Source:</i> Adoption of Children Act, Art. 6.</p>
<b>SUBSIDIARITY PRINCIPLE</b>	<p>An adoption shall not be made in favour of any applicant, who is not resident in Malawi. Thus, it appears that intercountry adoption in Malawi is not possible. However, as stated by the U.S. Department of State, '[t]he Malawi Adoption of Children Act of 1949 does not address</p>



intercountry adoptions and courts have wide discretion on how they handle adoptions. Although a May 9, 2009, Malawi Supreme Court decision gave courts more leeway in granting adoptions for foreign adoptive parents, the decision has not resulted in a permanent change to the country's intercountry adoption laws or regulations. The courts in Malawi assess each case individually, taking into consideration the circumstances of the prospective adoptive child. The May 9, 2009, Supreme Court decision did, however, set aside the requirement that prospective adoptive parents live in Malawi and foster a child for a period between 18 and 24 months before an adoption is granted'.

Sources: Adoption of Children Act, Art. 3; U.S. Department of State.

#### CHILD ADOPTABILITY

The child must be resident in Malawi.

The court must be satisfied that the adoption will be for the welfare of the child, with due consideration to his wishes, in accordance with his age and understanding.

It is the duty of the guardian *ad litem* (see *Procedure* below) to investigate, as fully as possible, all the circumstances of the adoptee and the applicants, and all other matters relevant to the proposed adoption with a view to safeguarding the interests of the adoptee, in particular the following issues: whether the statements in the petition are true; whether any payment or reward has been received or agreed ; whether the means and status of the petitioner are such as to enable him to maintain and bring up the adoptee suitably; what insurance has been effected on the life of the adoptee; and whether it is desirable for the welfare of the adoptee that the court should be asked to make an interim order (see *Probationary period* below) or to impose any particular terms or conditions on the adoption order.

Sources: Adoption of Children Act, Arts. 3 and 4;  
Adoption of Children (Subordinate Courts) Rules, Rule 12.

#### PROSPECTIVE ADOPTIVE PARENTS

The applicant must be over the age of 25 years and at least 21 years older than the adoptee.

Both married and single persons may adopt, but an adoption cannot be made in respect of a single male applicant if the adoptee is a girl, except in special circumstances.

An adoption shall not be made in favour of any applicant, who is not resident in Malawi. As stated by the U.S. Department of State, '[i]n a May 2009 Malawi Supreme Court decision, the Court determined that an adoption may be granted to foreign adopting parents so long as the parent(s) are not temporary visitors to Malawi and have a serious commitment or connection to Malawi. This decision effectively set aside the informal practice of requiring foreign adopting parents to foster the prospective adoptive child for a period of 18 months. (Note: this former practice was never set forth in Malawi law or regulation). While MoGCDSW has not promulgated a written policy implementing the May 2009 Supreme Court decision, we have observed that lower court judges are issuing adoption decrees to foreign adopting parents which adhere to the Supreme Court decision'.

Sources: Adoption of Children Act, Art. 3; U.S. Department of State.

#### CONSENTS

The court must be satisfied that every person, whose consent is necessary, has consented to and understands the nature and effect of the adoption order, in particular that the adoption will permanently deprive the parent of his parental rights.

An adoption order cannot be issued without the consent of every person or body, who is a parent or guardian of the adoptee, or who has the actual custody of the adoptee or who is liable to contribute to the support of the adoptee. This may be exempted if such a person has abandoned or deserted the adoptee or cannot be found or is incapable of giving such consent or has persistently neglected or refused to contribute to the support to the adoptee.

An adoption cannot be issued in relation to two spouses if the other one does not consent to the adoption.

The adoptee must express his wishes with regards to the adoption, in accordance with his



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age.

The consents shall be in writing.

*Sources:* Adoption of Children Act, Arts. 3 and 4; Adoption of Children (Subordinate Courts) Rules, Rule 5 (similar provisions appear in the Adoption of Children (High Court) Rules).

#### PROCEDURE

An application for an adoption shall be made by petition to the court. The petition shall be served on the parents of the adoptee, on the guardian, on the person having the actual custody of the child, or on the person liable to contribute to the support of the adoptee.

The court may impose any terms and conditions that it thinks fit.

The adoptee shall be a respondent to the petition and the court shall appoint some person or body to act as *guardian ad litem* of the adoptee upon the hearing of the application, with the duty of safeguarding the interests of the adoptee before the court. The *guardian ad litem* investigates the prospective adoptive child's social history and monitors the prospective adoptive family for a specified period (see *Child adoptability* above), after which the *guardian ad litem* submits a Court Social Report (home study) to the High Court. Upon receipt of the report, the High Court rules on whether or not the adoption can be finalised.

All documents filed in court shall be confidential and every petition and application shall be heard and determined *in camera*. The magistrate may refuse to issue the adoption or interim order unless all parties, including the adoptee, are present.

Specific forms (petition, consent, adoption order, interim order, etc.) are provided under the Adoption of Children (Subordinate Courts) Rules and the Adoption of Children Rules (High Court).

According to the U.S. Department of State, '[i]t normally takes two to six months to complete the adoption process from start to finish, including the investigation by the guardian ad litem of the child's eligibility for adoption and the prospective adoptive parents' eligibility to adopt the child'.

*Sources:* Adoption of Children Act, Arts. 5 and 9; Adoption of Children (Subordinate Courts) Rules, Rule 4, 8, 9, 10, 14 (similar provisions appear in the Adoption of Children (High Court) Rules; U.S. Department of State.

#### MATCHING

No legal provision. As stated by the U.S. Department of State, '[i]f a child is eligible for intercountry adoption, the MoGCDSW of Malawi will review your adoption dossier and, if an appropriate match is found, will provide you with a referral if you are unable to identify a child on your own. Prospective adoptive parent(s) often identify a child for adoption through local churches, orphanages, hospitals, or missions'.

*Source:* U.S. Department of State.

#### PROBATIONARY PERIOD

The court may postpone the determination of the application and may make an interim order giving the custody of the adoptee to the applicant for a period not exceeding two years by way of a probationary period upon such terms for the provision of maintenance and education and supervision and otherwise as the court may think fit. An interim order may provide for the supervision of the adoptee by the *guardian ad litem* or otherwise as the magistrate may think advisable.

*Sources:* Adoption of Children Act, Art. 7; Adoption of Children (Subordinate Courts) Rules, Rule 17.

#### ADOPTION DECISION

Judicial decision. Although the MoGCDSW oversees the adoption process, the High Court will make the final decision regarding a specific adoption. The court having jurisdiction to make adoption orders shall be the High Court, or, at the option of the applicant, a court of Resident Magistrate or of a magistrate of the first grade. If owing to special circumstances, an application appears to the magistrate to more fit to be dealt with by the High Court, the magistrate may refuse to make an order.

*Sources:* Adoption of Children Act, Art. 9; Adoption of Children (Subordinate Courts) Rules, Rule 16; U.S.

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**ADOPTION EFFECTS**

Upon an adoption, all rights, duties, obligations and liabilities of the parent, guardian, in relation to the child's future custody, maintenance and education, shall be extinguished; and all the latter shall vest in and be exercisable by and enforceable against the adopter, as though the adopted child was a child born to the adopter in lawful wedlock.

*Source: Adoption of Children Act, Art. 6.*

**POST-ADOPTION FOLLOW-UP**

No legal provision. According to the U.S. Department of State, '[t]here are no post-adoption reporting requirements for Malawi'.

*Source: U.S. Department of State.*

**SEARCH OF ORIGINS**

The Registrar General of Births and Deaths shall establish and maintain a register to be called the Adopted Children Register. Every adoption order shall contain a direction to the Registrar General to make in the Adopted Children Register an entry recording the adoption.

Every person shall be entitled to search the index and to have a certified copy of any entry in the Adopted Children Register in all respects upon.

*Source: Adoption of Children Act, Art. 12.*

**ADOPTION ACCREDITED BODIES (AAB)**

No legal provision. According to the U.S. Department of State, 'there are no adoption agencies in Malawi'.

*Source: U.S. Department of State.*

**SANCTIONS IN CASE OF IRREGULARITIES**

It shall not be lawful for any adopter or for any parent or guardian – except with the sanction of the court – to receive any payment or other reward in consideration of the adoption or any adoptee or for any person to make or give or agree to make or give to any adopter or to any parent or guardian any such payment or reward.

*Source: Adoption of Children Act, Art. 10.*

**ADOPTION COSTS**

The magistrate may make such orders as to costs as he shall think fit, and may direct that all the costs of a petition shall be borne and paid by the petitioner.

*Source: Adoption of Children (Subordinate Courts) Rules, Rule 19 (similar provisions appear in the Adoption of Children (High Court) Rules).*

**STATISTICS**

According to the U.S. Department of State, there were 10 intercountry adoptions from Malawi to the U.S.A. in 2013.

*Source: U.S. Department of State.*

## Comments of the ISS/IRC

As may be observed above, there is limited information available about – domestic and intercountry – adoptions in Malawi in terms of procedures and disaggregated statistics. Existing legal provisions are not only outdated, but do not provide adequate safeguards for the adoptee, his biological family and his adoptive family. Indeed, key stages of the adoption procedure do not benefit from a legal framework, including a comprehensive assessment of the child's adoptability, no established professional and multidisciplinary matching process, no preparation of the adoptee for his adoption, no post-adoption follow-up or support, or provisions relating to the adoption costs and the involvement of adoption agencies. In addition, there appears to be some confusion as to the principle of subsidiarity, given that the possibility to undertake intercountry adoptions – and in which circumstances – remains very unclear and uncertain. Thus, these aspects and concerns must be urgently addressed within the context of the ongoing legal reform of adoption-related legislation.

There is also a lack of information about the adoption authority, such as whether it is adequately resourced and functioning well. It is therefore important that an overhaul of the adoption laws and policies is developed to provide another option to institutional care that is compliant with relevant international principles and standards. Given this





context, it can be stated that the current legislation in this regard is not only outdated but does not fully comply with the principles and standards enshrined in the HC-1993. Its review and reform must take place prior to the country's accession to the Convention – which is advisable and would, of course, be welcome – once the country has implemented the necessary measures and is ready to fully assume its role and responsibilities under the latter.

Thus, the passing of the Adoption of Children (Amendment) Bill, which is pending, or any other piece of legislation that would ensure that Malawi's adoption-related legislation is fully in line with the HC-1993, is a pressing issue. The latter should occur in parallel to the development of comprehensive standards and guidelines for the operation of the Central and competent authorities and other bodies that would be appointed or authorised to act in the implementation of the Convention. This would be an essential action along the path towards Malawi's accession to the HC-1993.

## LEGISLATION

### A. International Instruments

INTERNATIONAL INSTRUMENTS	Signature (S) / Ratification (R) / Accession (A) / In Force (F)	Website
United Nations Convention on the Rights of the Child (1989)	2 January 1991 (A)	<a href="http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&amp;mtdg_no=IV-11&amp;chapter=4&amp;lang=en">http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&amp;mtdg_no=IV-11&amp;chapter=4&amp;lang=en</a>
Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (2000)	7 October 2009 (R) 7 September 2000 (S)	<a href="http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&amp;mtdg_no=IV-11-c&amp;chapter=4&amp;lang=en">http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&amp;mtdg_no=IV-11-c&amp;chapter=4&amp;lang=en</a>
Hague Convention on Protection of Children and Co-operation in respect of Inter-country Adoption (1993)	-	<a href="http://www.hcch.net/index_en.php?act=conventions.status&amp;cid=69">http://www.hcch.net/index_en.php?act=conventions.status&amp;cid=69</a>
Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children (1996)	-	<a href="http://www.hcch.net/index_en.php?act=conventions.status&amp;cid=70">http://www.hcch.net/index_en.php?act=conventions.status&amp;cid=70</a>

### B. Regional instruments

REGIONAL INSTRUMENTS	Signature (F) / Ratification (R) / Accession (A) / In Force (F)	Website
African Charter on the Rights and Welfare of the Child (1990)	16 September 1999 (R) 13 July 1999 (S)	<a href="http://au.int/en/sites/default/files/treaties/7773-sl-welfare_of_the_child_0.pdf">http://au.int/en/sites/default/files/treaties/7773-sl-welfare_of_the_child_0.pdf</a>

### C. Domestic legislation



LAW/REGULATIONS	Website
<b>Child Care, Protection and Justice Act, 2010</b>	<a href="http://www.malawilii.org/files/mw/legislation/act/2010/22/the_20child_20care_20protection_20justice_20act_1__17685.doc">http://www.malawilii.org/files/mw/legislation/act/2010/22/the_20child_20care_20protection_20justice_20act_1__17685.doc</a>
<b>Guidelines for the care of orphans and other vulnerable children, 2005</b>	-
<b>Minimum Standard Rules and Regulations for the Establishment and Management of Children's Homes and Orphanages in Malawi</b>	-
<b>Adoption and Children Act, Laws of Malawi, Chapter 26:01, together with the Adoption of Children (Subordinate Courts) Rules and the Adoption of Children (High Court) Rules, 1949 and subsequently amended</b>	Available at the ISS/IRC.

## ACTORS

### Ministry of Gender, Child and Community Development

Gemini House, City Centre, Private Bag 330, Lilongwe 3, Malawi

Tel: +265 1 770 411 / 736

Fax: +265 1 770 826 / 774 105

E-mail: [gender@malawi.gov.mw](mailto:gender@malawi.gov.mw)

Source: U.S. Department of State.

## APPENDICES

### A. Documents in the framework of the Committee on the Rights of the Child

#### Convention on the Rights of the Child

- Third and Fourth Periodic Report: Malawi, CRC/C/MWI/3-5, 23 February 2015
- Concluding Observations of the Committee on the Rights of the Child: Malawi, CRC/C/MWI/CO/2, 26 March 2009
- Second Periodic Report: Malawi, CRC/C/MWI/2, 17 July 2008
- Reply to List of issues, CRC/C/MWI/Q/2/Add.1, 9 July 2009

#### Optional Protocol to the Convention on the Rights of the Child on the sale of children child prostitution and child pornography

- First Periodic Report: Malawi, CRC/C/OPSC/MWI/1, 23 February 2015

**Source:** Committee on the Rights of the Child – including documents related to former sessions of the Committee: [http://tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=MWI&Lang=EN](http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=MWI&Lang=EN).

### B. Alternative reports in the framework of the Committee on the Rights of the Child



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irc-cir@iss-ssi.org ■ [www.iss-ssi.org](http://www.iss-ssi.org)

## Convention on the Rights of the Child

- Alternative Report on the Child Rights Convention – Malawi, Human Rights Consultative Committee, 2008, [http://www.crin.org/docs/Malawi\\_HRCC\\_NGO\\_Report.doc](http://www.crin.org/docs/Malawi_HRCC_NGO_Report.doc)
- Recommendations to the UN Committee on the Rights of the Child – Malawi, Child Helpline International, 2008, [http://www.crin.org/docs/Malawi\\_CHI\\_NGO\\_Report.doc](http://www.crin.org/docs/Malawi_CHI_NGO_Report.doc)

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**Source:** Child Rights International Network (CRIN) – ‘Library’ – ‘Advanced search’ – Enter ‘Alternative report’ and ‘Malawi’: <http://www.crin.org>.

## C. Other sources of information

### ❖ UNICEF Malawi

<http://www.unicef.org/malawi/>  
Information on the situation of children in the country.

### ❖ U.S. Department of State (U.S.A.)

<http://travel.state.gov/content/adoptionsabroad/en/country-information/learn-about-a-country/malawi.html>  
Information on the intercountry adoption procedure in the country.

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