



REPUBLIC OF MALAWI

## **INITIAL REPORT**

# **PURSUANT TO ARTICLE 43 OF THE AFRICAN CHARTER ON THE RIGHTS AND WELFARE OF THE CHILD**

DECEMBER 2014

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## PURSUANT TO ARTICLE 43 OF THE AFRICAN CHARTER ON THE RIGHTS AND WELFARE OF THE CHILD

### **Introduction**

This report is submitted in line with Article 43 of the Charter on the Rights and Welfare of the Child.

### ***Article 1: Obligation of States Parties***

- 1. Member States of the Organization of African Unity Parties to the present Charter shall recognize the rights, freedoms and duties enshrined in this Charter and shall undertake the necessary steps, in accordance with their Constitutional processes and with the provisions of the present Charter, to adopt such legislative or other measures as may be necessary to give effect to the provisions of this Charter.*
- 2. Nothing in this Charter shall affect any provisions that are more conducive to the realization of the rights and welfare of the child contained in the law of a State Party or in any other international Convention or agreement in force in that State.*
- 3. Any custom, tradition, cultural or religious practice that is inconsistent with the rights, duties and obligations contained in the present Charter shall to the extent of such inconsistency be discouraged.*

1. Malawi signed the African Charter on the Rights and Welfare of the Child (ACRWC) in 1999 5 years after adopting a new Constitution in 1994. While the obligation to recognize the rights, freedoms and duties enshrined in the ACRWC are post-dated to the Constitution, the Constitution has recognized, as supreme law of the land, some of the rights, freedoms and duties set forth in the ACRWC.
2. The Constitution recognizes the rights of children in two ways, first as a matter of national policy and secondly as a matter of enforceable and binding rights. Principles of National Policy under the Constitution are directory in nature but the courts are entitled to have regard to them in interpreting and applying the Constitution or any other law or in determining the validity of decisions of the Executive branch of Government.
3. With respect to children, the Constitution in section 13 (h) obliges the State to promote the welfare and development of Malawians by progressively adopting and implementing policies and legislation aimed at encouraging and promoting conditions conducive to the full development of healthy, productive and responsible members of society.

4. Under section 23 of the Constitution, provision for rights of children is made as follows:

*“(1) All children, regardless of the circumstances of their birth, are entitled to equal treatment before the law, and the best interests and welfare of children shall be a primary consideration in all decisions affecting them.*

*(2) All children shall have the right to a given name and a family name and the right to a nationality.*

*(3) Children have the right to know, and to be raised by, their parents.*

*(4) All children shall be entitled to reasonable maintenance from their parents, whether such parents are married, unmarried or divorced, and from their guardians; and, in addition, all children, and particularly orphans, children with disabilities and other children in situations of disadvantage shall be entitled to live in safety and security and, where appropriate, to State assistance.*

*(5) Children are entitled to be protected from economic exploitation or any treatment, work or punishment that is, or is likely to—*

*(a) be hazardous;*

*(b) interfere with their education; or*

*(c) be harmful to their health or to their physical, mental or spiritual or social development.”*

5. A child is defined as a person below the age of 16 years. Section 23 has been significantly improved since its enactment in 1994. The current provision covers issues of equality of children and has also introduced the principle of the best interests of the child as the primary consideration in all decisions that affect children.

6. Section 23 also provides for matters of identity for children and the right of a child to know and be raised by his or her parent.

7. Section 23 (4) has been extensively revised and now provides for reasonable maintenance of children by their parents and guardians. The State, under the same provision, has been obligated to provide safety and security and, where appropriate, assistance, to all children, especially orphans, children with disabilities and other children in situations of disadvantage.

8. Children are under the Constitution entitled to protection from economic exploitation or treatment, work or punishment that is or is likely to be hazardous, interfere with their education or be harmful to their health or physical, mental, spiritual or social development.
9. One of the most glaring challenges under the constitutional protection of children is the age of the child which is fixed to the provisions of section 23 only. It remains a challenge therefore for the State to offer protection to the girl child who in section 22 of the Constitution is allowed to marry and found a family. An attempt to revise the age of marriage under section 22 from 15 years to 16 years in line with section 23 failed during the enactment of Bill No. 11 of 2010 [Constitution (Amendment) Act] as the President refused to assent to the provision when Parliament had enacted the change.
10. At the time of adopting there were several statutes in place to regulate matters affecting children and these include the Adoption of Children Act; the Children and Young Persons Act; the Births and Deaths Registration Act; the Maintenance Orders (Enforcement) Act; the Affiliation Act; and the Penal Code. The current status of these laws is that the Adoption of Children Act is currently undergoing review by the Law Commission while the Children and Young Persons Act was repealed by the Child Care, Protection and Justice Act (CCPJA) of 2010 which is currently in force. The Births and Deaths Registration Act was repealed by the National Registration Act of 1999 while the Maintenance Orders (Enforcement) Act and the Affiliation Act were also repealed by the CCPJA.
11. The CCPJA is the most comprehensive statute on child rights and has also embraced the principle of the best interests of the child. While borne of the review process of the Children and young Persons Act which primarily provided for child justice, the CCPJA provides for care and protection of children.
12. In 2006, Parliament passed the Prevention of Domestic Violence Act (PDVA) which provides for mechanisms of preventing and punishing acts of domestic violence. The PDVA provides for special protection of children undergoing violence within the domestic relationship and is also undergoing review by the Law Commission.

13. In December, 2008, the Law Commission concluded the development of legislation on the prevention and management of HIV and AIDS. Among other things, the proposed legislation provides for access of persons over the age of 13 years to Voluntary Counselling and Testing for HIV infection without involving a parent or guardian while parents and guardians of children below the age of 14 years are entitled to, if employed, to leave on full pay for the first 4 weeks and leave on half pay for the next 4 weeks. The Bill has not been passed yet and the Department of Nutrition, HIV and AIDs under the Office of the President and Cabinet is working towards the enactment of the Bill by introducing it to Cabinet for approval.
14. In 2010, Parliament also passed the Penal Code (Amendment) Act which among other things has notably revised the age of consent to sexual intercourse for a girl from 13 years to 16 years. This means that a girl below the age of 16 years is incapable of consenting to sexual intercourse and any person having sexual intercourse with such a person commits the offence of Defilement which is punishable with imprisonment for life.
15. The Penal Code also provides for offences relating to kidnapping and abduction of children below the age of 16 years. The Penal Code also has made provision for offences related to infanticide; killing unborn children; concealing the birth of children. The punishments for these offences are life imprisonment for the first two and 2 years for the last offence.
16. The Penal Code also places a duty on persons with responsibility over others (including children) and heads of families over children under 14 years. Under section 219 of the Penal Code, the head of family is liable to have caused any consequences which result to the life or health of the child by reason of omission to perform the duty whether the child is helpless or not.
17. Any master or mistress contracted to provide necessary food, clothing or lodging for a servant or apprentice under the age of 16 years shall perform such duty failing which he or she is responsible for any consequences which result to the life or health of the servant or apprentice by reason of omission to perform the duty.

18. In 2011, the Law Commission concluded the development of legislation on Trafficking in Persons which seeks to especially protect women and children from a form of modern day slavery termed “human trafficking’. The Trafficking in Persons Bill seeks to provide among other things for protection of victims and witnesses of human trafficking, especially children by punishing the demand side of human trafficking.
19. In 2012, the Disability Act was passed into law, which comprehensively provides for rights of persons with disabilities
20. In 2013, the National Assembly passed the Gender Equality Act which among other things, seeks to prohibit commission of, engagement in, subjecting another person to or encouraging commission of a harmful practice. A harmful practice is a cultural, customary, traditional, social or religious practice that discriminates against a person purely on account of the victim’s sex, gender or marital status.

#### *Article 2: Definition of a Child*

*For the purposes of this Charter, a child means every human being below the age of 18 years.*

21. The ACRWC defines a child as a person who is below the age of 18 years. In the Constitution, there is no broad definition of a child. The provision where a child is defined remains section 23, where a child is defined only for purposes of that section. Under the Constitutional Amendment Act of 2010, section 23 provides as follows:

*“(6) For purposes of this section, children shall be persons under the age of sixteen years.”*

22. It must be noted that section 23 of the Constitution falls within the Scheduled provisions of the Constitution which need a more rigorous process for amendment. The 2010 amendments were a result of a Technical Review of the Constitution concluded in 1998 by the Law Commission. Clearly, at Constitutional level, there is variance with the ACRWC which can only be concluded if the rigorous process is undertaken.
23. A number of law reform processes have sought to propose the age of a child in line with the ACRWC. The major reform programme on child rights concluded in 2006 and its recommendations were enacted under the Child Care, Protection and Justice Act (Act No. 22 of 2010). The Child Care, Protection and Justice Act provides that the age of a child is



below 16 years just like in the Constitution. This was in contrast with the proposal made by the Law Commission to define a child per ACRWC.

24. The Law Commission also reviewed the Penal Code and produced its findings in 2000. The Commission recommended that the age of criminal responsibility should be raised from 7 years to 10 years. The proposal was considered by the National Assembly and enacted into law in 2010.
25. There are several legislative and non-legislative regimes governing marriage in Malawi. The Constitution remains unclear on the precise minimum age of marriage. The Constitution Amendment Act of 2010 has possibly brought light to this unsettled matter by providing unlike its predecessor, that the State shall “**actively**” discourage marriage between persons where either of them is under the age of 15 years. Previously, the Constitution used the word “actually”. While this proposal is commendable and justifies State action in this regard, it still falls short of an outright prohibition. Under the Constitution, it still remains legal to enter into marriage at the attainment of the age between 15 and 18 years as long as consent of parents or guardians is obtained.
26. The proposed Marriage, Divorce and Family Relations Bill raises the minimum age for marriage to 18 years. This recommendation has not been enacted into legislation and is likely to create a conflict between a marriage that is constitutionally compliant (because one or both parties are above the age of 15 years) and a law that nullifies that marriage as illegal.
27. Already under the current provisions of the Constitution, it is anomalous that a person who is capable of contracting a marriage under section 22 of the Constitution is defined as a child under section 23. A proposal to rectify this anomaly was defeated in 2010 when the President refused to assent into law the provision which raised the age of marriage from 15 years to 16 years under section 22.
28. The Penal Code Amendment Act complements the provisions of section 23 of the Constitution by raising the age of sexual debut from 13 years to 16 years. Any person having carnal knowledge of a girl below the age of 16 years commits the offence of “Defilement” and is liable to life imprisonment. Technically, this means that there is need for an exemption under section 22 of the Constitution prohibiting prosecution of a person who has sexual

intercourse with a wife of 15 years who under the Penal Code cannot consent to sexual intercourse.

29. Labour legislation is guided by the principal legislation, the Employment Act. The Employment Act regulates employment of young persons under Part IV where it expressly prohibits employment of persons under the age of 14 years in any public or private agricultural, industrial or non-industrial undertaking or any branch thereof. This prohibition does not apply to domestic chores or vocational and training institutions provided that the work in vocational or training institutions is approved and supervised by a public authority; and is an integral part of the educational or vocational training programme.
30. The Employment Act also prohibits a person between the age of 14 and 18 years from undertaking hazardous work. Hazardous work has been defined as an occupation or activity that is likely to be harmful to health, safety, education, morals or development of such a person; or prejudicial to the attendance at school or other training programme.
31. Every employer of a person below the age of 18 years of bound by law to keep a register of such employees.
32. A person contravening the prohibition regarding employment of young persons may be punished by a fine of K100,000 and imprisonment for 5 years.

### ***Article 3: Non-Discrimination***

*Every child shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in this Charter irrespective of the child's or his/ her parents' or legal guardians' race, ethnic group, colour, sex, language, religion, political or other opinion, national and social origin, fortune, birth or other status.*

### ***Article 26: Protection Against Apartheid and Discrimination***

*1. States Parties to the present Charter shall individually and collectively undertake to accord the highest priority to the special needs of children living under Apartheid and in States subject to military destabilization by the Apartheid regime.*

*2. States Parties to the present Charter shall individually and collectively undertake to accord the highest priority to the special needs of children living under regimes practising racial, ethnic, religious or other forms of discrimination as well as in States subject to military destabilization.*

*3. States Parties shall undertake to provide whenever possible, material assistance to such children and to direct their efforts towards the elimination of all forms of discrimination and Apartheid on the African Continent.*

33. The main prohibition of discrimination in the Constitution is provided for under section 20. Section 20 has listed a number of grounds under which discrimination is prohibited including “race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, disability, property, birth or other status or condition”. More importantly, section 20 (2) provides for enactment of legislation that addresses inequalities in society and prohibits discriminatory practices and the propagation of such practices. It also provides that such practices may render such practices criminally punishable.
34. With respect to children, the Constitution in section 23 provides that all children are entitled to equal treatment before the law regardless of the circumstances of their birth. Section 23 of the Constitution constantly uses the term “all children” notwithstanding that in other instances, the term “children” is used.
35. In order to ensure that other legislation conforms to the Constitutional provision against discrimination, the Child Care, Protection and Justice Act provides for, as a duty and responsibility by the parents or guardians, protection from discrimination. Several pieces of legislation also provide for prohibitions against discrimination. Already enacted are the Disability Act and the Gender Equality Act.
36. The Gender Equality Act prohibits the practice of what have been termed harmful practices on account of gender, sex or marital status. The practices may be customary, traditional, religious or social in nature. The Gender Equality Act also prohibits sex discrimination and sexual harassment. Contravention of the provisions making these prohibitions is punishable by criminal sanctions.
37. The proposed Trafficking in persons Bill is based on the United Nations Convention against Transnational Organized Crime whose Protocol on preventing and suppressing trafficking in persons, specially identifies women and children. In the proposed Bill, children are persons under the age of 18 years.

#### ***Article 4: Best Interests of the Child***

*1. In all actions concerning the child undertaken by any person or authority the best interests of the child shall be the primary consideration.*

*2. In all judicial or administrative proceedings affecting a child who is capable of communicating his/her own views, and opportunity shall be provided for the views of the child to be heard either directly or through an impartial representative as a party to the proceedings, and those views shall be taken into consideration by the relevant authority in accordance with the provisions of appropriate law.*

38. In 2010, two major statutes were passed: the Constitution Amendment Act and the Child Care, Protection and Justice Act. The statutes heralded a new era in child protection for the former amended section 23 of the Constitution to recognize at constitutional level, the principle of the best interests of the child. In the Child Care, Protection and Justice Act, the principle was given legislative effect.

39. In the language of the Constitution in section 23, ‘the best interests and welfare of children shall be the primary consideration in all decisions affecting [children]’.

40. The Child Care, Protection and Justice Act has given instances, by way of example, when the principle may be invoked in favour of children. One example is when a Child Justice Court considers making an order of custody or access to a child.

41. The principle has already found its place in Malawian jurisprudence when the famous case of adoption of Chifundo James went as far as the Supreme Court of Appeal. On 3<sup>rd</sup> April, 2009, the High Court rejected an application for the adoption of the infant CJ. In declining the application, the court had recourse to Article 3 (1) of the CRC and Article 4 of the ACRWC and qualified the principle on the understanding that inter-country adoption is a remedy of last resort.

42. When the matter went to the appellate court, the Supreme Court read the principle differently. In their judgment, pronounced on 12<sup>th</sup> June, 2009, the Justices of Appeal allowed the Petitioner’s appeal and granted the adoption order. While both judgments pre-date the 2010 amendments, a bone of contention also arose as to whether the principle was applicable in Malawi since it did not have constitutional or legislative effect. The Supreme Court found that as a signatory to the CRC and ACRWC, the principle had local application and stated as follows:

*“In our Judgment, we think that whether you talk about the best interest of the child as is the case in the above cited Conventions or you talk about the welfare of the child as is contained in the Act, this really is a question of semantics or nomenclature. They mean the same thing, and it is this; a court of law dealing with the adoption of an infant must pay attention at all times that the welfare of the child is not compromised by secondary issues. We therefore find that there is absolutely no conflict between what the Act provides and what Articles 3, 20 and 21 of the CRC provide. The provisions deal at some length with matters that can only be said to be for the welfare of the child which our courts are mandated to protect under the Act.”*

### ***Article 5: Survival and Development***

- 1. Every child has an inherent right to life. This right shall be protected by law.*
- 2. States Parties to the present Charter shall ensure, to the maximum extent possible, the survival, protection and development of the child.*
- 3. Death sentence shall not be pronounced for crimes committed by children.*

43. Life and development are recognized as specific rights under the Constitution. The latter has especially isolated women, children and people with disability as entitled to special consideration in the application of the right to development. the detail of the right to development is that in order to realize it, there is need for equality of opportunity for all in accessing basic resources, education, health services, food, shelter, employment and infrastructure. The right to life is granted indiscriminately.

44. In order to entrench the rights to survival and development, the Constitution provides for the child right to know and be raised by parents. Survival and development may also be attained by accessing maintenance regardless of the circumstances of the child’s parents.

45. Early childhood mortality rates for the five years immediately preceding the survey (2005-2010), the infant mortality rate is 66 deaths per 1,000 live births. The estimate of child mortality (age 12 months to 4 years) is 50 deaths per 1,000 live births, while the overall under-5 mortality rate for the same period is 112 deaths per 1,000 live births. The neonatal mortality rate is 31 deaths per 1,000 live births. The post-neonatal mortality rate is 35 deaths per 1,000 live births. An examination of mortality levels across the three successive five-year periods shows that under-5 mortality rates have declined from 180 deaths per 1,000 live births during the late 1900s (circa 1995-2000) to 112 deaths per 1,000 live births in the late part of this decade (2005-2010). Most of the decrease in mortality occurred outside of the

neonatal and post-neonatal periods. Infant mortality decreased from 92 deaths per 1,000 live births to 66 deaths per 1,000 live births in the same period.

46. The CCPJA provides for care within the family environment and under alternative care. In line with the constitutional requirement for provision for children under what may broadly be described as special circumstances and the constitutional prohibition of any form of exploitation that may affect a child's development, the CCPJA provides for care within the family; children in need of care and protection; guardianship; fosterage; support for children by local authorities; and protection of children from undesirable practices.
47. In order to deal with child development for children in conflict with the law, the CCPJA provides for measures of dealing with children. The measures include modes of bringing a child before a court or other inquiry, including pronouncing a finding against a child, non-effect of a finding against a child, mode of and guidelines on arresting a child; detention before a finding is made; preliminary inquiry; and diversion. The law also provides for Reformatory Centres and Safety Homes.

#### ***Article 6: Name and Nationality***

- 1. Every child shall have the right from his birth to a name.*
- 2. Every child shall be registered immediately after birth.*
- 3. Every child has the right to acquire a nationality.*
- 4. States Parties to the present Charter shall undertake to ensure that their Constitutional legislation recognize the principles according to which a child shall acquire the nationality of the State in the territory of which he has been born if, at the time of the child's birth, he is not granted nationality by any other State in accordance with its laws.*

48. The oldest statute regulating registration of birth is the Births and Deaths Registration Act of 1904. For every child born after the commencement of the Act, registration of that child's birth was compulsory within 3 months of the birth of the child. This was completed by means of completing a Birth Report. The duty to register birth fell on the father, mother, or in default, the occupier of the house in which to his or her knowledge, the child is born or each person present at birth and of the person having charge of the child.

49. In case of an illegitimate child, a person was not bound to be registered as a father of an illegitimate child except at his own request and upon acknowledging himself to be the father of the child and signing the Birth Report.
50. The Births and Deaths Registration Act was repealed by the National Registration Act (NRA) of 2010. The NRA mandates the Government to establish a National Registration System that records births, deaths and marriages. The marriages could be at village, traditional authority, district or national levels. The Register is expected to contain such data as sex, date of birth, parent's names and marital status. Registration is for every person who is 16 years of age or older and is a citizen, permanent resident, holds a temporary permit or a business residence permit.
51. The NRA requires a father or mother to register a birth within 6 weeks. If a child is born out of wedlock, the father is not required to register the birth or to be registered as the child's parent unless he voluntarily assents and the mother agrees or his fatherhood has been proved in court.
52. In the absence of the parents, the head of the household in which the child is born, anyone present at the time the child is born or anyone in charge of the child is bound to register the birth. The NRA also makes provision for a Register of Adopted Children in which an order of adoption is recorded.
53. Those registering a birth after 6 weeks will incur a fine. Failure to register a birth attracts a fine of up to K1,000,000 and 5 years imprisonment. Providing false information or illegally using someone else's identity is an offence that is similarly punished.
54. The NRA compliments the Constitution which provides that all children have the right to a given name and a family name and the right to a nationality. Under the same provision, children also have the right to know and to be raised by their parents.

#### ***Article 7: Freedom of Expression***

*Every child who is capable of communicating his or her own views shall be assured the rights to express his opinions freely in all matters and to disseminate his opinions subject to such restrictions as are prescribed by laws.*

55. The proposals by the Ministry of Gender to include an explicit provision entitling a child to know decisions affecting him or her; to express an opinion, and have that opinion taken into account, taking in to consideration the age and maturity of the child and the nature of the decision, was not included in the proposed amendments in 2007.
56. The CCPJA provides that when making an order for custody or access of a child, the Child Justice Court shall consider the views of the child. When making arrangements for fosterage, a report made in the course of the arrangements shall also include the views and feelings of the child concerning placement and where there are any problems. There is no specification that the views and feelings shall be taken into consideration beyond this provision.
57. Neither the Constitution nor the CCPJA provide explicitly for freedom of expression of children. The provision for freedom of expression is made in general terms for all persons under the Constitution where it is provided that “Every **person** shall have the right to freedom of expression”. It remains unclear whether this provision is not sufficient to cover children when it comes to enjoyment of this right.
58. The limitation prescribed under this Article are broadly covered by legislation and case law regarding protection of other people’s reputation and national security, public order, public health or morals. These restrictions must be understood in light of the provisions regarding criminal responsibility which place the minimum age of criminal responsibility at 10 years.

***Article 8: Freedom of Association***

*Every child shall have the right to free association and freedom of peaceful assembly in conformity with the law.*

***Article 9: Freedom of Thought, Conscience and Religion***

- 1. Every child shall have the right to freedom of thought conscience and religion.*
- 2. Parents, and where applicable, legal guardians shall have a duty to provide guidance and direction in the exercise of these rights having regard to the evolving capacities and best interests of the child.*
- 3. States Parties shall respect the duty of parents and where applicable, legal guardians to provide guidance and direction in the enjoyment of these rights subject to the national laws and policies.*

***Article 10: Protection of Privacy***

*No child shall be subject to arbitrary or unlawful interference with his privacy, family home or correspondence, or to the attacks upon his honour or reputation, provided that parents or legal guardians shall have the right to exercise reasonable supervision over the conduct of their children. The child has the right to the protection of the law against such interference or attacks.*



59. There is general consensus that the rights captured under these Articles are sufficiently covered by the broad provisions of the Constitution. The Commission that developed the CCPJA indicates that upon consideration of the provisions of the Constitution, the Commission was convinced that there was no need for specific legislation covering what had already and sufficiently covered.
60. The emerging challenge regarding the rights have arisen with respect to the potential and actual conflict between religion and public health regarding the refusal of some parents to have children vaccinated or treated medically on account of religious beliefs.

### ***Article 11: Education***

1. *Every child shall have the right to an education.*

2. *The education of the child shall be directed to:*

*(a) the promotion and development of the child's personality, talents and mental and physical abilities to their fullest potential;*

*(b) fostering respect for human rights and fundamental freedoms with particular reference to those set out in the provisions of various African instruments on human and peoples' rights and international human rights declarations and conventions;*

*(c) the preservation and strengthening of positive African morals, traditional values and cultures;*

*(d) the preparation of the child for responsible life in a free society, in the spirit of understanding tolerance, dialogue, mutual respect and friendship among all peoples ethnic, tribal and religious groups;*

*(e) the preservation of national independence and territorial integrity;*

*(f) the promotion and achievements of African Unity and Solidarity;*

*(g) the development of respect for the environment and natural resources;*

*(h) the promotion of the child's understanding of primary health care.*

3. *States Parties to the present Charter shall take all appropriate measures with a view to achieving the full realization of this right and shall in particular:*

*(a) provide free and compulsory basic education;*

*(b) encourage the development of secondary education in its different forms and to progressively make it free and accessible to all;*

*(c) make the higher education accessible to all on the basis of capacity and ability by every appropriate means;*

*(d) take measures to encourage regular attendance at schools and the reduction of drop-out rates;*

*(e) take special measures in respect of female, gifted and disadvantaged children, to ensure equal access to education for all sections of the community.*

*4. States Parties to the present Charter shall respect the rights and duties of parents, and where applicable, of legal guardians to choose for their children's schools, other than those established by public authorities, which conform to such minimum standards may be approved by the State, to ensure the religious and moral education of the child in a manner with the evolving capacities of the child.*

*5. States Parties to the present Charter shall take all appropriate measures to ensure that a child who is subjected to schools or parental discipline shall be treated with humanity and with respect for the inherent dignity of the child and in conformity with the present Charter.*

*6. States Parties to the present Charter shall have all appropriate measures to ensure that children who become pregnant before completing their education shall have an opportunity to continue with their education on the basis of their individual ability.*

*7. No part of this Article shall be construed as to interfere with the liberty of individuals and bodies to establish and direct educational institutions subject to the observance of the principles set out in paragraph I of this Article and the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the States.*

61. There are several statutes that provide for education. The Constitution guarantees education as a human right and, as a matter of national policy. Progressively, Malawi is expected to provide adequate resources to the education sector and devise programmes in order to eliminate illiteracy in Malawi; make primary education compulsory and free to all citizens of Malawi; offer greater access to higher learning and continuing education; and (iv) promote national goals such as unity and the elimination of political, religious, racial and ethnic intolerance. As a right, the Constitution provides for entitlement to education for all and spells out primary education as consisting of at least 5 years of education. The Constitution also permits the conditional establishment of private schools and institutions of higher learning.

62. Other than the Constitution, the main legislation are the Education Act; the University of Malawi Act; Mzuzu University Act; and Malawi National Examinations Board Act.

63. The Education Sector divides education into the following categories and priority areas:

(a) Basic education:

(i) Early Childhood Development (ECD);

- (ii) Adult literacy;
  - (iii) Out of school youths; and
  - (iv) Primary education;
- (b) Secondary education;
  - (c) Teacher education;
  - (d) Technical and Vocational Training;
  - (e) Higher Education.
64. ECD is considered as an important pillar in attaining the goals of Education for All. Malawi has 6,277 ECD Centres registered as pre-schools. The attendance in these centres for the targeted pre-school children is at 30% with most concentrated in urban and semi-urban areas.
65. ECD is fraught with a number of challenges which includes lack of a systematic monitoring and evaluation system; poor conditions of ECD centres due to lack of support and poor coordination of stakeholders; lack of integration of special needs in ECD provision; poor advocacy for information on importance of ECD; lack of parental and community involvement in ECD provision; acute shortage of trained teachers in ECD; lack of standard instructional materials; and insufficient public funding towards ECD activities.
66. Government intends to tackle issues of access and equity in ECD provision and further improve quality and relevance of ECD in Malawi. By developing a database for ECD, promoting the profile of ECD and developing ECD legislation, government hopes to improve governance and management issues. It is also hoped that at least 80% of up to 5 years will access ECD by 2017 with an average growth at 17.5%.
67. The increase coverage of ECD services will be based on the current basis of 84% CBCCs, 4% day care centres and 12% pre-schools. Each ECD centre will increase the number of minimum classes from two to three in order to curb underage enrolment and prepare five year olds for entry into standard one (primary education) at an appropriate age of six years. Thus, three classrooms will still be levels 1 and 2 although level 2 will have separate classes for ages 4 and 5 with a relatively modified syllabus/course content. Communities, as Community Based Care Centres (CBCC), will be encouraged to establish ECD centres through grants which will be accessible upon meeting minimum standards. Each education

district will have an ECD resource centre to offer the necessary services to CBCCs. By 2018, the average care giver to child ratio will be 1:20 and the helper to child ratio will be 1:40.

68. The Ministry of Youth Development and Sports and NGOs are currently at the centre of provision of non-formal basic education targeted at out of school (OOS) youths. OOS youth comprise youths who dropped out of school and those who never attended school at all. The equivalent of the programme is the first 5 years of primary education. The Ministry of Education has piloted the implementation of Complementary Basic Education in 4 districts in Malawi which aims at providing essential knowledge, skills and values to promote self-reliance, encourage lifelong learning and full participation in societal development.
69. The main challenges in this regard are lack of advocacy on the subject; limited alternative approaches to OOS youth education; absence of a relevant curriculum for out of youth clubs; poor access for children with special needs; and weak linkages among youth clubs and between youth service providers or policy makers.
70. In order to curb these challenges, Government plans to increase access to OOS through Interactive Radio Instructions (IRI), Complementary Basic Education (CBE) and open and distance learning. Government shall also integrate community based rehabilitation programmes run with special needs components; and provide alternative forms of education such as IRI and CBE. By developing a relevant curriculum and improving service delivery, Government hopes to deal with issues of quality and relevance. Government also intends to improve governance and management of OOS youth education by strengthening dialogue among youth clubs and between the youth service providers or policy makers.
71. Government established 15 learning centres in 3 districts of Ntchisi, Chikhwawa and Lilongwe Rural in the 2007/08 school year. It intends to increase the number to 500 annually with a target of an increase of 600 centres from 2012/13 school year.
72. In terms of Primary education as the longest existing structure under basic education, Government encounters many challenges. The following challenges are among the major ones: shortage of qualified primary school teachers; poor strategic management of teachers;

inadequate and inferior physical infrastructure; inadequate teaching and learning materials; poor monitoring and supervisory systems; poor access for children with special needs; poor retention of girls mainly from standards five to eight; negative impact of HIV/AIDS; and poor participation of school committees and their communities in school management (MGDS 2006:50).

73. In response to the challenges, Malawi is implementing a priority, fast-track programme to strengthen primary education, which will be the base for all other education developments. The programme combines policy measures, quality improvement and investments, through three sets of strategies listed below. Through policy and other measures, Malawi plans to give all children a quality primary education.
74. Government shall mobilise communities to participate in 'whole-school development' and management for both normal and special needs pupils. It shall also ensure appropriate decentralisation of delivery of education services which incorporates processes of planning, budgeting and financing, and monitoring and evaluation (M&E) while introducing policy measures to reduce the size of classes in Standards 1 and 2. There is a plan to reduce repetition, drop-out and enrolment of over- and under-age children, and to encourage promotion between standards, reinforce HIV and AIDS awareness, girls empowerment, safe schools (child friendly schools); and monitor performance and strengthen internal efficiency of sub-sector.
75. In addition to the fast-track programme, the following guiding principles are critical for the envisaged positive change in primary education between 2008 and 2018:
  - (a) Ratio of pupils to teachers progressing to a 1:60 ratio by 2013/14 and below 1:60 ratio by 2017/18;
  - (b) Percentage of teachers eligible for hardship fund increasing from 15% in 2008/09 to 30% by 2014/15 and staying at 30% thereafter;
  - (c) Transfer of teachers transferred from CDSSs to primary schools starts with 300 in 2008/09 and thereafter 200 teachers;
  - (d) Using Distance Education Teacher Trainees as a measure of reducing the pupil to teacher ratio to 1:60 by 2013/14. Starting with 4,000 temporary (voluntary) teachers in 2008/09;

- (e) Replenishment of textbooks for additional pupils in each Standard at the beginning of the plan and thereafter replenishment of textbooks every three years;
- (f) Giving 3 exercise books per subject per child for all standards, 1 slate per child in Standard 1, 3 pencils per child in a year for all children in Standards 1-4 and 3 pens per child in a year for all children in Standards 5-8;
- (g) The Primary Curriculum Assessment Review (PCAR) curriculum rolled out to all Standards by 2009/10 and taking into account special needs;
- (h) The Interactive Radio Instruction (IRI) programme rolled out to all schools starting with Standard 1 in 2007/08 and being completely rolled out to all Standards by 2014/15;
- (i) The Interactive Video Learning (IVL) programme rolled out to 50 schools in 2007/08 and increased to 50 more schools for each year;
- (j) Increasing the number of classrooms operating as double shift from 15.2% of the total in 2007/08, peaking at 20% in 2012/13 and ending with 15% in 2017/18;
- (k) The number of schools constructed will increase by 50 every year;
- (l) Number of classrooms to be constructed being 2,930 in 2007/08 and being reduced to 400 by 2017/18;
- (m) Provision of grants to communities to erect standard classroom shelters in difficult areas where it will not be possible to immediately build classrooms and follow up in later years to build the classrooms – more information to follow;
- (n) Teachers houses – 1,000 constructed every year from 2008/09 until the end of the NESP period in 2017/18;
- (o) Grants to schools for the support of orphans. Starting with the support of 20% of schools in 2009/10 to 100% of schools by 2013/14;
- (p) Support to girls in isolated areas for Standards 6, 7 and 8 in terms of monetary incentives starting in 2009/10;
- (q) Establishment of mother groups in all schools to support girl education in primary schools by 2017/18;
- (r) School feeding programmes to benefit 635,000 children from 2008/09 onwards;
- (s) School Health and Nutrition, including HIV/AIDS programmes, to be provided to all school children in public primary schools;
- (t) xx. Communities will be strengthened through monetary support and training throughout NESP period through the continued roll-out of the National Strategy for Community Participation; and

- (u) Direct grants to enable school based improvement planning and management thereby reinforcing decentralization.

76. For secondary education, Government encounters the following challenges:

- (a) inadequate access to secondary education with emphasis on special needs students, orphans and needy ones;
- (b) inadequate supply of qualified teachers, especially in Community Day Secondary Schools;
- (c) inadequate basic infrastructure and teaching and learning materials;
- (d) low funding to the secondary sub-sector, especially CDSS receiving less resources than government and grant secondary schools;
- (e) poor retention especially for girls due to long distance to school and unfavourable gender environment among others;
- (f) partial implementation of the curriculum which in turn affects negatively public examination administration and results;
- (g) poor learning achievement with only around 50% of students passing end-of-cycle examination;
- (h) inefficient use of existing resources such as infrastructure, time and staff;
- (i) negative impact of HIV/AIDS on teachers and students; and
- (j) lack of financial prudence, management and information systems thereby compromising standards.

77. In response to these challenges, Government intends to increase secondary school enrolment and mainly girls participation to at least 50%; attain improved throughput at Malawi School certificate of Education (O level) level from the current 38.6% in 2006 to at least 65%. Government sees teaching staff to student increased in community day Secondary Schools from 1:104 to 1:60. Overhead costs of secondary education shall also be reduced as a result of increased enrolment and reduced boarding subsidy.

78. For teacher education both at primary and secondary school level, Government shall increase the supply of teachers with a bias towards increased female throughput for both primary and secondary schools by at least 35% and mainstream special needs education in at least half of the teacher training colleges. Government shall also institutionalize In-Service Training (INSET)/Continuous Professional Development for Teachers in the education system and increase and rationalize use of teaching staff.

79. On Technical and Vocational Training, increased enrolment with a bias towards increasing the intake of females in non-traditional areas, reduction of overhead costs of running colleges, and rationalization of teaching staff in line with relevant training requirements remain a priority.
80. In Higher Education, Government intends to double enrolment, reduce overhead costs from 185 US dollars to 65 US dollars or below and increase and rationalize staffing levels with appropriate qualification from 20% to 75%.
81. The above undertakings shall be implemented under the Medium Term Expenditure Framework where Government will facilitate the implementation through formulation of the priority areas into programmes; monitor and evaluate the progress periodically; determine outcome indicators; assist districts to develop plans; and establish a development programme which will take care of capacity development.
82. Between the years 2007 and 2012, government projected growth in costs of the total annual public education programmes from 2007 and 2012 at 80%. The increase amount was pegged at MK23.7 billion, half of which was targeted towards recurrent spending which the remainder was slated for investment spending.
83. The 80% increase was attributed to building of new schools; new and rehabilitated classrooms and other facilities in existing schools; making grants for shelters for communities waiting for construction of classrooms; teaching staff accommodation in rural areas; teacher education; investment programmes for administration and other institutions; and university investment funding in recurrent grants under the operational budget.
84. The Basic Indicators for education include literate rates for the youth; pre-primary school participation; primary school participation; and secondary school participation. See Table 1 below:



Basic Indicators	
Youth (15-24 years) literacy rate (%) 2007-2011*, male	87
Youth (15-24 years) literacy rate (%) 2007-2011*, female	87
Number per 100 population 2011, mobile phones	25
Number per 100 population 2011, Internet users	3
Pre-primary school participation, Gross enrolment ratio (%) 2008 -2011*, male	-
Pre-primary school participation, Gross enrolment ratio (%) 2008 -2011*, female	-
Primary school participation, Gross enrolment ratio (%) 2008-2011*, male	133
Primary school participation, Gross enrolment ratio (%) 2008-2011*, female	138
Primary school participation, Net enrolment ratio (%) 2008-2011*, male	-
Primary school participation, Net enrolment ratio (%) 2008-2011*, female	-
Primary school participation, Net attendance ratio (%) 2007-2011*, male	76
Primary school participation, Net attendance ratio (%) 2007-2011*, female	79
Primary school participation, Survival rate to last primary grade (%) , 2008-2011*, admin. data	53
Primary school participation, Survival rate to last primary grade (%) , 2007-2011*, survey data	81
Secondary school participation, Net enrolment ratio (%) 2008-2011*, male	28
Secondary school participation, Net enrolment ratio (%) 2008-2011*, female	27
Secondary school participation, Net attendance ratio (%) 2007-2011*, male	19
Secondary school participation, Net attendance ratio (%) 2007-2011*, female	20

Table 1: Basic Education Indicators (Source: [http://www.unicef.org/infobycountry/malawi\\_statistics.html#103](http://www.unicef.org/infobycountry/malawi_statistics.html#103) (Accessed on 25 June, 2013))

85. The Education sector continues to perform poorly mainly with respect to low and inequitable access and poor quality and relevance.

*Article 12: Leisure, Recreation and Cultural Activities*

1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.

2. States Parties shall respect and promote the right of the child to fully participate in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

86. Under the Guiding Principles in Matters Concerning Children, which is a Schedule under the CCPJA, a child is entitled to leisure which is not morally harmful. A child also has the right to participate in sports and positive cultural and artistic activities.

### ***Article 13: Handicapped Children***

1. Every child who is mentally or physically disabled shall have the right to special measures of protection in keeping with his physical and moral needs and under conditions which ensure his dignity, promote his self-reliance and active participation in the community.

2. States Parties to the present Charter shall ensure, subject to available resources, to a disabled child and to those responsible for his care, of assistance for which application is made and which is appropriate to the child's condition and in particular shall ensure that the disabled child has effective access to training, preparation for employment and recreation opportunities in a manner conducive to the child achieving the fullest possible social integration, individual development and his cultural and moral development.

3. The States Parties to the present Charter shall use their available resources with a view to achieving progressively the full convenience of the mentally and physically disabled person to movement and access to public highway buildings and other places to which the disabled may legitimately want to have access to.

87. The 2010 amendments to the Constitution increased the profile of disability issues in Malawi. Section 13 (g) which lists one of the Principles of National Policy initially made provision for the Disabled. It provided that the State shall actively promote the welfare and development of the people by progressively adopting and implementing policies and legislation aimed at achieving support for the disabled through greater access to public places; fair opportunities in employment; and the fullest possible participation in all spheres of Malawian society. When the amendments were done, the provision read as follows:

#### *“(g) Persons with Disabilities*

To enhance the dignity and quality of life of persons with disabilities by providing—

- (i) adequate and suitable access to public places;
- (ii) fair opportunities in employment; and
- (iii) the fullest possible participation in all spheres of Malawian society.”

88. The language of provision has changed in order to incorporate the new paradigm towards people with disabilities. Section 23 on the rights of children also has included, with special note, 'children with disabilities' as entitled to State assistance and reasonable maintenance.
89. In May, 2012, Malawi passed the Disability Act which provides for equalization of opportunities for persons with disabilities through the promotion and protection of their rights; provides for the establishment of a Disability Trust Fund, among other things.
90. The main areas for equalization of opportunities include health care services; education and training; work and employment; political and public life; cultural, sporting and recreational activities and services; housing; economic empowerment; information and communication technologies; and research. The Trust Fund is established mainly to support the implementation of disability programmes and services.
91. Malawi signed the Convention on the Rights of People with Disabilities (CRPD) on 27<sup>th</sup> September, 2007 and formally ratified the same on 27<sup>th</sup> August, 2009. The Department of Disability Affairs which was previously under the Ministry responsible for Social Welfare has evolved into a stand-alone and fully fledged Ministry which also couples with the Department for the Elderly. The Human Rights Commission has also since 2013 established a Directorate of Disability Affairs to handle the human rights aspects of disability issues.

***Article 14: Health and Health Services***

1. *Every child shall have the right to enjoy the best attainable state of physical, mental and spiritual health.*
2. *States Parties to the present Charter shall undertake to pursue the full implementation of this right and in particular shall take measures:*
  - (a) to reduce infant and child mortality rate;*
  - (b) to ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;*
  - (c) to ensure the provision of adequate nutrition and safe drinking water;*
  - (d) to combat disease and malnutrition within the framework of primary health care through the application of appropriate technology;*
  - (e) to ensure appropriate health care for expectant and nursing mothers;*
  - (f) to develop preventive health care and family life education and provision of service;*
  - (g) to integrate basic health service programmes in national development plans;*

(b) to ensure that all sectors of the society, in particular, parents, children, community leaders and community workers are informed and supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of domestic and other accidents;

(i) to ensure the meaningful participation of non-governmental organizations, local communities and the beneficiary population in the planning and management of a basic service programme for children;

(j) to support through technical and financial means, the mobilization of local community resources in the development of primary health care for children.

92. The Ministry of Health adopted the Health Sector Strategic Plan 2011 – 2016, with a view to move towards equity and quality in the delivery of health services in Malawi.

93. Malawi has a robust and enviable immunization programme over many years (Figure 1) and recent high coverage is confirmed in the preliminary 2010 DHS report which shows that 81% of children aged 12-23 months were fully immunized. This is an increase in coverage of 26% since the 2004 DHS. However, in 2010 the country experienced an outbreak of measles with an estimated 43,000 children requiring treatment. High coverage, particularly of measles is required to maintain herd immunity and additional resources will therefore be required to sustain a vaccine coverage of 90 per cent and above for all antigens.

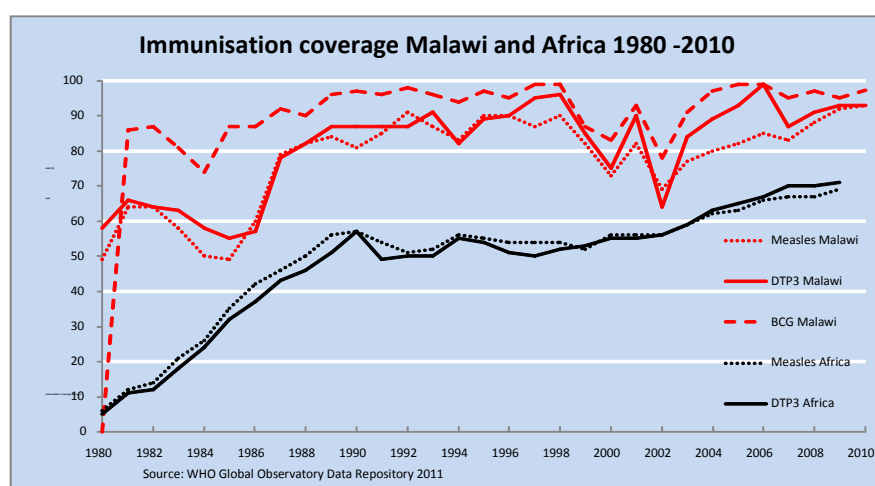


Figure [1]: Immunisation coverage in Malawi

94. Acute respiratory infections are one of the most significant causes of morbidity and mortality amongst children worldwide. Between 2004 and 2010 the proportion of children

with ARIs taken to a health facility for treatment increased from 19.6% to 65.7%. There has also been a reduction of pneumonia case fatality from 18.7% in 2000 to 5.7% in 2008.

95. Evidence has shown that populations, especially children that are heavily exposed to wood smoke from cooking, are at much higher risk from severe pneumonia and at higher risk of mortality. <sup>1</sup>
96. Prevention through handwashing, immunisations with pneumococcal vaccine, early diagnosis and Treatment with antibiotics is highly effective. Along with malaria and oral rehydration of diarrhoeal disease, it is addressed through an Integrated Management of Childhood Illnesses (IMCI) approach.
97. Successful implementation of pneumonia interventions in the PoW is likely to have contributed to the dramatic fall in infant and Under 5 mortality. Continuation will help to achieve the two MDGs 2015 targets dealing with child mortality.
98. Malaria is endemic throughout Malawi and continues to be a major public health problem with an estimated 6 million cases occurring annually. It is the leading cause of morbidity and mortality in Under 5 years of age and pregnant women. The use of Insecticide Treated Nets (ITN) when sleeping is the primary control strategy for preventing Malaria. The Malawi National Indicators Survey 2010 Report.<sup>2</sup> Malaria Parasite Prevalence Rate by slide microscopy of 43.3% nationally and severe anaemia prevalence (HB concentration > 8g/dl) was 12.3 % (>5yrs).
99. Malaria parasite prevalence increased with increasing age whilst severe anaemia showed the opposite trend, both Malaria parasite and severe anaemia prevalence rates were higher among children who did not sleep under an ITN the previous night.
100. The prevalence of severe anaemia in children under 2 years of age who did sleep under an ITN the night before showed 25.7% compared to rate of 13.6% among those who did sleep under a net the previous night. This was found to be higher in the poor wealth quintile.

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<sup>1</sup>Effect of reduction in household air pollution on childhood pneumonia in Guatemala (RESPIRE): a randomised controlled trial: *The Lancet*, [Volume 378, Issue 9804](#), 12 November 2011

<sup>2</sup>Malawi National Malaria Indicator Survey 2010 NMCP MOH 2010.

101. At present 60.4% of pregnant women are reported to have taken 2 or more doses of the recommended Intermittent Preventive Treatment (IPT) as compared to 48% in 2006.
102. Currently coverage of Insecticide Residual Spraying (IRS) is low with poor diagnostic capacity, abuse of ITNs, low coverage of second dose of SP in pregnancy, unavailability of quality ACTs in the private sector, poor adherence to treatment guidelines and policies have affected the implementation of malaria interventions.

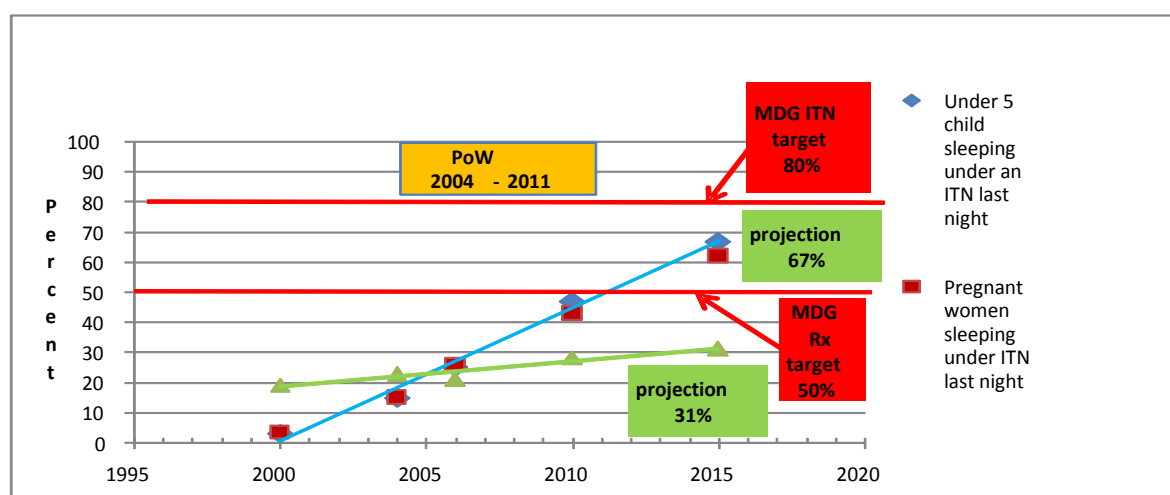


Figure [2] Prevention and treatment of Malaria in Malawi

103. Dehydration from diarrhoea is one of the major causes of death in young children worldwide. The prevalence of diarrhoea overall is estimated at 17.5 % with 38 % in children 6-12months, a higher % of reported cases without access to improved drinking water and sanitation , and 60% seeking treatment from a formal health provider and 24.2 % of children under 6 months reportedly not receiving any treatment at all.<sup>3</sup> The BoD assessment calculates that the number of episodes of acute diarrhoea in children under 5 years of age is over 13 million per year yet the health service treated only 324,000 in 2010, which suggests only 12% of need is being met.
104. The plan is to increase this by 10% a year for the duration of HSSP through better access to health centres. Reorientation to homemade ORS would reduce the dependence of families on the health sector for what is a common and treatable condition and save money and lives.

<sup>3</sup>Malawi DHS 2010

105. Although there has been some reduction, malnutrition remains high with 47% of children stunted with 20% severely stunted. The prevalence of diarrhoea and disease outbreaks such as measles have a significant influence on nutritional status, particularly acute malnutrition and have to be taken into account when interpreting nutrition surveillance results. The nutrition-related MDG target is projected to be reached but underweight children and stunting remain high.

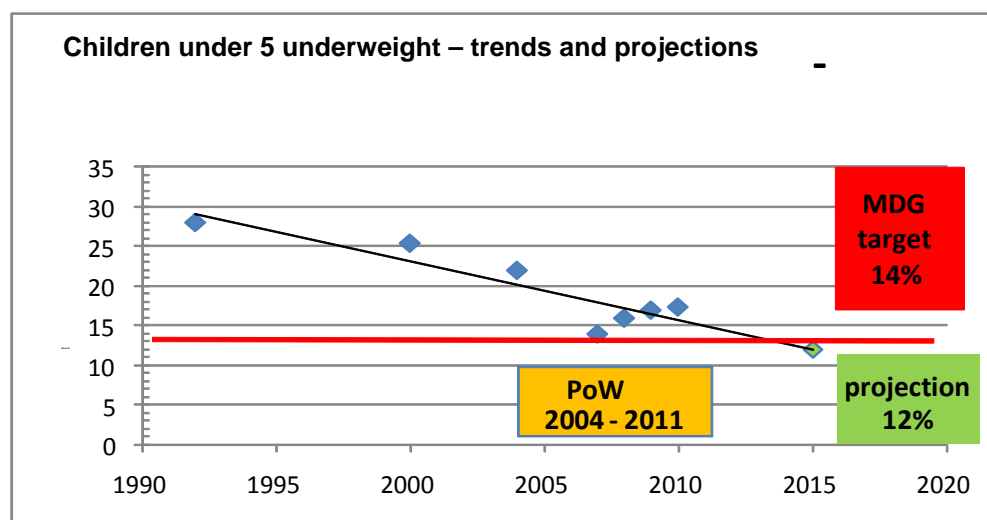


Figure [3]: Children under 5 underweight – trends and projections

106. The interventions chosen to combat malnutrition will be identical to those of the first EHP and also detailed in the National Nutrition Policy and Strategic Plan (2008-2012) namely growth monitoring and screening for children under 5, Vitamin A supplementation, deworming and the treatment of severe and moderate malnutrition. Investments in child survival interventions such as vaccines for various diseases, effective treatment of pneumonia at community level, effective prevention and treatment of malaria and diarrhoeal diseases have contributed significantly to the remarkable decline in infant and under 5 mortality rates as can be seen in Figures 4 and 5 below:

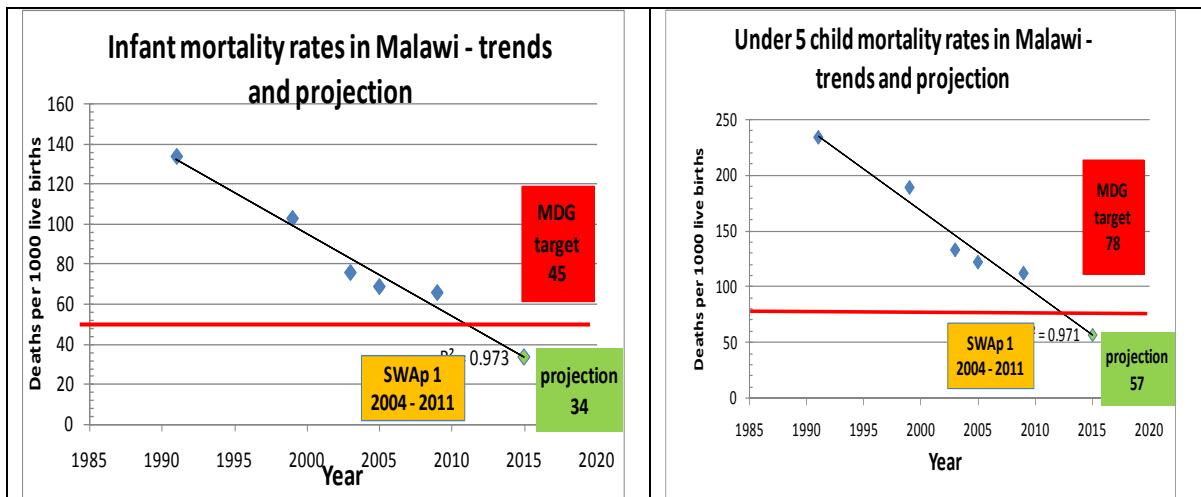


Figure [4]: Infant Mortality Rates in Malawi

Figure [5] Under five Mortality Rates in Malawi

107. These trends in infant and Under 5 child mortality rate demonstrate that there is a possibility that Malawi can reach the MDG targets for these two indicators. This will be possible if significant investments are made in child survival interventions.

108. Maternal mortality rate has decreased from 984/100,000 in 2004 to 675 /100,000 live births in 2010 with an increase in women delivering at health centres from 57.2% in 2004 to 71.5% in 2010. Data from maternal death audits from districts has shown that sepsis and Post *Partum* Haemorrhage were probably the most likely causes of death in the majority of health facility based mortality.

109. Unlike Child Health MDGs, Maternity MDG targets are unlikely to be met without significant additional investment to increase Emergency Obstetric Care (EmOC) access to many more pregnant women (Figure 6) and investment in family planning to reduce Total Fertility rates. Using data from the 2010 EmOC survey it is estimated that only half of the births requiring emergency care are receiving such care. Plans are in place to increase this access from 8% to 15% of births by 2016 by staffing and upgrading existing maternity units. The HSSP intends to increase operative deliveries from 4% now to 10% by 2016.



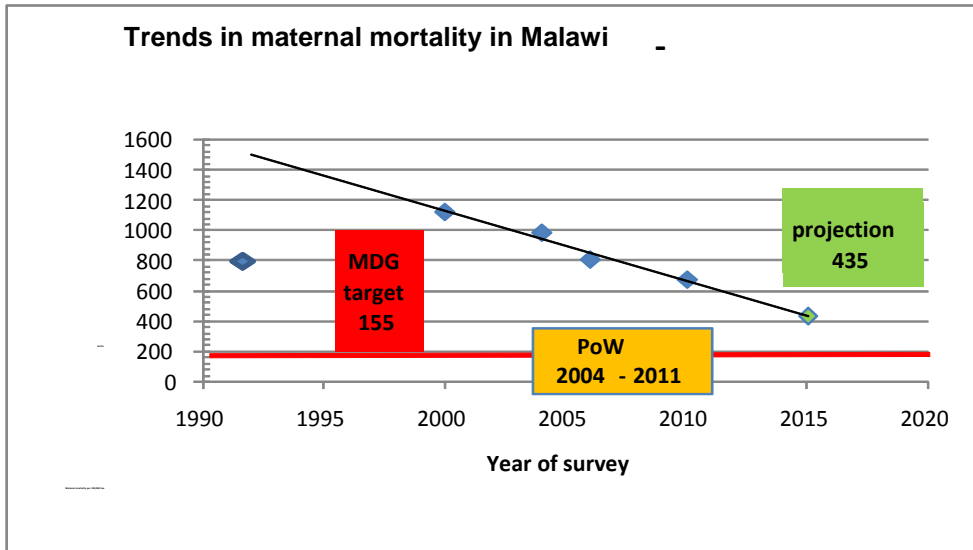


Figure [6]: Trends in maternal mortality in Malawi

110. Currently, the neonatal mortality rate (NMR) is estimated at 33 deaths per 1,000 live births and it is higher in rural areas (34/1,000) compared to urban areas (30/1,000). It is also higher among male children (38/1,000) compared to female children (30/1,000). About 88 per cent of pregnant women are protected against tetanus.

111. The HSSP has included strategies to increase skilled attendant deliveries to reach the MDG target by 2015 and crucial to this is increasing the availability of trained midwives in all maternity units (Figure 7).

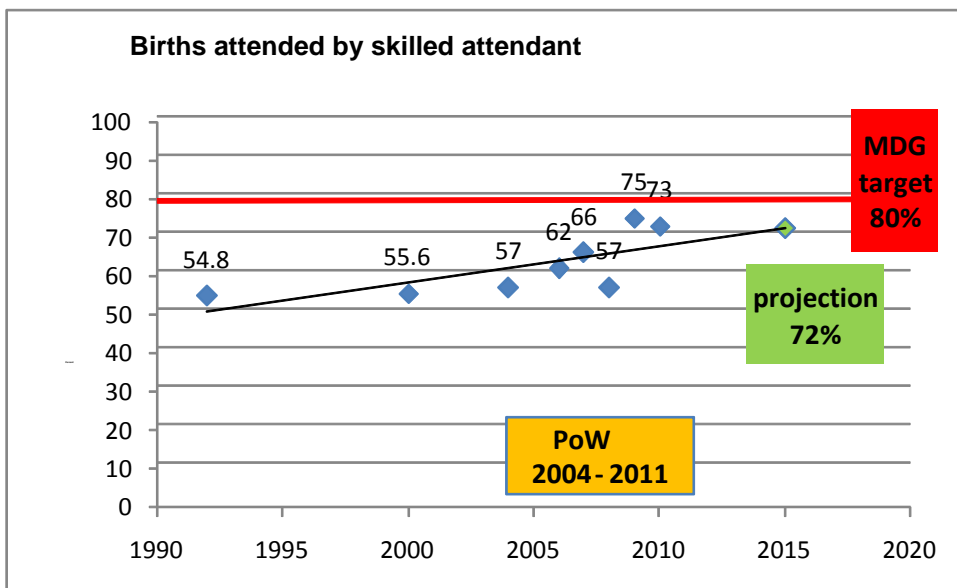


Figure [7]: Births Attended by Skilled attendants

### ***Article 15: Child Labour***

1. *Every child shall be protected from all forms of economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's physical, mental, spiritual, moral, or social development.*
2. *States Parties to the present Charter take all appropriate legislative and administrative measures to ensure the full implementation of this Article which covers both the formal and informal sectors of employment and having regard to the relevant provisions of the International Labour Organization's instruments relating to children, States Parties shall in particular:*
  - (a) provide through legislation, minimum wages for admission to every employment;*
  - (b) provide for appropriate regulation of hours and conditions of employment;*
  - (c) provide for appropriate penalties or other sanctions to ensure the effective enforcement of this Article;*
  - (d) promote the dissemination of information on the hazards of child labour to all sectors of the community.*

112. The Constitution protects children 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.

113. Among the duties imposed on a parent or guardian is the duty to protect the child from exploitation. A child is listed as in need of care and protection if the child is sexually abused or engages in an activity which is sexual in nature for purposes of sexual exploitation for gratification or commercial gain. The CCPJA also criminalizes child trafficking by prohibiting taking part in any transaction the object or one of the objects of which is child trafficking. Under the CCPJA, child trafficking means the recruitment, transaction, transfer, harbouring or receipt of a child for the purposes of exploitation.

### ***Article 16: Protection Against Child Abuse and Torture***

1. *States Parties to the present Charter shall take specific legislative, administrative, social and educational measures to protect the child from all forms of torture, inhuman or degrading treatment and especially physical or mental injury or abuse, neglect or maltreatment including sexual abuse, while in the care of the child.*
2. *Protective measures under this Article shall include effective procedures for the establishment of special monitoring units to provide necessary support for the child and for those who have the care of the child, as well as other forms of prevention and for identification, reporting referral investigation, treatment, and follow-up of instances of child abuse and neglect.*

### ***Article 27: Sexual Exploitation***

*1. States Parties to the present Charter shall undertake to protect the child from all forms of sexual exploitation and sexual abuse and shall in particular take measures to prevent:*

*(a) the inducement, coercion or encouragement of a child to engage in any sexual activity;*

*(b) the use of children in prostitution or other sexual practices;*

*(c) the use of children in pornographic activities, performances and materials.*

*Article 29: Sale, Trafficking and Abduction*

*States Parties to the present Charter shall take appropriate measures to prevent:*

*(a) the abduction, the sale of, or traffic of children for any purpose or in any form, by any person including parents or legal guardians of the child;*

*(b) the use of children in all forms of begging.*

114. Abuse and neglect takes many forms. The most illustrative forms are listed under the PDVA as physical abuse; economic abuse; sexual abuse; psychological abuse; verbal abuse; and financial abuse. Media reports indicate increasing trends for most of the forms of abuse. The soaring numbers of child-headed households also indicates largely increased incidence of neglect. There are other causes of neglect like orphanhood but it has been noted that some children are abandoned by living parents.

115. The PDVA not only provides for prevention of domestic violence but also provides for punishment for it. However, the key legislation on violence remains the Penal Code. The Penal Code was amended in 2010 and several provisions were revised. The most notable amendment is on sexual violence against persons below the age of 16 years under the offence termed Defilement.

116. Abuse and neglect are closely linked to poverty. Abuse and neglect are a cause and result of poverty. It has been observed that human trafficking has benefitted from this cycle and many children and women have fallen victim to it. The CCPJA has criminalized some undesirable practices including child trafficking which is punishable by life imprisonment. A more comprehensive legislation has been proposed by the Law Commission in order to prevent trafficking in persons in all aspects. The proposed legislation prescribes trafficking in persons and children and aggravated forms of trafficking; it provides for care and protection of victims including provision of shelter, introduction of a witness protection programme and general care and protection; it also provides for specialized forms of investigations and conducting proceedings.

117. The media continues to report cases of all manner of exploitation of children as a result of trafficking and general vulnerability. Most common forms of exploitation are labour in agriculture and sexual exploitation.
118. The special Law Commission that developed legislation on trafficking in persons has also recommended the revision of penalties of offences akin to trafficking in persons. These offences are mostly provided for under the Penal Code and include *Section 264* – Wrongful concealing or confining kidnapped or abducted person; *Section 265* – Kidnapping or abducting child under the age of fourteen years with the intention of stealing from such child; *Section 266* - Wrongful confinement of any person; *Section 267* - Buying or disposing of any person as a slave; *Section 268* – Habitual dealing in slaves; *Sections 132, 133 and 134* – rape, punishment and attempted rape; *Section 135* - Abduction; *Section 136* – Abduction of girls under sixteen; *Section 137* - Indecent assault of young girls; *Section 140* - Procuring a woman for sexual exploitation whether within or outside Malawi (misdemeanour) - a prostitute cannot be procured; *Section 141* – Prohibition of procuring for sexual purposes by use of deception and false pretences; *Sections 142, 143 and 147* – Operating a brothel or keeping any premises for purposes of prostitution; *Section 145* – (for men) living off the earnings of prostitution or soliciting for immoral purposes - courts -powers of search and arrest; and *Section 146* – (for women) living off the earnings of prostitution.
119. The special Law Commission was convinced that while these offences define most of the elements in the offences being proposed under the trafficking in persons regime, they may be committed independently and need to be punished appropriately.
120. Sexual abuse is specifically provided for under sections 132, 133, 134, 138 and 139 of the Penal Code. These provisions define and punish the offence of rape in sections 132 and 133.
121. The Constitution still provides for protection from torture, cruel, inhuman or degrading treatment for all persons. The same protection from arbitrary deprivation of liberty still stands.

122. The procedure regarding detention of children is provided for under the CCPJA. In addition to provisions on Criminal Procedure and Evidence Code and in order to actualize the overarching principle, the CCPJA provides for guidelines when arresting a child in conflict with the law. At the time of arrest of a child, the arresting officer shall not use physical abuse or harassment nor use handcuffs. A child in detention shall be separated from adults and if possible, the child shall be arrested in the company of parents or guardians, if possible, if not, an appropriate adult. If the parents or guardians are not available, they shall be informed, as soon as possible, where possible. In serious offences, legal representation should be provided.
123. As soon as a child is arrested, he or she shall be referred to a probation officer for age estimation. Age determination must be done at a preliminary inquiry based on the available evidence, if the age is not known. Comprehensive provisions on age determination are contained in the CCPJA in order to ascertain the age of the offender for purposes of determining criminal responsibility and the application of the law. The age of criminal responsibility provided for under the Penal Code as 10 years.
124. A process of diverting a child offender away from the normal criminal justice system procedures has been provided for under the CCPJA. The philosophy behind Diversion is that the effects of subjecting a child offender to a fully-fledged criminal justice system are far more detrimental than diverting the offender from the system. Other comprehensive provisions and structures have been adopted e.g. Child panels. However, the CCPJA provides that not all cases can be diverted as only minor cases can be diverted. Diversion programmes have been provided for under the CCPJA and a separate court system, the Child Justice Courts have been established.
125. Systematic provisions on legal representation including representation at state expense have been provided for under the CCPJA. In terms of court procedure, proceedings shall be held *in camera* and shall be informal in nature. No jury trial shall be held against a child unless it is necessary and to do so is in the best interests of the child.
126. For purposes of detention, the CCPJA has provided for special places for children on remand. The places are being referred to as Safety Homes. After trial, a child cannot be imprisoned and children against whom a finding of responsibility has been made shall be

placed in in Reformatory Centres. The detention centres whether Safety Homes or Reformatory Centres shall be regularly inspected. The detention centres shall contain and provide facilities for the children so detained.

***Article 17: Administration of Juvenile Justice***

*1. Every child accused or found guilty of having infringed penal law shall have the right to special treatment in a manner consistent with the child's sense of dignity and worth and which reinforces the child's respect for human rights and fundamental freedoms of others.*

*2. States Parties to the present Charter shall in particular:*

*(a) ensure that no child who is detained or imprisoned or otherwise deprived of his/her liberty is subjected to torture, inhuman or degrading treatment or punishment;*

*(b) ensure that children are separated from adults in their place of detention or imprisonment;*

*(c) ensure that every child accused in infringing the penal law:*

*(i) shall be presumed innocent until duly recognized guilty;*

*(ii) shall be informed promptly in a language that he understands and in detail of the charge against him, and shall be entitled to the assistance of an interpreter if he or she cannot understand the language used;*

*(iii) shall be afforded legal and other appropriate assistance in the preparation and presentation of his defence;*

*(iv) shall have the matter determined as speedily as possible by an impartial tribunal and if found guilty, be entitled to an appeal by a higher tribunal;*

*(d) prohibit the press and the public from trial.*

*3. The essential aim of treatment of every child during the trial and also if found guilty of infringing the penal law shall be his or her reformation, re-integration into his or her family and social rehabilitation.*

*4. There shall be a minimum age below which children shall be presumed not to have the capacity to infringe the penal law.*

127. The Constitution still provides for protection from torture, cruel, inhuman or degrading treatment for all persons. The same protection from arbitrary deprivation of liberty still stands.

128. The procedure regarding detention of children is provided for under the CCPJA. In addition to provisions on Criminal Procedure and Evidence Code and in order to actualize the overarching principle, the CCPJA provides for guidelines when arresting a child in

conflict with the law. At the time of arrest of a child, the arresting officer shall not use physical abuse or harassment nor use handcuffs. A child in detention shall be separated from adults and if possible, the child shall be arrested in the company of parents or guardians, if possible, if not, an appropriate adult. If the parents or guardians are not available, they shall be informed, as soon as possible, where possible. In serious offences, legal representation should be provided.

129. As soon as a child is arrested, he or she shall be referred to a probation officer for age estimation. Age determination must be done at a preliminary inquiry based on the available evidence, if the age is not known. Comprehensive provisions on age determination are contained in the CCPJA in order to ascertain the age of the offender for purposes of determining criminal responsibility and the application of the law. The age of criminal responsibility provided for under the Penal Code as 10 years.
130. A process of diverting a child offender away from the normal criminal justice system procedures has been provided for under the CCPJA. The philosophy behind Diversion is that the effects of subjecting a child offender to a fully-fledged criminal justice system are far more detrimental than diverting the offender from the system. Other comprehensive provisions and structures have been adopted e.g. Child panels. However, the CCPJA provides that not all cases can be diverted as only minor cases can be diverted. Diversion programmes have been provided for under the CCPJA and a separate court system, the Child Justice Courts have been established.
131. Systematic provisions on legal representation including representation at state expense have been provided for under the CCPJA. In terms of court procedure, proceedings shall be held *in camera* and shall be informal in nature. No jury trial shall be held against a child unless it is necessary and to do so is in the best interests of the child.
132. For purposes of detention, the CCPJA has provided for special places for children on remand. The places are being referred to as Safety Homes. After trial, a child cannot be imprisoned and children against whom a finding of responsibility has been made shall be placed in in Reformatory Centres. The detention centres whether Safety Homes or Reformatory Centres shall be regularly inspected. The detention centres shall contain and provide facilities for the children so detained.

### **Article 18: Protection of the Family**

1. *The family shall be the natural unit and basis of society. it shall enjoy the protection and support of the State for its establishment and development.*
2. *States Parties to the present Charter shall take appropriate steps to ensure equality of rights and responsibilities of spouses with regard to children during marriage and in the event of its dissolution. In case of the dissolution, provision shall be made for the necessary protection of the child.*
3. *No child shall be deprived of maintenance by reference to the parents' marital status.*

### **Article 19: Parent Care and Protection**

1. *Every child shall be entitled to the enjoyment of parental care and protection and shall, whenever possible, have the right to reside with his or her parents. No child shall be separated from his parents against his will, except when a judicial authority determines in accordance with the appropriate law, that such separation is in the best interest of the child.*
2. *Every child who is separated from one or both parents shall have the right to maintain personal relations and direct contact with both parents on a regular basis.*
3. *Where separation results from the action of a State Party, the State Party shall provide the child, or if appropriate, another member of the family with essential information concerning the whereabouts of the absent member or members of the family. States Parties shall also ensure that the submission of such a request shall not entail any adverse consequences for the person or persons in whose respect it is made.*
4. *Where a child is apprehended by a State Party, his parents or guardians shall, as soon as possible, be notified of such apprehension by that State Party.*

### **Article 20: Parental Responsibilities**

1. *Parents or other persons responsible for the child shall have the primary responsibility of the upbringing and development the child and shall have the duty:*
  - (a) *to ensure that the best interests of the child are their basic concern at all times-*
  - (b) *to secure, within their abilities and financial capacities, conditions of living necessary to the child's development; and*
  - (c) *to ensure that domestic discipline is administered with humanity and in a manner consistent with the inherent dignity of the child.*
2. *States Parties to the present Charter shall in accordance with their means and national conditions the all appropriate measures;*
  - (a) *to assist parents and other persons responsible for the child and in case of need provide material assistance and support programmes particularly with regard to nutrition, health, education, clothing and housing;*



*(b) to assist parents and others responsible for the child in the performance of child-rearing and ensure the development of institutions responsible for providing care of children; and*

*(c) to ensure that the children of working parents are provided with care services and facilities.*

133. The Child Care, Protection and Justice Act provides for Child Care and Protection by the family by creating specific duties and responsibilities for parents and guardians:

- 1) not to deprive a child of his or her welfare;
- 2) whether imposed by law or otherwise, towards the child which include the responsibility to:
  - (a) protect the child from neglect, discrimination, violence, abuse, exploitation, oppression and exposure to physical, mental, social and moral hazards;
  - (b) provide proper guidance, care, assistance and maintenance for the child to ensure his or her survival and development, including in particular adequate diet, clothing, shelter and medical attention;
  - (c) ensure that during the temporary absence of the parent or guardian, the child shall be cared for by a competent person; and
  - (d) exercise joint primary responsibility for raising their children.

134. The above responsibilities may not be exercised where the parent or guardian has forfeited or surrendered his or her rights and responsibilities in accordance with the law.

135. The Child Care, Protection and Justice Act has, among other things, repealed the Affiliation Act while the proposed Marriage, Divorce and Family Relations Bill shall repeal the Divorce Act, amongst other laws. The Act and the Bill provide for child maintenance.

136. Recovering child maintenance through the courts occurs mainly in urban and remains a challenge in rural settings where poverty is highest. Efforts to increase access to justice in the rural areas have been scaled up with the introduction of the revised Legal Aid Act enacted in 2010.

#### ***Article 21: Protection against Harmful Social and Cultural Practices***

*1. States Parties to the present Charter shall take all appropriate measures to eliminate harmful social and cultural practices affecting the welfare, dignity, normal growth and development of the child and in particular:*

- (a) those customs and practices prejudicial to the health or life of the child; and*

*(b) those customs and practices discriminatory to the child on the grounds of sex or other status.*

*2. Child marriage and the betrothal of girls and boys shall be prohibited and effective action, including legislation, shall be taken to specify the minimum age of marriage to be 18 years and make registration of all marriages in an official registry compulsory.*

137. There is general consensus that the rights captured under these Articles are sufficiently covered by the broad provisions of the Constitution. The Commission that developed the CCPJA indicates that upon consideration of the provisions of the Constitution, the Commission was convinced that there was no need for specific legislation covering what had already and sufficiently covered.

138. The emerging challenge regarding the rights have arisen with respect to the potential and actual conflict between religion and public health regarding the refusal of some parents to have children vaccinated or treated medically on account of religious beliefs.

139. The CCPJA has identified a number of practices as undesirable. These include abduction, trafficking, forced marriage and betrothal, pledging children as security and other harmful cultural practices. These practices are punishable by prison terms ranging from 10 years to life imprisonment.

140. As such, although the participation in cultural, traditional or customary practices is enshrined by the Constitution, the restrictions on practices which are harmful to children is provided for by law and is admittedly a limitation, albeit a legal one, on the enjoyment of cultural and social rights.

#### ***Article 22: Armed Conflicts***

*1. States Parties to this Charter shall undertake to respect and ensure respect for rules of international humanitarian law applicable in armed conflicts which affect the child.*

*2. States Parties to the present Charter shall take all necessary measures to ensure that no child shall take a direct part in hostilities and refrain in particular, from recruiting any child.*

*3. States Parties to the present Charter shall, in accordance with their obligations under international humanitarian law, protect the civilian population in armed conflicts and shall take all feasible measures to ensure the protection and care of children who are affected by armed conflicts. Such rules shall also apply to children in situations of internal armed conflicts, tension and strife.*

141. There has been no armed conflict in Malawi since independence in 1964 and as such, the applicability of this provision has not arisen. However, since independence Malawi has always had a standing Army now termed the Malawi Defence Force.

142. Under section 19(2) of the Defence Force Act, a Recruiting Officer shall not enlist a person under the age of 18 years. This means that all persons covered under the Constitution and the CCPJA cannot be employed under the Defence Force.

### ***Article 23: Refugee Children***

*1. States Parties to the present Charter shall take all appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law shall, whether unaccompanied or accompanied by parents, legal guardians or close relatives, receive appropriate protection and humanitarian assistance in the enjoyment of the rights set out in this Charter and other international human rights and humanitarian instruments to which the States are Parties.*

*2. States Parties shall undertake to cooperate with existing international organizations which protect and assist refugees in their efforts to protect and assist such a child and to trace the parents or other close relatives or an unaccompanied refugee child in order to obtain information necessary for reunification with the family.*

*3. Where no parents, legal guardians or close relatives can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his family environment for any reason.*

*4. The provisions of this Article apply mutatis mutandis to internally displaced children whether through natural disaster, internal armed conflicts, civil strife, breakdown of economic and social order or howsoever caused.*

143. Malawi has a Refugee Act which has been in the statute books since 1999 when it was enacted into law. The Refugee Act does not clearly provide for children as refugees.

144. Refugee children have access to basic social amenities, provided by Government and its cooperating partners, especially the UNHCR, such as education, hospitals and nutrition.

145. The Constitution, after 2010, made changes which while they do not explicitly refer to refugee children, do provide for children in situations of disadvantage. It is clear that while the Constitution could not cover all instances where children face disadvantage, the status of being a refugee is clearly one and should entitle a child to State assistance and protection in a place which offers safety and security.

#### **Article 24: Adoption**

*States Parties which recognize the system of adoption shall ensure that the best interest of the child shall be the paramount consideration and they shall:*

- (a) establish competent authorities to determine matters of adoption and ensure that the adoption is carried out in conformity with applicable laws and procedures and on the basis of all relevant and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and guardians and that, if necessary, the appropriate persons concerned have given their informed consent to the adoption on the basis of appropriate counselling;*
- (b) recognize that inter-country adoption in those States who have ratified or adhered to the International Convention on the Rights of the Child or this Charter, may, as the last resort, be considered as an alternative means of a child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;*
- (c) ensure that the child affected by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;*
- (d) take all appropriate measures to ensure that in inter-country adoption, the placement does not result in trafficking or improper financial gain for those who try to adopt a child;*
- (e) promote, where appropriate, the objectives of this Article by concluding bilateral or multilateral arrangements or agreements, and endeavour, within this framework to ensure that the placement of the child in another country is carried out by competent authorities or organs;*
- (f) establish a machinery to monitor the well-being of the adopted child.*

146. Under the 2010 amendment of the Constitution, there is now provision for State assistance to children under special circumstances. State assistance applies to all children, but particularly the following categories have been identified: orphans, children with disabilities and other children in situations of disadvantage.

147. The CCPJA has made extensive provision for alternative care for children. There are several forms of alternative care that are recognized as a matter of law or practice in Malawi. There are a number of common terms used and practised in this regard.

148. Community based Care is the direct care role assumed by the leadership or members of the community in their own homes; Foster Care is placement of a child in a foster home or with a foster parent; Foster Home means a home approved by the minister for the

purposes of foster care placement; Foster Parent means a person who has lawful or legitimate custody, care and control of a child in place of a parent; Place of safety is an appropriate place where a child in need of care and protection can be kept temporarily and includes a safety home or a foster home; Safety home is a place or part thereof for the purposes of reception, education, counselling and safety of children before conclusion of trial or in circumstances requiring placement of a child for care and protection; Reformatory centre is a home or institution or part thereof established for purposes of (a) reception, education and vocational training; and (b) counselling of children in accordance with law.

149. Orphanage is a residential institution devoted to the care of orphans – children whose natural parents are deceased or otherwise unable or unwilling to care for them; Orphan is a person aged 15 years or below who has lost at least one of his or her parents; Kinship care is a private arrangement whereby the child is looked after on an on-going or indefinite basis by relatives or friends.”; Special Needs Centre is an institution/ centre that provide the educational requirements of pupils or students suffering from any of a wide range of physical disabilities, medical conditions, intellectual difficulties, or emotional problems, including deafness, blindness, dyslexia, learning difficulties, and behavioural problems; Child headed households is children who choose to live together to the extent that the eldest sibling is willing and capable of acting as the head of the house; Church home is a place under the administration or having originated from a religious association; Transit Care centre is a temporary placement of children awaiting further placement in a short and/or long term care centre.
150. When the Commission concluded the review of the Child and Young Persons Act, it was considered proper that other legislation on children be reviewed especially that which affects areas that were not covered under the review. The Children and young Persons Act was largely a criminal justice statute but when the special Law Commission established to review it sat, it considered using the opportunity to introduce matters of care and protection in the Bill it proposed. When the Bill was enacted as the Child Care, Protection and Justice Act in 2010, it did not cover issues of adoption which are regulated by the Adoption of Children Act.

151. The Adoption of Children Act was enacted in 19... and has largely remained unchanged over the years. Following the celebrated cases of the adoption of David Banda (An Infant) and Chifundo James (An Infant), some concerns were raised as to the responsiveness of legislation to emerging issues in the field of adoption. One of the sticky points during the application for the adoption of Chifundo James was that the High Court threw out the application because the petitioner did not meet the residence requirement under the statute. The Supreme Court of Appeal overturned the lower court's verdict and using the principle of the best interests of the child found in favour of the applicant.
152. Soon thereafter, the Law Commission was re-engaged, this time, to comprehensively review the Adoption of Children Act, a process which should have been completed by now, except that the process has been fraught with financial challenges. However, the Law Commission has secured resources to conclude the process by the end of 2013.
153. The main areas being considered for reform include the Concept of adoption – in terms of purpose and effect; eligibility for adoption; eligibility requirements for prospective adoptive parents; procedural issues in adoption; nature of adoption services – including roles and functions of various players; inter-country adoption; and offences – suppression of improper financial gain; failure to disclose information; unauthorized disclosure of information; advertising; interfering with a child's upbringing; and tampering with documents.

#### ***Article 25: Separation from Parents***

*1. Any child who is permanently or temporarily deprived of his family environment for any reason shall be entitled to special protection and assistance;*

*2. States Parties to the present Charter:*

*(a) shall ensure that a child who is parentless, or who is temporarily or permanently deprived of his or her family environment, or who in his or her best interest cannot be brought up or allowed to remain in that environment shall be provided with alternative family care, which could include, among others, foster placement, or placement in suitable institutions for the care of children;*

*(b) shall take all necessary measures to trace and re-unite children with parents or relatives where separation is caused by internal and external displacement arising from armed conflicts or natural disasters.*

*3. When considering alternative family care of the child and the best interests of the child, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious or linguistic background.*

154. The CCPJA makes clear provision for child care by the family. The CCPJA and the PDVA have also made provision for circumstances under which parental and familial care may be interrupted. The CCPJA has provided for criteria for determining whether a child needs care and protection and placement of a child into a place of safety. The criteria include substantial risk of harm by people including parents or guardians. Unfitness, absence or abandonment of a parent also suffices for alternative care of a child.
155. The criteria listed under section 23 of the CCPJA also tallies with the grounds on which a finding of domestic violence may be made under the PDVA. Under the PDVA, an application for an order under it may be made by a parent or guardian of the child or dependant, or a person with whom the child or dependant ordinarily or periodically resides, where domestic violence involves a child or dependant; a parent or sibling, by blood or marriage of the applicant or respondent, not being a member of the household; a police officer; an enforcement officer; or a service provider approved by the Minister by order published in the Gazette.
156. The CCPJA empowers a police officer, social welfare officer, a chief or any other member of the community to take the child in need of care and protection and place that child in his or her temporary custody or a place of safety. Any child taken into a place of safety shall be brought before a Child Justice Court within 48 hours.

***Article 28: Drug Abuse***

*States Parties to the present Charter shall take all appropriate measures to protect the child from the use of narcotics and illicit use of psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the production and trafficking of such substances.*

157. The Dangerous Drugs Act and the Liquor Act are the key instruments against alcohol, drug and substance abuse. These statutes have not changed since the last report. However, in light of the enactment of the CCPJA which defines a child as a person below the age of 16 years, it is imperative that the statutes be revised in order to offer protection to the child not by changing the age of exposure but rather including the emerging substances that may be abused by children.

### ***Article 30: Children of Imprisoned Mothers***

*1. States Parties to the present Charter shall undertake to provide special treatment to expectant mothers and to mothers of infants and young children who have been accused or found guilty of infringing the penal law and shall in particular:*

- (a) ensure that a non-custodial sentence will always be first considered when sentencing such mothers;*
- (b) establish and promote measures alternative to institutional confinement for the treatment of such mothers;*
- (c) establish special alternative institutions for holding such mothers;*
- (d) ensure that a mother shall not be imprisoned with her child;*
- (e) ensure that a death sentence shall not be imposed on such mothers;*
- (f) the essential aim of the penitentiary system will be the reformation, the integration of the mother to the family and social rehabilitation.*

### ***Article 31: Responsibility of the Child***

*Every child shall have responsibilities towards his family and society, the State and other legally recognized communities and the international community. The child, subject to his age and ability, and such limitations as may be contained in the present Charter, shall have the duty;*

- (a) to work for the cohesion of the family, to respect his parents, superiors and elders at all times and to assist them in case of need;*
- (b) to serve his national community by placing his physical and intellectual abilities at its service;*
- (c) to preserve and strengthen social and national solidarity;*
- (d) to preserve and strengthen African cultural values in his relations with other members of the society, in the spirit of tolerance, dialogue and consultation and to contribute to the moral well-being of society;*
- (e) to preserve and strengthen the independence and the integrity of his country;*
- (f) to contribute to the best of his abilities, at all times and at all levels, to the promotion and achievement of African Unity.*

158. The State Party has entered into more agreements than the ACRWC to cater for child protection. The CRC is the major instrument which Malawi has ratified in order to realize even greater protection of children.

159. In keeping with the obligations of Malawi under the ACRWC, which provides for responsibilities of the child, the CCPJA has made provision for the duties and responsibilities of the child to respect the parents, guardians, superiors and elders at all times and depending on the age of the child assist them in cases of need; serve the



community by placing his or her physical and intellectual abilities at its service; preserve and strengthen social and national unity and character of Malawi; uphold the positive values of the community; and contribute towards the child's own development into being a useful member of the society. However, due regard shall be paid to the age and ability of the child and to such limitations as are contained in the CCPJA.