

AFRICAN UNION

African Committee of Experts on the
Rights and Welfare of the Child



UNION AFRICAINE

Comité Africain d'Experts sur les
Droits et le Bien-être de l'Enfant

الاتحاد الأفريقي

*"An Africa Fit for
Children"*

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**CONCLUDING OBSERVATIONS AND RECOMMENDATIONS BY THE AFRICAN
COMMITTEE OF EXPERTS ON THE RIGHTS AND WELFARE OF THE CHILD
(ACERWC) ON THE INITIAL REPORT OF THE REPUBLIC OF MALAWI ON THE
STATUS OF IMPLEMENTATION OF THE AFRICAN CHARTER ON THE RIGHTS
AND WELFARE OF THE CHILD**

I. INTRODUCTION

1. The African Committee of Experts on the Rights and Welfare of the Child (ACERWC/the Committee) extends its compliments to the Government of the Republic of Malawi and wishes to acknowledge with thanks receipt of the initial report on the status of the implementation of the African Charter on the Rights and Welfare of the Child (the African Children's Charter/the Charter). The ACERWC, during its 31th Ordinary Session, which was held from 24 April to 04 May, 2018, in Bamako, Mali, considered the Republic of Malawi's initial report which was submitted in accordance with the State Party's obligation under Article 43 of the African Children's Charter.
- 2.
3. The Committee also welcomes the constructive dialogue it held with the delegation of Malawi, led by Mr. Samuel Timbenu, Minister of Justice and Constitutional Affairs. The dialogue informed the Committee about the measures the State Party has undertaken towards the implementation of the African Children's Charter and the various challenges that the State Party has been facing. After a careful consideration of the facts in the State Party Report and the information provided during the constructive dialogue, the Committee has developed and adopted the following concluding observations and recommendations which, in the Committee's view, provide guidance to better enhance the implementation of the provisions of the African Children's Charter.

II. PROGRESS IN THE IMPLEMENTATION OF THE CHARTER

4. The Committee commends the legislative and institutional measures that the State Party has undertaken to implement the Charter. Particularly, the Committee appreciates the Government for taking the following measures:
 - a) Ratifying the African Charter on the rights and welfare of the Child;
 - b) Enactment of the Child Care, Protection and Justice Act; Adoption of Children Act; National Registration Act; the Penal Code; Prevention of Domestic Violence Act; Disability Act; Gender Equality Act and Marriage Divorce and Family Relations Act; Criminal Procedure and Evidence Code Act; Education Act; Trafficking in Persons Act, Deceased Estates (Will, Inheritance and Protection) Act and the Legal Aid Act;

- c) Incorporation of children's rights in the 1994 Constitution and incorporating the principle of the best interest of the child in the Constitution and the Child Care, Protection and Justice Act
- d) Establishment of the Ministry of Gender, Children, Disability and Social Welfare (MoGCDSW) as the principal organ for children rights implementation;
- e) Establishment of the Human Rights Commission (HRC) with a Directorate of Child Rights.

III. AREAS OF CONCERN AND RECOMMENDATIONS

A. General measures of implementation

- 5. The Committee appreciates the legislative measures being undertaken by the State Party for the implementation of the Charter. The Committee recommends to the State Party to fast track the review of the Adoption of Children Act to make it in line with the Charter and other relevant international standards.
- 6. The Committee acknowledges the inter-ministerial approach of budgetary allocation for children. The Committee recommends that the State Party specifically identifies the total percentage of the national budget allocated for the protection and for the promotion of the rights of the child and thereby ensure the allocation of adequate financial and human resources for the full implementation of child related laws and policies. The Committee further recommends for the State Party to increase budgetary allocation to the Ministry of Gender, Children, Disability and Social Welfare and ensure that adequate human and technical resources are provided to the Ministry to carry out its mandate effectively.
- 7. The Committee notes with appreciation the simplification and translation in to local languages of various national child rights laws such as the Marriage, Divorce and Family Relations Act. The Committee further acknowledges the dissemination of simplified versions of the Charter in schools and community-based structure, among other platforms, and child rights trainings given to police officers, social welfare officers, health workers, magistrates and community development officers. The Committee recommends to the State Party to translate the Charter in to local languages and undertake a nation-wide dissemination and sensitization. The Committee further encourages the State Party to strengthen trainings among various organs of the Government such as the police, judiciary, and Ministries to raise awareness on child rights issues.

8. The Committee encourages the State Party to ensure that the Malawi Human Rights Commission is provided with adequate human, technical and financial resources to carry out its mandate effectively in line with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles), including, making the Commission accessible for all children in all districts of the country. The Committee further recommends that the State Party ensures that the mechanism for monitoring children's rights, under the Human Rights Commission is able to receive, investigate and address complaints by children in a child-sensitive manner.
9. The Committee is concerned about the impact of corruption and misuse of resources on child rights protection in the State Party. The Committee urges the State Party to take immediate measures to combat corruption and strengthen institutional capacities to effectively identify and investigate cases of corruption and prosecute the perpetrators and take appropriate measures to ensure effective and efficient use of resources allocated for the promotion and protection of children's rights in all sectors and ministries.

B. Definition of a child

10. The Committee applauds the amendment of the Constitution of the Republic of Malawi in conformity with the Charter, thereby defining a child as a person under the age of 18. The Committee further appreciates efforts towards harmonization of subsidiary laws with the amendment of the constitution and the Charter. The Committee encourages the State Party to undertake speedy harmonization and ensure wide public awareness of all the relevant legislative changes.
11. The Committee notes that the Marriage Divorce and Family Relations Act sets the minimum age of marriage for both male and female at 18 years. However, the act allows for exceptional circumstances where a child above the age of 15 may get married with the consent of parents or guardians. The Committee urges that State Party to amend the Marriage, Divorce and Family Relations Act and ensure that the minimum marriageable age of 18 has no exceptions under all types of marriages allowed in Malawi.

C. General principles

Non-discrimination

12. The Committee notes with appreciation the prohibition of discrimination on various grounds under the Constitution and subsidiary laws. The Committee further applauds the various legislative and institutional measures put in place to ensure the non-discrimination of children with disabilities. The Committee recommends to the State Party to devise and implement strategies to increase budgetary allocation for the provision of services to children with disabilities. The Committee further recommends that the State Party increases the number of trained teachers, healthcare professionals and social workers to serve children with special needs and to ensure accessibility of schools, healthcare facilities and other essential services to children with disabilities.
13. The Committee notes with concern the challenges being faced by children of Muslim and Rastafarian religions with regards to dress codes in schools. The Committee encourages the State Party to continue dialogue with religious communities and public and private schools on dress code, having in mind the principle of non-discrimination and equality in order to accommodate children of various religious groupings.
14. The Committee notes with appreciation the development of the National Action Plan on Persons with Albinism and the amendment of the penal code to provide for strict punishment for atrocities against persons with albinism. However, the Committee remains concerned about the prevailing violence and discrimination against children with albinism as well as the lack of adequate services. The Committee urges the State Party to undertake mass sensitization to prevent discrimination and violence against children with albinism, ensure accountability to crimes committed against children with albinism and ensure affordable and accessible availability of sunscreen lotion, optical glasses and other basic necessities to children with albinism.

Best interests of the child

15. The Committee notes with appreciation the incorporation of the principle of the best interest of the child at the constitutional level and the adoption of laws to ensure the protection of the best interest of the child in the Justice system. The Committee recommends the State Party to furnish adequate funding and trained human resources to ensure the effective implementation of the principle in the justice system. The Committee further encourages the State Party to undertake training and awareness creation among Government officials and personnel of the justice system to ensure that primary consideration is given to the best interest of the child in all decisions and actions concerning a child.

Right to life, survival and development

16. The Committee applauds the continuous reduction of under-5 mortality rates. The Committee further commends efforts in the area of providing clean drinking water in rural and urban areas. The Committee is however concerned about the high rate of stunted growth and development in children under the age of five which is exacerbated by inadequate access to pediatric care systems, dismal sanitary infrastructure and resources, an increased regional prevalence of infectious diseases, and the malnourishment of pregnant and breastfeeding mothers. The Committee recommends for the State Party to undertake the following measures.
- a) Devise short term and long term strategies to combat and prevent stunting in children;
 - b) Provide dietary supplementation and life-saving treatments to children suffering from Sever Acute Malnutrition (SAM) and Moderate Acute Malnutrition (MAM);
 - c) Provide assistance to pregnant and lactating mothers suffering from malnutrition;
 - d) Implement school feeding program and ensure the accessibility of potable water in areas with a high risk of malnutrition for children;
 - e) Invest in long term food based strategies including promotion of agricultural practices that result in dietary diversification and;
 - f) Implement the recommendations of the UN Special Rapporteur on the Right to Food, following a visit to Malawi in 2014.

Child participation

17. The Committee commends the establishment of children's parliament at district levels and the establishment of the National Youth Assembly. The Committee recommends that the State Party gives due consideration to the views of children and strengthens structures for their participation, especially at the community level, in the family, at schools and in judicial and administrative procedures concerning them. The Committee further recommends the State Party to establish a national children's parliament that focuses on child related laws, policies and actions undertaken at a national level, as well as include the resolutions of children's parliaments in the National Children's Policy and other laws and policies affecting children.

D. Civil rights and freedoms

Right to name, nationality and birth registration

18. The Committee commends the enactment of the National Registration Act and the increased rate of birth registration. The Committee further commends the establishment of the National Registration Bureau to implement, coordinate, manage and maintain a national registration and identification system. However, the Committee notes with concern the lack of adequate dissemination of the National Registration Act at district level, which has resulted in low awareness, and lack of implementation in many districts. The Committee further notes with concern the low registration rates in districts where health facility based birth registration has not yet commenced and registration is obtained on demand. The Committee recommends to the State Party to:

- a) Develop mobile registration centers and create mechanisms for sub-district registration to ensure that the registration service is accessible by all Malawians;
- b) Expedite the scaling up of health facility based birth registration;
- c) Develop and implement a robust awareness-raising program for the general public on birth registration with a focus on remote and marginalized districts;
- d) Ensure that birth certificates are issued to all children born in the territory; and
- e) Undertake national birth registration campaigns to increase the rate of birth registration and certification;

19. The Committee notes with appreciation the enactment of the Citizenship Act, which provides for a guarantee that children born on the territory of the State Party, who would otherwise be Stateless, have the right to nationality. The Committee recommends the State Party to consider ratifying the 1954 Convention Relating to the Status of the Stateless Persons and the 1961 Convention on the Reduction of Statelessness, and align its laws with these instruments.

Protection against abuse and torture

20. The Committee notes with concern the existence of torture and abuse of children in farms and in domestic settings. While commending the policy and institutional

measures undertaken to combat abuse and torture, the Committee recommends for the State Party to undertake the following measures.

- a) Prevent and monitor abuse of children in the domestic setting;
- b) Ensure that the Ministry of Gender Children and Social Welfare takes a proactive role in preventing, investigating, prosecuting and remedying cases of violence against children in farms and in the domestic setting and;
- c) Create awareness among personnel of the Justice system and those working with children about the rights of children to protection against abuse and torture.

21. The Committee also notes with concern the prevalence of corporal punishment and the lack of legislation prohibiting the practice in all settings. The Committee urges the State Party to review relevant laws and expressly prohibit corporal punishment in all settings and create awareness in schools, among parents, community, traditional and cultural leaders, and among personnel of the justice system on the negative impacts of corporal punishment on the wellbeing of children. The Committee further recommends that the State Party actively promote positive and non-violent forms of child rearing and correction.

E. Family environment and alternative care

22. The Committee notes with appreciation the inclusion, in the Child Care, Protection and Justice Act, of criteria to determine a child in need of care and protection and placement of a child in to a place of safety, and the procedures thereof. The Committee further notes with appreciation the pilot de-institutionalization program operational in four districts. However, the Committee notes with concern the high rate of children deprived of family environment that do not have protection and the lack of monitoring mechanisms for alternative care institutions. The Committee recommends that the State Party undertake the following measures.

- a) Adopt and implement a comprehensive family environment and alternative care guideline in line with the Charter and other international standards;
- b) Periodically monitor and evaluate the situation of children in alternative care institutions;
- c) Establish a mechanism whereby any mistreatment or abuse of children in institutions can be reported and remedied;
- d) De-institutionalize and reduce the numbers of children in residential care by placing them into family and community care and upscale the pilot deinstitutionalization program in all districts of the country;
- e) Increase the number of social workers providing services to children deprived of family environment and;

- f) Provide special protection and support to child headed families through social cash transfer program and other means.

23. The Committee notes with appreciation the on-going review of the Adoption of Children's Act. The Committee encourages the State Party to accelerate the review process ensuring that the act complies with the Charter and other international standards. The Committee further recommends the State Party to establish an organ responsible for monitoring the status of children who have been adopted within and outside the country. The Committee encourages the State Party to consider ratifying the 1993 Hague Convention on Protection of Children and Cooperation in respect of Inter-country Adoption.

F. Basic health and welfare

24. The Committee notes with appreciation the decline in infant and under-five mortality rates, reduction of HIV prevalence, improved access to safe water, progress in the full immunization coverage for children (12-23 months), reduction of pneumonia case fatality and the increase in the proportion of children treated for acute respiratory infections. The Committee is however concerned about the shortages of health personnel, evidenced by a population to doctor ratio of 88,300 to 1, especially in marginalized communities; drug shortages in public hospitals due to mismanagement of resources and corruption; the poor implementation of existing healthcare frameworks; and the inaccessibility of healthcare facilities to marginalized communities and children with disabilities. The Committee is further deeply concerned with the high rate of HIV infection among 15-17 year olds. The Committee recommends that the State Party undertakes the following measures accordingly:

- a) Strengthen health system management and undertake appropriate measures to improve access to basic healthcare services to children and pregnant and lactating mothers;
- b) Undertake necessary measures to improve the population to doctor ratio and increase the availability of pediatricians in all districts such as training more doctors and skilled health officers and decentralization of health professionals across the country;
- c) Take urgent measures to reduce child mortality due to preventable diseases, such as pneumonia, diarrhoea, malaria and neonatal conditions by investing in prevention through vaccinations and immunizations, distribution of mosquito nets, and promotion of hygiene and sanitation including the provision of safe drinking water;

- d) Improve the drug management system and address mismanagement of resources in public health facilities;
- e) Implement the National Charcoal Strategy in order to promote alternative household cooking mechanism thereby preventing cases of severe pneumonia in children;
- f) Allocate adequate resources to effectively implement the five-year Malaria Strategic Plan (2017-2022);
- g) Undertake age appropriate comprehensive sexual and reproductive health education and services to adolescents to reduce the rate of HIV infection among the age group;
- h) Take measures to ensure the accessibility of healthcare facilities to children with disabilities and;
- i) Improve health infrastructure through further development of existing facilities and upgrading health centers to secondary level to avoid congestion in referral hospitals.

25. The Committee applauds the reduction of mother to child HIV transmission rate through an increase in mothers and infants receiving antiretroviral treatment during breastfeeding. The Committee encourages the State Party to strengthen and continue these measures for further reduction of the transmission.

26. The Committee notes the existence of conflict between religion and public health regarding the refusal of parents to have children vaccinated or treated medically on account of religious beliefs. The Committee encourages the State Party to engage parents, community leaders and religious leaders in creating awareness about the need to seek medical attention for their sick children and to take in to account the best interest of the child in doing so.

G. Education, leisure and cultural activities

27. The Committee applauds the State Party for prioritizing and increasing spending on education; the adoption of the Education Act, which provides that primary education in Government schools shall be free of tuition and compulsory for every child; improvement in access to primary education and net attendance; gender parity at primary school level; and the adoption of the re-entry policy for adolescent mothers. However, the Committee is concerned about the charging of fees in certain primary schools in the name of development fund and other activities, low attendance in secondary schools, burdensome procedure of sending requests to the Ministry of Education for re-admission of adolescent mothers, and lack of provision for

protection against physical and sexual violence in schools in the Education Act. The Committee recommends to the State Party to take the following measures:

- a) Recruit qualified teachers to reduce pupil to teacher ratio;
- b) Improve resource administration in the education sector to enhance efficiency and improve quality of education;
- c) Simplify and decentralize at school level, the procedure for re-admission for adolescent mothers aspiring to return to school;
- d) Integrate comprehensive sexual and reproductive health education in the high school curriculum;
- e) Harmonize the provisions of the penal code and teaching service commission Act, so that cases of sexual offences by teachers against students are appropriately handled;
- f) Expressly prohibit all fees in primary education;
- g) Improve attendance in secondary schools by, among others, making schools safe space, providing school feeding programs, and ensuring that economically disadvantaged children obtain support;
- h) Strengthen measures to increasing the transition rate of girls from primary school to secondary school and tertiary level through the provision of adequate teaching materials and facilities and providing tutorials;
- i) Undertake training for primary and secondary school teachers on children's rights and;
- j) Implement the National Inclusive Education Strategy of 2016 and ensure the availability of teachers trained to service children with disabilities in all district of the country.

H. Special Protection Measures

Refugee and migrant children

28. The Committee notes with appreciation the provision of basic social amenities to refugee children such as food and healthcare services. The Committee recommends that the State Party undertakes the following measures to enhance the protection of refugee children:

- a) Provide educational services for refugee children and ensure the re-integration of refugee children into the Malawian community;
- b) Fast track the review of the Refugee Act and ensure that it is in line with the Charter and other international standards;
- c) Provide rehabilitation and psychosocial support to refugee children who were former soldiers;

- d) Put in place family reunification programs for children separated from their parents and caregivers and;
- e) Consider lifting the reservations made to the *1951 Convention relating to the Status of Refugees*, particularly reservations to Articles 15, 22 and 34.

29. The Committee notes with deep concern that migrant children are detained for contravening immigration law. The Committee urges the State Party to prevent detention of migrant children and develop suitable places of safety.

Trafficking

30. The Committee notes the fact that the State Party is a source country for children subjected to labour and sex trafficking, a destination country for children from neighbouring countries and a transit country for children subjected to labour and sex trafficking in South Africa. The Committee notes with appreciation the adoption of the Trafficking in Persons Act and the establishment of the National Coordination Committee against Trafficking in Persons. The committee further commends the measures in place to combat child trafficking, including prosecution and conviction of perpetrators. The Committee recommends to the State Party to strengthen on-going efforts and to undertake the following additional measures:

- a) Develop cooperation and work closely with source and destination countries to combat trafficking of children in order to prevent trafficking and also to ensure the return of child victims; and;
- b) Ensure the investigation, prosecution, and conviction of perpetrators who recruit and transfer children for any form of exploitation;
- c) Put in place procedures for detecting child victims of trafficking and provide the necessary support and assistance to children who are victims of trafficking.

Children in conflict with the law

31. The Committee notes with appreciation the establishment of Child Justice Courts, the establishment of reformatory homes for children convicted of a crime and the establishment of safety homes for children awaiting trial. However, the Committee is deeply concerned by the detention of children with adults contrary to the Child Care, Protection and Justice Act, the handling of children's cases by magistrates that are not designated to handle matters in a child justice court and the setting of the age of criminal responsibility at 10 years. The Committee urges the State Party to;

- a) Implement the National Child Justice strategic plan and establish Child Justice Courts in every district;

- b) Increase the age of criminal responsibility to at least 12 years and establish age assessment guidelines in the justice system;
- c) Ensure that children in conflict with the law are kept in child reformatory centres separate from adults and those that are awaiting trial are also kept in safety homes;
- d) Undertake continuous assessment of detention centres to ensure that no child is detained with adults;
- e) Take appropriate measures to ensure that judges and magistrates presiding over cases involving children are trained in child rights and are acquainted with the Charter;
- f) Ensure that detention centres for children are focused on rehabilitation and reintegration;
- g) Prioritize alternative measures and diversion in the Child Justice system to minimize detention of children and;
- h) Take measures to ensure that child reformatory centres and similar facilities meet minimum standards and cater for basic needs of children such as health and education.

Children of imprisoned parents or care-givers

32. The Committee notes with concern that children whose primary or sole care givers are incarcerated are not duly protected. In accordance with its General Comment no. 1 on Article 30 of the Charter, the Committee urges the State Party to undertake the following measures:

- Prioritize non-custodial sentences for expectant mothers, primary or sole care givers;
- a) When custodial sentences are passed to sole or primary care givers, the decision to keep the child with the caregiver in detention should take in to account the age, sex, level of maturity, quality of relationship with caregiver and the existence of quality alternatives available to ensure the best interest of the child. It should also take in to account the views of the child depending on age and maturity;
- b) In cases where custodial sentences are found to be necessary and the child's best interest dictates that s/he be kept in a detention facility with the caregiver, establish special alternative institutions;
- c) Extend the protection given to incarcerated mothers, to primary or sole care givers under whose custody a child is placed;
- d) Ensure that children are not discriminated against in accessing their rights because of their parents/ primary caregivers' incarceration;

- e) Ensure that children living with caregiver in prison are never treated as prisoners and their rights to health, food, shelter, education and adequate standard of living are respected, protected and fulfilled;
- f) Ensure that expectant mothers deliver outside remand or prison facilities with adequate healthcare service provided and;
- g) If birth occurs in remand or prison facilities, ensure that birth registration takes place without delay and without mentioning prison or remand centre as place of birth.

Children in situation of exploitation and abuse

33. The Committee notes with appreciation the constitutional protection of children from economic exploitation and hazardous work. The Committee further notes with appreciation the setting of the minimum age of employment in public or private agricultural, industrial or non-industrial undertaking as 15 years, the prohibition of any person between the age of fourteen and eighteen from doing hazardous work, by the Employment Act, and the expansion of social cash transfer programs. However, the Committee notes with concern the high prevalence of child labour and children working under hazardous conditions. The Committee further notes with regret that the Government has not finalized policies protecting children from the worst forms of child labour, including the Child Labour Policy. The Committee further notes poor implementation of existing laws and policies as well as lack of coordination between implementing authorities. The Committee recommends for the State Party to undertake the following measures.

- a) Finalize and implement national child labor and child protection policies;
- b) Allocate adequate resources to ensure the full implementation of laws and policies on child labor including the National Code of Conduct on Child Labour;
- c) Establish referral mechanism from Ministry of Labor to Ministry of Gender Children, Disability and Social Welfare and vice versa to ensure effective coordination;
- d) Strengthen Social Cash Transfer Programme aimed at reduction of child labour targeting vulnerable children and implement the program in all districts of the Country;
- e) Increase resource allocation to the Child Labor Department and allocate adequate resources to labour inspection programs to undertake continuous inspection in all sectors and, identify and implement strategies to ensure labour inspection in domestic settings; and
- f) Ensure that children who are engaged in child labour are withdrawn and provided with necessary support for their rehabilitation and reintegration.

Harmful practices

34. The Committee notes with concern the prevalence of harmful practices such as female genital mutilation, ritual deflowering of young girls during initiation ceremonies and the practice of prescribing sex with girls to cure HIV. The Committee recommends that the State Party strengthens sensitizing communities to change societal attitude towards harmful practices using mass media and other platforms, and working in collaboration with traditional leaders.
35. The Committee notes with concern the high prevalence of forced and child marriages. While appreciating all the measures being undertaken by the State Party to alleviate this, the Committee encourages the State Party to accelerate the reduction of child marriage by allocating adequate resources towards the implementation of the Campaign to End Child Marriage. The Committee further recommends that the State Party undertakes mass sensitization about the negative impact of child marriage on the rights of the child and on society as a whole. The Committee invites the State Party to take note of the Joint General Comment on Ending Child Marriage in Africa and put in place legislative, institutional and other measures provided therein, to accelerate the campaign to end child marriage.

I. Responsibility of the child

36. The Committee notes with appreciation the incorporation of the responsibilities of the child in the Child Care, Protection and Justice Act. The Committee recommends for the State Party to come up with initiatives to guide parents, teachers and other concerned bodies to facilitate the active participation of children for the greater good of society. The Committee further encourages the State Party to sensitize children about their rights and responsibilities and to empower them through education and the media to assume their responsibilities in the society and prepare them to develop in to well-rounded adults.

IV. Conclusion

37. The African Committee of Experts on the Rights and Welfare of the Child appreciates the efforts invested by the Government of Malawi to implement the African Children's Charter and aspires for the implementation of these recommendations. The Committee would like to indicate that it will undertake a follow up Mission to assess the implementation of these recommendations in the foreseeable future. The Committee would also like to invite the State Party to submit

its combined first, second, third, fourth, fifth and sixth periodic report in 2020, which the Committee considers as the first periodic report.

38. The African Committee of Experts on the Rights and Welfare of the Child takes this opportunity to renew to the Government of the Republic of Malawi the assurances of its highest consideration.