



MALAWI FACT SHEET

# JUSTICE FOR CHILDREN



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COMPREHENSIVE LEGISLATION ON CHILD  
JUSTICE. PROVISIONS RELATING TO  
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# JUVENILE JUSTICE AND CHILDCARE AND PROTECTION IN MALAWI

Malawi does not have comprehensive legislation on child justice. Provisions relating to children are spread out in various pieces of legislation.

The **1969 Children and Young Persons Act** is the main legislation on child justice and childcare and protection. The Act, however, is outdated and contradicts the Bill of Rights provided in the Constitution. In addition, it does not conform to the UN Convention on the Rights of the Child. For example, the Act focuses more on punishing child offenders than on reforming and rehabilitating them. There is also no reference to the root causes of offending behaviour such as poverty and orphanhood, and social interventions to deal with it.

The **1958 Affiliation Act** is the current law that provides for proof of parentage where it is not known or it is disputed (i.e. in the case of illegitimate children) so that child maintenance can be provided. The Act, among other weaknesses, discriminates against children on the basis of the circumstances of their birth because the provisions for the maintenance of illegitimate children are less favourable than those for legitimate children.

The **1949 Adoption Act** is an independent piece of legislation that is outdated. It was intended for non-Malawians employed in the colonial government who wanted to adopt children. It does not put the best interests of the child first in determining whether an adoption can take place or not and it prohibits inter-country adoptions. The Act also does not make provisions for foster care.

The **2000 Employment Act** does not clearly differentiate between child labour and child work. It allows for 'light' child work such as helping the family earn an income but does not specify the conditions under which a child can work and whether work prevents the child from going to school. Child labour, such as forced labour in agricultural estates, is prohibited because it is harmful to moral, psychological and physical well being of the child.

The Act also only protects children between the ages of fourteen and eighteen from hazardous work, leaving out younger children who are more vulnerable to abuse and exploitation. It is also not in the best interests of the child that children below the age of fourteen should be employed despite the safeguards in the Act.

# THE CHILD (CARE, PROTECTION AND JUSTICE) BILL

The Malawi Law Commission developed the Child (Care, Protection and Justice) Bill in 2006, with support from UNICEF. It is currently under review by Parliament. The Bill is an innovative legislation that puts together all issues of child protection and justice into one law.

The Bill's **unique features** include the following:

- It defines a child as a person below the age of 18.
- The Bill recognises and places importance on the principle of the best interests of the child.
- It provides clear guidelines on the arrest of a child, ensuring that it is not a traumatic experience and takes into consideration a child's best interests.
- It introduces procedures following the arrest of a child. These include:
  - **Preliminary inquiry**, which determines whether the offence a child has committed should be dealt with by the criminal justice system or not.
  - **Criminal responsibility**: establishes the age of a child to determine whether they can be held criminally responsible for their actions (the age of criminal responsibility in Malawi is 10 years).
  - **Diversion**: where the offence is not serious and a child voluntarily admits responsibility, a child can be diverted away from the criminal justice system.
  - **Legal representation**: a child in conflict with the law has the right to be protected within the criminal justice system through legal representation.
  - **Child justice courts**: children's cases are to be presided in private by specially trained legal and judicial officers.
  - **Children in custody**: children cannot be detained in police stations or with adult offenders but in specially created 'safety homes'. After trial, children should be taken to reformatory schools for rehabilitation and eventual reintegration back into their communities.
- The Bill acknowledges that parents have primary responsibility for caring and protecting children. However should parents be unable to look after children or in cases of emotional, physical and sexual abuse of children, the State can take measures to provide substitute care such as guardianship, foster care or adoption, including inter-country adoption although this is seen as a last resort.
- The Bill introduces a new area not present in other legislation: child labour. It proposes that children younger than 10 cannot be employed at all, even in homes.
- Other areas covered by the Bill are child abduction, which is punishable by 10 years of imprisonment, child trafficking, which is prohibited, and harmful cultural practices such as forced marriage and pledging a child as security for a loan, which carry a three year prison sentence.





# WHAT IS THE IMPACT OF THE CHILD BILL?

- It is based on the rights of the child, recognising the special needs of children and focuses on the best interests of the child.
- It modernises the child justice system by applying principles of restorative justice. Restorative justice works to resolve conflict and repair harm by involving both offenders and their victims in a process of mediation.
- The Bill recognises the vulnerability of the child, especially when that child comes into conflict with the law and treats that child as a 'child' not as a 'juvenile offender', a label that adds to the child's victimisation.
- It recognises that crime prevention is not just about protecting children who are about to fall into bad association but also includes providing the best possible care and socio-economic support as well as proper parenting to minimise children's chances of resorting to crime.
- The Bill makes the processing of children through the formal justice system a last resort, and only for extreme cases, for the shortest amount of time, while taking into account the effects of the crime on the victim and the community.
- The Bill repeals the Children and Young Persons Act and amends both the Adoption Act and the Employment Act.



## MALAWI AT A GLANCE

- **Total population: 13.2 million** (estimated)
- **Children under 18 years: 7.3 million** (estimated)
- **GNI per capita: US\$160** (State of the World's Children, 2007)
- **People living below the poverty line: 52%** (2005, Integrated Household Survey)
- **Life expectancy at birth: 47 years** (estimated)
- **Under-five mortality rate: 118** (Multiple Indicator Cluster Survey 2006)
- **National HIV prevalence: 14%** (2005, National AIDS Commission)
- **Net primary attendance ratio: 82%** (2006, MICS)
- **Gender parity: 1.06** (2006, MICS)

<b>CHILD PROTECTION</b>	Child labour	28.8	Per cent
	Marriage before age 15	10.6	Per cent
	Marriage before age 18	50.2	Per cent
	Young women 15-19 currently married or in union	32.1	Per cent
<b>HIV/AIDS &amp; ORPHANHOOD</b>	Comprehensive knowledge about HIV prevention (15-24 women)	41.6	Per cent
	Comprehensive knowledge about HIV prevention (15-24 men)	40.7	Per cent
	Condom use at last high-risk sex (15-24 women)	39.6	Per cent
	Condom use at last high-risk sex (15-24 men)	59.6	Per cent
	Children not living with a biological parent	17.4	Per cent
	Prevalence of orphans	12.6	Per cent
	School attendance of orphans versus non-orphans	0.97	



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