

A SNAPSHOT OF ALTERNATIVE CARE ARRANGEMENTS IN MALAWI



QUALITY CARE FOR EVERY CHILD



SOS CHILDREN'S VILLAGES INTERNATIONAL

Based on SOS Children's Villages' assessment of a state's implementation of the UN Guidelines for the Alternative Care of Children





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SOS Children's Villages International

Hermann-Gmeiner-Straße 51, P.O. Box 209

A-6010 Innsbruck, Austria

Email: lao@sos-kd.org

www.sos-childrensvillages.org

Original report written by: SOS Children's Villages Malawi

Summary produced by: Véronique Lerch, Emmanuel Sherwin and Rebecca Dobson

Cover photo: Kristian Brasen, Mariantonietta Peru, Susanne Pilmark & Patrick Wittmann

Background

In 2011, SOS Children's Villages International, along with child rights experts Nigel Cantwell and Prof. June Thoburn, developed an assessment tool¹ to measure a state's implementation of the UN Guidelines for the Alternative Care of Children. This tool is meant to be used as research foundation for countries participating in the SOS Children's Villages global advocacy campaign: Care for ME! *Quality Care for Every Child*.

The assessment tool is a long and complex diagnostic instrument. Undoubtedly, many states will not have sufficient data available to answer all the questions contained in the assessment and no single state will have implemented all the provisions for family support and alternative care as laid out in the UN Guidelines for the Alternative Care of Children. Nevertheless, SOS Children's Villages national associations were asked to complete as much of the tool as possible, given the available data in their country. The three main steps for completing the assessment are:

1. Desk research of existing secondary and meta data, from state, non-state and international sources;
2. Interviews with key service providers, service users and management; and
3. Compilation of the final report, including this summary.

A full version of the original data can be made available upon request. Requests can take up to 90 days to complete. Please contact Emmanuel.sherwin@sos-kd.org for further assistance and questions.

The target groups of this study are:

Children in alternative care: those children and young people who, for any number of reasons, live outside their biological family and are placed in formal or informal care arrangements such as residential care, SOS families, foster care or kinship care.

Children at risk of losing parental care: children whose families are in difficult circumstances and are at risk of breaking down. They may be experiencing any number of challenges including, but not exclusively: material poverty, substance abuse, poor parenting skills, disability and behavioural issues.

Next Steps

SOS Children's Villages calls on all states, civil society partners, inter-governmental agencies, human rights institutions and individuals to use the data contained in this report to defend the rights of children and families – to work together or individually to bring about a lasting change in a child's right to quality care. If possible, in each of the countries where the assessment was carried out, SOS Children's Villages, in cooperation with key partners, will initiate an advocacy campaign on one or more of the recommendations contained within the report. Please contact the SOS Children's Villages national office if you wish to know more, support or become involved in the campaign.

Disclaimer

While all reasonable efforts have been made to ensure the accuracy and legitimacy of the data in this report, SOS Children's Villages cannot be held liable for any inaccuracies, genuine or perceived, of the information retrieved and presented in this document. The purpose of this report is to offer an insight into the state's attitude and recourse to alternative care and any human rights violations therein. SOS Children's Villages will not assume responsibility for the consequences of the use of any information contained in the report, nor for any infringement of third-party intellectual property rights which may result from its use. In no event shall SOS Children's Villages be liable for any direct, indirect, special or incidental damage resulting from, arising out of or in connection with the use of the information.

¹ The original version of the tool can be found here: www.sos-childrensvillages.org/What-we-do/Child-Care/Quality-in-Care/Advocating-Quality-Care/Pages/Quality-care-assessment.aspx.

Executive summary

Malawi is one of the poorest countries in the world, ranking 170 out of 186 countries in the 2013 Human Development Index.² Such high levels of poverty have a grave impact on the wellbeing of children who face a number of additional vulnerabilities. UNICEF has estimated that 800,000 children have lost either one or both parents and are at risk of being placed in an institution or orphanage,³ and according to UNAIDS 770,000 children have been orphaned due to the AIDS virus.⁴

There are widespread child protection challenges in the country: a high proportion of girls (65%) and boys (35%) under the age of 16 have experienced violence; 25% are used as child labour; and 23% of girls are at risk of early marriage.⁵ Many of these children are living without any form of protection or support, making them vulnerable to abuse, exploitation and neglect. An estimated 12,000 children live in child-headed households,⁶ and approximately 6,000 children are in institutional care.⁷

Malawi has made efforts to improve the situation of children. In 2010, the *Child Care, Protection and Justice Act* became the principle legislation on children's rights, enshrining the concept of the "best interests of the child". It consolidated care, protection and youth justice, outlined the duties and responsibilities of parents and put in place mechanisms for children in need of care, including protection from abduction, trafficking, harmful cultural practices and forced marriage or betrothal, and measures for children suspected of committing offences.

Despite this comprehensive law, knowledge of it is low among practitioners and the regulations for implementing the legislation have been delayed. There is no broadly implemented policy for children; instead national responses are still guided by the National Policy on Orphans and Other Vulnerable Children (2003), the National Support Policy (2012) and the Malawi Social Cash Transfer Programme (from 2006). Such gaps in policy instruments pose a challenge to the implementation of the alternative care system.

The *Adoption of Children Act* is the principal legislation on matters of adoption. The current law has imposed restrictions on inter-country adoption, which has been a subject matter for litigation. One of the most perplexing requirements is for applicants to be resident in Malawi for a period prior to being granted an adoption order, but in a number of cases the courts have waived this requirement.

The law does provide for sufficient guidance in terms of what should be taken into account before an order of adoption is granted. The challenge is whether the law is modern enough to take into account the contemporary issues in adoption and child rights in general. The Act is undergoing review after the general outcry over its noticeable gaps. Neither the law nor policy encourages adoption of sibling groups, nor while it is arguably one of the best methods of deinstitutionalisation of alternative care, is adoption seen as a quick route to this end. It was also noted that courts, the Department of Social Work and the Ministry of Gender, Children and Social Welfare keep separate records.

The research by SOS Children's Villages Malawi found that in particular there were concerns regarding the lack of data and information on children in both informal and formal alternative care; inadequate allocation of resources at the national and district levels and lack of staff

² UNDP, Human Development Index 2013, see: http://hdr.undp.org/en/media/HDR2013_EN_Summary.pdf.

³ UNICEF, *Malawi Child Protection Strategy 2012–2016*, Lilongwe: UNICEF, 2012.

⁴ UNAIDS, see: www.unaids.org/en/Regionscountries/Countries/Malawi/.

⁵ UNICEF, 2012.

⁶ *Ibid.*

⁷ *Ibid.*

capacity and training; insufficient registration and inspection of alternative care facilities by the authorities; lack of adherence to procedures, including the admission, development of care plans and reviews of children in the system; and no systematic approach to aftercare and monitoring the reintegration of children into their families and communities.

Key findings

Lack of data

There is no comprehensive data on children in alternative care prior to 2010, due to poor record keeping and the failure of a 2011 baseline study on children in care to access any existing records.⁸ Although there is still no data on the numbers of children in informal care or foster care, the limited information that does exist suggests that in 2011 there were 5,894 children in formal care, the majority of whom were in residential care (orphanages).

Number of children by formal alternative care

	Boy	Girl	Total
Foster care	-	-	-
Place of safety	-	-	-
Reformatory centre	151	17	168
Safety home	72	15	87
Orphanage	2,050	1,839	3,889
Special needs centre	434	331	765
Church home	411	202	613
Transit care centre	236	136	372
Total	3,354	2,540	5,894

Source: MoGCCD, *All Children Count: A Baseline Study of Children in Institutional Care in Malawi*, Lilongwe: MoGCCD, 2011.

Lack of data means that in general the government is unaware of the number of children in alternative care and therefore unable to assess and cater for their needs, or ensure that they are adequately protected from harm.

Funding and resource capacity

Although there are resources allocated by the government for alternative care, these amounts fluctuate annually and cannot be relied upon. For example, the 2011/12 national budget allocated to the Ministry of Gender, Children and Social Welfare (the Ministry) was MK1.7 billion (0.6% of the total), followed by an increase in 2012/13 to MK10 billion (2.5% of the total), and then a considerable reduction in 2013/14 to MK4.8 billion (0.8% of the total). This picture is replicated at the district level where gender, children and community services received less than 1% of the total funding allocated to all district councils between 2007/8 and

⁸ MoGCCD, *All Children Count: A Baseline Study of Children in Institutional Care in Malawi*, Lilongwe: MoGCCD, 2011.

2011/12, rising to 1.24% in 2012/13.⁹ As a result, there are inadequate funds to carry out the legal responsibilities of the authorities.

Although the government sets high standards for the qualification and training of alternative care professionals, it has been reported that only 29% of staff have been trained in childcare-related issues and that staffing levels in most facilities are low. This inevitably has an impact on the quality of care provided to children.

Inadequate registration and inspection of alternative care

A Malawi Human Rights Commission assessment found that there were only 11 care centres (34%) registered with the Ministry, as required by legislation. Other centres operate under the misapprehension that registration with the Council for Non-governmental Organisations is adequate, and the system still relies on the voluntary registration of informal carers.

In part, the large number of unregistered facilities is due to delays in the processing of applications: there is evidence of one application made in 2008 that remained unregistered until at least September 2012.

Before registration can be granted, district level teams are tasked with inspecting facilities and assessing their suitability and standards, including food provision, bedrooms, toilets and other amenities. They are then expected to make recommendations for improvements and decide on whether to issue a licence. Where a licence is granted, facilities should be closely monitored with regular reviews and licences should be renewed every two years.

However, according to the Malawi Human Rights Commission there are no records to suggest that such monitoring and oversight is taking place. It was found that only 31% of alternative care institutions reviewed in this research were inspected in 2012,¹⁰ and that there has been little improvement in 2013. According to a district social welfare officer, it is impossible to conduct the regular monitoring visits due to “financial constraints”.

At the time of the study the new regulations on registration and licensing were still in draft form, but once revised they will clearly outline a system for assessing the suitability of private providers of alternative care.

Lack of registration, care plans and reviews

All children in alternative care should be registered and their records should be kept up to date. However, not all care facilities have complete registers of the children in their care: for example only 79% of alternative care institutions hold details of children's disabilities.¹¹ At a district level, social welfare officers do not keep track of the number of children in alternative care, as care providers do not share adequate information. This means that there is limited control over the admission of children into alternative care, the services that they are provided with and how long they remain in the system.

Many children in alternative care are not provided with care plans, mainly due to the lack of knowledge and enforcement of the regulations attached to the *Child Care, Protection and Justice Act*. None of the district social welfare officers interviewed had a clearly outlined plan or knowledge of the contents of the legislation. The research found that only 558 children (9.2%) were reported to have an individual care plan.

⁹ Ministry of Finance/Local Government sources.

¹⁰ Malawi Human Rights Commission, 2013.

¹¹ MoGCSW, 2011.



Even though regular placement reviews should be undertaken, these are rare due to lack of funding and the lack of guidelines that is crippling the system. During the period under review, the Ministry indicated that contrary to the regulations, only 2.3% of children had their placement reviewed within the previous three months.

As procedures for admission, planning for and reviewing children are commonly not followed and there is no effective oversight, there are serious risks to the welfare of children in alternative care. There have been cases of alternative care providers seeking out children in communities, in order to increase financial assistance from their donors, and there have been allegations that some facilities keep children longer than necessary in order to continue receiving financial benefits.¹²

It is envisaged that the yet to be established Child Care Review Board will be mandated to undertake regular reviews, and the revised Institutional Care Regulations mandate the district social welfare officers and other authorities to visit institutions twice a year, with or without giving notice to the registered provider. However, it is unclear how these standards will be maintained without the adequate provision of resources.

Aftercare provision

There is no system to monitor the reintegration of children after alternative care placements. Although there are some programmes to follow up on the progress of street children by the district social welfare officers, there is very limited support offered to children.¹³ Some non-governmental alternative care providers, such as SOS Children's Villages provide adequate aftercare support, such as assistance with education and six months' accommodation while looking for employment.

According to the law and policy, children moving out of alternative care should be fully informed of and involved in the preparations for their departure and future life. If children are reintegrated into their families, there should also be an assessment of needs, but the level of support provided for any identified needs is limited. Most alternative care facilities do not provide aftercare support, and any support that is provided is often of a poor quality due to lack of funding.

¹² Malawi Council of Churches, 2013.

¹³ Malawi Human Rights Commission, 2013.



Recommendations

1. **Provision of guidelines and regulations:** The government should ensure that all practitioners are knowledgeable about the requirements of the *Child Care, Protection and Justice Act*, and that adequate guidelines and regulations are provided to implement its requirements.
2. **Data collection:** The government, assisted by the National Statistical Office, should establish a comprehensive method of collecting and storing disaggregated data on all children in alternative care, both formal and informal.
3. **Funding and resource allocations:** The government should provide adequate and predictable funding to the Ministry of Gender, Children and Social Welfare, so that it can carry out its responsibilities according to the legislation and policies. Funding should match the heavy burden on services and should focus on providing adequate resources, including adequately trained staff.
4. **Registration and inspection of alternative care:** The government should provide the funds and guidance to ensure that all alternative care providers are registered and regularly inspected, in line with the relevant regulations. The Registrar General should issue a statement that it is only the Office of the Director of Social Welfare that is mandated to regulate alternative care providers. Informal care providers should also be required to register with the authorities.
5. **Procedures for admissions, care plans and reviews:** All children should be registered when they enter the alternative care system and should be provided with and participate in the creation of care plans. Reviews to their care and needs should be undertaken regularly, including providing the opportunity to make complaints and make their wishes known.
6. **Aftercare and reintegration procedures:** The government should consider establishing a mechanism to assist in the monitoring and support of children in aftercare, and during reintegration with their families or communities. The yet to be released Institutional Care Regulations would provide a starting point for this.

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Glossary

Alternative care	The provision of residential care, protection and all other welfare needs for a child temporarily or permanently deprived of their family environment, or in whose own best interests cannot be allowed to remain in that environment, outside his family by either another family in terms of foster care and adoption or by an institution.
Child-headed households	A group of 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	A place under the administration or having originated from a religious institution.
Community-based care	The direct care role assumed by the community leadership or its members in their own homes.
Foster care	A placement of a child in a foster home with a foster parent.
Kinship care	A private arrangement whereby the child is looked after on an ongoing or indefinite basis by relatives or friends.
Institutional care	Residential care, protection and all other welfare needs for a child temporarily or permanently deprived of their family environment, by an institution licensed under these regulations.
Safety home	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	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.
Orphanage	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	A child who has lost one or both parents and is under the age of 18 years.
Special needs centre	An institution/ centre that provides 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.
Transit care centre	A temporary placement of children awaiting further placement in a short and/ or long-term care centre.

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