BRIEFING ON MALAWI FOR THE HUMAN RIGHTS COMMITTEE, COUNTRY REPORT TASK FORCE – July 2013

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1 The human rights obligation to prohibit corporal punishment

1.1 The legality and practice of corporal punishment of children breaches their fundamental rights to respect for their human dignity and physical integrity and to equal protection under the law, and the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment – rights guaranteed in the International Covenant on Civil and Political Rights and other international human rights instruments.

This briefing describes the legality of corporal punishment of children in Malawi. In light of the obligation under international human rights law to prohibit all corporal punishment of children, the recommendations of the UN Secretary General’s Study on Violence against Children, the recommendations to Malawi by the Committee on the Rights of the Child and during the Universal Periodic Review in 2010, we hope the Human Rights Committee will:

• raise the issue of corporal punishment of children in its List of Issues for Malawi, in particular asking what measures are being taken to ensure that corporal punishment is prohibited in the home and in all settings which do not fall under the prohibition in the Constitution, and

• recommend to Malawi, following its examination of the state party’s initial report, that legislation is enacted to prohibit corporal punishment in the home and all alternative care settings as a matter of priority, together with appropriate public education and professional training on positive, participatory and non-violent forms of education and childrearing.
2 Legality of corporal punishment of children in Malawi

2.1 Corporal punishment of children in Malawi is unlawful in the penal system and in state schools and care settings; it is lawful in the home, some care settings and possibly in private schools.

2.2 Home (lawful). Provisions against violence and abuse in the Constitution 1994 and the Penal Code are not interpreted as prohibiting corporal punishment in childrearing. The Child Care, Protection and Justice Act 2010 states that parents have the responsibility to “protect the child from neglect, discrimination, violence, abuse, exploitation, oppression and exposure to physical, mental, social and moral hazards” and “provide proper guidance, care, assistance and maintenance for the child to ensure his or her survival and development” (article 3), but it does not prohibit corporal punishment. Article 80 of the Act states that “no person shall subject a child to a social or customary practice that is harmful to the health or general development of the child” but this is not interpreted as prohibiting all corporal punishment in childrearing.

2.3 Schools (?unlawful). Corporal punishment is unlawful in state schools under article 19 of the Constitution, which prohibits corporal punishment “in connection with any judicial proceedings or any other proceedings before any organ of the state”. It is unclear whether the prohibition applies to private schools. Research has repeatedly confirmed the continued use of corporal punishment in schools.1

2.4 A Compulsory Education Bill is under discussion and in February 2013 was referred by the National Assembly to the Parliamentary Committees on Education and Legal Affairs. Following a review of the Education Act 1962 in 2009, the Government had recommended that the revised Act include explicit prohibition of corporal punishment: we have yet to verify that the current version of the Bill includes prohibition.

2.5 Penal system – sentence for crime (unlawful). Corporal punishment is unlawful under article 19 of the Constitution (see above). There is no provision for it in the Child Care, Protection and Justice Act 2010, though it is not explicitly prohibited.

2.6 Penal system – disciplinary measure in penal institutions (unlawful). Corporal punishment is unlawful under article 19 of the Constitution (see above). There is no provision for it in the Child Care, Protection and Justice Act 2010, though it is not explicitly prohibited. The Act, applicable to children under 16, provides for the manager of a reformatory centre or safety home to “make rules not repugnant to, or inconsistent with, this Act for the maintenance of discipline at the centre or home” (article 176).

2.7 Alternative care settings (partial prohibition). Corporal punishment is unlawful in state institutions under article 19 of the Constitution (see above), but it would appear to be lawful in private institutions and in non-institutional forms of care. There is no explicit prohibition of corporal punishment in the Child Care, Protection and Justice Act 2010: article 179(1) states: “A person to whose care a child is committed under this Act shall, whilst the order is in force, have the like control over the child as if he were the parent of the child responsible for the maintenance of the child.”

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3 Recommendations by human rights treaty monitoring bodies and during the Universal Periodic Review

3.1 The Committee on the Rights of the Child has twice recommended that legislation be enacted to explicitly prohibit corporal punishment in all settings, including the family – in its concluding observations on the state party’s initial report in 2002 and on the second report in 2009.  

3.2 Malawi was examined in the first cycle of the Universal Periodic Review in 2010 (session 9). The Government did not respond to the recommendation to “enact and implement legislation to ensure the complete prohibition of corporal punishment”.  

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Briefing prepared by the Global Initiative to End All Corporal Punishment of Children  
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2 1 February 2002, CRC/C/15/Add.174, Concluding observations on initial report, paras. 33 and 34  
3 27 March 2009, CRC/C/MWI/CO/2, Concluding observations on second report, paras. 38 and 39  
4 4 January 2011, A/HRC/16/4, Report of the working group, para. 104(22)