



# Convention on the Rights of the Child

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## Committee on the Rights of the Child Seventy-fourth session

### Summary record (partial)\* of the 2186th meeting

Held at the Palais Wilson, Geneva, on Tuesday, 31 January 2017, at 10 a.m.

Chair: Mr. Mezmur

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\* No summary record was prepared for the rest of the meeting.

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*The meeting was called to order at 10.05 a.m.*

**Consideration of reports of States parties (continued)**

*Initial report of Malawi under the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (continued) (CRC/C/OPAC/MWI/1; CRC/C/OPAC/MWI/Q/1 and Add.1)*

*Initial report of Malawi under the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (continued) (CRC/C/OPSC/MWI/1; CRC/C/OPSC/MWI/Q/1 and Add.1)*

1. *At the invitation of the Chair, the delegation of Malawi resumed places at the Committee table.*
2. **Ms. Shawa** (Malawi), responding to questions raised at the previous meeting, said that under section 211 of the Constitution, all international agreements certified by an act of Parliament formed part of the law of the country. Under the Child Care, Protection and Justice Act, trafficking was punishable by life imprisonment and anyone who sold a child or used a child as a pledge to obtain credit was liable to 10 years' imprisonment. Issues covered under the Optional Protocol were addressed in articles 74 to 83 of that Act, in articles 14 to 25 of the Trafficking in Persons Act, and in the Penal Code. Efforts were being made in cooperation with traditional leaders to combat the harmful practice of using children as collateral. Forced marriage as a way of paying off debts was prohibited and punishable by 10 years' imprisonment. The new national intersectoral coordination committee for the Trafficking in Persons Act had held its first meeting in December 2016 and had developed procedures for the implementation of the Act. Cases involving the sale of children, child prostitution, child sex tourism and child pornography were recorded in the current information management system. Follow-up action was taken in places where those problems had been identified and offenders were brought to justice. The National Plan of Action for Vulnerable Children included issues covered by the Optional Protocol. The Government had taken a range of measures, in cooperation with traditional leaders and through the school curriculum and the nationwide network of Children's Corners, to raise awareness in communities of the relevant laws and the Optional Protocol.
3. **Mr. Tembenu** (Malawi) said that the State party's system for incorporating international treaties into national law was based on the British model; the relevant ministries would review the situation and consider whether any changes to the law were required.
4. Concerning the Optional Protocol on the involvement of children in armed conflict and the issue of the reliability of the affidavits used to certify the age of prospective army recruits in the absence of a birth certificate, he stressed that lying in an affidavit was an offence. To date no such cases had been identified. Nor had there been any cases of children being recruited to fight in local hostilities between tribes; such practices were also prohibited by law. The Law Commission had already reviewed the Firearms Act and recommended some amendments, which were pending approval by the Cabinet.
5. The extradition of suspects who committed offences under the Optional Protocol on the sale of children, child prostitution and child pornography was covered in the replies to the list of issues; under the Trafficking in Persons Act, crimes committed in Malawi were extraditable. The law also allowed for the prosecution of Malawian citizens not resident in the country who committed such offences abroad.
6. **Ms. Ayoubi Idrissi** (Country Rapporteur for the Optional Protocol on the sale of children, child prostitution and child pornography) asked whether the law extended to offences committed outside the country, regardless of whether the perpetrator was

Malawian. Could the Optional Protocol serve as the basis for extradition in the absence of a bilateral treaty with another State?

7. **Mr. Tembenu** (Malawi) said that, in the absence of a bilateral extradition agreement, mutual assistance agreements could serve as the basis for extradition. It would be necessary to examine whether the Optional Protocol might also serve the same purpose. The delegation had taken note of the Committee's concern about the need for greater certainty in relation to the age of criminal responsibility and the matter would be discussed by the relevant authorities. He wished to stress that the President did not have powers to detain any child, no matter what wrong the child might have committed.

8. **The Chair** said that he would welcome further details on the measures being taken to prevent child sex tourism. Was there a code of conduct for the tourism sector and were there specific police units to deal with such offences? He requested details of specific cases and the outcome of investigations and prosecutions.

9. **Ms. Shawa** (Malawi) said that child trafficking had first been noted along the shores of Lake Malawi, and studies had been conducted to establish the magnitude of the problem before putting into place systems and strategies to curb it. There were police and community victim support posts along the lakeshore. A number of tour guides had received training on how to identify children being used in the sex tourism industry. Whistle-blowers informed the relevant authorities when problems were identified and undercover officers visited hotels and other tourist centres to investigate suspected unlawful behaviour. Several cases had been prosecuted.

10. **Ms. Ayoubi Idrissi** said that she would welcome information on efforts to improve data collection on issues covered by the Optional Protocol, to overcome difficulties in coordination, and to strengthen the capacity of all stakeholders, including children. She wished to know whether the criminal responsibility of legal persons was provided for in the law and whether child pornography, including online child pornography, was criminalized.

11. **Mr. Tembenu** (Malawi) said that child pornography was covered under the recently enacted legislation on cybercrime. The Human Rights Commission, an independent government body, had a dedicated unit dealing with children's rights and carried out important awareness-raising work.

12. **Ms. Shawa** (Malawi) said that the task force led by the ministry with responsibility for children dealt with issues under the Optional Protocol, including awareness-raising, dissemination and data collection. Given that the availability of technology varied across the country, online child pornography was not a major issue, but there was a problem with pornographic videos in some areas. Coordinated action was being taken by the relevant authorities to bring the perpetrators to justice in such cases.

13. **Ms. Kalilani** (Malawi) said that the new information management system for collecting data on all matters relevant to the Optional Protocol was in the process of being developed. The current database contained information on child protection and gender-based violence, but other elements would be added. The National Statistics Office would include indicators on children's rights in future surveys.

14. **Ms. Ayoubi Idrissi** asked whether children could submit complaints to the Human Rights Commission and, if so, how they could access that complaints mechanism. She enquired about rehabilitation measures for victims of child prostitution and child pornography. How many individuals had been prosecuted for offences relating to the Optional Protocol and how many judges, civil servants and law enforcement officers had received training on its provisions?

15. **The Chair** asked which gender-related laws specifically had been translated into local languages and simplified English.

16. **Ms. Shawa** (Malawi) said that children could lodge complaints with the police victim support units and social welfare officers or through a national children's helpline. Between 2015 and 2016, approximately 10 complaints had been received in relation to the Optional Protocol, half of which were still being investigated. In one case concerning a harmful cultural practice, the perpetrator had been convicted under the Gender Equality Act. With regard to rehabilitation, as well as the victim support units that had already been mentioned, there was a network of extension workers in all districts. Victims received psychosocial support and counselling and were prepared for reintegration into society. A training manual had been prepared for all those working in that area. All laws affecting women and children had been translated into local languages and produced in simplified English versions.

17. **Mr. Tembenu** (Malawi) said that children could lodge complaints with the Human Rights Commission; the only impediment to access was that the Commission did not yet have regional offices in all districts. Some 150 magistrates and judicial officers had received training on the Optional Protocol. Although statistics were not available, cases had been tried in connection with the Optional Protocol. In 2015, the police victim support units had dealt with 895 cases of sexual abuse or violence against children.

18. **Ms. Aho Assouma** said that she would like more information about the nature of the support provided by the community support units for victims of trafficking, prostitution and related offences. How many such units were there? She would also like to know how, in the absence of an affidavit or other evidence, the age of persons seeking to enlist in the armed forces was ascertained.

19. **Mr. Madi** said that, in order for the Committee to gain a clearer understanding of how the provisions of the Optional Protocol were being incorporated into domestic law, it would be useful to know whether judges had cited the Protocol in any of their rulings. Could the delegation provide any examples?

20. **Mr. Nelson** (Country Rapporteur for the Optional Protocol on the involvement of children in armed conflict) said that he would be grateful for information on coordination in respect of the Optional Protocol on the involvement of children in armed conflict. He would also like to hear about any assistance measures for refugees and asylum-seeking children. Would the new information management system include data on victims of offences related to the Optional Protocol?

21. **Mr. Tembenu** (Malawi) said that the majority of individuals who sought to enlist in the armed forces had all the necessary documentation. In the event that someone did try to enlist without offering proof of age — which was a rare occurrence — section 122 of the Child Care, Protection and Justice Act provided a mechanism for determining their age. The Government took great care to ensure that only persons who had reached the age of majority were allowed to enlist.

22. With regard to the application of the Optional Protocol on the sale of children, child prostitution and child pornography in court cases, approximately 65 such cases had been prosecuted, but most of them had been tried in child justice courts, the decisions of which were generally not recorded in formal law reports. If a case was appealed, however, then the decision would be included in the law reports.

23. **Ms. Ayoubi Idrissi** said that she would like more information on the Malawi Human Rights Commission complaints mechanism. In particular, she wished to know whether any specific measures had been taken to ensure and to facilitate children's access to the mechanism, whether complaints had to be submitted in writing or some other means, whether children could appear in person before the Commission and whether they had to be represented.

24. Returning to a question she had raised at the previous meeting, she said she would like to know if Malawian law provided for the prosecution of legal persons, or corporations. If so, had any legal persons been tried for offences related to the Optional Protocol on the sale of children, child prostitution and child pornography?

25. **Ms. Aho Assouma** said that she would welcome more details on the mechanism for determining age under the Child Care, Protection and Justice Act and also on the community support units for victims. What type of support was provided in such units for victims of trafficking and prostitution?

26. **Mr. Tembenu** (Malawi) said that the Human Rights Commission had a special unit to deal with issues relating to children. Children had access to the Commission, and the Commission was proactive in handling matters having to do with children. As he had explained earlier, children's access to the Commission was impeded by the fact that it did not have offices throughout the country. The Government would continue working to remedy that problem, resources permitting. Legal persons incurred criminal liability if they committed offences under the Trafficking in Persons Act. In such cases, legal responsibility would rest with the persons who managed the legal affairs of the company concerned. He was unable to provide information about any specific cases in which legal persons had been prosecuted.

27. As for the mechanism under the Child Care, Protection and Justice Act for determining a child's age, X-rays of the knee and sometimes of the teeth were used to determine the age of persons attempting to enlist in the armed forces.

28. **Ms. Kalilani** (Malawi) said that children or their parents or guardians could use any form of communication, not just writing, to submit complaints or register concerns. Complaints could be lodged not only with the Human Rights Commission and social welfare officers, but also through the child helpline, which they could access online, by text message or by telephone. The helpline gave children access to psychosocial counselling and information on sexual and reproductive health and on human rights. The helpline would refer them to the nearest service centre for follow-up.

29. **Ms. Shawa** (Malawi) said that Malawi had 300 community victim support units and 250 police victim support units. They dealt with cases that concerned various legal instruments, including the Optional Protocol on the sale of children, child prostitution and child pornography. A case-management approach was used to follow up cases involving children. Furthermore, there were 12,000 early childhood centres staffed by over 35,000 caregivers, who also communicated complaints and concerns to social welfare officers or to local authorities. In addition, there were Children's Corners where children between the ages of 7 and 17 years could meet, share information and talk about their fears and aspirations. The child protection workers who oversaw the Children's Corners would report any cases or complaints requiring redress or other attention. Between 2014 and 2016, numerous cases of trafficking had been identified through such community support mechanisms.

30. **Mr. Nelson** thanked the delegation for a fruitful dialogue, and said that the Committee now had a better understanding of the child rights situation in Malawi. It was clear that the State party had strong legislation, but implementation remained a challenge. Lack of resources was a challenge, too, as was access to services, especially for the country's large rural population. Nevertheless, the presence of a high-level delegation that included two ministers was evidence of the Government's commitment to implementing the Convention and the two optional protocols to which it was a party, and to improving the lives of children in Malawi.

31. **Ms. Ayoubi Idrissi**, agreeing that the dialogue had been very constructive, said that she would like to see the State party take greater ownership of the Optional Protocol on the

sale of children, child prostitution and child pornography by intensifying its efforts with regard to data collection, coordination, training and awareness-raising. She was confident that the Government would continue striving to strengthen protection for children and children's rights in Malawi.

32. **Mr. Tembenu** (Malawi) said that the dialogue had helped the delegation to identify issues of particular concern to the Committee and had also highlighted ways in which the Government could enhance the protection of children's rights and enable all Malawian children to live in a safe and secure environment.

33. **The Chair** said that the Committee strongly encouraged the State party to consider ratifying the Optional Protocol on a communications procedure. It looked forward to receiving further information on the amendments to the Constitution and other initiatives under way in the State party. The Committee understood that there were competing interests and priorities in the allocation of resources, but trusted that the Government would do its utmost to ensure that the children of Malawi received the share to which they were entitled.

*The discussion covered in the summary record ended at 11.25 p.m.*