



**Convention on the
Rights of the Child**

Distr.
GENERAL

CRC/C/SR.1373
22 January 2009

Original: ENGLISH

COMMITTEE ON THE RIGHTS OF THE CHILD

Fiftieth session

SUMMARY RECORD OF THE 1373rd MEETING

Held at the Palais Wilson, Geneva,
on Tuesday, 13 January 2009, at 3 p.m.

Chairperson: Ms. LEE

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The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS OF STATES PARTIES (continued)

Second periodic report of Malawi (CRC/C/MWI/2) (continued)

1. The members of the delegation of Malawi resumed places at the Committee table.
2. The CHAIRPERSON said that some members of the Committee still wished to ask questions.
3. Ms. KHATTAB asked what steps were being taken to address the sexual exploitation of children and to combat female genital mutilation. She also noted that, according to the written replies, Malawi did not have any reports of cross-border trafficking in children. She would like to know what reporting mechanisms were in place, how data were collected and how professionals who worked with children were trained. It would also be useful to learn whether national law defined trafficking in children and how it dealt with the related issues of child labour and early marriage. She enquired whether those practices had been made an offence, whether any cases had been prosecuted and whether there had been any initiatives to rehabilitate the victims.
4. Mr. PARFITT noted that the 2007 report by the Malawian Human Rights Commission on services available to children who had been sexually abused in the family had been very critical of the Government and had found that 93 per cent of the victims were girls, primarily aged 5 to 9. The report had referred to the culture of silence in the community. As he understood it, the Government had embarked on a programme to deal with sexual abuse in the family. The Committee was concerned that if services were not available to the victims after they reported abuse, they were in even greater danger in the family and the community. He asked whether Malawi was providing such services.
5. The CHAIRPERSON, speaking as a member of the Committee, asked what Malawi's priorities were with regard to children with disabilities. On the issue of corporal punishment, she noted that, according to the written replies, if such cases were reported, administrative and legal measures could be taken, and she enquired what those measures were. She also wondered whether there had been any change in the age of criminal responsibility, which in Malawi was set at 7 years, and she would like to have the State party's definition of the child, which according to the Constitution was 16.
6. Given the high infant mortality rate and problems of malnutrition, it would be useful to know whether any measures were being taken to urge health workers to encourage breastfeeding. As she understood it, there were a number of child help lines in the country, and she suggested that it might be more useful to have a single consolidated line, operational around the clock.
7. Mr. KAMLONGERA (Malawi) noted that a number of questions had been asked about education. With regard to how the disabled were included in the education system, he said that the Ministry of Education placed special emphasis on children with special educational needs, including the blind and the deaf, for whom it procured books in Braille and hearing aids. The Government also sought to make allowances for the physically challenged by introducing

changes to school infrastructure, such as the installation of ramps. The aim was to be as inclusive as possible. Only in special cases were there separate boarding schools for children with disabilities.

8. The Government was considering the introduction of classes on life skills in primary and secondary schools. A number of programmes were broadcast on national radio. Extracurricular clubs in primary schools were open to both sexes, but were attended almost exclusively by girls.

9. As in the past, the Malawian education system took a holistic approach to basic education. The national education plan reflected the educational needs of all Malawians and included programmes for school dropouts and campaigns to address adult illiteracy. The plan gave priority to promoting equitable access to education, better quality schooling, and improved governance and management. Equitable access to education was a key factor in early child development. Adult literacy classes were attended primarily by women, and more men must be encouraged to enrol. A so-called complementary basic education initiative targeted school dropouts.

10. Many children who completed primary school were unable to go on to secondary school. Thus, there was a problem of equitable access. Governance and management issues were a key factor in technical colleges, because progress could be made in improving education only if a robust mechanism existed for regulating the system. The ten-year plan provided that those goals should be put in place by 2017. The number of teachers being trained for primary schools was still insufficient. It was hoped that by 2013 the pupil/teacher ratio in primary schools could be reduced to 1 to 60, as against 1 to 98 currently. At the level of higher education, the goal was to improve governance and management in order to help provide the human resources needed in the private sector.

11. The CHAIRPERSON asked whether the complementary basic education programme was adequate to enable Malawi to meet its MDG2 goals.

12. Mr. KAMLONGERA (Malawi) said that the complementary basic education programme should not be considered in isolation, but was part of overall efforts being made in the context of the primary school system to meet the MDG2 goals.

13. Mr. KRAPPMANN stressed the crucial importance of overcoming the serious shortage of qualified teachers.

14. Mr. KAMLONGERA (Malawi), turning to the issue of corporal punishment in schools, said that parents who learned that their child had been subjected to corporal punishment could take the matter up with the school authorities or even with the police. The police then investigated and could take further action. If the matter was brought before the Ministry of Education, disciplinary measures could then be decided, and the Ministry of Justice could refer the case for legal action. With regard to a question on classes in refugee camps, he pointed out that, as some refugees were trained teachers, it was usually unnecessary to call in Malawian teachers.

15. Ms. NTABA (Malawi) explained that the report of the State party had been prepared in collaboration with non-governmental organizations (NGOs), which had helped with data collection in the field and with the actual drafting of the report. Thus, NGOs had made a major contribution to the elaboration of the report.

16. Data on sexual exploitation cases were available, but not on how such practices were related to trafficking. For example, if a child domestic worker had been sexually exploited, it was not recorded whether or not the child had been the victim of trafficking. However, a study had recently been conducted on trafficking in children, and it was hoped that it would provide sufficient information to show whether victims of sexual exploitation in the home were also victims of trafficking.

17. The CHAIRPERSON sought clarification on whether the delegation was referring to sexual abuse in the home or to sexual exploitation, which was a very different matter. The question had to do with sexual exploitation, not sexual abuse in the home.

18. Ms. NTABA (Malawi) said that there was in fact a correlation between sexual exploitation of child domestic workers and sexual abuse in the home. Most cases of sexual abuse and sexual exploitation were prosecuted. Police statistics existed but were not readily available, because they had not been computerized and were not disaggregated by age. Once the system was computerized, it would be possible to provide the Committee with such information.

19. The school authorities were encouraged to report cases of sexual abuse in schools to the police, even if the events had taken place more than a year earlier. Cases of sexual abuse of girls were also immediately reported to the health-care authorities, and community victim support units provided abused children with prophylactic treatment for HIV/AIDS.

20. The Constitution of Malawi prohibited corporal punishment in schools. Corporal punishment was classified as either grievous bodily harm or assault and battery. Administrative measures could also be taken to suspend or dismiss the offending teacher.

21. The system of juvenile justice provided for two scenarios: children were either kept on remand in separate juvenile wings in Malawi prisons, or held “at the pleasure of the President” in reformatory schools. Children under 18 were held in one of the country’s two reformatory schools. The Children and Young Persons Act, which continued to be the basis for dealing with juveniles, specified that children should not be tried in public, that their names should not appear in the press and that, if they wished, they could give evidence in the judge’s chambers rather than in the courtroom. Under a national programme, juvenile offenders received counselling and vocational training and could choose to perform community service, write an apology to the victim or take part in victim/offender mediation.

22. The regular evaluation of training courses for prosecutors and magistrates had resulted in a number of improvements. Police officers continued to receive training at the police academy.

23. The Board of Visitors met once a month. It was made up of representatives of the Ministry of Women and Child Development, the police, the courts and NGOs. Its reports on visits to

prisons were not made public. However, if the Board ascertained that a child had been held for too long, it could deal with the matter directly and obtain the child's release, except in cases involving murder or rape.

24. Mr. KOTRANE said that, despite the Government's praiseworthy efforts made to improve the situation, the quality of the judicial system raised some doubts. The minimum age of criminal responsibility was still 7 years. A bill was under consideration to raise the age to 10 years, but that was still too low. He urged the delegation to consult the Committee's general comment No. 10 on children's rights in juvenile justice.

25. The delegation had noted that the Board of Visitors could decide that a juvenile should no longer be held in remand custody. On what basis could the Board conclude that such remand was excessive? In the opinion of the Committee, Malawi did not have sufficient limitations on remand custody for juveniles, and specific legal provisions needed to be introduced without delay to bring the country's regulations on remand custody for juveniles into line with the requirements of the Convention.

26. It would be useful to hear more about the programmes offered to help with the reintegration of juveniles when they were released from prison.

27. Mr. PARFITT sought further information on existing rehabilitation services for victims of sexual abuse. He was disturbed that some children were kept "at the pleasure of the President". Judging by the experience in his own country, such decisions on how long young persons could be held in prison were often taken at a political level, and those concerned ended up staying in prison longer than if they had had a fixed sentence. He therefore wondered whether there had been any reconsideration of the use of such "at pleasure" decisions.

28. Ms. AIDOO (Country Rapporteur) noted that, according to paragraph 309 of the report, the Mpemba Boys Reformatory School sheltered both street children and children remanded in custody, and she asked the delegation to explain why street children were placed in reformatory schools. The report did not provide much information on street children or on efforts to protect their rights and ensure that they received proper care and treatment and were not treated like offenders.

29. The CHAIRPERSON asked whether the delegation thought that the Child (Care, Protection and Justice) bill would be passed soon.

30. Mr. KAMANGA (Malawi) said that there had been a considerable improvement in the administration of justice in Malawi. The provisions relating to pretrial detention were followed rigorously. No person - child or adult - could be held for more than 48 hours.

31. Common-law jurisdictions normally did not convict children, even when they were in trouble with the law. In particularly serious cases involving children, such as homicide, instead of convicting the defendant, the court ordered the child to be "held at the pleasure of the President", which often meant that the child was placed in a reformatory. Once there, the child was visited periodically by the Board of Visitors, which assessed the case and determined if the child was reformed; if so, the Board could recommend the child's release.

32. Because family ties in Malawi were quite strong, children were sent to orphanages only exceptionally as a last resort. A bill on family issues currently under consideration would cover the question of alimony; in cases where there was neglect or failure to pay, the new law would call for compulsory measures to be taken against the offending party. Referring to a statistic cited at the previous meeting, he said that he had doubts as to whether as many as 1,000 Malawian children were adopted every year. All adoptions had to be authorized according to an established court procedure. The executive branch had no influence over the outcome of applications, and could not independently decide to authorize a specific number of adoptions per year.

33. Every Government ministry, department and service was obliged to set aside 2 per cent of its budget to support staff who had contracted HIV, and the use of such funds was strictly audited. The Malawi Law Commission had made significant efforts in 2008 to ensure that new legislation would be adopted on HIV/AIDS. Because the question was so complex and involved sensitive issues related to privacy, the Commission had engaged in extensive consultation, inter alia with young people and HIV/AIDS sufferers.

34. Mr. FILALI asked whether recommendations of the Board of Visitors were accepted at face value, or whether a child whose release had been recommended would still stand trial. Noting that there had reportedly been an increase in criminal delinquency among minors, he asked whether in the delegation's view that was the result of a high dropout rate, drug use or a lack of alternatives. Had there been any studies that had shown an improvement in the conditions of detention? Lastly, he asked whether there were any bodies other than the Board of Visitors that were authorized to visit children when they were in detention.

35. Ms. AIDOO (Country Rapporteur), noting that the human resource shortfall resulting from HIV/AIDS was quite serious, and in the health sector had been estimated as high as 40 per cent, asked what plans the Government had to fill the gap.

36. Ms. ORTIZ (Alternate Country Rapporteur), referring to the delegation's affirmation that children with families were not placed in orphanages, asked how the Government could be sure that was the case. If, as the delegation maintained, all adoptions had to pass through the courts, then there must be a source of reliable statistics on the number of Malawian children adopted and their countries of destination. Such information was of interest to the Committee.

37. Mr. CITARELLA noted that the age of criminal responsibility at 7 or 9 years was very low and was not in line with the Committee's recommendation. When children were accused of serious crimes, was it a judge who decided whether they were sent to either a prison, an orphanage or a reformatory institution? When a child was detained "at the pleasure of the President", what legal guarantees applied?

38. Mr. KANSINJIRO (Malawi) said that there was an established procedure for the admission of children to orphanages. If it was determined that a child had no members of his or her extended family who could provide care, the case was handed over to the district social affairs office, which carried out an inquiry and produced a report. If the office recommended placement, the orphanage's absorption capacity was assessed, and once social workers from the orphanage and the Government agency confirmed the decision, the child was placed in the institution. Orphanages were subject to inspection at the district level by multisectoral teams, which

included officials from the education, health and social affairs administrations. If conditions were found to be inadequate, the Government Minister responsible for children's affairs could order the immediate closure of the institution. The Government issued specific guidelines for a number of situations involving orphans, including foster care and care in community-based institutions.

39. Ms. KULEMEKA (Malawi) said that the Government had seen no indication that the practice of female genital mutilation was performed during initiation ceremonies carried out when girls reached puberty.

40. Mr. KAMANGA (Malawi) said that although the age of criminal responsibility was currently 7, there was an ongoing debate on the subject, and the Law Commission and the commission that had reviewed the Penal Code had recommended raising the age to 10. The Board of Visitors had no authority to convict a child; in Malawi, there was no legal provision at all for the conviction of children. In criminal cases involving children, the court usually issued an order sending the child to a reformatory institution, after which an effort was made to reintegrate the child into society. The Board of Visitors generally had the power to order the release of a child who was in a reformatory if it considered the child reformed. However, in serious cases such as homicide, the Board had to issue a recommendation to the President, who could subsequently order the child's release.

41. Mr. FILALI asked at what age a person had to stand trial for committing a crime.

42. Mr. KAMANGA (Malawi) said that for purposes of criminal responsibility, the age was 7, and there was a proposal to raise that age to 10. As for the definition of a child, the question had been discussed at length during a constitutional review process. Different ages applied depending on whether the question concerned marriage, voting rights or other aspects. In the Law Commission, it was felt that there was no merit in defining a single age for all rights and responsibilities. The age of marriage was 18, but marriage could be authorized before that with the consent of the parents.

43. The CHAIRPERSON said that, while it was understandable that certain activities such as employment or the purchase of alcohol should be authorized at different ages, the Constitution apparently defined the child as a person under the age of 16, while under the Convention, the definition was a person under 18.

44. Mr. CITARELLA underscored the fact that, while the Convention allowed for different ages to be established for the right to work or to marry, it clearly defined the child as a person under the age of 18.

45. Ms. NTABA (Malawi) said that services for victims of sexual abuse were lacking, and that there was no established standard or procedure for providing them. Malawian society was, however, relatively supportive, and victims often received help in their family settings. In court cases involving sexual abuse, judges sometimes ordered Government assistance for the victim, but that had not yet become established practice. The Ministry of Women and Child Development maintained a social rehabilitation centre in one city, which provided services to women victims of domestic abuse.

46. In 2004, an assessment of drug use, including tobacco and alcohol, carried out in Malawi had shown a link between juvenile delinquency and crime. The subsequent report had made recommendations, as a result of which, some measures such as raising awareness of drug and alcohol abuse were being implemented. As yet, no follow-up had been carried out to see whether they were successful.

47. A study into crimes of need carried out by the National Statistical Office attributed the level of delinquency in Malawi to serious poverty, which forced some children to turn to crime in order to feed themselves. Vocational training and counselling were being offered to children so that they could learn other ways to sustain themselves. The Child (Care, Protection and Justice) Bill had been put forward because the Children and Young Persons Act needed to be reviewed in order to bring standards into line with the Convention on the Rights of the Child. It was one of several bills pending. The Children and Young Persons Act did provide for some best practice with regard to the way juveniles were dealt with in the justice system; for example, their trials could be held *in camera* and they were not detained with adults. Children went through the normal criminal justice process; however, at the end of that process, they were not convicted but “held at the pleasure of the President”. Each child’s case was subject to a review by the Board of Visitors and, after two years, by the High Court. During a review a retrial could be ordered or a sentence quashed.

48. The CHAIRPERSON reminded the delegation that there were a number of questions outstanding. For example, Mr. Siddiqui had asked who was responsible for writing the Malawi Poverty Reduction Strategy, and who was responsible for its implementation. There had been questions regarding malnutrition, breastfeeding, and the child helpline. Ms. Aidoo had asked about the human resource implications of HIV deaths.

49. Ms. ORTIZ (Alternate Country Rapporteur) asked whether civil registration would be compulsory for all children under the bill that had been put forward. With regard to orphans, some aspects of the report of the Human Rights Commission seemed to contradict the State party report. The Commission’s report stated that, although guidelines were in place, many orphanages were not being monitored; staff were not being provided with the proper training, and some orphanages were involved in setting up illegal adoptions. She asked whether Malawi had adopted the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption.

50. The CHAIRPERSON asked whether Malawi envisaged ratifying the Convention relating to the Status of Stateless Persons.

51. Ms. KACHIKHO (Malawi), responding to a question by Ms. Aidoo, said that the posts that were becoming vacant in government departments as a result of HIV/AIDS should be filled by the young men and women who had difficulty finding employment after graduating from university because they did not have the required number of years of experience.

52. Mr. KAMANGA (Malawi) said that Malawi had developed its own policy documents with regard to the Millennium Development Goals (MDGs) and the Malawi Poverty Reduction Strategy. The policies were not donor driven because the country’s development was considered to be a national matter, but that was not to say that there was no input from cooperating partners. The Millennium Goals underpinned national policy and streamlined child issues. For example,

children's rights were promoted under themes, such as social protection and social development. Children's issues were cross-cutting and the questions of education and health for children were tackled within all MDG themes. Further information could be provided if the Committee wished.

53. Malawi would look again at the Convention relating to the Status of Stateless Persons; it was useful to be reminded of conventions that had not been ratified and those that were in the process of ratification.

54. The Malawi Human Rights Commission was an autonomous, State institution. It had been involved at times in the State party reporting process and was a useful source of information. All adoptions granted by a court in Malawi were registered and data could be provided on the number. The Government did not have any information suggesting that some orphanages were being used to arrange adoptions, but it would look into that issue.

55. Mr. KANSINJIRO (Malawi) said that child helpline services were available, but that they were run by many different agencies. The Government had recognized that a national child helpline was necessary to curb the numerous abuses suffered by children. The existing regional helplines should feed into the national helpline. A needs assessment was being carried out and currently available services were being mapped out. Once the assessment had been completed, the next step would be to decide where the national helpline should be housed and to ensure that all the necessary equipment and resources were available. The existing helpline services had agreed to be partners in the national project. Telecommunication service providers were also key partners in providing a toll-free national helpline. Those service providers had been involved in the preliminary discussions and had asked for the tax on mobile telephones to be removed, which the Government had done, in order to allow the use of a toll-free number.

56. Mr. KOTRANE asked whether child refugees had access to education and what resources were available to help them overcome the specific difficulties they faced, such as language. With regard to child labour, he noted that Malawi had ratified the ILO Minimum Age Convention. The minimum age for work in Malawi was 14 and for dangerous work 16, which was acceptable for a transitional period, but they should eventually be increased to 15 and 18 respectively, in line with the Convention. He asked whether the Government was considering revising those requirements. Education was not compulsory in Malawi, as stated in paragraph 250 of the report, and many children worked. He asked what steps the Government was considering to make education free and compulsory, and to establish effective systems to monitor child labour, for example, through workplace inspections.

57. He noted that the number of child rights cases reported to the Malawi Human Rights Commission had increased year on year between 2002 and 2006. He asked whether the Human Rights Commission had continued to receive such reports in 2007 and 2008 and whether the number had continued to rise.

58. Ms. AIDOO (Country Rapporteur) requested information on children living on the streets; some had been placed in reformatories, which was a matter of concern.

59. Ms. KACHIKHO (Malawi) said that it was important to bear in mind the reasons why children took to the streets.

60. Mr. KANSINJIRO (Malawi) said that the reform schools created in the 1960s for children in conflict with the law were also special centres for protection of children in destitute circumstances, including street children. There had been fewer orphanages at that time, and not all children could be placed in foster care. Therefore, a decision had been made to provide care and protection for them in the reform schools. The Government was currently exploring alternate approaches to the care of vulnerable children.
61. The CHAIRPERSON said the Committee was concerned that street children held in reformatories might be seen as in conflict with the law.
62. Ms. KACHIKHO (Malawi) said that she was personally gratified that the lives of street children had so profoundly changed in recent years thanks to the work of the Ministry of Women and Child Development; many were in school, and some had gone on to higher education. This could not have been possible without the intervention of the Government.
63. Mr. CITARELLA pointed out that a system of compulsory education would help to resolve the problem of children in the street as well as the problem of underage employment.
64. Mr. KAYUNI (Malawi) said that under the Birth and Death Registration Act of 1904, which was still in force, birth registration was voluntary and a fee was charged. However, under the National Registration Bill that would supplant the previous legislation, birth registration would be free and compulsory. The Government had distributed registers to 14 of the 28 districts in Malawi, and there were 9,000 village headmen currently responsible for recording births. The question was what would be done with that information. A vital registration exercise had been conducted in 2003 with the assistance of UNICEF, and approximately 36,000 children had been registered. The National Registration Bureau was responsible for issuing birth certificates; and had already delivered about 9,000. UNICEF had paid registration fees for the children covered by that exercise. In the view of the Malawi Government, the introduction of free and compulsory birth registration would assist in the handling of many problems, including trafficking in children, child labour, street children and voting rights. It would be possible eventually to identify and trace every child in Malawi.
65. Ms. AIDOO (Country Rapporteur) asked whether birth registration might suffer as a result of being included in a broader registration bill. The Committee also wished to be sure that free and compulsory birth registration was introduced as soon as possible.
66. Mr. KAYUNI (Malawi) said that the enactment of the National Registration Bill would not slow down the birth registration process. The Ministry of Women and Child Development had already begun to issue unique identification numbers, which children would retain throughout their lives. The same number would never be given to two Malawian children.
67. Mr. KAMANGA (Malawi), turning to questions raised about the minimum age for employment, said that the Employment Act allowed children to begin working at the age of 14. Discussions were under way about raising the minimum age. If a decision was made to do so, the Employment Act would need to be amended.

68. Turning to the matter of education for refugee children, he said that the language problem had been resolved. The Government was using teachers from among the refugee groups to give classes, and Malawian teachers only when there were no refugee teachers available. It was important to point out that in any event children easily and quickly absorbed the new language.

69. Education was not currently compulsory. However, the Education Act review would make education compulsory for all children through the age of 18.

70. Ms. AIDOO (Country Rapporteur) said that the Committee had taken note of the achievements of Malawi in the protection of the rights of children, as well as of the significant obstacles facing that country, including financial and political ones. She hoped that the upcoming elections of 2009 would bring about genuine change in the status of children. The Committee firmly believed that the State party could play a stronger role in promoting and ensuring children's rights. It was the obligation of the Government and not NGOs to comply with the provisions of the Convention.

71. A number of key issues had emerged. First, the Ministry for Women and Child Development should establish the protection of children as a policy priority. Often, when a Ministry had responsibilities in the areas of community development and social services, women and children were accorded insufficient attention. Secondly, Malawi should take measures to create greater awareness of children's rights. Thirdly, the Committee had observed that there were many bills awaiting enactment; the Government should give priority to the passage of bills related to the situation of children. In particular, it hoped that the Child (Care, Protection and Justice) Bill would rapidly be enacted as law.

72. Fourthly, the Government should use its own resources for children to the greatest extent possible, and only then ask for additional assistance from international organizations. Strong advocacy would also be needed to ensure that children received their full share of pooled resources from many donors. Lastly, existing policies must be implemented. The Committee hoped for clearer and firmer results for children, and urged the Government not to wait until all political problems had been resolved before turning its attention to children.

73. Ms. KACHIKHO (Malawi) said she wished to express the profound gratitude of her Government for the careful attention given to the consideration of its report, and assured the Committee that its comments and advice would be a springboard for many activities on behalf of children. Important questions had been raised, highlighting key areas needing attention. The Government of Malawi undertook to foster a congenial environment for the survival, protection and development of children, and would do all in its power to pass child-related legislation as speedily as possible. Indeed, the consideration of the report heralded a new era in the lives of Malawi children. Finally, she said that Malawi looked forward to continued work with the Committee on the Rights of the Child.

74. The CHAIRPERSON said in conclusion that the day's meetings had been constructive, and that much ground had been covered. The Committee hoped that the Government of Malawi would be able to report, in five years' time, that all Malawian children were protected and happy.

The meeting rose at 5.40 p.m.