



Convention on the Rights of the Child

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Summary record of the 2185th meeting

Held at the Palais Wilson, Geneva, on Monday, 30 January 2017, at 3 p.m.

Chair: Mr. Mezmur

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

Consideration of reports of States parties (*continued*)

Combined third to fifth periodic reports of Malawi (continued) (CRC/C/MWI/3-5; CRC/C/MWI/Q/3-5 and Add.1)

1. *At the invitation of the Chair, the delegation of Malawi took places at the Committee table.*
2. **Ms. Shawa** (Malawi), replying to questions raised at the previous meeting, said that, of the estimated 1.8 million orphans in Malawi, around half had lost one or both parents to AIDS. In rural areas, they were cared for in community-based early childhood development centres. Child victims of abuse were accommodated in shelters until a suitable long-term home had been found for them.
3. Foster parents were normally registered and children's homes were licensed. Around 10,000 orphans and other vulnerable children were currently living in or receiving day care in such homes, where conditions were continuously monitored by social workers. Cases of violence had been recorded in 6 of the 105 licensed homes in the country. The perpetrators had been sentenced, and steps had been taken to afford adequate protection to the victims. Corporal punishment and other forms of abuse were prohibited under the Child Care, Protection and Justice Act.
4. Families who looked after orphans were offered economic support. Some, particularly those living in rural areas, benefited from the Social Cash Transfer scheme, which covered 750,000 individuals — 75 per cent of them children — in 180,000 low-income households across the country. Once it had been fully rolled out, the scheme was expected to cover over 319,000 households.
5. Following a review of the Adoption of Children Act, the Malawi Law Commission had drafted a new bill on adoption that reflected elements of the Convention on Protection of Children and Cooperation in respect of Intercountry Adoption, which the Government intended to ratify in the fullness of time. The bill had been submitted to the Cabinet for its consideration.
6. The children of women prisoners could reside with their mothers up to the age of 2 years, although alternative arrangements were made if possible. They had access to early childhood development services, appropriate nutrition and rehabilitation programmes to prepare them for school.
7. In view of the high maternal mortality rate, the Government had launched a safe motherhood initiative to provide the prenatal care needed to ensure safe deliveries. Pregnant women and their partners were encouraged to be tested for HIV, and adolescent girls were given information on conception and pregnancy prevention.
8. According to the latest figures, the percentage of children affected by stunting had fallen to around 37 per cent, thanks in large part to the Government's supplementary nutrition support programmes. Childhood immunization coverage stood at 90 per cent, with most children being vaccinated before the age of 6 months, regardless of their disability status. Mobile clinics had been introduced to reach children in rural areas, where many village leaders had been enlisted to promote vaccination. While there were occasional drug shortages, the Government had invested heavily in an attempt to ensure that essential treatment was available at all times. A large number of health professionals had been trained, but they could not be absorbed into the health system until certain rules had been relaxed.

9. A combination of comprehensive sex education and youth-friendly health services had proved effective in reducing the number of teenage pregnancies. Preventing HIV infection among adolescent girls remained a major challenge, but appropriate measures were being taken, including through the drafting of the HIV and AIDS Prevention and Management Bill. Sexual and reproductive health services had been integrated into general health services to facilitate access to contraception. Moreover, one-stop centres had been established to provide assessment, post-exposure prophylaxis of HIV infection, contraception and other treatment to victims of sexual violence.

10. In order to boost the school completion rate among girls, which stood at 24 and 12 per cent for primary and secondary education, respectively, the Government supplied sanitary pads and had extended the Social Cash Transfer scheme to cover over 100,000 school-age girls. In Zomba District, the prevalence of HIV had been found to be 60 per cent lower among girls benefiting from the scheme.

11. The Disability Act was being implemented in part. Schools had been opened for blind and deaf children, and the accessibility of educational facilities in general had been enhanced. The Disability Trust Fund was not yet operational owing to the lack of a management structure.

12. It was estimated that 40 per cent of children with disabilities, mainly those in rural areas, did not attend school. In order to rectify the situation, the Government, in cooperation with the Federation of Disability Organizations in Malawi, was working to locate children with disabilities and to assess their needs. It had also launched campaigns to combat the stigma associated with disability, increased the number of vocational training options open to children with disabilities, and provided training in the identification of disability to staff in early childhood development centres.

13. The Government acknowledged that many children had to travel long distances to attend school. Consequently, it had ordered the construction of boarding schools for girls and awarded bursaries to disadvantaged girls and boys. Despite its efforts, resources were insufficient, so support from the international community would be appreciated. The low proportion of female secondary-school teachers was not attributable to government policy, which provided for gender equality in recruitment. Rather, there was a need to provide qualified women teachers with services that were conducive to their continued employment.

14. Between 2011 and 2016, the Government had implemented a child labour action plan, which had involved monitoring tobacco and other farms and reuniting at-risk children with their parents. The plan had helped to reduce child labour by 60 per cent and had led to a number of prosecutions.

15. The adoption of the Trafficking in Persons Act had led to harsher sentences for child trafficking. Children aged 10 years and above who were in conflict with the law were often sent to reform schools, where they received education and training, although some were currently being held at Kachere prison. She did not have access to statistics on capital punishment for juveniles.

16. Intersex persons were considered to have a medical condition, and decisions regarding their treatment were made on the basis of the sexual characteristics that they possessed.

17. **Mr. Tembenu** (Malawi) said that the HIV and AIDS Prevention and Management Bill had been considered by the Cabinet and would be tabled in Parliament in the near future.

18. The Government had recently formulated a labour and employment policy that took into account emerging issues and was expected to prompt amendments to existing laws or the development of a new legal framework.

19. The issue of abortion divided opinion in Malawi. The Ministry of Justice and Constitutional Affairs was waiting for the Malawi Law Commission to deliver an independent report on the desirability and viability of drafting a bill on the matter.
20. The Malawi Law Commission was also in the process of finalizing guidelines to promote uniformity in the sentencing of child traffickers.
21. The age of criminal responsibility in Malawi was 10 years. However, children aged under 14 years only became criminally responsible if it was proven that they knew, or ought to have known, that what they were doing was wrong.
22. **Mr. Nelson** (Coordinator, Country Task Force) said that he wished to know whether there were plans to raise the age of criminal responsibility.
23. Turning to the data on school learners with special needs that the State party had provided in its replies to the list of issues (CRC/C/MWI/Q/3-5/Add.1), he asked why the number of children with disabilities was markedly lower in secondary school than in primary school.
24. The delegation should explain whether the national disaster risk management policy was disseminated among children, and what educational and other measures were taken to protect children in times of natural disasters.
25. Noting reports that, in February 2016, 37 unaccompanied migrant children from Ethiopia had been serving time in Kachere juvenile prison, he asked why those individuals were in Malawi in the first place.
26. **Ms. Oviedo Fierro** (Country Task Force) said that, if only 10,000 of the 1.8 million orphans in the State party were living or receiving day care in children's homes, it would be useful to know what arrangements were in place for the rest. She would also welcome details of the monitoring activities carried out in such homes, some of which were reportedly not monitored at all.
27. **Ms. Khazova** (Country Task Force) asked whether sex education was mandatory and taught in both public and private schools, whether health professionals received training in the early identification of intellectual disabilities and whether data, disaggregated by type of disability, were available on the number of children with disabilities in the State party.
28. Noting that issues related to children with disabilities were dealt with by several different departments of the Ministry of Gender, Children, Disability and Social Welfare, she asked how the work was coordinated and how resources were allocated.
29. Lastly, she wondered whether any training was provided in the application of the principle of the best interests of the child, particularly among government officials tasked with making decisions that affected children.
30. **The Chair** (Country Task Force), noting that, at the end of 2015, there had been concerns that a failure to provide appropriate training to law enforcement and judicial personnel had been hindering the implementation of the Trafficking in Persons Act, said that he wished to know whether any progress had been made in that regard. The delegation should also describe any steps taken to involve traditional leaders in the enforcement of formal laws.
31. **Mr. Tembenu** (Malawi) said that, for the time being, the Government did not intend to raise the age of criminal responsibility.
32. The 37 unaccompanied migrant children from Ethiopia in Kachere prison had been victims of human trafficking. They had been held not because they had been facing charges,

but because the Government had needed time to make the necessary logistical arrangements for their repatriation, which had since taken place.

33. The Ministry of Gender, Children, Disability and Social Welfare was responsible for addressing all child-related issues and for coordinating the work of other national bodies in that domain.

34. The implementation of the Trafficking in Persons Act was monitored by a committee that included representatives of all relevant government ministries. The need to train law enforcement and judicial personnel had not delayed efforts to give effect to the Act.

35. Most traditional leaders had been cooperative with the Government and took their roles and responsibilities very seriously. They had been involved in a range of government initiatives related not only to children but also to other sectors of the population.

36. The Constitution stipulated that the best interests of the child should prevail in all cases, without exception.

37. **Ms. Kalilani** (Malawi) said that the disparity between the primary and secondary school enrolment rates for children with special needs was not necessarily due to a high number of dropouts, as not every child who completed primary education had access to secondary education.

38. In 2014 and 2015, as part of a national strategy devised in response to the growing number of street-connected children, the Government, in cooperation with civil society organizations, had conducted a survey in two major cities that had identified over 4,000 street-connected children, of whom 430 had been homeless. Under the strategy, measures had been taken to prevent children from ending up on the street, to protect street-connected children from violence and abuse, and to offer them rehabilitation and reintegration services.

39. The provision of services to children with disabilities was coordinated by sectoral technical working groups at the national and local levels.

40. **Ms. Shawa** (Malawi) said that the Government had agreed to introduce modules on disaster management in school curricula, and that national disaster management strategic plans and policies contained components related to children and other vulnerable groups. Comprehensive sex education was compulsory, examinable and taught at all levels.

41. Of the 1.5 million persons with disabilities in Malawi, 45 per cent were children. The disparity between the primary and secondary school enrolment rates for children with special needs in regular schools was due in part to the existence of special schools.

42. A chiefs' council had been formed to foster the involvement of traditional leaders in the implementation of programmes for women, children and persons with disabilities, among others. Moreover, a framework had been established to ensure that by-laws were compatible with national legislation.

43. **Mr. Cardona Llorens** said that he would appreciate information on the measures adopted to promote the accessibility of primary schools, to ensure that children with albinism could attend school and to encourage mainstreaming, particularly in secondary schools.

44. He also wished to know what was done when intersex children developed a gender identity that was different to the sex assigned to them by doctors and their parents on the basis of their sexual characteristics.

45. **Ms. Khazova** asked whether mental health services were available for adolescent children. In view of the fact that child marriage was a major issue in the State party and that planned amendments to the Constitution did not include the deletion of article 22 (6), which

provided that “[n]o person over the age of eighteen years shall be prevented from entering into marriage”, the delegation should comment on whether it would not be better to prohibit child marriage in unequivocal terms.

46. **Ms. Aho Assouma** said that she had not received a response to her request for details of the indicators that were used to determine whether or not a harmful traditional practice had been reduced or eliminated.

47. She wished to know what community-based care was provided to children with disabilities and whether systems for the early identification of disability were in place in hospitals. Information on the HIV seroprevalence rate, the budget allocated to health and the steps taken in rural areas to prevent mother-to-child transmission of HIV would also be welcome.

48. She asked why the malaria mortality rate was so high in Malawi, whether the State party was a beneficiary of the Global Fund to Fight AIDS, Tuberculosis and Malaria, what mental health care was given to victims of sexual abuse and who covered the cost of medical certificates for such victims.

49. **Ms. Aldoseri** said that the paucity of information in the State party’s report concerning the implementation of article 31 of the Convention could be taken as indicative of the importance given to the rights enshrined therein. With that in mind, the delegation should provide details of cultural and other programmes, extracurricular activities, participatory television and radio channels, magazines and newspapers, and safe outdoor play areas that catered to children’s artistic, cultural and recreational needs.

50. **The Chair** asked whether the State party would consider withdrawing the nine reservations that it had made when ratifying the 1951 Convention relating to the Status of Refugees, whether there had been cases in which stateless children had successfully applied for Malawian citizenship, and how simple and accessible that application process was. The delegation should describe the efforts made to prevent statelessness, particularly bearing in mind concerns that the children of Malawian nationals who had lived for more than a generation abroad and children with a foreign father and Malawian mother might have difficulty in obtaining Malawian citizenship.

51. **Ms. Parsi** (Country Task Force) asked what measures were planned to ensure that feeding programmes were implemented nationwide and to facilitate children’s access to drinking water.

The meeting was suspended at 4.25 p.m. and resumed at 4.35 p.m.

52. **Mr. Tembenu** (Malawi) said that an amendment being made to the Constitution defined a child as a person under the age of 18 years. The Marriage, Divorce and Family Relations Act stated that no one under 18 years of age could marry. Child marriage was thus fully and clearly prohibited. A bill on the management of HIV and AIDS, currently under discussion, expressly prohibited a number of traditional practices that worsened the spread of HIV and AIDS.

53. Malawi was currently reviewing its Refugee Act, a process that would make it possible for the country to consider withdrawing its reservations to the Convention relating to the Status of Refugees. It was not in the interest of any nation State to grant automatic citizenship to the stateless persons in its jurisdiction. However, the Citizenship Act had been reviewed, and by June 2017 the repeal of the discriminatory provisions that caused people to lose their citizenship, especially women, should be complete.

54. **Ms. Shawa** (Malawi) said that preparations had been made to establish a system that would ensure that all institutions, such as schools and hospitals, complied with the Government’s newly defined disability standards. A national steering committee had been

set up to protect children with albinism. Population surveys had been taken, and awareness-raising and other efforts focused on the districts with the largest populations of such children. Local communities, together with their chiefs and even the police, had been mobilized to help ensure their safety, in particular on their way to and from school.

55. Rape victims could turn to one of the country's 300 community victim support units, which were staffed by police officers and health-care workers, whose services were provided free of charge. Counselling and post-exposure prophylaxis were also provided. The Gender Equality Act had prohibited a number of harmful cultural practices.

56. Children who were born to HIV-positive parents were tested at 6 months and again at 1 and 2 years of age. They were also tested for malaria and tuberculosis.

57. **Ms. Kalilani** (Malawi) said that gender-assignment surgery was performed only two to four years after a child's birth, when it became clearer which gender was more appropriate. The problem was not a major one. Some health-care workers had received special training to enable them to recognize and help children with mental health disorders. In the previous three years, the Government had worked with Special Olympics International and local organizations of and for persons with disabilities to develop programmes for children with intellectual and emotional disabilities. Malawi received assistance from the Global Fund to Fight AIDS, Tuberculosis and Malaria, but the floods of 2015 had been a recipe for increased transmission of malaria. Tuberculosis was an opportunistic infection that was more aggressive in people living with HIV.

58. **Ms. Shawa** (Malawi) said that the Government had created radio and television programmes for children. In addition, the country's roughly 12,000 early childhood development centres had outdoor play areas, as did its primary and secondary schools. Early childhood development centres also offered parenting programmes.

59. Some schools were encouraged to produce their own food to supplement the processed foods of high nutritional value provided by the State. In both primary schools and early childhood development centres, children were given one meal a day. During the rainy season and other periods, a safe drinking water programme ensured that WaterGuard, a chlorine-based water treatment product, was made widely available.

60. **The Chair** noting the findings of a national survey on violence against children and young women in Malawi, asked what efforts had been made to counter the widespread notion that violence was normal. He also wished to know what impact the report on the survey findings had made.

61. **Mr. Cardona Llorens** asked what policies the Government had put in place to help the poorest families, so that their children did not have to work.

62. **Ms. Ayoubi Idrissi** said that she wished to know whether the State party was considering developing a policy that ensured that child asylum seekers and migrants were not held with juvenile delinquents.

63. **Ms. Sandberg** asked why unaccompanied minors had been detained pending their repatriation to Ethiopia. Had there really been no other alternative?

64. **Ms. Aho Assouma** said that she wished to know whether the Government was making efforts to eliminate the breeding sites of mosquito larvae, whether children with disabilities had access to orthopaedic devices, and what steps had been taken to ensure that minors in conflict with the law had access to health care.

65. **Mr. Tembenu** (Malawi) said that although young children sometimes worked, their work could not really be characterized as forced child labour. Malawi was a country of transit for migrants on their way to South Africa, and in one instance only child migrants from Ethiopia had been held in Kachere juvenile prison until arrangements for their

repatriation could be made. The alternative would have been to house them in a refugee camp. They had been kept apart from the juvenile offenders in the facility.

66. Violence against children was being combated in part through awareness-raising. Victims were encouraged to report to centres set up to handle such cases. A recently completed review of the Prevention of Domestic Violence Act should make it possible to address violence against children more effectively.

67. **Ms. Shawa** (Malawi) said that the national survey on violence against children and young women had revealed the magnitude of the problem. As a result of the report on the findings of the survey, the Government had reviewed a number of laws and launched a violence prevention campaign. Policies and laws that were weak had been strengthened, and the backing of the media and community and traditional leaders had been sought for public efforts to stamp out violence against children. The perpetrators of such violence were prosecuted.

68. The Government was working with the Eliminating Child Labour in Tobacco Growing Foundation, an NGO based in Geneva, to adopt a number of frameworks for the elimination of child labour. Children came to Malawi not only from Ethiopia but also from Burundi, the United Republic of Tanzania, Rwanda, Zimbabwe, Zambia and the Democratic Republic of the Congo. Initially, the Government had placed such children in refugee camps, but it had become clear that once in such camps they almost immediately fell into the hands of traffickers again. The Government had therefore decided to keep such children in places where they could be monitored and protected from traffickers.

69. Prisoners had access to health care. The mandate of Malawi against Polio, an NGO, had been extended to include the provision of orthopaedic devices to children with disabilities. There were not enough such devices for all, however. The Government facilitated access to physical therapy for children with disabilities.

70. **Ms. Kalilani** (Malawi) said that efforts to lessen families' reliance on their children's labour included training in agribusiness and entrepreneurship, the provision of support for education, relevant outreach, a programme of cash transfers that would cover the entire country in 2017, and a number of food programmes. Efforts to combat violence against children had included the development of a response plan, the use of radio broadcasts to raise awareness, and cooperation with the United Nations Children's Fund. One of the aims of those efforts was to change firmly held beliefs.

71. Under normal circumstances, the country's mosquito-control programmes were relatively effective. However, Malawi had been overwhelmed by the flooding of 2015, and the receding floodwaters had left standing water in unusual locations, making mosquito control far more difficult than usual.

72. **Mr. Cardona Llorens** said that the State party's efforts to combat child labour were clearly ineffective. He wondered what more could be done to eliminate it.

73. **Ms. Aho Assouma** asked whether the State party took full advantage of the facilities provided by the Global Fund for the intermittent preventive treatment of malaria in pregnancy. She would welcome information on the distribution of insecticide-treated bed nets. It would also be interesting to know whether a new health plan had been developed and, if so, what its strategic pillars were.

74. **Mr. Nelson** said that, as he had noted in the previous meeting, he would welcome a comment on the increase in the number of cases of defilement and the failure to prosecute the perpetrators thereof. A comment on the shooting of a 14-year-old boy in Kasungu District would also be welcome. In addition, the delegation should comment on the results of the State party's strategic efforts to improve the lives of children living and working in

the streets. It would be interesting to know whether the State party had any statistics on such children.

75. **Ms. Oviedo Fierro** said that she wished to know why the Government intended not to raise the minimum age of criminal responsibility from 10 to 12 years.

76. **Mr. Tembenu** (Malawi) said that, according to the Government's statistics, child labour was decreasing. It would be helpful to know where or in which sectors it was said to be such a serious problem. The increase in the number of cases of defilement was quite possibly the result of the increased reporting of such cases. Anyone who visited Malawi and read the newspapers would see that they were full of stories of people being sent to jail for defilement.

77. He wondered why Malawi should not keep the minimum age of criminal responsibility at 10 years. The current minimum age was effective, and children up to the age of 14 years could be held criminally responsible only if it was shown that they knew or ought to have known that what they had done was wrong.

78. **Ms. Kayira** (Malawi) said that the boy in Kasungu had been shot by a police officer during a student demonstration. The child had survived. The investigation had not been completed, but it could lead to a charge of inflicting grievous bodily harm against the police officer involved.

79. **Ms. Shawa** (Malawi) said that Malawi distributed between 2.5 million and 3 million treated bed nets a year. Mothers and their children and pregnant women were the priority recipients. Although there had been an interruption at one point, Malawi had again begun receiving resources from the Global Fund.

80. Government statistics had shown that the number of cases of defilement and violence in general had fallen considerably in 2016. The Ministry of Gender, Children, Disability and Social Welfare had a lawyer who reviewed the outcomes of court cases involving such offences as defilement and ensured that improperly conducted cases were reopened.

81. According to a recent study, some 4,500 children, of whom 75 per cent came from their homes, generally in the villages surrounding the larger cities, worked and begged on the streets. Roughly 400 actually lived on the street. Some were children with disabilities. A case-management approach had been adopted, which involved identifying the reasons why the child had taken to the streets and working with parents or guardians. The upcoming introduction of a programme of cash transfers would lessen the incentive for parents to send their children out to beg, a practice that, like giving alms to beggars, was against the law.

82. **Ms. Winter** said that one reason to raise the age of criminal responsibility was that there was no standard for assessing a child's understanding. A judge could ask a child if stealing was right, and if the child said that it was not, he or she could be found fit to stand trial for murder.

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

83. **Ms. Ayoubi Idrissi** (Country Rapporteur for the Optional Protocol on the sale of children, child prostitution and child pornography) said that the State party's late submission of its replies to the list of issues was regrettable. Welcome developments included the adoption of the Trafficking in Persons Act, a related action plan and amendments to the Penal Code. However, she would appreciate more information on progress towards the creation of national system for collecting data on all matters relevant to the Optional Protocol. It would also be interesting to know whether the National Plan of

Action for Vulnerable Children 2015-2019 covered all the areas addressed in the Optional Protocol.

84. She asked what steps had been taken to ensure that the Ministry of Gender, Children, Disability and Social Welfare had the resources it needed to coordinate efforts to implement the Optional Protocol and to raise awareness of the Protocol among education personnel, law enforcement officials and families. In addition, she wondered whether the community victim support units had been provided with the resources they needed to help all child victims of the acts and activities covered in articles 2 and 3 of the Protocol, and whether the Trafficking in Persons Board and the planned shelters for children had actually been set up.

85. She wished to know what had been done to abolish the practice of forcing a child into marriage in exchange for the cancellation of debt contracted by the child's parents, and to expressly prohibit such activities as the sale of children, child prostitution and child pornography. It would also be interesting to know what measures, if any, had been taken to ensure that corporations could be held responsible for any role they played in facilitating activities or transactions that were prohibited under the Protocol, and whether the State party had a law allowing it to exercise universal jurisdiction over crimes under the Protocol. Lastly, she asked whether, in the absence of a bilateral extradition agreement, the Protocol could serve as a basis for extradition.

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

86. **Mr. Nelson** (Country Rapporteur for the Optional Protocol on the involvement of children in armed conflict) asked whether the State party was planning to incorporate the Optional Protocol into domestic law piecemeal or as a whole, and whether sufficient resources had been allocated for implementation of the Protocol. Commendable efforts had been made to disseminate and raise awareness of certain aspects of the Protocol, but he wondered how the authorities would address the remaining aspects and how they were monitoring compliance with the Protocol. With regard to prevention, and more specifically the requirement of proof of age in the context of the Defence Force Act, the delegation might wish to comment on the view that officials from the State party should not rely solely on affidavits from parents or elders when determining the age of children without birth certificates; information should instead be obtained from a number of sources. On prohibition and related matters, he wondered whether children were recruited by chiefs to help settle local hostilities or disputes, and what measures were being taken to prevent children from being involved in such conflicts.

87. The State party could consider reviewing and updating the Firearms Act to expressly prohibit the possession of firearms, including homemade weapons, by children. It would be interesting to know when the State party intended to exercise extraterritorial jurisdiction over offences under the Protocol. Lastly, he asked whether the State party intended to collect data on the number of victims of offences under the Protocol and whether any special measures had been taken to assist such victims.

The meeting rose at 5.55 p.m.