



# Convention on the Rights of the Child

Distr.: General  
20 November 2009  
English  
Original: French

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## Committee on the Rights of the Child Fiftieth session

### Summary record of the 1372nd meeting\*

Held at the Palais Wilson, Geneva, on Tuesday, 13 January 2009, at 10 a.m.

*Chairperson:* Ms. Lee

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### Consideration of reports of States parties

*Second periodic report of Malawi on the implementation of the Convention on the Rights of the Child*

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\* No summary record was issued for the 1371st meeting.

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

**Consideration of reports of States parties** (agenda item 4)

*Second periodic report of Malawi on the implementation of the Convention on the Rights of the Child (CRC/C/MWI/2; list of issues to be taken up (CRC/C/MWI/Q/2); written replies by the State party to the list of issues (CRC/C/MWI/Q/2/Add.1))*

1. *At the invitation of the Chairperson, the members of the delegation of Malawi took places at the Committee table.*

2. **Ms. Kachikho** (Malawi) said that representatives of non-governmental and international organizations had contributed actively both to the preparation of the second periodic report of Malawi and to the implementation of child rights. Through the implementation of its growth and development strategy, Malawi was currently working to give effect to the Millennium Declaration, adopted by the United Nations General Assembly in 2000. The strategy, which provided a framework for government policy, was designed to ensure the progressive realization of the rights of all, particularly children, as well as to mainstream issues relating to children in the Government's programme of work. The strategy focused on specific areas such as social protection, health and education; and children were treated as a separate category. Regarding the integration of the provisions of the Convention into the domestic law of Malawi, the relevant legislative texts had not yet been adopted. The political situation in the country had meant that parliament had, over the past four years, given preference to discussion of issues of political interest, delaying the passage of several important bills, particularly those relating to children. Despite the considerable backlog, the Government remained committed to introducing a legislative framework in line with the provisions of the Convention and would make the adoption of necessary legislation a priority. It hoped that most of the bills relating to children which still had to be adopted, particularly the Child (Care, Protection and Justice) Bill and the Birth Registration Bill would be tabled before parliament and adopted in 2009, following legislative and presidential elections. The constitutional review, which included recommendations for bringing Malawian legislation into line with the Convention, particularly in regard to the definition of the child, had been completed in 2007, and a process had been initiated with a view to incorporating those recommendations into legislation. The review of the Education Act had also been completed, and in particular it recommended that primary education should be free and compulsory for all children under the age of 18 years. Her Government had also initiated the process of ratifying the two Optional Protocols.

3. Work on a national plan of action for children had been started in 2004 but was not yet completed. In the absence of the plan, the Government continued to implement its national plan of action for orphans and vulnerable children as well as its early child development plan. It expected that in 2010 all issues relating to children would be incorporated into one generic policy and a national plan of action for children. Where orphans and other vulnerable children were concerned, the Government of Malawi was facing a crisis, and it was its firm will to intensify its efforts to address the situation and to increase resources designated for that purpose. The Ministry of Women and Child Development had been strengthened to allow it to play a lead role in the implementation of the national action plan for orphans and vulnerable children.

4. The Government was also implementing a social protection programme to support the most vulnerable groups, particularly children. Specific measures had been taken to help households, in particular the establishment of a direct cash transfer scheme and an agricultural subsidy programme; and the Government was committed to developing a social protection policy which would underpin the implementation of the whole range of social protection programmes, particularly those for children. Thirty per cent of children had access to early child development services, as opposed to 6 per cent in the early 1990s. The

Government intended to continue increasing the proportion of children with access to those services.

5. The under-5 mortality rate had been reduced from 133 per thousand live births during the period 2000–2004 to 118 per thousand live births in 2007. Likewise, the infant mortality rate had been reduced from 131 per thousand to 69 per thousand in 2007. If the trend were maintained, the Government of Malawi would reach the target of the relevant Millennium Development Goal. With regard to food, although the programme of agricultural subsidies implemented by the Government had ensured food security, it had not improved the nutrition status of children, since 48 per cent of children were stunted and 22 per cent were underweight. Nutrition must be given added emphasis and be the object of concerted action on the part of all players; and the Government was striving to improve the situation through its policies and programmes.

6. Difficult access to safe water and deficiencies in sanitation were two of the main reasons for the high rate of child mortality in Malawi. Studies showed that the massive school dropout rate among adolescents could be attributed to poor access to clean water in most Malawian schools and that the poor quality of sanitation facilities was one of the causes of the high rate of absenteeism. Nevertheless, generally, progress had been made concerning access to safe water and sanitation.

7. School enrolment of girls was higher than that of boys, and the Government believed it could reach the Millennium Goal concerning primary school enrolment. However, gender equality had not been achieved. Although girls represented 50 per cent of pupils in the first three years of primary schooling, they accounted for only 28 per cent of pupils in secondary education and 26 per cent at university. Their high dropout rate was mainly due to pregnancy, early marriage and the need for household labour.

8. Over the reporting period, the Government had continued to implement its child protection programme and, with support from development partners, its efforts to raise public awareness of child abuse. Likewise, it was working to improve access to justice for women and children by establishing 300 community-based victim support units, which were in addition to the 34 police station-based units across the country. Other achievements in child protection included the establishment of four child-friendly courts, an increase in the number of child protection workers and an increase in the capacity of reformatory schools.

9. The fight against HIV/AIDS was a major priority for the Government of Malawi. The HIV prevalence rate was estimated at 12 per cent and was stable, which was encouraging. The Government had made considerable efforts to establish structures and a generic policy framework which enabled it to respond effectively to the AIDS epidemic. Ministries, government departments and all other agencies had formulated guidelines, programmes and policies to guide the implementation of sector-specific action plans.

10. Despite the achievements, her Government faced certain challenges, especially inadequate funding of programmes for children, the absence of a monitoring and evaluation system for those programmes, the lack of institutional and human resource capacities, and the weak coordination amongst stakeholders. So as to create a protective environment for children, the Government would intensify its efforts, especially concerning legislation, institutional capacity-building and the access of children and families to quality services.

11. **Ms. Aidoo** (Country Rapporteur) said that, although the report had been submitted with a 10-year delay, she appreciated its quality and the openness with which challenges were acknowledged. She noted that Malawi was a landlocked, least-developed country, challenged by persistent poverty and a high population growth rate and facing an AIDS pandemic. In 2007, it had ranked 164th out of 177 countries in the United Nations Development Programme Human Development Index; 52 per cent of the population of over 13 million lived below the poverty line, while 22 per cent lived in extreme poverty and more than half of the children lived in general or extreme poverty.

12. The political impasse in which the country found itself had serious consequences for children. It was a great concern that there was an absence of an adequate legislative framework for pursuing children's rights. Many bills dating back to 2004 or 2005 were still before parliament, notably the Child (Care, Protection and Justice) Bill, which aimed to incorporate the provisions of the Convention into internal law.

13. She commended the impressive constitutional and legislative revisions and reforms aimed at harmonizing often outdated legislation and customary laws with the provisions of the Convention. Ten bills were before parliament and she wished to know whether the Government, given the large number of texts pending, could consider prioritizing those bills so that critical ones for children could be passed early. She welcomed the social cash transfer scheme, which had been established to help the very poor, and of which 70 per cent of the beneficiaries were children, particularly orphans and vulnerable children. She asked the delegation to indicate what measures had been taken to develop and implement a comprehensive child protection policy or strategy so that the cash transfer scheme was not just a limited project. Moreover, she noted that, in a report by the African Child Policy Forum covering the period 1999–2004, entitled *The African Report on Child Wellbeing 2008*, Malawi ranked 8th out of 53 countries, in view of the efforts made in the area of legislation, the programmes implemented and the funds allocated for the well-being of children. That was an indication of the achievements in that area.

14. The role of non-governmental organizations (NGOs) in the preparation of the Malawi report needed to be specified and the nature and extent of collaboration between the Government and civil society in promoting children's rights should be described.

15. Turning to the issue of coordination of action relating to children's rights, she noted that the State party report indicated that the Ministry of Women and Child Development had capacity limitations and serious budgetary constraints. She asked how effective coordination by the Ministry was, given the numerous multi-agency, multisectoral technical working groups established within the Ministry as well as within other Ministries, especially Health and Education. The Ministry had also established four networks on child trafficking, children on the street, child labour and disabilities. The delegation might indicate to what extent those working groups and networks were inspired by donors and whether the Government was playing a lead role in the area. The delegation might also indicate whether the Ministry had enough financial and human resources to ensure coordination among all those players and whether it could effectively coordinate children's rights issues in the absence of a Children's Act, a children's policy and a national plan of action on children.

16. Although the Convention had been translated into the two major local languages, Chichewa and Tumbuka, awareness of it was still quite low among policymakers, local government officials and traditional leaders. It was also a concern that the concept of child rights was still considered relatively novel in Malawi, 18 years after the ratification of the Convention. The observation highlighted the need to reinforce dissemination and training. She asked whether the Government was considering taking action to remedy the situation in collaboration with civil society. She also asked whether children themselves, attending school or not, were aware of the Convention.

17. A number of factors such as weak capacity, inadequate resources and poor coordination between local government and traditional leaders hampered the implementation of children's rights at a local level and in communities. The delegation might like to indicate what measures could be taken to strengthen the implementation of the Convention at those levels.

18. It was encouraging to note that the process for the ratification of the two Optional Protocols had been initiated. The delegation might like to give details on the progress of that process and the likelihood of its being completed by the end of 2009, as announced.

19. **Ms. Ortiz** said that she would like to know what means were used to translate the various child plans, programmes and policies into action at a local level, especially in terms of guidelines and standards, and to ensure that they had a real impact on the lives of children and their families. She was concerned at the gap that apparently existed between the urban and rural populations, since those living in the countryside were much less aware of the rights of the child and had not benefited in the same way from progress in implementing the Convention.

20. With respect to the principle of non-discrimination, it would be interesting to know what action had been taken with traditional leaders to involve them in the dissemination of good practice and to make them better prepared to implement new legislation.

21. **Mr. Siddiqui** said that he would like to know why the coordination between different ministries and government bodies in the area of data collection was so limited. He would particularly like to know the role of the National Statistical Office in that area. He regretted that he did not have sufficiently disaggregated data to know the exact situation of children in specific areas relating to the Convention and wondered whether that was due to technical difficulties or whether it reflected the fact that not much attention was paid to the Convention.

22. Regarding multiple indicator surveys, it would be useful to know what bodies were responsible for carrying them out and what was the exact role played by the United Nations Children's Fund (UNICEF). The Ministry of Women and Child Development had requested a survey to collect basic data on children needing special protection. The delegation could perhaps indicate who was carrying out the survey, when it should be completed and what groups of children it covered. He asked whether there was a connection between the survey and the registration scheme for orphans and vulnerable children. He also asked when the scheme would be extended by legislative act to cover the whole country.

23. **Ms. Vuckovic-Sahovic** asked whether there was a parliamentary committee or subcommittee for child issues. She enquired about the balance of power in parliament and the reasons why the passing of bills and the codification of customary law were so slow.

24. The situation concerning the registration of births had apparently improved, despite the length of time current legislation had been in existence. However, the data provided in the written replies dated back two years and it would be useful to know what progress had been achieved in the meantime. It would also be interesting to know what action had been taken in the previous two years to fight the practice of giving derogatory names to some children, especially those born out of wedlock.

25. **Mr. Zermatten** said that, in spite of the provisions of article 20 of the Constitution forbidding discrimination and of the programmes and policies to eradicate discrimination, it still existed, particularly with respect to girls, children with disabilities and highly vulnerable children, especially orphans. He would welcome comments on the gap between texts and programmes and actual practices and attitudes.

26. Likewise, in spite of the various programmes to strengthen the right to life, survival and development which had produced positive results in the area of health, there was still a category of extremely poor children. It would be useful to know what was the Government's overall policy on social security.

27. The delegation might perhaps indicate to what extent children could take part in civil or administrative proceedings affecting them. He also asked how, given the prevalence of customary law, which did not recognize the child as a subject of law in a number of areas, children could be provided the opportunity to express their views and to have them taken into account.

28. **Ms. Khattab** said she wondered what scope for action the Ministry of Women and Child Development had within the Government and what were its relations with other

ministries, especially where collaboration was concerned. She also asked to what extent senior government officials knew and took into account the rights of the child and how the Ministry went about promoting those rights among them.

29. The pilot cash transfer scheme implemented in Mchinji district seemed to have had a very positive impact. Nevertheless, it would be useful to know how the authorities ensured that the money transferred to households actually benefited children. She asked whether the continued payment of the transfers was conditional on the children attending school and, even more importantly, regular attendance.

30. The delegation could perhaps indicate what measures had been taken to coordinate data collection and obtain disaggregated data. It might also describe what had been done to raise awareness of traditional practices that were detrimental to the health of children, and indicate who played the lead role and how cooperation with UNICEF was organized. It would also be interesting to know whether the approach adopted in the area was a rights-based approach.

31. **Mr. Kotrane**, welcoming the objectivity of the periodic report, asked who had written the document. He invited the delegation to clarify the status of the Convention with respect to domestic law. It could also perhaps provide clarification of the case referred to in paragraph 18 of the written replies, indicating whether article 21 of the Convention had been directly referred to.

32. Customary laws authorized a number of practices contrary to the rights of the child, including early marriage and forced marriage, and the new legislation should contribute to their eradication. But the fact that the legislation had still not been adopted was a reason for concern.

33. According to a report of the Committee on the Elimination of Discrimination against Women, a Malawian woman who married a foreigner lost her nationality. The delegation might perhaps indicate whether children resulting from such a marriage had Malawian nationality.

34. **Mr. Parfitt** asked whether the Malawi Human Rights Commission played a role in raising awareness of the Convention and whether measures would be taken to increase its resources. The Commission had produced very interesting reports on specific issues relating to children, in which it had made recommendations to the Government. The delegation might perhaps indicate what follow-up action had been taken.

35. It would be useful to have details of the way in which the principle of the best interests of the child was reflected in law and judicial practice, and of the measures taken to ensure that the three branches of government — the executive, the legislature and the judiciary — applied the principle in all their activities.

36. **The Chairperson**, referring to paragraph 54 of the report under consideration, noted that, in general, data collection did not form part of the prerogatives of national human rights commissions and said that allocating such a task to the Malawi Human Rights Commission might impede its independence. She also requested further information on how the Ministry of Women and Child Development, which did not have a very high budget, intended to go about coordinating the efforts of the different ministries with responsibilities in the area.

*The meeting was suspended at 11.20 a.m. and resumed at 11.50 a.m.*

37. **Ms. Kachikho** (Malawi) acknowledged that a political impasse existed in her country, resulting in paralysis in parliament, since that institution rejected any proposal put forward by the Government. She said that the Government had, nevertheless, been able to develop various policies and to initiate programmes to promote education for girls.

Adolescents who had given birth were, for example, entitled to return to school so long as they could make arrangements for their child to be cared for, and girls who attended school regularly were, as part of a food programme in primary schools, entitled to food rations they could take home.

38. **Mr. Kamanga** (Malawi) said that several bills contained provisions for the compulsory registration of the births and deaths of everyone living on Malawian territory, whatever their nationality. Currently, only foreign nationals were required to declare the birth of their child or the death of a member of their family.

39. Under the Constitution, the ratification of international treaties, and, consequently, of the two Optional Protocols to the Convention, was the responsibility of the executive and ratification by parliament was not required. Another way of incorporating an international instrument into domestic law was to enshrine its principles in national legislation. The principle of the best interests of the child, for example, established both in the Convention on the Rights of the Child and the Charter of the Organization of African Unity, had been transposed into national legislation relating to the protection of children. Moreover, judges often based their rulings on the provisions, as well as the good practices, of relevant international law. In the recent high-profile case of an adoption of a Malawian child by a celebrity, the judiciary had demonstrated its independence by applying the principle of the best interests of the child established by international law.

40. With regard to the acquisition of Malawian nationality and the terms under which it might be withdrawn, a Malawian woman who married a foreign man could not be forced to give up her nationality. However, children born of such a marriage would not obtain Malawian nationality automatically. Further information on that point would be provided in writing.

41. **Ms. Kulemeka Kishindo** (Malawi) said that her Government had formulated a draft national social protection policy, which had been submitted to the various ministries with competence in that area, and that efforts were being made to develop a national strategic plan to facilitate its implementation. Every effort had been made to ensure that social cash transfers went to those most in need, without any discrimination. Committees had been established at the village level to select recipients according to clear criteria. Preference was given to the poorest, especially those without fixed employment, to families headed by a person with a chronic illness, by a woman or by a child and to heads of household who had more than three dependants. Contrary to what had been said, poor children — often AIDS orphans — were not discriminated against and were also the recipients of social cash transfers. Moreover, programmes designed specially for orphans and other particularly vulnerable children had been introduced to ensure that all children attended school, irrespective of the level of their resources or that of their parents.

42. In spite of the efforts to make the Convention better known, the financial difficulties faced by the Malawian Government hampered its widespread dissemination. However, the Ministry of Education had established child-friendly schools, with directors and supervisory staff who had received training to make them aware of the principles established by the Convention. Child protection workers were also trained to raise public awareness of the rights of the child.

43. A national campaign to raise awareness of the rights of the child had been conducted in cooperation with various partners, including UNICEF, and its success was evident from the attention currently given to child-related topics in the written and broadcast media. Traditional leaders were also targeted by the campaign, since certain practices harmful to children were often perpetrated in the name of tradition.

44. **Ms. Aidoo** (Country Rapporteur) asked whether there was a simplified, child-friendly version of the Convention; whether the training programmes for child protection

workers were run on an ad hoc basis or regularly; and, finally, whether directors of orphanages and teachers, who were in constant contact with children, also received awareness-raising training.

45. **Ms. Kulemeka Kishindo** (Malawi) said that there was an abridged version of the Convention and that, when there were special, nationwide events, such as the Day of the African Child, information leaflets were distributed to raise public awareness. Awareness-raising programmes were run for all those who had a duty to be familiar with child rights, such as judges, to ensure greater respect for those rights.

46. **Mr. Kansinjiro** (Malawi) said that, in spite of inadequate resources, the Ministry of Women and Child Development had been able to establish a network of child protection technical working groups in different sectors with a view to coordinating programmes for children. There was, for example, a network of special teams for child labour issues, which was accountable to the technical working groups, which in turn reported to the National Steering Committee on Child Labour, which was under the Minister of Women and Child Development. That systematic approach ensured that no child protection issue was disregarded. The Ministry of Women and Child Development was also working in partnership with public bodies and NGOs.

47. The Human Rights Commission faced difficulties in collecting data relating to children and particularly to cases of violations of rights of the child. However, by collating the information available to the Commission with that from the police and partner organizations, it was possible to have a fairly accurate idea of the number and type of violations of rights of the child in Malawi. The police had undertaken to computerize their database, which should make it easier to access disaggregated data. The planning department of the Ministry of Women and Child Development was working to set up a national database which would contain several indicators relating to children, including child rights indicators, and which would be particularly useful for demographic studies.

48. **Ms. Ortiz** asked what had been done to follow up the recommendations of the Committee aimed at strengthening the family structure, such as the promotion of greater participation by fathers in the education of their children and improved procedures for child support and inheritance. She highlighted the fact that there were many children in Malawi deprived of a family environment, including 500,000 AIDS orphans, and that the State did not have a clear policy on caring for such children. There were, in particular, many homes and institutions run by organizations over which the State exercised no control that enabled it to ensure that their practices respected child rights or to protect children from ill-treatment and commercial or sexual exploitation.

49. She asked what measures the State party had taken to prevent poor families from placing their children in care and to help them to bring up their children. She also enquired what had been done to maintain links between children living in care and their family, and whether children could be placed with foster families. Finally, she asked who monitored the situation of such children.

50. Given that there were over 1,000 cases of intercountry adoption of Malawian children annually, the Committee wished to know which act regulated such adoptions and whether the State party was considering bringing its legislation into line with article 21 of the Convention and ratifying the Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption.

51. **Ms. Smith**, emphasizing that resources allocated by the Government to combat HIV/AIDS must be used as transparently and effectively as possible, asked what measures had been taken to monitor and guide the use of those resources. She requested additional information on the draft bill on HIV/AIDS, which should be adopted in the near future, and asked whether civil society, human rights organizations and those living with HIV/AIDS

would be able to express their opinions on the draft bill, and whether it contained a provision relating to the confidentiality of personal information.

52. She also wished to know what measures had been taken to provide care for children with HIV/AIDS and to meet their nutritional needs, and asked whether general comment No. 3 on HIV/AIDS and the rights of the child (in particular paragraphs 17 and 18) and general comment No. 4 on adolescent health and development were disseminated among health professionals, public officers and policymakers; whether young people received the necessary information on HIV/AIDS; and whether there were effective awareness-raising campaigns for adolescents in particular.

53. **Mr. Puras**, emphasizing that the State party did not have a policy dealing exclusively with children with disabilities, asked what measures had been taken to guarantee access for children to community services and to education in particular. He asked what sort of services a family who discovered that its child had a disability might benefit from. He would also like to know what measures had been adopted to improve immunization coverage and access to services to prevent mother-to-child transmission of HIV/AIDS. Finally, he asked whether the Government was considering taking measures to strengthen the health-care system and, in particular, to increase the number of health professionals and improve the quality of health care for pregnant women and children.

54. **Mr. Siddiqui** asked whether the poverty reduction strategy and the growth and development strategy had been drawn up by Malawi's development partners, and therefore by foreign consultants, or whether the Malawians had taken part in preparing them. He would also like to know whether the two strategies had been implemented solely by the Government or also by NGOs, civil society organizations and local chiefs. Finally, he asked how the State party ensured that the two strategies took into account the best interests of the child.

55. **Mr. Krappmann** congratulated the State party on the quality of the critical analysis it had undertaken in preparing the report, which reflected a true commitment to the rights of the child. The Government had identified all the problems relating to the implementation of child rights and yet, in the field of education especially, no further progress had been achieved. It would be very useful to know why education was still not compulsory, why there was still such inequality between the sexes and regions in terms of school enrolment and why teachers' working conditions were still so demotivating. The policy and investment framework in the education sector set the objectives in the area. It would be useful to know what the State party intended to do in the near future to meet the objectives, given that the financial and human resources were inadequate and that the available resources were not used effectively.

56. **Mr. Kotrane**, noting that Malawi was a source of children trafficked for sexual exploitation and prostitution, asked what measures had been taken to put a stop to the phenomenon. Referring to a comment made by the Committee on the Elimination of Discrimination against Women concerning the sexual exploitation of girl children by teachers in primary and secondary schools, he asked what efforts had been made to put a stop to the practice, as well as that of corporal punishment.

57. He would also like to know what measures had been taken to promote refugee children's access to education, given that the State had indicated in its report that language was an obstacle to education for such children.

58. Finally, stressing that the situation of children in prisons was especially disturbing, he asked what had been done to improve the treatment of children in conflict with the law.

59. **Ms. Aidoo** (Country Rapporteur) said she would like to know what measures had been taken to address the problem of the lack of human resources, especially in the

education and health-care sectors, which was largely the result of the high mortality rate due to HIV/AIDS.

60. Stressing that malnutrition could have serious consequences for the physical and intellectual development of children, she enquired how the State party intended to address the problem of child malnutrition.

61. **Mr. Filali** asked why it was taking so long to adopt the Child (Care, Protection and Justice) Bill. He requested additional information on the diversion programme implemented in four districts and asked whether the State party was considering extending the programme to all districts in Malawi.

62. The delegation might also provide further information about the working of child-friendly courts and respect for the privacy of children in proceedings, as well as the training for police officers, judges and all professionals working with children. An evaluation of the training would also be welcome.

63. Finally, the delegation might perhaps indicate whether the board of visitors, which visited prisons twice a year, included members from NGOs; whether the report they prepared was made public; whether the members of the boards spoke directly to prisoners; and whether they also met former prisoners, who could speak more freely on the real conditions of detention.

*The meeting rose at 1.05 p.m.*