

Children's Rights in Malawi

Stakeholder Report on Malawi - Submission by World Vision For Universal Periodic Review, Ninth Cycle, November-December 2010

Summary

Malawi is a State Party to the Convention of the Rights on the Child. Malawi has signed and ratified the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography and has signed the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict. Malawi most recently reported to the Committee on the Rights of the Child in July 2008. The Committee noted the high level of political commitment and resources to respond to the orphans and other vulnerable children crisis in Malawi. The Committee noted the strengthening leadership role of the Ministry of Women and Child Development and the legislative reforms that have been undertaken by the Law Commission but has concerns that many Bills have yet to be introduced to Parliament. The Committee acknowledged the current political environment as cause for delay in promulgating laws of the Convention, however, the Committee reminded Malawi that the State was the principle bearer of upholding children's rights and stated that Malawi could assert stronger advocacy in ensuring Children's rights.

Education

Although Malawi provides free primary education and the access to early childhood development services has increased from 4 percent to 30 percent, this has placed further strain upon the secondary schools which struggle to accommodate more children. Primary education remains voluntary and there is no indication that the 88 percent of the population without any formal education from a 2000 National Statistical Office has changed (*net enrolment ratio at 81% in 2005*). For those who do attend there remains a high dropout rate especially for girls. In addition there remains the problem of gender inequality in education as approximately only 43 percent of those enrolled are girls. Further disparity exists between the urban and rural areas with the former having greater access to education.

Recognizing the addition of the Life Skills Curriculum in an attempt to improve the relevance of education, there remains the concern with the lack of qualified teaching, high student-teacher-ratios, and lack of facilities or resources needed to effectively educate.

Child Labor

Although the Employment Act effectively eliminates all forms of forced labor, abolishes child labor, sets up a minimum age for employment of 14 years and eliminates discrimination

in respect of employment, concerns remain with respect to children working in the agricultural sector.

The government is working to prevent child labor through proposing the Child (Justice, Care and Protection) Bill as well as training monitoring committees and inspectors. However, the committees are challenged by inadequate resources, lack of cooperation from parents or guardians and those suspected to have employed children. Poverty among most people is the contributing factor towards an increase in economic exploitation of children.

Health

The high prevalence of those infected with HIV/AIDS in Malawi is not only a health problem but a social and economic problem as well. Amongst adolescents prevention and education are improving with around 40 percent of males and females between 15 and 24 years knowledgeable of HIV/AIDS. However, women in this age range are four times more likely to contract the disease. Approximately 30,000 out of the 100,000 new HIV infections in Malawi every year have been attributed to mother to child transmission.

In general there have been improvements in the provision of health care evidenced by the improved maternal mortality rate from 1120/ 100,000 in 2000 to current rates of 984/ 100,000; the reduction in the infant mortality rate from 104/ 1000 in 2000 to 76/ 1000; and the under-five mortality decline from 189/ 1000 in 2000 to 133/ 1000 according to the Multiple Indicator Cluster Survey (MICS) 2006. This rate of reduction however remains disintegrated with a lack of safe water, poor sanitation, and difficult access to health services for the poor and rural. The poorest 20 percent are unlikely to achieve the two-third reduction of infant mortality target of the Millennium Development Goals (MDG).

There has been a consistent average of 80 percent immunizations coverage for over five years through the Expanded Program of Immunization and the distribution of free treated mosquito nets to children and pregnant mothers is one of the malaria program interventions. With malaria responsible for about 40 percent of deaths of under-five children, the highly subsidized nets are imperative however there remain a gap of ownership between the rich and poor.

In Malawi the health system suffers from a shortage of staff, especially in the rural areas where there exist poor work environments. In addition the expenditure per capita on health is one of the lowest in sub-Saharan Africa and falls short of the amount estimated to deliver the Essential Health Package (EHP) which should be provided free of charge at all public health facilities.

Nutrition

The Malawi economy is characterized by severe and widespread poverty. More than half of the population lives on less than a dollar per day and as a result of low income there exists food insecurity and high malnutrition. Poor health care and hygiene practices, the prevalence of HIV/AIDS, improper sanitation, and lack of safe drinking water especially in rural areas increase water and food-borne diseases and challenge efforts at reducing child mortality. The nutrition status of children in Malawi is not substantially improving with around 49 percent of children under five stunted and 25 percent underweight. However, almost all mothers practice exclusive breast-feeding for a year. Also, there exists a disparity in exclusive breast-feeding pattern with educated women practicing it more.

Discrimination against the girl child

Development of a Gender Equality statute has been made to counter the gender related customary laws and practices involving succession and forced sexual intercourse. However, girls of Malawi continue to experience a high dropout rate and absenteeism from school, genital mutilation, forced and early marriages, and a lack of procedure in civil laws. In effect there exists no minimum age for marriage and the State only has the capability to discourage rather than forbid a marriage.

Orphans and Vulnerable Children (OVC)

Malawi has implemented the National Plan of Action for Orphans and other vulnerable children in order to improve access for orphans and other vulnerable children to education, health, nutrition, water sanitations, and birth registration. In addition an OVC Registration System is being implemented to identify and consider the situation of orphans and vulnerable children. Safety nets include strengthening the capacity of families and communities to deal with orphans and other vulnerable children and the construction of technical institutional and human resource capacity raise awareness of those affected by poverty and HIV/AIDS. The death of family members due to HIV/AIDS increases the risk for losing property, escalates the poverty level, and shifts the responsibility especially to the girl child who has greater pressure to drop out of school and engage in dangerous ways to make money.

Trafficking

Malawi has not enacted any provisions on human trafficking since the initial State Party report to the Committee on the Rights of the Child, and there is no available data concerning the subject. Existing provisions have been relied upon to combat the commercial sexual exploitation of children though not always successfully as the amendments only address trafficking of women and children in prostitution and leave out trafficking for other purposes such as forced labor. In particular, concerns remain that young girls from poor families are sold to wealthy people as sex slaves in remote areas, children are at risk of being sexually exploited by European tourists, and people have been arrested in Malawi for trafficking in human body parts or organs. Despite this Malawi has been given Tier One Status by the United States.

Juvenile Justice

Corporal punishment is prohibited and the Child (Care, Protection and Justice) Bill goes further to prohibit the imprisonment of children. However, there are instances in which children are kept in the same facilities as adults. The age of criminal responsibility in Malawi is 7 with a recommendation by the national Law Commission to raise it to age 10. It has also been proposed that the age of majority be raised from 16 to 18 years so as harmonize the provision with the CRC. The positive shift in focus of the reformatory institutions from punishment to reform and rehabilitation is undermined by sporadic funding, inadequately trained staff, and insufficient training materials.

Disabled Children

The state is in the process of translating the Ministry of the Disabled and Elderly for disabled children; however it is not adequately allocated with financial resources nor is it a program specific to the needs of children. There is a lack of comprehensive data on disabilities as well as a lack of institutions for children with disabilities with none catering specifically for mental illness in children. Work still needs to be made to eliminate discrimination on grounds of disability as the cultural mindset to reject such children remains deep rooted and prevalent.

Birth Registration

Once enacted, the National Registration Bill shall make mandatory the registration of all births, deaths and marriages. It also makes provision for identity cards for Malawians aged 16 years and above and resident foreigners. Though delayed, it has had the opportunity to gain wide support.

Refugee children

Malawi is host to about one million refugees and although refugee children have access to primary education, there often exists a language barrier. There are no Constitutional provisions on refugee children nor is there data on the subject.

Child Soldiers

There is officially no armed conflict in Malawi since independence in 1964 and hence there are no children in armed conflict in Malawi. The Constitution is similarly silent on the issue of children and armed conflict. Nevertheless, in the Constitutional Review, there is a proposal to include provisions prohibiting the use of children in armed conflict and other protection measures for children in situations of hostilities.

Violence and sexual exploitation

The Penal Code (Amendment) Bill enhances protection of children, especially the girl child, from sexual abuse by raising the age of girls to consent to sexual intercourse from 13 to 16 and enhancing the period of imprisonment for procuring the defilement of and the detaining of women and girls. Reported cases of sexual abuse and exploitation of women and children have continued to rise to unprecedented numbers posing challenges to the protection, well-being, survival and development of children. Inadequate financial, capital and human resources as well as a lack of trained counselors hampers the implementation of this legislation.

Recommendations:

The Government must implement without further delay the recommendations made by the Committee on the Rights of the Child following the examination of the report of Malawi in 2009.

In particular:

The government should undertake all necessary steps to harmonize existing legislation, including the Constitution with the Convention on the Rights of the Child and expedite the adoption of the bills, with priority to those affecting children. (Child (Care, Protection and Justice) Bill, the National Registration Bill, the Deceased Estates (Wills, Inheritance and Protection) Bill, the Marriage, Divorce and Family Relations Bill, the Revised Penal Code Bill, the Criminal Procedure and Evidence Bill and Education Act Review)

The State party is encouraged to strengthen its data collection systems concerning children and ensuring that the information collected contains up-to-date, disaggregated data by sex, age and geographical areas on a wide-range of vulnerable groups, including children living in poverty, orphans, children with disabilities, child refugees, sexual exploitation of the youth, child trafficking, adolescent health, children living in the streets and working children among others. The government should work with the support of its partners and use this data as a basis for assessing progress achieved in the realization of child rights and to help design policies to implement the Convention on the Rights of the Child.

Reinforcement should be made of adequate and systematic training of policy makers and local government officials as well as all professional groups working for and with children, including, law enforcement officials, teachers, health personnel, social workers, personnel of childcare institutions, traditional leaders and the media on the principles and provisions of the Convention on the Rights of the Child.

The government is urged to ensure the swift adoption of the recommendations of the Constitutional Review process to establish the definition of the child in accordance with the Convention of the Rights of the Child.

The government should be aware that in the absence of a Comprehensive National Action Plan for Children (NAPC) no one national body has clear authority to and can be accountable to all child-related issues. The government must finalize the NAPC to ensure that resources are allocated directly toward child rights programs rather than be integrated in other policies.

The Ministry of Women and Child Development should create a national communication initiative aimed at developing a strategic and harmonized approach to increase public awareness of the participatory rights of children so as to change traditional values. Dissemination of the Convention should be increased so as to advocate the importance of children's rights to further sensitize and improve the opinion of Malawi concerning children's rights including those related to education, females, and orphans and those most vulnerable.

The government should expedite the ratification of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict. It further encourages the State party to ratify or accede to all core international human rights instruments and ensure prompt compliance, implementation and reporting requirements in order to promote and improve the overall protection of human rights.