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CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 44 OF THE CONVENTION

Initial reports of States parties due in 1993

MALAWI

[1 August 2000]

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I. MALAWI AND ITS PEOPLE

Physical background

1. Malawi is a small country occupying the southern part of the East African Rift Valley, lying between 9 degrees and 17 degrees south of the Equator. It has an area of 119,140 square kilometres of which 20 per cent is water. It is landlocked, by Mozambique in the south and east, Zambia to the west, and Tanzania to the east and north. The topography is immensely varied, from the Rift Valley floor almost at sea level to mountains rising to 3,000 metres. Tied in with this are wide ranges in climate, vegetation and economic activity.

2. The country is divided administratively into three regions: Northern, Central and Southern Region with a total of 26 districts. The Northern Region has five districts, the Central regional nine and the Southern Region 12 districts. There are three seasons, a cool dry period from mid-April to mid-August, a hot period during which relatively little humidity builds up between August and mid-November, and a period of tropical rains between November and April. Within this broad pattern, many areas have microclimates, with annual levels of rainfall varying from 800 mm (32 inches) to 2,500 mm (100 inches).

3. The variety of landform and climate gives Malawi the ability to grow a wide range of crops numbering more than 20. However, most of the land is under maize, the main staple crop. seconded by tobacco, the main cash crop. Other common food crops are groundnuts, rice and cassava. Other main cash crops are tea, coffee and sugar. These cash crops are grown on both estates and smallholdings. Lake fisheries are an important source of protein.

4. There are three categories of land tenure in Malawi. The first relates to customary land. Traditional leaders allocate this land since they are de facto “owners” of the land. Each household has plots of land that have been “inherited” from their ancestors who were once allocated the land. Unallocated land is considered communal but power of allocation rests with the traditional leaders. Traditional leaders allocate land to immigrants either from unallocated communal land or from other less utilized land. Formally, the authority for customary land is vested in the President as a trustee for the people of Malawi. The second category relates to private land, which includes leasehold and freehold land. The third category relates to public land, which is used, held or occupied by the Government. There are a number of proven mineral resources but mining has so far been limited to lime and coal. Malawi has 5 national parks, 4 game reserves and 66 forest reserves which together account for 22 per cent of the land area.

5. There are five lakes in Malawi. Lake Malawi, third and twelfth larges in Africa and the world, respectively, is a valuable national asset as a source of food and fresh water. It is also as a means of communication, a tourist attraction and a home to the most diverse fish fauna of any lake in the world. The other lakes, which are much smaller, are Chilwa, Malombe, Chiuta and Kazuni.

The people

6. The total population in 1998 was estimated at 9.8 million, with an annual growth rate of 1.9 per cent since 1987 as opposed to 3.2 per cent over the 1977-97 period. The population is young: 43.8 per cent below 15 years, 53.9 per cent below 20 years and only 8 per cent over 64 years. This gives a high dependency ratio of 1.3, as opposed to 1.0 in 1987. There are more females (51.6 per cent) than males. The national population density is 104 persons per square kilometre. The Northern Region has 12.5 per cent of the population and 46 persons per square kilometre, while the Central Region has 41.1 per cent with 114 persons per square kilometre and the Southern Region has 44.6 per cent with 144 persons per square kilometre. The bulk of the population (89 per cent) is rural. The estimated total fertility rate is 6.1. The crude birth rate is 44.1 and the crude death rate is 14.1 per 1,000. About 2.9 per cent of the population are people with disabilities; about 31 per cent of them are children under the age of 15 years.

7. There is no dominant tribal grouping. In the major urban centres there are sizeable communities of both Asian and European origin involved in commerce and industry. The language for official communication is English and the commonest spoken language is Chichewa. Of late, five other local languages considered major have been introduced on the national radio. However, this is only in news broadcasts. Further, local languages are being used for instruction in junior primary classes. The major religions are Christianity and Islam, but Christianity is dominant for historical reasons. There were more Christian explorers than Arab traders. There has been very little change in the relative shares of these religions. Other religions are traditionalism, Hinduism and Buddhism, among others.

8. About 12 per cent of the labour force is estimated to be employed in the formal sector. The bulk of these (46.2 per cent) are in agriculture and fishing, 14.6 per cent in manufacturing and 13.9 per cent in community and personal services. Some 19.7 per cent of employees work in the public sector and the remainder in the private sector. The majority of the labour force not in paid employment are mostly in subsistence smallholder agriculture and few venture into the informal sector as vendors and trained on-the-job artisans.

9. Malawi's society is characterized by the partrilineal system in the North and the two southernmost districts, and the matrilineal system in the centre and remaining districts in the south, each having its own sets of values and rules. Extended families are prominent although the nuclear family system is slowly replacing the extended family system as the chief production unit and the main source of social support. The village is organized under customary law, with authority vested in a traditional village head helped by village elders. Malawi's villages are grouped under group village heads, sub-chiefs (STA) and traditional chiefs (TA). Traditional beliefs, customs, ceremonies, and other social and cultural factors have a powerful influence on community life. These factors partly determine social relationships, decision-making patterns, inheritance rights, the acceptability of new ideas and practices in areas such as education, health, family planning, sanitation, agriculture, borrowing and debt repayment.

10. Women are key workers and producers in the national economy. They are farmers, income earners, traders and family caretakers. They represent over two thirds of the full-time farming population. About 70 per cent of smallholder agriculture work is done by women. The female labour force participation is estimated at 64 per cent, nearly as high as that

of men (67 per cent). This does not include most of the work done by women which goes unrecorded in the official statistics since the work is not accorded economic value. Further, about 30 per cent of Malawi's rural households are headed by women and these represent 42 per cent of the core poor. This poverty is also resource-related because about 70 per cent of the women have an average landholding size of less than a hectare, as compared to 50 per cent for the men. Again, nearly twice as many female- as male-headed households have landholdings of less than half of a hectare. According to the Human Development Report 1999, Malawi ranks 132 out of 143 countries in terms of the gender-related development index and 90 out of 102 countries in terms of the gender-empowerment measure.

Government and administration

11. Malawi received full independence in 1964 and republic status in 1966. From 1964 to 1994 the country was constitutionally under one-party rule; the President was given absolute powers in 1971. The Constitution provided for the independence of the judiciary, the executive and the legislature. However, the absolute powers of the President made that noble provision invalid. This changed with the 1993 referendum, which resulted in the adoption of a multiparty system of government, the 1994 multiparty elections won by the United Democratic Front (UDF) and the adoption of a new Constitution in 1995. The Constitution is now the supreme law of the land. It provides for separation of powers among the three organs of the State. The executive is responsible for the initiation and implementation of policies and legislation of all laws. The legislature enacts laws, while the judiciary interprets, protects and enforces the Constitution and all laws. The Constitution also provides for the establishment of the Human Rights Commission, the office of the Ombudsman and the Law Commission. All of these institutions of democracy have been established.

12. Administration of justice normally starts at village level. Most civil cases are presided over by traditional leaders first at village head level, then sub-chief (STA) level and finally chief (TA) level. Most cases in rural Malawi are presided over by these traditional leaders, using the customary law prevailing in their areas. The formal court system starts with magistrates courts, presided over by lay, paraprofessional and professional lawyers. These are subordinate courts to the High Court. The High Court has unlimited original jurisdiction to hear and determine any civil or criminal proceedings under any law and original jurisdiction to review any law. It also hears appeals from magistrates courts, and any action or decision of the Government. Above the High Court is the Supreme Court of Appeal, which hears appeals from the High Court and tribunals or other courts. An Industrial Relations Court with original jurisdiction over labour disputes and such issues relating to employment is provided for and has been established in 1999.

13. Malawi has three strands of public administration: central government, local government and the traditional authorities. The traditional authorities system has a hierarchy of village headmen, group village headmen, chiefs and, in some areas, paramount chiefs. Appointment is normally hereditary but is subject to confirmation by the President. This structure has an important role in the political organization of the nation and in communicating central government policies down to the village level. It is supervised by the district administration of central government. Local government is organized in a single-tier system with urban councils and rural councils. Urban councils are further divided into city, municipality and town councils.

Local authority councillors are required to be elected by the community concerned. Local authorities are responsible for providing a number of services, including primary education, non-primary road construction and maintenance, certain public health facilities and refuse disposal, and are closely supervised by the local government, a central government body.

14. The apex of central government is the Office of the President and Cabinet. The central government includes line ministries that deal with the implementation of government policies and programmes. There are also about 55 statutory bodies established by Acts of Parliament. Some provide a specific public service, while others have a particular responsibility to develop a given activity and others are effectively business enterprises owned by the State. Of these about 20 are categorized as commercial. There is, however, under way a programme of parastatal functional review and privatization.

Economic characteristics

15. The economy is dominated by agriculture, mainly smallholder agriculture. Subsistence agriculture accounts for the bulk of the smallholder agriculture evidenced by small proportions of marketed agricultural produce. It is estimated that 56 per cent of farming households produce only to consume. Provision of services overshadows manufacturing, and the economic and trade liberalization has favoured the distribution sector. See table 1 for details.

Table 1. Malawi - sectoral shares in gross domestic product

	1994	1995	1996	1997	1998
Agriculture	25.2	30.8	36.7	36.1	36.2
Small scale	17.7	22.2	28.2	27.1	28.5
Large scale	7.6	8.6	8.5	9.0	78.8
Mining and quarrying	0.5	0.4	0.9	0.9	0.9
Manufacturing	17.4	16.0	14.2	13.7	13.1
Electricity and water	1.6	1.4	1.3	1.3	1.3
Construction	2.2	1.7	1.9	1.8	1.8
Distribution	26.7	24.9	22.7	24.3	24.7
Transport and communication	5.1	4.7	4.2	4.3	4.2
Financial and professional services	8.3	7.9	7.3	7.5	7.2
Ownership of dwellings	1.8	1.6	1.5	1.4	1.4
Private, social and community services	2.3	2.0	2.0	2.1	2.1
Producers and government	12.1	11.4	10.0	9.8	9.6
Unallowable finance charges	-3.0	-2.9	-2.7	-3.2	-2.6
GDP at factor cost	100	100	100	100	100
GDP at constant factor cost (MK)	9.2	10.5	11.7	12.2	12.7

Source: Economic Report 1999.

16. The fiscal position of the country has been precarious, although there have been years when the deficit position has been commendable. Public expenditure has over the 1990s been shifting to social sectors. Revenue performance has also been increasing relative to GDP over the period. Some key fiscal indicators are presented in tables 2 and 3.

Table 2. Malawi-fiscal position since 1996/97

(As a percentage of GDP)

	1996/97 Actual	1997/98 Actual	1998/99 Revised	1990/00 Estimate
Total revenue and grants	20.9	18.3	24.8	25.5
Revenue	16.3	14.7	18.3	16.0
Grants	4.6	3.6	6.5	9.5
Total expenditure	23.6	22.9	26.4	27.6
Recurrent	18.9	19.8	19.5	17.4
Development	4.7	3.1	6.9	10.2
Extra-budgetary	0.0	0.3	1.9	0.0
Deficit excluding grants	-7.3	-8.2	-8.1	-11.6
Deficit including grants	-2.6	-4.6	-1.6	-2.1
Financing	2.6	4.6	1.6	2.1
Foreign loans (net)	4.8	1.9	6.4	9.8
Borrowing	6.4	3.5	8.7	12.1
Repaying	-1.6	-1.6	-2.2	-2.4
Domestic borrowing (net)	-2.2	-2.7	-4.8	-7.6
GDB at current market prices (MKb)	37.0	57.6	65.4	83.4

Source: Economic Report, 1999.

17. Foreign trade dominates the modern sector of the economy. In 1988, exports were 28.0 per cent of GDP. Tobacco exports accounted for 65.9 per cent of export earnings while tea and sugar accounted for 8.2 per cent and 6.1 per cent, respectively. Manufactured exports are relatively small, but are on the increase. Manufactures, industrial raw materials and fuel dominate the country's imports. Major sources of imports are South Africa, Europe, Japan and the United States of America.

18. Although merchandise exports generally exceed imports, there is a substantial net deficit in factor and non-factor services payments. Much of this relates to debt service and freight charges. The resulting shortfall on the current account is balanced by a net inflow of capital, mostly foreign aid but also some foreign private investment and commercial credit. See table 4 for details.

Table 3. Revenue and expenditure since 1996/97

Percentage of GDP

	1996/97 Actual	1997/98 Actual	1998/99 Revised	1999/00 Estimate
Gross tax revenue	15.7	14.1	15.1	15.2
Taxes on income and profit	6.7	6.0	6.9	6.9
Grants taxes on goods and services	5.3	4.6	5.6	6.2
Taxes on international trade	3.7	3.4	2.9	2.0
Recurrent net tax revenue	15.2	13.8	15.0	14.6
Net non-tax revenue	1.2	0.9	3.3	1.5
General administration	4.7	5.4	7.7	6.6
Social and community services	6.4	7.9	5.5	6.9
Education	3.4	3.6	2.6	2.8
Health	1.7	1.5	1.4	1.7
All others	1.3	2.8	1.5	2.3
Economic services	1.4	1.6	0.8	1.9
Unallocable services	6.4	4.8	5.5	20
GDP at current market prices (MKb)	37.0	57.6	65.4	83.4

Source: Economic Report 1999.

Social and economic indicators[1]

19. Malawi is classified as a least-developed country. According to the Human Development Report 1999, Malawi's GNP is estimated at US$ 2.1 billion with a GNP per capita of US$ 210 in 1997. It is ranked 159th out of 174 countries on the human development index. External resources play a crucial role in supporting Malawi's balance of payments, development account as well as revenue account. Total official development assistance (ODA) was US$ 350 million (US$ 40 per capita). Total external debt was US$ 2.2 billion and the debt service ratio was 12.4 per cent of exports of goods and services.

[1] The major source of these indicators is the Human Development Report 1999 published by the United Nations Development Programme. Most of the statistics are for 1997.

Table 4. Malawi - Balance of payment position since 1994

Percentage of GDP

	1994	1995	1996	1997	1998
Current account balance	-22.7	-9.3	-14.0	-13.1	-16.1
Merchandise trade balance	0.4	10.5	4.2	2.7	5.2
Exports of goods, FOB	27.5	29.6	20.3	21.2	28.0
Imports of goods, FOB	27.1	19.1	16.1	18.5	22.8
Non-factor services, net	21.3	-16.4	-15.9	-14.0	-18.3
Factor services net	23.4	17.7	17.4	15.9	20.7
Private transfers, net	1.8	-0.3	-0.6	-0.4	-0.8
Capital account balance	19.7	10.7	11.2	8.6	16.7
Long-term capital, net	19.3	11.5	10.5	8.6	16.7
Short-term capital, net	-4.0	0.7	-0.7	0.0	0.0
Overall balance after debt relief	2.4	-4.5	-5.0	0.4	-11.0
GDP at current market prices (MKb)	10.3	22.8	35.6	41.6	52.9
(as a percentage of total exports)					
Tobacco	62.1	68.2	63	63.1	65.9
Tea	9.6	6.4	5.7	7.8	8.2
Sugar	8.2	6.2	7.5	5.4	6.1
Cotton	0.6	0.9	3.3	5.6	1.1
Rice	0.7	0.3	0.3	0.3	0.5
Coffee	4.7	3.6	2.4	2.4	2.7
Pulses	0.9	1.7	2.7	1.4	1.2
Maize	0.6	1.2	0	0	0
Others	12.6	11.4	15.2	14.1	14.2

Source: Economic Report 1999.

20. The extent of poverty is wide and deep. Overall, 60 per cent of the population is classified as poor, being below US$ 40 of consumption per annum. Urban poverty is estimated at 65 per cent. Two thirds of agricultural estate tenants and workers live below the US$ 40 per annum poverty line. Sixty per cent of households are food insecure as the purchasing power of smallholders' incomes and workers' wages has been eroded by as much as 40 per cent and 25 per cent, respectively. This poverty is manifested in high incidence of malnutrition, morbidity and mortality. For example, about 48.3 per cent of children under five years of age are stunted and about 50 per cent are malnourished. Infant and child mortality rates and are

estimated at 135 and 215 per thousand born, respectively. Life expectancy at birth is estimated at 39.3 years for 1997. Table 5 presents the major socio-economic indicators.

Table 5. Malawi - Major social and economic indicators

Indicator	Applicable period	Level
GNP (US$ billion)	1997	2.1
GNP per capita (US$)	1997	210
Net ODA (US$)	1997	350
Total external debt (US$ billion)	1997	2.206
Debt-service ratio (% of exports)	1997	12.4
Exchange rate (MK/US$)	1997	15.3
Average annual rate of deforestation (%)	1990-1995	1.6
Female economic activity rate (%)	1997	46.7
Life Expectance (years at birth)	1997	39.3
Female (years at birth)	1997	39.6
Male (years at birth	1997	38.9
Infant mortality rate (per 1,000 live births)	1995	135
Under-five mortality rate (per 1,000 live births)	1995	215
Maternal mortality rate (per 100,000 live births)	1995	560
Infants with low birth weight (%)	1990-1997	20
Immunization rate one-year-olds (%)	1995-1997	100
TB	1995-1997	100
Measles	1995-1997	87
HIV prevalence rate (%)	1996	13
Cumulative Aids cases (per 1,000)	1997	505.4
Cumulative TB cases (per 1,000)	1996	209.8
Population (million)	1998	9.8
Proportion female (%)	1998	51.6
People with disabilities (proportion (%))	1985-1992	2.9
Adult illiteracy rate	1997	55.7
Female	1997	75.2
Male	1997	53.0
Gross enrolment rate (%)	1997	95
Net enrolment rate (%)		
Primary school	1997	98.7
Secondary school	1997	72.6

Source: Human Development Report 1999

II. GENERAL MEASURES OF IMPLEMENTATION

A. Introduction

21. This chapter provides the measures that have been put in place since Malawi's ratification without reservation of the Convention on the Rights of the Child. It outlines the legal and policy measures put in place, as well as those that are planned to be put in place. The Constitution has more measures than other laws. Likewise, newly formulated policies are closer to the Convention than earlier ones.

B. The Convention on the Rights of the Child and national laws

22. Malawi ratified the Convention on the Rights of the Child in 1991 without reservations. Since then, the Government has sought to bring legislation, policy and practice into line with the requirements of the Convention. Two main laws have been put in place since 1991 that specifically deal with children. Other laws are under review. The review of other laws has been facilitated by the Constitution and the National Youth Council Act.

1. The Constitution

23. The Constitution of Malawi, adopted in 1995, is the supreme authority of the land and requires that all legal and political authority should be exercised in accordance with its dictates, solely to serve and protect the interests of the people of Malawi. Section 13 of the Constitution, for example, requires the State to actively promote the welfare and development of the people of Malawi, including children, progressively. The Constitution also obliges the State to encourage and promote conditions conducive to the full development of healthy, productive and responsible members of society.

24. The Constitution has specifically provided for children in the Bill of Rights under section 23. It states that "all children regardless of the circumstances of their birth, are entitled to equal treatment before the law". In addition, the provision affords children some rights and protection. These include the right to a given name, a family name and to a nationality, and the right to know and to be raised by parents.

25. Children are further protected from economic exploitation, treatment, work or punishment that is or may be hazardous, interfere with their education or might be harmful to their health or to their physical, mental spiritual or social development. The Constitution has also abolished the concept of illegitimate children. The rights and protections under these provisions are only applicable to children under the age of 16.

26. In addition, the Constitution has made provision for the establishment of independent government bodies to promote and safeguard human rights, including women's and child rights. These bodies include the Human Rights Commission established under section 129 with a mandate to protect and investigate violations of human rights accorded by the Constitution or any other law, and the Law Commission established under section 132 with a mandate to review laws, including the Constitution itself, for conformity with international human rights standards and other applicable international laws.

2. The Human Rights Commission Act

27. This Act was passed in 1998 to provide for the proper functioning of the office of the Human Rights Commission. Section 13 of the Act provides that the function of the Commission is, among other things, "to promote more particularly the human rights of vulnerable groups, such as children". The Commission has sought to implement this particular provision by establishing a Child Rights Unit that is answerable to a special Committee on Children's Rights. Membership of the Committee is comprised of both government and civil society. The mandate is to promote and protect child rights in a holistic manner in the light of the Constitution and the Convention on the Rights of the Child. The Committee has initiated a training of trainers programme on child rights and human rights in general.

28. It is also hoped that these campaigns will assist in informing the general public of the existence and functions of the Human Rights Commission, which is currently unknown to most Malawians. The Human Rights Commission has the responsibility to submit to the President, Parliament or any other competent authority opinions, recommendations, proposals or reports on any matters concerning the promotion and protection of human rights. The Commission also has the responsibility to examine legislation, judicial decisions or administrative provisions in force, as well as bills and administrative proposals. It is required to make appropriate recommendations to ensure conformity with the fundamental principles of human rights.

3. The Law Commission Act

29. Since its inception the Law Commission has commenced reviews of various laws. Some of the reviews particularly address issues concerning children. The proposed amendments to the various laws that are relevant to the Convention on the Rights of the Child are outlined below. Apart from these, other laws, like the Censorship and Control of Entertainment Act and the Adoption of Children Act, are under review to ensure that they conform to the Convention and the Constitution.

The Constitution

30. There are three proposals that relate to the rights of a child. The first is that the best interests and welfare of the child should be entrenched in the Constitution. The second is that children with disabilities and orphans should be included as vulnerable groups. The third proposed amendment is that the Constitution should provide for reasonable maintenance of children by both parents at all times, as long as the parents are alive and able.

Affiliation Act

31. This Act deals with maintenance of children born out of wedlock. There are two recommendations. The first is that the level of the maintenance should be increased to reflect the reality of maintaining a child. The second is that courts should collect maintenance allowance payments from the salary or other regular income of the putative father to ensure the responsibility is not avoided.

The Penal Code

32. Issues under consideration include those relating to the age of criminal responsibility, sexual offences involving children as victims and domestic obligations. The law discriminates between boys and girls in relation to sexual offences. For example, defilement occurs if a girl is under 13 years and indecent assault occurs if a boy is under 14 years. The disparity also manifests itself in the penalties. For defilement the maximum penalty is life imprisonment, while for indecent, assault of a boy, it is seven years. Though the law provides stiff penalties for defilement, courts impose very lenient sentences, ranging from a suspended sentence to six months' imprisonment. There are two major reasons for such light sentences. The first is that most magistrates are male and the second is that most of the magistrates are para-professionals (i.e. lay). The review is meant to clear up the disparities and provide clear guidelines for sentencing.

4. The National Youth Council Act

33. This was passed in 1996 to promote youth participation in national development. To this effect, children and the youth have formed associations. This freedom of association has allowed children representation to appropriate authorities. All recommendations to amend the Constitution in relation to child rights came from Young Voices, one such organization.

C. The Convention and national policies

34. Section 13 of the Constitution provides for the State to actively promote the welfare and development of the people of Malawi by progressively adopting and implementing policies aimed at achieving various goals. Goals that directly relate to children include (i) adequate nutrition for all, (ii) adequate health care, (iii) sustainable environmental utilization and management, (iv) good quality life in rural areas, (v) elimination of illiteracy, (vi) fullest possible participation of people with disabilities in all spheres of the society and (vii) full development of healthy, productive and responsible members of the society.

1. Multi-sectoral policies and programmes

35. Immediately after ratifying the Convention the Government formulated the National Programme of Action for the Survival and Development of Children in the 1990s. This programme was adopted in 1993 as a follow-up to the World Summit for Children. The implementation of the action plan was slowed down because of economic instability and political transition. In 1995, the new Government created a Children Affairs Division in the Ministry of Gender, Youth and Community Services and formulated the Policy Framework for Poverty Alleviation Programme, which identified youth and orphans as vulnerable groups. As a follow-up to the Beijing Fourth World Conference on Women, the Government launched a National Platform of Action in 1996. The National Platform of Action identifies areas of action, which include the girl child and violence against women. Currently, there is a draft policy on gender and development which also emphasizes the education and health of the girl child. In 1998, the Government formulated a long-term development vision, entitled "Vision 2020", after extensive consultations. "Vision 2020" identifies children as a vulnerable group.

2. Sectoral policies and programmes

36. The Constitution, in section 13, sets out the principles for national policy. In essence, all sectoral policies are obliged to follow these principles. The policies formulated since then have taken most of these principles into consideration.

National early childhood development policy

37. This policy was adopted in 1998. It covers child nutrition, health, recreation and education. Apart from preparing a child for primary education and ensuring her/his survival, the policy also attempts to free mothers to take on non-childcare activities.

Education policy

38. The current education policy, in line with the Constitution, provides for free and compulsory primary education. It recognizes the potential education has for the development of the child. It addresses the issues of access, quality and equity in order to improve general education levels of the citizens, especially children.

Food security and nutrition policy

39. The policy aims at improving food sufficiency and nutritional status at household and national levels. It also has special emphasis on child nutrition.

Health policy framework

40. The overall objective of the health policy is to reduce the high mortality rates, especially of children. The policy aims at supporting basic programmes, including nutrition and community-based primary health care (PHC) activities, both of which promote child survival and development.

Policy guidelines on orphans

41. This policy was adopted in 1991 as the number of orphans increased due to HIV/AIDS. The policy provides for the improvement of the social welfare, care and standard of living of orphans and other children in situations of disadvantage.

Youth policy: Youth, the Nation Today and Tomorrow

42. The objective of the policy is to develop young people to their full potential and promote their active participation in national development.

3. Programmes and projects

43. These are a number of programmes that are child-centred. Most of these are quite recent. The major programmes are described below.

Gender equality and equity sub-programmes

44. This programme includes the Participatory Development for Women and Children Project and the Community Nutrition Project. The first has a component on training of extension staff on the rights of a child. The second aims at improving the nutrition status of members of the communities, especially children, through nutrition education and crop diversification. This programme is currently in four districts.

Orphan care community-based child care programme

45. There are two components in this programme.

(i) **Family and community care for children in difficult circumstances**

The main thrust is to strengthen community institutions, like nuclear and extended families and religious institutions, to be able to assist orphans. The other focus is on training and providing resources to community-based structures to look after orphans and other needy children. Many orphans and other needy children, in excess of 250,000, have been assisted in all districts in one way or the other.

(ii) **Community based child care**

This project, which relies on community initiatives, involves extension workers from various government departments and aims at promoting the delivery of child care services, particularly at village level, in order to improve child nutrition, early child stimulation, growth and development. So far the project has covered 13 districts.

Youth development and credit scheme

46. The project started in 1997 with the overall goal of providing opportunities to the youth by developing entrepreneurial skills and knowledge, and stimulating increased youth employment and self-employment through the provision of credit. It is funded by the Government. Since the inception of the scheme, 1,400 youths in the Southern Region have been trained. Of these 1,370 received loans totalling MK 6,833,414. In the Central Region 1,018 youths have been trained and 508 of these received loans amounting to MK 1,586,100. In the North, 720 youths have been trained and 300 received loans amounting to MK 1,161,556.

Family life education project

47. The project started in the early 1990s and has been focusing on meeting the reproductive health needs of young people aged between 14 and 25 years. The major activities include meeting officers dealing with youth issues, designing and preparing training materials for peer education and collaboration between partner agencies.

Youth participation and reproductive health project

48. This project aims at providing non-formal education to out-of-school youths to enable them to gain some skills. The reproductive health component facilitates the formation of EDZI TOTO (i.e. say "no" to AIDS) clubs within communities, where information on health issues related to HIV/AIDS is shared. This project evolved from the family life education project.

Girls' attainment in basic literacy and education (GABLE)

49. The project aims at promoting equity in education between boys and girls through increased girls' enrolment, retention and achievement. It used to provide assistance to non-repeating girls in terms of school fees and school uniforms from standards 2 to 8. After the introduction of the free primary education (FPE) policy in 1994 until 1998 the focus of the GABLE project was to offer bursaries to girls attending public secondary schools. This project phased into an NGO in 1999. The NGO's focus is on social mobilization and improving the quality of education.

4. Mechanisms for policy coordination

50. One of the mandates of the Ministry of Gender, Youth and Community Services was to coordinate all policies affecting the interests and welfare of children in Malawi. To facilitate the realization of this mandate, the Ministry created the mentioned Children Affairs Division. However, there were capacity problems in the Ministry to realize systematic coordination of the policies affecting children. In an effort to address the problem, a Child Rights Unit within the Human Rights Commission has been created in 1999 with the aim of promoting, realizing and protecting child rights in a holistic way. It is an institution that will work closely with the Government, but be independent enough to monitor and advise. It will coordinate all policies affecting children and advocate for their reform if need be.

5. Measures taken to publicize the provisions of the convention

51. A number of measures to publicize the Convention have been undertaken since Malawi ratified it. These include:

Some children and youth associations have been advocating the contents of the Convention using the child to child to adult strategy in their campaigns. The most prominent association in this regard has been the Young Voices Movement, which is in six districts of Malawi. They have formed clubs both in primary and secondary schools. These clubs discuss issues related to the Convention and sensitize their fellow children as well as adults. Their plans of action each year include sensitization campaigns on the Convention.

The Government, NGOs and children's and youth organizations use annual special events for children to advocate the contents of the Convention. Some of the annual special events are: the Day of the African Child, which falls on 16 June each year; the Children's Day of Broadcasting, the Universal Children's Day and the launching of the

State of the World's Children report. The institutions use the media and popular theatre in publicizing the provisions of the Convention. There are also sensitization campaigns through seminars, workshops and meetings. Some of the notable seminars on awareness of the Convention were those which were organized for parliamentarians in 1996 by UNICEF in collaboration with government ministries such as the Ministry of Gender, Youth and Community Services and the Ministry of Local Government.

The English version of the Convention was translated into Chichewa in 1998. Some copies have been distributed to the populace of Malawi and are being used. By and large, this popular version has facilitated publicity of the Convention.

About 25 core trainers have been trained on the Convention in 1999 by UNICEF. These trainers will in turn conduct training under the coordination of the Child Rights Unit which has been established in the Human Rights Commission.

III. DEFINITION OF A CHILD

A. Introduction

52. This chapter outlines what various laws provide as definitions of a child. It also outlines areas where there are no legal provisions at all. Inconsistencies and lack of logical reasons for ages of competency stipulated in definitions were noted during the consultations. According to article 1, "a child means every human being below the age of eighteen years unless, under the law applicable, majority is attained earlier".

B. Ages of competency in the national laws

53. National laws, including the Constitution, do not have one definition of a child. National laws and the Constitution do not uniformly comply with the Convention nor do they uniformly define a child. Rather, different laws prescribe the minimum/maximum legal age for various purposes. For example, the Constitution defines children for the purposes of human rights as persons under 16 years. Additionally, there are instances where there is no provision or legislation for children in certain cases. Outlined below are various instances and their legal provisions in the laws.

Legal counselling without parental consent

54. There is no law prescribing the minimum age at which children can receive legal counselling in the absence of parents or guardians. Notwithstanding the fact that the law is silent on this aspect, some people, especially in urban areas, allow and encourage their children of 12 years and above to benefit from legal counselling services.

Medical counselling without parental consent

55. This is another area where the law is silent. Nevertheless, people in both rural and urban areas prefer to send their children to clinics where they get appropriate information regarding health issues. In practice, therefore children of about 12 years old are permitted to access counselling services independently.

Age of criminal responsibility

56. Under section 14 of the Penal Code, children are regarded as having criminal capacity at the age of seven years, although there is a presumption that between the ages of 7 and 12 the child lacks criminal capacity. The presumption can be rebutted by the State where it is obvious that the child knows the difference between right and wrong and is able to act in accordance with that knowledge. The Law Commission is currently reviewing the Penal Code in order to raise the age of criminal responsibility. The general perception of Malawi is that the age should be 12 years. In practice, children of 12 years and below are seldom taken to the police if they commit an offence. They are mostly dealt with by their communities by way of admonition and counselling.

Age of sexual consent

57. The law differentiates between boys and girls regarding the age of sexual consent. Section 138 of the Penal Code makes it a criminal offence to have sexual intercourse with a girl below the age of 13 years with her consent; such an offence is called defilement. The principle is that a girl below 13 years is irrefutably presumed incapable of consenting to sexual intercourse. On the other hand, under section 14 of the Penal Code, a boy is presumed to be incapable of consent to sexual intercourse if he is below the age of 12 years. There has been pressure from women's lobby groups to increase the age of sexual consent for girls to 16 years. In fact, due to cultural practices, girls of 13 years and sometimes even below, are encouraged by parents or guardians to marry in some parts of the Southern Region. This is true mostly.

Age of military service

58. The Constitution provides, under section 23, that every child under 16 years is entitled to be protected from work that is likely to be hazardous. This implies that the Constitution prohibits the recruitment of children under 16 years into the military service, which can be categorized as hazardous employment.

59. In addition the Army Act, under section 14, stipulates 18 years as the minimum age of recruitment into the armed forces. If a person is under this age, written consent has to be obtained from his parent or guardian or, where they are dead or unknown, by order of a magistrate.

Paid work

60. The Constitution, under section 23, requires protection for children under the age of 16 years from economic exploitation and performing work that is or is likely to be hazardous, interfere with their education or is harmful to their health or to their physical, mental, spiritual or social development.

61. The minimum age of employment for children is specified in the Employment of Women, Young Persons and Children Act. This Act distinguishes between a child and a young person. It describes a child as a person under the age of 12 years and prohibits employment of such child at night or in any public or private industrial undertaking. By implication the law permits employment of children below 12 years in other areas, like domestic work.

62. A young person is defined as someone who is between 12 and 16 years. Section 4 provides that such a person should not be employed at night or in any public or private industrial undertaking other than where only members of the same family are employed. This extension absolves family members from liability where they employ children of between 12 and 14 years in hazardous employment.

63. The law does not protect children of below the age of 12 years from regular employment. The emphasis is on protection from working at night and heavy tasks. There is therefore employment of young children in lighter work and in domestic work. The Act also allows employment of young children. Notwithstanding, trade unions are concerned about work conditions on tobacco and tea estates, more especially the employment of underage children.

Marriage

64. The Constitution, under section 22, provides that the minimum legal age for marriage is 18 years for all persons. The Constitution further requires that persons between the age of 15 and 18 years should only marry with the consent of parents or guardians.

65. The constitutional provision differs from the provisions of the 1903 Marriage Act, which governs statutory marriages. Section 19 of the Marriage Act stipulates that a person under 21 years is a minor and can only enter into marriage with the written consent of his parents or guardians.

66. In practice, it is common in the rural areas of Southern and Central Regions for girls of age 15 years and below to enter into marriage. This is mainly due to the cultural practices prevailing in these two regions. For example, during initiation rites girls as young as 10 years are prepared for possible marriages. It is difficult to stop this practice, partly because the law does not expressly prohibit marriages of children below 15 years old. The Constitution merely states that the State should discourage such marriages.

Compulsory education

67. Section 25 of the Constitution grants every person the right to education and stipulates that primary education shall consist of at least five years. This provision which establishes

education as a right, falls short of the requirement in section 13 (f) of the Constitution which requires primary education to be both compulsory and free. There is therefore no maximum age stipulated for compulsory education.

The right to vote

68. Section 77 (2) of the Constitution provides that a person acquires the right to vote in elections at the age of 18. Nevertheless, people, mostly in the rural areas, are inadvertently allowed to vote under the stipulated age because they marry earlier or may not know their age or tend to age faster.

Consumption of alcohol

69. Under section 7 of the Liquor Act, it is an offence to supply liquor to any person under 18 years irrespective of whether the liquor is supplied for the personal use of such young person or of some other person. This implies that a person acquires the right to purchase and consume alcohol at the age of 18 years. In practice, this law is not enforced. It is common to find children under 18 years buying and drinking liquor in public places.

Maximum age for adoption

70. Section 2 (2) of the Adoption of Children Act defines an "infant" as a person under the age of 21 years. Other laws, including the Constitution, however define an adult as a person who is 16 years or 18 years.

Trial and imprisonment of children

71. Section 42 of the Constitution provides for a juvenile court. The Children and Young Persons Act provides that a child between the ages of 14 years and 18 years should be tried as a person who knew what he or she was doing. A child between the ages of 7 years and 14 years is tried with the presumption that his or her understanding or his or her actions is limited, unless proven otherwise.

IV. GENERAL PRINCIPLES

A. Introduction

72. This chapter provides relevant information on legislative, administrative and other measures put in place or that are planned to be put in place, and progress and constraints encountered in the implementation of the general principles of the Convention. These are principles of non-discrimination, best interests of the child, the right to life, survival and development, and respect for the views of the child.

B. Non-discrimination (art. 2)

1. Constitutional provisions

73. Section 20 (1) states that "discrimination of persons in any form is prohibited and all persons are, under any law, guaranteed equal and effective protection against discrimination on grounds of race, colour, sex, language, religion, political or other opinion, nationality, ethnic or social origin, disability, property, birth, or other status". Section 23 (1) states that "all children, regardless of the circumstances of their birth, are entitled to equal treatment before the law". Further, section 24 (2) invalidates any legislation that discriminates on the basis of sex or marital status. It also provides for the passing of legislation to eliminate customs and practices that discriminate against women.

2. Other legal provisions

74. No specific legislation has been passed with the intention of entrenching the principles of non-discrimination. Instead, there are Acts that still have provisions with respect to discrimination on the basis of sex, social origin and other status and condition.

3. Policies and programmes

75. There is no direct policy that deals with this principle of non-discrimination. The draft policy on gender and development, which has been a product of the National Platform of Action on Gender and Development, addresses the problems of discrimination in sectors and areas that discriminate on the basis of sex. The draft policy on education also addresses the problems of gender imbalances created by discriminatory cultural practices and policies. It also addresses the problem of discrimination against children with special needs. In the policy on people with disabilities which is to be developed, it is also intended to address the problem of discrimination against people with disabilities.

76. There have been a few affirmative (discriminatory) programmes with a view to correcting gender imbalance. The GABLE programme, which has been turned into an NGO, sought to increase girls' enrolment, achievements and persistence in schools. Its strategies included paying primary school fees for non-repeating girls, a social mobilization campaign that emphasized the importance of girls education among girls themselves, parents and communities, and, thirdly, the development of gender-sensitive material. Currently, the NGO is focusing on non-repeating secondary school girls.

4. Progress and constraints

77. The problem of discrimination exists to a large degree. It is not rampant but deep-rooted and there are signs that it is declining. Discrimination against girls and children with special needs is rampant. The key determining factor is culture. In paternalistic cultures, a girl or woman does not have the right to inherit. In general, girls' education is considered not important. A girl is not encouraged to continue with her education: she is instead encouraged to marry early.

78. Children with special needs are culturally not accepted. Care provided to these children is not optimal and the result is that their survival and development is made difficult. Government does not have enough institutional and financial capacity to take care of these children, either while they are with their parents or in an institution. Facilities and infrastructure in terms of schools, educational materials, teachers and trainers are in very short supply. Many children with special needs have problems developing to some level of usefulness, let alone to their fullest potential.

79. These cultural attitudes and practices are commonplace in homes, schools, workplaces and the communities. For example, in a family, preference is given to a boy child and not a girl child and the girl is further laden with a lot of domestic work at the expense of her education. When this results in general poor performance of girls at primary school level, few places are reserved for girls at secondary school. This, over time, turns out to be discriminatory as more and more girls fail to get secondary school places. Currently, there are three girls to seven boys at secondary school level. The plan is to equalize this to 1:1 through increasing the number of day and community secondary schools.

80. At the community level, girls are encouraged to marry early and ridiculed if they continue with their education. Boys, on the other hand, are encouraged to continue with their education. At the workplace, girls and women are less likely to be employed, as employers are wary of their gender roles at home which lead to absenteeism.

81. Similar if not worse treatment is given to children with disabilities. However, some children with special needs who pass their examinations are integrated in public secondary schools and universities. Currently, there are five secondary schools that can integrate vision impaired children.

82. The use of English in school, starting from primary school, and in official communication also discriminates against over half of the population, given the 40 per cent literacy rate. Children who are slow in mastering the language are considered “dull” and mostly neglected by teachers. Drop-out and repetition rates are also attributed to the use of English. In fact, a failure in English in the Primary School Leaving Certificate Examinations (SPLICE), Junior Certificate Examinations (JCE) and Malawi School Certificate Examinations (MSCE) means failure in the entire examinations.

83. There is no discrimination on the basis of religion. All religions exist and the only ban, which was on the Jehovah’s Witness sect, has been lifted. There is also no major discrimination on the basis of political leanings. There is some political tolerance as evidenced by the existence of multipartism. Although there is no discrimination on the basis of tribes and ethnicity, there exist some regionalistic tendencies. This is evidenced by the voting patterns in the last two elections of 1994 and 1999.

84. At the public service level, the poor and disadvantaged are discriminated against relative to the rich. Likewise, rural areas which are also poor are less advantaged than urban areas. Children coming from poor families are less likely to have chances of employment, which is mostly in urban areas and advertised mostly in newspapers whose readership is urban based.

85. The situation is made worse by the fact that the current school curriculum does not include the principle of non-discrimination. The curriculum review has taken up the issue of incorporating the principle of non-discrimination.

86. Culture leads to some groups of children being discriminated against. Likewise, lack of institutional, human and financial resources limit the Government's capacity to deal with the special needs of children who are discriminated against. Girls are culturally discriminated against and there are few education facilities open to them. Likewise, children with special needs are discriminated against at home and in school. In fact, these children lack teachers and trainers, in addition to appropriate teaching and learning materials, and sanitary and transport facilities. Children in rural areas have less access to facilities like libraries, schools, roads and health facilities. Urban children have access to publications, newspapers, magazines and a host of other sources of information.

C. Best interests of the child (art. 3)

1. Constitutional provisions

87. The Constitution does not provide for the principle of the best interests of the child. However, the Constitutional Technical Review has recommended that this principle should be provided for. The Constitution provides for the right of a child to maintenance, but only after the dissolution of a marriage. The Technical Review has recommended that a child should have a right to reasonable maintenance from his or her natural parents, whether married, unmarried or divorced, and also from their guardians. This recommendation has yet to be included in the Constitution.

2. Other legal provisions

88. There are certain laws and their court applications that provide for and consider the best interests of the child. For example, in custody cases presided over by professional magistrates and judges, the paramount consideration is the welfare of the child. Likewise, in the Adoption Act, the same consideration is provided for. The Children and Young Persons Act provides for juvenile justice to be conducted according to the principle that the best interests of the child should be paramount. The unwritten customary law, however, does not necessarily take into consideration the principle of the bests interests of the child. In custody cases, a child goes to the father in the patrilineal system, if a bride price was paid. In the matrilineal system, the child goes to the mother. However, being dynamic, the trend in the matrilineal system is changing. In many custody cases, the principle of the best interests of the child is being applied.

3. Policies and programmes

89. There are no specific policies and programmes that are directly related to the principle of the best interests of the child.

4. Progress and constraints

90. Children who are in conflict with the law are rarely removed away from their homes to prison or an approved home. Likewise, children are removed from natural parents to foster parents only when it is in the best interests of the child and only when the courts prove sufficiently that there is no guarantee of the principle holding in the child's home. The Government has set up transit centres in urban areas where children who run away or need a home are temporarily kept while a foster parent or institution is being identified for the child.

91. The provisions of the Children and Young Persons Act which recognize the principle of the best interests of the child are not always implemented in practice. Children are tried in open courts, instead of closed juvenile courts. Further, although the Act prohibits publication of the particulars of the juvenile offenders, such as name and address, journalists still publish them. In general the juvenile court system is not fully working in the best interests of the child due to limited human and financial resources. Juveniles are subjected to prolonged stays in police cells and mixed with adults in remand and prison. In some cases they receive harsh punishment instead of being sent to an approved school.

92. In cases of child custody, the principle of the best interests of the child is mostly applied only by professional magistrates. Unfortunately, most custody cases are handled in lay magistrate courts where customary law mostly applies. The granting of custody in these courts is based on culture, which may not be in the best interests of the child. The practice of sharing a deceased person's estate among family members other than the children is also not in the best interests of orphaned children. Although, in such cases, part of the estate is allocated to the children and spouse, it would be in the best interests of the children if most of the estate was left for the children.

93. It is becoming clear that culture has not been the best promoter of the principle of the best interests of the child. Some cultures require children to undergo initiation rites which are not always in their best interests. Likewise, some cultures force children to marry young and in some cases their marriage is an arranged one. While these cultural practices are viewed to be in the best interests of the child by those who propagate them, they are mostly not, especially in the long run.

94. The conflict between what is considered the best interests of the child by culture and by the Convention is also manifested in corporal punishment. In homes and primary schools, children receive corporal punishment in the name of the best interests of the child. Sometimes this punishment is meted out while others are learning, thereby denying the child an opportunity to learn. Clearly, this is not in the best interests of the child.

95. The principle of the best interests of the child is yet to take root in the society. Although there is a legal framework where the principle of the best interests of the child should be applied, it has been difficult to apply it due to limited human and financial resources on the part of the Government and culture on the part of magistrate courts, communities and households. It would take significant changes in attitude on the part of the custodians of culture, educators and budget directors for the principle of the best interests of the child to be inculcated.

D. The right to life, survival and development (art. 6)

1. Constitutional provision

96. The Constitution also provides for the right to life. Section 16 states that "every person has the right to life and no person shall be arbitrarily deprived of his or her life".

2. Other legal provisions

97. The Children and Young Persons Act stipulates that "the sentence of death shall not be pronounced on or recorded against a person under the age of eighteen years".

3. Policies and programmes

98. The survival of children is stressed in the health policy. Special programmes such as those for maternal and child health and safe motherhood have been put in place which provide antenatal and growth monitoring (under-five) clinics. The expanded programme of immunization (EPI) has assisted in achieving very high immunization rates and increased the survival rate of children. The less widespread vulnerable group feeding and water and sanitation programmes run by the Government and NGOs also assisted in reducing child deaths from malnutrition-related conditions and diarrhoeal diseases.

99. The Early Childhood Development Policy facilitates psychological, psycho-social and physical development of children between ages two and six. Under this policy is the programme of community based childcare. The programme is meant to improve child care for children at the community level by letting the community members take turns in taking care of the children, providing a chance for the children to develop together and leaving the mothers free to engage in other activities.

100. The Orphan Care Policy has been put in place in response to an increasing number of HIV/AIDS victims' orphans. The policy encourages community based orphan care support (i.e. extended families, communities and community based organizations) as opposed to institutionalized orphanages. Orphanages are considered as a last resort response to the orphan problem. This is considered to be in the best interests of the child and proper for the development of the child.

5. Progress and constraints

101. Malawi has made strides in immunization. Its immunization rates are among the highest in the world. The immunization rate for children under one year of age was 100 per cent for the 1995-1997 period. The immunization rates for TB and measles, for the same period, were 100 per cent and 87 per cent respectively. Further, there has been no reported case of polio since 1987.

102. Infant and child mortality rates are, nonetheless, still too high by regional and international standards. About 13 per cent of children born alive die before their first birthday and about 21 per cent die before their fifth birthday. Most of the deaths are caused by malaria

and preventable waterborne and malnutrition-related diseases. Resource constraints hamper progress and rural areas are the hardest hit. Further, lack of parental care manifested in negligence, laziness and poor feeding practices also contributes much to the high mortality rates.

E. Respect for the views of the child (art. 12)

1. Constitutional provision

103. Section 34 provides that "every person shall have the right to freedom of opinion, including the right to hold and receive opinions without interference and to impart opinions".

2. Other legal provisions

104. The Children and Young Persons Act provides for children to be heard and assisted by parents or guardians. In adoption cases, under the Adoption Act, a social welfare officer is supposed to hear the views of the child to be adopted and write a report based on the interviews. Likewise, in custody cases, the judge takes the children into the chambers (not the open court) to hear the views of the children so as to obtain relevant information that would assist in forming the judgement. Customary law does not provide for the principle of hearing the views of the child, even in matters that concern her or him.

3. Policies and programmes

105. The National Youth Policy, adopted after the adoption of the new Constitution, provides for channels for children to express their views. The National Youth Council is one such channel. Youth organizations, which are also provided for, have been used by young people to express their views.

4. Progress and constraints

106. Culture restricts children from expressing their views. Children at the household level have problems in expressing their views, let alone having the views respected. Only in a few families that are mostly educated and urban-based are children given a chance to express their views. At the community level, children are not supposed to express their views unless requested to do so.

107. In more formal settings, children are given the right to express their views. This is basically because these settings are not bound by the culture. Children in school express their views through set channels. At the national level, children express their views through youth organizations, the National Youth Council, radio and television. The Constitutional Technical Review has already heard one youth organization, the Malawi Young Voices, which presented recommendations that the Constitution should incorporate the four principles to ensure adequate protection of the child.

108. Under the juvenile justice system, but not customary law, children are allowed to express their views. Again, in cases of foster parenting, no child is placed unless his or her views are heard. When cases involving custody of children are brought before lay magistrates, the magistrates do not follow proper procedures. In most cases, the child's right to express his or her views is not exercised.

109. Again culture is the main stumbling block for the principle of respect for the views of a child to take root. Although the Government has created a conducive environment for children to express their views at the national level, the society is not ready to respect their views. Currently the society views the opening up provided for by the Government as retrogressive. Giving freedom of expression to children is viewed as contributing to the increasing problem of juvenile delinquency. It will take sustainable efforts and time to change the society's line of thinking.

V. CIVIL RIGHTS AND FREEDOMS

A. Introduction

110. This chapter provides the status of Malawian children's enjoyment of their civil rights and freedoms. It concentrates on those rights and freedoms most relevant to the Malawian child.

B. Name and nationality (art. 7)

1. Constitutional provisions

111. The Constitution generally provides a bill of rights where human and civil rights are outlined. In particular, section 23 (1) states that "all children, regardless of the circumstances of their birth, are entitled to equal treatment before the law". Further, section 23 (2) and (3) provides that "all children shall have the right to a given name and a family name and the right to a nationality. Children have the right to know, and to be raised by their parents". What the Constitution does not explicitly provide for is the registration of a child and the acquisition of nationality, immediately after birth or otherwise, by a Malawian child.

112. Regarding nationality, section 47 (2) provides that "an Act of Parliament may make provision for the acquisition or loss of citizenship of Malawi by any person". Acquisition of citizenship is defined in section 47 (3) (a) as including acquisition by birth, descent, marriage, registration, naturalization or other means prescribed by an Act of Parliament.

2. Other legal provisions

113. The Births and Deaths Registration Act, cap. 24:01 requires a register to be kept in every district and the birth of a child born alive within the district to be entered therein. The Act places the duty to register the birth of a child on the parents, where registration is compulsory. Under the Act registration is compulsory only for children of people who are not of African origin.

114. Citizenship is governed by the Malawi Citizenship Act, cap. 15:01. This Act provides in section 4 that a person born in Malawi after 5 July 1966 is a citizen of Malawi and section 5 provides that a person born outside Malawi after 5 July 1966 is a citizen of Malawi at birth if his or her father or mother is a citizen of Malawi by birth. Further, the Act provides that any Malawian citizen may register a child as a citizen of Malawi.

3. Progress and constraints

115. All children in Malawi generally enjoy the right to a name. Traditionally, a child is given a name on the eighth day after birth. A first born is given a name by the paternal side and the second by the maternal side. When a child is born out of wedlock and the father denies responsibility, the child may go without an official name for some time. In some cases, children are given derogatory names or names that are meant to remind parents of the circumstances surrounding the birth of the child. All children are given family names. However, some children who are not cared for by their fathers or whose fathers denied responsibility are given maternal family names.

116. Along the same lines, some children do not enjoy the right to know their parents. This is mainly true for children born out of wedlock whose father denied parental responsibility or did not make an effort to care for the child before and after birth. To ensure that the child does not know his father, the surname given is not that of his or her father.

117. The right to be cared for by their parents is enjoyed by most of children. However, most of the burden is borne by mothers, even where the father is available. Culture, poverty and parental illiteracy deny many children this right. Sending children from towns to relatives (mainly parents) in villages and sending children to relatives and older children from villages to towns are common practices. While these practices fall under social obligation for those who take the responsibility, the affected children are clearly denied their right to be cared for by their parents.

118. Regarding registration, not many parents see the need for registering the birth of their children. However, in recent years some parents, mainly those that are employed, are registering their children in order to have birth certificates, which are usually required for the processing of identity cards, passports or insurance claims.

119. Only 4,500 child registrations were recorded in 1998. Reasons for the low registration rate include ignorance of the existence of the Births and Registration Act, distance to the registration centres (district headquarters), the long processing time due to bureaucratic delays between the offices of the District Commissioners and the Registrar General, the low literacy rate and little official use of such registration.

120. At the moment, registration of birth is not compulsory except for non-African children. There is a project called Vital Registration System, which started in 1997 in three pilot districts, Nkhata Bay, Ntchisi and Nsanje. The objective is to register births and deaths. This data was collected by village heads.

C. Preservation of identity (art. 8)

1. Constitutional provision

121. Section 23 (2) provides the right to nationality to a child at birth. Apart from the provisions in section 23 (2), there is no provision for the re-establishment of identity. Even when a child takes a surname that is not his or her father's, there is no law that can make him change it.

2. Other legal provisions

122. The Change of Name (Restrictions) Act lays down the procedure to be followed when one wishes to change his or her name. It precludes any person who is less than 21 years from applying for approval of change of name. The Act requires a wife or a child to seek approval of the husband or father, respectively, in order to change their name.

3. Progress and constraints

123. The Government has not introduced national identity documents for Malawians, other than passports and driver's licences and not many people have these two documents. These two forms of identities are available upon application or after a successful driving test, respectively, and are issued after payment of a prescribed fee. Further, up until recently, children could not have their own passports, but merely had their names endorsed in their parents' passport.

124. Factors which limit the availability of these two identity documents are the fees payable, the distance to the places where these documents are processed and the time it takes to have the documents processed. Both passports and driver's licences are issued only in two cities of the country.

125. However, it is not mandatory for every citizen to have an identity document, although one is required to produce some credible identity when doing some transactions.

D. Freedom of expression (art. 13)

1. Constitutional provisions

126. Section 35 provides that "every person shall have the right to freedom of expression" and section 26 provides that "every person shall have the right to use the language and participate in the cultural life of his or her choice".

2. Other legal provisions

127. The National Youth Council Act (1996) provides for the holding of an assembly by the youth. There is, however, other legislation that limits that right for the sake of protecting the integrity of others, the State and the President. This legislation includes the Sedition Act, the Official Secrets Act and the Penal Code. The Censorship Board Act limits the right to pass information across the borders.

3. Progress and constraints

128. Malawi comprises people of different tribes speaking different local languages and dialects. There is no provision in the Constitution or any other legislation for a national and official language. However, in practice, English is the official language and Chichewa is the commonly spoken language and is the first-choice language of translation. The use of the two languages only limits freedom of expression to a very limited extent.

129. At the national level, children have some channels where they can express their views and opinions. Both print and electronic media, the radio and some newspapers have specific programmes and columns, respectively, which deal with children's issues. Many youth organizations have been established to act as conduits for children's freedom of expression. In 1998 youth organizations held their first general assembly and the minister responsible for youth was in attendance at the opening. The Assembly gives youth and children a forum to express and discuss issues concerning their welfare and also to express their views on certain issues to the Government.

130. However, at the community and household levels, the culture does not permit children to express their views unless they are requested to do so. Only a few educated, carefree and culturally "disoriented" parents, mostly in urban areas, give their children freedom of expression. It is also in urban areas where youth organizations flourish.

131. In educational institutions, there is some form of freedom of expression. Pupils in primary and secondary school use various forums, like clubs. There are also established channels in these schools that are used by school children to convey their views to the school administration.

132. There are no other channels for children as a group or a child to express their or his or her views at the community level.

E. Freedom of thought, conscience and religion (art. 14)

1. Constitutional provisions

133. The Malawi Constitution has two sections on this subject. Section 33 provides "the right to freedom of conscience, religion, belief and thought and to academic freedom to every person". Section 34 provides "the right to freedom of opinion, including the right to hold opinions without interference, to hold, receive and impart opinions to every person".

2. Other legal provisions

134. Section 61 of the Education Act, cap. 30:01 provides that religious instruction shall be given in every government and assisted school. Indeed the minister responsible for education prescribes the syllabus for religious instruction in government schools. However, the Act makes provision for excusing any pupil from attending religious workshop and religious instruction at

the school, at the request of that pupil's parents. The Act further stipulates that the section may not apply to any school or classification or type of school or pupils of particular religious persuasion.

3. Progress and constraints

135. Children tend to follow the religion of their parents and may not freely change their religion. When the children grow up they may change their religion. This may not be so easy in the case of some religions, but there is nothing in the laws of Malawi that prohibits a child from changing his or her religion. Generally this right is not enjoyed fully by children, as parents feel betrayed if their children change religious affiliation on their own.

F. Freedom of association and peaceful assembly (art. 15)

1. Constitutional provisions

136. The Malawi Constitution, in section 32, provides that "every person shall have the right to freedom of association which shall include the freedom to form associations. No person may be compelled to belong to an association" and section 38 provides that "every person shall have the right to assemble and demonstrate with others peacefully and unarmed".

2. Other legal provisions

137. The National Youth Council Act provides for freedom of association by the youth. It provides for the formation of youth organizations. The Cooperatives Act and Trade Unions Act also provide for freedom of association and peaceful assembly. Children can form and join cooperatives and can join and form unions under this legislation.

3. Progress and constraints

138. Since 1995 Malawi has experienced the sprouting of many youth associations throughout the country. These youth associations deal with many issues concerning children and youth, including dissemination of the rights of the children. The Constitution creates a favourable environment for the association of youth and children. The Ministry of Gender, Youth and Community Services has a Children's Section that deals with children's issues, including their organization. The National Youth Council of Malawi also works with youth organizations. The Human Rights Commission also has a section dealing with children's rights. Pupils in secondary schools and students at the University have been demonstrating and holding marches over issues of concern to them. Society generally approves of demonstrations.

G. Protection of privacy (art. 16)

1. Constitutional provision

139. The Malawi Constitution, in section 21, provides that "every person shall have the right to personal privacy which shall include the right not to be subject to:

(a) Search of his or her person, home or property;

(b) Seizure of private possessions; or

(c) Interference with private communications, including mail and all forms of telecommunications.

2. Other legal provisions

140. This right to privacy is subject to lawful search of arrested persons as stipulated in section 21 of the Criminal Procedure and Evidence Code. Section 26 of the Code provides that if the arrested person is a woman or a girl, only a female police officer can conduct the search.

3. Progress and constraints

141. By and large, children are accorded this protection. The enjoyment increases with age. Wherever possible, boys and girls are assigned separate rooms and houses. Only when parents suspect that their children are abusing this right do they "invade" the rooms or houses for spot checks. Girls and boys are also permitted to write and receive letters. Generally parents discourage correspondence between boys and girls as this is thought to disturb their education. Consequently, parents disregard the right by opening and/or reading the child's letters. This is thought to be in the best interest of the child.

142. Children living on the street do not enjoy the right to personal privacy since they do not have shelter and sometimes sleep in open places. This is also true for children of poor families living in a small house with a large family. In some cases a whole family has a one-roomed house. To create some form of privacy, even for the parents, the one room is demarcated only by a piece of cloth or mat. Where a big family lives in a house with two rooms all the children, regardless of their sex and age share one room.

143. The social development of street children and those living and sleeping in crowded and mixed rooms is negatively affected because of this lack of privacy.

H. Access to appropriate information (art. 17)

1. Constitutional provisions

144. Section 37 of the Malawi Constitution provides that "subject to any Act of Parliament, every person shall have the right to all information held by the State or any of its organs at any level of Government insofar as such information is required for the exercise of this right".

2. Other legal provisions

145. The Broadcast Act and the Communication Act do not explicitly provide for access to information. There is, however, other legislation that limits access to information and material considered harmful.

146. The Penal Code, section 46, gives the Minister power to prohibit importation of publications that in his opinion would be contrary to public opinion. Publications include records, cinematography films/video tapes and textile fabrics. Some of the publications have had their ban lifted after 1994. Malawi has, however, a very small list of banned material.

147. The Censorship Board established under the Censorship and Control of Entertainment Act, cap. 21:01 censors plays, films, publications, pictures, statues and records. It also provides theatre licences, premises licences and certificates of approval for cinematography films and videotapes. Attached to the certificates of approval are classifications of the films and conditions. The Official Secrets Act makes it an offence to communicate information that is an official secret and this includes matters relating to the defence and security of the country. The Education Act, through the curriculum, also limits the access by providing what type of information should be made available to children.

3. Progress and constraints

148. Generally, children get information from parents, peers, communities, schools and colleges, the media and libraries. At community level and traditionally, children also access important information (especially about moral values) from initiation rites, oral literature through songs, story telling and riddles. At the national level, children have access to a number of children's magazines and, of late, the radio has been used as a source of information for older children. Alongside this rather positive development, is the availability of harmful material in the form of books and video shows.

149. A lot of videotapes are imported and shown to all ages without the Censorship Board's approval and licence. Due to lack of capacity and resources, the Censorship Boards and the police are unable to enforce the provisions of the Act. Many children, especially in urban areas, have access to violent and pornographic video material, to the detriment of their social development.

I. Torture and inhuman or degrading treatment or punishment (art. 37 (a))

1. Constitutional provision

150. Section 23 (4) states that "children are entitled to be protected from … any treatment … or punishment that is likely to (a) be hazardous, (b) interfere with their education and (c) be harmful to their health, or to their physical, mental or spiritual or social development".

151. Further, section 19 provides for the inviolability of the dignity of all persons, respect for human dignity in judicial proceedings and enforcement of penalties, and protection from torture, punishment or treatment that is cruel, inhuman or degrading. It also provides for protection from corporal punishment in judicial proceedings or any other proceedings.

2. Other legal provisions

152. Despite the Constitution making corporal punishment illegal, the Acts which impose corporal punishment have not been amended. For instance, under the Children and Young Persons Act, a juvenile offender can be sentenced to corporal punishment (by the High Court). Under the Penal Code, the sentences for the offences of rape and attempted rape are death and life imprisonment with or without corporal punishment, respectively.

3. Progress and constraints

153. The public generally feels that corporal punishment is appropriate for child character building if just talking to them is not effective. In schools, especially primary and secondary schools, corporal punishment is still applied.

154. So far, no case has come up challenging the legality of corporal punishment but one would assume that should that happen the courts would easily declare corporal punishment unconstitutional, therefore illegal since the Constitution is the supreme law of the country.

VI. FAMILY ENVIRONMENT AND ALTERNATIVE CARE

A. Introduction

155. This chapter discusses the situation of Malawian children in relation to articles 5, 9, 10, 18, 19, 25, 27 (a) and 39 of the Convention. It partly analyses the kind of guidance and support that not only the institution of the family but also members of the community offer to children. It also analyses the mechanisms put in place to ensure family reunification, the contact of children with both parents in the event of the separation of their parents, and alternative care for children removed from the family environment, inter alia. The respect and support of government policies and programmes vis-à-vis the articles in question is also discussed.

156. The main emphasis is on the enjoyment of these rights vis-à-vis the standards provided in the Convention and factors that have affected implementation of the Convention. Data and statistics on most of the indicators is not available. Most of the figures provided in this chapter are based on some research done in early 1993.

B. Parental guidance (art. 5)

1. Constitutional provisions

157. Section 22 (1) and (2) states that "the family is the natural and fundamental group unit of society and is entitled to protection by society and the State" and that "each member of the family shall enjoy full and equal respect and shall be protected by law against all forms of neglect, cruelty or exploitation".

2. Other legal provisions

158. The Common Law puts the responsibility for bringing up a child in line with its cultural heritage on the parents. The Penal Code, in section II recognizes the need for parental guidance.

3. Policies and programmes

159. There is no specific policy that provides for parental guidance. This is mainly because parental guidance has culturally been taken for granted. Lack of parental guidance is mainly a recent phenomenon. Programmes that come close to parental guidance are also recent and confined to urban areas where the problem of lack of parental guidance is surfacing. The Early Childhood Development Policy in Malawi recognizes that, all along, the family has been the key, if not the only, institution that provides parental guidance consistently.

160. A few family welfare programmes are provided by the Government and by NGOs. These programmes contain a family counselling services component. However, these counselling services are mainly confined to urban areas and mostly geared towards those families that seek them. There are no awareness campaigns for parents and children on child rights within family life, except those undertaken during national events for children, for instance during the commemoration of the Day of the African Child.

4. Progress and constraints

161. In both the patrilineal and matrilineal systems, parents and members of the extended family have an obligation to guide, advise and mould children to become responsible citizens. In the matrilineal society, uncles and aunts on the mother's side also have a special obligation to provide parental guidance. In the patrilineal society, the husband and his relatives are more active in providing guidance to children. In families that reside in urban areas and away from relatives, parents/guardians take an active role in providing guidance to children, regardless of the type of family system. In both systems, however, the mother is a critical player in the provision of parental guidance to her children, especially at an early age.

162. Children enjoy this right to a very large degree. In general, culture determines the key players in the provision of guidance. In the patrilineal society, children "belong" to the father. As such, both parents are more active in providing guidance to the children. While in the matrilineal society, where the child "belongs" to the mother, the uncles take an active role in advising the children. This means that a child, in this case, is denied the right to be guided by the father as well. The trend is, however, changing, to the extent that both parents and relatives on

either side provide guidance to children. On the other hand, extended family members are becoming less active providers of guidance as they are concentrating on their own children.

163. In general, appropriate advice is given in accordance with the age of children. For instance, much advice concerning adult life is given to children when they have reached the age of puberty. This is not necessarily true for children who do not undergo initiation rites. In most cases, under-age children are pressured to go through the initiation. During the 30-day initiation period, they are subjected to advice and practices that are harmful to both their emotional and physical well-being. Parental guidance thereafter cannot be according to age, because these children feel they are grown up, even physically. This then limits the effectiveness of parental guidance.

164. The other factors that limit parental guidance include loss of either parent; no time allocation for parental guidance by parents due to busy working schedules and sheer neglect; and cultural influence. The culture does not encourage parents freely to discuss certain issues, especially sexuality, with their child.

165. Parental guidance also faces resistance, at times, from the child who does not want to be guided. These situations are mostly as a result either of a tense relationship between the parents and the child or of a lack of understanding between the parents and the child, or are due to the child keeping bad company. In general, children are becoming more unruly as parents are becoming less careful of the welfare and character of their children.

166. Again, where children have access to television and video shows, it is difficult for parents to provide guidance according to their evolving capacities. Children are exposed to material that is beyond their age. This makes parental guidance according to their evolving capacities without effect as children perceive themselves as being ahead of the parental advice. This is also true when children are exposed to radio messages which are sometimes quite explicit. These radio messages are not edited with various ages and capacities in mind.

C. Parental responsibility (art. 18)

167. Article 18 states that "parents have joint primary responsibility for raising the child, and the State shall support them in this. The State shall provide appropriate assistance to parents in child raising".

1. Constitutional provision

168. Section 23 (3) stipulates that "children have the right to know, and to be raised by their parents". This provision entails that both parents have the duty to care for and contribute to the upbringing of their children.

2. Other legal provisions

169. Under Malawi's Penal Code, anyone who is the head of a family and has a child under the age of 14 years in his or her care must provide necessities for the child. These necessities include food, clothes and shelter. The law therefore does not recognize joint primary

responsibility for raising the child, since emphasis is on the head of the family. The head of the family might either be the husband in a marriage or the mother in a single parent family. Failure to supply necessities is punishable by three years' imprisonment if the failure places the lives of the children affected in danger.

3. Policies and programmes.

170. The State does not render direct financial assistance except in special circumstances to parents and guardians in the execution of their responsibilities. For example, the State only provides foster care allowances to families that are fostering children. A sum of K200 is given per month to such families. Government, private companies and some NGOs also assist some students with bursaries. Otherwise, there is no countrywide policy and programme on parental responsibility.

4. Progress and constraints

171. Generally, parents or legal guardians provide for the needs of their children, which include food, shelter, clothing and psycho-social needs, to the best of their ability. There is generally no joint parental primary responsibility for raising children except amongst a few educated families. It is the mother in both the patrilineal and matrilineal societies who has the primary care of children. It is common to find most mothers engaging in income generating activities with a view of providing basic necessities for their children.

172. Most parents find it difficult to cater for the needs of their children because of financial constraints. The pervasive poverty makes parents less able to meet children's basic needs. The joint responsibilities of caring for children are further constrained by the high proportion of single parent, mostly female headed, households. As already mentioned earlier, most female-headed households are characterized by low unstable income, inadequate food stocks and insufficient family labour.

173. The other factor limiting joint parental responsibilities is culture, especially in the matrilineal society. Since children "belong" to the mother, some fathers do not work hard enough to provide for their children. Polygamy also limits parental responsibility for children. The polygamous father mostly leaves the responsibility with the respective mothers. He is mostly concerned about his own welfare at the expense of children. The practice of polygamy, is, however, on the decline.

D. Contact with parents (art. 9)

1. Constitutional provision

174. The Constitution of Malawi does not specifically provide for the need for the child to maintain contact with both parents if separation has occurred. The Constitution, under section 23 (3), provides for the need for the children to know and be raised by their parents, which implies that there ought to be contact with both parents if the parents are separated.

2. Other legal provisions

175. Legally, a child can be separated from his/her parents if (i) the child is a victim of indecent assault by one or both his parents; (ii) a judicial separation or a divorce occurs between parents; (iii) a custodial sentence has been imposed on one or both of the parents; and (iv) a child has been committed to an institution.

176. The Divorce Act (cap. 25:04) lays down the grounds and procedures for the granting of a divorce, particularly for those marriages under the Marriage Act. A claim for custody of the children can be included in a divorce. The court, mainly the High Court, takes the welfare of children into consideration when deciding on their custody. There is no provision for hearing the views of the child as far as custody of the child is concerned. The court will generally give children of tender age to the mother unless she is morally bankrupt to the extent of being a danger to the welfare of children. The court grants the child rights of visitation to both parents. A child may also be legally separated from her/his parents through an adoption order.

3. Progress and constraints

177. Separation of children from parents is traditionally not encouraged. What is culturally acceptable is the separation of the first born from parents to grandparents. Some children of parents in urban areas are commonly sent to their relatives, mainly grandparents, in rural areas to stay if the parents fail to take care of them (financially or socially, i.e. a girl becoming pregnant). It is also common for children in rural areas to be sent to their worthier relatives, mainly in urban areas, to live with them. Such separations are done in the spirit of the best interests of the child.

178. The most common cases of separation are those that are forced by cases of divorce. Realizing the devastating effects, courts are very reluctant to dissolve marriages. There are very rare cases where divorce is granted at village head or chief's courts. Efforts are made to reconcile couples for the sake of their children. In fact many marriages exist "only for the sake of the children". The probability of divorce is reduced if there are children in the family. Most divorce cases are handled in magistrate's courts. In these courts, customary law is applicable. This law does not favour divorce. However, when divorce is granted, this law does not seriously consider the principle of the best interests of the child.

179. The High Court applies the principle of "the welfare of children as being of paramount importance" in the granting of custody of children. In most cases, the courts use financial resources in the determination of custody of children. Since most women have fewer financial resources than men, custody is mostly granted to the father. The mother, in such a situation, is granted visitation rights. In practice, her rights are limited by the whims of the husband or relatives of the husband. Currently, women's groups are lobbying for amendment of the legislation that considers only financial resources in the determination of custody cases. Whatever the case, divorces force children to be separated from either or both parents. Once either parent remarries, the children are effectively separated from their parents.

180. In the case of imprisonment or indecent assault by a parent, the child is sometimes sent to be cared for by relatives or is sent to an institution for care and protection. There is no legal provision that addresses the issue of such children having contact with their parents. In practice,

parents are encouraged by social welfare officers to visit their children. However, the limiting factor is financial constraints. Most parents are too poor to afford to travel to visit their respective children in prisons or institutions.

E. Family reunification (art. 10)

1. Legal provisions

181. There is no specific legislation that provides for family reunification, except in cases of exceptional circumstances such as armed conflicts, civil wars or social unrest. The Refugee Act has made provisions for tracing of family members and reuniting them thereafter. Generally, the Immigration Act provides for the rights of either parents or children to leave or enter the country provided they have valid travel documents.

2. Progress and constraints

182. When Malawi played host to about a million refugees, members of the communities, the Malawi Red Cross and other NGOs were involved in tracing family members and reuniting them thereafter.

F. Illicit transfer and non-return (art. 11)

1. Legal provisions

183. There is no legislation covering the issue of illicit transfer of children, basically because such cases have been rare in the country.

2. Progress and constraints

184. There have been a few cases of child abduction in Malawi, mostly of boys, who have fallen victim to foreigners who pose as philanthropists. The children are enticed with gifts such as food and clothes and promises of a rosy better life. Some of the children are abducted while others are taken out of the country under the guise of adoption. Most of the children end up being abused. Loopholes in the Adoption Act have, in a way, precipitated the illicit transfer of the children. In an effort to curb this problem, the Government of Malawi is taking the alleged culprits to court, apart from reviewing the Adoption Act to limit intercountry adoption.

185. There has also been some mysterious disappearances of children. The disappearances are believed to be linked to either witchcraft or satanic vices. Neither witchcraft nor satanic worship are outlawed. Further, while customary law recognizes the existence of witchcraft, other more formal laws do not recognize it. Unless the exact cause of the child disappearances is known, there is very little that can be done to address this problem.

G. Recovery of maintenance for the child (art. 27.4)

1. Legal provisions

186. Although the Constitution does not have any provision on this, there are Acts that guarantee the recovery of maintenance for children. These include the Affiliation Act (cap. 26:02); Maintenance Orders Enforcement Act and the Divorce Act (cap. 25:04). The Affiliation Act addresses the maintenance of children born outside marriage. The payments are usually ordered to continue until the child reaches the age of 16 years. Alternatively, the court could order a lump sum payment. The Act also provides for the safety and custody of a child and for fines against any person contravening court orders. Any person who has custody of a child and misapplies maintenance money can be punished.

187. The Maintenance Order Enforcement Act provides for enforcement of maintenance orders made in Malawi where the person resides in the United Kingdom or Ireland. The Divorce Act provides for the custody of children; the court may at any time make such orders as it deems fit with respect to the custody, maintenance and education of a child.

2. Progress and constraints

188. A few cases requiring maintenance for children born outside marriage are brought before courts. There is generally lack of enforcement mechanisms for recovery of maintenance. Many cases requiring maintenance just end up at the community level, where in most cases maintenance for the child is left to the mother and her relatives. Even in cases where maintenance allowances are ordered, the allowances are too little to meet the basic needs of the child.

H. Children deprived of a family environment (art. 20)

Box 1. Children deprived of a family environment

Orphans, destitute children and street children fall into the category of children deprived of a family environment. In Malawi, an orphan is defined as anyone who has lost one or both parents and is under the age of 18. The situation of orphans is worsening due to increasing deaths of adults, with AIDS being the main cause. It is projected that the number of children who will be orphaned by AIDS will have risen from 140,000 in 1995 to over 300,000 by the year 2000. Most of the orphans are being cared for by their extended families. However, with the increase in the number of orphans compounded by the acceleration of adult mortality and the deterioration of the economic situation, extended families are no longer able to take care of their orphans.

This problem exists mainly in urban areas. The reasons for abandoning children include unwanted pregnancies, particularly by student mothers, denial of paternity and desertion. The magnitude of the problem is not really known, but it could not be very alarming.

Children are also deprived of a family environment owing to factors like poverty, juvenile delinquency and broken homes. There were over 400 street children in Lilongwe City alone in 1991. This number has increased tremendously, although the magnitude is not known. Of the total, 85 per cent were "hard core" street children who spent their time on the street undertaking various activities. Males constituted the majority of them.

The main activity for both male and female street children is being used as vendors. While male street children loiter around (including pick pocketing), female street children engage in "small time" prostitution.

1. Legal provisions

189. There are no legal provisions for children deprived of a family environment, like orphans, abandoned children, street children and destitute children.

2. Policies and programmes

190. The 1991 policy on orphans recognizes three alternative sources of care for children deprived of a family environment, as outlined below.

Extended family system

191. This is the preferred system. The extended family provides, and is encouraged to continue to provide, care for orphans and children of poor family members. Emphasis is placed on assisting or empowering families that take care of orphans.

Foster care

192. A foster care scheme operates through placement of orphaned and abandoned children where appropriate. Social workers place and supervise such children. Allowances to foster parents are reviewed from time to time. After placement of abandoned children, the social welfare officers visit the foster family and ensure reunification of foster children with blood relatives when they are found. Where the latter is not possible, the children may be adopted.

Institutional care

193. Institutional facilities are used as a last resort, mostly for orphaned children whose relatives have not been traced and whose lives are threatened by lack of care. It is recognized that family care is better than institutional care.

194. The Government, through the National Task Force on Orphans, constantly reviews and monitors the effectiveness of the three types of care for children deprived of a family environment. In 1996, Government launched an orphan care programme whose overall goal is to reduce the suffering experienced by orphans by ensuring that they are able to grow up in a caring environment in which they are adequately provided for and protected physically,

psychologically, socially, morally and legally. The programme generally supports and encourages families and communities to look after and provide for their orphans to the best of their ability.

195. The Government also provides short-term relief and public assistance to destitute children and their families in terms of food, shelter, clothes and transport. Destitute children are temporarily placed in transit centres en route to their respective homes. Funding of the transit centres is the main problem facing assistance to destitute children.

3. Progress and constraints

196. The Orphan Care Programme operates all over the country. It has established Orphan Care Village Committees that discuss and implement activities that assist orphans at the community level. For example, they run micro-enterprises whose proceeds are used for providing basic necessities for orphans. The main constraints of this programme include limited funding and the lack of voluntarism spirit on the part of communities in some areas.

197. There are also a number of children in foster care. However, there are more children requiring foster families than families willing to provide foster care. Recognizing the need for legislation governing children placed in foster care, the Government, through the ministry responsible for children affairs, is drafting a foster care act.

I. Adoption (art. 21)

1. Legal provisions

198. Adoptions are governed by the Adoption of Children Act. The Act provides that no adoption should take place where the applicant is under the age of 25 or is less than 21 years older than the infant in respect of whom the application is made, except in very special circumstances. It also provides that no sole male should adopt a female child and vice versa, unless under very special circumstances. It further prohibits the adoption of Malawi children by non-residents and of non-resident children by Malawi residents.

199. The process of granting an adoption order is undertaken in a court of law (the High Court, Resident or First Grade Magistrate Courts). The consent of the biological parents, if alive, is sought, but the Ministry of Gender, Youth and Community Services serves as guardian ad litem in the court proceedings.

2. Progress and constraints

200. Over the years, experience has shown that legal adoptions are not very common in Malawi. This is so because orphans culturally become part of their extended family. Orphans are mostly cared for by their next of kin, in accordance with traditional practices. Unfortunately, the capability of the extended family system is becoming overstretched because of the great increase in the number of orphans and poverty. The extended family system is also being threatened by a shift towards nuclear families, especially among the educated and rich who are the natural providers of assistance in the extended family system.

201. As already mentioned, some adopted children living abroad are being subjected to various forms of abuse, including physical, verbal, sexual and economic exploitation. The present Act is being revised to provide firstly for follow-up procedures to ensure that the adoptive home is suitable and secondly the option of the Government rescinding an adoption order in the case of child abuse or any other violation of a child's rights.

202. Other proposed amendments include the following:

(i) The maximum age of a person to be adopted should be 18 years and not 21 years, in order to be in line with the definition of an orphan, whose maximum age is 18 years.

(ii) Non-Malawians should only be allowed to adopt a child after the couple has lived in Malawi for a minimum period of two years and should stay with the child for at least 18 months before starting adoptive procedures.

(iii) A period of two years should be provided to enable follow-up on the adopted children to ensure continued good care, after which the social welfare officers will cease to supervise the children. During the period of follow-up, the social welfare officers should submit reports to the court.

(iv) Powers to revoke adoption orders should be vested in the High Court. This will enable the court to rescind an adoption order in cases where adoption follow-up reports by the social welfare officer strongly indicate that the child is being abused.

(v) Social welfare officers should be authorized to appeal on behalf of the child should the follow-up reports indicate the existence of child abuse.

(vi) Biological parents should not be allowed to place their children for adoption privately, to ensure that adoptions are effected with informed consent and in a lawful manner.

J. Protection from abuse and neglect (arts. 19 and 39)

1. Legal provision

203. The laws of Malawi provide protection against child abuse, particularly desertion, economic exploitation and sexual abuse. For instance, the Penal Code, cap 7:01, section 138 (1) stipulates that "any person who unlawfully and carnally knows any girl under the age of 13 years shall be guilty of felony and shall be liable to life imprisonment with or without corporal punishment". However, this provision of deterrent punishment is defeated by the Criminal Procedure and Evidence Code, cap 8:01, section 13, which limits the criminal jurisdiction of subordinate courts to passing a maximum sentence of 14 years. Despite the fact that the subordinate courts have the desecration of committing a convicted person to either a higher court or to another subordinate court of higher grade than itself for offences it feels need greater

punishment, sexual abuse cases have over the years commenced and ended in subordinate courts. In these circumstances, magistrates generally are lenient in that they pass very light sentences. The average sentence is less than 10 years for convicted child rapists.

2. Policies and programmes

204. The Government of Malawi has no specific policy yet related to the issue of child abuse. However, government policy in general terms on this issue is to protect and safeguard children from abuse. There are some provisions in the National Early Childhood Development Policy which address the issue of child abuse. In this policy, it is stated that in pursuance of the Convention on the Rights of the Child and other related covenants, the Government, in partnership with other stakeholders, will:

(i) Disseminate information to the community on what constitutes child abuse;

(ii) provide counselling services to child abuse victims and their abusers;

(iii) Encourage parents to report cases of child abuse to the police;

(iv) Strengthen the police to handle cases of child abuse professionally and adequately;

(v) Ensure that the law provides stiff penalties to those who abuse children.

205. There are some programmes run by the Government and NGOs that educate families and communities about the dangers of child abuse. For instance, the Community Based Population Education project has components for sensitizing communities about problems of child abuse. Currently these programmes are confined to restricted areas owing to financial constraints.

3. Progress and constraints

206. There are incidences where some parents or guardians neglect to provide children with sufficient food, clothes, bedding and other necessities. Although such cases occur in the community, unfortunately, not many of them are reported to the appropriate authorities.

K. Periodic review of placement (art. 25)

207. Article 25 states that "a child who is placed by the State for reasons of care, protection, or treatment is entitled to have the placement evaluated regularly".

1. Legal provision

208. The Children and Young Persons Act (cap 26:03) provides for review of placements of those children who have been placed in institutions. This Act also provides for special court procedures, sittings and sentencing pertaining to a child, as well as approved homes or institutions.

2. Progress and constraints

209. Some of the children who are in conflict with the law end up being placed in approved schools for care and protection. While these children are at the institutions, social welfare officers review their case from time to time and recommend their release once it is due. Social welfare officers also review the cases of children who have been placed in foster care. Members of the community are generally not involved in the review of placements.

VII. BASIC HEALTH AND SOCIAL WELFARE

A. Introduction

210. This chapter discusses the situation of Malawian children in relation to articles 6, 23, 24, 26 and 18 and 27. Two sectors are analysed, namely health and social welfare as they relate to the survival and development of the child.

B. Child survival (art. 6)

1. Constitutional provision

211. Section 16 of the Constitution provides for the right to life. The Constitution does not specifically provide for the right to life of a child, but provides for that right for everyone.

2. Policies and programmes

Health policy framework

212. One of the health policy objectives is child survival. Some of the strategies are provision of ante-natal and under-five clinics; maternal care services; child spacing services; and immunization services for mothers and children. Further, the policy recognizes that improvements in nutrition status of mothers and children increase the changes of child survival. As such, nutrition education and feeding programmes are the advocated strategies.

213. The Government, in collaboration with NGOs has been implementing programmes that aim at making a positive impact on child survival and development. Some of these programmes are:

(i) Preventive health programmes, e.g. community-based primary health care and Acute Respiratory Infections (ARI);

(ii) Disease control programmes, e.g. malaria, tuberculosis (TB), diarrhoea and bilharzia, and expanded programmes on immunization (EPI);

(iii) Reproductive health programme.

(iv) Nutrition programme;

(v) National AIDS control programme.

3. Progress and constraints

214. Infant and child mortality rates are very high by regional and international standards. According to the Human Development Report 1999, in 1995 the infant mortality rate was 135 per 1,000 live births and the under-five mortality rate was 215 per 1,000 live births. In terms of immunization, 70 per cent of children under five were covered. The prevalence of exclusive breastfeeding for children under four months of age was 11 per cent in 1995. Further, 75 per cent of all six- to nine-month old children are breastfeeding and receiving complementary food and over 50 per cent of all children aged 22 to 23 months are still breastfeeding. The prevalence rate of diarrhoea among children was 15 per cent in 1995.

215. The three major causes of infant and child mortality are malaria (33 per cent), upper respiratory tract infections (13 per cent) and diarrhoea (7 per cent). Malnutrition related conditions like kwashiorkor and marasmus are also common causes of death. In 1995, 48 per cent of children under five were stunted, while 30 per cent were underweight and 7 per cent were wasted. Further, about one third of children born of HIV/AIDS infected mothers are HIV infected.

216. Key constraints to the survival of children include lack of financial resources and capacity to implement health programmes, cultural practices and the HIV/AIDS pandemic. These problems are compounded by the pervasive poverty.

4. Cooperating partners

217. There are a number of cooperating partners in child survival. NGOs involved include CHAM and Save the Children Fund (Malawi, United States and the United Kingdom). Key international donors include the World Health Organization, the European Union, the International Development Association, the African Development Bank, the United Kingdom Department for International Development, KfW and the Government of Japan.

C. Child development (art. 6)

1. Constitutional provisions

218. Section 13 (h) provides for the State to encourage and promote conditions conducive to the full development of the health of children as members of society. Section 30 provides for the right to development. It states that children should be given special consideration in accessing basic resources, education, health services, food, shelter, employment and infrastructure and that the State has a responsibility to justify its policies in accordance with this responsibility.

2. Other legal provisions

219. Currently, there is no other legislative provision for child development, even in the form of an early childhood development act.

3. Policies and programmes

220. Malawi's first ever programme which has a direct link to the Convention on the rights of the Child is the National Programme of Action for the Survival, Protection and Development of Children in the 1990s adopted in 1993. The Community Based Child Care (CBCC) Programme is part of this National Programme of Action. It focuses on child nutrition, primary health care, early stimulation, pre-school education, parent education in early childhood development and reducing the childcare burden of mothers.

221. As part of the CBCC, the Government formulated and adopted, in October 1998, the National Policy on Early Childhood Development (ECD). The policy promotes a holistic approach to child development. Its strategies include:

Encouragement of family and committing participants;

Promotion of child health and nutrition;

Advocacy of child rights law reform;

Provision of basic education;

Special measures for children in difficulties;

Facilitation of recreation and play;

Training as a means of capacity building.

4. Progress and constraints

222. Since the early 1990s there has been increased supply of and demand for ECD services. Although statistics on the numbers of children receiving and institutions offering the services are not available, these services are common in urban areas. English is the main language of instruction in these institutions. Children who go through these have a very good head start in primary school.

223. Despite the popularity of ECD, government priority has been primary education. This is evidenced by the late adoption of the ECD Policy and inadequately planned, funded and weak ECD institutions. The result has been marginalization of the majority of children who do not have access to or can afford the fee-paying privately run ECD centres.

224. The privately run pre-school ECD centres have also had problems of quality and efficiency, as well as inadequate coverage. Research shows that from 1970 to date, only 0.1 per cent of the target population group has benefited from ECD services.

5. Cooperation with other stakeholders

225. Achievements in ECD have been due to close cooperation with a number of stakeholders. Key stakeholders include UNESCO, UNICEF and Save the Children. Other agencies include Plan International, Church NGOs and the Bernard Van Leer Foundation.

226. UNESCO focuses on capacity-building through training of ECD personnel, campaigning for policy development and adoption, production of pre-school education materials including the curriculum, syllabus, IEC materials as well as material on special needs education at the pre-school level and promotion of inter-agency cooperation through the creation of a national network in ECD.

227. UNICEF mainly focuses on the mother and child. Its support facilitated the implementation of the CBCC programme, as well as safe water, immunization and nutrition projects. The Save the Children Fund has worked to ensure the realization of the Convention for all the children of Malawi.

D. Children with disabilities (art. 23)

228. Article 23 states that a disabled person has the right to special care, education and training to help him or her enjoy a full and decent life in dignity and achieve the greatest degree of self-reliance and social integration possible.

1. Constitutional provision

229. Section 13 (g) of the Constitution provides that people with disabilities should be facilitated and assisted to have greater access to public services, fair opportunities in employment and the fullest possible participation in all spheres of Malawian society. Section 30 of the Constitution states that "children and the disabled in particular shall be given special consideration on the application of this right [of development]".

2. Other legal provisions

230. The 1971 Handicapped Persons Act (cap. 33:02) provides for the establishment of the Malawi Council for the Handicapped (MACOHA) with the mandate to improve the welfare of people with disabilities.

3. Policies and programmes

231. There is not policy yet on people with disabilities. However, the Government, through the Office of the Minister Responsible for People with Disabilities, has commenced a consultation process to formulate a policy on people with disabilities. The aim of the policy is to make people with disabilities equal partners in the creation and sharing of economic development and wealth. Its objectives are (i) to promote effective measures for the rehabilitation of persons with disabilities so that they fully participate in social life and development as equals and (ii) to promote effective measures for the prevention of disability.

4. Progress and constraints

232. A few children with disabilities enjoy the rights stipulated in the Convention. These are those who were privileged to go through the education system and vocational training programmes. Some of the agencies that contributed to this are the Malawi Council for the Handicapped, NGOs like Malawi Against Polio and the Cheshire Homes. Mission schools and colleges have enabled a number of people with disabilities to be productive contributors to the country's development. A few others have acquired some technical skills of their own and are mostly integrated.

233. However, the majority of children with disabilities face problems of access to public services. The main stumbling block is attitudes of the society. Culturally, a child with disabilities is considered a "curse". Consequently, care for such a child is not optimal. Other problems faced by children with disabilities include:

(i) Less friendly infrastructure;

(ii) Low coverage of other specialized assistance;

(iii) General unwillingness by community members to integrate children with disabilities in their various activities.

234. Just as in many other areas, targeting of resources to children with disabilities is rather problematic because of the lack of disaggregation of data by gender, age, rural/urban area, social level and region.

E. Access to effective health services (art. 24)

1. Legal provisions

235. Section 13 (b) provides for the State to achieve adequate nutrition for all in order to promote good health and self-sufficiency, while section 13 (c) provides for the State to provide for the health needs of Malawian society and international standards of health care.

Box 2. Health delivery system

There are several tiers in the health delivery system. The first tier is at community level where the Government has health surveillance assistants that serve a catchment area with growth monitoring kit and other health-related services like immunization, water and sanitation. Health personnel from health centres in the third tier service health posts. The second tier is health units, which have skeleton health personnel basically to serve as a first stop for minor cases. The third tier is the health centres, which have medical assistants, health assistants and community health nurses. Health centres are the major service providers to the rural communities. These first levels are categorized as primary health facilities. There are about 400 primary health facilities.

The fourth tier is district hospitals. Apart from serving as primary health service providers for those around them, these hospitals are referral hospitals for the health centres. There are currently 21 district hospitals. The fifth tier is central hospitals that are meant to be referral hospitals although they also serve populations surrounding them. Currently, there are three central hospitals and one central mental hospital.

2. Policies and programmes

236. Primary health care (PHC) has been the key area on which the Ministry of Health has been concentrating. PHC focuses on preventive health, maternal and child health, provision of safe water and sanitation using strategies like drug revolving funds, vulnerable group feeding and basic curative services offered in health centres, health units and district hospitals. Programmes such as vulnerable group feeding, immunization programmes, ante-natal clinics and growth monitoring services fall under preventive health services. The primary health care concept has been a central mechanism through which most of the policies and plans for women and children have been delivered.

3. Progress and constraints

237. There are just over 300 primary health facilities. In 1996, there were 302 facilities with 450 enrolled nurses/midwives, 236 medical assistants and 152 health assistants. There were 124 enrolled community nurses, 23 assistant environmental health officers and 2,627 health surveillance assistants in all these facilities. These numbers leave a shortfall of 46 nurses, 344 medical assistants and 138 health assistants.

238. There were only 20 medical specialists, all stationed in central (referral) hospitals. There were also 58 medical officers at the central hospital. The country had only three pharmacists. Two of these are in administrative positions. In fact, it is only enrolled nurses that are in good supply, although not necessarily adequate.

239. The median distance to a health facility is about five kilometres, while about 50 per cent of the population have access to safe drinking water within one kilometre. The major constraints are availability of drugs and paramedicals and lack of materials in general. Most rural facilities lack basic materials and operate below minimum levels. In terms of access to a mere health facility, the situation is still worse. There are currently 922 health facilities for a population of 10 million. (See table 6.)

Table 6. Health facilities in Malawi, 1998.

Institution	MOHP	NGOs and private		TOTAL	%
		CHAM	Others		
Central hospitals	3	0	0	3	0.33
District hospitals	21	0	0	21	2.39
Mental hospital	1	0	0	1	0.11
Rural hospitals	20	21	0	41	4.34
Other hospitals	0	19	9	28	3.04
Health control	236	87	66	389	42.19
Maternity units	12	10	48	70	7.59
Dispensaries	54	14	277	345	37.42
Health posts	15	0	9	24	2.60
Share (%)	39.3	16.4	44.4	100	

Source: Ministry of Public Health, Health Information/System Database.

F. Social security (art. 26)

1. Policies and programmes

240. The Government and NGOs have been running programmes that target vulnerable groups like children and expectant and lactating mothers. The common ones are the vulnerable group feeding, supplementary feeding, school feeding and free food distribution programmes. The Government also offers free medical services to the population. In emergency situations, the Government runs free food and agricultural inputs distribution programmes. There is, however, no policy or coordinated programme for social security or social insurance.

2. Progress and constraints

241. Formal social security does not exist in Malawi. there are no unemployment benefits and free medical services act as the country's health insurance. Consequently, there are no legal provisions, policies or programmes. The main constraint is financial resources. Notwithstanding the funding problems, the Government has a full-fledged agency that deals with emergency situations like floods, drought and other disasters.

242. On the personal level, what are available are insurance schemes and programmes that assist the poor. A proportion of the employed have private and company sponsored insurance schemes and retirement benefits. In some rural areas the poor have access to NGO or government sponsored public works programmes for cash or food and free distribution of food and inputs. However, the coverage of these programmes is very low. Currently, the Government is developing a safety nets programme that will act as a social security measure for the poorest.

243. The Government has recognized the chronic nature of poverty in the country. As a result, it is formulating a policy and programme that would address the basic needs of the poorest of the poor and those that may be affected by disasters.

G. Standard of living (art. 27)

1. Legal provisions

244. Section 13 of the Constitution recognizes the need to promote the welfare and development of children so as to ensure to them an adequate standard of living. Specifically, section 13 (e) provides for the State to enhance the quality of life in rural communities and to recognize rural standards of living as a key indicator of the success of government policies. Apart from the Constitution, the Affiliation Act ensures that children have an adequate standard of living.

2. Policies and programmes

245. Almost all economic policies have the raising of the standards of the living of the population as their objectives. The Government and NGOs have been addressing problems faced by vulnerable children through programmes like the vulnerable group feeding, school feeding and free food distribution programmes. There is, however, no policy or coordinated programme for social security or social insurance. Other programmes that may fall under social security include free medical services, and free and subsidized agricultural inputs. The proposed policy and programme on safety nets will assist in addressing the problem of the low standard of living.

3. Progress and constraints

246. The standard of living in the country is very low. Income distribution is very skewed against the majority of the poor. Income inequality as measured by the gini-coefficient is at 0.62. This is very high by international standards. Again, about 60 per cent of the population are poor. Children in poor families suffer, as manifested by high malnutrition levels, and high infant and child mortality rates.

VIII. EDUCATION, LEISURE AND CULTURAL ACTIVITIES

A. Introduction

247. This chapter discusses the position of Malawi vis-à-vis articles 28, 29 and 31 of the Convention on the Rights of the Child. It presents a situation analysis of the rights of the child to leisure and education that is relevant to cultural, national and international standards. The discussion centres around what instruments, institutional set-up and collaboration strategies the country has put in place to ensure that the set rights are fulfilled.

248. The main instruments are the Constitution of Malawi, the laws of Malawi and relevant policies and programmes. As regards institutional set-up, the emphasis is on monitoring strategies and mechanisms that have been put in place, progress achieved in the implementation of the Convention and factors that have affected or continue to affect the implementation of the Convention.

249. The discussion also highlights the cooperation between government ministries/departments, the Government and NGOs, the Government and local authorities and the Government and donors regarding the issues raised by these three articles of the Convention. The emphasis is on the nature and extent of the cooperation.

B. Right of a child to education (art. 28)

250. This chapter will discuss all levels of education since article 28 refers to all levels of education. This implies that the discussion will ignore the fact that some students in higher education are not children as defined in the Convention.

1. Legal provisions

251. The Constitution sufficiently provides for this right. For example, section 25 (1) entitles all persons to education. Likewise, section 13 (f) of the Constitution calls upon the State to provide adequate resources for free and compulsory education, while section 23 (4) provides for protection from any form of activity or punishment that would interfere with their education.

252. The Education Act, however, is out of date. Enacted in 1926 and revised in 1968, it does not provide specifically for primary education, let alone free and compulsory education. What it provides are general principles, like promoting education, educating the inhabitants, progressively developing schools and ensuring effective execution of the education policy of the Government. This Act is under review.

Box 3. Structure of the education system in Malawi

There are three levels of formal education in Malawi, namely, primary, secondary and tertiary education. Pre-school education which is part of Early Childhood Development is considered as a vital element of education, although it is informal. Pre-school education in Malawi is for children between two years and six years of age. It is loosely structured and streaming is usually according to age and capacity of the child. Most of the services offered fall within such broad categories as nurseries, day care centres, crèches, kindergartens, play groups and pre-primary education.

Primary education has eight steps, called standards. The eight standards are further categorized into infant (one and two), junior (three to five) and senior (six to eight). The secondary school level has four forms. Forms one and two are referred to as junior, while forms three and four are senior. Tertiary education generally refers to any education that is dependent on successful completion of either junior or senior secondary school. These include university (or higher) education, vocational and technical education including apprenticeships and training colleges. Up until 1998, only the University of Malawi offered

university education, through its five constituent colleges. The minimum period for a diploma is three years and a degree requires at least four years. Other programmes take as many as six years. Some faculties and programmes offer a master's degree for a minimum of two years. Mzuzu University has just started and is likely to be structured along the University of Malawi lines.

Promotion in primary school is dependent on a pass in end-of-year examinations and secondary school enrolment is dependent on a pass in primary school leaving certificate examinations (PSCLE). Secondary education is offered by conventional secondary schools (CSS), private secondary schools (PSS) and the Malawi College for Distance Education through distance education centres (DECs), night schools and home study. CSS are government or government-assisted day or boarding secondary schools. Enrolment in CSS depends on government selection, unlike DECs and PSS that only require a pass in PSCLE. Junior certificate examinations (JCE) are taken after completing form 2. A pass in JCE is required for enrolment in senior secondary school and some tertiary education institutions like vocational and technical education institutions and some training programmes like junior primary teachers, medical and health assistantship training programmes. Good passes are required for selection and promotion into form three.

The Malawi school certificate examinations (MSCE) are taken after completing form 4. A good pass (at least six credits, including English) enables one to be short-listed for university entry examinations used for University of Malawi selection. Apart from the university, enrolment in various training colleges including apprenticeship training at Polytechnics Board of Governors depends on performance in the MSCE. Some training colleges are subject-oriented. Key ones are the Natural Resources College (agriculture), Magomero Training College (community development), teacher training colleges (primary education), Malawi College of Forestry (forestry), Malawi College of Health Sciences and nursing schools and colleges (health). Others colleges include the Malawi College of Accountancy and technical colleges.

The recommended age for starting primary education is six years. If a child starts at age 6, she/he gets a diploma from a university college at 20 years of age and a degree at 21 years. However, the proportion of those that make it at that age is small because the education system is saddled with internal inefficiencies and poor quality. Many rural children, for example, start when they are older than six to ensure that they are old enough to walk the long distance to and from school. For instance in 1995, only 51 per cent of children entered school at the correct age. Further, repetition rates are very high, as high as 20 per cent for standard 8 and primary-secondary transition rates are very low, only 14 per cent in 1997. Even in secondary education there are some problems as evidenced by pass rates of 80 per cent for JCE and less than 40 per cent for MSCE in 1997. Some who fail are forced to repeat if they are to progress with their education. It is not uncommon to find first degree graduates in the age group of 25-30 years. (At university level, there is some repetition but to a small extent, i.e. less than 5 per cent in 1997.)

2. Policies and programmes

253. Policies outlined herein are from the current official education policy, namely the Policy and Investment Framework (PIF) 1995-2000. Some reference is made to the draft education policy that is to take effect in 2000, i.e. PIF 2000-2005.

Primary education

254. The PIF policies and strategies relate to access, equity and internal efficiency. Free and compulsory primary education falls under access and equity. One of the targets in the PIF is directly related to article 28 of the Convention. The policy target is to achieve a 90 per cent coverage of children by the end of the century by introducing free and compulsory primary education for children aged 6 to 13 years, i.e. standards 1 to 8, among other strategies.

255. After the ratification of the Convention, the Government introduced a school fees waiver scheme, in 1991-1992 for standard 1 and up to standard 4 by 1993-1994. At the same time, the Government, with donor support, embarked on a project (Girls Attainment in Basic Education and Literacy, popularly known as GABLE) that was meant to encourage girls' school enrolment and reduce their dropping out. The project paid school fees for all non-repeating primary school girls and also mounted a vigorous social mobilization campaign to encourage girl-child education. In 1994, the new Government introduced a programme called Free Primary Education (FPE). The FPE programme abolished the payment of tuition and all forms of charges and also abolished a school uniform requirement.

Secondary school

256. The PIF encourages the development of conventional secondary schools (CSS), distance education centres (DEC) and private secondary schools (PSS). Under CSS, the PIF is encouraging the development of day (non-residential) and boarding secondary schools. Special emphasis is, however, on community day secondary schools. It also advocates the decentralization of secondary school management and the establishment of private secondary schools.

257. The current policies do not provide for free secondary education. If anything, the move is towards increased parent contribution. Currently, the Government's subsidy of secondary education is well above 50 per cent. The policy on cost sharing states that school fees should be reviewed with the intention of decreasing government subsidy to 50 per cent of the cost of providing secondary education; and that book user fees should be constantly reviewed to increase the parental contribution to 50 per cent. Thus free secondary education is not being envisaged in the policy.

258. The provision of financial assistance to needy children for secondary education is not mentioned in PIF. The Government and local government offer some bursaries to needy children, but this is to a very limited extent. Many needy children have failed to continue with their education despite this bursary scheme. What is apparent is that the Government is concentrating its efforts on primary education.

259. The sub-issues of access and equity are adequately provided for in PIF. The targets for access to secondary education include:

(a) Achieving a net enrolment ratio of 10 per cent by 2005 from a net enrolment rate of 1.5 per cent and a gross enrolment rate of 4 per cent in 1995; and

(b) Achieving a transition rate of 15 per cent by 2000 and 30 per cent by 2005 for each district, from a transition rate of about 11 per cent in 1995.

260. The strategies and programmes to achieve the targets include:

Conventional secondary schools

(i) Giving priority to the provision of only day secondary schools;

(ii) Building 63 more schools in rural areas with 8,760 places by 2000;

(iii) Building 10 urban and peri-urban day secondary schools with 2,400 form 1 places by 2000;

(iv) Building a total of 250 day secondary schools by 2005;

(v) Encouraging the establishment of quality private schools.

261. The Government is also committed to improving access to school, especially for girls. To demonstrate this, it has abolished the policy of expelling pregnant girls from school. Instead they are allowed to come back after delivery. Research had revealed that the policy alone was responsible for 76 per cent of school drop-out by girls.

Distance education schools

(i) Encouraging community involvement in building school blocks and teachers' houses, with the Government providing materials;

(ii) Exploring the possibility of establishing private distance education centres.

262. With regard to equity, the target is to reach a girls' quota of 50 per cent in secondary schools by constantly increasing the quota from 33 per cent in 1995 and continuing to pay for needy girls.

Other strategies include:

263. (a) Continuing to integrate children with special needs in conventional secondary schools and adopting the architectural design of new schools to take into account children with special needs;

(b) Revising the curriculum and developing instructional materials to cater for girls and children with special needs;

(c) Redesigning and increasing school facilities to cater for the increasing numbers of girls and children with special needs;

(d) Strengthening guidance and counselling services in order to address the academic, psychological and socio-cultural needs of the youth, especially girls and children with special needs, by offering training courses to teachers in guidance and counselling techniques.

264. Thus the strategies and programmes under access and equity are meant to ensure equity in access to secondary education. However, it is clear that the poor who cannot afford secondary education have not been taken care of.

Vocational and technical education

265. Technical and vocational training in Malawi received low priority in the past and was characterized by minimal involvement of the private sector, non-responsive institutional structures, outdated curricula, inappropriate legislation and an unsuitable financial base. In October 1998, the Government, through the Ministry of Labour and Vocational Training, in cooperation with key stakeholders, formulated a new policy and programme. Its aim is to provide requisite competencies necessary for full participation. Government has established an independent and autonomous Technical, Entrepreneurial and Vocational Education and Training (TEVET) system. The idea is to have an integrated, demand driven and sustainable system that responds to personal development needs, as well as labour market trends.

266. Vocational training has been offered through technical colleges run by the Government, NGOs and private organizations. Other specialized government agencies such as the Development of Malawian Traders' Enterprises (DEMAT), the Small Enterprise Development Organization of Malawi (SEDOM) and the Malawi Entrepreneurs Development Institute (MEDI) focus on combining the provision of basic vocational and technical skills with training in management and marketing. However, only very few youths have benefited from such courses because of high fees, and inadequate facilities. The Malawi Council for the Handicapped (MACOHA) also targets youth with disabilities. MACOHA offers literacy classes and training in weaving, soap making, knitting, tailoring, carpentry and joinery, metal work, welding and agriculture. It also offers career guidance for those with high levels of literacy.

Higher education

267. Policies and strategies on university mention access. The current mission statement for the university calls for diversification of programmes to cater for a wide cross section of society. Strategies on access include:

(a) Diversifying university programmes to increase enrolment;

(b) Encouraging women to enrol in male-dominated courses;

(c) Providing learning and teaching materials and facilities for children with special needs, so as to increase their enrolment;

(d) Encouraging the establishment of private institutions of higher learning;

(e) Introducing correspondence courses and a credit system to allow for home study.

268. While these are positive strategies for access, the policy of increased cost-sharing (increased contribution paid by the student) is also being emphasized. It cannot be said that cost-sharing will reduce general access to higher education because the implementation of this policy is to be accompanied by some loan schemes for the needy.

4. Progress and problems

Primary school

269. The policies and programmes prior to free primary education (FPE) programme did not have a significant impact on primary school enrolment. Since 1994, with the introduction of FPE, enrolment increased tremendously. However, the disparity between boys' and girls' enrolment, despite some improvements over the years, has stagnated at 53:47. The introduction of community schools is also having a major impact on rural children, who were otherwise cut off from education facilities. (See table 7 for the details.) In 1994-1995 the net enrolment ratio was 71 per cent and it is estimated that by 1997 the ratio had gone to 100 per cent. The gross enrolment ratio has been over 100 per cent since 1994-1995.

270. There has been little progress made in the area of access and equity, especially for children with special needs. Even for those with some access, the infrastructure is not user friendly and most of the teaches are not trained to cater for children with special needs.

271. Further, the quality of education has deteriorated as resources are over-stretched. The increased enrolments overwhelmed the primary school system in terms of teaching and learning materials, classrooms and teachers. Most of the schools are in a poor state of repair and they are unevenly distributed.

Table 7. Primary school enrolment since 1988-1989

Year	Total (No.)	Growth (%)	Boys (%)
1980/90	1 325 453	10.2	55
1990/91	1 400 682	5.7	55
1991/92	1 662 583	18.7	54
1992/93	1 795 451	8.0	53
1993/94	1 895 423	5.6	52
1994/95	2 860 819	51.0	53
1995/96	2 887 107	1.0	53
1997	2 905 590	0.6	52

Source: Education Basic Education Statistics, Ministry of Education (various issues)

272. Apart from having a high proportion of untrained teachers (almost 50 per cent), teachers are also unevenly distributed across regions and between rural and urban areas, as well as classes in a particular school. Table 8 provides the range of pupil-teacher ratios for the various regions and classes.

Table 8. Pupil-teacher ratios by area and teacher quality, 1997

Region/district	All teachers	Qualified teachers
Northern Region	53	85
Lowest	38 (Mzuzu city)	71 (Mzuzu city)
Highest	60 (NB)	104 (NB)
Central Region	58	90
Lowest	37 (Lilongwe urban)	48 (Lilongwe urban)
Highest	64 (KK)	129 (Lilongwe rural)
Southern Region	62	87
Lowest	49 (Blantyre urban)	62 (Blantyre urban)
Highest	95 (Machinga)	203 (Machinga)
Standard 1 (1997)	173	Not applicable
Standard 4 (1997)	64	
Standard 8 (1997)	40	

Source: Ministry of Education.

273. On the basis of this year alone, the Northern Region is better off than all other regions and the Southern Region is the worst off. In almost all regions, urban areas are much better off than rural areas. In terms of classes, infant classes are worse off than senior classes. In 1997, for example, only 15 per cent of schools met the recommended 60:1 pupil-teacher ratio in standard 1 as opposed to 93 per cent in standard 8.

274. In general, the quality indicators are not favourable as can be seen in table 9 for the 1997 academic year.

Table 9. Some primary education quality indicators, 1997

Type of indicator	Value
Enrolment	2 905 950
Number of teachers	47 370
Qualified	24 353
Required	48 433
Number of teacher houses	15 797
Permanent	9 828
Temporary	5 969
Number of classrooms	24 425
Permanent	18 596
Temporary	5 829
Required	48 433
Number of schools	3 761
Local education authority	1 132
Mission	2 549
Government	49
Private	31
Number of schools with water	3 761
with safe water	750
Pupil-teacher ratio	61
Pupil-qualified teacher	119
Pupil-classroom ratio	119
Pupil-permanent classroom	148
Pupil-textbook (English, maths,	
Chichewa)	24
Pupil-desk	38
Pupil-chair	48
Teachers per house	2 (1995/96)
Permanent	3 (1995/96)
Pass rate	77
Transition rate	9.3 (1996)
Repetition rate (all grades)	15
Repetition rate (standard 8)	21
Drop-out rate (all grades)	17
Pupils per school	773

Source: Ministry of Education.

275. The low pass and repetition rates and high drop-out rates are largely attributed to the low quality of primary education. Other factors contributing to the low standards include poor working conditions for primary school teachers, lack of relevant supplementary reading materials, libraries and sick bays. The poor teacher working conditions include shortage of teacher houses. Almost half of the teachers are not housed, while only a third are housed in permanent structures.

276. Although the average school population is below the Malawi recommended one thousand, most of the urban schools have over one thousand pupils. For example in 1995-96 Blantyre Urban had 127,241 pupils in 47 schools, giving an average school size of 2,707 pupils. The average for Lilongwe Urban was 1,853 pupils and 4,092 for Zomba Urban in the same year. For comparison purposes, Blantyre Rural had an average of 753 pupils, Lilongwe Rural 852 pupils and Zomba Rural 1,084 pupils.

277. Another aspect of access is that poor children's participation is low, measured by the gross enrolment rate. Gross enrolment for the richest quintile is estimated to be 133 per cent, as opposed to 74 per cent for the poorest quintile. In general, there is unequal access to primary education.

Secondary school

278. It is estimated that the net enrolment rate in secondary school is no more than 6 per cent. However, the enrolment levels have been increasing lately and the estimate is actually an improvement. It is also estimated that only 4 per cent of the primary graduates go on to CSS and about 8 per cent of the successful candidates acquire secondary education through DECs. Table 10 presents the transition rates since 1992, using the number of form 1 places as a proxy for the number of standard 8 children who are selected to secondary school. It should be noted that the places are only for CSS. There are many more places in DECs and PSS, as can be seen from table 11.

Table 10: Transition rates, primary-secondary school, 1992/1997

Year	Examined	Passed	Selected	Transition rate
1992	96 634	60 418	7 550	8.0
1993	97 600	65 535	7 550	8.7
1994	103 833	82 288	7 620	10.8
1995	116 992	84 956	7 700	11.0
1996	120 881	74 644	8 004	0.3
1997				

Source: Government of Malawi and UNICEF (1998).

Table 11: Enrolment in secondary education, 1991/92-1997

Year	Total (No.)	Growth (%)	GSS* (%)	Private (%)	DECs (%)
1988/89	44 961	16.9	63.5		26.5
1989/90	48 922	8.8	64.4		35.6
1990/91	55 715	13.9	56.5		43.5
1991/92	68.956	25.6	49.1		50.9
1992/93	72.329	4.9	50.5		49.5
1993/94	88.752	22.7	36.7	15.6	47.7
1994/95	105 841	19.3	31.1	14.6	54.3
1995/96	136 386	28.9	27.6	12.6	59.8
1997	175 487	28.7	25.0	12 4	62.6
1988-94	63 273	15.5	56.8**	15.6**	37.9
1994-97	139 238	25.6	27.9	13.2	58.9
1988-97	88 594	18.9	44.9	13.8	44.9

Source: Ministry of Education.

* This included PSS up to 1992/93.

** Only up to 1992/93 (CSS) and 1993/94 (private).

279. The average increase in the total enrolment was certainly higher than population growth rate of the secondary school age group. As the growth in the number of pupils who completed primary school increased, the supply of CSS schools could not keep pace. This resulted in increased opening up of PSS and DECs. In fact, the share of DEC in the total enrolment rapidly increased from an average of 37.9 per cent in the period 1988/89-1993/94 to nearly 60 per cent in the period 1994/95-1997. This shows that demand forced the education system to develop various forms of secondary education in order to increase access and provide some equity. By 1997, there were 62 government secondary schools, 24 mission secondary schools, 401 DECs and 137 PSSs, making a total of 624 secondary schools.

280. The quest for increased access brought with it depressed quality of secondary education. Table 12 presents some key indicators for secondary education.

Table 12. Key indicators at secondary education level

	CSS	PSS*	MCDE	Total
1993/94				
Pupil-teacher ratio	28	39	41	35
JCE pass rate	89.4			89.4
JCE transition rate	82.6			
MSCE pass rate	65.4			65.4
1994/95				
Pupil-teacher ratio	12	127	47	26
JCE pass rate	91.2			91.2
JCE transition rate	74.0			
MSCE pass rate	54.6			54.6
1995/96				
Pupil-teacher ratio	14	58	41	28
JCE pass rate	87.7		84.5	86.1
JCE transition rate	74.0			
MSCE pass rate	51.9		12.0	51.9
1997				
Pupil-teacher ratio	15	74	44	31
JCE pass rate	87.4	86.7	83.4	85.8
MSCE pass rate	36.2	34.3	7.9	26

Source: Ministry of Education.

* Pass rates are combined with CSS.

281. Transition from form 2 to form 3 in CSS is dependent on performance in JCE. Since there are limited numbers of form 3 places only those who are selected proceed. In some cases, pupils from DECs, who perform better in JCE are selected to CSS replacing regular CSS pupils who performed poorly. Transition in PSS is not very much a problem as PSS are renowned for being "expandable". Although DECs are constrained by the number of teachers and classrooms, those DECs with forms 3 and 4 are also expandable. The major constraint in the DEC is that some offer only junior secondary education. Those who pass JCE and fail to be selected to CSS mostly end up in DECs or PSS. Previously, before DECs and PSS were in large numbers, most of these enrolled in vocational and technical colleges, teacher training and health sciences colleges.

282. JCE and MSCE pass rates for girls in all the three types of secondary education are low. In 1997, for example, only 33 per cent and 30 per cent of girls who sat for JCE and MSCE, respectively, in CSS passed the corresponding ratios were 43 per cent and 37 per cent for PSS and 33 per cent and 14 per cent for DECS.

283. The differences in pass rates among CSS, PSS and DECs are also a reflection of quality of teachers, facilities and average sizes of classes, apart from differences in intelligence. For example, in 1977 the average school sizes were 273 for DECs, 158 for PSS and 379 for CSS. In terms of facilities, science laboratories and libraries are under-equipped and out of date in CSS, non-existent in DECs and almost all PSSs. Further, in DECs only 18 of the 2,470 teachers for the 109,846 pupils (i.e. 0.7 per cent) have degrees. In fact, the bulk of them (2,449) are primary school teachers. These teachers are not trained in the secondary school curriculum and teaching methods and are therefore unqualified and inappropriate.

284. Private secondary schools also have unique problems that affect quality. Most of these stem from the fact that the schools are set up for simple business purposes. In the quest to maximize profits, fees are very high, but proprietors and mangers provide only very basic facilities and inputs. Key problems include:

(a) Use of untrained and unqualified teachers;

(b) Overcrowding and unhygienic conditions;

(c) Use of makeshift structures;

(d) Lack of teaching and learning materials, including libraries and laboratories;

(e) Rigidity in the school curriculum;

(f) Lack of professionalism due to lack of supervision, inspection and quality control mechanisms;

(g) Indiscipline of pupils as scholarship is determined by ability to pay and not merit as is the case with CSS.

285. However, the role of PSS and DECs in increasing access is recognized. What is clearly lacking in terms of the requirements of the Convention is free secondary education.

286. The need for free secondary education is clearly vindicated by the low transition rates. The high costs of DECs and PSS make it difficult for poor households to send their unselected children to school and are likely reasons for the low transition rates.

287. It is very ironic that DECs and PSS, which are clearly more expensive than CSS, use low quality teachers and have low pass rates as compared to CSS. Further, the high unemployment rate of secondary school graduates, combined with high cost and failure rates conspire against investment in children's secondary education. Clearly, short-run returns on secondary education are diminishing, making the opportunity cost to poor households of the high contribution too high even for the few households whose children are in secondary schools. The opportunity cost can only come down with high pass rates and gainful employment of their wards, given the high contributions. However, the high incidence of poverty and the obvious long-term benefits of secondary education to the country call for the provision of free secondary education.

Vocational and technical education

288. The major problems have been lack of access due to inadequate space available and high fees. Where access has been guaranteed for a few, the lack of appropriate learning/teaching materials has also hampered achievement. Another problem was lack of policy direction and coordination among providers of vocational and technical training. There is need to promote the participation of girls and young women in vocational and technical education and training whose participation is almost non-existent.

289. The major problem with courses offered by churches is poor quality. The main reason is that the course trainers are mostly under-qualified. Another problem of NGO and church offered training is that there their coverage is very minimal coverage, due to the fact that the NGOs could only target specific areas.

Higher education

290. Access to university is low despite a steady increase in enrolment. The net enrolment ratio at this level is less than 1 per cent, even when other non-university colleges and schools are included. University enrolment increased from 180 in 1964 to 4,124 in 1997, averaging 20.3 per cent per annum over the period.

291. By 1997, the University of Malawi awarded 680 certificates, 7,067 diplomas, 6,039 first degrees, 307 first degrees (honours), 121 masters' degrees and 5 doctorates, giving a total of 14,219 for all awards. The three main areas were education (16 per cent), social sciences (9 per cent) and business (9 per cent). Only 20 per cent of these awards went to females. Data for other non-university higher education is not readily available. However, using teacher training as an example, the growth in enrolment has been slow as the Government wanted to match the output of these colleges with its teacher needs. From 1964 to 1997, enrolment increased from 1,368 to 3,100 with a total of 62,244 and an average annual growth of 3.2 per cent.

292. Low access and an increasingly irrelevant curriculum are the key problems in higher education. There are very few places for MSCE graduates to pursue further education and training. There is also a mismatch between the graduates of the university and the job market requirements in terms of quality and quantity. This has resulted in unemployment of graduates in the presence of job opportunities in some areas.

5. Cooperation with other stakeholders

Primary education

293. The achievements in the education sector have been as a result of close cooperation within the Government, and between the Government and local communities, NGOs and donors. The improvements in most of the indicators are attributed to this cooperation. Below are some of the collaborators and areas of collaboration since 1994/95. Key government agencies that

cooperate with the Ministry of Education include the Malawi Institute of Education on curriculum development, the Ministry of Gender, Youth and Community Services on girl-child education and the Ministry of Health and Population on the provision of school health services, pilot school feeding and curriculum development.

294. The Ministry of Education also collaborates with the media in disseminating information. The Government and private sector collaboration includes the provision of teaching and learning materials and the distribution of the materials under the IMPACT Initiative. The private sector also contributes towards the Malawi Education for All Initiative, in particular the Universal Industry's assistance in primary education improvement through the Milk-O-Fund.

295. The Government also collaborates with NGOs in many aspects of education. It also works with religious organizations in the joint management of government grant-aided secondary schools. Donors also have a crucial role in the education sector. Table 13 outlines key local and international partners in this sector.

Table 13. Cooperating partners in primary education: donors and NGOs

NGO donor	Area or activities
Save the Children Fund/US	Established 44 village based schools Trained 44 school management committees Employed and trained para-professional teachers for the schools
Plan International	Constructed the country's largest school complex of 16 classrooms Donated reading and learning materials Funded in-training of teachers
World Vision	Constructed 126 classrooms and 140 teacher houses
Action Aid	Constructed 12 classrooms and teacher houses
The Samaritan	Extends primary education to street children
UNICEF	Provision of learning materials Formulation and promulgation of MEFA (community schools, para-professional teacher training, etc.)
GTZ	Development of science curriculum (basic education, teacher training, training of school committees and coordinators, etc.)
IDA	Infrastructure development Teacher training Text distribution Formulation of PIFs
DfID	Support of primary community school project (community school building, training and supporting teachers, etc.) Support of Malawi School Support Systems Programme (school supervision and training of school heads)

Table 13. (continued)

CIDA	Rehabilitation of schools
USAID	Support of GABLE Reprinting of teaching and learning materials for standards 5-8
EU	Construction of low-cost classrooms and teacher houses
ADB/ADF	Building and equipping urban primary schools and DEOs and Division Education offices
UNESCO	Curriculum review, policy development, development of teacher/learning materials

296. The Government also collaborates closely with communities, especially for primary education, as evidenced by the number of local education authority schools in the country. It can then be concluded that part of article 28 has not been taken care of. Since the absence of this aspect in PIF is more a question of affordability than anything else, the Government would require external assistance from the international community on how free secondary education or financial assistance to needy children could be implemented.

Secondary education

297. Cooperation between the Ministry of Education and other government ministries is similar to that for primary education; except for feeding programmes. This is true for government and mission schools cooperation. However, the cooperation with missions is getting thinner and thinner as the Government continuously reduces subsidies to the schools and the missions demand more and more autonomy. In fact, more and more previously government-aided secondary schools have been handed over to the missions and are run as private secondary schools. The only other cooperation that exists is between the Government and donors. At the secondary school level, there are fewer donors than at the primary level. These include IDA, ADB and USAID.

Vocational and technical education

298. The Government, churches and other NGOs are the main cooperating partners in this area. The most active churches and NGOs active in this area are the Roman Catholic Church, the Church of Central Africa Presbyterian Mission, the Anglican Church, the Lutheran Development Programme, Save the Children Fund (US) and World Vision International.

Donor support mostly comes from the Governments of Germany and China. However, a lot still needs to be done to strengthen international cooperation with other partners for the benefit of this sub-sector.

Higher education

299. There are a number of areas where there is cooperation between higher education institutions and the private sector. The National Bank, for example, offers some awards/scholarships to students with high performance records. Some faculties have some cooperation with the private sector in terms of vocational employment or attachments. In

particular, Polytechnic's the Board of Governors students in various trades are attached to companies throughout their period of study. Kamuzu College of Nursing has very strong cooperation with the Blantyre and Lilongwe Central Hospitals, when it is in session as students go to the hospitals for practicals. During vacations, students are also attached to various district hospitals. Other than in institutionalized cases, there is no formal cooperation between university colleges and the private sector.

300. Donor involvement in higher education is mainly through the development budget. DfID (ODA) and IDA have been key donors in university education. Some donors fund technical assistance programmes whereby lecturers from their countries teach at various university colleges. This is also true for the other post-secondary education institutions. All in all, the cooperation at this level is relatively getting less and less. One of the reasons is the Government's focus on basic education.

C. Educational and vocational information and guidance (art. 28.1 (d))

1. Legal provisions

301. There is no legislation governing educational and vocational information and guidance.

2. Policies and programmes

302. There are no legislation, policies or widespread institutional measures that can be described as making educational information and guidance available and accessible to all children. While it is true that almost all children are aware of the availability of education facilities and that these are increasingly being made accessible, the same is not true of vocational education and training. Vocational education and training is inaccessible.

303. The Government formulated a programme in cooperation with other African States entitled "The guidance and counselling and youth department programme". This programme aims at developing the child's personality and equipping him/her with skills and information to enable him/her to make correct and informed decisions on education, career, sexuality, family life and ideologies, among other things. The programme is currently training teachers, young people themselves and social workers.

3. Progress and constraints

304. The situation in Malawi is that whatever information children have, in terms of educational information and guidance, is from schools. The almost inaccessible educational facilities make the issue of making information on education and guidance available and accessible of little priority. What is of importance is making the educational facilities available. Once these are in abundance, advertising them would make a lot of sense.

305. The foregoing does not imply that educational and vocational information and guidance is not available. What is true is that it is not yet institutionalized. Most parents, for example, are not effective role models and promoters of education because of the high adult illiteracy rates. Further, the high unemployment and underemployment of educated children put parents and

promoters of education in an awkward position. Notwithstanding, communities are aware of the usefulness of vocational education and training. For example, during the Vision 2020 process communities stated that the country would develop much faster if there were widespread technical schools at the local community level. There is a lot of demand for vocational education and training. This training would assist in absorbing some of the unemployed school graduates.

306. Of late, though, efforts have been made through Information, Education and Communication (IEC) messages on radio and other media to stress the importance of sending children to school. This has been in the form of radio plays, posters and magazines. There is little done on vocational education, basically because of limited facilities.

D. Regular attendance and drop-outs (arts. 28 (e))

1. Legal provisions

307. The Constitution and the Education Act are both silent on these issues.

2. Policies and programmes

308. Some direct policies are in place that "force" children to attend school regularly. A pupil is dismissed if she or he is absent from school without good cause for five days consecutively or a total of 14 days per term. This policy only works if the pupil values school.

309. There have been a number of policies, strategies and programmes proposed or implemented to address factors that lead indirectly to absenteeism and dropping out. Policies, strategies and programmes have been designed to improve the quality of education and make lessons more interesting and relevant. Other programmes specifically deal with keeping children in class. Discussions are under way to introduce automatic promotion to reduce repetition rates. This is meant to encourage children to stay in school as opposed to dropping out when they are required to repeat.

310. Dropping out in primary education is likely to be reduced once compulsory primary school backed by appropriate legislation is introduced. Regular attendance and drop-out rates are to be addressed by school feeding. Results from pilot school feeding programmes show that pupils are encouraged to attend school and generally become more attentive. The Government is seriously considering making school feeding a primary school policy and programme.

3. Progress and constraints

311. The incidence of absenteeism is high, especially at the primary school level. Likewise, dropping out of school is rampant at the primary school level. Absenteeism and dropping out are closely related. It is highly likely that those who absent themselves drop out. On average, only 23 per cent of a cohort completes the eight years of primary schooling. Further, only 80 per cent reached standard five in 1993/94. National averages for drop-out rates hover between 15 and 20 per cent. The exception was 1994/95 when the FPE campaign attracted

ill-prepared or over-aged children who dropped out en masse (25 per cent). The repetition rate also hovered between 15 and 20 per cent in the 1990s except, again, in 1994/95 when it increased to 28 per cent.

312. The major causes of these problems are basically the same. The most cited ones are the opportunity cost, especially for poor and rural households; the low value attached to education, especially among uneducated parents and girls; and the quality of the learning environment (lessons and curriculum). It has also been found that pupils are mostly absent during agricultural peak periods, when labour is in high demand, and also during initiation ceremonies. Girls are more absent than boys as they are forced to take care of the household chores in times of need. Children of poor household tend to suffer from ill-health and hunger, which force them to be absent. Girls are also more likely to drop out than boys due to pregnancy, early marriage and fear of sexual abuse. With regard to the school environment, factors such as untrained, unqualified and ill-motivated teachers also contribute to absenteeism and drop-out. Apart from absenteeism, the high repetition rates in standards 1 to 7 are related to quality factors.

E. School discipline (art. 28.2)

313. Article 28.2 requires Governments to take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the Convention.

1. Legal provisions

314. Chapters III and IV of this report have already outlined the provisions on child punishment.

2. Policies and programmes

315. Malawi school policy discourages corporal punishment. School discipline is instilled through counselling, manual work and deprivation of certain services and privileges. Despite the policy which discourages corporal punishment, most parents and school administrators, especially at primary school, still advocate it. The argument is that it is more effective than the other forms of punishment.

3. Progress and constraints

316. At the primary school level, pupils are sometimes whipped, slapped, pinched or given some other form of corporal punishment when they are in the wrong, depending on their age, on the teacher and sometimes on the sex of the child. In many cases, though, school punishment entails some form of manual work like sweeping the school premises, tending the school garden, digging a school trash pit, etc., as deemed necessary by the teacher or headmaster and depending on the severity of the offence. Public humiliation of an offender is found, but is uncommon. There are also cases where the offender is expelled from school.

317. Punishment at secondary school is rarely corporal. Light offences lead to manual work. In general, the commonest punishments are rustication, suspension or expulsion, depending on

the severity of the offence. At university and other institutions of higher learning, offences have to be very severe to warrant punishments. Counselling and other methods are more in use. In severe cases, students are suspended or expelled.

318. Currently, there is increased indiscipline in schools and institutions of higher learning. Teachers, parents and school authorities are blaming this trend on the advent of respect for human rights, democracy and the attendant freedoms. School indiscipline has been frequent and has resulted in expulsions and the closure of schools and colleges, both of which affect the child negatively.

F. Universal aims of education (art. 29)

1. Legal provisions

319. The provisions of this article are not legislated. The Malawi Constitution does not specifically provide for this. Likewise there is no operational law that provides for broad-based education as articulated in this article.

2. Policies and programmes

320. The policy currently governing education does not provide for this type of education. However, the curriculum review has incorporated most aspects of this article. The Youth Policy has incorporated some aspects of this article. The Youth Policy addresses one of the aims of education articulated in the Convention, namely, the conservation of the natural environment. One of the objectives of the policy is to institute and promote environmental education and active participation in environmental conservation among young people. Further, the policy establishes respect for the environment and for sustainable development as one of the values for young people and conserving the environment as one of the responsibilities of young people.

321. The Youth Policy also stipulates promotion of national unity, respect for the principles of democracy and human rights, and promotion of a spirit of self-reliance as other values for young people. It also stipulates promotion of the spirit of tolerance, active participation in the development process, promotion and defence of democracy, promotion of patriotism and respect of others' rights as other responsibilities of young people.

3. Progress and constraints

322. The current primary school curriculum has incorporated most of the issues in article 29 of the Convention; the carrier subjects are social studies, languages and religious studies. However, the current secondary school curriculum has not done so. But as already stated, it is expected that the revised curriculum will be more responsive to the provisions of this article. It is interesting to note, however, that respect for parents has been problematic probably because the parents themselves have failed to recognize and take into account the evolving capacities of their children.

323. Other problematic issues have been respect for the child's own cultural identity, language and values, essentially because of influences from other supposedly "superior" cultures inherited from the colonialists and imported through videos, radio and television. Efforts are being made to put into place mechanisms that would increase the value of the country's culture and languages.

G. Leisure, recreation and cultural activities (art. 31)

1. Legal provisions

2. Policies and programmes

324. The current PIF does not have any provisions related to this subject. However, the draft 1999-2009 PIF includes some aspects of this article. Strategies of interest in the draft PIF are outlined below.

(i) Utilize sports as a tool to promote social relationships and discipline in schools and colleges;

(ii) Assist in the provision and development of accessible sports facilities and infrastructure in schools and colleges;

(iii) Provide opportunities for persons with different abilities to perform to the best of their abilities in their chosen sports as a means of self-fulfilment and recreation;

(iv) Facilitate the provision of opportunities for pupils with talent to excel in their chosen sports as a means of self-fulfilment and developing professional careers;

(v) Promote research and participation in traditional games and sports at school and college levels.

325. The current primary school curriculum has incorporated aspects of environmental conservation through such subjects as Science and Technology.

326. The Youth Policy also has some aspects that fall under leisure, recreation and cultural activities. Two of its objectives fall within the provisions of the article. The first is to promote, preserve and develop the ethnic cultural heritage of Malawi; and the second is to provide and sustain adequate recreational and sporting facilities for young people in communities and schools for healthy minds and healthy bodies.

327. Two of its values, namely (i) pursuit of excellence to one's maximum potential and (ii) development of youth's unique potential, also address some aspects of the article. One of its priority action areas is recreation, leisure, sports and culture. Issues highlighted in this priority area include (i) the provisions of sporting and recreation facilities, entertainment centres, libraries and parks, (ii) participation in cultural activities and (iii) incorporation of traditional dances, games, arts and craft, and music in the school curriculum and their teaching.

3. Progress and constraints

328. At home, many children are allowed to rest and play especially if they are staying with their parents. In general, children are not denied their right to rest and play. However, children are adopting foreign lifestyles and discarding traditional ones wholesale. The traditional oral literature and oral skills are being replaced by written literature and writing skills as more and more people become literate. The traditional fireplace folk narratives, riddles and proverbs, and the moonlight dances and village dance competitions (chioda), music and play have all become almost history. Most parents who were the custodians of these cultural practices have become less attached to them in pursuit of a literate culture, thereby breaking the inter-generational cultural link.

329. There are virtually no sporting and cultural activities in schools. The only time school children are seen playing is during break time. Sports, plays (drama) and traditional dances are not commonly available to children, even as extracurricular activities. The school curriculum inherited from the colonial government had leisure, recreation and cultural activities. Subjects and activities included physical education, sports, arts and crafts, music, drama and traditional dances. By the late 1970s, these had died. The main reasons are (i) lack of basic equipment, amenities and school sports competitions for the promotion of sports in school, (ii) lack of trained school sports trainers and (iii) lack of resources, compounded by a lack of creativity and a bad attitude towards promoting cultural activities in schools.

330. The results of this neglect has been poor performance of the country in sports and lack of cultural activities. Most musicians and artists fail to promote the country's culture, music and traditional dances. There have been problems in promoting traditional music and dance as artists seem to believe that their genre is inferior.

IX. SPECIAL PROTECTION MEASURES

A. Introduction

331. This chapter provides information about implementation of the Convention with respect to children in situations of disadvantage. This information is on policies and programmes and progress and constraints. The areas covered are child labour, refugee children, children in conflict with the law, sexual exploitation and child abuse, substance abuse, sale, trafficking and abduction, children of minorities and children in armed conflict.

B. Child labour (art. 32)

1. Constitutional provision

332. Section 23 of the Constitution of Malawi stipulates that children must be protected from any work that is hazardous and likely to cause interference with their education, health or development.

2. Other legal provisions

333. The relevant statute on child labour is the Employment of Children and Young Persons Act. The Act restricts the employment of children and specifies the contractual conditions for the employment of children. The Act provides that there should be no written contracts for children under 12 years. It also provides that a child must not be employed to work at night and that neither a child nor a young person must be employed in heavy work. The Act defines a child as a person under 12 years of age and a young person as a person between 12 and 14 years.
334. There are three exceptions to these restrictions. The first is that a child or a young person may work as long as the employment contract is not in written form. The second is that work in a family business is allowed. The last is that children and young persons are allowed to work in agriculture. However, the illegal child labour in tea and tobacco estates has been of concern to trade unions and educationists. Further, Malawi, in 1999 ratified the International Convention on the Prohibition and Elimination of the Worst Forms of Child Labour. The Act is consequently under review, coordinated by the Ministry of Labour.

335. Another relevant statute is the Labour Legislation (Miscellaneous) Act, which provides for labour inspections.

3. Policies and programmes

336. There is no defined policy on child labour and no specific government programmes against child labour. There are, however, two notable programmes that have the effect of curtailing child labour. The first is the Community-Based Population Education Programme. One of its objectives is to sensitize communities about the dangers of child labour. The second is the free primary education policy. Free primary education allows children to spend some time at school instead of working in hazardous or detrimental work.

4. Progress and constraints

337. By and large, child labour exists in Malawi. Most children work to supplement family incomes. Orphans, an increasing and vulnerable group, are the major contributors of child labour. The child labour market is also dominated by domestic workers, especially girls. Children are also involved in hazardous and detrimental work on tobacco and tea estates. Although no research has been carried out and the actual number of children involved in various sectors of employment is not known, some small studies on child labour have been done.

338. Child labour is found to be highest amongst tenant farmers. About 20 per cent of all children under 15 years were reported by their parents as working full time and a further 21 per cent were working part time. Children from tenant households were found, in another study, to be involved in all tasks related to tobacco production. Children under 10 years of age were found working alongside their parents as full-time workers in almost all the tasks of tobacco cultivation. Further, 20 to 30 per cent of children under 15 years living on the estates carry out household activities such as food preparation and processing. Women reported that their children are mere assistants in domestic work, but full workers in fieldwork.

339. Labour inspectors envisaged by the Labour Legislation (Miscellaneous Provisions) Act are in short supply and often without resources to undertake inspection of child labour. The Trade Unions, UNICEF, the Young Voices and some NGOs have, however, conducted advocacy campaigns against child labour. For example, the theme for the Day of the African Child for 1997 was child labour.

C. Children in conflict with the law (art. 40)

1. Legal provisions

340. The law, both in the Constitution and the statutes, provides for a separate juvenile justice system. The Constitution has, however, not defined a juvenile, despite providing a framework for the protection of children who transgress the law.

341. Section 42 (g) of the Constitution specifically provides that where a child is in conflict with the law he or she should be accorded treatment consistent with his or her special needs, which must include the rights.

(i) Not to be sentenced to life imprisonment without possibility of release;

(ii) To be imprisoned only as a last resort and for the shortest period of time;

(iii) To be separated from adults when imprisoned, unless it is considered not to be in his/her best interests, and to maintain contact with his or her family through correspondence and visits;

(iv) To be treated in a manner consistent with the promotion of his or her sense of dignity and worth which reinforces the rights and freedoms of others;

(v) To be treated in a manner which takes into account his or her age and the desirability of promoting his or her reintegration into society to assume a constructive role;

(vi) To be dealt with in a form of legal proceedings that reflects the vulnerability of children.

342. The Children and Young Persons Act establishes the procedure to be followed when dealing with juvenile offenders. The Act requires that the parents or guardian should be in attendance when the case is heard and that such cases be heard in camera. There is also a restriction on newspaper reports of proceedings in a juvenile court.

343. The age of criminal responsibility for the child in Malawi is seven years. The Penal Code stipulates that any person under this age cannot be criminally liable for any act or omission. Although this is the legal age of criminal responsibility, it is felt that it is too low and that there is need to put the age up to between 10 and 12 years. In practice, however, there is no record of a child of such a young age being taken to court. Further, the Law Commission has taken this issue up and is to look at this age.

344. Section 7 (1) (2) of the Children and Young Persons Act provides for a separate juvenile court. The court should either be in a different building/room from that in which sittings of courts other than juvenile courts are held or have sittings on different days from such other courts. This Act has important principles in relation to the Convention. The first is that a child should be treated humanely and in a manner consistent with his or her vulnerability. The second is that a child should not be imprisoned unless she/he is of such depraved character or so unruly that it would be in her or his best interest to be imprisoned.

2. Policies and programmes

345. There is no specific policy developed for juvenile offenders. However, there are some programmes running in the two approved homes that aim at building skills among young offenders. These include provision of education and education materials, provision of vocational skills courses, like carpentry, agriculture related courses, bricklaying, leather crafts, tailoring and painting, up to the Grade 3 Trade Test. These schools are meant to prepare the offenders for reintegration after their reformation.

346. The Malawi Government and the European Union are running a joint programme on penal reform which aims at improving the general conditions in prisons, including the juvenile wings and approved schools, and facilitating the rehabilitation of offenders through various services.

3. Progress and constraints

347. The provisions of the Children and Young Persons Act are rarely followed. In most cases arresting officers do not follow the required procedures. Some children are placed in prisons without charge. Many are not informed of their right to bail, trials are delayed, lay magistrates rarely constitute themselves into juvenile courts and children are tried as adults as presiding magistrates do not declare that they are presiding over a juvenile court. Mostly, juveniles are not aware of the type of the court they are being tried in.

348. Conditions in prisons are appalling and many children frequently suffer from scabies and diarrhoeal diseases. In some prisons children are mixed with adults. Recently, however, certain organizations, such as UNICEF, the European Union and Penal Reform International, have assisted with drugs. Other partners include Penal Reform International, CARER, Young Voices, Save the Children Fund of Malawi and the CEYCA.

349. Recently, some children have been released while others have been moved to approved homes. The basic services in the approved schools have been improved and their capacity increased. Reports indicate that 60 per cent of the juveniles discharged from Mpemba Boys Home are able to reform and become productive.

350. The approved schools' reintegration programme for discharged offenders is currently not assisting the young people, since they are not provided with start-up tools. Further, when they return to the community, members of the community do not welcome them wholeheartedly. While close family members are able to accept them, other members of the community are

reluctant as they still associate them with the offences they committed. So far, the Rotary Club of Blantyre, Round Table International and the Red Cross have assisted the reintegration programme. However, there is a lot that needs to be done.

D. Refugee children (art. 22)

1. Legal provisions

351. The Constitution does not have any specific provision dealing with refugees or refugee children. The Refugee Act was enacted in 1989 when the country hosted about a million refugees. That Act, however, does not provide specifically for refugee children.

2. Progress and constraints

352. Malawi does not have official refugees residing outside the country since the amnesty announced after the introduction of multiparty democracy in 1994. She is currently hosting 1,090 refugees from Rwanda, Burundi, Ethiopia, the Sudan, Angola, Sierra Leone, the Democratic Republic of the Congo and Uganda, 73 per cent of whom are women and children. At the peak of the Mozambique civil war she hosted close to a million refugees.

353. In 1987, Malawi acceded to the 1951 Convention relating to the Status of Refugees and the 1969 OAU Convention, which calls upon States parties to host refugees and give them special protection. It enacted a Refugee Act in 1989. Malawi also ratified the Convention on Refugees with a number of reservations. The reservations were on the provision of public education to refugees. This was on the basis of the numbers of refugees at that point in time. The reservation meant that Malawi could not allow refugee children to attend any public school in Malawi. Another reservation was refugee employment. Considering the high unemployment rate, it has been felt that refugees should not be allowed to seek employment in the country.

354. While these reservations still stand, Malawi has allowed the provision of education to refugees. Currently, refugee children have their own primary school, running from standard 1 to 6, at the Dzaleka camp in Dowa district. Currently, the Malawi Red Cross Society has opened a pre-school at the camp. The Government has also allowed Malawian children and refugee children to integrate. The refugee camp school has since January 1999 admitted 300 Malawian children; on the other hand, 20 refugee children have been admitted to Mpalankhwali primary school, the nearest government school to the camp.

355. There are other refugee-specific programmes that benefit refugee children directly and indirectly. These include:

(a) Provision of clean water (boreholes) and toilets;

(b) Provision of health facilities and services by the Government and other agencies, include building of health clinics and supply of drugs, equipment, medical personnel and other staff. The present refugee clinic at the Dzaleka camp is part of the Dowa District Hospital. When the Government carries out its routine immunization campaign, the refugee children benefit from such a programme as well;

(c) Provision of a special feeding programme for malnourished refugee children. This feeding programme takes place at the Dzaleka camp. Following this programme, two nutritional surveys were conducted and both revealed that there were no significant health deficiencies among the refugee children;

(d) Provision of a good road network for proper access to refugee camps. This helped to facilitate food distribution;

(e) Introduction of home craft lessons, vocational training, veterinary services and reforestation.

356. The Government is currently reviewing the Refugee Act. The draft bill, which is being prepared for presentation in the National Assembly, has withdrawn all the reservations including the one on education.

3. Cooperating partners

357. The agencies which helped the Government on this programme included: Save the Children Fund UK, Malawi and USA, the Norwegian Refugee Council, Zoa Refugee Care, the Malawi Red Cross Society and UNHCR.

E. Sexual exploitation (art. 34)

1. Legal provisions

358. Section 23 (4) of the Constitution stipulates that children are entitled to be protected from any treatment that is likely to be harmful to their physical, mental or spiritual, or social development. Section 138 of the Penal Code states that "any person who unlawfully or carnally knows any girl under the age of thirteen years shall be guilty of a felony and shall be liable to imprisonment for life, with or without corporal punishment" and "any person who attempts to have unlawful carnal knowledge of any girl under the age of thirteen years shall be guilty of a felony and shall be liable to imprisonment of fourteen years, with or without corporal punishment".

2. Progress and Constraints

359. A number of cases of child sexual abuse are being reported in the media. Cases on the increase are those of rape and defilement. The other form of sexual abuse is incest. Cases of incest are surfacing, despite the culture of suppressing this kind of offence. Some incest cases have been associated with superstition, especially those involving father and daughter.

360. There has been no research on sexual exploitation to establish the magnitude of the problem. The causes of sexual exploitation include poverty, growth in tourism and cultural practices. For example, it is believed that initiation rites give children a false sense of maturity and they are encouraged to engage in sex after the rites. Other cultural practices force a girl to have sex with an older person after her puberty as a proof of her maturity. These practices are not very common however.

F. Drug abuse (art. 33)

361. Article 33 states that children have the right to be protected from the use of narcotic and psychotopic drugs, and from being involved in their production and distribution.

1. Legal provisions

362. The Liquor and Licencing Act, among other protective measures, bars a young person under the age of 18 years old from access to public bars and further prohibits children from carrying beer.

2. Policies and programmes

363. There is no specific policy regarding drug abuse by children in Malawi. However, the Government established an Anti-drug and Alcohol Resources Centre to reduce demand for drugs and alcohol and create a drug free mental retardation. The resource centre also offers education on the dangers of drug and alcohol abuse. Anti-drug clubs have been established in some secondary schools. In addition, a strong anti-drug Community Based Programme (CBM) has been established in the three cities.

3. Progress and constraints

364. Both the Government and NGOs, especially youth NGOs have paid special attention to the problem of drug and alcohol abuse among young people. Lack of resources affects the effectiveness of their programmes. The churches also play an important role in providing counselling services.

365. There has been no research to establish the causes of drug and alcohol abuse among young persons. However, anecdotal evidence shows that boys, especially in secondary schools, are more affected than girls. Indiscipline in schools is one indicator of students' increased alcohol and drug abuse. The indiscipline mostly results in suspensions and expulsions. Some of the problems are due to lack of enforcement of the laws.

G. Street children

1. Legal provisions

366. There are no legal provisions for street children, since this is a recent phenomenon. Most of the issues are being dealt with at the programme level.

2. Policies and programmes

367. The Government has not developed a specific policy and has no programmes on street children. However, NGOs, working with the Government, have programmes dealing with various aspects of the problem of street children. A number of interventions target street children. The key ones are the provision of shelter as an alternative home, the provision of health care services, the provision of food, rehabilitation in the form of skills training, e.g.

carpentry, tinsmithing, welding, etc., the provision of informal education, e.g. numeracy or literacy lessons for those who have never been to school, counselling, spiritual or otherwise, farming, facilitation of reunification with parents, sport and others.

3. Progress and constraints

368. According to a survey on street children conducted in 1991, 400 children were living on the streets of Lilongwe City. A recent survey commissioned by UNICEF Malawi established an estimate of 2,400 children living in the streets of Blantyre, Lilongwe and Mzuzu: 1,500, 800 and 100, respectively. Reasons for living on the street include poverty, broken or unstable homes, domestic violence, parental abuse and mere adventure.

4. Cooperating partners

369. Key players and areas of operation include the Samaritans in Blantyre, Ana a Malawi, the Adventist Development and Relief Agency (ADRA) project in Blantyre, the Bangwe drop-in centre in Blantyre, the Blantyre drop in Centre in Blantyre, the Stella Maris camp in Blantyre, the Chisomo Children's Club in Blantyre, Yamikani House in Blantyre, the Catholic Diocese of Lilongwe in Lilongwe and Task Force for Homeless in Mzuzu.

H. Sale, trafficking and abduction (art. 35)

1. Legal provisions

370. Sections 135, 167 and 265 of the Penal Code establish various offences in relation to abduction, trafficking and sale. Any person found committing these offences is punishable by law. Penalties range from five to seven years' imprisonment.

2. Policies and programmes

371. There is no specific policy or programme regarding the sale, trafficking and abduction of children in Malawi and no domestic legislation has been passed.

3. Progress and constraints

372. Of late, Malawi has experienced abductions of children under 10 years, smuggling of girls of under 18 years and kidnapping of young children. The magnitude is, however, not high.