



Global Monitoring

status of action against commercial sexual exploitation of children

MALAWI



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GLOSSARY OF ACRONYMS

ACPF:	African Child Policy Forum
ACRWC:	African Charter on the Rights and Welfare of the Child
AfDB:	African Development Bank
AIDS:	Acquired Immune Deficiency Syndrome
APW:	Association of Progressive Women
CMR:	Country Monitoring Report
CEDAW:	Convention on the Elimination of all Forms of Discrimination against Women
CLM:	Child Labour Monitoring
CLMS:	Child Labour Monitoring Systems
COMSIP:	Community Savings Investment Promotion
CRC:	Convention on the Rights of the Child
CSEC:	Commercial Sexual Exploitation of Children
CSO:	Civil Society Organisation
CVSU:	Community Victim Support Units
DHS:	Demographic and Health Surveys
ECPAT:	End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes
FISP:	Fertilizer Input Subsidy Programme
HDI:	Human Development Index
HIV:	Human Immunodeficiency Virus
HRC:	Human Rights Commission
ILO:	International Labour Organization
IOM:	International Organization for Migration
Interpol:	International Police Organization
IPEC:	International Programme on the Elimination of Child Labour
ITU:	International Telecommunications Unit
LDC:	Least Developed Countries
MACRA:	Malawi Communications Regulatory Authority
MCTU:	The Malawi Congress of Trade Unions
MHRC:	Malawi Human Rights Resource Centre
MICS:	Multiple Indicator Cluster Survey

MNACT:	Malawi Network against Child Trafficking
MNAT:	Malawi Network against Trafficking
MOU:	Memorandum of Understanding
MPI:	Multidimensional Poverty Index
NCA:	Norwegian Church Aid
NCJF:	National Child Justice Forum
NGO:	Non-Governmental Organisation
NJJF:	National Juvenile Justice Forum
NPA:	National Plan of Action
NRA:	National Registration Act
NSSP:	National Social Support Program
OVC:	Orphans and Other Vulnerable Children
OPSC:	Option Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography
PEP:	Pre-Exposure Prophylaxis
PVSU:	Police Victim Support Unit
SADC:	Southern African Development Community
SANTAC:	Southern Africa Network against Trafficking and Abuse of Children
SARPPCO:	The Southern African Regional Police Chiefs Cooperation Organization
SEC:	Sexual Exploitation of Children
SECTT:	Sexual Exploitation of Children in Travel and Tourism
SCTP:	Social Cash Transfer Programme
SIMPOC:	Statistical Information and Monitoring on Child Labour
UN:	United Nations
UNFPA:	United Nations Population Fund
UNICEF:	United Nations Children's Fund
UPR:	Universal Periodic Review
VDC:	Village Development Committee
VSU:	Victim Support Units
YOCRIS:	Youth and Child Rights Shield
YONECO:	Youth Net and Counselling

FOREWORD

In order to be optimally involved in Malawi and ensure that relevant stakeholders have a common understanding internally of their role vis-à-vis the commercial sexual exploitation of children (CSEC), ECPAT International facilitated the development of this Country Monitoring Report (CMR). The CMR spells out the specific country context, legal frameworks and protection challenges and concerns related to CSEC and suggests concrete priority actions urgently needed to proactively advance the national fight against CSEC in Malawi. The CMR will increase knowledge of CSEC in Malawi in order to better protect children and provide comprehensive, reliable and up-to-date information on CSEC in the country. The report will thus serve as an instrument for the sharing of information and experiences among various stakeholders and duty-bearers within Malawi and internationally.

As a document which provides a baseline of information on CSEC in Malawi, and assesses achievements, challenges and priority actions to combat CSEC, it will serve as an advocacy instrument among various stakeholders and duty-bearers within the country as well as internationally, including the UN Committee on the Rights of the Child and the African Committee of Experts on the Rights and Welfare of the Child. This will enable the monitoring of the implementation of international instruments on child rights related to CSEC as ratified by Malawi. Although Malawi has taken steps in strengthening the legislative, policy and programmatic frameworks for protecting children from CSEC,¹ there is still a need to foster evidence-based advocacy to promote improvements in both the legislative and programmatic frameworks. As such, this Country Monitoring Report on CSEC in Malawi is an important contribution to the literature on CSEC and will guide plans to ensure concerted efforts to bridge gaps in the general areas of protection, prevention, policy and legal framework, and enforcement.

¹ Such as through the adoption of a Trafficking in Persons Act of 2015, and development of a National Plan of Action on Protecting Children from Child Labour and a National Policy on Orphans and Other Vulnerable Children (OVCs).

METHODOLOGY

The CMR was developed mainly through a desk-based review of literature on CSEC in Malawi. This was supplemented by meetings and phone call discussions with a limited number of institutions in the country.² The research and analysis was guided by the Stockholm Agenda for Action against CSEC. The Agenda for Action against CSEC provides a detailed framework as well as categories of actions to be taken by governments in partnership with civil society organisations (CSOs), and other relevant actors for combating commercial sexual crimes against children. It is the formal and guiding structure used by governments that have adopted it and committed to work against CSEC and comprises the main organising framework for reporting on the status of its implementation in the individual countries. The actions are focused on coordination and cooperation; prevention; protection; recovery; and child participation.

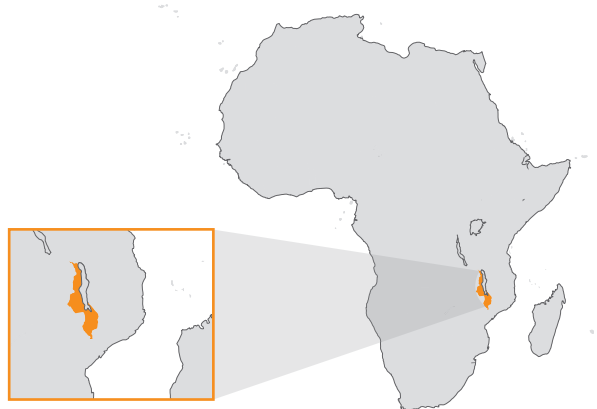
This report includes a compilation of the relevant international, regional, sub-regional and national legal frameworks for CSEC in Malawi, with a brief analysis of the status of compliance. The research included a review of secondary sources, such as State Party and alternative reports from Malawi on the Convention on the Rights of the Child (CRC), and the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), as well as research and field studies of stakeholders on CSEC including governmental and non-governmental organisations, and regional bodies. The preliminary findings were presented at a validation meeting which was organised in collaboration with the Malawi Network against Trafficking (MNAT) and was held in Lilongwe, on 13 July 2016. The meeting was attended by participants from various government bodies,³ local CSOs,⁴ UNICEF, the International Labour Organization (ILO) and Save the Children. The main challenge encountered during the compilation of this report was the lack of relevant up-to-date data and information in some respects. Despite this limitation, sufficient information was gathered to provide a broad overview of the situation in Malawi. The CMR therefore comprises the baseline for guiding stakeholders in developing a suitable approach to CSEC programming in Malawi.

2 Consultations were made with government departments (Ministry of Gender, Children, Disability and Social Welfare, Ministry of Labour, Malawi Police Victim Support Unit, Child Case Review Board), the Malawi Network against Trafficking (MNAT), Eye of the Child, Youth Net and Counselling (YONECO), International Organisation for Migration (IOM), UNICEF, Norwegian Church Aid (NCA), and Save the Children.

3 Ministry of Gender, Children, Disability and Social Welfare; the Human Rights Commission; Ministry of Health (One Stop Centre).

4 Eye of the Child; Theatre for a Change; Youth Net and Counselling (YONECO); Salvation Army, Chisomo Children's Club; Women Judges Association of Malawi (WOJAM).

MALAWI



INTRODUCTION

Country Context

Malawi is located in Southern Africa. It shares borders with Mozambique (to the south), Tanzania (to the north) and Zambia (to the south and west). In 2015, the population of Malawi was estimated to be 16.8 million people.⁵ The last formal comprehensive population census was conducted in 2008 and the population size was around 13.1 million.⁶ Malawi has been one of the least developed countries (LDC) in the world since 1971 with a high incidence of poverty.⁷ According to the 2010 Multidimensional Poverty Index (MPI)⁸ estimation, 66.7% of the population are under multidimensional poverty while an additional 24.5% live near multidimensional poverty (3,674,000 people). The breadth of deprivation (intensity) in Malawi, which is the average of deprivation scores experienced by people in multidimensional poverty, is 49.8%.⁹ In 2013, it was ranked 174 out of 186 countries in the Human Development Index,¹⁰ and in 2015 it was ranked 173 out of 188 countries.¹¹ Between 1980 and 2014, Malawi's life expectancy at birth increased by 18.0 years to reach 62.8 years.¹²

Malawi became independent on 6 July 1964, and on 6 July 1966, it became a Republic, and adopted a Republican Constitution which had no Bill of Rights, and no relevant provisions on child rights. In 1994, Malawi became a democratic State and a new Constitution with a full-fledged Bill of Rights came into force, following Malawi's transition to democracy.¹³ The Constitution is the supreme law of the land.¹⁴ It provides for the full promotion, protection and enjoyment of all human rights, including child rights, although it has been criticised for paying limited attention to the rights of children. The

5 UNDP, Human Development Reports – Malawi, accessed 7 June 2016, <http://hdr.undp.org/en/countries/profiles/MWI>.

6 National Statistics Office, Population Census Report, p3, accessed 15 April 2016, http://www.nsomalawi.mw/images/stories/data_on_line/demography/census_2008/Main%20Report/Census%20Main%20Report.pdf.

7 United Nations Committee for Development Policy, Development Policy and Analysis Division, Department of Economic and Social Affairs, "List of LDCs in the World (as of May 2016)", accessed 1 June 2016, http://www.un.org/en/development/desa/policy/cdp/ldc/ldc_list.pdf.

8 The MPI measures the nature and magnitude of overlapping deprivations in health, education and living standard at the household level, thereby providing information on who is poor and how they are poor, so as to enable policymakers to target resources and design policies more effectively. See Alkire, Sabina et al (2014), "Global Multidimensional Poverty Index", p2, accessed 30 July 2016, <http://www.ophi.org.uk/wp-content/uploads/Global-MPI-2014-an-overview.pdf?0a8fd7>

9 The MPI signifies multiple deprivations in the same households in education, health and living standards. UNDP (2015), "Human Development Report 2015: Work for human development briefing note for countries on the 2015 Human Development Report – Malawi", p6, accessed 7 June 2016, http://hdr.undp.org/sites/all/themes/hdr_theme/country-notes/MWI.pdf.

10 UNDP (2014), "Human Development Report 2014 - Sustaining Human Progress: Reducing Vulnerabilities and Building Resilience", p159, accessed 15 May 2016, <http://hdr.undp.org/sites/default/files/hdr14-report-en-1.pdf>.

11 UNDP (2015), "Human Development Report 2015: Work for human development briefing note for countries on the 2015 Human Development Report – Malawi", pp2 & 273. The report indicates that between 1980 and 2014, Malawi's HDI value increased by 60.2%, from 0.278 to 0.445, representing an annual increase of 1.40%.

12 UNDP, Human Development Reports – Malawi, accessed 7 June 2016, <http://hdr.undp.org/en/countries/profiles/MWI>

13 Following a national referendum held on 14 June 1993 in which Malawians voted for multiparty democracy.

14 Section 5, Constitution of Malawi.

Constitution is deficient in that it defines a 'child' in very limited ways.¹⁵ According to section 23, which for its purposes defines a child as a person below 16 years of age, 'all children, regardless of the circumstances of their birth, are entitled to equal treatment before the law'. They have the right to a name and nationality, and to know, and to be raised by, their parents. The section further entitles children to be protected from economic exploitation or any treatment, work or punishment that is, or is likely to be, hazardous, interfere with their education, or be harmful to their health or to their physical, mental or spiritual or social development. A number of institutions are established under the Constitution with a mandate to ensure the harmonisation of laws and the elimination of any defects in them, whether of a procedural, substantive or policy nature. These include the Human Rights Commission and the Law Commission.

Child Protection Laws

Malawi has ratified major international, regional and sub-regional human rights instruments that are relevant to protecting children from commercial sexual exploitation.¹⁶ Besides the human rights instruments ratified by Malawi the specific protection rights of children from commercial sexual exploitation are spelled out in a number of key international, regional and sub-regional documents which provide guidance to States like Malawi, including the Stockholm Agenda for Action against Commercial Sexual Exploitation of Children and its detailed framework. Beyond the Constitution, Malawi has laws and policies on child protection. With cooperation from the Ministry of Women and Child Development,¹⁷ the Law Commission completed the review of a number of laws under the National Plan of Action.¹⁸ These include the Children and Young Persons Act,¹⁹ the Affiliation Act,²⁰ the Marriage Act, the Divorce Act,²¹ the Penal Code,²² the Wills and Inheritance Act,²³ and the Adoption of Children Act.²⁴ The government also enacted the Prevention of Domestic Violence Act²⁵ which protects men, women and children who are in abusive domestic relationships. In 2010, the Child Care, Protection and Justice Act (the Child Act)²⁶ was adopted, to 'consolidate the laws relating to children by making provision for child care, protection and justice; and for matters of social development of the child and for connected matters'.²⁷ The Child Act repealed the Children and Young Persons Act and the Affiliation Act.²⁸ Amongst its many innovative provisions, the Child Act is embedded in the principle of the best interests of the child. Despite all these reviews, however, there was still need

15 Chirwa, Danwood M. (2006), "Harmonisation of national and international laws to protect children's rights: The Malawi report" (unpublished), Prepared for the African Child Policy Forum (ACPF), 16.

16 See the fifth section of this report, on Protection Measures.

17 The Ministry is now called the Ministry of Gender, Children, Disability and Social Welfare.

18 Malawi Law Commission (2011), "Report on the Development of the Trafficking in Persons Legislation"

19 Cap. 26:03 of the Laws of Malawi. This introduced extensive reforms to the legal framework surrounding child justice and the care and protection of children. See Malawi Law Commission (2005), "Report on the Review of the Children and Young Persons Act", Government Printer: Lilongwe.

20 Cap. 26:02 of the Laws of Malawi.

21 Cap. 25:01 of the Laws of Malawi and Cap. 25:04 of the Laws of Malawi, respectively. The review of these laws sought to reform the statutory and customary laws on family relations in order to address the imbalances existing in the laws and to afford better protection to women and children. See Malawi Law Commission (2006), "Law Commission Report on the Review of the Laws on Marriage and Divorce", Government Printer: Lilongwe, 39-43.

22 Cap. 7:01 of the Laws of Malawi. In its Report on the Review of the Penal Code gazetted in 2000, the Law Commission recommended that a new provision be made prohibiting sexual activities for commercial purposes to counteract the illicit trafficking of women, girls and boys for sexual purposes within Malawi and outside. This included recommendations to amend provisions on abduction and to proscribe the maintenance of brothels. See Malawi Law Commission (2000), "Report on the Review of the Penal Code," Government Printer: Zomba, 39-43. It was further recommended in the 2005 report that the abuse of children through their engagement in activities such as pornography, paedophilia and the drug courier trade be proscribed - Malawi Law Commission (2011), "Report on the Development of the Trafficking in Persons Legislation", 11.

23 Cap. 10:02 of the Laws of Malawi was reviewed in 2004 to offer more stringent protection to OVC, widows and widowers. See Malawi Law Commission (2004), "Report on the Review of Wills and Inheritance Act", Government Printer: Lilongwe.

24 Cap. 26:01 of the Laws of Malawi.

25 Act No. 5 of 2006.

26 Act. No. 22 of 2010.

27 *Ibid.*

28 Chapters 26:03 and 26:02 of the Laws of Malawi, respectively. This was after first being proposed as a Bill in 2005, by the Malawi Law Commission, in its report on the review of the Children and Young Person's Act - see Malawi Law Commission, (2005), Report on the Review of the Children and Young Person's Act.

to promulgate laws promoting the protection of orphans and vulnerable children from exploitation as a way of fulfilling the legislative aspirations of both the National Plan of Action for Orphans and Other Vulnerable Children (OVC) and the National HIV and AIDS Action Framework.²⁹ Recently, in 2015, Malawi adopted the Trafficking in Persons Act,³⁰ which has strong provisions on protecting children from various forms of trafficking. The Trafficking in Persons Act was conceptualised and promulgated within the perspective of HIV/AIDS and protection of OVC.³¹ It is therefore a very strong piece of legislation for protecting children from commercial sexual exploitation as the impact of HIV/AIDS and the multiple layers of vulnerability upon orphaned children cannot be overstated. Other relevant laws include the Penal Code, and the Employment Act.

Commercial Sexual Exploitation of Children (CSEC)

Commercial sexual exploitation of children is a fundamental violation of children's rights.³² It comprises sexual abuse by the adult and remuneration in cash or kind to the child or a third person or persons.³³ The child is treated as a sexual object and as a commercial object so these two elements have to co-exist for CSEC to manifest. CSEC constitutes a form of coercion and violence against children and it amounts to forced labour and a contemporary form of slavery.³⁴ There are many factors which exacerbate the vulnerability of girls and boys to be procured for commercial sexual exploitation.³⁵ Criminals and criminal networks take part in procuring and channelling vulnerable children into CSE and in perpetuating such exploitation. A wide range of individuals and groups at all levels of society, including intermediaries, family members, the business sector, service providers, customers, community leaders and government officials, contribute to the exploitative practice.³⁶ Some may contribute to the exploitation through indifference, ignorance of the harmful consequences suffered by children, or the perpetuation of attitudes and values that view children as economic commodities.³⁷

Commercial sexual exploitation of children happens within Malawi and there are many social and economic practices which contribute to the vulnerability of boys and girls. Malawi is both a source and transit country for trafficking to other places within Southern Africa, parts of Europe and the Middle East. It is also a destination country for women and girls trafficked from other African countries such as Mozambique, Tanzania, and Zambia. Although trafficking seems to be one of the major mechanisms for involving children in commercial sexual exploitation, there are also other ways in which CSEC manifests in Malawi such as through child labour (including domestic work), exploitation of children through prostitution, and child marriage. Some of the drivers of CSEC in Malawi are poverty, a poor birth registration system, and permeable borders. Because children who are not registered at birth never formally acquire a nationality, they are easily moved between countries.³⁸ Traffickers capitalise on the vulnerabilities created by poverty, minimal education levels, unemployment, and a general lack of economic opportunities. The main source of income for rural Malawian families is agriculture. However, due to droughts and shrinking land holdings, many Malawians are moving from rural areas to urban areas and cities, and sometimes even to neighbouring countries, in search of a better life.

29 Malawi Law Commission (2011), "Report on the Development of the Trafficking in Persons Legislation", 11.

30 Act No. 3 of 2015.

31 Further to the enactment of this Act, the Law Commission also recommended the amendment of other pieces of legislation whose provisions deal with matters connected to the offence of trafficking in persons i.e the Tourism and Hotels (Amendment) Bill, Penal Code (Amendment) Bill, Immigration (Amendment) Bill and the Extradition (Amendment) Bill.

32 Declaration and Agenda for Action, 1996, 1st World Congress against Commercial Sexual Exploitation of Children Stockholm, par. 5.

33 *Ibid.*

34 *Ibid.*

35 *Ibid.*, para. 6.

36 *Ibid.*, para. 7.

37 *Ibid.*, paras. 7 & 8.

38 Jonathan Fowler, "UNICEF: Human Trafficking in Africa Fueled by War, Economic Hardship, and Lack of Birth Registration," *Associated Press*, 23 April 2004.

In Malawi, while child labour in general has always been focussed on, and recently there has been a heightened level of awareness on child trafficking,³⁹ commercial sexual exploitation of children has not specifically received much attention. The reference to it has mainly been in the context of child labour or child trafficking. While CSEC may be an element or one of the purposes of child trafficking, not all trafficking of children amounts to CSEC. Similarly, while CSEC may happen in the context of child labour, not all child labour involves CSEC.

It is not easy to find data in Malawi which specifically focuses on commercial sexual exploitation of children. Even where it is discussed in child trafficking or child labour reports, it is usually not the main focus of the research but is presented just as a finding or an element thereof. As such, most of the laws and policies, prevention mechanisms and responses which have been developed in Malawi are in the context of child labour or child trafficking and not specifically on CSEC.

The fight against CSEC has to be understood from a rights-based perspective so that interventions at the policy or programmatic level are always in the best interests of children. Rights-based programming related to CSEC requires specific knowledge of legal and policy frameworks, as well as an understanding of child protection systems. Child protection principles are easily understood in theory, but guidance may be helpful on how to actually operationalise these principles within the context of the Agenda for Action against CSEC while specifically focusing on Malawi.

BACKGROUND TO COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN IN MALAWI

CSEC in Malawi: Causes and Vulnerability Factors

Malawi is one country in the Southern African Development Community (SADC) region that has been badly affected by CSEC, one of the worst forms of child labour, and commonly a purpose or element of child trafficking. CSEC in Malawi manifests in various forms including exploitation of children through prostitution, child marriage, sexual exploitation of children in the agricultural and tourism sectors, sexual exploitation of children in domestic work, and trafficking of children for sexual purposes.

The HIV/AIDS epidemic in Malawi has also had an impact on CSEC in the country with the number of child-headed families increasing and societies slowly losing their communal way of living and the

³⁹ With the enactment of the Trafficking in Persons Act.

importance of taking care of orphaned and vulnerable children. Other factors compounding CSEC in Malawi are lack of a proper birth registration system, limited access to quality education, the presence of a drought and displacement of some communities due to flooding. Some of the CSEC is cross-border as Malawi is a source country and, in some respects, a destination and transit country for children from neighbouring countries subjected to labour and commercial sex trafficking.⁴⁰

Harmful Cultural Practices

Some harmful cultural practices cause women to be viewed as sexual commodities, making them particularly vulnerable to exploitation. This includes young girls, especially from poor families, being sold to wealthy people as sex slaves in remote areas in the northern border districts of Karonga and Chitipa.⁴¹ Some parents give away their daughters to pay off debts. A traditional custom known as *Kupimbira* through which girls are held in perpetual bondage and are often subject to abuse is practiced by the Nyakyusa and Ngonde of northern Malawi, along the shores of Lake Malawi, on the Tanzanian border, and in the Misuku Hills.⁴² Across all the ethnic groups in the southern part of Malawi, a girl child may be pledged to another family (*Kutomera*) by an older man or boy who offers to marry the girl when she is still at a tender age and the man periodically provides gifts to the parents for the young girl.⁴³ A common harmful cultural practice that cuts across all traditions in Malawi is forcing children, especially girls, into marriage, usually for some economic gain to the parents, while the girls are sexually exploited.

The Effect of HIV/AIDS

The HIV/AIDS epidemic has widowed and orphaned countless women and children.⁴⁴ Malawi's HIV prevalence is one of the highest in the world, with 10.3% of the population living with HIV.⁴⁵ About 12% of Malawi's women are living with HIV compared to 8.1% HIV prevalence among Malawian men.⁴⁶ Malawi is one of the countries where there is high HIV prevalence among young people aged 15–19 years.⁴⁷ Women and children trafficked for prostitution are among the groups that are most vulnerable to HIV/AIDS, and children orphaned by the epidemic are especially vulnerable to trafficking.⁴⁸ The HIV/AIDS pandemic is therefore seen as both a cause and a consequence of trafficking in persons. It increases the number of children trafficked because there is an increased demand for sex with

40 US Dept. of State, (2015), 2015 Trafficking in Persons Report, 232.

41 Committee on the Elimination of Discrimination against Women, Consideration of Reports Submitted by States Parties under Article 18 of the Convention on the Elimination of all Forms of Discrimination against Women, Sixth Periodic Report of States Parties, Malawi, CEDAW/C/MWI/6, 20 October 2008 para.149. Also see, Malawi Law Commission, (2005) "Human Trafficking in Malawi: Research Paper", 26; "Human Rights Report Exposes Modern Slavery in Malawi," *Xinhua General News Service*, 26 July 2003.

42 *Ibid.*

43 Committee on the Rights of the Child, (2016), Consideration of Reports Submitted by States Parties under Article 12 (1) of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, Reports of States parties due in 2011, Malawi, CRC/C/OPSC/MWI/1, 1 July 2016, para. 50.

44 International Organisation for Migration, (2003), "The Trafficking of Women and Children in the Southern African Region: Presentation of Research Findings", IOM: Pretoria.

45 Malawi accounts for 4% of the total number of people living with HIV in sub-Saharan Africa. See UNAIDS, (2014), The Gap Report, accessed 1 May 2015, http://www.unaids.org/sites/default/files/media_asset/UNAIDS_Gap_report_en.pdf; "HIV and AIDS in Malawi", accessed 1 ay 2015, <http://www.avert.org/professionals/hiv-around-world/sub-saharan-africa/malawi>

46 Government of Malawi, Ministry of Health, (2014), "Malawi Progress Report for 2013".

47 UNAIDS, The Gap Report, 2014 p33, available at http://www.unaids.org/sites/default/files/media_asset/UNAIDS_Gap_report_en.pdf.

48 Rossi, Andrea, ed. (2003), "Trafficking in Human Beings, Especially Women and Children, in Africa", UNICEF Innocenti Research Centre: Annunziata, Italy.

young girls, since they are perceived to be HIV negative, making them more vulnerable in reality.⁴⁹ At the same time, victims of trafficking for the purposes of sexual exploitation, particularly children, cannot effectively negotiate condom use for their protection, making them more susceptible to HIV/AIDS.⁵⁰ They may be forced to endure sexual practices, like anal sex, which can still be associated with HIV transmission, and often are forced to have sex with multiple partners.⁵¹ In addition, violence in commercial sex is common, especially when women or children are forced to have sex against their will, and the injuries sustained as a result of forced sex may increase vulnerability to HIV transmission.⁵² Young girls, being physically immature, are extremely vulnerable to injuries which increase their risk of infection. It has also been noted that many trafficked persons have other sexually transmitted diseases, which heightens the risk of contracting HIV by up to a factor of 10.⁵³

As mentioned above, in 2005, the initiative of the Malawi Law Commission to develop anti-trafficking legislation coincided with the publication of the National Plan of Action for Orphans and Other Vulnerable Children, 2005-2009 and the Malawi HIV and AIDS National Action Framework, 2005-2009, by the Malawi government, both of which envisaged the development of legislation aimed at addressing the vulnerability and susceptibility to HIV and AIDS of OVC.⁵⁴ More details on these policy documents are discussed below. The two agendas were therefore merged and the Commission structured its work programme to also address issues pertaining to the plight of OVC as they are targeted by traffickers and are immediately at risk of sexual exploitation and exposure to HIV and AIDS.⁵⁵

Permeable Borders

Some CSEC is cross-border as Malawi is a source country and, in some respects, a destination and transit country for children from neighbouring countries subjected to labour and sex trafficking such that trafficking young girls to neighbouring countries like Mozambique and Zambia for prostitution has been a long standing issue in Malawi.⁵⁶ Women and girls are recruited along major trucking routes by long-distance truck drivers, who promise them jobs, marriage, or an education in South Africa.⁵⁷ They cross the border at Beitbridge or Komatipoort with no documents. Once in Johannesburg, the victims are held as sex slaves. Malawian businesswomen also traffic victims to brothels in Johannesburg. About 80 people are deported to Malawi every month from South Africa, out of which at least two are trafficking victims.⁵⁸ The movement and migration to South Africa for trade contributes to acceptance and expectations of unregulated movement. Porous borders, combined with civil unrest in some parts of Africa and lack of economic opportunities, have ensured a consistent southward flow of both legal and irregular migrants in Southern Africa,⁵⁹ making Malawi a transit as well as a source country. Trafficking victims are difficult to distinguish amid these flows.

49 The Malawi Law Commission, (2011), Report on Human Trafficking in Malawi, 9. It must also be understood that women and girls are biologically more vulnerable to contracting sexually transmitted infections. See UNESCO, (2006), "Policy Paper on Human Trafficking, Especially of Women and Children in Mozambique: Root Causes and Recommendations", Paper No. 14. /E., accessed 18 April 2016, <http://unesdoc.unesco.org/images/0014/001478/147846e.pdf>.

50 Girls are less able to bargain for condom use. They are forced to have sex with multiple partners and they may suffer injuries (caused by violence during sex against their will) which further increases their vulnerability to, and risk of, infection. See UNESCO, 2006, *Ibid.*

51 Burkhalter, Holly (2003) Sex Trafficking and the HIV/AIDS Pandemic, Physicians for Human Rights, before the House International Relations Committee, 38, accessed 1 May 2016, www.phrusa.org/campaign/aids/news062403.

52 *Ibid.*

53 *Ibid.*

54 The Malawi Law Commission (2011), Report on Human Trafficking in Malawi, 8.

55 *Ibid.*

56 US Dept. of Home Affairs, (2015), 2015 Trafficking in Persons Report, 232.

57 Malawi Human Rights Commission, (2004), Report on the Investigative Inquiry into Cross Boarder Child Labour in Dedza District (Unpublished) 6.

58 International Organisation for Migration (IOM), (2003), "The Trafficking of Women and Children in the Southern African Region: Presentation of Research Findings", IOM: Pretoria.

59 UNESCO, (2006), "Policy Paper on Human Trafficking, Especially of Women and Children in Mozambique: Root Causes and Recommendations", Paper No. 14. /E. accessed 18 April 2016 <http://unesdoc.unesco.org/images/0014/001478/147846e.pdf> 34.

Police/border officials are believed to be complicit with traffickers, accepting bribes for the passage of undocumented travellers.⁶⁰ The illicit trafficking of women and children to destinations outside Malawi for purposes of commercial sex was acknowledged as a growing problem in Malawi by the Special Law Commission on Criminal Justice Reform.⁶¹

Inadequate Awareness of Child Trafficking

A 2008 study by the Malawi government in collaboration with UNICEF and ILO revealed that although most NGOs and government departments appeared to have some knowledge of the defining elements of trafficking in persons, many were not able to identify cases of its occurrence, making it difficult for them to take appropriate action.⁶² One critical misconception was that trafficking in persons does not take place where a child or his or her parents consented to the movement of the child.⁶³ It has been reported that the problem of child trafficking in Malawi is not as severe as other African countries but most of the evidence for its prevalence is anecdotal, mainly reported in local press, without actual data.⁶⁴

According to ILO and the International Programme on the Elimination of Child Labour (IPEC), between 2001 and 2008, seven cases involving trafficking in persons were prosecuted.⁶⁵ However, as discussed in this report, in the past few years, several cases related to child trafficking have been reported. The Norwegian Church Aid and other organisations, including UNICEF in Malawi, have also facilitated and provided financial support to the network against trafficking in persons for awareness building and other programmes. More importantly, the media also plays an important role in publicising and sensitising the masses on various forms of exploitation of children, as discussed below. The role of the media was also acknowledged in the 2014 Periodic State Party Report for Malawi to the Committee on the Rights of the Child; the most common forms of exploitation cited were labour in agriculture and sexual exploitation.⁶⁶

The National Youth Council of Malawi, whose purpose is to ensure the engagement of youth in the general development of the country, works in collaboration with the Ministry of Labour, Youth and Manpower Development. Currently, the National Youth Council is involved in the development of the Child Labour Policy, the objective of which is to guide the programmes aimed at protecting children from all forms of exploitation.

Poor Birth Registration

Registration of births has generally been poor in Malawi as legal and practical measures had not been put in place for the mandatory registration of births until recently. Even though this problem still persists to date, a system has been put in place following the enactment of the National Registration Act (NRA) in 2010, making birth registration compulsory and universal.⁶⁷ Prior to that, under the Births and Deaths Registration Act of 1904 for children born outside wedlock (also known as “illegitimate” children), there was no obligation on the father to be registered as the father except at his own request and upon acknowledging himself to be the father of the child and signing the Birth Report. This was a discriminatory clause that had the effect of preventing men from acknowledging responsibility for the children they fathered outside of marriage.

60 *Ibid.*

61 The Malawi Law Commission, (2000), “Report on the Review of the Penal Code”, Zomba: Malawi Government Press, 39.

62 Government of Malawi, (2008), ILO & UNICEF “Child Trafficking in Malawi”, Lilongwe, 10.

63 Malawi Law Commission, (2011), Report on Human Trafficking in Malawi, 17.

64 ILO/IPEC (2008), “Malawi Child Labour Report”, 9.

65 *Ibid.* On September 24, two citizens and a foreigner were sentenced to seven years’ imprisonment with hard labour for kidnapping. The three men were arrested in September while attempting to smuggle five young boys across the border into Zambia to work on tobacco estates. Other convicted child traffickers were required to pay fines.

66 Committee on the Rights of the Child (2016), Consideration of Reports Submitted by States Parties under Article 44 of the Convention, Third to Fifth Periodic Reports of States Parties due in 2013, Malawi, CRC/C/MWI/3-5 21, June 2016, para. 46.

67 *Ibid.*, para. 31.

The NRA mandates the government to establish a National Registration System that records births, deaths and marriages.⁶⁸ In the case of births, the father or mother is required to register a birth within six weeks but when the child is born out of wedlock, just as in the 1904 Act, the father is not required to register the birth or to be registered as the child's parent unless he voluntarily assents and the mother agrees or his fatherhood has been proven in court.⁶⁹ Thus, the discriminatory clause preventing children born outside of marriage from knowing their fathers was unfortunately maintained in the new Act. This is contrary to the Constitutional provision that all children have the right to a given name and a family name and the right to a nationality, and to know and to be raised by their parents. In such a system, where there is no proper infrastructure for child support, this law further makes the position worse for children to be supported by their fathers. The provision also discriminates between men who have children within wedlock and those who have them outside wedlock in so far as their responsibility towards the children is concerned. As a result, children are the ones who suffer the most and grow up without fatherly care and, in most cases, with mothers with limited means, thereby exacerbating the vulnerability of the children to various forms of exploitation. In a positive development, the NRA provides for a Register of Adopted Children in which an order of adoption is recorded. The failure to register a birth is punishable by a fine of up to K1,000,000⁷⁰ and five years' imprisonment.

Limited Access to Quality Education

The importance of the provision of quality education as a key intervention in the fight against child labour because of the interlinkage between achieving Education for All and the elimination of child labour has been highlighted by the ILO.⁷¹ According to the 2006 Malawi Multiple Indicator Cluster Survey, 29-37% of children aged 5-17 years were involved in child labour, 53.5% of them in agriculture. Except for Mwanza and Mangochi, where 29% and 23% of the children, respectively, combined school and prostitution, only 9% of these girls reported attending school in the rest of the districts, while 17% had attended school, and the rest (72%) had dropped out of school.⁷² In general, girls tend to drop out of school to be engaged in child labour more than boys.⁷³

In 2011, the following statistics were reported:⁷⁴

- Primary schools had classrooms which were overpopulated with 105 pupils per teacher;
- There was a 20% drop out rate;⁷⁵
- Only 9% of the pupils were able to master minimum English reading and 2% could master mathematics;
- 55% boys and 48% girls completed eight years of primary education;
- Of the 179,265 primary school children who dropped out in 2010-2011, 33% was due to family responsibilities, 8% due to pregnancy and/or marriage, another 8% due to the long distance to school, and 4% was due to employment.

68 With data on sex, date of birth, parents' names and marital status, for every person who is 16 years of age or older and is a citizen, permanent resident, holds a temporary permit or a business residence permit.

69 Where there are no parents, the duty to register the child falls on the head of the household in which the child is born, anyone present at the time the child is born or anyone in charge of the child.

70 Approximately \$1,430, at the current exchange rate.

71 ILO & IPEC, (2011), *Mainstreaming Child Labour Concerns in Education Sector Plans and Programmes*, iv.

72 Malawi Child Labour Survey (2002), Zomba. Also see Child Labour National Plan of Action for Malawi (2009–2016), para. 2.3.3.

73 Child Labour National Plan of Action for Malawi (2009–2016), para. 2.3.3.

74 2011 Education Statistics of the Ministry of Education, Science and Technology for 8 years of primary school. See Malawi National Conference on Child Labour in Agriculture (2012), "Outcome Document and Framework of Action", 6.

75 600,000 pupils.

The Ministry of Education, Science and Technology was therefore called upon to, among other things, treble investment in education infrastructure development annually through various sources of funding, from 2012 to 2016;⁷⁶ scale up the Complementary Basic Education Programme and vocational skills training, targeting out-of-school children aged 9-17 to achieve national coverage by 2016; with youth groups, support the establishment of children's rights clubs at the local level; and encourage dialogue between rural school teachers, the community and parents, so programmes and courses respond to the specific needs and constraints of rural communities.⁷⁷

Unavailability of Data

In Malawi there is a lack of data on the worst forms of child labour such as child trafficking and sexual exploitation and District Labour Offices have been called upon to create databases on cases of child labour.⁷⁸ Initiatives to develop legislation to combat trafficking in persons started in November of 2004.⁷⁹ A preliminary research paper on trafficking in persons, primarily focusing on the trafficking of women and children for sexual exploitation within and outside Malawi, was published by the Malawi Law Commission in April 2005.⁸⁰ The research paper acknowledged the unavailability of data on trafficking as a major limitation, since no study providing an authoritative assessment of the extent of human trafficking in Malawi had specifically been undertaken.⁸¹ Similarly, in 2005, officials at the immigration department admitted that there had not been any efforts to monitor immigration patterns both into and out of Malawi so as to make informed conclusions as to whether trafficking occurs at all, let alone to determine its patterns and extent.⁸²

The lack of current disaggregated data on child labour is also evidenced by the reference in the Child Labour National Plan of Action (NPA) to the fact that the only child labour comprehensive national sample survey was conducted in 2002.⁸³ According to the 2002 survey, there were about 3.8 million children between 5-17 years of age representing 34% of the estimated total population in Malawi, 38% of whom were economically active,⁸⁴ 45% were engaged in non-economic activities while only 17% were inactive.⁸⁵

In its first ever report on the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (OPSC), submitted to the Committee on the Rights of the Child in 2015, Malawi recognised the existence of a gap of information among stakeholders on the legislation related to the OPSC such as the Penal Code, as amended in 2010, the Censorship and Control of Entertainment Act and the Trafficking in Persons Act.⁸⁶ The unavailability of data on the number of women and children involved in sexual exploitation, including prostitution, pornography and trafficking, although these are recognised social problems, was also lamented by the UN Committee on the Elimination of Discrimination Against Women (CEDAW) under the heading 'Article 6 – Suppression of the exploitation of women'.⁸⁷ Without being adequately informed on the nature and prevalence of commercial sexual exploitation of children, it is difficult to formulate contextualised responses or prevention mechanisms in this field.

76 Government funding (in particular, the Local Development Fund and, the Community Development Fund), development partners and private-public partnerships.

77 Malawi National Conference on Child Labour in Agriculture (2012), "Outcome Document and Framework of Action", 7.

78 Child Labour National Plan of Action for Malawi (2009–2016), para. 4.1.3.

79 Malawi Law Commission (2011), "Report on the Development of the Trafficking in Persons Legislation" 8.

80 Malawi Law Commission (2005), "Human Trafficking in Malawi: Research Paper".

81 *Ibid.*, 3.

82 Malawi Law Commission (2005), "Human Trafficking in Malawi: Research Paper", 4.

83 Malawi Child Labour Survey (2002), Zomba.

84 1.5 million.

85 Child Labour National Plan of Action for Malawi (2009–2016), para. 2.2.1.

86 Committee on the Rights of the Child, (2016), Consideration of Reports Submitted by States Parties under Article 12 (1) of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, Reports of States Parties due in 2011, Malawi, CRC/C/OPSC/MWI/1, 1 July 2016, para. 80.

87 United Nations Human Rights Council (2010), Compilation prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15 (b) of the annex to Human Rights Council resolution 5/1 Malawi, 4 August 2010, para. 23

There is, however, some progress in data collection on exploitation and abuse of children as the Police Victim Support Units (PVSUs) are now compiling cases reported to the police and they produce yearly reports.⁸⁸

Manifestations of CSEC in Malawi

Child Labour

Commercial sexual exploitation, one of the most hazardous forms of child labour, is a particular threat to child protection in a number of countries in Africa.⁸⁹ It must be noted that while child labour in and of itself is not a manifestation of CSEC, there are manifestations of CSEC such as trafficking and pornography that are (according to ILO Convention 182) “worst forms of child labour”. Additionally, children involved in labour can be at higher risk of CSEC. Child labour is rampant in Malawi. According to a 2003 baseline survey, 38% of Malawian children aged 5-17 were engaged in some sort of labour, and 95% of them were under 14 years old.⁹⁰ In 2012, the percentage of children aged 5-14 years involved in child labour in Malawi was 26%.⁹¹ Globally, domestic work has also been recorded as the leading employment for girls under the age of 16 years. This can be a problem as girls who are isolated and invisible in households face high risks of abuse (including sexual abuse), and generally limited access to educational opportunities.⁹² In fact, in 2003, domestic work was stated to be the most common form of child labour in Malawi, taking up 75% of the work done by children aged between 5-17 years.⁹³

Outside the home, most of the children in Malawi work in the agricultural industry especially in the tea and tobacco estates.⁹⁴ The risk to commercial sexual exploitation of children involved in labour has been experienced in Malawi, as per media reports.⁹⁵ Some girls are recruited to Arab countries by agencies, where instead of the jobs they are promised, they are forced into prostitution and their passports are confiscated.⁹⁶ Recently, 20 girls were found stranded in Kuwait after they escaped from exploitative labour conditions. According to media reports, in a government report dated 17 May 2016, the government admitted that the current laws of Malawi make it easier for labour agencies to export labour to different countries as there is no clear legal framework to check on their operations.⁹⁷ The government is therefore unable to control labour migration, which involves provision of national policies, law and regulations relating to immigration for employment and conditions of work. The current migration laws are reportedly fuelling unregulated export of labour as many agencies continue to be established and operate without proper oversight.⁹⁸ The government has had to intervene recently by banning all labour exports to the Middle East. The Minister of Labour was sent to Kuwait, with which there was no formal agreement with the government on the labour migration deals, to investigate the issue. The Minister provided a stern warning that recruiting agencies which do not comply with Malawi’s labour rules and regulations will be charged with human trafficking related offences.⁹⁹

88 See section 6 of this report below.

89 UNICEF “Child Labour and Commercial Sexual Exploitation” accessed 15 April 2016 http://www.unicef.org/esaro/5480_child_labour_sexual_exploitation.html.

90 Tsoka, Maxton & Konyani, Sidon (2003), “Child Labour Baseline Study, Draft Final Report”, Centre for Social Research, University of Malawi: Zomba.

91 UNICEF (2012), “The state of the world’s children”.

92 *Ibid.*

93 Tsoka, Maxton & Konyani, Sidon (2003), “Child Labour Baseline Study, Draft Final Report”.

94 *Ibid.*

95 “Malawi government warns job recruitment agencies over Kuwait labour export: We will prosecute you!” *Nyasatimes Newspaper*, 10 June 2016.

96 *Ibid.*

97 “Government says will now help 20 Malawian girls stranded in Kuwait” *Nyasatimes Newspaper*, 8 June 2016, accessed 20 June 2016, <http://www.nyasatimes.com/govt-says-will-now-help-20-malawian-girls-stranded-kuwait/>

98 *Ibid.*

99 “Malawi government warns job recruitment agencies over Kuwait labour export: ‘We will prosecute you!’” *Nyasatimes Newspaper*, 10 June 2016.

At a Malawi National Conference on Child Labour in Agriculture held from 5-6 September 2012 in Lilongwe,¹⁰⁰ an Outcome Document and Framework of Action, incorporating a children's conference,¹⁰¹ was adopted. While acknowledging the progress made by the Malawi government in terms of adopting anti-child labour laws, policies, instruments and strategies,¹⁰² it was recognised that in Malawi child labour in agriculture remains a significant social and economic problem; it contravenes national and international laws, norms and codes of good agricultural practices; and it is associated with inter and intra-district movement of children, sometimes without the knowledge or consent of parents/guardians.¹⁰³ The Conference therefore called for the enhanced capacity of the National Steering Committee on Child Labour in order to guide the implementation of the Framework for Action embodied in the outcome document, and support tripartism and cooperation among partners, based on respect for their mandates.¹⁰⁴ Amongst the recommendations made in the Outcome Document were that both the draft Child Labour Policy, and the Labour Inspection Policy should be approved; free and compulsory basic education should be provided up to the minimum age for entry into work;¹⁰⁵ there should be access to quality education;¹⁰⁶ child labour concerns should be mainstreamed into policies and strategies; labour inspection services should be adequately resourced and effective; a national system of district and community-based child labour monitoring should be developed to identify children at risk, prevent or withdraw them from engagement in child labour, refer them to appropriate services and track their progress to ensure they have sustainable alternatives; and there needs to be disaggregated data on child labour in agriculture.¹⁰⁷

Trafficking of Children for Sexual Purposes

The US Department of State annually releases a *Trafficking in Persons Report* which categorises countries into different "tiers" based on the extent of government action to combat human trafficking. Countries that have the highest level of compliance with the *Trafficking Victims Protection Act's* minimum standards for the elimination of trafficking are placed in Tier 1. Those that have made "significant efforts" to meet the standards are placed in Tier 2 and countries that are not making significant efforts to combat human trafficking are placed in Tier 3. In the 2015 and 2016 reports, Malawi was placed in Tier 2.¹⁰⁸ Malawi has consistently been in this Tier.

In one of the most comprehensive studies on child labour in Malawi (probably the first ever), the International Labour Organization (ILO) and International Programme on the Elimination of Child Labour (IPEC)¹⁰⁹ defined child trafficking in line with Article 3 of the Palermo Protocol.¹¹⁰ The report

100 Organised by the Ministry of Labour, the Malawi Congress of Trade Unions, and Employers Consultative Association of Malawi (ECAM), with support from CSOs, UN agencies, multi-stakeholder initiatives, producer associations and business, and funded by the Ministry of Labour, ECAM and the Eliminating Child Labour in Tobacco-growing Foundation (ECLT). The conference was attended by 290 delegates.

101 Supported by Eliminating Child Labour in Tobacco-growing Foundation, Plan International Malawi, Save the Children Malawi, YONECO, World Vision Malawi, Malawi Human Rights Commission, National Youth Council of Malawi and UNICEF.

102 Such as the Constitution of Malawi, the Employment Act (Cap 55:02), The Child Care, Protection and Justice Act, The Education Act, the National Registration Act, the Malawi Decent Work Country Programme, the Child Labour National Action Plan for Malawi (2010-2016), Malawi Growth and Development Strategy II (2011-2016), the National Code of Conduct on Child Labour and the Hazardous Work List.

103 Malawi National Conference on Child Labour in Agriculture (2012), "Outcome Document and Framework of Action", 3.

104 And to promote the collaboration and policy coherence required. See *Ibid.*, 2-3.

105 14 years for light work, according to section 21(2) of the Employment Act, No. 6 of 2000.

106 i.e. access to schools, school materials, availability of qualified teachers, quality school curriculums that are attractive to the rural communities and vocational training opportunities for out of school children.

107 Malawi National Conference on Child Labour in Agriculture (2012), "Outcome Document and Framework of Action", 5-6.

108 See US Dept. of Home Affairs, "2015 Trafficking in Persons Report", 232; and "2016 Trafficking in Persons Report", 253.

109 ILO/IPEC (2008), "Malawi Child Labour Report", 8.

110 Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime (Palermo Protocol), adopted and opened for signature, ratification

described child trafficking as consisting of three main elements. The first element involved a group of actions namely the recruitment, transportation, transfer, harbouring and receipt of a person. The second element was the means by which the actions are carried out: by threat, use of force or other forms of coercion, abduction, fraud, or deception, the abuse of power or a position of vulnerability, or the giving or receiving of a payment or benefits to achieve the consent of the person. The third element was the purpose of exploitation, which includes prostitution or other forms of sexual exploitation.¹¹¹ The report further differentiated between child trafficking and child labour which was defined as work that is likely to be hazardous for the child's spiritual, moral or social development.¹¹² To this effect, the report submitted that 'although children are mainly trafficked alone for the purposes of child labour, child trafficking alone does not take into account child labour that occurs in households which is very common in many rural households in Malawi'.¹¹³

Most Malawian trafficking victims are exploited within the country, with victims generally transported from the southern part of the country to the central and northern regions. Children are subjected to forced labour in the agricultural sector. At the same time, some children are trafficked for labour from various regions to tea and tobacco estates across the country. A 2008 Study by ILO and IPEC established that there is a seasonal element to child trafficking, especially with regard to children trafficked to work in tobacco estates and girls exploited in commercial sex, for example in restaurants and bars, which tend to be busy particularly during the crop marketing season.¹¹⁴ Children are trafficked for sexual exploitation in travel and tourism along the lakeshore, where they fall prey to travelling child sex offenders in the areas of Chilumba, Nkhatabay (around Chintheche), Nkhotakota, Salima, Monkeybay and Mangochi.¹¹⁵

A 2004 investigative inquiry of the Malawi Human Rights Commission revealed that around August every year, estate owners and agents from Mozambique carry out recruitment campaigns and children as young as seven years of age are trafficked from around Dedza to Mozambique to work as domestic servants¹¹⁶ or farm labourers.¹¹⁷ No formalities are followed and due to the porous nature of the borders, they are trafficked to and from Malawi and Mozambique without problems. Overall, for both adults and children, in 2015, the Malawi government reported investigating 27 trafficking cases involving 47 offenders and convicted 25 traffickers. The government identified 242 trafficking victims (an increase from 119 the previous year) but reportedly lacks effective procedures to systematically identify victims and provide them with adequate protection.¹¹⁸ A 2008 study provided guidance on internal trafficking trends, projecting that between 500 and 1500 women and children are trafficked within the country annually.¹¹⁹ According to Youth and Child Rights Shield (YOCRIS), a non-governmental organisation in Dedza district, in 2005, a total of 1,646 boys aged between 9-14 years were trafficked from Dedza, mainly to neighbouring Mozambique. In 2006, 958 boys aged between 9-15 years, and 231 girls aged between 9-16 years, had been internally trafficked from various districts, mainly for labour and sexual exploitation.¹²⁰

and accession by General Assembly Resolution 55/25 of 15 November 2000.

111 Or forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

112 ILO/IPEC (2008), "Malawi Child Labour Report", 8.

113 *Ibid.*

114 *Ibid.*, 9.

115 Malawi Law Commission (2005), "Human Trafficking in Malawi: Research Paper" 20. Also see International Organisation for Migration (2003), "Seduction Sale and Slavery: Trafficking in Women and Children for Sexual Exploitation in Southern Africa", IOM: Pretoria, 65.

116 Especially in places like Chipungu, Makhanga, Dambo la Ngondo Villa.

117 Malawi Human Rights Commission (2004), "Report on the Investigative Inquiry into Cross Boarder Child Labour in Dedza District".

118 US Dept. of State (2015), "2015 Trafficking in Persons Report" 232.

119 Centre for Social Research, (2008) 'Prevention of Trafficking in Women and Children for the Purpose of Sexual Exploitation: Malawi', A Report prepared for and submitted to Norwegian Church Aid, Lilongwe (Unpublished).

120 ILO/IPEC Child Labour Report 2008, p12.

Malawian victims of sex and labour trafficking have been identified in South Africa, Zambia, Mozambique, Tanzania, and parts of Europe.¹²¹ In 2005, the Malawi Law Commission identified three ways in which women, especially girls, were trafficked in Malawi, namely: from rural areas into the cities of Blantyre, Lilongwe and Mzuzu for sexual exploitation; from inland to the lakeshore areas of Mangochi, Salima and Nkhatabay; and from neighbouring countries like Zambia and Tanzania, mostly into Lilongwe.¹²² More than a decade later, these ways of trafficking are still dominant in the trafficking of children. Economic hardship and the impact of HIV/AIDS forces young boys and girls to trek to urban centres and lakeshore towns to support and provide for themselves and their siblings.¹²³ Girls from rural areas are lured by brothel owners or other facilitators with promises of good clothing and lodging but are charged high fees for these items and coerced into prostitution in order to pay off these debts.¹²⁴

According to media reports, there have been alarming cases of children as young as six years old being trafficked to neighbouring Mozambique where they are forced to work in brothels. In one incident in 2014, 13 children between the ages of 6-20 were trafficked after being told they were being brought to a Christmas party.¹²⁵ Upon being rescued, the children were handed over to a local NGO, Youth Net and Counselling (YONECO) to receive counselling before being reunited with their families.¹²⁶ In 2014, two young Malawian girls aged 12 and 13 were forced to work in prostitution in a Blantyre bottle store after being lured from their homes in Zomba with K500¹²⁷ and the promise of well-paid household jobs. One of them managed to escape and the other girl was rescued. One of the girls contracted HIV in the process. The woman behind their captivity was arrested.¹²⁸ At a news conference held at Norwegian Church Aid offices in Lilongwe, in February 2015, the Malawi Network against Trafficking indicated that the trafficking for sexual exploitation in brothels was growing in Malawi where even children were trafficked into the trade.¹²⁹ It was further reported at the news conference that police in Phalombe had been involved in rescue operations with Mozambican authorities and more than 124 children had been rescued, some of whom had mutilated genitals. In 2012, 29 children, mostly girls from Mangochi, Balaka and Machinga districts in southern Malawi, were rescued in Karonga district, north of Malawi, by the police but the trafficker was never found. The resources for victims are limited, but the government plans to increase the number of Child Protection Officers from 400 to 1,000.¹³⁰

Intercountry adoption is another way in which children can be trafficked to foreign places where they are prone to be subjected to sexual exploitation. This usually happens in a country where there are no proper systems or competent authorities to ensuring quality control of adoption agencies, authenticity of each and every adoption case, the child's eligibility for adoption, and monitoring and follow up mechanisms, once children have been adopted. Malawi has been a fertile ground for intercountry adoption, following the famous intercountry adoption cases of DB (a male infant)¹³¹ and CJ (a female infant) both of whom were adopted by the music star Madonna. This led to a flood in the

121 US Dept. of Home Affairs, "2015 Trafficking in Persons Report".

122 Malawi Law Commission (2005), "Human Trafficking in Malawi: Research Paper", 22.

123 Malawi Law Commission (2005), "Human Trafficking in Malawi: Research Paper", 25.

124 US Department of State (2015), "2015 Trafficking in Persons Report".

125 "Time for Comprehensive Anti-trafficking Law in Malawi", *Nyasatimes Newspaper* 4 February 2015, <http://www.nyasatimes.com/time-for-comprehensive-anti-trafficking-law-in-malawi/>

126 "Malawi Government Repatriates Abducted Children", *All Africa Newspaper* 12 January 2015 http://allafrica.com/stories/201501180027.html?utm_content=buffer5f61a&utm_medium=social&utm_source=twitter.com&utm_campaign=buffer

127 Approximately 70 cents.

128 "Time for Comprehensive Anti-trafficking Law in Malawi", *Nyasatimes Newspaper* 4 February 2015, <http://www.nyasatimes.com/time-for-comprehensive-anti-trafficking-law-in-malawi/>

129 "MPs Urged to Pass Human Trafficking Laws", *Nyasatimes Newspaper*, 12 February 2015, <http://www.nyasatimes.com/mps-urged-to-pass-human-trafficking-law-malawi-has-sex-brothels-osman/>

130 "Malawi Government Repatriates Abducted Children", *All Africa Newspaper* 12 January 2015 http://allafrica.com/stories/201501180027.html?utm_content=buffer5f61a&utm_medium=social&utm_source=twitter.com&utm_campaign=buffer

131 Adoption Case No. 2 of 2006 and 28 of 2009.

subordinate courts of cases of intercountry adoption, but as already noted, this was not a reflection of good practice in child protection.¹³² In response, the Judiciary issued Practice Direction No. 3 of 2009 which reserved jurisdiction over intercountry adoption to the High Court.¹³³ The Adoption of Children Act has also been reviewed to incorporate some aspects of international standards even though Malawi has not ratified the Hague Convention on Intercountry Adoption. Although there are no known reported cases of adopted children from Malawi being sexually exploited, this could be because there is no proper follow up and oversight structures once the children have left the country; hence, it is not indicative that sexual exploitation is nonexistent.

Sexual Exploitation of Children through Prostitution, Sexual Abuse Materials, and in Travel and Tourism

Sexual exploitation of children through prostitution, sexual abuse materials and in travel and tourism are all growing problems in Malawi. There has been limited research into the issues of the sexual exploitation of children in travel and tourism, children exploited through prostitution and child sexual abuse materials in Malawi. The scanty data available indicates that various versions of these types of exploitation exist in Malawi. There is a dearth of data on the number of men, women and children involved in sexual exploitation, including prostitution, sexual abuse materials and in travel and tourism, although generally, these are recognised social problems.

While there is information available on the exploitation of children in prostitution it is, however, mostly based on media reports. In a 2002 survey, wherein the extent and characteristics of girls in prostitution were examined in some detail,¹³⁴ it was revealed that over 90% of girls had been in the sex trade for less than three years, save for a few girls in Zomba and Mwanza who had been in the trade for five years. Most of the girls were from the same district or town of origin, and only a fifth of them migrated from other regions and another fifth came from other towns within the same district. Half of those surveyed were double orphaned while 70% had lost one parent through death or did not know their whereabouts and 60% did not have their mothers.¹³⁵

It has been reported that in Lilongwe, particularly at Chigwirizano in Likuni, there are high levels of young girls involved in prostitution, even below the age of 15, who use prostitution as a way to earn an income.¹³⁶ Some of the girls are trafficked to Likuni from Thyolo and Mulanje in Southern Malawi and they work in bars and rest houses. The Ministry of Labour has admitted that prostitution rates in Lilongwe are worrying as most children involved in prostitution in the district are under the age of 14 and are trafficked from the Southern Region of the country. According to the Ministry, the district labour office also withdrew five girls under the age of 13 from bars at Nsungwi, in Area 25 Township in Lilongwe.¹³⁷ There are reports of hundreds of girls, many as young as 10, who are being exploited through prostitution in brothels in places like Blantyre's Ndirande and Bangwe townships and at Biwi in Lilongwe, among other places in the country.¹³⁸ These girls are trafficked to the cities by brothel owners who take them from their homes upon paying a small amount of money, sometimes as low as K1,000¹³⁹ to their parents plus a promise that the girls will be employed in restaurants. Older girls are

132 Twea, Edward B & Manjolo Willard, A (2012) "Malawi: The Status of Child Protection and Child Justice" - paper presented at the 15th Annual Family Law Conference, Cape Town, South Africa 15-16th March 2012, accessed 12 May 2016 <http://www.millerdutoitcloeteinc.co.za/family-law-cape-town-img/Conf2012/Conf2012/Paper%20-%20EB%20Twea%20&%20WA%20Manjolo.pdf>

133 *Ibid.*

134 By interviewing a total of 549 girls from the cities and a selected number of districts (15% of the girls were aged 10-14, while 85% were aged 15-17 years).

135 In 2003, a Child Labour Baseline Study also confirmed that child prostitution was taking place in communities and plantations, income and food security and poverty being the main reasons for such practices. See ILO/IPEC (2003), Gender Mainstreaming in Actions Against Child Labour - Good Practices; and Child Labour National Plan of Action for Malawi (2009–2016), para. 2.3.3.

136 "Lilongwe Registers Increase in Child Prostitution", *Malawi News*, 1 August 2015, accessed 15 June 2016, <http://malawinewsnow.com/2015/08/lilongwe-registers-increase-in-child-prostitution/>

137 *Ibid.*

138 *Ibid.*

139 Approximately \$142.

ordered to teach the children “ways of pleasing men”.¹⁴⁰ It has also been reported that the practice of using girls in prostitution is common in Mzimba, Kasungu, Mchinji and that Dedza is becoming notorious for trafficking children to brothels into neighbouring Mozambique and Zambia. Some of the girls contract HIV/AIDS after sleeping with the many customers who patronise the brothels.¹⁴¹ In addition, a supposed children’s home for street kids known as Chimwemwe Children’s Centre was turned into a drug and prostitution hub. The children were starved and had no bedding and there was no one to look after them. This incident was uncovered in December 2012 by one of the local NGOs, Eye of the Child (which is currently chairing the Malawi Network against Trafficking).¹⁴²

The exploitation of children through prostitution is a serious problem in Malawi which, due to the clandestine nature of the exploitation, generally remains invisible. Brothel and bar owners may prefer girls as there is a general belief that they are good for business because the male clientele that patronise their businesses are interested in young girls, in the belief that they perform better. It is also presumed that young girls are HIV free so men opt for the girls as they assume that the risk of contracting HIV from them is low. The government and non-governmental organisations are working towards raising awareness of this worst form of child labour.

On the other hand, information on child sexual abuse materials/sexual exploitation of children online is rarely available. To this effect, the 2015 State Party Report for Malawi to the CRC Committee acknowledged that pornography (generally) goes unacknowledged in Malawian society, and it is rare that information or statistics emerge regarding it. Although the report suggests that instances continue to resurface, especially through the media, regarding the involvement of children, it is not easy to find such information. This is despite the fact that the proliferation of the internet and technological advances in the country can be used as a means for exploiting children in sexual abuse materials and online. There has not been much awareness of cybercrime but discussions around the same in Malawi are beginning to emerge. In a 2016 article in the Nation Newspaper it was reported that the Commonwealth Telecommunications Organisation (CTO), at a cyber security strategy workshop held in Lilongwe, warned that Malawi is a soft target for cybercrimes as many people are unsuspecting users and have yet to grasp the latest technological advancements.¹⁴³

Although there is limited information on the sexual exploitation of children in travel and tourism (SECTT), it has been reported that some foreign tourists visit Malawi to engage in the sexual exploitation of children and exploit young boys and girls whom they recruit in the holiday resorts especially along Lake Malawi.¹⁴⁴

Harmful Cultural Practices

In the northern border districts of Karonga and Chitipa, young girls from poor families are sold to wealthy people as sex slaves in remote areas.¹⁴⁵ A traditional custom known as *kupimbira*, wherein girls are held in perpetual bondage and are often subject to various forms of abuse (including sexual), is practiced by the Nyakyusa and Ngonde, who live along the shores of Lake Malawi, along the Tanzanian border, and in the Misuku Hills in northern Malawi.¹⁴⁶

140 “Malawi: Child prostitution worsens in cities” accessed 15 June 2016, <http://www.stopdemand.org/afawcs0153418/CATID=1/ID=131/SID=771891150/Malawi-Child-prostitution-worsens-in-cities.html>

141 *Ibid.*

142 “Malawi Children’s Home Turns into Drug, Prostitution Hub” *Nyasatimes Newspaper*, 29 December 2012, accessed 1 May 2016, <http://www.nyasatimes.com/malawi-childrens-home-turns-into-drug-prostitution-hub/>

143 “Malawi Soft Target for Cybercrime”, *The Nation Newspaper*, 8 June 2016, 13.

144 Rossi, Andrea ed (2003), “Trafficking in Human Beings, Especially Women and Children, in Africa” (Annunziata, Italy: UNICEF Innocenti Research Centre), 7.

145 Committee on the Elimination of Discrimination against Women (2008), Consideration of Reports Submitted by States Parties under Article 18 of the Convention on the Elimination of all Forms of Discrimination against Women, Sixth Periodic Report of States Parties, Malawi, CEDAW/C/MWI/6, 20 October 2008, para.149.

146 Malawi Law Commission (2005), “Human Trafficking in Malawi: Research Paper” 26.

There is a perception in many African countries that girls and boys become adults upon reaching puberty. In most places in Malawi girls have to undergo initiation ceremonies (*chinamwali*). Here, they are introduced to the responsibilities of adulthood and in secret rites, they are taught a variety of sexual skills to be able to please men.¹⁴⁷ They are then encouraged to find sexual partners to practice what they have been taught and the pressure to get married also increases at this stage, since parents also expect to get an economic return from marrying off their daughters. As a result, Malawi has for a long time had one of the highest rates of child marriage globally. Child marriage is a harmful practice that is prohibited by international and regional standards.¹⁴⁸ Although at the international level there is no binding instrument which prescribes the minimum age of marriage as 18 years, regional and subregional instruments do provide for the same.¹⁴⁹ Child marriage can constitute a grave threat to young girls' lives, health and future prospects. It also exposes girls to sexually transmitted infections, including HIV.¹⁵⁰ It has rightly been submitted that 'young girls are especially vulnerable to HIV because of their biology, and the heightened risk can increase with marriage, especially for child brides who marry older, more sexually-experienced husbands'.¹⁵¹ Not all child marriage is CSEC, but child marriage can be a manifestation of CSEC in certain circumstances. For example, when a child is received and used for sexual purposes in exchange for goods or payment in cash or kind. Child marriage can also be seen as a factor leading to CSEC, in that early marriage can sometimes be linked to wife abandonment, which can leave girls in bad economic situations and may force them into situations of being sexually exploited to survive.

According to the United Nations Population Fund (UNFPA), globally, between 2000 and 2011, just over one third (an estimated 34%) of women aged 20 to 24 years in developing regions were married or in a union before their 18th birthday.¹⁵² During this period, UNFPA household surveys (DHS and MICS) revealed that there were 41 countries in which the prevalence of child marriage was 30% or more, Malawi having one of the highest rates at 50%.¹⁵³ With this prevalence rate, Malawi is ranked eighth out of the 20 countries that are considered to have the highest rates of child marriage. Malawi therefore has one of the highest rates of child marriage in the world. On average, one out of two girls in Malawi will be married by their 18th birthday. In 2010, 50% of women aged 20 to 24 years were married or in union before the age of 18 (compared to 6.4% of men);¹⁵⁴ while 12% of women married before they were 15 years old (compared to only 1.2% of men).¹⁵⁵ Data shows little to no change in child marriage prevalence for women since 2000, when it stood at 47%. Child marriage prevalence in Malawi is also higher than the regional average for sub-Saharan Africa (37%).¹⁵⁶ The customary practices usually fail to protect girls against forced marriages or enable them to access justice for serious harms suffered.¹⁵⁷

147 *Ibid.*

148 The CRC, para 19, protects the child from abuse, exploitation and harm, among other things; Paragraph 49, Vienna Declaration and Program of Action adopted by the World Conference on Human Rights (1993), A/CONF.157/23, urges States to repeal existing laws and regulations and to remove customs and practices which discriminate against and cause harm to the girl child. For a general discussion on this, see ECPAT International & Plan International (2015), "Unrecognised Sexual Abuse and Exploitation of Children in Child, Early and Forced Marriage", accessed 20 June 2016, http://www.ecpat.org/wp-content/uploads/legacy/Child%20Marriage_ENG.pdf

149 Article 21:2 ACRWC; Art. 6(b), Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol), Adopted by the 2nd Ordinary Session of the Assembly of the Union, Maputo, 11 July 2003; Art. 8(2), The SADC Protocol on Gender and Development, 2008. For non-binding instruments at international level, see Committee on the Elimination of All forms of Discrimination against Women, General Recommendation No. 21 on "Equality in marriage and family relations", Thirteenth Session, 1992, UN Doc A/49/38 at 1 (1994), para. 36.

150 UNFPA (2012), "Marrying Too Young: End Child Marriage", 4.

151 *Ibid.*, 13.

152 In 2010 alone, this was equivalent to almost 67 million women, about 12 per cent of them having been married before the age of 15. See UNFPA (2012), "Marrying Too Young: End Child Marriage", 22.

153 *Ibid.*, 23.

154 UNFPA, "Profiles of 10 Countries with the Highest Rates of Child Marriage", p8, accessed 29 April 2016 undated, http://www.unfpa.org/webdav/site/global/shared/documents/publications/2012/ChildMarriage_8_annex1_indicator_definition.pdf.

155 National Statistical Office and ICF Macro, "Malawi Demographic and Health Survey 2010", 26, September 2011, accessed 29 April 2016, <http://microdata.worldbank.org/index.php/catalog/1449>.

156 UNFPA, "Profiles of 10 Countries with the Highest Rates of Child Marriage", 8.

157 *Ibid.*

NATIONAL PLANS OF ACTION

Malawi has developed a number of policy documents as well as Plans of Action which, although not specifically addressing commercial sexual exploitation of children, incorporate aspects of it or have a bearing on the same. The National Plan of Action for Orphans and Other Vulnerable Children (2009-2016) and the National HIV and AIDS Action Framework place government at the forefront of establishing institutional and legal frameworks within which services for the care and protection of OVC are to be organised and managed.¹⁵⁸ The Malawi government therefore amended and promulgated laws to ensure promotion of the protection of OVC and militate against the exposure to exploitation and, subsequently, to HIV/AIDS.¹⁵⁹ One of the most important national plans of action that has a bearing on protection of children from commercial sexual exploitation is the Child Labour National Plan of Action (Child Labour NPA). The NPA expires in 2016 but the Ministry of Labour is currently working towards reviewing it to be used for the next five years. The Child Labour NPA acknowledges that child labour constitutes one of the major development problems in Malawi and although it is widespread in the agricultural sector it is rapidly spreading to the other sectors of the economy such that children are employed in commercial farms, smallholder farms, domestic service, the informal sector, and are involved in commercial sex.¹⁶⁰ The trafficking of children for labour exploitation and use of children for illicit activities are some of the emerging issues that need immediate attention.¹⁶¹

Studies that have been carried out in Malawi have identified that child labour happens as a result of many factors, including the economic situation in Malawi, the effect of the HIV/AIDS epidemic, and cultural factors.¹⁶² Over half of the population live below the poverty line¹⁶³ and in most cases they have to involve their children in economic activities in an effort to provide food for the families. As a result, children's school attendance is usually compromised, thereby resulting in the children dropping out of school. The HIV/AIDS rate amongst adults is 12% such that many children have been left orphaned while others become bread winners while looking after sick parents. Cultural factors that tend to influence child labour include cultural initiation of children between 10-14 years of age, who are then deemed to be adults and schooling no longer becomes a priority; as a result, they either marry or join the workforce.¹⁶⁴ The Child Labour NPA therefore identifies the following priorities:¹⁶⁵

- a) Develop and improve the policy and legislative framework;
- b) Build the capacity of the education sector;
- c) Create awareness of child labour;
- d) Bridge the information gap in child labour;
- e) Build the institutional and technical capacity of service providers;
- f) Provide services to children (who have been rescued from exploitative labour), to enable them to achieve their education objectives; and
- g) Mitigate the effects of HIV and AIDS on working and at risk children.

158 Government of Malawi (2005), "The National Plan of Action for Orphans and Other Vulnerable Children", Ministry of Women and Child Development, Lilongwe.

159 *Ibid.*

160 Child Labour National Plan of Action for Malawi (2009–2016), para. 2.2.

161 *Ibid.*

162 *Ibid.*

163 According to UNDP, the poverty headcount ratio of people below the poverty line in Malawi is 50.7%. See www.mw.undp/content/malawi/en/home/countryinfo.html

164 Child Labour National Plan of Action for Malawi (2009–2016), para. 2.2.

165 *Ibid.*, "Executive Summary".

The Child Labour NPA is a critical document for guidance on protecting children from commercial sexual exploitation as it has a specific section on the same. The Child Labour NPA acknowledges that trafficking of children for labour exploitation, including for sex work,¹⁶⁶ exists in Malawi even though there has not been any comprehensive study done to determine the extent to which this is happening.¹⁶⁷ This happens usually when the children are lured into fraudulent job offers only to end up in situations of forced labour and commercial sexual exploitation. In a 2003 ILO/IPEC Child Baseline Study it was found that most of the children working in certain districts were internal migrants, particularly coming from Zomba, Dedza and Mangochi.¹⁶⁸

As part of its strategic framework, the Child Labour NPA provides for the provision of infrastructure and mechanisms for repatriation of recovered children.¹⁶⁹ This includes the development of repatriation and reintegration mechanisms, and the provision of support to formal and community-based transit centres. Furthermore, the NPA also provides for the control of trafficking of children for labour and commercial sexual exploitation, by enforcing trafficking and migration laws and policies, as well as strengthening the network of agencies dealing with trafficking and migration.¹⁷⁰

Child Labour is prioritised in the Malawi Growth and Development Strategy II (2011-2016) in the Social Support and Risk Management thematic area and the List of Hazardous Work for children was gazetted in February 2012. Various stakeholders have been involved in the fight against child labour including by implementing anti-child labour programmes and by integrating child labour concerns into their tripartite policy activities, organising and bargaining agendas;¹⁷¹ creating awareness on child labour, adopting employers' codes of conduct and implementing anti-child labour social responsibility programmes and engaging in social dialogue with government and trade union organisations;¹⁷² community mobilisation, improving access to basic education, complementary basic education programmes and promotion of child rights;¹⁷³ and provision of technical and financial support for the elimination of child labour.¹⁷⁴

PROTECTION MEASURES (POLICY AND LEGISLATIVE MEASURES)

Malawi has ratified a number of instruments that are relevant for the protection of children from commercial sexual exploitation. At the international level, these include the CRC in 1991; the OPSC in 2009; the ILO Convention on the Worst Forms of Child Labour in 1999; the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 1987; the Protocol against the Smuggling of Migrants by Land, Sea and Air, in 2005; the UN Convention against Transnational Organised Crime in 2005; and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime (Palermo Protocol) in 2005. At the regional and sub-regional levels relevant ratified instruments include the African Charter on the Rights and Welfare of the Child in 1999; the Protocol to the African Charter on Human and People's Rights on the Rights of Women in 2005; the African Youth Charter in 2010; and the SADC Protocol on Gender and Development in 2013. Malawi has also

166 The other forms of labour being agricultural labour, cattle herding, domestic service, and menial work for small businesses.

167 Child Labour National Plan of Action for Malawi (2009–2016), para. 2.3.4.

168 ILO/IPEC (2003), Gender Mainstreaming in Actions Against Child Labour...Good Practices.

169 Child Labour National Plan of Action for Malawi (2009–2016), para. 3.4.

170 *Ibid.*, para. 3.7.

171 Malawi Congress of Trade Unions and its affiliates in the agricultural sector.

172 Employers Consultative Association of Malawi.

173 CSOs and traditional leaders.

174 Development partners.

submitted reports to treaty monitoring bodies such as the CEDAW Committee (consistently), the Committee on the Rights of the Child in 2000, 2007, and 2015; and the African Committee on the Rights of the Child in 2015.

In 1994, Malawi adopted a democratic Constitution¹⁷⁵ which, among its many strengths, contained a Bill of Rights for the first time in Malawi.¹⁷⁶ More significantly, the 1994 Constitution recognises various rights specific to children in its section 23 and other sections. Section 23 of the Constitution protects children from economic exploitation or any treatment that is (likely) to be hazardous; interfere with their education; or be harmful to their health or physical, mental, spiritual or social development. In 2010, Malawi adopted the Child Care, Protection and Justice Act, No 22 of 2010 (the Child Act), after its Bill had been drafted in 2006.¹⁷⁷ The Child Act was drafted with the underlying principle of the ‘best interests of the child’; it is the first legal instrument to expressly embrace this principle in Malawi.¹⁷⁸ The ‘best interests of the child’ principle has now also been incorporated in section 23 of the Malawi Constitution.¹⁷⁹ This solidified the culture of recognition of rights for Malawian children who, prior to this Act, were mainly regulated under the Children and Young Persons Act of 1969¹⁸⁰ and several other statutes,¹⁸¹ most of which were not necessarily formulated with a rights-based orientation.¹⁸² However, the Malawi Constitution as well as the Child Act have some serious gaps pertaining to the definition of a child,¹⁸³ including in the prescription of the minimum age of marriage, as it falls below international and regional standards.¹⁸⁴

Trafficking of Children

As indicated above, the Trafficking in Persons Act (TIP) of 2015 is a very strong piece of legislation for protecting children from commercial sexual exploitation. The Act provides a comprehensive legislative framework for combating and preventing trafficking in persons using a human rights-based approach.¹⁸⁵ The Act combines issues of protection of trafficked persons and potential victims of trafficking, with prevention of trafficking in persons and prosecution of offences. It also increases participation of individuals, communities and institutions in the fight against trafficking in persons.¹⁸⁶ In addition, the Act provides for the establishment of an institutional framework for effective regulation and coordination of trafficking in persons and related matters.¹⁸⁷

Prior to the enactment of the Trafficking in Persons Act, the legal framework in Malawi made no express reference to the offence of trafficking in persons, save for the fact that elements of the

175 Act No. 20 of 1994.

176 A feature which was non-existent in the 1966 Constitution of Malawi, such that human rights (as well as children’s rights) were not constitutionally entrenched and Malawi suffered a lot of human rights violations until its transition to democracy in 1994. See Odala, Violet (2012), “Childhood denied: Examining age in Malawi’s child law, as the Constitution becomes of age” 6:1 *Malawi Law Journal* 97-98.

177 The Child Care, Protection and Justice Bill No 7 of 2010 was signed into law by the President of Malawi on 29 July 2010.

178 This is also how the Bill was described by others. See Stapleton, Adam, ‘The State of Juvenile Justice in Malawi’, CYC-Online, April 2000, accessed 20 November 2011 <http://www.cyc-net.org/cyc-online/cycol-0400-malawi.html>.

179 See Constitution Amendment Act No. 11 of 2010.

180 Chapter 26:03 of the Laws of Malawi.

181 Odala, Violet (2012), “Childhood denied: Examining age in Malawi’s child law, as the Constitution becomes of age” 6:1 *Malawi Law Journal* 98.

182 Chirwa, Danwood M and Kaime Thoko (2008), “Where are the missing pieces? Constructing a mosaic of the CRC and the African Children’s Charter in Malawi’s law and policy” 2 *Malawi Law Journal* 112.

183 Even though there is a general perception in Malawi that the Constitution does define a child, the Constitution does not have an overarching definition of a child. In section 23 it provides that for purposes of the rights stipulated therein, a child is a person aged below 16 years. See Section 2 of the Child Care, Protection and Justice Act wherein it is provided that a child is ‘a person below the age of sixteen years’. See Odala, Violet (2012), “Childhood denied: Examining age in Malawi’s child law, as the Constitution becomes of age” 6:1 *Malawi Law Journal* 100.

184 The minimum age of marriage is the age below which a person may legally not be allowed to enter into marriage. See Odala Violet, *ibid*, 98.

185 This was also reflected in Malawi Law Commission (2011), “Report on the Development of the Trafficking in Persons Legislation”, 14.

186 *Ibid*.

187 *Ibid*.

offence breached various fundamental rights and freedoms guaranteed under the Constitution and other elements of the offence of trafficking in persons were already criminalised in various laws.¹⁸⁸ These, however, did not provide sufficient basis for prosecuting or dealing with trafficking in persons offences, a case in point being *R v Lourenco*.¹⁸⁹ In this case, three girls aged between 15-19 years were arrested in 1999 in a police raid at a sex club in Amsterdam and subsequently deported to Malawi. A local businesswoman, Ruth Lourenco, was accused of trafficking the girls to the Netherlands to work in sex clubs. She was charged with procuring for prostitution outside Malawi, contrary to section 140(d) of the Penal Code, but she was acquitted on technical grounds. The girls lived in rest houses and/or their parents were either deceased or had stopped providing for them. The girls had been going to nightclubs in Blantyre, Lilongwe and had lived with foreign boyfriends before going to the Netherlands. The accused approached the girls and promised them a business trip to the Netherlands, after processing their passports. They flew via RSA, London, Brussels. In Amsterdam, Lourenco sold the girls to Nigerian traffickers for 10,000 USD. When the girls demanded to be sent back, they were told to pay back a debt of 20,000 USD, which had been used for their travel. The Nigerians forced them to work in night clubs and they were sexually abused and beaten.¹⁹⁰

This case highlighted three major problems with the law as it pertained to trafficking in persons, namely: penalties were 'not always commensurate with the level of criminal activity involved in trafficking in persons', there were no provisions for victim support, and convictions could not be secured for trafficking in persons offences with a transnational process.¹⁹¹ These gaps in the law were generally taken care of with the passing of the Trafficking in Persons (TIP) Act, which now defines and criminalises trafficking in persons, child trafficking, and aggravated forms of trafficking.

Section 2 of the TIP Act defines trafficking in persons as:
Recruiting, transporting, transferring, harbouring, receiving or obtaining a person within or beyond the territory of Malawi through:

- a) Threats or use of force or coercion;
- b) Abduction;
- c) Fraud or deception;
- d) Abuse or threats of abuse of power or position;
- e) Abuse or threats of abuse of position of vulnerability;
- f) Abuse or threats of abuse of the law or legal process; or
- g) Giving or receiving of payments to obtain consent of a person having control of the trafficked person for the purpose of exploitation of that person.

This definition of trafficking in persons is in line with the international definition from the Palermo Protocol. The TIP Act defines exploitation to include the forced participation of person in all forms of commercial sexual activity such as prostitution, sexually explicit activity, or the production of pornography.¹⁹² As part of an enforcement mechanism of the law the TIP Act creates a Trafficking in Persons Board and a Trafficking in Persons Fund. The Act also provides for care and protection of victims and witnesses and has introduced special methods of conducting investigations and

188 *Ibid.*, 17. The laws include the Penal Code (Cap. 7:01 of the Laws of Malawi), the Immigration Act (Cap. 15:03 of the Laws of Malawi), the Employment Act (Cap. 55:02 of the Laws of Malawi), the Extradition Act (Cap. 8:03 of the Laws of Malawi), and the Mutual Assistance in Criminal Matters Act (Cap. 8:04 of the Laws of Malawi).

189 *R v Lourenco*, Crim. Case No. 150 of 1999 (Senior Resident Magistrate Court, Lilongwe).

190 The girls were told to say they were from Ghana or Sierra Leone. In Holland, they also met another Malawian girl who had been recruited from City Council Rest House and had not been told she was going to work in brothels. She was locked up in a room, away from contact with any Malawians coming to the house in Holland. See summary of this case in Law Commission, 2005 Research Paper on human trafficking, p23-4.

191 Malawi Law Commission Report (2011) p17.

192 Section 2.

proceedings.¹⁹³ The Act increased the categories of conduct that are punishable including aiding and abetting trafficking in persons and children;¹⁹⁴ it provides for aggravated forms of committing offences under the Act;¹⁹⁵ and enhances the penalties for various activities related to trafficking in persons.¹⁹⁶

The Child Care, Protection, and Justice Act (2010) prohibits subjecting a child to any social or customary practice that is harmful to the health or general development of a child.¹⁹⁷ According to a US Department of State 2010 report, targeted practices that are harmful to the health and development of the child include child trafficking, forced labour, forced marriage or betrothal, and use of children as security for debts or loans.¹⁹⁸ The report also highlighted that the trafficking of children for sexual purposes was a problem in Malawi, and that child prostitution for survival without third-party involvement also occurred. The 2010 Child Act was the first law to expressly criminalise child trafficking in Malawi and stipulates punishment up to and including life imprisonment for child traffickers.¹⁹⁹ Under Division 6 of the 2010 Child Act, children are protected from undesirable practices, including their sale,²⁰⁰ harmful practices like forced marriages and forced betrothal,²⁰¹ and pledging children as security for a debt.²⁰² These practices are prohibited and punishable by imprisonment for 10 years.²⁰³ The Child Act also provides for public safety homes and defines a “safety home” as “a place or part thereof for the purposes of reception, education, counselling and safety of children before conclusion of trial or in circumstances requiring placement of a child for care and protection”.²⁰⁴ This is significant for child victims of all forms of sexual exploitation who may require to be removed from their usual place of abode or when rescued from situations of sexual exploitation or the threat thereof.

Adoption of Children

The Adoption of Children Act, enacted in 1949 as the Adoption Ordinance, is currently undergoing review at the Law Commission. The proposed offences include payments in consideration for adoption;²⁰⁵ exercising undue influence in the course of adoption;²⁰⁶ making or attempting to make an unauthorised adoption arrangement;²⁰⁷ failure to disclose information required under the law;²⁰⁸ and unauthorised disclosure of confidential information.²⁰⁹

193 Section 4 of the TIP Act establishes a National Coordination Committee against Trafficking in Persons, and under section 8, the functions of the Committee are laid down, including coordinating and overseeing investigations of offences under the Act as well as receive reports from law enforcement officers on investigations and prosecution of the offences.

194 Section 21.

195 Section 16(1), these include where the judicial process such as adoption, fosterage, guardianship, is used to recruit a child; or if a person dies, develops a medical condition, becomes pregnant or mutilated, or is exposed to a substantial health risk, as a consequence of trafficking a person.

196 Generally, under section 14(1), the offence of TIP attracts a term of imprisonment, but in terms of section 15(1), where the trafficked person is a child, the term of imprisonment goes up to 21 years. The consent of the child to be trafficked is immaterial. Under section 16 (2), where the trafficked person is a child, and the circumstances laid down in section 16(1) are met, the offender is liable to imprisonment for life without the possibility of a fine regardless of the circumstances. The consent of the child is immaterial.

197 Section 80.

198 United States Department of State (8 April 2011) 2010 Human Rights Report: Malawi.

199 Section 79.

200 Section 82(a).

201 Section 81.

202 Section 82(c).

203 Section 83.

204 Section 2. Also see Part VII of the Act.

205 Punishable by a fine of K1,000,000 and imprisonment for 5 years.

206 Punishable by imprisonment for 7 years.

207 Punishable by imprisonment for 7 years.

208 Punishable by imprisonment for 3 years.

209 Punishable by a fine of K1,000,000 (currently approximately \$1,430) and imprisonment for 5 years.

Child Labour

The Employment Act of Malawi prohibits a person between the ages of 14-18 years from undertaking hazardous work.²¹⁰ Hazardous work has been defined as an occupation or activity that is likely to be harmful to health, safety, education, morals or development of such a person; or prejudicial to the attendance at school or other training programme.²¹¹ This therefore includes commercial sex work. The law binds every employer of a person below the age of 18 years to keep a register of such employees.²¹² Acting contrary to the prohibition regarding employment of young persons is punishable by a fine of K20,000²¹³ and imprisonment for five years.²¹⁴ The Employment Act prohibits child labour under Part IV on Employment of Young Persons. The Employment Act prohibits the employment of persons below the age of 14 years except in homes, vocational technical schools or other training institutions.

The government ministries, especially the Ministry of Labour, were called upon to guarantee fundamental rights at work and enforce national child labour legislation, including resourcing labour inspectors, and to formalise the Child Labour Unit by regularising its structure and recruiting specialist staff; train the judiciary in child labour case management; popularise the nationally agreed upon List of Hazardous Work prohibited to children under the age of 18 (appended to the Employment Act, 2012) including through the training of labour inspectors, extension officers, social partners and community-based Child Labour Monitoring (CLM) groups; and undertake a comprehensive child labour survey, disaggregating data about those agricultural sub-sectors and activities in which most child labourers are found, to then allocate resources for child labour prevention and elimination appropriately.²¹⁵ Child labour is prevalent in non-unionised, unprotected, informal work in agriculture.²¹⁶ Considering that adults in decent work will have children in school, and organised workplaces are child labour-free, Trade Unions have a special responsibility and interest in promoting programmes against child labour and abusive labour practices in their businesses, work places and communities.²¹⁷ The Malawi Congress of Trade Unions (MCTU) and its agricultural affiliates have therefore been called upon to be active participants in community-based child labour monitoring systems (CLMS), and to organise agricultural workers and tenants to fight against child labour through formalisation, protection under the law and improved incomes and conditions in the current informal economy.²¹⁸

Child Marriage

In terms of section 22(6) of the Constitution, persons aged 18 years and above cannot be prevented from entering into marriage, but under section 22(7) of the same Constitution, persons aged between 15-18 years can marry upon parental consent, and marriages for those aged below 15 years are to be actively discouraged by the State as per section 22(8). This means that children aged below 15 years can still legally marry.²¹⁹ Section 22 is open to various interpretations.²²⁰ Based on this provision, to

210 Section 22, Regulation of Minimum Wages and Conditions of Employment Act (Cap. 55:01 of the Laws of Malawi).

211 Section 23 of the Malawi Constitution; Section 2 of the Employment Act.

212 Section 23.

213 Approximately equivalent of 30 USD.

214 Section 24.

215 *Ibid.*, 8.

216 *Ibid.*

217 *Ibid.*

218 *Ibid.*

219 Odala, Violet (2012), 6:1 *Malawi Law Journal* 105.

220 The Malawi government acknowledges that the Constitution is unclear as to the absolute minimum age of marriage. See paragraph 12 of the First Periodic Report to the UN Committee on the Rights of the Child, CRC/C/MWI/2 of 17 July 2008.

some, the minimum age of marriage is 18 years,²²¹ to others it is 15 years,²²² and to others there is no minimum age of marriage in Malawi.²²³ However, the minimum age of marriage in Malawi is 15 years because pursuant to section 22(7) of the Constitution, a 15-year-old boy or girl can get married with parental consent.²²⁴ The Malawi government also recognises that constitutionally, 15 years is the minimum age of marriage as indicated in its 2007 report to the UN Committee on the Rights of the Child.²²⁵ It has been noted that, ‘by allowing persons of between 15 and 18 (years) to enter into marriage with the consent of their parents, the Malawi Constitution fails to categorically prohibit child marriage’.²²⁶ This is despite the fact that with the recent enactment of the Marriage, Divorce and Family Relations Act in 2015, the statutory law has attempted to increase the minimum age of marriage to 18 years and did away with the requirement of parental consent. As much as this is commendable progress, the Constitution, as the supreme law of the land,²²⁷ still needs to be amended accordingly to be in harmony with international standards and the new legislation in Malawi.²²⁸

Although the law in Malawi falls below the recommended standard for the minimum age of marriage, in terms of the consequences for marrying children below the stipulated minimum age, Malawi has a very progressive normative framework. Where a child is forced into marriage or betrothal, the responsible person is liable to a term of imprisonment of up to 10 years.²²⁹ On the face of it, this provision appears to mean that the punishment is only applicable in situations where the child is forced into marriage. However, considering that children ought to be protected from all forms of exploitation regardless of whether the children consent to it, allowing them to enter into marriage below the legal minimum age could also be construed as forcing them into marriage. Related to the minimum age of marriage is the issue of sexual consent. Section 160A of the Penal Code (Amendment) Act²³⁰ also defines a ‘child’ as a person aged under the age of 16 years, and section 160B(1) prohibits engaging or indulging in sexual activity with a child as this is an offence with liability for imprisonment for 14 years.²³¹ Thus, by implication, the minimum age of sexual consent is 16 years.²³²

221 See for example the discussion in Mwambene, Leah (2008), “The impact of the Bill of Rights on African Customary Family Laws: A study of the rights of women in Malawi with some reference to developments in South Africa”, (Unpublished LLD diss., University of the Western Cape), 176. Also see paragraph 64 of the Initial State Party Report to the UN Committee on the Rights of the Child (CRC/C/8/Add.43 of 26 June 2001), wherein the State reported that the Constitution provides that the minimum legal age of marriage is 18 years for all persons (even though in paragraph 66 the Report submits that the law does not expressly prohibit marriages of persons below the age of 15 years).

222 Paragraph 62, Draft Report of the Working Group on the Universal Periodic Review, Human Rights Council, A/HRC/WG.6/9/L.2 (5 November 2010). The report discusses that anyone could marry at the age of 15 with the consent of his or her parents based on the constitutional provision. Thus the Malawi government in its submission to the Human Rights Council adopts 15 as the minimum age of marriage.

223 World Vision International, in its report submitted to the first Universal Periodic Review indicated in paragraph 27 that there existed no minimum age of marriage and that the State only had the capability to discourage rather than forbid a marriage, which explained occurrences of forced and early marriages. See a compilation of extracts featuring child-rights issues from the reports submitted to the first Universal Periodic Review. There are extracts from the ‘National Report’, the ‘Compilation of UN Information’ and the ‘Summary of Stakeholder’s Information’, accessed on 9 May 2016, <http://www.crin.org/resources/infoDetail.asp?ID=23512>

224 Whereas section 22(6) merely establishes that upon attaining the age of 18, the requirement for parental consent falls out. Section 22(8), which provides that ‘the State shall actively discourage marriage between persons where either of them is under the age of fifteen years’.

225 Para. 88 of the First Periodic Report to the UN Committee on the Rights of the Child, Malawi, CRC/C/MWI/2 of 17 July 2008.

226 Mwambene, Leah (2008), (Unpublished LLD diss., University of the Western Cape), 177.

227 In terms of section 5 of the Constitution of Malawi.

228 Odala, Violet (2012), 6:1 *Malawi Law Journal* 105. The Malawi government acknowledges that the Constitution is unclear as to the absolute minimum age of marriage. See paragraph 12 of the First Periodic Report to the UN Committee on the Rights of the Child, CRC/C/MWI/2 of 17 July 2008.

229 Section 83 of the Child Act. Prohibition of forcing a child into marriage and betrothal is under section 81 of the Child Act.

230 Act 1 of 2011.

231 The Penal Code (Amendment) Act No 1 of 2011 came into force on 28 January 2011.

232 This, however, is not in tandem with the minimum age of marriage under the Constitution wherein it is 15 years. Ordinarily, the minimum age of sexual consent ought not to be higher than the minimum age of marriage otherwise the marriage will not be consummated until the minimum age of sexual consent is reached. Odala, Violet (2012) 6:1 *Malawi Law Journal* 105.

Exploitation of Children in Prostitution

The CRC and the ACRWC do not define prostitution but prohibit the exploitative use of children in prostitution,²³³ or other sexual practices.²³⁴ ILO Convention 182 (1999) prohibits “the use, procuring, or offering of a child for prostitution”, and goes further to list it as one of the worst forms of child labour.²³⁵ Child prostitution is defined in the OPSC as “the use of a child in sexual activities for remuneration or any other form of consideration”.²³⁶ States are required to criminalise offering, obtaining, procuring, or providing a child for prostitution.²³⁷ Thus, the OPSC prohibits not only the procurement of a child for prostitution, but also “offering, obtaining, or providing” a child for prostitution. This use of the term “child prostitution” has been questioned, since it may arguably be interpreted in a manner to imply that the phenomenon represents a legitimate form of sex work.²³⁸ The UNAIDS Terminology Guidelines on preferred terminology prohibit the use of the term “prostitution” or “prostitute” with regard to adults or children, because it denotes value judgement. The Guidelines suggest using terms such as “sex work” and “sex worker” in relation to adults, and “sexual exploitation of children” in reference to children.²³⁹ More recently, the Luxembourg Guidelines recommend adopting the term “sexual exploitation of children”, and not “prostitution” as it better reflects the fact that the child is a victim of exploitation and that she/he is entitled to protection.²⁴⁰

The Penal Code of Malawi (as amended in 2011) defines prostitution as sexual activity with another person for money or something of economic value or the offer or acceptance of an offer to engage in sexual activity in exchange for money or economic value.²⁴¹ In Malawi, procurement of young girls aged below 21 years into prostitution is prohibited under section 140 of the Penal Code, and this is punishable by 14 years’ imprisonment. The Penal Code specifically protects girls from exploitation through prostitution, but not boys per se. The amended Penal Code in section 142 prohibits an owner or occupier of premises or having or acting or assisting in the management or control of the premises from inducing or knowingly suffering a girl under the age of 16 years to have sexual intercourse with a particular man or generally.²⁴² The use of any premise as a brothel is prohibited under section 148 of the Penal Code, while sections 145 and 146 prohibit living on the proceeds of prostitution. Under section 143 of the Penal Code, detaining a woman or girl against her will on any premises or in a brothel for purposes of sexual exploitation with a particular man or generally is punishable by five years’ imprisonment.

There appears to be an increase in cases of children offering sexual services. The basis is often found to be poverty with children living or working on the streets becoming easy victims to the vice. The law does not criminalise the children, especially those aged below 16 years, who are exploited through prostitution. Even though the definition of prostitution applies to both males and females, the penal

233 Art. 34, CRC; Article 27(b), ACRWC.

234 Article 27(b), ACRWC.

235 Article 3(b), ILO Convention No. 182.

236 Art. 2(b), OPSC.

237 Art. 3(b), OPSC.

238 Subgroup against the Sexual Exploitation of Children, “Semantics or Substance? Towards a shared understanding of terminology referring to the sexual abuse and exploitation of children” (2005), 14 www.ecpat.net/sites/default/files/Semantics%20or%20Substance.pdf

239 UNAIDS, Terminology Guidelines (2015), accessed 15 May 2016, http://www.unaids.org/sites/default/files/media_asset/2015_terminology_guidelines_en.pdf

240 Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse (2016), Adopted by the Interagency Working Group on Sexual Exploitation of Children, in Luxembourg, 28 January 2016 29-34.

241 Section 147A(2).

242 As discussed below, prior to the amendment, the minimum age of sexual consent for girls was actually 13 years. It was amended to 16 years, which is in line with the definition of a child in the Child Act, and in the Constitutional Provision which provides for the rights of children.

law in general focuses very particularly on girls, and needs to be amended to also include boys in the specific protection from exploitation through prostitution. There is need for comprehensive support and re-integration services for children who are exploited in prostitution.²⁴³

Child Pornography/Child Sexual Abuse Materials

Article 34(c) of the CRC prohibits “the exploitative use of children in pornographic performances and material” but does not elaborate on the meaning of this term. Similarly, Article 27(c) of the ACRWC, without defining the term, prohibits “the use of children in pornographic activities, performances and materials”. ILO Convention 182 prohibits “the use, procuring or offering a child [...] for the production of pornography or pornographic performances”.²⁴⁴ The international legal instrument that defines child pornography is the OPSC, which provides in article 2 that it is “any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or representation of the sexual parts of a child for primarily sexual purposes”. The OPSC requires States to criminalise “[p]roducing, distributing, disseminating, importing, exporting, offering, selling, or possessing for the above purposes, child pornography”.²⁴⁵

At the regional level, child pornography is defined in Article 2 of the AU Convention on Cyberspace and Personal Data Protection²⁴⁶ as “any visual depiction, including any photograph, film, video, image, whether made or produced by electronic, mechanical, or other means, of sexually explicit conduct, where:

- a) the production of such visual depiction involves a minor;
- b) such visual depiction is a digital image, computer image, or computer generated image where a minor is engaging in sexually explicit conduct or when images of their sexual organs are produced or used for primarily sexual purposes and exploited with or without the child’s knowledge;
- c) such visual depiction has been created, adapted, or modified to appear that a minor is engaging in sexually explicit conduct.”

The AU Convention on Cyberspace places an obligation on States Parties to take the necessary legislative and/or regulatory measures to criminalise production, registering, offering, manufacturing, making available, disseminating and transmitting an image or a representation of child pornography through a computer system, as well as possessing, procuring for oneself or for another person, importing, exporting an image or representation of child pornography.²⁴⁷ Even though Malawi has not yet ratified this treaty, it is significant in order to protect children from exploitation through pornography as is it the first binding regional instrument to expressly prohibit child pornography.

Based on these provisions, in Article 34(c) of the CRC, the focus is both on the act of performances and on the eventual material outcome.²⁴⁸ The provisions in the ACRWC and ILO Convention 182 serve to protect children from situations of exploitation involving live performances of a sexual nature without producing any pornographic material, such as recordings.²⁴⁹ However, according to the Luxembourg Guidelines (2016), the term “pornographic” is misguided in connection to the child, and can result in stigmatising or otherwise harming the child who is being used for this purpose.²⁵⁰ To

243 Initial Report to the Committee on the Rights of the Child on the OPSC, 2015, para. 59.

244 Article 3(b).

245 Article 3(c).

246 EX.CL/846(XXV), Adopted by the 23rd Ordinary Session of the Assembly of the African Union, in Malabo, on 27th June 2014.

247 Article 3.

248 The Luxembourg Guidelines (2016), 34.

249 *Ibid.*

250 *Ibid.*

describe this phenomenon, and to put the emphasis on the sexualisation of the child, the Guidelines therefore propose a more neutral term which does not place blame on the child, namely, the “use of children for sexual performances”. The notion of “using a child” for sexual purposes²⁵¹ has the benefit of placing the emphasis on the fact that the child is subjected to a crime and does not bear the responsibility for what happens to her/him.²⁵²

Following the Malawi Law Commission’s finding that offences of a sexual nature against children were on the increase in Malawi and that they were committed in various and diverse forms not adequately addressed by the Penal Code, it was recommended that such abuses be specifically legislated against under the Penal Code so that they form part of the general code of crimes. As a result, the Penal Code (as amended in 2011) added a new Chapter XV A, which provides for offences against morality relating to children.²⁵³ One such offence is child pornography. Although the law does not define child pornography per se, it criminalises possession or viewing of the pornographic materials, the sanction of which is 14 years’ imprisonment.²⁵⁴ Furthermore, the procuring of a child to take part in public entertainment that is immoral in nature or is dangerous to life, prejudicial to health, physical fitness and kind treatment of a child is punishable by imprisonment for seven years or a fine of K100,000.²⁵⁵ Section 160E of the Penal Code is complemented by section 160F of the Penal Code, and section 23(2) of the Child Act, wherein a child is deemed sexually abused if he or she takes part, whether as a participant or observer, in any activity of a sexual nature for purposes of a pornographic or indecent material, photograph, recording, film, videotape or performance; or sexual exploitation for sexual gratification or commercial gain. By prohibiting the possession and accessing of pornographic material, without a requirement to download it, the Penal Code is actually quite progressive.

Another important piece of regulation for protecting Malawi is the Information and Communications Technology (ICT) Policy (2013), which has a section for promoting national security which recognises that “globalisation and pervasiveness of crime and other security challenges have brought perverse tendencies which are threats to national security”.²⁵⁶ The policy recognises that surveillance and readiness of security agencies require the use of specialised skills and ICTs and requires the establishment of adequate capacity to deal with national security, violation of human rights, undesirable impacts of ICTs including the violation of privacy, spread of undesirable materials, cyber-crimes, digital frauds and terrorism.²⁵⁷ On 4 July 2016, Malawi passed the Electronic Transactions Act under which the Malawi Communications Regulatory Authority (MACRA) on behalf of the government has been tasked with certain cyber security mandates. The Electronic Transactions Act defines child pornography as material that depicts visual or realistic images of a person under the age of 18 engaged in sexually suggestive or explicit conduct. The Act criminalises production, reproduction, distribution and possession of pornographic material and public internet providers to use pornographic filtering software, or pay a penalty of K10,000,000 (approximately 14,000 USD) or 15 years imprisonment with hard labour.²⁵⁸ As noted by MACRA in its presentation at the Annual Human Capacity Building Workshop on Child Online Safety, organised by the International Telecommunications Unit (ITU), the Act has some gaps in relation to child online protection in that it does not include crimes such as grooming, parents/guardians who acquiesce to participation of their children in pornography and punishing attempted crimes.²⁵⁹

251 Whether for performances or other purposes.

252 The Luxembourg Guidelines (2016), 34.

253 Malawi’s Initial Report to the Committee on the Rights of the Child on the OPSC (2016), CRC/C/OPSC/MWI/1, para. 62.

254 Section 160E of the Penal Code.

255 Approximately \$143.

256 Paragraph 3.8, Malawi Information and Communications Technology (ICT) Policy (2013).

257 *Ibid.*

258 Section 88. Other computer related offences included are, cyber harassment, offensive communication, cyber stalking.

259 MACRA (2016), “Child Online Safety and Regulation in Malawi”, presentation at the Annual Human Capacity Building Workshop on Child Online Safety, Lilongwe 18-20 July 2016.

Sexual Exploitation of Children in Travel and Tourism (SECTT)

The OPSC, in its Preamble and in Article 10(1), requires of States Parties “to take all necessary steps to strengthen international cooperation by multilateral, regional and bilateral arrangements for the prevention, detection, investigation, prosecution and punishment of those responsible for acts involving the sale of children, child prostitution, child pornography and child sex tourism”. SECTT is, by its very nature, secretive and hidden. Far too little is known about what is happening and where, about the victims and perpetrators, and, very importantly, about what actually works to stop the abuse.²⁶⁰ At the same time, SECTT has been allowed to thrive in an atmosphere of wider social tolerance for sexual exploitation. The lack of solid information, coupled with silence or acceptance, keeps SECTT far too low on policy agendas.²⁶¹ The Global Study on SECTT defines SECTT as “acts of sexual exploitation of children embedded in the context of travel, tourism or both”.²⁶² Similarly child sex tourism has been defined by the Special Rapporteur on the sale of children, child prostitution and child pornography, as the exploitation of children for sexual purposes by people who travel locally or internationally²⁶³ to engage in sexual activities with children.²⁶⁴ It often involves the use of travel agencies, transport, accommodation and other tourism-related services that facilitate contact with children.²⁶⁵ In 1996, the Code of Conduct for the Protection of Children from SECTT was developed to provide guidelines, tools and the criteria for building up an effective system for the prevention of sexual exploitation of children in the tourism industry.²⁶⁶

By signing the Code, tourism companies commit to taking six essential steps to help protect children, namely:

- a) To establish a policy and procedures against sexual exploitation of children;
- b) To train employees in child rights, the prevention of sexual exploitation of children and how to report suspected cases;
- c) To include a clause in contracts on zero tolerance policy of sexual exploitation of children;
- d) To provide information to travellers on child rights, the prevention of sexual exploitation of children and how to report suspected cases;
- e) To support, collaborate and engage stakeholders in the prevention of sexual exploitation of children; and
- f) To provide annual reports on their implementation of the Code.²⁶⁷

In 1999, the UN World Tourism Organisation (UNWTO) adopted a Global Code of Ethics for Tourism which expressly recognises the problem of sexual exploitation of children in travel and tourism, stating that it conflicts with the fundamental aims of tourism and is the negation of tourism.²⁶⁸ This was followed by the adoption of a set of Guidelines for National Tourism Administration Focal Points

260 ECPAT & DCI (2016), “Offenders on the Move: Global Study on Sexual Exploitation of Children in Travel and Tourism”, 20, Accessed 1 July 2016, <http://globalstudysectt.org/global-report/>

261 *Ibid.*

262 *Ibid.*

263 In para. 18, the Special Rapporteur acknowledged the debates regarding the use of the term “child sex tourist”, and says the term “tourism” is to include any form of travel, whether short or long term, for business or for leisure, including long-term residential stays.

264 Report of the Special Rapporteur on the sale of children, child prostitution and child pornography on the protection of children from sexual exploitation in travel and tourism (A/HRC/22/54).

265 *Ibid.*

266 The Code is a global multi-stakeholder organisation based in Thailand, developed by ECPAT Sweden in partnership with the UN World Tourism Organisation (UNWTO) and several Swedish tour operators, after the first World Congress against CSEC in 1996. Since 2004, The Code has operated as an independent non-profit organisation. See www.thecode.org.

267 *Ibid.*

268 Article 2.3, World Tourism Organisation, Global Code of Ethics for Tourism, Adopted by Resolution A/RES/406(XIII) at the 13th WTO General Assembly, Santiago, Chile, 27 September - 1 October 1999.

for the Protection of Children from Sexual Exploitation in Tourism, in 2001.²⁶⁹ General Comment No. 16 of the Committee on the Rights of the Child on State obligations regarding the impact of the business sector on children’s rights highlights that, “child sex tourism can be facilitated by travel agencies operating on the internet as they enable the exchange of information and planning of sex tourism activities”.²⁷⁰

Unfortunately, in Malawi, even though there are thriving travel and tourism industries, it is a challenge to find information on the measures put in place regarding the prohibiting of sexual exploitation of children within the travel and tourism industries. This is despite evidence of an increase in tourism in Malawi. According to the African Development Bank, the tourism sector in Africa is growing. Between 1990 and 2014, the number of tourists to Africa grew from 17.4 million to 65.3 million.²⁷¹ Although Malawi is neither amongst the top five tourist destinations in Africa,²⁷² nor amongst the 10 fastest growing tourist destinations,²⁷³ there has been an increasing trend in the number of tourists. As reported by the World Bank,²⁷⁴ the number of tourist arrivals in Malawi grew as follows between 2006 and 2013:

Year	No. of Tourist Arrivals
2006	638,000
2007	735,000
2008	742,000
2009	755,000
2010	745,000
2011	767,000
2012	770,000
2013	795,000

The movement of people within the travel and tourism industry has a transnational element, which poses the need for extraterritorial jurisdiction of crimes committed within the travel and tourism industry, particularly when the industry is used for sexual exploitation of children. The Malawi Law Commission in its report on the development of the Trafficking in Persons Legislation, observed that the Convention against Transnational and Organised Crimes,²⁷⁵ “does not mandate, but only encourages, the establishment of jurisdiction extraterritorially in certain circumstances (including) where the nationals of a State are either victims or offenders, or that part or all of the offence is committed in the State concerned”.²⁷⁶ The Commission therefore recommended extending the scope of application of the Trafficking in Persons Bill to include elements of extraterritorial jurisdiction in conformity with current international law trends. As such, when the offence of trafficking in persons is transnational in nature, the TIP Act would have application as long as the crime has

269 World Tourism Organisation, “Guidelines for National Tourism Administration (NTA) Focal Points for the Protection of Children from Sexual Exploitation in Tourism”, 2001.

270 Doc. 13152, 27 March 2013. Also see Report of the Special Rapporteur on the sale of children, child prostitution and child pornography, Najat Maalla M’jid, Document A/HRC/25/48, 23 December 2013, in which the Special Rapporteur on the sale of children, child prostitution, and child pornography referred to both the “sexual exploitation of children in travel and tourism” and “child sex tourism; the report of the Special Rapporteur on the sale of children, child prostitution and child pornography on the protection of children from sexual exploitation in travel and tourism (A/HRC/22/54).

271 AfDB (2015), “Africa Tourism Monitor – Unlocking Africa’s Tourism Potential”, Vol 3 – Issue 1.

272 Morocco, Egypt, South Africa, Tunisia and Zimbabwe.

273 Lesotho, Cote d’Ivoire, Chad, Mali, Sudan, Madagascar, Ethiopia, Ghana, Niger, Congo Republic.

274 World Databank (2015), “World Development Indicators”.

275 Article 15 (1) (mandatory jurisdiction); Article 15 (2) (optional jurisdiction); and Article 16 (10) (obligation to prosecute where there is no extradition due to nationality of the offender).

276 Malawi Law Commission (2011), “Report on the Development of the Trafficking in Persons Legislation”, 21.

sufficient connection with Malawi. Thus, when the crime is committed wholly or partly in Malawi, by a Malawian citizen or a foreigner ordinarily resident in Malawi, but no element of the offence is committed in Malawi, sufficient connection may be established. When the victim of the offence is Malawian, a sufficient connection is established regardless of where the offence is committed.²⁷⁷ In terms of prosecuting perpetrators if they are Malawian or if the victim is Malawian and when the offence was partly or wholly committed in Malawi regardless of nationality of the perpetrator or victim, the Extradition Act²⁷⁸ and the Mutual Assistance in Criminal Matters Act²⁷⁹ would be of assistance.²⁸⁰ The Law Commission further recommended that the Trafficking in Persons Act should extend application of jurisdiction to instances where the accused person has already faced trial in another country, so long as that trial was merely to shield that person.²⁸¹

Although such recommendations were made by the Law Commission, the final TIP Act did not include the proposed provisions. However, the TIP Act does place an obligation on international transportation providers to verify the identities and destinations of all passengers, the failure of which makes them liable to a fine of K5,000,000 (approximately 7,000 USD), and imprisonment for five years.²⁸² When transportation providers knowingly transport trafficked persons, the law places an obligation on them to pay for their return as well as all lodging and related expenses pertaining to the persons for the duration of their stay within and outside Malawi.²⁸³ Similarly, using premises for purposes of trafficking in children or preventing a trafficked person from leaving the country is criminalised with the possibility of imprisonment for 14 years without the option of a fine.²⁸⁴ Although framed in the general context of trafficking in children, these provisions are one way of regulating the travel and tourism industry and protecting the sexual exploitation of children within this sector, especially where such exploitation happens within the context of trafficking. Considering the transnational nature of tourism and travel, the Law Commission recommendations for extraterritorial jurisdiction of crimes related to trafficking in persons should be incorporated in the TIP Act as that would also be of relevance when the trafficking of children happens within the travel and tourism industry.

COORDINATION AND RESPONSE

The Government of Malawi acknowledges that it has maintained its efforts to ensure victims' access to appropriate services but systematic procedures for proactively identifying victims of trafficking among vulnerable populations, especially women and girls in prostitution, have not yet been established.²⁸⁵ Government-run hospitals also provide trafficking victims with limited access to medical and psychological services. At the district level, the victims are referred to various NGO-run shelters, which cater largely for vulnerable children and youth, with some providing specialised care for women, but not for men. The government depends heavily on international organisations for

277 *Ibid.*

278 Cap. 8:03 of the Laws of Malawi.

279 Cap. 8:04 of the Laws of Malawi.

280 Malawi Law Commission (2011), "Report on the Development of the Trafficking in Legislation", 21.

281 *Ibid.*, 21-22.

282 Section 24, Trafficking in Persons Act (2015).

283 *Ibid.*

284 *Ibid.*, section 25.

285 Paragraph 78 of the draft Malawi's State Party Report on the OPSC (2016).

funding most anti-trafficking programmes. In 2012, the government was said to have funded only one recovery drop-in centre in Lilongwe for victims of trafficking and gender-based violence (with an unknown number of trafficking victims patronising the centre).²⁸⁶ There are also over 100 police stations throughout the country some of which have victim support units (as earlier mentioned) to respond to gender-based violence, including trafficking crimes, which provide limited counselling and, in some places, temporary shelter to victims.²⁸⁷ Limited access to medical and psychological services is also available at government-run hospitals. In addition, NGO-run shelters for victims are available at the district level.

To date there are three Safe Homes in Malawi. The first one is run by the Salvation Army and it is found in Mchinji District, where Malawi borders with Zambia, and it mainly provides services to children, youth and women but not men. It can accommodate 80 victims at a time. The second Safe Home, which accommodates eight victims and survivors at a time, is found in Zomba District and it is run by YONECO. The third is found in Rumphi District and was also established by YONECO, but in collaboration with the Malawi government. It can accommodate 20 survivors and victims at a time. The facilities provide temporary accommodation to survivors of violence and abuse. In most cases, placement facilitates the investigations and medical attention (examination and treatment) during the course of managing a case. Clients can be placed at the Place of Safety following formal requests from the respective police and District Social Welfare Office. Counselling and psychosocial support for the clients are ongoing processes facilitated by para-counsellors. The YONECO Safe Place model was adopted by the Ministry of Gender, Children, Disability and Social Welfare to become a model for the Places of Safety as stipulated in the Child Care, Protection and Justice Act (2010). Further to this, the Ministry has signed a Memorandum of Understanding (MOU) with YONECO on technical support in the management of a Social and Rehabilitation Centre based in Lilongwe, wherein a total of 31 clients were accommodated from January-December 2016.²⁸⁸ Security is a challenge in the Safe Houses and there is need for the Malawi Police to support the initiatives by providing armed security at all times at these houses. Suffice to say that YONECO, in Zomba, has an informal agreement with the Police to support the guarding and patrol of the safe house. There is an average of seven civil society organisations per district providing child protection services and the National Child Helpline is providing information, advice and counselling to thousands of children each year.²⁸⁹

The coordination at the local level is done through the Community and District level structures such as District Child Labour Committees and District Child Protection Committees. These structures are meant to protect children at community and district levels. At the National level there are steering Committees that guide policy direction for child protection.

In addition, the government has set up various structures to strengthen protection and care of children such as the Child Case Review Board, Child Panels and Child Magistrates. These include Police Victim Support Units (PVSUs) in 34 Police Stations across the country, nine substations and 38 posts, and 20 hospital-based One Stop Centres for women and child survivors of rape, family violence and child maltreatment.²⁹⁰ At the community level there are over 350 Community Victim Support

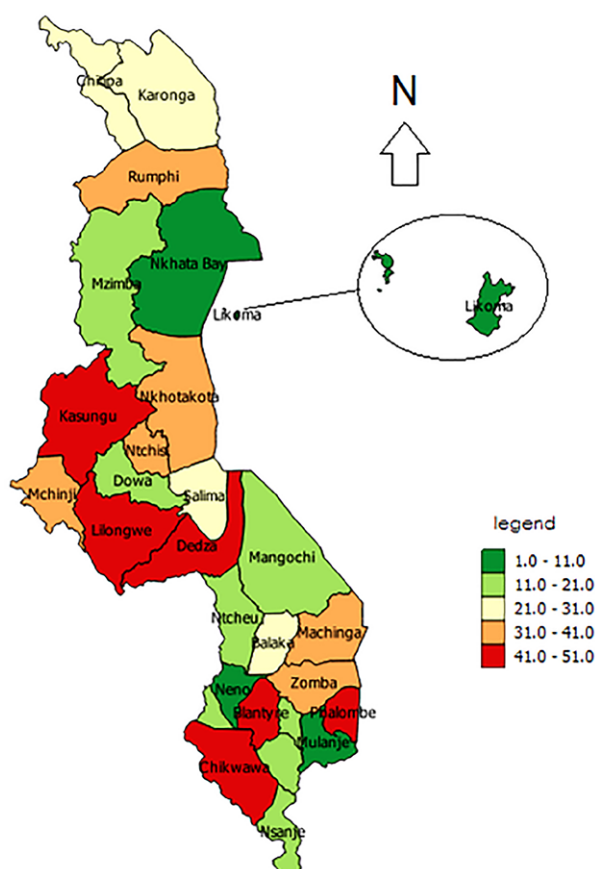
286 United States Department of State (27 June 2011), 2011 Trafficking in Persons Report – Malawi.

287 *Ibid.*

288 This information about YONECO's Safe places was provided by YONECO to the researcher, in July 2016, in a summary of YONECO's programmes.

289 Malawi Human Rights Commission (2016), "Concept Paper on the '25 Years of CRC in Malawi' Conference", 6.

290 *Ibid.*



Mapping of sexual violence/abuse cases against children reported by PVSUs in 2015*

* The Malawi Police (2015), "Analysis of Crimes Reported at Police Victim Support Units in Malawi", 20. The legend suggests percentage of cases of sexual abuse of children reported to VSUs.

All cases handled by PVSUs are registered and recorded for collation and analysis.²⁹⁶ The Police services have developed an internal database of the cases they handle, to facilitate realistic approaches to child protection issues.²⁹⁷

In 2015, a total of 895 incidences of sexual abuse/violence against children were reported at PVSUs in Malawi, representing 37% of all violence cases against children reported by the PVSUs.²⁹⁸ Out of these, the central region registered the highest number of sexual violence/abuse cases against children (37%) followed by the southern region (32%), then the eastern region.²⁹⁹ The highest number of these cases, (13%), was reported in Blantyre district, which is the commercial hub of Malawi.³⁰⁰ There is a high concentration of sexual violence against children in the central and southern parts of Malawi, as seen in the map below. However, this data is not disaggregated in terms of the types of sexual abuse; hence, it is not clear what percentage of these cases represents CSEC.

291 These are community-based structures which complement the Malawi Police VSUs.

292 Malawi Human Rights Commission (2016), "Concept Paper on the '25 Years of CRC in Malawi' Conference", 6.

293 Twea, Edward B & Manjolo, Willard A (2012), 8.

294 *Ibid.*

295 *Ibid.*

296 The Malawi Police, Analysis of Crimes Reported at Police Victim Support Units in Malawi 2015.

297 Twea, Edward B & Manjolo, Willard A (2012), 8.

298 The Malawi Police (2015), "Analysis of Crimes Reported at Police Victim Support Units in Malawi", 18.

299 *Ibid.*, 19.

300 *Ibid.*

In what has been commended as a positive development, as it is considered a way of providing focus to, and developing the social services system, the Ministry of Gender, Children and Community Development delinked social welfare services from the Child Protection Development Department.³⁰¹ The Social Welfare Directorate, under the government Ministry, focuses on social services which are a key element of combating commercial sexual exploitation and providing an effective response mechanism for victims. The social services are, however, not yet fully operational as there is still need for the government to increase the social workforce by training more social workers to meet the demand.

Under the Ministry of Health, all health services now test for HIV in sexual assaults and administer pre-exposure prophylaxis (PEP) when necessary. Guidelines have been approved which will be used by all service providers, which include post-treatment follow up for survivors. There is a designated desk office to ensure that the services are provided at an approved standard.³⁰²

The Human Rights Commission Act of 1998 established the Human Rights Commission (HRC) as a national institution independent of the authority or direction of any other body or person for promotion and protection of human rights including the rights of children. It has a very broad mandate including to 'investigate violations of human rights on its own motion or upon complaints received from any person, class of persons or body'.³⁰³ Within the HRC there is a Directorate of Child Rights, which was previously just a unit and is responsible for all matters related to children within the HRC.

In 1999, the National Juvenile Justice Forum (NJJF) was founded as a pilot project for an entity to inform policies, programmes and build capacities of stakeholders for children in contact with the law.³⁰⁴ Its work, therefore, covers both child protection and child justice. To more aptly reflect the work and advocacy that it does on behalf of children in the areas of child protection and justice the name of the institution was changed to National Child Justice Forum (NCJF). Coordination amongst stakeholders for children in contact with the law has, through the work of the NCJF, improved. The Judiciary has rolled out child justice courts to some districts with assistance from UNICEF and other collaborating partners, making a total number of seven standalone courts, with 16 specialised Child Magistrates.³⁰⁵ Child Justice Magistrates trained in core competencies have been designated in all districts where there is no Child Justice Magistrate, and tools as well as guidance documents have been developed, such as the Child Care Disposal Guidelines for the Child Justice Courts and the Handbook for Child Justice Practitioners. With such awareness amongst judicial officers, there has been over a 100% increase in child protection cases; maintenance, child neglect, desertion and parentage, among others.³⁰⁶

In the absence of a fully operational social welfare service by the Ministry of Gender, Children and Development, CSOs play a vital role. The Malawi Network against Child Trafficking (MNACT) was established as a national network of government institutions, civil society organisations, and development partners whose aim was to work together on a range of child trafficking related campaigns by sensitising the public to human trafficking and calling for a complete elimination through collaborated efforts. MNACT was formed in 2006 following a visit to Malawi in 2005 by two

301 Twea, Edward B & Manjolo, Willard A (2012), 8.

302 *Ibid.*, 9.

303 Section 12, Human Rights Commission Act (Cap. 3:08).

304 Its mission is 'to provide an accessible, equitable and fair child justice system that respects the best interests of the child through care, protection and justice services' – See National Child Justice Forum Five Year Strategic Plan (2012-2016) p11.

305 Malawi Human Rights Commission (2016) "Concept Paper on the '25 Years of CRC in Malawi' Conference" 6. Twea, Edward B & Manjolo, Willard A (2012), 6.

306 *Ibid.*

founding members of the Southern Africa Network against Trafficking and Abuse of Children (SANTAC) to promote the regional network and initiate efforts for civil society to join and work together at national and regional levels against all manifestations of trafficking and abuse of children in Southern Africa.³⁰⁷

MNACT was in the same year (2006) changed to a broader network called the Malawi Network against Trafficking (MNAT), which looks at trafficking issues in general. This was an initiative of the Ministry of Gender, Children and Social Welfare to establish a national consultative stakeholder's forum in the fight against trafficking in persons through coordination, cooperation and communication among state and non-state actors. MNAT is chaired by the Ministry of Home Affairs and Internal Security and coordinated by Eye of the Child. It has over 90 consultative members and partners. MNAT resolved to support the Ministry of Home Affairs and Internal Security in establishing the Coordination Committee as a policy body.³⁰⁸ MNAT adopted its Plan of Action in February 2007 at its first network meeting where Eye of the Child, a local NGO, was appointed as its coordinating NGO. The Plan of Action addresses six thematic areas, namely: (1) Coordination, partnership and monitoring; (2) Prevention and social mobilisation; (3) Rescue, rehabilitation and reintegration; (4) Training and capacity building; (5) Research and advocacy; and (6) Fundraising and resource mobilisation. Following the enactment of the Trafficking in Persons Act in 2015, at a meeting sponsored by Norwegian Church Aid (NCA), MNAT issued a press statement welcoming the establishment of the National Coordinating Committee as a policy body that will enhance the stakeholder and Network activities in Malawi and facilitate the implementation of the Act. Amongst its achievements, MNAT coordinated the Ministry of Gender National survey on child trafficking which was supported by UNICEF, ILO and the Malawi Human Rights Resource Centre (MHRC).

UN Women, which is also a member of the Network, provided lobbying support for the enactment of the Trafficking in Persons Act. NCA provides financial and technical support for network forums and advocacy. Other agencies which provide technical support are the International Organization for Migration (IOM), UNODC, and the United States Embassy.

The **National Child Helpline** is another powerful tool for promoting the protection of children from all forms of abuse and exploitation. It was established by YONECO in September 2006 and was transformed to become the National Child Helpline in March 2011 under the Ministry of Gender, Children and Social Welfare. The Helpline's toll free number is the International Child Helpline's short code of 116. The helpline is accessible to subscribers from all telecommunication networks free of charge.³⁰⁹ YONECO also runs a **Gender Crisis Line**, a telephone based, toll free facility that acts as a reporting mechanism on Gender Based Violence (GBV) cases through provision of counselling and psychosocial support to victims and survivors as well as by facilitating the necessary referrals. The facility is currently accessed at 80004404 and is manned by para-counsellors who have a background

307 MNACT Newsletter (2015) p1.

308 MNAT also resolved to operationalise the work of all enforcement officers; establish a Trafficking in Persons Fund; conduct stakeholder service mapping and baseline survey; conduct immediate training for all members of the National Coordinating Committee (NCC) and all enforcement officers; start popularisation of the Act for all Malawians to know; develop guidelines, rules and regulations as required by the Law for service partnership; develop a policy on trafficking in persons (TIP) to address all cross-cutting issues; and develop a well coasted National Plan of Action that will facilitate the implementation of the Act. See MNAT Press Statement on the Implementation of the Trafficking in Persons Act (2015).

309 See YONECO, Tithandizane National Child Helpline, available at <http://www.yoneco.org/site/index.php/our-innovative-approaches/220-tithandizane-national-child-helpline-listening-to-children-s-voices> (accessed 11 May 2016).

in the gender related laws and case management.³¹⁰ The team facilitates the follow-up of cases in partnership with respective Police Victim Support Units and District Social Welfare Offices. Publicity of these facilities is done using the mass media through radio programmes and jingles on YONECO FM which has nationwide coverage. Between 2012 and 2015 a total of 88 victims of child sexual abuse and exploitation were assisted by the National Child Helpline. As of July 2016, a total of 67 clients had their cases registered and followed up through the GBV Crisis Line. There is, however, no desegregated data on how many of the cases reported through the helplines were CSEC-related.

A number of organisations have been working to end child labour in Malawi. These include: Together Ensuring Children's Security, based in Lilongwe, focusing on the tobacco-growing region of Malawi;³¹¹ The Creative Centre for Community Mobilisation (CRECCOM), based in Zomba;³¹² and in Nkhotakota District, the Association for Elimination of Child Labor launched a school project in January 2004 with the aim of combating child labor by providing primary school education to the community.³¹³ In addition, IPEC launched in Malawi its Regional Programme on Prevention, Withdrawal, and Rehabilitation of Children Engaged in Hazardous Work in Africa.³¹⁴ As a positive outcome of this programme, in 2012, the Malawi government adopted the List of Hazardous Work for Children,³¹⁵ which among other things includes work that can harm the health and safety of the child, including:

- a. work in tavern, bars, pubs, shebeens;
- b. work involving escort services in motels, hotels or any other places of recreation or entertainment;
- c. work involving exposure to material of a pornographic or adult content or involving the child in any pornographic or adult act, exhibition or production;
- d. work as a tour guide.

At the international level, Malawi cooperates with a number of institutions in dealing with the sale of children, prostitution and pornography by reporting and facilitating the recovery of children that have been trafficked beyond its borders. These include the Southern African Regional Police Chiefs Cooperation Organisation (SARPPCO), and the International Police Organisation (Interpol) which has 189 partners in combating crime.

310 This information was provided by YONECO in a summary during the research for this report.

311 Financed in part by Eliminating Child Labor in Tobacco-Growing (ECLT), a Geneva-based Foundation which is funded by tobacco multinational corporations "Efforts to Reduce School Absenteeism Pay Off," Africa News, 31 May 2004.

312 Empowers communities to encourage education and discourage child labor. See Ligomeka, Brian (2003), "New Schools Draw Children away from Fieldwork," Inter Press Service.

313 CRIDOC: Child Rights Information and Documentation Centre, 8 September 2004, <http://www.cridoc.net>.

314 Tsoka, Maxton & Konyani, Sidon (2003), "Child Labour Baseline Study, Draft Final Report," Centre for Social Research, University of Malawi: Zomba.

315 Employment (Prohibition of Hazardous Work for Children) Order, 2012 The Malawi Gazette Supplement, dated 17th February, 2012, Regulations, Rules, etc. (No. 1A), art. 3-5.

PREVENTION OF COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN

The Child Care, Protection and Justice Act of 2010 provides that when a child is deemed in need of care and protection, a police officer, social welfare officer, a chief or any member of the community may take the child and place the child into his or her temporary custody or a place of safety.³¹⁶ Police officers undergo training in combating the sale of children, child prostitution and child pornography, but one problem is that the officers are not utilised for the work they were trained in as they get assigned to other duties.³¹⁷ In terms of research, there has not been a specific national study on CSEC. Information on CSEC is included in other broader studies on various forms of child abuse and exploitation (such as child trafficking, child labour and child marriage), which are all manifestations of CSEC.

Vulnerability Reduction

Social programmes and policies³¹⁸ have been put in place to ensure that children from marginalised backgrounds are adequately provided for as, among other things, this prevents their susceptibility to exploitation and abuse due to the poor economic status of their families. As a way of reducing extreme poverty and hunger; increasing school enrolment and attendance; and improving nutrition and health, well-being and protection of children in beneficiary households, Malawi initiated the Social Cash Transfer Programme (SCTP) in 2006, initially in nine districts. The aim of the programme is to provide cash grants to ultra-poor households without any able-bodied adult household members (labour constrained households). In addition, there is the National Social Support Programme (NSSP), which operationalises the Malawi Social Support Policy, an initiative for social support services in terms of welfare support; protection of assets; promotion through productivity enhancement; and policy linkages and mainstreaming to vulnerable groups, including children. The NSSP has five main components of public works under the Public Works Programme, which strengthen capacities of families and households to take care and meet the basic needs of children, namely:

- a) Fertilizer Input Subsidy Programme (FISP);
- b) School Bursaries;
- c) School Feeding;
- d) Village Saving Loan Schemes; and
- e) Community Savings Investment Promotion (COMSIP).

Awareness Raising

As one way of commemorating 16 days of activism³¹⁹ against gender-based violence, members of the MNACT, with financial and technical support from NCA (one of the network members) and the Ministry of Education, went on a national sensitisation tour for students on human trafficking. The tour went to the border districts of Mangochi, Karonga, Phalombe, Mwanza, Ntcheu, Mulanje, Nkhatabay and Machinga, due to their proximity to border areas and the high numbers of trafficking cases reported in the media.³²⁰ The awareness campaign was also aimed at empowering children to identify possible situations that may lead to human trafficking as well as exploring ways of how

³¹⁶ Section 37(c).

³¹⁷ For example, in September, 2010, three Malawi Police Officers underwent training on how to track down child pornography on the internet in Toronto, Canada. See paragraph 77 of the draft Malawi's State Party Report on the OPSC (2013).

³¹⁸ As outlined in Malawi's Initial Report to the Committee on the Rights of the Child, on the OPSC (2016), paragraphs 70-72.

³¹⁹ From November 25th to 9th December 2015.

³²⁰ MNACT (2015), '16 Days of Activism: Trafficking in Persons Sensitisation of Children Campaign' - A report to the Norwegian Church Aid.

children can protect themselves from trafficking in persons. The campaign was conducted under the global theme, 'From peace in the home to peace in the world: Make education safe for all', of which Malawi's national theme was 'Women Empowerment, a drive for Socioeconomic Development'. Participating members were drawn from the Malawi Human Rights Commission, the Ministry of Home Affairs and Malawi Police Service Headquarters, Eye of the Child, Law Commission, Women Judges Association, Child Case Review Board, Ministry of Gender, Association for the Progressive Women (APW), Ministry of Information, the Ministry of Education, Salvation Army and Child Rights Advice Centre.

The campaign reached a total of 1,474 children in schools around Karonga and Nkhata Bay Districts; 1,722 children in Mchinji and Kasungu Districts; 1,456 in Mwanza and Ntcheu Districts; 1,389 in Phalombe and Mulanje Districts; and 1,821 in Mangochi and Machinga Districts.³²¹ The campaign noted that the participation of young people on the issue of exploitation of children is critical as they have the capacity to contribute towards long-term changes within their homes and families, within the communities and the schools, and at higher levels. Amongst the issues identified to be addressed were the limited involvement of children and women, poor communication between children and parents which affects the ability of children to report issues to their parents, lack of appropriate parenting skills for children with special needs, and lack of power to make decisions on the part of children and women. The children submitted that children, especially girls, are often seen as commodities for the family and potential trafficking in person's victims, which makes it acceptable for families to sell their children into the labour and/or sex industry. However, sexual activity is often seen as a private matter making communities reluctant to act and intervene in cases of sexual exploitation. As such, parents need to be mobilised to understand the importance of protecting children from traffickers, and children and youth need to be empowered to play a strong advocacy role within their own families and in the monitoring of cases of trafficking in persons, abuse and exploitation within their communities.³²²

The Role of the Media

The growing levels of awareness on child trafficking and commercial sexual exploitation issues in Malawi can also be attributed to the important role the Media is playing in this regard. More and more stories on exploitation of children are captured online and through the visual and audio media.³²³ This helps to raise community awareness and also acts as deterrence to potential perpetrators as they know that someone is watching them and that their actions can be reported in the news. For example, in a discussion with the NCA during the research process for this report, it was mentioned that even though there seems to be an increase in the prevalence rates of trafficking in persons issues in Malawi, this is a consequence of awareness levels about these issues and the available remedies in most communities. This is so because, unlike in the past, more and more people, including children, are identifying elements of child trafficking and taking action against the same. Also, as discussed above, the media has covered such stories, which has greatly contributed to the sensitisation of issues related to sexual exploitation of children for commercial purposes. Recognising the important role played by the media in bringing social issues to the fore of advocacy agendas, the

321 *Ibid.*

322 *Ibid.*

323 See for example, "Malawi government warns job recruitment agencies over Kuwait labour export: 'We will prosecute you!'" *Nyasatimes Newspaper*, 10 June 2016, accessed 20 June 2016, <http://www.nyasatimes.com/malawi-govt-warns-job-recruitment-agencies-kuwait-labour-export-will-prosecute/>; "MPs Urged to Pass Human Trafficking Laws", *Nyasatimes Newspaper*, 12 February 2015, <http://www.nyasatimes.com/mps-urged-to-pass-human-trafficking-law-malawi-has-sex-brothels-osman/>; "Malawi Government Repatriates Abducted Children", *All Africa Newspaper* 12 January 2015 http://allafrica.com/stories/201501180027.html?utm_content=buffer5f61a&utm_medium=social&utm_source=twitter.com&utm_campaign=buffer; "Malawi Children's Home Turns into Drug, Prostitution Hub" *Nyasatimes Newspaper*, 29 December 2012, accessed 1 May 2016, <http://www.nyasatimes.com/malawi-childrens-home-turns-into-drug-prostitution-hub/>; "Malawi Soft Target for Cybercrime", *The Nation Newspaper*, 8 June 2016; "Lilongwe Registers Increase in Child Prostitution", *Malawi News*, 1 August 2015, accessed 10 June 2016 <http://malawinewsnow.com/2015/08/lilongwe-registers-increase-in-child-prostitution/>

2012 National Conference on Child Labour called upon the media to report regularly, accurately and responsibly on the issues of child labour, establish a dedicated Media Association for Elimination of Child Labour and create greater public awareness on the dangers of child labour, both for the child and for national development. Although the call was not specifically for reporting against CSEC, if CSEC happens in the context of child labour, with responsible reporting by the media on child labour issues, CSEC would also be highlighted.

ACCESS TO JUSTICE FOR VICTIMS AND SURVIVORS

Some of the recommendations from the 2012 National Child Labour Conference were to train the judiciary in child labour case management; popularise the nationally agreed List of Hazardous Work prohibited to children under the age of 18 (appended to the Employment Act, 2012) including through the training of labour inspectors, extension officers, social partners and community-based child labour monitoring groups; undertake a comprehensive child labour survey, disaggregating data about those agricultural sub-sectors and activities in which most child labourers are found; and allocate resources for child labour prevention and elimination appropriately.³²⁴

With support from UNICEF, NCA, and other stakeholders, a training manual of judicial officers, police prosecutors and investigators on issues of human trafficking has been developed. This is to ensure that the judiciary is well versed on trafficking issues and should be able to, among other things, assist children, including those who are victims of commercial sexual exploitation, to access justice effectively. To facilitate access to the court system by child victims through the Child Justice Courts, child-friendly procedures are in place in the criminal justice system to assist child victims and witnesses. For example, the child victim is required to appear in court with a parent or guardian unless the same is prejudicial to the matter at hand and not in the best interests of the child,³²⁵ the media attendance is restricted and they are not supposed to disclose the identity of the child to maintain their privacy;³²⁶ and the proceedings of the court are supposed to be informal.³²⁷

Since the judiciary cannot effect its duties alone the cooperation with other entities is vital, including the CVSUs, the Police VSUs and Social Rehabilitation Centres operated by the Malawi Police Services to assist survivors of trafficking in persons. These services also include reintegration of trafficked children into their families, shelters, psycho-social counselling services, and awareness raising initiatives. Unfortunately, the law does not specifically provide for compensation to all victims of commercial sexual exploitation. Limited provision is available under section 40 of the Trafficking in Persons Act wherein it is provided that a trafficked person, regardless of his immigration status, has the right to institute civil proceedings against any person including a public officer, in respect of an offence under the Act, or seek compensation or restitution and recovery in damages from any person or from the proceeds of the disposal of assets of any person connected with an offence under the Act. Thus, where commercial sexual exploitation of children happens in the context of trafficking in persons, the victims are entitled to compensation.

324 Malawi National Conference on Child Labour in Agriculture (2012), "Outcome Document and Framework of Action", 8.

325 Section 135, Child Act.

326 Section 139, Child Act.

327 Section 145, Child Act requires that there be regular breaks during the proceedings, no one must wear a uniform and no technical language must be used.

CHILD & YOUTH PARTICIPATION

Under Article 12 of the CRC, States Parties are under an obligation to ensure that children have the right to be heard in all matters affecting them. Child participation should therefore be a key feature of programmes protecting children against CSE. In Malawi, however, child participation is a developing area in child rights programming, and it is yet to become a key element of advocacy and programming for children amongst various stakeholders. The level of involvement of children in matters that affect them is still limited. As was reported by the stakeholders during the validation meeting for this report, there used to be a Children's Parliament which was organised through the Ministry of Gender and Children's Affairs in collaboration with UNICEF and other stakeholders, but the same was handed over to Parliament about two years ago. Due to lack of technical expertise on child focussed programmes in the Malawi Parliament, the Children's Parliament has since died out.

In the context of CSEC, there are a few instances in which children have been engaged in advocacy and awareness campaigns. For example, as reported by ILO and IPEC, in 2008, the Malawi Human Rights Youth Network organised mass and open rallies to address issues of child labour in Lilongwe district, which allowed children themselves to express to the public their problems faced as domestic workers.³²⁸ This also allowed children to identify other child labourers and identify the key players who traffic children from rural to urban areas.³²⁹

More recently, in 2012, at the Malawi National Conference on Child Labour in Agriculture held in Lilongwe³³⁰ the outcome document and Framework for Action was guided by the recommendations from a children's conference, which had been held prior to the adult's conference.³³¹ The importance of empowering children to report cases of child labour is highlighted in the Child Labour NPA, which also stresses the need to intensify and extend awareness on child labour and ensure community involvement in the fight against child labour in all areas.³³² The Government of Malawi admits that vulnerable people, especially children, have been left out in the relevant training that has taken place on matters related to the OPSC, the same having focussed on public officers and civil society organisations as participants.³³³ The 2014 State Party Report on the OPSC recommends that more comprehensive and systematic training and awareness raising programmes for the stakeholders, including the ultimate beneficiaries of the legislation, should be conducted.³³⁴ This would give effect to the principle of the CRC to take into account the views of the child by enabling them to express their opinions based on an informed position of the instruments that protect them so that in return they can demand compliance by the State and other stakeholders and seek appropriate remedies.³³⁵

328 ILO/IPEC (2008), Child Labour Report, 21.

329 *Ibid.*

330 Organised by the Ministry of Labour, the Malawi Congress of Trade Unions, and Employers Consultative Association of Malawi (ECAM), with support from CSOs, UN agencies, multi-stakeholder initiatives, producer associations and business, and funded by the Ministry of Labour, ECAM and the Eliminating Child Labour in Tobacco-growing Foundation (ECLT). The conference was attended by 290 delegates.

331 Supported by Eliminating Child Labour in Tobacco-growing Foundation, Plan International Malawi, Save the Children Malawi, YONECO, World Vision Malawi, Malawi Human Rights Commission, National Youth Council of Malawi and UNICEF.

332 Child Labour National Plan of Action for Malawi (2009–2016), para. 4.1.3.

333 Malawi's Initial Report to the Committee on the Rights of the Child, on the OPSC (2016), para. 80.

334 *Ibid.*, paras. 80-81.

335 *Ibid.*, para. 81.

In a positive development, the National Youth Council of Malawi, whose purpose is to ensure the engagement of youth in the development of the country, works in collaboration with the Ministry of Labour, Youth and Manpower Development. Currently, the National Youth Council is involved in the development of the Child Labour Policy aimed at guiding the programmes to protect children from all forms of exploitation and the youth are involved in the process.

RECOMMENDATIONS FOR ACTION



National Plans of Action

While there has been progress in adopting various National Plans of Action on issues related to children, there is no specific NPA to combat CSEC in Malawi. During the validation meeting for this report, stakeholders were unanimously of the view that there is no need to develop and adopt a specific NPA on CSEC but that:

- a) provisions on CSEC be included in already existing NPAs on children, with proper support and funding for community-based child protection structures which will help in the implementation of child-related NPAs at the local level.
- b) all existing annual action plans should be consolidated to take stock of provisions related to CSE and prioritise actions to be undertaken.

Coordination and Cooperation

Although significant efforts have been made to improve coordination among government, NGOs, donors and other stakeholders there is a need to also engage the private tourism and travel sector, and other industries, as this is where CSEC is sometimes facilitated. Thus, the Malawi Travel and Tourism Board, private tourism and travel companies, and the Ministry of Industry, Trade and Tourism should coordinate and collaborate to combat CSEC.

Capacity building of various stakeholders, including social workers, judicial officers, prosecutors, labour officers, health officers, community-based leaders and groups, children's groups, the media, workers' unions, and private institutions in various industries, should be carried out to track and assess CSEC, analyse policies and programmes relating to CSEC, and support the elimination of the practice.

Parallel structures created at community levels, such as Community Based VSUs, should be linked to already existing structures like Village Development Committees (VDCs), as structures responsible for implementation of village specific activities and action plans, to avoid a fragmented approach to community development and child protection.³³⁶

³³⁶ For more on local governance structures in Malawi see, Tilitonse (2013), "Report for a Political Economy Analysis of Local Governance in Malawi", 3 & 17.

Through the Malawi Police Victim Support Unit, the government, in collaboration with other relevant stakeholders (such as local NGOs) should build on the VSU database to establish a central database for recording violations of child rights, with disaggregated statistical data on CSEC issues in Malawi.

Prevention

CSEC is one field which has been under-researched in Malawi. There is therefore a need for primary research on the various forms of CSEC as well as its root causes in Malawi which will facilitate the development of context specific solutions for ending the practice. To this effect, the government of Malawi, through the Ministry of Gender, in collaboration with national and international partners, should develop a Programme Document on CSEC in Malawi. This should be preceded by a comprehensive national research on CSEC in Malawi, which should build on this report.

At the moment, there is an increased level of awareness on child trafficking and various forms of exploitation of children in Malawi. Nonetheless, a nation-wide awareness-raising campaign on CSEC, focusing on the rights of victims as well as the responsibilities of law enforcement, justice officials, and other relevant authorities should be carried out by the relevant government ministries (Ministries of Gender, Tourism, Labour, Home Affairs). In addition, the awareness-raising initiatives on the various manifestations of CSEC, and its negative effects on children, should also place emphasis on the issues of child sexual abuse materials and sexual exploitation of children in travel and tourism.

There is also an increase in the number of cases reported by the media. As such, the media should also be part of an integrated framework for protecting children from CSE as they are better placed to publicise cases and bring the issue to the attention of those in positions of power to take action.

Deterrence measures must be implemented to reduce the demand for CSEC, including the strict enforcement of punishments for offenders. Online protection of children should be an integral part of the government efforts to protect children from various forms of abuse and exploitation. IT departments in both the government and private sectors should be trained in child protection principles and online safety for children so that they can track those patronising or using online sexual abuse material of children.

Protection

The police are a key institution in ensuring that the perpetrators of crimes against children are held accountable by facing the law and receiving appropriate punishment. There is therefore need to ensure that the Victim Support Unit has sufficient and qualified staff who receive periodic training in investigative and interviewing skills, especially on matters of sexual exploitation of children. Likewise, both the police and the judiciary should have enough resources to ensure speedy and smooth processing of CSEC matters. Victims who seek redress through the justice system should be assisted by properly qualified personnel in a child sensitive infrastructure. The training of police and prosecutors on their duty to investigate and prosecute offences related to CSEC should be systematic. As there is a high turnover of police officers assigned to the Victim Support Unit and working specifically on child protection issues, there is a need to continuously train more officers to ensure that no gap is left when officers are moved among units.

The Trafficking in Persons Act is a strong piece of legislation as it was developed based on the contextual background of factors influencing the trafficking of children in Malawi. However, since its enactment, no implementation plan has yet been developed. There is therefore an urgent need for an implementation plan by the government for the TIP Act to be developed so as to guide the operation of the various stakeholders. The government should ensure that adequate resources are available for promoting the protection of all persons from specific forms of trafficking, including that which takes place in the context of commercial sexual exploitation of children.

It is recommended that the laws should be harmonised to define a child as a person aged below 18 years in line with international standards. As such, the Child Act, the Penal Code and the Malawi Constitution should specifically define a child as a person aged below 18 years.

The law that prohibits prostitution focuses on the rights and protection of girl victims. Malawi should therefore amend the Penal Code provisions on prohibition of prostitution to also expressly protect boy victims.

Malawi should adopt a comprehensive approach to combating child marriage, which could be set out in a national action plan, and include legal reforms and programmatic initiatives that address the causes and consequences of child marriage.³³⁷ The gaps at the policy and programmatic levels should be removed, including the complex readmission procedures for all married girls who wish to continue with education.³³⁸

The draft Child Labour Policy should be finalised and adopted and relevant communication material and videos should be produced in the local language, so as to raise greater awareness of the problem of commercial sexual exploitation in communities.

There is need for more and more awareness of sexual exploitation of children especially in the travel and tourism industries, as that is one area in which children are easily lured under the guise of being offered a decent job. Companies in Malawi's tourism industry should adopt the Code of Conduct against the Sexual Exploitation of Children in Travel and Tourism, to ensure responsible and sustainable tourism that integrates child protection principles into the industry.

Once children have been withdrawn from exploitative and hazardous labour or practices they should be provided with other alternatives, including support to return to their communities of origin, if it is in their best interests.

Response

While child protection NGOs that focus on awareness raising programmes are vital, it is equally important for NGOs, and above all the State, to provide protection as well as recovery measures for social reintegration and physical/psychological recovery to exploited children across Malawi. There is a need to develop tailored services and support structures for children who are sexually exploited for commercial purposes, since CSEC manifests in various forms. The government of Malawi should

337 Human Rights Watch 'Submission to the Human Rights Committee Consideration of Malawi's Periodic Report, 111th Session' 4, accessed 21 April 2016 http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/MWI/INT_CCPR_CSS_MWI_17468_E.pdf.

338 The HRW report describes factors contributing to child marriage, the severe consequences of child marriage, the risks that girls face when they resist these marriages, and the abuses they frequently face in marriage. It also examines the absence of protection for victims of child marriage and the many obstacles they face in attempting to obtain redress; as well as shortcomings in existing programmes to combat child marriage.

capitalise on already existing efforts in child protection systems to strengthen and design context specific programmes and responses which meet the needs of families and child victims, and are at the moment available in a limited capacity. To this effect, the Malawi Police should ensure that officers who undergo specialised training in combating the sale of children, child prostitution and child pornography, are utilised for the work they were trained in and not be assigned to other duties.³³⁹ In the event that they have been transferred to other units, there must be a sustainable programme for training more officers. Systematic procedures for proactively identifying victims of trafficking among vulnerable populations, especially women and girls in prostitution, must be established to ensure access to appropriate services for them.³⁴⁰

There is lack of information on response mechanisms for children forced into sexually exploitative work by their families under the guise of poverty. The International Guidelines for Decent Work should be well publicised in Malawi and guide the nature of jobs to be offered to children or the society at large.

There is need to replicate response and recovery initiatives, such as the Safe Houses by Salvation Army and YONECO. Three safe houses are not enough to service the entire country even though geographically, there is one house per region (i.e. Zomba – Southern Region; Mchinji – Central Region; Mzimba – Northern Region).

Access to Justice

Access to justice is generally very limited because of stigma attached to cases involving sexual abuse and exploitation. In the same vein, there is no specific legal provision requiring compensation of victims of commercial sexual exploitation. Even though the Trafficking in Persons Act does provide for compensation or damages to victims of trafficking, this is in the context of just one manifestation of CSEC. There is therefore a need for the specific provision of compensation for victims and survivors of CSEC in the legal and policy framework of Malawi. Awareness raising efforts by both the government and CSOs should be intensified to promote the confidence of children in the justice system, especially in relation to their privacy and confidentiality. There is also a need to link the formal justice system to informal mechanisms and the role of traditional leaders so that they are also well versed in the fight against CSEC.

Child and Youth Participation

A formalised structure of child participation should be re-established in Malawi to ensure meaningful participation of children in the policy making process. Thus, the Children's Parliament should be re-vitalised by moving it from Parliament to the Ministry of Gender, Children and Social Welfare.

³³⁹ For example, in September, 2010, three Malawi Police Officers underwent training on how to track down child pornography on the internet in Toronto, Canada. See para. 77 Malawi's Initial Report to the Committee on the Rights of the Child, on the OPSC (2016).

³⁴⁰ Paragraph 78 Malawi's Initial Report to the Committee on the Rights of the Child, on the OPSC (2016).

BIBLIOGRAPHY

African Charter on the Rights and Welfare of the Child, OAU Doc. CAB/LEG/24.9/49 (1990), entered into force Nov. 29, 1999.

ACPF (2007) "Realising rights for children: Harmonisation of laws on children in Eastern and Southern Africa"

AfDB (2015), "Africa Tourism Monitor – Unlocking Africa's Tourism Potential", Vol 3 – Issue 1.

AU Convention on Cyberspace and Personal Data Protection, EX.CL/846(XXV), Adopted by the 23rd Ordinary Session of the Assembly of the African Union, in Malabo, on 27th June 2014

CJ (a female infant), Adoption Case No. 28 of 2009

Centre for Social Research, (2008) 'Prevention of Trafficking in Women and Children for the Purpose of Sexual Exploitation: Malawi', A Report prepared for and submitted to Norwegian Church Aid, Lilongwe (Unpublished)

Child Labour National Plan of Action for Malawi (2009–2016)

Child Labour National Plan of Action for Malawi (2009–2016)

Chirwa, Danwood M. (2006), "Harmonisation of national and international laws to protect children's rights: The Malawi report" (unpublished), Prepared for the African Child Policy Forum (ACPF)

Chirwa, Danwood M and Kaime Thoko (2008), "Where are the missing pieces? Constructing a mosaic of the CRC and the African Children's Charter in Malawi's law and policy" 2 *Malawi Law Journal*

Code of Conduct for the Protection of Children from SECTT (1996) www.thecode.org

Committee on the Rights of the Child (2016), Consideration of Reports Submitted by States Parties under Article 44 of the Convention, Third to Fifth Periodic Reports of States Parties due in 2013, Malawi, CRC/C/MWI/3-5 21, June 2016.

Committee on the Rights of the Child, (2016), Consideration of Reports Submitted by States Parties under Article 12 (1) of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, Reports of States Parties due in 2011, Malawi, CRC/C/OPSC/MWI/1, 1 July 2016

Committee on the Rights of the Child, First Periodic Report to the UN Committee on the Rights of the Child, Malawi, CRC/C/MWI/2 of 17 July 2008

Committee on the Elimination of Discrimination against Women (2008), Consideration of Reports Submitted by States Parties under Article 18 of the Convention on the Elimination of all Forms of Discrimination against Women, Sixth Periodic Report of States Parties, Malawi, CEDAW/C/MWI/6, 20 October 2008

Committee on the Elimination of All forms of Discrimination against Women, General Recommendation No. 21 on "Equality in marriage and family relations", Thirteenth Session, 1992, UN Doc A/49/38 at 1 (1994)

'Compilation of UN Information' and the 'Summary of Stakeholder's Information', accessed on 9 May 2016, <http://www.crin.org/resources/infoDetail.asp?ID=23512>

Convention on the Rights of the Child, GA res. 44/25, annex, 44 UN GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989)

CRIDOC: Child Rights Information and Documentation Centre (8 September 2004), accessed 31 April 2016 <http://www.cridoc.net>

DB (a male infant), Adoption Case No. 2 of 2006

Draft Report of the Working Group on the Universal Periodic Review, Human Rights Council, A/HRC/WG.6/9/L.2 (5 November 2010)

Declaration and Agenda for Action, 1996, 1st World Congress against Commercial Sexual Exploitation of Children Stockholm

ECPAT International & Plan International (2015), "Unrecognised Sexual Abuse and Exploitation of Children in Child, Early and Forced Marriage", accessed 20 June 2016, http://www.ecpat.org/wp-content/uploads/legacy/Child%20Marriage_ENG.pdf

ECPAT & DCI (2016), "Offenders on the Move: Global Study on Sexual Exploitation of Children in Travel and Tourism" Accessed 1 July 2016, <http://globalstudysectt.org/global-report/>

"Efforts to Reduce School Absenteeism Pay Off," *Africa News*, 31 May 2004.

Employment (Prohibition of Hazardous Work for Children) Order, 2012 The Malawi Gazette Supplement, dated 17th February, 2012, Regulations, Rules, etc. (No. 1A)

General Comment No. 16 of the Committee on the Rights of the Child on State obligations regarding the impact of the business sector on children's rights highlights that, Doc. 13152, 27 March 2013

Government of Malawi, Trafficking in Persons Act No. 3 of 2015

Government of Malawi, Child Care, Protection and Justice Bill No 7 of 2010 was signed into law by the President of Malawi on 29 July 2010

Government of Malawi, the Penal Code (Cap. 7:01 of the Laws of Malawi)

Government of Malawi, Immigration Act (Cap. 15:03 of the Laws of Malawi)

Government of Malawi, the Employment Act (Cap. 55:02 of the Laws of Malawi)

Government of Malawi, Constitution of the Republic of Malawi, Act No. 20 of 1994

Government of Malawi, Children and Young Persons Act of 1969, Cap. 26:03 of the Laws of Malawi

Government of Malawi, the Extradition Act (Cap. 8:03 of the Laws of Malawi)

Government of Malawi, and the Mutual Assistance in Criminal Matters Act (Cap. 8:04 of the Laws of Malawi)

Government of Malawi, Employment Act, No. 6 of 2000

Government of Malawi, Ministry of Health, (2014), "Malawi Progress Report for 2013"

Government of Malawi (2005), "The National Plan of Action for Orphans and Other Vulnerable Children", Ministry of Women and Child Development, Lilongwe

Government of Malawi, Regulation of Minimum Wages and Conditions of Employment Act (Cap. 55:01 of the Laws of Malawi).

"Government says will now help 20 Malawian girls stranded in Kuwait" *Nyasatimes Newspaper*, 8 June 2016, accessed 20 June 2016, <http://www.nyasatimes.com/govt-says-will-now-help-20-malawian-girls-stranded-kuwait/> "HIV and AIDS in Malawi", accessed 1 ay 2015, <http://www.avert.org/professionals/hiv-around-world/sub-saharan-africa/malawi>

"Human Rights Report Exposes Modern Slavery in Malawi," *Xinhua General News Service*, 26 July 2003

Human Rights Watch 'Submission to the Human Rights Committee Consideration of Malawi's Periodic Report, 111th Session', accessed 21 April 2016 http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/MWI/INT_CCPR_CSS_MWI_17468_E.pdf.

ILO & IPEC, (2011), *Mainstreaming Child Labour Concerns in Education Sector Plans and Programmes*, ILO: Geneva,

ILO/IPEC (2008), "Malawi Child Labour Report"

ILO/IPEC (2003), *Gender Mainstreaming in Actions against Child labour - Good Practices*

International Organisation for Migration, (2003), "The Trafficking of Women and Children in the Southern African Region: Presentation of Research Findings", IOM: Pretoria

International Organisation for Migration (2003), "Seduction Sale and Slavery: Trafficking in Women and Children for Sexual Exploitation in Southern Africa", IOM: Pretoria

Ligomeka, Brian (2003), "New Schools Draw Children away from Fieldwork," *Inter Press Service*.

"Lilongwe Registers Increase in Child Prostitution", *Malawi News*, 1 August 2015, accessed 10 June 2016 <http://malawinewsnow.com/2015/08/lilongwe-registers-increase-in-child-prostitution/>

MACRA (2016), "Child Online Safety and Regulation in Malawi", presentation at the Annual Human Capacity Building Workshop on Child Online Safety, Lilongwe 18-20 July 2016

"Malawi: Child prostitution worsens in cities" accessed 15 June 2016, <http://www.stopdemand.org/afawcs0153418/CATID=1/ID=131/SID=771891150/Malawi-Child-prostitution-worsens-in-cities.html>

"Malawi Child Labour Survey (2002), Zomba. Also see Child Labour National Plan of Action for Malawi (2009–2016)

"Malawi Children's Home Turns into Drug, Prostitution Hub" *Nyasatimes Newspaper* 29 December 2012, accessed 1 May 2016, <http://www.nyasatimes.com/malawi-childrens-home-turns-into-drug-prostitution-hub/>

"Malawi government warns job recruitment agencies over Kuwait labour export: We will prosecute you!" *Nyasatimes Newspaper*, 10 June 2016, accessed 20 June 2016, <http://www.nyasatimes.com/malawi-govt-warns-job-recruitment-agencies-kuwait-labour-export-will-prosecute/>

"Malawi Government Repatriates Abducted Children", *All Africa Newspaper* 12 January 2015, accessed 21 June 2016, http://allafrica.com/stories/201501180027.html?utm_content=buffer5f61a&utm_medium=social&utm_source=twitter.com&utm_campaign=buffer

Malawi Growth and Development Strategy II (2011-2016)

Malawi Human Rights Commission (2004), "Report on the Investigative Inquiry into Cross Border Child Labour in Dedza District"

Malawi Law Commission (2011), "Report on the Development of the Trafficking in Persons Legislation"

Malawi Law Commission (2006), "Law Commission Report on the Review of the Laws on Marriage and Divorce", Government Printer: Lilongwe

Malawi Law Commission (2005), "Human Trafficking in Malawi: Research Paper"

Malawi Law Commission (2005), "Report on the Review of the Children and Young Persons Act", Government Printer: Lilongwe

Malawi Law Commission (2004), "Report on the Review of Wills and Inheritance Act", Government Printer: Lilongwe

Malawi Law Commission (2000), "Report on the Review of the Penal Code," Government Printer: Zomba

Malawi National Conference on Child Labour in Agriculture (2012), "Outcome Document and Framework of Action"

Malawi Police & UNICEF (2015), "Analysis of Crimes Reported at Police Victim Support Units in Malawi"

Malawi Information and Communications Technology (ICT) Policy (2013)

"Malawi Soft Target for Cybercrime", *The Nation Newspaper*, 8 June 2016

"MPs Urged to Pass Human Trafficking Laws", *Nyasatimes Newspaper*, 12 February 2015, accessed 10 June 2016 <http://www.nyasatimes.com/mps-urged-to-pass-human-trafficking-law-malawi-has-sex-brothels-osman/>

Mwambene, Leah (2008), "The impact of the Bill of Rights on African Customary Family Laws: A study of the rights of women in Malawi with some reference to developments in South Africa", (Unpublished LLD diss., University of the Western Cape)

National Statistical Office and ICF Macro, "Malawi Demographic and Health Survey 2010", 26, September 2011, accessed 29 April 2016, <http://microdata.worldbank.org/index.php/catalog/1449>

Odala, Violet (2012), "Childhood denied: Examining age in Malawi's child law, as the Constitution becomes of age" 6:1 *Malawi Law Journal*

Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime (Palermo Protocol), adopted and opened for signature, ratification and accession by General Assembly Resolution 55/25 of 15 November 2000

Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol), Adopted by the 2nd Ordinary Session of the Assembly of the Union, Maputo, 11 July 2003

Report of the Special Rapporteur on the sale of children, child prostitution and child pornography, Document A/HRC/25/48, 23 December 2013

Report of the Special Rapporteur on the sale of children, child prostitution and child pornography on the protection of children from sexual exploitation in travel and tourism (A/HRC/22/54).

R v Lourenco, Crim. Case No. 150 of 1999 (Senior Resident Magistrate Court, Lilongwe)

Rossi, Andrea ed (2003), "Trafficking in Human Beings, Especially Women and Children, in Africa" (Annunziata, Italy: UNICEF Innocenti Research Centre)

Stapleton, Adam, 'The State of Juvenile Justice in Malawi', CYC-Online, April 2000, accessed 20 November 2011 <http://www.cyc-net.org/cyc-online/cycol-0400-malawi.html>

The SADC Protocol on Gender and Development, 2008, accessed 18 June 2016, http://www.sadc.int/files/8713/5292/8364/Protocol_on_Gender_and_Development_2008.pdf

Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse (2016), Adopted by the Interagency Working Group on Sexual Exploitation of Children, in Luxembourg, 28 January 2016

Tilitonse (2013), "Report for a Political Economy Analysis of Local Governance in Malawi"

"Time for Comprehensive Anti-trafficking Law in Malawi", *Nyasatimes Newspaper* 4 February 2015, <http://www.nyasatimes.com/time-for-comprehensive-anti-trafficking-law-in-malawi/>

Tsoka, Maxton & Konyani, Sidon (2003), "Child Labour Baseline Study, Draft Final Report," Centre for Social Research, University of Malawi: Zomba

Twea, Edward B & Manjolo Willard, A (2012) "Malawi: The Status of Child Protection and Child Justice" - paper presented at the 15th Annual Family Law Conference, Cape Town, South Africa 15-16th March 2012, accessed 12 May 2016 <http://www.millerdutoitcloeteinc.co.za/family-law-cape-town-img/Conf2012/Conf2012/Paper%20-%20EB%20Twea%20&%20WA%20Manjolo.pdf>

UNICEF “Child Labour and Commercial Sexual Exploitation” accessed 15 April 2016 http://www.unicef.org/esaro/5480_child_labour_sexual_exploitation.html.

UNICEF (2012), “The state of the world’s children”

UNAIDS, (2014), The Gap Report, accessed 1 May 2015, http://www.unaids.org/sites/default/files/media_asset/UNAIDS_Gap_report_en.pdf

United Nations Human Rights Council (2010), Compilation prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15 (b) of the annex to Human Rights Council resolution 5/1 Malawi, 4 August 2010

UNFPA (2012), “Marrying Too Young: End Child Marriage”

UNFPA, “Profiles of 10 Countries with the Highest Rates of Child Marriage”, accessed 29 April 2016 undated, http://www.unfpa.org/webdav/site/global/shared/documents/publications/2012/ChildMarriage_8_annex1_indicator_definition.pdf .

UN World Tourism Organisation, Global Code of Ethics for Tourism (1999), Adopted by Resolution A/RES/406(XIII) at the 13th WTO General Assembly, Santiago, Chile, 27 September - 1 October 1999

UN World Tourism Organisation (2001), “Guidelines for National Tourism Administration (NTA) Focal Points for the Protection of Children from Sexual Exploitation in Tourism”

United States Department of State (8 April 2011) 2010 Human Rights Report: Malawi

United States Department of State (2015), “2015 Trafficking in Persons Report”

Vienna Declaration and Program of Action adopted by the World Conference on Human Rights (1993), A/CONF.157/23

World Databank (2015), “World Development Indicators”

YONECO, Tithandizane National Child Helpline, accessed 11 May 2016, <http://www.yoneco.org/site/index.php/our-innovative-approaches/220-tithandizane-national-child-helpline-listening-to-children-voices>

ANNEX

The Rio de Janeiro Declaration and Call for Action to Prevent and Stop Sexual Exploitation of Children and Adolescents*

Note: This is a condensed version. The full Rio Declaration and Call to Action also contains: Preamble; A. Review of progress and outstanding challenges; and B. Declaration.

C. Call for Action

We call on all States, with the support of international organizations and civil society, including NGOs, the private sector, adolescents and young people to establish and implement robust frameworks for the protection of children and adolescents from all forms of sexual exploitation, and we call upon them to:

I - International and Regional Instruments

- (1) Continue working towards ratification of relevant international instruments, including as appropriate the United Nations Convention on the Rights of the Child and the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography, ILO Convention 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, and the Convention on the Elimination of All Forms of Discrimination against Women.
- (2) Continue working towards ratification of relevant regional instruments, including as appropriate the African Charter on the Rights and Welfare of the Child, the ASEAN Charter, the Inter-American Conventions on International Traffic in Minors and on the Prevention, Punishment and Eradication of Violence against Women, the SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution, and the Council of Europe Conventions on Action against Trafficking in Human Beings, on Cybercrime and on the Protection of Children against Sexual Exploitation and Sexual Abuse, conventions which can be ratified by States that are non-members of the Council of Europe.
- (3) State Parties should take all necessary measures to implement the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, taking into due accounts the conclusions and the recommendations of the Committee on the Rights of the Child in the context of its review of State Parties' reports. All countries are encouraged to use this as an important reference.

* The Rio de Janeiro Declaration and Call for Action to Prevent and Stop Sexual Exploitation of Children and Adolescents (2008), full text available at: http://www.ecpat.net/WorldCongressIII/PDF/Outcome/WCIII_Outcome_Document_Final.pdf

II – Forms of Sexual Exploitation and its New Scenarios

Child pornography/child abuse images

- (4) Criminalize the intentional production, distribution, receipt and possession of child pornography, including virtual images and the sexually exploitative representation of children, as well as the intentional consumption, access and viewing of such materials where there has been no physical contact with a child; legal liability should be extended to entities such as corporations and companies in case the responsibility for or involvement in the production and/or dissemination of materials.
- (5) Undertake specific and targeted actions to prevent and stop child pornography and the use of the Internet and new technologies for the grooming of children into online and off-line abuse and for the production and dissemination of child pornography and other materials. Victim identification, support and care by specialized staff should be made a high priority.
- (6) Conduct educational and awareness-raising campaigns focusing on children, parents, teachers, youth organizations and others working with and for children with a view to improve their understanding of the risks of sexually exploitative use of the Internet, mobile telephones and other new technologies, including information for children on how to protect themselves, how to get help and to report incidences of child pornography and online sexual exploitation.
- (7) Take the necessary legislative measures to require Internet service providers, mobile phone companies, search engines and other relevant actors to report and remove child pornography websites and child sexual abuse images, and develop indicators to monitor results and enhance efforts.
- (8) Call upon Internet service providers, mobile phone companies, Internet cafes and other relevant actors to develop and implement voluntary Codes of Conduct and other corporate social responsibility mechanisms together with the development of legal tools for enabling the adoption of child protection measures in these businesses.
- (9) Call upon financial institutions to undertake actions to trace and stop the flow of financial transactions undertaken through their services which facilitate access to child pornography.
- (10) Set up a common list of websites, under the auspices of Interpol, containing sexual abuse images, based on uniform standards, whose access will be blocked; the list has to be continuously updated, exchanged on international level, and be used by the provider to perform the access blocking.
- (11) Undertake research and development, in the realm of the private sector, of robust technologies to identify images taken with electronic digital devices and trace and retract them to help identify the perpetrators.
- (12) Promote public/private partnerships to enhance the research and development of robust technologies to investigate and to trace the victims with a view to immediately stop their exploitation and provide them with all the necessary support for full recovery.
- (13) Make technologies easily available, affordable and usable for parents and other caregivers, including to assist with the use of filters to block inappropriate and harmful images of children.

Sexual exploitation of children and adolescents in prostitution

- (14) Address the demand that leads to children being prostituted by making the purchase of sex or any form of transaction to obtain sexual services from a child a criminal transaction under criminal law, even when the adult is unaware of the child's age.
- (15) Provide specialized and appropriate health care for children who have been exploited in prostitution, and support child centered local models of recovery, social work systems, realistic economic alternatives and cooperation among programmes for holistic response.

Sexual exploitation of children and adolescents in travel and tourism.

- (16) Encourage and support the tourism, travel and hotel sectors in adopting professional Codes of Conduct, for example by joining and implementing the Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism; encourage the use of businesses that put in place appropriate child protection-focused corporate social responsibility strategies; and/or provide other incentives for those participating.
- (17) Ensure that all stakeholders pay specific attention to unregulated tourism to prevent domestic and international travellers from sexually exploiting children and adolescents.
- (18) Cooperate in the establishment of an international travel notification system, such as the Interpol 'green notice' system, in accordance with applicable law and human rights standards.
- (19) Ensure investigation and, where sufficient evidence exists, that appropriate charges are brought and vigorously pursued against the State's nationals who are reported or alleged to have sexually exploited a child in a foreign country.
- (20) Prohibit the production and dissemination of material advertising the sexual exploitation of children in tourism; and alert travellers to criminal sanctions that will apply in cases of sexual exploitation of children.
- (21) Monitor new and emerging tourist destinations and establish proactive measures to work with private sector partners involved in the development of tourism services on measures to prevent the sexual exploitation of children and adolescents, including the use of socially and environmentally responsible strategies that promote equitable development.

Trafficking and the sexual exploitation of children and adolescents

- (22) Mobilize communities, including children and adolescents with a view to engaging them in dialogue on and a critical review of social norms and practices and economic and social conditions that make children vulnerable to trafficking, and establish procedures that involve them in developing strategies and programmes where they participate, where appropriate, in the planning, implementation and monitoring of such programmes.
- (23) Pilot and adapt or replicate successful models of community-based prevention and rehabilitation and reintegration programmes for child victims of trafficking.
- (24) Establish policies and programmes that address not only cross-border but also internal trafficking of children and that include, among other elements, a standard operating procedure for the safe repatriation and return of children based on the child's view and on a careful assessment of the needs and risks to the child of returning to her/his place of origin to ensure that the best interests of the child are taken into account.
- (25) Continue strengthening cross-border and internal cooperation of law enforcement officials, for example by establishing coordinating units with a mandate to issue clear guidelines for child centered investigation of cases of trafficking of children and for treating trafficked children not as criminals but as victims in need of protection.

- (26) Take legislative and other measures to ensure that a guardian is appointed without delay for every unaccompanied trafficked child, that an effective system of registration and documentation of all trafficked children is established, and that every trafficked child is provided with not only short-term protection but also with the necessary economic and psycho-social support for full and long-lasting recovery and social reintegration (in line with the UNICEF *Guidelines on the Protection of Child Victims of Trafficking* and UNHCR *Guidelines on Formal Determination of the Best Interests of the Child*).
- (27) Undertake and/or support, with the involvement of civil society and children, the regular evaluation of programmes and policies to prevent and stop the trafficking of children and of legislation that may have a conducive impact on trafficking, for example laws on marriage, free education, adoption and migration, birth registration, accordance of citizenship, refugee or other status.

III – Legal Frameworks and Enforcement of the Law

- (28) Define, prohibit and criminalize, in accordance with existing international human rights standards, all acts of sexual exploitation of children and adolescents in their jurisdiction, irrespective of any set age of consent or marriage or cultural practice, even when the adult is unaware of the child's age.
- (29) Establish effective extraterritorial jurisdiction, abolishing the requirement of double criminality for offences of sexual exploitation of children and adolescents, and facilitate mutual legal assistance, in order to achieve effective prosecution of perpetrators and appropriate sanctions. Make all acts of sexual exploitation of children and adolescents an extraditable offence in existing or newly established extradition treaties.
- (30) Designate a lead law enforcement agency, where appropriate to national circumstances, to proactively enforce extraterritorial laws related to sexual exploitation of children and adolescents.
- (31) Ensure that child victims of sexual exploitation are not criminalized or punished for their acts directly related to their exploitation, but are given the status of victim in law and are treated accordingly.
- (32) Establish special gender sensitive units/children's desks within police forces, involving when appropriate other professionals like health care and social workers and teachers, to address sexual crimes against children, and provide specialized training to judicial and law enforcement personnel.
- (33) Address corruption in law enforcement and the judiciary, as well as other authorities with a duty of care to children, recognizing corruption as a major obstacle to effective law enforcement and protection for children.
- (34) Establish and implement international, regional and national legal mechanisms and programmes for addressing sex offender behaviour and preventing recidivism, including through risk assessment and offender management programmes, the provision of voluntary extended and comprehensive rehabilitation services (in addition to but not in lieu of criminal sanctions as appropriate), safe reintegration of convicted offenders and the collection and sharing of good practices and establish where appropriate sex offenders registers.

IV – Integrated Cross-Sectoral Policies and National Plans of Action General

General

- (35) Develop and implement comprehensive National Plans of Action on the sexual exploitation of children and adolescents, or include these in existing relevant planning frameworks, such as National Development Plans and ensure that these Plans are based in a cross-sectoral approach which brings all stakeholders together in a coherent and comprehensive framework for action. These Plans should incorporate gender-sensitive strategies, social protection measures and operational plans, with adequate monitoring and evaluation targeted resources and designated

responsible actors, including civil society organizations for implementation of initiatives to prevent and stop the sexual exploitation of children and adolescents and provide support for child victims of sexual exploitation.

- (36) Promote and support multi-sectoral policies and programmes, including community-based programmes, within the framework of a comprehensive national child protection system to address phenomena that contribute to the sexual exploitation of children and adolescents including, for example, discrimination (including on the basis of sex), harmful traditional practices, child marriage and social norms that condone sexual exploitation.
- (37) Promote and fund meaningful child and youth participation at all levels in the design, monitoring and evaluation of policies and programmes, in campaigns and through peer-to-peer youth programmes, aimed at raising awareness and preventing the sexual exploitation and trafficking of children and adolescents.
- (38) Initiate and support the collection and sharing of reliable information and cross-border cooperation, and contribute to databases on victims and perpetrators, to enhance assistance to children and address the demand for sex with children, in accordance with applicable laws.

Prevention

- (39) Ensure that all children born on their territory are registered immediately and for free after their birth and pay special attention to not yet registered children and children at risk and in marginalized situations.
- (40) Strengthen the role of educational institutions and staff to detect, denounce and help address sexual abuse and exploitation of children in all forms and sources.
- (41) Emphasize prevention of sexual exploitation of children and adolescents, through e.g. awareness raising and educational campaigns, support for parents and eradication of poverty while reinforcing or establishing multi-sectoral referral mechanisms to provide comprehensive support and services to children who have been victimized in sexual exploitation.
- (42) Support children to gain deeper knowledge of their own rights to be free from sexual exploitation, and the options available to help them to address abuse, so that they are empowered, with the partnership of adults, to end sexual exploitation.
- (43) Engage children in meaningful and critical examination of changing contemporary values and norms and their potential to increase vulnerability to sexual exploitation; and promote education to enhance children's understanding of these issues in relation to sexual exploitation.
- (44) Undertake research on contemporary patterns of socialization of boys and men across different contexts to identify factors that promote and strengthen boys' and men's respect for the rights of girls and women and engage them in action initiatives that inhibit and discourage them from engaging in sexual exploitation of children and adolescents.

Protection of the child

- (45) Increase efforts to address the sexual exploitation of children and adolescents through the development of comprehensive and integrated national child protection systems, including the necessary budget allocations and based on identifications of settings where children are most at risk that aim to protect children from all forms of violence and abuse.
- (46) Establish by 2013 an effective and accessible system for reporting, follow up and support for child victims of suspected or actual incidents of sexual exploitation, for example by instituting mandatory reporting for people in positions of responsibility for the welfare of children.

- (47) Develop or enhance accessibility of existing telephone or web-based help lines, in particular for children in care and justice institutions, to encourage children and require care givers to confidentially report sexual exploitation and seek referral to appropriate services, and ensure that the operators of such reporting mechanisms are adequately trained and supervised.
- (48) Strengthen existing national child protection services or establish new ones in order to provide all child victims of sexual exploitation, girls and boys, without discrimination, with the necessary economic and psycho-social support for their full physical and psychological recovery and social reintegration, and when appropriate, family reunification and interventions that support and strengthen families to mitigate the risk of further exploitation; such services to be provided by well trained multi-disciplinary teams of professionals.
- (49) Ensure that these services are accessible, appropriately resourced, comprehensive, child- and gender-sensitive, and reach all children without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex (or orientation), and social origin and including children with disabilities, from ethnic minorities, indigenous or Aboriginal children, refugee or asylum-seeking and children in domestic service or living on the streets and children displaced by conflict or emergency situations.
- (50) Develop programs that provide children of sex workers and children living in brothels with support and protection.
- (51) Promote and defend the privacy of the child victims and child perpetrators of sexual exploitation, taking into account relevant national laws and procedures, to protect their identity in investigatory or court proceedings or from disclosure by the media and ensure that these proceedings are child friendly and allow the child to participate in a meaningful way in the process of bringing the perpetrator to justice.
- (52) Ensure that children and adolescents exhibiting acts of sexual violence harmful to others receive appropriate care and attention as a first option through gender-sensitive and child-focused measures and programmes that balance their best interest with due regard for the safety of others, and ensure compliance with the principle that depriving children of liberty should be pursued only as a measure of last resort, and ensure that those responsible for the care of such children are equipped with relevant and culturally appropriate training and skills.

V – International Cooperation

- (53) Take all necessary steps to strengthen international cooperation by multilateral, regional and bilateral arrangements for the prevention, detection, investigation, prosecution and punishment of those responsible for acts of sexual exploitation of children and adolescents; and for the assistance of child victims in their physical and psychological recovery, social reintegration and, as appropriate, repatriation.
- (54) Establish and/or improve by 2013 concrete mechanisms and/or processes to facilitate coordination at national, regional and international levels for enhanced cooperation among government ministries, funding bodies, UN agencies, NGOs, the private sector, workers' and employers' organizations, the media, children's organizations and other representatives of civil society with a view to enabling and supporting concrete action to prevent and stop the sexual exploitation of children and adolescents.
- (55) Strengthen and improve the effectiveness of existing regional mechanisms for exchange, coordination and monitoring of progress on child protection including against sexual exploitation in order to review progress and strengthen follow-up on the implementation of the recommendations made.
- (56) Provide, when in a position to do so, financial, technical and other assistance through existing multilateral, regional, bilateral and other programmes for addressing the sexual exploitation of children and adolescents; and explore the potential of a fund for child and youth initiatives in this area.

- (57) Develop, where appropriate with the support of UN agencies, NGOs, civil society organizations and the private sector, workers' and employers' organizations, policies and programmes to promote and support corporate social responsibility of enterprises operating *inter alia* in tourism, travel, transport and financial services, and of communication, media, Internet services, advertising and entertainment sectors; so that child-rights focused policies, standards and codes of conduct are implemented throughout the supply chain and include an independent monitoring mechanism.
- (58) Support and contribute to the Interpol international child abuse images database and nominate a responsible national focal point person or unit to collect and update promptly national data on sexual exploitation of children and adolescents, and systematically share this information with Interpol in order to support cross-border (international) law enforcement action and strengthen its effectiveness, and adopt multilateral agreements especially for police investigation work.
- (59) Undertake national and international coordinated measures to curb and stop the involvement of organized crime in commercial sexual exploitation of children and bring persons and/or legal entities responsible for this form of organized crime to justice.

VI – Social Responsibility Initiatives

We encourage the private sector, employers' and workers' organizations, to proactively engage in all efforts to prevent and stop the sexual exploitation of children and adolescents, and to use their knowhow, human and financial resources, networks, structures and leveraging power to:

- (60) Integrate child protection, including the prevention of sexual exploitation of children, into new or existing corporate social responsibility policies of enterprises operating *inter alia* in tourism, travel, transport, agriculture and financial services, and of communication, media, Internet services, advertising and entertainment sectors, and ensure appropriate implementation of such policies and widespread public awareness.
- (61) Incorporate the prevention and protection of children from sexual exploitation in human resources policies, such as Codes of Conduct and other corporate social responsibility mechanisms throughout the supply chain.
- (62) Join efforts with Governments, UN agencies, national and international NGOs, and other stakeholders to prevent the production and dissemination of child pornography, including virtual images and the sexually exploitative representation of children, and stop the use of the Internet and new technologies for the grooming of children into online and off-line abuse; undertake actions to trace and stop the flow of financial transactions for sexual exploitation of children through the services of financial institutions; support efforts to address the demand for sexual exploitation of children in prostitution and the strengthening of services for children victims and their families, including the establishment of accessible telephone or web-based help lines; and provide support for educational and awareness-raising campaigns targeting children, parents, teachers, youth organizations and others working with and for children, on the risks of sexual exploitation of children, sexually exploitative use of the Internet, mobile phones and other new technologies as well as on protective measures.

VII – Monitoring

- (63) Establish by 2013 independent children's rights institutions such as children's ombudspersons or equivalents or focal points on children's rights in existing human rights institutions or general ombudsperson offices, highlighting the importance for States Parties to the Convention on the Rights of the Child of General Comment No 2 of the Committee on the Rights of the Child; these bodies should play a key role in the independent monitoring of actions taken for the prevention of sexual exploitation of children and adolescents, protection of children from such exploitation and the restoration of the rights of sexually exploited children, in advocating for effective legal frameworks and enforcement and in ensuring, where necessary, that child victims have effective remedies and redress, including the possibility of filing complaints before these institutions. We encourage the Committee on the Rights of the Child to:

- (64) Persevere with reviewing progress of States Parties' fulfilment of their obligations to uphold the right of children to protection from sexual exploitation and pay special attention to the recommendations in the Rio Call for Action in its examination of reports under the Convention on the Rights of the Child and its Optional Protocols.
- (65) Adopt as a matter of priority a General Comment on the right of the child to protection from sexual exploitation, trafficking for sexual purposes, and the abduction and sale of children, including detailed guidance to States on the development, implementation and enforcement of national legislation and policies in this regard.
- (66) Continue to work with the Office of the High Commissioner for Human Rights in protecting child rights, and raising awareness of relevant international and regional human rights mechanisms.

We encourage other United Nations human rights treaty bodies, special procedures of the Human Rights Council and special representatives of the United Nations Secretary-General, as well as regional human rights mechanisms, to:

- (67) Pay particular attention to combating the sexual exploitation of children and adolescents, within their respective mandates and during their examination of State Parties' reports, country visits, in their thematic work and/or other activities.

We urge the Human Rights Council to:

- (68) Ensure that the Universal Periodic Review process includes rigorous examination of States' fulfilment of their obligations to children, including preventing and stopping the sexual exploitation of children and adolescents and to respectfully the rights of child victims of such exploitation.

We urge the yet-to-be-appointed Special Representative of the Secretary-General on Violence against Children, the Special Representative of the Secretary-General for Children and Armed Conflict, the Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography and the Special Rapporteur on Trafficking in Persons, especially in Women and Children, together with other appropriate mandate holders and in collaboration with the Committee on the Rights of the Child, to:

- (69) Work together to avoid duplication and to maximise their impact in preventing and stopping the sexual exploitation of children and adolescents and, through their work, map experiences in the area of prevention and response to sexual exploitation of children and asses their effectiveness.

We encourage UN agencies, NGOs and human rights institutions to:

- (70) Support and provide information on the extent of and responses to sexual exploitation of children and adolescents to these bodies.
- (71) Work with the media to enhance their role in education and empowerment, and in protecting children from sexual exploitation, and to mitigate the harmful potential of the media, including through the sexualization of children in advertising.

We call on international financial institutions such as the World Bank and the International Monetary Fund to:

- (72) Review their current macro-economic and poverty reduction strategies with a view to counteracting any negative social impact on children and their families, including loan conditionality which essentially limits social services and access to rights and minimizing the risk for children to sexual exploitation.

We call on religious communities to:

- (73) Reject, in the light of their consensus about the inherent dignity of every person, including children, all forms of violence against children including sexual exploitation of children and adolescents and establish, in that regard, multi-religious cooperation and partnership with other key stakeholders

such as governments, children’s organizations, UN agencies, NGOs, media and the private sector using their moral authority, social influence and leadership to guide communities in ending sexual exploitation of children and adolescents.

D. Follow-up

- (1) We commit ourselves to the most effective follow-up to this Call for Action:
 - At the national level, *inter alia*, by biennial public reporting on the measures taken for the implementation of the Rio Declaration and Call for Action and promoting/initiating discussions on the progress made and the remaining challenges to named responsible mechanisms for monitoring implementation while also integrating such requirements into State reporting to the Committee on the Rights of the Child.
 - At the international level, by encouraging and supporting coordinated actions by the relevant human rights treaty bodies, special procedures of the Human Rights Council and Special Representatives of the Secretary-General of the United Nations with a view to maintaining awareness of the Rio Declaration and Call for Action and promoting its implementation.
- (2) Encourage the private sector to join the United Nations Global Compact and communicate their implementation progress with regard to addressing the sexual exploitation of children and adolescents and supporting the realization of this platform for coordinated corporate efforts and sharing of best practices.



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