



EXECUTIVE SUMMARY

Malawi*



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Introduction

Malawi is located in Southern Africa and shares its southern borders with Mozambique, its northern ones with Tanzania and its southwest ones with Zambia. Since 1971, it has been considered one of the least developed countries in the world.¹ Malawi became a democratic State in 1994, gaining a new Constitution in the process. While the constitution appears to comprehensively protect human rights, including child rights, several shortcomings are identified including its definition of a child as a person under 16 years of age (Section 23).²

There is a general lack of data on the commercial sexual exploitation of children in Malawi, but it has been found that social and economic practices contribute to commercial sexual exploitation of children (CSEC) manifestations. For instance, children in Malawi not registered at birth lack a formal nationality and can thus be easily moved transnationally.³

Some cultural practices place women, including young girls, in the role of sexual commodities which leads to their sale as sex slaves or held as bondage for debts.⁴ **Child marriage** involving dowries is common in some areas,⁵ in 2010 Malawi had a 50% rate of child marriage.⁶ A HIV/AIDS epidemic has contributed to CSEC manifestations, owing to a faulty perception of young girls as HIV negative.⁷ This perception has also led to the exploitation of girls for prostitution in bars and brothels as owners believe they are good for business. Reports of the exploitation of children for prostitution has also been admitted by the Ministry of Labour: in Lilongwe most of these children were aged under 14 years.⁸ An additional issue is lack of access to quality education, with a report from 2011 registering 55% of boys and 48% of girls having completed the eight years of primary education. The same report identified problems such as overpopulated classrooms, high dropout rates and failure to master minimum English and Maths skills.⁹

A source and transit country for **trafficking**, to places within Southern Africa, Europe and the Middle East, Malawi is also a destination country for women and girls trafficked from other parts of Africa. With the main income for many rural Malawians being agriculture, droughts and shrinking land holdings have prompted a move to urban areas as well as other countries. Malawi's porous borders allow for crossing without documents¹⁰ and a lack of proper system for intercountry adoption provides an additional route for traffickers.¹¹ Malawi has a bad record of child labour, which often contains elements of trafficking. In 2012, it was reported that 26% of children between 5-14 years old were involved in **child labour**.¹²

With increases in tourism in Malawi, from 17.4 million tourists in 1990 to 65.3 million in 2014, the issue of **sexual exploitation of children in travel and tourism (SECTT)** is of particular concern.¹³ There have been reports on the SECTT, with foreign visitors recruiting children in holiday resorts.¹⁴ A State Party report to the CRC in 2015 admitted to instances of **child sexual abuse material** reported in the media, but acknowledged that this information was difficult to access as even information on sexual material involving adults is not prevalent.¹⁵

National Plans of Action

Though lacking any plan of action that specifically address CSEC, a number of Malawi policies are nonetheless relevant. The National Plan of Action for Orphans and Other Vulnerable Children (2009-2016), the National HIV and AIDS Action Framework and the Child Labour National Plan of Action create child protection frameworks.¹⁶ Efforts are being made towards the renewal of the latter plan by the Ministry of Labour.¹⁷ The importance of this particular plan lies in the intersection between exploitation of children for labour and exploitation of children for sexual purposes; priorities identified include: the education sector, creating awareness of child labour, providing services to child victims to allow them to resume with their education and working against HIV and AIDS on working and at risk children.¹⁸ The Malawi Growth and Development Strategy II (2011-2016) also identifies child labour as an issue to tackle.

Protection

Adopted in 1994, the Malawi democratic Constitution contains a Bill of Rights protecting specific children's rights including: economic exploitation, hazardous treatment, interference with education and harm to health or development (Section 23).¹⁹ The Child Care, Protection and Justice Act was adopted in 2010 and is the first legal instrument in Malawi that explicitly refers to the best interest of the child.²⁰ Following this act, the Constitution now incorporates the best interest of the child in Section 23.²¹

Under Malawi law a person between the ages of 14-18 years is prohibited from hazardous work, the definition of which is an occupation or activity likely to be harmful to health, safety, education, morals or development of a person, or prejudicial to the attendance of school or other training programmes.²²

Section 160A of the Penal Code (Amendment) Act defines a child as a person under the age of 16, with Section 160B(1) prohibiting the sexual activity with a child, the punishment ranging up to 14 years imprisonment.²³

The 1949 Adoption Ordinance is currently under review by the Law Commission whose proposed offences include payment for adoption, exercising undue influence in the course of adoption, attempting unauthorised adoption arrangements, failing to disclose information as required by law and unauthorised disclosure of confidential information.

The 2010 Child Care, Protection and Justice Act was the first in Malawi to explicitly criminalise **trafficking of children**, with punishments ranging to life imprisonment (Section 79). The implementation of this act came at a time of need, as the 2010 US Department Report identified trafficking of children for sexual purposes as an issue in Malawi.²⁴ Additional highlighted CSEC manifestations included exploitation of children for prostitution without third party involvement (survival sex). The Child Act prohibits harmful practices including forced marriage, forced betrothal (Section 81) and using children as security for debts (Section 82(c) with punishments up to 10 years imprisonment (Section 83). The creation of the 2015 Trafficking in Persons (TIP) Act followed after inadequate legal protection emphasised in the case *R v Lourenco*.²⁵ Following the trafficking of three girls, aged 15-19 years, to the Netherlands where sexual abuse followed - the defendant, charged with procuring for prostitution outside of Malawi, was acquitted on technical grounds.²⁶ The failure to secure a conviction highlighted a need for legislation addressing transnational trafficking offences – now covered by the Trafficking in Persons (TIP) Act of 2015. Section 2 of the Act defines trafficking in line with the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (also known as Palermo Protocol)²⁷ – the act of recruiting, transporting, transferring, harbouring, receiving or obtaining a person in Malawi or abroad; the means of threat, force, abduction, abuse of position; for the purposes of exploitation. The Act defines exploitation to include forced commercial sexual activity and the production of pornography. (Section 2) Additional relevant provisions relate

to victim protection (Section 4), special methods for conducting investigations (Section 8) as well as the aggravated offence of trafficking children. (Section 16(1))

Child marriage is prohibited under Section 22(6) of the Constitution, however under Section 22(7) those aged between 15-17 years may marry with parental consent. Section 22(8) discourages marriage under 15 years implying there is nonetheless a legal possibility. The 2015 Marriage, Divorce and Family Relations Act seemed to increase the minimum age to 18 as well as remove the parental consent option, yet the Constitution remains unchanged. However the punishment for forcing a child into marriage or betrothal is up to 10 years.²⁸

Malawi's Penal Code defines **prostitution** as sexual activity for money or something of economic value (Section 147A(2)). Section 140 of the Code prohibits procuring girls below the age of 21 into prostitution, with 14 years imprisonment as punishment; the Code does thus not specifically protect boys, it is recommended this be amended. Malawi law does not criminalise the increasing amount of children that are exploited through prostitution without third party involvement. There is a marked need for these children to be offered support and re-integration services.²⁹

Malawi has yet to ratify the African Union Convention on Cyberspace; the relevance of the Convention to sexual exploitation of children online lies in its requirement of States to criminalise child sexual abuse material.³⁰ In 2011, Chapter XV A was added to the Penal Code prohibiting offences against morality relating to children including **child sexual abuse material**.³¹ There is a punishment of 14 years imprisonment for possessing or viewing such material.³² Criminalising possession without requiring the download of such material indicates a progressive legislation. Additional offences include procuring a child to participate in immoral public entertainment. The Penal Code together with the Child Act identifies sexual abuse when a child participates or observes in an activity of a sexual nature for purposes of pornographic or indecent material, photograph, recording, film, videotape or performance; or sexual exploitation for gratification or commercial gain. (Section 160F and Section 23(2) respectively). In 2016, the Electronic Transactions Act was passed and it defines child sexual abuse material as depicting visual or realistic images of a person under 18 years of age engaged in sexually suggestive or explicit conduct; production, reproduction, distribution and possession is criminalised with a penalty of K10 million (US\$ 1925) or 15 years imprisonment with hard labour (Section 88). Yet, the Act does not include grooming or punishing attempted crimes.³³

Coordination and Response

Malawi lacks systematic identification procedures for victims of trafficking among vulnerable groups.³⁴ Victims are referred to NGO run shelters, some of which offer specialised care for women. While government hospitals provide trafficking victims with limited medical and psychological services, there is a heavy dependence on international organisations for the funding of most anti-trafficking programmes.³⁵

Currently, there are three Safe Homes in Malawi, run by the Salvation Army in Mchinji; Youth Net and Counselling (YONECO) in the Zomba district; and YONECO together with the Malawi government in the Rumphu district. Additionally, around seven civil society organisations in each district provide child protective services. There is also a National Child Helpline (116) which assists thousands of children each year.³⁶ YONECO runs this helpline as well as a Gender Crisis Line (80004404), a toll free reporting mechanism on Gender Based Violence which also provides counselling and support to victims.³⁷

At local level coordination is done by structures such as the District Child Labour Committees and District Child Protection Committees; at the national level child protection policy is directed by Steering Committees. Additional structures include the Child Case Review Board, Child Panels and Child Magistrates. There are Police Victim Support Units (PVSU) in 34 Police Stations as well as 20 hospital based centres for women and child survivors of rape, domestic violence and maltreatment.³⁸

Cases handled by the PVSUs are registered for analysis;³⁹ this has led to an internal database that allows for the development of child protection analysis.⁴⁰ 350 Community Victim Support Units, over 8000 Community Based Childcare centres and more than 3000 Children's Corners provide assistance and child surveillance at community level.⁴¹

The Human Rights Commission (HRC) established in 1998 promotes and protects human rights; the HRC contains a Directorate of Child Rights.⁴²

The work of the National Child Justice Forum provides both protection and justice for children; with the assistance from UNICEF child justice courts have been introduced to districts with seven courts and 16 specialised Child Magistrates.⁴³ Additionally, the development of guidance documents such as the Child Care Disposal Guidelines for Child Justice Courts as well as the Handbook for Child Justice Practitioners have led to a heightened awareness among judicial officers and 100% increase in child protection cases.⁴⁴

The Malawi Network against Trafficking (MNAT) is chaired by the Ministry of Home Affairs and Internal Security, with over 90 consultative members and partners. The local NGO Eye of the Child coordinates MNAT. MNAT adopted its Plan of Action in 2007 and welcomed the enactment of the TIP Act in 2015; additional activities include MNAT's coordination of the Ministry of Gender's National Survey on child trafficking. UN Women, a member of MNAT also lobbied for the enactment of TIP Act. Additional cooperation on an international level includes the Southern African Regional Police Chiefs Organisation (SARPCCO) and Interpol.

Prevention

Under the 2010 Child Care, Protection and Justice Act a child considered in need of protection may be placed in temporary custody by police, social welfare or any member of the community (Section 37(c)). While police officers are trained in combating CSEC manifestations, failure to assign these trained officers to duties relevant to this training remains problematic.⁴⁵ Additionally, there has yet to be a national study on CSEC though relevant information can be found in studies on other types of child abuse and exploitation.

To ensure children from marginalised backgrounds are less susceptible to exploitation social programmes have been implemented.⁴⁶ The Social Cash Transfer Programme, initiated in 2006, aimed to provide cash grants to households in poverty without able-bodied adult members, to improve school enrolment, nutritional status, and the well-being of children in these households. The National Social Support Programme works to operationalise the Malawi Social Support Policy including mainstreaming policy to children.

The Malawi Network against Child Trafficking (MNACT) with support from its network members and the Ministry of Education embarked on a national sensitisation tour on human trafficking aimed at students, to commemorate 16 days of activism.⁴⁷ This awareness campaign also aimed to ensure children could identify situations that may lead to trafficking; its reach counted thousands of children in numerous districts.⁴⁸ The campaign emphasised the importance of youth participation and identified issues such as poor communication between parents and children, lack of support for parents of children with special needs, parents viewing children as commodities and a conservative view of sexual activity that creates reluctance to intervene in sexual exploitation.⁴⁹

Awareness-raising has been facilitated by the increasing role of the media.⁵⁰ Covering stories of child trafficking and other CSEC manifestations has helped people in identifying elements of the crimes. The 2012 National Conference on Child Labour emphasised this important role of the media and established the Media Association for Elimination of Child Labour.

Access to Justice for Victims and Survivors

To facilitate the access to justice for child victims there are child-friendly procedures in place to assist both victims and witnesses. If not prejudicial, the presence of a guardian or parent of the child victim is required for court appearances.⁵¹ Media attendance is restricted as is the disclosure of the child's identity.⁵²

Various victim support services including the Police Victim Support Units provide reintegration, shelter and counselling. Yet, there is no basis in law for compensation to all victims of trafficking; Section 40 of the TIP Act provides for the right to institute civil proceedings for a trafficked person, regardless of their immigration status. The section allows the trafficked person to seek compensation or recovery in damages from a person or from the proceeds associated with an offence under the TIP Act; thus, the compensation for CSEC manifestation is provided when there is an element of trafficking.

Child & Youth Participation

Malawi has yet to fully realise child and youth participation as a key element of child protection. In 2008, the Malawi Human Rights Youth Network hosted open rallies and allowed for the expression of children who had experience of domestic child labour.⁵³

The Malawi National Conference on Child Labour in 2012 incorporated recommendations from a children's conference held prior into the final Framework for Action. The Child Labour National Action Plan also highlighted the importance of empowering children to report cases of child labour.⁵⁴

The National Youth Council of Malawi, in collaboration with the Ministry of Labour is currently involved in developing the Child Labour Policy to protect children from manifestations of CSEC. The Youth Council ensures the engagement of youth in the development of the country and collaborates with the Ministry of Labour, Youth and Manpower Development.

Recommendations for Action

National Plans of Action

- While there is no NPA specific to CSEC, stakeholders have suggested the inclusion of CSEC provisions in existing NPAs as well as the support and funding for community-based child protection structures.

Coordination and Cooperation

- Engage the private tourism and travel sector, as well as other industries relevant to CSEC; the Malawi Travel and Tourism Board, private companies and the Ministry of Industry, Trade and Tourism should collaborate in combating CSEC.
- Community Based Victim Support Units should be linked to structures such as the Village Development Committees to ensure a holistic approach to child protection on a community level.⁵⁵
- The Victim Support Unit database should be elaborated with support from the Malawi Police Victim Support Unit, the government and other relevant stakeholders in order to establish a central database with disaggregated statistical data on CSEC issues in Malawi.

Prevention

- ✎ There is a need for more research on CSEC manifestation and its root causes in Malawi; the Ministry of Gender should collaborate with partners to develop a Programme Document on CSEC in Malawi, preceded by comprehensive national research on the relevant issues.
- ✎ A nationwide awareness raising campaign on CSEC, with focus on the rights of the victims as well as the responsibility of law enforcement, should be carried out, with emphasis on child sexual abuse material and sexual exploitation of children in travel and tourism.
- ✎ Needed deterrence measures include the strict punishment of offenders, online protection of children through government efforts, and the training of IT departments to enable the tracking of online offenders.

Protection

- ✎ Ensure that the police and staff at the Victim Support Units are appropriately trained in investigative and interviewing skills; high turnover at these units requires continuous training.
- ✎ Ensure Malawi laws specifically define a child as a person aged below 18 years, in particular the Child Act, Penal Code and Malawi Constitution. Amend provisions to ensure that boy victims of CSEC are also protected.
- ✎ Remedy the gaps in protection from child marriage as well as policy issues such as the readmission procedures for married girls wanting to continue with their education.⁵⁶
- ✎ Companies involved in Malawi tourism should adopt the Code of Conduct against the Sexual Exploitation of Children in Travel and Tourism.

Response

- ✎ Support for children subjected to exploitation should be tailored to their experiences; the Malawi Police should ensure that those officers with the relevant training are utilised in the relevant duties.
- ✎ Increase the number of safe houses as well as the awareness of the International Guidelines for Decent Work in Malawi.

Access to Justice

- ✎ The stigma associated with sexual abuse cases and lack of specific provisions requiring compensation for victims of CSEC limits access to justice, this should be resolved with specific legal and policy framework. Additional remedies include linking the justice system to informal mechanisms and traditional leaders.

Child and Youth Participation

- ✎ Re-establish structures of child participation, including revitalising the Children's Parliament by moving it to the Ministry of Gender, Children and Social Welfare.

Endnotes

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