



Malawi

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Council

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Introduction and Summary

1. People Serving Girls At Risk (PSGR), a registered non-profit organization under the Trustees Incorporation Act in Malawi, is a frontline organization working towards ending human trafficking for the purpose of sexual exploitation, prostitution and child marriages. PSGR undertakes public civic education, advocates for effective laws and policies to protect girls and women, and provides a range of direct support services to victims and survivors of human trafficking for sexual exploitation, prostitution and child marriages.

2. Equality Now is an international human rights organization with ECOSOC status working to protect and promote the rights of women and girls worldwide since 1992, including through our membership network comprised of individuals and organizations in over 190 countries. Its main areas of focus are ending sexual violence, harmful practices, human trafficking for the purpose of sexual exploitation and achieving legal equality.

3. The submission is further informed by consultations undertaken by PSGR in September 2019 with 24 local civil society organizations comprised of membersⁱ of the Malawi Network against Trafficking Coalition (M-NAT) and other non-state organizations working towards addressing human trafficking in Malawi, including those providing services to victims and survivors of human trafficking.

4. In this submission, People Serving Girls at Risk and Equality Now provide information as stipulated in the *Universal Periodic Review (Third Cycle): information and guidelines for relevant stakeholders' written submissions*, and detail our concerns regarding human trafficking in general, and more specifically regarding trafficking for the purpose of sexual exploitation. We make recommendations for action by the Government of Malawi, based on international law and the UN Sustainable Development Goals, to better address these areas of concern.

Human Trafficking Trends in Malawi

5. Malawi is a source, transit and destination country for human trafficking. Through its programmes that are supporting victims and survivors of human trafficking and in consultations with members of MNAT, PSGR has identified different forms and victims' experiences of human trafficking and exploitation. Trafficking in Malawi manifests in various forms including exploitation through prostitution, child marriage, exploitation of children in the agricultural and tourism sectors and in domestic work.ⁱⁱ

6. Human trafficking for sexual exploitation is gendered and affects mainly women and girls who are the majority of victims. Local organizations have identified and supported many victims who were enticed from their families in rural areas by traffickers' false promises of employment opportunities, but end up coerced into prostitution in the urban areas of Lilongwe and Blantyre. There have also been media reportsⁱⁱⁱ of women and girls trafficked from Asian countries into Malawi for sexual exploitation. PSGR has been monitoring a case currently at Lilongwe High Court involving Nepalese women who had been trafficked into Malawi.

7. Specifically with regards to human trafficking for sexual exploitation, the high levels of gender inequality, harmful cultural practices which discriminate against women and girls and poverty in many communities in Malawi are among the key factors generating women and girls' vulnerabilities to trafficking and sexual exploitation. Traffickers are driven by quick and huge profits they make from the crime of human trafficking.

8. 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.^{iv}

Government of Malawi efforts to address human trafficking

9. During its last UPR in 2015 Malawi received and accepted notable recommendations to ensure the coming into force and effective implementation of the Trafficking in Persons Act as well as a National Plan of Action to strengthen coordination efforts at the national level.^v Malawi also received recommendations to vigorously investigate and prosecute trafficking offenders and ensure the identification, protection and access of victims to justice. "Ensure that the Trafficking in Persons Act comes into force and is implemented as soon as possible and implement a national action plan to strengthen coordination efforts against trafficking at the national level (Switzerland)"

10. In 2015, the CEDAW Committee^{vi} also made a number of recommendations to Malawi key among them that the Government establishes a timeframe for the implementation of the Trafficking in Persons Act, ensuring its wide dissemination, carrying out public awareness-raising and providing capacity building to relevant professional groups. The Committee also gave specific recommendations on addressing trafficking for the purpose of sexual exploitation including that Malawi addresses the root causes of trafficking in women and girls and the exploitation of prostitution, ensures that sex traffickers are prosecuted and adequately punished, and measures are instituted to discourage the demand for prostitution and develop exit programmes for women in prostitution, including alternative income-generating opportunities. The Committee also encouraged Malawi to repeal discriminatory provisions, such as sections 180 and 184 of the Penal Code, and eliminate discriminatory practices faced by women in prostitution, including when accessing health-care services.

11. Commendably, the Government of Malawi has made positive strides to implement the recommendations from the UPR and the CEDAW Committee and address human trafficking. In 2015, the Government passed the Trafficking in Persons Act and in 2017 the National Coordination Committee against Trafficking in Persons, mandated to coordinate and monitor the Act, adopted a National Plan of Action against Trafficking in Persons and established an Anti-Trafficking in Persons Fund. It is our understanding that the National Coordination Committee has now published guidelines for disbursements from the Anti-Trafficking in Persons Fund, which have yet to be shared. For the first time since it was established, in 2018/19 the Government of Malawi allocated MK150 million (approximately \$203,500 USD) to the Fund. The same amount was also allocated in 2019/20. The National Coordination Committee has also

developed and launched the Standard Operation Procedures for working with victims of trafficking in persons at the time of writing.

12. The Government of Malawi has also introduced some measures to address extreme poverty which is a key driver for generating vulnerability to human trafficking. These include the Social Cash Transfer Programme otherwise known as “*Mtukula pakhomo*” which seeks to empower families living in extreme poverty with cash grants on a monthly basis for a period of 3 months. Another measure has been the introduction of community colleges, where young people who have either dropped out or have finished secondary school can acquire vocational skills.

13. In June 2019, the Government launched the National Children’s Policy, which aims to bring increased understanding that children matter and that their needs and interests should be integrated across all sectors of society. This will galvanize commitment to address human trafficking of children as a key issue affecting them.

14. In January 2017, in the case of *Gwanda v State*, the Malawi High Court declared section 184(1)(c) of the Penal Code unconstitutional and invalid and therefore arrests made under this offence are unlawful.^{vii} Section 184(1)(c) provided that “every person found in or upon or near any premises or in any road or highway or any place adjacent thereto or in any public place at such time and under such circumstances as to lead to the conclusion that such person is there for an illegal or disorderly purpose, is deemed a rogue and vagabond.”^{viii} The ruling helps to emphasize that all persons including poor, vulnerable and marginalized individuals such as those in prostitution who were mostly targeted and arrested under this provision are fully entitled to fair treatment, and to be free from victimization and abuse.

Gaps and Challenges in Malawi’s efforts to address human trafficking

15. Local organizations, including PSGR and some members of the M-NAT, played a key role in advocating for the allocation of funds to the Anti Trafficking Fund, however are not aware of how the Ministry of Homeland Security and the National Coordination Committee on Trafficking in Persons are using the funds. There is a lack of transparency around the utilization of the funds. Accountability measures are required that involve all stakeholders including civil society who are playing a key role in supporting victims and survivors and their communities.

16. Although section 45(1) of the Trafficking in Persons Act mandates the Minister of Gender to designate premises for a shelter for the care and protection of trafficked persons, not a single shelter has been established or designated thus far. This means that the non-designated NGO-run shelters which government and other stakeholders rely on are hampered by lack of funding and some have closed down their services; in other cases they are ill-suited for the needs of girls and women suffering from Post-Traumatic Stress Disorder (PTSD). For example, PSGR and Equality Now have been monitoring and providing legal and practical support in cases where teenage girls and adult women victims of trafficking for sexual exploitation have been put in children’s homes or orphanages due to lack of appropriate options. Such an approach is untenable, with young children reporting to shelter staff that they are afraid of the older girls and women, who may exhibit symptoms of PTSD such as flashbacks, dissociation and suicide

attempts, which staff find themselves ill prepared to respond to. The trafficking victims themselves have similarly not found the living situation to be appropriate and have sought to leave these shelters, with few alternative options.

17. Local civil society organizations' experiences with law enforcement officers have led them to conclude that there are rampant corrupt practices within the law enforcement sector. For example, in one case in February 2019, there were reports that 4 women had been trafficked to Malawi from Nepal for the purpose of sexual exploitation. Local police with the help of Interpol and local NGOs rescued the women and made arrangements for them to be housed at a non-designated shelter for young people. PSGR gathered information that the alleged traffickers are highly connected and are running successful tourism businesses in Malawi. PSGR has also been monitoring the case hearing at Lilongwe High Court and observed numerous irregularities surrounding the case which raise questions on victim protection. For instance, before the victims were repatriated back to Nepal, they had been moved from the shelter and united with the accused trafficker, living in the same house and attending court together.

18. The Government of Malawi and its development partners have established a number of One-Stop-Centres, where victims of gender based violence including trafficking for the purpose of sexual exploitation can report and access a range of support services. The Queen Elizabeth Hospital in Blantyre established the One-Stop-Centre model which has since been replicated in other districts of Malawi. However, local civil society organizations' experience when they help women and girls to seek support has been that the centres are not effectively supporting victims of trafficking for sexual exploitation mainly due to being insufficiently funded, coupled with poor attitudes (stigmatization of victims) and quality of services from the staff.

19. In Mangochi District along the Lake Malawi, women have reported to local civil society organizations such as the Community Initiative for Self Reliance who work with communities in that area, the increase of a practice called "Fish for Sex – Sex for Fish". Under this practice, small scale businesswomen are coerced to have sex with fishermen or middlemen in order to access the fish market. In another scenario, women with limited capital are coerced with offers of more fish, in exchange for sex with fishermen or middlemen. In yet other scenarios, poor village women living around the fishing grounds who are without food or relish are coerced with offers of fish by fishermen in exchange for sex. **This practice is purely an act of sexual exploitation, a structural form of discrimination against women and a violation of the rights of women. It must be condemned in the strongest terms.**

20. Local civil society organizations have noted unnecessary delays owing to long and unjustified adjournments in court proceedings involving the prosecution of traffickers and other actors involved in sexual exploitation and prostitution of women and girls, thus delaying justice for the victims. This gives the impression of elements of corruption and collusion between traffickers and law enforcement officers. The Government of Malawi can do more to ensure that courts conclude cases within a reasonable time, as recommended by Botswana and accepted by Malawi in 2015.^{ix} For example, the matter of *Tomasi Bitoni vs The State, Criminal Case #484/2018* in which PSGR is supporting a young girl who was trafficked for sexual exploitation,

has been ongoing since April 2018 and as of September 2019 (over a year) has not yet concluded the pre-trial hearing stages, with hearings having been adjourned with little explanation on more than 10 occasions.

RECOMMENDATIONS

We respectfully urge the Human Rights Council to call on the Government of Malawi to:

- Prioritize prosecution of sex trafficking cases through the Chief Justice’s Office and ensure they are concluded within reasonable time and without undue delay;
- Allocate resources towards rolling out of the National Plan of Action against Trafficking in Persons, with a particular focus on women and girls. Developing the plan is a first step and implementation requires sufficient allocation of funding and other resources;
- Demonstrate high levels of transparency and accountability in the administration of the Anti-Trafficking Fund, and ensure that it is open to all players;
- Through the Minister of Gender, establish shelters for victims of trafficking in persons as required by the Trafficking in Persons law. In addition, the government must ensure these shelters are equipped with the necessary resources to meet the needs of victims of trafficking for sexual exploitation, including qualified psychosocial counselors, as prescribed by the Trafficking in Persons Act;
- Through the Fisheries Department, ensure adherence of the National Fisheries Policy, the national Gender Policy and other human rights instruments Malawi is party to in order to address the problem of “Fish for Sex-Sex for Fish”;
- Review the National Fisheries Policy to include regulation of fish sales and safeguard from discrimination against women, i.e. through the allocation of a quota to women;
- Implement programmes to support exit strategies for girls and women wanting to escape prostitution. Empower these girls and women with vocational, business skills and start-up funds to provide them alternative sources of income and hold perpetrators of child sexual exploitation and trafficking for sexual exploitation accountable;
- Introduce the Trafficking in Persons Act as part of the curriculum for police training. This will greatly help the existing knowledge gap, for example making clear that the entire trafficking chain, beginning with the recruiter, is criminally liable;
- Encourage law enforcement officers and prosecutors to use the Trafficking in Persons Act, so that human trafficking cases are prosecuted as such and sufficient jurisprudence can be generated and provide guidance on prosecution and adjudication of trafficking offences across its different forms;
- Translate and/or simplify the Trafficking in Persons Act, and popularize the Act among members of the public, with particular focus on vulnerable communities and groups such as women, children, adolescent girls and young people who are more vulnerable to trafficking;

- Repeal section 180^x of the Penal Code;
- Enhance data collection and documentation of human trafficking cases at the local and district levels, ensuring that the data is gender disaggregated and categorized under the different forms of human trafficking by establishing District Coordinating Committees under the auspices of the National Coordinating Committee on Trafficking in Persons to help. This is to strengthen national level statistics and documentation.

ⁱ These are: ACT Now, Age Africa, Angaliba Foundation, Catholic Commission for Peace and Justice, CEGORE, Centre for Children Aid, Centre for Human Rights and Rehabilitation, Chance for Change, Coalition for Child Rights, Community Initiative for Self Reliance, Girl Guides Association of Malawi, Grassroots Foundation, Malawi Village of Orphans, National Initiative for Civic Education, National Publications, Outreach Foundation, Packachere Institute, Paralegal Advisory Service, Rights Advice Centre, Save the Children Fund of Malawi, Scout Foundation of Malawi, Street Kids Awareness and Youth Watch Society.

ⁱⁱ “Global monitoring status of action against commercial sexual exploitation of children: Malawi” ECPAT International (2016) https://www.ecpat.org/wp-content/uploads/2016/11/A4A_V2_AF_MALAWI.pdf

ⁱⁱⁱ “Racket Trafficking Nepal Girls to Dubai Busted”, Times of India (19 December 2018).

<https://timesofindia.indiatimes.com/city/ahmedabad/racket-trafficking-nepali-girls-to-dubai-busted/articleshow/67168716.cms>

^{iv} Malawi Law Commission (2005), “Human Trafficking in Malawi: Research Paper” in: ECPAT p 22.

^v A/HRC/30/5 - Para. 110 - 111 recommended by Egypt, Spain, Switzerland, Norway, USA <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/160/43/PDF/G1516043.pdf?OpenElement>

^{vi} Please see CEDAW Committee, Concluding observations on the seventh periodic report of Malawi, November 2015

^{vii} Gwanda v S (Constitutional Cause No. 5 of 2015) [2017] MWHC 23 (10 January 2017) available at

<https://malawilii.org/mw/judgment/high-court-general-division/2017/23>

^{viii} Penal Code of Malawi, Chapter 7:01 available at

https://malawilii.org/system/files/consolidatedlegislation/701/penal_code_pdf_14611.pdf

^{ix} A/HRC/30/5 - Para. 110

^x [Ch0701s180]180. Idle and disorderly persons The following persons— (a) every common prostitute behaving in a disorderly or indecent manner in any public place; (b) every person wandering or placing himself in any public place to beg or gather alms, or causing or procuring or encouraging any child or children so to do; (c) every person playing at any game of chance not being an authorized lottery or a private lottery for the purposes of section 174, for money or money's worth in any public place; (d) every person who without lawful excuse publicly does any indecent act; (e) every person who in any public place solicits for immoral purposes; (f) every person wandering about and endeavouring by the exposure of wounds or deformation to obtain or gather alms; and (g) every male person who wears the hair of his head in such a fashion as, when he is standing upright, the main line of the bottom of the mass of hair (other than hair growing on his face or on the nape of his neck) lies below an imaginary line drawn horizontally around his head at the level of the mouth, shall be deemed idle and disorderly persons, and shall be liable for the first offence to a fine of K20 and to imprisonment for three months and for a subsequent offence to a fine of K50 and to imprisonment for six months.