

STATEMENT
UPR Pre-Session on Malawi
31 July 2020
Delivered by: Equality Now

1. Presentation of the Organization

This statement is delivered on behalf of [Equality Now](#) and [People Serving Girls at Risk](#) (PSGR). Equality Now, an international human rights organization, works to achieve legal and systemic changes that address violence and discrimination against women and girls. **PSGR**, a frontline organization, works to end sex trafficking, sexual exploitation, and child marriage in Malawi. Equality Now supports local organizations in UPR processes, and PSGR has participated in UPR processes in Malawi since 2015.

2. National consultations for the drafting of the national report

The Ministry of Justice and Constitutional Affairs Human Rights Unit held consultative meetings in all 4 regions of Malawi with a range of civil society organizations (CSOs).

3. Plan of the Statement

This statement addresses these issues (I) Sex trafficking and sexual exploitation of women and girls (II) Access to justice for victims of sex trafficking (III) Protection of victims and survivors of sex trafficking.

4. Statement

D) Sex trafficking and sexual exploitation of women and girls

A. Follow-up to the first review

During the last UPR review, many countries recommended Malawi to adopt and enforce the Prevention of Trafficking in Persons Act (hereinafter called the Trafficking Act), and adopt a National Plan of Action to ensure its effective implementation. This was reiterated in the CEDAW Committee's 2015 concluding observations on Malawi's 7th periodic report.

In many communities in Malawi, gender inequality and discrimination, and resulting poverty are key factors that make women and girls particularly vulnerable to sex trafficking. Long established sex trafficking trends which still persist today namely from rural to urban areas; from inland to lakeshore areas; and from and to neighboring countries and other continents.¹ Recently, local media has reported many cases of women and girls sex trafficked from Asia into Malawi. In Mangochi, where sex trafficking is prevalent, women reported an increase in the practice of "Fish for Sex – Sex for Fish", an act of sexual exploitation, in which small scale businesswomen are coerced to have sex with fishermen or middlemen in order to access the fish market.

B. New developments since the last review

In 2015, Malawi adopted the Trafficking Act which criminalizes all forms of human trafficking, and in 2017 adopted the National Action Plan against Trafficking in Persons with a target to eradicate human trafficking by 2022. Malawi adopted the National Gender Policy (2015) and the National Girls Education Strategy (2014 - 2018), and introduced the Social Cash Transfer Program targeted at families living in extreme poverty. These efforts are commendable, but inadequate to address the widespread and entrenched gender inequality and discrimination, and without an explicit focus on sex trafficking, the problem is increasing. The loss of household livelihoods during the COVID-19 pandemic has increased poverty among women and girls, making them more vulnerable to sex trafficking. School

¹ Malawi Law Commission (2005), "Human Trafficking in Malawi: Research Paper" in: ECPAT p 22.

closures have excluded many girls from accessing education and their main source of shelter and nourishment, leaving them at heightened risk of sex trafficking.

Question: What measures has the government taken to address the specific needs of trafficked persons during the COVID-19 pandemic?

C. Recommendations

We urge that sex trafficking and sexual exploitation of women and girls is made a prominent issue in the upcoming UPR, and recommend the Government of Malawi to:

- a. Establish programs in the 4 regions of Malawi that increase women's skills and incomes in order to reduce gender inequality, discrimination and poverty, in line with the targets of the SDGs and regional and international law such as CEDAW ratified by Malawi

II) Access to Justice for victims of sex trafficking and sexual exploitation

A. Follow-up to the first review

During the last UPR review, Switzerland recommended Malawi to ensure the identification, protection and access of victims to justice, and guarantee effective investigations in trafficking cases. The UK and Botswana recommended Malawi to tackle gender based violence by improving access to justice, and to develop and implement a comprehensive strategy and judicial reforms to effectively reduce the backlog of cases respectively. Slovenia recommended the effective prosecution and punishment of traffickers. The CEDAW Committee 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.

Local CSOs have noted unnecessary delays owing to long and unjustified adjournments in court proceedings in sex trafficking cases, thus delaying and/or denying justice for victims. The unnecessary delays give the impression of corruption and collusion between traffickers and law enforcement officers. For example, a sex trafficking criminal case² involving a girl that PSGR and Equality Now are supporting has been ongoing since April 2018 and as of July 2020 had not concluded the pre-trial hearing stage. Hearings were adjourned with little explanation on more than 10 occasions. In another case involving Nepalese women³, before they were repatriated to Nepal, the women were moved from a shelter and united with the accused trafficker, living in the same house and attending court together. Without an effective criminal justice system traffickers and other offenders in the exploitation chain offend with impunity and are not held accountable.

B. New developments since last review

The Trafficking Act provides for victims to access to justice, and the state's responsibility to investigate and prosecute human trafficking cases. Through the National Plan of Action Malawi committed to building the capacity of law enforcement, prosecution and judicial officers in order to improve investigation, prosecution and adjudication of human trafficking cases, as well as ensuring that relevant institutions had systems and mechanisms to better handle and manage cases. However, there is very little evidence that these commitments have been fulfilled across the country. Further, despite the High Court declaring Section 184 (1)(c) of the Penal Code unconstitutional⁴ for law enforcement to criminalize and detain prostituted women and girls, who may also be victims of sex trafficking, local CSOs note that this practice is still taking place.

²Case of *Tomasi Bitoni vs The State*, Case #484/2018 being heard at Blantyre Magistrate's Court PSGR and Equality Now are supporting the girl in this case

³PSGR is monitoring the case which is being heard at the Lilongwe High Court

⁴*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>

C. Recommendations

We urge that access to justice for victims of sex trafficking and effective prosecution of offenders is prioritized in the upcoming UPR, and call on the Government of Malawi to:

- a. Through the Chief Justice's Office, prioritize prosecution of sex trafficking cases and ensure that they are concluded within reasonable time and without undue delay
- b. By 2022, in the 4 regions of Malawi, train law enforcement, prosecutors, and judicial officers to apply the Trafficking in Persons Act and ensure protection to trafficked and prostituted women and girls in line with the recommendations of the CEDAW Committee

III) Protection of victims and survivors of sex trafficking

A. Follow-up to the first review

Egypt, Spain and Switzerland recommended Malawi to ensure comprehensive assistance and ensure that victims benefit from full reparation. Although the Trafficking Act mandates the Minister of Gender to designate premises as shelters for the care and protection of trafficked persons, so far no shelter has been established or designated. The non-designated CSO-run shelters are hampered by limited funding and some have closed down; and yet others lack the capacity and skills to address the psychosocial needs of girls and women who have experienced sex trafficking and are suffering from Post-Traumatic Stress Disorder. CSOs have reported instances where victims have been sheltered in Victim Support Units that are located in police stations, without properly trained staff to address their psychosocial needs and without adequate security and safeguarding systems to protect them from being contacted and intimidated by accused traffickers.

B. New developments since last review

Malawi and its development partners established a number of One-Stop-Centres, where victims of gender based violence including sex trafficking can report and access a range of support services. However, local CSOs' experience is that the centres are not effectively supporting victims of sex trafficking due to insufficient funding, coupled with poor attitudes (stigmatization of victims) and quality of services from the staff. In 2018 Malawi established the Anti-Trafficking in Persons Fund as mandated by the Trafficking in Persons Act, with an annual allocation of MK150 million (approximately \$203,500 USD), although the guidelines for disbursements of the funds are yet to be made public, and in 2019 developed Standard Operating Procedures and a National Referral Mechanism to support victims. There is no public information on how many victims have received support and compensation from the Fund or were supported through the National Referral Mechanism.

C. Recommendations

We therefore urge that protection for victims of human trafficking, taking into account the particular needs of victims of sex trafficking, is prioritized in the upcoming UPR, and recommend the Government of Malawi to:

- a. Establish designated-trafficking-shelters that meet the needs of women and girls trafficked for sexual exploitation, including assigning qualified psychosocial counselors, as mandated by the Trafficking Act. These should be established by 2022, the target year of the current National Plan of Action against Trafficking in Persons
- b. Increase transparency in the administration of the Anti-Trafficking Fund by publishing annual disaggregated data on victims and survivors who have been supported by gender, age, location and form of trafficking at a minimum