



African Committee of Experts on the Rights and Welfare of the Child Briefing Report on Child Marriage and Child Sexual Exploitation in Malawi, October 2023

Introduction

Equality Now (with observer status No. OBS/028/2018), an international human rights organization, founded in 1992, working for the protection and promotion of the rights of women and girls worldwide in partnership with People Serving Girls at Risk (PSGR), a human rights non governmental organization in Malawi working on fighting against the exploitation of girls and women in forms such as prostitution, trafficking for sexual exploitation, commercial sexual exploitation, and child marriages compiled this thematic briefing report on child marriage and child sexual exploitation in Malawi. This report is submitted to the 42nd Ordinary Session of the African Committee of Experts on the Rights and Welfare of the Child (ACERWC), to be held from 8th to 17th November in Addis Ababa, Ethiopia. This report was developed through multi-stakeholder consultations coordinated and consolidated by Equality Now and PSGR. Stakeholders engaged included Mphatso Zathu Foundation, Extra Mile Development Foundation (EMDEF), People Serving Girls at Risk and Fountain of Hope. (FOHOP). The evidence covered was drawn from Mzimba, Chileka, Kalonga and Nkhata Bay districts in the Northern Region and Blantyre, Neno, Balaka, and Mangochi districts in the Southern Region.

I. Harmful practices: Child Marriages

i) Harmonization of laws

In 2017, Malawi successfully amended its Constitution by removing the provision that earlier allowed parents to consent to the marriage of their children under 18. This amendment harmonized the Constitution with the provisions of the Marriages, Death, and Family Relations Act of 2015, which set the minimum age of marriage at 18¹. However, the legislative framework of Malawi also includes community by-laws which are commonly used in informal courts within the rural areas which are seldom reviewed to ensure that they align with statutory law, yet they are widely applied within the communities thus potentially perpetuating child marriages². One of the key factors preventing effective implementation of the laws to combat child marriage is the lack of a comprehensive and consistent legal framework. While Malawi's Constitution and the Marriage, Divorce and Family Relations Act set the minimum age of marriage at 18, the *Childcare, Protection and Justice Act of 2011* prohibits forced marriage of children, but it defines a child as

¹ Equality Now, UNFPA and Southern African Development Community Parliamentary Forum, *Ending Child Marriage in Eastern and Southern Africa: Challenges in Implementing Domestic Laws and the SADC Model Law on Child Marriage*, August 2023, <https://equalitynow.storage.googleapis.com/wp-content/uploads/2023/08/22060035/EN-Child-Marriage-Policy-Briefs-3-05.pdf>

² UN Women 'Realizing the African Union Campaign to end child marriage: emerging lessons from child marriage programming from Malawi and Zambia' Policy Paper (2020).

a person below the age of 16. In this case, while the Constitution will supersede the *Childcare, Protection and Justice Act*, it still creates complications in the application of the law³.

ii) Government of Malawi initiatives on community sensitization on harmful practices.

Human Rights Watch found that many of the girls and women in Malawi who were victims of child marriage were not aware of their rights under the law, and therefore did not know where to seek assistance showing a gap in information dissemination⁴. The Government of Malawi reported conducting mass sensitization initiatives including convening annual symposiums for stakeholders to discuss the illegality of child marriages, and undertaking awareness programs on the social, economic and health impact of child marriages, development of a community awareness handbook on child and gender-related laws in 2019 to assist in sensitization and declared the month of December as child protection month starting from December 2020. However, awareness has not filtered to marginalized communities where it is most needed due to lack of adequate resources for the required programs and interventions.

iii) Government of Malawi Resource allocation towards the implementation of the Campaign to End Child Marriage.

The budget allocated to child protection services in Malawi has been low and this affects the implementation of child marriage laws and the standards set by the SADC Model Law. UNICEF reports that the budget allocation is estimated at US\$0.08 per child for the year 2022/2023 (which is 0.02% of the national budget) which is very low and inadequate⁵. Also, the National Children's Commission was allocated only MK 275 million (approx. US\$335,000) instead of the estimated MK 2 billion (approx. US\$2.4 million) required for its establishment⁶. This limits their ability to provide child protection services (including birth registration, protection from harmful practices, violence, support services etc.) which are crucial especially in programmatic activities that support children at risk of child marriage and children already in marriage. Most interventions to end child marriage in Malawi are done and funded by NGOs and development partners/donors. Budgetary allocation for ending child marriages is by far too little annually.

iv) Steps Taken by Government of Malawi to improve the rate of birth registration as a measure to prevent child marriages.

Limited resources for relevant government departments responsible for birth registration and lack of understanding of the benefits of the registration system by some members of the community continue to affect access to birth certification. This results in some children either not being registered or their parents not collecting birth certificates after registering their birth in health centers. A total of 14% of women who were child brides were in informal unions. It becomes difficult to enforce marriage laws, annul marriages or re-integrate children into the education system if their data is unrecorded and unknown, or if their birth has been registered late⁷.

³ Equality Now, UNFPA and Southern African Development Community Parliamentary Forum, *Ending Child Marriage in Eastern and Southern Africa: Challenges in Implementing Domestic Laws and the SADC Model Law on Child Marriage*, August 2023, <https://equalitynow.storage.googleapis.com/wp-content/uploads/2023/08/22060035/EN-Child-Marriage-Policy-Briefs-3-05.pdf>

⁴ Human Rights Watch I have never experienced happiness: Child marriage in Malawi (2014).

⁵ UNICEF Child Protection Budget Brief: Malawi 2022-2023.

⁶ Ibid.

⁷ UNFPA State of the World Population Report 2023.

v) Traditional practices which promote child marriage like kupimbira/debt repayment, fisi, chinamwali/puberty rites of passage

While Government of Malawi and other players are sensitizing communities to modify harmful cultural practices, there are still some communities who are continuing with the same. In many communities in Malawi, the puberty rite of passage ceremony called chinamwali is still taking place. As part of this ceremony, upon graduation, young girls (sometimes as young as 10-12) are encouraged to have sex with an older man as a mark of womanhood and readiness for sex and marriage is still practiced. Some girls are exchanged in marriage or betrothal in the traditional practice of kupimbira which is a form of debt repayment, especially in the northern part of the country. In Districts such as Mangochi, Machinga, and some parts of Zomba and Thyolo Districts, girls report that traditional initiation counselors have not modified training content for initiating chinamwali⁸.

In another practice called 'fisi', an older man called a 'hyena' is hired by the parents of a girl who has just been initiated to sleep with her and teach her how to please her future husband⁹. In a 2019 report, it was reported that in 80% of the villages in the South of Malawi, the majority of girls had participated in initiation rituals.¹⁰ Further, 2.61% of girls surveyed indicated that they had participated in the fisi ritual.¹¹ Many of these young girls are forced into marriage especially if they become pregnant as a pregnant young girl is expected to marry to avoid bringing 'dishonor' to the family. Changing harmful practices is not a process that happens overnight, therefore resistance towards laws prohibiting child marriage remains an issue within the community and amongst traditional leaders. One of the triumphs that Malawi has had is the engagement of traditional leaders as champions for ending child marriage. In February 2020, more than 100 female chiefs committed to help end child marriage.¹² Through the implementation of the multisectoral approach, this commitment has started to bear fruits for example, some community bylaws provide for a family being fined a goat for marrying of their daughter before 18 years.

vi) Children in marriages and child marriages ability to access justice through courts

It is still a challenge for children affected by child marriages to access justice, because of societal resistance and lack of resources to hire private lawyers to speed up the processes. Malawi has not yet criminalised child marriage apart from mandating various players to nullify child marriages. Children whose marriages are nullified do not get any form of compensation and to date no child has been reported to have gone to court and accessed justice.

vii) State of implementation of Malawi's National Strategy on Ending Child Marriage (2018-2023)

Malawi adopted a *National Strategy on Ending Child Marriage (2018-2023)*, which adopts a multi-sectoral approach to tackle child marriage. The strategy aims to reduce the prevalence of child marriage in the country by 20% by 2023. Significant strides have been achieved in ending forced child marriages in Malawi and the rate reducing from 50% at the highest pick to 42%

⁸ UN Women Multi-country analytical study of legislation, policies and interventions and cultural practices on child marriage in Africa (2019).

⁹ UN Women (n8).

¹⁰ UN Women (n8).

¹¹ UN Women (n8).

¹² ReliefWeb <https://reliefweb.int/report/malawi/female-chiefs-vow-end-child-marriage-malawi>

currently. This falls short of the 20% target. The COVID-19 pandemic set back some of the gains that had been made on reducing child marriage due to the school closures which discontinued intervention programmes and limited access to sexual and reproductive health services, as well as re-socialised them into the traditional social structures that encourage child marriage¹³. From April to June 2020, the national youth helpline recorded 669 child marriages, an 83% increase from the same period in the previous year¹⁴. The *National Strategy on Ending Child Marriage (2018-2023)*, comes to an end this year and we are hoping Government of Malawi will convene stakeholders to reflect and review the ending strategy, draw best practices, identify gaps and what needs to change, on the road to developing a new strategy.

viii) Linkages and impact of climate change on cases of child marriage in Malawi

Climate change has greatly contributed to child marriages. In Karonga district where the Fountain of Hope (FOHOP) organization works on ending child marriages, it discovered that one of the causes of child marriages was lack of household income due to either droughts or excessive river floods which left families without food to survive. This situation influenced parents and guardians to force their girl children into marriage to avoid their care responsibilities. Men who had better income took advantage of the families who were suffering from the impact of climate change, to convince a girl for a marriage even when the man already had another wife. There are always flash floods which displace and dislodge communities from time to time; communities are now having to walk long distances to fetch for fuelwood and collect water, tasks often performed by teenage girls. The scorching heat waves force many communities to sleep outside their huts or houses and in the process increasing the vulnerability of girls to sexual and gender-based violence. In some communities parents would force their boys to marry so they can have an energetic girl who could help them with such chores as collecting water and firewood.

ix) Resources Provision of the Malawi Human Rights Commission

According to the Republic of Malawi Combined First, Second, Third, Fourth, Fifth and Sixth Periodic Report Under the African Charter on The Rights and Welfare of the Child (2018-2021), The Malawi Human Rights Commission (MHRC) has a total establishment of 124 personnel of which 61 positions are filled representing a 49.1% staffing level. Specifically, the Child Rights Section within the Commission has a total establishment of 10 positions of which only 3 are filled, representing a 30% staffing level. The available funding is still not adequate for the MHRC to carry out its mandate relating to child rights including ending child marriages as provided for in the Constitution of the Republic of Malawi.

II. Sexual exploitation of children

In this section our submission focuses on trafficking of children for sexual exploitation, which is rife in Malawi.

Trafficking for sexual exploitation, also known as sex trafficking, occurs internally as well as between Malawi's neighbours and further abroad. Traffickers often lure those who are vulnerable

¹³ The Telegraph <https://www.telegraph.co.uk/global-health/women-and-girls/child-marriages-skyrocket-malawi-covid-19-closes-schools-figures/>

¹⁴ ReliefWeb (n12)

and living in poverty by promising to provide them with education and employment opportunities. Inside Malawi, vulnerable children, with girls being disproportionately affected, may be put to work as "bar girls" at local bars and rest houses, and then coerced to have sex with customers. Children are also trafficked along major transport routes by truck drivers who falsely promise them schooling, marriage, and jobs in South Africa. There have also been cases of young girls trafficked into Malawi from Nepal and India and sexually exploited in bars and brothels, especially in the capital city, Lilongwe.¹⁵ Trafficking for sexual exploitation generates high profits and comes with a low risk of being prosecuted. This situation has been compounded by the COVID-19 pandemic which left many more children vulnerable to trafficking and sexual exploitation (worst case scenario, police rescued 43 young girls at a checkpoint in Blantyre who were enroute to Lilongwe)¹⁶. Also, Cyclone Freddy left many families without their homes and livelihoods, further increasing the risk of trafficking and sexual exploitation for children already living in vulnerable situations.

i) Legal and policy framework to address trafficking of children for sexual exploitation

The passing of the Trafficking in Persons Act in 2015 was an important milestone to ensure protection of children from sex trafficking, and to promote the prosecution and punishment of offenders. The Act also guarantees victims' access to compensation and rehabilitation services including psychosocial support and shelter services. A major challenge is that implementation of the law is weak. Since the law was enacted, there have been very few convictions, and in the absence of gender disaggregated national data it is difficult to assess how many of these cases involved children trafficked for sexual exploitation. CSOs are also waiting for the moment a victim of trafficking will get compensated, as provided for by the Trafficking in Persons Act

The first National Plan of Action against Trafficking in Persons (NPA), which supports the implementation of the law and of other measures to prevent, protect, and to detect and prosecution human trafficking cases, covered the period 2018 to 2022. Through the NPA, Government of Malawi implemented measures to prevent trafficking of children including awareness raising campaigns and developed Standard Operating Procedures (SOPs) for law enforcement and judicial officers handling cases of human trafficking. Using the SOPs, Government of Malawi has also trained some police prosecutors, investigators and magistrates on how to identify cases of trafficking and ensure that survivors get justice through the criminal justice system. However, not all frontline law enforcement staff have been trained.

Further, Government of Malawi is still to develop a new NPA for the period 2023 to 2027. There has been very little information available on when this will be done. During 2023, the Ministry of Homeland Security organized regional meetings for stakeholders to discuss what should be included in a new NPA. PSGR and other local organizations are concerned that in the absence of clear targets and indicators on sex trafficking in the new NPA, monitoring of progress will not be effective.

(ii) Ensuring the investigation, prosecution, and conviction of perpetrators who recruit and transfer children for the purposes of sexual exploitation.

¹⁵ Local organizations report from their court monitoring.

¹⁶ [Malawi Struggles to End Sex Trafficking as Cases Rise \(voanews.com\)](https://voanews.com)

In 2021, 37 cases involving the trafficking of children were reported and investigated. Convictions were secured in 24 cases; 10 cases are currently under investigation and three cases are still before the courts.¹⁷ However, there are gaps in the areas of investigation, prosecutions as well as concluding cases of sex trafficking. While a few cases have been concluded and sentences passed, there is still under-reporting largely because cases take too long to conclude which leads to demotivation of victims/survivors. For example, PSGR has been pursuing justice for a girl who was trafficked for sexual exploitation in 2018. Up to now, her case is still to be concluded by a Magistrate's Court in Malawi. PSGR and Equality Now's communication on this case is before the ACERWC.

(iii) Providing necessary support and assistance focusing on shelter and other psychosocial support across all districts in a child sensitive manner as mandated by the Trafficking in Persons Act

Government of Malawi has made efforts to provide shelter and other psychosocial support to victims/survivors of human trafficking. However, there are very few government-run shelters, many of the shelters are run by CSOs. For example, Blantyre has only one transit shelter managed by Love Justice International, and survivors can only stay there for a few nights before they are repatriated to their respective homes. Further, Malawi has not established nor designated any shelters for the care and protection of trafficked persons. The non-designated NGO-run shelters are hampered by limited funding, and some have closed down. In other cases, they are ill-suited for the needs of trafficked children, as distinct from adults, who are also likely to be suffering from Post-Traumatic Stress Disorder. In addition, psychosocial support services are very far from rural areas thereby denying the opportunity of the most vulnerable child to access these services. In the absence of these essential services vulnerable children are at risk of being re-trafficked.

(iv) Child protection officers' trafficking in persons capacity enhancements

Although the government has employed child protection officers, few are deployed in many rural areas, leaving a big gap in prevention and protection of trafficked children and those at risk. In Karonga district there is only one child protection officer to serve a population of over 70,000 people. There is also a challenge of the limited capacity and Child protection officers including social welfare office, district child protection office, district youth office needs their capacity strengthened to effectively conduct awareness campaigns and training to the citizens without waiting for CSOs to fill the gap. In addition to employing more child protection officers, as a short-term measure, Government of Malawi should also put resources into special training of community structures to conduct awareness campaigns and support victims/survivors as first responders, especially in communities where there are no child protection officers.

III. Recommendations

While the government of Malawi has made progress in ending child marriages, trafficking and sexual exploitation, the gaps presented in this report calls for the government of Malawi to:

¹⁷ United States, State Department Trafficking in Persons Report, 2022

1. Prioritize the harmonization of national laws, as well as civil and customary or religious laws to make them consistent with relevant SADC Model Law and comply with the Charter, international and regional human rights obligations.
2. Criminalize child marriage and come up with corresponding penalties as sexual abuse cases are not yet statutory offences and the Penal Code does not recognize them as punishable criminal offences.
3. Expedite investigation and prosecution of sex trafficking cases, and ensure they are concluded in a reasonable time.
4. Ensure wide information dissemination and community sensitization to ensure laws, policies and mechanisms in place are widely known.
5. Allocate adequate funding towards implementation of laws, strategies, and national plans of action to end child marriages and sexual exploitation.
6. Strengthen multi-sectoral consultations, capacity strengthening, partnerships, and coordination of local and international institutions for legal reform and implementation of the National Strategies and Plans of Action to ensure each sector is adequately equipped for their role in eradicating child marriage and sexual exploitation.
7. Invest in child rights response mechanisms for monitoring children's rights so that the Human Rights Commission's ability to receive, investigate and address complaints of child marriages, sexual exploitation and sex trafficking in a child-sensitive manner is strengthened.
8. Ensure access to justice for children affected through deliberate efforts to ensure cases are expedited and concluded timely as well as designation of special courts and appoint special judges or magistrates who can preside over cases of child marriages, sexual exploitation, and sex trafficking.
9. Establish mechanisms for cooperation, coordination, and data management with neighboring countries to prevent trafficking, ensure that child victims are compensated, provided with services, and ensure detection and identification of common places where child trafficking destinations are existing at both national and international level.
10. Swiftly embark on rebuilding the infrastructure demolished by Cyclone Freddy to ensure children continue with their education to reduce their vulnerability to child marriages, sex trafficking and other forms of exploitation.

Conclusion

It is commendable that the Government of Malawi has put significant effort in ensuring that different laws and policies are established to end child marriages, sexual exploitation, and trafficking of children for the purposes of sexual exploitation. There is still a lack of awareness of the rights of children, the COVID-19 pandemic and Cyclone Freddy has increased the number of child marriages, trafficking, and exploitation. Equality Now and People Serving Girls at Risk hope, the government of Malawi will prioritize addressing child marriages, harmful practices, and trafficking in children for sexual exploitation in compliance with the provisions of the Charter, in accordance with, Government of Malawi's SDGs commitments and accepted UPR recommendations from the 2020 reviews and urgently prioritize the hardest to reach areas as they remain very fertile child rights violations with impunity.