Briefing
Submitted on 15 December 2016

for the examination of the implementation of the CRC and OPSC in Malawi

to the Committee on the Rights of the Child
Session 74
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## Glossary

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<td>CEDAW</td>
<td>Convention on the Elimination of all Forms of Discrimination against Women</td>
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<td>Committee</td>
<td>The Committee on the Rights of the Child</td>
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<td>CRC</td>
<td>Convention on the Rights of the Child</td>
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<td>CSE</td>
<td>Child sexual exploitation</td>
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<td>CSO</td>
<td>Civil society organisation</td>
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<td>CVSU</td>
<td>Community Victim Support Units</td>
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<td>ECPAT</td>
<td>End Child Prostitution, Child Pornography, and Child trafficking for sexual purposes</td>
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<td>HIV/AIDS</td>
<td>Human Immunodeficiency Virus/Acquired Immune Deficiency Syndrome</td>
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<td>HRC</td>
<td>Human Rights Commission</td>
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<td>ICT</td>
<td>Information and communication technology</td>
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<td>ILO</td>
<td>International Labour Organization</td>
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<td>IOM</td>
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<td>IPEC</td>
<td>International Programme on the Elimination of Child Labour</td>
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<td>MACRA</td>
<td>Malawi Communications Regulatory Authority</td>
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<td>MNACT</td>
<td>Malawi Network against Child Trafficking</td>
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<td>MNAT</td>
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<td>NCCATIP</td>
<td>National Coordination Committee against Trafficking in Persons</td>
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<td>NCJF</td>
<td>National Child Justice Forum</td>
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<td>NPA</td>
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<td>OPSC</td>
<td>Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography</td>
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<td>PVSU</td>
<td>Police Victim Support Unit</td>
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<td>SADC</td>
<td>Southern African Development Community</td>
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<td>SECTT</td>
<td>Sexual exploitation of children in travel and tourism</td>
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<td>Tourism</td>
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<td>UN</td>
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1. EXECUTIVE SUMMARY

A 2016 research on child sexual exploitation in Malawi conducted by ECPAT International has found that although no country is immune, Malawi is particularly affected due to poverty, the HIV/AIDS epidemic, poor birth registration practices, access to quality education, harmful cultural practices and child labour placing children in hazardous situations. Although statistics on the number of victims are missing, research and media reports have shown in the past decade that child trafficking for sexual purposes still flourishes and child marriage persists with one of the world’s highest prevalence. All forms of child sexual exploitation are pervasive and most probably growing in Malawi. Various reports note that not just older children are affected, but many young children as well, as young as ten years old. Although little is known about sexual exploitation of children online and child sexual exploitation materials, Malawi appears to be an easy target with the growing connectivity to the internet, especially through smartphone usage.

Malawi has ratified most international and regional instruments to protect children. While most international standards are embodied in national legislation, the Constitution falls short with its definition of a child as a person below 16 years of age for section 23 of the Constitution. The Child Care, Protection and Justice Act of 2010 also defines children below the age of 16, but does include a prohibition on the sale of children, harmful practices like forced marriages and betrothal, and pledging children as security for a debt. Although the Constitution still regulates the right to be married at 15 years of age, the newly adopted Marriage, Divorce and Family Relations Act of 2015, conforms to international standards by setting the age at 18. The Trafficking in Persons Act of 2015 provides a legislative and institutional framework for prevention, protection and prosecution or trafficking related offences. The Penal Code (2011) has some specific prohibitions to combat child sexual exploitation such as child pornography and procuration of sex with young girls aged below 21 years. There is no such prohibition for boys, while, especially street boys, are targeted.

Malawi does not have a Plan of Action to address child sexual exploitation specifically. However, the Child Labour National Plan of Action is a critical guiding document. Equally important are the Malawi Network against Trafficking (MNAT) and the recently established National Coordination Committee against Trafficking in Persons (NCCATIP). Police Victim Support Units, Community Victim Support Units, National Child Helpline - 116, National Gender based Violence Crisis Line - 5600, Drug and Substance Helpline - 6600 and One Stop Centres across the country assist children who fall victim to violence. There are Child Justice Courts with child friendly procedures in place. Noteworthy is also the Malawi Communications Regulatory Authority (MACRA) combatting sexual exploitation of children online.

Despite the laws, policies and mechanisms in place, there are gaps in the combat against child sexual exploitation and key laws such as the Child Care, Protection and Justice Act (2010) and the TIP Act (2015) do not have operational guidelines, hindering implementation. There is no national identification procedure, nor a referral system and the government depends heavily on international organisations for funding most anti-trafficking programmes while CSOs play a vital role in service provision, for example the by YONECO initiated National Child Helpline and NGO operated shelters. The government operates only one drop-in centre, based in Lilongwe. Although recently a training manual on trafficking was developed, in general, there is a lack of capacity among judicial sector to handle cases of child sexual exploitation and little resources available to build capacity. There is a lack of statistics and data to inform effective responses, although the victim support units are now collecting
valuable case data. Awareness among the public on all manifestations of child sexual exploitation is still marginal, albeit growing due to case coverage in (social) media. There is little involvement of children in child rights programming in Malawi. This means that children’s voices are taken into account in the development processes.

A comprehensive set of recommendations is given in the final chapter to end child sexual exploitation in Malawi through evidence-based responses covering coordination, protection, prevention, recovery & reintegration, access to justice, child participation and data collection.

2. JUSTIFICATION FOR SUBMISSION

This Submission has the primary objective to provide an overview of Child Sexual Exploitation (hereinafter “CSE”) in Malawi. As written by the Government of Malawi there has been limited research into the issues of CSE in Malawi although the Government acknowledges CSE occurs in Malawi and is a recognized social problem.¹ In 2016 ECPAT International (hereinafter “ECPAT”) conducted a research on CSE in Malawi, publishing the report “Country Monitoring Report on the Commercial Sexual Exploitation of Children in Malawi” in November 2016.² As the research is one of the first in its kind on CSE in Malawi, ECPAT would like to bring the findings and recommendations under the attention of the Committee on the Rights of the Child (hereinafter “the Committee”). ECPAT and its partners Eye of the Child and Youth Net and Counselling (hereinafter “YONECO”) hope that the Committee will incorporate the findings and recommendations in their concluding remarks on the implementation of the CRC and the OPSC in Malawi to allow for tailored and evidence-based recommendations towards eradicating CSE in Malawi.

3. METHODOLOGY AND SCOPE

The present submission is a desk review and includes the findings and recommendations of a recent country monitoring report published by ECPAT³ as well as input from two of ECPAT’s member organisations on the ground: Eye of the Child and YONECO.

³ Ibid.
The scope of this submission is limited to CSE⁴ and its different manifestations, including child trafficking for sexual purposes, child marriage,⁵ exploitation of children in prostitution,⁶ sexual exploitation of children online, child sexual exploitation material,⁷ and sexual exploitation of children in the context of travel and tourism (hereinafter “SECTT”).⁸

4. CSE IN MALAWI

Malawi is one country in the Southern African Development Community (SADC) region that has been badly affected by CSE, one of the worst forms of child labour, and commonly a purpose or element of child trafficking. CSE in Malawi manifests in various forms including child trafficking for sexual purposes, child marriage, exploitation of children in prostitution, sexual exploitation of children online and/or production of CSE materials, and SECTT. While child labour has been focussed on in Malawi, and recently there has been a heightened level of awareness on child trafficking,⁹ CSE has not specifically received much attention. The reference to it has mainly been in the context of child labour or child trafficking.

CAUSES AND DRIVERS OF CSE
The causes and drivers of CSE in Malawi are numerous and complex.

Traffickers capitalise on the vulnerabilities created by poverty, minimal education levels, unemployment, and a general lack of economic opportunities. Some CSE is cross-border as with women and girls being recruited along major trucking routes by long-distance truck drivers, who promise them jobs, marriage, or an education in South Africa.¹⁰ They cross the border at Beitbridge or Komatipoort without 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.¹¹ The movement and migration to South Africa for trade contributes to acceptance and expectations of unregulated movement.

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

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⁵ Ibid., 62.

⁶ Ibid., 29.

⁷ Ibid., 39.

⁸ Ibid., 54.

⁹ With the enactment of the Trafficking in Persons Act.


HIV prevalence is one of the highest in the world, with 10.3% of the population living with HIV. Malawi is one of the countries where there is high HIV prevalence among young people aged 15-19. 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. 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 young girls, since they are perceived to be HIV negative, making them vulnerable.

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 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.

Children have limited access to quality education. In 2011, there was a 20% drop out rate and 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.

Some harmful cultural practices cause women to be viewed as sexual commodities, making them particularly vulnerable to exploitation. 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.

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border, and in the Misuku Hills. 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. 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. There is a perception in many African countries that girls and boys become adults upon reaching puberty. In most places in Malawi girls must undergo initiation ceremonies (chinamwali). At some of these ceremonies, 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. 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. Thus, Malawi has for a long time had one of the highest rates of child marriage globally.

While CSE can be classified as one of the worst forms of child labour, other child labour can place children in hazardous situations placing them at risk of CSE. Child labour is rampant in Malawi. In 2012, the percentage of children aged 5-14 years involved in child labour in Malawi was 26%. 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. Outside the home, most of the children in Malawi work in the agricultural industry especially in the tea and tobacco estates.

CSE MANIFESTATIONS IN MALAWI
All these causes and drivers lead to various CSE manifestations in Malawi, all of which will be discussed hereinafter.

Child trafficking for sexual purposes


ILO Convention, Article 182.

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

Ibid.


its 2015 and 2016 reports, the US Department of State, placed Malawi in Tier 2 for Malawi’s significant efforts to combat human trafficking.\textsuperscript{26} In one of the most comprehensive studies on child labour in Malawi, the International Labour Organization (ILO) and International Programme on the Elimination of Child Labour (IPEC)\textsuperscript{27} defined child trafficking in line with Article 3 of the Palermo Protocol.\textsuperscript{28} The same 2008 study 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.\textsuperscript{29} 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 servants\textsuperscript{30} or farm labourers.\textsuperscript{31} 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.\textsuperscript{32} A 2008 study provided guidance on internal trafficking trends, projecting that between 500 and 1,500 women and children are trafficked within the country annually.\textsuperscript{33} 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 or sexual exploitation.\textsuperscript{34}

Malawian victims of sex and labour trafficking have been identified in South Africa, Zambia, Mozambique, Tanzania, and parts of Europe.\textsuperscript{35} In 2005, the Malawi Law Commission identified three ways in which women, especially girls, were trafficked in Malawi, namely: from rural


\textsuperscript{30} Especially in places like Chipungu, Makhanga, Dambo la Ngondo Villa.


\textsuperscript{34} ILO/IPEC Child Labour Report 2008, p12.

\textsuperscript{35} US Dept. of Home Affairs, “2015 Trafficking in Persons Report”.

\textsuperscript{9}
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.  

More than a decade later, these ways of trafficking still exist. 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. 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. 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 and youth between the ages of 6-20 were trafficked after being told they were being brought to a Christmas party. Upon being rescued, the children were handed over to a YONECO to receive counselling before being reunited with their families. 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. 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.

Child marriage

Child marriage is a harmful practice that is prohibited by international and regional standards. Although at the international level there is no binding instrument which

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Briefing to the Committee on the Rights of the Child on the Child Sexual Exploitation in Georgia by ECPAT International, Eye of the Child and YONECO

prescribes the minimum age of marriage as 18 years, regional and sub regional instruments do provide for the same. Not all child marriage is CSE, but child marriage can be a manifestation of CSE 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 a factor leading to CSE, in that early marriage can sometimes be linked to wife abandonment, which can leave girls in bad economic situations and may force them into a situation 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. During this period, UNFPA household surveys (Demographic and Health Surveys and Multiple Indicator Cluster Surveys) 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%. 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); while 12% of women married before they were 15 years old (compared to only 1.2% of men).

Exploitation of children in prostitution

Exploitation of children in prostitution appears to be a growing problem in Malawi. There has been limited research into the issues of children exploited in prostitution, CSE materials and the SECTT. The scanty data available indicates that various versions of these types of exploitation exist in Malawi and the CSE manifestations are recognised social problems. The reports on exploitation of children in prostitution are mostly based on media reports. In a 2002 survey, wherein the extent and characteristics of girls (minors) in prostitution were examined in some detail, it was revealed that over 90% of girls had been in the sex trade for less than three 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

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45 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.

46 Ibid., 2 3.


50 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).
through death or did not know their whereabouts and 60% did not have their mothers. 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. 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. 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. 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 K1,000 to their parents plus a promise that the girls will be employed in restaurants. Older girls are ordered to teach the children “ways of pleasing men”. 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. 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).

### Sexual exploitation of children online and/or CSE materials

Information on sexual exploitation of children online and/or CSE materials is rarely available in Malawi. 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. Although the report suggests that instances

51 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.


53 Ibid.

54 Ibid.

55 Approximately $142.


57 Ibid.

continue to resurface, especially through the media, regarding the involvement of children, it is not easy to find such information. This is even though 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.

SECTT
The Global Study on SECTT defines SECTT as “acts of sexual exploitation of children embedded in the context of travel, tourism or both”. Although there is limited information on the sexual exploitation of 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. Another research found that 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, Nkhotakota, Salima, Monkeybay and Mangochi. The government also noted that there are foreign sex offenders residing in Malawi.

5. Responses

International and Regional Legal Standards
Malawi has ratified most instruments that are relevant for the protection of children from CSE. 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 level, 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 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.

**National Legal Framework**

In 1994, Malawi adopted a democratic Constitution\(^6^5\) which, among its many strengths, contained a Bill of Rights for the first time in Malawi.\(^6^6\) Although it has been criticised for paying limited attention to the rights of children, 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. The Constitution fails to meet international standards as Section 23 defines a child as a person below 16 years of age. The Government of Malawi has agreed to amend the Constitution as per the amicable settlement reached under the auspices of the African Committee of Experts on the Rights and Welfare of the Child in October 2016.\(^6^7\)

Based on the principles laid out in its Constitution, Malawi has laws and policies to regulate its child protection. Important contribution to the legislative framework around child protection was the initiative of the Malawi Law Commission in 2005 to develop anti-trafficking legislation, which 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. With cooperation from the Ministry of Women and Child Development,\(^6^8\) the Law Commission completed the review of a number of laws under the National Plan of Action.\(^6^9\) These include the Children and Young Persons Act,\(^7^0\) the Affiliation Act No. 20 of 1994.

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\(^{65}\) Act No. 20 of 1994.

\(^{66}\) 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.

\(^{67}\) ACERWC, October 2016, Communication: No. 004/Com/001/2014, Report on consideration of an amicable settlement under the auspices of the Committee.

\(^{68}\) The Ministry is now called the Ministry of Gender, Children, Disability and Social Welfare.


Act, the Marriage Act, the Divorce Act, the Penal Code, the Wills and Inheritance Act, and the Adoption of Children Act. The government also enacted the Prevention of Domestic Violence Act which protects men, women and children who are in abusive domestic relationships. In 2010, the Child Care, Protection and Justice Act (2010) 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’. Amongst its many innovative provisions, the Child Act is embedded in the principle of the best interests of the child. The ‘best interests of the child’ principle has now also been incorporated in section 23 of the Malawi Constitution.

To date no cases have been reported of adopted children from Malawi being sexually exploited, however, intercountry adoption could be another way in which children can be trafficked to other countries for sexual exploitation. Malawi has been a fertile ground for intercountry adoption, following the famous intercountry adoptions by the music star Madonna. This led to a flood in the subordinate courts of cases of intercountry adoption, but failed to incorporate child protection measures. In response, the Judiciary issued Practice Direction No. 3 of 2009 which reserved authority over intercountry adoption to the High Court.

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71 Cap. 26:02 of the Laws of Malawi.
75 Cap. 26:01 of the Laws of Malawi.
76 Act No. 5 of 2006.
78 Long title of the Act.
79 See Constitution Amendment Act No. 11 of 2010.
Court.\textsuperscript{81} The Adoption of Children Act has also been reviewed by the Law Commission that has advised to incorporate some aspects of international standards even though Malawi has not ratified The Hague Convention on Intercountry Adoption.

The Employment Act of Malawi prohibits a person between the ages of 14-18 years from undertaking hazardous work.\textsuperscript{82} Although not explicitly mentioned, the prohibition includes commercial sex work. Acting contrary to the prohibition regarding employment of young persons is punishable by a fine of K20,000\textsuperscript{83} and imprisonment for five years.\textsuperscript{84} 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 Malawi Law Commission in its report on the development of the Trafficking in Persons Legislation, recommended to include elements of extraterritorial jurisdiction in conformity with current international law trends.\textsuperscript{85} As such, when the offence of trafficking in persons is transnational in nature, the TIP Act would have application if the crime has 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.\textsuperscript{86} 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 Act\textsuperscript{87} and the Mutual Assistance in Criminal Matters Act\textsuperscript{88} could be of assistance but require amendment to include trafficking in persons under the Act.\textsuperscript{89} 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.\textsuperscript{90} Although these recommendations were made by the Law Commission, the final TIP Act did not include the proposed provisions. The fact that the Committee has, in its List of Issues, asked the Government of Malawi for its extraterritorial jurisdiction in OPSC related crimes, indicates the importance in CSE cases, which often involve more than one jurisdiction.

\textsuperscript{81} Ibid.

\textsuperscript{82} Section 22, Regulation of Minimum Wages and Conditions of Employment Act (Cap. 55:01 of the Laws of Malawi).

\textsuperscript{83} Approximately equivalent of 30 USD.

\textsuperscript{84} Section 24.


\textsuperscript{86} Ibid.

\textsuperscript{87} Cap. 8:03 of the Laws of Malawi.

\textsuperscript{88} Cap. 8:04 of the Laws of Malawi.


\textsuperscript{90} Ibid., 21-22.
Malawi has developed several policy documents as well as Plans of Action which, although not specifically addressing CSE, 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 Orphans and Other Vulnerable Children are to be organised and managed. One of the most important national plans of action that has a bearing on protection of children from CSE 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 for the next five years. The Child Labour NPA is a critical document for guidance on protecting children from CSE as it has a specific section on the same. The Child Labour NPA acknowledges that child trafficking for labour exploitation, including for sex work, exists in Malawi even though there has not been any comprehensive study done to determine the extent to which this is happening. As part of its strategic framework, the Child Labour NPA provides for the provision of infrastructure and mechanisms for repatriation of recovered children. 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 child trafficking for labour and sexual exploitation, by enforcing trafficking and migration laws and policies, as well as strengthening the network of agencies dealing with trafficking and migration.

Combating 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; 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; community mobilisation, improving access to basic education, complementary basic education programmes and promotion of child rights; and provision of technical and financial support for the elimination of child labour.

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

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

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

95 Ibid., para. 3.7.

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

97 Employers Consultative Association of Malawi.

98 CSOs and traditional leaders.

99 Development partners.
Briefing to the Committee on the Rights of the Child on the Child Sexual Exploitation in Georgia by ECPAT International, Eye of the Child and YONECO

Child trafficking for sexual purposes
The Trafficking in Persons Act (TIP Act) of 2015, which define a child as a person under the age of 18, is a strong piece of legislation for protecting children from CSE. The TIP Act provides a comprehensive legislative framework for combating and preventing trafficking in persons using a human rights-based approach. The TIP 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. In addition, the TIP Act provides for the establishment of an institutional framework for effective regulation and coordination of trafficking in persons and related matters. The definition of trafficking in persons in the law is in line with 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. As part of an enforcement mechanism of the law the TIP Act creates a National Coordination Committee against Trafficking in Persons (NCCATIP) 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 proceedings. However, currently there is no witness protection scheme in place. The Act increased the categories of conduct that are punishable including aiding and abetting trafficking in persons and children; it provides for aggravated forms of committing offences under the Act; and enhances the penalties for various activities related to trafficking in persons.

The Child Care, Protection, and Justice Act (2010) prohibits subjecting a child, defined as under 16 years of age, to any social or customary practice that is harmful to the health or general development of a child. According to a US Department of State 2010 report,

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

101 Ibid.

102 Ibid.

103 Section 2.

104 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.

105 Section 21.

106 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, because of trafficking a person.

107 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.

108 Section 80.
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. 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. Under Division 6 of the 2010 Child Act, children are protected from undesirable practices, including their sale, harmful practices like forced marriages and forced betrothal, and pledging children as security for a debt. These practices are prohibited and punishable by imprisonment for 10 years. 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”. 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.

### Child marriage

In terms of section 22(6) of the Constitution, persons aged 18 years and above cannot be prevented from entering 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. However, the Malawi government indicated that, constitutionally, 15 years is the minimum age of marriage. This is even though 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. As much as this is commendable progress,

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110 Section 79.

111 Section 82(a).

112 Section 81.

113 Section 82(c).

114 Section 83.

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


117 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.

118 2007 report of Malawi to the UN Committee on the Rights of the Child, 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.
the Constitution, as the supreme law of the land,\textsuperscript{119} still needs to be amended accordingly to be in harmony with international standards and the new legislation in Malawi.\textsuperscript{120}

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.\textsuperscript{121} Related to the minimum age of marriage is the issue of sexual consent. Section 160A of the Penal Code (Amendment) Act\textsuperscript{122} 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.\textsuperscript{123} Thus, by implication, the minimum age of sexual consent is 16 years.\textsuperscript{124}

**Exploitation of children in prostitution**

The law does not prohibit prostitution. In Malawi, procuration of young girls aged below 21 years for ‘carnal connections’ or to lure into prostitution is prohibited under section 140 of the Penal Code of Malawi (as amended in 2011), and this is punishable by 14 years’ imprisonment. The Penal Code 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.\textsuperscript{125} The Penal Code specifically protects girls from exploitation through prostitution, but not boys. 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 causing a girl under the age of 16 years to have sexual intercourse with a man or generally.\textsuperscript{126} 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 man or generally is punishable by five years’ imprisonment.

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\textsuperscript{119} In terms of section 5 of the Constitution of Malawi.

\textsuperscript{120} 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.

\textsuperscript{121} Section 83 of the Child Act. Prohibition of forcing a child into marriage and betrothal is under section 81 of the Child Act.

\textsuperscript{122} Act 1 of 2011.

\textsuperscript{123} The Penal Code (Amendment) Act No 1 of 2011 came into force on 28 January 2011.

\textsuperscript{124} 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.

\textsuperscript{125} Section 147A(2).

\textsuperscript{126} As discussed below, prior to the amendment, the minimum age of sexual consent for girls was 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.
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 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.127

**Sexual exploitation of children online and/or CSE material**

The African Union 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.128 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.

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.129 One such offence is child pornography, by law defined as “any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes criminalises possession or viewing of the pornographic materials” and is punishable by 14 years’ imprisonment.130 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 K100,000.131 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 quite progressive.

Another important piece of regulation 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

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

128 Article 3.

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

130 Section 160E of the Penal Code.

131 Approximately $143.
tendencies which are threats to national security”. 132 On 4 July 2016, Malawi passed the Electronic Transactions Act under which the Malawian 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. 133 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 child pornography and punishing attempted crimes. 134

SECTT

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. The lack of solid information on incidence, coupled with silence or even social acceptance, keeps SECTT far too low on policy agendas across the globe. 135

This is despite a growing tourism industry in Malawi. Between 1990 and 2014, the number of tourists to Africa grew from 17.4 million to 65.3 million. 136 Although Malawi is neither amongst the top five tourist destinations in Africa, 137 nor amongst the 10 fastest growing tourist destinations, 138 there has been an increasing trend in the number of tourists. As reported by the World Bank, 139 the number of tourist arrivals in Malawi grew as follows since 2006:

<table>
<thead>
<tr>
<th>Year</th>
<th>No. of Tourist Arrivals</th>
</tr>
</thead>
<tbody>
<tr>
<td>2006</td>
<td>638,000</td>
</tr>
<tr>
<td>2013</td>
<td>795,000</td>
</tr>
</tbody>
</table>

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


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

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

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

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The movement of people within the travel and tourism industry has a transnational element, which poses the need for extraterritorial jurisdiction of crimes. As stated before on page 14, such extraterritorial legislation is currently not in place. 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.\(^{140}\) 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.\(^{141}\) 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.\(^{142}\) 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.

Another way of (self-)regulation for the travel and tourism industry would be to adopt The Code, a tool to prevent and report SECTT\(^{143}\) and to regulate prevention of both trafficking in person and SECTT in the Tourism Act.

**IMPLEMENTATION**

**Coordination of CSE responses**

As mentioned before, there is no national action plan on CSE. The main responsible Ministry to coordinate the national combat of CSE is the Ministry of Gender, Children, Disability and Social Welfare. In the past months, the government has appointed members of the National Coordination Committee against Trafficking in Persons (NCCATIP) as per the TIP Act (2015). The NCCATIP will coordinate, monitor and oversee proper implementation of the TIP Act (2015), including investigations, prosecutions, treatment of victims, provision of services to victims, awareness raising, training of professionals and strategy development to combat trafficking in persons. The NCCATIP will also manage the Trafficking in Persons Fund. The Committee will commence its work in December 2016, but to date no budget has been allocated to the fund.

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. The Government of Malawi acknowledges that systematic procedures for proactively identifying victims of trafficking among vulnerable populations, especially women and girls in

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\(^{140}\) Section 24, Trafficking in Persons Act (2015).

\(^{141}\) *Ibid.*


\(^{143}\) 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](http://www.thecode.org)
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prostitution, have not yet been established.\textsuperscript{144} Not only identification procedures are lacking, but also a referral system. The government depends heavily on international organisations for funding most anti-trafficking programmes.\textsuperscript{145}

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’.\textsuperscript{146} 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 (NJF) 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.\textsuperscript{147} Its work, therefore, covers both child protection and child justice. To reflect the work and advocacy more aptly, 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.\textsuperscript{148} Child Justice Magistrates trained in core competencies have been designated in all districts where there was 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.\textsuperscript{149}

In the absence of a fully operational social welfare service by the Ministry of Gender, Children, Disability and Social Welfare, 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 founding members of the Southern Africa Network against Trafficking and Abuse of Children (SANTAC) to promote the regional network and

\textsuperscript{144} Government of Malawi (2015), State Party Report on the OPSC, CRC/C/OPSC/MWI/1, para. 78.

\textsuperscript{145} United States Department of State (27 June 2011), 2011 Trafficking in Persons Report - Malawi.

\textsuperscript{146} Section 12, Human Rights Commission Act (Cap. 3:08).

\textsuperscript{147} 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.


\textsuperscript{149} Ibid.
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.

MNACT was in the same year (2006) changed to a broader network called the Malawian Network against Trafficking (MNAT), which looks at trafficking issues in general. This was an initiative of the Ministry of Gender, Children, Disability 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. 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. 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 TIP Act. Norwegian Church Aid 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.

A few 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; The Creative Centre for Community Mobilisation (CRECOM), based in Zomba; and in Nkhotakota District, the Association for Elimination of Child Labor launched a school project in January 2004 with the aim of combating child labour by providing primary school education to the community. YONECO, Total Land Care and Creative Centre for Community Mobilisation (CRECOM) has been implementing a child labour project called Child Labour Elimination for Real Change (CLEAR) since 2011 focusing in the tobacco growing districts of

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151 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).


Mchinji, Ntchisi and Rumphi. The project has also incorporated purposely developed safe home in Rumphi districts which need to be modelled. In addition, IPEC launched in Malawi its Regional Programme on Prevention, Withdrawal, and Rehabilitation of Children Engaged in Hazardous Work in Africa.\textsuperscript{155} As a positive outcome of this programme, in 2012, the Malawi government adopted the List of Hazardous Work for Children,\textsuperscript{156} which among other things includes work that can harm the health and safety of the child, including:

\begin{itemize}
\item a. work in tavern, bars, pubs, shebeens;
\item b. work involving escort services in motels, hotels or any other places of recreation or entertainment;
\item 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;
\item d. work as a tour guide.
\end{itemize}

\section*{Protection}

In general, there is a lack of capacity among the police, the judiciary, prosecutors, and investigators on CSE related issues. As noted in the State Party Report there is little knowledge and understanding among key stakeholders on CSE related issues due to resource constraints.\textsuperscript{157} The Child Care, Protection and Justice Act of 2010 authorises police officers, social welfare officers, a chief or any member of the community to take a child deemed in need of care and protection, and place the child into his or her temporary custody or a place of safety.\textsuperscript{158} Police officers undergo training in combating CSE, but one problem is that the officers are not utilised for the work they were trained in as they get assigned to other duties.\textsuperscript{159} However, the government has set up various structures to strengthen protection of children, including 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 victims of rape, family violence and child maltreatment.\textsuperscript{160} At the community level there are over 350 Community Victim Support Units (CVSUs),\textsuperscript{161} 8,197 Community-Based Childcare Centres, and over 3,000 Children’s Corners,\textsuperscript{162} with volunteer Community Child


\textsuperscript{156} 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.


\textsuperscript{158} Section 37(c).

\textsuperscript{159} 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).


\textsuperscript{161} These are community-based structures which complement the Malawi Police VSUs.

Protection Workers who are, effectively, child surveillance officers.\textsuperscript{163} There are plans to eventually put the volunteers on the government pay roll.\textsuperscript{164} In addition, the Ministry is also responsible for the CVSUs, which are available at every traditional authority level and mirror PVSUs by providing limited counselling and, in some places, temporary shelter to victims.\textsuperscript{165} For quality control, the units are operationally overseen by a designated police officer. Further to these structures, there are also District Child Committees to coordinate child protection and justice issues in each district.

All cases handled by PVSUs are registered and recorded for collation and analysis.\textsuperscript{166} The Police services have developed an internal database of the cases they handle, to facilitate realistic approaches to child protection issues.\textsuperscript{167} 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.\textsuperscript{168} 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 CSE.

\begin{footnotesize}
\begin{enumerate}
\item\textsuperscript{163} Twea, Edward B & Manjolo, Willard A (2012), 8.
\item\textsuperscript{164} Ibid.
\item\textsuperscript{165} Ibid.
\item\textsuperscript{166} The Malawi Police, \textit{Analysis of Crimes Reported at Police Victim Support Units in Malawi} 2015.
\item\textsuperscript{167} Twea, Edward B & Manjolo, Willard A (2012), 8.
\end{enumerate}
\end{footnotesize}
At the international level, Malawi cooperates with a few institutions in dealing with CSE 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 (SARPCCO), and the International Police Organisation (Interpol) which has 189 partners in combating crime.

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 2006 and has transformed into the National Child Helpline in 2011 under the Ministry of Gender, Children, Disability and Social Welfare. The helpline is accessible to subscribers from all telecommunication networks free of charge. 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 as well as by facilitating the necessary referrals. The team facilitates the follow-up of cases in partnership with respective Police Victim Support Units and District Social Welfare Offices.

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171 Information was provided by YONECO.
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 the National Child Helpline assisted a total of 88 victims of child sexual abuse and exploitation.

Prevention

To improve prevention, there is a need for a national study on CSE. Limited information on CSE 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 CSE.

Social programmes and policies\textsuperscript{172} 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, 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 National Social Support Programme 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:

\begin{itemize}
  \item Fertilizer Input Subsidy Programme (FISP);
  \item School Bursaries;
  \item School Feeding;
  \item Village Saving Loan Schemes; and
  \item Community Savings Investment Promotion (COMSIP).
\end{itemize}

The Norwegian Church Aid and other organisations, including UNICEF in Malawi, have facilitated MNAT to raise awareness. 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 State Party Report on the CRC; the most common forms of exploitation cited were labour in agriculture and sexual exploitation.\textsuperscript{173}

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.

\textsuperscript{172} As outlined in Malawi's Initial Report to the Committee on the Rights of the Child, on the OPSC (2016), paras. 70-72.

\textsuperscript{173} Government of Malawi (2015), State Party Report on the CRC, CRC/C/MWI/3-5, para. 46.
As one way of commemorating 16 days of activism against gender-based violence, members of the MNACT, with financial and technical support from Norwegian Church Aid (one of the network members) and the Ministry of Education, went on a national sensitisation tour for students on human trafficking in 2015. 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. 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 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 almost 8,000 children. 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 labour and/or the 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.

The growing levels of awareness on child trafficking and CSE issues in Malawi can also be attributed to the important role the media is playing in this regard. More stories on

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174 From November 25th to 9th December 2015.

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

176 Ibid.

177 Ibid.
exploitation of children are captured online and through visual and audio media.\(^ {178}\) This helps to raise community awareness and acts as deterrence to potential perpetrators as they know that someone is watching them and that their actions can be reported in the news. Stakeholders have pointed out that though there seems to be an increase in the prevalence rates of trafficking in persons in Malawi, this could very well be the consequence of raised awareness levels and the available remedies in communities. Recognising the important role played by the media in bringing social issues to the fore of advocacy agendas, the 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.

**Recovery & Reintegration**

The Ministry of Gender, Children, Disability and Social Welfare is responsible for the appointment of Protection Officers who have the responsibility of ensuring that trafficking victims are accorded proper treatment and are provided with the necessary care and support.\(^ {179}\) 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. 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. There are also over a hundred police stations throughout the country some of which have victim support units to respond to gender-based violence, including trafficking crimes, which provide limited counselling and, in some places, temporary shelter to victims.\(^ {180}\)

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 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 victims at a time. The facilities provide temporary accommodation to victims of violence and abuse. In most cases, placement facilitates the investigations and

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medical attention (examination and treatment) while 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. 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.

**Access to Justice for victims**

Some of the recommendations from the 2012 National Child Labour Conference were to train 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.

With support from UNICEF, Norwegian Church Aid, and other stakeholders, the Women Judges Association developed a training manual of judicial officers, police prosecutors and investigators on issues of human trafficking. This could help to ensure the judiciary is well versed on trafficking issues and is able to, among other things, assist children, including those who are victims of CSE, 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 this is considered not in the best interests of the child; the media attendance is restricted and they are not supposed to disclose the identity of the child; and the proceedings of the court are supposed to be informal.

Unfortunately, the law does not specifically provide for compensation to all victims of CSE. Limited provision is available under section 40 of the TIP Act wherein it is stated that a

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181 This information about YONECO’s Safe Places was provided by YONECO to ECPAT in July 2016, in a summary of YONECO’s programmes.


184 Section 135, Child Act.

185 Section 139, Child Act.

186 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.
trafficked person, regardless of his immigration status, has the right to instigate 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 CSE happens in the context of trafficking in persons, the victims are entitled to compensation.

To improve Access to Justice, a global Bill of Rights for Child Victims of Sexual Exploitation and Abuse was developed by ECPAT and in Malawi, it was validated with 38 adult CSE survivors, at a consultation organised by Eye of the Child.187 The Bill of Rights can serve as a tool for raising awareness on access to justice for CSE victims.

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. In 2010 Malawi amended the Constitution to include the principle of taking into primary consideration “the best interest and welfare of the children” in decisions 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. There used to be a Children’s Parliament which was organised through the Ministry of Gender, Children, Disability and Social Welfare 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.188

In the context of CSE, 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.189 This also allowed children to identify other child labourers and identify the key players who traffic children from rural to urban areas.190

187 ECPAT and partners involved 400 children and youth, most of whom are CSE survivors from 28 countries. The Bill of Rights was endorsed at the Global Forum for Survivors of Childhood Sexual Exploitation on 18 November 2016.


190 Ibid.
More recently, in 2012, at the Malawi National Conference on Child Labour in Agriculture held in Lilongwe\(^{191}\) 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.\(^{192}\) 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.\(^{193}\) 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.\(^{194}\) The 2015 State Party Report on the OPSC recommends more comprehensive and systematic training and awareness raising programmes for the stakeholders, including the ultimate beneficiaries of the legislation, should be conducted.\(^{195}\) 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.\(^{196}\)

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 on the development of the Child Labour Policy aimed at guiding the programmes to protect children from all forms of exploitation.

**Data**

In its ‘List of Issues’ of July 2016, the Committee asks for disaggregated statistics on CSE cases and recovery and reintegration and steps taken to develop a data collection and management system.\(^{197}\) In Malawi there is a lack of data on the worst forms of child labour such as sexual exploitation and CSE manifestations. The District Labour Offices have been called upon to create databases on cases of child labour.\(^{198}\) 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

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\(^{191}\) 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). 290 delegates attended the conference.

\(^{192}\) 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.

\(^{193}\) Child Labour National Plan of Action for Malawi (2009-2016), para. 4.1.3.


\(^{195}\) Ibid., paras. 80-81.

\(^{196}\) Ibid., para. 81.


\(^{198}\) Child Labour National Plan of Action for Malawi (2009-2016), para. 4.1.3.
conducted in 2002.\textsuperscript{199} 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,\textsuperscript{200} 45\% were engaged in non-economic activities while only 17\% were inactive.\textsuperscript{201}

Initiatives to develop legislation to combat trafficking in persons started in November of 2004.\textsuperscript{202} 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.\textsuperscript{203} 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.\textsuperscript{204} 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.\textsuperscript{205}

In its first ever State Party Report on the OPSC, 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.\textsuperscript{206} 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’.\textsuperscript{207} Without being adequately informed on the nature and prevalence of CSE, it is difficult to formulate contextualised and evidence based responses or prevention mechanisms.

There is, however, some progress in data collection on violence against children as the PVSUs are now compiling cases reported to the police and they produce yearly reports.\textsuperscript{208}

\textsuperscript{199} Malawi Child Labour Survey (2002), Zomba.
\textsuperscript{200} 1.5 million.
\textsuperscript{201} Child Labour National Plan of Action for Malawi (2009-2016), para. 2.2.1.
\textsuperscript{203} Malawi Law Commission (2005), “Human Trafficking in Malawi: Research Paper”.
\textsuperscript{204} \textit{Ibid.}, 3.
\textsuperscript{205} \textit{Ibid.}, 4.
\textsuperscript{206} Government of Malawi (2015), State Party Report on the OPSC, CRC/C/OPSC/MWI/1, para. 80.
\textsuperscript{207} 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
\textsuperscript{208} See section 6 of this report below.
6. RECOMMENDATIONS

COORDINATION AND COOPERATION

Although there is no need for a specific NPA to combat CSE in Malawi, there is a need to include strategies to combat CSE in the existing NPAs, with proper support and funding for community-based child protection structures to facilitate the implementation of child-related NPAs at the local level.\(^{209}\)

All existing annual action plans should be consolidated to take stock of provisions related to CSE and prioritise actions to be undertaken.\(^{210}\)

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 sector, including the travel and tourism and the ICT sector, as this is where CSE can be detected and prevented. For example, 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 CSE.

Further capacity building of stakeholders is necessary, 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 CSE, analyse policies and programmes relating to CSE, and support the elimination of the practice.

Streamlining of community efforts is needed. Parallel structures created at community levels, such as CVSUs, 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.\(^{211}\)

PROTECTION

Allocation of resources for the combat of CSE needs to be improved.\(^{212}\) The Victim Support Units need sufficient and qualified staffs who receive systematic training in investigative and interviewing skills, especially on CSE matters. 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. Likewise, both the general police and the judiciary should have resources to ensure speedy and smooth processing of CSE matters. Victims who seek redress through the

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\(^{210}\) Ibid.

\(^{211}\) For more on local governance structures in Malawi see, Tilitonse (2013), “Report for a Political Economy Analysis of Local Governance in Malawi”, 3 & 17.

\(^{212}\) This recommendation is in line with the recommendation formulated by 38 adult survivors of CSE in consultations organised by Eye of the Child to give a voice to victims, October 2016.
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 CSE offences should be systematic.

The TIP Act is a strong piece of legislation as it was evidence based on the contextual background. However, since its enactment, no TIP Act implementation plan has yet been developed, nor are funds allocated to the NCCATIP and the Trafficking in Persons Fund. There is therefore an urgent need for an implementation plan by the government for the TIP Act to be developed to guide the operation of the various stakeholders and to explicitly include issues related to child trafficking for sexual purposes as well as allocate a budget.

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 in line with the amicable settlement under the auspices of the African Committee of the Experts on the Rights and Welfare of the Child of October 2016.213

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 protect boy victims also expressly.

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.214 The gaps at the policy and programmatic levels should be addressed, including the complex procedures for all married girls who wish to continue with education.215

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

**PREVENTION**

CSE is one field which has been under-researched in Malawi. There is therefore a need for primary research on the various forms of CSE as well as its root causes in Malawi which will facilitate the development of evidence based strategies to end CSE. To this effect, the Government of Malawi, through the Ministry of Gender, Children, Disability and Social Welfare, in collaboration with national and international partners, should develop a **Policy Document on CSE in Malawi**. This should be preceded by comprehensive national research on CSE in Malawi.

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213 ACERWC, October 2016, Communication: No. 004/Com/001/2014, Report on consideration of an amicable settlement under the auspices of the Committee.


215 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.
At the moment, there is an increased level of awareness on child trafficking and labour exploitation of children in Malawi. However, more awareness is needed on CSE. The government should ensure that children are well informed about their rights so that they are enabled to identify themselves as CSE victim and know how to apply for help. The recently developed global Bill of Rights can serve as a tool for awareness raising on self-identification and self-reporting and to improve access to justice for CSE victims. 217

There is need for more awareness of SECTT in the travel and tourism industries and with the public, as that is one sector in which children are easily lured under the promise of decent jobs. Companies in Malawi’s travel and tourism industry should adopt the Code of Conduct against SECTT, to ensure responsible and sustainable tourism that integrates child protection principles.

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 in a responsible manner and bring the issue to the attention of those in positions of power to act.

Online protection of children should be an integral part of the government efforts to protect children. Law enforcement and ICT departments in both the government and private sectors should be trained in detection of sexual exploitation of children online and online safety for children.

**RECOVERY & REINTEGRATION**

NGOs, and above all the State, should provide recovery and reintegration services to exploited children across Malawi. 218 Once children have been removed from exploitative practices they should be provided with other alternatives, including support to return to their communities of origin, if it is in their best interest. Guidelines and standards need to be developed for the recovery and reintegration services. 219

There is a need to develop tailored services and support structures for CSE victims, since CSE manifests in various forms. The Government of Malawi should capitalise on already existing structures to strengthen and design context specific programmes and responses which meet the needs of families and CSE victims.

There is a need for response and referral mechanisms for CSE victims. 220

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

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216 This recommendation is in line with the recommendation formulated by 38 adult survivors of CSE in consultations organised by Eye of the Child to give a voice to victims, October 2016.

217 The Bill of Rights for Child-Victims of Sexual Exploitation and Abuse, has been developed and validated with the input of children, youth, survivors, and experts’ consultations involving over 400 children and youth, most whom are CSE survivors from 28 countries, including Malawian and on 18 November 2016 endorsed by the Global Forum for Survivors of Childhood Sexual Exploitation.

218 This recommendation is in line with the recommendation formulated by 38 adult survivors of CSE in consultations organised by Eye of the Child to give a voice to victims, October 2016.

219 Ibid.

220 Ibid.
even though geographically, there is one house per region (i.e. Zomba - Southern Region; Mchinji - Central Region; Mzimba - Northern Region).

**Access to Justice for Victims**

Access to justice is generally very limited because of stigma attached to CSE cases. 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 as victims or witnesses. There is 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 CSE. **Specific provisions of compensation for CSE victims** are needed in the legal and policy framework of Malawi. Even though the TIP Act does provide for compensation or damages to victims of trafficking, this is just one manifestation of CSE. Finally, a child ombudsman or independent committee to protect the rights of children would greatly benefit child protection.

**Child & 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 back to the Ministry of Gender, Children, Disability and Social Welfare. Another way to involve children more actively is the appointment of a child ombudsman who can engage children or regulate the child participation as per section 4 of the Child Care, Protection and Justice Act of 2010.

**Data**

There is an urgent need for more data on CSE crimes. The Child Care, Protection and Justice Act (2010) requires the government to collect and manage data while the TIP Act (2015) requires the NCCATIP to facilitate data collection and management. Through the PVSU and the One Stop Centres, the government, in collaboration with other relevant stakeholders (such as local NGOs) could establish a central database for recording violations of child rights, with disaggregated statistical data on CSE issues in Malawi.
ECPAT International is a global network of civil society organisations working for the eradication of all forms of sexual exploitation of children. For the past 25 years, ECPAT has acted as the international watchdog, monitoring States' response to sexual exploitation of children, and advocating for robust international measures to protect children from sexual exploitation. ECPAT currently has 90 network members operating in 82 countries across eight regions of the world.

Eye of the Child is a registered human rights organisation that was established in 1995 to promote and protect the rights of children in Malawi and beyond.

Youth Net and Counselling (YONECO) is a non-governmental organization that is committed to empowering the youth, women and children; promoting good health, human rights and democracy.