



**Zomba Catholic Secondary School**

# **Universal Periodic Review Malawi Report**

*August 2019*

**Submission by:**

**Foundation for Marist Solidarity International (FMSI)**

## **Presentation of Marist International Solidarity Foundation**

FMSI's approach to development is based on the promotion of Quality Education as an effective tool to protect child rights and empower children to become agents of social change.

Inspired by the charisma of St. Marcellin Champagnat and established by the Congregation of the Marist Brothers of the Schools in 2007, the Marist International Solidarity Foundation works in the world for the rights of children and adolescents through:

- Supporting projects, especially in the field of education: Child, youth and adult education and learning; Training school leaders, teachers/educators; Providing safe and equitable school environments and didactic material; Engaging families and communities; institutional building for strengthening local education systems.
- Advocacy and Lobbying: Promotion and Protection of the Rights of the Children through the mechanisms of the United Nations; Skills training within the Marist Institute; building coalitions with other NGOs.

This report highlights two areas of concern for Malawi, namely; 1. **early marriages** and 2. **the rampant child trafficking**. In either case, the youths potentially remain victims.

The report attempts to expose the worsening situation of children or youth, especially the girl-child who is subjected to early marriage and also often falls prey to trafficking in persons.

### ***Child marriage***

1. Malawi accepted 14 recommendations on implementation of the new Marriage, Divorce and Family Relations Act on ending Child Marriage and take the necessary measures to set the minimum age for marriage at 18 years of age (see Annex).

With the Marriage Act of 2015, February 12, the Malawian Parliament passed the Marriage, Divorce and Family Relations Bill (Marriage Act) which is an important milestone in securing women and girls' rights in a country where patriarchal norms are deeply entrenched, poverty is widespread and women and girls generally score low on development indicators and lag behind in many areas of life. The new law consolidates multiple marriage regimes and addresses some of the discriminatory provisions in previous laws governing marriage and family relations. The provision sets the age of marriage at 18 and demands formal government registration of all marriages. However, many cases of child marriage continue to persist.

2. Legal inconsistencies threaten the enforcement of this law. The new age of marriage set in the Marriage Act is not absolute since it is subject to the Constitution. Section 22 (6) of the Constitution allows for marriage between the ages of 15 to 18 with parental consent (or consent by guardian). Even marriage below the age of 15 is not explicitly prohibited, although such marriage should be "actively discouraged". To this effect, several actors have expressed concern as to how the new Law would match the constitutional provision.

The inconsistencies in the implementation of the new marriage Law and the constitution regarding the legal age of marriage can obstacle the application of the new Act.

3. According to Centre for Social Concern report 2018, even when the legal marriage age is 18, cultural traditions are very strong and predominant over the new law.

In most cases, girls are forced by their parents and their grandparents to marry early so that they can provide for their families. Some Malawian communities see child marriage as being in the best interests of girls and their families. Marriage is regarded as a means of protecting girls from out of wedlock pregnancy that undermine family honour. Other families see it as an important way to improve their economic status through payment of dowry by the groom to the bride's family, or through continued support by their daughter's husband. In the recent past families at times used to give their daughters in marriage as a mean to repay family debt ("kupimbira" in Karonga).

4. Drug Fight Malawi (DFM) has revealed that most of the girls who had early and arranged marriages have high illiteracy levels, are more vulnerable to shocks of life and, in the case of husband dies early, they are more at risk of prostitution, to become victim of trafficking and other harmful practices. Educating a girl child has a positive outcome in delaying the time to entry into marriage.

## 5. Recommendations

- (a) To involve the churches in the fight against early marriages due to their strong presence, wide outreach and direct impact in the communities and build the interfaith bodies' capacity and knowledge on the ills of child marriages, in order to make public awareness, implement campaigns and other measures (i.e. education program for girls) in sustainable way with the families.
- (b) Due to the lack of a coordinated holistic anti-early marriage approach in Malawi, it is necessary to create a stakeholders' network involving NGOs, schools, health care facilities and government institutions is essential. The Dedza Catholic Commission for Justice and Peace is an example of large network able to build capacity of communities to raise awareness and prevent early marriages.
- (c) to carry out further studies and researches regarding the volume and causes of early marriage.

## *Child trafficking*

6. In the last Malawi UPR (2015) 4 recommendations to implement the Trafficking in Persons Act were accepted (see Annex) together with other recommendations on ending child labour, criminalising all forms of sexual abuse against children, implementing the action plan on vulnerable children and ensuring registration of children at birth.

7. Most Malawian trafficking victims are exploited within the country, for forced labour in agriculture, goat, cattle herding and brick making. The report on tobacco industry indicates that most trafficked children are involved in hazardous work and are further described as mere instruments of production.

Malawian victims of sex and labour trafficking have been identified in Mozambique, South Africa, Zambia, Kenya, and Tanzania, as well as Iraq, Kuwait, and Saudi Arabia. Traffickers involved in land border trafficking to South Africa are typically long-distance truck drivers and local businesswomen.

Traffickers and owners typically lure children from their families in rural areas under pretexts of employment opportunities, clothing, or lodging for which they are sometimes charged exorbitant fees, resulting in sex trafficking coerced through debts. Traffickers subject teenage boys to forced labour on farms, fishing industry and young girls to sexual exploitation in nightclubs or bars.

Some young girls are drugged, gang-raped, and exploited in commercial sex. Some girls recruited for domestic service are instead forced to marry and subsequently subjected to child sex trafficking by their "husbands." Fraudulent employment agencies lure women and girls to Gulf States where they are exploited in sex and labour trafficking. Cases were also reported concerning Malawian women being trafficked to European destinations.

8. **Anti-Trafficking in Persons Act passed by the Malawian parliament in April, 2015** and a national anti-trafficking strategy or policy have been developed. In addition, Malawi ratified the UN Trafficking Protocol, the Organized Crime Convention and the Smuggling Protocol on 17th March 2005. These instruments require signatories to combat human trafficking and protect and assist victims of trafficking through enactment of legislation as well as by establishing relevant institutions and adopting relevant policies.

The Trafficking in Persons Act, which received Presidential assent on 10th April 2015, comprehensively covers the offence of trafficking in persons, provide administrative arrangements for the enforcements and establish measures for the care and protection of victims. In addition, the country has improved coordination between key institutions and implementation of an existing law that makes compulsory the child registration at birth that can positively contribute toward reduction of the child trafficking in Malawi.

The Malawi Police Service (MPS) reported many actions for the persecution of trafficking crimes and imprisonment of traffickers, however there is a need for stronger enforcement mechanisms, the enhancement of the penalties, especially for child trafficking, enlarge measures for investigation and prosecution and for the social support to child trafficking victims.

**9.** There are still several challenges or barriers to dealing with child trafficking; these include:

**Corruption:** The rising trends in corruption have so far paralyzed any efforts towards preventing and handling case of child trafficking. Trafficked victims pass through roadblocks that are expected to be manned by competent security personnel. The fact that trafficked children pass through these security checks without questioning is a major concern. It is worth noting that Malawi ranks one of the highest on corruption index after Nigeria and few other countries.<sup>1</sup>

**Poverty:** the overall persistent high level of poverty in Malawi suggests that poverty is primarily the consequence of how a society shares money out than how much money there is overall; poverty in Malawi is a result of the way society is organized and resources are allocated, whether these are financial or other resources such as access to health and social services. The country has some of the most distorted systems of the redistribution of wealth in Southern Africa; such as tax injustice and high-income inequalities. The poor become poorer and the rich richer leaving most children malnourished and without proper education. As a result, children are lured to promises for a better future elsewhere.

**Inconsistent and weak legal framework:** The passing of the new anti-TIP legislation should have registered improvement in monitoring and criminalizing trafficking in children. In some instances, the courts still use penal codes which are not stiff enough to stop child trafficking. In addition, the majority of Malawians have limited knowledge on the current Act that criminalizes trafficking in persons and other laws.

**Porous border posts and surrounding areas:** Porous border posts and surrounding areas: Malawi has porous borders that allow free movement of people from either side. People use border passes to go over side and come back. This facilitate Trafficking in Persons.

**Increased demand for Commercial Sex:** Commercial sex (prostitution) is the most widely reported sexual exploitation that women and girls face. This is as a result of an increase in demand for young women and girls to be used as sex objects in return for money for the traffickers. There is rising demand for young girls for sex by foreigners and tourists in holiday resorts, tourists' centres and border districts whose result is sexual exploitation of vulnerable young girls.

**Culture of Silence:** The culture of silence remains a major challenge in the fight against trafficking in Persons. There is little knowledge shared between individuals/families and communities on the practice and impact of the child trafficking. This makes difficult for government bodies, police and social operators to provide strategies to prevent and fight the practice, especially at recruitment stage in the communities.

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<sup>1</sup> Transparency International Index

## 10. Recommendations

- (a) make aware people and communities regarding the risks and impact of Human Trafficking. Awareness is a key in the fight against child trafficking. There is need for more awareness raising on issues surrounding Human Trafficking such as its causes, effects, how it happens, how to and where to report it, how to handle it, and the policy and legal framework including the Human Trafficking act among other areas needing awareness.
- (b) involve the Churches<sup>2</sup> that in Malawi have an immensely important role to play in the fight against trafficking in women and children due to their strong presence, wide outreach and direct impact in the communities. Hence, there is a need to build the interfaith church bodies' capacity and knowledge on the concept of trafficking in order to secure a sustainable path for the anti-trafficking efforts in the future. Similarly, Traditional leaders.
- (c) to empower and sensitize traditional leaders, faith leaders and local villagers to report any suspicious behaviours/ people especially in the boarder districts and rural areas of the country;
- (d) involve more security people to intensify security at the borders. Enough resources should be allocated to departments of immigration, social welfare and police to ease and facilitate their work in this area of child trafficking and avoid corruption;
- (e) Due to the lack of a coordinated holistic anti-trafficking approach in Malawi, to create a stakeholders' network involving NGOs, schools, churches communities and government institutions is essential in dealing with the problem;
- (f) enhance the creation at community level of training opportunities, job seeking assistance and counselling for youths
- (g) Government and Organizations should seriously consider taking action on the issues that are prompting the increase in demand for migration such as poverty, unemployment through the creation of better services accessed by all for instance education, creation of better jobs and a conducive, corruption free and just world for all citizens.
- (h) Guidelines on record-keeping and managing and sharing information should be developed and followed. Collaboration between stakeholders to identify, repatriate and rehabilitate victims must also be improved.
- (i) Parents should be encouraged to educate their children so that they are able to get jobs within Malawi or better still employ themselves to better their lives.

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<sup>2</sup> FMS in the schools



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## **UPR of MALAWI 2015 Recommendations in relation to CHILD MARRIAGE:**

- 110.23. Take the necessary steps for the effective implementation of the law on marriage, divorce and family relations, in order to set the minimum age for marriage at 18 and to contribute to combating forced or early marriages (Mexico);
- 110.22. Accelerate the adoption of the project on marriage, divorce and family relations and the establishment of the minimum age of marriage in line with international standards (Chile);
- 110.91. Take effective measures to reduce child marriage (China);
- 111.1. Accelerate the review and adoption of the new law on marriage in order to eradicate early marriages of young girls (Democratic Republic of the Congo);
- 110.87. Strengthen the legal institutional framework to fight against child marriage (Algeria);
- 110.95. Ensure effective respect of the Child rights and to fight, in particular, against early marriages by adopting rapidly and implementing the marriage bill (France);
- 111.3. Enact the Marriage, Divorce and Family Relations Bill with a view to ending child, early and forced marriage and other harmful practices, and raise the minimum age of marriage to 18 years (Sierra Leone);
- 110.66. Launch a broad public awareness and education campaign among the population and authorities in order to ensure effectiveness of the new legislative framework prohibiting child marriage at less than 18 years of age (Luxembourg);
- 110.86. Put in place necessary mechanisms to ensure successful implementation of various strategies and legal reforms being considered to end child marriage (Mauritius);
- 110.89. Develop and implement a comprehensive national action plan to prevent and eliminate child, early and forced marriages (Netherlands);
- 110.113. Take the necessary measures to set the minimum age for marriage at 18 years (Togo);
- 111.9. Ensure the effective implementation of the Marriage, Divorce and Family Relations Bill in order to prevent the prevalence of child marriage (Sweden);
- 111.9. Ensure the effective implementation of the Marriage, Divorce and Family Relations Bill in order to prevent the prevalence of child marriage (Sweden);
- 110.88. Develop and implement a comprehensive national action plan to prevent and address the consequences of child marriage by, inter alia, ensuring the investigation and prosecution of domestic violence against women and revising the legal incongruence concerning the minimum age of marriage (Thailand);
- 110.90. Continue to take concrete steps to eliminate child, early and forced marriage, such as Malawi's recent passing of the law raising the age of marriage to 18 years (Canada);

## **UPR of MALAWI 2015 Recommendations in relation to HUMAN TRAFFICKING:**

- 111.2. Expedite the adoption of a law on trafficking in persons, which would provide for the criminalization of all forms of trafficking, sanctions and adequate assistance for victims (Egypt);
- 111.10. Adopt a law on human trafficking that criminalizes all forms of trafficking and that provides the corresponding sanctions and comprehensive assistance to victims (Spain)
- 110.100. Ensure that the Trafficking in Persons Act comes into force and is implemented as soon as possible and implement a national action plan to strengthen coordination efforts against trafficking at the national level (Switzerland);
- 110.99. Take concrete measures to ensure that the anti- human trafficking act is effectively implemented and that albinos are provided equal protection by the law (Norway);
- 110.101. Vigorously investigate and prosecute trafficking offenders, under the recently passed Trafficking in Persons Act (United States of America);
- 110.107. Ensure the identification, protection and access of victims to justice and guarantee effective investigations into cases of trafficking (Switzerland);



