
MALAWI – Tier 2

Malawi is a source country for men, women, and children subjected to forced labor and sex trafficking. To a lesser extent, Malawi is also a destination country for men, women, and children from neighboring countries subjected to labor and sex trafficking and a transit point for people from some of these countries subjected to labor and sex trafficking in South Africa. Most Malawian trafficking victims are exploited within the country, with victims generally transported from the southern part of the country to the central and northern regions. Children are subjected to forced labor in the agriculture sector (predominantly in the tobacco industry, but also on tea, coffee, and sugar plantations), goat and cattle herding, and brickmaking. Frequently, traffickers entice families to part with their children with the promise of work as farm laborers. NGOs have noted a growing trend of traffickers using long-haul public transport buses to move three to four boys or young adults at a time from the southern region for forced labor on tobacco farms in the northern and central regions. Children are also subjected to forced labor in begging, small businesses, and potentially in the fishing industry. Some are coerced to commit crimes. One-third of Malawian children are involved in labor activities; the majority of cases of child labor outside of the family involve fraudulent recruitment and physical or sexual abuse, conditions indicative of forced labor. Adult tenant farmers are vulnerable to exploitation, as they incur debts to landowners and may not receive payment in times of poor harvest. Brothel owners or other facilitators lure girls—including primary school children—from rural areas with promises of clothing and lodging, for which they are later charged high fees, resulting in prostitution coerced through debts in Malawi or neighboring countries.

Malawian victims of sex and labor trafficking have been identified in Mozambique, South Africa, Zambia, Tanzania, and Europe. In 2013, Zambian police discovered 30 Malawian women and girls with false identity and immigration papers at a bus terminal in Lusaka. Zambian officials determined these women and girls were likely trafficking victims. Malawian girls are subjected to domestic servitude in eastern Zambia. In recent years, there have been reports of young girls being drugged, gang-raped, and placed in the sex trade. Some girls recruited for domestic service are instead forced to marry and subsequently subjected to prostitution by their “husbands.” Anecdotal reports indicate that South Asian adults and children have been subjected to forced labor in past years. Migrants from the Great Lakes region and the Horn of Africa may become labor

trafficking victims in Malawi or transit through Malawi and subsequently become labor trafficking victims in South Africa.

The Government of Malawi does not fully comply with the minimum standards for the elimination of trafficking; however, it is making significant efforts to do so. In 2013, the Malawi Police Service (MPS) produced its second report of law enforcement data from seven districts; authorities in two of the districts provided additional data. Malawi sustained law enforcement efforts, reporting 15 trafficking convictions in seven districts. The government, often in partnership with NGOs, identified at least 119 trafficking victims, a slight decrease from the 135 trafficking victims identified in 2012. Government and NGO representatives participated in anti-trafficking workgroups; however, district-level officials received little supervision or guidance from national coordinating bodies. The government failed to finalize and forward to parliament anti-trafficking legislation submitted to the government by a specially constituted law commission in 2011. It also failed to make systematic efforts to identify and protect trafficking victims. The government continued to rely on international organizations and NGOs to fund and implement most anti-trafficking programs.

RECOMMENDATIONS FOR MALAWI:

Enact comprehensive anti-trafficking legislation to define offenses, increase penalties for trafficking crimes, and coordinate anti-trafficking law enforcement and victim protection services; vigorously prosecute both sex and labor trafficking offenses; investigate and prosecute officials complicit in trafficking crimes, including corruption by immigration and police officers; expand training and increase funding for judges, prosecutors, labor inspectors, and police to identify, investigate, and prosecute trafficking offenses; improve and expand the collection of national prosecution and protection data; increase awareness and monitoring of human trafficking crimes, as well as efforts to identify traffickers and victims at border crossings and internal police checkpoints; develop formal structures to identify trafficking victims, especially among vulnerable populations, and to refer them to available services; increase the availability of shelters and protection services for victims, including through financial or material support to NGOs for expansion of direct service provision; sentence convicted traffickers to sufficiently stringent punishments, including the increased imposition of prison sentences rather than fines or suspended sentences; adopt a national strategy to combat trafficking that focusing on improving national-level coordination of anti-trafficking efforts across all districts; and launch anti-trafficking public awareness campaigns.

PROSECUTION

The Government of Malawi sustained its anti-trafficking law enforcement efforts, though enforcement of forced labor and child trafficking laws remained weak. Malawi prohibits all forms of trafficking through various laws, including the Employment Act and Articles 135 through 147 and 257 through 269 of the penal code, which criminalizes forced labor and forced prostitution, although it does not define child sex trafficking in accordance with international law. The penalties prescribed under these various statutes range from small fines to 14 years' imprisonment; the maximum penalties are sufficiently stringent and commensurate with punishments prescribed for other serious crimes, such as rape. The Child Care, Protection, and Justice Act of 2010 prohibits child trafficking and prescribes sufficiently stringent penalties of up to life imprisonment for convicted traffickers. The government, however, has yet to complete implementation guidelines for the act. Comprehensive anti-trafficking legislation is necessary to codify anti-trafficking provisions in a single place using language that law enforcement and judicial officials can easily apply, to provide stiffer penalties to deter trafficking offenses, to establish mechanisms for the government to coordinate its anti-trafficking response, and to enhance victim protection. Draft comprehensive anti-trafficking legislation has been pending since 2011. In March 2014, following a lengthy review by the Ministry of Home Affairs, the legislation was returned to Malawi's cabinet for consideration.

In 2013, the Malawi police force produced its second-ever report of anti-trafficking data covering seven of Malawi's 28 districts; police provided information for eight districts in 2012. Poor record management and a lack of government direction contributed to shortcomings in tracking accurate investigation, prosecution, and conviction statistics nationwide. Police reported the government convicted 15 traffickers in seven districts; 13 traffickers were convicted across eight districts in 2012. The police reported arresting 32 suspects, down from 72 in 2012. Police from two of the seven reporting districts provided additional investigation, prosecution, and conviction data—some of which was included in the national report. Mchinji police reported arresting suspects in 10 cases. In these cases, eight convictions were obtained with punishments ranging from light fines to 30 months' imprisonment with hard labor. Phalombe police reported five investigations involving 12 suspects. Each investigation involved boys and young men being sent to Mozambique for forced labor on farms. Prosecutors issued charges in several of the cases under section 79 of the Child Care, Protection, and Justice Act. Eight traffickers were convicted with sentences ranging from 12 to 18 months'

imprisonment with hard labor, with two others convicted but given suspended sentences. In one high profile case of alleged trafficking, Malawian police at the Karonga border crossing with Tanzania detained two men transporting 25 girls and four boys. Civil society groups investigating the incident believe the children were being trafficked for purposes of early marriage and forced labor under the pretense of receiving religious education in Tanzania. Charges against one suspect were dropped, while the second suspect fled after being granted bail and remains at large.

The Ministry of Home Affairs, which includes the MPS and immigration officials, has primary responsibility for the prosecution of trafficking crimes and enforcement of trafficking laws. MPS prosecutors are responsible for prosecuting the vast majority of identified trafficking cases in Malawi. Malawi's High Court reported 120 judicial officers received training on trafficking issues funded by a foreign government. The Immigration Department continued to train an unspecified number of immigration officers on how to identify human traffickers and assist trafficking victims. Police recruits received some basic training on child trafficking as part of broader trainings on child protection. Members of the Malawi Network against Child Trafficking (MNACT) trained 35 judges and magistrates. The government did not report any investigations, prosecutions, or convictions of government employees complicit in human trafficking, including low-level police and immigration officials who allegedly facilitated illegal border crossings.

PROTECTION

The Government of Malawi sustained inadequate efforts to provide protection to trafficking victims. It relied largely on NGOs to identify victims and provide long-term care. The national government lacks comprehensive data on the number of victims it identified, referred, or assisted during the reporting period; however, case information provided by the MPS indicates that the government identified at least 119 trafficking victims. The government reported identifying at least 135 victims in 2012. NGOs separately reported identifying a significant number of victims, but it was unclear what assistance the government provided these victims. The government continued to lack systematic procedures for the proactive identification of victims and their referral to care. Police, district-level social welfare officers, and child protection officers cooperated with local NGOs on an ad hoc basis to coordinate the rescue and care of trafficking victims.

A 2011 NGO baseline survey of six districts reported that 73 percent of victims did not receive any services after their rescue. The lack of adequate and longer-term

assistance leaves victims vulnerable to re-trafficking. The government funded one social rehabilitation center in Lilongwe for orphans, vulnerable children, trafficking victims, and gender-based violence victims, that offered counseling and assistance services. Government officials reported providing assistance to several child trafficking victims at this center during 2013. More than 300 police stations at the sub-district level housed victim support units (VSUs) to respond to gender-based violence and trafficking crimes; however, the VSUs lacked capacity to respond adequately, providing only limited counseling and, in some districts, temporary shelter to victims. Some foreign victims likely avoided these centers out of fear of being deported. As a result of the minimal capacity of the VSUs, some district staff temporarily sheltered victims in their offices or used their personal funds or donor payments for hotel stays. Specialized care for male victims remained limited in the country. The government did not provide material or financial support for most NGO services, including the only dedicated shelter for trafficking victims in the country, which is operated by an international NGO.

The government did not have a policy of providing foreign victims with temporary residency or other legal alternatives to their removal to their countries of origin; in practice, foreign victims faced deportation unless they challenged their immigration status in court. Trafficking victims participated in investigations and prosecutions and had the option to seek restitution as a result of the crimes committed against them; in practice, such sums awarded were at the minimum rural wages in cases of forced labor. Law enforcement generally treated persons in prostitution—including children—as criminals, rather than those who facilitated their prostitution or clients; subsequent to their arrest, some police coerced persons in prostitution, possibly including sex trafficking victims, into sex acts by threatening them with charges. There were no reports of trafficking victims penalized for crimes as a direct result of being trafficked; however, the government failed to screen suspects to determine whether criminal conduct was coerced, and some trafficking victims may have been penalized.

PREVENTION

The government sustained overall efforts to prevent human trafficking, despite a decline in labor inspections compared to 2012. Multiple government agencies were involved in anti-trafficking efforts. The Ministry of Gender led a working group, created in 2012, called the Child Protection Technical Working Group (TWG). The TWG partnered with four networks of NGOs and international organizations that focused on individuals with disabilities, street children, child labor, and human trafficking. The human trafficking network—MNACT—was comprised of

government officials, NGOs, and religious leaders; it met three times during the reporting period. This is an increase from meeting only once in 2012. Government and NGO members of MNACT carried out additional anti-trafficking activities at the district level. Most districts had local committees focused on child protection issues.

Malawi continued to lack a national action plan to combat trafficking. The government maintains a 2012-2016 Child Labor National Action Plan and has drafted a National Child Labor Policy which remains under cabinet review. In 2013, the government conducted approximately 600 labor inspections, which represents a large decrease from 1,750 labor inspections in 2012. As of January 2014, the Ministry of Labor employed 29 District Labor Officers and 120 labor inspectors, 60 of whom are dedicated to monitoring child labor. Budget constraints limited the amount of monitoring. The Kasungu District Social Welfare office reported training an unspecified number of child labor monitors. Labor inspectors lacked resources to conduct proactive inspections; however, they investigated cases of forced or exploitive labor when alerted to complaints. In 2013, the government pursued labor export agreements with South Korea, the United Arab Emirates, and Kuwait. Government officials reported concluding agreements with the UAE and Kuwait, but the South Korea effort did not result in an agreement. NGOs expressed concern that these labor export arrangements are not well known to the general public and lack protections for workers against trafficking.

The Malawi Human Rights Commission, an independent government agency, conducted outreach on draft anti-trafficking legislation to Members of Parliament. Government officials spoke about the dangers of child trafficking at several conferences. The majority of public awareness campaigns were coordinated at the district level with NGOs partners. National-level coordinating bodies played a negligible role, failing to organize awareness activities or finalize the national plan of action drafted in 2010. The government did not make efforts to reduce the demand for commercial sex acts or forced labor during the year, and made no efforts to address child sex tourism. In partnership with a foreign donor, the government provided Malawian troops with anti-trafficking training prior to their deployment abroad on international peacekeeping missions.