A HUMAN RIGHTS PERSPECTIVE TO HUMAN TRAFFICKING IN MALAWI

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The Malawi Human Rights Commission is a body that is established under the Constitution of the Republic of Malawi in section 129. Its primary function as provided by the Constitution is broad and encompasses the promotion, protection, and investigation of human rights violations provided for in the Malawian Constitution or any other laws in the country.

It is regulated by Human Rights Commission Act 1998 in terms of its competence and powers, duties and functions, responsibilities, and methods of operation.

The Act empowers the Commission to be competent in every respect to promote and protect human rights in Malawi in the broadest sense possible and investigate violations of human rights on its own motion or upon complaints received from any person, class of person or body including those affecting children.

The Commission has additional powers and functions prescribed by other national legislation, that is, the Gender Equality Act (GEA) of 2013 and the Access to Information Act (ATIA) of 2017.
In this respect, the Commission must, among other obligations:

i. Ensure the enforcement of the statutes;

ii. Monitor compliance with the statutes and international treaty obligations;

iii. Facilitate legal remedies where there are disputes;

iv. Assist in educating the public on the statutes;

v. Develop recommendations regarding issues relating to the statutes.
According to Section 13 of the Human Rights Commission Act, the Commission is mandated to, among others

- to assist in educating the public on, and promoting awareness and respect for human rights;

- to promote more particularly the human rights of vulnerable groups, such as children, illiterate persons, persons with disabilities and the elderly.

One common denominator about the victims of human trafficking is the issue of vulnerability
CONTEXTUAL ANALYSIS- TRENDS

- Labour Trafficking (376 women in Oman)
- COVID-19 pandemic, syndicates began using unchartered, unmonitored and irregular border crossings to facilitate transnational trafficking, avoiding traditional border crossings that demanded COVID-19 test certificates. (Case of Phalombe, Mchinji, Mangochi)
- The deteriorating of economic situation characterized by high unemployment and food insecurity is causing women, girls and boys to look for greener pastures within and outside the country.
- Online recruitments
- Border routes are porous
Government has expressed optimism that 376 Malawian female domestic workers stuck in Oman and facing various forms of human rights abuses will be repatriated soon following negotiations that have started between the two countries.

Speaking in separate interviews on Thursday and Friday last week, Minister of Labour Vera KamtuKule and Ministry of Foreign Affairs spokesperson John Kabaghe said an inter-ministerial delegation from Malawi went to Oman from October 16 to 21 2022 to request for the immediate discharge and subsequent repatriation of the domestic workers.

According to KamtuKule, the Malawian delegation met some of the domestic workers and communicated with others by phone due to time limitation and the long distances between their workplaces.
TRENDS IN HUMAN TRAFFICKING

• Cyclone triggers
• Children are also involved in other forms of exploitation, including illegal cyber activities. (The case of Susu)
• Recruited for counter terrorism activities.
• Human trafficking and counter-terrorism in Malawi may seem like two separate issues, but they are actually interconnected. Considering that drivers of both terrorism and human trafficking are almost the same, Countering terrorism can also counter human trafficking in the same vein.
From the discussion this morning we will see that victims of human trafficking are the following

- Refugees and asylum seekers
- Poor labourers
- Women and girls
- Orphans
- Internally displaced persons
- Persons with albinism

There are also clear gender dynamics into the issue. Women and girls are effected more than men
2020 UPR RECOMMENDATIONS TO MALAWI

• During the 3rd Review of UPR in November 2020, Malawi received and **accepted** the following recommendations related to issues of human trafficking:

  1. **122.98** Intensify efforts to combat modern slavery through training, improved coordination between law enforcement agencies, and prosecution of traffickers (United Kingdom of Great Britain and Northern Ireland);

  2. **122.99** Vigorously investigate and prosecute sex and labour traffickers, including those who engage in forced labour and those who use child labour, and appropriately sentence convicted perpetrators, including government officials complicit in such crimes (United States of America);

  3. **122.108** Intensify further public awareness-raising and capacity-building for duty bearers on addressing child trafficking and violence against children (Philippines);
2020 UPR RECOMMENDATIONS

• 122.102 Continue to fight against human trafficking and its root causes, as well as against the sexual exploitation of women and girls, in accordance with targets 5.2 and 8.7 of the Sustainable Development Goals, by setting up programs to increase skills and women’s income (Switzerland);

• 122.103 Ensure the protection of victims of trafficking by prioritizing access to justice for victims and the effective prosecution of the perpetrators of such acts (Switzerland);

• 122.104 Prioritize prosecution of sex trafficking and conclude the cases within a reasonable time, as well as providing training to judges, prosecutors and security forces (Israel)
Recommendation 25: The Committee recommends that the State party:

i. Effectively implement the Trafficking in Persons Act, including by establishing a time frame for its implementation, ensuring its wide dissemination, carrying out public awareness-raising and providing capacity-building to relevant professional groups;

ii. Establish appropriate mechanisms aimed at early identification, referral and support for victims of trafficking, including through provision of access to shelters and adequate legal, medical and psychosocial assistance;

iii. Step up efforts aimed at bilateral, regional and international cooperation, including exchange of information, to prevent trafficking and facilitate the prosecution of traffickers;

iv. Study and address the root causes of trafficking in women and girls and the exploitation of prostitution;
CEDAW RECOMMENDATIONS CONT.

• Ensure that traffickers and other actors involved in the exploitation of prostitution are prosecuted and adequately punished;

• Repeal discriminatory provisions, such as sections 180 and 184 of the Penal Code, and eliminate discriminatory practices faced by women in prostitution, including when accessing health-care services;

• Institute measures to discourage the demand for prostitution and develop exit programmes for women in prostitution, including alternative income-generating opportunities;

• Ensure systematic monitoring, including by strengthening its database, and evaluation of the impact of all measures taken.
INTERVENTIONS
Tailor-made stakeholders trainings for police, immigration, labour, social welfare, judiciary, traditional leaders, faith-based organizations and relevant NGOs

Assess and engage the transport networks and training for transporters (owners and drivers)

special sensitization programs targeting refugee camps

Expand training on and usage of standard operating procedures (sops) and the National Referral Mechanism (NRM) to identify trafficking victims systematically and proactively by screening vulnerable populations, including individuals involved in commercial sex, refugees, and foreign workers, and refer all trafficking victims to appropriate services.

Train labour inspectors to identify potential forced labour victims during routine inspections and to report potential trafficking violations to appropriate officials.

Collaborate with NGOs and international organizations to increase the government’s capacity to provide shelter and protective services to more trafficking victims.

Develop and institutionalize mandatory pre-departure anti-trafficking training for all.

Comprehensive assessment on the nature and scope of the problem

Monitoring court cases related to trafficking in persons

Monitoring selected Estates and Farms that harbor young men and women that are potential victims

Conducting monitoring exercises in prone places of human trafficking (border districts).

Conducting investigations.

Collection of victim protection data for trafficking cases, specifically the number of victims referred from all districts
**AWARENESS**

- Community sensitization and media programs (Radio and Television)
- Dissemination of Standard Operating Procedures and National Referral Mechanisms on the Identification and Assisting Victims of Trafficking in Persons in Malawi
- Dissemination and popularization of the TIP Act of 2015 (User friendly templates)
- Conduct bi annual conference with key stakeholders for information sharing and joint planning

**RESOURCES MOBILIZATION**

- Collaboration with partners and leveraging on resource from existing projects

**LOBBying and ADVOCACY**

- As a referral pathway, lobby for protective services for victims participating in the criminal justice process to prevent re-traumatization, including establishing child-friendly interviewing spaces and ensuring victims receive basic needs.
REFLECTIONS

A number of issues require further reflection, research and analysis

There is limited knowledge among the local population on the threats and dangers of human trafficking. Awareness raising

There is need to conduct a comprehensive situation analysis on the root causes and factors facilitating human trafficking in Malawi. (Capturing new emerging trends) Research and Data

Legal reform is key to strengthen existing legal framework coupled with Training of law enforcement agencies.

Victim Tailored Interventions are also key recognizing the multifaceted nature of human trafficking

There is need to intensify Collaboration of various actors in the anti trafficking chain and Pooling of Resources to address the problem
THANK YOU