

2009 Trafficking in Persons Report

MALAWI (TIER 2)

Malawi is a source, transit, and destination country for men, women, and children trafficked for the purposes of forced labor and sexual exploitation. The incidence of internal trafficking is believed higher than that of transnational trafficking, and practices such as forced labor exist, particularly on tobacco plantations. Children are trafficked primarily within the country for forced labor in agriculture, animal herding, domestic servitude, and to perform forced menial tasks for small businesses. Girls and young women are trafficked internally for forced labor and prostitution at local bars and rest houses. Malawian adults and children are lured by fraudulent offers of employment into situations of forced labor and commercial sexual exploitation in Mozambique, South Africa, and Zambia. In 2008, Malawian men were also trafficked to Tanzania for forced labor in the fishing industry. Children, as well as a smaller number of women, from Zambia, Mozambique, Tanzania, Burundi, and Zimbabwe are trafficked to Malawi for forced labor and commercial sexual exploitation.

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. While the government incrementally improved its efforts to identify victims and bring trafficking offenders to justice, the largely inconsequential punishments meted out to convicted traffickers during the reporting period demonstrated a continued lack of understanding of the seriousness of human trafficking crimes on the part of judicial and other government officials.

Recommendations for Malawi: Provide additional training to judges, prosecutors, and police (particularly those working near border areas) on how to identify, investigate, and prosecute trafficking cases utilizing existing laws; pass and enact comprehensive anti-trafficking legislation; expand the existing focus on protecting victims of child labor trafficking to include children exploited in domestic servitude or prostitution; and institute a system to compile data on cases investigated and prosecuted and victims assisted throughout the country.

Prosecution

The Government of Malawi's anti-trafficking law enforcement efforts improved over the last year, though punishments of trafficking offenders remained weak, inconsistent, and highly dependent on the knowledge level of the judges and prosecutors involved in the case. Malawi prohibits all forms of trafficking through existing laws, including the Employment Act and Articles 135 through 147 and 257 through 269 of the Penal Code, though a lack of specific anti-trafficking legislation allows for a range of potentially weak punishments to be imposed on convicted trafficking offenders. Prescribed penalties under the aforementioned statutes range from small fines to 10 years, imprisonment; these penalties are sufficiently stringent and commensurate with punishments prescribed for other grave crimes. The Child Care, Protection and Justice Bill, which defines child trafficking and sets a penalty of life imprisonment for convicted traffickers, remains in Cabinet and was not passed by Parliament during the reporting period. The Malawi Law Commission continued drafting comprehensive anti-trafficking legislation to specifically outlaw all forms of human trafficking.

In 2008, the government used laws against child labor, kidnapping, and profiting from prostitution to convict trafficking offenders; as in past years, the majority of trafficking cases involved forced child labor in the agricultural sector. According to the Ministry of Labor, the government conducted at least 24 such child labor trafficking investigations and prosecuted three cases under the Employment Act in 2008. A court in Mchinji district sentenced a man to eight years, imprisonment for trafficking children for agricultural labor. A Mchinji tobacco farm employee received a sentence of two years, imprisonment for his participation in child labor trafficking. A Kasungu district court sentenced a man to two years, imprisonment for attempting to sell his 17-year old daughter into slavery for \$700. Most other offenders, however, received a warning for the first offense and a small fine for subsequent violations. The Ministry of Labor reported the out-of-court settlement of at least 13 possible trafficking cases for payment of back wages and repatriation costs. Responding to the trafficking of young Burundian girls for prostitution, a Malawian court convicted two Burundian nationals for profiting from prostitution; they received fines rather than prison sentences. In 2008, the government deported a Zimbabwean sex trafficking victim when her temporary residency status expired, resulting in the dismissal of the court case against the Malawian truck driver who trafficked her to Malawi. The Anti-Corruption Bureau did not provide information on the status of its 2007 investigation into two complaints of government corruption relating to trafficking.

Protection

Malawi depends heavily on foreign donors and NGOs to fund and operate most of the country's anti-trafficking programs, limiting the government's discretion in programming and placement of resources. The government funds and operates a social rehabilitation drop-in center in Lilongwe for victims of trafficking and gender-based violence, but does not maintain records specifically on trafficking victims receiving assistance or identify trafficking victims among the center's clients. The government provided shelter and legal assistance to one identified Zimbabwean trafficking victim in 2008. Using established procedures, district and local officials (police, social welfare officers, and labor officers) also referred victims to various NGO-run facilities that provided protective services and, in some districts such as Mchinji, facilitated their return to their home districts. There were no protective services available to Malawian trafficking victims returning from other countries. Police stations throughout the country housed victim support units to respond to gender-based violence and trafficking crimes. These units provided limited forms of counseling and, in some places, temporary shelter, though their capacity to identify and assist victims varied greatly among stations. Inter-ministerial district child protection committees monitored their districts for suspicious behavior and reported suspected trafficking cases to police and social welfare officers.

During the reporting period, the Ministry of Women and Child Development trained 289 volunteer community child protection workers to recognize child victims of all forms of exploitation, including trafficking. In early 2009, it began the process of converting these volunteer positions into paid positions within the ministry. The government allocated \$176,056 to the Child Labor Control Unit for conducting inspections in 2008. The government encouraged victims, participation in the investigation and prosecution of trafficking crimes and did not inappropriately incarcerate, fine, or otherwise penalize victims for unlawful acts

committed as a direct result of being trafficked. Government officials indicated that foreign victims were usually granted temporary residency status; the length of courts proceedings, however, sometimes exceeded the duration of this status, resulting in deportation and dismissal of cases against alleged traffickers.

Prevention

The government sustained its efforts to prevent human trafficking in 2008. Child trafficking issues fall under the purview of both the National Steering Committee on Orphans and Vulnerable Children and the National Steering Committee on Child Labor, which were created to provide policy guidance and coordinate the government's engagement on children's issues. Most districts have a district child labor committee, a district orphan and vulnerable child committee, and a district child protection committee, all of which have responsibility for trafficking issues. There is significant overlap and inadequate communication and coordination among these committees. The effectiveness of these committees in preventing child trafficking during the reporting period varied widely and was often dependent on the capacity of the individuals employed or their partnership with NGO- or foreign-funded projects in the vicinity. The government and UNICEF continued a child rights information campaign called "Lekani" or "Stop!" that included billboards, bumper stickers, newspaper ads, and radio programs which provided messages against trafficking, child labor, child sexual exploitation, and commercial sexual exploitation. Through the National Aids Commission's Action Framework on HIV/AIDS Prevention, the government also provided community sensitization on the dangers of commercial sexual exploitation and attempted to reduce the demand for commercial sex acts. The Malawi Defense Force has a zero tolerance policy on human trafficking and provided training on human rights, child protection, and the elimination of sexual exploitation to its nationals deployed abroad as part of peacekeeping missions.