



Marist Foundation for
International
Solidarity (FMSI)



Universal Periodic Review (UPR) of Malawi

Joint NGO Submission by:

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Trafficking in persons, especially in women and children

1. During harvest period, children, mainly boys from nine years old from Malawi are recruited to work in agriculture in Mozambique and Zambia and are economically exploited by working in difficult and horrid conditions.

2. Extreme poverty, the high dropout rate at school and lack of support from the Government to families for the education of children, especially for girls, heighten trafficking in women and children in the country. The lack of holistic measures to tackle the root causes of the phenomenon as well as its consequences exposed young girls to sexual exploitation without any information with regards to effort to breakout and combat trafficking spiral.

3. Despite the commitment of Malawi upon ratification on 17 March 2005 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the UN Convention against Transnational Organized Crime, “to curb and stamp out offences related to trafficking in persons especially women and children”¹ and to embark upon various “social and legal reforms to incorporate obligations emanating from this Protocol”², the Government has not undertaken any serious legal and other measures to fulfill its pledges. As result, the national legislation does not provide any provision for the criminalization and the prosecution of trafficking in boys. The Penal Code only criminalizes the abduction of girls under 16 years. As for the Trafficking Bill, it has not yet been approved by the Cabinet before its presentation to the Parliament for enactment.

4. Recommendations

- **(a) Bridge the gap in the domestic legislation and *de lege feranda* to prevent and protect victims and to criminalize trafficking in persons, including in boys, girls and women as well as the attempt to commit such offences, to participate as accomplice, to organize or to direct other people to commit trafficking;**
- **(b) Comply with its responsibility to efficiently and duly investigate, prosecute and adjudicate trafficking, including its component acts and related conduct, whether committed by governmental or by non-state actors and make sure that effective and proportionate penalties is applied to individuals and legal persons found guilty of trafficking or of its components or related offences;**
- **(c) Provide adequate protection to victims through appropriate housing, counselling and information related to their legal rights in Chichewa and other**

¹ Declaration of Malawi upon ratification:

“The Government of the Republic of Malawi in its efforts to curb and stamp out offences related to trafficking in persons especially women and children has embarked upon various social and legal reforms to incorporate obligations emanating from this Protocol (Article 16 (4)).

Further, declares expressly its acceptance of Article 15 (2) on settlement of disputes concerning interpretation and application of this Protocol”. UN Treaty Collection, Chapter XVIII, 12.a.

² *Ibid.*

national languages, medical, psychological and material assistance as well as employment, educational and training opportunities;

- **(d) Coordinate and cooperate with neighbouring countries to alleviate the factors that make persons, especially women and children, vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunity and to discourage the demand that fosters all forms of exploitation of persons.**

HIV and AIDS Pandemic and Impact on Human Rights

5. Due to the HIV and AIDS pandemic that left many orphan children, many households are headed by grandparents and very young children around 13 to 20 years of age. Obligated to take such heavy family responsibilities for the survival of the rest of their younger brothers and sisters, these young children, mainly girls, already under economic hardships, failed to continue their studies and the situation led to the high rate of dropout of young girls without any adequate protection and support from the Government.

6. HIV and AIDS exacerbated the number of orphans living in harsh living condition without suitable protection from the Government. The devastating impact of HIV and AIDS impedes the enjoyment of basic economic, social and cultural rights as the infected and affected persons, including children, have limited access to antiretroviral drugs and do not have a proper diet. Without sound integration of nutrition security in treatment and care programmes, the efficacy and adherence to drug regimens will decrease. Government efforts have shown limited results and the gap needs to be bridged. Furthermore, the poor health care system worsens prevention and treatment opportunities, including the prevention from mother-to-child.

7. The 2005-2009 National HIV and AIDS Action Framework and the 2006 Emergency Human Resources Strategy on health workers have not adequately addressed the effective implementation and coordination of a comprehensive response. Accordingly, the current HIV and AIDS Bill under discussion should address the implementation gap of those existing policies and programmes and allow for more prevention of the disease and protection of infected and affected people, including children and HIV positive mothers.

8. Recommendations

- **(a) Finalise without delay, and to ensure effective participation of all stakeholders, including civil society organisations, the HIV/AIDS Bill to provide stronger protection, care and human rights of people living and affected by HIV and AIDS. This Bill should protect them against stigmatization and discrimination, including job assessment and at the work place and allow them to exercise their civil and political rights and by increasing the capacity of mother-to-child prevention/transmission and to provide means and facilities prior to and after birth delivery to HIV positive mothers; and to protect orphans;**
- **(b) Expand available and accessible free antiretroviral treatment services, including in rural and remote areas.**

Right to an Adequate Standard of Living

9. The lack of basic needs, including safe drinking water, accessible and affordable health care facilities and services, electricity and hygienic sanitation, perpetuates the decline in the standard of living. In rural areas, transportation is a big problem due to the lack of good roads. As result, many people are isolated and cut off from education and health services.

10. The increased impoverishment of families who can only afford one meal per day, especially in villages, hampers the capacities of poor households to deal with food, which is compounded by bad harvests. These impoverished conditions deprive these people of adequate health and an education for their children. This extreme poverty is worsened by the widespread HIV and AIDS, which is lowering the life expectancy of the population. Approximately 65% of the population live below the poverty line.

11. Recommendations

- **(a) Increase public spending on transportation infrastructures to facilitate accessibility to basic health facilities and services, including education;**
- **(b) Strengthen the Social Cash Transfer programme in order to reach out to more vulnerable population in remote areas by adapting the criteria to beneficiaries' situations, and improve the human rights-based dimension of the programme according the guidelines provided by the independent expert on the question of human rights and extreme poverty³.**

Right to a Quality Education for All

12. This section of the report focuses on the **right of children to a compulsory and free primary education and a secondary education that is available and accessible**, according to the international and national obligations of the Government of Malawi. It expresses a serious concern about the poor situation of education in Malawi, with a focus on **access for all, equity, quality and efficiency of the education system**.

The Right to Education for Children in Malawi

13. In 1994 the Malawi Government introduced free primary education whose overall objective was to increase enrolment and ensure education was accessible to all, regardless of their financial capacities. Since that time access to education has improved and the learning needs of young people have been given attention through the development of a National Youth Policy and non-formal education programs. The Government's school

³ Report of the independent expert on the question of human rights and extreme poverty, Magdalena Sepúlveda Carmona, A/HRC/11/9.

feeding programs have been a significant factor for increased enrolments. Despite these developments, many challenges remain.

14. Whilst free primary education was introduced into the country in 1994, it was not made compulsory. Thus, the full expression of Article 28 of the Convention of the Rights of the Child is not fully realized.

15. Primary education in Malawi is characterized by demographic pressure, a high prevalence of HIV/AIDS, striking poverty, and very low human and social development⁴. The population is estimated at 13 million inhabitants in 2008, and increasing at the rate of 2.4% per year. 82% of the population live in rural areas where school supply and demand are weaker. If universal primary education is to be reached by 2018 (c.f MDG 2), primary school places for an estimated 4.8 children⁵ will be needed by then, a 45% increase on 2008.

16. The adult (15 years and older) literacy rate is estimated to be 69%, and this impedes education development because these parents are not likely to enroll their children in school. The HIV/AIDS pandemic dramatically affects the education sector, due to the deaths of teachers and parents, teachers' absenteeism and the increasing number of orphans.

17. Recommendations

- **(a) Pass without delay the reviewed Education Act so as to remove legal impediments to primary education, which exist under the outdated 1962 Education Act;**
- **(b) Along with the on-going formation of children, undertake necessary steps to raise awareness on the importance of their rights, which should be inherent in the school curricula, i.e. include human rights and child rights in the curricula of schools;**
- **(c) Make primary education compulsory, in accord with Article 28 of the Convention on the Rights of the Child;**
- **(d) Promote and strengthen vocational education and training opportunities to mitigate the high dropout effects.**

Accessibility

18. Due to the high number of dropouts at school, only 35% of students complete primary school. The poor retention rate is highest among the rural poor. Abject poverty which often leads to early pregnancies, the lack of food and clothes in households and lack of resources for education, have been the principal causes of this high pupil drop out rate. For instance a total of 194,495 pupils dropped out of primary school in 2007 and, of these 51.5% were girls and 48.5% were boys. Dropout rates in Malawi primary education is

⁴ The data from this section relies on the "Fast Track Initiative" (FTI) report which gleaned its information from Malawi's Education Country Status Report (CSR) 2009.

⁵ The assumption used is that repetition rate will stay constant between 2008 and 2018; 20 percent of the students would be repeaters.

still a major concern. The negative attitudes of certain communities towards education, chiefly for girls, and the long distances covered by children to get to schools have also affected attendance rates.

19. Economic difficulties and traditions such as early marriage, pregnancy, and family responsibilities explain the fragility of school demand. The lack of child-friendly learning environments (crowded classrooms, lack of sanitary facilities and clean water within easy reach, open-air or temporary classrooms, and incomplete schools, untrained teachers) also contribute to the negative effect. For example, because of the lack of classrooms, some classes (lower primary) are conducted in the open or under trees. Very often, such classes have been disrupted by the rains during the rainy season.

20. The budget allocation for education is low when compared to other African countries. Total education public recurrent expenditures in the 2007/08 fiscal year represent 19.4% of total government recurrent expenditures. In the ten low-income African countries that most highly prioritize their education system, the share for education equals an average of 28.8%⁶.

21. The challenge in this context, and it is a financial one, is to address the very high Pupil:Teacher Ratio (80:1) and Pupil:Classroom Ratio (117:1). In the long run, this has to be done by increasing the output from the pre-service Teacher Training Colleges and by constructing additional primary school infrastructure, particularly classrooms in existing schools in rural areas and complete new schools in urban areas. It is noted that plans for both of these developments are included in the NESP and the ESIP but they are not based on any sound needs assessment or enrolment projections. The FTI Donor Group suggests that, in the short term, the priority should be to bring about a drastic and immediate reduction in the Pupil:Teacher Ratio (PTR) through double-shifting, reduced repetition, and/or the employment of additional untrained teachers, or a combination of these measures⁷. All of these proposals are included in the ESIP, but the strength of the Government's commitment to these reforms is not clear. However, the coalition submitting this report would not support the employment of untrained teachers. This simply perpetuates the poor level of delivery in the classroom.

22. In terms of recruitment, the total output per annum remains about 3,000 for primary schools and about 400 for secondary schools. An attrition rate of about 6% means that the retention rate is low. To meet the Ministry of Education's mid-term pupil-teacher ratio of 60:1 by 2012, an additional 20,000 teachers will have to be produced based on current figures of 39,000 trained teachers against the required 60,000.

23. It is also a fact that many children who complete primary school are unable to go on to secondary school due to the lack of facilities and teachers.

⁶ FTI Donor Partners Appraisal of the Government of Malawi's Education Sector Plans NESP (National Education Sector Plan) 2008-2017 and ESIP (Education Sector Implementation Plan) 2009-2013, Draft September 2009; p. 8.

⁷ Ibid., p.10

24. Recommendations

- **(a) Give priority to infrastructure development – construct more classrooms, schools and teacher houses and request, if necessary, technical and financial assistance from international organizations such as UNESCO and UNICEF;**
- **(b) Increase the level of education financing in order to realistically meet the Government’s own education goals as outlined in its National Education Sector Plan (NESP) 2008-2017, in particular its goal of having a PTR of 60:1 by 2012;**
- **(c) Increase the transition rates to secondary schools.**

Equity

25. Despite recent improvements, the economy remains one of the poorest in the world. 63% of Malawians live on less than US\$ 2 a day. Poverty is a major factor inhibiting equal opportunities for the children of Malawi.

26. There are more or less equal numbers of boys and girls in each grade of primary school up to Standard 5. Girls tend to drop out of school at the top end of primary school in larger numbers than boys and the disparity increases in each successive grade. With an 8- year primary cycle, frequent late entry to school, and a very high repetition rate, girls in Standards 6-8 are often over-age and are withdrawn from school to be married or when they fall pregnant. The difference in the primary completion rate is 14% between boys and girls, and 34% between urban and rural students. The ESIP includes measures to encourage entry into Standard 1 at age 6 and to reduce the repetition that reinforces over-age enrolment in the higher grades. It also includes six other programs or activities designed to promote the promotion and retention of girls in school and to address gender equity issues amongst teachers and local communities. Activities envisioned for improving access and quality of education for girls include: increased proportion of female teachers, separate, clean and safe sanitation for girls in schools, strengthening the role of mother groups by providing training and supplies, and measures to reduce gender based violence in schools and communities. The Government is urged to prioritize these aspects in the ESIP.

27. Schooling inequalities arising from socioeconomic factors are partly a result of an unequal appropriation of public resources for education. For example, girls only benefit from 48% of the public expenditure on education, compared to 52% for boys. Due to their longer years of schooling, children from the wealthiest households receive 68% of the public education expenditure. Conversely, the poorest 20% of children only benefit from 6% of these resources (i.e. 11.5 times less)⁸.

28. Recommendation

- **Insure that all sectors of the community have equal opportunities in education: the poor, girls, those with disabilities and others who suffer from**

⁸ Ibid., p. 8

discrimination, by removing the barriers that hinder their right to an education.

Quality

29. The quality of education is generally poor, and is deteriorating. Malawi participates in the Southern and Eastern African Consortium for Monitoring Education Quality (SACMEQ) for monitoring learning achievement at primary level in reading (English) and Mathematics. Public examinations are also used in the performance assessment at Grade 8, the last stage of primary schooling. Results reveal that Malawi's children perform very poorly in both subjects and reading performance has deteriorated in the period 1999 to 2004. In 2004, Malawi was ranked lowest of all fourteen countries in Reading and second lowest in Mathematics. The number of children who reach a minimum level of mastery in English reading was barely 9% in 2004.

30. This decline has, in part, been attributed to the 1994 Fee-Free primary policy, which was not adequately planned for. As a result of this policy change, more than a million additional pupils joined the primary education system during the first year of the policy change. Consequently, the situation in the education system deteriorated even further. Overcrowding increased, the few resources in schools were inadequate for the increased numbers, and the recruitment of temporary teachers (TTs) made the teaching and learning process fall short of what was expected.

31. There is a severe shortage of teachers, with a high pupil-teacher ratio of 80:1 in 2007, but the pupil-to-qualified-teacher ratio is even higher, at 88:1. The shortage is compounded by a fairly incoherent teacher deployment system, with little correlation between the number of teachers allocated and the number of students. Teacher allocation across location and divisions/districts is uneven, with the deployment of teachers highly skewed toward urban areas (46:1) instead of rural area (86:1)⁹.

32. The introduction of the Free Primary Education met with another challenge. There is a big shortage of teaching and learning materials in schools. A study by *Civil Society Coalition for Quality Basic Education* in 2003 indicated that over 50% of the schools did not receive textbooks in the first six months of the 2002/2003 financial year and the 2006/2007 report indicated that Government had not distributed textbooks to schools since 2004. This situation has not greatly improved today.

33. Most of the Early Child Care Centres operate under poor conditions. They lack standard instructional materials, no systematic monitoring and evaluation tools, acute shortage of trained teachers in Early Childhood Development, lack of community and parental involvement in the provision of ECD.

34. The poor quality of education, particularly primary education, is largely due to many years of under-investment in education and mis-allocation of resources between sub-sectors. Unlike most countries in Africa, the Government of Malawi spends much more

⁹ Ibid., p. 8.

of its own resources on health (26.5%) than on education (17.8%)¹⁰. In the light of Article 4 of the Convention on the Rights of the Child, the State is urged to prioritize, increase and protect budgetary allocations for children's education at national and local levels.

35. The fact is that student learning is not improving in Malawi. The reduction in the Pupil:Teacher Ratio should be seen as a pre-requisite to any future improvement in the quality of teaching and learning. It is worth noting that, financially, the amount required for the 'total required resources' for the year 2009-10 in the ESIP is double the amount that was allocated to the Ministry of Education, Science and Technology by Parliament.

36. Recommendations

- **(a) Improve the quality of education through improvement of the ratio of teachers to students in primary and secondary schools, ensuring at the same time that teachers are well-trained, fully qualified and well paid¹¹;**
- **(b) Provide without delay the classroom resources and student textbooks necessary for the children's learning needs.**

Efficiency

37. The internal efficiency of the system is weak, largely due to very high repetition rates. Globally, evidence shows that high repetition rates are not conducive to better mastery of learning, and have adverse effects on the pupil-teacher ratio and costs. The government is seeking to address the issue, notably as it affects standards 1 to 4 of the primary cycle, where repetition rates are greatest.

38. With regards best use of available capital finance, the current centralized construction approach for new schools and classrooms tends to increase the unit cost and thus reduces the number of units constructed.

39. There is no systematic teacher evaluation in place. Assessments comprise observation during teaching - but these are irregular at best. An absence of a teacher motivation policy or strategy has left schools with little guidance on how to address any gaps identified through random evaluation processes. A coordinated approach to school-based supervision, and training of head teachers in this area, would contribute to a better system of supervision and capacity building of teachers. Suitable motivation rewards based on teacher evaluation outcomes would also assist with improved teaching standards.

40. Recommendations

- **(a) Consider a more decentralized approach to capital development, based around infrastructure grants to schools;**

¹⁰ Ref. Malawi Aid Atlas FY 2007/08, p.7

¹¹ CRC/C/MW1/CO/2, p. 14, para 63 (e).

- **(b) Strengthen the Monitoring and Evaluation systems within Ministry of Education, including teacher evaluation, and between the Ministry and other line Ministries, Civil Society Organisations and the private sector;**
- **(c) Promote the private sector participation in education policy formulation and education financing. This, if meaningfully utilised, would improve the resource base for education financing in Malawi;**
- **(d) Consolidate community participation in education development agenda.**