



THE LEGAL FRAMEWORK & PROSECUTION OF HUMAN TRAFFICKING OFFENDERS IN MALAWI

BY I.Y WADI, DPP MALAWI presented at the seminar on Prosecuting
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MALAWI: GEOGRAPHICAL FEATURES

- ◆ Malawi is a small landlocked country sharing its borders with Tanzania to the north, Zambia to the West and Mozambique to the south and West.
- ◆ The Borders of Malawi are **very porous** make it easy for persons to cross the borders other than from an immigration entry and exit port



ECONOMIC FACTORS

- ◆ Malawi is considered to be one of the **poorest** country in the world with a GDP of which means the majority in the rural areas live on less than \$1 a day.
- ◆ Heavily effected by **HIV/AIDS pandemic**
- ◆ **Poverty** levels are very high
- ◆ **Unemployment** is very high
- ◆ **Economic prosperity** of neighbouring countries



VUNERABILITY

- ◆ The economic factors creates potentials for human exploitation.
- ◆ The geographical factors makes it easy for human traffickers to cross the borders
- ◆ Illiteracy levels are high



TRAFFICKING ACTIVITIES

REGIONAL/INTERNATIONAL	DOMESTIC
Labour	Labour in the tobacco estates
Sex/Prostitution	Domestic labour
Trafficking for body parts	Trafficking for body parts

Am not aware of Malawians trafficked and sold to Nigerians; Am also not certain if tourists are involved in human trafficking.



Cross-Border Trafficking: Malawi & Zambia

- ◆ Two Zambian Nationals were caught in Malawi in the process of taking boys from Malawi to Zambia for labour purposes
- ◆ convicted by the FGM and sentenced to 5 years.



LABOUR ORIENTED TRAFFICKING WITHIN MW

FARM LABOUR with specific focus on **tobacco farms**. Every year Tobacco Estate owners in the North send trucks to the central & South to recruit peasant farmers as labourers. **They entice them with great expectations** on income, good food & housing. The entire family would normally leave to work for the farms. Actually they would all be providing labour



Labour oriented trafficking

THE TENANT SYSTEM;

- ◆ Labourers are recruited on **annual wages**
- ◆ They are provided with **housing & food**
- ◆ The wages are calculated as a **percentage of the profits.**
- ◆ They are transported to the farm but the return trip is at own cost



Aspects of exploitation & deception in Farm Labour based trafficking

- ◆ These farmers are **so impecunious** that they can not even afford transport to go back home
- ◆ The Estate owners provide the tenant with **tiny housing, insufficient & unpalatable food**
- ◆ The tenants are **compelled to work** on huge farming land.
- ◆ Mostly the tenant is **cheated on the sales/profits** & is paid **meagre wages** not enough for transport



Practical consequences

Various tenants have reacted in different ways to the exploitation

- ◆ Some have **remained** on the farms
- ◆ Others have simply **left** saying “God knows my way from here” – they are rescued by the good people
- ◆ Others connive & set the farm ablaze
- ◆ Others steal the tobacco, sell to middlemen & make a runner



Aspects of domestic labour based trafficking

- ◆ The pattern is from **rural to urban areas**
- ◆ The targets are children both male & female from the **age of 12 to 21**
- ◆ They are **enticed with promises** of good income, clothing,
- ◆ Mostly they are **underpaid and overworked**



Why are there less cases reported on trafficking

- ◆ Malawi does not have a specific legislation to exclusively deal with the problem of human trafficking.
- ◆ Victims may not be aware of their legal rights
- ◆ The police, expertise (intelligence) & capacity
- ◆ Lack of victim support programme

The Law



THE CONSTITUTION	THE PENAL CODE
THE IMMIGRATION ACT	THE EMPLOYMENT ACT
THE MONEY LAUNDERING, PROCEEDS OF CRIME & FINACING OF TERRORIST ACT	LABOUR RALATIONS ACT



THE CONSTITUTION

- ◆ Prohibits slavery, servitude & forced labour
- ◆ Guarantees fair & safe labour practices
- ◆ Guarantees fair remuneration
- ◆ Protects children from exploitation
- ◆ Protects women from sexual abuse, harassment & violence
- ◆ Prohibits torture, cruel, inhuman & degrading treatment

Practically to what extent does the Constitution protect the citizens from human trafficking in the absence of criminal legislation



THE PENAL CODE

Unlawful compulsory of labour-S269	Kidnapping Slavery S257/S267	Brothels Prostitution S147/
Obtaining (labour) by false Pretence S219	Wrongful confinement Abduction Procuration	Aiding prostitution Unnatural offences S146/S153
Child stealing S167	Detaining a woman/a girl for sex trade	Indecent assault



§135: Abduction of a woman

Any person who, with intent to marry or carnally know a woman of any age, or to cause her to be married or carnally known by any other person, **takes her away, or detains her, against her will**, shall be guilty of a felony and shall be liable to **imprisonment for seven years.**

Would the provision cover where there have been agents involved?



S136: Abduction of a girl of under the age of 16

- ◆ Any person who unlawfully takes an unmarried girl under the age of 16 years out of the custody or protection of her father or mother or other person having the lawful care or charge of her, and against the will of such father or mother or other person, is **guilty of a misdemeanour.**

S 140: Procuration

Any person who-

(a) procures or attempts to procure any girl or woman under the age of 21 years to have unlawful carnal connexion, either in Malawi or elsewhere, with any other person or persons; or





Procuration

(b) procures or attempts to procure any woman or girl to become, either in Malawi or elsewhere, a common prostitute; or



Procuration

(c) procures or attempts to procure any woman or girl to leave Malawi, with intent that she may become an inmate of or frequent a brothel elsewhere; or



Procuration


(d) procures or attempts to procure any woman or girl to leave her usual place of abode in Malawi with intent that she may, for purposes of prostitution, become an inmate of or frequent a brothel either in the Republic or elsewhere;



Punishment for procuration

shall be guilty of a misdemeanour

Parliament did not intend this to be a serious offence at the time the statute was enacted on 1st April, 1930



Rep v Ruth Lourenco criminal case no. 150 of 1999 (CRM)(LL)

Facts; Involved trafficking of 3 prostitutes
from Malawi to Netherlands

Court findings

- ◆ No deception or fraud
- ◆ Not forcibly detained in brothels in Netherlands
- ◆ Could not be procured to become a prostitute

S 143 Detention with intent or in brothel



- ◆ Any person who detains any woman or girl against her will-
 - ◆ (a) in or upon any premises with intent that she may be unlawfully and carnally known by any man, whether any particular man or generally; or
 - ◆ (b) in any brothel
- shall be guilty of a misdemeanour.**



S 153: Unnatural offences

- ◆ Any person who (a) has carnal knowledge of any person **against the order of nature**; or (b) has carnal knowledge of animal (c) permits a male person to have carnal knowledge of him or her against the order of nature, shall be guilty of a felony and shall be liable to imprisonment for 14 years.



S257: kidnapping from the Republic- Definition

- ◆ Any person who conveys any person beyond the limits of the Republic without the consent of that person or of some person legally authorized to consent on behalf of that person, is said to kidnap that person from Malawi.



S258: kidnapping from lawful guardianship - Definition

- ◆ Any person who takes or entices any minor under fourteen years of age if a male, or under sixteen years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship.



Aggravated Kidnapping

General Kidnapping punishable with 7 years IHL	Kidnapping or abducting with intention to murder punishable with 10 years IHL
Kidnapping or abducting with intention to confine punishable with 10 years IHL	Kidnapping or abducting with intention to cause Grievous harm, slavery or unnatural offences 10 years IHL

S 266: Wrongful confinement

- ◆ Whoever wrongfully confines any person shall be guilty of a misdemeanor and shall be liable to a fine of £700 or to imprisonment for five years.

Under the conversion of fines Act, the multiplier is 150



S267. Buying or disposing of any person as a slave

- ◆ Any person who imports, exports, removes, buys, sells or disposes of any person as a slave, or accepts, receives or detains against his will any person as a slave, shall be guilty of a felony and shall be liable to imprisonment for seven years.

S262: Habitual dealing in slaves

- ◆ Any person who habitually imports, exports, removes, buys, sells, traffics, or deals in slaves shall be guilty of a felony and shall be liable to imprisonment for ten years.





S 167: Child Stealing

- ◆ Any person who, with intent to deprive any parent, guardian or other person who has the lawful care or charge of a child under the age of fourteen years, of the possession of such child-
 - (a) forcibly or fraudulently takes or entices away, or detains the child: or
 - ◆ (b) receives or harbours the child, knowing it to have been so taken or enticed away or detained; shall be guilty of a felony and shall be liable to imprisonment for seven years.



INTERNATIONAL LEGAL OBLIGATIONS

Malawi ratified the Palermo protocols

- ◆ UN convention against trans-national organised crime
- ◆ Protocol to prevent, suppress & punish trafficking in persons especially women & children
- ◆ UN convention on the protection of the child



ENABLING ACT

S 211 of the constitution (Malawi)

- ◆ Any International agreement ratified by an Act of Parliament shall form part of the Republic if so provided for in the Act of Parliament ratifying the agreement
- ◆ S11(2)(C) can be applied in interpretation by the Judiciary as current norms of international



THE MALAWI LAW COMMISSION

- ◆ Produced a proposed legislation on the Protection of children & Young persons Act; Bill at cabinet level
- ◆ Is in the process of producing an issues paper and constitute a special commission to develop legislation to deal with the problem of Human trafficking exclusively.



Current status - commentary

- ◆ Not too good
- ◆ Over twisting the arm; The law is not comprehensive
- ◆ The snake without teeth; Lack of enabling legislation to enforce international convention
- ◆ The lion which cant walk; lack of requisite action by police



Current status - commentary

- ◆ Lack of victim support programme
- ◆ Lack of witness protection prgme
- ◆ Prosecution capacity not fully developed
- ◆ Lack of prevention policies & sensitisation
- ◆ Weak networking with other countries
- ◆ Insufficient and inaccurate information