



KidsRights Report

Innocence Lost

**Child Marriage in a global context,
with a focus on Malawi**

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Executive Summary

Child marriage, according to international human rights authorities, is defined as any marriage below the age of 18 years. Sometimes involving boys, but mostly girls, it is a global issue which affects children before they are physically or emotionally mature enough to deal with the consequences. The practice violates a host of children's rights including the right to an education and the right to protection from sexual abuse.

14 million girls under 18 get married every year, in some poorest countries of the world. Marriage is seen as the only option for most of these girls, whose families often struggle to pay for their upkeep, and receive a bride wealth on the occasion of their marriage. Young wives must leave school, and often become pregnant, facing the increased risks of mortality and complication that early pregnancy brings.

Worldwide, 70,000 girls under 19 die every year in pregnancy or childbirth, and infants born to mothers under 18 are 60% more likely to die in their first year. Malawi has one of the highest maternal mortality rates in the world, with one in 36 women dying in pregnancy or childbirth.

Malawi has the eighth highest rate of child marriage in the world, with over half of girls marrying under the age of 18. It is one of the world's poorest countries, with 61% of the population living below the poverty line. Despite the Malawian government's efforts to eradicate child marriage through national legislation, the practice continues to be accepted within communities, reinforced by customary laws. Child marriage is almost twice as prevalent in rural areas of the country.

The legal minimum age of marriage in Malawi is 18; or 15 with the consent of parents. It is illegal to force any child into marriage, but not technically criminal (just "discouraged") for a child younger than 15 to marry. Children have been known to marry as young as 12 years old. The government of Malawi is currently reviewing its minimum age legislation, and a national debate is taking place about whether the minimum age with parental consent should be raised to 18.

Gender inequality is part of the problem in Malawi; girls are at a disadvantage not just at home but also in wider society, where their economic alternatives are extremely limited. Often married to older men, in exchange for a sum of money, young wives are very vulnerable to domestic violence.

Education is seen as the most powerful tool in the fight against child marriage. Those girls who stay longer at school improve their economic potential, and are statistically far less likely to marry young. At the moment, only 5% of girls in Malawi complete their secondary education.

For child marriage to end, the practice must be kept high on the global human rights agenda. In Malawi, local perceptions of the practice need to change. Girls, their families and their communities must be informed of the risks of early pregnancy, the benefits of an extended education, and the human rights to which all children are entitled.

Section 1: Introduction

The International Planned Parenthood Federation (IPPF) defines child marriage as any marriage carried out below the age of 18 years, before the girl is physically and psychologically ready to shoulder the responsibilities of marriage and childbearing (International Planned Parenthood Federation, 2009). The African Charter on the Rights and Welfare of the Child (ACRWC) also specifies a minimum age for marriage of 18 years.

Child marriage is a reality for both boys and girls, although young girls are disproportionately affected.¹ In total, 140 million child marriages are expected to take place between 2011 and 2020, and 50 million of those will involve girls under the age of 15.

Child marriage violates a number of rights enshrined in the Convention on the Rights of the Child (CRC, 1989). Girls marrying at a young age do so rarely on the basis of a free and informed decision. They are unable to enjoy their last few years of childhood, and their time for growth and development is cut short. Inevitably, early marriage often means dropping out of school, limiting a girl's chances for the future. Child brides are less able to fulfill the health needs of their own children, placing their children, in turn, at increased risk.

Poverty and a lack of economic opportunities are key causes of child marriage. The practice occurs mostly in South Asia and Sub-Saharan Africa; those countries with the highest proportion of child marriage are also some of the poorest in the world. Girls may be viewed as an economic burden, and can also be married off in lieu of a debt. Marriage might also be seen of a means of securing a better future for the girl. Where dowries and payment of bride wealth are common, families can be tempted to offer their daughters in marriage at an early age.

This report focusses on Malawi, which has the 8th highest rate of child marriage in the world, according to the United Nations Population Fund. On average, according the United Nations (UN), one out of two

girls in Malawi will be married by their eighteenth birthday (Human Rights Watch, 2014: p 15).

Gender roles are deeply rooted in cultural traditions, and child marriage tends to extend back through generations. In communities with a high rate of child marriage, the status of women and girls is often solely based upon their role as mother and wife. Marriage is considered a mark of success for a girl, and increases the standing of her family.

When a girl marries, she must live with her husband and possibly also his family, and face the challenges of pregnancy and child-rearing. She also faces an increased risk of domestic violence, the age difference putting her at a significant disadvantage; she is more vulnerable to abuse and less likely to assert herself.² Marriage usually also means an end to her schooling, because she takes on domestic responsibilities, and school is considered socially incompatible with her new status.

Education is in fact one of the most powerful weapons in the battle against early marriage. If a girl can continue her schooling, she can become financially independent and fulfil her potential without the need for an early marriage.

Young girls who marry are at risk of pregnancy at a young age. In 2010, 36.4 million young women in developing countries had given birth before the age of 18 (UNFPA, *Motherhood in childhood. Facing the challenge of adolescent pregnancy*, 2013). Pregnancy at a young age exposes both mother and child to various increased risk factors, including maternal death and other complications. According to the UNFPA, adolescent mothers aged 15 to 19 are more likely than older mothers to die in childbirth, while very young mothers up to the age of 14 are at the highest risk (UNFPA, *Motherhood in childhood. Facing the challenge of adolescent pregnancy*, 2013).

This report addresses child marriage in the global context of children's rights. The first chapter takes

a global perspective, outlining the legal framework, and key facts and figures. The second chapter addresses these with particular reference to Malawi. The report concludes with recommendations.

Section 2: Child marriage from a global perspective

2.1 Legal framework

In 1948 the Universal Declaration of Human Rights was adopted by the UN. In 30 articles, the declaration commits to protecting and promoting the human rights of every individual. That includes children, who are entitled to enjoy all the rights guaranteed by the various international human rights treaties which have since evolved from the original Declaration.

Although children are covered by these international treaties, the international community recognised the specific need for the protection and promotion of children's rights in 1989, with the Convention on the Rights of the Child (CRC). The CRC defines a child as "every human being below the age of 18 years unless, under the law applicable, majority is attained earlier" (UNICEF, A summary of the rights under the Convention on the Rights of the Child, 2012). It contains 54 articles covering almost all aspects of the life of a child, grouped in the following three categories:

- Provision: these are the rights to the resources, the skills and services; the "inputs" that are necessary to ensure children's survival, and the development of their full potential;
- Protection: these are the rights to protection from acts of exploitation or abuse, in the main by adults or institutions that threaten their dignity, their survival and their development;
- Participation: these are the rights that provide children with the means by which they can engage in those processes of change that will bring about the realisation of their rights, and prepare them for an active part in society and change.³

All States that have ratified the UN Convention on the Rights of the Child are bound to this convention by law. The only States that have not ratified the CRC are The United States of America and Somalia. Article 16 of the Universal Declaration of Human Rights defines human rights with regards to marriage:

Universal Declaration of Human Rights; Article 16
 (1) Men and women of full age (18 years) have the right to marry and found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution. (2) Marriage shall be entered into only with the free and full consent of the intending parties.

Child marriage is not directly considered in the CRC itself, but its committee places a great deal of importance on the issue. The CRC Committee recommends that States should increase the minimum age for marriage in accordance with the evolving capacity, age and maturity of the child. In General Comment number 4, the Committee recommends that the minimum age should be set at 18 years old (UNICEF, A summary of the rights under the Convention on the Rights of the Child, 2012).

The CRC Committee reminds States that although marriage is not specifically named in the CRC, various general principles do apply, including the principles of non-discrimination (Article 2), the principles of the best interests of the child as the primary consideration (Article 3), the right to life and maximum survival and development (Article 6) and respect for children's evolving capacities (Article 12). The following articles of the CRC define rights which can be violated by child marriage:

Rights denied by child marriage

- The right to education (Article 28)
- The right to be protected from all forms of physical or mental violence, injury or abuse, including sexual abuse (Article 19) and from all forms of sexual exploitation (Article 34).
- The right to the enjoyment of the highest attainable standard of health (Article 24).
- The right to educational and vocational information and guidance (Article 28).
- The right to freedom of expression and to seek,

receive and impart information and ideas (Article 13).

- The right to rest and leisure, and to participate freely in cultural life (Article 31).
- The right to not be separated from their parents against their will (Article 9).
- The right to protection against all forms of exploitation affecting any aspect of the child's welfare (Article 36).
- The right to survival and development to the maximum extent of survival (Article 6)

“Child Marriage is a practice that robs millions of girls of their childhood, their rights and their dignity.”

Archbishop Desmond Tutu. World Day of Prayer and Action for Children Secretariat New York. July 2012

In 1999, the African Charter on the Rights and Welfare of the Child (ACRWC) entered into force, adopted by the Organisation of African Unity (now African Union). The ACRWC builds on the same basic principles as the UN Convention on the Rights of the Child, but pays particular attention to issues of special importance to Africa. Africa is in fact the only continent in the world with a region-specific child rights instrument.

Children in Africa are disproportionately affected by human rights violations such as poverty, warfare and harmful cultural practices. One of the unique features of the ACRWC is Article 21, which addresses the protection of children against harmful social and cultural practices including child marriage (Center for Reproductive Rights, 2006).

ACRWC Article 21: Protection against Harmful Social and Cultural Practices

Child marriage and the engagement of girls and boys shall be prohibited and effective action, including legislation, shall be taken to specify the minimum age of marriage to be 18 years and make registration of all marriages in an official registry compulsory.

In 1964, the UN Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages entered into force. It requires States to

abolish any customs, ancient laws and practices relating to marriage and the family which contradict the principles of the Charter of the UN and the Universal Declaration of Human Rights. It also requires them to eliminate child marriage completely, and to ensure that all marriages are entered into with complete freedom of choice.⁴

Customary laws are local in nature whereas “customary law in African jurisdictions is diverse and “remains largely unwritten, informal, and often difficult to ascertain”⁵ Many communities follow customary laws which correspond with their traditions in which marrying at a young age for girls is condoned. The UN Committee on the Rights of the Child and the African Committee of Experts on the Rights and Welfare of the Child have often cited this situation as very problematic in the fight against child marriage.⁶

Along with legislation defining the minimum age for marriage, the age of sexual consent must also be specified. The minimum age for marriage should not be set lower than that for sexual consent. According to UNICEF “16 is by far the most common age of sexual consent”.⁷ Though there are no international laws or guidelines on the age of sexual consent, the CRC Committee argues that countries with a low legal age of consent should raise it.

In 1979 the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) was adopted by the UN General Assembly. The Convention consists of 30 articles committed to ending discrimination against women, including girls. CEDAW recommends a minimum age for marriage of 18 years, and requires all States to eliminate discrimination against women in all matters relating to marriage and family relations. CEDAW's rights include those below, in pursuit of marriages of equal opportunities:⁸

- The same right to enter into marriage.
- The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation.
- The same right freely to choose a spouse and to enter into marriage only with their free and full

consensus.

- The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights.
- The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.

The International Day of the Girl Child takes place on 11 October every year, following a resolution adopted by the UN General Assembly to recognise the rights of girls and to highlight the unique challenges they face worldwide. The inaugural Day of the Girl Child in 2012 was based on the theme “Ending child marriage”, because despite laws to restrict it, child marriage had remained constant in developing countries over the previous decade. The associated report, *Marrying too Young: End Child Marriage*, was a call to decision-makers, parents, communities and the world to put an end to the unacceptable practice.⁹

Identifying child marriage as a human rights violation helps to raise the issue as a serious public concern rather than a private matter between families. The human rights agenda allows child marriage to be viewed through the lenses of both civil and political rights, and economic, social and cultural rights covenants.¹⁰

2.2 The context of child marriage

Girls often marry young because of a lack of alternatives such as education or economic opportunity. Many families opt for child marriage due to its short-term benefits. Education is key to providing a better future, but many communities do not embrace the opportunities it offers.

Child marriages are often arranged by parents or guardians, denying girls their right of freedom of choice. Research conducted by Plan International in West, Southern and East Africa shows that social norms often determine marriage and childbearing

as the only option for girls. Few girls, once married, continue to attend school; it is seen as inappropriate and incompatible with their new domestic responsibilities. This, combined with a lack of viable educational and employment opportunities for young women, can mean that many parents see little benefit in educating their daughters (Plan International, 2013).

Child marriage is often motivated by financial need, to pay off a loan or make ends meet. A girl, once married off, is one less child to feed, clothe and educate. In Bangladesh, Mali, Mozambique and Niger, where more than 75 per cent of people live on less than \$2 a day (ICRW, 2010), more than half of girls are married before the age of 18.¹¹

Child marriage can also be a way to protect a girl, a necessary survival strategy in situations such as war, famine or the hiv/aids epidemic. If, for instance, a family fears the rape of its daughters in a refugee camp, marriage to a man with authority might give the girl some protection (International Planned Parenthood Federation, 2006).

Child marriage can entail various risk factors. The frequently large age difference can lead to a highly uneven balance of power and decision-making. It puts girls at increased risk of abuse, harm, violence and sexual exploitation. This is particularly evident in marriages where a dowry or money is paid. The exchange of property or money gives the girl less bargaining power, and she is more likely to be subjected to physical and sexual abuse. A clear motivation for a man to marry a young girl is the opportunity to exploit her sexually with impunity.¹² Early pregnancy, as outlined above, leads to increased health risks; UNFPA reports that girls aged 15 to 19 are more likely than older mothers to die in childbirth, while those aged 14 and under are at the highest risk (UNFPA, *Motherhood in childhood. Facing the challenge of adolescent pregnancy*, 2013).

The practice of child marriage is often strongly associated with traditional and religious beliefs, deeply rooted in communities. The practice of child marriage is not exclusive to any one culture

or religion. It is entrenched in social, cultural and religious norms, and often encouraged by traditional and religious leaders in the community.

“Traditions are made by us — and we can decide to change them. We should be respectful but we must also have the courage to stop harmful practices that impoverish girls, women and their communities” Graça Machel, Member of The Elders, founder of Girls not Brides¹³

Every community has its own ideals regarding marriage age, the extent of a wife’s submissiveness, extended family patterns and other requirements such as dowry or the bride price. Failure to conform to these norms can endanger a family’s reputation. Often it is believed that girls should be married early to protect them from engaging in improper behaviour, which would bring shame on the family and destroy her future chances of marriage. A girl’s virginity is a symbol of her honour, and marrying her off at a young age guarantees that her first sexual experience will be with her husband.

In Southern Africa the centuries old marriage tradition of Lobola still prevails. The groom pays a price (in goods or more recently, money) to the family of the bride. The Lobola process encourages lengthy negotiations between the two extended families, and plays an important role in bringing families and communities together. Another local custom requires the bride’s father to transfer the duty of care to his daughter’s future husband. This transition takes place when the girl is still young, to limit the chance that she might question it (International Planned Parenthood Federation, 2006).

One of the main challenges to enforcing minimum age legislation is that child marriage is strongly rooted in cultural and religious norms. It is not viewed by families as a criminal offence, but accepted as a culturally legitimate practice. This adherence to customary law over civil law has become a huge obstacle in the fight against child marriage. The International Planned Parenthood Federation argues:

“A holistic approach is needed in order to change

the entrenched social, cultural and religious norms that contribute to the continued existence of child marriages. Therefore it is important that, alongside the national law, a dialogue is initiated with traditional and religious leaders to identify practical ways to reduce child marriages” (The International Planned Parenthood Federation, 2012).

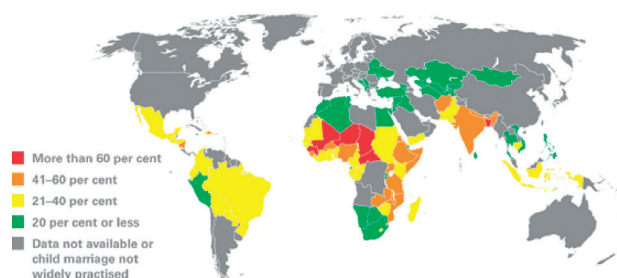
2.3 Facts and figures

In 2010, the minimum legal age for marriage for women without parental consent or official approval was 18 years or higher in 158 countries. With consent or approval, girls could marry below the age of 18 in 146 countries. In a further 29 countries, the minimum legal age for marriage for women, without any necessary consents, was below 18. (UNFPA, World Marriage Patterns, 2011).

The following statistics illustrate the state of child marriage on a global scale:

- Every year an estimated 14 million girls under 18 years old are married with little or no say in the matter (Girls not Brides, 2013).¹⁴
- In 2010, 67 million women between 20 and 24 years old reported that they had married before the age of 18. (ICRW, 2013).
- The United Nations Population Fund (UNFPA) estimates that in total, 140 million child marriages are expected to take place between 2011 and 2020, and 50 million of those will involve girls under the age of 15.¹⁵
- Almost 39,000 girls become child brides every single day, often married to much older men (CARE, 2013).

Figure 1: The geographical distribution of the percentage of women aged 20-24 who were married or in union before the age of 18 (1987-2006)¹⁶



As the graph shows, child marriage is most widespread in West Africa, South Asia, North Africa/ Middle East, and Latin America. The highest rates therefore correspond with the world’s poorest countries. The percentages of girls in these countries who marry before the age of 18 are shown in the table below.¹⁷

Table 1: Child marriage hot spots, as indicated by International Centre for Research on Women, 2013

Rank	Country Name	% girls married before 18
1	Niger	75%
2	Chad	68%
3	Centr. African Republic	68%
4	Bangladesh	66%
5	Guinea	63%
6	Mozambique	56%
7	Mali	55%
8	Burkino Faso	52%
9	South Sudan	52%
10	Malawi	50%
11	Madagascar	48%
12	Eritrea	47%
13	India	47%
14	Somalia	45%
15	Sierra Leone	44%
16	Zambia	42%
17	Dominican Republic	41%
18	Ethiopia	41%
19	Nepal	41%
20	Nicaragua	41%

In the top ten countries of the table above, 50-75% of girls are married before the age of 18. Girls in poor rural areas are most likely to marry young, but child marriages do also occur in wealthier families and in urban areas. In 2012, there were 51.9 million women aged 20-24 years old in rural areas of developing countries who had married or were in a union before the age of 18; the urban equivalent was 15.5 million. In the same year, also in developing countries, 17.5 million women in the poorest 20% of the population, and 6.5 million in the richest 20%, were married or in a union before the age of 18 (UNFPA, *Marrying Too Young. End Child Marriage*, 2012). Countries where child marriage rates are high tend to have correspondingly low literacy and schooling rates for young women. The International Center for

Research on Women (ICRW) conducted an analysis of the 20 countries with the highest prevalence of child marriage. In 18 of these countries, the study shows, the extent of a girl’s education is the strongest predictor of the age at which she will marry. In Mozambique for instance, 60% of girls with no education are married by 18, compared with 10% of girls with secondary schooling, and less than 1% with a higher education (ICRW, 2013).

Marrying young, often to a much older man, increases various risk factors including maternal and infant mortality, sexually transmitted infection, social separation, and domestic abuse (The Partnership for Newborn and Child Health, 2012). Early sexual activity and pregnancy are harmful to the immature body of a young girl. UNICEF’s report, *State of the World’s Children*, points to maternal death in pregnancy and childbirth as an important component of mortality for girls aged 15 to 19. It accounts for 70,000 deaths worldwide each year (UNICEF, *State of the World’s Children*, 2009). If a mother is under the age of 18, her infant’s risk of dying in its first year of life is 60% greater than that of an infant born to a mother older than 19. If the child survives, he or she is more likely to suffer from low birth weight, malnutrition and late physical and cognitive development (UNICEF, *State of the World’s Children*, 2009).

2.4 Government and the role of NGOs

- The CRC establishes the following duty-bearers for guaranteeing children the enjoyment of their rights:
1. The State
 2. Parents, legal guardians and individuals legally responsible for children
 3. Institutions, services and facilities for the care and protection of the child

At international and national levels, the focus is on creating awareness in communities and families about the consequences of child marriage, with regard to health, education, empowerment and economic independence.¹⁸ The UN classifies child marriage as a serious human rights violation, threatening the success of nearly all the Millennium

Development Goals (eight international development goals established following the UN Millennium Summit in 2000).

The UN and many national governments are working on strategies and programmes for access to information about reproductive health and rights. In many communities there is a strong cultural and social taboo around the issues of sexual and reproductive health. Often, as a result, most young girls enter into marriage and pregnancy without any adequate preparation. For those girls at risk of marrying young, information about sexual and reproductive health is of enormous significance, both for their own future life and health, and for that of their children. The UN initiated a joint programme on adolescent girls to support governments and partners to target girls at risk of child marriage and early pregnancy. The most successful programmes are those which provide empowerment for girls at risk of early marriage, by providing life skills training, developing support networks and providing safe spaces for girls to discuss their futures (UNFPA, *Marrying Too Young. End Child Marriage*, 2012).

The practice of child marriage has remained constant in developing countries in the past decade, despite laws to prevent it. In 2012, The UN used the first International Day of the Girl Child to call on governments and leaders to end child marriage, by implementing and enforcing national laws. “Through global commitments, civil society movements, legislation and individual initiatives girls will flourish in a safe and productive environment,” said Anju Malhotra, of the UNICEF Gender and Rights Section.¹⁹

The UNFPA report, *Marrying too Young: End Child Marriage*, is a call to decision-makers, parents, communities and the world to end the unacceptable practice of child marriage. UNFPA announced in 2012 that it would invest an additional \$20 million over five years to reach the most marginalized adolescent girls in countries with high rates of child marriage,

with a focus on India and countries in Africa. They would prioritise maternal health and sensitising the media and communities about the denial of a girl’s rights.

NGOs, because of their close collaboration with local communities, play a key role in bringing the consequences of child marriage to public attention. Many NGOs participate actively in monitoring the CRC, and present their findings to the UN Committee on the Rights of the Child.

NGOs can play an important role in the following:

- Advocacy/proposals; to improve legislation and adequate State budgets for countering the practice of child marriage.
- Campaigns/protests; to sensitise, educate and inform about the consequences of child marriage.
- Educational training; to improve the knowledge of young adolescents about safe sex, child bearing and hiv/aids (sexual and reproductive health programmes).
- Research; to provide case studies and information about the characteristics of girls who marry at a young age.

Girls not Brides is a global partnership of more than 300 civil society organisations from over 50 countries. The partnership was established by The Elders, an international NGO of public figures chaired by Kofi Annan. Members of Girls not Brides are based throughout Africa, South Asia, the Middle East, Europe and North America. This global partnership shows how civil society organisations can work together to create awareness and exchange information about child marriage.

Other international organisations campaigning against child marriage are: UNICEF, International Women’s Health Coalition (IWHC), CARE International, International Planned Parenthood Federation, International Center for Research on Women (ICRW) and Plan International.

Section 3: Child marriage from a country perspective: Malawi

3.1 Legal framework: Malawi

Malawi is a member of the UN and of the African Union. In 1989, the government of Malawi committed itself to protecting and ensuring children's rights by agreeing to sign up to the CRC; the ratification came into force in 1991. The Ministry of Gender, Children and Community Development, with offices in all 28 districts of Malawi, has responsibility for designing and implementing programmes on children rights. The Office of the Ombudsman and the Human Rights Commission monitor the situation of children in Malawi. Authorities at the district level must submit quarterly reports to the national level, about activities on child protection, early childhood development and community services. In 1999 the government of Malawi signed the African Charter on the Rights and Welfare of the Child (ACRWC), committing itself to ensuring the survival, development and protection of every child.

Section 22 of the constitution of Malawi sets the minimum legal age for marriage at 18 years. However, with the consent of parents or guardians, marriage is legally permitted at 15 years old.

Marriage in Malawi defined by the constitution, section 22.

No person shall be forced to enter into marriage. The minimum legal age for marriage is 18 years for all persons. The Constitution further requires that persons between the age of 15 and 18 years should only marry with the consent of parents or guardians, marriages of parties below 15 years old should be discouraged. (Committee on the Rights of the Child, 2012)

The High Court of Malawi discourages marriage below the age of 15 years old, because girls at that age are still children, and not capable of managing a family properly.²⁰ Unfortunately, the state has only given it the authority to discourage such marriages, and not to forbid them.

In 2010, the Malawi Child Care Protection and Justice Act was passed by parliament. Section 81 requires that no person shall force a child into marriage or force a child to be betrothed. No person shall sell a child, or use a child as a pledge to obtain credit, or as surety for a debt or mortgage.²¹

In Malawi there is no explicit legal minimum age for sexual consent. However, Section 138 of the Penal Code states that any person who unlawfully and carnally knows any girl under the age of 13 years old shall be guilty of a felony and be liable to imprisonment for life, with or without corporal punishment. If a girl is under the age of 13, her consent is irrelevant; the accused person would still be guilty of rape (Kamyongolo, 2012).

The offence of rape is defined in section 133 of the Penal Code:

“Any person who has unlawful carnal knowledge of a woman or girl, without her consent, or with her consent if the consent is obtained by force or means of threats or intimidation of any kind, or by fear of bodily harm, or by means of false representations as to the nature of the act, or in the case of a married woman, by personating her husband, shall be guilty of the felony termed rape” (Kamyongolo, 2012).

Section 132 of The Penal Code punishes unlawful rape, but non-consensual sexual intercourse within marriage is not considered to be unlawful or criminal (Kamyongolo, 2012).

According to The Equality Effect's report, The Treatment of Consent In Sexual Assault Law in Malawi, most marriages are characterized by unequal power relations rooted in gender inequalities, and can lead to marital violence, including marital rape (Kamyongolo, 2012).

Child marriage is one of the customs which is embedded in Malawi's traditions and cultures. Malawi has two predominant customary family law systems, the Chikamwini system and the Lobola system. Chikamwini is matrilineal, meaning that children are linked to their mother's clan. The Lobola system is most common in patrilineal societies where the children are in the custody of their father's clan. The system requires not only the presence and consent of the marriage guardians, but also the payment of Lobola (bride wealth) by the groom to the family of the bride (Wanda, 1988).

In Malawi the Constitution (section 10.2) states that all customary law must be in line with the Constitution in order to be valid. If there are any laws that are in conflict with the Constitution, the High Court is allowed to overturn it.²¹

3.2 Context of Malawi

Malawi is located in Southern Africa. The country is landlocked; neighbouring countries include South Africa, Zambia and Mozambique. In July 2013, the population of Malawi was 16.7 million, 44.7% of which were children up to 14 years old.²³ The economy is predominantly rural, with about 80% of the population living in rural areas.²⁴ Malawi is one of the poorest countries in the world. In the KidsRights Index, it ranks 127th out of 165 countries on the overall score. The KidsRights Index is a global measurement tool which ranks countries on the basis of their adherence to children's rights. The index is based on five domains which are necessary for the implementation of children's rights: the right to life, health, education, protection and child rights environment.²⁵

According to UNICEF, 61.1% of the population lives below the international poverty line of \$1.25 per day.²⁶ Malawi's poor economic status is caused in part by a lack of mineral resources, the aids epidemic and low levels of education. For most children, primary education is the highest level of education they will attain. In 2007 to 2011, the net attendance rate for girls was 79%, and for boys 76%. This is substantially lower for secondary education, at 27% for girls and 28% for boys.²⁷

Poverty is one of the major factors which underpin child marriage globally; Malawi is no exception. Officials say that increasing poverty, worsened by hiv-aids and drought leading to crop failure, has put even more young girls at risk of forced marriage (Human Rights Watch, 2014: 9). According to Penston Kilembe, Malawi's Director of Social Welfare Services, "The practice has been there for a long time, but it is getting worse now because there is desperation. It is particularly prevalent in communities that have been hard hit by famine".²⁸

Malawi is plagued by chronic and widespread poverty. Women's chances of overcoming it are more limited than those of men, because their educational and labour opportunities are systematically discriminated against (IFAD, 2011). Ultimately, basic human rights are denied more to women than to men in Malawi.²⁹

"My parents forced me [to marry]. They said I would be better off married."

Chaonaine (19 years old) Nkhotakota district.

Chaonaine married a 21-year-old son of a chief when she was 16. She has four siblings, her parents are poor, and she dropped out of school in standard eight (seventh grade) because they could not buy her uniform or textbooks. Chaonaine's husband paid her parents MK 8,000 (US\$19) as dowry. September 24, 2013. Human Rights Watch³⁰

If a family has to choose between educating a boy child or a girl, it is usually the boy who will stay in school. According to the World Bank, only 27% of Malawi's girls enroll in secondary school, and just 13% attend. Few of those will complete 4 years of secondary school; only 5% of all girls nationally get their leaving certificate.³¹ Families seeking a bright future for their daughters often see marriage as the most realistic opportunity.

3.3 Facts and figures

Nearly half of girls in Malawi are married before the age of 18; some as early as 12 years old.³² Child marriages occur more frequently among girls who are less educated, poorer and living in rural areas. In 2010, women aged 20 to 24 in rural areas were almost twice as likely to have married before 18 than

their urban counterparts. This urban-rural divide has not changed since 2004.³³ 66% of women aged 20 to 24 with no education, and 62% with primary education, were married by 18, compared with only 16% of women with secondary education or higher.³⁴ Education is undoubtedly one of the most important tools to empower girls to avoid early marriage and fulfil their potential.

“They thought that I was just a girl, that education wasn’t important but that marriage was.”

Rita, 18³⁵

In Malawi, one in 36 pregnant women dies during labour or due to pregnancy complications; one of the highest maternal mortality rates in the world.³⁶ This is an indication of women's limited access to quality reproductive health services and their limited knowledge about the consequences of early pregnancy.

3.4 Challenges and underlying causes

In Malawi, girls are expected to get married and be supported by their husbands, so educating them comes low on their families’ list of financial priorities. This approach is transferred from generation to generation, making it difficult to reverse. Girls as young as 15 can marry legally with their parents’ consent, and although younger girls cannot do so legally, it is not often perceived as a criminal offence. Although the government has signed and ratified various conventions, including the CRC, the new laws have not taken hold at local levels, and child marriage remains culturally acceptable. A key challenge for the Malawian government is to change grassroots attitudes about child marriage, and to educate families and communities about its consequences.

The constitution of Malawi gives both spouses equal rights to custody over their children, sets a minimum age for marriage (with exceptions), and recognises children’s rights. However, local traditions and religious laws maintain and enforce the idea that women and girls are inferior.³⁷

Many more girls than boys drop out of primary school in Malawi. Many don’t finish their education because

they must help support their families, because of the cost of secondary school fees, because of poverty, early marriage and early childbearing. In the long term, staying on at school could help them make a greater financial contribution to the family, as well as keeping them out of early marriage and enabling them to fulfil their own potential.

However, many families struggle to look beyond the shortterm. With the majority of people living below the poverty line, marrying off their daughters gives families one less mouth to feed, and a little additional income.

3.5 Government and the role of NGOs

The government of Malawi enacted the Malawi Growth and Development Strategy II (2011-2016), highlights girls’ education and delayed marriage as essential to social development. The strategy also supports advocacy for delayed marriage, girls’ retention in school at all levels, and the provision of scholarships for girls most in need. The government of Malawi strives for higher enrollment and attendance rates for girls in secondary education; as Mrs Catherine Gotani Hara, Malawi’s Minister of Health says, “to allow the girl child to continue with education, to become a learned citizen who can contribute to the development and economy of the country,”.³⁸

The government of Malawi has a key role in eradicating child marriage. It is currently considering revisions to the legal age of marriage, which would be a monumental step forward. It will become clear this year whether the minimum legal age for marriage, even with the consent of parents, will be increased to 18 years.

In Domain 5 of the KidsRights Index (Child Rights Environment), Malawi’s various policies and programmes designed to abolish gender-related customary laws (with specific reference to the girl child) are noted “with appreciation”.³⁹

In December 2013, 21 ministers of education and health in Southern and Eastern African countries, including Malawi, came together to set targets for

sexual and reproductive health. One of the targets is to eliminate child marriage in order to improve the health of young girls. In their report, *Young People Today, Time To Act Now*, child marriage is defined as a serious obstacle to the realisation of all rights for young people, notably adolescent girls and young women.⁴⁰ In Malawi, girls need access to accurate information about their sexual and reproductive rights, to learn about aids/hiv, (early) pregnancy and safe sex.

The United Nations Development Fund is working with Malawi's National Youth Council in order to develop a programme for adolescent girls. It aims to support the government of Malawi and its partners to target girls who are at risk of child marriage and early pregnancy. The main focus points are non-formal education, protection from violence, mentors for vulnerable girls and access to sexual and reproductive health and hiv services. The UN and the government of Malawi joined forces in the *Girl Up* programme, to support adolescent girls in remote areas such as the Chikwawa and Mangochi regions.

NGOs work at grassroots level, and are therefore best place to sensitise the community about the impact of child marriage. The Girls Empowerment Network Malawi (GENET) advances the rights, status and wellbeing of girls, and campaigns against child marriage among other traditional and cultural practices. In response to the debate in Malawi about the legal minimum age for marriage, GENET organised a writing contest in which over 2,200 adolescent girls participated. "I Will Marry When

I Want, Voices Of Malawian Girls" includes the girls' opinions, their experiences and their current situation. The report makes clear that girls do have a strong voice, but that no one is listening (GENET, 2013).

"An educated Malawian girl has high earning potential, enjoys good health, she is less likely to marry as a teenager, has fewer children, less likely to be a victim of gender based violence, more likely to educate her children and be productive to the community and the country at large." The Girls Empowerment Network Malawi (GENET) "

In 2011 The Adolescent Girls Advocacy and Leadership Initiative (AGALI) decided to form the Adolescent Girls' Advocacy Network (AGANET) to increase their lobbying power at national level. They collaborate with traditional authorities and village chiefs, and they empower adolescent girls to speak out against child marriage.

Other grassroots organisations that create awareness about child marriage, and about the position of women and girls in communities with regard to their education, health and empowerment are: Sustainable Rural Community Development (SURCOD), African Women In Malawi (FAWEMA), The Coalition of Women Living with HIV and AIDS in Malawi (COWLHA), Active Girls Initiative Centre (AGIC) and the Malawi Girl Guides Association (MGGA).

Section 4: Conclusions and recommendations

Many girls are at risk of marriage at a young age. There are 140 million child marriages expected to take place between 2011 and 2020, and global awareness and action is needed to make this change.

Child marriage often means that a girl can no longer attend school. As a young wife she is expected to take on household duties and bear children, and school is no longer a socially acceptable option for her. She is therefore deprived of an education and the chance of a brighter future, and her employment opportunities will remain extremely restricted. Marrying at a young age also exposes her to the significant risks associated with early pregnancy and childbirth.

Every society has its own ideals regarding marriage age, the extent of a wife's submissiveness, extended family patterns and other requirements such as dowry or the bride price. Child marriage is not exclusive to one culture or religion, but is entrenched in many social, cultural and religious norms worldwide, and often encouraged by traditional and religious leaders in the community.

In Malawi nearly half of all girls are married before the age of 18. Child marriages occur more frequently among girls who are less educated, poorer, and in rural areas.

The government of Malawi enacted the Malawi Growth and Development Strategy II (2011-2016), highlights girls education and delayed marriage as essential to social development. The Adolescent Girls' Advocacy Network Malawi (AGANET) collaborates with traditional authorities and village chiefs to change the traditional and social attitudes that contribute to the country's high occurrence of child marriage. However, many families live with poverty and a lack of opportunity, making girls vulnerable to be married at a young age.

Global Recommendations:

- Child marriage needs to be consistently raised as a human rights issue.
- National legislation should ensure that, in line with international human rights standards, the age of 18 is upheld as the minimum legal age of marriage for both males and females (UNFPA, 2012).
- Girls need to be empowered to acquire the skills that can earn them a livelihood, and to negotiate and make their own life decisions (UNFPA, 2012)
- Governments need to ensure that all girls are able to complete quality primary and secondary education (Plan International, 2013).
- Further research is needed to improve data collection, monitoring and evaluation of the drivers and consequences of child marriage (Plan International, 2013).
- NGOs must continue to raise awareness in communities about the dangers and restrictions to a girl's life incurred by child marriage.

Recommendations for Malawi:

- The government of Malawi should ensure that, in line with international human rights standards, the age of 18 is upheld as the minimum legal age of marriage, with or without parental consent, for both males and females.
- The government of Malawi needs to improve girls' economic standing, by increasing their economic opportunities, and by initiating incentive-based programmes to support girls to stay at school.
- Parents, teachers and community leaders should be involved in the dialogue about child marriage, in order to change attitudes and social norms.
- Safe, comprehensive, age-appropriate sexual and reproductive health information and services should be accessible to all young girls in Malawi.
- Attention should be paid to those girls who are already married at a young age, by providing adequate and accessible healthcare, psycho-social support and, if necessary, a way out of the marriage.

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