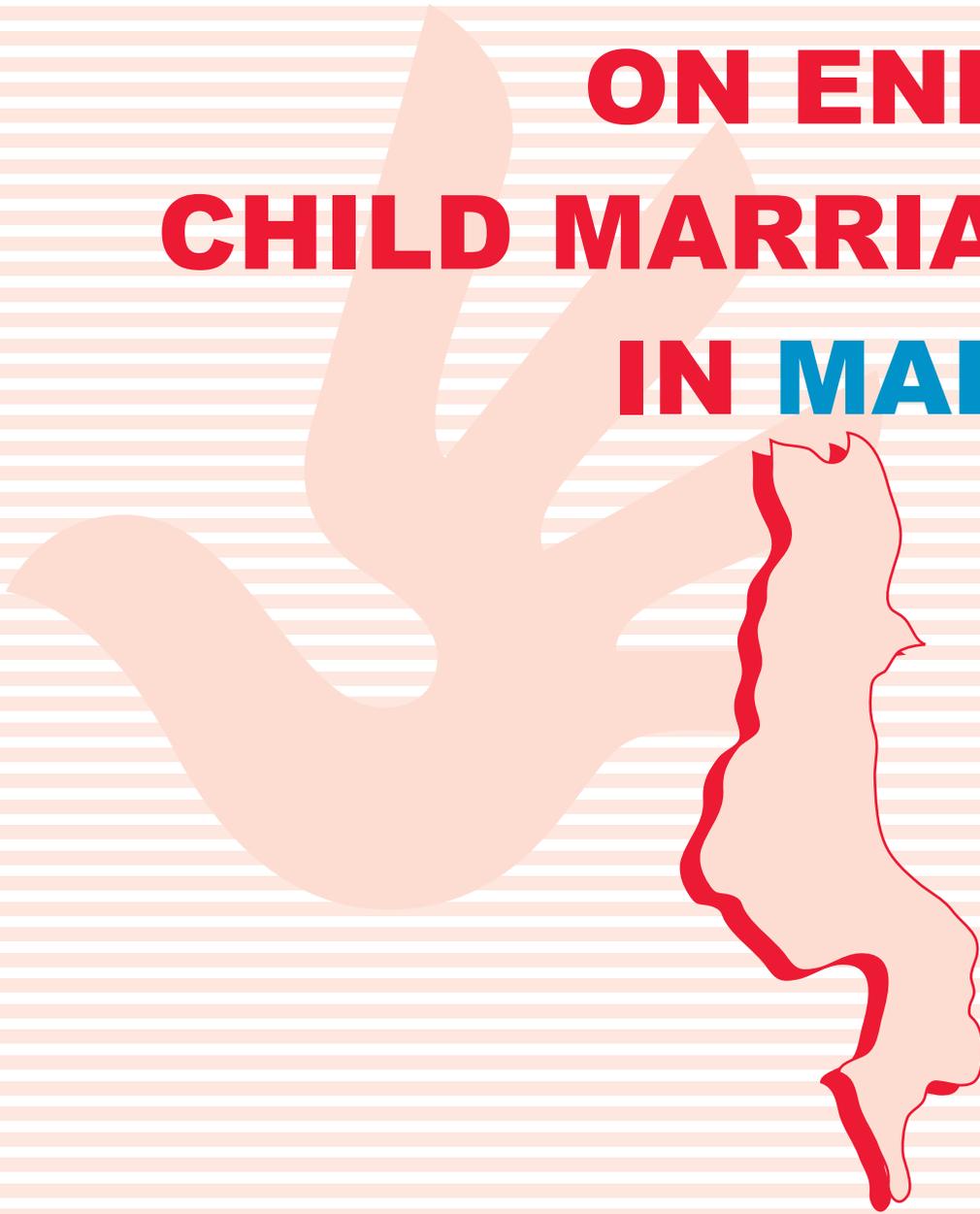




MEDIA BRIEF

ON ENDING CHILD MARRIAGES IN MALAWI



P Panos Institute
Southern Africa





MEDIA BRIEF

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IN MALAWI

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Acronyms

| | | |
|---------|---|---|
| AIDS | – | Acquired Immune Deficiency Syndrome |
| ACRWRC | – | African Charter on Rights and Welfare of the Child |
| BPfA | – | Beijing Declaration Platform for Action |
| CEDAW | – | Convention on the Elimination of Violence against Women |
| CRC | – | Convention on the Rights of the Child |
| FGD | – | Focus Group Discussion |
| FORWARD | – | Human Immune Deficiency Syndrome |
| MDHS | – | Malawi Demographic Health Survey |
| MICS | – | Multiple Indicator Cluster Survey |
| MHRC | – | Malawi Human Rights Commission |
| NGO | – | Non Governmental Organization |
| NYCOM | – | National Youth Council of Malawi |
| PSAF | – | Panos Institute Southern Africa |
| UNFPA | – | United Nations Population Fund |
| UNICEF | – | United Nations Children's Fund |

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Foreword

The media is a key stakeholder in ensuring that the public is well sensitized about the consequences of child marriages, that law enforcement agencies and their officers are alerted about such practices, and that they create a platform for other stakeholders such as children to share experiences on child marriage.

Child marriage is a violation of children's rights whether it happens to a girl or a boy. It represents perhaps the most prevalent form of sexual abuse and exploitation of girls. It is also a direct form of discrimination against the girl child, who, as a result of the practice, is often deprived of her basic rights to health, education, development, and equality.

Child marriage adversely impacts upon the well-being of children generally, and the girl child in particular, in numerous other ways. For example, given that most girls get married to much older men early marriage renders them susceptible to physical, emotional and sexual abuse, as well as early widowhood.

Children should be protected from early marriages considering the physical and mental burdens these relationships entail and the need to develop the child intellectually, physically and psychologically. Child marriages undermine almost all the foundational principles of child rights- non-discrimination, the right to life, survival and development, participation and the child's best interests. Much as the girl child is adversely affected by the inaccessibility of all four principles, the issue of non-discrimination is a key driver with regards to the position of the girl child.

Child marriage is a multi-faceted phenomenon that requires involvement of the, physical, social, cultural and legal support from different stakeholders. It needs a multi-sectoral approach in order to win the fight. There is therefore need for an informed citizenry that will respond positively to the initiatives that are intended to fight against the vice.

Despite the power and influence they wield, however, media houses and journalists do not often adequately report on development issues in their reporting.

Panos Institute Southern Africa (PSAf) acknowledges the need for effective capacity building of the media to address the issues of child marriages. This is in the form of relevant information to enhance their role in raising awareness and influencing behavior change as the public questions harmful cultural and traditional practices and improving their contribution in the fight against child marriages.

It is my hope that the media personnel will find this brief helpful in closing this lacuna by enhancing their understanding child marriages in an in-depth and effective way.



Lilian Kiefer
Executive Director
Panos Institute Southern Africa

CHAPTER ONE: BACKGROUND AND INTRODUCTION

1.1 Introduction

Malawi still has challenges in preventing child marriage. The challenges contribute to children's failure to fulfil their right to education, right to development and reproductive health. Consequently, children end up dropping out of school; fail to participate in development initiatives and worst of all they end up in a situation of having children without planning. Child marriage has negative impact on children's careers and personal development.

Child marriage means any kind of marriage in which one or both parties in the marriage relationship are below the age of 18 years. The age of 18 is considered because Malawi is a state party to the International and Regional human rights instruments that define a child as any human being below the age of 18 and the instruments are: Convention on the Rights of the Child and African Charter on the Rights and Welfare of the Child. Unfortunately up to date Malawi has not yet harmonized its laws on child marriage, as a result child marriages persist. This is the case because many people get married through customary and religious marriage which have no age of marriage and mostly consider puberty as age of maturity for marriage.

A major concern is that many forces are at play in Malawi and create the undesirable circumstances which give rise to child marriage. Poverty is one of the major factors that impact on a girl child. Some end up dropping out of school and go straight into marriage. In the marriage, most of the girls start childbearing too early which leads to premature motherhood.

Motherhood at an early age has a long term adverse impact on the quality of life in terms of educational and employment opportunities (Beijing Platform for Action paragraph 268). It is very detrimental to those who are less educated as it leads to early school dropout, while the more educated women can cope with the additional burden of the motherly chores while at the same time, pursuing their economic interests and social development. However, the less educated woman who may not be able to adjust, may forfeit her future employment opportunity as a result of school dropout caused by child marriage.

1.2 Rationale of the media brief

To strengthen the campaign for ending child marriage, it is very important to involve the media in awareness raising and advocacy. The media plays a very powerful role in awareness raising and change of policies. This requires identifying the right media platform, using multiple media channels, and appropriate evidence. Advocates should use media platforms to disseminate messages to local communities as well as national policy and decision makers. The advocates should make sure that the media platform that is used is trusted by the public because if and only if the media is trusted by the public, it often helps set the agenda.

With public awareness and advocacy through media, people will have more access to accurate and appropriate information on child marriage which will enable the communities, traditional leaders, government and other stakeholders to make better choices about their children's future. With better choices, children will be able to prepare their future through enjoyment of their right to education and right to reproductive health. The media brief therefore provides information to explore how children can be protected from child marriage.

The media brief will enhance the capacity of journalists in Malawi to enable them to report on child marriages in an in-depth and effective way in order to influence enactment of laws that will facilitate the abolishment of child marriage and form a basis for discussions of child marriage issues with policy makers. It is important for the media to bring a human face in the coverage of issues about child marriage. This can be done by using real life stories of the continued existence of child marriage and provide empirical evidence about it. Real life stories of girls can be used to make cases at national and international levels, engaging communities, political leaders and policy makers for transformational change.

CHAPTER TWO: COUNTRY SITUATION ANALYSIS ON CHILD MARRIAGES

The 2008 Malawi Population and Housing Census enumerated the population to be 13.1 million, with an annual growth rate of 2.8 percent. The population was projected to be at 14.8 million in 2012 and double by 2023. The population is youthful with about 52 percent aged 18 years and below with 70 percent aged below 30 years. The population of Malawi is predominantly rural with only 15.3 percent of the total population living in urban areas in 2008.

Despite the persistence of child marriage, any marriage that occurs before the age of 18 is considered child marriage whether it occurs with or without parental consent. In Malawi, girls have been reported to get married as early as 12 years with some districts as early as 10 years.

In Malawi, there are two indicators that are reported to illustrate child marriage. These are: the percentage of women married before the age of 15 and before the age of 18 (Multiple Indicator Cluster Survey MIC, 2006 and Malawi Demographics Health Survey, 2004 & 2010). The 2004 MDHS indicates that 50.1% of women aged 20-49 got married before the age of 18 years.

The 2006 MIC indicates that 11% of women aged 15-49 years got married before their 15th birthday. 50% of women aged 20-49 got married before their 18th Birthday. MIC *2006* also shows that at least 50 percent of girls in Malawi are married before the age of 18 in contrast only, 7 percent of males are married before they reached age 18. Currently of all people in union aged 15- 19 years, there are more adolescent girls who are married, 33.3 percent than adolescent boys 2.1 percent.

The 2010 Malawi Demographics Health Survey (MDHS) indicates that 51.6% of women aged 20-49 years got married before 18 years and 52.2% of women aged 25-49 years got married before 18 years. In urban areas, median age at first marriage increases with age: 17 years for women age 45-49 compared with 19.5 years for women age 20-24. In rural areas, the median age at first marriage is similar for all age groups. Among women with no education, the median age at first marriage declines with age: from 17.3 years for women age 45-49 to 16.9 years for women age 20-24. Median age at first marriage for women age 20-49 is higher among women in the highest wealth quintile (19.2 years) than in other quintile.

In 2009, the National Youth Council of Malawi carried out a study to profile child marriage in Malawi with an aim of making a case to stop child marriage. The study was carried out in 20 out of 28 districts and the results from the analysed data indicate that the problem of child marriages persists. Adolescents girls aged 15- 19 years who live in the rural areas are more likely to be married than those living in the urban areas.

2.1. Drivers of Child Marriage

Living in the rural areas is a risk factor to child marriages among adolescent girls. (MIC, 2006)¹. A snapshot survey and literature review conducted for this media brief reveals that the following factors fuel child marriage in Malawi: cultural practices, poverty, lack of information and alternatives and peer pressure.

2.1.1 Culture

Malawi still experiences harmful cultural practices especially in the rural areas. The harmful cultural practices influence girls to go into child marriage e.g. initiation ceremonies which emphasize on sex education whereby girls are taught how to satisfy men sexually. Soon after the initiation, most of the girls feel that they are old enough to have a sexual partner hence to marry. The other common custom is whereby girls are married off to men without their consent in order to fulfil some customs and this happen to girls as young as nine years old. Mostly those girls are married off to men older than them. These cultural dynamics overlap with other factors, such as poverty in determining child marriages.

2.1.2 Poverty and Economic Status

Apart from cultural factors, child marriage is also driven by economic factors such as poverty. Given the dire poverty in most Malawian communities girls are compelled to enter into child marriages in order to ensure economic security. Parents are also keen to give away their children in marriage in order to alleviate poverty since children are considered as an unnecessary cost especially when the parents feel that they have reached marriage age despite them being below 18 years old. Given the levels of poverty in Malawi, some parents, for example, hasten to give their children away in marriage in return for financial benefits which might accrue from the payment of bride price or from having a wealthy son-in-law. Poverty may also compel parents to give away their daughters in the hope of giving them a better life and alleviate the burden on family resources.

2.1.3 Peer Pressure

Peer pressure also fuels child marriage especially in rural areas whereby girls who get married late are subjected to mockery by their peers and society in general. Such girls are usually reminded that their peers have a number of children and they are getting late. Likewise, young men get married in order to gain respect from society. This is especially because society tends to treat married people with more respect than their unmarried counterparts.

2.1.4 Lack of information, alternatives and role models

The 2006 Cluster survey indicates that adolescent girls aged 15 to 19 years who live in the rural areas are more likely to be married (34.9 percent), than if they are living in the urban areas (26.9 percent).

¹ National Statistical Office (NSO). 2006. Malawi Multiple Indicator Cluster Survey. Zomba. NSO.

Living in the rural areas is a risk factor to early marriages among adolescent girls. The following are some of the reasons why living in the rural area is a risk factor for girls:

- Girls in urban areas have a lot of activities that they are involved in after school e.g games unlike the girls in rural areas where they do not have facilities and usually stay idle.
- The girls in urban area have more information and access to Reproductive health facilities that help them make informed decision pertaining marriage.
- Urban girls have so many models around them of the people who are educated and are motivated unlike those in the rural who do not have models and sometimes are not sure of the benefits of staying in school when almost all their models got married at a tender age.

2.2 Traditional, cultural and customary practices that promote child marriages

The section provides an outline and analysis of traditional, cultural and customary practices that promote child marriage. With reference to the report by Malawi human rights Commission of cultural practices. Malawi Human Rights Commission report, (2004). Cultural Practices and their Impact on the Enjoyment of Human Rights, Particularly the Rights of Women and Children in Malawi, unpublished available on line <http://www.malawihumanrightscommission.org> (Accessed on 8th February, 2011).

2.2.1 Girls' Initiation as one of the cultural practices is a practice that all girls go through to mark transition between childhood and adulthood and this begins with attainment of puberty that is the time when the girl experiences her first menses. The girl usually informs a friend, mother, an aunt or grandmother about her new experience. The girl is then taken for confinement for counselling, the counselling tackle issues of personal hygiene, obedience, home management, etiquette, dressing and sexual morality. The counselling emphasize on how girls can satisfy men sexually in marriage. The emphasis on sex influence girls into sexual relationships and also fuels child marriage.

Girls' initiation is viewed in some cultures as an opportunity to learn a lot in preparation for womanhood. However, it exposes and influences girls into immoral sexual behaviour at a very tender age. Some girls go into child marriage because they feel they are old enough after being comprehensively taught about how to satisfy men sexually. Therefore, the counselling that is conducted during initiation ceremony should provide sexual reproductive health education focusing on pregnancy prevention and consequences of child marriage. Sex education that prepares girls for marriage should only be provided at the time the girls are preparing to get into marriage at the age of majority which is above 18 years old.

² Malawi Human Rights Commission report, (2004). Cultural Practices and their Impact on the Enjoyment of Human Rights, Particularly the Rights of Women and Children in Malawi, unpublished available on line <http://www.malawihumanrightscommission.org> (Accessed on 8th February, 2011).

2.2.2 Traditional and cultural practices

According to the Human Rights Commission, girls as young as 9 or less may be pledged to men as old as 40 or even more. Some girls are forced to marry young in order to inherit their deceased sisters' husbands. Studies have also shown that in some parts of Malawi parents compel young men to enter into child marriages to avoid paying damages where the said young men impregnate girls.

2.2.2.1 Bonus wife (Mbirigha, Nthena, chimeta nsisi)

This is a practice that promotes child marriage. Under this practice, a man is offered a bonus wife for various reasons as follows:

- Sometimes parents offer a mbirigha as a sign of gratitude to the son-in-law who is regarded to be very generous or takes proper care of their daughter and the parents themselves.
- To bear children for the husband if the elder sister is barren or has stopped bearing children because of advanced age.
- If the husband is perceived to be rich, the wife may want to protect the wealth by letting her younger sister join her so that the man does not marry elsewhere. At times the older sister can invite her young sister in order to have someone with whom to live in the event that the husband dies. There is no specific age for mbirigha, the determining factor is the attainment of puberty. So mostly the girl is 15 years or younger than that.

In this practice, usually the girls involved are very young and are subject to abuse through all sorts of human rights violations. They are made to pay debts of their parents/guardians by force, they are not capable of making decision in matters of marriage, they are deprived of education which may help their development in future and they are subjected to contract HIV in cases where they are married off to older men who might have already contracted the virus.

2.2.2.2 Kulowana/ Ukwati wa chinkhoswe/ Ukwati wachibudu/ Kusemya/ Kupinjirira/ Ubwinga/ Chiwezga/ Chipereka/ukathyali

This is a very common practice throughout Malawi whereby a boy and a girl agree to live together as husband and wife before any traditional or religious formalities, such as informing relatives, making some form of payment such as lobola or chiwongo are conducted. Some of the couples start living together soon after the traditional ceremony.

After traditional formalities have been done, most of the couples forgo church formalities or registering with The Registrar General. Some couples formalize the marriage at a church during the course of the marriage. Both customary and religious marriages do not specify the age of marriage and this automatically makes children vulnerable to child marriage. This calls for a serious action of harmonization of the law on child marriage.

In such practice, it shows there is laxity on part of the parents to protect their children from child marriage. The marriage constitution is considered lightly whereby there are so many short cuts and there is more concentration on financial gains not the well-being of the girl. Since it is a customary type of marriage the issue of age is not considered.

Additionally, some girls are forced to marry under certain cultural practices including kutomera - a practice under which young girls are pledged to a potential husband well before they are ready to get married or even born and kupimbira which entails the pledging of young girls in settlement of debts.

The issue of marrying off girls is a very serious issue because the girls miss on opportunities to be educated and employed. It becomes very challenging for such young women because the resources are few, so one needs to fit in to survive. If young women are denied the opportunity to pursue their education and become financially independent, some of them will end up suffering in future or will end up in the hands of a powerful few who will exploit them through cheap labour (Tong, 1994).

2.3 Consequences of Child Marriage

Child marriage has far reaching consequences in the immediate present and future and the effects includes high maternal deaths, increased HIV incidence, low literacy and low education attainment. The consequences are explained in various sectors below:

2.3.1 Physiological

i) Health

Child-birth related complications in teenage mothers sometimes result in the death of the mother, the child or both. Mostly girls experience obstetric fistula. This is a condition characterized by the abnormal opening between the vagina and bladder or rectum, and very common complication in young mothers. According to the United Nations Population Fund (UNFPA),³ the incidence of *obstetric fistulae* disproportionately affects very young and very poor women. Girls under the age of 15 years are 25 times more likely to have critical complications related to pregnancy than women in their 20s.

In the case of the girl child, marriage under the age of 18 years is a health hazard because sexual relations under that age may result in a lot of health complications ranging from early contraction of HIV and AIDS and other sexually transmitted infections such as herpes simplex and human papillomavirus, tendencies to develop cervix cancer later in life or high probability of death, should she become pregnant.

³ UNFPA, Preventing Fistulae and other Disability. Available from <http://www.unfpa.org/mothers/disability.htm>

ii) Psychological Consequences

Mostly girls are not assertive enough to negotiate safe sexual relations with their often older husbands. Child marriage makes girls vulnerable to HIV/AIDS than unmarried girls of the same age. Most children cannot handle the pressure in marriage and because of age cannot challenge their older husbands. As a result they suffer in silence hence affected psychologically.

2.3.2 Economic Consequences

i) Poverty:

Child marriage traps girls and their families in a cycle of poverty. Girls who marry young do not receive the educational and economic opportunities that help lift them and their families out of poverty and their children are more likely to undergo the same fate. Child marriage also has negative development implications. The attainment of the Millennium Development Goals; especially Goal 3, which emphasizes the need for girl child education or the goal on Human Capital Development under the Poverty Reduction Strategy Paper may be elusive.

ii) Insufficient Education:

Child brides usually drop out of school and are denied the opportunity to complete their education, significantly reducing their ability to earn an income and lift themselves out of poverty. Education provides an opportunity to girls to advocate for their rights and they are more likely to raise healthy, educated children. Educating a girl child has a positive outcome in delaying the time of entry into marriage and delaying childbearing.

2.3.3 Social Consequences

i) Human Rights:

Child marriage is a human rights violation. It denies girls their rights to health, to education, to live in security and to choose when and whom they marry.

ii) Child Protection: Child brides are among the world's most isolated and vulnerable groups. As minors they are unable to assert their wishes to their much older husbands or negotiate safe and consensual sex. Girls who are married before 18 are more likely to experience domestic abuse than their unmarried peers.

CHAPTER 3: INTERNATIONAL, REGIONAL AND NATIONAL LEGAL INSTRUMENTS ON CHILD MARRIAGE

Malawi has signed and ratified most of the international and regional Human Rights instruments with recommendations on child marriage. This entails that Malawi is obliged to adopt various measures to address this problem. This mainly includes domestication of human rights instruments that the country ratified. By ratifying, Malawi assumes a legal duty to make sure that Malawians enjoy the rights enshrined in the instruments. The international and regional human rights frameworks have guided the formulation of policies, design of programmes and interventions in Malawi.

3.1 National Policies

Malawi has developed some policies that could be used to protect the rights of children and ensure their development holistically. These include:

3.1.1 The National Gender Policy

The National Gender Policy aims to raise awareness of gender matters, legal rights of women, diet and the efficient utilization of food and nutrition, and the economic empowerment of women in conjunction with the poverty alleviation program. Another important aspect of the National Gender Policy is better access to reproductive health services.

3.1.2 The National Youth Policy

The purpose of this policy is to formally and clearly establish the identity and status of the Malawian youth as a distinct sector of government policy, and to create a direction for youth activities and involvement in various national development programmes. The policy therefore aims to empower the youth to face the social, cultural, economic and political challenges facing the nation. The policy provides a broad guidelines from which action programmes and services can be developed to facilitate meaningful involvement of the youth in the overall national development efforts. These programmes also respond to their needs and problems

3.1.3 The National HIV and AIDS Policy

The goal of this policy is to prevent HIV infections, to reduce vulnerability to HIV, to improve the provision of treatment, care and support for people living with HIV/AIDS and to mitigate the socio-economic impact of HIV/AIDS on individuals, families, communities and the nation. Its objectives are to prevent HIV infections, improve delivery of prevention, treatment, care and support services, mitigate the impact of HIV/AIDS on individuals, the family and communities, reduce individual and societal vulnerability to HIV/AIDS through the creation of an enabling environment and strengthen the multi-sectoral and multi-disciplinary institutional framework for coordination and implementation of HIV/AIDS programmes in the country.

3.1.4 The National Health Policy

The purpose of the Policy is to address SRHR problems that emerge from different age groups. Additionally, the policy also provides the framework for implementation of SRHR programmes in the country. One of the implementation strategies for the policy is having youth friendly services in health centres. The youth friendly health services include: Counselling and provision of contraceptives that help girls to make informed choices as such help them avoid unwanted and unplanned pregnancies. Most of the times, unplanned and unwanted pregnancies lead girls into child marriage because marriage is usually used as a solution to unwanted and unplanned pregnancies. This is a very good programme however it's accessed by very few because of awareness raising, location and negative attitude of health personnel.

3.1.5 The National Education Policy

The policy puts emphasis on recognition of the rights of children and youth, investing in young people by providing resources for their development. The three thematic areas of intervention during covered by the policy envisage to expand equitable access to education to enable all to benefit, improve quality and relevance of education to reduce drop-out and repetition and promote effective learning, as well as improve governance and management of the system to enable more effective and efficient delivery of services.

The policy also provides analysis of relevant human rights instruments on issue of child marriage and the extent to which Malawi has domesticated the ratified human rights instruments.

3.2 The international Legal Instruments on child marriages

Malawi has signed and ratified key international human rights instruments aimed at promoting and protecting the welfare of women and children, as well as protecting women and girls against discrimination based primarily on their sex and age. These international instruments oblige the Malawian Government to ensure equality between women and men, and girls and boys. They also guarantee the right to life and to the highest attainable standard of health to all persons, irrespective of sex or age. They also guarantee security of person and freedom from inhuman and degrading treatment. This includes protection from harmful cultural practices such as child or forced marriages. Further, these human rights instruments guarantee the right to information and freedom of expression to women and children.

3.2.1 Convention on the Rights of the Child (CRC)

Malawi ratified the CRC which in its article 1 defines a child, "as every human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier." Article 2.2 commends that "state parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of status, activities, expressed opinions or

beliefs of the child's parents, legal guardians, or family member." In order to comply with this article it is important for state parties to protect children below 18 years old from child marriage because they are very young to contain the pressure within marriage arena.

3.2.2 The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) explicitly prohibits child marriages and obliges States to set a minimum age of marriage and make marriage registration compulsory. Article 16 (2) of the CEDAW provides that:

"The betrothal and marriage of a child shall have no legal effect, and all necessary action including legislation, shall be taken to specify a minimum age for marriage and to make registration of marriages in an official registry compulsory."

The CEDAW effectively prohibits marriages of people under the age of 18 unless the State Parties concerned set a different age of majority.

It is important to note that in 1994 the treaty monitoring body for CEDAW, advised States to enact legislation specifying the minimum age of marriage at 18. This recommendation was based on a growing body of evidence, including statistics from World Health Organization (WHO) highlighting "the adverse effects of child marriage on girls' health, reproductive well-being and education.

"The Committee on the Elimination of Discrimination against Women and other treaty bodies require States to register births and marriages as a means to facilitate monitoring of the age of marriage and to support the effective implementation and enforcement of laws on the minimum age of marriage.

The Committee on the Elimination of Discrimination against Women and the Committee against Torture have also identified child marriage as a harmful practice which leads to the infliction of physical, mental or sexual harm or suffering, with both short- and long-term consequences, and negatively impacts on the capacity of victims to realize the full range of their rights."⁴

3.2.3 The International Covenant on Civil and Political Rights (ICCPR)

The ICCPR is the principal international human rights instrument which promotes and protects civil and political rights. These rights include the right to life, personal autonomy, privacy, human dignity, freedom from inhuman and degrading treatment, freedom of expression, right to information, freedom

⁴ The report on child marriage by the Office of the United Nations High Commission for Human Rights A/HRC/26/22

of movement and freedom from discrimination. Malawi is a state party to the ICCPR. It is, therefore, obligated to adhere to the provisions in the ICCPR.

Article 2 of the Covenant imposes an obligation on Malawi and other member states to adopt legislative and other measures to ensure that it promotes and protects the rights in the Covenant. The covenant does not expressly prohibit child marriages but could be relied on to enhance the protection of children's civil and political rights. This is because the covenant does not discriminate between individuals, but requires that rights of human beings (including those of children) should be protected.

Malawi can thus be said to breach its duties to uphold and give effect to the ICCPR by permitting or acquiescing to the practice of child marriages in the country. It could also be argued that by allowing child marriages to continue, Malawi breaches provisions of the treaty relating to the rights to life, human dignity, information, security of person and freedom from inhuman and degrading treatment, freedom from discrimination and freedom of expression.

3.2.4 The International Covenant on Economic, Social and Cultural Rights (ICESCR)

The ICESCR is the "twin" of the ICCPR. It is concerned with economic, social and cultural rights, which includes rights such as the right to education, right to housing, right to health care, right to food, clean water and other such basic necessities. The ICESCR imposes a duty on member states such as Malawi to guarantee these rights to its citizens by progressively realising these rights and to the maximum of its available resources. In relation to child marriages, the ICESCR creates a conducive environment for member states to address factors that make children vulnerable to early marriage as well as the negative consequences of child marriages.

3.3 Regional Legal Instruments

Malawi is party to regional instruments that similarly promote and protect the rights of women and children from discrimination and guarantee their enjoyment of fundamental rights.

3.3.1 The African Charter on the Welfare of the Child (ACWRC)

"The African charter on rights and welfare of the child article 2 defines a child as, every human being below the age of 18years." As such, Malawi as a state party to the charter is obliged to prohibit any marriage below the age of 18.

The report on child marriage by the Office of the United Nations High Commission for Human Rights A/HRC/26/22 recommended that;

States parties remove exceptions related to the minimum age of marriage and establish a minimum age of marriage for girls and boys, with or without parental consent, of 18 years.

3.3.2 Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (Women's Protocol)

Malawi is a state party to the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa which also obliges State parties to set the minimum age of marriage at 18 and this is specified in its Article 6: "States Parties shall ensure that women and men enjoy equal rights and are regarded as equal partners in marriage. They shall enact appropriate legislation that guarantees that: (b) the minimum age of marriage for women shall be 18 years (d) every marriage shall be recorded in writing and registered in accordance with national laws, in order to be legally recognized." As a state party to this, Malawi is supposed to oblige to this through enactment of legislation that can guarantee this to Malawians.

3.4. Limitations of the international and regional instruments

The following have been identified as the limitation to the international and regional instruments that Malawi has been party to.

3.4.1 Domestication of the International and regional instruments

This means that these instruments have not gone through a process in which Parliament enacts them into national law, thereby making them enforceable within the Malawian courts of law. This means that once Malawi signs and ratifies an international instrument, the instrument is binding between the country and other member states. It is, however, not binding between the State and its citizens. For it to become binding between the State and its citizens, it must go through a legislative process for the enactment of laws. This is the process referred to as domestication. Thus, if an international instrument is not domesticated, citizens cannot sue the Government for non-compliance as a matter of right. Such international instruments can only be of persuasive value in national courts.

3.4.2 Compliance with the legal instruments

Each of these instruments has mechanisms meant to ensure compliance with the provisions of the treaty. One prominent mechanism is the use of periodic reports which must be submitted to monitoring bodies that are created under the treaties. When Malawi does not submit its reports on time and/or does not at all, it makes it difficult for the monitoring bodies to determine our progress in realising the rights contained in the instruments, as well as to get best practices and recommendations for how we can address some of the challenges we experience in our efforts to curb child marriages.

3.4.3 Popularisation of the signed and ratified instruments

Many international instruments are not publicised once signed and ratified. This means that the average Malawi will not know of their existence until some form of sensitization is done. The sensitization will enhance a rights based approach that enhances people's participation in different issues affecting

society. The Rights based approach entails that duty bearers will account to the people on why they have spent huge sums of money to ratify a treaty that they do not intend on implementing. It also entails that rights holders will be empowered to claim their rights and question government on issues of compliance.

3.4 National Legal Instruments

3.4.1 The Constitution

The constitution provides various ages of minority with respect to different issues. The current situation is that there is no harmonized age of a child as various laws has their own ages of the child depending on the relevance. The variation of the ages in various laws implies different contexts demands various levels of maturity. Under the Child Care, Protection and Justice Act, a child who is 16 years can be convicted of a criminal offence; the Employment Act recognises 14 years as the age one can be employed; the Deceased Estates (Wills, Inheritance and Protection) Act gives children at 18 years opportunity to inheritance; while the Land Act recognises 21 years as the age where an individual can have access to land.

The Constitution of the Republic of Malawi contains a number of provisions that are relevant to the issue of child marriages. Section 22(6) fortifies the right to marry and found a family by stating that “no person over the age of 18 years shall be prevented from entering into marriage.” Section 22(4) provides that “no person shall be forced to enter into marriage.” This implies that most traditional marriage that are currently practiced in Malawi, including betrothal of young girls fall foul of this provision.

3.4.1.1 Limitation of the constitution

i) Parental Consent

Section 22 subsection (7) allows persons between the age of fifteen and eighteen years to get married with parental consent. This section does not prohibit child marriage and the provision assumes that the parents are reasonable and consider the best interest of the child. Parental consent may under these circumstances not be in the best interest of the concerned child.

The words of a commentary by UNICEF sum it all:

“Parents and heads of families make marital choices for their daughters and sons with little regard for the personal implications. Rather they look upon marriage as a family building strategy, an economic arrangement or a way to protect girls from unwelcome sexual advances.”⁵ Critics of this provision have argued that this provision allows people who are too young to get married and exposes children, especially the girl child.

5 UNICEF (2005), *Child Marriage: A Harmful Traditional Practice- A stastical Exploration*, p1

The human rights abuses include the violation of the following rights: education and reproductive health. The Report of the Human Rights Commission⁶ revealed that parents are involved in the vast majority of cases of forced marriages and these are usually child marriages.

ii) Contradicting sections within the constitution.

Section 23 of the Constitution has compounded the issue by restricting the available definition under that provision, strictly to the provision itself. As such, the age of 16 years in section 23 only arises with respect to the matters provided for under that provision. In fact, it is for that reason that the preceding provision allows a "child" of 15 years to enter into marriage because section 23 has no application to matters arising under section 22.

Arguments have been made calling for the harmonization of the definition of a child in line with the international definition of a child under the CRC where a child has been defined as a person below the age of 18 years. In view of the fore going. This will worsen if there is no harmonized law on the age marriage that should be domesticated to comply with the Convention on the Rights of the child (CRC), CEDAW, Women's protocol and African Charter on Rights and Welfare of the child (ACRWC) which Malawi is a party.

3.4.2 Marriage Act

Malawi has a marriage bill which has harmonised the age of marriage for all types of marriages. The proposed age of marriage in the bill is 18. The bill will be tabled in the next sitting of Malawi parliament in January. Currently Civil Society and NGOs are lobbying the Members of Parliament to support the bill. Malawians have hope that once this bill passes and is assented by the president with the proposed marriage age of 18, it will save children from child marriage.

3.4.3 Domestic Violence Act

The importance of the Domestic Violence Act is its broad applicability; it covers not only spousal relationships but also includes 'relations between family members' or financially dependent relations. In this Act, unless the context otherwise requires "domestic relationship", in relation to domestic violence, means the relationship between persons who are family members and share a household residence or are dependent on each other financially, and includes the relationship where

- a) the applicant and the respondent are spouses;
- b) a person has a child in common with the respondent and that person is being subjected or is likely to be subjected to domestic violence by the respondent;

⁶ Malawi Human Rights Commission report, (2004). Cultural Practices and their Impact on the Enjoyment of Human Rights, Particularly the Rights of Women and Children in Malawi, unpublished available on line <http://www.malawihumanrightscommission.org> (Accessed on 8th February, 2011).

- c) one is a parent and the other is his child or dependent; and
- d) the applicant and the respondent are or have been in a visiting relationship for a period exceeding twelve months;

The Act defines "Domestic violence" to include physical, sexual, emotional or psychological or financial abuse committed by a person against a spouse, child, any other person who is a member of the household, dependant or parent of a child of the households.

Child marriage is, therefore, a form of domestic violence within the meaning of the Act as the child who has been married is usually subjected to physical, sexual, emotional, physiological and financial abuse.

3.4.4 Child Care, Protection and Justice Act

In 2010, parliament passed the Child Care, Protection and Justice Act which endeavours to protect children from undesirable practices. Section 81 of the Act prohibits forced marriages and forced betrothals. Unfortunately, the definition of the child in this act is any person under the age of 16. This is very problematic, much as it has got very good sections to protect the child, it leaves the child of the age between 16 to 18 years vulnerable. It is unfortunate that it is a new Act but it is very important to revise the age to 18 years so that it complies with the CRC and ACWC to avoid leaving any loophole for child abuse through child marriage.

3.5 Challenges in the contradictions of the international, regional and domestic instruments

Child marriage exists and it will continue to exist so long as there are no better strategies to abolish this practice. Malawi has not domesticated some of the provisions of the age of a child found in International and Regional human rights instruments it ratified. The following challenges have been identified as a result of non-compliance to the international and regional instruments.

3.5.1 Inconsistency in definition of a child

Malawi is still experiencing the inconsistency in defining a child and this is very clear in the constitution Section 22 (7) of the Constitution states that, for persons between the age of 15 and 18 years, a marriage shall only be entered into with the consent of their parents or guardians. This section needs to be repealed because the power vested in parents and guardians is abused.

S22 (8) of the Constitution states that, the state shall actually discourage marriage between persons where either of them is under the age of fifteen years. This section should be amended to allow the state to prohibit any marriage of children less than 15-18 years instead of simply discouraging them. This is a serious claw back clause which leaves children very vulnerable especially the girl child.

3.5.2 Harmonisation of the age of marriage

The age of marriage should be harmonized to 18 years in order to comply with the age at which a child becomes an adult as stipulated in the CRC and ACRWC in article 1 and article 2, respectively which Malawi ratified. The Malawi Law Commission considered the lack of consistency to the age of marriage within the various regimes of marriage unsatisfactory. As noted earlier, only statutory marriages set the age of 18 years as the minimum age for marriage. Both customary marriages and religious marriages have no fixed age requirement and the attainment of puberty tends to be a critical determinant of capacity to marry.

3.5.3 Customary Marriages

Despite the provisions in the constitution, most of the people in Malawi marry through customary and religious law. Despite the provisions in the constitution both customary and religious marriages do not specify the age of marriage, however all the marriages under customary and religious marriages seek parental consent and this includes the marriages of people above 18 years old.

The worse scenario of the customary marriage law was in 2010 when the legislature agreed on 16 years as the marriage age for customary law marriages. The proposed amendment to the constitution on marriage mentioned above will assist prohibition of child marriage which in turn will prevent early child bearing. If there will be a possibility for young women to prevent early marriage, they will be able to pursue their education to the level they want. Therefore, will have an opportunity to be economic secure.

3.5.4 Weakness of the National legal framework

The current national Legal Framework is weak and cannot protect children from marriage because it allows children below 18years to get married under parents' consent. The legal framework will become strong once Malawi has a law that abolishes child marriage. In addition to putting the law in place, Malawi is supposed to come up with very good implementation strategies to make sure that children are protected and some of the examples of the strategies are as follows:

- Programmes to keep children in school up to 18 years
- All marriages should be registered
- Introduction of national registration to make sure that there is evidence of one's age

CHAPTER 4: THE ROLE OF COMMUNITY AND TRADITIONAL LEADERSHIP IN ENDING CHILD MARRIAGES

4.1. Role of the Community

4.1.1 Involvement of Traditional gate keepers

Involvement of traditional gate keepers in the campaign to end child marriage is very vital. The Traditional gatekeepers include mothers, fathers and religious leaders. The Religious leaders have power invested in them to officiate weddings. This power is an opportunity to prohibit child marriage. In this context, the gate keepers mean families who take steps to keep their children in school or who resist the pressures to marry their daughters as early as others.

4.1.2 Community mobilization and empowerment

Community mobilization and empowerment of Girls should be at the centre of the campaign to end child marriage. The community and girls in particular should be sensitized about the importance of delaying marriage and education of a girl child.

4.1.3 Engaging boys and men in the campaign to end child marriage

Deliberate effort should be made to engage men and boys in the campaign to end child marriage. Men and boys should be taught the dangers of marrying children. Men should have peer education to enhance abolishment of child marriage in the communities. This will be done with the fact that most of the perpetrators are men and the victims of child marriage will either be their sisters or their daughters.

4.1.4 Enrolment of boys and girls in school

The communities should make sure that boys and girls are the active participants of campaign to end child marriage. Their involvement will increase chances of abolishment of child marriage. This will provide them with an opportunity to understand their situation. The communities can come up with programmes that will ensure that boys and girls who dropped out return back to school. An example is Income Generating Activities to support the most needy girls and boys in school.

4.2. Role of traditional leaders

The traditional leaders should take a leading law in modifying bad cultural practices that fuel child marriage. The affirmative action that should be taken by the traditional leaders is to come up with by-laws on ending child marriage. The entire communities – civil society groups, parents, girls, law enforcement and religious leaders should be mobilized by traditional leaders to support girls' rights and child marriage laws that recognize the definition of a child as human being under the age of 18. This campaign can be done with assistance of existing NGOs and CBOs available in communities. This

is very possible by mainstreaming the issue of child marriage in all programmes the NGOs, CBOs and communities are running, as a campaign to end child marriage.

4.3. Role of religious leaders

They should advocate for age of marriage to be 18 years and above. For this to be possible, they should be oriented about the existing legal framework that protects children from child marriage.

CHAPTER FIVE: CONCLUSION AND RECOMMENDATIONS

The brief discusses the country situation on child marriages; reviews the strengths and weaknesses of the international, regional and domestic laws and policies on child marriages; reviews how traditional, cultural and customary practices that encourage child marriages and the impact of child marriages on the development of a child.

The brief aims to provide basic information on child marriages to assist journalists to have a clear understanding on the legal, cultural and policy issues to be presented to the public and thus enabling them to report from an informed point of view. The brief therefore provides basic information on the legal and policy issues on child marriages; provides information on the consequences of child marriages on the development of children; informs the journalists on the traditional and customary practices that hinder compliance to the international, regional and domestic laws and policies as well as providing information on the role of different stakeholders (policy makers, community members and traditional leaders) in ending child marriages

The media advocacy on child marriage is very key to the abolishment of child marriage in Malawi. The most important thing to do in order to run a successful advocacy campaign is to line up strategies of the campaign that will clearly state the issues in question, the target audience, timeframe and means of communication. The advocacy should concentrate on the following issue:

| Issue | Description | Recommendation |
|---|---|---|
| Traditional and cultural practices fuel child marriages | Cultural beliefs and practices influence child marriages in many ways. For example, initiation ceremonies for children who become of age and other socialisation processes mostly prepare children for marriage and gender responsibilities as defined by culture. This creates the attitude that such children are ready for marriage. | The traditional leaders can develop by-laws that would promote abolishment of child marriage. There should be intensive sensitization of the communities on their role to end child marriages. Engaging and involving men and boys in the campaign could help with education on the consequences of child marriages. |
| Legal and policy programming | Among the numerous laws that were analysed, it was evident that national instruments have different ways in protecting and guaranteeing children's rights as envisaged in the international human rights instruments which does not fully protect children. | There is need to harmonize the laws that protect children against child marriages. The national policies and laws should be in line with the international and regional instruments. |

| Issue | Description | Recommendation |
|------------------------------------|---|---|
| Complexities in defining the child | In Malawi, a child is defined differently depending on the legal instruments. Under the customary law, under which most child marriages take place, a child can be married when he/she reaches puberty. | There is need to develop structures, strategies and interventions that empower communities to promote cultural practices that guarantee child protection. |
| Lack of human rights understanding | The publication has found that there is a lack of understanding and contextualising the laws on child protection. This is mostly affected by the customary and traditional beliefs that form culture which also defines who the child is. | There is need empowerment of communities through education to ensure that people understand the rights of children and ensure their protection. |

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