



HUMAN  
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# “I’ve Never Experienced Happiness”

Child Marriage in Malawi



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## Map of Malawi



## Glossary

This report uses the following definitions:

**“Child”** is used to refer to anyone under the age of 18, consistent with usage under international law.

**“Girl”** refers to a female child under age 18.

**“Child marriage”** refers to a union where either spouse is below 18 years of age.

**“Marriage”** is used in its widest sense to cover a betrothal or union between two people, recognized under civil law, religious law, or customary rites, and understood to be binding by the spouses concerned, their families and the wider community, whether or not it has been formally registered in law.

**“Forced marriage”** refers to a union in which there is the absence of free and full consent of one or both parties. It encompasses related harmful practices such as wife inheritance, bride kidnapping, girl-child compensation, and marriage as dispute settlement or debt payment, which are practiced in Malawi.

**“Sex work”** refers to the commercial exchange of sexual services.

**“Commercial sexual exploitation”** of children refers to sexual abuse by the adult and remuneration in cash or kind to the child or third persons.

**“Child protection worker”** refers to child protection workers employed by the Malawi Ministry of Gender, Children and Community Development.

## Summary

Two years ago, when she was 12 years old, Chimwemwe K. married a 17-year-old boy. She had started a sexual relationship with him when she was 10 because, she said, he gave her money and small gifts, while at home her parents could not afford to buy her clothes or provide enough food. Chimwemwe became pregnant shortly after, and their families forced them to marry. Chimwemwe said about the marriage: “It was my only solution from poverty, and I was pregnant.”

Chimwemwe today says, “I’ve never experienced happiness in my marriage. I’ve never seen the benefit of being married.” Her husband beats her and she almost died when she was giving birth: “I bled a lot and I was in labor for two days.”

Chimwemwe has not reported her husband to the police for the violence because, “I fear my husband will be arrested and I don’t want to go back to my parents. So I would rather live with him even if he beats me.” Chimwemwe has never thought of leaving her abusive husband because, “I cannot manage on my own. Also, if I chase him away I will face stigma from the community.”

Chimwemwe dropped out of school in standard four (equivalent to fourth grade) but says she does not want to go back because “I was not good with books.”

Chimwemwe’s experience reflects a common reality for many girls in Malawi, which has one of the highest rates of child marriage in the world. On average, one out of two girls in the country will be married by her eighteenth birthday, according to the United Nations. In 2010, half of women aged 20 to 24 years were married or in union before they were 18. Some are as young as 9 or 10 when they are married.

Many Malawian communities see child marriage as being in the best interests of girls and their families. Some families see it as an important way to improve their economic status, sometimes through payment of dowry by the groom to the bride’s family, or through continued support by their daughter’s husband. For some girls, marriage may suggest a route, often unfulfilled, to escape poverty. Child marriage is also deeply entrenched in Malawi’s traditions and patriarchal cultures, which encourage early sexual initiation and



marriage and women's subordination in society, but stigmatize adolescent pregnancy. Marriage is regarded as a means of protecting girls who get pregnant from undermining family honor.

Child marriage has a negative impact on girl's and women's realization of key human rights, including their rights to health, education, to be free from physical, mental, and sexual violence, and to marry only when they are able and willing to give their free and full consent. The younger the age of marriage the more serious these impacts are.

Girls told Human Rights Watch that marriage interrupted or ended their education. Many said that they found it difficult to return to school after marriage because of lack of money for school fees, lack of child care, unavailability of flexible school programs or adult classes, and the need to do household chores. Others said that their husbands or in-laws would not allow them to continue school after marriage. In adulthood, many child brides remained financially dependent on often abusive spouses in part because they lacked the education and skills needed to provide for themselves and their families.

Human Rights Watch documented cases in which child marriage exposed girls to gender-based violence, including domestic and sexual violence. Some girls who rejected forced marriages said they were threatened, verbally abused, or thrown out of their homes by their families. Others told us they were verbally or physically assaulted by their husbands and in-laws. Still others said their husbands abandoned them and left them to care for children without any financial support, thus increasing the likelihood of their being impoverished. We also learned of cases in which child marriage led girls into commercial sexual exploitation and child labor.

Many girls we interviewed had suffered emotionally and psychologically. They said they were unhappy in their marriages and regretted having married early. Health workers described the reproductive health harms and risks of early pregnancy when girls marry young, including maternal death, obstetric fistula, premature delivery, and anaemia. The shortage of prenatal and postnatal health care services, especially in Malawi's rural areas, increases these risks. Health workers also talked about the avoidable costs of early pregnancy to the health care system.

Based on extensive interviews with girls and women in six districts in Central and Southern Malawi, and with government officials, magistrates, child protection workers, police officers in charge of child protection, traditional and religious leaders, health workers, and experts, this report describes factors contributing to child marriage, the severe consequences of child marriage, the risks that girls face when they resist these marriages, and the abuses they frequently face in marriage. It also examines the absence of protection for victims of child marriage and the many obstacles they face in attempting to obtain redress; as well as shortcomings in existing programs to combat child marriage.

Malawi has adopted major legislative and policy reforms in the area of women's human rights including a Gender Equality Act in 2013 that promotes gender equality in the areas of education and reproductive health. The government also amended the Penal Code Act in 2011 to raise the age of sexual consent from 13 to 16 years. Malawi's laws also have important protections for girls and women that prohibit forced marriage, criminalize the abduction of girls under 16, and prohibit discrimination against women and girls. In addition, parliament in October 2013 passed the Education Bill, making education universal and compulsory for all – a big advancement for girls' access to education. Many girls also benefit from a "readmission" policy that allows girls who become pregnant while in school or who drop out due to marriage to continue with school. However, Malawi lacks a comprehensive adolescent reproductive health policy and strategy to address its high rates of teenage pregnancy.

Human Rights Watch found that Malawi's government has failed to enforce existing legal protections against child marriage, and to develop and implement a comprehensive national child marriage plan.

Although Malawi has adopted some important laws and policies to protect women's and girls' rights, existing laws provide only partial protection. Malawi's laws do not explicitly prohibit child marriage, and there is no set minimum age of marriage. The laws also fail to consistently define who is a child, to require free and full consent to marriage, and to criminalize marital rape. The government has yet to enact the Marriage, Divorce and Family Relations Bill, a comprehensive family law developed in 2006 that has stronger protections from child and forced marriage and provides 18 as the minimum marriage age.

Victims of child marriage in Malawi face many barriers in getting help from authorities. Many girls and women do not know what their rights are under the law, or do not know where to look for assistance other than from their own families or traditional authorities, who often fail them. The absence of clear family legislation means that most matters relating to marriage, divorce, maintenance payments, and domestic violence are handled through customary procedures.

Neither the customary systems nor the judicial courts succeed in providing adequate redress to survivors of gender-based violence. Both systems, but especially customary processes, prioritize “family reconciliation” over prosecution, supposedly because it maintains family unity and community peace. But this is often at the expense of the security of survivors and their ability to obtain justice for serious harms suffered.

These problems are compounded and perpetuated by poor coordination among government agencies responsible for responding to violence against women; little or no monitoring of cases handled by officials from these agencies; negligent and dismissive police responses to reports of violence against women; lack of infrastructure, resources, and well-trained personnel in the justice system; and widespread and deep-seated discriminatory attitudes towards women. Moreover, Malawi does not have sufficient specialized safe spaces where victims of forced marriage and other gender-related abuses can find shelter and protection.

Today, the government and domestic and international nongovernmental organizations with the assistance of international donors are implementing programs to address child marriage and widespread violence against women in Malawi. But little effort is devoted to evaluating the effectiveness of these programs systematically. Proper evaluation of existing programs would assist the government in developing a comprehensive plan or strategy detailing specific and targeted action to end child marriage.

Human Rights Watch calls on the Malawi government to take immediate and long-term measures to protect girls from child and forced marriage and ensure the fulfillment of their human rights, in accordance with its international human rights obligations. Reforms are needed now to mitigate the far-reaching harms of child marriage and its negative implications for Malawi’s future development.

## **Key Recommendations**

### **To the President of Malawi**

- Sign into law the Education Bill that was passed by parliament in October 2013.
- Publicly support the prompt enactment of the Marriage, Divorce and Family Relations Bill, calling on relevant government agencies to consult and take the required legislative steps for passage.

### **To the Ministry of Justice and Constitutional Affairs**

- Take the necessary legislative steps for the enactment of the Marriage, Divorce, and Family Relations Bill, and together with relevant ministries and government agencies, promptly carry out its provisions.
- Together with the Ministry of Home Affairs and Internal Security, provide regular training for police and prosecutors on their legal responsibilities to investigate and prosecute violence against women, including child marriage, under the applicable law. Trainings should clarify that child marriage can be prosecuted as a crime in addition to using Penal Code provisions on defilement and abduction.

### **To the Ministry of Gender, Children and Community Development**

- Create a national action plan to combat child marriage, with input from women's and children's rights groups, health professionals, and other service providers; coordinating efforts among all relevant ministries; and ensure sufficient resources to implement the plan.

### **To the Ministry of Education**

- After the Education Bill becomes law:
  - Develop a comprehensive plan to implement the provision on compulsory education.
  - Initiate a national awareness raising campaign on the education law, with particular attention to compulsory education.

## **To the Ministry of Health**

- Develop and implement a national policy and strategy on adolescent reproductive health. Both the policy and the strategy should have a strong focus on the right to access health information and services, including contraception, and address factors that contribute to unplanned pregnancies.

## **To United Nations Agencies and International Donors**

- Support nongovernmental organizations to monitor and evaluate programs on violence against women, including child marriage, and to use this information to improve programming.
- Support the establishment and maintenance of shelters for survivors of gender-based violence.

## Methodology

This report is based on field research Human Rights Watch conducted between September and December 2013 in Chikwawa, Mangochi, and Mwanza districts in Southern Malawi; and Dowa, Lilongwe, and Nkhosakota districts in Central Malawi. Interviews were also conducted by phone and email. Human Rights Watch selected the districts in which to conduct the research in consultation with local organizations working on women's rights and on child marriage. Districts were selected in order to reflect cultural and religious variations in the country.

Human Rights Watch also reviewed laws, policies, official government strategies, and reports by academics, national and international organizations, and United Nations agencies. We conducted an extensive review of literature on child marriage in Malawi and other countries in which there are similar consequences on the lives of girls and women.

Human Rights Watch researchers interviewed 80 girls and women: 34 were currently married; 15 had been married but left the marriages for various reasons; 17 were unmarried teenage mothers, some of them in school; and 14 were primary or secondary students who had not married or been pregnant. Some girls and women were unsure about their age, but most girls and women we interviewed were married or became pregnant as children, under the age of 18.

Human Rights Watch interviewed women individually and in small groups. We conducted 53 individual and 27 group interviews. Most group interviews involved four to seven girls and women. A key focus of these interviews was on girls' access to education, but interviewees also relayed experiences of marriage of their sisters and friends.

Individual girls and women were identified with the assistance of local nongovernmental organizations (NGOs) providing services to women, and by district youth officers. Human Rights Watch conducted most interviews in confidential settings. Where we interviewed women in their villages, the interviews took place in their homes with as much privacy as possible. We informed all participants of the purpose of the interview, its voluntary nature, and the ways the information would be used. Each orally consented to be interviewed. We

told participants they could decline to answer questions or end the interview at any time, particularly where they were recounting traumatic personal experiences.

Interviews lasted between 30 minutes and one hour. Human Rights Watch conducted some interviews in English but most in Chichewa with the assistance of a female interpreter. We took care to minimize the risk to women and girls who were recounting difficult experiences that could further traumatize them. Where appropriate, Human Rights Watch provided contact information for organizations offering legal, social, or counseling services. We gave Interviewees no material compensation for participating, but reimbursed the cost of public transport to and from the interview.

Human Rights Watch also interviewed government officials in the Ministries of Justice and Constitutional Affairs; Home Affairs and Internal Security; Education; and Health. We also spoke to the director of public prosecutions and officials from the Malawi Human Rights Commission. We had hoped to include the perspectives of the Ministry of Gender, Children and Community Development. But despite repeated requests, the ministry did not grant us a meeting.

We interviewed 6 magistrates (one in each district we visited); 19 child protection workers, including 13 police officers in charge of child protection; 8 social welfare officers; 12 traditional leaders; 2 religious leaders; 8 health workers; and 2 district youth officers. We also observed 6 Victim Support Units at police stations. Finally, we also interviewed 27 representatives of NGOs working on women's and children's rights; as well as officials from the United Nations and international donor organizations.

Some girls were unsure about their exact ages or dates of birth. This report uses the estimates provided by the girls – many said that their parents had told them their age. Where we felt the estimate was too low or high we have mentioned that the girl looked older or younger.

The report uses pseudonyms to protect the privacy and security of the women and girls interviewed. We selected pseudonyms randomly, and they may not reflect the interviewee's ethnicity or region. We have also sometimes withheld the exact dates of interviews, the location of interviews, as well as additional identifying details.

## Background: Rights of Women and Girls in Malawi

Malawi has a population of 13.2 million people, the great majority of whom (85 percent) live in rural areas.<sup>1</sup> The country is one of the world's poorest with a gross national per capita income of US\$320.<sup>2</sup> More than half (51 percent) of the population is considered poor.<sup>3</sup> More women than men are poor.<sup>4</sup> Most women are employed in the agricultural sector that is the mainstay of Malawi's economy, but they earn less than their male counterparts.<sup>5</sup> Of those in non-agriculture waged employment, 21 percent are women, while 79 percent are men, and the numbers have not changed in recent years.<sup>6</sup> Malawi's human development challenges are reflected in its ranking of 170 out of 187 countries on the United Nations' Human Development Index.<sup>7</sup>

### Women's Legal and Social Status

Malawi's Constitution recognizes women's right to full and equal protection by the law, and non-discrimination on the basis of their gender or marital status.<sup>8</sup> The constitution calls for legislation to eliminate customs and practices that discriminate against women.<sup>9</sup> The Malawi government has developed laws, policies, and programs that promote protection and respect for women's and girls' human rights.<sup>10</sup> It is also developing a national gender policy. The government's blueprint for development, the Malawi Growth

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<sup>1</sup> Government of Malawi, National Statistical Office (NSO), "Integrated Household Survey 2010-2011: Household Socio Economic Characteristics Report," 2012, [http://www.nsomalawi.mw/images/stories/data\\_on\\_line/economics/ihs/IHS3/IHS3\\_Report.pdf](http://www.nsomalawi.mw/images/stories/data_on_line/economics/ihs/IHS3/IHS3_Report.pdf) (accessed September 3, 2013), p. 11.

<sup>2</sup> World Bank, "Malawi," undated, <http://data.worldbank.org/country/malawi> (accessed September 12, 2013).

<sup>3</sup> NSO, "Integrated Household Survey 2010-2011," p. 206. On average, a Malawian consumes about Malawian Kwacha (MK) 150 (US\$0.45) per day. Ibid., p. 97.

<sup>4</sup> Ministry of Gender, Children and Community Development and the NSO, "Gender and Development Index 2011," June 2012, [http://www.nsomalawi.mw/images/stories/data\\_on\\_line/economics/Gender/MALAWI\\_GENDER\\_AND\\_DEVELOPMENT\\_INDEX%20-June%202012.pdf](http://www.nsomalawi.mw/images/stories/data_on_line/economics/Gender/MALAWI_GENDER_AND_DEVELOPMENT_INDEX%20-June%202012.pdf) (accessed November 28, 2013), p. 24.

<sup>5</sup> Ibid. The study also notes that compared to men, women spend about six times more time doing domestic work and attributes this to their low levels of education, p. 25. as much, time in domestic, care and volunteer activities as compared to men.

<sup>6</sup> Ibid., p. 25.

<sup>7</sup> United Nations Development Programme (UNDP), "Human Development Report 2013," <http://www.undp.org/content/dam/undp/library/corporate/HDR/2013GlobalHDR/English/HDR2013%20Report%20English.pdf> (accessed September 2, 2013), p. 147.

<sup>8</sup> Malawi Constitution, art. 24. Discrimination on the basis of sex is also prohibited. Ibid., art. 20 (1).

<sup>9</sup> Ibid., art. 20(1).

<sup>10</sup> Since 2010, Malawi adopted the Gender Equality Act 2013, the Deceased Estates (Wills, Inheritance and Protection) Act 2011, the Child Care Protection and Justice Act 2010, and the Legal Aid Act 2010.



and Development Strategy II (MGDS) 2011-2016, promotes gender equality and gender mainstreaming in all sectors.<sup>11</sup>

In practice, however, women's rights in Malawi remain largely curtailed. Malawi is ranked 124 out of 148 countries in the 2012 UN Gender inequality index.<sup>12</sup> Patriarchal beliefs and attitudes still prevail and traditional and cultural practices, many of which are harmful to human rights, shape the lives of women and girls.<sup>13</sup> The unequal status of women in Malawi is further affected by the inter-locking factors of general poverty and discriminatory treatment in the family and public life. Both matrilineal and patrilineal systems operate in Malawi's ethnic groups and both perpetuate discrimination against women in the family.<sup>14</sup>

## Literacy and Access to Education

Despite the government's efforts to advance the rights of girls' access to education, there remain significant gender disparities in educational opportunities. The proportion of those who have never attended school is higher among women, estimated at 28 percent, compared to 14 percent of men.<sup>15</sup> More boys than girls enroll in secondary school.<sup>16</sup> Of the 74 percent of the population aged 15 years and above that have not attained any educational qualification, 80 percent are women.<sup>17</sup> The literacy rate is 65 percent, and more men (74 percent) than women (57 percent) are literate.<sup>18</sup>

Many girls drop out of school as a result of pregnancy. Data on girls who drop out due to marriage and pregnancy is not comprehensive. However, available data shows that between 2010 and 2013, 27,612 girls in primary and 4,053 girls in secondary schools

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<sup>11</sup> Government of Malawi, "MGDS II 2011-2016," 2012, <http://www.imf.org/external/pubs/ft/scr/2012/cr12222.pdf> (accessed October 30, 2013), p. 50.

<sup>12</sup> UNDP, Human Development Report 2013: p. 4.

<sup>13</sup> For more information see, Malawi Human Rights Commission (MHRC), "Cultural Practices and their Impact on the Enjoyment of Human Rights, Particularly the Rights of Women and Children in Malawi," 2005, [http://www.medcol.mw/commhealth/publications/cultural\\_practices\\_report.pdf](http://www.medcol.mw/commhealth/publications/cultural_practices_report.pdf) (accessed September 3, 2013). Also see National Youth Council of Malawi, "Report on Profiling Early Marriages in Malawi: Making a Case to 'Stop' Early Marriages", 2009, <http://www.nycommw.org/reports/Report-20Profiling%20Early%20Marriages%20MW.pdf> (accessed August 21, 2013) pp. 5 and 11.

<sup>14</sup> See, for example, Ngeyi Ruth Kamyongolo and Bernadette Malunga, "The Treatment of Consent in Sexual Assault Law in Malawi," May 2011, <http://theequalityeffect.org/pdfs/ConsentPaperMalawi.pdf> (accessed September 12, 2013), p. 12.

<sup>15</sup> Ibid., p. 22.

<sup>16</sup> NSO, "Integrated Household Survey 2010-2011: Household Socio Economic Characteristics Report," p. 35.

<sup>17</sup> Ibid., p. 25.

<sup>18</sup> Ibid., p. 21.

dropped out due to marriage.<sup>19</sup> During the same period, another 14,051 primary school girls and 5,597 secondary school girls dropped out because they were pregnant.<sup>20</sup>

## Violence against Women and Girls

Violence against women in Malawi appears widespread. A 2005 study of intimate partner violence – the first nationally representative study – found that 49 percent of women, or nearly half, have experienced some form of abuse by their intimate partner.<sup>21</sup> According to the 2010 Demographic Health Survey (DHS), of all women and girls aged 15 - 49 in Malawi, approximately 41 percent have experienced physical or sexual violence.<sup>22</sup> Many have experienced controlling behaviors from a husband or intimate partner, such as insisting on knowing where they are at all times (51 percent), and being jealous or angry if they talk to other men (43 percent).<sup>23</sup> A 2012 study looking at domestic violence against pregnant women at a district hospital in southern Malawi found that 59 percent had been psychologically, physically, or sexually abused during pregnancy.<sup>24</sup>

The 2010 DHS found that levels of physical and sexual violence against women have generally not changed since the 2004 DHS.<sup>25</sup> The study also showed that younger women, women who are divorced, separated, or widowed, and women with less than a secondary education, are more likely to experience violence.<sup>26</sup> Most violence against women occurs in the home, within the family unit.<sup>27</sup> Common perpetrators of physical and sexual violence against women are current or former intimate partners.<sup>28</sup> Violence against women is frequently viewed as a private family affair and few women report it.<sup>29</sup> Roughly one in three

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<sup>19</sup> Human Rights Watch email communication with Chandiwira Nyirenda, Department of Planning, Ministry of Education, Science and Technology, Lilongwe, November 20, 2013.

<sup>20</sup> Ibid.

<sup>21</sup> Pelser E. et al., “Intimate Partner Violence: Results from a National Gender-Based Violence Study in Malawi,” 2005, <http://www.issafrica.org/uploads/Book2005PartnerViolence.PDF> (accessed August 10, 2013), p. 10.

<sup>22</sup> NSO and ICF Macro, “Malawi Demographic and Health Survey 2010,” p. 246.

<sup>23</sup> Ibid., p. 248.

<sup>24</sup> Robert Chasweka et al., “Magnitude of Domestic Violence against Pregnant Women in Malawi,” *Journal of Research in Nursing and Midwifery*, July 2012, Vol. 1(2), p. 18.

<sup>25</sup> Ibid., pp. 242, 247, 248 and 249.

<sup>26</sup> Ibid., pp. 240-53.

<sup>27</sup> Government of Malawi, Ministry of Health, “Malawi Health Sector Strategic Plan, 2011 – 2016: Moving towards Equity and Quality,” 2011, p. 29.

<sup>28</sup> NSO and ICF Macro, “Malawi Demographic and Health Survey 2010,” pp. 242 and 245.

<sup>29</sup> Ministry of Health and UNICEF, “Assessment of the Capacity of the Health Sector to Respond to Violence against Women and Children in Malawi,” p. 14; and NSO and ICF Macro, “Malawi Demographic and Health Survey 2010,” p. 259.

women, 36 percent, who experience physical or sexual violence never tell anyone about it, and nearly half, 48 percent, never seek help.<sup>30</sup>

Poor implementation of laws, gaps in laws, and cultural attitudes that condone violence against women are major challenges in preventing abuse.<sup>31</sup> The Prevention of Domestic Violence Act is thought to have been largely ineffectual in protecting victims of domestic violence.<sup>32</sup>

Malawi's Penal Code criminalizes assault, rape, and attempted rape but does not criminalize marital rape.<sup>33</sup> It sets the age of sexual consent at 16 for girls.<sup>34</sup> The definition of rape in the Penal Code is limited. It addresses women and girls only, and it does not address forced anal sex, or forced non-penile penetration of the vagina or anus as constituting rape. Malawi lacks a sexual offense law to address these gaps. However, there is scope to include a broader perspective on sexual violence in the Prevention of Domestic Violence Act, which is currently being reviewed by the Malawi Law Commission.

The government is also reviewing its strategy for addressing gender-based violence, the National Response to Combat Gender-Based Violence, 2008-2013. It is not clear what impact this strategy has had. The strategy did not address child marriage and many of the NGOs with whom Human Rights Watch spoke did not even know that this strategy existed.

A number of international and national NGOs have been trying to address the problem of violence against women, but resources are scarce. The Malawi police service, with support from various government ministries and UN agencies, especially UNICEF, has developed Victim Support Units (VSUs), Community Victim Support Units (CVSUs) and One Stop Centers to help women and child survivors of violence. According to UNICEF,

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<sup>30</sup> Ibid.

<sup>31</sup> Ibid., p. 239. Also see NSO and ICF Macro, "Malawi Demographic and Health Survey 2010," p. 239.

<sup>32</sup> Human Rights Watch interview with Fahad Assani, minister of justice and Constitutional affairs, Pacharo Kayira, chief state advocate, and Chipiliro Thombozi, economist, Ministry of Justice and Constitutional Affairs, Lilongwe, October 29, 2013. Also see, Ministry of Health and UNICEF, "Assessment of the Capacity of the Health Sector to Respond to Violence against Women and Children in Malawi," pp. 25 -26 for analysis of gaps and challenges in implementing this law.

<sup>33</sup> Penal Code Act, arts. 132 and 133, p. 9.

<sup>34</sup> Penal Code Act, 2011, art. 138(1), states, "Any person who carnally knows any girl under the age of sixteen years shall be guilty of a felony and shall be liable to imprisonment for life."

there are 400 VSUs and 250 CVSUs in the country, and four hospitals in four major towns host One Stop Centers.<sup>35</sup>

## Reproductive, Maternal, and Child Health

Malawi's government, with substantial international donor support, has made efforts to improve the quality and availability of health services, including through increased financing to the health sector.<sup>36</sup> There have been specific efforts to improve reproductive health care, for example, through increasing access to family planning services, and encouraging pregnant women to deliver in health facilities.<sup>37</sup> The Ministry of Health has developed a National Sexual and Reproductive Health and Rights Policy and a National Sexual and Reproductive Health and Rights Strategy, 2011 - 2016. There is a Road Map for Accelerating the Reduction of Maternal and Neonatal Morbidity and Mortality in Malawi. The Ministry of Health developed the Malawi Health Sector Strategic Plan (MHSSP) 2011-2016, which focuses on attainment of the UN Millennium Development Goals (MDGs), mainstreaming gender issues in the planning and implementation of all health programs, and tracking them for impact.<sup>38</sup> All of these identify child marriage as a contributing factor to poor health outcomes, including the high maternal mortality rate, but without much detail about how to address this aspect.

These efforts have produced some positive results. Malawi has reduced its total fertility rate and infant and child mortality rates, and increased age at first birth.<sup>39</sup> It has increased

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<sup>35</sup> UNICEF, "Protecting Children in Malawi: A Report on the Major Findings of the Mapping and Assessment of the National Child Protection System," July 2012, <http://www.unmalawi.org/pdf/2012%20Malawi%20Child%20Protection%20System%20Mapping%20and%20Assessment%20Report.pdf> (accessed August 23, 2013), p. 11. VSUs are specialized units, which are situated at police stations, and are staffed by officers trained to investigate and mediate or prosecute cases involving women and children. They also offer counseling and referral services for survivors. CVSUs are specialized units based at the community level and do prevention interventions, counseling, and referral of cases to the police for prosecution. VSUs and some CVSUs offer accommodation to survivors of violence. One Stop Centers are based at hospitals and ensure that women and girls survivors of violence access various services, including legal information, medical care, and psychosocial support in one place.

<sup>36</sup> Government of Malawi, Ministry of Health, "Malawi Health Sector Strategic Plan, 2011 – 2016: Moving towards Equity and Quality," 2011, <http://medcol.mw/commhealth/publications/3%20Malawi%20HSSP%20Final%20Document%20%283%29.pdf> (accessed October 31, 2013). p. 31.

<sup>37</sup> Ministry of Health, "Malawi Health Sector Strategic Plan, 2011 – 2016," p. 127.

<sup>38</sup> Ministry of Health, "Malawi Health Sector Strategic Plan, 2011 – 2016," pp. XI and 47.

<sup>39</sup> Ministry of Health, Malawi Health Sector Strategic Plan, 2011 – 2016: Moving towards Equity and Quality, 2011, p. 12; NSO and ICF Macro, "Malawi Demographic and Health Survey 2010," pp. 44, 49 and 221; WHO et al., "Trends in Maternal Mortality: 1990 – 2010," pp. 41.

the number of women giving birth in health facilities, and the number of people living with HIV who are on treatment. The contraceptive prevalence rate (CPR) has increased,<sup>40</sup> while the maternal mortality rate has significantly decreased, from 984 deaths per 100,000 live births in 2004 to 675 in 2010.<sup>41</sup>

Nonetheless, Malawi's health indicators remain poor and often vary greatly according to residence, age, wealth, and educational status. Malawi still has high rates of maternal mortality, which represents about 16 percent of all deaths of women aged 15-49.<sup>42</sup> The total fertility rate (TFR) is also high at 5.7 births and the rate is higher among women with no education.<sup>43</sup> About 1 in 10 people are living with HIV in Malawi, and more women than men are infected (13 and 8 percent respectively).<sup>44</sup> Early child-bearing is common: 7 percent of women aged 25-49 have given birth by age 15, while 65 percent have become mothers by age 20.<sup>45</sup>

Malawi does not have a comprehensive national policy and strategy on adolescent reproductive health. The 2007 National Standards for Youth Friendly Health Services guides services for adolescents. A Young People's Health Strategy expired several years ago.<sup>46</sup> The Ministry of Health told Human Rights Watch that it is reviewing the National Standards for Youth Friendly Health Services to address gaps in implementation and to use that information to review the Young People's Health Strategy.

Many health services – including for reproductive and maternal health – remain limited, and often of poor quality when available due to a lack of qualified health personnel,

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<sup>40</sup> NSO and ICF Macro, "Malawi Demographic and Health Survey 2010," p. 57. The CPR increased from 33 percent in 2004 to 46 percent in 2010. The CPR is the proportion of women of reproductive age who are using (or whose partner is using) a contraceptive method at a given point in time. See, <http://www.who.int/whosis/whostat2006ContraceptivePrevalenceRate.pdf> (accessed September 1, 2013).

<sup>41</sup> Ibid., p. 221.

<sup>42</sup> Ibid.

<sup>43</sup> Women with more than a secondary education have a TFR of 2.1 compared with women with no education who have a TFR of 6.9. *ibid.*, p. 44. The total fertility rate represents the number of children that would be born to a woman if she were to live to the end of her childbearing years (15-49) and bear children in accordance with current age-specific fertility rates. See World Bank, "Indicators," undated, <http://data.worldbank.org/indicator/SP.DYN.TFRT.IN>. (accessed September 12, 2013).

<sup>44</sup> HIV prevalence among adults aged 15 to 49 is 11 percent. NSO and ICF Macro, 2011, "Malawi Demographic and Health Survey 2010," p. 196.

<sup>45</sup> Ibid., p. 49.

<sup>46</sup> Human Rights Watch interview with Hans Katengeza, reproductive health officer responsible for youth and adolescents, Ministry of Health, Lilongwe, October 28, 2013.

equipment, and supplies.<sup>47</sup> Access to reproductive and maternal health services is worse in rural areas due to inadequate health infrastructure and personnel being largely based in urban or semi-urban areas, and limited means of transport.<sup>48</sup> For example, only 46 percent of the population has access to a health facility within a 5 kilometer radius and only 25 percent of the population lives within 25 kilometer of a hospital.<sup>49</sup>

## Child Marriage

Malawi has one of the highest rates of child marriage in the world. It is ranked eighth of the 20 countries that are considered to have the highest rates of child marriage by the UN Population Fund (UNFPA).<sup>50</sup> On average, one out of two girls in Malawi will be married by their eighteenth birthday according to the United Nations.<sup>51</sup> In 2010, half of the women (50 percent) aged 20–24 years were married or in union before age 18 (compared to 6.4 percent of boys); while 12 percent of women married before they were 15 compared to only 1.2 percent of men.<sup>52</sup> Data shows little to no change in child marriage prevalence since 2000 where it stood at 47 percent.<sup>53</sup> Child marriage is common across all three regions of Malawi, and in both rural and urban areas.<sup>54</sup> Child marriage prevalence in Malawi is also higher than the regional average for sub-Saharan Africa (37 percent).<sup>55</sup>

In its 2005 study on cultural practices, Malawi's Human Rights Commission noted that girls in Malawi may be forced to marry as early as 9 years old, immediately after attaining puberty, or even before attaining puberty so long as they look physically mature.<sup>56</sup> Boys of the same background generally got married around the age of 17.<sup>57</sup>

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<sup>47</sup> Ministry of Health, "Malawi Health Sector Strategic Plan, 2011 – 2016," p. 30.

<sup>48</sup> Ibid., pp. 1-2.

<sup>49</sup> Ministry of Health, "National Sexual and Reproductive Health and Rights Strategy, 2011 – 2016, 2012," p. 1.

<sup>50</sup> United Nations Population Fund (UNFPA), "Marrying too Young: End Child Marriage," 2012, <http://www.unfpa.org/webdav/site/global/shared/documents/publications/2012/MarryingTooYoung.pdf> (accessed January 8, 2014), p. 23.

<sup>51</sup> UNFPA, "Profiles of 10 Countries with the Highest Rates of Child Marriage," undated, [http://www.unfpa.org/webdav/site/global/shared/documents/publications/2012/ChildMarriage\\_8\\_annex1\\_indicator-definition.pdf](http://www.unfpa.org/webdav/site/global/shared/documents/publications/2012/ChildMarriage_8_annex1_indicator-definition.pdf) (accessed July 15, 2013), p. 8.

<sup>52</sup> NSO and ICF Macro, "Malawi Demographic and Health Survey 2010," p. 76.

<sup>53</sup> UNFPA, "Profiles of 10 Countries with the Highest Rates of Child Marriage," undated, p. 8.

<sup>54</sup> Ibid.

<sup>55</sup> Ibid.

<sup>56</sup> Ibid.

<sup>57</sup> MHRC, "Cultural Practices and their Impact on the Enjoyment of Human Rights, Particularly the Rights of Women and Children in Malawi," pp. 25, 33, 34 and 78.

The most important reasons why child marriage in Malawi is so prevalent are poverty, teenage pregnancy, traditions and cultures that tolerate violence against girls and women and their subordination, and lack of adequate education and employment opportunities. These factors are all interlinked and heightened by a lack of strong judicial and government policy framework to ensure that existing laws designed to prevent and address child marriage are enforced.

### *Poverty and Teenage Pregnancy*

Poverty contributes to child marriage in many ways. First, many poor families view young girls as a financial burden, prompting them to marry their daughters off as soon as they can. Girls themselves see marriage as a way out of poverty. Zulu K., 14, married four months before our interview, told Human Rights Watch: “I got married because I wanted to end my problems. I was going to school, but I did not have school uniform. We didn’t have food at home. I stay with my father who sells buckets. My parents are separated and I have nine siblings.”<sup>58</sup>

Second, some families believe that marrying their daughters may give them a chance for a better life and better prospects for the future. Chaonaine A., 19, 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 because they could not buy her uniform or textbooks. She told Human Rights Watch that, “My parents forced me [to marry]. They said I would be better off married.”<sup>59</sup> Chaonane’s husband paid her parents MK 8,000 (\$19) as dowry.

Third, due to limited economic resources and opportunities, some families also see their daughters as a monetary asset. Countrywide, some poor families marry off daughters to get money to meet basic needs such as food, and sometimes to get dowry or continued support by their daughter’s husband. A practice known as *kupimbira*, practiced largely in the northern part of Malawi, is a form of debt repayment in which a girl is given to the creditor for marriage for failure to repay a debt.<sup>60</sup>

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<sup>58</sup> Human Rights Watch Interview with Zulu K., Chikwawa district, September 18, 2013.

<sup>59</sup> Human Rights Watch interview with Chaonaine A., Nkhosakota district, September 24, 2013.

<sup>60</sup> MHRC, “Cultural Practices and their Impact on the Enjoyment of Human Rights, Particularly the Rights of Women and Children in Malawi,” p. 25.

Also, because of poverty, many girls engage in transactional sex, a commonly accepted practice in Malawi. Sometimes parents also force girls to have sex with men to get money or food.<sup>61</sup> Because of poor knowledge of sexuality and contraception, as well as lack of power to negotiate safer sex with the men, many girls end up becoming pregnant and being forced into marriage. Lucy P., 17, said she dropped out of school in 2011 when she was 15: “I got a boyfriend who could look after me because my parents are poor. After some time he told me to have sex with him. I became pregnant and my mother forced me to marry him.”<sup>62</sup> When asked why she did not use protection, Lucy said, “My boyfriend used to give me money so I could not insist that he use condoms.”

### *Tradition and Culture*

Child and forced marriage are deeply entrenched in Malawi’s traditions and patriarchal cultures, which encourage early sexual initiation and marriage and women’s subordination in society, but stigmatize adolescent pregnancy.<sup>63</sup> Marriage is regarded as a means of protecting girls who get pregnant from undermining family honor. A traditional leader in Lilongwe district told Human Rights Watch, “In my culture, we call a pregnant [unmarried] girl ‘disabled.’” He said that when he learns of a teenage pregnancy, he tries to convince the boy to marry the girl because marriage is the only option for her.<sup>64</sup>

One issue contributing to teenage pregnancy and subsequently child marriages is girls’ poor knowledge of reproductive health. Many of the girls we interviewed lacked accurate reproductive health information. Some displayed a lack of basic knowledge about sexuality and contraception, while others said they did not have this knowledge before getting married. Girls told us they did not discuss sex with their parents.

Despite a “life skills” program that includes sexuality education, some girls who had been to school also lacked correct information on sexuality. Patricia K. said she started having sex before she reached puberty, and became pregnant when she was about 14 and in standard five (fifth grade). She said, “I was thinking of it more like playing. I didn’t think I

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<sup>61</sup> See Stephenson R. et al., “Community Environments Shaping Transactional Sex among Sexually Active Men in Malawi, Nigeria, and Tanzania,” 2012, <http://www.ncbi.nlm.nih.gov/pubmed/23215551> (accessed January 2, 2014).

<sup>62</sup> Human Rights Watch interview with Lucy P., Nkhosakota district, September 24, 2013.

<sup>63</sup> See MHRC, “Cultural Practices and their Impact on the Enjoyment of Human Rights, Particularly the Rights of Women and Children in Malawi,” for a comprehensive analysis of cultural and traditional practices that promote child marriage.

<sup>64</sup> Human Rights Watch interview with David Kantcheri, village headman Chitsatanji, Lilongwe district, September 22, 2013.



would get pregnant.”<sup>65</sup> Human Rights Watch interviewed four girls who told us that they became pregnant after their first sexual encounter. All believed that they would not get pregnant because it was their first time.

### *Education*

When girls are not in school, they are more likely to get married. Conversely, school helps girls delay marriage. In Malawi, girls are more likely to be withdrawn from school when families face financial constraints because of their low social status and the costs of educating them.<sup>66</sup> At the same time, the quality of education in Malawi is largely poor and few students move onto higher education or obtain employment when they complete their education.<sup>67</sup> As a result, many parents do not see the value of education, whereas children, mainly girls, can contribute to the family’s income through petty trading, working in family farms, as well as through marriage when they receive dowry and other benefits.<sup>68</sup>

A representative from the Forum for Women Educationists in Malawi (FAWEMA) said: “Education is not attractive to girls. They see girls who finished school staying at home with no jobs and ask: Why should I go to school? If they are not in school, they marry.”<sup>69</sup> Another NGO official commented, “Some primary schools have never sent a girl to secondary school. It is difficult for girls to be motivated.”<sup>70</sup>

Alima G., 18, said she dropped out of school when she was 14 and in standard eight (eighth grade):

I had too much work to do at home. My mother always made me to skip school so that I can go to the farm and cook for my four siblings. We did not

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<sup>65</sup> Human Rights Watch interview with Patricia K., Chikwawa district, September 18, 2013.

<sup>66</sup> According to a government survey, in 2011 in primary and secondary schools, 15 percent of females (compared to 2.1 percent of males) dropped out of school because of marriage, and 7.7 percent of females (compared to 3.6 of males) left to help with house chores. NSO, “Integrated Household Survey 2010-2011,” p. 38.

<sup>67</sup> Ibid.

<sup>68</sup> See Stephenson R et al., “Community environments shaping transactional sex among sexually active men in Malawi, Nigeria, and Tanzania,” 2012, <http://www.ncbi.nlm.nih.gov/pubmed/23215551> (accessed January 2, 2014).

<sup>69</sup> Human Rights Interview with Hendrina M. Givah., FAWEMA, Lilongwe, September 23, 2013.

<sup>70</sup> Human Rights Watch interview with Boniface Mandere, head of advocacy, Eye of the Child, Blantyre, September 16, 2013. A government study found that in 2011, 45 percent of students who dropped out of primary school cited lack of interest in studying. NSO, “Integrated Household Survey 2010-2011,” p. 38. The study does not have sex disaggregated data on this issue.

have money or food. I got a boyfriend who started taking care of me but then I became pregnant and left school.<sup>71</sup>

Alima married a few months after stopping school, but left the marriage after one and a half years as her husband was physically and emotionally abusing her.

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<sup>71</sup> Human Rights Interview with Alima G., Nkhotakota district, September 24, 2013.

## I. Child Marriage: Harm and Rights Violations

Child marriage violates a range of human rights recognized under international law. These include: the right to bodily integrity and to be free from violence; the right to education; the right to decide when and whom to marry; and the right to the highest attainable standard of health.

### Limited Literacy and Access to Education

I really want to go back to school so that I can get a job and live a better life. But I'm very busy with housework and my mother-in-law doesn't support my going back to school.

—Changamile F., married at 16, Chikwawa district, September 2013

Child marriage often interrupts girls' education or denies them access altogether. Few of the girls we interviewed had returned to school after marriage or pregnancy. Some of the reasons given by girls for not returning were lack of money, lack of child care, unavailability of adult classes or other flexible school programs such as evening classes, and the need to do household chores. Others said that their husbands or in-laws would not allow them to continue school after marriage, or that marriage was incompatible with schooling.

Kausiwa C., 24, became pregnant when she was 15 after her father forced her to leave school to look after her sick mother, and immediately married her 27-year-old boyfriend. She told Human Rights Watch:

I was in school in form two before she got sick. Then my father told me to leave school to look after her. I have two brothers who go to school. When I left school, I got a boyfriend to take care of me. He used to give me small amounts of money and I fell for it. I became pregnant and married him.<sup>72</sup>

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<sup>72</sup> Human Rights Interview with Kausiwa C., Mwanza district, September 17, 2013. Malawi operates an 8-4-4 system of education (eight years in primary school, four in secondary school, and another four in university). The first year of primary school, standard one, is equivalent to grade one in the United States, while form one equals grade 9.

Kausiwa said that a local NGO helped her to return to school in 2012, but her husband has tried to stop her:

He wants me to stop school. He gives me many house chores. He says I'm wasting time going to school and that I will fail at school. I really want to complete schooling but I'm often absent from school looking after my mother.<sup>73</sup>

Kabwila N., 17, said she left school in standard eight when she was 15 because of poverty. She said she could not go back to school because she felt ashamed about having become pregnant: "I would not want to go back to school because I started having sex with my boyfriend while at school. I am not fit to go back."<sup>74</sup> Gowelo L., about 20, said she studied up to standard four. She said, "I do not want to go back to school because I am married. My work is to look after my husband. I can go to adult school but the adult literacy classes here just teach people how to read and write and I can do that."<sup>75</sup>

Those girls and women who had not returned to school after marriage often said they regretted not being able to complete their education and hoped to do so in the future. Esther B. said she was 18 but looked much younger.<sup>76</sup> She left school in standard seven to marry her 28-year-old boyfriend who was married with another wife and children. When Human Rights Watch interviewed her, she was admitted at the Mwanza District Hospital waiting to give birth to her first child. Her husband had abandoned her and returned to his first wife. Esther had bad anemia and high blood pressure and her mother told us she was struggling to buy her food. Esther said, "I now know the benefits of education. I have faced so many problems. I will return to school after I have the baby."<sup>77</sup>

A 2012 study by the Population Council, an international organization that conducts research on HIV/AIDS, gender, and poverty and youth in order to improve reproductive

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<sup>73</sup> Human Rights Interview with Kausiwa C., Mwanza district, September 17, 2013.

<sup>74</sup> Human Rights Watch interview with Kabwila N., Lilongwe district, September 22, 2013.

<sup>75</sup> Human Rights Watch interview with Gowelo L., Lilongwe district, September 22, 2012.

<sup>76</sup> Human Rights Watch had been told by a local NGO official who knew her case that from their investigations she should be about 15 years.

<sup>77</sup> Human Rights Interview with Esther B., Mwanza district, September 17, 2013.

health services, found that in contrast to their peers who left school for other reasons, girls who had left school because of marriage were less likely to return to school.<sup>78</sup>

Studies have shown that girls who continue their education, especially until completing secondary school, are more likely to invest in their own children's education, enabling them to become economically independent and positive contributors to society.<sup>79</sup> On the other hand, children of young and illiterate mothers tend to face the same cycle of childhood deprivation and abuse.<sup>80</sup>

Malawi has a readmission policy that allows girls who become pregnant while in school to return after giving birth, but it requires the pregnant girl to withdraw from school for one academic year before applying for readmission. A deputy school head told Human Rights Watch, "We don't allow pregnant girls to continue with school. We ask her to go home and return after the baby is born. If she attends pregnant, she can be ridiculed by other students and be a bad influence."<sup>81</sup>

Some girls and community members are not aware of the readmission policy. Government monitoring of the implementation of this policy is poor. For example, there is no data on the number of teenage mothers that have been readmitted to school under the policy, what challenges they face after readmission, or how they perform at school including whether they remain in school or drop out.<sup>82</sup>

Many NGOs workers, police officers in charge of child protection, social workers and teachers told Human Rights Watch that a law compelling parents to send children to school was needed if married girls or teenage mothers are to benefit more from the readmission policy, and more generally to ensure that parents educate girls. A police

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<sup>78</sup> According to the study, only 2.8 percent of 253 girls who dropped out because of marriage had gone back to school. Satvika Chalasani et al., "Adolescent Pregnancy and Education Trajectories in Malawi," September 21, 2012, <http://paa2013.princeton.edu/papers/132776> (accessed January 3, 2014), p. 7.

<sup>79</sup> UNICEF, "The State of the World's Children," p. 64; UNICEF Innocenti Digest, "Early Marriage: Child Spouses," No. 7, March 2001, <http://www.unicef-irc.org/publications/pdf/digest7e.pdf> (accessed April 20, 2012), p. 16.

<sup>80</sup> Ibid.

<sup>81</sup> Human Rights interview with Kenneth Tengani Malemia, deputy head teacher, Dyeratu Primary School, Chikwawa district, September 18, 2013.

<sup>82</sup> An official from the Ministry of Education told us, "This data is not available. It is important but it has been overlooked." Human Rights interview with Mr. Kandiwira, Statistical unit, Ministry of Education, September 29, 2013; Human Rights interview with Hendrina M. Givah, national coordinator, FAWEMA, Lilongwe, September 23, 2013.

officer in charge of child protection who has helped to rescue girls from child marriage noted:

We have able parents who refuse to educate their children. Sometimes they say they don't have money to take the girl to school after she gets pregnant and that she should be married. But when we intervene and inform them that they are breaking the law by forcing her to marry, they send the girl to school. The law says that children should be protected from abuse. But when we intervene in cases of marriage and the parent refuses to allow the girl to go to school, there is no law to compel her because compulsory education is not in our laws. So the girl stays at home doing nothing and eventually gets married.<sup>83</sup>

If enacted and implemented, the proposed education law could address this gap.

## **Sexual Violence, Domestic Abuse, and Abandonment**

Girls marry because of problems at home. But few girls who enter marriage are happy. They marry young when they have nothing, and start making children whom they cannot feed. So at their parents' there is no food, at her husband's there is no food. They fight a lot and end up breaking up. It's a chain of problems.

—David Kantcheri, village headman, Chitsatanji, Rural Lilongwe,  
September 2013

Violence linked to child marriage happens before and during marriage. In Malawi, marriage is usually a family affair. Parents and other family members have a say as to whom and when girls marry, and can choose marriage partners without the consent or even knowledge of girls. Girls who reject these marriages often face violence from their families. A married girl or woman, especially those from patrilineal communities, often leaves her maternal home to live with her husband and his family. Power and authority in the home is

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<sup>83</sup> Human Rights Watch interview with Esau Kamwando and Matthews Chinangwa, child protection officers, Nkhotakota VSU, Nkhotakota district, September 25, 2013.

customarily held by men and older women, and this can place young married girls at greater risk of abuse and violence.

### *Violence to Force Girls to Marry*

Some of the girls and women interviewed by Human Rights Watch said that they were threatened, verbally abused, or thrown out of their homes by their family when they refused to marry. Many told us that they had suffered emotionally and psychologically as a result of the abuse.

Chanika B., now about 18 and married at 15, told Human Rights Watch:

My grandmother and sister wanted me to marry a trader by the lakeside. I refused. They threatened me to leave the house if I did not marry the man. I went to my mother's sister but she also said I had to marry him or leave the house. I accepted because I had nowhere to go.<sup>84</sup>

Seventeen-year-old Alinane Y. became pregnant when she was 14. Her boyfriend was 20 and refused responsibility for the pregnancy. Her mother wanted her to marry him nonetheless, and, according to Alinane, “she made my life a living hell.” Alinane broke down crying during the interview saying, “My mother really gave me a hard time, she really mistreated me.” She said:

My mother was working hard to keep me in school but it was not easy. My seven siblings needed food and school fees. Life was very difficult. When I was in form two I decided to get a boyfriend who could give me money so that I can be in school. He gave me money, bought me soap and books. I became pregnant three months after I met him. My mother was very angry with me. She said I must marry my boyfriend although he didn't want me. She was always fighting me, telling me I was useless and marriage was the only option for me. I was so stressed. She threatened to throw me out of the house. I promised I would pay for my school fees and that is how she allowed me to have the baby and return to school. But she insisted I had to

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<sup>84</sup> Human Rights Watch interview with Chanika B., Mangochi district, September 21, 2013.

cook, wash, and go to the farm. I was always tired until I wrote my exams. I am not sure I will pass because I had very little time to study.<sup>85</sup>

An official from an organization that works on youth issues, including child marriage, said: “Girls who refuse to get married as required by their parents are considered outcasts and are chased away, or face hostile [home] environments.”<sup>86</sup>

### *Girls Forced into Commercial Sexual Exploitation After Escaping Forced Marriage*

Some girls run away from forced marriages and then turn to commercial sexual exploitation or look for work in tobacco farms where they may be exposed to sexual exploitation and forced labor. Although this aspect of gender-based violence is not well documented, local rights activists and media reports indicate that there may be many cases that go unreported.<sup>87</sup>

Eighteen-year-old Chikondi R. was 14 when her mother and sister forced her to marry her 19-year-old boyfriend in 2008. She had passed her final primary school exams to go to secondary school. She told us that she was beaten and neglected by her husband, rejected by her family when she sought help for the violence, and forced into commercial sexual exploitation to fend for herself and her child:

After dating for some time my boyfriend asked my sister who was married and with whom I was living if he could marry me. She said yes. I said no because I was in school. But my mother and sister pressured me to marry my boyfriend because they wanted to get money. He was a potter and used to give me some money. My mother used to tell me, “Marry him so that he can assist us in any way.” I did not know anything about marriage. The only advice that my mother gave me when I was already married was that I should persevere when my husband beats me. I was not happy in my

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<sup>85</sup> Human Rights Watch interview with Alinane Y., Nkhotakota district, September 24, 2013.

<sup>86</sup> Human Rights Watch group interview with Marcel Chisi, executive director, and Christopher Misuku, project officer, Active Youth Initiative for Social Enhancement, Blantyre, September 16, 2013.

<sup>87</sup> See Dyson Mthawanji, “Malawi: Child Labour and Child Marriage Perpetuate Gender Inequality,” June 12, 2013, <http://allafrica.com/stories/201306120761.html> (accessed January 16, 2014); Malawi Voice, “Girls’ Empowerment Network Launches Girls’ Publication,” March 14, 2013, <http://www.malawivoice.com/2013/03/14/girls-empowerment-network-launches-girls-publication-44145/> (accessed January 16, 2014).



marriage because my husband beat me every day. He was verbally abusive and used to tell me when I complained about the violence: “You should not ask me anything because your mother pushed you to me.” I reported to my mother that my husband beats me but she forced me to go back to him saying I should endure because that is how marriages are. I left my husband because the beating became too much. But I had nowhere to stay after I left him. I went to my sister and my mother but they chased me away and told me to return to him. A friend of mine agreed to accommodate me and my child for three months. After the three months she told me, “Why do you want me to keep looking after you? Why don’t you do the work that I do?” That is how I started sex work.<sup>88</sup>

Human Rights Watch heard similar stories from others. The executive director of a local NGO said, “We helped a girl who turned to prostitution after running away from an early marriage. Her relatives forced her to get married and she ran away to stay with a friend who encouraged her to start prostitution.”<sup>89</sup> A project manager at another NGO commented, “We have found that some of the girls who are forced into child labor were once married and are running away from these marriages.”<sup>90</sup>

### *Violence in Marriage*

Many girls and women told Human Rights Watch that they were abused by their husbands after getting married. Many complained that they were beaten or verbally abused. Many also said their husbands had extra-marital affairs that caused them great emotional stress. Others said they were abandoned by their husbands who neglected to support them financially.

Elina V., 19, married a 24-year-old man when she was 15. He was a fisherman who used to give her money. She was in form two when she became pregnant by him and her mother forced her to marry him because “it was her only option.” She told Human Rights Watch:

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<sup>88</sup> Human Rights Watch Interview with Chikondi R., Blantyre, September 18, 2013.

<sup>89</sup> Human Rights Watch interview with Ephraim Chimwaza, executive director, Center for Social Concern and Development (CESOCODE), Blantyre, September 16, 2013.

<sup>90</sup> Human Rights Watch group interview with Peter Ngalawa Phiri, C-SEP project manager, and Irene Banda, CM and CB project manager, Save the Children Malawi, Blantyre, September 16, 2013.

I faced a lot of problems in marriage. I was young and did not know how to be a wife. I was pregnant, had to look after my husband, do housework, deal with in-laws, and work on the farm. My worst time was when I was pregnant; I had to do all this and deal with a pregnancy while I was just a child myself.<sup>91</sup>

Elina said, “My husband started beating me and abusing me verbally. His mother told him not to give me money and he stopped supporting me and our child. I left him early this year.”

Some girls and women who have been forced into marriage try to leave their marriages; others are abandoned by their spouses. However, they are usually left with the responsibility of raising children without their partners’ or family’s financial support, thus making them more likely to live in poverty. Many of the girls who had left their marriages or had not married their partners after becoming pregnant said that the men did not support them financially. Many told us that they did not know that they could sue for maintenance.

### *Leaving Forced Marriages*

Girls may run away from their abusive husbands and attempt to go back to their own families’ homes, expecting to receive help, but are often told to endure their tribulations because all married women must tolerate their husbands. Victims of child marriages also may be unable to leave abusive marriages because of economic pressures and other social circumstances, increasing their vulnerability.

Chanika B., 18, married when she was 15, told Human Rights Watch:

I faced a lot of abuse in my marriage. My husband had an affair. He would beat me when he returned home. Whenever he was drunk, he would beat me for no reason. Every time he beat me, I would pack my clothes and go to my grandmother’s house but she did not help me. When I talked to my husband’s relatives, they used to tell me that that is how marriage life is and I should go back to my husband.<sup>92</sup>

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<sup>91</sup> Human Rights Watch interview with Elina V., Mangochi district, September 21, 2013.

<sup>92</sup> Human Rights Watch interview with Chanika B., Mangochi district, September 21, 2013.

A government study found that many women who experience violence seek assistance from their own families and in-laws, but rarely get help.<sup>93</sup>

Many girls and women told us that when they were getting married they were warned not to deny their husbands sex and to bear their suffering when they faced problems including violence.

Seventeen-year-old Kabwila N. married a 21-year-old man when she was 15. She told Human Rights Watch, “My sister told me about home management and how to look after my husband. She said that no matter what, I should not deny him sex and I should keep the home clean, cook his food well and persevere [accept it] when he beats me.”<sup>94</sup>

Chipeta A., 19, married a 23-year-old man when she was 13. She said that her grandmother advised her when she was getting married to “do whatever your husband tells you to. Don’t say no when he wants sex. Persevere [accept it] when he beats you because there are lots of problems in marriage.”<sup>95</sup>

Research by international organizations, including the World Health Organization (WHO), shows that child brides are more likely to experience physical and emotional abuse at the hands of their husbands and in-laws. A WHO multi-country study on women’s health and domestic violence in various countries found that younger women, particularly those aged 15 to 19, and those with lower levels of education faced a higher risk of physical or sexual violence at the hands of a partner in almost all the countries studied, than older and more educated women.<sup>96</sup> The 2010 Malawi DHS has similar findings.<sup>97</sup> Research suggests that spousal age difference is also a risk factor associated with violence and abuse, including

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<sup>93</sup> NSO and ICF Macro, “Malawi Demographic and Health Survey 2010,” p. 259. According to the survey, women aged 15 – 19 are less likely to seek help from the police.

<sup>94</sup> Human Rights Watch interview with Kabwila N., Lilongwe district September 22, 2013.

<sup>95</sup> Human Rights Watch interview with Chipeta A., Lilongwe district, September 22, 2013.

<sup>96</sup> WHO, “Multi-country Study on Women’s Health and Domestic Violence against Women: Initial Results on Prevalence, Health Outcomes and Women’s Responses: Summary Report,” 2005, [http://www.who.int/gender/violence/who\\_multicountry\\_study/summary\\_report/summary\\_report\\_English2.pdf](http://www.who.int/gender/violence/who_multicountry_study/summary_report/summary_report_English2.pdf) (accessed November 10, 2013), p. 8. The multi-country study found that in all the countries studied, except Japan and Ethiopia, girls in this age bracket were more vulnerable to physical and sexual abuse by a partner, non-partner, or both, than older women. Also see, (UNICEF), “Early Marriage, A Harmful Traditional Practice, A Statistical Exploration,” pp. 22-23.

<sup>97</sup> See NSO and ICF Macro, “Malawi Demographic and Health Survey 2010,” pp. 240-53.

marital rape.<sup>98</sup> Child marriage creates an environment that increases young brides' vulnerability to physical, sexual, psychological, and economic abuse. Because early marriage limits young married girls' knowledge and skills, resources, social support networks, mobility, and autonomy, they often have little power in relation to their husband or his family.

## Adverse Health Consequences

In traditional societies where child marriage is common, including Malawi, girls and women are expected to become pregnant soon after marriage. There are serious risks to the health and lives of young mothers and their children associated with early pregnancy and childbirth. These increased risks are not only related to age, but also to girls' low levels of education, low social status, and lack of access to health-related information and health services.

A nurse midwife at Nkhotakota district hospital observed:

In August 2013, we had one girl aged 14, three girls aged 15, one aged 16, three aged 17, and five aged 18 who gave birth at the hospital. In September we had one 12-year-old, one 15-year-old and one 16-year-old. The younger ones die more during childbirth in this hospital.<sup>99</sup>

Due to physical immaturity, young girls are more susceptible to obstructed labor, which is a leading cause of maternal mortality globally.<sup>100</sup> Obstructed labor also causes obstetric fistula, a devastating childbirth injury that leaves its victims with urine or fecal incontinence.<sup>101</sup> Studies show that although factors such as lack of access to timely and quality maternity care are predisposing factors, physical immaturity is the key risk for developing obstetric fistula for girls under 15.<sup>102</sup>

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<sup>98</sup> Robert Jensen and Rebecca Thornton, "Early Female Marriage in the Developing World," *Gender and Development*, July 2003, vol. 11, No. 2, pp. 9-19.

<sup>99</sup> Human Rights Watch interview with Mary Makwawa, nurse and midwife, Nkhotakota District Hospital, Nkhotakota district, September 25, 2013.

<sup>100</sup> Nawal Nour, "An Introduction to Maternal Mortality," *Journal of Obstetrics and Gynecology*, vol. 1, No. 2 (2008), pp. 77-81.

<sup>101</sup> See Amy Tsui et al., "The Role of Delayed Childbearing in the Prevention of Obstetric Fistulas," *International Journal of Gynecology and Obstetrics*, vol. 99 (2007), p. 98; WHO, "Obstetric Fistula: Guiding Principles for Clinical Management and Programme Development," p.3; and UNFPA, "Marrying too Young: End Child Marriage," p. 22.

<sup>102</sup> Nawal Nour, "An Introduction to Maternal Mortality," p. 12.

Malawi does not maintain reliable statistics on fistula. A nurse and midwife at Chikwawa district hospital told Human Rights Watch about cases of obstructed labor at the hospital:

We see many girls who come with obstructed labor. We have to operate on them and this is expensive for the hospital. Sometimes we also advise them to come and wait at the hospital if they are like 8-months pregnant. It takes resources to look after them.<sup>103</sup>

Another said, “We see about two or three cases of fistula every two to three months. Many girls need a C-section and it is not cheap for the hospital.”<sup>104</sup>

Health workers also told us that they see many cases of anemia among young girls because of poor feeding. One observed, “Young girls get many problems like obstructed labor, premature labor. They also get anemia a lot because they are not getting enough food at home. Many of them tell us they eat one meal a day or sometimes even go without food.”<sup>105</sup> Others expressed their frustration delivering teenage mothers whom they described as not being emotionally ready for labor and motherhood. For example, one health worker said:

Every month we deliver girls who are 14, 15.... Many are below 18. It is not easy because they are not ready mentally and physically. They do not understand the labor process. You tell them it is not time to push and the moment they feel the first contraction they start pushing and end up with large tears and bleeding.<sup>106</sup>

Our interviews with girls, including schoolgirls, boys, and traditional leaders indicate that there is general awareness about reproductive health problems associated with child marriage. Almost all the girls that we interviewed delivered in a health facility. Many said that they were given information about family planning and contraception at the hospital.

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<sup>103</sup> Human Rights Watch interview with Eliza Hiwa, midwife, Chikwawa District Hospital, Chikwawa district, September 18, 2013.

<sup>104</sup> Human Rights Watch interview with Helen Mtonga, nurse and midwife, Mwanza District Hospital, Mwanza district, September 17, 2013.

<sup>105</sup> Ibid.

<sup>106</sup> Ibid.

Research in developing countries shows that complications in pregnancy and childbirth are the leading cause of death for girls and women aged 15 to 19.<sup>107</sup> Teenagers who are aged 15 to 19 years are twice as likely to die during pregnancy or childbirth compared to women over 20 years old.<sup>108</sup> Girls between the ages of 10 and 14 are five times more likely to die during delivery than mothers who are between 20 and 24.<sup>109</sup> The children of young mothers also face higher mortality rates.<sup>110</sup>

### *Psychological Health Consequences*

Child marriage deprives girls of their childhood and adolescence, a time necessary to develop not only physically, but emotionally and psychologically. It burdens them with adult responsibilities for which they are unprepared, including those related to marriage and childbearing. As mentioned, girls in Malawi are generally considered ready for marriage when they reach puberty. Marriage at this time curtails girls' freedom and denies them the chance to develop their intellect and independent identities.<sup>111</sup>

Child marriage can have profound psychological health consequences for girls, particularly younger girls, and these consequences may impact women throughout their lives. They may have few options to socialize and participate in public life, and experience feelings of worthlessness, regret, and depression.<sup>112</sup> They are expected to take on household chores

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<sup>107</sup> Ibid., p. 4.

<sup>108</sup> WHO, "WHO Guidelines on Preventing Early Pregnancy and Poor Reproductive Outcomes Among Adolescents in Developing Countries," 2011, [http://whqlibdoc.who.int/publications/2011/9789241502214\\_eng.pdf](http://whqlibdoc.who.int/publications/2011/9789241502214_eng.pdf) (accessed January 8, 2014), p. 2.

<sup>109</sup> Ibid. Studies on other countries show that women who marry early have the highest proportion of unfavorable pregnancy outcomes at all stages throughout their childbearing years. S. Shawky and W. Millat, "Early Teenage Marriage and Pregnancy Outcome," *Eastern Mediterranean Health Journal*, 2000, vol. 6, issue 1, <http://www.emro.who.int/publications/emhj/0601/06.htm> (accessed January 8, 2014), pp. 46-54.

<sup>110</sup> Young mothers are less likely to get prenatal care and often do not have enough information about proper nutrition while pregnant to nurture themselves and babies. Babies born to young mothers run a 30 percent increased risk of dying during their first year of life. Babies may have a low birth weight as a consequence of their mother's poor nutritional status while pregnant, and babies with low birth weight are 5 to 30 times more likely to die than babies of normal weight. See Population Action International, "How Family Planning Protects the Health of Women and Children," May 1, 2006, [http://www.populationaction.org/Publications/Fact\\_Sheets/FS2/How\\_Family\\_Planning\\_Protects\\_the\\_Health\\_of\\_Women\\_and\\_Children.pdf](http://www.populationaction.org/Publications/Fact_Sheets/FS2/How_Family_Planning_Protects_the_Health_of_Women_and_Children.pdf) (accessed March 12, 2012), pp. 1-2; Nawal M. Nour, "Health Consequences of Child Marriage in Africa," November 2006, [http://wwwnc.cdc.gov/eid/article/12/11/06-0510\\_article.htm](http://wwwnc.cdc.gov/eid/article/12/11/06-0510_article.htm).

<sup>111</sup> See UNICEF Innocenti Digest, "Early Marriage: Child Spouses," No. 7, March 2001, <http://www.unicef-irc.org/publications/pdf/digest7e.pdf> (accessed April 20, 2012), p. 12.

<sup>112</sup> Population Council, "Understanding Sex Without consent Among Young People: A Neglected Priority," Brief No. 7, July 2007, [http://www.popcouncil.org/pdfs/TABriefs/PGY\\_Brief07\\_NonconsensualSex.pdf](http://www.popcouncil.org/pdfs/TABriefs/PGY_Brief07_NonconsensualSex.pdf) (accessed September 12, 2012), p. 3.

and care for children and families while they themselves are still children. They often lack support when faced with marital problems.

Danira T. is now 28 years old. She was 14 when she married a 30-year-old man with whom she has three children. She told Human Rights Watch:

I did not know what to expect in a marriage and thought that my husband will just take care of me. But I had to do a lot of work in the farm, look after children, and please my in-laws. I feel very sad when I see small girls getting married. They don't know the hard life that awaits them there. When I got married, I was very young. When I look back, I wish someone had told me to wait till I was grown up. I regret every day the choice I made but I have to live with it. I wish I had gone to school. Life could be better for me because I could get a job.<sup>113</sup>

Many of the girls and women Human Rights Watch interviewed said they were unhappy in their marriages and regretted having been married early. Many said they had not understood the implications of marriage, and were not ready for the responsibilities that came with it. Many broke down crying during the interviews when they recalled the suffering they had endured in forced marriages, and their lost opportunities for happiness and personal development.

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<sup>113</sup> Human Rights Watch interview with Danira T., Mwanza district, September 16, 2013.

### **Unhappy in Marriage: Kalinde J.'s Story**

I am 23 years old and my husband is 30. I married when I was 15. I have two children aged 9 and 18 months. I did not want to marry but I agreed because of poverty at home. We had a marriage ceremony where both our parents came together, talked and agreed that we can marry. During the marriage ceremony, I was told to respect my husband and never to deny him sex. I was told to bear it when I get problems because that is how marriages are. I found life very difficult after marriage. I was a small girl and I did not know anything about marriage. One time, my stomach started getting big and I was having severe headaches. I was so scared; I did not know what was happening. I went to the hospital and that is when the nurse told me I was 5 months pregnant.

My husband is a builder and I do nothing. I am not happy in my marriage because my husband goes away without leaving food and takes long to come back home. My husband also beats me and is a womanizer. I love him so much but he does not love me and that is why he has very many women. I want to leave the marriage but I am waiting for the right time to leave. I am waiting for him to change and if he does not, I will leave him.

When my husband comes back from other women and wants sex, I just accept because he is my husband. We do not use condoms because he already infected me with HIV. Marriage is not good for girls. There is no happiness. I want change for girls and that is why I want my story to be heard by all girls out there thinking of marriage.



## II. Malawi's Laws on Child Marriage

Last month, the 1<sup>st</sup> grade magistrate handled a case of a 15-year-old girl who got married. The Constitution allows a girl who is 15 years to get married yet the Penal Code says anyone who has carnal knowledge of a girl below 16 commits a crime. The perpetrator was acquitted based on the Constitution.

—Francis Kantikana, magistrate, Dowa district, September 2013

The Malawi government has failed to address shortcomings, inconsistencies, and gaps in existing laws that could help to prevent child and forced marriage and protect girls' and women's rights in marriage.<sup>114</sup> There are a number of laws, discussed below, that can be read together to prohibit child marriage and sanction those who force children to marry. However, there is a need for more explicit and comprehensive legislation on marriage, including a clear definition of a child and setting a minimum age for marriage that is consistent with international norms and standards. The government has failed to enact new legislation, including the Marriage Bill, also discussed below, that would strengthen protections for girls and address gaps in existing laws.

### Existing Laws

Laws on marriage in Malawi do not explicitly provide for full and free consent to marriage. For example, Malawi's Constitution provides only that no one shall be forced into a marriage, implying but not specifically requiring consent. The Child Care, Protection and Justice Act of 2010 has a similar provision.<sup>115</sup> The United Nations considers child marriage to be a form of forced marriage since children are not legally capable of giving free, full, and informed consent to marriage.<sup>116</sup> As a matter of international law, older children have

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<sup>114</sup> Currently, there are three regimes of marriage under Malawi law: statutory, customary, and by repute and permanent cohabitation. In the absence of a comprehensive family law in Malawi, the choice of applicable law is determined by the type of marriage in question.<sup>114</sup> Each type of marriage has varied marriage formalities, and confers different rights and obligations during marriage and at its dissolution. These marriages are governed by laws developed in the colonial era and include: the Marriage Act, Chapter 25: 01; the African Marriage (Christian Rites) Registration, Chapter 25: 02; and The Asiatics (Marriage, Divorce and Succession) Act, Chapter 25: 03. See generally, Malawi Law Commission, "Report of the Law Commission on the Review of Laws on Marriage and Divorce."

<sup>115</sup> Child Care, Protection and Justice Act, art. 81 (a).

<sup>116</sup> See UN Women, "Developing Legislation on Violence against Women and Girls," May 2011, <http://www.endvawnow.org/uploads/modules/pdf/1355776748.pdf> (accessed February 3, 2014), p. 359. It states, "As a child under the age of 18 is not capable of giving her valid consent to enter into marriage, child marriages are considered to be forced marriages."

the right to participate in decisions about whom and when they marry as soon they have the maturity to understand the implications of their decisions.<sup>117</sup> But no matter what their age, the traditionally low status of children, especially girls, in many Malawian communities and well-entrenched cultural beliefs undermine their ability to oppose the wishes or opinions of parents, guardians, or community elders. As the accounts in this report show, families often force girls into marriage, including those who are lawfully old enough to marry under the Constitution.

Another challenge in preventing and punishing child marriage offenses in Malawi concerns the recognition of customary law and customary practices that are discriminatory, harmful, or otherwise violate fundamental human rights.<sup>118</sup>

In Malawi, most marriages are entered into under customary laws or by repute and permanent cohabitation. Few marriages are registered. Customary laws and practices discriminate against women in matters related to marriage.<sup>119</sup> For instance, they generally condone child marriages, and promote practices such as polygamy and wife inheritance that discriminate against women and may be harmful to their well-being. Customary laws do not recognize marital rape.<sup>120</sup> Furthermore, customary processes generally favor restorative and consensual solutions over punitive ones. While these are accepted ways of settling disputes within communities, the failure of customary procedures to address the criminal elements of certain gender-based crimes leaves victims without an adequate remedy. In addition, it creates opportunities for families and husbands to intimidate women, and to coerce them into forced marriages or into continuing in marriages that they did not want, with husbands who may be abusive.

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<sup>117</sup> The Convention on the Right of the Child in article 12 states that governments shall assure a child who is capable of forming his or her views the right to freely express those views in accordance with the age and maturity of the child. CRC, art. 12. However, there are challenges in determining the age a child should be before he or she can “consent” fully and freely to marriage and sexual relations, and with full understanding of the implications of such a union, including the risks of underage marriage. See UNICEF Innocenti Digest, “Early Marriage: Child Spouses,” pp. 9-11, for a discussion on the difficulty of determining full and free consent to marriage for different categories of children under the age of 18.

<sup>118</sup> The Constitution in article 200 provides for the continued application of the customary law in force at the time the Constitution was adopted. Further, the Constitution in article 10 enjoins courts to have due regard to the principles and provisions of the Constitution when applying and developing the same.

<sup>119</sup> See Women and Law in Southern Africa Research and Educational Trust, “The Situation of Women,” undated, <http://wlsamw.wordpress.com/situation-of-women/> (accessed November 10, 2013).

<sup>120</sup> Ngeyi Ruth Kamyongolo and Bernadette Malunga, “The Treatment of Consent in Sexual Assault Law in Malawi,” p. 12.

Nonetheless, the Constitution provides that all laws, including customary laws, are subject to its provisions: “Any act of Government or any law that is inconsistent with the provisions of this Constitution shall, to the extent of such inconsistency, be invalid,”<sup>121</sup> and that “In the interpretation of all laws ... the provisions of this Constitution shall be regarded as the supreme arbiter and ultimate source of authority.”<sup>122</sup> On the right to equality before the law, the Constitution states, “There shall be no derogation, restrictions or limitation with regard to ... the right to equality and recognition before the law.”<sup>123</sup>

While the provisions of the Transitional Constitution, the Child Care, Protection and Justice Act, and the Penal Code offer guidance for resolving conflicts between customary law and human rights protections, there are no published court decisions articulating this line of reasoning or offering guidance in interpretation of customary laws consistent with the Constitution.

## Minimum Age for Marriage, Sexual Consent

Existing laws on marriage in Malawi do not provide a clear minimum age for marriage. A clear age would help ensure a coherent application of laws protecting women and girls from child and forced marriage consistent with international human rights law.

Under article 22 of the Constitution, a person who is 18 years of age may enter into marriage without parental consent, while persons between 15 and 18 must obtain parental consent before entering into marriage. The Constitution does not prohibit marriage of children below 15, but provides that the state is obliged merely to “discourage” marriages where either party is under age 15.<sup>124</sup> The 1903 Marriage Act, which sets 21 as the minimum age of marriage, also allows for marriage of children below 18 years with parental consent.<sup>125</sup> The Child Care, Protection and Justice Act does not provide for a minimum age of marriage nor prohibit child marriages, but provides criminal penalties for those who force a child to marry.

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<sup>121</sup> Constitution of the Republic of Malawi (2004), art. 5.

<sup>122</sup> *Ibid.*, art. 10.

<sup>123</sup> *Ibid.*, 44(1).

<sup>124</sup> Constitution, art. 22(8).

<sup>125</sup> The Marriage Act in article 19 states: “If either party to an intended marriage, not being a widower, widow or divorced person, is not over eighteen years of age, the written consent of the father or mother, or if both be dead or of unsound mind or absent from Malawi, of the guardian of such party, must be produced annexed to such affidavit as aforesaid, before a licence can be granted or a certificate issued.”

In practice, as noted earlier, girls in Malawi are often married on attainment of puberty or before.<sup>126</sup> In some cases documented by Human Rights Watch, girls aged 10 to 12 were married.

In addition to the lack of a clear minimum age of marriage, existing provisions conflict with the Penal Code provisions on rape and defilement. The Penal Code criminalizes sex with a girl below 16 as defilement, and those convicted under this provision can be sentenced to 14 years in prison.<sup>127</sup> The Penal Code does not discuss the issue of consent in defilement cases, but case law has established that whether the girl consented to the sexual act or not is irrelevant and the accused person would still be guilty.<sup>128</sup> All the police officers and magistrates we interviewed told us that consent is immaterial in defilement cases because according to the Penal Code, girls below the age of 16 cannot consent to sex.

The Penal Code defines rape as:

Anyone 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.<sup>129</sup>

The punishment for rape is life imprisonment or death.<sup>130</sup> The position in Malawi is that marital rape does not exist under the Penal Code because its definition of rape does not make any reference to the position of husband and wife. The interpretation of consent and the word “unlawful” in the definition of rape results in legal impunity for marital rape.<sup>131</sup> How the current definitions of rape and defilement apply to sexual intercourse in the context of child marriage is unclear.

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<sup>126</sup> MHRC, “Cultural Practices and their Impact on the Enjoyment of Human Rights, Particularly the rights of Women and Children in Malawi,” p. 88; and Malawi Law Commission, “The Report of the Malawi Law Commission on the Review of Laws on Marriage and Divorce,” p. 13.

<sup>127</sup> Penal Code Act, art. 138 (2).

<sup>128</sup> See Ngeyi Ruth Kamyongolo and Bernadette Malunga, “The Treatment of Consent in Sexual Assault Law in Malawi,” pp. 13-14.

<sup>129</sup> Penal Code, art. 132.

<sup>130</sup> Penal Code, art. 133.

<sup>131</sup> However, there have been convictions for offenses that amount to marital rape although courts have not characterized them as such. See Ngeyi Ruth Kamyongolo and Bernadette Malunga, “The Treatment of Consent in Sexual Assault Law in Malawi,” p. 9.

## Current Legal Developments on Marriage Age

Malawi's government has yet to enact the Marriage, Divorce and Family Relations Bill (Marriage Bill), a comprehensive family law that was developed in 2006 and has stronger protections from child and forced marriage. Among other things, the bill proposes that the minimum age of marriage be raised to 18. However, there are uncertainties about this law, which presents issues that need to be addressed before it is enacted.

The government of Malawi has created a public impression that it supports the Marriage Bill, but its actions indicate otherwise. President Joyce Banda has made several public comments committing her government to passing the bill without delay. In 2012, she issued a presidential directive that the bill be presented for debate before parliament. But on November 1, 2013, during the High Level Task Force for Women, Girls, Gender Equality and HIV for Eastern and Southern Africa, she made comments that suggested a change of mind:

There is no question about my personal commitment to the raising of the marriage age. I am however aware that this is a delicate issue among some traditional leaders, conservative communities, faith leaders and some legislators. That is why, in my opinion, it is best that we do our homework by engaging all stakeholders and bring the bill to parliament at the right time for us to succeed.<sup>132</sup>

Public support for the Marriage Bill from the Ministry of Gender, Children and Community Development as well as the president raised expectations that the bill would be presented for discussion before parliament during the session ending in November 2013. However, this did not happen. The minister of justice told Human Rights Watch that the bill was unlikely to be introduced at the next sitting of parliament in February 2014, parliament's last session before general elections in May 2014. The bill is currently being reviewed by the Ministry of Justice and Constitutional Affairs.<sup>133</sup>

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<sup>132</sup> Yamikani Yapuwa, "Joyce Banda Forms Education Committee," *AllAfrica*, November 1, 2013, <http://allafrica.com/stories/201311030198.html> (accessed December 7, 2013).

<sup>133</sup> Human Rights Watch interview with Fahad Assani, minister of justice and Constitutional affairs, Pacharo Kayira, chief state advocate, and Chipiliro Thombozi, economist, Ministry of Justice and Constitutional Affairs, Lilongwe, October 29, 2013.

One challenge to enacting the law seems to be lack of clarity on the legislative procedure to be followed.<sup>134</sup> The Ministry of Gender, Children and Community Development, the Ministry of Justice and Constitutional Affairs, the judiciary, and the Malawi Law Commission do not have a common position on the legislative process needed to pass the Marriage Bill.<sup>135</sup> In fact, they have not come together to agree on a clear way forward,<sup>136</sup> and it is not clear who should make the final decision on a way forward on this issue.

### *Marriage, Divorce and Family Relations Bill*

The Marriage Bill defines a child as anyone below the age of 18 and sets the minimum age for marriage at 18. This is consistent with international and regional human rights treaties that Malawi has ratified. The bill gives equal status to parties in all marriages recognized under the proposed law, and requires that all marriages, including customary marriages, be registered with a competent authority. However, several important components of any law dealing with marriage, divorce, and family relations are not addressed in the bill.

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<sup>134</sup> The minister of justice and the chief state advocate told Human Rights Watch during a meeting in October 2013 that there has to be a constitutional amendment to raise the minimum age of marriage and definition of a child to 18 – as proposed in the Marriage Bill – before it can pass. However, there are conflicting views among Malawian lawmakers and legal experts on this issue. Some say that the Marriage Bill can be passed and enacted without such an amendment, while others noted that such a move would render the enacted law toothless since the Constitution is the supreme law of Malawi. There is also confusion as to whether, should the Constitution need to be amended to allow the Marriage Bill to be passed and enacted, what procedure should be used: a referendum or a two-thirds majority vote by parliament.

<sup>135</sup> The four entities are the most relevant in pushing forward the Marriage Bill. One of the roles of the Ministry of Justice and Constitutional Affairs is to coordinate legal reform to bring laws in conformity with the Constitution. Once drafted, the ministry presents laws to cabinet and parliament. Article 132 of the Constitution, which establishes the Law Commission, states that the commission shall have, “the power to review and make recommendations relating to the repeal and amendment of laws and which shall have such powers and functions as are conferred on it by this Constitution and any other Act of Parliament.” According to article 108(1), “The High Court shall have original jurisdiction to review any law, and any action or decision of the Government, for conformity with this Constitution, save as otherwise provided by this Constitution and shall have such other jurisdiction and powers as may be conferred on it by this Constitution or any other law.” The Ministry of Gender, Children and Community Development is mandated to provide policy guidance on women and children. Malawi’s judiciary is an independent body and article 9 of the Constitution mandates it with “the responsibility of interpreting, protecting and enforcing this Constitution and all laws and in accordance with this Constitution in an independent and impartial manner with regard only to legally relevant facts and the prescriptions of law.” The Constitution states in article 103(2) that, “The judiciary shall have jurisdiction over all issues of judicial nature and shall have exclusive authority to decide whether an issue is within its competence.” In its report on review of laws on marriage and divorce, the Law Commission stated:

It is the Commission’s view that the Constitution sets the minimum standard for the protection of children from early marriage. It would not be amiss for a law regulating marriage to set a higher standard. Nonetheless, the Commission also recommends that subsection (7) of section 22 of the Constitution should be amended so that children aged below the age of eighteen years must be prohibited from entering into marriage. The Commission also recommends that subsection (5) of section 23 of the Constitution should be amended so that the threshold on the minimum age for “child” should be raised from sixteen years of age to “eighteen.”

<sup>136</sup> Human Rights Watch phone interview with Eric Chisazo, assistant chief law reform officer, Malawi Law Commission, Lilongwe, December 3 and December 10, 2013.

First, the bill does not specifically require the free and full consent of those entering into marriage, nor define what should constitute free and full consent; or provide mechanisms necessary to determine that consent is freely and fully given. Second, the bill fails to define forced or child marriage, or define and criminalize related harmful practices. Third, the bill fails to make proof of age compulsory for marriage. Fourth, the bill does not create a specific offense of child marriage, and one of forced marriage, or set penalties for them. Doing so would allow the full range of such marriages to be punishable under the law. Also, the bill does not criminalize those involved in the arrangement, for example those contracting or registering a forced or child marriage. Nor does the bill prohibit betrothal before the age of 18; subject to criminal punishment those adults who marry a person who has not reached the marriage age; or include specific penalties for those who solemnize and register child and forced marriages.

Finally, the bill does not penalize and punish acts of violence against girls and women carried out as intimidation or retribution for refusal to marry, which has an important impact on public attitudes, deters such marriages, facilitates the public sector response, grants greater bargaining power to children, and clarifies and facilitates action against perpetrators.

## Definition of a Child

A precise legal definition of a child that is consistent with international human rights law is essential to ensure a coherent application of laws protecting children. In the laws of Malawi, there is no consistent definition of a child. The Constitution and the Child Care, Protection and Justice Act define a child as a person below the age of 16.<sup>137</sup> This definition is inconsistent with the Convention on the Rights of the Child (CRC), ratified by Malawi, which defines a child as anyone below 18. At the same time, the Prevention of Domestic Violence Act defines a child as a person below the age of 18, although our research found that this definition is rarely applied in law enforcement. Under the customary laws of Malawi, a child becomes an adult on attainment of puberty.<sup>138</sup>

Our interviews with police, child protection workers and staffers from NGOs indicate that they do not apply a uniform definition of a child in their protection work. Here are some responses we received when we asked what age they use in defining a child:

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<sup>137</sup> Ibid., art. 23 (5) and Child Care, Protection and Justice Act, art. 2.

<sup>138</sup> MHRC, “Cultural Practices and their Impact on the Enjoyment of Human Rights, Particularly the Rights of Women and Children in Malawi,” p. 28.

- “For me, I use the age of 21, as defined in the Marriage Act, when dealing with cases of child marriage.”<sup>139</sup>
- “We use the Constitution’s definition of a child as someone below 16 in dealing with issues of child marriage. When we are advocating for other protection issues, we apply the age of 20.”<sup>140</sup>
- “The child care act defines a child as one less than 16 years, but I usually use article 183 [of the act] to extend my application of the act to protect children between 16 and 18 years.”<sup>141</sup>

## Birth and Marriage Registrations

Birth and marriage registration are some of the most powerful tools for ensuring equity over a broad scope of services and interventions for children and women. They are essential components of combating child marriage as they assist in proving the age of spouses at the time of marriage.

According to the National Registration Act 2009, all births, marriages, and deaths should be registered and the government is required to establish a birth registration system.<sup>142</sup> The Child Care, Protection and Justice Act, which requires local government authorities to keep and maintain a registry of the births and deaths of children in the area of its jurisdiction, makes it the responsibility of every parent to register their child’s birth.<sup>143</sup> It also provides guidelines for determining the age of a child in the absence of a birth certificate.<sup>144</sup> However, only 17 percent of children below 18 have their birth registered.<sup>145</sup> Lack of birth registration makes it difficult to take age into account before a marriage.

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<sup>139</sup> Human Rights Watch interview with Francis Kantikana, magistrate, Dowa district, September 26, 2013.

<sup>140</sup> Human Rights Watch interview with Alex Malizani, Alfred Kapenta and Mary Phiri, child protection workers, Nkhotakota police VSU, Nkhotakota district, September 25, 2013.

<sup>141</sup> Human Rights Watch interview with Fred Juma Chilowetsa, magistrate, Nkhotakota district, September 25, 2013. Article 183 of the Child Care, Protection and Justice Act on extension of the application of the act states, “A court may, on application or on its own motion, extend the application of this Act to persons that are above sixteen years of age but below twenty-one years of age.” Only this magistrate said he applied this article in child protection work.

<sup>142</sup> National Registration Act, 2009, arts. 3(1), 24(1), 30, 31 and 33-35.

<sup>143</sup> Child Care, Protection and Justice Act, arts. 122–124.

<sup>144</sup> *Ibid.*, arts. 76 (1) and 3 (2).

<sup>145</sup> UNICEF, Child Protection and Mapping Report, p. 22.



### III. Right to Redress for Child Marriage Victims

My husband beats me and quarrels all the time. He beat me when I was pregnant until I got a miscarriage. I went to the police to report him but the police didn't do anything. They said they would discuss it with my husband and that I should go home. My husband then gave the police money and he wasn't arrested.

—Hiwa O., age 15, Chikwawa district, September 2013

Girls and women in Malawi face various abuses before and during marriage. The government of Malawi is committing rights violations by failing to provide girls and women with adequate protection from child and forced marriages and marital abuse, and by not providing them with opportunities for redress.

Few Malawians have access to the formal legal system. Barriers include the high cost of legal fees, long distances to courts that are located mainly in urban areas, lack of awareness about court procedures, inadequate laws, and lack of legal aid. Broader systemic barriers in the criminal justice system such as lack of infrastructure, government resources, and personnel make it difficult for Malawians to seek and obtain justice.

In addition to these obstacles, survivors of gender-based violence in Malawi face discrimination in legal processes, and have to overcome lack of awareness about their rights and cultural hurdles – such as the belief that women are subservient – to seek justice. Most marital problems that are adjudicated are handled by traditional leaders who use customary laws of Malawi's ethnic groups. However, because child marriages are accepted in many Malawian traditions and cultures, customary processes offer little help.

Human Rights Watch heard about many instances where perpetrators of violence against women pay the parents of the victim, or marry them in cases of rape and defilement. A child protection officer confirmed these practices, noting, "Sometimes perpetrators pay the parents. Even in defilement cases, we have seen this happen."<sup>146</sup>

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<sup>146</sup> Human Rights Watch interview with Esau Kamwando and Matthews Chinangwa, child protection officers, Nkhosakota VSU, Nkhosakota district, September 25, 2013.

Vague laws on marriage and domestic violence also create barriers to accessing justice, making it difficult for a girl or woman to know if her marriage is illegal and what rights she has. The weak application of existing protections against child marriage and violence contributes to ambiguity about the scope of legal protection survivors of violence have.

Commenting on the impact of conflicting laws governing child marriage, the Ministry of Justice director of public prosecutions told Human Rights Watch: “The law has to have the capacity to be obeyed. If you bring laws that contradict each other, you make it hard for them to be implemented. You encourage lawlessness.”<sup>147</sup>

Survivors of domestic violence who do seek help may encounter an inadequate, negligent, or even hostile response by the police and the courts, and a shortage of safe spaces for protection. Tembo K., about 22, said she married when she was about 17. She told Human Rights Watch her husband used to beat and verbally abuse her. But when she reported this to the police, “they did not do anything because they knew my husband and are friends with him. They said I must go back to my husband.”<sup>148</sup>

A staff member from an NGO that operates a helpline for children commented on police indifference to helping survivors of violence:

Many times government people don’t follow-up on the cases we refer. For example, police say they don’t have fuel if we call them to go and help a girl who’s told us she is defiled. In other places there is no willingness by police and district officials to follow-up on the cases. We get feedback from the girls saying “I went to the place where you referred me but I was not helped.”<sup>149</sup>

Poverty also hinders women from pursuing justice. For example, police officers at Victim Support Units said that some women bring complaints against their husbands but then withdraw them for fear that he might be arrested and be unable to provide financial support.

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<sup>147</sup> Human Rights Watch interview with Bruno Kalemba, director of public prosecutions, Ministry of Justice and Constitutional Affairs, Lilongwe, October 29, 2013.

<sup>148</sup> Human Rights Watch interview with Tembo K., Mangochi district, September 21, 2013.

<sup>149</sup> Human Rights Watch interview with Charles Banda, media networking and advocacy officer, YONECO, Mangochi district, September 21, 2013.

## Lack of Shelters

We face a big challenge of lack of shelters to offer safety to girls who are chased away from home because of refusing to get married. Kasungu district where we work has no shelters. We have a rehabilitation center in Lilongwe, where we send some girls. There is a small shelter run by an NGO in Lilongwe. For girls with nowhere to go, we talk to them, identify people who can talk to their parents or our team goes to counsel parents and ask them to take the girls back.

—Desmond Mhango, program manager, Center for Youth and Children Affairs (CEYCA), Lilongwe, September 2013

The CRC Committee, the international expert body that interprets and monitors compliance with the CRC, has urged governments to provide shelters to girls who escape from child marriages and to develop and provide adequate resources to implement “physical and psychological recovery programs for child victims of harmful traditional practices,” including child marriage.<sup>150</sup>

There is no data on the number of shelters in Malawi. Police VSUs offer temporary accommodation to survivors of gender-based violence – usually only for a few days – and this is inadequate. A police officer described the challenges they face offering survivors of violence accommodation at the VSU: “VSU offices are small. We counsel victims in the same room that we use as our office. Elders and children share the same room. There is no privacy. These people also need food but we don’t have a budget for that.”<sup>151</sup>

In other instances, girls who have been rescued from child marriages are kept at reform centers for juvenile offenders that do not provide appropriate programs for girl victims of child marriage.<sup>152</sup>

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<sup>150</sup> CRC Committee, *Concluding Observations: Burkina Faso*, para. 59(e), U.N. Doc. CRC/C/BFA/CO/3-4 (2010); *Cameroon*, para. 60(d), U.N. Doc. CRC/C/CMR/CO/2 (2010).

<sup>151</sup> Human Rights Watch interview with inspector Mark Munana, coordinator, community policing; Esnarth Wiz, crime prevention desk officer; and George Sinalo, child protection officer, Chikwawa Police Station, Chikwawa district, September 19, 2013.

<sup>152</sup> Human Rights Watch interview with Esmey Tembenu, Magistrate, and Alex Mlangere, child protection and probation officer, Blantyre child justice court, Blantyre, September 16, 2013.

Shelters are a vital part of state protection for victims of gender-based violence, including child and forced marriages. Lack of shelters, or safe spaces where girls can seek protection and help when at risk of forced marriage, or when they escape from them, is a key barrier to responding efficiently to forced marriages and domestic violence generally. Girls who resist forced marriages may face physical, verbal, and psychological violence from their families or husbands and are not safe at home.

One NGO worker described the challenge of helping survivors of violence in the absence of shelters:

We had a case of a woman whose husband was beating her and making her sleep outside the house. She was in so much fear. We decided to remove her from the home, but we had no place to take her. I was asked if I could accommodate her at my home. She stayed there for one night. The following day we arranged for her to go to her rural home to stay with some relatives. She was supposed to report to us if she got help from her relatives but she did not report. So we don't know what happened to her.<sup>153</sup>

A staffer from an NGO that runs a small shelter and rescues girls from forced marriages said:

We have a safe place in Zomba district where we keep girls we have rescued. We keep girls here for one to two weeks as the police conduct their investigations. If we didn't have this small place, it would have been very difficult to help girls because where do you take them after the rescue? The demand is high and our center can't take more than 12 people.<sup>154</sup>

Several child justice magistrates and social welfare officers said that they refer children in need of shelter to NGOs: "When we remove a child from an abusive family, we refer to social welfare department who identify NGOs to assist."<sup>155</sup>

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<sup>153</sup> Human Rights Watch interview with Anthony Chiseko and Felix Gama, paralegal officers, Women's Voice, Blantyre, September 16, 2013.

<sup>154</sup> Human Rights Watch interview with Charles Banda, media networking and advocacy officer, YONECO, Mangochi district, September 21, 2013.

<sup>155</sup> Human Rights Watch interview with Esmey Tembenu, Magistrate, and Alex Mlangere, child protection and probation officer, Blantyre child justice court, Blantyre, September 16, 2013.

Many child protection officers, traditional and religious leaders, and NGO workers said they also often take in girls needing protection from abuse in their families. A child protection worker in Nkhotakota district said, “Twice I have kept girls needing protection. Chiefs do it almost every month. This arrangement is not appropriate. The government should make a way so that we are not left with the responsibility to care for these girls.”<sup>156</sup>

Other times, police and other social welfare officers identify a relative or a community member who can house a girl who has been removed from abusive situations. The problem with this arrangement is that there is little follow-up to ensure the girl has not been returned to the situation of abuse.

NGOs working on women and children’s rights expressed concern that the government and foreign donors do not take the issue of lack of shelters seriously. Some NGOs said they had land to establish shelters but they have not received needed support from the government and donors.

One NGO director told Human Rights Watch, “We have procured land where we want to build a shelter but we don’t have money. We have tried donors but they are not interested in shelters. They see it as construction.”<sup>157</sup> Another director made similar comments:

There is no political will to protect children [from abuse]. We used to have a transit center here that provided temporary safety to children from the southern region. Police would bring them here. However, the government stopped supporting us, yet we have lots of beds here to offer shelter to children.<sup>158</sup>

Because of lack of shelters, some victims end up going back to their homes where they risk further violence. A police officer at a VSU said: “For victims who come into the VSU, we give

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<sup>156</sup> Human Rights Watch interview with Shabani Mtila, child protection worker, Nkhotakota district, September 25, 2013.

<sup>157</sup> Human Rights Watch interview with Joyce Phekani, director, Center for Alternatives for Victimized and Abused Women and Children, Blantyre, September 16, 2013.

<sup>158</sup> Human Rights Watch group interview with Marcel Chisi, executive director, Active Youth Initiative for Social Enhancement (AYISE); and Christopher Misuku, project officer, AYISE, Blantyre, September 16, 2013.

them a bed and mattress and cooking utensils. The environment is not conducive and many go back to their husbands.”<sup>159</sup>

## Prosecution versus Mediation: Police and Judicial Perspectives

There are traditional mechanisms of dealing with these issues. Matters of marriage are not easy. There are children involved. Why should we lean more towards prosecution?

—Zangazanga Chikhosi, principal secretary, Ministry of Home Affairs and Internal Security, October 2013

Few child or forced marriage cases have been brought before Malawian criminal courts despite existing legislation. Police and magistrates told us that they prefer to prosecute cases of child marriage using Penal Code provisions on defilement, and on a few occasions used provisions on abduction. Rarely do they prosecute the crime of child or forced marriage.

Some NGOs noted the lack of urgency by the police in dealing with child marriage cases. A program manager remarked: “Our courts have very few convictions for child marriage. The police are interested in criminal issues mainly, [and] they seem not to have a good grasp of how to handle child marriage cases.”<sup>160</sup>

In every district Human Rights Watch researched, interviewees told us that law enforcement officers prefer to mediate rather than prosecute offenders.<sup>161</sup> Social welfare officers, child protection workers, NGOs, and traditional and religious leaders also undertake mediation for child marriage and related abuses, often only referring a case to the police for prosecution when mediation has failed.<sup>162</sup> Human Rights Watch witnessed police officers at VSUs

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<sup>159</sup> Human Rights Watch interview with Enoc Tembo, inspector of police and VSU coordinator, Mangochi district, September

<sup>160</sup> Human Rights Watch interview with Desmond Mhango, program manager, Center for Youth and Children Affairs, Lilongwe, September 23, 2013.

<sup>161</sup> Mediation, as used in law, is a form of alternative dispute resolution; a way of resolving disputes between parties. It is structured and has concrete effects. Typically, a third neutral party assists the parties to negotiate a settlement. The term “mediation” is used in this report broadly to refer to any instance in which a third party helps others reach agreement.

<sup>162</sup> Human Rights Watch interviews with Aaron Mackeka, assistant social welfare officer, Mwanza district, September 17, 2013; Harvey Mbwezo, assistant social welfare officer, Mangochi district, September 20, 2013; Nyuma Phiri, child protection officer, Nkhotakota district, September 25, 2013; John Washali, district social welfare officer, Dowa district, September 26, 2013; and Anthony Chiseko and Felix Gama, paralegal officers, Women’s Voice, Blantyre, September 16, 2013.

mediating cases. There are no guidelines or mechanisms to document and monitor how mediation is done, nor have those doing mediation been trained.

One of the reasons given for preferring mediation over prosecution is that it preserves family unity and community relations. A police inspector in Mangochi district told us, “There are cases where we feel like prosecuting, but then you have to consider the plight of the girl. If you prosecute an uncle who is forcing a girl to marry, the relatives might turn against her and chase her away from the home. Here you create another problem.”<sup>163</sup>

A magistrate at a child justice court in Dowa district commented on a defilement case, providing insight into attitudes towards abuse of girls among judicial officials:

I handled a case of a 15-year-old pregnant girl in Tambani that was brought by the girl’s father. I considered that the girl was pregnant and the child will need care when it’s born. I convicted the man of defilement and sentenced him to four years in prison. The conflict I faced is that under the Penal Code it is an offense to have sex with a girl below 16. But what about our culture? They say if a girl is mature, has attained puberty, she can do what she wants. This girl was 15, she was mature. So the law is conflicting with culture. There is also the civil side of it: if you imprison this man, who will maintain the baby?<sup>164</sup>

Mediation can be a potentially useful tool where criminal punishments are unwarranted. But mediation, just as with the criminal justice system, can be rendered unfair by the unequal power relationships of the parties. Placing the matter in mediation should not serve to perpetuate the notion that child marriage is a personal or family issue and not a matter of broader concern to the state. And mediation can lead to further harm to victims if there is not sufficient follow-up to protect against renewed violence.

Law enforcers and government officials said they preferred to mediate cases of gender-based violence because in many instances women withdraw cases that have been

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<sup>163</sup> Human Rights Watch interview with Enoc Tambo, police inspector and coordinator of the VSU, and Teresa Nsukwu, police officer at the VSU, Mangochi police station, Mangochi district, September 20, 2013.

<sup>164</sup> Human Rights Watch interview with DDH Dzowera, magistrate, Mwanza child justice court, Mwanza district, September 17, 2013.

forwarded for prosecution because they lack financial support at home and fear the imprisonment of a breadwinner. In a justice system where the resource burden is placed on the victim instead of on the state, the government's lack of resources contributes to the many cases of gender-based violence going through mediation. The director of public prosecutions said:

[Police prefer mediation] because the state does not have enough resources to follow through these cases. For example, if police do mediation, it means less paper work, fuel, custody time, pens to write, toner to print documents, and the cases will end the same day. So they chose mediation. It is not that they favor mediation but cannot afford due process. But if they send the case to me I follow due process. So they would rather not accelerate them to my office and end them at mediation.<sup>165</sup>

Some magistrates expressed concern that police officers sometimes mediate cases that are criminal in nature. A magistrate in Chikwawa noted, "Many cases reported to police stay at the police station and are not brought before a magistrate. The police prefer to counsel victims and perpetrators and yet some of these cases have criminal elements."<sup>166</sup>

The director of public prosecutions told Human Rights Watch that although there are no guidelines on the types of cases that police can mediate, in practice murder, defilement, and incest cases must be prosecuted.<sup>167</sup> However, police do mediate such cases. Police officers at a VSU who said they have never prosecuted any child marriage cases described the mediation of a defilement case:

The man had befriended a 15-year-old girl and she had moved into his house. Her father reported the case to us. We decided to just counsel him [mediate] and not take him to court because he is looking after four orphans.<sup>168</sup>

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<sup>165</sup> Human Rights Watch interview with Bruno Kalembo, director of public prosecutions, Ministry of Justice and Constitutional Affairs, Lilongwe, October 29, 2013.

<sup>166</sup> Human Rights Watch interview with Gladstone Chirundu, magistrate, Chikwawa, September 18, 2013.

<sup>167</sup> Human Rights Watch interview with Bruno Kalembo, director of public prosecutions, Ministry of Justice and Constitutional Affairs, Lilongwe, October 29, 2013.

<sup>168</sup> Human Rights Watch interview with Enoc Tambo, police inspector and coordinator of the VSU, and Teresa Nsukwu, police officer at the VSU, Mangochi police station, Mangochi district, September 20, 2013.



A magistrate told us about cases in which police allow parents to withdraw defilement or rape complaints being forwarded for prosecution. But he made clear the courts were not at the mercy of those bringing the case: “In cases of rape and defilement, even if parents or relatives tell police to withdraw the case, many times I refuse and sentence.”<sup>169</sup>

## Training for Law Enforcement Officers

We have not received any training. Sometimes we attend a meeting and they talk about a law and say we should use it. Can you call that training?

—Esau Kamwando, child protection officer, Nkhotakota VSU, Nkhotakota district, September 2013

Legal prohibitions on child marriage are only effective if they are enforced and training is a vital component of an enforcement strategy. Almost all child protection workers, including police officers and magistrates interviewed by Human Rights Watch, said they lacked adequate training on women’s and children’s rights. A child protection worker in Nkhotakota district said,

I have been in this job for six months now and I haven’t received any training. I would like training about specific child rights issues, the law, and how to work with the community. I feel I can do mediation because I was briefed by the office but I need to be properly trained.<sup>170</sup>

A staffer for an NGO that runs a child helpline in Mangochi district said, “We see many community child protection workers who are untrained.”<sup>171</sup> Mangochi district’s social welfare officer also noted, “Social workers need to be trained. Some of them are not qualified social workers. Few are graduates.”<sup>172</sup> A magistrate in Dowa district said: “We have not received any training since 2008 on how to handle cases of children. The Child Care Act was passed in 2010 but we have not been trained on it.”<sup>173</sup>

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<sup>169</sup> Human Rights Watch interview with Dwhon Mwenyali, magistrate, Mangochi district, September 20, 2013.

<sup>170</sup> Human Rights Watch interview with Shabani Mtila, child protection worker, Nkhotakota district, September 25, 2013.

<sup>171</sup> Human Rights Watch interview with Charles Banda, media networking and advocacy officer, YONECO, Mangochi district, September 21, 2013.

<sup>172</sup> Human Rights Watch interview with Macloud Mphande, district social welfare officer, Mangochi district, September 20, 2013.

<sup>173</sup> Human Rights Watch interview with Francis Kantikana, magistrate, Dowa district, September 26, 2013.

Special training is needed to ensure that law enforcement and child protection officials understand the various manifestations of gender-based violence and how to deal with domestic violence cases, including cases involving child marriage. Training is also needed on the various laws that protect girls and women against forced marriage and marital abuse, and to ensure that police and judges fully understand the laws on child marriage and domestic violence more generally so that they can properly enforce them.

The importance of the institutionalization of gender-based violence training was illustrated by law enforcement officers' approach to the laws, the procedures for handling cases, and attitudes towards child marriage and related abuses.

Some police and judicial officers we interviewed displayed a lack of understanding of laws. An NGO program manager told us, "Some [police officers] do not understand the legal framework. Some charge on a wrong offense, for example child trafficking instead of abduction. Some use laws that do not exist. Government does business as usual and does not look at these problems."<sup>174</sup>

## Coordination among Government Agencies

The problems in the system to protect children are compounded by the lack of clarity among government ministries and agencies as to where responsibilities lay. Various government entities, officially coordinated by the Ministry of Gender, Children and Community Development, are mandated to tackle violence against women, including child marriages. The Ministry of Justice is responsible for the prosecutors, the Ministry of Gender, Children and Community Development for child protection workers, and the Ministry of Interior for the police. To respond effectively to violence against women, these agencies need to be well coordinated at various levels, including planning, training, data collection, monitoring and evaluation, and resource allocation. Lack of a comprehensive strategy on child marriage detailing specific and targeted action adds to the problem of poor coordination.<sup>175</sup>

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<sup>174</sup> Human Rights Watch interview with Desmond Mhango, program manager, Center for Youth and Children Affairs, Lilongwe, September 23, 2013.

<sup>175</sup> In its mapping report on child protection in Malawi, UNICEF found that poor coordination is a key challenge to protecting children from abuse. See UNICEF, "Protecting Children in Malawi: A Report on the Major Findings of the Mapping and Assessment of the National Child Protection System," p. 10.

## National Action Plan

The government, international donors, and national and international NGOs are implementing programs to address child marriage and violence against women. There are direct programs targeted at ending child marriage, and others that address issues that foster child marriage.<sup>176</sup> The impact of these programs is unclear, partly because few of them have been evaluated. For example, the effectiveness and equitable enforcement of community by-laws is unclear and the way some of them are implemented may violate girls' rights.<sup>177</sup> Ongoing monitoring of programs is also poor, such as with respect to programs around the school readmission policy. Some interventions have limited scope. For example, according to NGO officials, few NGOs have programs on income-generating activities, safe spaces for violence survivors, or engaging men to end gender-based violence. They also noted there are few programs supporting teenage mothers who have not returned to school to improve their literacy, for example through non-formal schooling programs.

Some NGOs expressed concern that donors preferred to fund certain programs even when NGOs had shown that they were not effective. An official of an NGO that works in Mangochi district said:

We worked on child marriage in Mangochi for 12 years. We did community sensitization on the dangers of early and forced marriage of girls. We did a lot of whistleblowing so police could do their work and arrest perpetrators. But we were not very successful because religion and culture supporting early marriage is deeply rooted in Mangochi. There is no willingness from most people in Mangochi to end early marriage. What Mangochi needs is public interest litigation where perpetrators can be taken to court and punished to deter others.<sup>178</sup>

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<sup>176</sup> Human Rights Watch did not conduct a comprehensive review of programs and initiatives addressing child marriage. This analysis is based on interviews with 30 NGOs that mentioned they were implementing such programs.

<sup>177</sup> For example, a village headman in Dowa district told us about issuing an order for a girl to be tested for pregnancy against her will. He told us, "My niece got pregnant. She was at school. We have older women who check girls for pregnancy. They asked her if she was pregnant and wanted to inspect her but my sister was against it. However, I went ahead and issued the order for her to be checked and she was found to be pregnant. My sister was fined a goat. After the baby was born, I told my sister to look after the child and send the girl back to school. She is now in form four." Human Rights Watch interview with Mchighly Kalama, village headman Kayeseramunda, Dowa district, September 25, 2013. However, community bylaws/local regulations signal a community concern that can be capitalized on and possibly generate more effective prevention strategies.

<sup>178</sup> Human Rights Watch group interview with Marcel Chisi, executive director, Active Youth Initiative for Social Enhancement; and Christopher Misuku, project officer, Blantyre, September 16, 2013. Mangochi has a large Muslim population.

Malawi needs a comprehensive approach to child marriage, which should be set out in a national action plan. This will help ensure meaningful progress by the government, its agencies, civil society, and development partners in ending child marriage. Such an approach should include legal reforms and programmatic initiatives that address the causes and consequences of child marriage, as well as protection for girls and women who seek redress through the justice system. A national action plan is also important to ensure scarce resources are used effectively. It will also identify priorities and guide efforts of all players. As one NGO official commented: “It would be great to have a national action plan on child marriage so best practices can be documented and NGOs can come together to work with one aim.”<sup>179</sup>

## Seeking Help and Enforcing Rights

Almost all the child protection workers, social welfare officers, and NGO staffers working with women and children who spoke to Human Rights Watch mentioned a lack of awareness about rights as a key barrier to girls and women reporting child and forced marriages and other domestic violence. The majority of the girls we interviewed knew nothing about the laws on child marriage and that they could report their families for forcing them to marry. Many girls who had been abandoned by their husbands or whose boyfriends had refused to support their children did not know that they could apply for maintenance orders from the courts.

For example, Chanika B., whose grandmother and sister forced her to marry at 15 said, “I did not know I could report them.”<sup>180</sup> A police officer commented, “Girls usually do not report when they are forced to marry because they do not know about their rights. The people who usually report child marriages cases to us are teachers, child protection workers, chiefs or parents who are not happy with the marriage.”<sup>181</sup>

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<sup>179</sup> Eunice Chamgono, coordinator, NGO Gender Coordination Network, Lilongwe, September 23, 2013.

<sup>180</sup> Human Rights Watch interview with Chanika B., Mangochi district, September 21, 2013.

<sup>181</sup> Human Rights Watch interview with inspector Mark Munana, coordinator, community policing; Esnarth Wiz, crime prevention desk officer; and George Sinalo, child protection officer, Chikwawa Police Station, Chikwawa district, September 19, 2013.

## **IV. Malawi's International Legal Obligations on Child Marriage**

The government of Malawi has obligations under international and regional human rights law to protect the rights of girls and women. These include the rights to equality and non-discrimination, to the highest attainable standard of health, to education, to information, to free and full consent to marriage, to choose one's spouse, to be free from physical, mental, and sexual violence, and to be protected from slavery, trafficking, and sale. Those whose rights are violated are entitled to an effective remedy. The inadequate fulfillment and protection of these rights is both a cause and consequence of child marriage in Malawi.

Malawi is a party to the core international treaties that protect women's and girls' human rights. Malawi has ratified the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and the Convention on the Rights of the Child (CRC).<sup>182</sup> Among the regional treaties to which Malawi is a party is the African Charter on Human and Peoples' Rights (African Charter), the African Charter on the Rights and Welfare of the Child (ACRWC), and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol).<sup>183</sup>

International human rights law recognizes state accountability for abuses by private actors and requires states to show due diligence in preventing and responding to human rights violations. For instance, the CEDAW Committee in a general recommendation concluded

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<sup>182</sup> International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S.171, entered into force March 23, 1976, ratified by Malawi on December 22, 1993; International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted December 16, 1966, G.A. Res.2200A (XXI), 21 U.N. GAOR Supp. (No.16) at 49, U.N. Doc. A/6316 (1966) 993 U.N.T.S. 3, entered into force January 3, 1976, ratified by Malawi on December 22, 1993; International Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted December 18, 1979, G.A. Res. 34/180, entered into force September 3, 1981, ratified by Malawi March 12, 1987; Convention on the Rights of the Child (CRC), adopted November 20, 1989, G.A. Res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), entered into force September 2, 1990, ratified by Malawi January 2, 1991.

<sup>183</sup> African (Banjul) Charter on Human and Peoples' Rights (ACHPR), OAU Doc. CAB/LEG/67/3 rev. 5, 21 (1982), entered into force October 21, 1986, ratified by Malawi February 23, 1990; African Charter on the Rights and Welfare of the Child (ACRWC), OAU Doc. CAB/LEG/24.9/49 (1990), entered into force November 29, 1999, ratified by Malawi September 16, 1999; and Protocol to the African Charter on Human and Peoples' Rights on The Rights of Women in Africa (the Maputo Protocol), adopted July 11, 2003, entered into force November 2005 and ratified by Malawi May 20, 2005.

that: “States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence.”<sup>184</sup>

CEDAW explicitly acknowledges social and cultural norms as the sources of many women’s rights abuses, and obliges governments to take appropriate measures to address such abuses. It obliges states to “modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.”<sup>185</sup> The argument that some practices are cultural norms and thus impervious to alteration cannot justify a government’s failure to address discriminatory practices. The Human Rights Committee affirms that governments “should ensure that traditional, historical, religious or cultural attitudes are not used to justify violations of women’s right to equality before the law and to equal enjoyment of all Covenant rights.”<sup>186</sup>

## **Obligation to Enforce Consistent Definition of a Child, Minimum Marriage Age, and Birth and Marriage Registration**

The CRC Committee has repeatedly addressed the need for countries to establish a definition of a child in all domestic legislation that is consistent with the provisions of the CRC, as anyone below the age of 18 years.<sup>187</sup> It has also endorsed 18 as the minimum age for marriage, regardless of parental consent.<sup>188</sup> At the Africa regional level, the African Charter on the Rights and Welfare of the Child explicitly requires governments to take

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<sup>184</sup> Committee on the Elimination of Violence Against Women (CEDAW Committee), General Recommendation No. 19, Violence against women, (Eleventh session, 1992), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 at 84 (1994), (contained in document A/47/38), para. 9. See also see ICCPR, HRC, General Comment 31, Nature of the general legal obligation on states parties to the Covenant, para. 9, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (2004); UN Committee Against Torture, General Comment No. 2: Implementation of Article 2 by States Parties, 24 January 2008.CAT/C/GC/2. Regarding the responsibility of states extending to all within their jurisdiction, see ICCPR, art. 2(1).

<sup>185</sup> CEDAW, art. 5.

<sup>186</sup> Human Rights Committee, General Comment No. 28, para. 5.

<sup>187</sup> CRC, art. 1. In the context of the CRC, “a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.”

<sup>188</sup> See, for example, UN Committee on the Rights of the Child, General Comment No. 4, Adolescent Health and Development in the Context of the Convention on the Rights of the Child, (Thirty-third session, 2003), para. 20 (“The Committee strongly recommends that States parties review and, where necessary, reform their legislation and practice to increase the minimum age for marriage with and without parental consent to 18 years, for both girls and boys”). There is an evolving consensus in international law that 18 should be the minimum age for marriage.

effective action, including through legislation, to specify the minimum age of marriage as 18 years.<sup>189</sup> The Maputo Protocol also specifies that governments are to “enact appropriate national legislative measures to guarantee that the minimum age of marriage for women shall be 18 years.”<sup>190</sup>

The CEDAW Committee addressed the need for Malawi to take all necessary measures to expedite the enactment of outstanding bills, including the Marriage, Divorce and Family Relations Bill, which defines a child as any person below 18 years and sets the minimum age of marriage at 18 years.<sup>191</sup>

Malawi should also implement the legislation making the registration of births and marriages compulsory. The Convention on Consent to Marriage, Minimum Age for Marriage, and Registration of Marriages states that all marriages should be registered by a competent authority.<sup>192</sup> The Maputo Protocol also calls on governments to ensure that all marriages are recorded in writing and registered in accordance with national laws.<sup>193</sup> The CRC committee has also addressed States parties in general, and to Malawi in particular, the obligation to make the registration of all births and marriages compulsory and to put in place measures to enforce implementation.<sup>194</sup>

## Rights to Equality and Non-Discrimination

Malawi has obligations under international law to ensure women’s rights to equality and non-discrimination. The ICCPR calls for “the equal right of men and women to the

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<sup>189</sup> ACRWC, art. 21(2).

<sup>190</sup> Maputo Protocol, art. 6(a).

<sup>191</sup> CEDAW, “Consideration of Reports Submitted by States Parties under Article 18 of the Convention, Concluding Observations, Malawi,” January 22, 2010, <http://sim.law.uu.nl/SIM/CaseLaw/uncom.nsf/fe005fcb50d8277cc12569d5003e4aaa/70143da9ad8bd5a7c12576cfoo356bb9?OpenDocument> (accessed November 6, 2013) paras. 14 and 15.

<sup>192</sup> Convention on Consent to Marriage, art. 3.

<sup>193</sup> Maputo Protocol, art. 16 (d).

<sup>194</sup> For the specific recommendation to Malawi see UN Committee on the Rights of the Child, “Consideration of Reports Submitted by States Parties under Article 44 of the Convention, Concluding Observations, Malawi,” March 27 2009, <http://www2.ohchr.org/english/bodies/crc/docs/co/CRC-C-MWI-CO2.pdf> (accessed January 31, 2014), paras. 36 and 37. For other countries see for example, UN Committee on the Rights of the Child, “Consideration of Reports Submitted by States Parties under Article 44 of the Convention, Concluding Observations, Myanmar,” March 14, 2012, [http://www2.ohchr.org/english/bodies/crc/docs/co/CRC\\_C\\_MMR\\_CO\\_3-4.pdf](http://www2.ohchr.org/english/bodies/crc/docs/co/CRC_C_MMR_CO_3-4.pdf) (accessed January 31, 2014), paras. 43 and 44; and “Consideration of Reports Submitted by States Parties under Article 44 of the Convention, Concluding Observations, Djibouti,” October 7, 2008, <http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC.C.DJI.CO.2.pdf> (accessed January 31, 2014), paras. 33 and 34.

enjoyment of all civil and political rights set forth in the ... Covenant,” including the right to birth registration, to free and full consent to marriage, to equality of rights and responsibilities of spouses during marriage and at its dissolution, to life, to liberty and security of the person, and to freedom of expression.<sup>195</sup>

The ICESCR contains similar provisions against discrimination.<sup>196</sup> The CRC recognizes the right of children to be free from discrimination, including on the grounds of sex and age.<sup>197</sup> The ACRWC states that, “Child marriage and the betrothal of girls and boys shall be prohibited.”<sup>198</sup> Prohibitions on child marriage and non-discrimination are also included in the Maputo Protocol and the African Charter.<sup>199</sup>

The CEDAW Committee has explained that “[i]nherent to the principle of equality between men and women, or gender equality, is the concept that all human beings, regardless of sex, are free to develop their personal abilities, pursue their professional careers and make choices without the limitations set by stereotypes, rigid gender roles and prejudices.”<sup>200</sup>

Child marriage is considered a form of gender-based discrimination because the practice disproportionately affects girls, and negatively impacts the realization of girls’ and women’s many other human rights. The impact of these violations is felt by women throughout their lives, and extends to their families and societies.

## Right to Consent to Marriage, Choose a Spouse

The right to marriage based on “full and free consent” of the spouses is recognized in several international instruments.<sup>201</sup> Article 16 of CEDAW includes the equal right of men

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<sup>195</sup> ICCPR, arts. 3, 6, 9, 19, 23 and 24.

<sup>196</sup> ICESCR, art. 2.

<sup>197</sup> CRC, art. 2.

<sup>198</sup> ACRWC, art. 21.

<sup>199</sup> The Maputo Protocol in article 6 calls on governments to develop laws that establish 18 as the minimum age of marriage. The African Charter in article 18 obligates governments to “ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions.”

<sup>200</sup> CEDAW Committee, General Recommendation No. 28: the core obligations of states parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, 47th Sess., U.N. Doc. CEDAW/C/ GC/28, 2010, para. 5.

<sup>201</sup> Universal Declaration of Human Rights, adopted December 10, 1948, G.A. Res. 217A(III), U.N. Doc. A/810 at 71 (1948), art. 16; ICCPR, art. 23; ICESCR, art. 10(1).



and women to enter into marriage, and the Convention on the Consent to Marriage further specifies that each spouse must give his or her consent “in person...as prescribed by law.”<sup>202</sup> The Maputo Protocol specifies that “no marriage shall take place without the free and full consent of both parties.”<sup>203</sup>

The UN Human Rights Committee, which monitors the implementation of the ICCPR, clarified in General comment No. 19 that the marriageable age for both men and women shall be based on the ability of both spouses to give their full and free consent.<sup>204</sup> In its General Comment No. 28 it affirms states’ obligation to treat men and women equally with regard to marriage.<sup>205</sup> CEDAW General Comment No. 21 on the right to marriage reiterates men and women’s equal right to enter into marriage, conditioned on their free and full consent.<sup>206</sup>

Consent cannot be “free and full” when one of the parties involved is not sufficiently mature to make an informed decision about a life partner; or the meaning and responsibility of marriage. Testimonies in this report indicate that many girls, including older girls who are of the Constitutional legal marriage age, were unaware of the implications of marriage and the responsibilities that come with it.

## Right of Children to Express Their Views Freely

The right of children to express their views is set out in the CRC, which stipulates that they have this right in all matters affecting them, according to their age and maturity.<sup>207</sup> The CRC Committee’s General Comment No. 12 on the right of the child to be heard affirms this right in any judicial or administrative proceeding affecting their well-being.<sup>208</sup> In its comment, the committee goes on to set out the obligations of governments to establish reporting

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<sup>202</sup> CEDAW, art.16, and Convention on Consent to Marriage, art. 2.

<sup>203</sup> Maputo Protocol, art. 16.

<sup>204</sup> UN Human Rights Committee, General Comment No. 19 (The Family), Protection of the Family, the Right to Marriage and Equality of the Spouses, (Article 23), (Thirty-ninth session, 1990), Compilation of General Comments and General recommendations Adopted by Human Rights Treaty bodies, UN Doc.HRI/Gen/1/Rev.7 (2004), p. 149, para. 4.

<sup>205</sup> UN Human Rights Committee, General Comment No. 28, Equality of Rights Between Men and Women (Article 3), (Sixty-eight session, 2000), Compilation of General Comments and Recommendations Adopted by Human Rights Treaty Bodies, UN Doc.HRI/GEN/1/Rev.7 (2004), p. 178, para. 27.

<sup>206</sup> CEDAW Committee, General Recommendation No. 21, Equality in Marriage and Family Relations, (Thirteenth Session, 1994), Compilation of General comments and General Recommendations Adopted by Human Rights Treaty Bodies, UN Doc.HRI/GEN/1/Rev.1(2004), paras. 16, 1 (a) and (b).

<sup>207</sup> CRC, art. 12.

<sup>208</sup> Committee on the Rights of the Child, General Comment No. 12, The Right of the Child to Be Heard, U.N. Doc.CRC/C/GC/12(2009), para. 2.

mechanisms such as telephone help lines and support mechanisms to assist children to express their views. This includes access to physicians and to teachers who can offer a safe space for children to express their views freely or to seek help in any matter related to their well-being.<sup>209</sup>

Child marriage is incompatible with international human rights law, even if children do “consent” to the marriage. This does not mean however that Malawi should not respect the right of children to express their views. Instead, the government should take policy and programmatic measures to ensure children’s right to be heard in matters concerning marriage.

## Right to Health

The right to health is enshrined in numerous treaties. The ICESCR specifies that everyone has a right “to the enjoyment of the highest attainable standard of physical and mental health,” and obligates governments to implement the right without discrimination on the basis of sex, age, or other prohibited grounds.<sup>210</sup> The CRC recognizes children’s rights to health and to access health services, and notably the right to be protected from traditional practices prejudicial to the health of the child.<sup>211</sup> CEDAW obligates governments to take all appropriate measures to eliminate discrimination against women in the field of women’s health.<sup>212</sup>

Several treaties and authoritative interpretations specifically note that reducing maternal mortality rates and improving maternal health services should be considered priorities in the progressive realization of the right to health.<sup>213</sup>

The CRC Committee has called on governments to reduce child mortality,<sup>214</sup> and to raise the age of sexual consent to prevent forced marriage and ensure the health of children.<sup>215</sup>

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<sup>209</sup> Ibid.

<sup>210</sup> ICESCR, art. 12.

<sup>211</sup> CRC, art. 24; see also, CESCR, General Comment No. 14, The right to the highest attainable standard of health (Twenty-second session, 2000), U.N. Doc. E/C.12/2000/4 (2000), reprinted in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, U.N. Doc. HRI/GEN/1/Rev.6 at 85 (2003), para. 22.

<sup>212</sup> CEDAW, art. 12(1).

<sup>213</sup> CESCR, General Comment No. 14, , paras. 14 and 21.

<sup>214</sup> CRC Committee, General comment No. 15: The Right of the Child to the Enjoyment of the Highest Attainable Standard of Health (art. 24), CRC/C/GC/14 (2013), para. 33.

<sup>215</sup> CRC Committee, Concluding Observations: Costa Rica, paras.27, 28, U.N. Doc CRC/C/CRI/CO/4 (2011).

The CEDAW Committee has specifically addressed the need for Malawi to make every effort to raise awareness of and increase women's access to healthcare facilities, to put in place measures to reduce maternal mortality by identifying and addressing causes of maternal death and to eradicate harmful traditional practices and customs against women.<sup>216</sup> The CRC Committee also addressed the need for Malawi to take legislative and awareness-raising measures to prohibit and eradicate traditional practices, including child and forced marriages that are harmful to the health, survival and development of children, boys as well as girls, and the need to strengthen sex education and reproductive and mental health counseling services.<sup>217</sup>

The risk of child marriage – and subsequently reproductive health problems – often begins when young girls get pregnant early and are pressured by family members to marry or girls themselves feel marriage is the best option for them. One of the factors leading to early pregnancy and childbearing is the lack of accurate reproductive health knowledge. Although there is a life skills program in Malawian schools covering sexuality and reproductive health, human rights, and gender-based violence – including child marriage and sexual harassment – it is not well-implemented and the government of Malawi lacks a comprehensive policy on adolescent reproductive health.

## Right to Education

International law provides that everyone has the right to free primary education and the right to equal opportunity in education.<sup>218</sup> The Maputo Protocol specifically places obligations on governments to eliminate all forms of discrimination against women and guarantee them equal opportunity and access to education and training.<sup>219</sup>

The CRC Committee explains that the purpose of education is to develop a child's "personality, talent, mental and physical abilities to full potential" and to prepare a child

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<sup>216</sup> CEDAW Committee, "Concluding Observations of the Committee to End All Forms of Discrimination against Women, Malawi," January 22, 2010, <http://sim.law.uu.nl/SIM/CaseLaw/uncom.nsf/fe005fcb50d8277cc12569d5003e4aaa/70143da9ad8bd5a7c12576cfoo356bb9?OpenDocument> (accessed November 6, 2013), paras 35, 37 and 41.

<sup>217</sup> CRC Committee, "Consideration of Reports Submitted by States Parties under Article 44 of the Convention, Concluding Observations, Malawi," January 24, 2002, [http://www.bayefsky.com/pdf/malawi\\_t4\\_crc.pdf](http://www.bayefsky.com/pdf/malawi_t4_crc.pdf) (accessed November 6, 2013), paras. 425 (b) and 429.

<sup>218</sup> ICESCR, art. 13; CRC, art. 28 and CRC, art. 29; African Charter, art. 17; Maputo Protocol, art. 12; ACRWC, art. 11.

<sup>219</sup> African Charter, art. 17; ACRWC, art. 11; CEDAW, art. 10; Maputo Protocol, art. 12.

to assume life's responsibilities.<sup>220</sup> It remarks that an education provides children with life skills such as critical thinking, the ability to make well-balanced decisions, to develop a healthy lifestyle and good social relationships; and empowers them by developing their self-esteem and confidence.<sup>221</sup>

Child and forced marriages are major contributors to Malawi's low rates of school enrollment among girls, particularly at the secondary level. They therefore also contribute to low rates of literacy among women. Such marriages are also a major cause of school dropout for girls. By failing to curb child and forced marriages, Malawi is failing in its obligation to ensure access to education for boys and girls on an equal basis.

## Right to be Free from Physical, Mental, and Sexual Violence

Under international and regional law, the government of Malawi has an obligation to prevent, investigate, prosecute, and punish violence against girls and women.<sup>222</sup> The responsibility is grounded in the rights of non-discrimination and equality, security of person, health, and freedom from torture and other ill-treatment provided in treaties that Malawi has ratified.

The CRC obligates governments to protect children from physical, mental, and sexual abuse or exploitation through legislation and other social and educational measures. The obligation to protect children from violence includes protection from parents or other caregivers.<sup>223</sup> The CRC also sets out the obligation of governments to protect children from sexual exploitation and abuse.<sup>224</sup>

The Maputo Protocol calls on states to adopt legislative, administrative, social, and economic measures as may be necessary to identify the causes and consequences, and ensure the prevention, punishment, and eradication of all forms of violence against

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<sup>220</sup> CRC Committee, General Comment No. 1, The Aims of Education (Article 29(1)), (Twenty-sixth session, 2001), Compilation of General Comments and General recommendations Adopted by Human Rights Treaty Bodies, UN Doc. HRI/gen/1/rev.7, p.294, para. 1(a).

<sup>221</sup> Ibid., para. 2.

<sup>222</sup> Human Rights Committee, General Comment No. 31, Nature of the general legal obligation on states parties to the Covenant (hereinafter "General Comment 31"), para. 9, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (2004); UN Committee Against Torture, General Comment No. 2: Implementation of Article 2 by States Parties, 24 January 2008.CAT/C/GC/2.

<sup>223</sup> CRC, art. 19.

<sup>224</sup> Ibid., art. 34.

women, including sexual violence whether it occurs in private or public.<sup>225</sup> It specifically obligates governments to take measures to protect women who are at risk of being subjected to harmful practices or all other forms of violence, abuse and intolerance, and to establish mechanisms and accessible services for effective information, rehabilitation, and reparation for victims of violence against women.<sup>226</sup>

In its general comment on the right of the child to freedom from all forms of violence, the CRC Committee explains “sexual abuse and exploitation” to include forced marriage, sexual exploitation, and sexual slavery. Included among “harmful practices” are forced marriage and early marriage.<sup>227</sup>

As this report shows, girls in Malawi who are subjected to child marriage may experience violence from their spouses, in-laws, and other family members. This includes physical, verbal, sexual, and psychological abuse. Girls and women often do not report violence to the authorities due to a number of cultural and legal barriers as noted. Nonetheless, some women do report abuse, including forced marriages, but they rarely get redress.

Malawi’s obligations to prevent, investigate, prosecute, and punish violence against girls and women includes ensuring that state actors, such as the police, the justice system, and traditional courts take all reasonable steps to provide everyone within its territory with effective protection against such violence by private parties. This obligation includes that a government effectively investigate such violence in a manner capable of leading to the identification, prosecution, and punishment of those responsible.<sup>228</sup>

The inaction of government authorities, police, prosecutors, and customary bodies in the face of violence against women creates an atmosphere of impunity facilitating further abuse, and dissuades women from seeking help. Their failure to act exposes girls and women to further violence.

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<sup>225</sup> Maputo Protocol, arts. 4(2 and b) and 3(4).

<sup>226</sup> Ibid., arts. 5(d) and 4(2f).

<sup>227</sup> Committee on the Rights of the Child, General Comment No. 13 (2011) on the Right of the Child to Freedom from all Forms of Violence (Article 19), U.N. Doc. CRC/C/GC/13, paras 25(d), and 29(e).

<sup>228</sup> See generally, the European Court of Human Right, *Kaya v. Turkey*, judgment of February 19, 1998, Reports of Judgments and Decisions 1998-I, p. 324; *Jordan v. the United Kingdom*, No. 24746/94, judgment of May 4, 2001; *Finucane v. the United Kingdom*, No. 29178/95, judgment of July 1 2003; *Isayeva v. Russia*, 57950/00, judgment of July 27, 2004; *Adali v. Turkey*, 38187/97, judgment March 31, 2005.

## Recommendations

### To the President of Malawi

- Sign into law the Education Bill that was passed by parliament in October 2013.
- Publicly support the prompt enactment of the Marriage, Divorce and Family Relations Bill, calling on relevant government agencies to consult and take the required legislative steps for passage.

### To the Ministry of Justice and Constitutional Affairs

- Take the necessary legislative steps for the enactment of the Marriage, Divorce, and Family Relations Bill, and promptly carry out its provisions.
- Revise the Marriage, Divorce and Family Relations Bill before it goes through the legislative process to include the following:
  - A provision that clearly establishes the requirement for full and free consent of both partners to a marriage.
  - A provision that would require young persons to demonstrate proof of age before obtaining a marriage license.
  - A clear definition of forced marriage that is broad enough to include a definition of free and full consent and the whole array of related harmful practices.
  - A specific offense of child marriage and forced marriage, and criminalization of adults involved in the arrangement, contracting or solemnizing and registering of a child marriage or forced marriage.
  - Provision that the betrothal and the marriage of a child shall have no legal effect.
  - Penalties and punishment for acts of violence against anyone carried out as intimidation or retribution for refusal to marry; provisions to assist victims of attacks with legal, medical, and psycho-social services.
- Use the opportunity of the current review of the Prevention of Domestic Violence Act to expand protections against sexual violence.
- Seek revisions to the Penal Code to recognize marital rape as a criminal offense, stating specifically that no marriage or other relationship shall constitute a defense to a charge of sexual assault.

- Together with the Ministry of Home Affairs and Internal Security, and the Ministry of Gender, Children and Community Development, provide regular trainings for police and prosecutors on their responsibilities to investigate and prosecute violence against women, including child marriage, under the applicable law. Trainings should clarify that child marriage can be prosecuted as a crime, in addition to using Penal Code provisions on defilement and abduction; and aim to address negative attitudes towards domestic violence.

## **To the Ministry of Gender, Children and Community Development**

- Create a national action plan to combat child marriage, with input from women's and children's rights groups, health professionals, and other service providers; coordinating efforts among all relevant ministries; and ensure sufficient resources to implement the plan.
- Develop and implement mechanisms for improving coordination among various government agencies working on violence against women, including child marriage.
- Establish a national budget line specifically aimed at combating violence against women on national, district, and traditional authority levels.
- Establish more safe spaces, such as shelters, for girls threatened by early and forced marriages or other forms of domestic violence.
- Together with the Ministry of Education, develop and implement childcare support programs to enable girls who have children to attend school.
- In coordination with the Ministry of Home Affairs and Internal Security, establish a central database on violence against women to record the number of cases of violence against women reported and addressed through prosecution or mediation and their outcomes; ensure such data is publicly available.
- Together with the Ministry of Justice and Constitutional Affairs, initiate a national awareness raising campaign on violence against women, including child marriage, focusing on the rights of victims as well as the responsibilities of law enforcement, prosecution, and other relevant authorities.
- Create, with the assistance of nongovernmental organizations, a database of violence against women programs, identifying gaps in such programming to promote international good practices.

## To the Ministry of Home Affairs and Internal Security

- Provide, in coordination with the Ministry of Gender, Children and Ministry of Justice and Constitutional Affairs, regular trainings for police and prosecutors on their responsibilities to investigate and prosecute violence against women, including child marriage, under the applicable law. Trainings should clarify that child marriage can be prosecuted as a crime, in addition to using Penal Code provisions on defilement and abduction; and aim to address negative attitudes towards domestic violence.
- Together with the Ministry of Gender, Children and Community Development, initiate a national awareness-raising campaign on violence against women, including child marriage, focusing on the rights of victims as well as the responsibilities of law enforcement, prosecution, and other relevant authorities.
- In coordination with the Ministry of Gender, Children and Community Development, establish a central database on violence against women to record the number of cases of violence against women reported and addressed through prosecution or mediation and their outcomes; ensure such data is publicly available.

## To the Ministry of Education

- After the Education Bill becomes law:
  - Develop a comprehensive and costed plan to implement the provision on compulsory education.
  - Initiate a national awareness raising campaign on the education law, with particular attention to compulsory education.
- Expand efforts to provide continuing formal education and vocational training opportunities for married girls and women, for example by initiating evening classes or part-time classes.
- Together with the Ministry of Gender, Children and Community Development, expand child care for teenage mothers so they can attend school.
- Monitor implementation of the readmission policy for girls who leave school because of pregnancy or marriage.
- Improve monitoring and data collection on girls who drop out of school due to pregnancy or marriage and readmission, as well as on girls' attendance and completion rates.
- Monitor and ensure competent teaching of "life skills" lessons in schools.



## **To the Ministry of Health**

- Develop and implement a national policy and a national strategy on adolescent reproductive health. Both the policy and the strategy should have a strong focus on the right to access health information and services, including contraception, and address factors that contribute to unplanned pregnancies.
- Improve access to reproductive health services and information for all girls and women, including access to emergency obstetric care and family planning.
- Provide tailored health information to young mothers about proper nutrition and care for their health and the health of their babies.
- Raise awareness among health workers and the public on the importance of registering all births, including home deliveries.

## **To the Judiciary**

- Issue judicial circulars to raise awareness among judicial officials that:
  - Clarify the provision in the Child Care, Protection and Justice Act, article 183, that, “A court may, on application or on its own motion, extend the application of this Act to persons that are above sixteen years of age but below twenty-one years of age.”
- Provide regular training for judges on their legal responsibilities to punish violence against women, including child marriage, under the applicable law. Trainings should clarify that child marriage can be punished as a crime in addition to using Penal Code provisions on defilement and abduction.

## **To the Malawi Human Rights Commission**

- Increase monitoring of child marriage cases. Investigate and publish reports on the issue of child marriages and gaps in protection and access to justice for victims.

## **To United Nations Agencies and International Donors**

- Urge the government to enact and implement the Marriage, Divorce and Family Relations Bill.

- Urge the government to develop a comprehensive national strategy for combating child marriage, and support programs to implement the national action plan once it is developed.
- Support the development and implementation of a national adolescent reproductive health policy and a strategy that has a strong focus on preventing teenage pregnancy.
- Support nongovernmental organizations to monitor and evaluate programs on violence against women and to use this information to improve programming.
- Support efforts to assist girls in seeking legal remedies for forced marriage and abuse, obtaining maintenance, and in continuing their education, including through support for public interest litigation.
- Support the establishment and maintenance of shelters for survivors of gender-based violence.

## **Acknowledgements**

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# “I’ve Never Experienced Happiness”

## Child Marriage in Malawi

One out of two girls in Malawi will be married by her eighteenth birthday. Some are as young as 9 or 10 when they are married. Child marriage violates the rights of girls and women. It increases Malawi’s high levels of poverty, illiteracy, and maternal mortality. It widens marked gender gaps in education.

Many Malawian families see marriage as a way to improve their economic status, sometimes through payment of a dowry, or through continued support by their daughter’s husband. Child marriage is also deeply entrenched in Malawi’s traditions and patriarchal culture.

*“I’ve Never Experienced Happiness,”* based on in-depth interviews with 80 girls and women in six districts in Malawi, examines how child marriage negatively shapes the experiences, status, and security of Malawian girls and women, and limits their development. It shows how the practice violates their rights to health and education, freedom from physical, mental, and sexual violence, and their right to marry only when they can give their free and full consent.

Human Rights Watch recommends the Malawian government adopt a comprehensive approach to child marriage. This should include legal reforms and programmatic initiatives that effectively address the causes and consequences of child marriage, as well as protection for girls and women who seek redress through the justice system. Reforms are urgently needed to reduce the far-reaching harms of child marriage and its negative implications for Malawi’s future development.



*A 14-year-old girl holds her baby at her sister’s home in a village in Kanduku, in Malawi’s Mwanza district. She married in September 2013, but her husband chased her away. Her 15-year-old sister, in the background, married when she was 12. Both sisters said they married to escape poverty.*

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