

Committee on the Rights of the Child
Office of the High Commissioner for Human Rights
Palais Wilson, 52 Rue des Pâquis
1201 – Geneva – CH

November 21, 2016

Re: Plenary Session on Malawi

Dear Members of the Committee on the Rights of the Child,

We write in advance of your upcoming plenary session on the government of Malawi's compliance with the Convention on the Rights of the Child.

Human Rights Watch has documented numerous child rights violations in Malawi in recent years. This submission relates to Articles 1, 2, 3, 6, 19, 24, 27, 28, 29, 31, and 34 of the Convention on the Rights of the Child. It proposes issues and questions that Committee members may wish to raise with the government while reviewing its compliance with these articles.

Thank you for your attention to our concerns, and best wishes for a productive session.

Sincerely,

A handwritten signature in black ink that reads "Zama Coursen-Neff". The signature is written in a cursive, flowing style.

Zama Coursen-Neff
Executive Director
Children's Rights Division

Legal definition of childhood (Article 1)

Malawi's constitution and the Child Care, Protection and Justice Act define a child as a person under the age of 16 years.¹ The Prevention of Domestic Violence Act defines a child as a person below 18.² Most magistrates, police officers, and child protection workers interviewed by Human Rights Watch in 2014 did not recognize 16 and 17-year-olds as children, because they adhered to the definition of a child in the constitution. This means that adolescents aged 16 and 17 years old cannot access the services and protections they are entitled to as children.³

In November 2016, at an African Union Commission meeting in Gambia, the government committed to bring its constitution in line with regional and international standards.⁴

Human Rights Watch urges the Committee to ask the government of Malawi:

- What timeline does the government have to amend the definition of a child in its constitution?

Human Rights Watch asks the Committee to call upon the government of Malawi to:

- Follow through on its commitment to bring the constitution in line with regional and international standards and set the definition of childhood as anyone under the age of 18.
- Once the definition of childhood has been amended in the constitution, harmonize its child protection laws.

Child Marriage

Articles 2, 6, 19, 24, 28, 29, 31, 34

Child marriage violates a wide range of human rights enshrined in the Convention on the Rights of the Child, including freedom from violence and discrimination, and the rights to survival, health, and education. The younger the age of marriage, the more severe these rights violations often are.

Malawi has one of the highest child marriage rates in the world. According to the United Nations, on average, one out of two girls in Malawi will be married by their eighteenth birthday.⁵ Child marriage is widespread in all three regions of Malawi, in both urban and rural areas.⁶ Data shows little to no change in child marriage prevalence since 2000 where it stood

¹ Constitution of the Republic of Malawi, art. 23 (5); Child Care, Protection and Justice Act, No. 22 of 2010, Part 1 (2).

² Prevention of Domestic Violence Act, Act 5 of 2006, Part 1 (2).

³ Agnes Odhiambo, "Good News for Child Protection in Malawi, Decision to Redefine Childhood Should Help Deter Child Marriage," November 3, 2016, <https://www.hrw.org/news/2016/11/03/good-news-child-protection-malawi>.

⁴ Ibid.

⁵ United Nations Population Fund (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_indicatordefinition.pdf (accessed July 15, 2013), p. 8.

⁶ Ibid.

at 47 percent.⁷ The 2014 Human Rights Watch report “[I’ve Never Experienced Happiness”: Child Marriage in Malawi](#) is based on interviews with 80 girls and women in six districts in southern and central Malawi, and examines how child marriage negatively impacts Malawian girls and women.

Tradition and culture

Strong social and cultural norms drive the practice of child marriage in Malawi. Many communities view child marriage as being in the best interests of girls and their families, and some families see child marriage as a way to improve their economic status, 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 to escape poverty. Adolescent pregnancy is also stigmatized in Malawi, and marriage is regarded as a means of protecting girls who become pregnant from undermining family honor.⁸

Education

Child marriage often interrupts girls’ education or denies them access altogether. Few of the girls Human Rights Watch interviewed had returned to school after marriage or pregnancy.⁹ Some of the reasons given by girls for not returning included lack of money, lack of childcare, unavailability of adult classes or other flexible school programs such as evening classes, and the need to do household chores.¹⁰ Others said that their husbands or in-laws would not allow them to continue school after marriage, or that marriage was incompatible with schooling.¹¹ Many girls drop out of school as result of pregnancy. In 2010 and 2013, 27,612 girls in primary and 4,053 girls in secondary schools dropped out due to marriage.¹² Within that same period, 14,051 primary school girls and 5,597 secondary school girls dropped out because they were pregnant.¹³

Child marriage is also more common among uneducated girls in Malawi. Almost two-thirds of women with no formal education were child brides, compared to five percent of women who attended secondary school or higher levels of education.¹⁴

Health and Violence against Women and Girls

There is societal pressure in Malawi for women and girls to get pregnant soon after marriage. Many girls interviewed by Human Rights Watch had poor knowledge of reproductive health and

⁷ Ibid.

⁸ Human Rights Watch, “*I’ve Never Experienced Happiness*”: *Child Marriage in Malawi*, March 2014, https://www.hrw.org/sites/default/files/reports/malawio314_ForUpload.pdf, pp. 1-2, p. 17.

⁹ Ibid., p. 20.

¹⁰ Ibid.

¹¹ Ibid.

¹² Human Rights Watch email communication with Chandiwira Nyirenda, Department of Planning, Ministry of Education, Science and Technology, Lilongwe, November 20, 2013

¹³ Ibid.

¹⁴ United Nations Children’s Fund (UNICEF), “Ending Child Marriage: Progress and prospects,” UNICEF, New York, 2014, http://www.unicef.org/media/files/Child_Marriage_Report_7_17_LR..pdf (accessed October 11, 2016).

contraception use, and lack access to such information and services.¹⁵ Girls who become pregnant are often forced by their families to get married. Early pregnancy and childbirth can result in serious risks to both the health and lives of young mothers, as well as their children. Malawi's maternal mortality rate is high at 634 deaths per 1000,000 live births.¹⁶ The numerous health risks of early pregnancy include maternal death, obstetric fistula, premature delivery, and anemia, and there is also significant cost to the health care system.¹⁷

Child marriage in Malawi also exposes girls to gender-based violence, including domestic and sexual violence. Some girls who reject forced marriages face threats, verbal abuse, or being thrown out of their homes by their families.¹⁸ Others told Human Rights Watch that they were verbally and physically assaulted by their husbands and in-laws. Some others said their husbands abandoned them, leaving them to take care of their children alone without financial support, thus increasing their likelihood of poverty.¹⁹

Government Role

Victims of child marriage in Malawi face many barriers in getting help from authorities. Many girls 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.²⁰ Those who seek formal justice face many challenges including the high cost of legal fees, long distances to courts that are located mainly in urban areas, lack of awareness about court procedures, and lack of legal aid.²¹ Victims may also encounter an inadequate, negligent, or even hostile response by the police and the courts, and a shortage of safe spaces for protection, making it difficult for victims of child marriage to seek and obtain justice.²² 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.²³

Existing laws in Malawi do not adequately protect girls against child marriage and are also poorly implemented. The government has failed to develop and implement a comprehensive plan to end child marriage.

In early 2015, the government enacted the Marriage, Divorce and Family Relations Act (Marriage Act) of 2015, consolidating all laws on marriage and divorce, and setting the minimum age for marriage as 18. The Marriage Act also contains strong protections for married

¹⁵ Human Rights Watch, *"I've Never Experienced Happiness,"* p. 17.

¹⁶ World Health Organization (WHO), UNICEF, UNFPA, World Bank Group, and United Nations Population Division Maternal Mortality Estimation Inter-Agency Group, "Maternal mortality in 1990-2015 Malawi," http://www.who.int/gho/maternal_health/countries/mwi.pdf (accessed October 11, 2016).

¹⁷ Human Rights Watch, *"I've Never Experienced Happiness,"* p. 2.

¹⁸ *Ibid.*

¹⁹ *Ibid.*

²⁰ *Ibid.*, p. 4.

²¹ *Ibid.*, p. 42.

²² *Ibid.*, p. 4.

²³ *Ibid.*, p. 42.

women, giving equal status to both parties, and includes a requirement to register marriages with the government. While this is an important step, in order to have effect, lawmakers must still amend competing provisions in Malawi's constitution, which takes precedence over any conflicting laws.²⁴ 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 explicitly prohibit marriage of children below 15, but provides that the state is obliged merely to "discourage" marriages where either party is under age 15.²⁵

Human Rights Watch urges the Committee to ask the government of Malawi:

- Does the government plan to reform the constitution to make the minimum age of marriage 18?
- What comprehensive national plan does the government have to prevent and address the consequences of child marriage?

Human Rights Watch asks the Committee to call upon the government of Malawi to:

- Amend the constitution to raise the minimum age of marriage to 18 for both boys and girls without exception.
- Amend the constitution to establish a requirement for full and free consent of both partners.
- Create a national plan to combat child marriage, with input from women's and children's rights groups, health professionals, and other service providers; coordinate efforts among all relevant ministries; and ensure sufficient resources to implement the plan.
- 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.

Children's Rights Violations in the Context of Mining

Articles 3, 24, 27, 29

The government of Malawi has failed to protect children from risks of exposure to hazardous substances, a violation of their rights enshrined in the Convention on the Rights of the Child, particularly Article 24, linking the child's right to the highest attainable standard of health to issues of environmental pollution, and Article 29, defining the child's right to information on environmental health issues.

²⁴ "Malawi: New Marriage Law Can Change Lives," Human Rights Watch news release, April 17, 2015, <https://www.hrw.org/news/2015/04/17/malawi-new-marriage-law-can-change-lives>. In 2014, magistrates told Human Rights Watch that the constitutional provisions took precedence over contrary provisions in the various marriage laws at the time.

²⁵ Constitution of the Republic of Malawi, art. 22(8).

The Committee on the Rights of the Child, in its General Comment 15 on children’s right to health, asserts that “States should regulate and monitor the environmental impact of business activities that may compromise children’s right to health, food security and access to safe drinking water and to sanitation.”²⁶ The Committee also states that state parties should address climate change “as this is one of the biggest threats to children’s health and exacerbates health disparities.”²⁷ Most recently, at the Day of General Discussion on Children’s Rights and the Environment, Committee members emphasized the importance of access to information in the context of children’s environmental health.

Over the past 10 years, Malawi’s government has promoted private investment in resource extraction to diversify its economy, but this development strategy has also threatened children’s rights to health, food, water, housing, and information. The September 2016 Human Rights Watch report “[They Destroyed Everything”: Mining and Human Rights in Malawi](#) examined the human rights impact of extractive industries on communities in Karonga district located on the northwestern shores of Lake Malawi.²⁸

In some of Malawi’s first coal and uranium mining areas visited by Human Rights Watch, residents said that mining threatened their livelihoods and that they and their children suffered from increasing rates of illnesses that could be mining-related.²⁹ Residents told Human Rights Watch that they did not receive sufficient information about planned mining operations and any associated risks, and lacked adequate access to health care facilities where they could be assessed and treated for any mining-related health conditions.³⁰

Residents interviewed by Human Rights Watch complained that trucks passed along narrow village roads, coating homes and local schoolhouses in dust.³¹ Community members in Kayelekera complained about dust blowing up from the mining trucks on the road from Paladian uranium mine and Malcoal coal mine passing by the primary school and reported increasing prevalence of bad coughs and asthma among children.³² Scientific studies show that children in coal mining communities often suffer increased rates of asthma, and that uranium mining can lead to health problems in nearby communities, although manifestations of these negative health impacts are often delayed.³³

²⁶ UN Committee on the Rights of the Child, General Comment No. 15, The Right of the Child to the Enjoyment of the Highest Attainable Standard of Health (Art. 24), (Sixty-second session, 2013), U.N. Doc. CRC/C/CG/15, http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f15&Lang=en (accessed November 11, 2016), para. 49.

²⁷ Ibid., para. 50.

²⁸ Human Rights Watch, “[They Destroyed Everything”: Mining and Human Rights in Malawi](#),” September 2016, <https://www.hrw.org/report/2016/09/27/they-destroyed-everything/mining-and-human-rights-malawi>.

²⁹ Ibid., pp. 5-6.

³⁰ “Malawi: Mining Puts Residents at Risk,” Human Rights Watch news release, September 27, 2016, <https://www.hrw.org/news/2016/09/27/malawi-mining-puts-residents-risk>.

³¹ Human Rights Watch, “[They Destroyed Everything](#),” p. 9.

³² Ibid., p. 66.

³³ Bernard Brabin, et. al, “Respiratory Morbidity in Merseyside Schoolchildren Exposed to Coal Dust and Air Pollution,” *Archives of Disease in Childhood*, vol. 70 (1994), pp. 305-12; JMF Temple and AM Sykes, “Asthma and Open Cast Mining,” *British Medical*

Several villagers also described how mining had destroyed water pipes or posed risks to other water sources they depended on for drinking and irrigation.³⁴ For example, Eland Coal Mining Company ended operations in 2015 but left behind piles of coal and open pits filled with water that can threaten local water sources.³⁵ According to the Ministry of Agriculture, Irrigation and Water, government water testing results from 2015 indicated that the water in the open pits is acidic and therefore harmful for human health. During a Human Rights Watch visit in August 2016, children were swimming in the open pits filled with water.³⁶

Human Rights Watch also found that girls who often take on the responsibility for fetching water have to walk longer distances to gather water from what they believe are less contaminated sources. As a result, girls lost time to attend school, earn money, and rest.³⁷ Girls also often had to help their mothers caring for family members who fell ill by what could be a mining-related illness and taking care of the household and fields.³⁸

Furthermore, families are resettled by the government to make space for mining operations, often without adequate warning, decent resettlement conditions, or compensation.³⁹ Farmers also complained that dust in the air, coal on the road, and poor water quality hurt their crops and decreased the harvest of their fields, threatening the livelihood of their families and making it more difficult for parents to feed their children.⁴⁰

The government and companies operating in Malawi's Karonga district told Human Rights Watch that they monitor the impacts of mining, but do not release the results.⁴¹

Representatives of Eland informed Human Rights Watch in writing and by phone that the company has suspended operations at Mwalambulo. They had yet to reply at time of writing to Human Rights Watch's request for comment on the substantive issues raised in this report.⁴²

In a letter to Human Rights Watch, Paladin explained that the company maintains safety, health, radiation, and environmental management programs. Paladin had yet to reply to Human Rights Watch's questions regarding the situation in Kayelekera at time of writing.⁴³

Malcoal stated in an email to Human Rights Watch that they "strive to help the government to reduce rural poverty by providing employment while at the same time taking care of our

Journal, vol. 305(6858) (1992), pp. 396-7; Environmental Monitoring Group, "The Social and Environmental Consequences of Coal Mining in South Africa," 2010, p. 12; "Late (Delayed) Effects of Radiation," US Nuclear Regulatory Commission, October 25, 2010, <http://pbadupws.nrc.gov/docs/ML1122/ML11229A694.pdf> (accessed September, 14, 2016), p. 9.

³⁴ Human Rights Watch, "They Destroyed Everything": Mining and Human Rights in Malawi," September 2016, p. 10.

³⁵ "Malawi: Mining Puts Residents at Risk," Human Rights Watch news release, September 27, 2016.

³⁶ Human Rights Watch, "They Destroyed Everything," pp. 70-71.

³⁷ Ibid., p. 6.

³⁸ Ibid., p. 67.

³⁹ Ibid., pp. 10-11.

⁴⁰ Ibid., p. 10.

⁴¹ Ibid.

⁴² Ibid., p. 14.

⁴³ Ibid.

communities and the environment.” Malcoal disputed that any resettlements had taken place in Kayelekera but did not comment on any of the other issues raised in this report.⁴⁴

Government and Company Role

The government of Malawi has failed to effectively monitor, let alone systematically address, the impacts of mining operations on children’s rights to water, food, health, and information.

While Malawi has some laws and policies that protect the rights of communities potentially affected by mining, they are poorly implemented and enforced. The result is that key government watchdogs stand by as spectators while mining operations are allowed to progress, regardless of the negative impact they may have on local communities or the environment. A new draft law, the Mines and Minerals Bill, while relatively progressive in many respects, fails to address one of the core problems documented by Human Rights Watch: a lack of transparency about the risks related to mining.

Because children’s bodies are most vulnerable to toxic pollution resulting from some of the mining by-products, specific protection and regular health monitoring is needed for them. The current system does not provide that.

Human Rights Watch urges the Committee to ask the government of Malawi:

- What plans are in place to regularly monitor the health of children living in communities affected by the mining industry, and to strengthen the health system’s capacity to diagnose and treat mining-related conditions in children?
- What plans are in place to more effectively manage and regulate the mining industry, to mitigate the industry’s environmental damage and the negative health impacts on affected communities, and to effectively disseminate information to communities that may be adversely affected by operations of extractive industries before, during, and after operations?

Human Rights Watch asks the Committee to call upon the government of Malawi to:

- Include provisions in the draft Mines and Minerals Bill that require robust environmental and health monitoring at all stages of the mining process and ensure access to information as guaranteed under the constitution. Revise the draft Access to Information Bill to ensure that minimum requirements for access to information follow international best practices and are in line with the model law by the African Union.
- Actively monitor health indicators and disease patterns in mining communities and ensure that results are easily available and accessible to the public.
- Develop a national strategy to improve health in mining communities, including by increasing access to healthcare in mining areas, taking into account the increased health risks for marginalized populations, particularly children.

⁴⁴ Ibid.

- Facilitate access to information about mining for individuals or groups that may face specific impacts or are marginalized, such as women, children, older people, people with disabilities, and minorities.

Protecting Students, Teachers, and Schools

Human Rights Watch encourages Malawi to endorse the Safe Schools Declaration, an international commitment to protect education in armed conflict.⁴⁵ The Declaration includes a pledge to respect the Guidelines for Protecting Schools and Universities from Military Use during Armed Conflict, which safeguards students, teachers, and schools in war.⁴⁶ The approximately 850 Malawi troops who partake in UN peacekeeping operations are already obliged to follow the UN's requirement to not use schools in their operations, and so signing on to the Declaration should present no challenge for these forces.⁴⁷

⁴⁵ Safe Schools Declaration, May 28, 2015, https://www.regjeringen.no/globalassets/departementene/ud/vedlegg/utvikling/safe_schools_declaration.pdf (accessed October 19, 2016).

⁴⁶ Global Coalition to Protect Education from Attack (GCPEA), *Guidelines for Protecting Schools and Universities from Military Use during Armed Conflict*, March 18, 2014, http://protectingeducation.org/sites/default/files/documents/guidelines_en.pdf (accessed October 19, 2016).

⁴⁷ United Nations Infantry Battalion Manual, 2012, section 2.13, "Schools shall not be used by the military in their operations."