

Children's Rights Standards and Child Marriage in Malawi

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Abstract: Child marriages occur when one of the parties is below the age of eighteen. In Malawi, research has shown that most child marriages are a result of cultural practices. To comply with various international and regional instruments, Malawi has enacted different pieces of legislation that can be useful in addressing child marriage. The article, therefore, examines these different pieces of legislation and assesses Malawi's compliance with international standards in addressing child marriages. The authors highlight two imperative issues. First, these laws show evidence of using international children's rights standards as a tool in addressing child marriages. Secondly, they prescribe conflicting approaches that one can interpret as to encouraging child marriages linked to cultural practices. As a result, the article suggests possible recommendations on how Malawi can comply with international standards in addressing child marriages. These include amendment of laws, and more importantly, enactment of a specific law, for example, the Prohibition of Child Marriages Act, which, if enacted, should target all laws and cultural practices that lead to child marriages in Malawi.

Introduction

Malawi is one of the top ten countries with the highest rates of child marriage in Africa.¹ The United Nations Children's Emergency Fund (UNICEF) revealed that 50 percent of Malawian women aged between twenty and twenty-four years old were married before eighteen years of age.² These statistics indicate significant gender disparities between boys and girls in child marriages. In 2015, UNICEF revealed that 23.4 percent of female adolescents were already married or in unions as compared to only 2.2 percent of males in the same age group.³ This position presumably led to the Human Rights Watch predicting that on average one out of two girls will be married by their eighteenth birthday by 2020.⁴ More important to this discussion, a study by the Malawi Human Rights Commission has shown that different cultural practices and rules that regulate marriage, marriageable age, and initiation ceremonies predispose girls to child marriage.⁵

The conclusion of a marriage before the age of eighteen is, according to scholars such as Rita Mutyaba, a fundamental violation of human rights as well as a health

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<http://www.africa.ufl.edu/asq/v17/v17i3a2.pdf>

hazard to girls.⁶ As pointed out by Chatterjee, child marriage robs girls of their survival and development skills that critically prepare them for adulthood life.⁷ In addition, Nour also observed that the resultant outcomes of such marriages include high rates of maternal and child mortality, susceptibility to sexually transmitted diseases, the inability to acquire education, and domestic violence.⁸ To sum up, child marriage negatively affects the rights of girls to health, life, education, survival and development, freedom from sexual abuse, dignity and personal integrity, and not to be discriminated against. For these reasons, Cook rightly depicted child marriages not only as a human rights crisis but also as health and social hindrances for girls.⁹

Malawi is party to several international and regional human rights instruments that can address issues of cultural practices that lead to child marriage.¹⁰ In complying with the requirement of enacting legislation as a first step towards the implementation of international standards on the protection of children's rights in general, and child marriage in particular, Malawi's Constitution has a Bill of Rights with specific provisions on children's rights.¹¹ In addition, Malawi has enacted several pieces of relevant legislation: the Child Care, Protection and Justice Act; the Marriage, Divorce and Family Relations Act; and the Gender Equality Act.

This article critically analyses the above-mentioned national legislative frameworks in addressing the issue of child marriage. The aim is to highlight the compliance or non-compliance of such legislation with international and regional standards on the protection of children, particularly girls, against child marriage. The analysis starts with a brief discussion of the international legal standards that address cultural practices that lead to child marriages and violations of children's rights.¹² Thereafter, we examine Malawi's current legal framework that can be used to address the issue of child marriages.¹³ A critical assessment of Malawi's legal response and its compliance with international standards then follows. The last part contains a conclusion in which we recommend that for the national laws to be effective, they must be accompanied by civic education, effective training of different stakeholders, and amendment of out-dated laws. In addition, as proposed by Braimah in the context of Nigeria and child marriages, we also recommend the enactment of a special law that deals with child marriages, for example, the Prohibition of Child Marriage Act.¹⁴

International and Regional Law Context on Child Marriage

As pointed out, Malawi is a party to several international and regional human rights instruments that are relevant for measuring its compliance in addressing cultural practices that lead to child marriage. To address this issue, international law prescribes, in Articles 1 and 2 of the Convention on the Rights of the Child (CRC) and the African Charter on the Rights and Welfare of the Child (ACRWC), that a child is a person aged below eighteen.¹⁵ Importantly, the African Charter on the Rights and Welfare of the Child (ACRWC) defines a child as anyone under the age eighteen, without attaching any limitation.¹⁶ Thus, as Gose rightly observes, "this definition is unequivocal, it does not allow for any exceptions."¹⁷

In addition, the African Charter on the Rights and Welfare of the Child (ACRWC) explicitly requires state parties to specify eighteen as the minimum age for marriage.¹⁸ This position is similar to the Protocol to the African Charter on Human

and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol), which also prescribes eighteen as the minimum marriageable age.¹⁹ The Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) also requires state parties to prescribe a minimum marriageable age and declares that child betrothals and/or marriages shall have no legal effect.²⁰ The Committee on Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW Committee) also explicitly endorsed eighteen as the minimum marriageable age.²¹

Furthermore, the Convention on the Rights of the Child (CRC) and Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) Committees have urged Malawi to set eighteen as the minimum marriageable age and make birth registration compulsory for all children.²² In this context, the United Nations Committee on the Rights of the Child (CRC Committee) urges Malawi to provide free birth registrations as their non-registration, among other children's rights violations, extends the practice of child marriage.²³ Given the high prevalence of the non-registration of births in Malawi, Odala noted that this may be a serious challenge to the legal protection of children, particularly girls who physically appear to be of marriageable age when in fact they are not.²⁴ For the purpose of this discussion, improving the registration of births will help to conform to the requirements of setting eighteen as the minimum marriageable age. Moreover, the 2008 Southern African Development Community Protocol on Gender and Development (SADC Gender Protocol) has also stressed the importance of setting eighteen as the minimum marriageable age.²⁵

As noted in the introduction, many of the cultural practices that result in child marriages affect girls more than they affect boys. This is obviously discrimination based on sex. In addressing this, Article 4 of the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) requires state parties to adopt special measures including legislative, executive, administrative, and other regulatory instruments, policies, and practices to effectively combat discrimination and improve the welfare of women and girls.²⁶

Moreover, Article 5(a) specifically obliges state parties to "modify the social and cultural patterns of conduct for men and women."²⁷ According to Sepper, Article 5(a) is both an "interpretive tool" and a "substance-giver" which acts as the guarantor of substantive equality for women.²⁸ In addition, the CRC Committee, General Comment No. 4 of 2003 also emphasised the importance of interventions to set the minimum age for marriage without discrimination.²⁹ Moreover, the 2014 joint general recommendation No. 31 of the CEDAW Committee and CRC Committee General Comment No. 18 on harmful practices took a position that "child marriage is considered a forced marriage."³⁰ In addition, the joint recommendation considered the immaturity of one or both parties to a child marriage and concluded that only in exceptional cases will it allow marriages of those who are below eighteen but above sixteen.³¹

Apart from prescribing marriageable age and non-discriminatory provisions in addressing child marriage, the CRC Committee, General Comment No. 3 of 2003 explicitly categorised child marriages as harmful cultural practices since they violate children's rights.³² In providing guidelines for the protection of girls against child marriages due to cultural practices, Article 24(3) of the Convention on the Rights of

the Child (CRC) is also applicable.³³ It requires state parties to take “all effective and appropriate measures, with the view to abolishing traditional practices prejudicial to the health of children.”³⁴ According to van Bueren, “Article 24(3) advances the rights of children by prohibiting all forms of harmful cultural practices including those which have not been explicitly defined” such as child marriages.³⁵ Since child marriages are harmful cultural practices, one can read Article 24(3) as calling for the abolition of child marriages.³⁶

In addition, Article 5(a) of the Convention on the Elimination of Discrimination against Women (CEDAW) requires state parties to take legal protection, and preventive measures to eliminate stereotypes and cultural prejudices against women.³⁷ The CEDAW Committee, General Comment No. 28 of 2010 emphasised that gender is a social and cultural construction that should change.³⁸ In this view of child marriage, these measures are useful tools in eliminating cultural practices that specifically target girls.³⁹ They eliminate stereotypes and cultural prejudices against girls. Additionally, the African Charter on the Rights and Welfare of the Child (ACRWC) obligates state parties to eliminate harmful social and cultural practices prejudicial to the survival and development of the child.⁴⁰ This position has been echoed in the Southern African Development Community Protocol on Gender and Development (SADC Gender Protocol) where it “requires state parties to support public awareness programmes aimed at changing behaviour to effectively eliminate harmful cultural practices.”⁴¹

The principle of the “best interests of the child” found in Articles 3 and 4 of the Convention on the Rights of the Child (CRC) and the African Charter on the Rights and Welfare of the Child (ACRWC), respectively, is relevant in addressing the matter of child marriage. Most cultural practices, such as *kupawila* (paying off a debt by marrying a daughter) that may lead to child marriage give priority to the interests of parents at the expense of children.⁴² One would view the parental interests that surround most child marriages linked to cultural practices as inconsistent with the protection of the best interests of the child.⁴³ In resolving this inconsistency, the international standard prioritises the best interests of the child at the expense of either her parents or guardians.⁴⁴ Article 1(3) of the African Charter on the Rights and Welfare of the Child (ACRWC) as read together with Article 4 are vocal in addressing the conflicts between culture and the best interests of the child. It provides that: “Any custom, tradition, a cultural or religious practice that is inconsistent with the rights, duties and obligations contained in the present Charter shall, to the extent of such inconsistency, be discouraged.”⁴⁵

In view of the above provisions, Lloyd has rightly observed that the African Charter on the Rights and Welfare of the Child (ACRWC) “could be seen as an overriding *lex specilis* aimed at the realisation of children's rights and should, therefore, prevail over harmful cultural practices.”⁴⁶ This observation is supported by the African Committee of Experts on the Rights and Welfare of the Child (ACERWC) that has recommended state parties put in place legislative, administrative, and judicial measures to safeguard the best interests of the child.⁴⁷

In addition, Articles 12 and 7 of the Convention on the Rights of the Child (CRC) and the African Charter on the Rights and Welfare of the Child (ACRWC), respectively, provide for the right to child participation.⁴⁸ In principle, child participation allows children to voice their concerns, needs, and views to the extent

that they can challenge cultural practices associated with child marriages.⁴⁹ Mezmur and Sloth-Nielsen have also observed that the principle of child participation is useful in the protection of girls against cultural practices that lead to child marriages.⁵⁰ Furthermore, linked to the best interests of the child principle, “the right to child participation can enable children to achieve their best interests.”⁵¹ In cognisance of this fact, the CRC Committee, General Comment No. 12 of 2009 recommended that state parties give due regard to the views of the child when decisions are to be made that affect them.⁵²

Furthermore, Articles 2 and 3 of the Convention on the Rights of the Child (CRC) and the African Charter on the Rights and Welfare of the Child (ACRWC)⁵³ prohibit differential treatment of boys and girls without objective and reasonable justifications.⁵⁴ Hodgkin and Newell have then observed that Articles 2 and 3 of the Convention on the Rights of the Child (CRC) and the African Charter on the Rights and Welfare of the Child (ACRWC) are relevant in addressing child marriages.⁵⁵ Indeed, the principle of non-discrimination becomes relevant because it sends a strong message that parents cannot perpetuate discrimination through preferential treatment of a boy child over a girl child.⁵⁶ Moreover, Articles 2 and 6 of the Convention on the Elimination of Discrimination against Women (CEDAW) and the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (Maputo Protocol), respectively, reiterated that “women and men enjoy equal rights and are regarded as equal partners in marriage.” The CEDAW Committee, General Comment No. 28 of 2010 recognised that women experience countless forms of discrimination because of their sex and gender.⁵⁷ More importantly, the CEDAW Committee, General Comment No. 19 of 1992 has characterised oppressive practices against women such as child marriages as forms of discrimination.⁵⁸

Lastly, the principle of “survival and development” found in Articles 6 and 5 of the Convention on the Rights of the Child (CRC) and the African Charter on the Rights and Welfare of the Child (ACRWC), respectively, is relevant in addressing child marriages.⁵⁹ Kaime has observed that the right to development particularly creates the concepts of equality of opportunity and distributive justice for all.⁶⁰ The Convention on the Rights of the Child (CRC) requires state parties to interpret “development” as achieving the optimal physical and mental growth for all children.⁶¹ In the context of addressing child marriages, the right to development is important because it centres on the notion of participation as discussed above.⁶² Similarly, the African Committee of Experts on the Rights and Welfare of the Child (ACERWC) held that the child’s right to development “enables children to grow up in a healthy and protected manner, free from fear and want, and to develop their personality, talents and mental and physical abilities to their fullest potential consistent with their evolving capacities.”⁶³ The human rights standards rightly requires girls to develop into adults who can make their own free choices and enjoy their fundamental human rights, such as the right to choose their own spouses.

What is clear from this discussion is that at the international level there are clear guidelines to measure against state parties’ compliance through the scrutiny of their legislative, policy, and administrative actions. As pointed out in the introduction, Malawi is party to these international legal instruments. In the following sections, therefore, we discuss Malawi’s legal response to child marriages.

Legal Framework on Child Marriages in Malawi

The Constitution

The findings of Malawi Human Rights Commission revealed that several cultural practices that lead to child marriage disproportionately affect young girls.⁶⁴ As a result, these practices discriminate against girls based on sex and gender.⁶⁵ Despite this, there are several provisions in the Constitution that are useful in addressing these discriminatory cultural practices. For example, consistent with international standards, section 20 guarantees the right to equality:⁶⁶ Section 20 provides:

1. *Discrimination* of persons in any form is prohibited and all persons are, under any law, guaranteed equal and effective protection against discrimination on grounds of race, color, sex, language, religion, political or other opinion, nationality, ethnic or social origin, disability, property, birth or other status.
2. Legislation may be passed addressing inequalities in society and prohibiting discriminatory practices and the propagation of such practices and may render such practices criminally punishable by the Courts.⁶⁷

According to Chirwa, section 20(1) encompasses three aspects of equality, namely, “non-discrimination”, ‘equal protection before the law’ and ‘positive measures to combat and eliminate inequality.’⁶⁸ One can interpret these elements as follows: firstly, “non-discrimination” involves equal treatment of all persons irrespective of gender.⁶⁹ Indeed, Nyirenda has interpreted section 20(1) as prohibiting any form of discrimination.⁷⁰ In this context, cultural practices that force girls into marriage discriminate based on sex. Furthermore, the Court in *Malawi Congress Party & Others v Attorney General & Another* held that non-discrimination prohibits any classification that arbitrarily burdens an individual or group of individuals.⁷¹ This observation is relevant as girls belong to a group commonly affected by cultural practices that lead to child marriages. Hodgkin and Newman argued that girls have greater risks of discrimination because they are relatively powerless and depend on elders for the realisation of their rights.⁷²

Secondly, Chirwa asserts that the element of “equal protection before the law” finds its basis on the concept of formal equality.⁷³ With this interpretation, section 20(1) meets the requirement of formal equality on the protection of girls against child marriage because it outlaws discrimination based on sex. The last element of “positive measures to combat and eliminate inequality” entrenches substantive equality.⁷⁴ Substantive equality, as opposed to formal equality, recognises the difference between men and women, but affirms equality between them by placing laws, policies, and programs which address societal inequalities, for example, affirmative action.⁷⁵ Fredman identified three aspects that substantive equality aims to achieve: “First, substantive equality redresses stereotype by promoting the respect for equal dignity and worth of all. Second, it gives positive affirmation and celebration of identity within the community, and, finally, it facilitates full participation in society.”⁷⁶

In this context, substantive equality can address child marriages that lead to children's rights violations as it breaks the cycle of perpetual disadvantage associated with girls.⁷⁷ The Malawi Law Commission echoed the same sentiments when it interpreted section 20 as providing special protection to women and children because they are vulnerable.⁷⁸ In addition, section 20(2) fortifies section 20(1) by purposely obliging Malawi to pass legislation that combats cultural practices that support discrimination.⁷⁹ This concurs with the Convention on the Elimination of Discrimination against Women Sixth Periodic State Report, in which Malawi affirmed its constitutional obligation to enact laws that address societal inequalities.⁸⁰ Thus, the Court in *Republic v Chinthiti & Others* observed, "that section 20(2) reinforces section 20(1) in that both formal and substantive equality are indispensable tools in combating discrimination."⁸¹ Thus, section 20(2) envisages affirmative action. Affirmative action encompasses law reform efforts to extend existing benefits, privileges, or rights to a particular group that was previously disadvantaged.⁸² Through law reform, such as, the enactment of the Gender Equality Act and the Marriage, Divorce and Family Relations Act, which impose criminal liability on the perpetrators of discrimination, girls can assert their rights and overcome patriarchal discrimination.⁸³

Apart from section 20, section 23, which specifically protects children's rights, is also pivotal in addressing child marriages. It provides, "(1) all children, regardless of the circumstances of their birth, are entitled to equal treatment before the law." Nyirenda has rightly argued that section 23(1) must be read together with section 20(1).⁸⁴ Section 23(1), consistent with international and regional instruments, arguably prohibits discrimination of girls based on sex.⁸⁵ As pointed out in part 2, most cultural practices that lead to child marriages affect the girls' right to education. Once married, girls lose the protection of the law as children.⁸⁶ Section 23(4)(b) which requires non-interference with the education of children, becomes relevant as "children are entitled to be protected from economic exploitation or any treatment, work or punishment that is, or is likely to interfere with their education."⁸⁷

More importantly, section 23(4)(b) must be read together with section 25 which also guarantees the right to education.⁸⁸ In this context, cultural practices that lead to child marriages deny girls to exercise their right to education by forcing them into marriage. These provisions are, therefore, relevant in that they prohibit parents from practicing traditions that interfere with the girls' education rights.⁸⁹ The Committee on the Covenant on Economic, Social and Cultural Rights (CESCR Committee) has pointed out that, "the right to education is important because it obviously gives priority to the best interests of girls; thereby, safeguarding them from abuse associated with harmful cultural practices."⁹⁰

In addition, cultural practices that affect the health of girls can be addressed using section 23(4)(c), which is similar to Articles 24(1) (3) of the Convention on the Rights of the Child (CRC). This provision protects the physical, mental, spiritual health, and social wellbeing of children. Most girls found in child marriage situations are immature and taken advantage of by older men. This subjects them to domestic violence and the risks of HIV infection that inevitably affect their health, survival, and development.

Apart from sections 20 and 23 as discussed, section 22 also lays down the framework that can address child marriages for it directly prohibits forcing anybody

into a marriage.⁹¹ Implied in this provision is that, parties to a marriage should give their consent.⁹² We therefore argue that section 22 excludes children from concluding a marriage since they are incapable of giving consent because of their age. Furthermore, section 22(6) seems to set the minimum marriageable age at eighteen, which is in line with the regional standards that require eighteen as the age of marriage.⁹³

However, section 22(7) is problematic as it allows persons between fifteen and eighteen years to enter into a marriage if they obtain parental consent. This legal gap encourages parents or guardians to bypass the age requirement stipulated by section 22(6) and marry off their young children.⁹⁴ This provision is an oversight as it stands in the way of all attempts to end child marriages where parents are particularly involved in the name of cultural practices.⁹⁵ More importantly for this discussion, this provision is in conflict with international standards, specifically the African Charter on the Rights and Welfare of the Child (ACRWC) that sets eighteen as the minimum age for marriage.⁹⁶

Section 22(8) further heightens the problem of child marriages in that it merely discourages marriages between persons where either is under the age of fifteen years.⁹⁷ The court in *Francis Mangani v Republic* observed that persons under age fifteen are too immature and incompetent to give consent to a marriage.⁹⁸ Section 22(8), therefore, does not take a firm standing in prohibiting child marriages. Instead, section 22 subsections (6), (7) and (8), respectively, give "a constitutional imprimatur to child marriages."⁹⁹ In addition, these subsections give a negative impression that the Constitution permits marriages between persons where either of them is under the age of eighteen since they merely discourage child marriages.¹⁰⁰

Furthermore, section 24 on the constitutional protection of women's rights is useful in addressing child marriages.¹⁰¹ The Maputo Protocol defines women as "persons of the female gender, including girls."¹⁰² Section 24(2) complements sections 20 and 23 in that it effectively prohibits discrimination against women and girls based on gender. In this view, Chirwa has rightly stated that men and women require equal treatment and laws that discriminate against women are void.¹⁰³ In addition, section 24(2), just like section 20(2), requires Malawi to pass legislation that eliminates patriarchal customs and practices. In compliance with these constitutional provisions, Malawi has enacted several acts, for example, the Marriage, Divorce and Family Relations Act, which have fixed the marriageable age at eighteen. The Child Care, Protection and Justice Act and the Gender Equality Act, discussed below, also outlaw harmful cultural practices, such as child marriages. What is evident here is that Malawi complies with most human rights treaties that require it, as state party, to enact legislation that outlaws discriminatory practices against girls and women.¹⁰⁴

Despite the positive attributes that come from the Constitution in addressing child marriages, however, section 23(5), which defines a child as a person less than sixteen years old, is problematic. Firstly, it is incompatible with the international standards that set the age of majority at eighteen years.¹⁰⁵ Secondly, by defining a child as anyone under sixteen years of age, the Constitution does not send a strong message against child marriages.¹⁰⁶ Thirdly, the constitutional definition of the child is against the guarantees of the general norms of non-discrimination, child participation, right to survival and development, and the best interests of the child principle.¹⁰⁷ What is also problematic is that the Constitution does not expressly

recognise the best interest of the child, which is a cardinal principle in the protection of children's rights.¹⁰⁸ Lastly, as the supreme law of the land, the Constitution sets a bad precedence; hence, the Child Care, Protection and Justice Act, as it will be shown below, has similar prescriptions.¹⁰⁹

The Child Care, Protection and Justice Act

The Child Care, Protection and Justice Act, is the principal piece of legislation on matters concerning children. This Act is a direct response to Malawi's obligation under international law to address child marriages in the context of cultural practices.¹¹⁰ For instance, section 80 provides that "no person shall, subject a child to a social or customary practice that is harmful to the health or general development of the child."¹¹¹ This provision complies with Articles 24(3), 21, and 5 of the Convention on the Rights of the Child (CRC), 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), respectively.

Section 80, just like section 23(4) of the Constitution, prohibits parents, guardians, and public or private agents from practicing customs that negatively affect the health, education, and general development of children. This led Mwambene to observe that the ban on all cultural practices that may affect children sends a strong message that any cultural practice that is harmful to children cannot be in the best interests of the child.¹¹² More relevant to the focus of this paper, section 80 complies with the Committee on the Convention on the Rights of the Child (CRC Committee), General Comment No. 13 of 2011 that explicitly prohibits child marriages because they hinder the general health and development of children, especially girls.¹¹³

In addition, section 81 provides that "no person shall force a child into the marriage; or force a child to be betrothed."¹¹⁴ This provision is unequivocal in dealing with customary practices such as *kutwala* (marriage by abduction) and *kupawila* (paying off a debt by marrying a daughter), which force girls into marriage.¹¹⁵ Section 81 complements the Constitution in that consent is an essential element of the right to marry.¹¹⁶ The provision also complies with Articles 16 and 21(2) of the Convention on the Elimination of Discrimination against Women (CEDAW) and the African Charter on the Rights and Welfare of the Child (ACRWC), respectively.¹¹⁷ By prohibiting children from entering into forced marriages, this provision is in tandem with the international standards, which require consent to be given by a person who has the competency.¹¹⁸ As Chirwa has rightly observed, the decision to marry or not to marry is essential because marriage is a life commitment.¹¹⁹ Moreover, courts have, before the Child Care, Protection and Justice Act, reprimanded parents who allow young girls to get married.¹²⁰

Furthermore, section 82 can address cultural practices such *kupawila*, whereby parents or guardians pledge girls to obtain credit or as surety for a debt.¹²¹ Arguably, the practice of *kupawila* is as good as slavery because it forces girls, without the right to refuse, into marriage as payment of a debt owed by their parents. Section 82 is therefore consistent with section 23(4)(b) of the Constitution and Article 1 of the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery of 1956 (Slavery Convention), which also

outlaw and prohibit institutions or practices which can exploit children economically and are similar to slavery.¹²²

More importantly, section 83 fortifies sections 80, 81, and 82 in that a person who contravenes sections 80, 81, and 82 commits an offence and shall be liable for a ten-year imprisonment.¹²³ This provision is in accordance with the Convention on the Rights of the Child (CRC) and the Committee on Convention on the Elimination of Discrimination against Women (CEDAW Committee), both of which recommended that criminal laws must include protection measures for victims of harmful practices.¹²⁴ The imposition of a punishment sends a strong message that child marriages can no longer be justified on the grounds of cultural practices.¹²⁵

Section 23(1)(b) can also be used to address child marriage.¹²⁶ This provision is similar to the Convention on the Elimination of Discrimination against Women (CEDAW) and CRC Committees' Joint General Comment No. 31, which noted that children, particularly girls, are in need of special care and protection against cultural practices that lead to child marriages, since they subject girls to substantial risks of physical, emotional, and sexual abuse.¹²⁷

Due to the direct linkages between cultural practices and child marriages, the Child Care, Protection and Justice Act's definition of a child becomes relevant. Accordingly, a child "means a person below the age of sixteen years."¹²⁸ This definition, together with that of the Constitution, is not in accord with international standards where eighteen is the age of majority.¹²⁹ The age sixteen is, therefore, against the guarantees of the general norm of the best interests of the child that is useful in reinforcing the prohibition of child marriages.¹³⁰

The Marriage, Divorce and Family Relations Act

The Marriage, Divorce and Family Relations Act is premised on the principle of equality as envisaged by section 20 of the Constitution.¹³¹ It fosters equality by guaranteeing equal treatment in terms of the rights and obligations of the parties to a marriage under this Act.¹³² In addition, the Marriage, Divorce and Family Relations Act has, *inter alia*, provisions which can address cultural practices linked to child marriages in the following ways: unlike both the Constitution and the Child Care, Protection and Justice Act, section 14 fixes the minimum marriageable age at eighteen. It provides that "subject to section 22 of the Constitution, two persons of the opposite sex who are both not under the age of eighteen years, and are of sound mind, may enter into marriage with each other."¹³³

Read together with section 2, which defines the "child" as a person under eighteen years, section 14 categorically prohibits marriages of persons below the age of eighteen. More importantly, it complies with international standards such as 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), which set eighteen as the minimum age for marriage.¹³⁴ In addition, section 14 makes no distinction between boys and girls on their legal minimum age of marriage. Section 14, therefore, guarantees girls enjoyment of their rights, such as the right to education that is proven to keep girls from early marriages at an equal basis with boys.¹³⁵

Apart from section 14, section 77(1)(e) declares a marriage invalid if consent was obtained by force, duress, deceit, or fraud. Consequently, section 77(1)(e) precisely is

important in addressing child marriages where some cultural practices allow girls to marry without their consent. In addition, the girl's right to freely consent to a marriage is fundamental since it affects her life, dignity and equality as a human being.¹³⁶ It can, therefore, be argued that section 77(1)(e) goes hand in glove with section 14, as discussed above, which fixes the minimum age for marriage at eighteen. Thus, before reaching eighteen years, girls cannot give their consent. Hence, the age of a person determines whether her consent was given. In assessing its compliance with international and regional standards, section 77(1)(e) is similar to Articles 16, 8(2)(b), 6(a), and 10 of the Convention on the Elimination of Discrimination against Women (CEDAW), the Southern African Development Community Protocol on Gender and Development (SADC Gender Protocol), the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol), and the Covenant on Economic, Social and Cultural Rights (CECSR), respectively. These instruments also emphasise that the free and full consent of both parties is a prerequisite when concluding a marriage.

In addition, section 10, which provides rules for the registration of all marriages (civil, customary, and religious entered after the commencement of the Marriage, Divorce and Family Relations Act must comply with section 10), is also relevant in addressing child marriages linked to cultural practices. It complies with both Articles 6 and 21(2) of the Maputo Protocol and the African Charter on the Rights and Welfare of the Child (ACRWC), respectively, which require that all marriages be registered. More importantly, this provision can guarantee that parties to all marriages are eighteen years or above.¹³⁷ Furthermore, the failure to meet section 10 formalities renders a marriage void.¹³⁸ In the context of customary marriages, section 38 has entrusted traditional authorities to register all customary marriage.¹³⁹ Traditional authorities are then required to carefully observe and comply with section 10 formalities before registering and concluding a customary marriage. Most cultural practices that allow child marriages, at best, require consent of the girl's parents. As such, the formalities in section 10 will reduce the number of child marriages because it will be difficult to bring admissible evidence that compels girls to marry.¹⁴⁰

Section 54 further provides that:

A registrar who performs the ceremony of a marriage knowing that any of the matters required by law for the validity of a marriage have not been fulfilled, so that the marriage is void on any of those matters, commits an offence and is liable on conviction to a fine of K100 000 and to imprisonment for five years.¹⁴¹

This section thus complies with the Convention on the Rights of the Child (CRC) and the Convention on the Elimination of Discrimination against Women (CEDAW) committees which recommended state parties to impose punishments to persons who observe practices that are detrimental to girls' wellbeing.¹⁴² Section 54 compels traditional registrars to perform their duties diligently when registering and recording customary marriages. Furthermore, the law prevents traditional authorities from registering marriages that are otherwise void, for example, child marriages. As pointed in the introduction, statistics have shown that child marriages affect mostly girls compared to boys.¹⁴³ Section 54 is, therefore, important in

combating the problem as it can be used to punish traditional authorities who contravene any of the marriage requirements. The provision can also deter offenders from further committing offences and discourage others from doing the same.¹⁴⁴

The Gender Equality Act

The Gender Equality Act fulfils Malawi's commitments to international law on gender equality and female empowerment by addressing sex discrimination, harmful cultural practices, and sexual harassment.¹⁴⁵ As discussed above, sex discrimination, cultural practices and sexual harassment have direct linkages with child marriages that affect mostly girls. Several provisions in the Gender Equality Act are useful to address these practices. For example, section 3 of the Gender Equality Act defines harmful practices as: "Social, cultural or religious practices which, on account of sex, gender or marital status, do or are likely to (a) undermine the dignity, health or liberty of any person; or (b) result in physical, sexual, emotional, or psychological harm to any person."¹⁴⁶ Section 3 is similar to Article 1(g) of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol), which also defined "harmful practices" as, "all behaviour, attitudes and/or practices which negatively affect the fundamental rights of women and girls, such as their right to life, health, dignity, education and physical integrity."¹⁴⁷

Besides section 3, section 4(2) imposes a punishment on anyone who engages in sex discrimination to guarantee gender equality.¹⁴⁸ In this way, the provision is useful in eliminating sex discrimination leading to child marriage. It also complies with sections 20(1) and 23(1) of the Constitution and Articles 1, 2 and 3 of the Convention on the Elimination of Discrimination against Women (CEDAW), Universal Declaration of Human Rights and the African Charter on the Rights and Welfare of the Child (ACRWC), respectively, which guarantee the right to equality. Analysts such as Chirwa have argued that if men and women are entitled to enjoy full and equal protection before the law, then parents should treat children in the same way regardless of their sex and gender.¹⁴⁹

Most cultural practices that lead to child marriage amount to sex discrimination because they mostly disadvantage girls but not boys. As earlier observed, through some cultural practices, such as *kupawila*, girls are viewed as a source of wealth or used as debt payment to their parents' creditors. In poor families, parents force girls to swap school for marriage so that they can pay school fees for male siblings to continue schooling.¹⁵⁰ Section 4, therefore, gives equal opportunities for both girls and boys. This provision affords all children equal treatment coupled with dignity, integrity and without distinction. Higgins and Fenrich have argued that provisions, such as section 4 of the Gender Equality Act, imply that states must affirmatively regulate customs and social practices in a way that promotes gender equality.¹⁵¹

In addition, section 5, which prohibits any commission of harmful practices, can also address cultural practices linked to child marriages. Section 5 provides that "(1) A person shall not commit, engage in, subject another person to, or encourage the commission of any harmful practice. (2) Any person who contravenes this commits an offence and is liable to a fine of K1, 000,000 and to a term of imprisonment of five years."¹⁵² This provision then complies with Articles 16, 5, and 12 of the Convention on the Elimination of Discrimination against Women (CEDAW), the Protocol to the

African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) and the Southern African Development Community Protocol on Gender and Development (SADC Gender Protocol), respectively. These provisions also prohibit and condemn all forms of harmful cultural practices that negatively affect the human rights of women and children.¹⁵³ More importantly, the imposition of a penalty on those who commit or encourage the commission of cultural practices that affect children's rights can deter the prevalence of child marriages in Malawi.¹⁵⁴

Furthermore, section 14, which provides for the right to access education, is crucially important in the attempt to address cultural practices leading to child marriage.¹⁵⁵ Thus Chirwa rightly observed that education is an indispensable tool for achieving gender equality in Malawi.¹⁵⁶ In view of these observations, one can observe that there are strong linkages between child marriages, culture, and poverty. Therefore, education facilitates a just and fair environment where everyone has equal opportunities. In addition, the CESCR Committee emphasised the importance of education as an empowerment tool for women and girls that safeguards them from abuse.¹⁵⁷ In the context of this discussion, however, section 14 is consistent with section 25(1) of the Constitution and Article 13 of the Covenant on Economic, Social and Cultural Rights (CESCR).

Has Malawi's Legal Response Complied with International Standards on Child Marriage?

As already demonstrated, the international legal framework is clear: children's rights take priority over cultural practices that may lead to child marriages. The main question in this paper, however, is: has Malawi's legal response to child marriage complied with international standards? To answer this question, two main observations are now briefly under discussion.

First, the discussion on the current Malawi's legal framework on child marriages shows evidence of the value of using international children's rights standards as a tool in addressing child marriage. For example, in line with international standards, section 80 of the Child Care, Protection and Justice Act prohibits cultural practices, such as child marriage, that are harmful to the health and development of the child. In addition, and similar to the Convention on the Rights of the Child and the African Children's Charter on the Welfare and Rights of the Child, section 81 is unequivocal that no child shall be forced to be betrothed. More importantly, section 14 of the Marriage, Divorce and Family Relations Act prescribes the marriageable age of eighteen. This prescription is in line with African Children's Charter on the Welfare and Rights of the Child and the Maputo Protocol.

Second, the analysis has also revealed conflicting legal approaches in addressing cultural practices that lead to child marriage. For example, whereas the Marriage, Divorce and Family Relations Act prescribes the marriageable age of eighteen, both the Constitution and the Child Care, Protection and Justice Act define a child as "any person below sixteen" and not eighteen. By implication, according to the Constitution and the Child Justice Act, the marriageable age is sixteen years. This is obviously in conflict with the international definition of the child as well as the marriageable age provided in the Maputo Protocol. While the newly enacted 2015 Marriage, Divorce and Family Relations Act fixes the minimum marriageable age at

eighteen, it unfortunately lacks any legal effect since the Constitution allows anyone under sixteen to marry.¹⁵⁸

Customary rules further heighten the problem of the marriageable age because they have no fixed age requirement to determine the capacity to marry. As such, there is a pressing need for Malawi to amend the definition of the child in its Constitution and the Child Care, Protection and Justice Act to eighteen. Put differently, all pieces of legislation, especially the Constitution, must adopt a uniform age of eighteen to clamp down any loopholes that may legally justify marriages of under aged girls. In addition, Malawi needs to harmonise its laws on the age of marriage and the definition of a child with international standards. Conflicting laws pose as a serious challenge in tackling child marriages through legal measures.

Closely linked to the deficiency of a uniform marriageable age is that both the Constitution and the Child Care, Protection and Justice Act do not expressly provide for the best interests of the child, which is the cornerstone for the protection of children's rights, particularly girls, against child marriage.¹⁵⁹ For this reason, the Constitution and the Child Care, Protection and Justice Act must be modified to ensure that the rights of children are given due consideration at all times. Lastly, under the Marriage, Divorce and Family Relations Act, it is regrettable that the law does not specify child marriage as one of the grounds for nullifying a marriage.¹⁶⁰ This failure only fasttracks and extends the perpetuation of child marriages. Therefore, we recommend a law review to specify clearly that child marriage is a ground for nullifying a marriage. By criminalising all child marriages, Malawi will be sending a strong message about the unacceptability of child marriages, a lesson that other countries, such as Mozambique and South Africa, facing this problem can learn.

Conclusion and Recommendations

The analysis on Malawi's compliance with international standards in addressing child marriages has highlighted two issues. First, the legislation discussed have provisions that comply with the international standards in addressing child marriage. More importantly, these laws have the potential to protect girls against child marriages linked to cultural practices. Indeed, Chief Kachindamoto, a female traditional leader demonstrated this protection when she used the Marriage, Divorce and Family Relations Act in her village to annul 330 child marriages and enrolled them back in school.¹⁶¹ As both a punitive and protective measure against child marriages, Chief Kachindamoto further suspended the village heads who were responsible in consenting to those marriages.¹⁶² This serves as a remarkable lesson to other village leaders who might want to follow suit in consenting to child marriages.¹⁶³ According to McNeish, "Chief Kachindamoto has broken up 850 child marriages in three years, and banned the sexual initiations of young girls' that encourage child marriages."¹⁶⁴ In this way, the law, with the cooperation of traditional leaders becomes effective in restricting, and ultimately protecting, girls from marrying before the age of eighteen.

Second, these laws have provisions that are in conflict with the international standards. More disturbing is the fact that the different laws enacted seem to be conflicting each other, sending bad messages in addressing child marriage. We

therefore suggest the amendment of all current laws so that they provide a uniform definition of the child, marriageable age, and consent to the marriage. In addition, as proposed by Braimah in the context of Nigeria and child marriages, we also recommend that Malawi enact a special law, for example, the *Prohibition of Child Marriages Act*, which, if enacted, should target all laws and cultural practices that lead to child marriage (emphasis added).¹⁶⁵

Notes

- 1 World Vision “Ten worst places for child marriages.”
<http://www.worldvision.org/newsstoriesvideos/ten-worst-places-child-marriage>
(accessed 22/04/2016).
- 2 UNICEF 2015a, p. 6.
- 3 Ibid.
- 4 Human Rights Watch 2014.
- 5 Malawi Human Rights Commission 2005.
- 6 Mutyaba 2011.
- 7 Chatterjee 2011.
- 8 Nour 2009.
- 9 Cook 1994.
- 10 For example, Malawi is party to both the CRC and the ACRWC, having ratified these instruments in January 1991 and July 1999, respectively.
- 11 See, Article 24(3) of the CRC, Article 16 of CEDAW, Articles 2(1)(b) and 5 of Maputo Protocol, Article 20 of AYC and Article 21 of SADC Gender Protocol. Section 23 of the Constitution explicitly guarantees the rights of children.
- 12 The discussion, particularly, focuses on the Convention on the Rights of the Child (CRC), Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), African Charter on the Rights and Welfare of the Child (ACRWC), and the Protocol to the African Charter on Human and People’s Rights (Maputo Protocol). The focus will be on the minimum age and the issue of consent, and the general measures to address cultural practices linked to child marriages. The protection of children’s rights in both the CRC and the ACRWC is guided by four general principles, namely: non-discrimination, the best interests of the child, child participation, and child’s survival and development. For the CRC and ACRWC, see Gose 2002, Ekundayo 2015, Hodgkin and Newell 2007, for CEDAW, see Sepper 2008, Mwambene 2010 and Cook 1994, and for Maputo Protocol see, Chirwa 2011 and Banda 2006.
- 13 For example, Malawi 1994, section 5 of the Constitution.
- 14 Braimah 2014.
- 15 Article 1 of the CRC and Article 2 of ACRWC.
- 16 Article 2 of the ACRWC.
- 17 Gose 2002, p. 53.
- 18 Article 21(2) of the ACRWC.
- 19 Article 6 of the Maputo Protocol.
- 20 Article 16(2) of the CEDAW.

- 21 CEDAW Committee. 1994. *CEDAW General Recommendation No. 21: Equality in Marriage and Family Relations*.
- 22 CEDAW Committee. 2010. *Responses to the list of issues and questions with regard to the consideration of the 6th periodic report: Malawi*. CRC Committee. 2002.
- 23 CRC Committee. 2009. *Consideration of reports submitted by States parties under article 44 of the Convention: Convention on the Rights of the Child: concluding observations: Malawi*.
- 23 Odala 2012.
- 24 Odala 2012.
- 25 Article 8(2) of the SADC Gender Protocol.
- 26 CEDAW Committee. 2004. *CEDAW General recommendation No. 25, on article 4, paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women, on temporary special measures*.
- 27 Article 5(a) of the C
- 28 Sepper 2008.
- 29 CRC Committee. 2003. *General comment No. 4 (2003): Adolescent Health and Development in the Context of the Convention on the Rights of the Child*.
- 30 CEDAW Committee. 2014. *CEDAW General Recommendation No.31 and UN Committee on the Rights of the Child (CRC Committee), General comment No. 18 on harmful practices*.
- 31 CEDAW Committee. 2014. *CEDAW General Recommendation No.31 and UN Committee on the Rights of the Child (CRC Committee), General comment No. 18 on harmful practices*.
- 32 CRC Committee. 2003. *General comment No. 3 (2003): HIV/AIDS and the Rights of the Child*.
- 33 CRC Committee. 2003. *General comment No. 5 (2003): General measures of implementation of the Convention on the Rights of the Child*.
- 34 Article 24(3) of the CRC.
- 35 van Bueren 1998, p.307.
- 36 Braimah 2014.
- 37 Biholar 2013.
- 38 CEDAW Committee. 2010. *CEDAW General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women*.
- 39 Merry 2003.
- 40 Article 21 of the ACRWC.
- 41 Article 21 of the SADC Gender Protocol.
- 42 For example, *kupawila* is a customary practice in which parents pledge their girl child into marriage as a form of debt repayment; hence, they prefer their own interests to the girl's.
- 43 Ekundayo 2015.
- 44 African Committee of Experts on the Rights and Welfare of the Child. 2013. *General Comment No. 1 on Article 30 of the ACRWC: "Children of Incarcerated and Imprisoned Parents and Primary Caregivers"*.
- 45 Article 1(3) of the African Charter on the Rights and Welfare of the Child

- 46 Lloyd 2002. The doctrine of *lex specilis* relates to the interpretation of laws. It can apply in both domestic and international law contexts.
- 47 African Committee of Experts on the Rights and Welfare of the Child. 2013. *General Comment No. 1 on Article 30 of the ACRWC: "Children of Incarcerated and Imprisoned Parents and Primary Caregivers.*
- 48 Article 12 of the CRC requires State Parties to give an optimum environment where children are freely capable of forming their own views in all matters affecting them. Article 4(2) of the ACRWC demands all proceedings, which affect children, must allow them to communicate their views and those views must be considered when giving a decision that affect those children.
- 49 Chirwa 2011.
- 50 Mezmur and Sloth-Nielsen 2008.
- 51 Lansdown 2005.
- 52 CRC Committee. 2009. *General comment No. 12 (2009): The right of the child to be heard.*
- 53 It is also recognised in Articles 1, 2, 2, 2, and 26 of CEDAW, ICESCR, AYC, Maputo Protocol and ICCPR, respectively.
- 54 Vandenhole 2005.
- 55 Hodgkin and Newell 2007.
- 56 Human Rights Watch. 2014.
- 57 CEDAW Committee. 1992. *CEDAW General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women.*
- 58 CEDAW Committee, *CEDAW General Recommendations Nos. 19 and 20, adopted at the Eleventh Session, 1992.*
- 59 Articles 6 and 5 of the CRC and ACRWC, respectively.
- 60 Kaime 2009.
- 61 CRC Committee. 2003. *General comment No. 5 (2003): General measures of implementation of the Convention on the Rights of the Child.*
- 62 Chirwa 2011.
- 63 African Committee of Experts on the Rights and Welfare of the Child. 2013. *General Comment No. 1 on Article 30 of the ACRWC: "Children of Incarcerated and Imprisoned Parents and Primary Caregivers.*
- 64 Malawi Human Rights Commission 2005. See also discussion by Mwambene, Lea. 2010.
- 65 Malawi Human Rights Commission 2005. See also discussion by Mwambene, Lea. 2010.
- 66 See for example, Articles 2, 1, 2, 3, and 1 of the UDHR, CEDAW, CRC, ACRWC and the Maputo Protocol, respectively.
- 67 Malawi 1994, section 20 of the Constitution.
- 68 Chirwa 2011.
- 69 Oxford Dictionary.
- 70 Nyirenda 2014.
- 71 *Malawi Congress Party & Others v Attorney General & Another* [1996] MLR 244, 299-300 (HC).
- 72 Hodgkin and Newell 2007.

- 73 Chirwa 2011.
- 74 *Republic v Chinthiti & Others (1)* [1997] 1 MLR 59, 65 (HC).
- 75 Albertyn 2011.
- 76 Fredman 2005.
- 77 Fredman 2005.
- 78 Malawi Law Commission 2006.
- 79 Chirwa 2011.
- 80 CEDAW Committee. 2008. *Consideration of reports submitted by States parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women: 6th periodic report of States parties: Malawi.*
- 81 *Republic v Chinthiti & Others* [1997] 1 MLR 59, 65 (HC).
- 82 Nyirenda 2014.
- 83 CEDAW Committee. 2014. *CEDAW General Recommendation No.31* and UN Committee on the Rights of the Child (CRC Committee), *General comment No. 18 on harmful practices.*
- 84 Nyirenda. 2014.
- 85 See, Article 2 of the CRC, Article 3 of the ACRWC, Art 2 of the CEDAW and Art 6 of the Maputo Protocol.
- 86 Katja 2015.
- 87 Malawi 1994, section 23(4)(b) of the Constitution.
- 88 The provision of the right to education is compatible with Articles 13, 28, 12 and 11 of the ICESCR, CRC, Maputo Protocol and ACRWC, respectively.
- 89 Chirwa 2011, p. 249.
- 90 Committee on Economic, Social and Cultural Rights. 1999. *ICESCR General Comment No. 13: The Right to Education.*
- 91 Malawi 1994, section 22(4) of the Constitution.
- 92 Section 22 is compatible with Articles 16, 8(2) and 6(a) of the CEDAW, SADC Gender Protocol, and Maputo Protocol, respectively.
- 93 Malawi 1994, section 22(6) of the Constitution.
- 94 Chirwa 2007.
- 95 Malawi Human Rights Commission 2005..
- 96 ACRWC, Article 21.
- 97 Section 22(8) provides that 'the State shall actually *discourage* marriage between persons where either of them is under the age of fifteen years'.
- 98 *Francis Mangani v Republic* Criminal Appeal no 3 of 2007 (unreported) as cited by Chirwa 2011.
- 99 Chirwa 2011.
- 100 Mwambene 2010.
- 101 Malawi 1994, section 24(2) of the Constitution.
- 102 Art 1(k) of the Maputo Protocol.
- 103 Chirwa 2011.
- 104 Malawi then complies with provisions such as Articles 21, 16 and 24(3) of the African Charter on the Rights and Welfare of the Child (ACRWC), Convention on the Elimination of Discrimination against Women (CEDAW) and the Convention on the Rights of the Child (CRC) that require state parties to enact legislation outlawing discriminatory practices against girls and women.

- 105 CEDAW Committee. 2014. *CEDAW General Recommendation No.31 and UN Committee on the Rights of the Child (CRC Committee), General comment No. 18 on harmful practices.*
- 106 Braimah 2014.
- 107 Articles 2, 3 and 3, 4 of the CRC and ACRWC, respectively.
- 108 Chirwa 2007.
- 109 See, observations by Chirwa 2011 and Mwambene 2010.
- 110 The Child Care; Protection and Justice Act No. 22 of 2010 was adopted on 07 July 2010 and commenced on 29 July 2010.
- 111 The Child Care; Protection and Justice Act, section 80
- 112 Mwambene 2012.
- 113 CRC Committee. 2011. *General comment No. 13 (2011): The right of the child to freedom from all forms of violence.*
- 114 The Child Care; Protection and Justice Act, section 81
- 115 Jacobson-Widding 1967.
- 116 Ibid.
- 117 Articles 16 and 21(2) of the CEDAW and ACRWC, respectively also prohibit child betrothal and child marriages.
- 118 Article 8(2) of the AYC.
- 119 Chirwa 2011.
- 120 *Getrude Gondwe v Matiasi Gondwe* (unreported) and *Francis Mangani v Republic* Criminal Appeal no 3 of 2007 (unreported) as cited by Chirwa 2011.
- 121 Section 82 of the Marriage; Divorce and Family Relations Act.
- 122 Article 1 of the Slavery Convention.
- 123 Odala 2012.
- 124 CEDAW Committee. 2014. *CEDAW General Recommendation No.31 and UN Committee on the Rights of the Child (CRC Committee), General comment No. 18 on harmful practices.*
- 125 Gaus and D'Agostino 2012.
- 126 Section 23 of the Child Care; Protection and Justice Act.
- 127 CEDAW Committee. 2014. *CEDAW General Recommendation No.31 and UN Committee on the Rights of the Child (CRC Committee), General comment No. 18 on harmful practices.*
- 128 The Child Care; Protection and Justice Act, section 2.
- 129 CEDAW Committee. 2014. *CEDAW General Recommendation No.31 and UN Committee on the Rights of the Child (CRC Committee), General comment No. 18 on harmful practices.*
- 130 Articles 2, 3 and 3, 4 of the CRC and ACRWC.
- 131 See, Part II of the Marriage; Divorce and Family Relations Act. See, a discussion by Mwambene 2007.
- 132 Section 14 of the Marriage; Divorce and Family Relations Act.
- 133 See, Part 14 of the Marriage; Divorce and Family Relations Act.
- 134 Articles 21(2) and 6 of the ACRWC and Maputo Protocol, respectively.
- 135 Chirwa 2011.
- 136 CEDAW Committee. 1994. *CEDAW General Recommendation No. 21: Equality in Marriage and Family Relations.*

- 137 Article 6 of the Maputo Protocol.
- 138 Section 10 of the Marriage; Divorce and Family Relations Act.
- 139 Section 38 of the Marriage; Divorce and Family Relations Act.
- 140 CEDAW Committee. 2014. *CEDAW General Recommendation No.31* and UN Committee on the Rights of the Child (CRC Committee), *General comment No. 18 on harmful practices*.
- 141 Ibid.
- 142 Ibid.
- 143 UNICEF 2014, p. 4.
- 144 Gaus and D'Agostino 2012.
- 145 See Part II of the Gender Equality Act.
- 146 See section 3 of the Gender Equality Act
- 147 Article 1(g) of the Maputo Protocol.
- 148 Section 4(2) of the Gender Equality Act.
- 149 Chirwa 2011.
- 150 Mwambene 2010.
- 151 Higgins and Fenrich 2011.
- 152 Section 5 of the Gender Equality Act.
- 153 Sections 3, 4 and 5 of the Gender Equality Act.
- 154 Ibid.
- 155 Section 14 of the Gender Equality Act.
- 156 Chirwa 2011.
- 157 Committee on Economic, Social and Cultural Rights. 1999. *ICESCR General Comment No. 13: The Right to Education*.
- 158 See, section 14 of the Marriage; Divorce and Family Relations Act.
- 159 Mwambene 2012.
- 160 See, section 77 of the Marriage; Divorce and Family Relations Act.
- 161 *Nyasa Times* 2015.
- 162 Ibid.
- 163 Ibid.
- 164 McNeish 2016.
- 165 Braimah 2014.

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