

Evils of child marriages in Malawi



Affaires étrangères, Commerce
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Eye of the Child

Defining Marriage

WHAT IS CHILD MARRIAGE?

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The term marriage is not easy to define because it does not mean the same thing to everyone. Different cultures have different conceptions of marriage. What people in one culture describe as marriage may not necessarily be similar to what people in another culture term marriage. Accordingly, definitions of marriage essentially differ according to the social context as well as the laws of specific jurisdictions. One of the simplest definitions of marriage may be found in Black's Law Dictionary which defines marriage as "the legal union of a couple as husband and wife."¹

Other commentators have attempted to define marriage as a:

*"traditional practice which is a legitimate union between a man and a woman, most of the times preceded by a religious ceremony establishing the act from which sexual intercourse between the spouses is authorized and ensuing pregnancies are considered legitimate."*²

While the above definitions make sense in theory they are inadequate in that they do not embrace a wide range of unions which may properly fall under the definition of marriage. These include informal unions such as marriages by repute or permanent cohabitation. The definitions are also understandably restrictive given that they exclude same sex unions from the ambit of marriage. It is also not very clear whether polygamous marriages fall within the ambit of the definitions.

¹Bryan A Garner (2004), Black's Law Dictionary, (Thomson West), p

²Ibrahima Cisse and Akory AG Iknane (2008) Study on Early Marriage, Reproductive Health and Human Rights: Timbuktu Region (Study Commission by Norwegian Church Aid), p 32

Under the English Common Law, marriage is considered to be a contract under which men and women enter into legally binding obligations with each other. The contract of marriage, like any other contract, effectively creates mutual rights and obligations between the parties to it.³ A classic common law definition of marriage was laid down in the nineteenth century decision of *Hyde v Hyde and Woodmansee*⁴ in which Lord Penzance defined marriage as “a the voluntary union for life of one man and one woman to the exclusion of all others.”⁵ According to this definition a number of conditions must be satisfied in order for a union to be defined as marriage. First, the union must be voluntary in that neither party must be forced or coerced to enter into it. Second, the union must be for life. Third, the union must be monogamous in that either party is not allowed to enter into another union simultaneously with an existing union.⁶

The definition also contains an element of ‘voluntariness.’ In other words, the definition assumes that only unions in which parties enter into voluntarily are valid. However, while voluntariness may be essential to the validity of a marriage in individualistic societies, lack of individual consent may not render a marriage in certain societies invalid. This is especially so, in communitarian societies whereby it is normal for individuals to be coerced or forced into marriages by familial or social pressure.

³PM Bromley (1966), *Family Law*, 3rd Edition (Butterworths and Co. Ltd), p3

⁴[1866] LR 1P&D 130.

⁵[1866] LR 1P&D 130.133

⁶Bromley(n.11) 4

As one former Minister of Nigeria observed:⁷

“the western conception of marriage , ... was not the only valid one . Whereas in the West the consent of the two intending spouses only was required, that was not the case in Africa, where not only the wishes of the parties but also the interests of the community were taken into consideration.”⁸ This is true for Malawi where customary marriages are generally considered to be more than a personal relationship between husband and wife. Rather marriage is considered to be a union between the individuals as well as their respective extended families.⁹

While Lord Penzance’s definition may represent an accurate definition of marriage as understood in the Judeo-Christian tradition, it does not reflect a wide variety of marital practices observed across other traditions. This is because the definition does not embrace polygamous or potentially polygamous unions. Likewise, the definition does not recognize same sex marriages.

Some commentators have attempted to adopt definitions which are broad enough to embrace a wide range of unions that may be described as marriages. The International Planned Parenthood Foundation for

⁷Alison Diduck and Felicity (1999), *Family Law, Gender and the State: Text, Cases and Materials*, (Oxford : Hart Publishing),p40.

⁸Schwelb, p350

⁹Mercy Mankhambwa, Ishmael Kankhumbwa and Bertha Sefu , *Family Relations and the Law , ‘ Health, Educational and Psychosocial Well-Being ’* in Malawi Law Commission: *Special Law Commission on Gender and the Law (2003)Overview and Issues of Gender Based Law Reform*, pp 26-42.27.

example defines marriage as “a formalized, binding partnership between consenting adults, which sanctions sexual relations and gives legitimacy to any offspring.”¹⁰ This definition, however, excludes informal marriages from its ambit. Nevertheless, the definition is wide enough to embrace most marriages that are the subject of the present discussion.

The above discussion suggests that it is difficult to find a definition which is all embracing and captures all possible forms of union that may be classified as marriages.¹¹ In other words, no single definition of marriage can be applicable to all cultures. As Hogget and Pearl rightly observe, “No definition can be found which applies to all institutions which ethnographers and anthropologists commonly refer to as marriage.” What needs to be borne in mind is that different forms of unions exist in different societies that would qualify as marriage. Perhaps Westermarck’s definition may come close to an all-embracing definition. He defines marriage as “a relation of one or more men to one or more women that is recognized by custom or law.”¹²

TYPES OF MARRIAGES

Malawi recognizes a wide variety of unions which may properly be classified as marriages. These range from customary marriages to marriages under the

¹⁰International Planned Parenthood Foundation, UNFPA and The Global Coalition on Women and AIDS (2006), *Ending Child Marriage: A Guide for Global Policy Action*, p7.

¹¹Brenda M Hogget and David S Pearl (1983) *The Family, Law and Society: Cases and Materials*, (London: Butterworths), p13

¹²Edward Westermarck (1936), *The Future of Marriage in Western Civilization*, p3.

¹³Cap 25:01 of the Laws of Malawi.

Marriage Act (1902).¹³ While some customary marriages are unregistered others are registered under particular statutes designed to cater for marriages of members of particular religious or racial groups. For instance, most marriages that Malawian Christians enter into are registered under the African Marriages (Christian Rites) Registration Act.¹⁴ Non-Christian Asians register their marriages under the Asiatics Marriage, Divorce and Succession Act.¹⁵ However, it could safely be argued that the majority of marriages in Malawi are unregistered customary marriages. The formalization of these marriages is generally characterised by the involvement of the extended family.¹⁶ In fact, the extended family is sometimes even involved in the selection of the prospective spouses. Moreover, it needs to be borne in mind that while the Malawian society generally only recognizes formal unions as valid, the Constitution recognizes marriages by permanent cohabitation as equally valid.¹⁷ The idea behind recognizing marriages by permanent cohabitation was simply to protect spouses in informal unions, given that they are generally more vulnerable than those in mainstream marriages.¹⁸

WHAT IS CHILD MARRIAGE?

One of the essentials of a valid marriage, at least under statutory law, is that the respective parties to an intended marriage have the requisite capacity to enter into a

¹⁴Cap25:02 of the Laws of Malawi.

¹⁵Cap 25:03 of the Laws of Malawi

¹⁶Mercy Mankhambwa, Ishmael Kankhumbwa and Bertha Sefu, ‘Family Relations and the Law’, *Health, Educational and Psychosocial Well-Being*; in Malawi Law Commission: *Special Law Commission on Gender and the Law (2003) Overview and Issues of Gender Based Law Reform*, pp 26-42.27.

¹⁷Ibid

¹⁸UNICEF (2005), *Early Marriage: A Harmful Traditional Practice- A Statistical Exploration*, p1 http://www.unicef.org/publications/index_26024.html (Accessed 22/03/2011).

contract of marriage.¹⁹ Capacity to enter into marriage is generally associated with age, as well as physical and emotional maturity. Most legal systems generally consider children too young to take on the onerous obligations associated with marriage.

However, what generates controversy is the exact age at which young persons may be deemed to have the requisite capacity to enter into marriage. This is because childhood is seldom a biological or a historical fact. Rather it is a social construct. Different societies define childhood differently. While societies generally agree that a child is a person “who is not yet an adult,” there is no consensus on the exact age at which a child transitions from childhood to adulthood.²⁰ Instead, the definition of childhood is influenced by “religious, cultural, physical and psychological practices and beliefs”²¹ The same factors also shape different understandings of what constitutes early marriage.

Notwithstanding the fact that there is no universal definition of childhood, Article 1 of the Convention on the Rights of the Child (CRC) provides that for its purposes a child is “every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier.” However, the CRC recognizes the fact that different societies may have different conceptions of childhood. Consequently, it links the definition of childhood to municipal laws on majority and duly recognizes the right of States to set an age of majority that may be below 18.²² In this regard, the

Convention attempts to strike a balance between emerging international norms and “existing cultural and religious diversities reflected in national age limits.”²³ Accordingly, there is no universal definition of childhood. This approach is problematic because it exposes children in countries with a lower age of majority to practices that may be harmful. It might also exclude such children from the protection that the CRC intends to provide.

The Child Care Protection and Justice Act defines “Child” as “a Person below the age of sixteen years.”²⁴ This definition represents a marked departure from the Report of the Law Commission on the Review of the Children and Young Persons Act which recommended that “a child should be defined as any person under the age of eighteen years.”²⁵ This recommendation was informed by a number of considerations. First, the Commission took into consideration that the Constitution treated persons under eighteen as deserving special protection. This was evidenced by the fact that children under 18 were supposed to seek their parents’ permission before getting married. Second, the Commission recognized the fact that persons under eighteen were not eligible to vote. This, according to the Commission suggested that persons under eighteen were not mature enough to make certain important decisions. Third, the Commission made reference to its earlier report on the Technical Review of the Constitution which suggested “an amendment to section 42(2) to prescribe the age of 18 for child

²²Sharon Detrick (1999), A Commentary on the United Nations Convention on the Rights of the Child (The Hague: Martinus Nijhoff Publishers), p53.

²³Geraldine Van Bueren (1995), The International Law on the Rights of the Child, (Martinus Nijhoff Publishers)

²⁴Section 2. (Act No.22 of 2010).

²⁵P17 of the Report.

¹⁹Bromley (n.11)30.

²⁰Geraldine Van Bueren (1995), The International Law on the Rights of the Child, (Martinus Nijhoff Publishers),p33

²¹Ibid

offenders.”²⁶ Finally, the Commission suggested this amendment in order to harmonize the laws of Malawi with foreign municipal law and international law which “recognize the evolving capacities of children, who under eighteen are considered incapable of making important decisions.”²⁷ However, despite this excellent recommendation by the Commission, Parliament resorted to peg the threshold of childhood at sixteen. This suggests that young persons who would otherwise be entitled to protection by the law on the basis that they fall within the age range of sixteen to eighteen will be excluded from protection.

Accordingly, for purposes of this paper early marriage may be defined as marriage of persons under the age of 18.²⁸ This definition is in line with the one adopted by the National Youth Council which defines “early marriage as marriage before the age of 18.” This is especially so given the trend that is emerging in international law whereby 18 is the upper threshold for childhood.²⁹ Likewise, most treaty monitoring bodies generally regard 18 as the age at which a child becomes an adult. For instance, the UN Committee on Civil and Political Rights in its General Comment number

21 observed that Article 10 of the ICCPR “does not indicate any limits of juvenile age” and that States had the right to determine this with regard to “relevant social, cultural and other conditions.” However, the Committee held the view that a holistic reading of the provisions of the ICCPR suggests “that all persons under the age of 18 should be treated as juveniles, at least in matters relating to criminal justice.” The fact that most international documents peg the upper limit of childhood at 18 suggests that any person under the age of 18 is a child and people who marry before that age are child spouses.

However, section 23(5) of the Constitution provides a different definition for “children.” It states that “for purposes of this section, children shall be persons under the age of sixteen years.” To that extent the section is at variance with international standards and hence excludes children aged between sixteen and eighteen from the ambit of its protection. Notwithstanding the above, the question whether persons who are domiciled in Malawi are old enough to get married or not is largely determined by the law under which he or she wishes to contract his/her marriage. For example, nobody can enter into a valid marriage under the Marriage Act unless they are 21 years old. Section 11(b) of the Act prohibits the Registrar of Marriages from issuing a certificate of an intended marriage (Registrar’s certificate) unless he is satisfied: “each of the parties to the intended marriage is ...21 years old.” The Registrar’s certificate may be issued to persons who are under the age of 21 where they obtain the requisite consent from their parents, guardians or designated public officials.³⁰ The Act, however, exempts widowers and widows from the age requirement. Similarly, section 19 of the Act

²⁶Malawi Law Commission (2005), Report of the Law Commission on the Review of the Children and Young Persons Act (Lilongwe: Government Printer), p17.

²⁷Ibid.

²⁸For a more detailed analysis of the consequences of early marriages see National Youth Council (2009), Report on Profiling Early Marriages in Malawi: Making A Case to “STOP” Early Marriages, p10. <http://www.k4health.org/system/files/Report-%20Profiling%20Early%20Marriages%20MW.pdf> (Accessed 22/03/11)

²⁹Van Bueren (n28) 38.

³⁰Sections 11, 19 and 21 of the Marriage Act.

provides that persons who are under the age of 21 must obtain parental consent before getting married. However, where the parents are not available due to death, absence from Malawi or mental-health problems the requisite consent may be granted by a guardian. In the absence of a guardian, consent may be granted by one of the following designated public officials: “the Minister, A Judge of the High Court and a District Commissioner.”³¹

It needs to be pointed out though that the above provisions may be inconsistent with the constitution to the extent that they require people who are over 18 to obtain parental consent before getting married. This is in light of section 22 (4) of the Constitution states that no person who is over “the age of eighteen years should be prevented from getting married.” Nonetheless, this law still stands until the Constitutional Court rules on its validity. Similarly, the Marriage Act may be inconsistent with international standards which consider people who are over 18 as adults.³² Unsurprisingly, in its concluding comments on Malawi, the Committee on the Elimination of Discrimination against Women (a treaty monitoring body for compliance with the CEDAW) noted with concern the contradictions between the Marriage Act “which establishes 21 as a minimum age of marriage and the Constitution which allows child marriages.”³³

Furthermore, the customary laws of various communities do not provide for a specific age at which parties can enter a valid mar-

riage. Instead, most ethnic groups consider puberty and maturity (physical and psychological) as a major indicator of whether a child is fit to get married or not.³⁴ In fact, for some ethnic groups, children are considered fit to get married as soon as they graduate from traditional initiation ceremonies. Given that some children attend initiation ceremonies³⁵ at an age as early as 12, it is obvious that some cultures expose children to marriage when they are too young to do so.

The fact that different legal traditions have different rules relating to capacity to marry makes it very difficult to define early marriage given that societies differ on what constitutes early marriage. Nevertheless, some commentators have attempted to define early marriages by reference to international standards. UNFPA, for examples, defines early marriage as “any marriage carried out below the age of 18 years, before the girl is physically, physiologically, and psychologically ready to shoulder the responsibilities of marriage and childbearing.”³⁶ This definition has also been adopted by the Inter African Committee on Traditional Practices Affecting the Health of Women and Children.³⁷ Thus, according to emerging international human rights norms, children under the age of eighteen are minors and not capable of giving informed consent to marriage.³⁸ Unsurprisingly, the CRC Committee generally urges States which

³⁴Mankhambra, et al (n.25).30.

³⁵Malawi Law Commission (2005), Report of the Law Commission on the Review of the Laws of Marriage and Divorce , p12.

³⁶UNFPA (2006), In Ending Child Marriage, A Guide for Global Policy Action: International Planned Parenthood Federation and Forum on Marriage and the Rights of Women and Girls UK.

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³⁸Forum on Marriage and the Rights of Women and Girls (2001), p 5

³¹Section 21 of the Marriage Act.

³²Mankhambra etal (n.25) 31..

³³Committee on the Elimination of Discrimination Against Women Thirty-Fifth Session, 15 May- 2 June 2006- Concluding Comments: Malawi. CEDAW/C/MW/CO/5. 2 June 2006, paragraph 13.

permit different minimum ages of marriage under various laws to reform their laws in order to bring them in conformity with the CRC.

EARLY MARRIAGE: PREVALENCE, CAUSES AND CONSEQUENCES

Prevalence

One of the major obstacles to any attempts to devise policies to address the problem of early marriages is that it is very difficult to obtain precise and reliable data on the extent of child marriages.³⁹ This is for two reasons. First, most marriages, especially in rural areas are not registered. Second, most births are not recorded or registered in Malawi and consequently it is very easy for most parents to falsify the ages of their children.

A recent study by the National Statistical Office reveals that 51.3 per cent of married youth were within the age range of 15-24.⁴⁰ Another study by the NSO reveals that 33 per cent of girls aged between 15-19 years are either married or in some form of permanent union⁴¹ In contrast, only

2% of the young men within the above age group are married.⁴² A similar study by NSO reveals that 51 percent of Malawian women within the age range of 20-49 reported to have entered marriage by the age 18 and 73 percent by age of 20. Their male counterparts, however, generally entered marriage at a much later stage. Statistics reveal that only 22 per cent of men within this age range report being married.⁴⁴ This suggests that young women tend to marry men that are much older than them. The above-cited NSO study confirms this. It observes that approximately 46% of married women within the 15-19 age range have

between 15-19 report being married while 40 per cent of their female counterparts report being Married. The figures in the southern region are 2 per cent and 35 per cent for men and women respectively. In central region on the other hand the statistics reveal that 1 per cent of men and 30 per cent of women aged between 15-19 report being married. The NSO report also presents statistics at district level. It notes that Phalombe has the highest rates of marriage of women below the age of 15. Specifically, the rate in Phalombe is 18 percent, Machinga and Karonga come second at 17 percent and Dedza has the lowest rate at 6 per cent. In terms of marriages below the age of 18 Machinga ranks highest at 65 per cent, seconded by Balaka and Phalombe at 60 per cent. Ntchisi and Lilongwe record the lowest rates of marriage for girls aged under 18 in that only 42 per cent of girls in that age group report being married. Statistics also reveal a correlation between high marriage rates and low school attendance rates. For instance, the NSO Report notes that “ that Phalombe has lowest primary school net attendance ratio and is also one of the district with the lowest secondary school net attendance ratio.”

⁴³George Mandere (2005), *Other Proximate Determinants of Fertility*, in NSO and ORC MACRO Malawi: Demographic and Health Survey, 2004 (Calverton and Maryland: NSO and ORC Macro), pp93-107.96. See also Jonathan Wittenberg, Alister Munthali, Anne Moore, Eliya Zulu, Nyovani Madise, Macbain Mkandawire, Felix Limbani, Leila Darabi and Sidon Konyani (2007), *Protecting the Next Generation in Malawi: New Evidence on Adolescent Sexual and Reproductive Health Needs*, (Guttmacher Institute), p13.

⁴⁴Wittenberg et al, (n.50),13.

³⁹IPPF, UNFPA and The Global Coalition on Women and AIDS (2006), *Ending Child Marriage: A Guide for Global Policy Action*,p9.

⁴⁰NSO (2010), *Population and Housing Census 2008, Analytical Report: Volume 8- Children and Youth*, (National Statistics Office, Zomba), p 11

⁴¹NSO and UNICEF (2008), *Malawi: Multiple Indicator Cluster Survey 2006, Final Report, Lilongwe* , Malawi: National Statistical Office and UNICEF, p206.

⁴²NSO and UNICEF (2008), *Malawi: Multiple Indicator Cluster Survey 2006, Final Report, Lilongwe* , Malawi: National Statistical Office and UNICEF, p206. The report also reveals that there are regional differences in the prevalence of early marriages. In particular, the problem is less prevalent in the central region than the other regions. In the northern region, for example, 4 per cent of men aged

spouses who are at least 5-14 (or even more) years older than them.⁴⁵

Thus, while it may be argued that the problem of early marriage affects both boys and girls, it is obvious that the practice disproportionately affects more girls than boys. Likewise, as we will see below, early marriages more adversely impact upon girls than boys. This as we will note below has dire consequences for the health and general welfare of the girl child.

Similarly, a study by the Human Rights Commission revealed that many girls, especially in northern Malawi, get married immediately after attaining the age of puberty which in sometimes may be as low as twelve. Their male counterparts on the other hand generally got married at the age of 17.⁴⁶ The Commission also noted that in a significant number of cases girls got married even before attaining puberty, so long as they looked physically mature.⁴⁷ These girls are generally driven into marriage at an early stage by cultural and socio-economic factors.⁴⁸ This implies that marriages of children who are below the age of 18 are not uncommon in Malawi and that child marriages are a wide-spread practice.

Factors that drive early Marriage

A review of the existing literature on early marriage suggests that a complexity of factors play a role in fuelling the problem of

⁴⁵NSO and UNICEF (n.48), 210-212.

⁴⁶Malawi Human Rights Commission (2006), *Cultural Practices and Human Rights : A Study into Cultural Practices and their Impact on the Enjoyment of Human Rights Particularly the Rights of Women and Children in Malawi*, (Malawi Human Rights Commission), p 28

⁴⁷Ibid

⁴⁸Wittenberg et al, (n.48)13.

child marriages. These include cultural and religious values, peer pressure, and poverty. The following section considers these factors in turn. Among the cultural factors that drive early marriages are the preservation of moral purity and virginity, protection of girls from pregnancy out of wedlock, preservation of family honour and to enhance familial ties.⁴⁹ Sex education offered to adolescents at initiation ceremonies also encourages them to experiment with sex and enter into marriages prematurely.⁵⁰ Additionally, some girls are forced to marry pursuant to certain cultural practices including kutomera,⁵¹ (a practice under which young girls are pledged to a potential husband well before they are ready to get married or even born) and kupimbira (the pledging of young girls in settlement of debts).⁵² According to the Human Rights Commission, girls as young as 9 or less may be pledged to men as old as 40 or even more.⁵³ Some girls are forced to marry young in order to inherit their deceased sisters' husbands. The MHRC study also reveals that that in some parts of Malawi parents compel young men to enter into early marriages to avoid paying damages where the said young men impregnate girls.⁵⁴ These cultural dynamics overlap with other factors, such as poverty in determining early marriages. Unsurprisingly, in its concluding comments on Malawi the CEDAW Committee noted with concern the "the persistence of deep-cultural norms, customs and traditions, including early marriage – that constitute

⁴⁹UNICEF (2005), (n.26),1; Annie Bunting (2005), *Stages of Development : Marriage of Girls and Teens as An International Human Rights Issue*, Social and Legal Studies , Vol.14(1), 17-38.28.

⁵⁰MHRC (n.53), 28.

⁵¹Ibid.

⁵²MHRC (n.53),19.

⁵³Ibid

⁵⁴MHRC (n.53),28.

serious obstacles to women's enjoyment of human rights."⁵⁵

Apart from cultural factors, early marriage is also driven by economic factors such as poverty. Given the dire poverty in most Malawian communities girls are compelled to enter into early marriages in order to ensure economic security. Parents are also keen to give away their children in marriage in order to alleviate the economic burden associated taking care of children.

It ought to be borne in mind, however, that economics alone may not give a satisfactory explanation as to why poor children get married in certain contexts as opposed to others. What needs to be emphasized is that poverty might only fuel early marriages in concert with other factors including cultural, religious and gender dynamics of a particular society.⁵⁶

Peer pressure and social pressure are also among the major factors that push children into early marriages. Generally, girls who marry late are considered immoral and are subjected to mockery by their peers and society in general. Likewise, young men get married in order to gain respect from society. This is especially because society tends to treat married people with more respect than their unmarried counterparts.⁵⁷

Other factors that drive early marriages include the desire on the part of parents to have grandchildren,⁵⁸ protection of children

from pre-marital sexual relationships which may expose them to unwanted pregnancies and HIV/AIDS, lack of educational and economic opportunities for young people, gender inequalities, the desire to establish social ties with prosperous/ respectable families and the tendency to confuse puberty with adulthood.⁵⁹ Additionally, some parents encourage their girls to marry early to protect them from potential sexual assault.⁶⁰

Even though the above outline of the factors that trigger early marriages appears simplistic, in practice it is not easy pin down early marriages to specific causes. Early marriages are triggered by a complex interaction of the above factors and others. As Bunting notes "these causes are not neat categories of explanation but rather overlap with one another."⁶¹

Adverse Consequences of Early Marriage
While the practice of early marriages is pervasive in Malawi, it generally is associated with a number of devastating consequences on the health and general welfare of children. This section will outline some of the consequences in order to make a case for reform of marriage-related laws to stop the practice of early marriages.⁶²

⁵⁹Mankhambra, et al 28.

⁶⁰Jonathan Wittenberg, Alister Munthali, Anne Moore, Eliya Zulu, Nyovani Madise, Macbain Mkandawire, Felix Limbani, Leila Darabi and Sidon Konyani (2007), *Protecting the Next Generation in Malawi: New Evidence on Adolescent Sexual and Reproductive Health Needs*, (Guttmacher Institute), p13.

⁶¹Annie Bunting (2005), *Stages of Development : Marriage of Girls and Teens as An International Human Rights Issue*, *Social and Legal Studies* , Vol.14(1), 17-38.29

⁶²For a more detailed analysis of the consequences of early marriages see National Youth Council (2009), *Report on Profiling Early Marriages in Malawi: Making A Case to "STOP" Early Marriages*, <http://www.k4health.org/system/files/Report-%20Profiling%20Early%20Marriages%20MW.pdf>

⁵⁵Committee on the Elimination of Discrimination Against Women Thirty-Fifth Session, 15 May- 2 June 2006- Concluding Comments: Malawi. CEDAW/C/MW/CO/5. 2 June 2006, paragraph 19.

⁵⁶Bunting (n.56), 26.

⁵⁷MHRC (n.53),29.

⁵⁸Ibid,28

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Similarly, a study by the Human Rights Commission revealed that many girls, especially in northern Malawi, get married immediately after attaining the age of puberty which in sometimes may be as low as twelve. Their male counterparts on the other hand generally got married at the age of 17. The Commission also noted that in a significant number of cases girls got married even before attaining puberty, so long as they looked physically mature. These girls are generally driven into marriage at an early stage by cultural and socio-economic factors. This implies that marriages of children who are below the age of 18 are not uncommon in Malawi and that child marriages are a wide-spread practice.

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⁴⁵NSO and UNICEF (n.48), 210-212.

⁴⁶Malawi Human Rights Commission (2006), *Cultural Practices and Human Rights : A Study into Cultural Practices and their Impact on the Enjoyment of Human Rights Particularly the Rights of Women and Children in Malawi*, (Malawi Human Rights Commission), p 28

⁴⁷Ibid

⁴⁸Wittenberg et al, (n.48)13.

⁴⁹UNICEF (2005), (n.26),1; Annie Bunting (2005), *Stages of Development : Marriage of Girls and Teens as An International Human Rights Issue*, Social and Legal Studies , Vol.14(1), 17-38.28.

⁵⁰MHRC (n.53), 28.

⁵¹Ibid.

⁵²MHRC (n.53),19.

⁵³Ibid

⁵⁴MHRC (n.53),28.

Health consequences

A substantial body of literature has revealed that early marriages have serious consequences for the health and emotional well-being of children generally, and the girl child in particular.⁶³ The consequences may be physical, intellectual, psychological and emotional in nature.⁶⁴ They may include illiteracy, disruption of education, loss of freedom and autonomy, poverty and reproductive health problems.⁶⁵ Apart from undermining the self-confidence and self-identity of girls, child marriages also make girls prone to physical and emotional abuse. In fact, as UNICEF suggests child brides are “likely to lead to a life of domestic and sexual subservience over which they have no control.”⁶⁶ The following section outlines some of the harmful consequences of early marriages in more detail.

One of the serious consequences of early marriages, especially on the part of girls is that it exposes them to serious reproductive health problems. Given that marriage is the institution in which pregnancy and child-bearing naturally occur, early marriages inevitably expose children to early child-bearing. Unfortunately, at this stage children may not be physically and psychologically mature to assume the roles of child-bearing and child-rearing. Of course, it could be argued early marriages do necessarily mean early child bearing. But in practice early marriage inevitably means early parentage. This is because most newly

married people feel pressured by their family and communities to prove their fertility immediately after they get married.⁶⁷ As one study observes, most married women in Malawi have unprotected sex considering that marriage is an institution within which child bearing is expected. Consequently, as a recent NSO/ UNICEF study reveals, “only 24 per cent of married women or those in union, aged 15-19, currently use conception,” as opposed to 46 per cent of their older counterparts (25-29 years).⁶⁸ Similarly, only 11 per cent of married girls between 15-19 years use condoms compared to 38 per cent of their unmarried counterparts.⁶⁹ As a consequence, adolescents who are currently in marriage or have ever been married tend to have a higher childbearing rate than their counterparts who have never been married. In fact, the recent population and housing census reveals that “early marriage increases the likelihood of pregnancy and childbearing among adolescents.”⁷⁰

In any event, young girls may not have the psychological maturity which is essential for the proper management of a matrimonial relationship. As some commentators observe, a young wife may not have enough bargaining power with her husband on

<http://www.k4health.org/system/files/Report-%20Profiling%20Early%20Marriages%20MW.pdf> (Accessed 22/03/11)

⁶³UNICEF (2005), (n.26),1.

⁶⁴Ibid

⁶⁵Bunting (n.56), 33

⁶⁶UNICEF (2005), (n.26),1.

⁶⁷Wittenberg et al in fact observe that in most girls child bearing follows after marriage and in fact the first birth generally occurs after 0.9 years of marriage (see page 13).

⁶⁸Jean Mwalabu and Mylen Mahowe, “Reproductive Health,” in NSO and UNICEF (2008), *Malawi Multiple Indicator Cluster Survey, 2006, Final Report Lilongwe Malawi* (National Statistics Office and UNICEF), p145.

⁶⁹Wittenberg et al (n.48) p13.

⁷⁰NSO (2010), *Population and Housing Census 2008-Analytical Report: Volume 1 Fertility and Nuptuality* (National Statistical Office, Zomba), p36. The results of the Census reveal that while the birth rate amongst those who have never been married is 56 births amongst 1000 adolescents, the rate amongst those who are married is 187 births per 1000 adolescents (See the NSO, *Analytical Report on Children and Youth*, p 27).

important issues concerning her health and welfare such as family planning. Consequently, she may have children even when her body is not ready for them. This may be dangerous both for her and her offspring.⁷¹ Moreover, a young wife may not have the emotional maturity that is an essential element in coping with the rigours of motherhood.⁷²

Among the consequences of early marriages on the reproductive health of children is maternal mortality. This is evidenced by studies which reveal that the risk of deaths associated with pregnancy and child birth is 5 times higher in under-15 girls than in their counterparts aged 20-24. Similarly, there is evidence abound that pregnancy and child-birth related complications claim the lives of the majority of girls aged 15-19 worldwide.⁷³ One commentator suggests that “young women between ages 15 and 19 are twice as likely as women in their 20s to die in child birth.”

Furthermore, adolescent mothers are 88 percent more prone to a debilitating condition called obstetric fistula than their older counterparts. Recent studies have confirmed this. A UNFPA report focusing on Chad, Benin, Malawi, Mali, Mozambique, Niger, Nigeria, Uganda and Zambia observed that :

“Fistula is both preventable and treat-

able and is virtually unknown in places where early pregnancy is discouraged, young women are educated, family planning is accessible and skilled medical care is provided at childbirth.”⁷⁵

Moreover, commentators have observed that the mother’s age at first birth is an important factor in determining the “welfare of the mother and child.”⁷⁶ This is especially because child pregnancy is associated with an increased risk for premature birth and subsequent neonatal or infant mortality.⁷⁷ Likewise, experts believe that children that become mothers prior to reaching the age of 18 tend to have “a 35% to 55% higher risk of delivering a preterm or low birth-weight infant than mothers over 19 years.”⁷⁸ Medical data also reveals that in low income countries child mothers (18 and below) are 60 % more likely to lose their infants in the first year than their older counterparts.⁷⁹ Likewise, even for those children that survive the first year, the mortality rate for under-5 children with child mothers is 28 per cent higher than for children born to older parents.⁸⁰ Studies reveal that a mother’s age during child birth influences

⁷⁵Ibid,20.

⁷⁶Sophie Kang’oma, “Fertility,” in NSO and UNICEF (2008), Malawi Multiple Indicator Cluster Survey, 2006, Final Report Lilongwe Malawi (National Statistics Office and UNICEF), p32.

⁷⁷Nour (2009) (n.78), 51; Nour NM(2006), Health Consequences of Child Marriages in Africa, Emerging Infectious Diseases, Vol. 12 1644-1649; Zhang ZF, Parkin DM, Yu SZ et al (1989), Risk Factors for Cancer of the Cervix in a Rural Chinese Population, International Journal Cancer, Vol.43: 762-767; Adhikari RK (2003), Early Marriage and Childbearing: Risks and Consequences, in Bott S, Jejeebhoy S, Shah I., Puri C., eds Towards Adulthood: Exploring the Sexual and Reproductive Health of Adolescents in South Asia. Geneva: World Health Organisation, pp 62-66.

⁷⁸Nour (2009), (n.78)54

⁷⁹Ibid

⁸⁰Ibid

⁷¹Mary K Burket, Mohammad Alauddin, Abdul Malek and Mizanur Rahman (2006), Raising the Age of Marriage for Young Girls in Bangladesh, (Pathfinder International),

⁷²Nawal M Nour (2009), Child Marriage: A Silent Health and Human Rights Issue. Reviews on Obstetrics and Gynaecology, Vol.2, No. 1, 2009., pp51-56.54

⁷³UNICEF (2005), (n.26), 3; See also: MHRC (n.53),29.

⁷⁴Bunting (n.56),30

child survival in all stages of early childhood (i.e there is a strong relationship between the age of the mother at child birth and neonatal, post-neonatal, infant and child mortality rates). The latest population census report, for instance, reveals that “the infant mortality rate was 106 deaths per 1000 live births for mothers aged between 15-19 years” as opposed to “87 deaths per 100 live births for mothers aged 20-24 years.”⁸¹

Furthermore, studies have shown that early marriage is a risk factor in the transmission of HIV and other STIs.⁸² This is partly because the sexual organs of young women are not mature enough to protect them from infection. Similarly, young wives do not have much bargaining power to negotiate safe sex with older men. This renders them more susceptible to infection than more mature women. The above-mentioned risks are also exacerbated by the fact that some of the young wives are junior wives in polygamous relationships. Consequently, there is a high probability that their partners may be infected. Moreover, given their low levels of education, adolescent wives may not have much access to information about how they can protect themselves from STIs.

The link between early marriages and HIV transmission was highlighted by the CRC Committee in its concluding observations on the State party report submitted to it by Malawi. The Committee noted with concern that “harmful traditional practices including early marriages continued to

increase vulnerability to HIV infection.”⁸⁴

To conclude, there is evidence that the probability of reproductive ill health is higher in married adolescents than in their counterparts aged 18 and above.⁸⁵ It is against this background that global consensus is emerging to the effect that adolescent marriages may be a violation of human rights and are in fact a health concern that requires urgent attention.⁸⁶

Other consequences

Early marriage also adversely impacts upon the well-being of children generally, and the girl child in particular, in numerous other ways. For example, given that most girls get married to much older men early marriage renders them susceptible to physical, emotional and sexual abuse, as well as early widowhood. In fact, studies covering ten African, South American and Asian Countries suggest that girls who marry before the age of twenty are more prone to domestic violence and sexual abuse than their older counterparts.⁸⁷

This as, we have seen above, is because most adolescents do not have the emotional maturity to navigate their way through the storms of matrimony. It is therefore not difficult to imagine how early marriage can reduce a child to a life of hardship.⁸⁸ As some commentators note:

“Early and forced marriage constitutes multiple abuses of girls’ human rights. Hidden behind the social cloak of marriage, under-age girls are deprived of their

⁸¹NSO (2010), Children and Youth, (n.47), 40.

⁸²Nour (2009), (n.78),54.

⁸³Nour (2009), (n.78),54

⁸⁴Convention on the Rights of the Child : concluding observations : Malawi, 27 March 2009, CRC/C/MWI/CO/2 http://www.unicef.org/malawi/resources_6997.html (Accessed 22/03/2010).

⁸⁵Bunting (n.56),30

⁸⁶USAID (2009), Fact Sheet on Youth Reproductive Health Policy: Early Marriage and Youth Reproductive Health , (USAID Health Policy Initiative), p4

⁸⁷Ibid,1.

⁸⁸Forum on Marriage and the Rights of Women and Girls (2001), p 5

*personal freedom, forced into non-consensual sex, exploitation of their labour and diminution of their educational development and individual life-choices.*⁸⁹

Early marriages also perpetuate poverty in a number of ways. First, early marriage disrupts the education of children. Studies conducted elsewhere suggest that there is an inverse relationship between early marriage and education, especially among girls. In other words, school enrolment (“especially in secondary school”) tends to be low where children enter marriage at an early age.⁹⁰ Similarly, there is evidence in Malawi that large numbers of girls drop out of school to get married. A recent study by the Human Rights Commission confirms this.⁹¹ Lack of education, in turn, reduces life’s opportunities and hence consolidates poverty.

Similarly, early marriages inevitably “extend a woman’s reproductive span.”⁹² This suggests that women who start bearing children early are likely to have more children at the end of their reproductive cycle, especially where contraception is difficult to come by. Thus, women who marry early tend to have large family sizes given that they have a longer period of bearing children. This suggests that societies that have a lower marriage age tend to be more fertile than those that have a higher age of marriage.⁹³ Given the limited resources that most people who rush into marriage have, it is easy to see how early marriage entrenches poverty in most families. Considering that societies with younger mothers tend to be very fertile, inevitably, early marriages have implications for population growth and sustainable

development.

In conclusion Honourable Minister, early marriages need to be prohibited because they constitute a violation every conceivable human right including the right to health, education and development. Early marriages are also an obstacle to the government’s efforts to attain a number of millennium development goals. The General Recommendation 21 of the CEDAW Committee buttresses this point. According to paragraph 36 of the Recommendations:

“When minors, particularly girls, marry and have children, their health can be adversely affected, their education is impeded. As a result their economic activity is restricted. “Similarly paragraph 37 of the General Recommendations notes that early marriage affect girls by limiting “the development of their skills and independence and reduces access to employment, thereby detrimentally affecting their families and communities.”

Early marriages violate human rights to the extent that they present numerous obstacles to the personal development of children and obstruct them from enjoying various human rights. These include dignity and bodily integrity, liberty, education, employment, health and life.⁹⁴ The practice also hampers Malawi’s efforts to attain almost all Millenium Development Goals (MDGs), eradication of extreme poverty and hunger, achievement of universal primary education, promotion of gender equality, reduction of child mortality, improvement of maternal health, combating HIV/AIDS and other diseases and ensuring

⁸⁹Ibid

⁹⁰Bunting (n.56), 29

⁹¹MHRC (n.53),28.

⁹²UNICEF (2005), (n.26) 3.

⁹³Mandere (n50),93.

⁹⁴Jeannette Bayisenge (2009) Early Marriage as a Barrier to Education: A Development al Challenge in Africa, p1.

environmental sustainability. It is against this background that the NSO observes: “the 2008 census shows that Malawi has a high incidence of early marriages, which undermines national efforts to promote economic and social development.”⁹⁵

Given the inextricable link between poverty and early marriages it is not difficult to see how early marriages pose a big barrier to national development. In any case, it needs to be borne in mind that extreme poverty also leads to early marriages. Poverty is, thus, a cause and consequence of early marriage.⁹⁶

STRATEGIES TO ADDRESS THE PROBLEM

The need to understand the context

The preceding discussion has proceeded on the assumption that the practice of early marriages leads to a plethora of human rights abuses and that the State should take measures to address this problem. Among the important rights affected by early marriages are life, health, and education. The discussion has also assumed that the age of fifteen/sixteen is too low an age for marriage and that the state should increase the age of marriage to eighteen. The main rationale behind the choice of the age of eighteen is simply because it is the age at which children are deemed to be mature enough to make important decisions.

This section addresses a number of arguments against the imposition of a universal minimum age of marriage, most of which are not entirely correct. Nonetheless, in addressing them one may see ways in which the proposed reforms may be refined and could be implemented in a way such that they are practical and acceptable by the

target communities.

Some contend that imposing a universal age of marriage on a pluralistic society with different cultural and religious norms would not be ideal given that different groups have different cultural constructions/conceptions of childhood and what it means to be a child. Likewise, critics may argue that different socio-economic realities in which people live determine when a person can be deemed to have grown out of childhood. Accordingly, imposing a uniform definition of a “child” would be met with resistance.⁹⁷ Among the commentators who question the imposition of a uniform age of majority across the globe is Bunting. Bunting argues for the recognition of “the cultural specificity of child-hood and adolescence in contrast to the international human rights perspective that considers all people under the age of 18 as children.”⁹⁸ In this regard, she emphasizes the importance of examining the socio-economic conditions in which girls live and marry” before recommending a uniform minimum age of marriage.⁹⁹ She thus advocates for the recognition of the fact that childhood and adolescence are cultural specific and challenges the dominant “international human rights perspective that considers all people under the age of 18 as children.”¹⁰⁰

In practical terms, critics of the dominant approach merely remind policy advocates to desist from transplanting standards which might be workable elsewhere into a context whereby they might be misplaced and

⁹⁵NSO (2010), Children and Youth Report, (n.47) 29.

⁹⁶Bunting (n.56),31.

⁹⁷Parents sometimes stand to gain financially or otherwise from marriage so their consent may not be in the best interest of the concerned child.

⁹⁸Bunting (n.56),17

⁹⁹Ibid

¹⁰⁰Ibid

difficult to implement. Given that notions of marriage, age, responsibility and maturity are complex and vary according to particular contexts it is always important to understand the dynamics of a particular society before implementing reforms of this nature.¹⁰¹ Any law that does not take due cognizance of the socio-economic context might potentially be unenforceable. The fact that early marriages are prevalent in Mozambique despite the adoption of the minimum age of eighteen may be a reflection of this problem.

Accordingly, proposed reforms must endeavour to address deep-rooted cultural values that underlie child marriages. This is important because some communities are bound to resist reforms which are viewed as imperialistic values imposed on them by outsiders.

Moreover, critics contend that increasing the age which children may be allowed to marry to eighteen might not necessarily address the socio-economic problems that the girl child is experiencing at the moment. Instead, it might aggravate them. In this regard, Bunting observes: "To decry early marriage without addressing these systemic problem, may leave women with fewer opportunities and worse off."¹⁰² Legislative reforms aimed at addressing the problem of child marriages must thus be accompanied by initiatives to improve the economic status of the girl child. In particular, law reform will not achieve much in the context of poor education, poor health care and extreme poverty.

The foregoing analysis suggests that the solution to the problem of early marriage might lie in improving the economic status

of people, including the provision of health-care, education and employment opportunities. Likewise, instead of preventing people from getting married it might be more prudent to for the state to focus on the mitigating the undesirable effects of child marriage. This may be achieved by improving healthcare and reducing poverty.

In any event, the consequences of early marriage inevitably vary according to the socio-economic context one finds oneself in. As commentators have observed some of the reproductive health problems young women experience at present are not necessarily due to early marriage. Rather, they are a product of poor reproductive health care. The following statement by one commentator buttresses this point:

*"not in every place will the consequences of childbearing include fistulae and other reproductive ill health; in places with higher levels of economic development, in particular with better health care services, young women will not experience such consequences."*¹⁰³

The above quote emphasizes the need to adopt a multifaceted approach to the problems associated with early marriage. Instead of focusing exclusively on legislative reforms, there is need to address other structural issues that exacerbate the problem. The above analysis does not suggest, however, that Malawi should not take steps to eliminate deep rooted traditions that are harmful to women. On the contrary, it urges the government to pursue a holistic and realistic approach to the problem of early marriages. In any case, Malawi is under an obligation "without delay and in

¹⁰¹Ibid,33

¹⁰²Ibid, 31

¹⁰³Ibid, 20

conformity with articles 2 (f) and 5(a)” of the CEDAW to introduce “concrete measures to modify customs and cultural and harmful traditional practices that discriminate against women so as to promote women’s full enjoyment of their human rights” including the practice of early marriages.¹⁰⁴ However, measures to eliminate those practices must be sensitive to the cultural context and be adopted in consultation with the target communities. As the CEDAW’s committee suggests, the government of Malawi must implement necessary measures “in collaboration with civil society, women’s NGO’s and community leaders.”¹⁰⁵ The reforms, in order to be successful, must be accompanied by “comprehensive education and awareness raising programmes targeting women and men at all levels of society, including village head persons and chiefs.”¹⁰⁶ Having said that, the best interests of the children must prevail over the cultural dictates.

Human rights-based v Impact-based approaches to reform

Another issue relating to advocacy strategies is whether the practice of early marriages should be packaged as a human rights issue or whether it should be presented by making reference to its negative consequences.

International Treaty bodies and NGOs generally approach the issue of early marriages from a human rights platform. The treaty monitoring body for the CEDAW for instance advocates human rights based approach to the problem of child marriage

¹⁰⁴Committee on the Elimination of Discrimination Against Women Thirty-Fifth Session, 15 May- 2 June 2006- Concluding Comments: Malawi. CEDAW/C/MW/CO/5. 2 June 2006, paragraph 20.

¹⁰⁵Ibid.

¹⁰⁶Ibid

and regards these marriages as a violation of human rights. The consequences of child marriages on the health and education of girls are not the primary concern of the Committee. Rather, they are regarded as secondary issues.

There is some prudence in viewing child rights using human rights lenses, given that human rights standards have a moral appeal and are useful for holding governments accountable to their commitments. However, human rights based approach has limitations. Some communities are bound to resist the human right given that they may represent cultural imperialism and efforts to destroy their cultural values. One pragmatic strategy would be to present the issue of early marriage both as a human rights issue and as well as an issue which negatively impacts upon the socio-economic wellbeing of their children. Communities are more likely than not to be receptive to law reforms if they see that the reforms are meant to protect children from harm.¹⁰⁷ As Bunting notes:

*“the international human rights argument ought to be grounded in the particular consequences which women experience in specific contexts, such as the discriminatory impact upon women’s education , reproductive well-being, economic opportunities, and physical integrity.”*¹⁰⁸

This approach would be useful tool for protecting children from early marriages

¹⁰⁷Forum on Marriage and the Rights of Women and Girls (2001), p 33

¹⁰⁸Bunting (2005) (n.56), 32

until human rights become a respected aspect of our traditions.

RECOMMENDATIONS

The above analysis has revealed that the problem of child marriages is a sad reality in Malawi and that the problem affects about 33 percent of the young women between the age of 15 and 19 are in some form of permanent union. This exposes these women to a plethora of human rights violations. Among the rights which are compromised by child marriages are: life human dignity, health, education and development. In extreme cases, early marriages also expose girls to various forms of servitude, sexual abuse and exploitation. While it has been argued in certain quarters that child marriages are acceptable among certain cultural and religious groups, the fact still remains that the practice of early marriages exposes children to a multiplicity of harmful consequences.

While the government has taken steps to address the problem of early marriages, it has not decisively dealt with the issue of minimum age of marriage and has completely ignored the views of children on this matter. Similarly, government law reform initiatives on this issue have been characterised by so many contradictions. This, as we have noted above, is partly because of pressure from certain sections of society who wish to preserve the practice of early marriages for cultural and religious reasons. This is unfortunate given that the Constitution and international human rights standards oblige the State of Malawi to take into consideration the best interests of the child before enacting legislation affecting children.

Considering the concessions made by the Law Commission's Committee on the Re-

view of the Constitution that children need protection until the age of eighteen, it would be irresponsible for government to peg the age of marriage at sixteen.

In any case, the age of sixteen is not sensitive to the best interests of the child. If it is indeed true that Malawian children are generally in school until the age of eighteen, then any law that sets the age of marriage at sixteen would be difficult to justify. Moreover, given the state of Malawi's health care system, permitting children to get married at the age of fifteen is tantamount to condemning them to debilitating reproductive health problems and even death. Accordingly, from the perspective of the "best interests of the children principle" marriages should not be allowed until the age of eighteen or above. The government cannot therefore abdicate from its responsibility to promote and protect the rights of the girl child under the pretext that some cultural groupings would like to maintain the status quo. The state has an obligation to ensure that tradition and culture are not used as a basis for violating children's rights.¹⁰⁹ The paramount consideration should be "the best interests of the children." The government of Malawi is thus in violation of its international obligation by failing to domesticate international standards relating to the age of marriage. The government has also failed to provide legislative harmony regarding the definition of the child. The various ages reflected in the Constitution and Acts of parliament are not always consistent with the CRC.

In this regard, the government needs to take legislative steps to peg the age of marriage at eighteen. This will not only be in line with the recommendations of international human

¹⁰⁹Forum on Marriage and the Rights of Women and Girls (2001), p 20.

rights bodies but also with the WHO which is concerned about the reproductive health problems connected with early marriages.¹¹⁰

However, it could be naïve to ignore the socio-cultural context within which the proposed reforms will have to operate. As this paper has shown early marriages are culturally accepted and deeply entrenched in Malawi and any reforms that do not take this fact into account are likely to be resisted. Consequently, they may be difficult to implement and enforce. Any law reforms, therefore, must be accompanied by strategies to make the law acceptable to communities. Having said that, it is important to bear in mind that a substantial segment of the Malawi population is in favour of the reform of the Constitutional provision to increase the age at which young people can get married. This is evidenced by the public outcry that followed the passing of the Constitutional Amendment Bill, which in turn compelled the President to avoid signing the Bill. But as Bunting observes: **“The task of changing existing customs without irrevocably upsetting social structures will be achieved only by considerable study, tact and care.”**¹¹¹

One important strategy for enhancing the legitimacy and acceptability of the proposed reform would be to raise public awareness of the negative consequences of child marriages and to emphasize the benefits of the proposed law to target communities, including the fact that the proposed law is in the best interests of children and their communities. Emphasis should also be on the link between the proposed law and “safe-motherhood” initiatives.

Furthermore, it should be borne in mind that efforts to eradicate the problem of early marriages will be illusory if Government does not create opportunities for the girl child. One strategy that would address the problem of early marriages would be to provide educational and economic alternatives to early marriages. The government should, for instance, make education compulsory, at least for girls. This is especially given the fact that given the evidence that girls who stay in school tend to be more empowered, marry late and more aware of the reproductive health consequences of early pregnancies.

To conclude, it needs to be emphasized that no single approach may serve as a panacea to the problem of early marriage. Any strategy to reform the law must be accompanied by programmes and policies aimed at addressing the problem of early marriages. Law reforms must also be accompanied by advocacy and awareness raising campaigns involving community leaders.

¹¹⁰United Nations Commission on Human Rights: Sub-Commission on Prevention of Discrimination and Protection of Minorities Forty-Sixth Session Item 4 of the Provisional Agenda (1994), Review of Further Developments in Fields With Which the Sub-Commission Has been Concerned : Plan of Action for the Elimination of Harmful Traditional Practices Affecting the Health of Women and Children, Distr. General E/CN.4/Sub.2/1994/10/Add.1 22 July 1994.

¹¹¹Schwelb, p350.

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