

Malawi's constitutional change: a step forward towards ending child marriage

In summary

On 14 February 2017, the Constitutional Amendment Act No.36 was passed by Malawi's parliament amending Malawi's Constitution to state that 18 years should be the minimum age of marriage. The amendment was the culmination of efforts across civil society organisations, including *Girls Not Brides* members parliamentarians, traditional and religious leaders, UN Agencies, and government Ministries to strengthen legal protections against child marriage. This case study explores the motivations, initiators and political influencers which were instrumental in bringing about the constitutional amendment and ensuring the minimum age of marriage is 18 for girls throughout Malawi, and could be relevant for other countries seeking to strengthen legal protections against child marriage.

1. What was the legal change that came about?

Since Malawi ratified the United Nations Convention on the Rights of the Child in 1991, civil society organisations have been advocating nationally for Malawi to comply with international instruments on child rights.

In February 2015, Malawi adopted the Marriage, Divorce and Family Relations Act which set the minimum age of marriage at 18 for boys and girls. While this progress was celebrated, without amending the constitution – which had a provision that allowed children to marry at 15 with parental consent – a loophole existed, making child marriage still legal in Malawi. Malawi's Constitution had three provisions on marriages:

- Section 22(6) – age for marriage at 18
- Section 22(7) – parental consent for 15-18
- Section 22(8) – State to discourage child marriages under the age of fifteen.

The constitutional provision on the age of the child was 16 (section 23).

Despite the loophole in the Constitution, there were clear signs that change was on the horizon in Malawi. Other progressive laws such as the Gender Equality Act (2013) and the Divorce and Family Relations Act (February 2015) were being passed. Pressure started to brew to remove the inconsistencies in the Constitution to make child, early or forced marriages illegal. A complaint was raised against Malawi at the 2015 56th session of the African Commission on Human and People's Rights on issues of child marriage which led to a judicial decision calling for the age of the child to be 18 and under.

In 2016, a Bill for the Amendment of the Constitution was drafted by the Ministry of Justice. The draft was reviewed by a multi-stakeholder team. On 14 February 2017, parliament voted to amend the constitution to make marriage before the age of 18 illegal. The Constitutional Amendment Bill No.36 was passed unanimously with 131 votes. This ensured there was harmonisation between the Constitution and the Marriage Act and marked a historic day for girls in Malawi.

2. What is /are the anticipated outcomes of the legal change as identified in the Girls Not Brides Theory of Change?

- National laws reflect international and regional human rights standards.
- Robust legal framework against child marriage in place that sets 18 as the minimum legal age for marriage and protects girls' and women's rights.
- Increased accountability and monitoring of national / regional / community institutions.

3. How did the legal change come about?

A number of key strategies helped to pave the way for the Constitutional change in Malawi:

1. Identifying champions who could apply pressure on the government

Champions to end child marriage were crucial in spearheading momentum and galvanising support for closing the loophole in the constitution.

First of all, getting the President and the First Lady of Malawi on board to address child marriage was key. The President who was a global HeforShe Champion was supportive of the Marriage Act in 2015 and strongly supported commitments to end violence against children in the country. The First Lady has shown her support and commitment to working on girls' education and has her own charitable trust focusing on this issue.

Global and regional pressure helped. At the London Summit on Family Planning on 11 July 2012, Vice President Khumbo Kachali, on behalf of the government of Malawi, made the commitment to attempt to raise the legal age for marriage to 18 by 2014. The Special Representative of the Secretary-General (SRSG) on Violence against Children, Marta Santos Pais, visited Malawi in March 2015 to launch the first nationally representative analysis of the problem of violence against children through a Violence Against Children survey. Findings from the survey, which highlighted that 2 out of 3 Malawians experience violence in their childhood, were then used to push sectors to commit to a 10 point Response Plan. During a second visit in October 2016, she followed up and held respective parties such as traditional chiefs and the Head of State to account to achieve the 2030 Sustainable Development Goals' violence-related targets. Graça Machel, member of the Africa Progress Panel, also played a key role by visiting Malawi several times, raising the issue and pushing for action.

2. Working with parliamentarians

Two options were available to amend the Constitution and rectify the inconsistency created by the Marriage Divorce and Family Relations Act (2015):

1. A 2/3 majority of members of parliament to vote for change
2. A referendum where all eligible Malawians could vote to change the constitutional provision

As the second option was a costly exercise, NGOs and government ministries opted for the first option.

UN Women and civil society organisations played a critical role working with parliamentarians to get their support. They focused much of their advocacy efforts on the Ministry of Justice which was the key Ministry to get on board, given its mandate and authority over legal amendments. They also lobbied parliamentarians and sent text messages regularly before the vote to encourage MPs to vote for the constitutional amendment and remind them to go vote.

Civil society organisations also organised interfaces meeting between chiefs and the parliamentarians which helped to build political support.

3. Highlighting contradictions within the law

The groundwork for amending the Constitution had already been done through the passage of the Marriage, Divorce and Family Relations Act. The fact that there was a lack of harmonisation between the Marriage, Divorce and Family Relations Act and the Constitution helped to make a clear case for raising the age of marriage. As Magistrates always deferred to the Constitution rather than the Marriage Act, this confusion helped build a case that the constitutional provisions needed revising.

4. Building cross-sector support for change

The Ministry of Gender and the Ministry of Justice, with funding from UN Women, organised a number of consultation meetings. CSOs were invited to attend the national consultation meetings.

The Ministry of Education exhibited high level political will to address child marriage and this sent out strong messages to other Ministries that this is an issue which needs to be taken seriously at the highest level. The Ministry of Education has a desk in the Ministry of Gender and is regularly consulting with CSOs working on ending child marriages.

5. Once the law amendment has been approved, gaining support from traditional chiefs is important to help ensure implementation

UN Women helped mobilise the chiefs, particularly the Female Chief Katchindamoto who was instrumental in bringing other chiefs on board. They have also been working closely engaging the wives of chiefs and religious leaders who can play an important role in ending child marriage, partly due to the influence they have over their husbands, but also due to their roles in preparing girls for marriage and their involvement in initiation rites. A group of wives of chiefs in the country now want to formalise and develop their own 'Association of Spouses' and plans to work with the wives of religious leaders who play a crucial role in preparing girls for marriage.

6. Institutionalising successful programmatic approaches and fostering cross-governmental leadership

Getting the buy-in of the government to address child marriage by already taking action to address it has helped to strengthen the case to amend the constitution. Civil society organisations have had great success in institutionalising their programming models at a national level by working with the Ministry of Education. Some have pioneered 'mothers' groups', which are groups made up of about 14 people (10 women, 4 men) as a way to get girls to stay in school. Their role is to identify challenges faced by girls such as teenage pregnancy, child marriage, and harmful traditional practices. The Ministry of Education adopted the programme as official policy, mandating every school to be affiliated with one, and published a 'Mothers' Groups Training Manual' for distribution to every primary school.

4. What are the next steps for the implementation of the law in the next 12 months?

- Sensitisation and awareness building of the general public on the constitutional amendment.
- Increased work with traditional and religious leaders to reach out to the community.
- UN Women have also been doing work on developing gender responsive by-law frameworks with buy-in from the Ministries of Local Government, Gender, and Justice along with traditional chiefs. These by-laws will ensure there is no conflict between customary laws and national frameworks when it comes to gender, poverty, or disability, for example and help with effective implementation at the local level.
- Continued advocacy and lobbying for issues around child marriage such as support of child brides, education, empowerment, etc.
- Review of the child protection policy and the development of a national strategy on ending child marriage.

In the longer run, harmonisation of the policy and legislative framework with regards to the age of the child will be needed, including in-depth audits of all policies and laws, analysis of the implications of the Constitutional Amendment, and identification and development of subsidiary legislation. This process is currently under way in Malawi led by the Ministry of Justice and constitutional affairs

5. What have been the key lessons learned throughout the process of advocating for this legal change

- Some of the key factors of success in bringing about the constitutional amendment included:
 - Coordinated and collaborated efforts by all three arms of the Government, civil society, UN organisations, International NGOs, youth, religious organisations, traditional leaders, and the media accelerated the process of law review.
 - Strong consensus that the issue of early and forced marriage have negative consequences for Malawi's children, highlighted as an issue of national importance, allowing for a shared space but one collective voice.
 - A strong justification for amending the legal framework based on legal inconsistencies
 - Strategic and evidence-based advocacy and lobbying on the issue.
 - Prolonged massive awareness campaigns since 2009.
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