

**A Cultured Education: Malawi As An Example For
Protecting the Rights of the Girl Child in the Face of Cultural Barriers**

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I. INTRODUCTION – BACKGROUND ON MALAWI

A. Malawi in the News

Malawi is a small country in sub-Saharan Africa recognized by relatively few in the western world. Recently, however, Malawi has been the subject of international acclaim on several occasions. Perhaps first drawing significant attention to Malawi was renowned entertainer, Madonna's, highly publicized and somewhat controversial adoption of a Malawian boy in 2008. Then in May of 2010, Malawi again rose to the international forefront, this time as the subject of widespread criticism by human rights activists for the trial, conviction, and incarceration of an openly homosexual couple. Though the couple eventually received a humanitarian pardon from Malawi's President, Bingu wa Mutharika, homosexuality remains a crime and is the subject of continuing controversy in the country. On a lighter note, Malawi again made international news, including coverage by BBC and even Above the Law, in February 2011 by proposing a law that would criminalize passing gas in public. Finally, coming full circle, Malawi's Madonna connection once again brought the public eye on the nation as news of Madonna's failing charity, Raising Malawi, spread quickly across international news agencies.

B. Malawi on the Ground

Despite garnering minimal attention from the international community, Malawi is not a country that should be dismissed by the international community once these news stories fade. Malawi, known as the "Warm Heart of Africa," is a beautiful country with a population that has rightly earned the country's title. One travel book deems Malawi, "Africa for beginners,"

because of its relative safety and ease of travel and the kindness of its citizens who are proud, kind, and incredibly helpful as a whole.¹

A relatively recent democracy (1994), Malawi still struggles with some aspects of both running a democracy and implementing the country's laws and Constitution. According to the U.S. Embassy in Malawi, some of the greatest concerns currently relate to the civil and political freedoms under President Mutharika, leading to concerns over the sustainability of a continued free democracy in the country.²

In terms of human rights generally, though, Malawi is a mixed bag. Malawi has a largely rights-friendly constitution, enacted in 1994, which embraces many of the rights recognized in the Universal Declaration of Human Rights. This includes many of the economic, social, and cultural rights that the United States has chosen not to recognize in our own Constitution.³ Additionally, Malawi is party to nearly all the major international and regional covenants on human rights and has accordingly accepted responsibility for providing for the rights therein. Thus, Malawi can serve as a positive example to many countries in terms of its recognition of international human rights – at least on paper. In reality, Malawi has room for drastic

¹ Philip Briggs, *Malawi* (Bradt Travel Guides Ltd) (2010).

² Interview U.S. Embassy officials, in Lilongwe, Malawi (January 5, 2011); *see also*, U.S. Department of State, 2010 Human Rights Report: Malawi, April 8, 2011, *available at* <http://www.state.gov/g/drl/rls/hrrpt/2010/af/154356.htm>.

³ *See* CONSTITUTION (1994) (Malawi); U.S. CONST.; Universal Declaration of Human Rights, G.A Res. 217A (Dec. 10, 1948), *available at* <http://www.un.org/en/documents/udhr/>. In particular, the United States does not specifically recognize a right to culture, a right to education, or a right to development or adequate standard of living. These rights are, however, protected under the Malawi Constitution in articles 26, 25, and 30, respectively. This is not to say that the United States does not value these rights. In fact, the United States has several laws with the goal of assuring these rights to varying degrees. However, by not providing specifically for these rights in the Constitution, the United States is able to limit its obligations under these rights. Instead, the U.S. Constitution assures generally only negative rights, meaning it protects against violations of those rights; but makes no promises of the so-called affirmative rights which would require the government to take affirmative steps to provide resources rather than simply remedy violations after the fact.

improvement when it comes to implementation of the legal rights the country promises to provide and protect under these domestic, regional, and international instruments.

C. Malawi and This Paper

In particular, this paper will address Malawi's treatment of the rights of the girl child with respect to cultural practices, and will evaluate how Malawi can both improve and serve as an example to other countries looking to overcome cultural barriers and protect the education rights of their girls.

Malawi, like many other countries in Africa and around the world, is party to numerous international and regional covenants addressing the rights of the child and the rights of women and girls. However, Malawi in many respects, similar to other comparator countries, has failed to adhere to its promises under these agreements.

Further, Malawi, not unlike many other developing countries, has also failed to fulfill the promises set forth in her own domestic laws. Malawi has a relatively comprehensive domestic legal framework that sets forth a variety of legal rights and assurances. However, these laws often conflict, leading to ineffective enforcement of the laws and failed protection of the girl child. Specifically, Malawi's Constitution promises all citizens the right to live the cultural life of their choice.⁴ Additionally, the Constitution asserts that legislation will be passed to eliminate customs and practices that discriminate against women,⁵ guarantees all children equal treatment,⁶ and promises that no one shall be forced to enter into marriage.⁷ Unfortunately, Malawi's guarantee of the right to live the cultural life of one's choice can and does interfere with the above, and many other, rights also guaranteed under the Constitution.

⁴ CONSTITUTION, Art. 26 (1994) (Malawi).

⁵ *Id.* at Art. 24.2.

⁶ *Id.* at Art. 23.

⁷ *Id.* at Art. 22.4.

This paper will examine how certain cultural practices applicable to girls interfere substantially with the fulfillment of many other rights of young girls, with a specific focus on the right to education. After laying out the current legal, educational, and cultural conditions in Malawi, this paper will address the particular impact of Malawi's cultural practices on the educational rights of Malawi's girls. Next, the paper will set forth recommendations for how Malawi can conquer the cultural obstacles to girls' education and establish a working framework applicable to many comparable developing states. Finally, this paper will conclude with some observations of positive steps that have been taken in Malawi that can provide hope for both other countries and for a better future for the girl child in Malawi.

II. MALAWI – CURRENT STATE

A. Education Statistics

Malawi has been the subject of many educational studies within the developing world. When compared to her nearby African countries, Malawi fares quite well in the realm of education. According to a United Nations Children's Fund (UNICEF) report based on the years 2004-2008, eighty-five percent of females in the country are literate.⁸ Moreover, eighty-seven percent of females attend primary school according to the same study.⁹ However, the number of female students completing first through fifth grade is less promising with a mere thirty-six percent actually finishing primary school.¹⁰ The percentage of females attending secondary school is significantly more concerning. According to the UNICEF report, the net secondary

⁸ U.N. Children's Fund [UNICEF], *Report on the State of the World's Children 2011*, table 5 (February 2011) [hereinafter UNICEF, *World's Children Report*].

⁹ *Id.*

¹⁰ *Id.*

school female attendance rate from 2005-2009 was a meager thirteen percent.¹¹ Though Malawi has achieved gender parity in secondary school enrollment, this simply means overall secondary school enrollment for both male and female students is low, falling well below thirty percent.¹² Moreover, the enrollment rates differ drastically when comparing enrollment between girls living in rural and populated areas, with enrollment rates for girls in rural areas dropping below five percent.¹³ Malawi also has several other issues to address with respect to the right to education in school settings, however as this paper will address cultural issues affecting *access* to education, these will not be discussed in this paper.¹⁴

B. Relevant Cultural Issues at Play

Despite its small size, Malawi is a diverse country, consisting of eleven recognized ethnic groups practicing various indigenous religions along with Catholicism, Protestantism, and Islam.¹⁵ Residents of Malawi also speak numerous languages with various dialects.¹⁶ Thus, cultural practices necessarily vary widely throughout the country, a right that is guaranteed by

¹¹ *Id.*

¹² U.N. Development Fund for Women [UNIFEM], *Gender Justice: Key to Achieving the Millennium Development Goals*, 4-5 (September 22, 2010) [hereinafter UNIFEM, *Gender Justice*], available at <http://www.unifem.org/progress/pdfs/MDGBrief-English.pdf>.

¹³ *Id.*

¹⁴ Some of the primary issues in Malawi revolving around girls' education involve nondiscriminatory textbooks, private and separate restrooms, access to schools, corporal punishment, and sexual assault by teachers and peers. *See generally*, U.N. Committee on the Rights of the Child, *Consideration of Reports Submitted by States Parties Under Article 44 of the Convention: Malawi*, U.N. Doc. CRC/C/8/Add.43 (June 26, 2001) [hereinafter U.N. CRC Report].

¹⁵ U.S. Department of State, Background Note: Malawi, January 11, 2011, available at <http://www.state.gov/r/pa/ei/bgn/7231.htm>.

¹⁶ *Id.*

the Malawi Constitution.¹⁷ Specifically with respect to the girl child in Malawi, there are several cultural practices worth examining in some depth.¹⁸

i. Early and Forced Marriages

According to a study from 2005-2009, fifty percent of Malawian women aged twenty to twenty-four report having been married or in a committed union before the age of eighteen.¹⁹ In rural areas, this number rises even further to fifty-three percent.²⁰ Furthermore, statistics from 2000-2009 demonstrate that thirty-three percent of girls aged fifteen to nineteen were married or in union at the time of the study.²¹ These statistics are stark when compared to the fact that more than ninety-five percent of Malawian males are still single at age 20.²²

The Malawi Human Rights Commission reports that in some areas of the country, many girls marry as soon as they reach puberty, as early as twelve years of age, while boys are more likely to get married around age seventeen or older.²³

¹⁷ CONSTITUTION, Art. 26 (1994) (Malawi).

¹⁸ It is worth noting that the practices described in this section are often shrouded in secrecy. Many practices cannot be discussed with others who have not gone through the process. Other practices may involve topics considered taboo in the village, or they may be more widely condemned and thus forced underground. Furthermore, the practices described can vary in either minor or major respects by village or by region. Accordingly, not all practices described here can be said with certainty to apply to the country as a whole or to any specific area in the country. Nevertheless, conversations with various individuals in the community and national reports confirm that various versions of the practices have been and continue to be practiced in Malawi.

¹⁹ UNICEF, *World's Children Report*, *supra* note 8, at Table 9.

²⁰ *Id.*

²¹ *Id.*

²² Malawi Human Rights Commission, *The Status of the Human Rights of Women and Girls in Malawi*, 10 (2010) [hereinafter MHRC, *Status of Women and Girls*], available at http://www.nhri.net/2010/PRESENTATION_ON_HR_WOMEN_IN_MALAWI.pdf.

²³ Malawi Human Rights Commission [MHRC], *Cultural Practices and their Impact on the Enjoyment of Human Rights, Particularly the Rights of Women and Children in Malawi*, 33 (May 2006) [hereinafter MHRC, *Cultural Practices Report*].

One primary cause of early marriage is simply the extreme poverty seen throughout the country. In order to improve the status of their families, many girls' parents will encourage their daughters to enter into marriage with a rich man to access the man's wealth.²⁴ This may occur even when girls are already married to another man.²⁵ Additionally, some extremely poor families may not be able to support their many children. Therefore, these families may simply force their children out of the house by marrying them off so that they no longer have to care for the girl and to recoup a bride price for the girl, as discussed below.

In many parts of the country, families can marry their daughters off for a "*lobola*" or "bride price," which will be paid by a man to a girl's parents in exchange for her hand in marriage. The *lobola* comes in some form of monetary payment or transfer of gifts, such as goats. The value of the *lobola* may depend on the young girl's behavior, education status, the affluence of her family, and whether the girl is a virgin or not.²⁶ The result of this practice is that girls may have little choice over their eventual husbands, and are essentially purchased by their would-be husbands.²⁷ Moreover, the factors affecting the bride price a girl can earn are largely out of her own individual control.

Another common cause of early marriages is known as "*kupimbila*" or "*kupawila*," depending on the area of the country. This practice occurs when a family may get into debt and has no way to pay off that debt. Thus, as payment, a family will offer their daughter in marriage to their creditor. Girls may be as young as nine years old when they are sent to live with the creditor in these situations. Most often, the arrangement is that the girl will eventually marry the

²⁴ See MHRC, *Cultural Practices Report*, *supra* note 23, at 20.

²⁵ *Id.*

²⁶ *Id.* at 29-30.

²⁷ *Id.*

man when she becomes of age.²⁸ These types of arrangements may also occur prospectively, as opposed to in repayment of a debt already owed, through a contractual arrangement known as “*kutomera*.”²⁹ Sadly, in most cases, girls are completely oblivious of the arrangement into which they are sent and cannot be said to have fully consented to the marriage because of their lack of knowledge. These practices are condemned in some areas but nevertheless continue to be practiced.³⁰

Finally, their families or the families of their sexual partner may often force girls in Malawi into marriage if they become pregnant. This practice is known in some areas as “*ukwati wotulira*” or “*chipati*” and usually involves some sort of payment in damages by the girl’s sexual partner. In most areas, the practice exists because having sex outside of marriage brings shame to the parents and the community, and the parents thus force the couple into marriage to avoid the embarrassment.³¹ Though many Malawians support the practice because of the social expectation it reinforces, this practice also violates the liberty of the women to choose whom they marry and violates the Malawi Constitution, which asserts that no person shall be forced to enter into marriage, even in customary marriages.³²

The obvious impact of these practices is that families do not see education as a priority for their daughters. Rather, the clear role for girls is to marry early as this is seen as the best way girls can help provide for their family.³³ Moreover, society treats individuals with reverence

²⁸ *Id.* at 25.

²⁹ *Id.*

³⁰ *Id.* In the Human Rights Commission’s focus group discussions, 48.2% of interviewees stated that some form of *kutomera* or early marriage arrangement is common in their communities.

³¹ *Id.* at 28-29.

³² CONSTITUTION, Art. 22 (1994) (Malawi).

³³ See U.N. CRC Report, *supra* note 14, at 23, ¶77.

once they have married, regardless of their age.³⁴ Accordingly, there are significant social incentives for girls to marry early and enter into the “revered” society.

ii. Initiation Practices

In addition to the above tradition of early and forced marriages, there are also many more culture-specific practices revolving around initiation customs for Malawian girls. In Malawi, both boys and girls go through an initiation process or rite of passage during which they are taught about the values and norms respected in their communities. Children are taught about things such as manners and how to interact with elders in their villages. Girls might also learn about cooking, washing, and gardening skills and other domestic obligations they will be expected to take up.³⁵ Girls with bad manners or who do not listen to the advice of their elders may be beaten during the initiation period.³⁶ Boys initiation practices, however, tend to be less elaborate than those provided to girls. Additionally, in most parts of the country, the girls’ rites of passage primarily revolve around preparing the girl child for married adult life.³⁷

The practice of girls’ initiation in Malawi is known as “*chimnamwali cha atsikana*.” It begins at puberty or even earlier for some girls. Girls ready for initiation will be taken away into confinement for a period of time where they will receive counseling and training. The period of time a girl is confined away from home may vary from one week (corresponding with her menstruation period) to periods of up to one month. During this time, a girl is not allowed to see boys and men and is not allowed to do household chores or, critically, attend school. In addition to manners counseling, girls generally receive sexual and marriage counseling. The messages they receive may vary by age and by region and can often be contradictory. Girls are told to

³⁴ MHRC, *Cultural Practices Report*, *supra* 23, at 58.

³⁵ *See id.* at 35-37.

³⁶ *Id.* at 37 & 39.

³⁷ *Id.* at 35.

abstain from sex before marriage for fear of pregnancy and maternal complications or sexually transmitted diseases.³⁸ Girls as young as ten years may be prepared for possible marriage during these trainings.³⁹

In addition to these messages, girls are often taught about various sexual expectations of them including how to offer the best sex to their male counterparts. For example, in the Mangochi district, girls are taught to perform a dance that teaches them about sex. The dance is performed naked while the girls lie on their back and simulate the process of having sex in front of people from the community.⁴⁰ Girls as young six years old may be participants in this rite of passage.⁴¹ Observers from the community may sing obscene songs during the dance and offer money to particular girls by placing it on their vaginal area.⁴² At the end of their initiation period, girls may be brought before the village chief where a ceremony is held for them and they are instructed to perform the same dance in front of the chief on a wooden door carried in the air. Observers may touch the breasts of the girls during the dance, and at the end of this ceremony, girls are instructed to identify a boy to have sex with.⁴³ This process where the young girls have sex after initiation is known as “dust cleansing” or “*kusasa fumbi*.”⁴⁴ In this way, girls are encouraged to practice what they have learned during initiation. In some areas, dust cleansing may be performed by a “chosen” older man in the community who will have sex with all of the girls being initiated.⁴⁵

³⁸ *See id.* at 36-37.

³⁹ U.N. CRC Report, *supra* note 14, at 21.

⁴⁰ MHRC, *Cultural Practices Report*, *supra* note 23, at 37.

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.* at 38.

⁴⁴ *Id.*

⁴⁵ Interview with Victor Kanyema and Chris Misuku, Active Youth Initiative for Social Enhancement Malawi, in Blantyre, Malawi (January 10, 2011).

Furthermore, in some areas, the sexual training provided to girls involves advice about when to engage in sex with your partner. Girls are taught never to deny sex to their husbands except that they must refuse sex during their menstrual cycle.⁴⁶

As mentioned, boys undergo initiation as well. The boys' initiation practices also have a detrimental effect on the rights and treatment of girls in Malawi. During these initiations, boys are taught about girls and advised not to have sex with a woman during her monthly period. Boys also undergo circumcision and are taught that this procedure makes them mature. Afterwards, boys are even encouraged to go out and have sex with a girl after the practice to “*kutaya mafuta*” (spilling oil) or “*kuminitisa*” (blowing out). A common belief stemming from this practice is that if a boy does not have sex, his penis will shrink and become too small for sex.⁴⁷ These practices of course affect young girls with whom the boys attempt to have sex with when they return from initiation.

Another common practice related to boys' initiation is called “*gwamula*.” According to this practice, young men will invade girls' dormitories at night and have sex with the girls. This practice may be considered a way for boys to practice what they have learned during initiation or to test their newfound adulthood.⁴⁸ Additionally, sometimes the practice is the result of an arrangement between both a girl and a boy to experiment with what they have learned. In any case, the practice results in early sexual activity among girls and can often result in unwanted

⁴⁶ MHRC, *Cultural Practices Report*, *supra* note 23, at 38. In some villages, women convey their menstrual status by hanging beads on the wall in their bedroom. When a woman is menstruating, she will hang a red strand of beads on the wall to indicate to her husband that she cannot have sex. When she is not on her period, a woman will hang a white strand of beads indicating that her husband is free to initiate sex. In a tour of a village in southern Malawi, we witnessed these beads in both the hut where we slept as well as the hut of a local woman.

⁴⁷ *Id.* at 41-43.

⁴⁸ *Id.* at 44-45.

sexual intercourse by unwilling girls. *Gwamula* appears to be largely discouraged among most members of the population, yet continues to be practiced in at least some areas of the country.⁴⁹

iii. Pervasiveness of Gender Discrimination

Many of the above practices are the result of a general and widespread sentiment that women are and can be treated inferior to men. Women are expected to do the majority of domestic chores around the house and are taught not to question their husbands, either with respect to household decision-making or in regard to sexual advances. Girls are generally socialized to put themselves last and taught to fill an inferior role, which detrimentally reduces their self-esteem.⁵⁰ In addition, there are several cultural practices that continue to be followed by populations in Malawi that perpetuate this sexist attitude throughout the country.

Child Preference: One such practice is that of favoring the male child over the female. This preference is seen first with the birth of a child. Most families and communities will prefer a boy child because there is a perception that he will bring success and money to the family.⁵¹ This preference is evidenced in statements from community members as well as in the celebration of a child's birth. When a boy child is born, almost all communities will ululate, or yell loudly, more times than when a girl is born. The number of ululations symbolizes the strength of the role a child will play. Thus, the higher number of ululations signifies that boys are believed to play a bigger role in society as the head of the household.⁵²

⁴⁹ *Id.* Thirty-eight percent of the commission's interviewees stated that the practice was observed in their community.

⁵⁰ Economic Commission for Africa, *A Fifteen-Year Review of the Implementation of the Beijing Platform for Action in Africa (BPfA) +15 From 1995-2009*, 90 (February 2010) [hereinafter Economic Commission for Africa, *A Fifteen-Year Review*].

⁵¹ MHRC, *Cultural Practices Report*, *supra* note 23, at 52.

⁵² *Id.*

In some families, girls may in fact be preferred, particularly by the mother and particularly among poor families. However, most often, this preference stems from the fact that a girl will be able to assist with household chores or from the valuable bride price a girl may bring to her family.⁵³ Thus, when girls are preferred, it is often the result of the material or physical value they may bring to the family rather than their intrinsic value.

Malawi families also may show a preference for boys in the realm of education. Where very poor families cannot afford to send all their children to school, many families will make the choice to send their boys to school rather than their girls.⁵⁴ This may be because they expect boys to be able to achieve more success in school or because they want to keep their girls at home helping with the household chores.⁵⁵ Interestingly, though, some parents interested in a bride price for their daughters may often choose to send their girls to school because an educated girl can bring in a higher bride price. Though this is good in terms of education, it clearly sends the wrong message about the inherent value of pursuing education for girls.

Wife Inheritance: In approximately half of the country, the custom of wife inheritance, known sometimes as “*levirate*” or “*chokolo*,” is practiced. According to this practice, when a wife’s husband dies, the husband’s brother, cousin, or nephew will inherit the surviving wife. This is arranged by contract as part of the death rituals, and the surviving wife may or may not have a choice about her new husband. Many women may be required to agree to these arrangements or risk losing their property and even their children to their husband’s family.⁵⁶ Further, if a woman wants to remarry someone who is not a relative of her deceased husband,

⁵³ MHRC, *Cultural Practices Report*, *supra* note 23, at 52.

⁵⁴ *Id.* at 58-59; Interview with staff from the Centre for Alternatives for Victimized Women and Children, in Blantyre, Malawi (January 10, 2011).

⁵⁵ MHRC, *Cultural Practices Report*, *supra* note 23, at 59.

⁵⁶ *Id.* at 21-22.

she may be required to pay the family and leave the village. Though in some cases the custom is practiced in order to offer security to the wife and family who have lost their financial support, it also relegates women to the mere property of their husbands and families and is offensive to a woman's rights as an individual and a mother.

Along similar lines, some Malawians, mainly in the north, follow a practice known as “*chimeta masisi*,” which dictates that when a wife dies, a bereaved husband may marry the younger sister or niece of the deceased wife.⁵⁷ Often, this practice is encouraged by a young girl's parents and may be required even when a girl is unwilling – particularly if the parents risk having to return the bride price to the husband's family.⁵⁸ In some cases, these arrangements may involve girls as young as fifteen years old or younger who are forced to marry a man that may be as old as 50 years or more.⁵⁹

Wife Swapping: A related practice is that of “*chimwanamayi*” or “wife swapping.” This practice involves an arrangement between two men to go to the other's house at night at an agreed upon time and have sex with the other man's wife.⁶⁰ Generally the men convince their wives to participate in this agreement and the idea is to offer the couples a different sexual experience.⁶¹ However, noted consequences of this practice include the spread of HIV/AIDS and increased divorce rates when men find their friend's wives to be more sexually satisfying.⁶²

iv. General Consequences

Many of the cultural practices outlined above are sexual practices that not only demean women and girls, but also place them at higher risk of HIV and AIDS and, significantly, early

⁵⁷ MHRC, *Cultural Practices Report*, *supra* note 23, at 23.

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.* at 26-27.

⁶¹ *Id.*

⁶² *Id.*

pregnancy. As of 2009, the total fertility rate for Malawian women was 5.5%.⁶³ Moreover, between 2000 and 2009, thirty-four percent of girls aged twenty to twenty-four admitted to giving birth to a child before the age of eighteen.⁶⁴ The Mangochi district holds the highest percentage of teenage mothers where forty-eight percent of women begin childrearing as a teenager. Lilongwe boasts the lowest percentage of teen mothers, but still twenty-five percent of teens in the district have begun childrearing by age eighteen.⁶⁵ There is little doubt that early pregnancy and motherhood have a substantial and detrimental impact on the ability of girls to continue their education. Once girls become pregnant, their childrearing and other domestic duties generally preclude them from continuing their education.

Additionally, and as mentioned above, many of the sex-related practices contribute substantially to the spread of HIV and AIDS among Malawians. Nearly twelve percent of the population of Malawi is living with HIV, and HIV prevalence among young women aged fifteen to twenty-four is a shocking nine percent. In comparison, only two percent of young males are living with the virus.⁶⁶ Practices where girls are required or encouraged to sleep with an older man in the village or which encourage girls to try out their new sexual knowledge at an early age are large contributors to the spread of HIV as girls are often unaware of the HIV status of their partners. Further, practices such as wife swapping and wife inheritance have been known to spread HIV among families.⁶⁷

Fortunately, however, forty-two percent of adolescents aged fifteen to nineteen have a comprehensive knowledge of HIV. This means that these adolescents can correctly identify the

⁶³ UNICEF, *World's Children Report*, *supra* note 8, at Table 6.

⁶⁴ *Id.*

⁶⁵ MHRC, *Status of Women and Girls*, *supra* note 22, at 10.

⁶⁶ U.S. Agency for International Development [USAID], *HIV/AIDS Health Profile for Malawi* (2010) [hereinafter USAID, *HIV/AIDS Health Profile*].

⁶⁷ MHRC, *Cultural Practices Report*, *supra* note 23, at 23 & 27.

two major ways of preventing sexual transmission of HIV (using condoms and limiting sex to one faithful partner), will reject the two most common local misconceptions about HIV transmission, and are aware that a healthy-looking person can be HIV infected.⁶⁸

C. Legal Framework

Internationally, Malawi has signed on to all the major international covenants. Malawi is a party to the International Covenant on Civil and Political Rights (ICCPR); the International Covenant on Economic, Social, and Cultural Rights (ICESCR); the Convention on the Rights of the Child (CRC); and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). Accordingly, Malawi is obligated under each of the international agreements to adhere to the principles set forth therein and to assure the provision of all human rights specified in those agreements. By signing on to these treaties, Malawi is also bound to the reporting and monitoring components of each of the agreements as required by the relevant administering commissions.

In addition, Malawi has signed on to many of the critical regional conventions, further imposing international legal obligations on the government. The relevant regional conventions to which Malawi is a party include the African Charter on Human and People's Rights, and the accompanying Protocol on the Rights of Women in Africa; the African Charter on the Rights and Welfare of the Child; and the Treaty of the Southern African Development Community (SADC).

However, with respect to international legal instruments, Malawi requires an affirmative act of Parliament for international treaties to become part of domestic law.⁶⁹ Only international instruments binding on Malawi before the 1994 adoption of the current Constitution have the

⁶⁸ UNICEF, *World's Children Report*, *supra* note 8, at Table 9; USAID, *HIV/AIDS Health Profile*, *supra* note 66.

⁶⁹ See CONSTITUTION, Art. 211 (1994) (Malawi).

force of domestic law in Malawi.⁷⁰ Unfortunately, the Malawi parliament has taken no such steps to bind themselves to obligations under international instruments in the country's law.⁷¹ As a result, only the U.N. Universal Declaration of Human Rights, a primarily aspirational and nonbinding legal instrument, has been incorporated into Malawi's domestic law.⁷²

Finally, Malawi has a variety of domestic laws in place, further affirming the country's duty to provide for and protect the rights of the girl child in Malawi. First and foremost, Malawi's Constitution asserts protection of educational, cultural, gender, and children's rights along with many other rights consistent with the Universal Declaration of Human Rights.⁷³ Further, in 2006, Malawi passed the Prevention of Domestic Violence Act, enacted with the goal of eliminating gender-based violence occurring within a domestic relationship and to provide legal remedies and social services to persons affected by domestic violence.⁷⁴

Then just last year, in 2010, the government passed the Child Care, Protection and Justice Act, replacing the old Children and Young Person's Act. This new act takes some tremendous strides towards protecting the rights of Malawi's children and, if enforced, could do much to protect the rights of the girl child in Malawi. The Act obligates any member of the community with evidence that a child's rights are being infringed to report the matter to the local

⁷⁰ Of course, Malawi is still bound by these obligations internationally, but this aspect of the law makes it difficult for individuals to assert and redress their rights in the most directly accessible system.

⁷¹ The U.N. Secretary-General, Desk Review, *Assessment of Violence Against Children in the Eastern and Southern Africa Region*, 15 (2005), available at http://www.unicef.org/southafrica/resources_1843.html.

⁷² According to Malawi's 1966 Constitution, the UDHR was binding on the country and therefore continues to have the effect of law today. See *The Republic vs. Chakufwa Thom Chihana*, Criminal Appeal number 9 (Malawi Supreme Court of Appeal, 1992) ("We accept that the UN Universal Declaration of Human Rights is part of the law of Malawi and that the freedoms which that Declaration guarantees must be respected and can be enforced in these Courts.").

⁷³ See CONSTITUTION, Art. 23-26 (1994) (Malawi).

⁷⁴ Prevention of Domestic Violence Act, § 3 (2006) (Malawi).

government authority in the area. Upon receipt of the report, the Secretary for Children’s Affairs may summon the person to discuss the matter or may refer the matter to child justice court.⁷⁵

Additionally, the law asserts 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, and that no person shall force a child into marriage or betrothal.⁷⁶ Finally, the Act directs that no person shall sell a child or use a child as a pledge to obtain credit, use a child as surety for a debt or mortgage, or force a child into providing labor for the income of a parent, guardian or other person.⁷⁷ Any violations of the above laws are punishable by up to ten years imprisonment.⁷⁸ The Act also establishes special child justice courts for accused children and children in need of care and protection.⁷⁹

Although these acts do seem to set Malawi up with a strong legal framework to protect the girl child, there are also some contradictory and discriminatory laws on the books that can complicate enforcement of these laws. For example, while the Malawi Constitution defines the child as under sixteen years of age,⁸⁰ the same Constitution allows girls as young as fifteen to marry.⁸¹ In fact, the Constitution only “discourages” marriage of girls under age fifteen. For context, the U.N. outlaws marriage for young girls under eighteen.⁸² The 1903 Marriage Act in Malawi also prohibits marriage without parental consent for girls under the age of twenty-one.⁸³

⁷⁵ Child Care, Protection and Justice Act, § 75 (2010) (Malawi).

⁷⁶ *Id.* at §§ 80 & 81.

⁷⁷ *Id.* at § 82.

⁷⁸ *Id.* at § 83.

⁷⁹ *Id.* at § 132.

⁸⁰ CONSTITUTION, Art. 23 (1994) (Malawi).

⁸¹ CONSTITUTION, Art. 22 (1994) (Malawi).

⁸² U.N. Convention on Consent to Marriage, Minimum Age for Marriage and the Registration of Marriage, G.A. Res. 1763 XVII (December 9, 1964), *available at* <http://treaties.un.org/doc/Publication/MTDSG/Volume%20II/Chapter%20XVI/XVI-3.en.pdf>.

⁸³ Marriage Act (1903) (Malawi); *see also*, Right to Education Project, *National Law and Policies on Minimum Age – Malawi*, *available at* <http://www.right-to-education.org/country-node/367/country-minimum>.

Contradiction in the laws makes enforcement of these provisions extremely difficult and, in practice, there is little effort to go forward with enforcement of these marriage prohibitions. In 2009, the Malawi Law Commission backed a bill that would increase the minimum age of marriage to sixteen to coincide with the legal age for a child in other sections of the Constitution. However, the marriage age clause was struck from the bill before it was passed. Although this protective marriage clause was struck from the bill, there are still many in Malawi who feel that the minimum age for marriage should be raised even further to age eighteen or even twenty-one.⁸⁴

Further complicating the problem is the fact that Malawi sets the age of sexual consent for girls at thirteen.⁸⁵ Under the same penal code, assault of boys is criminal and punishable by 7 years imprisonment when the boy is under fourteen years of age.⁸⁶ Malawi's laws therefore provide for inconsistent and disparate treatment of girls as compared to boys under the same laws.

III. CULTURE'S IMPACT ON EDUCATION FROM A RIGHTS-BASED FRAMEWORK

The above-mentioned cultural practices all have considerable and injurious effects on the right to education for Malawi's girls. From a rights-based framework, the cultural practices primarily raise questions of accessibility of education to the girl child. The following Right to Education Project school accessibility indicators are relevant to the issues presented in this paper

⁸⁴ Interview with Wezi Moyo, ActionAid Malawi, in Lilongwe, Malawi (January 11, 2011).

⁸⁵ Malawi Penal Code Section 138 defines the crime of "defilement," which prohibits sexual intercourse with a girl less than 13 years of age. MALAWI PENAL CODE [C. PENAL] § 138.

⁸⁶ MALAWI PENAL CODE [C. PENAL] § 155.

and will be examined in turn: Economic Obstacles, Gender Obstacles, Sociocultural Obstacles, and Out-of-school Children.⁸⁷

A. Economic Obstacles

Extreme poverty in Malawi is a major contributor to the number of girls unable to attend school in Malawi. As a consequence of limited resources in Malawi, there are limited subsidies to assist girls in attending school or to provide girls with the materials they need to attend school, such as books and school uniforms. Malawi should continue work with other aid countries and nongovernmental organizations to attain funding for girls' scholarships to demonstrate that girls can afford to continue their education. Girls should not worry about getting funding for secondary or post-secondary education; rather they should focus on getting accepted to the program of their choice, and the funds are more likely to follow.⁸⁸

Furthermore, as discussed above, poverty is a root cause of many cultural practices resulting in early marriage for Malawian girls, which keeps them out of school. Girls who are forced to marry rather than attend school are the victims of rights violations at the hands of their parents and the Malawi government. While the eradication of poverty would be the ideal solution, short of that distant goal, girls must be taught that there are other ways to improve their economic situation. Most importantly, girls' families must support their decisions to continue with their education. Their families must understand that education can provide economic stability as well, and that more times than not, education provides more long-term stability than the support that a girl's bride price may bring. In the same vein, families must learn to value education for their girls as much as they do for their boys. None of the reasons for sending boys

⁸⁷ Right to Education Project, *Accessibility Indicators*, available at <http://www.right-to-education.org/node/862>.

⁸⁸ Interview with Clara Chindime, Basic Education Department, UNICEF Malawi, in Lilongwe, Malawi (January 14, 2011).

to school instead of girls can withstand scrutiny in light of Malawi's stated commitment to nondiscrimination and equality for women.

B. Gender Obstacles

In Malawi, disparate expectations for girls as compared to boys result in a significant number of girls dropping out of school or never attending in the first place. Girls are heavily relied on for subsistence and disproportionately bear the burden of domestic chores, often at the expense of their education.⁸⁹ The 2008 Population and Housing Census found that 42.4% of girls in Malawi drop out because of family responsibilities.⁹⁰ These domestic responsibilities include chores such as cooking and cleaning, gathering water and firewood, and providing childcare for their younger siblings. Girls are also expected to work in the fields to assist with gardening and harvesting. Particularly in the rural areas, domestic chores can take up to seven hours per day, clearly leaving little time for the education to which girls are entitled.⁹¹

Therefore, even girls who are interested in completing an education will simply not have the time to do so, or they may be forced to drop out by their families.

Another important gender barrier to the receipt of education for girls is the valuation of education by many mothers in Malawi. It is not just community expectations but also, and significantly, the expectations of girls' mothers that limit their ability to acquire an education. Many mothers in Malawi significantly underestimate the value of education for their girls, and they do not provide the necessary encouragement to send their daughters to school. Many

⁸⁹ MHRC, *Status of Women and Girls*, *supra* note 22, at 9.

⁹⁰ Government of Malawi, National Statistics Office, *The Year 2008 Population and Housing Census Report* (2008); *see also* MHRC, *Status of Women and Girls*, *supra* note 22, at 9.

⁹¹ UN Econ. & Soc. Council [ECOSOC], *Report Submitted by the Special Rapporteur on the Right to Education, Mr. V. Muñoz Villalobos*, 11, U.N. Doc. E/CN.4/2006/45 (February 8, 2006), available at http://www.ungei.org/resources/1612_666.html; *see also*, UNIFEM, *Gender Justice*, *supra* note 12, at 8.

women do not feel that education will provide the economic or professional success that it might for boys and believe their daughters will be better off by finding a husband to support them. Additionally, and as discussed above, many mothers have numerous household obligations and feel they need their daughters' assistance at home to complete these many domestic duties.

Thus, mothers as well as girls must be educated on the value and rewards of education for girls and boys alike. Further, expectations as to the household responsibilities can and should be changed to allow for boys and girls to share in household duties, which will reduce the time girls spend doing chores and will allow all children to attend school equally. As increasingly more girls begin attending school and completing their education, gender obstacles should begin to decline. Studies show that educated women have fewer children, have them later, and are more likely to send their own children to school.⁹² This is precisely the kind of cycle that Malawi needs to reverse the disparate gender trends surrounding girls' education.

Finally, treatment of women and girls under Malawi's laws are cause for further confusion regarding expectations for Malawi's girls, and results in more girls dropping out of school. Of particular concern is the above-mentioned confusion regarding Malawi's minimum age for marriage.⁹³ While the Marriage Act forbids marriage of girls less than twenty-one years old without parental consent, the Constitution allows girls as young as fifteen or younger to marry with parental consent and discourages, but does not provide punishment for, marriages involving girls under fifteen.⁹⁴ As a result, many girls end up in early marriages arranged by their parents – often for the purpose of debt repayment or garnering a bride price – without their knowledge, and they have no redress under Malawi's Constitution. These girls thus have no

⁹² UNIFEM, *Gender Justice*, *supra* note 12, at 5.

⁹³ See U.N. CRC Report, *supra* note 14, at 19-22.

⁹⁴ *Id.* at 22.

choice in how their future plays out and are deprived of the opportunity to obtain an education that might otherwise allow them to live an economically rewarding life through their own means.

C. Socio-Cultural Obstacles

Similar to the above gender barriers to education, many social constraints also affect the ability of girls to attend school. It is not just early marriages, but also the initiation practices and resulting trends that impact girls' attendance at school. The widespread subordination of women inherent in these practices lead to many girls having to drop out of school both for the messages the practices convey and due to health-related circumstances resulting from the practices.

According to the Malawi Human Rights Commission, once girls undergo initiation rites, they no longer take school seriously. Following the initiation practices, girls apparently perceive school to be a place for girls rather than for women. And once the girls have undergone initiation, they are considered to be and expected to act like women, which essentially means preparation for marriage.⁹⁵ Clearly, the initiation trainings and the messages being conveyed by these trainings do not sufficiently instill into the girls the value and the importance of education for the girl child. Keeping in mind that the initiation practices can occur when girls are as young as nine and generally not older than twelve to fourteen years old, education should undoubtedly be given a higher priority during initiation trainings as nearly all of these girls would not yet have completed primary school (through standard eight).

Initiation trainings and ceremonies are also problematic because of the time requirements. As mentioned, the initiations can take girls away from their homes and keep them confined for a period of one to four or more weeks. Further, in some areas, initiations may involve confinement of girls for multiple periods of confinement. Often, these confinement periods

⁹⁵ Interview with Wezi Moyo, ActionAid Malawi, in Lilongwe, Malawi (January 11, 2011).

occur during the time girls are in school, so girls may miss up to four or more weeks of school during these initiations. These absences from school undoubtedly place girls behind in their learning and impact their ability to perform at grade level. Moreover, the fact that the initiation takes precedence over school sends a message to the girls that education is secondary to their role of wife and homemaker.

Further, as many of the initiation practices are sexual in nature, girls are often forced into sex at an early age and against their will. This naturally leads to two extremely harmful results: early pregnancy and the spread of sexually transmitted infections – in particular, HIV. Early pregnancy, discussed more below, obviously obstructs access to education for girls by requiring them to drop out of school to give birth and subsequently raise their child.

HIV also affects girls in a couple ways. Certainly directly, transmission of HIV and AIDS may keep a girl out of school as she starts to fall victim to more physically limiting symptoms of AIDS. HIV and AIDS can also affect girls' attendance at school indirectly. In Malawi, like many other African countries, many children must watch their own parents suffer through the AIDS virus or watch their parents die from the disease. Malawi has at least 600,000 orphans in the country due to parents dying from HIV.⁹⁶ When a family loses one or both parents, it is often the girls who are expected to become the homemaker for the family. Thus, girls in this situation must often drop out of school to assume that role. Additionally, where it is the father who dies, the family's source of income may disappear, making school attendance economically impossible and requiring girls to find other ways to support their family.

⁹⁶ See World Health Organization, *Epidemiological Fact Sheet on HIV and AIDS – Malawi*, 6 (2008) available at, <http://www.unaids.org/en/dataanalysis/tools/aidsinfo/countryfactsheets/>; Avert, *AIDS Orphans Table* (2009), available at <http://www.avert.org/aids-orphans.htm>.

D. Out-of-School Children

Despite Malawi's efforts in eliminating school fees and making school, at least primary school, accessible to all, Malawi has failed to implement compulsory education. Compulsory education is exceedingly important in the international covenants and essential to the attainment of education for all. Without compulsory education, it is difficult to enforce the right to education and to monitor the country's compliance with educational promises. Additionally, Malawi does not have an effective means of tracking school dropout rates and there is no way to know how many children are not attending school if they have never enrolled in the first place.

Malawi has one of the highest dropout rates in the Southern African Development Community.⁹⁷ A story from the Mangochi District provides a telling story of just how great the problem of out-of-school children is in Malawi. According to a teacher in that district, "most pupils drop out of school."⁹⁸ In her school, of about 140 students, approximately thirty will finish the Malawi standard one, or first grade. Moreover, only about four of these initial 140 students are likely to reach the eighth grade, and none of the initial 140 would go on to secondary education.⁹⁹ Secondary attendance rates confirm this story, showing that only thirteen percent of girls attend primary school.¹⁰⁰

Experience across many countries shows that early marriage has a tremendous impact on girls, disempowering them throughout their lives. Early marriage curtails girls' opportunities for education and exposes them to risks of early pregnancy and childbirth, the leading cause of death

⁹⁷ Interview with staff from the Centre for Human Rights and Rehabilitation, in Blantyre, Malawi (January 10, 2011).

⁹⁸ MHRC, *Cultural Practices Report*, *supra* note 23, at 34.

⁹⁹ *Id.*

¹⁰⁰ UNICEF, *World's Children Report*, *supra* note 8, at table 5.

for girls between ages fifteen and nineteen in developing countries.¹⁰¹ Moreover, women who marry early often feel powerless at home and accept a position of inferiority. For example, in Nigeria, women who marry when under the age of eighteen are eighty percent more likely than women who marry later to report feeling that they have no say in household decision-making.¹⁰²

This same youth and powerlessness makes young married girls vulnerable to domestic violence and sexual abuse in the home, including nonconsensual sex. This is clearly a human rights violation, and it also puts girls at an increased risk of HIV because many husbands are unlikely to wear a condom and girls may have no say in the matter.¹⁰³ Powerlessness among these girls makes it highly unlikely they will assert their right to earn an education or return to school if they have dropped out, even if they would like to return. Exposure to HIV would also have an obviously detrimental effect on girls' ability to continue attending school. Early pregnancies, however, are by far the largest contributing factor to out of school children. Traditionally, girls who became pregnant during school were not even allowed to continue school. Moreover, they were scorned at school and shamed in their communities.

Only recently has there been a push for a readmission policy encouraging girls who have married or become pregnant to re-enroll in school. A few girls have taken advantage of this policy. However, even with this program, girls who do return are often ridiculed and, overall, very few return to school.¹⁰⁴ Mockery at school combined with childrearing obligations and domestic responsibilities all make returning to school for child mothers nearly impossible.

¹⁰¹ UNIFEM, *Gender Justice*, *supra* note 12, at 12.

¹⁰² UNIFEM, *Gender Justice*, *supra* note 12, at 12.

¹⁰³ U.N. Children's Fund [UNICEF], *Progress for Children, A Report Card on Child Protection*, 11 (September 2009) [hereinafter UNICEF, *Progress for Children*], available at <http://www.unicef.org/progressforchildren/index.html>.

¹⁰⁴ Interview with staff from the Centre for Alternatives for Victimized Women and Children, in Blantyre, Malawi (January 10, 2011).

Moreover, for the majority of Malawian girls living in rural villages, school offers few rewards anyway.

In addition to reducing early marriages and encouraging safer sex practices, economic incentives may encourage girls to attend school and delay marriage. If girls see little benefit to attending school and since poverty is an enormous contributing factor to school dropouts, scholarships and other economic incentives may be an answer.

IV. HOW MALAWI CAN SERVE AS A POSITIVE EXAMPLE TO HER PEOPLE AND TO OTHER COUNTRIES

Solving these issues in Malawi is incredibly complex. There are various cultural and social values behind the practices that simply cannot change overnight. But to bring education to more girls, the population needs more information – information about why women don't have to submit to a lower social status and information about why education is so important. The challenge is to find a way to convince citizens of the importance of education, especially those that are not going to school. There are many civil society organizations going into the communities and trying to perform this work, but these groups have limited resources and therefore are not necessarily reaching much of the country.

Malawi desperately needs a sincere commitment from the government to protecting the rights of the girl child. While the government is happy to proclaim equality and nondiscrimination, men in Parliament are afraid to pass certain laws actually giving effect to these principles. More girls in school means fewer women to marry, fewer women to do their household chores, fewer women to work in their fields, and fewer women to bear their children. If the women of Malawi do not see the necessary commitment from their government, it will be extremely difficult to bring about the widespread change that is needed. What follows are

several recommendations for how Malawi can improve their position towards protection of the girl child and how Malawi has the potential to be the shining example to other countries struggling with similar cultural barriers.

A. Legal Solutions

Compulsory Education: Perhaps the single biggest change Malawi and similarly situated countries could make to the existing legal framework is the introduction of compulsory education. Compulsory education is required under the UDHR, the CRC and the ESC Covenant. Additionally, the African Charter on the Rights and Welfare of the Child also calls for free and compulsory education. Though Malawi has provided for free primary education (excepting certain fees like uniform fees), the country has failed to guarantee compulsory education. Compulsory primary education, if enforced, would encourage parents to send their daughters to school rather than face legal repercussions, and compulsory education would necessarily change the perception regarding school and early marriages to girls still enrolled in primary school. Moreover, compulsory education would require countries to develop a system of tracking students in school, and it would help authorities identify out-of-school students to enforce compulsory education.

Minimum Age for Marriage: Malawi should end the legal battle over the minimum age once and for all and bring all laws discussing the minimum age for marriage up to international standards. The recent legislation clause attempting to increase the minimum age for marriage to sixteen passed in Malawi's parliament, but failed with the President due to political pressure. Clearly the issue has sufficient societal and political support to make it through the Parliament

only to die on the President's desk. Many in the field suggest that the minimum age should be raised even higher than the proposed bill, to eighteen, or even as high as twenty-one.¹⁰⁵

The African Charter on the Rights and Welfare of the Child prohibits child marriage and requires states to pass legislation specifying the minimum age for marriage as eighteen years. Malawi's continuous political debate over this issue can be ended by passing legislation that comports with the country's clear obligations under international law prohibiting early and forced marriages and requiring girls to be eighteen years old before marrying without parental consent.

Registration System: Malawi has traditionally had no national identification or registration system. One negative result is that many girls in the country may not know their exact age. This is particularly problematic for girls who mature more quickly as people may believe they are much older than they are. This may provide parents an incentive to marry their daughters earlier to earn a bride price. This, in turn, forces girls to drop out of school even earlier and can result in dangerous health consequences if these girls become pregnant. Accordingly, Malawi would substantially benefit from a comprehensive registration system allowing them to track and identify citizens. Identifying citizens would further assist in the enforcement of laws by providing evidence of a violation if a girl is married too young. In addition, a registration system would help provide accurate fertility rates and track the rate of early marriage and pregnancy or track the progress of efforts taken to reduce such practices. The National Registration Act was passed in 2010 but a mechanism to implement the law is not yet in

¹⁰⁵ Interview with Wezi Moyo, ActionAid Malawi, in Lilongwe, Malawi (January 11, 2011).

place.¹⁰⁶ Malawi must take sincere efforts to provide for a system that will effectively accomplish the goals of the Act.

Enforcement of Existing Laws: There is no question that Malawi and many other African countries have made substantial progress with respect to ratifying international agreements and enacting legislation to address the goals of the international human rights agreements. However, there is an acute need for the implementation and enforcement of these laws and government proclamations.¹⁰⁷ To do this, it is critical that those responsible for enforcing the laws are aware of the requirements under the law, which is not always the case. According to one civil society organization, many magistrates in Malawi are not even aware of the existence of the 2006 Prevention of Domestic Violence Act.¹⁰⁸ Consequently, training of magistrates on the laws and their implications has been and should continue to be conducted.¹⁰⁹

Simply having the legislation in place is not enough if the authorities are unaware of its existence. Malawi must develop a full-scale plan and must generate the resources necessary to implement the existing laws in order to comply with their international and domestic obligations. For example, the Malawi Constitution as well as the recent Child Care, Protection and Justice Act both prohibit forced marriages. However, it is apparent that forced marriages for young girls continue to be widely practiced and encouraged by customary practices such as debt repayment, bride prices, and marriage due to pregnancy. Malawi must provide a proper venue for violations of these laws to be heard, must impose substantive penalties for proven violations, and must enforce those penalties. Malawi's attorney general could institute a policy placing these as high

¹⁰⁶ Interview with Martin Nkuna, Legal Division, UNICEF Malawi, in Lilongwe, Malawi (January 14, 2011).

¹⁰⁷ See also, Economic Commission for Africa, *A Fifteen-Year Review*, *supra* note 50, at 97.

¹⁰⁸ Interview with Victor Kanyema and Chris Misuku, Active Youth Initiative for Social Enhancement Malawi, in Blantyre, Malawi (January 10, 2011).

¹⁰⁹ *Id.*

priority cases and seek out violations to prosecute. By demonstrating a commitment to these laws and following through with enforcement, Malawi's citizens will have to change their own actions with respect to some of these harmful cultural practices.

Encourage Reporting of Violations: In order to aid in enforcement of the existing laws, Malawi should encourage the reporting of violations and urge the use of their legal system to rectify reported violations. Traditionally, many actions that would be violations under the Malawi laws and Constitution have been resolved in traditional justice systems through customary compensation. This practice, however, allows perpetrators to escape punishment and perpetuates the practices by keeping them silent. Instead, Malawi should utilize the court system to impart formal punishments and fines on individuals offending the domestic laws and violating the human rights of Malawi's girls. If women and girls feel their complaints will be heard and tangible punishments will be dispensed, more cases will be reported and publicized, likely leading to increased public attention and advocacy against these kinds of illegal practices.

One way to encourage reporting among Malawians may be to follow the lead of Latin America where "women's police stations" were developed. These police stations employed properly trained female social service providers and police officers to offer a receptive environment for women to report violations. The result of these police stations was an increased social visibility of violence against women, more reporting of violations, and increased enforcement of the laws.¹¹⁰ Malawi does have a victim support unit which can be developed to employ the kinds of officers who will be receptive to reporting of gender based violence and to provide other necessary services to reporting victims.

¹¹⁰ UNIFEM, *Gender Justice*, *supra* note 12 at 16-17.

To accommodate a similar type of system, Malawi's justice system must also expand and find ways to provide relief for victims in rural areas in particular. Currently, the court system is largely accessible only to those living in one of the three major regional cities of Blantyre, Lilongwe, and Mzuzu. Additionally, services such as Legal Aid are available only in these central cities. This is at least one reason why so many complaints are widely resolved in traditional courts, or not reported at all.

In addition to providing more sensitive and receptive environments for reporting, Malawi should provide for more effective means of reporting. Anonymous reporting and reporting by phone rather than in person should be encouraged to make reporting easy for individuals. Anonymous reporting will also allow victims to escape social repercussions reserved for those who report against the will of the community.

Victim Support Programs: With an increase in reporting, Malawi will also need to expand and improve their victim support services. Very few African countries have comprehensive victim support services for victims of domestic or sexual abuse. Malawi and similarly situated developing countries would benefit from improved systems to provide sensitivity training and counseling to victims of abuse as well as medical and legal support after an attack. Counseling services for victims of assault are crucial to help victims cope with the trauma they have suffered as well as to prepare them to face any potential social consequences they may confront from their community for reporting the incident.

In addition to feeling comfortable reporting despite community resistance, victims must also feel safe to report without fearing backlash from the perpetrator of the crime. Often resolutions of these complaints involve bringing the victim and the perpetrator together to talk

about the situation.¹¹¹ However, this can be intimidating and traumatizing for sexual assault victims. Women, and especially girls, who come forward to report a gender-based crime should not be forced to face their attacker after reporting an offense; it should rather be a choice of the victim.

Namibia provides an example of the type of comprehensive service that could address the needs of women and children victims. The country has established special Women and Child Protection Units that provide safety shelters, counseling services, and legal advice for victims. Unit duties include investigation of rape, incest, indecent assault, sodomy, abduction and physical abuse cases. The units are generally located close to hospitals or clinics to provide ease of access to these facilities and services. Victims reporting to these units thus receive counseling from a social worker and then have an avenue to report to the police for investigation. Critically, all members in these units are trained to deal specifically with cases of domestic violence.¹¹² A similar system in Malawi would be incredibly valuable to encourage reporting, set the tone for redress in the justice system, and provide rehabilitation for traumatized victims to allow them to rebuild.

Constitutional Remedies: As discussed, Malawi has a relatively progressive and rights-friendly Constitution. Thus, individuals in Malawi might be able to take advantage of this fact by requiring the government to comply with their constitutional guarantees. To do so, one could seek redress for women in Malawi's Constitutional Court. One could challenge the practice of certain cultural practices, such as early or forced marriages, as contrary to the constitutional guarantee of equality and elimination of discrimination or the constitutional prohibition of forced

¹¹¹ Interview with Peter Msefula, Director of Women Development, Ministry of Gender, Child Development and Community Development, in Lilongwe, Malawi (January 13, 2011).

¹¹² Economic Commission for Africa, *A Fifteen-Year Review*, *supra* note 50, at 51.

marriages. In Benin, such legal action has been taken with positive results. Benin's Constitutional Court found that the practice of polygamy in Benin was contrary to the principle of equality between men and women guaranteed by their Constitution because men, but not women, were permitted to have more than one spouse. As a result of this challenge, polygamy was outlawed in Benin.¹¹³

Educational Incentives: For many girls in Malawi, education simply does not provide sufficient rewards in comparison to the other options available. For most, marriage offers more immediate and potentially more profitable rewards. And in a country as poor as Malawi, immediate monetary rewards are significant and sometimes necessary to meet one's basic needs. Accordingly, Malawi must provide other motivations to encourage girls to attend school.

For example, Bangladesh, in conjunction with the World Bank, Asian Development Bank, and government of Norway, instituted the Female Secondary School Stipend Project which paid the tuition fees and provided monthly stipends to unmarried rural girls who remain unmarried, maintain seventy-five percent attendance, and secure at least forty-five percent marks on their annual exams. The aim of the study was to delay marriage and childrearing among girls by promoting and rewarding an increase in school attendance.¹¹⁴

Malawi did institute a similar program, a cash transfer program, in 2008 with the goal of increasing girls' enrollment in school. The program gave girls aged thirteen to twenty-two and their parents up to \$15 per month if the girls attended school regularly. Results of the program showed that one year later, more girls receiving the cash transfer (95%) stayed in school than did

¹¹³ Economic Commission for Africa, *A Fifteen-Year Review*, *supra* note 50, at 76.

¹¹⁴ Anna T. Schurmann, *Review of the Bangladesh Female Secondary School Stipend Project Using a Social Exclusion Framework*, 27 J. OF HEALTH, POPUL. & NUTR. 4 (August 2009).

a control group of girls who received no money (85%).¹¹⁵ This same program also proved to reduce HIV prevalence among girls receiving stipends. This reduction was attributed to changes in girls' sexual behavior, such as needing to engage in less transactional sex with older men to earn money.¹¹⁶ Malawi should continue to explore similar programs to encourage girls to enroll and maintain attendance in school. These types of incentive programs not only provide much-needed financial support to these girls and their families, but the programs also send a message to these girls and their families that girls' education is a priority for the Malawi government.

Government Quotas: One means of improving the view towards women and girls is to increase the number of women in the public eye. Malawi has made some strides in increasing the number of women in government, but would benefit from a stronger move towards equal numbers of female and male politicians and parliamentarians. Malawi participated in The Beijing Declaration and Platform for Action (PFA), which commits Malawi to the enhancement of women's rights. Among other things, the Beijing PFA calls for gender balance in government bodies.¹¹⁷ Furthermore, CEDAW, to which Malawi is a party, mandates the use of special measures such as quotas to increase the number of women in power and increase their voices in political decision-making.¹¹⁸ By introducing and, more importantly, enforcing the use of quotas in government elections, Malawi can move quickly towards achieving gender balance in the

¹¹⁵ The World Bank, *Malawi and Tanzania Research Shows Promise in Preventing HIV and Sexually-Transmitted Infections*, July 18 2010, available at, <http://go.worldbank.org/BX003N4F10>.

¹¹⁶ *Id.*

¹¹⁷ United Nations, *Beijing Declaration and Platform for Action, adopted at the Fourth World Conference on Women*, Strategic Objective G.1 (October 27, 1995), available at <http://www.unhcr.org/refworld/docid/3dde04324.html> [accessed 8 May 2011]; see also, UNIFEM, *Gender Justice*, *supra* note 12, at 14-15.

¹¹⁸ Convention on the Elimination of All Forms of Discrimination Against Women [CEDAW] art. 4, G.A. Res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46 (September 3, 1981); see also, UNIFEM, *Gender Justice*, *supra* note 12, at 14-15.

public eye. Critically, the use of quotas will also be helpful in creating gender balance in a realm where women can have a direct impact on the government policies addressing the treatment of women and girls.

B. Civil Society Solutions

Malawi has a very active civil society that is working hard to improve education statistics in the country as well as to target and limit the cultural practices that are affecting women and girls throughout the country. The following are some recommendations to target the issues addressed in this paper through civil society and to continue the work already being done.

Education: Ironically, perhaps the single best way to effect change in cultural views is to educate the younger generations. In Malawi, however, this is acutely problematic because Malawi's cultural views are the major factor keeping the younger generation of women out of school. Consequently, Malawi must find a way to reach the girl child and educate her through non-traditional means. Under the current cultural traditions, the primary way of educating Malawi's girls is through the initiation process. This tradition allows Malawians to pass on their cultural norms as they are entitled to under domestic and international law. These rites of passage can and should be continued in Malawi and may be the best method of reaching Malawi's young girls and passing on the message of education. Malawi, and other similarly situated countries, should tap into these cultural avenues of education to spread the message of gender equality and impart the importance of education to the youth. Some civil society organizations have begun this process already by approaching "mother leaders" and the counselors in communities, the *nankungwi*, who lead initiation trainings. Educating these women on the laws in place and particularly on the value of education for their girls will allow these important messages to reach even those girls that never attend a single day of school.

Role Models: Another important method of educating the Malawian youth is through the use of role models who have attained what is perceived as nontraditional success to provide positive examples to girls and women in rural villages. Many civil society organizations are currently employing role models from the same or nearby village as the one they are working in to demonstrate to young girls that successful women can and do start out in equivalent circumstances. It may be hard to track the actual effects of this method of civic education, but chances are good that as more and more women attempt to follow in the steps of successful women leaders, increasingly more girls will start to value education as a way forward.

Sex Education: As many of the cultural practices affecting girls' access to schools are sexual in nature, Malawi would benefit from increased efforts to provide sex education to young girls. While some messages of sexual restraint and contraceptive use are provided during girls' initiations, this is provided with, at times, conflicting information about sexual practices. For example, girls are encouraged at initiation ceremonies to practice sexual acts they have learned, and yet strong community views regarding abstinence before marriage directly contradict this instruction.¹¹⁹ Further, rather than teaching girls about sex for the purposes of pleasing men, less demeaning discussions of sexual relations and encouragement of wholly consensual sex should be advised.

Moreover, despite sex being an integral part of the initiation ceremonies, sexual topics remain taboo outside this secret circle and are not discussed openly among community members. As a result, girls may feel restrained in how they talk about sex or may not ask the questions they should be asking. More significantly, girls may not feel they are able to talk about sexual practices that make them uncomfortable and are less likely to report abuse to which they or a

¹¹⁹ Interview with staff from the Centre for Alternatives for Victimized Women and Children, in Blantyre, Malawi (January 10, 2011).

friend is victim.¹²⁰ An affirmative policy on sex education with respect to contraception specifically would benefit the country both in preventing the spread of HIV and keeping girls from early pregnancy and child rearing, which prevents them from pursuing their education.

Women Empowerment: The aim of using role models, and a general solution to the overall attitude towards women and girls, is to employ methods of empowering women. If women do not feel entitled to the same educational and professional outcomes as men, the countrywide sentiment may never change. Thus, civil society must work to help women understand that they, too, deserve to go to school and to pursue a professional career if that is what they want. They must understand that they need not marry early and have multiple children simply because that is what they are “supposed” to do. A major part of this empowerment is simply ensuring that women are aware of their own individual rights and their rights as women. Educating women and girls on their constitutional rights and their rights under the recent domestic laws should allow them to speak up and assert those rights when they are violated. Once women feel empowered to speak out against demeaning cultural practices, the idea is that more and more members of the community will begin to shift their views on some of the practices. Malawi women, and women of all countries, should take the advice of Malawi’s first female attorney general: “Women should love themselves in such a manner that they are not going to compromise in any way. They should work hard and be promoted for being able to deliver not because they are compromising.”¹²¹

¹²⁰ Interview with Desmond Mnango, Centre for Youth and Children Affairs, in Lilongwe, Malawi (January 14, 2011).

¹²¹ *Attorney General Urges Women to Love Themselves*, NYASA TIMES, January 25, 2010, available at <http://www.nyasatimes.com/women/attorney-general-urges-women-to-love-themselves.html>.

C. Social and Cultural Solutions

In Malawi, many of the practices dealt with in this paper are widely accepted throughout the country or in the local communities. In fact, girls who are over twenty years old and not married are generally disrespected and may be scorned by their peers and the community, often called “*mahure*” (whores).¹²² Where girls are growing up in societies in which they are so widely scorned by their communities, it is not hard to see why they end up in marriages as early as they do. Thus, until society can accept a different attitude towards these practices, there is little doubt that these customs will continue to impede access to education for the girl child.

In reviewing theories for cultural change, many evaluate cultural change as a result of technological change and modernization. Many sociological studies focus on the idea of how democracy, industrialization, and similar forms of modernization can change the cultural attitudes of the country. What is troublesome, though, is that Malawi cannot afford to, and should not, wait until large scale industrial and modernization changes come to the country. Though Malawi, and Malawian women especially, would benefit from agricultural and industrial changes in the country, Malawi can and must effect a change in cultural attitudes toward the role of women and girls now, not potentially several decades down the road. Some potential ways to prompt the needed cultural and sociological change in Malawi and similar developing countries follow.

National Attention and Consensus: In the search to increase girls’ attendance in school, a change in the general societal view towards women is essential. As discussed, a primary motivating factor in girls’ absence from school is the fact that girls and women are treated inferior to men; and education is not valued as highly for girls as other pursuits, such as

¹²² MHRC, *Cultural Practices Report*, *supra* note 23, at 34.

marriage and childrearing. To reduce the prevalence of these cultural barriers to education, the perception of female inferiority must change. Currently in Malawi, there remains abundant resistance to this ideal. Recent attempts to pass legislation that would improve the status of women in the country have been stymied at the hands of male parliamentarians who fear what equalizing legislation might mean for them and their familial role. For change to occur, there must be a sincere commitment from both men and women to openly accept the changing roles.

To spark this change, there must be a governmental commitment to equality for women in the country and national attention must be focused on this aim. Men must understand how the improved status for women can in fact be beneficial to them so they, too, can embrace the changing roles, including their own increased responsibilities in the home. For example, countries should encourage men to focus on their role as fathers and demonstrate how education can best provide for a high-quality and successful future for their daughters and their families. Further, men should support equality for women as it will create more and better role models for their daughters. Economically, men can benefit from introducing equal status among women because successful women will bring additional income into the home, thereby sharing the financial burdens in the home and improving the family's status.

The worldwide decline in female genital mutilation or cutting (FGM/C) provides a helpful example of just how national and international attention to an issue can generate consensus on the issue and spark a change in the cultural practice. Since FGM/C was first brought to international attention in the 1970s, the practice has sharply declined in most countries.¹²³ Presumably the international attention to the practice and increased government commitment to its eradication has contributed to this decline.

¹²³ UNICEF, *Progress for Children*, *supra* note 103, at 14.

Additionally, there must be collective agreement to abandon harmful cultural practices because even where individuals oppose a custom, it is hard to discontinue many practices when individuals fear they will be banished from their communities for resisting.¹²⁴ Evidence in several countries shows that even where individual women believe that a practice should be abolished, their daughters may still undergo genital mutilation or cutting due to the continued societal pressures.¹²⁵ Further, studies have shown that progress towards abandonment of FGM/C is more rapid in countries where only certain social groups follow the practice. In these countries, examples of groups who do not follow the practice and alternatives to the practice are more readily available.¹²⁶ It is where individuals practicing a custom do not see any alternatives to the practice that the practice is more likely to continue.

Accordingly, countries need national attention to harmful cultural practices and government backing of the changing attitudes in the community. There must be legal punishment for the practice to provide support to women who would like to discontinue harmful practices and set their daughters up for a successful future. Additionally, countries must employ community-led efforts in the regions practicing harmful cultural practices geared toward offering locals alternatives to such practices and reducing the traditional reliance on harmful customs.

Understanding of Rights Framework: In order to help change the national consensus towards some of the harmful cultural practices discussed, it is critical for citizens to understand the rights framework on which objections to the practice are based. For example, much of the current work being done to counteract some of the traditional practices – at least those that are

¹²⁴ *Id.*

¹²⁵ According to the UNICEF study, Mauritania, Eritrea, Djibouti, Ethiopia, Guinea-Bissau, Burkina Faso, Senegal, and Benin are all countries where the prevalence of female genital mutilation is higher than the percentage of girls and women aged 15-49 who support the practice.

Id.

¹²⁶ UNICEF, *Progress for Children*, *supra* note 103, at 14.

sexual in nature – focuses on the impact the practices have on the spread of HIV and AIDS.¹²⁷ In many ways, this focus has been successful in finding alternatives to at least some of the sexual practices. However, not all harmful cultural practices are sexual in nature so this philosophy does not address all traditions. Moreover, this philosophy does not get at the heart of the problem. Harmful cultural practices should be discouraged not just because of their health effects, but because they are blatant violations of the rights of women and girls in the country.

Individuals who have a comprehensive understanding of how the laws and cultural practices relate, and how it affects them specifically, may be more likely to change their views towards the practices. The country should therefore strive to educate the populous regarding the human rights impacts of customary practices and how they may negatively affect individuals and the country as a whole.

Alternatives to Negative Practices: As part of educating the country about the impact of certain traditional practices, it is helpful to provide examples of alternative practices that can be implemented to achieve the same social goals without the harmful effects. For instance, many of the goals of the initiation practices involve teaching girls how to behave as adults, how to treat others with respect, and how to help out around the house. None of these goals are inherently damaging. However, the same goals can easily be achieved without also teaching girls to be subordinate or to engage in early sex or marriage. If sexual practices are taught during initiation ceremonies, they should be reserved for separate trainings for older girls and safe sex practices should be encouraged. Additionally, messages conveyed during initiations should be parallel for

¹²⁷ Interview with Wezi Moyo, Action Aid Malawi, in Lilongwe, Malawi (January 11, 2011); Interview with Grace Malera, Malawi Human Rights Commission, in Lilongwe, Malawi (January 12, 2011); Interview with Peter Msefula, Director of Women Development, Ministry of Gender, Child Development and Community Development, in Lilongwe, Malawi (January 13, 2011); Interview with Desmond Mnango, Centre for Youth and Children Affairs, in Lilongwe, Malawi (January 14, 2011).

both girls and boys. Just as girls are taught about child rearing and performing chores around the home, boys too should be expected to assist with these responsibilities and should learn to help from an early age. Finally, initiation trainings should impart the value of education for young girls and encourage school attendance rather than marriage as a means to financial success.

Community Focus - Target Village Chiefs: To reach those throughout the country, particularly those in the villages where these practices are most commonly practiced, it is necessary to strengthen the message coming from the central government, but at the same time to take advantage of the decentralized political system. Utilizing the decentralized system by reaching out to the village chiefs and local authorities responsible for conveying the government's message will allow the country to target local communities directly. In many communities, it is the traditional authorities that are responsible for the practices carried on in the community and for meting out punishment for violations of most rights in the village.

Under the Chiefs Act of 1967, village chiefs or traditional authorities are expected to, among other things, preserve the public peace, assist in the general administration of the district, and carry out and enforce any lawful directions of the District Commissioner.¹²⁸ Additionally, according to the Ministry of Local Government and Rural Development, the chiefs are charged with “‘spearheading development’ and assisting government to ‘put down evil practices like corruption.’”¹²⁹ Chiefs have the authority to uphold and enforce customary law not contrary to the Constitution, and under the Constitution, customary law is binding on all citizens.¹³⁰

¹²⁸ Chiefs Act (1967) (Malawi).

¹²⁹ Diana Cammack et al., *Town Chiefs in Malawi* 14 (Africa Power & Politics Working Paper No. 3, June 2009), available at <http://www.institutions-africa.org/filestream/20090618-appp-working-paper-no3-june-2009-town-chiefs-in-malawi-diana-cammack-edge-kanyongolo-tam-o-neil>.

¹³⁰ *Id.* at 15.

Accordingly, chiefs hold great power and are well positioned to uphold the proper functioning and practice within their villages.

Furthermore, local authorities are not only obligated under the law to carry out lawful directions, but many are also paid by the government. With their jobs and financial stability dependent on the government, traditional authorities have a strong incentive to follow the orders they receive from the government. These community leaders are therefore a critical piece to solving the problem of cultural change in the country when backed by a positive governmental message.

The government and civil society organizations can target these community leaders in order to change the views in the community and spread the message of equality and protection of the girl child. Many of the cultural practices, particularly the initiation rites, involve the village chief as part of ceremonies. If the chief in a community is convinced to end harmful practices, this will change the very nature of some practices and can send a strong message to the community members. For this reason, a goal of shifting the beliefs of those most directly responsible for carrying out the laws and forming cultural attitudes in the local community is necessary and a sincere change in those beliefs is ideal.

This can, however, be exceedingly difficult for a number of reasons. First, certain of the cultural practices directly involve and benefit the chief. For example, as part of some initiation rituals, parents of girls are required to bring material goods to the chief and counselors as a gift of thanks.¹³¹ Hence, chiefs may be reluctant to abandon traditional practices that bring these benefits. Also, in some areas such as in the south among the Sena tribe, village headmen

¹³¹ Interview with Victor Kanyema and Chris Misuku, Active Youth Initiative for Social Enhancement Malawi, in Blantyre, Malawi (January 10, 2011).

strongly believe that cultural values must not be tempered with.¹³² This too, however, can be overcome with sufficient advocacy. Another solution that is becoming more commonplace is when educated individuals who have left the village return to their home village to assume the role of chief. These new chiefs bring with them modern views and can advocate for a change in harmful practices.¹³³

In addition to targeting village authorities with positive messages to convey to the community, there must also be accountability for those traditional authorities who are expected to convey the message to the community, but don't. The government and civil society organizations often report that chiefs and traditional authorities are receptive to the messages coming from outside the village. But being receptive does not mean they will trigger change in their communities. It is easy for chiefs to agree to a policy and take the money to implement it, but it is difficult to ensure these policies are indeed carried out.¹³⁴ Where leaders fail to follow through on their promises to convey the government's message, there must be consequences and follow through. For example, since many traditional authorities are paid to carry out government objectives in their communities, failure to do so should be penalized with the loss of wages or ultimately the position.

Alternatively, refusing to follow government's orders or knowingly permitting practices that violate those orders is contrary to the law delegating authority and contrary to the Constitution and other domestic laws. Therefore, such refusal can and should be criminally punishable by incarceration or fines. Without political, criminal, and financial accountability,

¹³² Interview with Peter Msefula, Director of Women Development, Ministry of Gender, Child Development and Community Development, in Lilongwe, Malawi (January 13, 2011).

¹³³ *Id.*

¹³⁴ Interview with Clara Chindime, Basic Education Division, UNICEF Malawi, in Lilongwe, Malawi (January 14, 2011).

social change, particularly in rural communities, may be slow. However, involving the traditional authorities in the countrywide plan to abolish harmful practices can ultimately be an important step towards the common goal of increasing girls' enrollment in school.

Urbanization: The increasing urban population may also play a role in the change in attitude towards women and the cultural practices discussed in this paper. Particularly in Malawi, but also likely in many other neighboring African nations, residents are moving increasingly towards the city for a variety of economic and practical reasons. Interestingly, though, many Malawians living in the city are described as “translocals,” meaning they spend their time in both the city and their home villages.¹³⁵ Thus, while translocals continue to hold the values of their home villages, they are also exposed to new viewpoints in the urban areas that may differ from others remaining in the village. These translocals may be key to spreading new views and educational messages to the community members in their home villages.

Translocals may come to the city for many reasons such as for work or for education. Often, however, they tend to be more educated and may be receptive to rights-based arguments for changes to cultural practices in the country. Civil society organizations might therefore consider targeting these folks with information and educating them about the issues involved with the hopes that they will return to their villages and convey these messages back home. Moreover, many in the villages may be more sympathetic to proposed social changes coming from translocals who are often seen as successful examples from the community and may cause villages to change their own practices with a view towards achieving that same success.

Involve Girls: Most importantly, girls need to be involved in the process of improving their quality of life and increasing access to schools. Girls must be reached and civic education

¹³⁵ Cammack et al., *supra* note 129, at 10.

completed to help girls to understand the rights they have and the importance of speaking up when they feel uncomfortable or when their rights have been violated. Young girls who fear repercussions in their village for reporting an attack, or who are indoctrinated with the belief that talking about these practices or acts is taboo, will be unable to assert their rights and change the perception of girls' individual sexual and educational rights. Thus, efforts must be taken at every step of the way to ensure girls understand how they are impacted by these practices and to reassure girls that they are in a position to assert their rights.

V. PROGRESS AND HOPE

Though the task can seem quite daunting, Malawi is not without hope for eliminating gender discrimination and providing an environment in which girls are free to pursue education. One substantial note of promise is the fact that Malawi is starting to see more women assuming government positions. In fact, of the SADC member states, Malawi has one of the highest percentages of female ministers with twenty-seven percent of the country's ministers being female as of 2009.¹³⁶ Only three other countries, Angola, Lesotho, and South Africa, have a higher representation of women ministers.¹³⁷ Additionally, thirty percent of Malawi's Deputy Ministers are female.¹³⁸ Looking at parliament, however, nine other countries best Malawi's twenty-two percent representation of female members,¹³⁹ meaning women have limited ability to impact the passage of gender mainstreaming legislation if the male members of parliament are against it. Nonetheless, Malawi did implement a 50/50 campaign prior to the 2009 elections with the aim of increasing the number of female parliamentarians.

¹³⁶ Economic Commission for Africa, *A Fifteen-Year Review*, *supra* note 50, at 122.

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ *Id.*

Perhaps one of the most promising role models for women and girls in Malawi is Joyce Banda, Malawi's current Vice President. At age twenty-five, Ms. Banda left an abusive marriage with three kids and became actively involved in Malawi's women's rights movement. She founded both the Joyce Banda Foundation for Better Education and the National Association of Business Women in Malawi before getting involved in politics in 2004. She is an incredibly important role model for women in Malawi and will hopefully be able to instigate change for Malawi's women and girls by showing them what wonderful opportunities there are for educated women. In addition to Vice President Banda, Malawi also has a female attorney general, clerk of parliament, law commissioner, and registrar of the Supreme Court of Appeals and High Court of Malawi.¹⁴⁰

Along with positive female role models, Malawi's civil society deserves mention as an element that provides hope for Malawi's future. Malawi has a multitude of civil society organizations in the country working hard on a variety of legal and human rights issues, and they are making visible, but oftentimes slow progress. The organizations provide examples of various models that might be used to reach citizens and instigate change in the cultural landscape for Malawi's women as well as to increase enrollment of girls in primary school and secondary or post-secondary education. Also promising is the fact that many of the organizations are working jointly with other organizations as well as international NGOs and Malawi's government to bring their programs to as many girls as possible. With improved support from Malawi's government and a more receptive cultural setting, there is considerable hope for the girl child in Malawi.

Civil society organizations are witnessing some success. One such success story comes from ActionAid Malawi, citing the story of a girl in the Chitipa district who observed that a bride

¹⁴⁰ MHRC, *Status of Women and Girls*, *supra* note 22, at 15.

price was being offered for another girl in her school. This girl was to be married to a man looking for another girl to fulfill the needs of his family. The girl witness went to a local women's forum to report the incident and the women's forum brought the issue to a district court magistrate. The district court found that the girl was underage, that the man would not be permitted to marry the girl, and that the man was not allowed to recover the bride price he had paid.¹⁴¹ In this story, the reporting by the young girl, the action of the women's forum, the use of the court system to challenge that action, and the favorable judgment are all positive examples for Malawi.

Additionally, one policy worth mentioning that was spurred by civil society action is the readmission policy Malawi has recently endorsed to tackle the limitations of teen pregnancy, by permitting and encouraging young mothers to return to school after giving birth.¹⁴² As discussed at length above, early pregnancy is one of the major causes of school dropouts for Malawi's girls. The readmission policy addresses this problem by demonstrating that girls are welcome back in school after pregnancy and that they can still pursue an education even after becoming a mother.

Finally, Malawi has also made some important legal movements to protect women and girls. The 2006 passage of the Prevention of Domestic Violence Act takes an important step towards condemning the practice of violence against women in the household. What's more, the law is significant in that it reflects a government-backed attitude that the violent and subordinate treatment of women will not be tolerated, at least on paper. The recent passage of the Child Care, Protection and Justice Act takes this attitude one step further by extending that protection

¹⁴¹ Interview with Wezi Moyo, ActionAid Malawi, in Lilongwe, Malawi (January 11, 2011).

¹⁴² This policy began as a pilot project through the Forum of African Women Educationalists in Malawi (FAMEWA) in 2003 and is now employed as a countrywide policy. Interview with staff member from FAWEMA, in Lilongwe, Malawi (January 13, 2011).

to children and providing a legal path by which girls and others can challenge the cultural practices that violate their right to education and freedom from discriminatory and harmful cultural practices.

VI. CONCLUSION

All individuals spoken with in Malawi seem to agree that culture is extremely important to Malawi and her citizens, particularly given the various ethnicities and tribes across the country.¹⁴³ Indeed, the right to culture is guaranteed in Malawi's Constitution and throughout the major international treaties. However, interviewees also widely agree that culture cannot be allowed to impede the enjoyment of other rights such as education, a right that holds the "future" for Malawians, in particular its female population.¹⁴⁴

Education is widely described as an indispensable multiplier right.¹⁴⁵ Education is also closely tied to increased incomes, increased agriculture production, and improved nutritional status.¹⁴⁶ Among women, education has been shown to reduce fertility rates and to increase women's assertiveness and participation in political and economic activities in their

¹⁴³ Interview with Victor Kanyema and Chris Misuku, Active Youth Initiative for Social Enhancement Malawi, in Blantyre, Malawi (January 10, 2011) ("Everyone is entitled to culture, but education is our future."); Interview with staff from the Centre for Alternatives for Victimized Women and Children, in Blantyre, Malawi (January 10, 2011) ("Society is nothing without culture. But when educated, you have different cultures at your disposal."); Interview with Wezi Moyo, ActionAid Malawi, in Lilongwe, Malawi (January 11, 2011) ("Fulfillment of one right should not clash with others. If cultural practices clash with women's rights, then they should not be continued."); Interview with Peter Msefula, Director, Ministry of Gender Child Development and Community Development, in Lilongwe, Malawi (January 13, 2011) (opining that culture identifies you with your clan and should be maintained for that purpose, but cautioning that care should be taken to identify those practices which are harmful.).

¹⁴⁴ Interview with Victor Kanyema and Chris Misuku, Active Youth Initiative for Social Enhancement Malawi, in Blantyre, Malawi (January 10, 2011).

¹⁴⁵ See KATARINA TOMASEVSKI, *EDUCATION DENIED* 36 (Zed Books 2003).

¹⁴⁶ Malawi Human Rights Commission & ActionAid Malawi, *The Existence and Implementation of Laws, Policies, and Regulations in Education and How They Affect the Girl-Child in Malawi* (2010).

communities.¹⁴⁷ There is thus no doubt that in a country like Malawi where only one in three girls completes a primary school education, and far fewer in the rural areas, substantial measures must be taken to improve school attendance. In Malawi, and in many similar countries, the many traditional and cultural practices play a sizeable role in the low school enrollment rates in the country. Accordingly, in order to begin improving education statistics, Malawi must tackle the harmful cultural and sexual practices obstructing girls' access to school. The above legal, civil society, and cultural solutions provide numerous objectives to which Malawi might turn in her campaign to protect the individual and educational rights of the girl child. If Malawi is able to achieve some of these objectives, there is no doubt that Malawi will once again rise to the front page of international news as a guiding standard for other developing countries.

¹⁴⁷ *Id.*