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**STATUS OF HUMAN RIGHTS IN THE REPUBLIC OF MALAWI  
FOR THE 50<sup>TH</sup> SESSION OF THE  
UNIVERSAL PERIODIC REVIEW**

*www.ECLJ.org*  
*4, quai Koch*  
*67000 Strasbourg, France*  
*Phone: +33 (0)3.88.24.94.40*

## Status of Human Rights in Malawi for the 50th Session of the Universal Periodic Review

### Introduction

1. The European Centre for Law and Justice (ECLJ) is an international, non-governmental organization dedicated to promoting and protecting human rights around the world. The ECLJ also holds Special Consultative status before the United Nations Economic and Social Council. This report discusses the status of human rights in the Republic of Malawi (Malawi) for the 50th session of the Universal Periodic Review (UPR).

### Background

2. Malawi is a country located in southeastern Africa and has a population of approximately 20.2 million people.<sup>1</sup> The country is predominantly Christian, with approximately 33.5% of the population identifying as Protestant, 17.2% as Roman Catholic, 26.6% as Christian, 13.8% as Muslim, and 5.6% belonging to no religion.<sup>2</sup>

3. Malawi's last review was held on November 3, 2020.<sup>3</sup> As a result of the review, Malawi received 232 recommendations, 192 of which it accepted.<sup>4</sup> It was recommended by Haiti, and supported by Malawi, that the government “[c]ontinue to support, through economic and social policies, the institution of the family and the preservation of family values, including the protection of the right to life.”<sup>5</sup> Further, it was recommended by Norway, and supported by Malawi, that the government “[i]mplement national legislation and policies to safeguard women’s rights to sexual and reproductive health services and information, and end child marriage.”<sup>6</sup> While protecting and providing reproductive health services to women is a good thing, it must be noted that “reproductive health” is often a term used to refer to abortion, which involves the deliberate killing of a preborn baby.

4. On the issue of child marriage, it was also recommended by Angola, and supported by Malawi, that the government “[t]ake specific measures in order to reduce child marriage.”<sup>7</sup> No recommendations were made regarding religious freedom.

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<sup>1</sup> *Malawi*, BRITANNICA, <https://www.britannica.com/place/Malawi> (last visited Apr. 2, 2025).

<sup>2</sup> *Malawi Religions*, INDEX MUNDI, [https://www.indexmundi.com/malawi/religions.html#google\\_vignette](https://www.indexmundi.com/malawi/religions.html#google_vignette) (last visited Apr. 2, 2025).

<sup>3</sup> *Universal Periodic Review – Malawi*, OHCHR, <https://www.ohchr.org/en/hr-bodies/upr/mw-index> (last visited Apr. 2, 2025).

<sup>4</sup> *Malawi – Infographic*, OHCHR, <https://www.ohchr.org/sites/default/files/lib-docs/HRBodies/UPR/Documents/Session36/MW/InfographicMalawi.pdf> (last visited Apr. 2, 2025).

<sup>5</sup> *UPR of Malawi (3rd Cycle – 36th Session) Thematic List of Recommendations*, OHCHR, <https://www.ohchr.org/sites/default/files/lib-docs/HRBodies/UPR/Documents/Session36/MW/MatrixRecommendationsMalawi.docx> (last visited Apr. 2, 2025).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

## Legal Framework

### *Abortion*

5. Under Article 16 of the Constitution of Malawi, “[e]very person has the right to life and no person shall be arbitrarily deprived of his or her life.”<sup>8</sup> In order to provide the right to life for all its citizens, Malawi’s Penal Code restricts access to abortion except when it is performed in good faith to preserve the life of the mother.<sup>9</sup>

6. Additionally, Malawi is a party to the International Covenant on Civil and Political Rights (ICCPR).<sup>10</sup> Under Article 6 of the ICCPR “[e]very human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.”<sup>11</sup> Further, Malawi also has a responsibility to uphold pro-life principles enshrined in other international agreements such as the UN Charter, the Universal Declaration of Human Rights (UDHR), and the 1994 Cairo Conference on Population and Development.

### *Child Marriage*

7. Article 23 of the Constitution of Malawi states that the “best interests and welfare of children shall be a primary consideration in all decisions affecting them.”<sup>12</sup> Additionally, the Marriage, Divorce and Family Relations Bill No. 5 establishes eighteen as the minimum age for marriage without any exceptions.<sup>13</sup>

8. Article 47 of the Marriage Act prohibits people from carrying out illegal marriages: Under Article 47:

Any Registrar who performs the ceremony of marriage knowing that any of the matters required by law for the validity of such marriage has not happened or been performed, so that the marriage is void or unlawful on any grounds shall be liable upon conviction thereof before the High Court to a fine of K200 and to imprisonment for five years.<sup>14</sup>

9. Child marriages are also prohibited under international treaties such as the Convention on the Rights of the Child (CRC) and the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), to which Malawi is a party.<sup>15</sup> Article 1 of the CRC

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<sup>8</sup> CONSTITUTION OF MALAWI 1994 (rev. 2017) art. 16, [https://www.constituteproject.org/constitution/Malawi\\_2017](https://www.constituteproject.org/constitution/Malawi_2017).

<sup>9</sup> PENAL CODE OF MALAWI art. 243, <https://malawilii.org/akn/mw/act/1929/22/eng@2014-12-31>.

<sup>10</sup> *Ratification Status for Malawi*, OHCHR, [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Treaty.aspx?Lang=en](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?Lang=en) (last visited Apr. 2, 2025).

<sup>11</sup> International Covenant on Civil and Political Rights art. 6, *adopted* Dec. 16. 1966, 999 U.N.T.S. 171, <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights> (last visited Apr. 2, 2025).

<sup>12</sup> Constitution of Malawi 1994 (rev. 2017) art. 23, *supra* note 8.

<sup>13</sup> *Malawi*, GIRLS NOT BRIDES, <https://www.girlsnotbrides.org/learning-resources/child-marriage-atlas/regions-and-countries/malawi/> (last visited Apr. 2, 2025).

<sup>14</sup> MALAWI MARRIAGE ACT art. 47.

<sup>15</sup> *Ratification Status for Malawi*, *supra* note 10.

defines a child as “every human being below the age of eighteen years,”<sup>16</sup> and Article 16 of the CEDAW prohibits child marriages.<sup>17</sup>

10. Additionally, Malawi is a party to the African Charter on Human and People’s Rights on the Rights of Women in Africa. Article 6 of this Charter establishes eighteen to be the minimum age for marriage.<sup>18</sup>

## Abortion

11. Malawi has an obligation under its Constitution to ensure that “[e]very person has the right to life and no person shall be arbitrarily deprived of his or her life.”<sup>19</sup> Malawi’s abortion laws are consistent with these rights. While abortion activists claim that abortion is healthcare, the fact of the matter is that it is not. Nothing that involves the killing of a preborn baby can be construed as healthcare. By limiting abortion to only rare cases when the mother’s life is at risk, Malawi is protecting the right to life for all its citizens at every stage of life.

12. Malawi’s law on abortion is critical in protecting both the lives of preborn babies and mothers. In addition to preventing the deaths of preborn babies, restricting abortion also protects mothers from harmful and serious side effects. In sub-Saharan Africa, where Malawi is located, it has been documented that women who have had an abortion have experienced potentially life-threatening complications, and others have had “severe maternal outcomes” as defined as near-miss cases and death.<sup>20</sup>

13. Further, Malawi is not required to expand abortion as there is no such thing as an international right to an abortion. On the contrary, there is an international right to life, and this right has been enshrined in numerous international documents. The ICCPR uses similar language to Malawi’s Constitution and states that “[e]very human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.”<sup>21</sup> Similarly, the UDHR also states that “[e]veryone has the right to life.” None of these fundamental human rights documents makes a distinction as to when an individual is granted these rights; it simply says that everyone enjoys these rights.

14. Despite that the right to life is enshrined in international legal instruments, Malawi received two contradictory recommendations during its last UPR review, and supported both. As stated above, Haiti recommended that Malawi support the “protection of the right to life.”<sup>22</sup> In contrast, Norway recommended that Malawi “[i]mplement national legislation and policies

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<sup>16</sup> Convention on the Rights of the Child art. 1, *adopted* Nov. 20, 1989, 1577 U.N.T.S. 3, <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child> (last visited Apr. 2, 2025).

<sup>17</sup> *Id.* art. 16.

<sup>18</sup> African Charter on Human and People’s Rights on the Rights of Women in Africa art. 6, [https://au.int/sites/default/files/treaties/37077-treaty-charter\\_on\\_rights\\_of\\_women\\_in\\_africa.pdf](https://au.int/sites/default/files/treaties/37077-treaty-charter_on_rights_of_women_in_africa.pdf) (last visited Apr. 2, 2025).

<sup>19</sup> CONSTITUTION OF MALAWI 1994 (rev. 2017) art. 16, *supra* note 8.

<sup>20</sup> Estelle Pasquier et. al, *High Severity of Abortion Complications in Fragile and Conflict-Affected Settings: A Cross-Sectional Study in Two Referral Hospitals in Sub-Saharan Africa (AMoCo Study)*, BMC PREGNANCY & CHILDBIRTH (Mar. 4, 2023), <https://bmcpregnancychildbirth.biomedcentral.com/articles/10.1186/s12884-023-05427-6#:~:text=Our%20results%20suggest%20that%20women%20who%20accessed%20post-abortion.>

<sup>21</sup> ICCPR art. 6, *supra* note 11.

<sup>22</sup> OHCHR, UPR of Malawi (3rd Cycle – 36th Session) Thematic List of Recommendations, *supra* note 5.

to safeguard women’s rights to sexual and reproductive health services and information.”<sup>23</sup> Although Norway’s recommendation may seem benign, it is well established that using “sexual and reproductive health” language refers to abortion. As such, Malawi was right to support Haiti’s recommendation, as it supports human rights protections. But, it is confusing why Malawi would also support Norway’s recommendation in direct contradiction, as there is no international right to abortion. To further demonstrate that the so-called right to abortion, does not exist, one needs to only look at U.N. Members States’ laws restricting abortion. Out of the 193 U.N. Member States, a majority of them have strict restrictions on abortion (outlawing it altogether or only allowing it to save the life or health of the mother).<sup>24</sup>

15. As demonstrated above, Malawi has an obligation under both its Constitution and international human rights documents to protect all its citizens from the dangers of abortion, regardless of stage of life. In fact, Malawi has an affirmative commitment to “reduce the recourse to abortion” under the 1994 Cairo Conference on Population and Development.<sup>25</sup> Thankfully, Malawi has continued to uphold these obligations since its last UPR and, as recently as 2021, when the National Assembly rejected a motion to debate a bill that would have expanded access to abortion.<sup>26</sup>

### Child Marriage

16. Despite being illegal, child marriage remains a widespread issue across the entire country.<sup>27</sup> In fact, it is estimated that 38% of girls in Malawi are married by the time they turn eighteen, and 8% are married before they turn fifteen.<sup>28</sup> Child marriage has been prevalent in Malawi because of cultural norms and extreme poverty.<sup>29</sup> This is concerning because child marriage has been shown to be extremely harmful to children, particularly girls. Girls who marry before they are eighteen are more likely to drop out of school and are at an increased risk of experiencing domestic violence.<sup>30</sup> Further, child brides are more likely to become pregnant during adolescence, which exposes them to risks during both pregnancy and childbirth.<sup>31</sup> Additionally, girls who get married before they turn eighteen are often isolated from their families and friends which poses a risk to both their physical and psychological well-being.<sup>32</sup>

17. One girl shared how she got married at the age of fifteen because her family could not provide her with two meals a day.<sup>33</sup> However, child marriage is not the answer to this problem. The girl shared that after she got married, she was forced to drop out of school and perform

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<sup>23</sup> *Id.*

<sup>24</sup> *The World’s Abortion Laws*, CTR. FOR REPROD. RTS, [https://reproductiverights.org/wp-content/uploads/2023/12/WALM\\_2023-v3-Updated\\_12-20-23.pdf](https://reproductiverights.org/wp-content/uploads/2023/12/WALM_2023-v3-Updated_12-20-23.pdf).

<sup>25</sup> International Conference on Population and Development, *Report of the International Conference on Population and Development*, ¶ 8.25, U.N. Doc. A/CONF/F.171/13/Rev. 1, <https://digitallibrary.un.org/record/206701?v=pdf>.

<sup>26</sup> Lamech Masina, *Malawi Parliament Rejects Debate on Liberalizing Abortion Law*, VOA (Mar. 12, 2021), [https://www.voanews.com/a/africa\\_malawi-parliament-rejects-debate-liberalizing-abortion-law/6203213.html](https://www.voanews.com/a/africa_malawi-parliament-rejects-debate-liberalizing-abortion-law/6203213.html).

<sup>27</sup> *Malawi*, *supra* note 13.

<sup>28</sup> *Id.*

<sup>29</sup> *Breaking the Chains of Tradition: Battling Child Marriage in Malawi*, FREEDOM UNITED (Nov. 29, 2023), <https://www.freedomunited.org/news/child-marriage-malawi/>.

<sup>30</sup> *Child Marriage*, UNICEF, (last visited Apr. 2, 2025).

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> Stephanie Desmon, *CCP Finds Success in Reducing Child Marriage in Malawi*, JOHNS HOPKINS CTR. FOR COMM’N PROGRAMS (Sep. 19, 2022), <https://ccp.jhu.edu/2022/09/19/married-child-stopping-malawi/>.

menial work for very little money.<sup>34</sup> Thankfully, an organization in Malawi heard her story and was able to mobilize workers who reached out to the girl and her family to educate them on the negative effects of child marriage.<sup>35</sup> This led to the girl being able to return to live with her family and continue her schooling.<sup>36</sup>

18. Another girl shared her story of how her uncle was unable to take care of her and her sister and married them off following the death of their parents:

My uncle found men and married us off. I could not believe it. He felt he couldn't take care of all of us. Since he depends on rain-fed agriculture, he struggles to harvest enough food for the whole year. We had no choice but to comply with his idea of marrying us off. It seems he collected some money from these men.<sup>37</sup>

Thankfully, their marriage was reported to the police and their cases were investigated by the Police Victim Support Unit.<sup>38</sup> This led to the uncle being arrested and the marriage being annulled.<sup>39</sup>

19. Thankfully, child marriage rates have been declining since it was declared illegal in 2015, rates have dropped from approximately 44 % of girls being married before the age of eighteen in 2015<sup>40</sup> to approximately 38% today.<sup>41</sup> However, while we are encouraged by the declining rates, a lack of funding and support by the government has slowed the pace of intervening and stopping these marriages.<sup>42</sup> Further contributing to the rates of child marriage is the prevalence of “secretive unions.”<sup>43</sup> While traditional leaders have begun taking steps to refuse to carry out child marriages, there is difficulty in uncovering marriages that are done in secret. Even though it is illegal for an individual to conduct marriages they know to be invalid, social services rarely gets involved in cases regarding child marriage.<sup>44</sup>

20. While child marriages are still taking place, reports show that when victims know who to turn to and are educated about the law, efforts are taken to annul these illegal marriages. One group in Malawi is working with traditional leaders and community members to inform people on the dangers of child marriage and work to annul such marriages.<sup>45</sup> In one district alone, this led to 184 marriages being annulled between January 2021 and March 2022.<sup>46</sup> Further, in 2021,

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<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Annuling One Child Marriage in Malawi, Giving Hope to Many Girls*, UN WOMEN AFRICA (Nov. 17, 2021), <https://africa.unwomen.org/en/news-and-events/stories/2021/11/annulling-one-child-marriage-in-malawi-giving-hope-to-many-girls>.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *Malawi*, THE CHILD MARRIAGE DATA PORTAL, <https://childmarriedata.org/country-profiles/malawi/> (Apr. 2, 2025).

<sup>41</sup> *Malawi*, *supra* note 13.

<sup>42</sup> Cathering Tinto, *Inadequate Resources Derail Child Marriages Fight – CSO*, CAPITALFM (May 2024), <https://www.capitalradiomalawi.com/2024/05/27/inadequate-resources-derail-child-marriages-fight-cso/>.

<sup>43</sup> *Breaking the Chains of Tradition: Battling Child Marriage in Malawi*, *supra* note 29.

<sup>44</sup> Megha Mohan & Yousef Eldin, *Child Marriage: “I Was Sold Into Marriage for £7 at the age of 12”*, BBC (Nov. 28, 2023), <https://www.bbc.com/news/world-africa-67549633>.

<sup>45</sup> Desmon, *supra* note 33.

<sup>46</sup> *Id.*

the United Nations Population Fund (UNFPA) investigated 700 cases of child marriage and was able to work to annul more than 60% of them.<sup>47</sup>

21. To combat the problem of child marriage, the government launched a National Strategy to End Child Marriage on October 18, 2024.<sup>48</sup> The goal of this strategy is to reduce rates of child marriage by 20% by focusing on education, changing social norms, and strengthening legal protections combating child marriage.<sup>49</sup> This new strategy is critical to combating child marriages and stopping girls from experiencing the negative effects of child marriage.

### **Recommendations**

22. We are encouraged by Malawi's efforts to continue to protect life at all stages and reject legislative measures that have been put forth to expand access to this deadly practice. We want to remind Malawi that despite outside pressure to expand access to abortion, its position to protect life is in line with and supported by numerous fundamental human rights documents. Malawi has no obligation to provide access to abortion, but it does have an obligation to ensure that no one is arbitrarily deprived of their life.

23. Even though child marriage is illegal, more needs to be done to slow the high rates of abortion. To do this, Malawi must commit to educating its population on the laws and dangers of child marriage. As demonstrated above, when people know the law and the risks child marriages pose to girls, efforts are taken to annul such marriages. Additionally, we ask that Malawi investigate and prosecute individuals who are knowingly conducting illegal child marriages. We are encouraged by Malawi's recent commitment to reduce the rates of child marriage by 20%, and we hope it is successful in this endeavor.

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<sup>47</sup> *Engaging Communities in Malawi to End Child Marriage and Help Girls Finish School*, UNFPA (Oct. 31, 2022), <https://www.unfpa.org/news/engaging-communities-malawi-end-child-marriage-and-help-girls-finish-school>.

<sup>48</sup> *Malawi Launches National Strategy to End Child Marriage*, GIRLS NOT BRIDES (Oct. 30, 2024), <https://www.girlsnotbrides.org/articles/malawi-launches-national-strategy-to-end-child-marriage/>.

<sup>49</sup> *Id.*