

Towards a Human Rights-Based Approach to Learner Pregnancy Management in Malawi



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MHRC AND SALC RESEARCH REPORT

Towards a Human Rights-Based Approach to Learner Pregnancy Management in Malawi

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- (b) Study the status and effect of legislation, bills, judicial decisions and administrative provisions for the protection and promotion of human rights and to prepare reports on such matters and submit the reports, with such recommendations or observations as the Commission considers appropriate, to the authorities concerned or to any other appropriate authorities;
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Acronyms and Abbreviations

AIDS	Acquired Immune Deficiency Syndrome
CRECCOM	Creative Centre for Community Mobilisation
CSE	Comprehensive Sexuality Education
DEM	District Education Manager
DEO	District Education Office
ECD	Early Childhood Development
EMIS	Education Management Information Systems
EPIF	Education Policy Investment Framework
FAWEMA	Forum for African Women Educationalists in Malawi
FGD	Focus Group Discussions
GDP	Gross Domestic Product
GENET	Girls Empowerment Network
GPI	Gender Parity Index
HIV	Human Immunodeficiency Virus
HRW	Human Rights Watch
IDI	In-depth Interviews
IHS	Integrated Household Survey
KII	Key Informant Interviews
LAC	Legal Assistance Centre
MDHS	Malawi Demographic and Health Survey
MGDS	Malawi Growth and Development Strategy
MHRC	Malawi Human Rights Commission
NESP	National Education Sector Plan
NSO	National Statistical Office
NSRHP	National Sexual and Reproductive Health Policy
PCAR	Primary Curriculum and Assessment Reform
SADC	Southern Africa Development Community
SALC	Southern Africa Litigation Centre
SRHR	Sexual and Reproductive Health Rights
TOR	Terms of Reference
UN	United Nations
UNDP	United Nations Development Programme
UNESCO	United Nations Educational, Scientific and Cultural Organisation
UNICEF	United Nations Children's Fund
WLSA	Women and Law in Southern Africa
YFHS	Youth-Friendly Health Services
YONECO	Youth Net and Counselling

EXECUTIVE SUMMARY

Before the dawn of democracy in Malawi, and due to the large influence of colonial norms, learners who became pregnant were often expelled from school. Though the approach was seemingly applicable to both male and female learners, the female learners were disproportionately affected, as the male learner would eventually return to school. As a result of limited livelihood opportunities that were further perpetuated by their lack of education, the affected learner female and her child would become embroiled in a vicious cycle of poverty.

At the advent of democracy, it became increasingly apparent that learner pregnancies, which resulted in expulsion of girls (and boys) from school remained a significant problem necessitating the Government to revisit its position on the matter. Despite calls made by the Ministry of Health and concerned international non-governmental organisations for the Ministry of Education to implement preventive strategies towards addressing early pregnancies amongst learners,¹ the Ministry of Education remained firmly inclined towards promoting total abstinence from sex amongst learners. Nonetheless, and despite such a stringent approach, new discussions emerged which focused on developing guidelines for the readmission of learners to school following a pregnancy. The Ministry of Education in 1993 drafted a Readmission Policy which provided that a pregnant female learner, and the male learner responsible for the pregnancy, would be withdrawn from school for one academic year and be readmitted upon application. The Readmission Policy further provided that the learner would be given only one opportunity for readmission. Thus, the policy towards learner pregnancy remained punitive and reactionary. Evidently, the significant problem of learner pregnancies remained largely unaddressed.

Additionally, there was a lack of clarity about the readmission process, and where utilised, the process often proved to be lengthy and cumbersome for the learner seeking readmission. Following problems with the implementation of the 1993 Policy, the Ministry of Education developed the Revised Readmission Procedures (Procedures) in 2006. The procedures provide that a pregnant female learner, and the male learner responsible for the pregnancy, must submit three copies of a letter to the head teacher regarding the pregnancy. Both learners are to be counselled by the school counselling committee. The counselling should include being informed about the possibility of readmission. Both learners must also be withdrawn from school for a year and the opportunity for readmission will only be given once in their education cycle.

It has been 11 years since the adoption of the Procedures. Whilst the net enrolment in primary school has been steadily increasing for girls and the gender parity on pupils commencing the first grade of school improves, gender disparities are still widespread with pregnancy among schoolgirls leading to high drop-out rates in the senior grades. Such disparities are among the most critical factors contributing to the incidence of school dropouts by girls. According to Education Management Information Systems (EMIS) data from 2015, the survival rate of girls to standard 8 is just 29 percent. This infers that despite an impressive primary enrolment rate, there is a high

1 The Ministry of Health particularly worked to promote the use and availability of condoms to learners.

dropout rate for girls. The EMIS data also reveals that many girls drop out due to pregnancies and marriage – these two reasons alone account for 44 percent of total female dropouts. In light of this, the Government is currently in the process of reviewing the 1993 Readmission Policy to more adequately take into account the 2006 Procedures. It is imperative that the ongoing review process is informed by human rights standards and international best practices. Thus, the main purpose of this Study was to undertake research on learner pregnancy management in Malawi to contribute to the body of evidence concerning the practical management of learner pregnancy in the country, and, in the process, contribute to the process of reforming the Policy by Government.

The research findings indicated significant gaps not only in the response towards learner pregnancies but also in the prevention of learner pregnancies. There is an evident need for a sound holistic implementation framework of learner pregnancy management in the country that is informed by human rights-based approaches, which will put the best interests of the learner as a paramount consideration in all approaches. Thus, it is essential that the revised Readmission Policy enables all adolescent learners to access good quality Comprehensive Sexuality Education, including education on pregnancy, prevention and contraception. Furthermore, access to health education and services (including contraception) by learners needs to also be promoted through the establishment of a referral system between schools and health facilities.² Pregnant female learners and/or learners with infants must also have their right to education reaffirmed. The punitive approach towards pregnant female learners must cease and be replaced by a supportive framework that includes the provision of comprehensive counselling services through human rights-based approaches, which prioritise the best interests of the affected learner. Rather than promoting expulsions and temporary suspensions of pregnant learners, all efforts must be made towards eliminating stigma and discrimination towards pregnant and childbearing girls in schools and communities.

Based on the findings of the Study the following factors could be considered and debated when reviewing the existing Policy and developing a new Policy on the management of learner pregnancy:

² Harriet Birungi et al., *Education Sector Response to Early and Unintended Pregnancy (EUP): A Review of Country Experiences in East and Southern Africa*, Global Consultation on Education Sector Response to Early and Unintended Pregnancy 1, 3 (2014), https://assets.publishing.service.gov.uk/media/57a09dcfe5274a31e0001a6c/2014STEPUP_GlobalConsultationPresentation.pdf.

1. Managing pregnant learners at school

- a) Pregnant female learners should be allowed to continue going to school depending on their abilities to cope with the learning demands;
- b) Female learners should not be compelled to withdraw from school on the mere discovery of their pregnancy; and
- c) Where the school authorities have reasonable concerns regarding the health of the pregnant learner and wish to propose that the female learner should temporarily withdraw from school to prevent an adverse health impact, the school authorities must first seek an opinion from a medical practitioner whether or not the learner can continue to attend school during the course of her pregnancy.

2. Policy on the readmission of learners after giving birth

- a) The Policy should be flexible and allow the female learner to be absent from school for six months commencing from the date she gives birth or earlier where medically required, whilst allowing her to choose when to return based on an assessment of availability of alternative and nutritional care for the infant verified by the counselling committee in conjunction with the Social Welfare Office;
- b) The Policy should not restrict the opportunity for readmission to happening only once. What is paramount is that a female learner should not be restricted from accessing education even in instances of a recurring pregnancy; and
- c) The Policy must provide for a systematic collection of data on readmission to be institutionalised in all schools and later consolidated at the national level. The education sector already has an advanced Management Information System that adequately provides gender disaggregated data. Thus, it is recommended that readmissions of learners following a pregnancy be included as an important variable when collecting data through the EMIS.

3. Provision of counselling

- a) Comprehensive and on-going counselling should be provided to both male and female learners affected by a pregnancy;
- b) There is a need for counselling services offered by the counselling committee to ensure regular follow-up contact with the female learner during her period of absence from school;
- c) Such counselling must engage the parents of the female learner to also ensure that they provide a supportive environment for the female learner, which will also enable her to return to school; and
- d) The composition of the counselling committee, their functions and methods should be indicated by the Policy. It should include mother group members, parents, teachers

(especially female teachers) and a Social Welfare representative. A progressive traditional authority may also be co-opted where possible.

4. Providing a conducive school environment for pregnant learners and young mothers

- a) School management committees must ensure that the school environment is conducive, safe and secure for readmitted female learners. The Policy should elaborate upon the active role that teachers should play in preventing bullying and responding to any concerns of bullying;
- b) Apart from the incorporation of anti-bullying measures in the Policy, the Government should also develop and implement a comprehensive anti-bullying policy to be used in all schools in the country; and
- c) There should be proper child-friendly complaint channels within schools where learners can access the help and support of the school where necessary. In the event of pregnancy, the Policy should provide that the response by the school should be largely supportive as opposed to being punitive. Confidentiality and privacy should be respected, especially in instances where the pregnancy is less evident but is known by the school management and the counselling committee.

5. Providing additional support to young mothers during their absence from school

- a) Flexible models of learning should be introduced so that schools can improvise in order to provide additional learning opportunities for pregnant schoolgirls and young mothers. In instances where a female learner fails to return to school due to lack of alternative care for the baby, the Policy should put in place procedures to enable the female learner to return to school. Specifically, the counselling committee should engage family members of the female learner on possibilities of providing alternative care for the baby. Where this is impossible, the Policy should provide for collaboration amongst the school committee, the counselling committee and Social Welfare Office to identify alternative care arrangements for the baby during the period that the mother will be attending school. These may include ECD centres within the district. Other care arrangements within the school premises can, where reasonably possible, be made with the support of mother groups; and
- b) That during the period of absence from school by the female learner, the Policy should encourage communication links between the school and the female learner. Where possible, education materials can be provided to the learner while she is at home awaiting her readmission.

6. Policy on male learners responsible for pregnancy

- a) Once it is accepted that a punitive approach to learner pregnancy is not effective, then the discussion about withdrawal changes. A pregnant learner should be allowed

absence from school on a flexible basis but should not be compelled to withdraw from school. Similarly, a male learner responsible for a pregnancy should ideally not be withdrawn from school, as it serves no tangible purpose except to punish the male learner. Instead, comprehensive counselling for male learners must, amongst others, emphasise the responsibilities of the male learner for the pregnancy and the baby after delivery; and

- b) The Policy must emphasise the role of the counselling committee to ensure that they regularly follow up with the male learner and his parents/guardians in order to ensure that he is acting upon his responsibilities.

7. Ensuring that older men responsible for female learner pregnancy are held accountable

- a) In instances where the responsible male is uncooperative but is not a learner and that the sexual relations between the responsible male and the female learner did not constitute defilement, the Policy should provide that school authorities must refer the matter to the Social Welfare Office who can subsequently present the matter to the court for a possible order of maintenance; and
- b) In instances where the sexual relations between the responsible male and the female learner constituted defilement or rape, the Policy must stipulate that the school authorities must refer the matter to the law enforcement authorities immediately. This includes instances where the responsible male is a teacher.

8. Delivery of Comprehensive Sexuality Education

- a) The Policy must recognise the importance of a broader approach towards managing learner pregnancies, and towards the provision and effective delivery of Comprehensive Sexuality Education. It must ensure the establishment of a referral system between schools and health facilities concerning sexual and reproductive health needs and services that are appropriate for learners.

1. Introduction and Background

Key Facts about Malawi

Malawi is a landlocked country in Southern Africa with an estimated population of 17.2 million.³ Malawi is considered to be one of the least developed countries in the world and stands as 173 out of 187 countries in the low human development category.⁴ Furthermore, it stands at 170 out of 188 countries on the UN Gender Equality Index.⁵ According to the 2012 Integrated Household Survey (IHS3) of the National Statistical Office, the national poverty rate is currently 50.7 percent, indicating that more than half of the population lives in poverty.⁶ Poverty has been increasing in rural areas, which constitute 85 percent of the population, in comparison to urban areas where it fell significantly from 25 percent to 17 percent.⁷ The IHS3 shows that about 49 percent of the people in male-headed households are poor, while 59 percent of people in female-headed households are poor.⁸

The Situation of Women and Girls in Malawi⁹

The Constitution of the Republic of Malawi (the Constitution) guarantees equal rights to men and women.¹⁰ Section 13 of the Constitution outlines the principles of national policy by requiring that the State “actively promote the welfare and development” of the Malawian people through the adoption and implementation of policies and legislation aimed at achieving gender equality.¹¹ In achieving the above, the State is expected to ensure:

- Full participation of women in all spheres of Malawian society on the basis of equality with men;
- The implementation of the principles of non-discrimination and such other measures as may be required; and
- The implementation of policies to address social issues such as domestic violence, security

3 See *Overview*, The World Bank para. 1 (2017), <http://www.worldbank.org/en/country/malawi/overview>.

4 *Human Development Report 2015: Work for Human Development*, UNDP 1, 210 (2015), http://hdr.undp.org/sites/default/files/2015_human_development_report.pdf.

5 *Human Development Report 2016: Human Development for Everyone*, UNDP 1, 200 (2016), http://hdr.undp.org/sites/default/files/2016_human_development_report.pdf.

6 *Integrated Household Survey 2010-2011*, National Statistical Office 1, 204 (2012), <http://www.nsomalawi.mw/>

7 See The World Bank *supra* note 3, at para. 5.

8 Centre for Human Rights – University of Pretoria, *Child Marriage: A Human Rights Perspective (Malawi)* 1, 1 (2014).

9 See *id.* at 1-4.

10 See Constitution of Malawi, 1996, section 20 (“Discrimination of all persons in any form is prohibited and all persons are, under any law, guaranteed equal and effective protection against discrimination on grounds of race, colour, sex, language, religion, political or other opinion, nationality, ethnic of social origin, disability, property, birth or other status.”).

11 *Id.* section 13.

of the person, lack of maternity benefits, economic exploitation and rights to property.¹²

Section 24(2) of the Constitution also provides for the need to pass legislation to eliminate customs and practices that discriminate against women in areas such as sexual abuse, harassment and violence. Thus, the Constitution adequately guarantees gender equality and principles of non-discrimination. Various laws, including the Gender Equality Act of 2013, Marriage, Divorce and Family Relations Act of 2015 and the Prevention of Domestic Violence Act of 2006 also promote women's equality and principles of non-discrimination.

Though the development of progressive laws consolidating gender equality is a positive development, there remains a wide gap between the laws and their implementation. In addition, there has been an inadequate dissemination of the Gender Equality Act and other relevant laws to the public, specifically women who are the final beneficiaries,¹³ as well as the duty bearers who are meant to use the law to protect women and girls.¹⁴

Gender disparities are also evident in critical areas within the health sector. For instance, Malawi has a high HIV prevalence, constituting one of the world's highest proportions of its adult population at 10.6 percent (aged 15-64) living with HIV.¹⁵ HIV also disproportionately affects women in comparison to men. A national assessment of the impact of HIV on the population carried out by the Ministry of Health in 2015-16, found HIV prevalence among adult Malawian women (aged 15-64) to be 12.8 percent, compared to 8.2 percent among their male counterparts.¹⁶ This gender disparity is especially prominent among young people.¹⁷ Key factors contributing to such disparities include harmful cultural practices that promote sexual initiations amongst young girls with older men, sexual violence against young girls and women, limited comprehensive knowledge and understanding of HIV prevention, and limited sexual and reproductive health services especially for the youth and rural women and girls.

With regard to health, a complete primary education can reduce the risk of HIV infection for young people and it can prove vital in protecting young people from HIV infection.¹⁸ Unfortunately, and as shall be later examined, high numbers of dropouts of girl children from school cripple the capacity of education "to reverse the impact of HIV and AIDS on the human and social capital on which poor people's livelihoods depend".¹⁹ Assessed from another angle, the proportion of teenagers who have started childbearing decreases with increasing levels of education. Fifty-four

12 See *id.* section 13(a) ("The State shall actively promote the welfare and development of the people of Malawi by . . . achieving . . . gender equality for women with men through – full participation of women in all spheres of Malawian society on the basis of equality with men; the implementation of the principles of non-discrimination and such other measures as many be required; and the implementation of policies to address social issues such as domestic violence, security of the person, lack of maternity benefits, economic exploitation and rights to property").

13 See Women and Law in Southern Africa Research and Educational Trust Malawi and Faculty of Law et al., UN Convention on the Elimination of Discrimination Against Women (CEDAW) CSOs Shadow Report for Malawi 16 (2015).

14 *Situation of Women in Malawi: A WLSA Malawi Perspective*, Women and Law in Southern Africa Research and Educational Trust (2009), <http://wlsamw.wordpress.com/situation-of-women/>.

15 *HIV and AIDS in Malawi*, Avert para. 1 (30 June 2017), https://www.avert.org/professionals/hiv-around-world/sub-saharan-africa/malawi#footnote1_k4s4x47.

16 *Id.* at para. 5.

17 *Id.* at para. 5.

18 Natalia Streuli & Catherine Moloni, *Education and HIV and AIDS in Malawi: The role of open, distance and flexible learning*, Institute of Education – University of London 1, 6 (2008), https://opendocs.ids.ac.uk/opendocs/bitstream/handle/123456789/11865/Education_HIV_AIDS_Malawi.pdf

19 *Id.*

percent of teenagers aged 15-19 “with no education have begun childbearing compared with 32 percent of teenagers who have attained primary education and 19 percent of those who have attained secondary education”.²⁰ According to the MDHS survey from 2015-16, teenage mothers are more likely to experience adverse pregnancy outcomes.²¹ In addition, teenagers in the lowest wealth quintile tend to start childbearing earlier than those in the highest quintile (44 percent versus 15 percent, respectively).²² Samati notes that this “reflects the ‘triple handicap’ of being poor, rural and female, which is the situation for the majority of women and girls in Malawi.”²³

All in all, these figures are clearly illustrative of the huge disparities in gender equality and reflective of gender inequality as a systemic problem in Malawi. Hence, interventions to address gender inequality within a thematic area or sector must not be ignorant of the broader spectrum. Furthermore, the trend in gender inequality points to a fundamental problem of access to education primarily for women and girls. Education is an important prerequisite for better developmental, economical and health outcomes for women and girls. Thus, hurdles affecting girls’ access to and completion of school must be strategically acknowledged and addressed.

Education and the Girl Child in Malawi

The education system has largely a three-tier system that comprises primary, secondary and tertiary education levels. Other sub-sectors that are just as relevant, but less systematically consolidated, include technical and vocational training, Early Childhood Development (ECD), and Adult Literacy.²⁴ The predominant process is, however, that students go through eight years of primary education, four years of secondary education and between four and five years of tertiary education.

When the Government introduced free primary education, it resulted in an increase in the primary school enrolment from “1.8 million to nearly 3 million.”²⁵ Unfortunately, this strategy was not complemented with an increase in infrastructure development and the provision of adequate learning and teaching materials for schools. Hence, primary schools faced an overwhelming pressure to meet the increasing demand.²⁶ Additionally, free primary education did not guarantee completion of education, let alone primary education. The 2015 UNDP Human Development Report states that one of the critical challenges that the young population in Malawi faces is access to education, which includes challenges in sustaining education within and beyond primary and secondary school.²⁷

20 Jessie Kabwila, Malawi: *Landmark Bill on Marriage Age Passed*, allAfrica para. 9 (2017), <http://allafrica.com/stories/201702170291.html>; see also *Malawi Demographic and Health Survey: 2015-16*, National Statistical Office et al. 1, 81 (2016), <https://dhsprogram.com/pubs/pdf/FR319/FR319.pdf>.

21 See *id.* at 69-74.

22 See *id.* at 74.

23 Madalo Samati, *At the Interface of Policy and Cultural Change: Engaging Communities in Support of Girls’ Education in Malawi*, Centre for Universal Education – Brookings Institution 67, 71 (date unknown), https://www.brookings.edu/wp-content/uploads/2016/07/samati_girls_education.pdf.

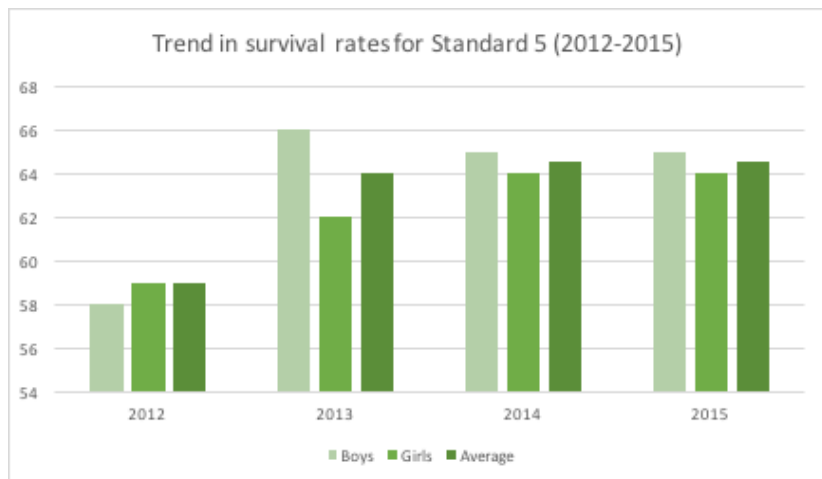
24 Olivia M. Liwewe, *Re-Entry Policy: The Case of Malawi* 5 (2012).

25 Streuli & Moleni, *supra* note 18, at 10.

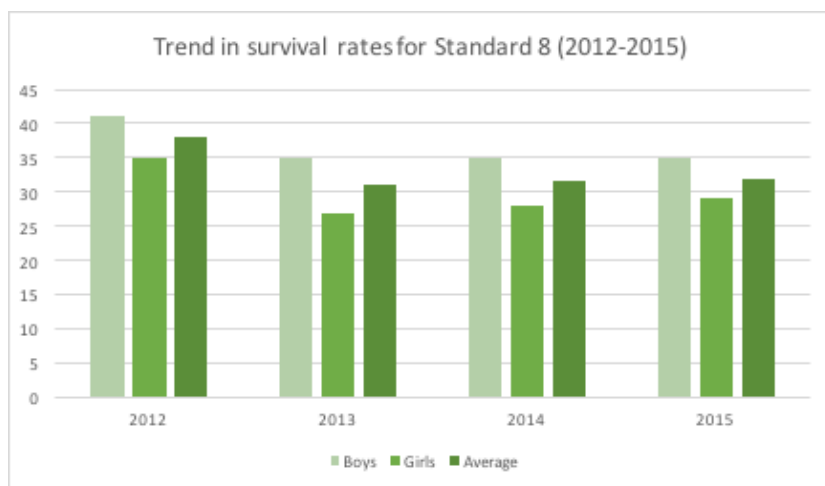
26 See generally Esme Kadzamira & Pauline Rose, *Educational Policy Choice and Policy Practice in Malawi: Dilemmas and Disjunctures* (Institute of Development Studies, Working Paper No. 124, 2001) (reviewing education policies in Malawi as they concern primary school education, and assesses the extent to which such policies respond to the growing needs of the poor).

27 The UNDP Report also cites lack of economic opportunities and employment following the completion of education as major challenges that young people face.

Similarly, data generated by the Education Management Information System (EMIS) has consistently shown high dropout levels at primary school level as children ascend to higher classes.



Source: Ministry of Education, Education Management Information System, 2015 (Figure 2.6.10)



Source: Ministry of Education, Education Management Information System, 2015 (Figure 2.6.11)

The 2015 EMIS Report provides the following summary of its findings:

“When we take a closer look at 2015 survival rate, the results indicate that in total 64 percent of pupils that start standard 1 reach standard 5, however boys survived slightly more than girls at 65 percent and 64 percent respectively. However the results further reveal that almost half of the pupils who survived to standard 5 dropped out before standard eight since only 32 percent of a cohort of pupils beginning standard1 in a particular school year survived to standard eight. Girls’ survival rate to standard 8 is the lowest at only 29 percent relative to boys at 35 percent.”²⁸

Thus, there exists a critical problem of keeping learners in school, and even more so for the girl child. Ironically, the 2015 EMIS data shows that there is equality between boys and girls at the time of enrolment. As can be seen below, enrolment levels for both boys and girls at primary level have shown no significant gender disparities.

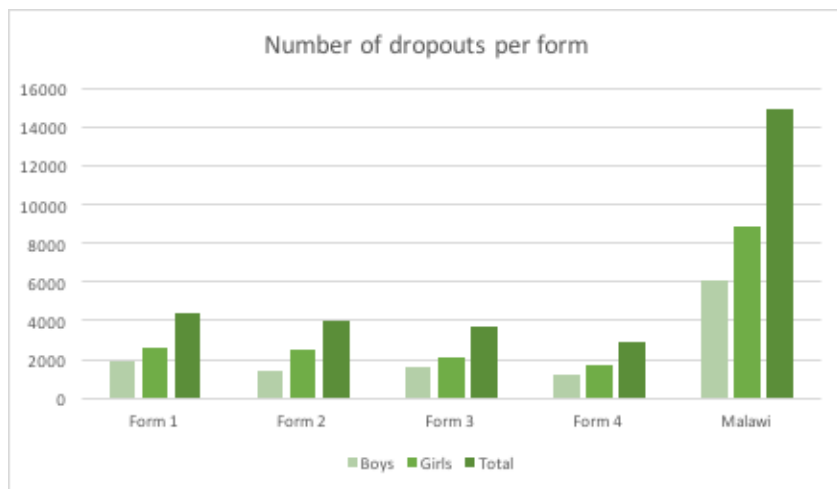
Year	Primary School GPI		
	Girls	Boys	Index
2011	2033711	2000509	1.02
2012	2099885	2088792	1.01
2013	2250352	2247189	1.00
2014	2322679	2347600	0.99
2015	2405589	2398605	1.00

Source Ministry of Education, Education Management Information Systems 2015²⁹

²⁸ Education Management Information System et al. (“EMIS”), Malawi Education Statistics 51 (date unknown).

²⁹ See National Statistical Office et al., *supra* note 20, at 28, Table 2.13.

There are significant factors leading to higher dropout levels for girls as they transcend into higher classes of primary education and into secondary education:



Source Ministry of Education, *Education Management Information Systems 2015*³⁰

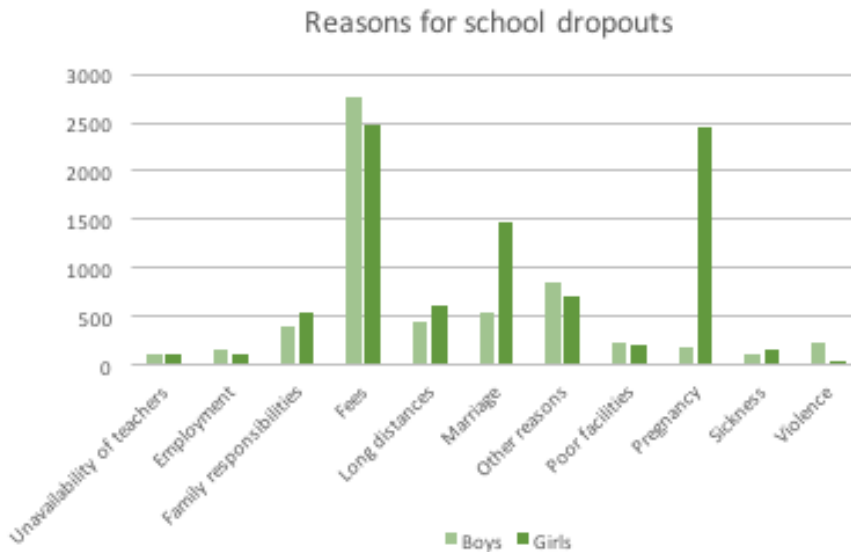
Reasons for High Dropouts amongst Girls in Malawi

There are various reasons explaining dropouts amongst pupils in both primary and secondary schools. These include unavailability of teachers, pregnancy, employment in order to support family, poor learning and sanitation facilities, lack of support, lack of interest by the learner, early marriage, traveling long distances to school, lack of fees, family responsibilities and sickness and violence within the school or on the way to and from school. For the girl child in particular, early marriages, early pregnancies, family responsibilities, lack of appropriate sanitary conditions, lack of school fees and lack of role models are particularly significant.³¹

The 2015 EMIS data indicate that most students, both male and female, dropped out mainly because of school fees, which accounted for 35 percent of total dropouts. However, the EMIS data also reveal that many girls dropped out due to pregnancies and marriage – these two reasons alone accounted for 44 percent of all female dropouts:

³⁰ See EMIS, *supra* note 28, at 65, Figure 3.2.9.

³¹ See Centre for Human Rights – University of Pretoria, *supra* note 8, at 31-33.



Source: Source Ministry of Education, *Education Management Information Systems 2015*³²

The UNDP Human Development Report from 2015 also cites high fertility as a challenge faced by girls who complete their education in Malawi. Similarly, the Malawi Demographic and Health Survey (MDHS) from 2015-2016 reveals that 29 percent of adolescents aged 15-19 in Malawi have begun childbearing. In addition, 22 percent of women aged 15-19 have given birth, and another 7 percent were pregnant with their first child at the time of the interview.³³ The finding also shows that childbearing among teenagers is more common in rural than in urban areas (31 percent versus 21 percent respectively).

It is more worrisome that pregnancy can lead to a female learner's permanent drop out from school. Malawi has a 'Readmission Policy'³⁴ that was developed in 1993 in response to this issue. Its procedures for readmission were later elaborated upon in 2006, as they later become known as the 'Malawi Revised Readmission Procedures'. They provide for the withdrawal process of a pregnant learner and a male learner responsible for a pregnancy from school, as well as their eventual readmission into school following the delivery of their baby. It would, however, appear from the staggering statistics on dropouts by female learners as a result of pregnancy that there are fundamental gaps in the implementation and management of these procedures. Additionally, it may also be necessary to examine whether the content and strategy of the procedures ably respond to the problem at hand. This research has been undertaken upon this premise.

³² See EMIS, *supra* note 28, at 30, Figure 2.2.7.

³³ See National Statistical Office et al., *supra* note 20, at 73.

³⁴ The term 'policy' is being used loosely in this context, as the document in question does not in fact embody the characteristics of a policy. This is why others resort to using the term 'circular' in reference to it.

2. Purpose and Rationale for the Study

This Study mainly aimed to contribute to the body of evidence regarding the implementation of the Readmission Policy, as well as the practical management of learner pregnancy in Malawi.

The conclusions in this Report are supported by the literature review, which draws heavily from the following studies:

- A 2000 report by United Nations Children’s Fund (UNICEF) on the Readmission Policy;³⁵
- A research report by the Forum for African Women Educationalists in Malawi (FAWEMA) which looks at the enforcement of the Readmission Policy and was conducted 12 years after the UNICEF report;³⁶ and
- A report by the Centre for Human Rights at the University of Pretoria on child marriage in Malawi.³⁷

These reports provided important background information for this Study and enabled the researcher to focus the qualitative research on areas of concern around the enforcement of the Policy on learner pregnancy and readmission.

³⁵ See generally Nahid Mazloum, *Readmission/Pregnancy Policy Status Report* (UNICEF-Malawi) (2000) (discussing a study aimed at clarifying the status of the re-admission policy as it applies to teenage mothers who are part of the education system of Malawi).

³⁶ See generally Liwewe, *supra* note 24 (discussing the implications of Malawi’s re-entry policy on girls’ education).

³⁷ See generally Centre for Human Rights – University of Pretoria, *supra* note 8 (discussing the prevalence of child marriage in Malawi, the human rights violations it presents and promising interventions to enhance girls’ empowerment).

3. Methodology

Design of the Study

A qualitative research design was employed for this assignment. Engaging qualitative research methods permitted a deeper exploration and understanding of specific issues and, in this case, issues surrounding learner pregnancy management and the implementation of the Readmission Policy within Malawian primary and secondary schools.³⁸

Study Setting

The Study was mainly conducted in four districts in Malawi, namely Nkhata Bay (in the Northern Region), Dedza (in the Central Region), and Balaka and Mangochi (in the Southern Region). The interviews and focus group discussions in these districts were held in April and May 2017.³⁹ The 2015 EMIS data records that Mangochi has the highest dropout rate in the Southern Region, while Dedza has the highest dropout rate in the Central Region. Nkhata Bay has the second highest dropout rate in the Northern Region.⁴⁰ The data show that the reasons for dropping out vary, but include pregnancy, which disproportionately affects female learners. In contrast, Balaka has a lower dropout rate in the Southern Region and was added for comparative purposes.

In addition, data from key informants was collected in Blantyre, Zomba, Lilongwe and Mzuzu where some policy makers and non-governmental organisations are based.

This Study also benefitted substantially from consultative sessions undertaken by the Malawi Human Rights Commission with male and female learners in selected schools in Mulanje,⁴¹ including those who had been withdrawn due to pregnancy and were readmitted to school. Selected teachers and members of mother groups within the surrounding communities within the Mulanje District were also consulted by the Malawi Human Rights Commission.

On 13 June 2017, a research validation meeting was held in Lilongwe where civil society organisations working on children and women's rights were invited to provide input on the Study findings. The research validation meeting was attended by 30 delegates from various stakeholders.

38 See generally John W. Creswell et al., *Qualitative research designs: Selection and implementation*, 35 *Counselling Psychologist* 236 (2007) (discussing five different qualitative research approaches as they pertain to test interpretation: narrative research; case study research; grounded theory; phenomenology; and participatory action research).

39 Focus groups discussions and interviews were held: in Nkhata Bay District on 24 and 25 April 2017; in Mangochi District from 8 to 10 May 2017; in Zomba City on 11 May 2017; in Balaka District on 20 May 2017 and in Dedza District on 29 May 2017.

40 Due to heavy rainfalls, we were unable to visit Mzimba district, which, according to 2015 EMIS findings, has the highest dropout rate in the Northern Region. However, Nkhata Bay still presented itself as a good case study as its dropout rate closely mirrors that of the Mzimba district.

41 These schools include, *inter alia*, Mkanda School, Nalingula School, Gambula School and Mombo School (Mulanje district). Data was collected between 5 and 8 September 2016.

Delegates discussed the findings of the Study, sought clarity and made observations and contributions that were taken into account in the final Report. Among other things, it was noted that a very important strategy in learner pregnancy management was prevention, which could be achieved by a review of the Comprehensive Sexuality Education curriculum in schools, to make it more relevant to the prevailing circumstances, and also training of teachers to equip them to teach the subject and change the negative social and cultural attitudes that hinder effective sexuality education. The validation meeting further strongly recommended that any Policy on learner pregnancy management should not be punitive and that accordingly, there is no need to withdraw boys from school when counselling could be sufficient to ensure that they take responsibility for the pregnancy.

Data Sources

Qualitative data was collected from primary and secondary sources and the range of data collection approaches used complied with the TOR. The data collection strategy used for secondary data sources was a desk review or literature review, while multiple primary data sources included key informant interviews (KIIs), in-depth interviews (IDIs), and focus group discussions (FGDs). The use of multiple qualitative data collection approaches allowed triangulation of data collected from different data sources. Triangulation of data entailed combining different qualitative data collection methods to ensure that these approaches complemented each other and compensated the weaknesses of using a single data collection method.⁴²

Primary data sources

Primary data collection involved the collection of qualitative data directly from individuals involved in the management of learner pregnancy or affected by learner pregnancies. Several data sources were used to collect primary data and have been described below:

Key informant interviews

Key informant interviews involved conducting face-to-face interviews with individuals with important insights and informed perspectives on the subject matter. These individuals included officials from the Ministry of Education within the districts visited, the Social Welfare Department, and members of mother groups,⁴³ school administrators/head teachers, and senior employees of non-governmental organisations playing a key role on the subject matter such as Youth Net and Counselling (YONECO) and Girls' Empowerment Network (GENET). The key informants provided useful information on both the Readmission Policy and practical implementation of the Policy in the management of learner pregnancies at primary and secondary school levels.

42 See generally Hennie Boeijs, *A Purposeful Approach to the Constant Comparative Method in the Analysis of Qualitative Interviews*, 36 *Quality & Quantity* 391 (discussing the constant comparative method of qualitative analysis); see also Uwe Flick, *An Introduction to Qualitative Research* (SAGE Publications, 5th ed. 2009) (discussing various qualitative research approaches); see also Karsten Jonsen & Karen Jehn, *Using triangulation to validate themes in qualitative studies*, 4 *Qualitative Research in Organisations and Management: An International Journal* 123 (2009).

43 Members of mother groups were chosen as key informants because they play a fundamental role in promoting access to education for the girl child, including girls who drop out because of pregnancy.

In-depth interviews

In compliance with human rights-based approaches, it was imperative to listen to the voices and claims of those most affected by learner pregnancy. Thus, deliberate effort was made to ensure that girls who dropped out of school because of pregnancy, those readmitted to school following a pregnancy, as well as boys responsible for the pregnancy of female learners were interviewed. In addition, some parents of the affected learners were also interviewed to gain their perspectives on the matter. Interviewing these affected groups of people was crucial for this Study, as the perceptions of these individuals were deemed critical to allow for a comprehensive analysis of the impact of Malawi's management of learner pregnancy, as well as in framing evidence-based recommendations.⁴⁴ It is crucial that the debate surrounding the Readmission Policy, including its review, provides ample voice to those who are experiencing the interventions (or lack thereof) first hand. This was, therefore, a vital opportunity for affected learners to be heard and to participate meaningfully within the ambit of this Study.

Focus group discussions (FGDs)

Focus group discussions were conducted with learners in order to understand social norms about the management of learner pregnancy captured or observed within the collectivism of a group dynamic. This is a qualitative research technique that collects data through group interaction on a topic determined by a researcher.⁴⁵ Focus groups are often “used as both a self-contained method and in combination with surveys and other research methods, most notably individual, in-depth interviews” (IDI).⁴⁶ In recognition of cultural sensitivities, which may have the potential of inhibiting meaningful participation, female learners had a separate FGD from male learners. In addition, parents also had a separate FGD from that of their children-learners. Each FGD did not exceed ten participants. A full description of the Study was provided to participants and informed consent was obtained prior to conducting the group discussion. Where permission to do so was granted, the FGDs were digitally recorded and short notes were collected during the discussion.

44 See generally Alice Yeo et al., *In-depth Interviews*, in *Qualitative Research Practice: A Guide for Social Science Students and Researchers* 177-210 (Jane Ritchie et al. eds., 2003) (discussing the nature and methodology of conducting in-depth interviews).

45 See generally Helen Finch et al., *Focus Groups*, in *Qualitative Research Practice: A Guide for Social Science Students and Researchers* 211-242 (Jane Ritchie et al. eds., 2003) (discussing the features and types of focus groups).

46 David L. Morgan, *Focus Groups*, 22 *Annual Review of Sociology* 129, 129 (1996).

Table below: Study participants

Study participants	Male	Female	Total
Learners in general	20	20	40
Learners readmitted	1	13	14
Learners not readmitted	3	36	39
TOTAL of learners consulted			93
Key informants: District Education Managers, education officials at district level, Social Welfare	6	1	7
Key informants: NGOs and academia	2	3	5
Key informants: Head teachers and teachers	11	8	19
Traditional authorities		1	1
Parents and mother groups	1	15	16

Secondary data

Secondary data entailed the collection and synthesis of pertinent documented data sources on the subject matter. This data provided the background to the Study and informed the development of data collection instruments used to collect primary data in the field.

Literature review

An in-depth review of relevant documents on the subject matter was conducted. The literature review entailed reviewing relevant material related to the management of learner pregnancies in Malawi. The documented sources of data reviewed included the following:

- Legal and policy framework on education and children's rights (i.e., the Malawi Constitution, the Childcare Protection and Justice Act of 2010, the Education Act of 2013, the Gender Equality Act of 2013, the Malawi Growth and Development Strategy, 2016 National Education Sector Plan, the National Education Policy, and the National Sexual and Reproductive Health Rights Policy). The literature review also examined international conventions and jurisprudence.
- Reports of local and international human rights organisations on the subject matter (i.e., including reports/studies from the Malawi Human Rights Commission, UNICEF, UNESCO, Girls Empowerment Network (GENET), Creative Centre for Community Mobilisation (CRECCOM), State Party reports by Malawi and their concluding observations as well as alternative and shadow reports submitted by the National Human Rights Institution and civil society organisations, respectively).
- Scholarly publications focusing on learner pregnancy management and best practices therein.

Data Collection and Sampling

Semi-structured guides were prepared to facilitate these discussions during face-to-face interviews for the KIIs, IDIs and FGDs. The development of these guides drew insight from the literature review. Interview guides were semi-structured to provide flexibility during the discussion and to enhance the conversation. Hence, when collecting data through interviews, the Study used semi-structured interviews encompassing an interview guide that contained pre-determined questions and raised new questions through probing that were necessitated by arising discussions. The interview guides were based on the questions and objectives of the Study.

Purposive identification of potential participants used several criteria including, but not limited to: male/female learners readmitted in schools; male/female learners not readmitted; parent of a learner affected by pregnancy; learners in general, public school administrator; institutions working within the area of learner pregnancy; and member of groups involved in the management of learner pregnancy in the community.⁴⁷ The mix of the different characteristics of the Study participants was deemed sufficient to represent the breadths of the different attributes and dynamics required to achieve the objectives of this Study.

Study participants were identified using the existing public education structures with the office of the District Education Manager as the entry point at the district level. The researcher (supported by a post-graduate qualitative research assistant) was involved in recruiting and interviewing Study participants. All interviews and discussions were conducted in Tumbuka and/or Chichewa, the most commonly spoken local languages used in the Study districts. However, English was used as a medium of communication with some of the key informants conversant with the English language.

Participants were requested to provide oral informed consent before participating. Data was collected until saturation of information was reached. This was determined through a constant comparison technique where newly gathered data are continually compared with previously collected data through daily field debriefing meetings.⁴⁸ During data collection at the later stages, it was evident that saturation of information had been reached as it became notable that there was a recurrence of the same issues. Considering the sensitivity of this Study, the researcher ensured that a detailed description of what the Study entailed was provided and informed consent from all participants was obtained before an interview was conducted. The names of the learners who participated in the Study were recorded but are not included in the Report for ethical reasons and to preserve the confidentiality of information. In this Report, the researcher has instead referred (where necessary) to sex, age and district of residence of participating learners. All data and participant identifying information was treated with utmost confidentiality and the presentation of the data has been entirely anonymous.

47 See generally Anthony J. Onwuegbuzie & Nancy L. Leech, *A Call for Qualitative Power Analyses*, 41 *Quality & Quantity* 105 (2007) (emphasising the importance of sampling and sample size considerations in all forms of qualitative research).

48 See generally Glenn A. Bowen, *Naturalistic inquiry and the saturation concept: a research note*, 8 *Qualitative Research* 137 (2008) (discussing the saturation concept in association to qualitative research).

Study Limitations

This Study had several limitations that may influence the interpretation of the findings. First, the learners within the population sample were predominantly female because of the difficulties in finding male learners responsible for female learner pregnancy. This was because the school administration in most schools advised that the male responsible for the pregnancy of a female learner was often not a fellow learner within the same school.

Second, male learners were not readily available because they had moved to other schools to continue with their education or had denied responsibility for the pregnancy. In addition, some of the male learners who had been readmitted into schools had withdrawn because of socio-economic reasons such as lack of clothes, books, and family support. For those females who were not readmitted, many could not locate the male responsible for their pregnancy, as he had either denied the pregnancy or moved away. However, the researcher still managed to conduct an FGD with four male learners, each responsible for pregnancy of a female learner in the Nkhata Bay District. The Malawi Human Rights Commission also conducted FGDs with twenty male learners⁴⁹ - not all of whom were responsible for pregnancies – at four different schools in the Mulanje District. These findings provided good insight towards male learners generally.

Third, there was a lack of information from private schools with respect to the Readmission Policy. Consultations with education authorities at the district level and head teachers in Government schools pointed out the alleged exclusive applicability of the Policy to public schools.

Fourth, the school holidays and Primary School Leaving Certificate examination period coincided with data collection which provided some problems in tracking down readmitted learners, especially in the Dedza District. In addition, it slowed down the data collection process which operated within stringent timelines.

Fifth, there was no consolidated data at the district level on the number of readmissions that had occurred in the District. A district education official often accompanied the researcher to schools in order to enquire whether any readmission had occurred. In a similar vein, some head teachers had to inquire from teachers on readmissions in their respective classes. Hence, the Study was not able to capture the actual number of students readmitted in the visited districts.

Finally, any review of the existing Policy would benefit from research on the practice of learner pregnancy management in comparative countries, including on issues relating to the benefits and risks of the withdrawal of male learners responsible for a learner's pregnancy. Due to time constraints such comparative research was not possible for this Study.

49 Five male learners constituted an FGD in each school. FGDs were conducted between 5 and 8 September 2016.

4. Learner Pregnancy Management in Malawi

Background to Learner Pregnancy Management in Malawi

During the colonial era, female learners who were discovered to be pregnant were immediately expelled from school.⁵⁰ The pre-independence period in the history of Malawi was influenced by Christian values.⁵¹ As a result, pregnancy before marriage was considered a sin warranting an immediate penalty. Prior to the development of the Readmission Policy in 1993, however, the Government made some subtle efforts to address the steadily rising problem of learner pregnancy and subsequent withdrawals from school of female learners. The political climate at the time was un-democratic, hence discussions on the subject were not strongly premised upon human rights or the need for human rights-based approaches in developing and implementing the Readmission Policy. In response to them, the Ministry of Education developed ‘disciplinary guidelines’ concerning the sexual behaviour of boys and girls some time prior to 1992.⁵² These disciplinary guidelines dealt with any form of sexual intimacy between learners. For instance, they indicated that a girl and a boy found kissing, hugging, or chatting in the dark were to be suspended from school for two weeks. Additionally, a girl and a boy caught having sex were to be suspended from school for three to six weeks. Any girl discovered to be pregnant or discovered to have had an abortion was also to be excluded from school. In a somewhat similar fashion, a boy discovered to have been responsible for the pregnancy of a schoolgirl was suspended from school indefinitely until his innocence was proved.⁵³ Upon production of the court evidence, he would then be readmitted into school. In practice, however, the pregnant schoolgirls were often permanently unable to return to school while the responsible male would, on the contrary, eventually return to school and complete his education. Exclusion from school, coupled with cultural attitudes and practices of the parent and community subjected such girls to permanent poverty and adversely affected national attempts to reduce poverty.

Despite this highly regulated and restrictive environment, sexual activity amongst the youth was still a predominant occurrence. Thus, the Ministry of Education was under immense pressure from various women groups and donor agencies to acknowledge that the disciplinary measures were not working. Such organisations referred to research that cited pregnancy as one of the major reasons

50 See John F. J. Moyo, *Analysis of Malawi’s Re-Admission Policy: Exemplification of Lapses in Education Policy Planning 5* (2016), http://www.academia.edu/24169245/Malawis_Re-Admission_Policy.

51 See *id.*

52 See Mazloum, *supra* note 35, at 4.

53 See Liwewe, *supra* note 24, at 11.

for the dropout of girls from school.⁵⁴ Female learners who got pregnant were not readmitted to school. This all subjected the female learner and her child to a vicious cycle of poverty. UNICEF reports that in 1991, the Ministry of Health made a proposal to the Ministry of Education for the accessibility of methods for safe sex practises, primarily condoms, amongst learners in an effort to prevent unwanted pregnancies and curb the tendency for desperate learners to resort to unsafe abortions.⁵⁵ The proposal by the Ministry of Health was based on research that revealed increased deaths of teen mothers due to abortion and increased numbers of learner girls dropping out of school due to their pregnancy.⁵⁶ Nonetheless, the Ministry of Education remained inclined towards a more restrictive approach by insisting that the distribution of condoms in the schools would not provide any sustainable solution. The Ministry argued that it would be impossible to meet the demand of all learners to access the condoms.⁵⁷ Consequently, the Ministry of Education insisted that learners would then resort to unsafe sex in instances where condoms were unavailable. The Government therefore continued to lean more towards advocating for total abstinence from sex amongst learners. Though the response from the Ministry of Education was disheartening, it nonetheless set the stage for refreshed conversations on the matter. Shortly afterward, the Ministry of Education convened a workshop in 1993 aimed at devising strategies towards readmitting female learners to school following a pregnancy. The approach to learner pregnancy management, nonetheless, remained punitive and not supportive. Notwithstanding the position of the Ministry of Education for youths to abstain from sex in schools, a little flexibility in readmitting female learners to school following a pregnancy was agreed upon. The following measures were therefore adopted:⁵⁸

- Girls and boys who were found pairing and engaged in hugging and kissing would be suspended from school for six weeks and would receive counselling upon admission.
- Boys and girls found engaging in sexual intercourse would be excluded from school.
- A schoolgirl who had an abortion would be excluded from school.
- A schoolgirl found to be pregnant would be withdrawn from school for one academic year and be readmitted upon application.
- A schoolboy found to be responsible for the pregnancy of a schoolgirl would be withdrawn from school for one academic year and be readmitted upon application.
- This chance for readmission was to be given once in a girl's education cycle.

Subsequently, a new Policy was approved in 1993.⁵⁹ Following the approval of this Policy, a circular reaffirming the Policy was addressed to all the regional education officers, district education officers, heads of secondary schools, principals of technical colleges, education secretary-generals, proprietors of private schools and other educational authorities.⁶⁰ The Government also

⁵⁴ See Mazloun, *supra* note 35, at 5.

⁵⁵ See Liwewe, *supra* note 24, at 11-12; see also Mazloun, *supra* note 33, at 5.

⁵⁶ See Liwewe, *supra* note 24, at 11-12.

⁵⁷ See Mazloun, *supra* note 35, at 5.

⁵⁸ See Mazloun, *supra* note 35, at 6.

⁵⁹ Mazloun, *supra* note 35, at 6.

⁶⁰ See Mazloun, *supra* note 35, at 7. Additionally, the author is in possession of a copy. However, there are unconfirmed indications from consulted stakeholders that though the circular was meant to reach all educational facilities, the circular remained at the District Education Offices and as such, respective schools had little knowledge of it.

acknowledged that over the years, difficulties had arisen with its position to permanently exclude pregnant learner girls from school. The circular stipulated that:

- A schoolgirl who was pregnant was to be withdrawn from school for one academic year and be readmitted upon application as long as there was assurance of safe custody of her child. Such opportunity would be given once in a girl's education cycle.
- A schoolboy who was responsible for a schoolgirl's pregnancy was to be withdrawn for one academic year and be readmitted on application.

The circular then proceeded to warn that the approach should not be taken as a relaxation of the existing rules of discipline for boys and girls, which would continue to be enforced.

As part of implementing the Policy, the Ministry of Education apparently sent another circular in 1997 to all Heads of Government and Grant Aided Secondary Schools, the Regional Education Officers and the District Education Officers and teachers in charge of DECs directing that pupils who were suspended due to pregnancy could write the National Examinations.

The envisaged procedure at the time was that once a teacher suspected a pregnancy, he or she had to inform the head teacher who would subsequently bring the matter before the Discipline Committee.⁶¹ The girl suspected of being pregnant would then be brought before a health centre for a pregnancy test, often without her consent. Once pregnancy was confirmed, the female learner was required to write a letter to the school informing the school of her pregnancy and the name of the person responsible for her pregnancy. Upon receipt of the letter, the school would write a follow-up response to the concerned female learner apprising her of her one year school suspension and reassuring her of her readmission to school following the birth and safe custody of her baby. It was also envisaged that the school would counsel her parents regarding the situation. Correspondingly, the school would also notify the male learner responsible for the pregnancy about his one-year academic suspension. The temporary withdrawal of the learners would need to be reported by the school to the District Education Office, which, in turn, would convey the issue and handling of the pregnancy by the school to the Division Education Office (DEO). The DEO would then make the final decision about the learners and report this decision to the Ministry of Education.

The procedure for readmission followed similar protocols.⁶² Upon the delivery and safe custody of the baby, a female learner was expected to write an application letter to her school seeking readmission. The school would then forward the letter to the DEO. At the primary level, the DEO was empowered to decide to readmit the girl, though this decision pertaining to readmission at the primary level which was made by the District Education Office still had to be confirmed by the Education division. Upon confirmation, the Education Division then reported on the matter to the Ministry of Education.

When female learners applied for readmission to secondary schools, upon receipt of the letter seeking readmission the secondary school would forward to the District Education Office, which would forward to the Education Division Offices and would have to make a recommendation about the

61 See Mazloum, *supra* note 35, at 7.

62 See Mazloum, *supra* note 35, at 8.

readmission to the Ministry of Education. At the Ministry, the application would be considered by the department in charge of disciplinary matters, and if approved, would be forwarded to the Minister for final approval. A readmission list was to be prepared and sent to all the schools concerned. The schools would thereafter write to the applicants, advising them of their status.

Challenges in the Implementation of the 1993 Readmission Policy

The process

Despite the 1993 Readmission Policy, fundamental challenges continued to exist in implementation, resulting in a significant number of female learners still failing to return to school after a pregnancy.⁶³ The procedures seeking readmission, as outlined above, proved to be rigorous and lengthy. A response from the Ministry of Education on the application for readmission would sometimes also have to go through the same process before it reached the learner. In some instances, the process of seeking readmission in this manner would take just a couple of months.⁶⁴ However, in most instances, a significant period was spent by each office considering and endorsing the application.

To avoid such delays, some parents chose to circumvent the school process and either apply directly to the Ministry of Education, or follow-up personally at each office in which the application was being considered.⁶⁵ However, because of poor record keeping at the Education offices, it was not always easy to track the application process.

It is also notable that problems in the readmission process were more prominent for secondary school learners than primary school learners. Some flexibility in the readmission process could be noted in the primary schools. For instance, some primary schools would readmit learners without seeking confirmation and endorsement from the stipulated higher offices. Such flexibility was difficult for secondary schools to assimilate because enrolment into Government secondary schools is often done through a selective process that is largely regulated by the central Ministry of Education. Hence, it is difficult for secondary schools to by-pass the readmission process and readmit a learner on their own accord.

Though officials from the Ministry of Education indicated that the process of seeking readmission would take no more than a month, girls reported waiting up to two years for a response to their application.⁶⁶ This is inherently unjust considering that the learner is already withdrawn for one academic year, as it would mean that she would collectively lose out on three years of her education. Such delays were demotivating for many female learners, who sometimes found it challenging to muster the courage to return to school when most of their friends had proceeded to higher classes, and they had to learn in class with learners who were significantly younger than them. It was also reported that the longer learners waited for readmission, the more likely they were to get married or engage in other economic activities which would permanently deter their chances of returning

63 See generally Samati, *supra* note 23 (assesses the interface of policy and cultural constraints by examining Malawi's 1993 Readmission Policy and its challenges of implementation).

64 See Mazloum, *supra* note 35, at 20.

65 See Mazloum, *supra* note 35, at 20.

66 See Mazloum, *supra* note 35, at 9.

to school.⁶⁷

Despite the intention of the Policy to apply equally to both male and female learners, male learners would rarely be suspended or withdrawn as a result of impregnating a female learner.⁶⁸ Reasons for this are not well documented but link to the inability to prove the responsibility of a male learner for the pregnancy of the female learner. Even when the Policy was stringently applied, teachers indicated that the male learner could easily be readmitted into another school.⁶⁹

Inconsistencies were also reported concerning the period of withdrawal, with some female students being withdrawn immediately upon detection of pregnancy and others being withdrawn after the completion of their school term and exams. Reasons for such inconsistencies largely point towards a limited understanding of the Policy. Criticisms were raised against the Ministry of Education for merely issuing circulars on the Readmission Policy without any regard as to whether the implementers would be able to implement the Policy or not.⁷⁰ Head teachers complained of lack of comprehensive information from the Ministry of Education including the provision of guidance or direction on the challenges faced.⁷¹

Awareness of the Policy

There was general awareness amongst school authorities within districts on the need to readmit a girl to school following her pregnancy. What was of concern, however, were the differences in how the Readmission Policy was understood and applied across districts. Knowledge disparities were noted on the time when the learner should be withdrawn from school, the period of absence, and the conditions for accepting readmission (i.e. proof of caretaker). Learners were also left largely unaware of the contents of the Policy.⁷²

The fact that there is no budget for implementing the Readmission Policy has been a contributory factor towards the poor mechanisms in place to ensure that the Policy is known and successfully implemented.⁷³ Most of the advocacy work has been done by various NGOs, development partners, and other interested non-State actors.⁷⁴ Depending on the strength of such interventions, sustainability of the advocacy initiatives is not always guaranteed.

The school environment

Initially, readmitted learners (especially females) were sent to a different school from the one they attended prior to the pregnancy.⁷⁵ However, the practice changed and all learners were eventually readmitted to the same school. This stance was evidently problematic considering findings in

67 But see Samati, *supra* note 23, at 75 (“If the girl does not marry . . . it is generally believed that returning to school will increase the chances of her falling pregnant again and reduce the possibilities for marriage even further.”).

68 See Mazloum, *supra* note 35, at 17.

69 See Liwewe, *supra* note 24, at 20.

70 See Liwewe, *supra* note 24, at 13.

71 See Samati, *supra* note 23, at 77.

72 See Mazloum, *supra* note 35, at 4.

73 See Liwewe, *supra* note 24, at 25.

74 See Liwewe, *supra* note 24, at 25.

75 See Mazloum, *supra* note 35, at 8.

Zambia,⁷⁶ which showed that girls who attended co-educational schools suffered “more teasing and taunting” than those that attended all-girls schools. That same study showed that girls in co-educational schools often preferred to attend different schools after having a baby.⁷⁷ It also revealed that learners in schools that drew from the locality also preferred to transfer to other schools.⁷⁸ In a similar vein, the 2000 UNICEF study on the Readmission Policy also found that readmitted female learners had difficulties coping in school due to teasing, scolding and bullying by their classmates.⁷⁹

Consequently, the school environment lacked a comprehensive supportive framework for readmitted learners and did not make any appropriate adjustments for the returning learners. For this and other reasons, the Readmission Policy has therefore been criticised for merely “getting the girl back into school” without assessing or creating a conducive environment necessary for her emotional and psychological well-being.⁸⁰ In addition, insufficient progressive steps were institutionalised to support the readmitted learner in her added role of being a young mother.

Follow-up mechanisms for dropouts were not strongly consolidated. Upon discovery of their pregnancy, some female learners would ‘quietly’ disappear from school without disclosing it.⁸¹ The school would thus merely assume that the girl had dropped out and would rarely follow-up.⁸² Problems would arise when the female learners sought readmission, as there would be no record supporting their claim. Readmission was more problematic at the secondary school level in such instances.⁸³

The home environment

Marriage is considered to be a status of prestige in the Malawian community.⁸⁴ Having a baby out of wedlock, especially at a young age is considered to be a taboo. It is for this reason that parents and guardians of learners are largely hostile towards the incidence of learner pregnancy, as they instead prefer that the learner “should marry and start a life of her own.”⁸⁵ UNICEF reported that it was the exclusion and stigma by the parent and community that often forced these girls to marry immediately despite the existence of the Readmission Policy’s existence.⁸⁶

In some instances, poverty and the added responsibility of a new infant made parents and guardians non-supportive towards the learner. There are several documented experiences and reports of parents that refused to look after the baby of a female learner so as to enable the learner

76 Forum for African Women Educationalists (“FAWE”), Keeping Girls in School: FAWE Zambia’s Campaign for an Enabling Readmission Policy for Adolescent Mothers 16 (date unknown).

77 *Id.*

78 *Id.* at 17.

79 See Mazloum, *supra* note 35, at 30.

80 Liwewe, *supra* note 24, at 28.

81 See Mazloum, *supra* note 35, at 11.

82 See Mazloum, *supra* note 35, at 11.

83 See generally Mazloum, *supra* note 35, at 9-11 (discussing readmission protocols in secondary schools).

84 See generally Malawi Law Commission, Report of the Law Commission on the Review of Laws on Marriage and Divorce (2006), https://s3.amazonaws.com/landesa_production/resource/1489/LawCommission_Report-Marriage-and-Divorce-Laws_2006, (containing specific findings and recommendations offered by the Commission regarding the new proposed law in Malawi called the ‘Marriage, Divorce and Family Relations Act’).

85 Liwewe, *supra* note 24, at 32.

86 See Mazloum, *supra* note 35, at 16-17.

to go back to school.⁸⁷ Thirty percent of the girls who were interviewed by UNICEF in 2000 stated that their parents did not want them to return to school and had to be convinced otherwise, by the learner or others.⁸⁸ Twenty percent of the girls mentioned that their parents were afraid that they would get pregnant again at school, and another 20 percent believed that having a baby meant they could not learn anymore.

The lack of a supportive home environment also led to instances in which the female learner ended up cohabiting with the male responsible for her pregnancy, especially if the responsible male was older. A female learner's cohabitation, and eventual marriage, with the male who impregnated her was sometimes attributed to her parents ostracizing her upon the discovery of her pregnancy.⁸⁹ In such scenarios, the female learner was less likely to even return to school. On the other hand, her marriage would sometimes be perceived as being beneficial to her family, as it would award them other material gains, and mean that they would have one less person to feed and care for.⁹⁰ For these reasons, it is not uncommon for pregnant learners to be forced to marry and forego their education prospects.⁹¹

Availability of monitoring mechanisms and data on readmission

Notwithstanding the development and eventual implementation of the Readmission Policy, as well as the highly intricate procedure for readmission, there were no established mechanisms to accurately capture data on readmissions. HRW reported the lack of data “on the number of teenage mothers that have been readmitted to school under the Policy, [the] challenges they face after readmission, or [their performance] at school . . .”⁹² At the time, there were also no comprehensive accurate records on the number of dropouts attributed specifically to pregnancy. Thus, incidences of learner pregnancy were under-reported. A FAWEMA study reveals that head teachers and deputy head teachers mentioned that most girls simply disappear from school without formally withdrawing on the basis of pregnancy.⁹³

Due to the lack of a monitoring mechanism regarding the effectiveness of the Readmission Policy, challenges in its implementation remained largely unaddressed.

The practice in private schools

There was not much documented information regarding the readmission of learners to private schools. Whether the Readmission Policy was intended to apply to private schools remained unclear to respondents, which caused learner pregnancies in private schools to remain largely unregulated and unmonitored. Private schools interviewed by UNICEF indicated that they did

87 See Liwewe, *supra* note 24, at 26.

88 See Mazloun, *supra* note 35, at 19.

89 See Mazloun, *supra* note 35, at 22.

90 See Mazloun, *supra* note 35, at 22.

91 See Centre for Human Rights – University of Pretoria, *supra* note 8, at 6-9 (discussing the root causes of early and forced marriages in Malawi).

92 “I’ve Never Experienced Happiness”: *Child Marriage in Malawi*, Human Rights Watch 22 (2014), https://www.hrw.org/sites/default/files/reports/malawi0314_ForUpload.pdf.

93 See Liwewe, *supra* note 24, at 22.

follow the Policy.⁹⁴ Some private schools admitted to allowing the pregnant female learner to proceed with school so long as the pregnancy was physically less evident.⁹⁵ Thereafter, the female learner was advised to withdraw from school until the delivery of her baby, while male learners were rarely withdrawn. However, what was more significant amongst private schools was that such schools were more “business oriented”, and, thus, were less concerned with following such a strict protocol.⁹⁶

The lack of a holistic approach to learner pregnancy

The background towards the development of the Readmission Policy points to a highly restrictive environment concerning sexual and reproductive health rights for learners. As was previously illustrated, the Readmission Policy was developed to prevent sexual intimacy and displays of affection between male and female learners. Any action by the learner to the contrary would lead to suspension for a specified period of time or to other punitive action. Despite this approach, learner pregnancy continued to soar and the Government was under immense pressure to address the rising numbers of girls who were permanently out of school because of pregnancy. However, regardless of the Readmission Policy, there were less concerted efforts towards tackling the root causes of learner pregnancy. The Government continued to embrace a rather punitive approach to prevent early pregnancy amongst learners even though no significant progress was registered through their approach. Access to Comprehensive Sexuality Education and contraceptive methods for learners remained largely restrictive. Many were not aware of contraceptive methods to prevent pregnancy, except for condoms, which were also largely unavailable to young people. Lack of youth-friendly health services at the time made it increasingly difficult for learners to gain the necessary information and services on safe sex and contraceptive methods.

Additionally, there were also less concerted efforts to simultaneously address the prominence of sexual violence against schoolgirls. Girls were sometimes exposed to sexual violence including rape or defilement when walking the long distances – often as much as ten kilometres – to school. There was a much lower incidence of sexual violence against girls who boarded in secondary schools, which, in turn, enabled their performance to improve greatly in boarding school environments.⁹⁷ However, these schools still lacked adequate security and sanitary facilities.

The fact that the Readmission Policy failed to strategically link its implementation taking into consideration these broader intricacies meant that its effectiveness was limited. Attempts to increase access and retention of primarily female learners only targeted symptoms of a major inherent challenge that demanded a lot more investment in strategic approach, time, and resources to turn the tables in their favour.

94 See Mazloum, *supra* note 35, at 11.

95 See Mazloum, *supra* note 35, at 11.

96 Liwewe, *supra* note 24, at 21.

97 See *Gender and Development Index 2011*, Government of Malawi 19 (2012), http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/MWI/INT_CEDAW_ADR_MWI_19901_E.pdf.

5. The Malawi Revised Readmission Procedures

As a result of evident challenges in the implementation of the 1993 Readmission Policy, the Government developed and adopted the Revised Procedures in 2006. They were aimed at ironing out the ambiguities in the process of withdrawal and readmission of learners following a pregnancy. Specifically, the Revised Procedures indicate that a female learner must submit three copies of a letter to the head teacher regarding her pregnancy. The letter must also indicate her place of residence during the duration of absence. According to the Revised Procedures, the female learner must be counselled by a member of the counselling committee at the school and must be advised that she can return to school upon delivery and safe custody of her baby. She is then withdrawn from school for one academic year, and any opportunity for readmission will only be granted once throughout her education cycle. In a similar fashion, the boy responsible for the pregnancy is also expected to withdraw for one academic year from school, receive appropriate counselling from the counselling committee, and apply for readmission once the baby is delivered and in safe custody. The opportunity for readmission is also given once in his education cycle.

It has been eleven years since the Revised Procedures were adopted, though there have been few progressive changes in the retention of learners in school following their pregnancy. As previously stipulated, the survival rate of girls to standard eight is the lowest at only 29 percent in comparison to their male counterparts at 35 percent.⁹⁸ Child marriages and pregnancy continue to be cited as the predominant factors leading to permanent dropouts from school. Thus, the Government, through the Ministry of Education, is revising the Readmission Policy in a bid to make the procedures more responsive and effective to the prevailing. Hopefully, this Study will prove to be insightful and informative towards the review process.

Findings of the Study

The Study reveals that there are major discrepancies with regard to adherence by schools to the provisions under the Revised Procedures. The discrepancies are largely due to two major factors. First, they are a result of limited awareness of the specific procedures under the Revised Procedures. Second, they are a result of efforts by education authorities (often head teachers) to adapt the Procedures to emerging practical circumstances. This section examines the practice in the Study areas as distinguished from what is stipulated in the Readmission Policy and its Revised Readmission Procedures. Notable gaps will also be discussed and raised to inform future interventions.

⁹⁸ EMIS, *supra* note 28, at 51.

The readmission process under the Revised Readmission Procedures

Learners and education authorities at the district level felt that the readmission process under the Revised Procedures was unnecessarily lengthy.⁹⁹ Educational authorities interviewed in Dedza, for instance, indicated that it was a burdensome expectation to require the learner to instigate the withdrawal and readmission process by writing a letter. As provided for under the Revised Procedures, a pregnant schoolgirl, and the male learner responsible for the pregnancy, are each expected to submit three copies of a letter to the head teacher indicating their circumstances. In response to this letter writing procedure, an education official in Dedza felt that such learners would be more likely to undergo a subsequent traumatic period. Hence, it was proposed that such a letter should instead be documented by the head teacher if the latter has obtained the necessary information from the female learner. In practice, however, this requirement is not strictly adhered to. Most female learners who were interviewed in this Study left school on their own accord after discovering that they were pregnant. They did not write any letter regarding their withdrawal. However, less than five female learners indicated that they were asked to write a letter seeking readmission when they had presented themselves to the school after delivering their baby. This practice was more evident in secondary schools and was largely attributed to the fact that admission to secondary schools is contingent upon availability of space. Hence, the Education Division is independently informed of a request by a learner for admission from either the respective schools or through the office of the DEM. For primary schools, almost all learners indicated that they were not required to write a letter either at withdrawal or at readmission stages.

Notable differences were also documented regarding the few learners – often secondary school learners – who were told to write a letter when seeking readmission. For instance, some learners were told to write the letter and deliver it themselves to the education division offices. None of the interviewed learners who were instructed to do this complied with the instruction, as they cited problems of transport and time. A head teacher in a secondary school in Mangochi thus intervened by delivering the letters to the education division on behalf of two learners. The personal initiative by a concerned teacher/head teacher in the provision of support is critical to the eventual successful readmission of the learner in question. For instance, a primary school head teacher wrote the letter of withdrawal to the DEM on behalf of a pregnant female learner and also facilitated her eventual readmission a year later.¹⁰⁰

Where such letters are written, it is not entirely clear as to whether all of them addressed to the education division are responded to promptly. In one incident, a female secondary school learner in Mangochi indicated that she became frustrated whilst awaiting a response from the Education division. She then decided to obtain assistance from a family friend who knew the councillor in their area. It was therefore the councillor who facilitated a speedy readmission after weeks of waiting. Other withdrawn secondary school learners indicated that they were merely told to report to class after a week but were uncertain as to whether the Education Division had in fact responded to the letters that they had submitted to the office of the head teacher.

⁹⁹ Government respondent in Nkhata Bay and learners interviewed in all three districts.

¹⁰⁰ See Liwewe, *supra* note 24, at 19.

It was also interesting to note that the role of the Education Division in the readmission process is unclear in practice. Some head teachers indicated that the Education Division is merely informed of the intention to admit a learner, and as such, the Education Division is supposed to update its records regarding the newly readmitted learner. Other head teachers indicated that the Education Division is meant to authorise the readmission depending on the availability of space within the secondary school. The Revised Readmission Procedures indicate that the Education Division is supposed to “immediately approve” the readmission in writing. Thus, there is an expectation that the Education division is meant to provide an immediate approval on readmission and not deny the request for readmission.

Concerning primary schools, the DEMs interviewed admitted that requests for readmission rarely pass through their offices. However, what they do have are regular statistics on attendance and dropouts forwarded from Government schools within the district. There is no specific data on readmission. The DEMs indicated that they request schools to provide information on readmissions that take place, though most schools do not provide the data. Instead, primary school head teachers were largely handling readmissions without adhering to the process under the Revised Readmission Procedures. The DEMs did not have significant problems with this situation:

“Requests for readmissions do not necessarily have to be approved by my office. Let them readmit the learners on their own. However, what we need from them is just the data on readmission.”¹⁰¹

Additionally, education authorities at the district level were of the view that the readmission procedures should be simplified. Thus, newly developed proposals indicated that readmissions at primary school should be facilitated at the primary school level with notifications to the office of the DEM.¹⁰² As regards secondary schools, it was recommended that head teachers should merely inform the Education Division when a learner has been withdrawn from school as a result of pregnancy so as to reserve a place for her upon readmission. Thus, the respondents indicated that it should not be necessary to seek approval and permission from higher education authorities on readmission, but rather just a notification to update records and ensure that accurate data is captured on readmissions at the national level.

The Study also observed that learners who independently approached the office of the head teacher to seek readmission were sometimes sent back with instructions to return with their parents.¹⁰³ Such head teachers justified this stance on the basis that they needed to counsel the learner in the presence of his or her parents. In addition, these head teachers indicated that it was also a way to engage actively the parents of the learner on the welfare of the learner to ensure that there is no repetition of the circumstances that led to the pregnancy, this, despite the discomfort that the learners felt towards the situation. For instance, two school authorities in Dedza cited instances in which female learners failed to return to school after they had been instructed to return with their parents and guardians when they sought readmission. No counselling sessions were conducted with these learners. A similar case was noted in one secondary school in Mangochi.

101 DEM in Dedza.

102 Government respondents in Nkhata Bay and Dedza.

103 Observed in some schools within Dedza and Mangochi.

The nature of the sexual relationship that resulted in pregnancy

The Study revealed that the common types of sexual relationships resulting in learner pregnancy were often between male and female learners within the same age groups, and between a younger female learner and an adult male.

It was therefore common to hear of a female learner impregnated by a male learner in a different school, or a female learner impregnated by a male school dropout who was conducting business in a nearby village.¹⁰⁴ The Gender and Development Index (GDI) has also noted instances in which impregnation of girls was the result of sexual assault at the hands of their male teachers.¹⁰⁵ Furthermore, males who impregnate schoolgirls are “not confined to just school boys, teachers, business men and relatives or male guardians”.¹⁰⁶

However, sexual activity amongst learners who studied in the same school as each other was a less common occurrence. This was because sexual relationships between learners were strongly regulated within the school environment.¹⁰⁷ Learners are prohibited from engaging in relationships (i.e. boyfriend-girlfriend relationships). Strong warnings are issued by teachers to learners suspected of being in such relationships. Should the learners in question still fail to abide by the rules, they may be suspended from school.¹⁰⁸ The learners specifically indicated that it was against school rules to have “zibwenzi” (sexual relationships) and that such conduct would result in punitive action from the schools. At the same time, the Study also noted that the existence of such stringent rules did not negate the existence of such sexual relationships amongst learners within the same learning environment altogether. Some learners could confirm that sexual relationships between learners in the same school still occurred, but were often more present outside the regular school hours, for instance, during walks to and from school or during school activities outside the school premises. Learners even admitted to having sexual encounters in bushes and other secluded areas.

The Study also interrogated the various reasons why learners engaged in sexual activities. A significant number of them were subjected to peer pressure, in which they were persuaded to engage in sex under the influence of their friends. Also, sexual interest was perpetuated by exposure of the girl to early sexual initiation, as dictated by cultural practices in their respective communities. Finally, girls were prompted to engage in sex with men in exchange for money or basic necessities.

Sexual violence in schools

Sexual violence, by definition, includes “all forms of sexual abuse and sexual exploitation of children.”¹⁰⁹ This encompasses a wide range of sexual offences, including non-consensual sex acts such as rape, attempted non-consensual sex acts, “abusive sexual contact (i.e. unwanted touching), and non-contact sexual abuse (i.e., threatened sexual violence, exhibitionism, [and] verbal sexual

104 Focus group discussions with learners held in Nkhata Bay and Mangochi.

105 See Government of Malawi, *supra* note 97, at 16.

106 Liwewe, *supra* note 24, at 27.

107 Interview with Government respondents in Nkhata Bay and Dedza.

108 Interview with Government respondent in Nkhata Bay.

109 *Report: Violence Against Children and Young Women in Malawi – Findings from a National Survey 2013*, Malawi Ministry of Gender, Children, Disability and Social Welfare 17 (2014), https://www.unicef.org/malawi/MLW_resources_violencereport.pdf.

harassment).¹¹⁰ According to one national survey on violence against women and young children in Malawi, one out of every five females in Malawi experienced at least one incident of sexual abuse before their eighteenth birthday.¹¹¹ According to Malawi's Demographic and Health Survey 2015-16, of surveyed women between 15-49 years, 21 percent had experienced some kind of sexual violence in their life; of these women, 4 percent had experienced sexual violence before their eighteenth birthday.¹¹² Among thirteen to seventeen year old females, the most common location for the sexual abuse incidents occurring during the previous year of the research was on a road or in school.¹¹³ The perpetrator was often reported as a boyfriend or romantic partner 33.4 percent of the time and as a schoolmate 15.5 percent of the time.¹¹⁴ Additionally, 33 percent of women between the ages of eighteen and twenty-four years reported getting pregnant as a result of unwanted sex prior to attaining the age of eighteen.¹¹⁵

There is a growing concern regarding the safety of the school environment for female learners. It is even more worrisome that a staggering percentage of such sexual abuse results in unwanted pregnancies amongst female learners. A female learner who previously enrolled at a secondary school in Dedza revealed that her boyfriend raped her:

"I did not want to have sex. I was not ready for it. But he kept pressuring me and eventually forced himself upon me. I was disgusted but afraid to tell anyone because relationships between boys and girls were banned by the school. I therefore kept quiet. But I later discovered I was pregnant. My boyfriend initially refused the pregnancy and only accepted much later, when my daughter was 5 years old. I quietly dropped out of school and was readmitted to a different school after a year and some months."¹¹⁶

Similarly, FGDs held with female learners in a primary school in Mulanje revealed that some female learners who are victims of sexual violence within the school often suffer in silence:

"Some of the boys were just our friends and yet they forced us to have sex with them along a secluded road. But we didn't report it because no one will believe it. They will probably ask why we became friends with such boys in the first place. They will question why we agreed to go with the boy for secluded walks. Anena kuti zofuna zimenezo. Mwamuna sangakhale mnzako. (They will say that we asked for it because a boy cannot just be your friend)."

One girl added:

"These boys are difficult. They don't take 'no' for an answer. And especially if they have been spending money on you, they demand sex or threaten you to give back the money they spent on you. Since we don't have the money, we just end up sleeping with them."¹¹⁷

110 *Id.*

111 *Id.* at 23.

112 National Statistical Office et al., *supra* note 20, at 282.

113 See Malawi Ministry of Gender, Children, Disability and Social Welfare, *supra* note 109, at 24.

114 See Malawi Ministry of Gender, Children, Disability and Social Welfare, *supra* note 109, at 63.

115 See Malawi Ministry of Gender, Children, Disability and Social Welfare, *supra* note 109, at 23.

116 Female respondent who was a learner at a secondary school in Dedza. She has since finished her secondary school.

117 Focus group discussion held with learners at a primary school in Mulanje.

When queried as to whether acceptance of gifts or money from a boy implies consent to sex, another girl responded with a shrug:

"I guess so. I know a certain incident in which the police reprimanded a girl who went to complain about a sexual assault that she had experienced from her boyfriend. The police told her that the sex was consensual since it was clear that she had been receiving money from him. No man can just spend money on you for free."¹¹⁸

The Study went further to probe the question of why such female learners receive gifts or money from boys. One female learner indicated that it was because they often lacked basic necessities.

The implications of such sentiments possibly indicate that the approach towards relationships between boys and girls in a learning environment is so restrictive that it unintentionally may lead to some instances in which female learners are unable to report sexual violence instigated by a male learner with whom they shared an intimate relationship for fear of reprisals over having the relationship in the first place. This may therefore necessitate a shift in the approach to how relationships between male and female learners are perceived within the learning environment, from a strictly punitive approach to creating a safe place for learners to interact responsibly with the necessary psycho-social support from school authorities.

An important dimension concerning sexual violence within schools relates to instances in which such violence is instigated by a school authority, such as a teacher. Though the present Study did not unearth any incident of sexual intimacy or violence between a male teacher and a female respondent, there was anecdotal evidence of such incidences. Learners reported that:

"We hear it happens a lot. But not in our school."¹¹⁹

A Nkhata Bay official reported seeing one or two cases a year in which a teacher impregnates a female learner.¹²⁰ Some parents also indicated that:

"It used to happen a lot in the past. Some teachers were removed from this area due to that. I currently have not heard of such occurrence recently."¹²¹

When probed further, respondents indicated that such teachers often manipulated or threatened the female learners into sexual relationships in exchange for good grades or monetary support. The Study revealed that when such situations occur, the procedure is that such cases need to be reported to the District Education Manager who is expected to conduct an independent investigation into the matter. A report of the same is to be shared with the Ministry of Education headquarters.

However, respondents indicated that once either relationship is widely known, or a teacher is suspected to be responsible for the pregnancy of a learner, they often do not see very firm action from the Ministry of Education. In many instances, such teachers are merely transferred to different schools. Education authorities at the district level, however, insisted that all incidences of

118 Focus group discussion held with learners at a primary school in Mulanje.

119 Focus group discussion with learners in Mangochi.

120 Interview with Government respondent.

121 Interview with a parent in Nkhata Bay.

sexual relationships or violence between a male teacher and a female learner would be impartially investigated.¹²² In addition, they emphasised that transferring a teacher is never employed as a punitive or disciplinary measure. It was however, indicated that when such transfers do occur, they are due to lack of sufficient evidence to inform any decisive action against the teacher. The suspected male teacher is transferred to a different school as a precaution and to ensure a safe learning environment for the female learner.

Education authorities at the district level indicated that in some instances, the female learner herself is unwilling to disclose her relationship with the male teacher because the latter is often perceived to enjoy a high status in the community. Parents of such learners also often approve of the relationship with the teacher and would rather have his support for maintenance (in the event of a pregnancy) as opposed to having him face punitive action that may result in his loss of income as a teacher. In addition, the Study also unveiled that some cases come to a standstill due to lack of an appropriate response from the Ministry of Education regarding the disciplinary measures to be taken against the responsible teacher.¹²³

The Study documented a recent case in Nkhata Bay in which decisive action was taken against a teacher who had a sexual relationship with a female learner over the age of sixteen, resulting in his dismissal from work. There was suspicion that the teacher had forced himself on the female learner. The teacher was convicted of rape at the Magistrate's Court. However, the conviction was overturned on appeal as the court established that the sex had been consensual. Nonetheless, the Ministry of Education maintained its decision to dismiss the teacher, since it had been previously established that his sexual activities with the female learner constituted unwarranted conduct.

Availability and access to counselling

According to the Revised Readmission Procedures of 2006, a member of the school counselling committee must counsel female and male learners withdrawn because of a pregnancy. The Study revealed that the said counselling committee is largely unavailable or non-functional. None of the schools visited indicated that they had a counselling committee. Counselling would, however, sometimes be provided in one way or the other. The most notable channel through which counselling was delivered was through the mother groups,¹²⁴ the head teacher, and any female teacher or through any member of the Parents Teachers Association. Others had a more remedial or supportive approach whilst some maintained a disciplinary and punitive approach. Withdrawn learners indicated some of the differing messages that they received during the said counselling sessions:

"The headmistress called me and told me that this is not the end of my future. She encouraged me to return to school once I had delivered. She told me that everything will be alright."¹²⁵

122 Interview with Government respondents in Nkhata Bay and Dedza.

123 Interview with Government respondents in Nkhata Bay.

124 Their role is to advocate for girls' education in the community and support girls so as to prevent them from dropping out of school.

125 A readmitted female learner in a primary school in Mangochi.

"The head teacher reprimanded me and asked me what I was thinking. He said that this is what happens when I fool around with boys. He told me that I will end up suffering whilst the man responsible for my pregnancy will continue happily with his life. He said that we girls are very foolish in our thinking when we engage in zibwenzi (sexual relationships)."¹²⁶

For most learners, such counselling was a "once off" session, often conducted during withdrawal or at the time of their readmission. Since female learners often withdrew on their own accord, head teachers indicated that it was difficult to provide counselling during the period of withdrawal. When readmission was sought, however, the head teachers would seize the opportunity to provide the said counselling before readmitting a learner. A few readmitted learners also indicated that when walking around the school premises, they would sometimes "run into" the head teacher who would offer some random words of encouragement to them or call them to the office where the head teacher would enquire how the learner was faring. Such scenarios were, however, informal and infrequent.

The counselling provided during admission of the learner was relatively short, often lasting between ten and twenty minutes. None of the providers of the counselling sessions had been specifically trained to provide such counselling, except a few members of the mother groups who indicated that they had been sporadically selected to undergo training with NGOs on aspects of childcare, support, and protection in general. It was evident therefore that these counselling sessions could not adequately cover the whole spectrum of psycho-social problems that a learner would experience as a result her pregnancy.

The importance of appropriate and regular counseling sessions with learners in such situations cannot be overstated. Previous studies have indicated feelings of withdrawal, rejection, and depression by pregnant learners and/or readmitted learners. In some extreme cases, some female learners indicated that they would sometimes feel hatred towards the child due to the challenges experienced after giving birth.¹²⁷ Others cited "psychological challenges of both loving and rejecting their child because they [found] raising a child demanding" and had no one to whom they could express such feelings.¹²⁸ The FAWEMA study from 2012 narrates stories of rejection by parents of a learner following her pregnancy.¹²⁹ Others noted "harassment by male teachers" who thought that because the learners were mothers, they must be looking for sex.¹³⁰ In addition, the younger female learners indicated that they were "negatively judged and condemned", such that the burden they carried could sometimes make it difficult for them to concentrate in school.¹³¹ As a result, it remains a cause of concern that systematic, regular and appropriate counseling services are not well institutionalised across districts.

126 A readmitted female learner in another primary school in Mangochi.

127 See Liwewe, *supra* note 24, at 24.

128 Liwewe, *supra* note 24, at 24.

129 See Liwewe, *supra* note 24, at 24.

130 Liwewe, *supra* note 24, at 24.

131 Liwewe, *supra* note 24, at 24.

Stigmatisation and bullying of pregnant learners and readmitted learners

The Study has found that stigmatisation and bullying of pregnant female learners and/or readmitted female learners is the most critical problem that adversely affects their access to education. This proved to be a predominant factor cited by all withdrawn learners when queried as to why they did not return to school after giving birth:

*"I was afraid I would be teased."*¹³²

*"My friends laughed at me when they discovered I was pregnant."*¹³³

*"My schoolmates called me names. They called me nchembere (mother). It was so embarrassing."*¹³⁴

*"They would make up funny stories in class without referring directly to me, but I knew they were talking about me. It was obvious and the whole class would end up laughing at me. I felt so alone and stupid."*¹³⁵

The participants were further asked if they sought assistance in dealing with such incidences of bullying. They cited how they reacted or coped with the situation:

*"I talked to my mother and she told me not to mind them. She said I must remember what I was there for, and it was to learn."*¹³⁶

*"I talked to the head teacher and he told me that I must be strong. I must just concentrate in class and make sure that I pass. He said the classmates bullying me were merely immature and they should not deter me in my pursuit of education."*¹³⁷

*"I complained to the teacher and he made a general announcement in class that anyone found bullying or teasing another classmate would be punished. Of course the bullying did not end completely but it helped a bit."*¹³⁸

*"I did not bother to report. I knew not much would be done. That is how children are anyway. Even if I reported, I would probably have made things worse for myself as they may have teased me more after school hours."*¹³⁹

The Study, however, found that most of the learners who were bullied did not report the incidences to school authorities. Such learners seemed to perceive such occurrences as "expected" or "normal." Some learners even seemed to suggest that they deserved to be bullied, after becoming pregnant while young and out of wedlock. These sentiments correlate with findings of the 2012 study by FAWEMA, in which readmitted learners complained of being stigmatised and having to manage

132 A female during a focus group discussion in Mangochi with females who have permanently dropped out of school.

133 A female who has not returned to school during a focus group discussion in Nkhata Bay.

134 A female who withdrew from school in Mangochi.

135 A female who permanently withdrew from school in Balaka.

136 A readmitted learner at a primary school in Mangochi.

137 A readmitted learner in Mangochi. Similar sentiments noted in Dedza.

138 A readmitted learner in Mangochi.

139 A female respondent during a focus group discussion in Balaka.

that stigma on their own.¹⁴⁰ This has subsequently led to poor learning outcomes for readmitted learners.¹⁴¹ The finding that such incidences of bullying were to be “expected” correlates with the provisions of the revised procedures. The actual wording indicates that:

“Once students have reported for classes, they should be counselled on expected behaviour and stigma.”

There are no further indications on what such counselling on stigma would entail. It would appear to provide that such learners should be prepared for stigma once in school as opposed to ensuring that the school constitutes a safe environment which they should feel comfortable returning to.

It was also notable that stigmatisation, bullying, and teasing were less profound for a male learner who had impregnated a girl. Pregnant and/or readmitted female learners were more likely than male learners to be teased, bullied and harassed due to their pregnancy. One female learner elaborated on this by saying that:

“It is because it is the girl who bears the brunt. She is the one whose body bears utmost responsibility for the baby. Nothing much changes for the male learner.”¹⁴²

This is also perceived by some learners to mean that teenage mothers no longer belong in the school environment, hence the use of negative words and names when referring to these young mothers. Discussions held with readmitted learners show that the result of such attitudes and stereotypes against them leads to feelings of isolation, rejection and depression. The focus group discussions and interviews held in all districts visited revealed that this is a major reason why female learners drop out of school or never return to school at all.

School authorities interviewed did not appear to have a systematic or structural approach in their response to complaints of bullying or teasing. While some teachers indicated that they would summon the perpetrators and issue a stern warning, others indicated that they would punish the perpetrator. When probed further as to whether there were high incidences of bullying against pregnant and/or readmitted learners, school authorities indicated that this was not the trend, as they did not receive a substantial number of complaints. These findings confirm that incidences of bullying often go unreported. When questioned as to why many female learners do not return to school after delivering their babies, the school authorities indicated that:

“It is because they feel shy. They know their friends will laugh at them.”¹⁴³

Since most incidences of bullying are not reported to school authorities, the school authorities are generally aware that they occur. However, there is a general lack of proactiveness on their part as they often wait to receive such complaints from the affected learners before taking action even if they are made aware of the bullying from other sources.

140 See Liwewe, *supra* note 24, at 23-24.

141 See Liwewe, *supra* note 24, at 23-24.

142 A readmitted learner in a primary school in Mulanje.

143 A head teacher at a school in Nkhata Bay. Similar sentiments expressed by school authorities in Mulanje, Dedza and Mangochi.

The Study also examined whether an effective and approachable complaints handling system is in place in the schools visited and whether the absence of such a system may be the reason why learners do not report bullying incidences. Head teachers were quick to illustrate that any learner is free to come to their office to complain, though no deliberate initiatives were in place to ensure that learners felt free to do so. The Study did, however, note sporadic efforts in some schools spearheaded by some NGOs to ensure safe and anonymous reporting by learners, especially on incidences of sexual abuse. There were also a number of donor-funded projects conducted in primary schools in response to gender-based violence, and, as such, learners were educated on how to complain about such incidences.¹⁴⁴

It is nonetheless apparent that the stance of the Ministry of Education on bullying and teasing is not well consolidated into a policy framework. Directives against bullying and teasing are in the form of circulars and are not yet documented.¹⁴⁵ This shortcoming affects how respective schools effectively respond to incidences of bullying and teasing in the absence of a comprehensive policy framework that consolidates preventive and responsive measures. The fact that teachers are overwhelmed with teaching responsibilities makes it less likely for them to express a keen interest in a situation that affects only a handful of learners.

Withdrawal of male learners from school and their responsibility for a pregnancy

The Study reveals that male learners responsible for a pregnancy are rarely withdrawn from school. However, this is not a deliberate stance. Educational authorities at the district levels cited various reasons as to why the tendency is often to withdraw the pregnant female learner alone. Firstly, it was illustrated that it is often very difficult to establish the responsibility of a male learner over a pregnancy. This is particularly problematic in situations where the male learner is denying responsibility. Due to lack of medical evidence, what ensues is a hearsay version of “she said, he said”. Though sometimes testimony may be sought from friends who may confirm the existence of a relationship between the two parties, the likely result is that the matter is often left unresolved, and only the female learner is withdrawn from school.

Secondly, the Study indicates a tendency by female learners to refuse to disclose the identity of the male responsible for the pregnancy. In many instances, this is more prevalent in instances where the responsible male is older, married or holds a highly esteemed office in the community, for example, a teacher or religious leader. In instances where the responsible male is a learner, however, some female learners conceal his identity to protect him from facing punitive action.¹⁴⁶ This lack of disclosure by the female learners is seldom voluntary, as it often occurs because of persuasion or threats from the male learner about the continuation of their relationship if the female learner reveals his involvement. Due to feelings of despair and isolation, the female learner thus sometimes chooses to “cling” to the relationship and thus keeps the identity of the male learner a secret. Unfortunately, what almost inevitably ensues is that the male learner ends up abandoning the female learner in the long run.

144 Email from a respondent at the Ministry of Education.

145 Email from a respondent at the Ministry of Education.

146 Interview with Government respondents in Nkhata Bay and Dedza.

Thirdly, it was shown that even in the few instances in which the male learner responsible for a pregnancy is known and subsequently withdrawn from school, he sometimes successfully seeks admission in a different school. This is particularly common for Government primary schools in which the admission process is less cumbersome and regulated. For secondary schools, however, such readmission is less likely to happen as the admission process is more stringent and beyond the mere discretion of the head teacher and student placement goes through the Education Division office. In some instances, however, such male learners might also be re-admitted in a different secondary school if they have the “right” connections.¹⁴⁷ Head teachers mentioned that councillors and/or Members of Parliament have been known to seek admission of students to secondary schools without necessarily going through the rigorous process of seeking transfers. The Study also revealed that a few male learners responsible for a pregnancy would seek admission in private schools. There is an evident dichotomy between private schools and public schools. Private schools are, thus, very unlikely to seek transfer letters from students wishing to seek admission into their school.¹⁴⁸ Private schools would speedily admit a learner if he is able to provide the necessary monetary requirements, such as school fees.

Another notable aspect on the disparities between the treatment of the male learner and the female learner is the apparent lack of knowledge of the Readmission Policy and its Revised Procedures. For instance, concerning the withdrawal of the male learner in particular, the 2012 FAWEMA study¹⁴⁹ revealed that different schools had different views on how the male learner should be treated. If the male learner was from a different school to the female he impregnated, 40 percent of teachers said that he should continue his schooling without any disturbance, while 20 percent believed that the school should decide the “punishment” of the boy which may include undertaking forced labour within the school. Another 20 percent thought that the parents of the girl learner would have to decide his treatment and that he should nevertheless be suspended for at least a couple of weeks.

This Study revealed that the justification behind the school withdrawal of a male learner, who is responsible for a pregnancy of a female learner, was three-fold. The first justification is that it is meant to be a punitive measure. Respondents indicated that the male learner had to be withdrawn so that he understands that his actions were not condoned. Respondents also indicated this would act as a deterrent, warning other male learners not to engage in premarital sex. The aspect of withdrawing the male learner was strongly supported by most educational authorities and female learners who were either readmitted or not admitted. Secondly, the male learner is withdrawn to compel him to assume responsibility over his actions and face the consequences alongside the female learner who he impregnated. School authorities consistently used the following term to describe this justification: “*akalelele limodzi mimbayo*” (they should both care for the pregnancy). Lastly, it was also stipulated that withdrawing the female learner alone would amount to a form of gender discrimination.¹⁵⁰ Most female learners and school authorities bemoaned that there is indirect discrimination when fewer male learners responsible for a pregnancy than their pregnant counterparts are withdrawn from school. Some went further to insist that based on the premise of

147 Government respondent in Dedza.

148 Government respondent in Dedza and Nkhata Bay.

149 See Liwewe, *supra* note 24, at 32.

150 Government respondent in Dedza and Mulanje.

gender equality, the rules that apply to pregnant female learners should also apply to male learners who impregnate a female learner during the course of their education.

Interestingly, the school authorities¹⁵¹ were quick to emphasise that they do not expect the relationship between the two learners to continue during the period of withdrawal. The relationship was not to exist even during their eventual readmission to school, as that would compel punitive action from the school against the two learners. When queried further as to whether school authorities took an active role in ensuring that both parties shared responsibility in caring for the pregnancy and the baby, school authorities indicated that it was the duty of the families to ensure such responsibility. The question was raised in light of consistent complaints from the young female mothers that the males responsible for their pregnancy refused to be actively involved in the pregnancy or to take care of the baby. Female learners who got pregnant by a male learner confirmed that the school authorities did not play an active role in ensuring that the male learner acted upon his responsibility with regard to the pregnancy. Often it is family members, and to a certain extent, traditional authorities who play a role in trying to compel the male learner to accept responsibility over the pregnancy. Nonetheless, and without the willingness to do so by the male learner and his family, such mediation approaches often remain unsuccessful.

Period of withdrawal

The Revised procedures provide that a pregnant female learner and the male learner responsible for the pregnancy are to withdraw from school for one academic year. However, the Study reveals that there are many inconsistencies in the application of this rule. Most school authorities interviewed believed that the withdrawal period was two years. They inferred that this was the period of withdrawal pursuant to Government regulations. No documentation was provided in order to support this stance, though the school authorities were adamant that this is what they had been advised. When queried as to why the two year rule of absence from school is necessary, the justification provided was that it was important for the baby of the learner to become slightly less dependent on the learner at the time of her readmission.

Other school authorities randomly guessed that the learner should be withdrawn for six months, correlating to the period of time within which the baby of the learner is able to rely less on breast milk for his or her dietary needs. What remains so interesting about all of this is that the primary consideration for readmission appears to be the interests of the infant of the learner, rather than the interests of the learner herself.

In practice, there is no strict adherence to the prescribed time for the withdrawal of the learner. School authorities would often readily admit a learner once he or she has presented him or herself at school. School authorities did not ordinarily enquire about the safe custody of the baby of the learner as envisaged by the Revised Readmission Procedures. It was, thus, notable that some learners would leave their babies who were younger than six months old at home while proceeding with school. When asked what the babies feed on when the young mothers are away at school, the readmitted learners indicated that their babies would be given water or some soft

151 In Dedza, Nkhata Bay and Mangochi.

solids.¹⁵² Only three readmitted learners were able to provide formula milk to their babies whilst at school. The three readmitted learners indicated that the men responsible for their pregnancies had migrated to South Africa in search of greener pastures, and would send formula milk.¹⁵³ For those readmitted learners who were unable to provide formula for their babies who were under the age of six months, concerns were raised that the babies would often get fussy and hungry due to the prolonged absence of the young mother, which would be exacerbated by the extension of school learning hours in Government schools.¹⁵⁴ It was noted that these young mothers came from poor families and could not afford supplementary feeds for the babies. A Social Welfare assistant thus emphasised the need to ensure that babies of learners are not subjected to suffering due to the “hastiness” of readmitting the female learner to school.¹⁵⁵

In a purely sympathetic consideration, some schools allowed guardians and parents to bring the babies of the learners to the school for breastfeeding during lunch and break-time.¹⁵⁶ Though affected learners found such flexible arrangements commendable, it was noted that this would sometimes elicit teasing from other learners who witnessed the young mother breastfeeding. There were no proper shelters within the school premises where these young mothers could privately breastfeed. While a few head teachers reportedly allowed female learners to tend to their infants during recess, others stopped the mother of a female learner from bringing the baby of the learner to school for breastfeeding as it was viewed as having a bad influence on the other girls.¹⁵⁷ Those school authorities that were opposed to this “flexible arrangement”, argued that schools should not stretch themselves too far in a bid to accommodate the needs of a readmitted learner and her baby. Instead, they maintained that such learners should only be readmitted when the baby of the learner was able to be separated from his/her mother for extended periods of time.

Aside from the implications of leaving infants at home at an early age during the time that the female learner proceeded to school, other readmitted female learners in community day secondary schools bemoaned the huge responsibility they had to bear as soon as they got home after school. In line with findings from an earlier study, they had no time to do any schoolwork, since the majority of all their time had to be spent “feeding, nursing, washing clothes and preparing food” for their babies.¹⁵⁸ They would be “fulltime mothers” as soon as they got home.¹⁵⁹ There was limited time for studying and this would adversely affect their performance in school.

The Study further examined what learners would consider as being an ideal period of withdrawal, as well as whether withdrawal was even a sensible course of action to be taken. The Revised Procedures are unclear about when the one academic year of withdrawal should commence. Does it commence once pregnancy is discovered or when the baby of the learner is born? Most educational authorities were of the view that a pregnant learner should be withdrawn immediately when pregnancy is discovered. They were highly opposed to any possibility of a pregnant girl

152 Readmitted learners in Mulanje.

153 Readmitted learners in a secondary school in Mangochi.

154 Readmitted learners in a primary school in Mulanje.

155 Respondent in Nkhata Bay.

156 Noted in some primary schools in Mulanje.

157 See Liwewe, *supra* note 24, at 23.

158 Liwewe, *supra* note 24, at 18.

159 Liwewe, *supra* note 24, at 18.

remaining in school when the pregnancy is evident:

"Schools are not maternity wards."¹⁶⁰

"We just don't have the time, resources or capacity to cater for the peculiar needs of a pregnant learner. Being a young pregnant girl, there are many risks. If something happens within the school premises, we would be blamed. Let the girl go home immediately and come back after giving birth."¹⁶¹

Other justifications against having pregnant learners on school premises were based on the belief that their presence would set a bad example for other learners:

"We would be setting a bad precedent. Let us not normalise early pregnancy. Early pregnancy is wrong and unacceptable. The moment you start accommodating pregnant learners within school and allow them to learn while pregnant; you are basically telling other learners that this is okay. You are telling other learners that early pregnancy is normal. So other students will say 'even if I am pregnant, the school will accommodate me.' We need to set a tone that early pregnancy is bad and that anyone who becomes pregnant whilst in school will be withdrawn. Hence learners will begin to exercise more caution with regard to being pregnant."¹⁶²

Other school authorities also maintained that the decision to keep pregnant learners out of school is made out of concern for the teasing and bullying the learner would be subjected to otherwise:

"In all honesty, a pregnant learner on school premises will just entice teasing and bullying from colleagues. She cannot learn properly in such an environment. It is in her interest to just withdraw."

However, it was clear that exceptions were still being made. This was particularly notable in instances where pregnancy was discovered at the beginning of examinations. Head teachers would often allow the pregnant learner and a male learner responsible for her pregnancy to sit for the examinations. This was particularly evident in instances in which the learner was about to sit for national examinations like the Primary School Leaving Certificate and the Malawi School Certificate of Education.

The learners' views on this issue were divided. Whilst some learners felt that it would be proper to be allowed to continue with school, others were sceptical that such an arrangement would be tenable.

A female respondent in Balaka remarked:

"I don't think pregnant female learners should be forced to leave school at all. I attended school until I was eight months pregnant. I wanted to finish the school term and I'm thankful that the head teacher was understanding. Yes, some classmates made fun of me but I was still able to write the exams and pass."

160 A Government respondent in Nkhata Bay.

161 A Government respondent in Nkhata Bay.

162 School authorities in Dedza, Mangochi and Nkhata Bay.

For those who were against the idea of pregnant learners remaining in school, their concern was premised on the suitability of the school environment itself as opposed to the notion of pregnant learners being allowed to learn.

*"You know how pregnancy is. Suppose it gets too hot. Look at our classrooms? They have no ventilation. It would be so uncomfortable."*¹⁶³

*"Even if I had the chance to remain in school whilst pregnant, I would not have remained. Everyone would laugh at me."*¹⁶⁴

*"The headmaster allowed me to remain in school whilst pregnant because exams were just 2 months away. I felt it was important for me to write the exams so that I could proceed to a new class when I came back. But it was so uncomfortable. I know everyone was talking about me and giggling behind my back. I just decided to ignore them and be strong. It is really not an ideal situation."*¹⁶⁵

Thus, it would appear that if the school environment had allowed for it, pregnant learners would have opted to remain in school until they were ready to withdraw in order to deliver.

For those who were in support of a period of withdrawal, a slight majority held the view that it was not proper for a learner to be left at home for a year or more. They indicated that the longer a learner remained at home, the harder it would be for her to readjust to life in school. One readmitted learner in a primary school in Mangochi remarked:

"I stayed home for almost 2 years. When I came back, it was so strange. All my friends had moved on to higher classes and I had to be in class with children who were 2 years behind me. I found my mind wandering most of the time. Thus, I could not concentrate in class. It took me some time to get back into 'school mode' as I had stayed away for too long."

Although some were in support of immediately withdrawing a pregnant female learner from school, it was generally agreed that such withdrawal ought not to be too long. However, respondents still had difficulties in reconciling this aspect together with their desire to ensure that the baby of the learner had attained a certain level of independence and detachment from the mother so that the latter would be able to attend school.

Detecting a pregnancy

The Study revealed the absence of mandatory testing for pregnancy within the visited Government schools. Education authorities at the district level indicated that there was a Government directive prohibiting such a practice.¹⁶⁶ When probed as to why this was the case, respondents indicated that they were informed that mandatory pregnancy testing was against human rights principles. However, a significant majority of the education authorities at the district level were not in

163 A readmitted female learner in a primary school in Mangochi.

164 A female respondent currently out of school in Nkhata Bay.

165 A female respondent during a focus group discussion in Balaka.

166 Government respondent in Dedza and Nkhata Bay.

agreement with this and stressed that learners needed to exercise their rights with due regard to their responsibilities. The common occurrence was that rumours regarding the pregnancy of a female learner would often surface amongst the learners themselves which would then prompt the school authorities to inquire from the female learner in question.¹⁶⁷ In a few instances, the school authorities themselves would notice some “bodily changes” of the pregnant female learner and consequently question her. Since many schools have more male than female teachers, some school authorities indicated that they would seek the assistance of mother group members or the parents of the learner in questioning the female learner. However, as the Study revealed, the predominant practice was that the female learner would often withdraw on her own accord without providing reasons. After some time, the school authorities would then informally hear from the community that the female learner was pregnant. This raises questions as to why female learners were more inclined to quietly “disappear” from the school without openly reporting the pregnancy to the school. Female learners who had done this cited various reasons:

“I was too shy and embarrassed.”¹⁶⁸

“I was just not comfortable to report.”¹⁶⁹

“I knew I had done something wrong, something that is against school rules and regulations. I knew that I just had to leave.”¹⁷⁰

These responses speak volumes about the unavailability of child-friendly channels within school systems under which learners can openly engage with school authorities on matters that privately affect them.

In instances where female learners withdraw on their own as a result of pregnancy, school authorities have no follow-up procedures in place to check on their well-being. It often depends upon the personal commitment of a teacher or a head teacher to take this initiative, though the Study revealed that few such attempts were made by teachers in Nkhata Bay and Mangochi. In other instances, members of mother groups would visit the female learners in their homes. However, such efforts were also on a minimal scale. The Study also revealed that some communities had developed by-laws or had collective community agreements to ensure the compulsory attendance of learners at primary school. Thus, traditional leaders would follow-up with parents and guardians where it is known that their child or dependent is not attending primary school. It is therefore within these limited sporadic efforts that learners would usually be made aware of the possibility of readmission.

The provision of comprehensive sexuality information and education to learners

The Study found that the provision of comprehensive sex information and education is largely inadequate. Through the Life Skills subject, students are expected to be equipped with knowledge about topics such as sexuality, safe sex practices, and sexually transmitted infections. The subject

167 Interviews with learners and Government respondents in Nkhata Bay, Dedza and Mangochi.

168 Female learner in Nkhata Bay.

169 Female learner in Mangochi.

170 Female learner in Mangochi.

is examinable during the Primary School Leaving Certificate, the Junior Certificate of Education¹⁷¹ and the Malawi School Certificate of Education examinations. Though examinable at secondary level, the subject is taken as an elective subject, and, thus, not a mandatory requirement of learners' academic curriculum.

The extent to which the subject adequately covers the aspect of sex education is contentious. There is far-reaching criticism that learners still do not have comprehensive information regarding sexuality and contraceptives.¹⁷² For instance, pregnant female learners reported engaging in sex seven days after their menstrual cycles, as they thought that they would not become pregnant this way.¹⁷³ Others indicated that they engaged in sex so that they could benefit from 'vitamin K', which would help in boosting their immunity.¹⁷⁴ Some also thought that engaging in sex while in the water would prevent pregnancy.¹⁷⁵

Learners provided testimony about their experiences:

"I started learning Life Skills in standard 4. One of the topics we covered was on safe sex practices. It was very interesting. But I was too embarrassed to ask questions where I did not understand as this was new to me. We just giggled a lot."¹⁷⁶

"The topic was very interesting. But the teacher was visibly embarrassed. He did not maintain any eye contact with us. He went through the topics quickly. I really did not understand."¹⁷⁷

Teachers themselves had interesting perspectives on the subject:

"I don't understand why you people only concentrate on sex education when you ask questions regarding Life Skills. The Life Skills subject is very broad and we teach students about the basic skills necessary in life. Sex education is just but a small component. But you people emphasise it too much."¹⁷⁸

"Of course now with the advent of human rights, we know we have to teach sex education through Life Skills. But honestly, it is not the right approach. Imagine how you would feel if your daughter was being taught about condoms and pills whilst in school. This is not right."¹⁷⁹

"I think sex education should not be taught as an examinable subject. I think it should be provided as an out- of-curriculum interactive session where learners must be asked to attend I don't think the classroom setting is good for such an intimate discussion."¹⁸⁰

171 The Government has however decided that this certificate will no longer be provided.

172 Civil society respondents in Blantyre and Zomba.

173 See Liwewe, *supra* note 24, at 27.

174 Female respondent in Balaka.

175 Female respondent in Nkhata Bay.

176 Withdrawn learners in Nkhata Bay district.

177 Withdrawn male learner in Nkhata Bay district.

178 A teacher of a secondary school in Mangochi.

179 Government respondent in Nkhata Bay.

180 Government respondent in Dedza.

Thus, it was evident that socio-cultural norms played a role in how teachers themselves perceived the provision of sex education in schools. As Samati has rightly observed, “culture, values, and social norms not only affect community members but all actors, including policymakers at national and global [levels].”¹⁸¹

For others, religious dictates also had a fundamental bearing on the subject’s practice:

“I cannot lie to you. I am a Muslim and we believe sex before marriage is a sin. I am certain that this is the same with the Christian faith. You cannot expect us to teach these children something that is against our religious convictions. These children also come from these faiths. I have to be honest with you that for me personally, I teach abstinence. I ignore the rest.”¹⁸²

School teachers and educational officials at the district level consistently referred to a Ministry of Education “policy” in which total abstinence from sex is to be promoted, encouraged and emphasised amongst learners as the key method in preventing pregnancy. Less of an emphasis is placed on contraceptive options for those learners who may fail to abstain from sex. A Social Welfare assistant illustrated that teachers are not entirely wrong in their approach.¹⁸³ He indicated that this is consistent with the ABC (Abstain, Be faithful, use a Condom or Contraceptive) approach in which learners must be aware that abstinence is the best option and thus must be prioritised.

UNESCO¹⁸⁴ has noted that the implementation of Comprehensive Sexuality Education in Malawi is still work in progress despite some progressive steps. Some teachers, for example, have been trained to teach Comprehensive Sexuality Education. However, the efficacy of the training depends on the ability and willingness of each individual teacher to deliver the full content of the course to learners as is intended. Consequently, understanding of contraceptive use differed amongst learners in different schools. Whilst some had a very concrete understanding of the different methods of contraceptives, others had very minimal knowledge. Some were also able to supplement the knowledge acquired from school with information they received from the media. This compares well with the 2015 Demographic and Health Survey findings, which indicate that 41 percent of women and 64 percent of men both aged between fifteen and forty-nine years reported hearing a family planning message on the radio.¹⁸⁵

The socio-cultural perception and approach to sexuality amongst adolescents is restrictive and punitive. Sentiments were commonly heard as follows:

“Children in this area are very loose. You sometimes see a boy and a girl in the streets, holding hands just after dark. It is unacceptable.”¹⁸⁶

181 Samati, *supra* note 23, at 68.

182 Teacher of a secondary school in Mangochi.

183 Respondent in Nkhata Bay district.

184 See generally *Sexuality Education: A ten-country review of school curricula in East and Southern Africa*, UNESCO 47-55 (2012), <http://unesdoc.unesco.org/images/0022/002211/221121e.pdf> (discussing the content, quality and delivery method of curricula used in Malawi for the purpose of delivering life skills-based comprehensive sexuality education to protect young people from poor reproductive health outcomes).

185 See National Statistical Office et al., *supra* note 20, at 109, Table 7.15.

186 Respondent in Nkhata Bay district.

In addition, socio-cultural values across many Malawi communities perceive pregnancy out of wedlock as a taboo. Similar discussions surrounding sexuality are not made publicly, though this trend is gradually changing. The main form of communication about sexuality is often between parents or elders and children. A 2012 study found that parents and elders in Malawi “usually initiated the communication regarding sexuality and the young people characterised communication and advice about sex from their elders as warnings, often presented in the form of threats.”¹⁸⁷ In addition, that study found that most of the parents “perceived talking about sex with one’s children as shameful and immoral.”¹⁸⁸ Parents also believed that discussing sex with their children encouraged sexual activity.¹⁸⁹ This mentality seems to have permeated into the education system as well. School authorities interviewed were vehemently opposed to providing Comprehensive Sexuality Education and service to learners, claiming that this would appear as encouraging them to experiment with sex.

Ironically, 19 percent of women aged 25-49 have sex for the first time before their fifteenth birthday, while 64 percent do so before their eighteenth birthday.¹⁹⁰ By age twenty, 85 percent of women have had sexual intercourse.¹⁹¹ As for men, 11 percent of men aged 25-49 first have sex before age fifteen and 42 percent do so before age eighteen.¹⁹² By age twenty, 66 percent of men have experienced sexual intercourse.¹⁹³

Regardless of Malawi’s “subtle” approach towards discussing sexuality with children and learners, the reality points to a highly sexually active youth and a high rate of unintended pregnancies. In the Government’s submission to the Fiftieth Session of the Committee on the Rights of the Child, it observed that girls and young women remain “at risk of unintended pregnancy, unsafe abortion and STIs, including HIV.”¹⁹⁴ The Government admitted that the Adolescent Reproductive Health Policy was relatively new at the time, and, as such, services addressing the needs of young people were not well established and were often based in urban areas where they were mainly provided by NGOs.¹⁹⁵ HRW noted with concern that by 2014 Malawi still lacked a “comprehensive adolescent reproductive health policy and strategy to address its high rates of teenage pregnancy.”¹⁹⁶

The fact that provision of sexuality education in school is highly contentious makes school authorities vehemently opposed to the option of providing contraceptives in schools.

“I have openly told the NGOs that they cannot distribute condoms in our schools. If our children want condoms, let them go to youth clubs or to the health centre. But not in our schools.”

187 Rupali J. Limaye et al., *Talking About Sex in Malawi: Toward a Better Understanding of Interpersonal Communication for HIV Prevention*, 1 J. Pub. Health Res. 117, 121 (2012).

188 *Id.*

189 *See id.*

190 *See* National Statistical Office et al., *supra* note 20, at 57.

191 *See* National Statistical Office et al., *supra* note 20, at 57.

192 *See* National Statistical Office et al., *supra* note 20, at 57.

193 *See* National Statistical Office et al., *supra* note 20, at 57.

194 *See* Comm. 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/MWI/2, para. 226 (2008).

195 *See id.*

196 Human Rights Watch, *supra* note 92, at 3.

Parents expressed their discomfort with children receiving or accessing any contraceptives during their time in school.¹⁹⁷ A FGD in Balaka with females who had dropped out of school permanently because of pregnancy indicated the importance of providing adequate information and services on safe sex practices within the school. Some of the females indicated that they wished they had more information and services on contraceptives to prevent pregnancy:

"My mother told me that using contraceptives at such a young age would make me infertile. So I didn't use it and eventually got pregnant. I wish I knew better then."

The same trend was notable in terms of access to contraceptives in health centres. Learners who became pregnant indicated that they felt uncomfortable going to their nearest health centres to seek contraceptives. One male learner responsible for a pregnancy indicated:

"They ask too many questions. It is just embarrassing. I don't think I will go again."¹⁹⁸

A female who had dropped out of school permanently as a result of pregnancy remarked:

"The women at the health centre are older. Some of them know our parents. They ask why we want contraceptives and then they tell us it is not good for us because we are too young."¹⁹⁹

All in all, efforts are underway in revising the content of the Life Skills subject at the primary school level.²⁰⁰ It is uncertain as to whether all matters relevant under sex education will be included. The process of revision is not yet completed.

Awareness of the Readmission Policy

The Study revealed that awareness of the Policy varies across the different personnel in the education sector. One was more likely to have awareness about the Policy if he occupied a higher position. At the district level, the District Education Managers expressed knowledge of the Policy. At least one had the Policy stapled to a small notice board in their office.

The head teachers and teachers who were interviewed expressed a generalised knowledge of the Policy. This is worrisome considering that they are often the ones who have to deal with practical issues of readmission on a first-hand basis. When FAWEMA²⁰¹ conducted its study in 2012 on the Readmission Policy in the Lilongwe District, all the schools visited did not have a copy of the Readmission Policy readily available and only two out of the ten female head teachers interviewed were able to recite what the Policy outlines. The position has not substantially changed since that study was conducted.

Interviews with learners, ex-learners and their parents revealed that there were varying levels of understanding or knowledge regarding the Readmission Policy. Many were unaware that a specific

197 Parent of a pregnant learner in Nkhata Bay.

198 Male respondent in Nkhata Bay.

199 Female respondent in Mangochi.

200 Email from a respondent at the Ministry of Education.

201 See Liwewe, *supra* note 24, at 17.

Policy actually existed but rather that Government had embarked on a promotional campaign to encourage girls who had dropped out of school as a result of pregnancy to return to school. They indicated that they had heard of this “campaign” from NGOs and/or traditional leaders. Many learners, ex-learners and parents also indicated that they had learned of the possibility of readmission through by-laws developed in the community.

Though the Readmission Policy is not explicitly restricted to public schools, there seems to be a predominant perception that it is. There is very little, if any, regulation of learner pregnancy management in private schools. Though the Ministry of Education regulates the operation of schools both in the public and private sector, the relevance of the Readmission Policy in private schools is downplayed. Respondents indicated that private schools are often “profit oriented” and, thus, are often more flexible in admissions if one is able to provide the required fees. In addition, respondents indicated that learner pregnancy management depends on the nature of the private school itself. Thus, there is a distinction if the private school has a religious basis (e.g. Catholic schools, mission schools, Islamic schools, and other formal religious schools). Such schools are more likely to have stringent rules on learner pregnancy and are less likely to apply human rights-based approaches to learner pregnancies.

Availability of a caretaker for the baby of the learner

According to the Revised Procedures, a learner must provide assurance of safe custody of the baby upon seeking readmission to school. The provisions seem to indicate that the learners seeking readmission will have to prove that they have someone responsible looking after their baby. Despite this well-intended provision, this criterion is difficult for learners to meet. Focus group discussions revealed that guardians and parents of such learners are often reluctant to shoulder “extra” responsibilities over and above those they already have.²⁰² Most of them have limited financial resources, have to work multiple tasks in order to gain some form of income, and already have other young children who need their constant care and supervision. Consequently, as much as some parents may wish for the learner to return to school, the additional “burden” of taking care of the baby of the learner also becomes a deterring factor. Hence, female learners are often dissuaded by their parents or guardians from returning to school, as there will be no one to look after the baby in their absence during the school day.²⁰³ Parents interviewed even indicated that they would rather use school fees to buy fertiliser for their crops.²⁰⁴ The Study also noted several instances in which the female learners married the responsible male learners, resulting in both individuals dropping out of school permanently.²⁰⁵ In such scenarios, family relations, especially in local communities, often persuaded the learners to marry, in line with the Malawian culture to avoid the taboo around pregnancy out of wedlock. Pregnancy is often perceived to be a sign that one has matured and must therefore settle down in marriage. Community and family members are known to make statements like:

202 Focus group discussions held with learners in Mulanje.

203 Focus group discussions in Balaka with females who permanently dropped out of school as a result of pregnancy.

204 See Liwewe, *supra* note 24, at 25.

205 Focus group discussions in Balaka with females who permanently dropped out of school as a result of pregnancy. Also noted in focus group discussions held in one school in Mangochi.

*"You made a decision to get pregnant. You cannot go back to school. If you wanted an education, you would not have gotten pregnant. Basi, pano mwakula (and that's that! You are now old)."*²⁰⁶

A Social Welfare assistant in Nkhata Bay noted that parents and guardians who have never gone to school are less likely to actively persuade a learner to return to school. Some respondents in Mangochi shared similar sentiments.

The lack of an available caretaker for the baby of the learner is further compounded when such female learners come from female-headed households. According to the 2012 Integrated Household Survey (IHS), female-headed households are poorer in terms of income and, more often than not, have less means to move out of poverty.²⁰⁷ Thus, such households have less ability to take care of the baby of the learner as the female head is often already overwhelmed with other household or income-generating responsibilities.

The Study noted that there were no comprehensive and systemic measures to counsel, support and rehabilitate a female learner who faces stigma and "has to pretend to be a normal student despite the various psychological challenges she could be experiencing."²⁰⁸ For example, a readmitted school learner missed classes for three weeks as she had to nurse her child who had been hospitalised.²⁰⁹

Due to the low socio-economic status of the learners and their respective households, it is almost impossible, to engage a caregiver to look after the baby of the learner within the comfort of the home of the learner. Thus, the lack of alternative care for the baby is one of the fundamental challenges inhibiting a learner's return to school.

The role of parents and the immediate community

Learners who receive constant resentment and reproach, humiliation and lack of emotional support from their parents and guardians are less likely to return to school.²¹⁰ On the contrary, the Study noted that learners who received substantial support from their parents in connection with the pregnancy, as well as support for their subsequent readmission in school, were more likely to return to and remain in school. Parents who accepted the pregnancy of the learner supported the learner during the pregnancy and upon birth, as well as facilitated their eventual readmission in school. This resulted in positive learning outcomes for the learner. The Study heard positive testimony on how important the support of a parent or guardian to a learner can be:

*"When my mother heard about my pregnancy, she was obviously disappointed. But she kept encouraging me to return to school. Thus after I had delivered the baby, I gathered courage to return to school."*²¹¹

206 Insights from Social Welfare assistant in Nkhata Bay.

207 See National Statistical Office, *supra* note 20, at 37.

208 Liwewe, *supra* note 24, at 28-29.

209 See Liwewe, *supra* note 24, at 18.

210 Focus group discussions with female learners in Balaka who have permanently dropped out of school.

211 Readmitted learner at a secondary school in Mangochi.

“Both my parents died and I live with my elder sister. My elder sister takes care of the baby for me. When I come from home, she tells me to go and study whilst she tends to my baby. It makes it easier for me to catch up on school work.”²¹²

“My mother brings the baby to me during break-time and lunch-time so I can breastfeed the baby. My mother insisted that I must return to school immediately after I had recovered from the birth and she would take care of the baby.”²¹³

One parent also testified:

“Education is important. Though I was disappointed that she had gotten pregnant whilst in school, I knew she had to return to school. Yes its extra work for me as I have to also look after the baby but I would rather suffer now than allow her to suffer for the rest of her life if she does not go back to school.”²¹⁴

The Study similarly found that some community leaders also played a fundamental role in ensuring the readmission of learners to school following a pregnancy. Some local communities had developed by-laws to ensure compulsory attendance of all children of school-going age to primary school. The traditional leader of that area fines any parent and guardian whose child is not attending school for any justifiable reason. In this context, parents and guardians are mandated by such by-laws to ensure that a female learner returns to school (usually primary school) following a pregnancy.

“Parents who fail to send their children, especially girls, to school will be punished.”

It is every parent’s responsibility to ensure that children under their care are going to school. Parents have a duty “to ensure that their children are not interested in other things that may deter them from going to school.”²¹⁵ Furthermore, “[p]arents or guardians who in anyway hinder their wards’ education”²¹⁶ will:

Be summoned to appear before their village headperson to give reasons. If the reasons are not convincing, they will be fined four chickens if they are first time offenders.

If there is no change, the case will be referred to the TA and if the behaviour still persist, the chief, head teacher and religious leaders will take the case to court.”²¹⁷

From 2012 to date, traditional leaders have even gone further to penalise learners’ sexual relationships that result in pregnancy. This has been notable in areas such as TA Makhwira and Ngabu in Chikhwawa, TA Wasambo and Mwilang’ombe in Karonga, TA Kapondo and Dambe in Mchinji, TA Nthalire and Kameme in Chitipa, TA Ngokwe in Machinga, TA Lukwa in Kasungu,

212 Readmitted learner at a primary school in Mangochi.

213 Readmitted learner at a primary school in Mulanje.

214 Mother of female learner with a young baby in Nkhata Bay.

215 Tinyade Kachika et al., *Mapping of Community Bylaws under the Gender Equality and Women Empowerment Programme and Other Selected Initiatives* 27, Table 4 (2016).

216 *Id.*

217 *Id.* at 94, Table 28.

TA Mankhambira in Nkhata Bay and Inkosi ya Makosi Gomani, in Ntcheu.²¹⁸ Three females in TA Samala, Kampeni village in Balaka confirmed paying K5000 as a fine for becoming pregnant out of wedlock during the time they were in school.

By-laws are often effective in curbing ill practices within a community. They promote a sense of ownership and ensure easy monitoring by the community itself as a means of ensuring compliance. However, while some by-laws have good intentions, they have also ended up infringing on other fundamental human rights. At least fourteen teenagers were imprisoned by a lay magistrate for failing to pay a by-law penalty of K10, 000 for becoming pregnant while in school. The case is currently under review at the Mzuzu High Court.²¹⁹ GENET²²⁰ has criticised the manner in which that particular by-law was formulated and implemented, explaining that by-laws are only successful if communities take ownership over them by formulating their scope, content and implementation. An important component when formulating by-laws meant to protect children is to ensure that such children are portrayed as survivors and agents of change, rather than as victims.²²¹ GENET further illustrated that the penalties imposed under a by-law are not meant to be severe, but sufficient enough to cause a deterrent effect. Thus, monetary penalties are not usually imposed as community members in rural areas do not often have a lot of money. Instead, effective penalties would often include provision of livestock such as chicken or goats or limiting the perpetrator's access to land.

Where sensitised, traditional leaders could also play a fundamental role in preventing harmful cultural practises, such as forced sexual initiations on young females, thus increasing their chances of having unintended pregnancies.

Abortion, “baby-dumping” and infanticide

Focus group discussions revealed that female learners often hold fears that a pregnancy will disrupt education. This sometimes compels them to seek unsafe abortions without professional medical care. Considering that Malawi has restrictive abortion laws, female learners were not forthcoming on whether they have personally attempted to or procured an abortion or are aware of anyone who has. They only indicated that they are aware that the problem exists within their communities. In discussing motivations for abortion by female learners, participants not only cited fears of having to leave school, but also shame, embarrassment, stigma, worries regarding lack of financial support for the baby, lack of emotional support from parents and immediate family members, and lack of emotional support from the father of the baby. Furthermore, “because they do not want to involve other people [including, even their own parents], they decide to use simple and cheap means of aborting which might be dangerous to their health.”²²² In 2015, 53 percent of pregnancies

218 See *id.* at 21-26 (denoting the TA areas in which bylaws on sexual and reproductive health and early pregnancy have been formulated).

219 See generally *Malawi: Detention of Learners for Pregnancy*, Southern Africa Litigation Centre (“SALC”) <http://www.southernafricalitigationcentre.org/cases/ongoing-cases/malawi-detention-of-learners-for-pregnancy/> (detailing that SALC is collaborating with Youth Watch Society on a case seeking to review a prior decision to fine parents of learner students in Malawi who were pregnant).

220 See generally *Girls Empowerment Network* (2017), <https://girlsempowermentnetwork.org> (providing information about an NGO working to enhance girls' empowerment).

221 GENET respondents.

222 Salome Assey, *A Critical Analysis of the Expulsion of Pregnant Girls from School: A Case Study of Temeke District, Dar es Salaam*,

in Malawi “were unintended, and close to one-third [30 percent] of these unintended pregnancies ended in abortion.”²²³ Such instances can also lead to baby-dumping or infanticide, although there are no studies which document the extent of this connection.

Restricting the readmission opportunity

The Revised Readmission Procedures provide that opportunity for readmission should only be given once in the educational cycle of a learner. Education authorities at the district level were largely in agreement with this provision, stating that one should not make the same mistake twice, and insisting that if pregnancy should re-occur, then such learners have a limited interest in school and should therefore not be given a second chance of readmission. In addition, they indicated that it gives a “bad picture” to other learners who may end up acting irresponsibly knowing that they have many opportunities for readmission. When readmitted learners were asked about this provision, they indicated that they did not think that it was likely for one to be impregnated for a second time unless it was as a result of rape or defilement:

“Being pregnant as a child is hard. I don’t think anyone would want to re-live that experience. So even if they restrict the readmission opportunity to only one time, I doubt that anyone can fall into that predicament again. It is tough and traumatic.”²²⁴

However, one girl who had permanently dropped out of school in Balaka as a result of pregnancy was quick to disapprove of this provision:

“I know of a girl who got pregnant twice in primary school and once in secondary school. She kept getting readmitted in all instances. Now she wrote her MSCE and she is currently working. She is doing much better than any of us. Yes, she may have been very mischievous but at least now she is able to fend for herself and her children unlike some of us. Some girls and boys can have behavioural problems which may lead to pregnancies but you will be surprised that given the necessary opportunities, they become productive citizens. I don’t think we should be restricting access to education.”

It was apparent during these interviews with readmitted and non-admitted learners that due to the punitive approach against sexuality and early pregnancies, their eventual re-entry into school was perceived as being an “act of compassion” by Government, rather than a right for them to access education.

The Study also included some females who had permanently dropped out of school between 2000 and 2010 as a result of pregnancy, currently aged between 22 and 29. They indicated that they were largely unaware of the Readmission Policy at the time of their withdrawal. They eventually married and had more children. This group of females was particularly keen to know whether they could be readmitted. While some were interested in having the Government introduce adult literacy

Tanzania 1, 12 (2012) (published Masters Dissertation, Southern and Eastern African Regional Centre for Women’s Law, University of Zimbabwe).

223 *Abortion and Post abortion Care in Malawi*, Gutmacher Institute para. 16 (2015), <https://www.gutmacher.org/fact-sheet/abortion-malawi>.

224 Interview with readmitted learner in Mangochi.

lessons in their area, others wanted to go back into the mainstream education system to complete their education. A few indicated that they had been sent back from primary school by the head teacher on the premise that they were too old to be readmitted. They therefore wondered how this provision to restrict readmission to just once in their lifetime would apply to them, considering that they now have more children.

This discussion also presented the fact that adult literacy is particularly crucial for women in Malawi (aged fifteen-years and older) in light of the high dropout rate of the girl child during her primary education. Thus, such women have a “second chance” at learning opportunities that they may have missed when they were young. It is therefore essential that adult literacy programs are rolled out in all areas and that they teach the specialised knowledge, skills, and attitudes that are needed for productivity.²²⁵

225 See *The Education System in Malawi 238* (World Bank, Working Paper No. 182, 2010).

6. Malawi's Obligations under the International Legal and Policy Framework

Recognition of Education as a Right

Education is recognised as being a “fundamental social, economic and cultural” right.²²⁶ Its formal recognition as a human right dates to the adoption of the Universal Declaration of Human Rights (UDHR) in 1948.²²⁷ In 1960, the Convention against Discrimination in Education²²⁸ was adopted. State Parties under this Convention undertook “[t]o ensure, by legislation where necessary, that there is no discrimination in the admission of pupils to educational institutions.”²²⁹ Though Malawi is not a party to the Convention, it ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR) of 1966, which similarly enshrines the right to education.²³⁰ The ICESCR recognises primary and secondary education to be compulsory, available and free for all through any appropriate means.

Malawi also ratified the 1981 Convention on the Rights of the Child (CRC), which further broadens and elaborates upon the right to education.²³¹ This is provided for under articles 28 and 29 of the CRC which, amongst others, oblige the State to take measures to encourage regular attendance at schools and reduce dropout rates. Specifically, article 28 provides that State Parties recognise the “rights of the child to education by making primary education compulsory, available and free to all.”²³² Thus, preventive measures against early pregnancies are essential in light of the high dropout rates in schools as a result of pregnancy. However, the reduction of school dropouts also means that Government is obliged to put into place an effective Readmission Policy to ensure that girls and boys withdrawn from school on the basis of pregnancy are readmitted. The Committee on the Rights of the Child has made specific recommendations to Malawi on this aspect. In its 2017 Concluding Observations to the State Party report submitted by the Government, the Committee on the Rights of the Child recommended that Malawi should address the high number of dropouts,

226 Birutė Pranevičienė & Aurelija Pūraitė, *Right to Education in International Legal Documents*, 3 Jurisprudence 133, 134 (2010).

227 See *A Human Rights-Based Approach to Education for All*, UNESCO 1, 7 (2007), https://www.unicef.org/publications/files/A_Human_Rights_Based_Approach_to_Education_for_All.pdf.

228 See Convention against Discrimination in Education, adopted on 14 Dec. 1960, http://www.unesco.org/education/pdf/DISCRI_E.PDF.

229 *Id.* at art. 3(b).

230 Malawi ratified the ICESCR in 1993.

231 Malawi ratified the CRC in 1991.

232 Eunice N. Uzodike, *New Legislative Approach Towards Child Protection and Other Family Law Developments in Nigeria*, 1, 5 (date unknown), <http://www.law2.byu.edu/isfl/saltlakeconference/papers/isflpdfs/Uzodike.pdf>.

particularly among girls who are pregnant and subjected to child marriage.²³³ More specifically, the Committee went further to recommend that Malawi should “[decentralise] and simplify the re-admission process for adolescent girls returning to school after pregnancy and ensure they are given the appropriate support”.²³⁴

Similarly, Malawi ratified the Convention on the Elimination of Discrimination against Women (CEDAW). Under article 10(f) of CEDAW, States are required “to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education . . . [through the] reduction of female student dropout rates and the [organisation] of programmes for girls and women who have left school prematurely”.²³⁵

This provision speaks specifically to the role of the Government to adopt positive measures to ensure that girls remain in school regardless of the circumstances that may lead to their withdrawal from school prematurely. The Committee on the Elimination of Discrimination against Women thus noted with concern the extremely high rate of illiteracy among women in Malawi and the “high dropout rate of girls owing to early and forced marriage, pregnancy and girls’ low enrolment rates in higher education.”²³⁶ The Committee on the Elimination of Discrimination against Women then proceeded to urge the Government of Malawi to “raise awareness of the importance of education as a human right and as a basis for the empowerment of women.”²³⁷ It further recommended that Malawi should “take steps to ensure equal access of girls and young women to all levels of education, to retain girls in school and to strengthen the implementation of re-entry policies so that girls return to school after pregnancy.”²³⁸

Articles 11 and 14 of the Southern African Development Community (SADC) Protocol on Gender and Development require State Parties to adopt policy, legal and programmatic interventions to ensure girls have equal access to education. States are further required to enact laws that promote equal access to and retention in primary, secondary and vocational training. This arguably includes developing and implementing readmission procedures for pregnant girls who have dropped out to return to school.

The importance of education has also been cited as a critical factor in the achievement of the Sustainable Development Goals.²³⁹ By 2030, States (including Malawi) must work towards ensuring that all girls and boys complete free, equitable and quality primary and secondary education. States are also obliged to eliminate gender disparities in education and ensure equal access to all levels of education, especially for children in vulnerable situations that would arguably include pregnant learners or males responsible for a pregnancy.²⁴⁰ The Sustainable Development Goal on education

233 See Comm. on the Rights of the Child, Concluding observations on the combined third to fifth periodic reports of Malawi, U.N. Doc. CRC/C/MWI/CO/3-5, para. 37(c) (2017).

234 *Id.* at para. 37(e).

235 Convention on the Elimination of All Forms of Discrimination against Women, adopted on 18 Dec. 1979, entered into force on 3 Sept. 1981, art. 10(f), <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm#article13>.

236 Comm. on the Elimination of Discrimination against Women, Concluding comments of the Committee on the Elimination of Discrimination against Women: Malawi, U.N. Doc. CEDAW/C/MWI/CO/5, para. 27 (2006).

237 *Id.* at para. 28.

238 *Id.* at para. 28.

239 See generally General Assembly, Transforming our world: the 2030 Agenda for Sustainable Development, U.N. Doc. A/RES/70/1 (adopting the post-2015 development agenda).

240 See generally Goal 4: Ensure inclusive and quality education for all and promote lifelong learning, United Nations (2017), <http://>

indicates that the institutions must be gender sensitive and provide safe, nonviolent, inclusive and effective learning environments for all. This speaks volumes when one considers the prominence of sexual violence in schools in Malawi that sometimes results in pregnancy. In addition, it also speaks to the need for countries like Malawi to address issues of bullying and teasing that have adversely affected access to education for pregnant and/or readmitted girls. Universal access to sexual and reproductive healthcare services, which include family planning, information and education, has also been cited by the Sustainable Development Goals.

The Right to Access Comprehensive Sexual and Reproductive Health Information for Learners

The CRC obliges States to provide education that prepares a “child for responsible life in a free society”.²⁴¹ Under General Comment No. 1 (2001) of the Committee on the Rights of the Child, “the child’s right to education is not only a matter of access (article 28) but also of content.”²⁴² Thus, article 29(1) of the CRC rightly observes that education must be directed to “the development of the child’s personality, talents and mental and physical abilities to their fullest potential”.

General Comment No. 1 on the aims of education states that:

*“Education must also be aimed at ensuring that ... no child leaves school without being equipped to face the challenges that he or she can expect to be confronted with in life. Basic skills should include . . . the ability to make well-balanced decisions . . . and to develop a healthy lifestyle [and] good social relationships”*²⁴³

Under paragraphs 2 and 3 of General Comment No. 4 (2003),²⁴⁴ the Committee on the Rights of the Child noted “with concern that in implementing their obligations under the Convention, States parties have not given sufficient attention to the specific concerns of adolescents as rights holders” and to the promotion of their health and development.²⁴⁵

*“Adolescence is a period [characterised] by rapid physical, cognitive and social changes, including sexual and reproductive maturation; the gradual building up of the capacity to assume adult behaviours and roles involving new responsibilities requiring new knowledge and skills. While adolescents are in general a healthy population group, adolescence also poses new challenges to health and development owing to their relative vulnerability and pressure from society, including peers, to adopt risky health behaviour. These challenges include developing an individual identity and dealing with one’s sexuality.”*²⁴⁶

www.un.org/sustainabledevelopment/education/ (outlining target goal for ensuring the quality education in order to achieve sustainable development and improve people’s lives).

241 Convention on the Rights of the Child, adopted on 20 Nov. 1989, entered into force 2 Sept. 1990, art. 29(d).

242 Convention on the Rights of the Child, General Comment No. 1, U.N. Doc. CRC/GC/2001/1, para. 3 (2001).

243 *Id.* at para. 9.

244 See Office of the High Commissioner for Human Rights, CRC General Comment No. 4: Adolescent Health and Development in the Context of the Convention on the Rights of the Child, U.N. Doc. CRC/GC/2003/4 (2003).

245 *Id.* at 1, Introduction.

246 *Id.* at 1, Introduction.

The Committee on the Rights of the Child further indicated that the concepts of “health and development” must be defined more broadly than articles 6 (right to life, survival and development) and 24 (right to health) of the CRC.²⁴⁷ These definitions must extend to instances in which adolescents “enjoy the highest attainable standard of health, develop in a well-balanced manner, and are adequately prepared to enter adulthood and assume a constructive role in their communities and in society at large.”²⁴⁸

Considering the Committee on the Rights of the Child’s emphasis on adolescence, it is imperative that the term must be defined. According to paragraph 5 of General Comment No. 20 (2016) on the “implementation of the rights of the child during adolescence”, the Committee acknowledges that “adolescence is not easily defined, and that individual children reach maturity at different ages.”²⁴⁹ In addition, the Committee notes that the process of -

*“Transitioning from childhood to adulthood is influenced by context and environment, as reflected in the wide variation in cultural expectations of adolescents in national legislations, which afford different thresholds for entry into adult activities, and across international bodies, which employ a variety of age ranges to define adolescence.”*²⁵⁰

But though General Comment No. 20 does not provide a specific definition of adolescence, it still focuses on the period of childhood from ten to eighteen years to facilitate consistency in data collection.

The Committee on the Rights of the Child, therefore, recognises that the “right of adolescents to access appropriate information is crucial if State parties are to promote costeffective measures, including through laws, policies and programmes” (i.e., family planning and prevention of early marriages).²⁵¹ Thus, the General Comment illustrates that State Parties must “provide adolescents with access to sexual and reproductive information, including on family planning and contraceptives, the dangers of early pregnancy, the prevention of HIV/AIDS and the prevention and treatment of sexually transmitted diseases (STDs).”²⁵² Additionally, the General Comment provides that State Parties “should ensure that [adolescents] have access to appropriate information, regardless of their marital status and whether their parents or guardians consent.”²⁵³ The General Comment emphasises the need to “find proper means and methods of providing information that is adequate and sensitive to the particularities and specific rights” of adolescents.²⁵⁴

General Comment No. 20 (2016) reiterates these same provisions with regards to the implementation of the rights of the child during adolescence:

²⁴⁷ See *id.* at para. 4.

²⁴⁸ *Id.* at 1, Introduction.

²⁴⁹ Comm. on the Rights of the Child, General comment No. 20 (2016) on the implementation of the rights of the child during adolescence, U.N. Doc. CRC/C/GC/20, para. 5 (2016).

²⁵⁰ *Id.*

²⁵¹ Office of the High Commissioner for Human Rights, *supra* note 244, at para. 6.

²⁵² Office of the High Commissioner for Human Rights, *supra* note 244, at para. 24.

²⁵³ Office of the High Commissioner for Human Rights, *supra* note 244, at para. 24.

²⁵⁴ Office of the High Commissioner for Human Rights, *supra* note 244, at para. 24.

“The Committee urges States to adopt comprehensive gender and sexuality-sensitive sexual and reproductive health policies for adolescents, [emphasising] that unequal access by adolescents to such information, commodities and services amounts to discrimination. Lack of access to such services contributes to adolescent girls being the group most at risk of dying or suffering serious or lifelong injuries in pregnancy and childbirth. All adolescents should have access to free, confidential, adolescent-responsive and non-discriminatory sexual and reproductive health services, information and education, available both online and in person, including on family planning, contraception, including emergency contraception, prevention, care and treatment of sexually transmitted infections, counselling, pre-conception care, maternal health services and menstrual hygiene.”²⁵⁵

The Committee on the Rights of the Child has continually raised concerns regarding failure by Malawi to provide comprehensive information regarding sexuality and health to adolescents, both in and out of their school environments. To illustrate, the Committee on the Rights of Children in 2002 urged Malawi to strengthen sex education and reproductive counselling services. This initiative included making such services “sensitive and accessible to adolescents.”²⁵⁶ In 2009, the Committee remained dissatisfied with the efforts by Malawi on the matter and noted “with concern” the particularly high levels of early pregnancies.²⁵⁷ Thus, the Committee further recommended that the State Party adopt an “effective and gender-sensitive strategy of education and awareness raising for the general public [to reduce] the incidence of teenage pregnancies.”²⁵⁸

Recently, and in its concluding observations in 2017, the Committee remained concerned with the alarming rate of early pregnancies and bemoaned the “lack of comprehensive age-appropriate education on sexual and reproductive health rights and family planning services, and the limited access to modern contraceptives” for adolescents.²⁵⁹ The Committee stressed that the Government of Malawi should adopt a “comprehensive sexual and reproductive health policy for adolescents” to ensure that such education “is part of the mandatory school curriculum in public and private schools”, and to prevent early pregnancy and sexually transmitted infections.²⁶⁰

The Committee on the Elimination of Discrimination against Women has also raised similar sentiments in reiterating Malawi’s obligations under the CEDAW. In 2006, the Committee under CEDAW expressed concerns about “the alarming rate of teenage pregnancy and multiple pregnancies” in Malawi, and its adverse implications on “girls’ educational opportunities and economic empowerment.”²⁶¹ The Committee under CEDAW recommended “that sex education be widely promoted and targeted at [both genders], with special attention paid to the prevention

255 Comm. on the Rights of the Child (2016), *supra* note 249, at para. 59.

256 Comm. on the Rights of the Child, Consideration of Reports Submitted by States Parties under Article 44 of The Convention: Concluding observations of the Committee on the Rights of the Child: Malawi, U.N. Doc. CRC/C/15/Add.174, para. 46(b) (2002).

257 Comm. on the Rights of the Child, Consideration of Reports Submitted by States Parties under Article 44 of The Convention: Concluding Observations: Malawi, U.N. Doc. CRC/C/MWI/CO/2, para. 53 (2009).

258 *Id.* at para. 55.

259 Comm. on the Rights of the Child (2017), *supra* note 233, at para. 34(b).

260 Comm. on the Rights of the Child (2017), *supra* note 233, at para. 35(a).

261 Comm. on the Elimination of Discrimination against Women (2006), *supra* note 236, at para. 31.

of early pregnancy” in girls.²⁶² In 2010, this Committee expressed ongoing concern with what it termed as “persistent barriers to the ability of pregnant girls to exercise their right to education.”²⁶³

Thus, it encouraged the Government of Malawi to take steps to “strengthen its policy on the readmission to school of pregnant girls and young mothers.”²⁶⁴

Malawi also signed the African Union Maputo Plan of Action in 2006. One key component therein is the positioning of adolescent sexual and reproductive health as a strategy for empowerment, development and social well-being. It is therefore imperative that the Malawi Government makes fundamental progressive changes in its approach to Comprehensive Sexuality Education, services and information to learners.

Meaningful Participation of Children in Decisions Affecting Them

Under paragraph 4 of the Committee on the Rights of the Child’s General Comment No. 4 (2003), State Parties must ensure that adolescents “express their views freely on all matters affecting them, especially within the family, in school, and in their communities.” The Comment recognises that “[i]n order for adolescents to be able to safely and properly . . . exercise this right, public authorities, parents and other adults working with or for children need to create an environment based on trust, information sharing, the capacity to listen and sound guidance . . .”²⁶⁵ Also, the Committee on the Rights of the Child calls upon “State parties to develop and implement, in a manner consistent with adolescents’ evolving capacities, legislation, policies and programmes . . . to facilitate the development of a relationship of trust and confidence in which issues regarding . . . sexuality and sexual behaviour and risky lifestyles can be openly discussed . . .”²⁶⁶

As a State Party to the CRC, Malawi needs to seriously reflect upon its approach to sexuality and sexual behaviour of learners. The country still embraces a punitive approach that has resulted in fear and lack of openness amongst learners regarding their sexual behaviour. Such an approach has not helped in curbing sexual relationships but has, in fact, resulted in learners engaging in such relationships from an uninformed perspective that leads to dire consequences.

Under General Comment No. 20, the Committee on the Rights of the Child underscores that “engaging adolescents in the identification of potential risks and the development and implementation of programmes to mitigate them will lead to more effective protection.”²⁶⁷

Similarly, the Committee under this same Comment on “the right of the child to have his or her best interests taken into account as a primary consideration . . . stresses that . . . the child’s views

262 Comm. on the Elimination of Discrimination against Women (2006), *supra* note 236, at para. 32.

263 Comm. on the Elimination of Discrimination against Women, Concluding observations of the Committee on the Elimination of Discrimination against Women: Malawi, U.N. Doc. CEDAW/C/MWI/6, para. 31 (2010).

264 Comm. on the Elimination of Discrimination against Women, Concluding observations of the Committee on the Elimination of Discrimination against Women, Kenya, U.N. Doc. CEDAW/C/KEN/CO/7, para. 32(a) (2011).

265 Office of the High Commissioner for Human Rights (2003), *supra* note 244, at para. 4.

266 Office of the High Commissioner for Human Rights (2003), *supra* note 244, at para. 12.

267 Comm. on the Rights of the Child (2016), *supra* note 249, at para. 19.

should be taken into account, consistent with their evolving capacities”.²⁶⁸ Thus, State Parties need to ensure that appropriate weight is afforded to the views of adolescents as they acquire understanding and maturity. Again, this is a fundamental aspect that Malawi, as a State Party to the CRC, is obliged to undertake. In other words, to what extent has Malawi meaningfully engaged learners on its efforts to reduce early pregnancies and the content and scope of Comprehensive Sexuality Education? Programming that is informed by the perspectives of those most affected is more sustainable and effective. There is a need to meaningfully engage learners concerning their evolving capacities on programmatic interventions and efforts regarding sexuality.

Youth-Friendly Health Services

The Committee on the Rights of the Child notes that health services are “rarely designed to accommodate the specific health needs of adolescents”.²⁶⁹ Thus, when adolescents seek help, they often experience many barriers including financial barriers, lack of confidentiality and respect, stigma and judgmental attitudes from healthcare personnel.²⁷⁰

Under paragraph 11 of the Committee’s General Comment No. 4 (2003), State Parties are obliged to strictly adhere to the right to privacy and confidentiality, including with respect to advice and counselling on health matters concerning adolescents.

Ever since the first submission by Malawi of its State Party reports to the Committee on the Rights of the Child, the provision of youth-friendly health services has always been a concern raised by the Committee. To illustrate, the Committee’s Concluding Observation on Malawi’s initial State Party report recommended in 2002 that Malawi should –

*“undertake a comprehensive study to assess the nature and extent of adolescent health problems and, with the full participation of adolescents, use this study as a basis to formulate adolescent health policies and programmes with particular attention to the prevention of STDs and early pregnancies”.*²⁷¹

In 2009, the Committee continued to emphasise the need for Malawi “to establish more child-friendly programmes and services in the area of adolescent health”.²⁷² Having noted no significant change, the Committee on the Rights of the Child reiterated its recommendation in its recent Concluding Observations for Malawi in 2017 by stressing that the Malawi Government should improve “adolescent girls’ access to reproductive health-care and related services and increase support for reproductive health and family planning services and access to affordable contraceptives and contraceptive methods”.²⁷³

With this consideration in mind, it is evident that education policies and approaches on learners’ sexuality and access to sex information are in agreement with the desired approach under youth-

268 Comm. on the Rights of the Child (2016), *supra* note 249, at para. 22.

269 Comm. on the Rights of the Child (2016), *supra* note 249, at para. 56.

270 *See id.*

271 Comm. on the Rights of the Child (2002), *supra* note 256, at para. 46(a).

272 Comm. on the Rights of the Child (2009), *supra* note 257, at para. 54.

273 Comm. on the Rights of the Child (2017), *supra* note 233, at para. 35(b).

friendly health services. Currently, there seems to be a subtle battle between the education sector and those health entities that provide youth-friendly health services in health centres with the former dispelling or underplaying the relevance of the latter. Both sectors need to collaborate to ensure that the interests of the learner are upheld and protected. Adolescents' sexual and reproductive health rights and services have multidimensional aspects, and, hence, collaboration with other sectors (i.e., the education sector) is critical.

Sexual Abuse and Violence in Schools

General Comment No. 20 (2016) developed by the Committee on the Rights of the Child recognises that during adolescence, gender inequalities become increasingly significant.²⁷⁴ Thus, State Parties have to make investments in strategies that promote positive gender relations and social norms that include addressing sexual and gender-based violence within schools.²⁷⁵ As per the Violence against Children Survey of 2013, sexual violence is a pertinent occurrence within schools and is often perpetuated by classmates and school authorities. Thus, in its recent Concluding Observations to Malawi, the Committee on the Rights of the Child urged Malawi to address the “sexual abuse of children, especially girls, by teachers and peers.”²⁷⁶ Malawi has an obligation to ensure that all children, especially girls, find schools to be a safe and conducive environment for their effective learning.

Support for Pregnant Learners and Readmitted Learners

Considering the high levels of learners leaving school early while still illiterate or without obtaining qualifications, the Committee on the Rights of the Child has called for more efforts to remove barriers impeding continued participation in school. One major contributory factor that the Committee explicitly recognised is the exclusion of pregnant schoolgirls and adolescent mothers from school.²⁷⁷ The Committee also noted with concern that “schools often lack the flexibility needed for adolescents to be able to combine work and family care responsibilities with their education.”²⁷⁸ In compliance with article 28(1)(e) of the CRC and Sustainable Development Goal 4, States are obliged to introduce comprehensive and proactive measures to address all these factors and improve enrolment and attendance, reduce early school leaving and provide opportunities to complete education for those who have left.

In addition, article 11(6) of the African Charter on the Rights and Welfare of the Child obligates State Parties to “take all appropriate measures to ensure that children who become pregnant before completing their education shall have an opportunity to continue with their education on the basis of their individual ability.”²⁷⁹ The phrase ‘individual ability’ would include instances in which a pregnant learner would wish to continue with her education until she is unable to do so. Thus,

274 See Comm. on the Rights of the Child (2016), *supra* note 249, at para. 27.

275 See Comm. on the Rights of the Child (2016), *supra* note 249, at para. 69.

276 Comm. on the Rights of the Child (2017), *supra* note 233, at para. 37(d).

277 See Comm. on the Rights of the Child (2016), *supra* note 249, at para. 71.

278 Comm. on the Rights of the Child (2016), *supra* note 249, at para. 71.

279 African Charter on the Rights and Welfare of the Child, adopted on 1 July 1990, entered into force on 29 Nov. 1999, art. 11(6).

mandatory withdrawals of pregnant learners upon the immediate discovery of the pregnancy by school authorities are unwarranted.

Furthermore, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) obliges State Parties, like Malawi, to eliminate barriers to girls' education. It requires governments to "promote the enrolment and retention of girls in schools and other training institutions and the organisation of programmes for women who leave school prematurely."²⁸⁰

Similarly, paragraph 55 of General Comment No. 20 (2016) by the Committee on the Right of the Child recognises that adolescent parents need extra support in order to enjoy their rights to education, play and participation. In particular, States are obliged to introduce social protection interventions and respond to the specific requirements of adolescent caregivers.

280 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, adopted on 1 July 2003, entered into force on 25 Nov. 2005, art. 12(2)(c).

7. Malawi's Obligations under the National Legal and Policy Framework

Education as a Strategic Priority for Malawi's Development

The Malawi Growth and Development Strategy (MGDS) is the overarching national development strategy. The MGDS II (2011-2016) specifically identified education as a prerequisite for overall social development and poverty reduction, with identified goals for the basic education, secondary education and the tertiary education levels.²⁸¹ Within this vein, learners' enrolment and retention in school are paramount for sustainable development.

Malawi also has a National Education Sector Plan (NESP), which is its "overall education strategy and is derived from the [MGDS]."²⁸² The NESP builds upon the MGDS' aspirations and goals, "outlines the strategic priorities" to guide both the planned implementation as well as the justification for such priorities and investments.²⁸³ The NESP calls for proactive measures in secondary schools to address gender disparities and increase the enrolment of girls.²⁸⁴ Similarly, a National Education Policy exists which recognises primary education as being free and compulsory.²⁸⁵ One of the primary aims of the National Education Policy is to increase the numbers of girls equitably accessing, participating, excelling in and completing primary education.²⁸⁶ In addition, the Policy illustrates that the primary school curriculum must be relevant and responsive to the needs of the country. These conditions are particularly relevant for justifying the provision of Comprehensive Sexuality Education to learners, which is clearly relevant and responsive to the current high rate of unintended early pregnancies.²⁸⁷

281 See Centre for Human Rights – University of Pretoria, *supra* note 8, at 20.

282 Liwewe, *supra* note 24, at 6.

283 Liwewe, *supra* note 24, at 6.

284 See Liwewe, *supra* note 24, at 7.

285 See Centre for Human Rights – University of Pretoria, *supra* note 8, at 31.

286 See Centre for Human Rights – University of Pretoria, *supra* note 8, at 31.

287 See *Strengthening Comprehensive Sexuality Education for Young People in School Settings in Zambia: A Review and Documentation of the Scale-Up Process*, UNESCO 1, 17-18 (2016) <http://unesdoc.unesco.org/images/0024/002472/247268E.pdf> (emphasising the importance of implementing Comprehensive Sexuality Education to female learners in Zambia who are at risk of experiencing early and unintended pregnancies).

Inclusiveness and Non-Discrimination in Access to Education

The Malawi Parliament passed the Education Bill in 2013, “making education universal and compulsory for all.”²⁸⁸ Unfortunately, the Government has not developed a comprehensive strategy on how it intends to implement compulsory education at the primary level. Pregnancy brings in a unique characteristic that may give rise to discriminatory tendencies. This section is relevant insofar as it underpins the need to refrain from justifying pregnancy as a basis for any form of discriminatory practices. This can also be read with sections 20 and 24 of the Constitution, concerning equality and non-discrimination regardless of one’s status.²⁸⁹

Sexual and Reproductive Health Rights and Services for Adolescents

Malawi enacted the Gender Equality Act in 2013, which specifically provides for the “right to adequate sexual and reproductive health.”²⁹⁰ The right covers access to sexual and reproductive healthcare services, access to family planning services, protection from sexually transmitted infections, self-protection from STIs, choice of whether and when to have a child, fertility control, and choice of contraceptive method.²⁹¹ The Gender Equality Act specifically provides that every health officer has an obligation to “respect the sexual and reproductive health rights of every person without discrimination”²⁹² and “respect the dignity and integrity of every person accessing sexual and reproductive health services.”²⁹³

In addition, Malawi has a National Sexual and Reproductive Health Policy (NSRHP). The goal of the NSRHP is “to promote, through informed choice, safer reproductive health practices by men, women, and young people including use of quality and accessible reproductive health services.”²⁹⁴ The NSRHP acknowledges that young people in Malawi are faced with challenges such as early marriages, early and unwanted pregnancies, unsafe abortions and early child bearing. The Policy specifically acknowledges that, on average, most young people start having sex at the age of twelve, and that high risk sexual behaviour is more common among young people between the ages of fifteen and twenty-four. Thus, one of the Policy’s strategies is to improve the availability of and access to youth-friendly health services. In a similar vein, the Ministry of Health has also developed the Youth-friendly Health Services Standards to address the sexual and reproductive health needs of young people.

Furthermore, “a new curriculum called ‘Primary Curriculum and Assessment Reform’ (PCAR) was rolled out in 2007 and puts the needs of pupils first.”²⁹⁵ Not only does PCAR encourage learners’

288 Centre for Human Rights – University of Pretoria, *supra* note 8, at 30.

289 See Constitution of Malawi, *supra* note 10; see also Constitution of Malawi, section 24 (“Women have the right to full and equal protection by the law, and have the right not to be discriminated against on the basis of their gender or marital status . . .”).

290 Gender Equality Act, 2012, section. 19.

291 See *id.*

292 *Id.* at section. 20(a).

293 *Id.* at section. 20(b).

294 Republic of Malawi: Ministry of Health, Advocacy and Communication Strategy for Sexual and Reproductive Health Rights v. (2009).

295 Government of Malawi (2012), *supra* note 97, at 43.

academic and social development,²⁹⁶ but it is also aimed at reducing repetition and dropout rates which translate into an increase in the number of children reaching the last grade of primary education. PCAR aims to support learners to develop knowledge of strategies to cope with all the challenges of life. Thus, one could argue that the provision of Comprehensive Sexuality Education in schools would enhance the capacity of learners to make informed decisions on this aspect of their life. In addition, the fact that PCAR prioritises the needs of the pupils reflect the need for educational authorities to jealously safeguard the child's interests by preventing unplanned pregnancies and ensuring flexible readmission frameworks for learners following a pregnancy.

The Best Interests of the Child as a Primary Consideration

Section 23(1) of the Constitution provides that the best interests and welfare of a child shall be the primary consideration in all decisions affecting him or her.²⁹⁷ Under this provision, the development and implementation of the Readmission Policy should firmly be guided by what would be in the best interests of the affected child. Impregnated female children are in situations of disadvantage, and it is the responsibility of the State, amongst others, to ensure that they have a safe and secure environment, including in the school premises. State assistance in this section could also be interpreted widely to include the necessary psychological support and the creation of an environment that would foster the return of the female learner to school.

Duties of Parents

In addition, the Childcare Protection and Justice Act No. 22 of 2010 provides for duties of parents under section 3, including the provision of care and protection in order to ensure the advanced welfare of the child. The section arguably applies to the responsibilities that "child parents" assume over their infants. It is critical that learners who are parents are aware of their parental responsibilities and discharge such responsibilities as far as it is reasonable for them to do so, taking into consideration their unique position as children themselves. Under section 3(b)(iii), parents also have the responsibility to ensure that during the temporary absence of the parent or guardian, a competent person shall care for the child. This provision is relevant as far as the advocacy for readmission is emphasised. The babies of learners also have rights and it is essential that the readmission of their parents into school does not adversely affect those rights. Alternative appropriate care must be identified for the baby when the young parent attends school. As shall be discussed in this paper, this provision of care for the baby can be assumed by an immediate family member or even extend to the State where no other means for alternative family care is available. Lastly, section 23 provides for children in need of care and protection. This section is also relevant as far as it applies to "child-parents" who face heightened vulnerability as a result of the immense responsibility that they shoulder at an immature age. The State is thus obliged to provide the necessary care and protection for such children.

²⁹⁶ See *id.*

²⁹⁷ See Constitution of Malawi, *supra* note 10, at section. 23(1) ("All children, regardless of the circumstances of their birth, are entitled to equal treatment before the law.")

8. Outlining the Pathway to Review: Issues for Consideration

Period of Absence

The Revised Procedures provide for a one-year withdrawal period for both a male and female learner in the event of a pregnancy. Questions arise as to whether the procedures should provide a set period under which a learner should be removed from school or whether it should be dependent upon the circumstance of each learner as to when they are able to return to school. Some African jurisdictions have also prescribed a one-year period of absence but this is gradually changing. For example, new mothers in Madagascar “can return to school immediately after delivery [of their baby] if they so wish.”²⁹⁸ Alternatively, girls in Cameroon are given “the right to negotiate the duration of their maternity leave with their school, and can arrange for extra classes so that they do not lag behind in their school work during the agreed period of absence from school.”²⁹⁹

It is not entirely clear why the one-year period of absence from school was specifically provided for in the Procedures. However, it is more probable that it was meant to ensure that the responsible learners provide the necessary support and care to the newborn. This must also be examined from the wider policy interests of the Government in ensuring that infants are provided with the necessary nutritional care, especially through the first six months of the life of a baby in which exclusive breastfeeding is encouraged as well as other developmental support that necessitates the presence and support of the responsible parents during the first year of life.

However, Namibia’s Legal Assistance Centre (LAC) has argued that a one-year period of absence was regressive to the girl’s education and contradictory in law since working mothers are not given a full year’s maternity leave.³⁰⁰ Girls who become pregnant in school should therefore not be treated differently.³⁰¹ In addition, Article 2(6) of the African Charter on the Rights and Welfare of the Child states that African governments must ensure that “children who become pregnant before completing their education shall have an opportunity to continue with their education on the basis of their individual ability.”³⁰²

298 Dianne Hubbard, *Policy on Learner Pregnancy in Namibia: Background to Reform*, Legal Assistance Centre 13 (2008), <http://www.lac.org.na/projects/grap/Pdf/learnerpregnancyfull.pdf>.

299 *Id.*

300 *Id.* at 11-12.

301 *Id.*

302 African Charter on the Rights and Welfare of the Child, *supra* note 279, at art. 2(6).

Thus, the State should not dictate a prescribed period since the individual ability and capacity of each learner will differ. Guided by this provision, Kenya's Readmission Policy provides that "there is no specified period of leave of absence and the girl should join school as soon as possible".³⁰³

Setting a prescribed period of withdrawal from school is not a simple task. Considering the socio-economic status of most families in Malawi, it is not easy for girls (especially girls in rural areas) to find alternative care for a child under the age of one. Thus, if the discretion to return to school is left to the female learner alone, it can lead to unfortunate instances where the newborn baby lacks the necessary nutritional care from its mother should the female learner decide to return to school immediately after birth. As previously illustrated, the Study has revealed instances in which some female learners were keen to be readmitted to school shortly after giving birth and often had to leave their newborn babies at home without sufficient nutritional care. On the other hand, setting a one-year period of absence can also lead to situations where the female learner becomes accustomed to her role as a "stay-at-home mother" and gradually loses interest in returning to school. She may also be dissuaded by the fact that her friends have proceeded to a higher grade. Long absence following the delivery of a baby can easily reduce the links of the female learner to the school and her desire to continue with schooling.³⁰⁴

Having considered the literature review and the socio-economic context of Malawi, it would be important to remain flexible regarding the period of absence from school by a female learner. Whilst policy initiatives of the Government aim to ensure at least six months of exclusive breastfeeding for infants, this is seldom the practice. The MDHS 2015-2016 indicates that the mean duration of exclusive breastfeeding is four months.³⁰⁵ The Policy should, therefore, provide for an assessment to be conducted by the Social Welfare Office in conjunction with the counselling committee as to whether the means are available for the provision of necessary care for the baby during the mother's absence, especially if the child is under six months of age. Such care includes the availability of formula milk for the infant or the availability of expressed breast milk that the baby can consume through a baby bottle or other appropriate means.

Time of Absence from School

Concerns have also been raised regarding the exact time a female learner should be withdrawn from school. Should female learners be allowed to attend school even when the pregnancy is at an advanced stage? This Study has revealed that this is a very contentious debate, as many education authorities interviewed at the district level were not in support of it. Others feared that it would be uncomfortable and burdensome for the female learner to continue to attend school if the pregnancy is advanced, specifically within the last trimester. Others worried that it might elicit bullying from schools peers that may result in adverse psychological consequences for the learner. In addition, a significant majority of authorities felt that it would suggest that early pregnancy is acceptable, and, thus send the wrong message to other learners.

303 Naomi Wairimu Mbugua *Stakeholders' Roles in Implementing the Readmission Policy on Adolescent Mothers in Public Secondary Schools in Kikuyu District, Kiambu County, Kenya*, PhD Thesis, 9 (2013), <http://ir.cuea.edu/jspui/bitstream/1/85/1/Naomi%20W%20Mbugua.pdf>.

304 See *id.* at 54.

305 See National Statistical Office et al., *supra* note 20, at 173, Table 11.4.

In the United States of America, “pregnant and parenting adolescents were expelled from school . . . until Title IX of the 1972 Educational Amendments Act prohibited public schools from discriminating” against them and declared expulsion illegal.³⁰⁶ In the United Kingdom, the Department for Education and Skills has “reiterated that pregnancy is not a reason for exclusion from school.”³⁰⁷ Similarly, the Government Readmission Policy Guidelines on student pregnancy in Kenya states that the one year rule no longer applies: “at no time should a girl be coerced to leave school because she is pregnant; she shall leave school at an appropriate time so as to give birth.”³⁰⁸

While appreciating the cultural and contextual differences of the above-mentioned jurisdictions, the paramount consideration should always be in ensuring the best interests of the child (entailing that access to education should not be unduly restricted). Thus, female learners who are pregnant should be encouraged to attend classes as long as it is reasonably possible for them to do so. The decision as to when they will withdraw from school during their pregnancy should be theirs to make as the ones in control of their physical capability. However, where the school has reasonable concerns regarding the health of the female learner who insists on attending school during her pregnancy anyway, the school management and counselling committee can seek an independent assessment from a medical practitioner within the community as to whether the female learner can continue to do so without any adverse effects on her health, after which a decision can be made which takes into account the health and educational needs of the learner.

With regard to concerns of bullying and teasing of a pregnant female learner which are sometimes prompted by the changes in the physical features that accompany pregnancy, it is imperative that the Policy should specifically provide that it is the responsibility of teachers to ensure that such female learners are not harassed and bullied within school premises. Bullying and teasing within the school are major factors explaining females’ decision to not return or remain in school. The Policy should outline that teachers must act with due diligence on any complaint that a pregnant learner raises regarding her bullying or harassment. The school must also create or strengthen open and child-friendly channels for such complaints. From a broader perspective, it is also essential to develop and implement a comprehensive national policy on bullying in schools to protect learners from adverse impacts of bullying. Bullies often target those who are most vulnerable (including pregnant and readmitted girls) and can also cause some learners to withdraw from school altogether.

Gender Neutrality Regarding Withdrawals is Misplaced

The Revised Procedures provide that a male learner who impregnates a female is to be withdrawn from school in a similar fashion as his female counterpart. Some Study participants were in support of this as they thought that it would act as a deterring factor to other male learners. Other feminist organisations have also criticised the idea of withdrawing girls from school when a similar step

306 Naomi Wairimu Mbugua, *supra* note 303, at 53 (quoting W. Pillow, *Teen pregnancy and education: politics of knowledge, research, and practice* 20 *Education Policy Journal* 59, 59 (2006)).

307 Naomi Wairimu Mbugua, *supra* note 303, at 56.

308 See Naomi Wairimu Mbugua, *supra* note 303, at 58 (quoting Ministry of Education, *Gender in education: implementation guidelines* 18 (2011)).

is not taken against boys involved.³⁰⁹ They perceive such a policy or practice as discriminatory. However this issue was canvassed at the validation meeting where it was concluded that once it is accepted that a punitive approach is not appropriate, then withdrawal of the male learner could be counterproductive, whilst the pregnant learner's absence from school should be determined based on a range of factors and the best interest of the child.

The current motivation behind the withdrawal of the male learner appears to be more punitive than supportive or rehabilitative. Unfortunately, simply applying the same rules to male learners is less progressive than envisaged. It is not in the best interest of both the male and female learner to merely withdraw the former. It is important to bear in mind that withdrawing the female learner from school upon the delivery of the female learner's infant should not be a punitive measure, even though early and teenage pregnancies are not desirable. Withdrawing the female learner from school may only be a supportive measure undertaken to enable the female learner to give birth and recuperate from the birthing experience. It would also help to provide intimate care to the newborn, primarily through breastfeeding in which the infant relies substantially on the mother.

While applying this supportive framework to male learners who find themselves in this predicament, it is often unclear what the withdrawal from school of the male learner will achieve. What is paramount is for the male learner to be actively engaged in the welfare and upbringing of his infant. This role can be performed without necessarily withdrawing the male learner from school. Study participants have revealed numerous cases in which men and boys play little or no role regarding a pregnancy that they are responsible for and during the life of the infant. This is a concern that requires serious intervention. The Policy therefore needs to explicitly provide that counselling offered to male learners must specifically address their responsibility by law to be actively engaged in the raising of the infant and the provision of any necessary support by the male learner regardless of whether a relationship still exists between the male learner and the female learner. In addition, the Policy needs to stipulate the active role that the school can play in ensuring that a male learner is involved in the upbringing of the baby. The mother group is an important avenue that can follow-up with the male learner on his role.

Other structures that can be employed in order to compel the involvement and support of the male learner include the traditional authorities as well as the Social Welfare Department. These institutions must work collaboratively by engaging with the parents or guardians of the male learner on the need for the male learner to accept his responsibility. This would be a better and more beneficial approach than merely withdrawing the male learner on the unfounded premise of ensuring equality. Rather, robust counselling and regular follow-up with the male learner must be made in order to ensure that the male learner takes responsibility for the infant. This is to ensure on-going parental contact, involvement and responsibility on the part of the male learner.

As previously outlined, many cases arise where the responsible father is more likely to be an older man who is out of school as opposed to a fellow learner. Even in instances where the responsible father is a male learner, he often refutes the pregnancy and there is often insufficient evidence to substantiate the claim by the female learner. In other scenarios, girls are sometimes reluctant to identify the father, whether he is a fellow learner or someone outside the school due to socio-

309 See Naomi Wairimu Mbugua, *supra* note 303, at 57.

cultural restrictions and patriarchal norms. This all leads to instances where a female learner bears the brunt of the pregnancy alone. Continued counselling is essential, as it can assist the female learner to engage the male responsible for the pregnancy so that she can share the burden of parenting.

In instances where an older male is responsible for the pregnancy of a female learner (under the age of sixteen), it is important that the Policy stresses the role of the school committee in conjunction with the mother groups and the Social Welfare Department to ensure that the older man is brought before law enforcement authorities. School authorities rarely follow-up on these matters on their own initiative even though these are serious criminal cases that also infringe on the education of the female learner. There have also been incidences in which male teachers are responsible for pregnancies of female learners. In many instances, such teachers deny the pregnancies while few accept responsibility but most of such teachers are merely transferred to another school. In some cases, teachers end up marrying the female learners resulting in a situation where the female learner drops out of school permanently. Worse still, the situation is rarely investigated as a criminal matter especially in instances where the female learner was under the age of sixteen at the time of sexual intercourse with the teacher. Thus, the Policy must re-emphasise the role that the school should play in ensuring that all matters of defilement are reported to the police, regardless of whether the perpetrator is a member of staff at the school or not.

In instances where a female learner is impregnated by another male who is not a learner and the sexual relations between the two of them did not constitute defilement, the Policy must nonetheless provide for referral services in which the school must refer the matter to the Social Welfare Office, especially in instances where the male is uncooperative and thus require an order of child maintenance from the courts. Though Malawi has a progressive Childcare Protection and Justice Act which ably provides for child maintenance, it is still imperative that the Policy provides for the role of the school to refer such matters for appropriate assistance because such female learners and their families may be unaware of such laws and avenues. Even when they are aware, they may not have the resources to approach such structures or they may be restricted by socio-cultural norms. It is important to understand that all of these elements play a critical role towards the successful readmission of the female learner into school and her successful performance in school thereafter. Thus, the Policy needs to make specific reference to the active role that the school should assume even when the responsible male is not a learner.

All in all, simply applying the same rules to boys responsible for pregnancies is not a sufficient method to achieve gender equality. Even if the fathers are schoolboys, the social and biological consequences of the pregnancy will not be the same for both genders. In order to achieve gender equality with regards to learner pregnancies, considerable support to the female learner must be paid so as to minimise the pregnancy's negative consequences.³¹⁰

310 See *School Policy on Learner Pregnancy in Namibia: Background to Reform*, UNICEF 1, 22 (2008), <http://www.lac.org.na/projects/grap/Pdf/learnerpregnancyfull.pdf>.

The Opportunity to Readmit a Female Learner Must Not be Restrictive

The Procedures provide that the opportunity to readmit a learner to school on the basis of pregnancy shall be given only once. Some participants interviewed have justified this stance on the basis that learners must not take advantage of the Readmission Policy framework and conduct themselves carelessly in terms of their sexual behaviour, which can ultimately result in another pregnancy.

Nonetheless, it is submitted that access to education should not be unduly restricted. Education is an important factor towards breaking the vicious cycle of poverty in Malawi, especially in rural communities that contain 80 percent of the population. In the unfortunate event that a female learner falls pregnant again, the solution is not to restrict her access to education, which can limit her ability to eventually fend for herself and her children. Denying her readmission may mean that she and her children remain poor with no opportunity to become economically empowered. In addition, it must not be overlooked that a second pregnancy can also occur due to rape or defilement. Regardless of the circumstances, there are several cases in which learners who find themselves in this predicament on more than one occasion end up applying themselves conscientiously after the experience.

Thus, the Policy must not deny readmission to school if a pregnancy recurs. It is equally not necessary for the Policy to state that a learner can be readmitted as many times as possible following a pregnancy. In practice, such a learner must not be restricted from being readmitted to school. Instead, the counselling committee must ensure that the learner undergoes intensive counselling and that any underlying factors that have resulted in the recurrence of a pregnancy should be examined and addressed.

The Need for Flexible Learning Arrangements

The Study has revealed that in some instances, a female learner often fails to cope with the demands of school and the demands of raising a baby. The Diphhalana initiative in Botswana has been recognised as a good example of a flexible learning programme that caters for girls who get pregnant during their course of learning. During the female learner's "maternity leave, schoolwork and other resources are sent to the homes of the learners and the school has developed a curriculum that includes distance education modules" that learners can attend to from home.³¹¹ As a result, pregnant learners are enabled "to continue learning from home instead of being marginalised", as is typically the norm.³¹² When a doctor deems them fit to return to school, they return with their babies. The school has crèche facilities, which can take babies as young as four months, providing them with nappies and milk. At break and lunchtimes, the young mothers breastfeed their children. The Diphhalana Initiative conducted in Botswana required that "the father, if he is at school, share the responsibility of looking after the baby at break and lunchtimes" as a means of

311 *Commission on the Status of Women 2011*, IPPF para. 10 (2011), <http://www.ippf.org/advocacy/ippf-at-the-un/CSW/2011>.

312 *Id.*

developing a sense of responsibility.³¹³

Notwithstanding the capacity constraints in Malawi, some of the incentives outlined above can be employed. For instance, a female learner who is at home as a result of pregnancy need not be entirely detached from the school environment. In order to ensure that she continues to stimulate herself academically, school materials including text books (where available) can be lent to her. She can also be allowed to write assignments and send them to the teacher for written feedback where possible. Some schools in Malawi already allow readmitted female learners to bring their babies (with guardians) to school during learning periods so that they can periodically breastfeed the babies during break-time and lunch. However, there is often lack of a conducive environment for the babies and guardians to wait during such school hours as a result of poor infrastructure in schools. Often guardians and the baby wait under tree shades or just move around the school blocks. As a long-term plan, there is need for Government to strategically consider this gap.

FGDs also revealed that lack of alternative care for a baby was a prominent problem resulting in many female learners being unable to return to school. The Procedures need to provide mechanisms under which the absence of alternative care should not be a restricting factor to the return to school by a female learner. The Procedures must stipulate the need for the mother group and the school committee in conjunction with the Social Welfare Office to follow-up on the female learner and assess whether other alternative care arrangements can be made with other members of the immediate family, if available. Where such arrangements cannot be identified or are unavailable, the Procedures must stipulate that suitable members of the Mother group who are often stationed within school premises, must look after the baby within the school premises as the young mother attends to classes. Where Early Child Development (ECD) centres are operational and in close proximity, Social Welfare Offices can also make arrangements to have the baby stay at the ECD centre during the learning period. Social Welfare Offices can also identify other childcare institutions within close proximity that can offer care for the baby during learning periods.

Notice to the School Regarding the Pregnancy

The Revised Readmission Procedures provide that a pregnant schoolgirl should write a letter to the head teacher about her status, inferring that she is the one responsible for informing the head teacher of her condition. The practice on the ground is different. A female learner will rarely approach the head teacher or any other staff member to advise them of her pregnancy, and this is largely due to non-acceptance of her situation, fear of stigmatisation, fear of withdrawing from school, lack of child-friendly procedures to access the head teacher's office including the lack of a private space and limited female teachers or staff members. The predominant practice, therefore, is that the female learner will eventually drop out of school without informing any member of the school committee, or that a female teacher or member of the family may notice changes in her physical features and thus compel her to withdraw from school.

However, both the female learner and the school can play an active role in instances where a pregnancy is suspected. What is imperative is that proper child-friendly channels should be put

³¹³ UNICEF, *supra* note 310, at 14.

in place to ensure that female learners can use the process with ease to report their predicament. On the other hand, a member of staff who has reasonable grounds to believe that a female learner is pregnant must inform a member of the counselling committee who must privately approach the female learner to inquire on her condition. The female learner must voluntarily give out information regarding her condition. Coercive pregnancy testing is problematic because consent is not voluntarily or freely given.³¹⁴ Practices that involve coercive pregnancy testing and mandatory pregnancy testing in schools have the potential to violate learners' rights.³¹⁵

The Composition of the Counselling Committee

The Revised Readmission Procedures make reference to a counselling committee but there is no indication as to the composition of this counselling committee. It is therefore imperative that the Policy should specifically indicate the composition of the counselling committee which should include teachers (of which the presence of at least one female teacher³¹⁶ should be a must), members of mother groups, parents of reputable standing from the within the community and a Social Welfare representative (i.e., childcare protection worker). In addition, the Policy should emphasise the need for the counselling committee to receive training on human rights-based approaches to counselling and child protection.

The Need for a Comprehensive Approach to Early Pregnancies

Pregnancy prevention remains “an important component of any approach to adolescent pregnancy.”³¹⁷ However, prevention is also a complex task. Due to socio-cultural norms, the tendency in Malawi has been to emphasise abstinence from premarital sex for learners. It is acknowledged that this is by far the most effective method. However, the reality on the ground is that sexual activity begins early for most learners. A significant number of girls and boys between the ages of twelve and nineteen are sexually active. Notwithstanding the well-meaning intention of teachers and education authorities to emphasise abstinence from sex, the unfortunate result of such curriculum is that such learners still end up engaging in sexual activity nonetheless and without any form of protection. Comprehensive Sexuality Education needs to be provided to learners in an

314 The Centre for Reproductive Rights *Forced out: Mandatory Pregnancy Testing and the Expulsion of Pregnant Students in Tanzanian Schools* 17 (2013), http://www.reproductiverights.org/sites/crr.civicaactions.net/files/documents/crr_Tanzania_Report_Part1.pdf.

315 *Id.*

316 The Malawi Human Rights Commission was made aware of the critical role that female teachers played in providing counselling and support to pregnant female learners out of their own initiative. Unfortunately, the Commission also noted that there are generally more male teachers than females. Female learners, as a result of the socio-cultural setting, are generally more likely to open up to female teachers about their experiences and feelings as opposed to male teachers. In addition, female teachers serve as important role models to girls, often inspiring them on the value of education. In all schools visited during the Malawi Human Rights Commission's consultative process on the Readmission Policy, the Commission noted that all female students therein indicated that they aspired to become either teachers or nurses. When queried further as to why these two professions were particularly appealing to the female learners, the Commission learned that this was because these were the only two professions within the rural areas in which women were predominantly visible. Thus, the presence of female teachers in rural areas has a profound impact on girls in terms of role modelling and provision of counselling.

317 UNICEF, *supra* note 310, at 15.

unbiased manner so that learners can make responsible decisions from an informed perspective.

We cannot delink the aspect of Comprehensive Sexuality Education offered in schools and the availability of youth-friendly health services. Thus, it is essential that Government critically evaluates the provision of youth-friendly health services in the country, taking into consideration the socio-cultural dynamics at play. In addition, access to health centres in rural communities that provide comprehensive sexual and reproductive health services for young people is largely lacking. Even in instances where the health centres are accessible, they rarely have the necessary services, such as contraceptives, that are appropriate for young people. Though both male and female learners have a responsibility to ensure safe sex, it is nonetheless disheartening to also note that female condoms are rarely available both in urban and rural areas. All these factors need to be strategically addressed by Government.

9. Conclusion

The findings of this Study have illustrated that interventions to address school dropouts because of pregnancy require innovative approaches that take into careful consideration the multi-faceted nature of the problem. In addition, pregnant learners, readmitted learners, or learners out of school due to pregnancy are not a homogenous group and it is critical that an effective Readmission Policy framework takes into careful consideration the peculiarities of each case.

UNESCO has proposed a four pillar response to early and unintended pregnancies. The first involves providing all young people with good quality Comprehensive Sexuality Education (CSE) (including education on pregnancy, prevention and contraception). The second is to ensure that pregnant learners and learners with infants have the right to education through the development and effective implementation of re-entry policies. Thirdly, learners' "access to health education and services (including contraception)" needs to be promoted "through the establishment of a referral system between schools and health facilities".³¹⁸ Lastly, all efforts must be made towards eliminating stigma and discrimination towards pregnant learners and learners with infants in schools and communities.

Within this framework, it is therefore essential that efforts towards revising the Readmission Policy critically address the aspect of stigma and discrimination within schools and communities so that they are not pervasive barriers for learners to resume education. There is also a need to consolidate facility linkages between the school and the health centres, especially with regard to the provision of Comprehensive Sexuality Education and youth-friendly health services. This may include integrating school health programs that encompass preventive and responsive services. There is also a need to ensure that there are structures at school level to support learners who are mothers and/or fathers.

The Committee on the Rights of the Child in its General Comment No. 20 (2016) notes the following about implementing the rights of the child during adolescence:

*"The costs of inaction and failure are high: the foundations laid down during adolescence in terms of emotional security, health, sexuality, education, skills, resilience and understanding of rights will have profound implications, not only for their individual optimum development, but also for present and future social and economic development."*³¹⁹

318 Harriet Birungi et al., *supra* note 2.

319 Comm. on the Rights of the Child (2016), *supra* note 249, at para. 3.

Therefore, the Government of Malawi must guarantee “the right to universal, quality and inclusive education and training [as] the single most important policy investment that [it] can make to ensure the immediate and long-term development” of learners and the country.³²⁰

Specific Factors to Consider in a Revised Readmission Policy

In summary, the following factors should be considered and discussed for possible incorporation into the Readmission Policy:

Managing pregnant learners at school

- Pregnant female learners should be allowed to proceed with school according to their abilities to cope with the learning demands;
- Female learners should not be compelled to withdraw from school on the mere discovery of their pregnancy; and
- Where reasonable concerns on health are observed by school authorities leading to their proposition that the female learner should temporarily withdraw from school to prevent an adverse health impact, the school must seek the determination of a medical practitioner as to whether the learner can proceed to attend school during her pregnancy.

Policy on the readmission of learners after giving birth

- The Policy should be flexible³²¹ and allow the female learner to be absent from school for six months commencing from the date she gives birth or earlier where medically required, whilst allowing her to choose when to return based on an assessment of availability of alternative and nutritional care for the infant verified by the counselling committee in conjunction with the Social Welfare Office;
- The Policy should not restrict the opportunity for readmission to happen only once. What is paramount is that a female learner should not be unduly restricted from accessing education even in instances of a recurring pregnancy; and
- The Policy must provide for a systematic collection of data on readmission to be institutionalised in all schools and later consolidated at the national level. The education sector already has an advanced Management Information System that adequately provides gender-disaggregated data. Thus, it is recommended that readmissions of learners following a pregnancy be included as an important variable when collecting data through the EMIS.

320 Comm. on the Rights of the Child (2016), *supra* note 249, at para. 68.

321 The Constitutional Court of South Africa, in considering a policy on pregnant learners passed by a school, held that “by operating inflexibly, the policies may violate section 28(2) of the Constitution, which provides that a child’s best interests are of paramount importance in every matter concerning the child. The policies require that learners must leave school for the remainder of the year in which they give birth without regard to the health of the learner, the point in the school year at which she gives birth, arrangements she has made for appropriate care for her newborn, the wishes of the learner and her parents or her capacity to remain in school.” *Head of the Department, Department of Education, Free State Province v Welkom High School and Others* [2013] ZACC 25, at para 116.

Provision of counselling

- Comprehensive and on-going counselling should be provided to both male and female learners affected by a pregnancy;
- There is a need for counselling services offered by the counselling committee to ensure regular follow-up with the female learner during her period of absence from school;
- Such counselling must engage the parents of the female learner to also ensure that they provide a supportive environment for the female learner, which will also enable her to return to school; and
- The composition of the counselling committee and their mode of functionality should be indicated by the Policy. Composition of the counselling committee should include mother group members, parents, teachers (especially female teachers) and a Social Welfare representative. A progressive traditional authority may also be co-opted where possible.

Providing a conducive school environment for pregnant learners and young mothers

- School management committees must ensure that the school environment is conducive, safe and secure for readmitted female learners. The Policy should elaborate upon the active role that teachers should play in preventing bullying and responding to any concerns of bullying;
- Apart from the incorporation of anti-bullying measures in the Policy, the Government should develop and implement a comprehensive anti-bullying policy to be used in all schools in Malawi; and
- There should be proper child-friendly complaint channels within schools where learners can access the help and support of the school where necessary. In the event of pregnancy, the Policy should provide that the response by the school should be largely supportive as opposed to being punitive. Confidentiality and privacy should be respected, especially in instances where the pregnancy is less evident but is known by the school management and the counselling committee.

Providing additional support to young mothers during their absence from school

- Flexible models of learning should be introduced so that schools can improvise in order to provide additional learning opportunities for pregnant learners and young mothers. In instances where a female learner fails to return to school due to lack of alternative care for the baby, the Policy should put in place procedures to enable the female learner to return to school. Specifically, the counselling committee should engage family members of the female learner on possibilities of providing alternative care for the baby. Where this is impossible, the Policy should provide for collaboration amongst the school committee, the counselling committee and Social Welfare Office to identify alternative care arrangements for the baby during the period that the mother will be attending school. These may include ECD centres within the district. Other care arrangements within the school premises can, where reasonably possible, be made with the support of mother groups; and
- During the period of absence from school by the female learner, the Policy should encourage

communication links with the female learner. Where possible, education materials can be provided to the learner while she is at home awaiting her readmission.

Policy on male learners responsible for pregnancy

- A male learner responsible for a pregnancy should ideally not be withdrawn from school, as it serves no tangible purpose except to punish the male learner. Instead, comprehensive counselling for male learners must, amongst others, emphasise the responsibilities of the male learner for the pregnancy and the baby after delivery; and
- The Policy must emphasise the role of the counselling committee to ensure that they regularly follow-up with the male learner and his parents/guardians in order to ensure that he is acting upon his responsibilities.

Ensuring that older men responsible for the pregnancy of a learner are held accountable

- In instances where the responsible male is uncooperative but is not a learner and that the sexual relations between the responsible male and the female learner did not constitute defilement, the Policy should provide that school authorities must refer the matter to the Social Welfare Office who can subsequently present the matter to the court for a possible order of maintenance; and
- In instances where the sexual relations between the responsible male and the female learner constituted defilement or rape, the Policy must stipulate that the school authorities must refer the matter to the law enforcement authorities immediately. This includes instances where the responsible male is a teacher.

Delivery of Comprehensive Sexuality Education

- The Policy must recognise the importance of a broader approach towards managing learner pregnancies, and towards the provision and effective delivery of Comprehensive Sexuality Education. It must ensure the establishment of a referral system between schools and health facilities concerning sexual and reproductive health needs and services that are appropriate for learners.

