



Enhancing Access to Adolescent Sexual Reproductive Health Rights Information and Services

A Compilation of Key Issues for enhanced access to
SRHR by adolescent girls

Umunthu Plus

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Foreword

Adolescents in Malawi, especially girls continue to face challenges in accessing Sexual Reproductive Health Rights Services (SRHRS). The situation has been made worse in the last few years since 2019 following the outbreak of the COVID 19 pandemic. The challenges have persisted over time despite efforts by government, unilateral and bilateral donors and development partners to curb the situation.

The Government of Malawi promotes equitable access to SRHRS for adolescents through its SRH policy of 2017-2022 alongside the constitution and other international normative frameworks that Malawi is signatory. Past studies highlight various cultural practices that influence young people's behaviors, attitudes and motivations related to sexual and reproductive health issues. The socialization process, which involves various forms of initiation ceremonies, has a strong influence on how adolescents understand their sexual and reproductive health. Although Malawian culture values virginity and condemns premarital childbearing, there is a general understanding that initiation ceremonies, which are meant to groom young people to be responsible sexual beings, sometimes achieve the undesired outcome of encouraging young boys and girls to initiate sexual relationships prematurely because they feel that the initiation ceremonies mark their transition to maturity. It is also evident that the traditional socialization system's role in adolescent sexuality and reproductive health has been waning as a result of the increasing influence of religion, schooling, exposure to media and other sources of information on these issues. While sexual abuse appears to be a major problem in Malawi, the actual magnitude of this problem is not known. On one part, it is because of poor reporting that is imbedded in the culture of silence that is characteristic of most Malawian societies.

The situation is catalyzed by limited knowledge of existing laws and policies that protect and empower women and particularly, adolescent girls towards accessing services related to SRH. Umunthu Plus is a local Non-Governmental Organization (NGO) that is focused on access to quality health services including Cancer education, HIV and AIDS prevention care and support and others. We strive to support and advocate for increased access to quality health services for all, especially adolescent girls whose effects become adverse if they do not access sexual reproductive health services. To this end, Umunthu Plus and Umunthu FM aim to complement the efforts by the Government of Malawi (GoM) in promoting access to SRHR information and services for adolescent girls. With financial support from Share-Net International, we have compiled this policy document to improve information access by adolescent girls in Malawi. It is our hope that the information will be used to make service providers more accountable and provide quality services to our adolescent girls in Malawi.

Yours Sincerely,

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The Umunthu Plus team also acknowledges the input extracted from the following policies, laws, compilations and research papers that has made this compilation rich and useful for adolescent girls in Malawi:

- (i) Munthali AC, Chimbiri A and Zulu E, Adolescent Sexual and Reproductive Health in Malawi: A Synthesis of Research Evidence, The Alan Guttmacher Institute, 2004, No. 15
- (ii) Ministry of Health, Government of Malawi, National Sexual and Reproductive Health and Rights (SRHR) Policy (2017-2022)
- (iii) The Constitution of the Republic of Malawi
- (iv) Malawi National Youth Policy, 2013
- (v) The Republic of Malawi Penal Code

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Acronyms

ART	Anti-Retroviral Therapy
AIDS	Acquired Immunodeficiency syndrome
EC	Emergency Contraception
MoH	Ministry of Health
FP	Family Planning
NGO	Non-Governmental Organization
HIV	Human Immunodeficiency Virus
HSA	Health Surveillance Assistants
HCT	HIV Testing and Counselling
STI	Sexually Transmitted Infections

Key Definitions

Adolescent

A period in which children make the transition from childhood to adulthood or a person that is in transition from child hold to adulthood. In Malawi, adolescence is typically defined to span the ages 10 to 19.

Sexual Reproductive Health

SRHR implies that people should have a satisfying and safe sexual life and that capacity should be built amongst the people

Felony

An offence which is declared by law to be punishable, without proof of previous conviction, with death, or with imprisonment with hard labor for three years or more

Introduction

This publication is a compilation of key laws and policies that protect and promote access to sexual reproductive health rights for adolescent girls in Malawi. It has been developed from a background of continued poor access to SRHR by adolescent girls in Malawi that has been catalyzed by poor limited or lack of access to information on legal frameworks that protect and promote the SRHR services. SRHR policy framework to attain highest level of sustained comprehensive and integrated SRHR services to improve quality of life for all.

Primary Users

The primary users of this policy compilation are adolescent girls in and out of school. It is meant to provide reference material in case of demanding services around SRHR in Malawian societies. The compilation is therefore published in two languages i.e. English and Chichewa to make possible for a larger cross section of adolescent girls to access the valuable information by adolescent girls.

The compilation has been organized into four main topics that have been simplified from Malawi Laws and Policies as follows:

- (i) The Constitution and related provisions
- (ii) The Penal Code and its provision related to adolescents and their SRHR
- (iii) Marriage, Divorce and family Relations Act
- (iv) SRHR Policy (2017-2022)
- (v) Youth Policy (2013)

Disclaimer

This document is in no way a substitute of the original laws and policies gazetted by the Government of Malawi and should only be used as guides and quick references on constraints that adolescent girls meet in accessing SRHR information and services. Reference to original gazetted documents should be made in any legal matters that may arise in practice.

The Constitution and related provisions

The constitution of the Republic of Malawi shall bind all executive, legislative and judicial organs of the State at all levels of Government and all the peoples Malawi are entitled to the equal protection of this Constitution, and laws made under it (Section 3) and under section 4 stipulates that “Any act of Government or any law that is inconsistent with the provisions of this Constitution shall, to the extent of such inconsistency, be invalid.”

From this, the constitution therefore gives protects all Malawians regardless of age sex, tribe, religion, political affiliations or other social demographic characteristics.

Principles of National Policy

Under principles of national policy, section 13, the constitution stipulates that the State shall actively promote the welfare and development of the people of Malawi by progressively adopting and implementing policies and legislation aimed at achieving the following goals (Including gender equality and health):

(a) Gender Equality

To obtain gender equality for women with men through

- i. full participation of women in all spheres of Malawian society on the basis of equality with men;
- ii. the implementation of the principles of nondiscrimination and such other measures as may be required; and
- iii. 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.

(c) Health

- i. To provide adequate health care, commensurate with the health needs of Malawian society and international standards of health care.

It is clear from the constitution therefore that the Government of Malawi has the responsibility to ensure that all citizens, including adolescent girls have equitable access to quality health. Services are therefore a right and supported by the constitution such that failure to do so is in itself an offence punishable by law.

The Penal Code

A penal code is a compilation of all or a significant amount of offences that are recognized in the jurisdiction, penalties that might be imposed for the offences and some provisions associated with the offences.

Key Sections of the Penal code

- a) **Section 7: Ignorance of the law** does not afford any excuse for any act or omission which would otherwise constitute an offence unless knowledge of the law by the offender is expressly declared to be an element of the offence
- b) **Section 8: Bona fide claim of right**
A person is not criminally responsible in respect of an offence relating to property, if the act done or omitted to be done by him with respect to the property was done in the exercise of an honest claim of right and without intention to defraud.
- c) **Section 14: Immature age**
- A person under the age of seven years is not criminally responsible for any act or omission.
 - A person under the age of twelve years is not criminally responsible for an act or omission unless it is proved that at the time of doing the act or making the omission he had capacity to know that he ought not to do the act or make the omission
 - A male person under the age of twelve years is presumed to be incapable of having carnal knowledge.
- d) **Section 136: Abduction of girls under sixteen**
Any person who, with intent to marry or carnally know a woman of any age, or to cause her to be married or carnally known by any other person, takes her away, or detains her, against her will, shall be guilty of a felony and shall be liable to imprisonment for seven years
- e) **Section 137: Indecent assault of females**
- (1) Any person who unlawfully and indecently assaults any woman or girl shall be guilty of a felony and shall be liable to imprisonment for fourteen years, with or without corporal punishment.
 - (2) It shall be no defence to a charge for an indecent assault on a girl under the age of thirteen years to prove that she consented to the act of indecency.
 - (3) Whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture or exhibits any object intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman or intrudes upon the privacy of such woman, shall be guilty of a misdemeanour and shall be liable to imprisonment for one year.
- f) **Section 138: Defilement of girls under thirteen years of age**
- (1) Any person who unlawfully and carnally knows any girl under the age of thirteen years shall be guilty of a felony and shall be liable to imprisonment for life, with or without corporal punishment.

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- (2) Any person who attempts to have unlawful carnal knowledge of any girl under the age of thirteen years shall be guilty of felony and shall be liable to imprisonment for fourteen years, with or without corporal punishment:

Provided that it shall be a sufficient defence to any charge under this section if it shall be made to appear to the court, jury or assessors before whom the charge shall be brought that the person so charged had reasonable cause to believe and did in fact believe that the girl was of or above the age of thirteen years.

g) Defilement of idiots or imbeciles

Any person who, knowing a woman or girl to be an idiot or imbecile, has or attempts to have unlawful carnal knowledge of her under circumstances not amounting to rape, but which prove that the offender knew at the time of the commission of the offence that the woman or girl was an idiot or imbecile, shall be guilty of a felony and shall be liable to imprisonment for fourteen years, with or without corporal punishment.

h) Section 140: Procuration

Any person who—

(a) procures or attempts to procure any girl or woman under the age of twenty-one years to have unlawful carnal connection, either in Malawi or elsewhere, with any other person or persons; or

(b) procures or attempts to procure any woman or girl to become a common prostitute; or

(c) procures or attempts to procure any woman or girl to leave Malawi with intent that she may become an inmate of or frequent a brothel elsewhere;

- shall be guilty of a misdemeanour and, if a male person, may, at the discretion of the court, and in addition to any term of imprisonment awarded in respect of the said offence shall be sentenced to corporal punishment:

Provided that no person shall be convicted of any offence under this section upon the evidence of one witness only, unless such witness be corroborated in some material particular by evidence implicating the accused.

Marriage divorce and family relations Act (2015)

Definition

The act provides provisions for marriage, divorce and family relations between spouses, unmarried couples, their welfare and maintenance and that of their children for connected matters. It also protects adolescents from early marriages by stipulating the age of 18 and above as applicable for marriage (sec 14)

Sexual Reproductive Health Policy (2017-2022)

Definition

The International Conference on Population and Development (1994) meeting defined Reproductive Health (RH) as a state of complete physical, mental, and social wellbeing and not merely the absence of disease and infirmity in all matters related to the reproductive system and its functions and processes, Maternal and neonatal health (including prevention and management of unsafe abortion)

The SRHR services in Malawi focus on the following;

- ✓ Young people sexual and reproductive health
- ✓ Family planning
- ✓ Prevention and management of STI, HIV and AIDS
- ✓ Early detection and management of cervical, prostate and breast cancers
- ✓ Elimination of harmful maternal practices, including domestic and sexual violence,
- ✓ Prevention and management of obstetric fistula
- ✓ Prevention and management of infertility
- ✓ Male involvement in the development, promotion and delivery of SRHR services
- ✓ Development of human resources for SRHR services
- ✓ Strengthening of the support systems for delivery of SRHR services

The policy provides a framework for provision of accessible, acceptable and affordable, comprehensive SRHR services to all women, men, and young people of Malawi through informed choice enable them attain their reproductive rights and goals safely.

Policy Statements

Family planning

The need for family planning services arises from the risk of maternal, infant, and child mortality and morbidity when pregnancies are too early, too many and too frequent for adolescent girls. It is therefore crucial that adolescent girls. Family planning impacts the well-being of individuals, families and nations and improves health of individual women and families to enable them accumulate wealth over time.

FP also lowers the risk of pregnancy related complications hence maternal, neonatal and infant mortalities are reduced at national level. Family planning rests of on the following policy statements:

- (i) Prevention of unplanned and unwanted pregnancy shall be given the highest priority in the development and implementation of the family planning services.
- (ii) Public health facilities shall offer a full range of family planning services, including emergency contraception.

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- (iii) Injectable contraceptives shall be available through the community-based delivery system using appropriately trained service providers including HSAs.
 - (iv) Post-exposure prophylaxis (PEP) ARVs shall be made available, free of charge after any high-risk exposure to HIV where medically indicated.
 - (v) Dual protection shall be promoted among all sexually active persons.
 - (vi) Emergency contraception shall be made available to all women and girls who have had unprotected sex.
 - (vii) Abortion shall be provided to the full extent of the existing national law and guidelines shall be formulated to properly interpret the law. (Abortion bill is not passed in parliament but services are provided in line with provision in the law and will be guided by service providers)

!!! NOTE !!!

The aim of this section is not encourage girls to have sex or unprotected sex, but rather to present available options that will help adolescent girls prevent early pregnancies in case of eventualities and prevent contracting HIV.

Family Planning Policy Strategies

To ensure effective service delivery and access, the policy stipulate the following strategies:

- (i) Provide accurate and timely FP information
- (ii) Strengthen the availability, access to, and utilization of family planning services at both facility and community level.
- (iii) Increase coverage of family planning services among the young people to all groups of people
- (iv) Broaden the range of family planning methods offered at both health facility and community levels.

Sexually Transmitted Infections and HIV/AIDS

HIV prevalence is higher among women (10.8%) than among men (6.4%). In addition, Malawi has high annual new HIV infections especially among young people. The policy makes the following stipulations to help adolescents better access services that will reduce prevalence rate among them.

- (i) Management of STI shall be provided through the syndromic management approach at all levels, supported by diagnostic services as necessary.

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- (ii) HTC services and condom use shall be fully integrated in the management of STI and shall routinely be offered to all men, women and young people, who present for STI services to promote and protect their health.
 - (iii) Young people shall not require parental consent for STI services, and confidentiality shall be maintained at all times.

To facilitate the provision of services related to sexually transmitted diseases, the SRHR policy promotes:

- a) behavior change interventions to reduce risky behavior among men, women and young people.
- b) integration of STI and HIV and AIDS services.

Young people in Reproductive Health

Young people face a lot of challenges in Malawi due to the emerging economic situation, changing patterns in sexual behaviour, a social environment that encourages certain harmful cultural practices, premarital sex and lack of access to family planning education and services. High risk sexual behaviour is more common among young people aged between 15 and 24. It is crucial that young adolescents therefore take heed of policy guidance to curb negative impact of their limitations to access services.

Policy Statements

The SRHR Policy 2017-2022 stipulates that:

- (i) All young people shall have access to quality youth friendly health services that are safe, guard their right to privacy, ensure confidentiality, and provide respect and informed consent, while also respecting their cultural values and religious beliefs.
- (ii) Youth friendly health services shall be provided at all levels of care.

National Youth Policy (2013)

Critical to access to SRHR is the notion of youth. The National Youth Policy (2013), policy defines youth as all persons from age 10 to 35 years regardless of their sex, race, education, culture, religion, economic, marital and physical status. It recognizes that youth is a definitive social entity that has its own specific problems, concerns, needs, and aspirations. It must be mentioned here that the definition of youth has continuously changed variably in response to political, economic and social perspectives

Policy Statements

- At least 30% representation of youth are in decision making bodies at all levels such as Village Development Committees, Area Development Committees, District Councils and National Parliament;

- Equal access to young men and young women to participate in decision-making and in fulfilling civic duties;

Adults have an inherent role to play for the youth s follows:

The role of adults in the SRHR for youth

- Providing for the physical, emotional, mental, moral, spiritual and economic well- being of the youth;
- Ensure provision of quality education to youth and the time to dedicate for their school attendance;
- Protecting youth against all forms of violence including abuse, discrimination, deprivation, neglect and exploitation;
- Assisting, encouraging and motivating young women and men in reaching their goals and full potential;
- Guiding and counselling youth on the impacts of HIV and AIDS, early and child bearing and beyond SRHR issues;
- Protecting the youth against gender- based violence and early marriages;
- Protect youth from exploitation including child-labour and child sex work

Source: Malawi National Youth Policy, 2013.

Conclusion

Umunthu Plus and Umunthu FM continue to advocate for equitable provision of services across all humanity in Malawi. It is our hope that while this compilation is not a substitute for the prescribed laws and policies, this compilation will help adolescent girls to better access SRHR services. Consultations with Umunthu Plus and Umunthu FM staff, direct SRHR service providers, Victim Support Units (VSU), District Social Welfare Office (DSWO), District Gender Office (DGO) and Community Policing Unit (CPU) is encouraged in case of abuse or need for clarifications.