

## **Factsheet: Reproductive Health related Laws in Malawi**

This factsheet gives you some facts about laws in Malawi concerning sexuality and reproduction.

Note that in daily Malawi life customs and habits may differ from the law. For instance persons may be acting legal according to law, but still be judged upon by their community (for having premarital sex for instance).

**Legal age of marriage:** Persons below the age of 18 shall be prevented from entering into marriage. However persons between the ages of 15 and 18, may enter into marriage with consent of their parents or guardians.

**Age of consent to have sex:** The law of Malawi (The Penal Code) doesn't provide for a legal age of consent.

**Rape/defilement:** Rape/defilement is illegal.

Rape/defilement is:

- A woman or girl is forced to have sex without her consent;
- Consent is obtained by force or means of threats or intimidation (pressure, violence). This is illegal;
- A man may trick a married woman into having sex with her, by impersonate her husband;
- Also men can be raped by men (anally), this we call sodomy and is illegal as well.

In Malawian law to this date there is no law for rape of men by women.

**Abortion:** In Malawi performing abortion is illegal except when it is performed to save the life of the pregnant woman. This should be agreed on by a medical practitioner, who should examine her considers her to be in danger.

However the Gender Bill gives every woman the right to choose whether or not to have a child.

**Gender: Laws addressing gender & children**

**Section 13a** of the Constitution provides for gender equality for women and men

**Section 20** prohibits discrimination in any form on grounds of sex

**Section 23** provides for the protection of children from any treatment that is likely to be hazardous, interfere with their education, harmful to their health or to their physical, mental or spiritual or social development.

**Homosexuality:** The Constitution criminalizes homosexuality but as of 2013, the provision has been suspended pending judicial review.

**Articles addressing harmful practices and inheritance:**

The **Constitution** states that customs and practices that discriminate against woman and men should be eliminated, particularly practices such as sexual abuse, harassment and violence.

**Note:** By customary law in Malawi it is unlawful for someone to have sexual intercourse with a girl or woman without her consent. However, in daily (cultural) practice this may happen anyway. Consent in those circumstances will be given by the people entrusted with the care of the girl or woman, and it implies that woman/girls are the property of men. ***This is actually illegal.*** A woman or girl should consent herself and never be forced to have sex.

Some of these cultural practices are:

1. **Initiation ceremonies:** when a girl reaches puberty she undergoes an initiation ceremony welcoming her into adulthood. Girls are taught about pleasing one's husband as well as being gentle and obedient wives.

The initiation at times involves bringing in a man to the place where the initiation is being conducted, commonly known as 'Fisi' (hyena in English) who is expected to have sexual intercourse with the girl to test the knowledge she has gained.

2. **Ritual cleansing ceremonies**

There are certain rituals which demand sexual intercourse with women as a form of 'cleansing' when calamity has befallen a community to appease spirits. It is imperative therefore for the women to conduct these rituals whether they approve of the person they are chosen to have sex with or not. One of those rituals is known as widow cleansing: in this case a widow has to have sex with a man to end her period of mourning, after her own husband has died.

3. **'Kulandira Alendo'/Installation of New Chiefs**

Installation of New Chiefs is another commonly practiced rite among the Chewa tribes of the Central Region of Malawi that is also a violation of the rights of young girls. During the installation of chiefs, other chiefs from near and far come and spend nights in the Chief-Designate's village. During such nights, it is part of traditional etiquette that young girls should be organized that will be required to keep the visiting chiefs company and have sex with them during the night.

*Last adapted 28 2 2014*