



**Human Rights Watch Submission
to the United Nations Committee on Economic, Social and Cultural Rights
Review of Malawi
72nd Pre-Sessional Working Group
*January 2023***

We write in advance of the 72nd pre-session of the Committee on Economic, Social and Cultural Rights regarding Malawi's compliance with the International Covenant on Economic, Social and Cultural Rights. This submission includes information on teenage pregnancy and child marriage as barriers to the right to education, government-endorsed online learning during the Covid-19 pandemic, and the protection of education from attack.

Teenage Pregnancy and Child Marriage: Barriers to the Right to Education (articles 2, 3, and 13)

From 2004 to 2020, the adolescent birth rate in Malawi was 138 per 1,000 adolescent girls and women aged 15-19.¹ This is above the regional rate in East and Southern Africa and more than three times the world rate.² Recent data on child marriage in Malawi is unavailable, but Malawi's 2015-2016 demographic and health survey indicates that 42 percent of girls in the country are married before the age of 18, and 9 percent of girls are married before the age of 15.³ Pregnancy is both a barrier to girls continuing their education and often a consequence of girls dropping out of

¹ United Nations Population Fund (UNFPA), "Seeing the Unseen: The case for action in the neglected crisis of unintended pregnancy," 2022, https://www.unfpa.org/sites/default/files/pub-pdf/EN_SWP22%20report_o.pdf (accessed December 6, 2022).

² Ibid.

³ National Statistical Office, Malawi Demographic and Health Survey 2015-16, February 2017, <https://dhsprogram.com/pubs/pdf/FR319/FR319.pdf>, (accessed January 5, 2023).

school. Numerous studies have shown that the longer a girl stays in school, the less likely she is to be married as a child or become pregnant during her teenage years.⁴

In 2017, Malawi removed from its Constitution a provision allowing children between the ages of 15 and 18 to marry with parental consent, thereby aligning the minimum age of marriage with the Marriage, Divorce and Family Relations Act,⁵ a law that sets 18 as the minimum age of marriage.⁶

Malawi has adopted a readmission policy (introduced in 1993 and revised in 2016) to ensure that pregnant girls can resume their education after giving birth. It states that girls are not allowed to remain in school while pregnant but are expected to return to school one year after giving birth. Students, their parents or guardians, and the school's head teacher are expected to fill in a standard school dropout and readmission form detailing both processes. This provision replaced a previous and more complex requirement for students to submit letters to education officials.⁷ Malawi also provides students readmitted after pregnancy counseling and psychosocial as well as remedial academic support.

However, strong social and traditional norms drive the practice of child marriage in Malawi. Many communities view child marriage as being in the best interests of girls and their families, and some families see child marriage as a way to improve their economic status, through the money or goods the groom gives to the bride's family, or through continued support by their daughter's husband. For some girls, marriage may suggest a route to escape poverty. Adolescent pregnancy is also stigmatized in Malawi, and marriage is regarded as a means of protecting girls who become pregnant from undermining family honor.⁸

Moreover, community and societal pressures push women and girls to get pregnant soon after marriage. Many girls interviewed by Human Rights Watch in 2013 had poor knowledge of reproductive health and contraception use and lacked access to such information and services.⁹

⁴ UNFPA, *Worlds Apart: Reproductive health and rights in an age of inequality*, the State of World Population 2017, https://www.unfpa.org/sites/default/files/sowp/downloads/UNFPA_PUB_2017_EN_SWOP.pdf (accessed December 8, 2022).

⁵ Available at "Malawi: Marriage Registration," UNICEF, <https://data.unicef.org/crvs/malawi/> (accessed December 6, 2022).

⁶ Human Rights Watch, "Malawi Amends Constitution to Remove Child Marriage Loophole," February 23, 2017, <https://www.hrw.org/news/2017/02/24/malawi-amends-constitution-remove-child-marriage-loophole> (accessed December 8, 2022).

⁷ Human Rights Watch, "A Brighter Future: Empowering Pregnant Girls and Adolescent Mothers to Stay in School," August 2020, Index; Human Rights Watch, *Leave No Girl behind in Africa: Discrimination in Education against Pregnant Girls and Adolescent Mothers*, (New York: Human Rights Watch, 2018) https://www.hrw.org/sites/default/files/report_pdf/au0618_web.pdf.

⁸ Human Rights Watch submission to the Committee on the Rights of the Child concerning Malawi, November 21, 2016, <https://www.hrw.org/news/2016/11/21/human-rights-watch-submission-committee-rights-child-concerning-malawi> (accessed December 8, 2022).

⁹ Human Rights Watch, *I've Never Experienced Happiness: Child Marriage in Malawi*, March 2014, https://www.hrw.org/sites/default/files/reports/malawio314_ForUpload.pdf (accessed December 8, 2022).

Abortion in Malawi is illegal and punishable by imprisonment,¹⁰ unless surgical intervention is done in good faith for the “preservation of the mother’s life.”¹¹ Malawi was due to debate the Termination of Pregnancy Bill in Parliament in February 2021, but the bill was tabled.¹²

Human Rights Watch encourages the Committee to:

Commend Malawi for removing from its Constitution the provision allowing children between the ages of 15 and 18 to marry with parental consent.

Human Rights Watch also encourages the Committee to call on the government of Malawi to:

Continue to combat child marriage through national strategies, with input from women’s and children’s rights groups, health professionals, and other service providers; and coordinate efforts among all relevant ministries.

Address social, financial, and systemic barriers that inhibit adolescent mothers from continuing their education.

Adopt a continuation policy that allows students who are pregnant, mothers, and/or married to continue their education while pregnant and after giving birth.

Take steps to ensure that schools are free from stigma and discrimination.

Ensure that adolescents have confidential access to modern forms of contraceptives and information on sexual and reproductive health rights, including through comprehensive sexuality education.

Resubmit the Termination of Pregnancy Bill for debate in parliament and carry out public awareness campaigns on the dangers of unsafe abortions.

Government-Endorsed Online Learning during the Covid-19 Pandemic (article 13)

In a global investigation of education technology (EdTech) products endorsed by the world’s most populous countries for children’s education during the pandemic, Human Rights Watch found that the Malawian government violated children’s right to privacy and other rights.¹³

Human Rights Watch analyzed Notesmaster, an EdTech website that was used by Malawi’s Education Ministry as its primary means of delivering online education to secondary school students during the pandemic. The website was developed in partnership with Notesmaster, its

¹⁰ Malawi Penal Code, chapter XV, sections 149-151.

¹¹ Ibid., chapter XXII, section 243.

¹² Southern Africa Litigation Centre, “Malawi’s obligation to enact the Termination of Pregnancy Bill,” September 27, 2021, <https://www.southernafricalitigationcentre.org/2021/09/27/malawis-obligation-to-enact-the-termination-of-pregnancy-bill/> (accessed January 5, 2023).

¹³ Human Rights Watch, “How Dare They Peep into My Private Life?”, May 25, 2022, <https://www.hrw.org/report/2022/05/25/how-dare-they-peep-my-private-life/childrens-rights-violations-governments> (accessed December 12, 2022).

parent company of the same name. As most Malawian children were not likely to have access to affordable, reliable internet,¹⁴ access to the website was provided to students at no cost through a partnership with Telekom Networks Malawi, a major telecommunications provider in the country.¹⁵

Notesmaster was found surveilling children not only within its online learning platform, but also tracking them across the internet, outside of school hours, and deep into their private lives.¹⁶ Human Rights Watch observed 14 ad trackers and 15 third-party cookies sending children’s data to a combined 16 advertising technology (AdTech) companies. In most instances, Notesmaster transmitted this data to domains owned by these companies that are intended to receive and process incoming data for commercial or advertising purposes.

Among these, Human Rights Watch detected Notesmaster transmitting children’s data to Oracle’s BlueKai Data Management Platform, a data broker that has amassed one of the world’s largest troves of data on people online.¹⁷ In June 2020, TechCrunch reported that BlueKai had left one of its servers unprotected, spilling data on billions of records on people—names, home addresses, other personally identifiable data—out onto the open web for anyone to find, resulting in one of the most significant data security incidents of 2020.¹⁸ Human Rights Watch detected Notesmaster sending children’s data to Oracle’s BlueKai, both before and after the reported data breach.¹⁹

In addition, Human Rights Watch observed Notesmaster collecting and sending children’s data to Meta (formerly Facebook) through Facebook Pixel, an AdTech tool that could not only be used by Notesmaster to later target its child users with ads on Facebook and Instagram, but also allowed Meta to retain and use this data for its own advertising purposes. Notesmaster sent children’s data to Google’s advertising platform, and through its use of Google Analytics’ “remarketing

¹⁴ Human Rights Watch, “Years Don’t Wait for Them,” May 17, 2021, <https://www.hrw.org/report/2021/05/17/years-dont-wait-them/increased-inequalities-childrens-right-education-due-covid> (accessed December 21, 2022); Freedom House, “Freedom on the Net 2021, Malawi,” 2022, <https://freedomhouse.org/country/malawi/freedom-net/2021> (accessed December 21, 2022).

¹⁵ Speech by Dr. William Susuwele-Banda, Minister of Education, Science and Technology, April 21, 2020, https://www.facebook.com/permalink.php?id=262009470606274&story_fbid=1659255777548296 (accessed December 15, 2022).

¹⁶ Human Rights Watch, “Privacy Snapshot: Notesmaster,” June 2021, https://features.hrw.org/features/StudentsNotProducts/files/privacy_snapshots/Privacy%20Snapshot%20-%20Malawi%20Notesmaster.pdf (accessed December 15, 2022).

¹⁷ By one estimate, BlueKai tracks over one percent of all web traffic in the world. See Cliqz, Who Tracks Me, “BlueKai,” <https://whotracks.me/trackers/bluekai.html> (accessed July 12, 2021); Bennett Cyphers and Gennie Gebhart, “Behind the One-Way Mirror: A Deep Dive Into the Technology of Corporate Surveillance,” Electronic Frontier Foundation, December 2, 2019, <https://www.eff.org/wp/behind-the-one-way-mirror> (accessed July 12, 2021).

¹⁸ Zack Whittaker, “Oracle’s BlueKai Tracks You Across the Web. That Data Spilled Online,” *TechCrunch*, June 19, 2020, <https://techcrunch.com/2020/06/19/oracle-bluekai-web-tracking/> (accessed July 12, 2021).

¹⁹ Human Rights Watch, “How Dare They Peep into My Private Life?,” May 25, 2022.

audiences,” an AdTech tool that allowed Notesmaster to target its users with ads across the internet.²⁰

In doing so, Notesmaster permitted these companies the opportunity to stitch together and analyze the data they received to guess at a child’s personal characteristics and interests (“profiling”), and to predict what a child might do next and how they might be influenced. Access to these insights could then be sold to anyone—advertisers, data brokers, and others—who sought to target a defined group of people with similar characteristics online.

Profiling and targeting children on the basis of their actual or inferred characteristics not only infringes on their privacy, but also risks abusing or violating their other rights, particularly when this information is used to anticipate and guide them toward outcomes that are harmful or not in their best interest. The Committee on the Rights of the Child has warned that such processing and use of children’s data “may result in violations or abuses of children’s rights,”²¹ and has called on states to “prohibit by law the profiling or targeting of children of any age for commercial purposes on the basis of a digital record of their actual or inferred characteristics, including group or collective data, targeting by association or affinity profiling.”²²

Notesmaster also deployed “key logging,” a particularly invasive procedure that surreptitiously captures personal information that people enter on forms before they hit submit, much less consent. Human Rights Watch detected Notesmaster using key logging to send child users’ names, usernames, passwords, and other information to YouTube.

Children were compelled to give up their privacy for their learning. Human Rights Watch finds that these tracking techniques, designed for advertising and commercial purposes, are neither proportionate nor necessary for Notesmaster to function or to deliver educational content. Their use on children in an educational setting arbitrarily interferes with children’s right to privacy.

Children who relied on Notesmaster as their primary source of education during school closures could not reasonably object to such surveillance without opting out of compulsory education and giving up on formal learning during the pandemic. Notesmaster did not allow children to decline to be tracked. As these tracking technologies were invisible to the user, children had no reasonably practical way of knowing the existence and extent of these data practices, much less the impacts on their rights.

²⁰ Human Rights Watch, “Privacy Snapshot: Notesmaster,” June 2021.

²¹ United Nations Committee on the Rights of the Child, General Comment No. 25 on Children’s Rights in Relation to the Digital Environment, U.N. Doc. CRC/C/GC/25 (2021), para. 40.

²² *Ibid.*, para. 42.

Human Rights Watch did not find evidence that Malawi's Education Ministry took measures to prevent or mitigate children's rights abuses through Notemaster's data practices, or that the Education Ministry checked whether Notesmaster was safe for children to use. As a result, children whose families were able to afford access to the internet and connected devices, or who made hard sacrifices in order to do so, were exposed to the risks of misuse or exploitation of their data.

The Education Ministry did not respond to Human Rights Watch's request for comment. Notesmaster denied that it shares children's data with third-party advertising companies and stated that it does not display advertising on its site.²³ In its response, Oracle confirmed the data leak, and said that an investigation it conducted in 2020 did not uncover evidence that data relating to children were involved. Oracle stated that any receipt of data related to children would be a violation of Oracle's agreements and policy, and did not address whether it had nonetheless received child users' data from six EdTech websites, including Notesmaster. The company did not address whether data received from Notesmaster were exposed as part of the 2020 security breach, and whether it had informed Notesmaster or the other EdTech websites about the security breach.²⁴

Meta did not address whether it was receiving children's user data from Notesmaster and said that it was their customers' responsibility to comply with their policies and applicable laws that prohibit the collection of children's data.²⁵

Human Rights Watch recommends that the Committee ask the government of Malawi:

- Does the government have plans to amend its proposed draft data protection law to incorporate comprehensive protections for children?
- What recourse or remedy does the government provide, or is planning to provide, to children who have experienced infringements of their rights as a result of their use of Notesmaster and whose data remain at risk of misuse and exploitation?

Human Rights Watch recommends that the Committee call on the government of Malawi to:

- Amend and adopt its proposed draft data protection law to incorporate comprehensive protections for children. Such protections should require that any processing of children's data meet strict requirements of necessity and proportionality, regardless of consent.

²³ Human Rights Watch email correspondence with Dean Dundas, Managing Director, Notesmaster, April 20, 2022.

²⁴ Human Rights Watch email correspondence with Dorian Daley, Executive Vice President and General Counsel, Oracle, April 15, 2022.

²⁵ Human Rights Watch email correspondence with Miranda Sissons, Director, Human Rights Policy, Meta, April 15, 2022.

- Provide remedies for children whose data were collected through their use of Notesmaster. To do so, the Education Ministry should:
 - Require Notesmaster to immediately remove all ad tracking technologies from its website, and delete any children’s data collected during the pandemic.
 - Immediately notify and guide affected schools, teachers, parents, and children to prevent further collection and misuse of children’s data.
 - Require AdTech companies to identify and immediately delete any children’s data they received from Notesmaster during the pandemic.
- Ensure that any services that are endorsed or procured to deliver online education are safe for children. In coordination with data protection authorities and other relevant institutions, the Education Ministry should:
 - Require all actors providing digital educational services to children to identify, prevent, and mitigate negative impacts on children’s rights, including across their business relationships and global operations.
 - Require child data protection impact assessments of any educational technology provider seeking public investment, procurement, or endorsement.
 - Ensure that public and private educational institutions enter into written contracts with EdTech providers that include protections for children’s data.
 - Define and provide special protections for categories of sensitive personal data that should never be collected from children in educational settings.

Protection of Education from Attack (article 13)

The Safe Schools Declaration is an inter-governmental political commitment that provides countries the opportunity to express political support for the protection of students, teachers, and schools during times of armed conflict,²⁶ the importance of the continuation of education during armed conflict, and the implementation of the Guidelines for Protecting Schools and Universities from Military Use during Armed Conflict.²⁷ Malawi endorsed the Safe Schools Declaration in February 2020.²⁸

²⁶ Safe Schools Declaration, May 28, 2015,

https://www.regjeringen.no/globalassets/departementene/ud/vedlegg/utvikling/safe_schools_declaration.pdf (accessed December 8, 2022).

²⁷ GCPEA, Guidelines for Protecting Schools and Universities from Military Use during Armed Conflict, March 18, 2014,

http://protectingeducation.org/sites/default/files/documents/guidelines_en.pdf (accessed December 8, 2022).

²⁸ GCPEA, “Safe Schools Declaration Endorsements,” 2022, <https://ssd.protectingeducation.org/endorsement/> (accessed December 8, 2022).

In October 2020, the African Committee of Experts on the Rights and Welfare of the Child issued a general comment on children and armed conflict in Africa, in which they stated that “all State Parties should either ban the use of schools for military purposes, or, at a minimum, enact concrete measures to deter the use of schools for military purposes in accordance with the Safe Schools Declaration’s Guidelines on Protecting Schools and Universities from Military Use during Armed Conflict, including through their legislation, doctrine, military manuals, rules of engagement, operational orders, and other means of dissemination to encourage appropriate practice throughout the chain of command.”²⁹ In January 2021, the African Union began requiring countries contributing troops to its peace operations to “ensure that schools are not attacked and used for military purposes.”³⁰

As of September 2022, Malawi provides 731 troops to UN peacekeeping missions.³¹ The 2017 Child Protection Policy of the UN Department of Peace Operations, Department of Field Support, and Department of Political Affairs notes: “United Nations peace operations should refrain from all actions that impede children’s access to education, including the use of school premises. This applies particularly to uniformed personnel. Furthermore ... United Nations peace operations personnel shall at no time and for no amount of time use schools for military purposes.”³²

Human Rights Watch recommends that the Committee pose the following questions to the government of Malawi:

What steps has Malawi taken to implement the commitments in the Safe Schools Declaration?

Do any Malawian laws, policies, or trainings provide explicit protection for schools and universities from military use during armed conflict?

Does pre-deployment training for Malawian peacekeepers include the ban on using schools in military operations?

Human Rights Watch encourages the Committee to:

Congratulate Malawi for endorsing the Safe Schools Declaration.

²⁹ African Committee on the Rights and Welfare of the Child, General Comment on Article 22: Children in Armed Conflict, (2020), para. 59.

³⁰ African Union, Peace and Security Department, “International Day to Protect Education from Attack: Joint Statement by African Union Commission’s Department of Political Affairs, Peace and Security (PAPS); Department of Health, Humanitarian Affairs and Social Development and Save the Children International,” September 9, 2021, <https://www.peaceau.org/en/article/international-day-to-protect-education-from-attack-joint-statement-by-african-union-commission-s-department-of-political-affairs-peace-and-security-paps-department-of-health-humanitarian-affairs-and-social-development-and-save-the-children-international> (accessed December 5, 2022).

³¹ United Nations Peacekeeping, “Troop and Police Contributors,” <https://peacekeeping.un.org/en/troop-and-police-contributors> (accessed December 8, 2022).

³² UN Department of Peacekeeping Operations, Department of Field Support and Department of Political Affairs, “Child Protection in UN Peace Operations (Policy),” June 2017.

- Recommend that the government of Malawi implement the commitments of the Safe Schools Declaration and share any good practices with other countries in the African Union.

