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# List of abbreviations and acronyms

**CECAP** - Coligação para a eliminação de Casamentos Prematuros  
**DHS** - Demographic Health Survey;  
**DFID** - Department of International Development;  
**MICS** - Multiple Indicator Cluster Survey;  
**INE** - Census Projections from the National Institute of Statistics;  
**ILO** - The International Labor Organization  
**UNICEF** - The United Nations Children’s Fund works for children’s rights;  
**USAID** - The United States Agency for International Development;
Access to social protection minimum floors as a tool to end early marriage in Mozambique

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Abstract

Mozambique has the seventh highest child marriage prevalence rate in the world. On average, one out of two girls is married before her 18th birthday. 2 In 2008, over half of the women aged 20–24 (52%) were either married or in a union before the age of 18.3 Child marriage occurs more frequently among girls who are the least educated, poor and living in rural areas.4

According to the Constitution of Mozambique, a child is defined as a human being under 18 years.5 The Law in Mozambique provides for exceptions that lower the age,6 (e.g. less than 16 years). The fact that the law provides for exceptions, it leads to child rights (e.g. equality, the right to education; health; protection against child abuse and torture; etc.) being violated. The causes for early marriages can be grouped as follows: poverty, customs and gender inequality.7

As mentioned above early marriage excludes the girl child from the process of development. Development is defined as both constitutive and instrumental; it is useful as a means and an end to provide people with the ability to choose.8 Although many African countries have registered progress in addressing early marriage, the progress is still very low. Experience shows that simply passing laws banning the practice has little effect of prohibiting early marriage.9 However, some NGO programs aimed at protecting girls from the practice have been considered successful. For instance, the Ethiopian world learning program which was implemented by USAID (The United States Agency for International Development) and Pathfinder and the Zambia cash transfer program, implemented by the government and the World Bank.10 These programs empower girls at risk of child marriage through, for example, life skills training, provision of safe spaces for girls

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3 As above
4 As above
5 See article 4 of the Mozambican Constitution.
6 See article 30 (a) of the Family Law in Mozambique, Lei n°10/2004 de 25 de Agosto
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to discuss their futures, the provision of information about their options, and the development of support networks.\textsuperscript{11}

Nonetheless, current legal studies do not mention social protection minimum floors as a tool to empower a girl child and to end child marriage. Thus, in comparison to the prior studies (casamentos prematuros em Moçambique context tendências e realidades and casamentos prematuros na adolescência em Moçambique causas e impacto)\textsuperscript{12} the current study focuses on: first, showing that operating instruments for social security in Mozambique have not been designed to ensure the protection of the girl child, assuming that, well- designed social security policies are inclusive and contribute to a better environment for economic growth. Employment opportunities improve incentives for parents to invest in their children’s education.\textsuperscript{13} Therefore, it is erroneous to think that social security is a luxury to be afforded only when growth has taken place or when countries have reached a certain level of per capita income.

In order to discuss the topic, the study, first (1), gives situational analyses of child marriage in Mozambique. Second (2), there is a brief description of the existing social security laws and the challenges that children in need face to be eligible for minimum social protection floor. Third (3), the study identifies situations of inadequacy in the legal framework for inclusive development. Finally (4), the conclusion brings the findings of the study together.


\textsuperscript{13}GLEWWE, P and JACOBY, H.G (2004), ’Economic growth and the demand for education: is there a wealth effect?’, Journal of Development Economics, Vol. 74, pp. 33-51
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Introduction

Mozambique is located along the Indian Ocean in southern Africa, with an estimated population of approximately 25 million. The life expectancy is about 52.6 years – there is an HIV/AIDS prevalence of 11.5% distributed amongst 13.1% of female and 9.2% of male adults aged 15–49, totaling nearly three million individuals. Children make up 52% of the total population. Almost 2 million (approximately 15%) of these children are orphans because of HIV, chronic illness or for poverty related reasons (where one or both parents have abandoned the child to work elsewhere).

In 1992, when the signing of a peace agreement brought an end to 15 years of civil strife, Mozambique was considered a poor country, ranking 180 of 188 in the 2015 Human Development Index. Since then, political stability and democratic governance have paved the way for sustained socio-economic development in Mozambique. Mozambique has been ranking among the top ten fastest growing economies in the world. The country was recognized as an example of post-war reconstruction and economic recovery in Africa up until 2014. The country held its first democratic elections in 1994. In that same year, Mozambique endorsed the Convention on the rights of a child where it adopted the definition of a child as being as every human being below the age of eighteen years.

However, despite strong economic performance, and two decades of peace and political stability, Mozambique is one of ten countries with the highest rates of child marriage in the world. Child marriage affects girls’ rights to education and health. Studies show that child marriage is one of the reasons why girls do not transition to secondary education or later drop out. Therefore, in this study, it is argued that an exposure to child marriage should be considered a vulnerability that qualify the girl child to access minimum social protection floor as an inclusive development tool.

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16 idem
20 According to IMF, Mozambique’s economic outlook remains robust. Growth of 6.3 percent is expected in 2015, and remains below potential at 6.5 percent in 2016, mainly due to a stagnant mining sector and substantially tighter fiscal and monetary policies. Over the medium term, growth is projected to recover to 7.5–8 percent, supported by massive investment in natural gas projects and higher coal production if key agreements can be reached for coal and gas sector development. Inflation is expected to increase towards the BM’s medium target of 5–6 percent, due to the recent depreciation of the metical and adjustments in administered prices. In, IMF Country Report No. 16/9, Republic of Mozambique Staff Report for the 2015 article IV consultation, fifth review under the policy support instrument, request for modification of assessment criteria, and request for an 18-month arrangement under the standby credit facility—press release; staff report; and statement by the executive director for the republic of Mozambique, Jun, 2016. available at: http://www.imf.org/external/pubs/ft/scr/2016/cr1609.pdf.
22 As above, article 1.
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Methodology

The study will analyse:

The legal provisions on the rights and welfare of the child looking at the opportunities that the minimum social protection floor framework can offer vis a vis the issue of child marriage. Data from: Demographic Health Survey (DHS) 1997, 2003, 2011; Multiple Indicator Cluster Survey (MICS) 2008; Census Projections from the National Institute of Statistics (INE) 2007; and Administrative data from the Ministry of Education.

The study considers two main age groups, namely 15 and below as well as 16 to 18 years. It is important to note that in Mozambique, child marriage is illegal before the age of 18. However, the law allows for exceptions from 16 years of age provided there is consent from the child’s parents (Family Law 2004).

Chapter 1

1.1 Conceptualization and the legal framework of the rights of the girl child

Concept of early marriage

Child marriage occurs when one or both spouses are below the age of 18.24 However, the minimum legal age for marriage (without a parent or a guardian) consent is eighteen.25 Normally, exceptions are made whereby there is the consent of the parents or legal representatives and it is verified to be a circumstance of recognized public or family interest.26 In this circumstance, the age can be lowered to 16 years old as provided legally. However, according to the customary law and generalized practices, this age can be lowered to less than 16 years old.27

However it is often referred to as “early and forced” marriage because, the girl, given her age, can hardly make a free and informed decision about their marriage partner, the timing or the implication of this building commitment.28

The Constitution of Mozambique provides for the paramount principle of the best interest of the child (Article 47, paragraph 3) according to which all public entities or private institutions shall take into account.29

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24 Article 30 a) of Law no. 10/2004 of 25 of August, BR no. 34 I Serie. São impedimentos derrientes, obstanto ao casamento pessoas a quem respeitam com qualquer outra: a) a idade inferior a dezoito anos.
25 As above
26 Article 30 , no. 2, of Law no. 10/2004 of 25 of August, BR no. 34 I Serie. A mulher ou homem com mais de dezaseis anos, a titulo excepcional, pode contrair casamento, quando ocorram circustâncias de reconhecimento interesse publico e familiar e houver consentimento dos pais ou dos legais representantes.
28 See article 7, of the Law no. 10/2004. O casamento é uma uniao voluntaria e singular entre um homem e uma mulher, com o proprio de constituir familia mediante comunhao plena de vida.
29 Article 47 of the 2004 Constitution was approved on 16, November 2004 by Assembly of the Republic and came into force in 21, January 2005 and it is published in BR No. 51, 1er Serie, 22, December 2004. Todos os
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The principle of the best interest of the child simply means considering the child before a decision affecting his/her life is made. This is a principle that has established itself through all matters and legislation affecting the well-being of the child. It is an overarching common law principle that has been used to assist primarily courts and other institutions in the decision-making process. It should be borne in mind that courts are the upper guardians of minor children and, if the need arises, have a final say in determining the overall welfare of the child. In contrast, the law permits the limitation of the rights to be protected from harmful cultural practices, access to education and development of the girl child without any court intervention.

Thus, early marriage is in clear violation of article 56 of the Constitution, which prohibits any type of limitation of the right, provided in the bill of rights without reasonable and justified ground. If the paramount principle of the best interest of the child is considered central in all decisions made by the public and private entities, the two exceptions made by the law to allow child marriage (namely parent consent and public interest) cannot be justified.

The legal exceptions mentioned above are also contrary to the African Charter on Human and Peoples’ Rights where Article 18, paragraph 3 highlights that the state has a duty to ensure the protection of women’s and children’s rights, as stipulated in international declarations and conventions. It is also enshrined in the Protocol on Rights of Women in Africa (Article 6 section b where state parties shall take appropriate legislative measures to ensure that the minimum age of marriage for women is 18 years). It is to be noted that for the Constitution, the African Charter on Human and Peoples’ Rights was taken as a yardstick for the bill of rights.

1.2 Situational analyses of child marriage in Mozambique

According to the Demographic Health Survey (DHS) of 2011, 14.3% of Mozambican girls between the ages of 20 and 24 were married before 15 years of age. The proportion of girls in the same age group married before 18 is 48.2% of which 56.3% were married before they reached 15 years.
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of age. This also undermines efforts to reduce poverty in particular by halting girls’ education prematurely and leading directly to teenage pregnancy, with heightened risks of maternal and child mortality.

There is empirical evidence linking child marriage and adolescent pregnancies. It is considered that the overwhelming majority of adolescent pregnancies happen among girls who have married early. Furthermore, girls have their first child fifteen (15) months after they get married and rarely more than 24 months after their marriage. For instance, if a girl is 16 years for example, she will be a mother before reaching the age of 18 years.

However, there is an acknowledgment of some improvements in the rates of a child marriage in recent years. Yet, the changes remained statistically insignificant in most provinces, with a partial exception of the northern provinces, which have seen a significant decrease from a very high starting point.

Furthermore, in almost all provinces, the modest improvements in child marriage rates have been insufficient to make up for the fast population growth, meaning that even if the percentage of girls married in their teens has decreased, the absolute number of child marriages has increased.

Finally, in many provinces, the improvement in the rate of child marriages has not translated into an improvement in adolescent pregnancy rates, due to the increase of births out of wedlock.

The table and the graphic below illustrates that, 14.3% of Mozambican girls between the ages of 20 and 24 were married before 15 years of age. The proportion of girls in the same age group married before 18 is 48.2%. The highest rates of child marriage were found in northern provinces. In Niassa, 24.4% of girls aged 20-24 were married before 15 (representing 13.865 girls). The provinces that have the largest numbers of girls married in their teens are Zambezia and Nampula with 95.525 and 129.604 girls married before 18, respectively.

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39 Ibidem.


41 Ibidem.


43 Ibidem.
Table 1. Situation of early marriage according to the provinces

<table>
<thead>
<tr>
<th>Province</th>
<th>Female Under 15 years old</th>
<th>Female Under 18 years old</th>
<th>Male Under 18 years old</th>
</tr>
</thead>
<tbody>
<tr>
<td>Niassa</td>
<td>24.4</td>
<td>55.7</td>
<td>2.4</td>
</tr>
<tr>
<td>Cabo-Delgado</td>
<td>17.6</td>
<td>60.7</td>
<td>5.2</td>
</tr>
<tr>
<td>Nampula</td>
<td>17.6</td>
<td>62.3</td>
<td>11.9</td>
</tr>
<tr>
<td>Zambezia</td>
<td>17.1</td>
<td>47.1</td>
<td>11.9</td>
</tr>
<tr>
<td>Tete</td>
<td>13.7</td>
<td>51.6</td>
<td>11.8</td>
</tr>
<tr>
<td>Manica</td>
<td>17.7</td>
<td>59.2</td>
<td>10.8</td>
</tr>
<tr>
<td>Sofala</td>
<td>16.8</td>
<td>49.4</td>
<td>4.4</td>
</tr>
<tr>
<td>Inhambane</td>
<td>11.2</td>
<td>39.1</td>
<td>6.6</td>
</tr>
<tr>
<td>Gaza</td>
<td>7.1</td>
<td>40.9</td>
<td>5.7</td>
</tr>
<tr>
<td>Mphuto province</td>
<td>5.2</td>
<td>25.6</td>
<td>1.6</td>
</tr>
<tr>
<td>Maputo City</td>
<td>2.5</td>
<td>14.9</td>
<td>3.9</td>
</tr>
<tr>
<td>Urban</td>
<td>11.5</td>
<td>36.1</td>
<td>4.8</td>
</tr>
<tr>
<td>Rural</td>
<td>16.1</td>
<td>55.7</td>
<td>11.8</td>
</tr>
<tr>
<td>Total</td>
<td>14.3</td>
<td>48.2</td>
<td>8.7</td>
</tr>
</tbody>
</table>

Source: ROSC44

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1.3 Causes of early marriage

According to UNICEF, the economic pressure on the poorest households and the prevailing socio-cultural practices continue to lead families to marry their daughters at an earlier age, when girls have not yet reached sufficient maturity for marriage and pregnancy or to take responsibility to be wives and mothers. In the sense that parents may feel that giving their daughter in marriage will reduce family expenses or temporally increase their income, in cases where a bride’s parents are paid bride price.

Similarly, CECAP (Coligação para a eliminação de Casamentos Prematuros) highlighted the importance of economic factors, in addition to geographic and religious factors, as girls from the richest quintile and girls from households that own land are significantly less likely to get married in their teens.

The probability of getting married as a child also decreases with the age of the head of household and for girls living in household headed by women. When it comes to preventing adolescent pregnancies, one crucial factor appears to be women’s empowerment, and in particular their ability to request the use of contraception. Regional disparities in the prevalence of early marriages suggest that specific sociocultural factors in conjunction with poverty in high prevalence areas, may be particularly mentioned as causes of early marriages.

Boys are also subjected to forced marriages but, the majority of victims are girls. Thus, gender inequality also drive child marriages - in many communities where there is high child marriage practice, there is the accompanying idea that girls are not valued as much as boys- they are considered to be a burden or a commodity. Hence, poverty and sociocultural factors are still play an important role in setting standards on the age of marriage.

1.4 Consequences of early child marriage

Child marriage and adolescent pregnancies have a negative impact on a range of wellbeing indicators for women. In particular, a strong and significant effect of child marriage is on girls’

47 Idem
48 UNICEF (2010) as above
50 CANCIAN, M and REED, D (2010) Family structure, childbearing, and parental employment: Implications for the level and trend in poverty Urban Institute
51 UNICEF (2010) as above
53 Idem
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schooling.\textsuperscript{55} Similarly, adolescent pregnancy is associated with higher risk of malnutrition and death among children of adolescent mothers.\textsuperscript{56} The above data shows that a particularly robust number of early marriage and pregnancy for northern regions. It should be noted that the sociocultural traditional practices such as: initiation rites and child initiation are cultural institution that perpetuate gender inequality.\textsuperscript{57} According to UNICEF the resilience of traditional institutions and opinion of leaders at community level are still shaping attitudes and practices.

Further referee that one of the most serious consequences, despite some modest improvement in the last few years, is the still very high incidence of child marriage among girls, which contributes in turn to early sexual activity and a huge problem of adolescent pregnancy, with knock-on effects on child and maternal mortality.\textsuperscript{58}

Consequently, most school dropouts are linked to early pregnancy in girls at a stage of their physical and emotional development in which they are not yet ready to bear a child, with very serious consequences for their health and survival of their children.\textsuperscript{59} It should be noted that education is a key factor in determining employment outcomes and thus, the possibility of women development.

The table below shows the level of school drops and the impact of a child marriage on access to education. However, while, reading the table it is important to note that in some areas child labour (especial for boys) is reality.\textsuperscript{60}

2. Table. Level of school drops

<table>
<thead>
<tr>
<th>Provinces</th>
<th>EP1 Total (Men)</th>
<th>EP1 Total (Women)</th>
<th>EP2 Total (Men)</th>
<th>EP2 Total (Women)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Country</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Niassa</td>
<td>6.8</td>
<td>7.1</td>
<td>7.0</td>
<td>8.8</td>
</tr>
<tr>
<td>Cabo- Delgado</td>
<td>7.3</td>
<td>7.8</td>
<td>7.2</td>
<td>10.3</td>
</tr>
<tr>
<td>Nampula</td>
<td>8.2</td>
<td>8.7</td>
<td>8.3</td>
<td>11.1</td>
</tr>
<tr>
<td>Zambézia</td>
<td>5.9</td>
<td>5.8</td>
<td>6.4</td>
<td>9.2</td>
</tr>
<tr>
<td>Tete</td>
<td>8.2</td>
<td>6.8</td>
<td>6.4</td>
<td>9.2</td>
</tr>
<tr>
<td>Manica</td>
<td>6.8</td>
<td>7.1</td>
<td>7.0</td>
<td>9.9</td>
</tr>
<tr>
<td>Sofala</td>
<td>7.7</td>
<td>7.5</td>
<td>8.5</td>
<td>10.0</td>
</tr>
<tr>
<td>Inhambane</td>
<td>3.6</td>
<td>4.1</td>
<td>3.1</td>
<td>5.9</td>
</tr>
<tr>
<td>Gaza</td>
<td>5.0</td>
<td>5.7</td>
<td>4.3</td>
<td>6.8</td>
</tr>
<tr>
<td>Maputo</td>
<td>4.2</td>
<td>4.8</td>
<td>3.9</td>
<td>3.8</td>
</tr>
<tr>
<td>Maputo Cidade</td>
<td>3.6</td>
<td>3.7</td>
<td>3.7</td>
<td>3.4</td>
</tr>
</tbody>
</table>


The national education system curriculum for primary education is divided into two levels: 1st degree (EP1, from 1st to 5th grade) and the Primary School 2nd degree (EP2, 6th and 7th grade).

\textsuperscript{57} Gender Religion and Spirituality (1999), Gender and Development (Oxfam) Vol. 7 (1) March, and issue on Women and culture” Gender and Development (Oxfam) Vol. 3 (1) (February 1995).
\textsuperscript{58} As above. SANTHYA K G (2011)
\textsuperscript{60} Idem
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The age for enrolment on grade one is 6 years old which means, they normally finish the first degree with age of 10 years. Therefore, they are expected to start the second degree with 11 years and to finish the primary education circle at the age of 15 years.

The table shows that in the second degree, the level of school dropping is very high with special highlight in the number of girls dropping a school. It gives an indication that girls are being forced to drop school at the age of 11 to 15 years old. Coincidentally, it is at the age of 11 to 15 years that the initiation rites are perfumed in Cabo-Delgado, Niassa and Nampula.61 Initiation rites is a ceremony performed in some cultures at times when an individual changes his or her status, as at puberty and marriage62

Initiation rites were also considered by United Nation Committee on the Rights of the Child in its concluding observation on the State report on the fulfilment of article 4 of the Convention on the Rights of Child and the Committee on the Elimination of all Forms of Discrimination Against Women. It was observed with concern, the high levels of teenage pregnancy and the persistence of initiation rites which lead to early and harmful sexual behavior and the significant disparity in accessing education between provinces of Nampula, Niassa and Zambézia.63

The direct link between the initiation rites and the child early marriage is very clear.64 The cultural practices essentially shape expectations on the role of girls in society and reproductive practice.65 Thus, many drop out of school and quickly become pregnant, before their bodies are ready for childbearing, with very serious implications both for their own health and for the survival of their children as well as impossibility to conclude the mini education circle.66

However, inequities and poverty increase human development and child well-being challenges, with almost all indicators worse in the rural areas and in the north and center of the country, compared with the urban areas and the South. The table above also shows the particularly disadvantaged situation of Zambézia province, the second most populous province.

62 Kurth, E. A et al. (2015) The Timing and role of Initiation Rites in Preparing Young People for Adolescence and Responsible Sexual and Reproductive Behaviour in Malawi, AIDS Soc. 2015; 18(2Suppl 1): 19433. Published online 2015 February 26. doi: 10.7448/IAS.18.2.19433PMCID: PMC4344538 The Rite of Adulthood is the second major initiation rite and it is nowadays the most popular among the set of rites. Most people today assume that “rites of passage” only refers to initiation into adulthood, and they are often not aware that adulthood rites are only one set of rites within a larger system of rites. Adulthood rites are usually done at the onset puberty age (around 12-13 years of age in many cultures) and they are to ensure the shaping of productive, community-oriented responsible adults. There is nothing automatic about youth being productive members of society, nor is there anything particularly difficult about transitioning from a child to an adult.
UNICEF considers poverty as a key driver of child deprivations, showing the importance of cost and distance as barriers to access, for example, health services and birth registration. Many social indicators show large disparities by household wealth quintiles, although in some cases deprivations are high even in the wealthier quintiles.67

Chapter 2. Social protection minimum floor

2.1 Background of social protection minimum floor

On 5th April 2009, the High Level Committee on Programmes was assigned to decide and urgent multilateral action to address the global crisis, deploying all UN resources and capacities to rapid and effective response to a global financial crisis.68 An agreement was reached on nine joint initiatives.69 The sixth initiative is the Social Protection Floor Initiative which aims at providing essential services and transfers to all in need of such protection in order to not fall into abject poverty.70

2.2 Concept of the minimum social protection floor

United Nations High Level Committee on Programmes adopted a common concept of a social protection floor which consider:71

Social protection floors as nationally defined sets of basic social security guarantees that should ensure, as a minimum that, over the life cycle, all in need have access to essential health care and to basic income security which together secure effective access to goods and services defined as necessary at the national level.72 The nature and objective of the social protection floor initiative is such that it promotes a holistic and coherent vision of national social protection systems as a key component of national development strategies.73 It supports countries in identifying and closing crucial protection gaps through coherent and efficient measures that maximize the effects of scarce resources on the reduction of poverty and insecurity.74 Hence, concerted actions of United Nation agencies, national governments and stakeholders as well donor agencies in order to alleviate the negative social impact of the crisis and increase the resilience of societies against the impact of

70 Idem.
71 Idem.
74 Idem.
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future crises for example through the implementation of automatic social and economic stabilizers.75

2.3 Social protection minimum floor in Mozambique

In 2007, Mozambique adopted the Social Security Law (Law No. 4/2007, of 07 February). The Law defines the social security as a system endowed with appropriate means to satisfy social needs mandating the distribution of income, within the framework of solidarity among members of the society.76 Hence, the Law establishes the right to social security and it defines three levels of security structure as follows: Basic Social Security; Compulsory Social Security; Complementary Social Security. The last two are contributory—where people receive benefits or services in recognition of contributions to social security program. These services typically include provision for retirement pensions, disability insurance, survivor benefits.77

This paper focuses on the Basic Social Security subsystem as one of the levels of social security which encompass the social protection system in Mozambique. Social protection is considered to drive the process of strengthening the most vulnerable people, and open space to define sustainable mechanisms to protect them against risks and vulnerabilities.78 In 2009, the Government of Mozambique adopted the Regulation of the Basic Social Security, which sets out principles and standards appropriate to the subsystem.

It is important to note that different institutions and agencies define social protection in different ways some reflecting objectives and approaches. For instance, Department of International Development (DFID) considers Social protection as sub-set of public actions, carried out by the state or privately, that address risk, vulnerability and chronic poverty.79 The Development Assistance Directorate describes social protection as those public actions that enhance the capacity of poor people to participate in, contribute to and benefit from economic, social and political life of their communities and societies.80 The International Labor Organization (ILO) considers the public

75 idem
76 See article 2 of the Law no. 4/2007 of 7 of February: A protecção social tem por objectivo atenuar, na medida das condições económicas do país, as situações de pobreza absoluta das populações. garantir a subsistência dos trabalhadores nas situações de falta ou diminuição de capacidade para o trabalho. bem como dos familiares sobreviventes em caso de morte dos referidos trabalhadores e conferir condições suplementares de’ sobrevivência.
77 See article 20 of the Law no. 4/2007 of 7 of February 2007: I. As contribuições para a segurança social obrigatória são repartidas entre as entidades empregadoras e os trabalhadores, segundo proporções a fixar pelo Conselho de Ministros, não podendo a parcela imputada ao trabalhador exceder, em caso algum, cinquenta por cento do montante daquelas contribuições. 2. A entidade empregadora é responsável pelo pagamento das contribuições devidas ii entidade gestora da segurança social obrigatória, incluindo a parcela a cargo do trabalhador que é descontada na remuneração respectiva. 3. O trabalhador não pode opor-se aos descontos a que está sujeito. 4. As contribuições da entidade empregadora são da sua inteira e exclusiva responsabilidade, sendo nula e de nenhum efeito qualquer convenção em contrário.
78 See article 7 of the Law no. 4/2007 of 7 of February 2007 A segurança social básica abrange os cidadãos nacionais incapacitados para O trabalho, sem meios próprios para satisfazer as suas necessidades básicas, nomeadamente: a) pessoas em situação de pobreza absoluta; . b) crianças em situação difícil; c) idosos em situação de pobreza absoluta; 6 d) pessoas portadoras de deficiência. em situação de pobreza absoluta; e) pessoas com doenças crónicas e degenerativas.
79 DFID (2005), —Social transfers and chronic poverty: Emerging evidence and the challenge ahead!, p. 6, A Department of International Development (DFID) Practice Paper, London
80 GINNEKEN, V and WOUTER (2005) Managing Risk and Minimizing Vulnerability: The Role Of Social Protection in Pro-Poor Growth, a paper produced for the Organisation for Economic Co-operation and Development
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actions taken in response to levels of vulnerability, risk and deprivation which are deemed socially unacceptable within a given polity or society. From the definitions it is clear that some focus on the objectives, while others place emphasis on key instruments. Generally, the essence is that it includes tackling poverty, risk and vulnerability.

The Basic Social Security in Mozambique law framework:

- Aims to prevent situations of need, as well as to provide social integration of the most vulnerable groups.
- It is based on a national solidarity, reflecting distributive characteristics;
- It is mostly funded by the State Budget.

This Subsystem covers national citizens living in absolute poverty, without means to satisfy their basic needs, including: Children in difficult situation; Elderly (55 years women and 60 years old for men); People with disabilities; People chronically ill and with degenerative diseases.

Thus, from the above stated provisions there is a recognition of social protection as an important tool for protecting elderly, people with disabilities, chronically ill, particularly, those who have spent their lives in the informal sector or have never been employed.

2.3.1 The Basic Social Security provisions:

Provisions of disability, these are a set of support measures granted by the State based on goods, products, services or granting monetary amounts intended to mitigate to ensure the survival of people living in absolute poverty and in a state of vulnerability (cash transfers for people incapable to work, social transfers for a fixed period to ensure access to services in response to temporary situations of vulnerability).

Provisions of social support comprising the grant by the state or nongovernmental organizations to support access to services, implementation of programs or projects that guarantee social and economic integration through work, targeting individuals or groups of individuals with special needs at housing, health care, food, among others. However, these two provisions are mainly transfer


83 Idem

84 Idem

85 See article 7 of the Law no. 4/2007 of 7 of February 2007 A segurança social básica abrange os cidadãos nacionais incapacitados para O trabalho, sem meios próprios para satisfazer as suas necessidades básicas, nomeadamente: a) pessoas em situação de pobreza absoluta; b) crianças em situação difícil; c) idosos em situação de pobreza absoluta; d) pessoas portadoras de deficiência. em situação de pobreza absoluta; e) pessoas com doenças crônicas e degenerativas.

86 As above, Estratégia Nacional de Segurança Social Básica Maputo, Agosto de 2011.

87 Idem
programs for the poor and vulnerable who are unable to work, as well as short-term, in-kind transfers provided to temporary vulnerabilities and other social welfare services.

2.3.2 The main pillars of the basic social protection are:

**Direct Social Action**, managed by the Ministry of Women and Social Action which oversees the area of social action, aims to ensure the recipients (that are permanent or temporary incapable to work) an access to a monetary or non-monetary values to satisfy their basic needs. This pillar is the main social protection minim floor protection activity in Mozambique.

The direct social assistance is a targeted program to people extremely poor and without physical ability to work, among them are orphan children, the elderly, people with disabled, chronically ill and pregnant women. 88 However, target or selective benefits is normally perceived to be a cash transfers and services limited to individuals or households with limited resources. 89 The selectivity may either involve direct means testing or be applied by other measures intended to target the benefit on deprived groups, such as selectivity by deprived area. 90 Thus, targeting is a method for selecting beneficiaries of particular transfers or services. Therefore, benefits may be targeted through various criteria: age, geographic location, labour market status, family composition, income, etc. 91

On the contrary universal benefits is a cash transfers or services that are available to all citizens/residents, or large categories of citizens without a means-testing requirement or other form of selectivity. 92 Note therefore that universal encompasses some benefits that to do not go to everybody – they may be demographically targeted or dependent on prior contributions, without being specifically targeted at less well-off households. 93 Therefore universal access would mean all those people that are objectively in some category should have access to a social protection minim floor. For instance, if the goal is to irradiate poverty it should be considered that all the vulnerable that are unable to break the intergenerational poverty should have access to social protection minim floor.

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providing a monthly transfer. Currently the program cover an estimated of 20% of household in need with special emphasis on the elderly taking care of children. However, only orphanned children are eligible for support.

The direct social support program can be considered as targeting people with special contingencies such as: elderly, those with cronical illness or disability and poor pregnant women who cannot work and it works as well as short-term support for to poor household who experience some chock (house fire, death, illness) as well as orphan vulnerable children. However, it is very low in coverage for the fact that it is targeted to specific group of people and it does not reach the rural areas. As a result, it impacts negatively to poverty reduction program.

Social Action on Health, managed by the Ministry of health, aims to ensure universal access for populations most vulnerable to primary health care, including measures that can improve the quality of their health. By the law, health service should be provided free of cost to the following group: pregnant women, mothers and their new-born, children under the age of 5 years old as well as elderly and orphans.

The law also provides for specific diseases, free treatment: HIV/AIDS, chronic physiological disorders, tuberculosis, leprosy and trypanosomiase. According to the INSIDA report, 11.5 percent of Mozambicans age 15 to 49 are HIV/AIDS positive. It is further considered that in overall, 13.1 percent of women and 9.2 percent are men of 15 to 49 years old. Young women (15-24 years) are at risk of sexual exploitation as a consequence of early marriage and pregnancy.

Pregnancy poses many challenges for young girls. For instance, it suppresses the immune system; pregnant girls are at increased risk of acquiring diseases like malaria. Malaria kills one million people each year, 90% of them in Africa. Approximately 25 million worldwide pregnant women are exposed to malaria per year, and pregnant women are among the most severely affected by malaria. In addition, pregnancy increases the risk of cervical cancer, death during childbirth, and obstetric fistulas diseases that are not excepted in the national health system. However, in accessing health care facility service the most common constrain long distance, transportation cost.

95 Idem.
97 Idem.
101 Idem.
and poor health care services.\textsuperscript{102} HIV/AIDS related stigma remains an influencing factor on decision to access HIV –related treatment.

**Social Action in Education**, managed by the Ministry of education, aims to encourage the participation of vulnerable groups in the education system. Since 2003, public primary school education has been free and compulsory for all students in Mozambique.\textsuperscript{103} In order to realise the right to education, the government provides textbooks for primary education students.\textsuperscript{104} Few primary public schools (5 percent out of 16044) offer school lunches. However, the school attendance is not considered free for parents due non fee costs such as: uniform, school material, transport and any order fee collected by the school as well as the geographical distance.\textsuperscript{105}

Though, it should be noted that some children do not attend school because, first, the school is too far away. Second, they have other duties in the families or need to work special girls where culturally are assigned to take care of the household work such as: cooking, fetching water, firewood and providing farming labour.\textsuperscript{106} It is perhaps at this stage the family will be result to choose to send only the boy to school. In addition, for those children who transition from primary to secondary school, there is a tendency to force them into marriage and drop out of school.

The Ministry of Women and Social Assistance approved the national strategy to combat early marriage where there will be provisions for a married girl child to attend vocational schools, workshops and practical guidance. However, the strategy is in contrast with the Minister of Education Dispatch no.39/GM/2003, which states that pregnant girls are not allowed to attend day school on the elementary, primary and secondary school level.\textsuperscript{107} It is, however clear that there is no uniformity in perception of early marriage and the response to it, as well as the position of the girl. In a sense, in the strategy she is considered victim and yet in the Ministry of Education Policy she is considered responsible for her pregnancy.

According to OSORIO the prosecution and accountability of girls for the sexual harassment and violence show how well the incorporation of the cultural model in construction of feminism, women are accomplices and agents of their submission: the notion of decency in relation to clothing is a form of rule. For example, to consider girls " uncontrolled " using short skirts exposed to a violence that is socially and culturally legitimate.\textsuperscript{108} As well stated by ARTUR, the co- responsible for the pregnancy, peers or teachers, do not suffer any sanction.\textsuperscript{109} Hence, it is clear that the girl child is not considered as a victim or vulnerable to the culture of early marriage with all

\textsuperscript{102} Idem.
\textsuperscript{103} República de Mocambique, Ministério de Educação, Plano Estratégico da Educação 2012-2015, Versão aprovada pelo Conselho de Ministros no dia 12 de Junho de 2012.
\textsuperscript{104} Idem
\textsuperscript{105} Idem
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consequences that the practice can cause. This brings questions regarding the principle of equality and no-discrimination. Thus, this will be further analysed in the next chapter.

Productive Social Action, the management is shared by the Ministries that oversees the areas of social action, planning and development, agriculture, labor, public works and housing. It ensures social inclusion through work (Ex. Public works), in response to a situation of chronic food insecurity, exacerbated by the shocks, structural risks and impacts of environmental changes. However, it is important to note that this program, it is being developed with the support of the World Bank and it is expected to be an income, stabilize and to reduce vulnerability to future shocks by providing monetary transfer in exchange with temporary work.

Chapter 3

Social protection minimum floor legal framework for inclusive development in Mozambique

Human development can be simply defined as a process of enlarging choices. Furthermore, human development is defined as "creating an environment in which people can develop their full potential and lead productive and creative lives in accordance with their needs and interests." The African Commission on Human and Peoples' Rights in the Endorois case, which took the position that the right to development brings along a "two-pronged test, which is both constitutive and instrumental, or useful as both a means and an end to provide people with the ability to choose."

It is important however to note that the right to development definition and its delimitation still poses debate. Hence, commenting on the book Development as human right - Legal, political and economic dimensions, Whyte claims that the book is an intellectual disaster, whereas Louise Arbour, former UN High Commissioner for Human Rights believes that it is an "excellent scholarly writing". This highlights the lack of consensus on the conceptualization of the right to development.

It is still very important meritorious debate but, for this study, the right to development will be looked as an means and an end to providing people with the ability to choose as an empowerment
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tool. Empowerment is expansion of freedom of choice.\textsuperscript{116} NARAYN consider that although the concept expansion of freedom can sound very broader in a way that it is applicable to all disadvantages groups or social excluded groups it is important to recognize that women empowerment encompasses some unique addition elements.\textsuperscript{117} First, women are not just a group among various disempowered people with a society or community there are cross-carting category of individuals that overlap with all other groups.\textsuperscript{118} Second, household and interfamilial relations are central universe of women disempowered in a way that it does not occur to the other group.\textsuperscript{119} In the case of early marriages as above mentioned the girl child is left disempower by the decision of her parents' for marriage were she rarely participates. Hence, marriage at a young age prevents girls from exercising agency in making important life decisions and securing basic freedoms, including pursuing opportunities for education, earning a sustainable livelihood and accessing sexual health and rights. Legally, it is also important to look at a marriage as a civil contract, which informed consent is an important autonomous rights.

In Mozambique the constitution guarantees the principle of universality and equality in article(s) 35 and 36 respectively.\textsuperscript{120} However, the achievement of equality must not be only normatively but guaranteed substantively. It is important to briefly differentiate between formal and substantive equality. Formal equality promotes individual justice as the basis for a moral claim to virtue and is reliant upon the proposition that fairness (the moral virtue) requires consistent or equal treatment.\textsuperscript{121} Therefore, the right to equality is achieved if a measure provides for the same standard to be applied to everyone – uniform (same) treatment for everyone that finds themselves in the same circumstances. Inequality would thus, occur when a measure lays down different standards for various categories of persons even though they find themselves in the same position.

For instance, in the Mozambique the law permits children below the age of 18 to be married, either with parental, caregiver consent in accordance with cultural practices or religious laws.

The limitations of the formal approach to equality are acknowledged in the interpretation of the idea of non-discrimination provided by the Committee on the Elimination of Discrimination against Women, where the Committee stated that Articles 1 to 5 and 24 together indicate that State Parties under CEDAW are required to go beyond a formal interpretation of equal treatment between

\textsuperscript{118} Idem
\textsuperscript{119} Idem
\textsuperscript{120} Article 35 and 36 of the Constitution of the Republic of Mozambique approved on 16, November 2004 by Assembly of the Republic and came into force in 21, January 2005 and it is published in BR No. 51, 1\textsuperscript{er} Série, 22, December 2004. Transcription Article 36. (Princípio da universalidade e da igualdade) Todos os cidadãos são iguais perante a lei, gozam dos mesmos direitos e estão sujeitas aos mesmos deveres, independentemente da cor, raças, sexo, origem étnica, lugar de nascimento, religião, grau de instrução, posição social, estado civil dos pais, profissão ou opção política. Article 36 (Princípio da igualdade de gênero) O homem e a mulher são iguais perante a lei em todos os domínios da vida política, econômica, social e cultural.
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men and women to counter and improve the de facto situation of women and to address prevailing gender relations and the persistence of gender-based stereotypes that affect women.122

For that reason, substantive equality would entail, “positive action means offering targeted assistance to people, so that they can take full and equal advantage of particular opportunities. Positive discrimination means explicitly treating people more favorably on the grounds of race, sex, religion or belief, etc. by, for example, appointing someone to a job just because they are male or just because they are female, irrespective of merit.”123

Thus, it requires that the different conditions that people of different categories might find themselves in be examined. This may bring to light that different categories of persons, finding themselves in different positions, may experience the same rule or standard differently - some favorably others unfavorably.124 The test in the case of substantive equality is the effect of a measure, not the way in which it is formulated. This concept is both restitutionary and corrective in nature.125 The concern of substantive equality is equality of outcome. The with a particular aim to redress the history of inequality; hence not merely removing discrimination and stumbling blocks in the way to equality but also positively creating the conditions for achieving equality. Thus, child, early and forced marriage is now widely recognized as a form of gender-based discrimination which disproportionately affects women and girls. The rights to equality and non-discrimination are set forth in a number of international human rights instruments.126

And so, gender sensitive strategy in parallel to effective implementation of the law, it is required that a cultural shift be brought about, while expanding social and economic opportunities to new elements of culture dynamic. However, it is important to note that there is very strong perception in socio- anthropological field stating that preventing, rather than punishing, appears to be the approach promising sustainable results.127 Action aimed at transforming knowledge and beliefs is more likely to address attitudes and finally change practice.

If considers early marriage as an obstacle to girls’ access to education around it should be also, recognized as a significant barrier to social and economic progress. As noted economist Gene

125 Idem.
126 Universal Declaration of Human Rights, art. 7, the International Covenant on Civil and Political Rights, art. 2, paras. 1 and 3, and the International Covenant on Economic, Social and Cultural Rights, arts. 2, paras. 2 and 3. Article 16 of the Convention on the Elimination of All Forms of Discrimination against Women places an obligation on States to take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations. See also Committee on the Elimination of Discrimination against Women, general recommendation No. 24 (1999) on women and health.
127 Idem.
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Sperling said at The Council on Foreign Relations in 2004, “Girls’ education is an integral part to virtually every aspect of development. And what is striking is the amount of hard, rigorous academic data that is, not only about what girls’ education does in terms of returns for income, and for growth, but in terms of health, AIDS prevention, the empowerment of women, and prevention of violence against women.”

So it is with an eye to both economic progress and development that broadening girls’ access to quality education has become an urgent matter for Mozambique to end early marriage. Nonetheless, programs that specifically focused on the status of girls may have direct or indirect effect on the reduced number of child marriages. Hence, successful programs have provided economic and educational opportunities to young women and their families by employing girls with the specific goal of delaying marriage, giving families financial incentives to keep their daughters in school, or feeding children during school to decrease families' expenses. Keeping girls in school or vocational training does not only help to protect them from HIV infection, pregnancy, illness, and death but also enhances their earning potential and socioeconomic status. Educated girls can contribute to the health and welfare of their family and marry a man of their own choice and age.

Thus, it is clear that early marriage can still be viewed as a vulnerability that should qualify to access social protection minim floor, targeting girls from provinces such as : Niassa, Cabo-Delgado, Zambézia, Manica. This view that was also chaired by United Nations Child Rights Committee when it urged the state to, inter alia, to develop programs for major improvement of the social security system, housing schemes in rural and peri-urban areas, home sanitation facilities and access to clean drinking water.

It is also important to keep in mind that the most important strategy for reducing the vulnerability and poverty of Mozambican families as a major objective of the social protection system, is to continue to pursue growth-oriented, job creating, pro-poor policies. However, this objective cannot be achieved without inclusive access to quality education, since before accessing a job one should acquire necessary knowledge. Therefore, it becomes important to look at structural reason related to social, political and economic structure and relationships, and process of exclusion and

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131 Idem.
133 UN Committee on the Rights of the Child (CRC), Written replies by the Government of Mozambique to the list of issues (CRC/C/MOZ/Q/2) prepared by the Committee on the Rights of the Child in connection with the consideration of the 2nd periodic report of Mozambique (CRC/C/MOZ/2), 29 September 2009, CRC/C/MOZ/Q/2/Add.1, available at: http://www.refworld.org/docid/4acefe4e2.html [accessed 1 July 2016]
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adverse incorporation. As well as, social protection should be viewed as not only tackle income poverty, but, also as providing effective support for broader developmental objectives.

It should be acknowledged also, that households in developing countries spend social transfer income primarily on improving nutrition. The failure to provide appropriate social protection limits prospects for growth and development at the very foundation of society because household poverty undermines children’s nutrition and educational attainment, limiting their future prospects. According to Stephen Devereux and Rachel Sabates-Wheeler, the full range of social protection intervention can be categorised under protective, preventive and transformative measures. In the sense that social protection should aim to provide relief from poverty and deprivation where typically include target resource transfers. The preventive, for people who have fallen or might fall in to poverty and they will need support to help them manage their livelihood shock. The transformative measures seek to address the social equity and exclusion such as early marriage.

In doing so, there would be focus on the contemporary approach of bringing the equality and non-discrimination agenda within a human rights framework which has the effect of highlighting other conceptions of equality that purely economic integrationist models largely seem to neglect. It seems the human rights based approach to equality and non-discrimination can be translated into meaningful legal and policy instruments. Therefore, there is need to break down all socioeconomic and cultural barriers which uphold the idea that equality and non-discrimination are anything other than inherent, fundamental and indivisible to human rights. Consequently, this means creating an environment in which people can develop their full potential and lead productive and creative lives in accordance with their needs and interests.

4. Conclusion

The Mozambican social protection minim floor is caracterises as categorically targeting. However, it is important for safeguarding lives in context of chronic, acute economic risk and vulnerability. However, since it is categorically targeting it excludes some vulnerable groups, including the girl child vulnerable to early marriage with all its attendant consequences.

It was found important to extend the scope of the social protection beyond its current categorical target system in order to make social protection system more inclusive as a way to open a space for the girl child to participate in the process of development. Hence, strengthening the human capital through education is a way to include women in the process of development. The social protection minim floor should be considered starting point of inclusion for all in need. Consequently, promoting a protective social protection measures and the application as well as

135 Idem.
effective implementation of the principle of the best interest of the child and non-discrimination will be a toll to end child marriage. Consequently, giving an opportunity to girls at risk to marry young to access the educational and economic opportunities that help lift them out of poverty and necessary build a sustainable and prosperous future for their communities and countries.

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