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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 early marriage prevalence rate in the world, notwithstanding there being a legal ban. Early marriage generally affects girls who are the least educated, poor and living in rural areas. This situation is a reflection of the gendered socialization process in Mozambique, which places girls in caregiving and reproductive roles. Recently, legal research on early marriage has gained importance in Mozambique. This article demonstrates that social protection floors (SPFs) can be a tool to empower girls. SPFs should be designed to capture substantive inequality in the household and increase protection for girls, in order to reduce early marriage rates.

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Introduction

Mozambique is located along the Indian Ocean in Southern Africa. It has an estimated population of 25 million, 52 per cent of whom are children (Republic of Mozambique, 2008). In 1992 a peace agreement brought an end to 15 years of civil strife. The country held its first democratic elections in 1994. In more recent years political stability and democratic governance have paved the way for sustained socio-economic development (World Bank, 2015). Mozambique now ranks among the top ten fastest growing economies in the world. The country has been recognized as an example of post-war reconstruction and economic recovery in Africa (IMF, 2016).



Figure 1. Map of Mozambique, by André Koehne. Licensed under Creative Commons.

Notwithstanding its achievements Mozambique has remained a poor country, ranking 180 out of 188 in the 2015 Human Development Index. Life expectancy is approximately 52.6 years and is highly influenced by a HIV/AIDS prevalence of 13.5 per cent among adults aged 15-49 (INE, 2015).

Disaggregated data show that the prevalence is much higher for women (9.8 per cent) than for men (3.2 per cent). It is estimated that 6.9 per cent of young people aged 15-24 are infected with HIV. Almost two million children, i.e. approximately 15 per cent of the total number of children, are orphans because of HIV, chronic illness or poverty related reasons (where one or both parents have abandoned the child to work elsewhere) (GARPR, 2014). Although Mozambique ratified, in 1994, the Convention on the Rights of the Child, it is one of the seven countries in the world that count very high levels of early marriage (ICRW, 2010).

According to the Demographic Health Survey (DHS) of 2011, 14.3 per cent of Mozambican girls between the ages of 20 and 24 were married before the age of 15. The proportion of girls in the same age group that married before 18 is 48.2 per cent (MISAU, 2011). This would indicate that in 2011, 62.5 per cent of the girls between 20 and 24 entered into marriage before they turned 18.

The research that has been conducted thus far is inclined to look at early marriage as a social and medical issue. Thus far, very few people have taken a legal approach. This article intends to contribute to this lacuna and examines early marriage from the angle of social security law. It seeks to explore to what extent social protection floors (SPFs), as translated into Mozambican law, could offer an avenue to combat the problem of early marriage in Mozambique. The central question is whether the current Mozambican non-contributory social security system is adequate to protect a girl child from early marriage. The article draws on data from the Demographic Health Surveys of the Government of Mozambique (DHS) of 1997, 2003, 2011; Multiple Indicator Cluster Survey (MICS) 2008; Census Projections from the National Institute of Statistics (INE) 2007; and data from the Ministry of Education. The focus is on two main age groups: first, 16 to 18 year old girls, who can, as is shown below, enter into a legal marriage as an exception to the general rule that one should be 18 and, second, those under 16, whose marriages are merely based on customary practice and are not legally permitted.

Some facts and figures on early marriage in Mozambique

The above mentioned national average of 62.5 per cent of Mozambican girls having married before the age of 18 hides major differences between the provinces. The table below illustrates that the highest rates of early marriage are found in the northern provinces. In Niassa, for example, 24.4 per cent of girls aged 20-24 were married before they turned 15 years old, as opposed to the national average of 14.3 per cent. The provinces that have the largest numbers of girls getting married in their teens are Nampula and Cabo-Delgado, with 62.2 per cent and 60.7 per cent of girls getting married between 15 and 18 years of age respectively. Also, almost all indicators are

high in the rural areas and the north and center of the country, compared with the urban areas and the south (World Bank, 2015).

The figures in Table 1 are problematic, as early marriages clearly undermine the country's efforts to reduce poverty and have a negative impact on a range of wellbeing indicators for women. Generally speaking, they hinder human development, which is to be defined as a process of enlarging choices for everyone (UNDP, 1990) and of creating an environment in which people, including girls, can develop their full potential (UNDP, 1990).

As far as Mozambique in particular is concerned, research has shown that early marriage is one of

	Province	Female		Male
		Under 15 years old	Under 18 years old	Under 18 years old
North	Niassa	24.4	55.7	2.4
	Cabo-Delgado	17.6	60.7	5.2
	Nampula	17.6	62.3	11.9
Center	Zambezia	17.1	47.1	11.9
	Tete	13.7	51.6	11.8
	Manica	17.7	59.2	10.8
	Sofala	16.8	49.4	4.4
South	Inhambane	11.2	39.1	6.6
	Gaza	7.1	40.9	5.7
	Maputo province	5.2	25.6	1.6
	Maputo City	2.5	14.9	3.9
Urban		11.5	36.1	4.8
Rural		16.1	55.7	11.8
Total	62.5	14.3	48.2	8.7

Table 1: Early marriage in the 15-18 age group distributed by province.

Source: Republica de Moçambique, Estrategia Nacional de Prevenção e Combate dos Casamentos Prematuros, 2011.

the key reasons why Mozambican girls do not transition from primary to secondary education or subsequently drop out of school (Nhantumbo, 2010). As a consequence, career prospects for those girls are severely restricted, potentially limiting them to lower socio-economic status (Otoo-Oyortey and Pobi, 2003). The Mozambican national curriculum for primary education is

areas child labour, especially for boys, is a harsh reality. That explains why dropout is also high for boys in the northern provinces, and is even higher for boys than for girls in the southern provinces.

Apart from school dropout, researchers have also found a direct link between early marriage and teenage pregnancy, again in particular in the

Regions	Provinces	EP1- From 1st to 5th grade			EP2- Grades 6 th and 7 th		
		Total	Man	Women	Total	Men	Women
	Country	6.8	7.1	7.0	8.8	9.0	9.2
North	Niassa	11.3	11.5	12.5	12.8	11.9	16,3
	Cabo-Delgado	7.3	7.8	7.2	10.3	9.6	12,4
	Nampula	8.2	8.7	8.3	11.1	11.3	12.1
	Zambezia	5.9	5.8	6.4	9.2	9.5	9.6
Centre	Tete	8.2	6.8	6.4	9.2	9.5	9.6
	Manica	6.8	7.1	7.0	9.9	10.5	10.0
	Sofala	7.7	7.5	8.5	10.0	9.4	12.1
South	Inhambane	3.6	4.1	3.1	5.9	6.6	5.5
	Gaza	5.0	5.7	4.3	6.8	7.7	6.5
	Maputo Provincial	4.2	4.8	3.9	3.8	3.3	4.5
	Maputo cidade	3.6	3.7	3.7	3.4	4.0	2.9

Table 2. Level of school dropouts. Source: Republica de Moçambique: Instituto Nacional de Estatísticas e Indicadores Sociais, 2013-2014, instituto nacional de Estatísticas, 2015.

divided into two levels: the first degree (EP1, from 1st to 5th grade) and the second degree (EP2, 6th and 7th grade). The age for enrolment in the first degree is six years, implying that children normally finish the first degree at the age of 10. Children are expected to start the second degree at the age of 11 and to complete primary education at age 15. Table 2 (above) shows that in the second degree, the level of school dropout is high, in particular again in the northern provinces. For purposes of interpretation of the data in the table below, it is important to also note that in some

north of the country (Osório, 2013). There is empirical evidence linking early marriage and adolescent pregnancies which shows that the overwhelming majority of teenage pregnancies occur amongst girls who have married early (UNICEF, 2010). Girls generally have their first child 15 months after marriage and rarely more than 24 months after marriage.

Teenage pregnancy brings along heightened health risks for both mother and child (INS, INE, ICF, 2010). There are findings indicating that

obstetric outcomes for teenage mothers are poorer than for adult mothers, as those young mothers' bodies are not ready yet for childbearing (Tallis, 2002; Nour, 2006). Adolescent pregnancy is also associated with a higher risk of malnutrition and death among children (Liang, 2013). Pregnant girls are at an increased risk of acquiring diseases like malaria as well (Watanabe et al., 1997). Malaria kills one million people each year, 90 per cent of them in Africa. Worldwide approximately 25 million pregnant women are exposed to malaria per year, and pregnant women are among the most severely affected by the disease (WHO, 2006). In addition, pregnancy increases the risk of cervical cancer (ENPCCPM, 2015) and early sexual activity also seems to have a huge effect on HIV infection (ENPCCPM, 2015).

There are signs of improvement in the rates of early marriage in recent years. However, in almost all provinces, those modest improvements have been unable to make up for the fast population growth. This implies that even though the percentage of girls married in their teens has decreased, the absolute number of early marriages has still increased (UNICEF, 2010). Finally, in many provinces, the decline in the rate of early marriages has not translated into an improvement in adolescent pregnancy rates, also due to the increase in births out of wedlock.

According to the United Nations Children's Fund - UNICEF (2010) there are two main reasons why early marriage remains a rigid phenomenon in Mozambican society. Both economic pressure on the poorest households and prevailing socio-cultural practices continue to lead families to give away their daughters for marriage at an early age, notwithstanding the fact that these girls have not yet reached sufficient maturity for marriage and pregnancy or to take responsibility to be wives and mothers (Artur, 2010).

Parents may indeed feel that their daughter's marriage will reduce family expenses or temporally increase their income in cases where they are paid the bride price. In a context of limited economic resources and opportunities, girls are often seen as a burden or an economic asset whose marriage provides cattle, money and gifts (UNICEF, 2010). While boys may also be

Region		Percentage
Mozambique	National	37.5
	Niassa	51.7
North	Cabo-Delgado	54.2
	Nampula	45.9
	Zambezia	41.0
	Tete	36.5
	Manica	38.7
Centre	Sofala	28.5
	Inhambane	28.4
	Gaza	35.4
South	Maputo Provincial	31.8
	Maputo cidade	19.5

Table 3. Percentage of women between ages of 15-19 who have given birth or are pregnant.

Author's calculations based on Republica de Mocambique Instituto Nacional de Estatística, Ministerio de Saúde. Ministério da Saúde (2013).

subjected to forced marriages, the majority of victims are girls (Bott et al., 2005). Similarly, the Coalition for the Elimination of Early Marriages in Mozambique (CECAP) highlights the importance of economic factors, as girls from the richest quintile of the population and girls from households that own land are significantly less likely to get married in their teens.

Socio-cultural practices are also at play. Table 3 shows unusually robust numbers for northern regions, where practices such as initiation rites - ceremonies performed at the occasion of status changes, like puberty and marriage - keep providing the cultural basis for early marriages and perpetuate gender inequality (Osório and Macuácuca, 2013; Kurth et al., 2015). The direct link between initiation rites and early marriage is obvious (Osório and Macuácuca, 2013), as such rites shape expectations on the role of girls in society and reproductive practice (Singh and Samara, 1996). According to UNICEF (2015) the resilience of traditional institutions and the opinion of leaders at the community level are, indeed, still shaping attitudes and practices in Mozambique. Initiation rites are still not balanced by information provided through formal sexual

education, which works as an antagonist practice *vis-à-vis* the fight against early marriages and all its negative consequences including school dropout, health risks and gender equality more generally. Culture is certainly not a static phenomenon, but poverty tends to slow down its dynamicity as it prevents people accessing education, reproductive health services and other basic services in general (Osório and Macuácuá, 2013). Therefore, it is not very surprising that the probability of getting married as a child also seems to be lower when the head of household has a higher level of schooling or when girls live in a household headed by women (Osório and Macuácuá, 2013).

From a legal perspective, the above is all quite surprising given the fact that there is a very clear rule in Mozambican civil law that persons under 18 cannot get married. Merely by way of exception, and given certain conditions are met, persons between 16 and 18 can get married. The Mozambican Constitution does contain children's rights and Mozambique is a party to several regional and international treaties that also guarantee the rights of the child. Why has this not led to a drop in early marriage figures?

When it comes to preventing early marriages and adolescent pregnancies, one crucial factor appears to be women's empowerment, and in particular their ability to request the use of contraception (Cancian and Reed, 2010). Where human development has been defined above as enlarging people's choices, empowerment is viewed as an expansion of people's ability to make strategic life choices in a context where this ability was previously denied to them (Kabeer, 1999; World Bank, 2002). Empowerment means involvement in decision-making and control over resources allowing a higher quality of life, as well as improving the capability for taking advantage of the development opportunities provided by the system. In the context of early marriages and teenage pregnancies empowerment implies that women themselves must become significant actors in the process of change (Malhotra and Mather, 1997). All of this should be seen against the background of the Mozambican girl child who finds herself, from cradle to grave, trapped in a

system that values the traditional African family, featuring some sort of natural hierarchy and power structure that *de facto* leads to lifelong vulnerability for women.

The remainder of this article consists of four parts. First, Mozambican civil law with regard to (early) marriage is described and compared against international human rights standards, in particular those relating to children and gender. Second, the existing Mozambican social security laws that translate the SPF's requested by international law are listed, and the underlying conception of vulnerability and the challenges that girls in need face to be eligible for such SPF's is considered. The third part links the Mozambican SPF legal framework with inclusive development and empowerment of women. Finally, a brief conclusion brings the findings of this article together.

The ambivalence of Mozambican civil law with regard to early marriage

According to Article 30 (1) of Mozambican Family Law no. 10/2004 marriage is considered to be a contract of mutual consent between two adults above 18 years of age. However, exceptions can be allowed for children of at least 16 years to enter into a marriage contract when verified circumstances of public or family interest have occurred, and provided that their parents or legal representatives have consented (Article 30 (2) of Family Law no. 10/2004). The family interest in matters of marriage finds support in Article 119(2) of the Mozambican Constitution, which provides that the State shall protect marriage as an institution that guarantees the continuation of family goals. The legal exception is centred around the strong traditional understanding of marriage as a matter that involves families, rather than an issue that is individual, personal or exclusive to the spouses. It is seen as a prerogative of the family to decide when and how a marriage is to be concluded (Malunga and Muzzi, 2014). Moreover, from a cultural perspective, women are said to be the guardians of culture and morals (Ortner, 1974). Thus, losing your virginity before marriage and pregnancy out of wedlock are seen as acts that dishonour the family and society in general

and which should, as a consequence, be avoided.

What the Mozambican Family Law actually does in its Article 30 (2) is to substitute the teenager's consent with a parental consent or the consent of a legal representative. This involvement of a parent or a representative is in fact a translation of the traditional Mozambican marriage - where parents literally substitute their sons and daughters in finding a spouse and consent to the marriage. This practice is more visible in the south of Mozambique which is known to be patriarchal.

Even from the perspective of internal Family Law logics such substitution is problematic. After all, according to Article 7, taken together with Article 47 of Family Law no. 10/2004, the marriage contract is an agreement which is based on two crucial elements; an intention to enter into the contract and an intention to be bound by it. Therefore, when at least one of the two individuals involved has not given his/her full and free consent, the marriage is to be defined as a forced marriage. Early marriage - defined as the union of two persons of whom at least one is under 18 years of age - is considered to be a forced marriage, due to the fact that such a young person cannot make a free and informed decision about their marriage partner, the timing or the implications of the commitment (Article 7 of Family Law no. 10/2004).

Civil society organizations have accurately maintained early marriage as a violation of the paramount principle of the best interests of the child, including the right of protection from harmful cultural practices (Papadakis, 2016). The principle of the best interests of the child implies that, when adults make decisions, they should think about how their decisions will affect children. It is an overarching common law principle that has been used to assist primarily courts and other institutions in their decision-making process (Freeman, 2007).

The principle of the best interests of the child has been recognized in the Mozambican Constitution and should be taken into account by all public entities and private institutions (Article 47 (3)). Also Article 18(3) of the African Charter on Human and Peoples' Rights highlights the state has a duty

to ensure the protection of women's and children's rights, as stipulated in international declarations and conventions. In this respect the Protocol on Rights of Women in Africa (Article 6(b)) is of major importance. It provides that states parties shall take appropriate legislative measures to ensure that the minimum age of marriage for women shall be 18 years. It should be highlighted that the African Charter is of specific relevance to the Constitution of Mozambique, as it is a yardstick for the purpose of the interpretation of the fundamental rights laid down in it (Article 43 of the Constitution of Mozambique).

The exception of Article 30(2) of Family Law no. 10/2004 has not been tested as yet by the Mozambican judiciary for compatibility with the best interests of the child. However, when they will be called upon to do so, they must realize that courts are the upper guardians of minor children and, if the need arises, they have the final say in determining the overall welfare of the child (Committee on Rights of a Child (CRC), General Comment No.14 (2013) on Article 3 (1) (b) of the Convention on the Rights of the Child). Article 30(2) of Family Law no. 10/2004 permits the limitation of a girl's rights by virtue of (harmful) cultural practices. It may eventually block a girl's access to education, as provided in the Constitution (Article 88), without any court intervention. As a consequence, early marriage is in clear violation of Article 56 (3) of the Mozambican Constitution, which prohibits any limitation of rights, provided in the Bill of rights, unless expressly provided for within the Bill of rights. Essentially, limitation of a right is acceptable only when there is a conflict between two equivalent Constitutional rights (Article 56 (2)), which is not the case here. Additionally, the UN Committee on the Rights of the Child (UN CRC) (General comment No. 14, 2013) states that the principle of the best interests of the child has to be taken into consideration in case of a conflict between rights and that attention must be paid to identifying possible solutions which are in the child's best interests. Consequently, limitation of the rights and freedoms provided in the Constitution should only be accepted on a reasonable and justified ground.

Although there are serious arguments to maintain that marriage between the ages of 16 and 18 is contrary to both Mozambican and international law, the data described above shows that legal rules are obviously outpaced by general customary law and generalized practice that tend to reduce the minimum age for marriage to even less than the legally stipulated age of 16 years. Therefore, this article argues that the Mozambican poverty reduction strategy, which is being challenged by rocketing early marriage figures, should make use of more refined legislative tools, so as to reach an inclusive right to human development, i.e. a right to human development that does not leave behind a large and very vulnerable category of the population, namely girl children, who are prone to early marriage and teenage pregnancies. The argument made here is that SPFs can be such legislative tools, provided that they are well-targeted towards girls and women. If the former condition is met, SPFs may hold genuine empowering potential.

Social protection floors (SPFs)

On 5 April 2009 the UN High-Level Committee on Programmes was requested to develop an urgent multilateral action, deploying all UN resources and capacities in order to find a rapid and effective response to the global financial crisis (UNICEF, 2014). An inter-agency agreement was reached on nine joint initiatives (UN SPF, 2009). The sixth of those initiatives is the Social Protection Floor Initiative which aims at providing essential services and transfers to all in need of such protection to not fall into abject poverty (UN SPF, 2009). The nature and objective of the SPF initiative are such that it promotes a holistic and coherent vision of national social protection systems as a key component of national development strategies (WHO and ILO, 2009). The SPF is also considered to contribute to the realization of, at the very least, minimum essential levels of rights embodied in human rights treaties. Also, there are indications that SPFs can make a significant contribution to promote gender equality, which is of key importance to this article.

The International Labour Organization (ILO) has described the SPFs as nationally defined sets of basic social security guarantees, ensuring 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 adequate access to goods and services defined as necessary at the national level (www.ilo.org, accessed 2017). In this respect, the International Labor Organization (ILO) refers to four social security guarantees that the national SPFs should contain as a minimum:

1. access to essential health care, including maternity care;
2. basic income security for children, providing access to nutrition, education, care and any other necessary goods and services;
3. basic income security for persons in active age who are unable to earn sufficient income, in particular in cases of sickness, unemployment, maternity and disability;
4. basic income security for older persons.

It is remarkable how strongly these SPF's are connected with both the causes (limited financial resources, resilience of initiation rites) and the consequences (no access to education, teenage pregnancies, health problems) of early marriages in Mozambique, as described above.

The Basic Social Security subsystem: Mozambique's SPF

On 7 February 2007, Mozambique adopted Social Security Law No. 4/2007. This law defines the Mozambican social security system as a program endowed with appropriate means to satisfy social needs and mandating the distribution of income, within the framework of solidarity among members of the society. Hence, the law establishes a right to social security and defines three levels of security: Basic Social Security, Compulsory Social Security and Complementary Social Security (Article 5 of Law No. 4/2007). The last two are contributory - where people receive

benefits or services in recognition of contributions to the social security program. Those typically include retirement pensions, disability insurance and survivor benefits. However, this paper focuses on the Basic Social Security subsystem, which should be seen as the Mozambican implementation of the SPF (Cunha, 2013). It drives the process of strengthening the most vulnerable people (article 7 of Law No. 4/2007) and is particularly important for those Mozambicans who have spent their lives in the informal sector or have never been employed, including children. In 2009, the Government of Mozambique adopted Decree no. 85/2009, which further sets out the principles and standards of the Basic Social Security system. Its three main pillars include: unconditional cash transfer, social action for health and social action for education.

Fully in line with the idea of SPFs, the Basic Social Security subsystem aims to prevent situations of need, as well as to provide social integration of the most vulnerable groups (Ministério da Mulher e da Acção Social, 2011). It is based on national solidarity, primarily funded by the State Budget, and reflects distributive characteristics. According to Article 7 of Law no. 4/2007 the Basic Social Security subsystem covers national citizens who are unable to work and have no means to satisfy their basic needs, including people living in absolute poverty, children in a difficult situation, elderly living in absolute poverty, people with disabilities living in absolute poverty and people who are chronically ill or have degenerative diseases. Article 1(b) of Decree no. 85/2009 adds to this that 'absolute poverty' should be defined as the impossibility due to disability and/or lack of opportunities of individuals, families and communities to have access to basic minimum conditions, according to the norms and dynamics of society.

The Mozambican legal framework defines vulnerability and risk according to a lifecycle approach. This lifecycle concept was first coined in the Beveridge Report, which stated that basic social security is a protection offered to citizens from 'the cradle to the grave' (Beveridge, 1942). Since then, the lifecycle concept has consistently been used by policymakers in a variety of contexts

(Bonilla and Gruat, 2003). The Mozambican National Basic Social Security Strategy divides lifecycle risk and vulnerability into four stages. The first stage is pregnancy and birth, the second one children of school age, the third one youth and the fourth one adults and elderly. For the purpose of this article, the focus is on school age children.

Notwithstanding the merits of the Beveridge approach, it is, however, important to also look at the Basic Social Security provisions from a gender perspective. The division of roles and responsibilities goes along gender lines and is socially constructed. The power of social rules lies in the fact that they appear to be consensual and non-negotiable, while in fact they are based on inequality and power equations. It has been highlighted before that the Mozambican girl child is caught in a traditional family system featuring a 'natural' hierarchy that leaves her disempowered. As a consequence, it is relevant to see whether poor women qualify for help under the Basic Social Security scheme. It is important to analyze what Mozambican law considers to be, for example, a 'difficult situation' and whether it includes children who are at risk or victims of early marriage.

In the following paragraphs the main pillars of the Mozambican Basic Social Security system are briefly discussed. For each of those pillars, attention is paid to the question of whether girls at risk of early marriage qualify for the benefits that are provided?

Girls' and women's access to the main pillars of the Basic Social Security subsystem

Unconditional Cash Transfers

The unconditional cash transfer program is managed by the Ministry of Women, Children and Social Action and is the main basic social protection program of the Mozambican government in terms of coverage. It was created in 1990-1993 as a national program intended to relieve the difficulties of destitute families and individuals who are temporarily or permanently unable to work and unable to meet their basic needs, by transferring cash benefits. The program beneficiaries are the destitute, elderly (women over 55 years and men over 60), people living with

disabilities, the chronically ill and their dependents. Currently, it is estimated that only 20% of the households in need get the program benefit, which means that 80% remain uncovered (UNDP, 2005).

As far as children are concerned, it has been mentioned above that Article 7(f) of Decree no. 85/2009 speaks of 'orphans and vulnerable children', where Article 7 of Law no. 4/2007 mentions 'children in a difficult situation'. The Social Security Law no. 4/2007 provided for a broad concept ('difficult situation') which was consequently given a very narrow interpretation at the implementation level (decree). This is not surprising in a developing country where financial resources are limited. An important question remains, however, of whether those 'orphans and vulnerable children' constitute two different categories of beneficiaries, or whether they are cumulative categories. The uncertainty is based on the fact that, in the original Portuguese version of the Decree, reference is made to 'as crianças órfãs e vulneráveis', which – from a linguistic point of view – may support both interpretations. The Operational Plan of the Cash Transfer Programs 2010-11 is pretty clear: it considers merely children who lost both parents. Also according to the Manual of Procedure of the direct social support program 2013 only orphans can be beneficiaries. The Manual as well appears to be interpreted as referring only to double orphans.

It is of course correct that children are particularly vulnerable when they have lost their parents. The percentage of Mozambican children who are orphans rose from 10 per cent in 2003 to 13 per cent in 2011 (IDS, 2011). However, in Article 7 of the Decree no. 85/2009 the authorities took a short-sighted approach where they narrowed down the group of children in a 'difficult situation' (Article 7 of Law no. 4/2007) to merely 'orphans and vulnerable children'. Other children, who may still have both parents, can also be subject to lifecycle vulnerability, in particular early marriage (ENSSB, 2015). As already indicated above, early marriage is considered to be a vulnerability, as it is produced by the power structure that a girl child faces within the family and community and it exposes the involved child to very serious risks,

the most important of which is not finishing education and high levels of teenage pregnancy, causing serious health risks for both mother and child.

All of the above means that the operational criteria to qualify for the unconditional cash transfer is very narrow, notwithstanding the broad objectives of the SPFs to prevent situations of need, as well as to provide social integration to the most vulnerable groups. Moreover, looking at the situations of both orphans and children that are victims of early marriage, it turns out that approximately 42 per cent of girls under 18 years are victims of early marriage compared to 13 per cent of orphaned children in general which evidences a protection gap. It consequently follows that, out of both vulnerabilities, early marriage has a bigger social and health impact than orphanage. Therefore, the program eligibility criteria should include early marriage as a separate risk, independently of being an orphan or not. The legal framework should consider the vulnerability that children face, and not just their parental status. This suggests that all girl children at risk of early marriage should receive the benefit, in particular those from the areas where early marriage is a common practice. In those cases the benefit works in a preventive transformative way (Sabates-Wheeler and Devereux, 2013). As highlighted before, the part of the population that is still practicing early marriage largely coincides with those living in extreme poverty. Access to unconditional cash benefits for a girl child provides for an income that helps not only to take a gender approach to social protection but, also, to using social protection as a tool to lift households out of poverty.

Social Action for Health

Social Action for Health is managed by the Ministry of Health. It aims at ensuring universal access to primary health care for the most vulnerable people, including measures that can improve the quality of health such as vaccinations and other public preventive health measures (GARPR, 2014). According to the Decree no. 12/95, Article 2, healthcare services should be provided free of charge to the following groups of the population: pregnant women, mothers and

their newborn, children under the age of 5 as well as elderly and orphans. Here again, young girls at risk of early marriage and – as a consequence – teenage pregnancy are not a separate category.

As set out above, pregnancy poses many health risks for young girls. In accessing healthcare services, the most common constraints are long distance, transportation cost, and poor health care services. For pregnant teenagers the influence of the traditional African family system should be added to those practical difficulties. For example, whilst young women may want to avoid pregnancy, they may inadvertently heighten their risk of unwanted pregnancies by using traditional, less effective contraceptive methods or no contraceptive method at all (Van der Veken, 2007). HIV/AIDs related stigma generally remains an influencing factor in the decision to access or refuse HIV-related treatment (ENPCCPM, 2015). The office of the UN High Commissioner for Human Rights does recommend that reproductive health rights be looked at in all its dimensions: prevention, treatment, control of diseases and access to essential medicines. This means that only targeting women at pregnancy and the post-partum stage is insufficient and does not consider lifecycle health vulnerabilities, especially for young girls. It could help to properly identify barriers that hinder access to health programs and uncover the connections that exist between sexual and reproductive health issues. A law targeting women in the reproductive stage is considered the first step towards the realization of women's health concerns (Holmes and Jones, 2010). Comprehensive sexual and reproductive health programs and services are the most effective approaches for preventing maternal mortality and morbidity, fighting HIV and AIDS, and meeting the sexual and reproductive health needs of women and young people while also promoting human rights (CHANGE, 2010).

Social Action for Education

Social Action for Education, managed by the Ministry of Education, aims to encourage the participation of vulnerable groups in the education system. Since 2003, public first level primary school education has been free of charge and compulsory for all children in Mozambique.

To genuinely fulfil the right to education, the government provides textbooks for primary school pupils (Republic of Mozambique, 2003). There is also a provision for school meals. However, few public primary schools (only 5 per cent out of 16,044 schools) offer free school lunches. Nonetheless, school attendance cannot be considered free for parents due to non-fee costs such as uniforms, school material and any other fees collected by the school (Republic of Mozambique, 2003). Additionally, it should be noted that some children do not attend school due to the absence of a school within walking distance. Alternatively, they have to use public transport and bear the costs.

Apart from purely financial considerations, which affect girls as much as boys, there are additional considerations which affect girl children more than boys. Those considerations relate to other family duties that a girl child has. Here the traditional role of the girl child within the family enters the picture again: girls have to take care of household work such as cooking, fetching water, firewood and providing farming labor (Osório, 2001). It is most often at this stage a family will opt to send only the boy to school, to the detriment of the girl child, believing that a girl is more productive at home than at school. Very often, at the age of transition from primary EP1 to EP2, a girl child has already acquired care work skills and takes part in initiation rites. From a cultural perspective, a girl child is then considered to be a woman and is automatically forced into leaving school and marriage.

The idea that a girl child at risk of early marriage should be a specific target group for the Social Action for Education has been adopted by the Ministry of Women and Social Assistance. It approved the National Strategy to Combat Early Marriage (*Estratégia Nacional de Prevenção e Combate dos Casamentos Prematuro em Moçambique*) (2016-2019) (ENPCCPM, 2015), which has a general objective of creating a conducive environment to prevent and progressively combat early marriage. It intends to increase access to information and education on reproductive health rights for teenagers, to guarantee and mitigate the impact of early

marriage, to support a married child with vocational courses, to set up programs that help to empower socio-economic capacities of the families. Unfortunately, this Strategy considers that the solution depends mainly on improvements in the supply and quality of the education system and mechanisms of basic social protection, such as school meals, without considering access to minimum income.

Notwithstanding the merit of school meals when it comes to retaining children at school, the Strategy does not address any of the deeply rooted causes of early marriage, like the economic pressure on the poorest households and the prevailing socio-cultural practices that lead families to believe that marrying a girl child will reduce the expense of the family temporarily. These causes are better responded by another type of intervention, such as access to unconditional cash transfers.

A failing SPF and a misfit with other parts of the Mozambican legal system

The above analysis has shown that the Basic Social Security subsystem, which is the Mozambican translation of the SPFs, is problematic when it comes to the conceptualization of what entails child protection in gender terms. It is clear that girl children are never seen as a separate category that is worthy of protection, which in the short run precludes women's empowerment, and in the long run undermines the country's efforts to fight poverty.

On top of these drawbacks of the Basic Social Security subsystem, there is also a lack of congruency within the Mozambican legal system as a whole, where the girl child is not unequivocally considered a victim of or vulnerable to the culture of early marriage. By way of example: the above mentioned National Strategy to Combat Early Marriage is in strong contrast with the Minister of Education's Decision no. 39/GM/2003, which provides that pregnant girls are not allowed to attend day school at EP1 and EP2 levels. This clearly shows that - even on the political level - there is no uniformity in the perception of early marriage and the response to it. In the Strategy, the pregnant girl is considered

to be a victim, and yet in the Ministry of Education's policy, she is considered responsible for and guilty of her pregnancy. The co-responsible for the early pregnancy, often peers or teachers, do not suffer any sanction at all. Another example is the prosecution and accountability of girls for sexual harassment and violence (Artur, 2003).

All of these examples show how well the cultural model has been incorporated in the legal system (Osorio, 2007). Within that cultural model women are accomplices and agents of their submission. For example, girls wearing short skirts are considered 'uncontrolled' and exposed to violence that is socially and culturally legitimate. Therefore, the Mozambican Basic Social Security subsystem and the legal system as a whole raise questions regarding the way in which Mozambique guarantees the principle of equality and non-discrimination of women. One could claim that there is at least substantial inconsistency in the fulfilment of Mozambique's international human rights commitments, as contained, by way of example, in the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) which states that any engagement or marriage of a child should not have any legal status.

An SPF legal framework for inclusive development and empowerment of women in Mozambique

Since 1990, international financial institutions like the World Bank have played an important role in the reformulation of development policies and the new approach to poverty reduction in Mozambique. Development policies in developing countries have always focused largely on social assistance for the poor and vulnerable generally, alleviating the adverse impact of economic shocks (UNRISD, 2010). Although the definition of the right to development and its delimitation still incites debate, it is clear that empowerment, as an expansion of the freedom of choice that goes together with human development, has become the guiding principle. Such expansion of freedom sounds very broad and could apply to all disadvantaged or socially excluded groups such as

children, people with disabilities, refugees, migrants, etc.

It is important, however, to recognize that women's empowerment encompasses some unique additional elements. First, women are not just a group of various disempowered people within a society or community: they are a cross-cutting category of individuals that overlap with all other groups. Second, household and interfamilial relations are a central universe of women disempowered in a way that does not occur to any other group (Narayan, 2002). The Mozambican girl child in particular faces various levels of oppression that disempower and create disadvantage in many respects from a very early age on. First, from the cultural perspective, early marriage tends to affect Mozambican girls disproportionately as compared to boys, as girls are seen to be less valuable. Second, from the legal perspective, the exception to the marriage age - which clashes with the notion of the civil contract requiring informed consent - supports and even legalizes the cultural practice. Third, from a class perspective, the majority of girls vulnerable to early marriage seem to be those coming from (northern) rural areas and low-income families.

As a consequence of early marriage and teenage pregnancies, Mozambican women have more limited access to educational, employment and leadership opportunities, as compared to their male counterparts (Tvedten, 2012). 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 rights.

The situation described above is a clear violation of Article 35 of the Mozambican Constitution which stipulates that men and women shall be equal before the law in all spheres of political, economic, social and cultural life. The equality that the Constitution aspires to should not only be formal equality, but also substantive equality. The limitations of a merely formal approach to equality have also been acknowledged by the Committee on the Elimination of Discrimination against Women, as it stated that Articles 1 to 5 and 24 indicate that States Parties under CEDAW

are required to go beyond a formal interpretation of equal treatment between men and women, in order 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 (CEDAW, 2004). Substantive equality requires the different conditions that people of different categories might find themselves in be examined. This may bring to light that different categories of persons may experience the same rule or standard differently - some favorably others unfavorably (CEDAW, 2004). The test in the case of substantive equality is the effect of a measure, not the way in which it is formulated.

In the case of early marriage, there is substantive discrimination of young girls when it comes to accessing SPFs, as their specific vulnerability is not recognized in the Basic Social Security subsystem, nor in the legal framework as a whole. This type of deep and historic socioeconomic disadvantage cannot be understood without an awareness of the implication of certain norms that govern the society (Mackinnon, 1989).

The Mozambican Government did realize that early marriage is a problem, and approved, as discussed above, the 2016 National Strategy to prevent and fight early marriage. That, however, is not sufficient as long as the law reproduces the oppression that Mozambican girl children still face on several levels. The Family Law provision, for example, which has introduced an exception to the minimum marriage age, tends to dismiss all the fundamental human rights and freedoms that children have universally acquired. As shown above, legal acceptance of early marriage is evidence that the law in itself reinforces gender roles. It embraces the system of the traditional African family where roles are distributed along gender lines from a very early age onwards and where daughters tend to be prepared to get married and not to acquire skills that help to secure formal employment.

Apart from tackling legal rules that reproduce cultural norms, it is clear that early marriage should be viewed as a vulnerability that should qualify to access SPFs, targeting in particular young girls from northern and central provinces

such as Niassa, Cabo-Delgado, Zambézia and Manica. This view is shared by the UN Children's Rights Committee as it urged the state to, among other things, 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 (CRC, 2009). Successful pilot programs of social intervention have provided economic and educational opportunities to young women and their families by employing members of the family with the specific goal of delaying marriage, giving families financial incentives to keep their daughters in school (República de Moçambique, 2011), or feeding children during school hours to decrease families' expenses (República de Moçambique, 2011). 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 (República de Moçambique, 2011). Educated girls can contribute to the health and welfare of their family and marry a man of their own choice and age.

Conclusion

The economic context in which early marriage exists in Mozambique is one of household poverty. Arranging the marriage of young girls before the age of 18 is a way for poor families to be relieved of the responsibility of feeding, clothing and protecting the girl child in an uncertain and insecure society. Socio-cultural practices like initiation rites keep providing the cultural basis for early marriages and, in so doing, perpetuate gender inequality. Early marriage, however, comes with many disadvantages and dangers that weigh enormously on the involved young girls' future, and consequently also on the country's future. Early marriages undermine any policies developed by the government to combat poverty.

This article has argued that SPFs should be seen as a tool to respond to that risk. The Basic Social Security subsystem, which is seen as the Mozambican translation of the SPF's, is currently based on a very narrow targeting system, which leads to the exclusion of a large proportion of

children from the program, in particular girl children vulnerable to early marriage and all its attendant consequences. This situation is also indicative of a failure to leverage the national and international commitments and laws on gender equality and the protection of children.

This article has argued that it is time to extend the scope of the Basic Social Security subsystem beyond its current targeting system to make the Mozambican social protection system more inclusive, as a way to open a space for the girl child, not only to participate in the process of human development, but to attain genuine empowerment. Hence, direct cash transfers, free health care and strengthening human capital through education are all ways to include women in the process of development and to empower them, as well as to effectively implement the principle of the best interests of the child and gender equality.

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