



18+ PROGRAMME ON ENDING CHILD MARRIAGE IN SOUTHERN AFRICA

OVERVIEW

CHILD, EARLY AND FORCED MARRIAGE IN MALAWI, MOZAMBIQUE, ZAMBIA AND ZIMBABWE

APPLICABLE INTERNATIONAL AND REGIONAL LAW AND POLICY



About Plan International

Founded in 1937, Plan International is one of the oldest and largest children's development organisations in the world. Plan International is currently working in 71 countries worldwide. Their vision is of a world in which all children realise their full potential in societies that respect people's rights and dignity. Through its *Because I Am A Girl* (BIAAG) global campaign, Plan International has had a major focus on promoting gender equality to lift millions of girls out of poverty.

About the 18+ Programme

The 18+ Programme on Ending Child Marriage in Southern Africa was conceptualised as an initiative to domesticate and operationalise the BIAAG campaign. It is a programming model with a clear theory of change and pathways for attaining the desired change. The programme, hosted in Zambia, covers Malawi, Mozambique, Zambia, and Zimbabwe and has three main objectives:

1. To mobilise girls at risk of child marriage so that they have the capabilities to determine their own futures and make their own choices about if, when and whom they marry.
2. To transform, through social movement-building, the gender norms and practices that drive child marriage.
3. To facilitate an enabling legal and policy environment to protect girls from child marriage.

About the study

The study, which took place between November 2014 and April 2015, analysed and documented domestic and regional legislation that prohibits and/or perpetuates the practice of child, early and forced marriage in the four countries. It interrogated whether formal, customary or religious laws are in conformity with international human (child) rights standards. The validation workshop was held in April 2015 and the final draft reports were out in July 2015. This in-depth review of the legal and policy environment has informed the development of policy briefs for the four participating countries, which recommend legal and policy changes at country and regional levels.

Acknowledgements

On behalf of Plan International, the chairperson of the *18+ Programme on Ending Child Marriage in Southern Africa*, Samuel Musyoki, would like to acknowledge the support accorded by our partners namely: the Open Society Initiative of Southern Africa (OSISA), Plan Netherlands, the Royal Netherlands Government and Plan Norway. We are thankful to Emmily Kamwendo-Naphambo, manager of the 18+ Programme, for the pivotal role she played in coordinating this study; and the 18+ focal point persons in Malawi, Mozambique, Zambia and Zimbabwe, the CSO and government partners and the Southern Africa Development Community (SADC) Parliamentary Forum (PF) for providing information and participating in the validation workshop. Finally, we would like to thank the research team: Professor Julia Sloth-Nielsen from the University of Western Cape, South Africa and Tinyade Kachika, a gender and legal consultant from LawPlus, Malawi, who carried out this review. Our thanks go also to the editorial team.

Cover photo: Plan International Mozambique.

Published by Plan International, 2016.

The 18+ Programme on Ending Child Marriage in Southern Africa is hosted at:

Plan International Zambia Country Office, Plot 87A, Kabulonga Road, Lusaka, Zambia, Southern Africa
Email: zambiacountryoffice

@plan-international.org

Tel: +260 211 260074

or +260 211 260075

Fax: +260 211 260093

Website: <https://plan-international.org/what-we-do/because-i-am-girl>



Twitter: @Planzambia
(<http://twitter.com/PlanZambia>)



Facebook: Plan International Zambia (www.facebook.com/PlanInternationalZambia)

CONTENTS

Acronyms	4
Introduction	5
Part 1. Applicable legal instruments	6
Treaties that are binding on States Parties	6
General Recommendations and General Comments	6
Key consensus documents	7
Part 2. Ratification status of applicable treaties	8
Part 3. Human rights frameworks applicable to issues relating to child marriage	10
References	26

ACRONYMS

ACERWC	African Committee of Experts on the Rights and Welfare of the Child
ACHPR	African Commission on Human and Peoples' Rights
ACRWC	African Charter on the Rights and Welfare of the Child
AU	African Union
CCPR	Committee on Civil and Political Rights
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CESCR	Committee on Economic, Social and Cultural Rights
CPD	Commission on Population and Development
CRC	Convention on the Rights of the Child
CRC Committee	Committee of the Convention on the Rights of the Child
ICCPR	International Covenant on Civil and Political Rights
ICESCR	Economic, Social and Cultural Rights
ICPD	International Conference on Population and Development
IPAS	International Pregnancy Advisory Services
OHCHR	Office of the United Nations High Commissioner for Human Rights
SADC	South African Development Community
UDHR	Universal Declaration of Human Rights
UNECA	United Nations Economic Commission for Africa
UNFPA	United Nations Population Fund
UNGA	United Nations General Assembly
UNICEF	United Nations Children's Fund

INTRODUCTION

This overview of international law and policy is intended for use by the Plan 18+ programme being implemented in Malawi, Mozambique, Zambia and Zimbabwe as a reference base for child and gender-related treaties, General Recommendations and General Comments, consensus documents, and policy milestones.

The report consists of three parts. The legal implications of the applicable instruments are outlined in Part 1. The ratification status of those that are legally binding is discussed in Part 2, and the list of human rights frameworks related to child, early and forced marriage is analysed in Part 3. A summary of international and regional policy milestones in the area of child, early and forced marriage is also included in Part 3.

PART 1. APPLICABLE LEGAL INSTRUMENTS

Treaties that are binding on States Parties

A 'State Party' to a treaty (also known as a convention, protocol or charter) is a State that has expressed its consent to the treaty through ratification, accession or succession. When a State ratifies a treaty, it assumes a legal obligation to implement the rights recognised in that treaty and undertakes to put in place the necessary measures and national legislation. The State also commits to submitting regular reports on how these rights are being implemented to the monitoring committee set up under that treaty.¹

For purposes of the Plan+18 programme and its focus on Malawi, Mozambique, Zambia and Zimbabwe, the international treaties that are captured in this report are those that are ratified under the United Nations human rights system. Regional treaties are those that are ratified under the African Union and SADC systems; the latter are in fact sub-regional treaties.

General Recommendations and General Comments

Various bodies monitor the implementation of human rights treaties, both in the United Nations and African systems. The ones described in Part 3 are:

- **The CRC Committee**, responsible for monitoring the implementation of the Convention on the Rights of the Child (CRC).

- **The CEDAW Committee**, responsible for monitoring the implementation of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).
- **The Human Rights Committee**, responsible for monitoring the implementation of the International Covenant on Civil and Political Rights (ICCPR). It is also known as the Committee on Civil and Political Rights (CCPR).
- **The Committee on Economic, Social and Cultural Rights (CESCR)**, responsible for monitoring the implementation of the International Covenant on Economic, Social and Cultural Rights (ICESCR).
- **The African Commission on Human and Peoples' Rights (ACHPR)** of the African Union, which monitors the African Charter (1981) and the Protocol to the African Charter on the Rights of Women in Africa; and the **African Committee of Experts on the Rights and Welfare of the Child (ACERWC)**, which monitors the implementation of the African Charter on the Rights and Welfare of the Child (ACRWC).

Treaty monitoring bodies occasionally interpret the provisions of treaties that they are tasked to monitor through General Comments or General Recommendations. These frameworks are significant because they establish the criteria for assessing the States' compliance with conventions.² Furthermore, they are very important documents in ensuring that specific rights in particular treaties are given meaning.³ Adherence to treaty monitoring bodies' General Recommendations, Comments and Concluding Observations is part of the obligation of countries to respect, protect, and fulfil human rights.⁴

1. www.ohchr.org/Documents/Issues/HRIndicators/MetadataRatificationStatus.pdf

2. IPAS (2002).

3. IPAS (2006).

4. The Committees that monitor the International Covenant on Economic, Social and Cultural Rights and CEDAW, among others, have said that once States have ratified the Conventions, they are legally obliged to meet these three duties. See Cook *et al.* 2001, p. 23-26.

In 2014, General Recommendation No. 31 of the CEDAW Committee/General Comment No. 18 of the CRC Committee mark the first time that the two treaty monitoring bodies have collaborated to interpret provisions related to harmful practices under CEDAW and the CRC, which mutually affect women and children. This joint General Recommendation/Comment is analysed in a more detail in Part 3 so as to understand what this new framework means for programmes aimed at preventing child, early and forced marriage.

Key consensus documents

Consensus documents include declarations, which although not legally binding, express agreed rules of conduct that have an impact on international relations that may later mature into custom, or become the basis of a binding instrument. Likewise, resolutions, action plans or programmes of action are not legally binding instruments; however, they signal concrete commitment by States to take deliberate steps to realise the principles governing the instruments.⁵

5. See Amnesty International (2010); Kurukulasuriya & Robinson (2006).

PART 2. RATIFICATION STATUS OF APPLICABLE TREATIES

The table below shows the ratification status of treaties that are relevant to early, child and forced marriage. Note that the Universal Declaration of Human Rights (UDHR 1948) does not have any

ratification status, since it was initially adopted as a non-binding instrument; however it has since become a binding treaty over time either by way of custom or state practice.

TREATY	RATIFICATION STATUS			
	Malawi	Mozambique	Zambia	Zimbabwe
A. United Nations treaties				
Convention on the Rights of the Child (1989)	Ratified in 1991	Ratified in 1994	Ratified in 1990	Ratified in 1990
CRC Optional Protocol on the Sale Of Children, Child Prostitution and Child Pornography (2002)	Ratified in 2010	Ratified in 2003	Not ratified	Ratified in 2012
Convention on the Elimination of All Forms of Discrimination against Women (1979)	Ratified in 1987, initially with reservations on Article 5. The reservation was withdrawn on 24 October 1991	Ratified in 1997	Ratified in 1985	Ratified in 1991
International Covenant on Civil and Political Rights (1966)	Ratified in 1993	Ratified in 1994	Ratified in 1984	Ratified in 1991
Convention on the Consent to Marriage, Minimum age for Marriage and Registration of Marriage (1962)	Not ratified	Not ratified	Not ratified	Ratified in 1994
UN Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (2000)	Ratified in 2005	Ratified in 2006	Ratified in 2005	Ratified in 2013
ILO Convention on the Worst Forms of Child Labour, 1999 (No. 182)	Ratified in 1999	Ratified in 2003	Ratified in 2001	Ratified in 2000

TREATY	RATIFICATION STATUS			
<p>B) African Union treaties</p> <p>African Charter on the Rights and Welfare of the Child (ACRWC, 1990)</p> <p>African Youth Charter (2006)</p> <p>Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2003)</p>	<p>Malawi</p> <p>Ratified in 1999</p> <p>Ratified in 2010</p> <p>Ratified in 2005</p>	<p>Mozambique</p> <p>Ratified in 1998</p> <p>Ratified in 2008</p> <p>Ratified in 2005</p>	<p>Zambia</p> <p>Ratified in 1992</p> <p>Ratified in 2009</p> <p>Ratified in 2006</p>	<p>Zambia</p> <p>Ratified in 1995</p> <p>Ratified in 2009</p> <p>Ratified in 2008</p>
<p>C) SADC treaty</p> <p>SADC Protocol on Gender and Development (2008)</p>	<p>Ratified in 2013</p>	<p>Ratified in 2010</p>	<p>Ratified in 2012</p>	<p>Ratified in 2008</p>

PART 3. HUMAN RIGHTS FRAMEWORKS APPLICABLE TO ISSUES RELATING TO CHILD MARRIAGE

1) Consent to marriage

Universal Declaration of Human Rights (1948)

Article 16(2) provides that marriage shall be entered into only with the free and full consent of the intending spouses. This supports advocacy for laws against forced child marriage, and for a minimum age of marriage that can enable a party to a marriage to independently exercise this free will.

International Covenant on Civil and Political Rights (1966)

Article 23(3) provides that no marriage shall be entered into without the free and full consent of the intending spouses. This is later interpreted by the Human Rights Committee within the context of obligations to set an acceptable minimum age of marriage (see next).

Committee on Civil and Political Rights (CCPR) General Comment No. 19: Protection of the Family, the Right to Marriage and Equality of the Spouses (1990)

Paragraph 4 of the Human Rights Committee reiterates that Article 23, paragraph 2 of the International Covenant on Civil and Political Rights (ICCPR) reaffirms the right of men and women of marriageable age to marry and to found a family, and paragraph 3 of the same article provides that no marriage shall be entered into without the free and full consent of the intending spouses. Therefore, the Committee reminds States Parties that although the Covenant does not establish a specific marriageable age either for men or for women, the age should be such as to enable each

of the intending spouses to give his or her free and full personal consent in a form and under conditions prescribed by law. Such legal provisions must be compatible with the full exercise of the other rights guaranteed by the covenant.

CCPR General Comment No. 28: Equality of Rights between Men and Women (2000) Paragraphs 23 and 24:

- a) Restates that men and women have the right to enter into marriage only with their free and full consent, and States have an obligation to protect the enjoyment of this right on an equal basis. The Human Rights Committee acknowledges that many factors may prevent women from being able to make the decision to marry freely. One factor relates to the minimum age for marriage. It therefore requires that this age should be set by the State on the basis of equal criteria for men and women. These criteria should ensure women's capacity to make an informed and uncoerced decision. A second factor in some States may be that either by statutory or customary law, a guardian, who is generally male, consents to the marriage instead of the woman herself; thereby preventing women from exercising free choice.
- b) Requires that States should ensure that a woman's free and full consent to marriage is not undermined by laws which allow a rapist to have his criminal responsibility extinguished or mitigated if he marries the victim. Women should enjoy the right to marry only when they have given free and full consent.

The Human Rights Committee joins the array of international frameworks that strive for all steps to be taken to allow no room for forced marriage. More importantly, the Committee brings to light the need for abduction, rape and related crimes affecting girls to be fully prosecuted, and that marriage, usually sanctioned by tradition, which results from such actions, is not acceptable as it unquestionably qualifies as forced marriage.

Committee on Economic, Social and Cultural Rights (CESCR) General Comment No. 16: Equal Right of Men and Women to the Enjoyment of All Economic, Social and Cultural Rights (2005)

Paragraph 27 of the General Comment recognises that Article 10, paragraph 1 of the ICSECR requires that States Parties recognise that the widest possible protection and assistance should be accorded to the family, and that marriage must be entered into with the free consent of the intending spouses. Therefore, implementing Article 3, in relation to Article 10, requires States Parties to ensure that men and women have an equal right to choose if, whom, and when to marry. In particular, the legal age of marriage for men and women should be the same, and boys and girls should be protected equally from practices that promote child marriage, marriage by proxy, or coercion.

Commission on Population and Development (CPD) Resolution 2012/1: Adolescents and Youth (2012)

Under **Paragraph 8**, the 45th Session of the CPD⁶ that was dedicated to the theme of ‘adolescents and youth’ expressed the concern that early and forced marriage and forced sexual relationships have adverse physical, social and psychological effects on adolescent and young girls and violate their human rights. Also, early childbearing and early and forced marriage reduce opportunities for adolescent and young girls to complete their education, develop employable skills and participate in community development.

States were urged to enact and strictly enforce laws to ensure that marriage is entered into only with the free and full consent of the intending spouses.

6. A UN process that tracks the implementation of recommendations of the International Conference on Population and Development (ICPD).

Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (2003)

Article 6 obliges States Parties to ensure that women and men enjoy equal rights and are regarded as equal partners in marriage, including through the enactment of appropriate national legislation to guarantee that no marriage shall take place without the free and full consent of both parties.

2) Prohibition of forced marriage/child betrothal

CRC Optional Protocol on the sale of children, child prostitution and child pornography (2002)

The Optional Protocol supplements the CRC by providing States with exhaustive requirements to end the sexual exploitation and abuse of children.

Article 2 (a) defines ‘sale of children’ as any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration. The joint General Recommendation/Comment of the CEDAW and CRC Committees (2014) has stated that this provision describes child and/or forced marriage that include dowry payments or bride price as constituting a ‘sale of children’.

The Optional Protocol requires member states to use criminal law and other measures to punish and/or eradicate acts and activities that amount to the sale of children.

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW, 1979)

Article 16(2) stipulates that the betrothal and the marriage of a child shall have no legal effect, and legislation must be one of the necessary actions taken to ensure that a minimum age for marriage is specified.

CEDAW General Recommendation No. 21: Equality in Marriage and Family Relations (1994)

Paragraph 37 of the General Recommendation mandates States to abolish the practice of betrothal of girls, since this contravenes CEDAW as well as the Convention, and also a woman’s right to freely choose her partner.

CEDAW General Recommendation No. 24: Women and Health (1999)

Paragraphs 15(d) & 28 of the General Recommendation elaborate on Article 24 of CEDAW, which has provisions related to women and health. It obliges States Parties to enact and ensure the effective enforcement of laws that prohibit marriage of girl children. It also asks States Parties to be mindful of Article 16 (2) of CEDAW, which proscribes the betrothal and marriage of children, an important factor in preventing the physical and emotional harm which arises from early childbirth.

Joint General Recommendation/General Comment No. 31 of the Committee on the Elimination of Discrimination against Women and No. 18 of the Committee on the Rights of the Child on Harmful Practices (2014)

Facets of forced marriage (Paragraphs 22 and 23)

After describing the causes, forms and manifestations of harmful practice⁷ this historical joint General Recommendation/Comment by the CEDAW and CRC Committees closes, to a considerable extent, the door on the debate about whether there is a distinction between child and forced marriage. It notes that child marriage is considered as a form of forced marriage given that one or both parties have not expressed their full, free and informed consent.

In its continued analysis of forced marriage, the joint General Recommendation/Comment enumerates examples of situations where one or both parties to a marriage have not personally expressed their full and free consent to the union by pronouncing that forced marriages may also be manifested through:

- i. Marrying girls too young, when they are not physically and psychologically ready for adult life or making conscious and informed decisions, and thus not ready to consent to marriage.
- ii. Cases where guardians possess the legal authority to consent to marriage of girls in accordance with customary or statutory law, and in which girls are thus married contrary to their right to freely enter into marriage.

- iii. Exchange or trade-off marriages (ie *baad* and *baada*).
- iv. Servile marriages.
- v. Coercing a widow to marry a relative of her deceased husband (levirate marriages).
- vi. Permitting a rapist to escape criminal sanctions by marrying the victim.
- vii. In migration situations, ensuring that a girl marries within the family's community of origin in order to provide extended family members or others with documents to migrate to and/or live in a particular destination country.
- viii. In conflict situations, marriage of girls by armed groups or compelling a girl to get married as a means for a girl to escape post-conflict poverty.
- ix. A marriage in which one of the parties is not permitted to end or leave it.
- x. Payment of dowry and bride price, which increases the vulnerability of women and girls to violence; and where, if children are involved, it is defined as a sale of children by the CRC Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (OP-SC). In addition, the CEDAW Committee (General Recommendation 29) has declared that such practice should not be required for a marriage to be valid, and such agreements should not be recognised by the State Party as enforceable.
- xi. Situations where families will agree to the temporary 'marriage' of their daughter in exchange for financial gains (contractual marriage), which is a form of trafficking in human beings.

Listing these examples of forced marriage in the joint General Recommendation/Comment strengthens advocacy to eradicate forced child marriage in all contexts through concrete legal measures.

⁷ para 6.

3) Minimum age of marriage

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW, 1979)

Article 16(2) stipulates that the betrothal and the marriage of a child shall have no legal effect, and legislation must be one of the necessary actions taken to ensure that a minimum age for marriage is specified. This is significant obligation for States Parties to ensure that children are not getting married below the internationally accepted minimum age of marriage of 18 years.

CEDAW General Recommendation No. 21: Equality in Marriage and Family Relations (1994)

Paragraph 36 of the General Recommendation establishes that the CEDAW Committee considers the minimum age for marriage to be 18 years for both men and women; and mandates States to set a minimum age for marriage.

Joint General Recommendation/General Comment No. 31 of the Committee on the Elimination of Discrimination against Women and No. 18 of the Committee on the Rights of the Child on Harmful Practices (2014)

a) Minimum age of marriage (Paragraph 19):

The joint General Recommendation/Comment by the CEDAW and CRC Committees has left the door open for legal obfuscation about the minimum age of marriage. It states that, as a matter of respecting the child's evolving capacities and autonomy in making decisions that affect her or his life, in exceptional circumstances a marriage of a mature, capable child below the age of 18 may be allowed, provided that the child is at least 16 years old and that such decisions are made by a judge based on legitimate exceptional grounds defined by law and on the evidence of maturity without deference to cultures and traditions. The implications of this are that:

- Unlike the solid stand taken by the ACRWC, the African Charter on Human and People's Rights on the Rights of Women in Africa (also known as the Maputo Protocol),⁸ CEDAW and CRC General Comment No. 4 on the minimum age of marriage

as being 18 years, the joint Comment is introducing a new standard that can see the lowering of this age in exceptional circumstances involving a mature, capable child below the age of 18. However, it sets the absolute ceiling for minimum age (in exceptional circumstances) at 16, meaning that States Parties will not be justified for any reason whatsoever to accept marriages where a party is lower than this age.

- It lays down clear and rigid guidelines for ascertaining such maturity, and this is helpful for arresting random decisions that are tradition based and that are to the detriment of a child. These guidelines are particularly helpful for interpreting the SADC Protocol on Gender and Development (2008), whose Article 8(2) provides that "legislation on marriage shall ensure that no person under the age of 18 shall marry, unless otherwise specified by law, which takes into account the best interests and welfare of the child". Therefore, the joint Comment subjects laws permitting marriages of a person of 16 and 17 years to heightened scrutiny, and States Parties are expected to strictly conform to the joint General Recommendation/Comment to its fullest extent. This implies ensuring that any country that wants to pursue the route of 'respecting the evolving capacity of children' in decisions related to marriage should immediately review its laws accordingly in order to institute the recommended judicial safeguards.
- However, admittedly, the position taken by the joint General Recommendation/Comment brings some complications to the consistent message that most international frameworks have so far maintained,⁹ that the absolute minimum age of marriage is 18 years. This can best be mitigated by country level vigilance to lobby for the absolute minimum age of 18 regardless; and/or to ensure that the specific checks and balances requiring judges to be in charge of determining whether or not a marriage should occur at the lower minimum marriage age of 16 years (in exceptional circumstances) are indeed present and are being fully enforced in

8. www.achpr.org/files/instruments/women-protocol/achpr_instr_proto_women_eng.pdf

9. Perhaps with the exception of the (outdated) Convention on the Consent to Marriage, Minimum age for Marriage and Registration of Marriage (1962), which recommends that the minimum age for marriage should be no lower than 15 years.

practice without any deference to tradition. In rural settings, access to courts is usually problematic, and this challenge in itself may be both an advantage and a disadvantage. An advantage because the absence of courts may inherently make it difficult to pursue such child marriages; and a disadvantage because the absence may be used as a licence for ignoring the law with impunity.

b) Implementation measures for addressing the issue of minimum age (Paragraphs 54 (f), (g) & (h))

To address the issue of age, the joint General Recommendation/Comment urges States Parties to take the following measures:

- Establish a minimum legal age of marriage for girls and boys, with or without parental consent, at 18 years. When exceptions to marriage at an earlier age are allowed in exceptional circumstances, the absolute minimum age should not be below 16 years, grounds for obtaining permission are legitimate and strictly defined by law and marriage is permitted only by a court of law upon full, free and informed consent of the child or both children who appear in person before the court;
- A legal requirement of marriage registration is established and effective implementation is provided through awareness-raising, education, and existence of adequate infrastructure to make registration accessible to all persons within their jurisdiction;
- A system of national compulsory, accessible and free birth registration of all children is established, in order to effectively prevent harmful practices including child marriages.

Convention on the Consent to Marriage, Minimum Age for Marriage and Registration of Marriage (1962)

This Convention was passed by the General Assembly in November 1962. The preamble to the Marriage Convention establishes both the context to the passage of the Convention, and appropriate manner of interpretation of its provisions. The preamble recalls Article 16 (1) of the Universal Declaration of Human Rights, which states that men and women of full age, without any limitation due to race, nationality or religion, have the right to

marry and to found a family. It further establishes that States Parties should take all appropriate measures with a view to abolishing such customs, ancient laws and practices by ensuring, inter alia, complete freedom in the choice of a spouse, completely eliminating child marriages and the betrothal of young girls before the age of puberty, establishing appropriate penalties where necessary, and establishing a civil or other register in which all marriages will be recorded.

Article 2 of the Marriage Convention requests States Parties to take legislative action to specify a minimum age for marriage. The same provisions further provide that no marriage shall be legally entered into by any person under this age, except where a competent authority has granted a dispensation as to age, for serious reasons, in the interest of the intending spouses.

This Convention could be regarded as being somewhat dated, as the minimum age for marriage is recommended to be no lower than 15 years.

Commission on Population and Development Resolution 2012/1: Adolescents and Youth (2012)

Under **Paragraph 8**, the 45th Session of the Commission on Population and Development (CPD) that was dedicated to the theme of 'adolescents and youth' expressed the concern that early and forced marriage and forced sexual relationships have adverse physical, social and psychological effects on adolescent and young girls and violate their human rights. There is also the concern that early childbearing and early and forced marriages reduce opportunities for adolescent and young girls to complete their education, develop employable skills, and participate in community development.

States were urged to enact and strictly enforce laws concerning the minimum legal age of consent and the minimum age for marriage, and to raise the minimum age for marriage where necessary.

Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2003)

Article 6 obliges States Parties to ensure that women and men enjoy equal rights and are

regarded as equal partners in marriage. This shall be reflected through the enactment of appropriate national legislation to guarantee that the minimum age of marriage for women shall be 18 years.

African Charter on the Rights and Welfare of the Child

Article 21(2) provides the most unequivocal statement under international law concerning the minimum age of marriage. It provides that “child marriage and the betrothal of girls and boys shall be prohibited and effective action, including legislation shall be taken to specify the minimum age of marriage to be 18 years”. The Article does not contemplate any deviation from this age for any reason, and it applies to all forms of marriage or union, including under religion or custom. It is also immaterial whether the union is formalised or not. The clear requirement of Article 21(2) is that legislative measures are required to ensure adherence with the prohibition. The legislation should regulate all eligibility requirements for a valid marriage, and should ensure harmonised national laws which cover all forms of marriage or union. The law should further provide penalties for persons who solemnise a marriage without verifying age, or where partners are aged below 18 years and where full and free informed consent of the partners has not been given. Article 21(2) also requires States Parties to take ‘effective action’ which is deemed to include appropriate sanctions and actions to enforce the prohibition on child marriage.

The text of Article 21(2) also proscribes the betrothal of children, which can be defined as the act of offering or promising a child in marriage. Article 21(2) served as the basis for the recent ruling of the Constitutional Court of Zimbabwe in *Mudzuru v Minister of Justice, Parliamentary and Legal Africa and other* (CCZ 12/2015) that found that the marriage or union of persons aged below 18 years was of no legal effect and in violation of the Constitution of Zimbabwe. Article 21(2) should further be read in conjunction with Article 2 of the Charter which again without exception defines a child as a person below the age of 18 years.

There are clear links between setting a minimum age of marriage and birth registration (Article 6 of

the Charter), as registration of births and the accessibility of supporting documentation such as a birth certificate are the only viable means of verification of age.

African Youth Charter (2006)

‘Youth’ are defined as persons between 15 and 35 years of age, meaning that the charter is relevant to part of the target group under discussion, namely persons 15-17 years old.

Article 8 of this Charter notes that the family, as the most basic social institution, shall enjoy the full protection and support of States Parties and that young men and women of full age who enter into marriage shall do so based on their free consent and shall enjoy equal rights and responsibilities. With this provision the Charter implies that no young people should enter into marriage before the full age.

SADC Protocol on Gender and Development (2008)

Article 8(2), which focuses on marriage and family rights, states that legislation on marriage shall ensure that no person under the age of 18 shall marry, unless otherwise specified by law, which takes into account the best interests and welfare of the child; and that every marriage takes place with the free and full consent of both parties. While the former is potentially open to sanctioning child marriage at any age (ie that are deemed in the best interest of the child as an escape from poverty), the joint Recommendation/Comment of the CEDAW and CRC Committees (2014) has arguably come to the rescue by defining stringent standards that laws should adhere to in permitting marriage of persons not below 16 years of age.

4) Marriage registration

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW, 1979)

Article 16(2) commits States Parties to use legislation to make the registration of marriages in an official registry compulsory. This is an important obligation for States Parties to ensure that systematic registration of marriages are happening within their jurisdictions, which remains a weak area in many countries (especially where customary and religious marriages are rampant).

**CEDAW General Recommendation No. 21:
Equality in Marriage and Family Relations (1994)**

Paragraph 39 of the General Recommendation commits States to require the registration of all marriages, whether contracted civilly or according to custom or religious law.

**Convention on the Consent to Marriage,
Minimum age for Marriage and Registration of
Marriage (1962)**

Article 3, with an eye on implementation of the goals of the Marriage Convention, mandates that all marriages be registered in an appropriate official register by the competent authority.

**Joint General Recommendation/General
Comment No. 31 of the Committee on the
Elimination of Discrimination against Women
and No. 18 of the Committee on the Rights of
the Child on Harmful Practices (2014)**

Under **Paragraphs 54 (g) & (h)**, the Committees recommend that the States Parties to the Conventions adopt or amend legislation with a view to effectively addressing and eliminating harmful practices, and this includes ensuring that:

- A legal requirement of marriage registration is established and effective implementation is provided through awareness-raising, education, and existence of adequate infrastructure to make registration accessible to all persons within their jurisdiction;
- A system of national compulsory, accessible and free birth registration of all children is established, in order to effectively prevent harmful practices including child marriages.

In relation to marriage registration, the emphasis on awareness-raising, education and existence of infrastructure needs to be heeded by States Parties so that functional, instead of rhetorical, registration mechanisms that are managed by competent authorities are available; and that these are widely known by the public. Furthermore, the issue of marriage registration is inseparable from the establishment of functional birth registration because official birth certificates are the surest way of verifying true age at marriage.

The Africa Charter on the Rights and Welfare of the Child compels States Parties to make the registration of all marriages in a marriage registry compulsory. This entails further that marriage

registry systems should be accessible and cost-effective so that they are widely available to the general population.

5) Eliminating harmful practices

**Convention on the Elimination of All Forms of
Discrimination against Women (1979)**

Article 2(f) mandates States Parties to condemn discrimination against women in all its forms, and immediately adopt all appropriate means to eliminate discrimination against women. Such measures include legislation to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against women. This puts the spotlight on the obligation of countries to use legal and policy measures to eradicate child marriage as a discriminatory practice against girls. Such discrimination manifests itself by requiring girls to get married much earlier than boys, increasing the health hazards of childbirth on young girls and their children, when other women face minimal hazards; and generally increasing the exposure of young girls to HIV infection, domestic violence and unequal relationships with their spouses.

Article 5(a) carries the obligation for States Parties to take all appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to eliminating prejudices, customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes, or on stereotyped roles for men and women. Child marriage perpetuates the inferiority of women and girls, especially when it is promoted in pursuance of traditions where offering a girl for marriage is regarded as a reward to the male spouse; and generally in forced marriage the consent of the concerned girl is not an important factor.

**Joint General Recommendation/General
Comment No. 31 of the Committee on the
Elimination of Discrimination against Women
and No. 18 of the Committee on the Rights of
the Child on Harmful Practices (2014)**

Paragraphs 12 to 17 elaborate on the two Committees' expectations of how States Parties should respond to the challenge of harmful practices. The Committees stress that an

important first step in ensuring the protection of women and girls is through the incorporation of CEDAW and the CRC into domestic legal frameworks, and to ensure that legislation aimed at eliminating harmful practices should include appropriate budgeting, implementing, monitoring, and effective enforcement measures. In this regard, a clarification is made that **the obligation to protect** requires States Parties to establish legal structures to ensure that harmful practices are promptly, impartially and independently investigated, that there is effective law enforcement and that effective remedies are provided to those who have been harmed by such practices. Therefore, the Committees call on States Parties to explicitly prohibit by law and adequately sanction or criminalise harmful practices, in accordance with the gravity of the offence and harm caused, provide for the means of prevention, protection, recovery, reintegration and redress for victims and combat impunity for harmful practices.

Additionally, the Committees note that as the requirement to effectively address harmful practices is among the core obligations of States Parties under the two Conventions, reservations to these and other relevant articles, which have the effect of broadly limiting or qualifying the obligations of States Parties to respect, protect and fulfil women's and children's rights to live free from harmful practices, are incompatible with the object and purpose of the two Conventions and impermissible pursuant to Article 28(2) of CEDAW and Article 51(2) of the CRC.

The Committees prescribe the following criteria for determining harmful practices to States Parties:

- They are persistent practices and behaviours that are grounded on discrimination on the basis of sex, gender, age and other grounds as well as multiple and/or intersecting forms of discrimination that often involve violence and cause physical and/or psychological harm or suffering. The harm that these practices cause to the victims surpasses the immediate physical and mental consequences and often has the purpose or effect of impairing the recognition, enjoyment and exercise of the human rights and fundamental freedoms of women and children. There is also a negative impact on their dignity,

physical, psychosocial and moral integrity and development, participation, health, educational, economic and social status. These practices are therefore reflected in the work of both the CEDAW and CRC Committees.

- They constitute a denial of the dignity and/or integrity of the individual and a violation of human rights and fundamental freedoms enshrined in the two Conventions.
- They constitute discrimination against women or children and are harmful insofar as they result in negative consequences for them as individuals or groups, including physical, psychological, economic and social harm and/or violence and limitations on their capacity to participate fully in society or develop and reach their full potential.
- They are traditional, re-emerging or emerging practices that are prescribed and/or kept in place by social norms that perpetuate male dominance and inequality of women and children, based on sex, gender, age and other intersecting factors, and
- They are imposed on women and children by family, community members, or society at large, regardless of whether the victim provides, or is able to provide, full, free and informed consent.

Further, the Committees observe the following **causes, forms and manifestations of harmful practices** that States Parties should consistently strive to address.

The causes of harmful practices are multidimensional and include:

- stereotyped sex and gender-based roles;
- the presumed superiority or inferiority of either of the sexes;
- attempts to exert control over the bodies and sexuality of women and girls;
- social inequalities; and
- the prevalence of male dominated power structures.

Efforts to change the practices must address these underlying systemic and structural causes of traditional, re-emerging and emerging harmful practices, empower girls and women, as well as

boys and men, to contribute to the transformation of traditional cultural attitudes that condone harmful practices, to act as agents of such change, and to strengthen the capacity of communities to support these processes.

Despite efforts to combat harmful practices, the overall number of women and girls affected remains extremely high and may be increasing, including for instance in conflict situations and due to technological developments, such as the widespread use of social media. Through the examination of States Parties' reports, the Committees have noted that there is often continued adherence to the harmful practices by members of practicing communities who have moved to destination countries through migration or to seek asylum. Social norms and cultural beliefs supporting these harmful practices persist and are at times emphasised by a community in an attempt to preserve their cultural identity in a new environment, particularly in destination countries where gender roles provide women and girls with greater personal freedom.

CESCR General Comment No. 14 on the right to the highest attainable standard of health (2000)

Paragraph 22 of this General Comment is one of the human rights frameworks that identified child marriage as a harmful traditional practice much earlier on. It recommends that States Parties should adopt effective and appropriate measures to abolish harmful traditional practices affecting the health of children, particularly girls, including early marriage.

CESCR General Comment No. 16: Equal Right of Men and Women to the Enjoyment of All Economic, Social and Cultural Rights (2005)

Paragraph 27 of the General Comment mandates that States Parties should take appropriate measures to eliminate violence against men and women and act with due diligence to prevent, investigate, mediate, punish and redress acts of violence against them by private actors. Being one form of the harmful practice of gender-based violence, child marriage falls squarely within this mandate.

Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2003)

Article 5 seeks to eliminate harmful practices against women and girls in Africa, and stipulates that States Parties shall prohibit and condemn all forms of harmful practices which negatively affect the human rights of women and which are contrary to recognised international standards. To achieve this, States Parties shall take all necessary legislative and other measures, including the creation of public awareness in all sectors of society regarding harmful practices through information, formal and informal education and outreach programmes; provision of necessary support to victims of harmful practices through basic services such as health services, legal and judicial support, emotional and psychological counselling as well as vocational training to make them self-supporting; and protection of women who are at risk of being subjected to harmful practices or all other forms of violence, abuse and intolerance.

The African Charter on the Rights and Welfare of the Child's Article 21 concerns protection of the child against harmful social and cultural practices. Article 21(2) reads that "States Parties to the present Charter shall take all appropriate measures to eliminate harmful social and cultural practices affecting the welfare, dignity, normal growth and development of the child...". This injunction covers an entire gamut of potential harmful practice conducing to child marriage, such as permitting the withdrawal of criminal charges on condition that the offender marry the victim, kidnapping or abduction for the purposes of marriage, and cultural perceptions that early marriage is an appropriate means of securing a girls' well being.

Article 21 further specifies in particular that customs and practices which are harmful to the health or life of the child, and those which are discriminatory to the child on the grounds of sex or other status, must be eliminated. The Charter is therefore focused on discriminatory customs and practices which adversely affect the girl child. The prohibition on child marriage in Article 21(2) underlines this point.

African Youth Charter (2006)

Article 13 highlights that the education of young people shall be directed to the development of life skills to function effectively in society and include issues such as HIV and AIDS, reproductive health, substance abuse prevention and cultural practices that are harmful to the health of young girls and women as part of the education curricula. Not only are these identified skills critical to minimising the challenge of child marriage, but their presence in the Charter also provides an entry point programming that is well aligned to early, child and forced marriage.

Vienna Declaration and Programme of Action (1993)

Paragraph 49 of the Vienna Declaration and Programme of Action, which was adopted by the World Conference on Human Rights held at Vienna on 14-25 June 1993, urges States to repeal existing laws and regulations and to remove customs and practices that discriminate against and cause harm to the girl child.

Commission on Population and Development Resolution 2012/1: Adolescents and Youth (2012)

In **Paragraph 9**, the 45th Session of the Commission on Population and Development (CPD) that was dedicated to the theme of ‘adolescents and youth’ expressed the concern that early and forced marriage and forced sexual relationships have adverse physical, social and psychological effects on adolescent and young girls and violate their human rights. There is also the concern that early childbearing and early and forced marriage reduce opportunities for adolescent and young girls to complete their education, develop employable skills and participate in community development.

States were urged to develop, adopt and fully implement laws and to take other measures, such as policies and educational programmes, as appropriate, to eradicate harmful practices, including early and forced marriage, which are violations of the human rights of women and girls; and to intensify efforts, in cooperation with local women’s and youth groups, to raise collective and individual awareness on how such harmful practices violate the human rights of women and girls.

Plan of Action for the Elimination of Harmful Traditional Practices affecting the Health of Women and Children (1994)

This PoA was adopted on 22 July 1994 by the Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities at its 46th session. It originated from deliberations of an African regional seminar that took place in Ouagadougou, Burkina Faso, on 29 April to 3 May 1991, and an Asian regional seminar that was held in Colombo, Sri Lanka, on 4-8 July 1994, which assessed the human rights implications of certain traditional practices affecting the health of women and children. It contains a specific topic of child marriage, under which governments are being urged to adopt several measures, which should be reinforced with necessary mechanisms for implementation. The PoA uniquely highlights the role of the school curriculum, the media, and safe motherhood initiatives in addressing child marriage.

In particular, under **Paragraphs 30-37**, it recommends the following actions:

- Fixing a minimum age for marriage for boys and girls in accordance with the World Health Organisation’s recommendation that the minimum age for girls should be 18 years.
- Making compulsory the registration of births and deaths, marriages and divorces.
- Including health issues relating to sex and family life education in the school curricula to promote responsible and harmonious parenthood and to create awareness among young people about the harmful effects of early marriage, as well as the need for education about sexually transmitted diseases, especially AIDS.
- Mobilising the media to raise public awareness on the consequences of child marriage and other such practices and the need to combat them.
- Monitoring, by government and women’s activist groups, of the role being played by the mass media to raise public awareness.
- Adopting and working towards ‘safe motherhood’ initiatives.
- Conducting effective training programmes for traditional birth attendants and paramedical personnel to equip them with the necessary skills

and knowledge, including those concerning the effects of harmful traditional practices, to provide care and services during the ante-natal, child delivery and post-natal periods, especially for rural mothers.

- Promoting male contraception, as well as female contraception.
- Increasing the provision of vocational training, retraining and apprenticeship programmes for young women to empower them economically. In this regard, a certain percentage of the places in existing training institutions should be reserved for women and girls.
- Recognising and promoting the reproductive rights of women, including their right to decide on the number and spacing of their children.

6) Eliminating discrimination against women and girls

Convention on the Elimination of All Forms of Discrimination against Women (1979)

Article 10 provides that States Parties to CEDAW should undertake particular measures to eliminate discrimination against women and men in all levels of education.

Article 14 places an obligation on States Parties to ensure that rural women have training, education, economic and health-related opportunities.

Article 1, the implementation Article for the Charter as a whole, is also relevant. Article 1(3) obligates States Parties as follows:

“Any custom, tradition, cultural or religious practice that is inconsistent with the rights duties and obligations contained in the present Charter shall to the extent to such inconsistency be discouraged.” Harmful social and customary practices which are implicated as offending the welfare, dignity, normal growth and development and health of the child also violate a large number of Charter rights, including the best interests of the child (Article 4), the right not to be discriminated against (Article 3), the right to survival development and protection (Article 5). Depending on the nature of the harmful practice, rights such

as education, health, and protection against child abuse and torture, to name but three, might be at stake. Child marriage falls to be considered as a harmful cultural practice due to its implications for girls’ education, their health (due to early pregnancy and child bearing) and increased risk of exposure to violence.

African Youth Charter (2006)

Article 23 is especially dedicated to girls and young women. States Parties are expected to adopt the following measures to eliminate discrimination against girls and young women (and address ills such as early, child and forced in the process), according to national, international and regional human rights obligations:

- Introduce legislative measures that eliminate all forms of discrimination against girls and young women and ensure their human rights and fundamental freedoms.
- Ensure that girls and young women are able to participate actively, equally and effectively with boys at all levels of social, educational, economic, political, cultural, civic life and leadership as well as scientific endeavours.
- Institute programmes to make girls and young women aware of their rights and opportunities to participate as equal members of society.
- Guarantee universal and equal access to and completion of a minimum of nine years of formal education.
- Guarantee equal access to and completion of vocational, secondary and higher education in order to effectively address the existing imbalance between young men and women in certain professions.
- Enact and enforce legislation that protects girls and young women from all forms of violence, genital mutilation, incest, rape, sexual abuse, sexual exploitation, trafficking, prostitution and pornography, and
- Develop programmes of action that provide legal, physical and psychological support to girls and young women who have been subjected to violence and abuse such that they can fully re-integrate into social and economic life.

Programme of Action of the International Conference on Population and Development (ICPD) (1994)

Under **Paragraph 7.41**, the Programme of Action galvanised action to address child marriage along with other aspects of adolescent's reproductive health. It acknowledged that before the ICPD, the reproductive health needs of adolescents as a group had been largely ignored by existing reproductive health services. This is despite the reality that: motherhood at a very young age entails a risk of maternal death that is much greater than average; children of young mothers have higher levels of morbidity and mortality; and that early child-bearing continues to be an impediment to improvements in the educational, economic and social status of women in all parts of the world since for young women, early marriage and early motherhood can severely curtail educational and employment opportunities and are likely to have a long-term, adverse impact on their and their children's quality of life.

7) Prohibition of dowry or similar payment

CEDAW General Recommendation No. 29: Economic Consequences of Marriage, Family Relations and their Dissolution (2013)

Paragraph 33 describes the concerns of the CEDAW Committee over traditional marriage-related payments. Although no specific reference is made to child marriage, the CEDAW Committee has asserted that payment or preferment, (which are transactions in which cash, goods or livestock are given to the bride or her family by the groom or his family; or a similar payment is made by the bride or her family to the groom or his family) is a practice that should not be in any way required for a marriage to be valid; and that such agreements should not be recognised by the State Party as enforceable. Such child marriage practices that are pursued by parents or guardians in order to acquire dowry or any form of economic benefit are covered by the General Recommendation.

8) Rape is not a licence to marriage

CCPR General Comment No. 28: Equality of Rights between Men and Women (2000)

Paragraph 24 obligates States to ensure that a woman's free and full consent to marriage is not undermined by laws which allow a rapist to have his criminal responsibility extinguished or mitigated if he marries the victim. Women should enjoy the right to marry only when they have given their free and full consent.

Joint General Recommendation/General Comment No. 31 of the Committee on the Elimination of Discrimination against Women and No. 18 of the Committee on the Rights of the Child on Harmful Practices (2014)

Paragraph 41 contains a censure by the two Committees that contrary to the obligation of the States Parties under both Conventions, many of them maintain legal provisions which justify, allow, or lead to harmful practices such as legislation which allows for child marriage, provides the defence of so called 'honour' as an exculpatory or mitigating factor for crimes committed against girls and women, or legislation that enables a perpetrator of rape and/or other sexual crimes to avoid sanctions through marriage to the victim.

9) Other required measures to combat early, child and forced marriage

Joint General Recommendation/General Comment No. 31 of the Committee on the Elimination of Discrimination against Women and No. 18 of the Committee on the Rights of the Child on Harmful Practices (2014)

Due diligence obligations of States Parties

The joint General Recommendation/Comment declares that States Parties to both Conventions have a due diligence obligation to prevent acts that impair the recognition, enjoyment or exercise of rights by women and children, and ensure that private actors do not engage in discrimination against women and girls, including gender-based violence in relation to CEDAW, or any form of violence against children, in relation to the CRC.

In this context, 'due diligence' should be understood as an obligation of States Parties to the Conventions to prevent violence or violations of human rights, protect victims and witnesses from human rights violations; the obligation to investigate and punish those responsible, including private actors; and the obligation to provide access to redress for human rights violations.¹⁰ This makes the need for States to take multi-pronged approaches to combat child marriage as a form of violence against girls and a violation of their human rights non-negotiable.

This approach has to target all the harmful implications of child marriage, including those that are spelt out in the General Recommendation/Comment as illustrative examples. These are early and frequent pregnancies and childbirth, resulting in higher than average maternal morbidity and mortality rates; pregnancy-related deaths as the leading cause of mortality for 15-19 year old girls (married and unmarried) worldwide; high infant mortality among the children of very young mothers; limited decision-making power by girls in relation to their own lives, particularly in cases where the husband is significantly older and where girls have limited education; higher rates of school dropout, particularly among girls, forced exclusion from school; increased risk of domestic violence; limited enjoyment of the right to freedom of movement; girls' lack of personal and economic autonomy; girls' attempts to flee or commit self-immolation or suicide to avoid or escape the marriage.¹¹

Specific legal measures

The joint General Recommendation/Comment explains that the CEDAW and CRC Conventions outline the obligations of States Parties to establish a well-defined legal framework in order to ensure the protection and promotion of human rights.¹² An important first step in doing so is through the incorporation of CEDAW and CRC into domestic legal frameworks, with particular attention paid to adopting specific provisions that have the combined effect of holistically addressing child marriage and its harmful impacts.

Moreover, the joint General Recommendation/Comment places an unequivocal obligation on States Parties to establish legal structures to ensure that harmful practices are promptly, impartially and independently investigated; that there is effective law enforcement; and that effective remedies are provided to those who have been harmed by such practices. The Committees call on States Parties to explicitly prohibit by law and adequately sanction or criminalise harmful practices, in accordance with the gravity of the offence and harm caused; provide for the means of prevention, protection, recovery, reintegration and redress for victims; and combat impunity for harmful practices.¹³ This is a clear statement that harmful practices are usually tantamount to criminal offences, and it is not acceptable for States Parties to undermine their gravity, either by failing to adopt the right legal frameworks, or by failing to diligently enforce the same where they exist. This is the challenge that is faced with the fight against child marriages, whereby many law enforcement agencies turn a blind eye to criminal law violations such as defilement or the perpetuation of harmful practices that are criminalised by law (ie child betrothal).

Education-related strategies

The joint General Recommendation/Comment provides the impetus for States Parties to earnestly implement strategies to promote education for girls; since the Committees stress that the completion of primary and secondary education provides girls with short- and long-term benefits, contributing to the prevention of child marriage and adolescent pregnancies, preparing women and girls to better claim their right to freedom from violence, and increasing their opportunities for effective participation in all spheres of life. Measures that States Parties ought to take to boost enrolment and retention in secondary education are:

- i. Ensuring that students complete primary school;
- ii. Abolishing school fees for both primary and secondary education;

10. Paragraphs 10 & 40.

11. Paragraph 21.

12. Paragraph 11.

13. Paragraph 12.

- iii. Promoting equitable access to secondary education, including technical-vocational educational opportunities;
- iv. Giving consideration to making secondary education compulsory; and
- v. Ensuring that adolescent girls, during and after pregnancy, have the right to continue their studies, which can be guaranteed through non-discriminatory return policies.¹⁴

States Parties can institute these measures through: education for girls and school drop-out strategies; school re-admission policies for child mothers; laws guaranteeing equality at all levels of education; and resource allocation to fully implement all identified measures.

Economic empowerment

The joint General Recommendation/Comment also recommends that as part of a holistic approach to addressing harmful practices (including child marriage), States Parties should ensure the economic empowerment of women. In this regard, women and girls should be enabled to build their economic assets through training in livelihood and entrepreneurship skills.¹⁵ They should benefit from programmes that offer an economic incentive to postpone marriage until the age of 18, such as scholarships, micro-credit programmes or savings schemes. Further, complementary awareness-raising programmes should be conducted in order to communicate the right of women to work outside of the home and challenge taboos about women and work.¹⁶

ACHR General Comments on Article 14 (1) (a), (b), (c) & (f) and Article 14 (2)(a) & (c) of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2014)

These General Comments were adopted by the African Commission on Human and Peoples' Rights (ACHR) - the treaty monitoring body for the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa) on 7 May 2014. The General Comments focus on Articles that deal with family planning and abortion under the protocol.

The ACHPR recognises that sub-Saharan Africa still has one of the highest rates of early marriage, with some girls being given in marriage at the age of 7 to 10 years, and this exposes them to early pregnancies before reaching their full physical maturity. The result is an increased risk of deliveries with maternal complications and a high rate of mortality and morbidity. The ACHPR recommends specific action that States Parties should implement in order to promote the right to family planning education and access to information and education on family planning/contraceptive and safe abortion for adolescent girls and women.¹⁷

10) International and regional policy milestones

- a) On 20 December 2012, the General Assembly adopted Resolution 67/146, in which it urges States to condemn all harmful practices that affect women and girls.
- b) In 2012, the first International Day of the Girl Child (demarcated as 11 October each year) drew specific attention to the practice of child marriage. The Executive Directors of UNICEF, UNFPA and UN-Women issued a joint statement calling for dedicated resources to accelerate efforts to end child marriage, and UNFPA committed an additional US\$20 million to reach the most marginalised adolescent girls in 12 countries with a high prevalence of child marriage. In the same year, in its Resolution 2012/1, the Commission on Population and Development urged member states to enact and strictly enforce laws concerning the minimum legal age of consent and the minimum age for marriage.¹⁸
- c) In June 2014, the Human Rights Council held a panel discussion on early, child and forced marriage. (See the Report of the Office of the United Nations High Commissioner for Human Rights Preventing and eliminating child, early and forced marriage (A/HRC/26/22)).

14. Paragraph 54.

15. Paragraph 62.

16. Paragraph 64.

17. Paragraphs 17, 39, 43, 51, 52, 53 & 61.

18. UN Secretary General's Report on the Girl Child (August 2013), para 77.

- d) In June 2014, a High Level Summit was hosted by 'Girls not Brides' in London, UK to develop key messages on the ways to eliminate child marriage in a generation.¹⁹ A further focus of the summit was ending female genital mutilation (FGM). During 2014, the number of civil society organisations that are members of 'Girls not Brides' grew to more than 400.
- e) In November 2014, the UNGA adopted a historic resolution on child early and forced marriage,²⁰ supported by a large number of countries. The motion was co-led by Zambia and Canada. The resolution situates child marriage firmly within the post-2015 development agenda, and calls on the Secretary General to provide information to follow up on the report prepared by the OHCHR, discussed in June 2014 at the Human Rights Council.
- f) In October 2014, the African Committee of Experts on the Rights and Welfare of the Child appointed one of its members as the Special Rapporteur on Child Marriage following the decision of the Executive Council of the African Union in June. The Special Rapporteur will act independently of governments. This position is honorary and the expert is not a staff of the African Union, nor paid for his or her work. The tenure of office will be for two years. It is intended that a dedicated legal and social science research staff (at least a complement of two persons) will support the work of the Special Rapporteur.
- g) In April 2014, the ACERWC identified the theme of child marriage for the celebrations of the 2015 Day of the African Child (DAC), celebrated on 16 June. The exact theme was '25 years after the Adoption of the African Children's Charter: Accelerating our Collective Efforts to End Child Marriage in Africa'.²¹
- h) In May 2014, the historic African Union Campaign to End Child Marriage was launched at the AU headquarters in Addis Ababa.²² At the launch it was stated that the campaign was intended to run for an initial period of two years in ten countries: Burkina Faso, Cameroon, Chad, Ethiopia, Mauritania, Mozambique, Malawi, Niger, Sierra Leone and Zambia. After the two-year cycle ended, the campaign was expected to continue in another set of African countries where child marriage is prevalent. However, since the launch, several other countries have expressed interest in joining and launching the campaign domestically. The two-year campaign is hosted in conjunction with UNICEF and UNFPA, and brings together a large range of partners, including the Ford Foundation, the United Nations Economic Commission for Africa (UNECA), Save the Children, Plan International, Africa Child Policy Forum (ACPF) and the UK Department for International Development (DFID).
- i) Mrs Nywaradzayi Gumbonzvanda (from Zimbabwe), General Secretary of the World Young Women's Christian Association (YWCA), was named Goodwill Ambassador of the AU Campaign to End Child Marriage.
- j) In January 2015, UNICEF released an Issue Brief outlining its desired targets for the post 2015 development agenda. Child marriage features as a child protection target, with UNICEF noting that "child marriage hinders human progress by perpetuating deprivation, inequality and disadvantage across generations. Child marriage is associated with early pregnancies, poor sexual and reproductive health, higher maternal and infant mortality rates and lower education levels for girls."²³

19. www.facebook.com/notes/our-girls-afrika-end-child-marriage-now/key-messages-at-girls-summit-girls-not-brides-july-22-2014/664629350289698 [Accessed 16 January 2016].

20. A/C.3/69/L.23/Rev.1.

21. <https://app.box.com/s/ilalx0kw6dwh7w9ly5nf003h5y2vhuy0>

22. <http://pages.au.int/cecm>

23. UNICEF (n.d.).

- k) In 2014 and 2015, work towards the drafting of the General Comment on child and early marriage conducted by the Centre for Human Rights in Pretoria for the Special Rapporteur on Gender of the African Commission on Human and Peoples' Rights took further shape. Eight country studies were completed (including Malawi and Mozambique), and a workshop to commence drafting the General Comment was convened in Addis Ababa on 9 and 10 April. The African Committee of Experts on the Rights and Welfare of the Child has joined in this effort, and further joint workshop was held in Nairobi in November 2015. The joint General Comment will be finalised by the two Committees in 2016.
- l) Effective 1 June 2015, the United Nations Headquarters appointed Malawi President Prof. Arthur Peter Mutharika as Global Champion for the 'HeforShe' initiative, following recognition of his commitment towards the promotion and protection of women's and girls' empowerment.
- j) On 17 June 2015, the Heads of State and Governments of the African Union announced that they had formally adopted a common position on ending child marriage in Africa. Under this agreement, the AU is urging its Member States to establish comprehensive action plans to end child marriage, including establishing and enforcing laws which set the minimum age for marriage at 18, even within pluralist legal systems. The AU common position urges all member states of the AU to, among other things: develop national strategies and action plans aimed at ending child marriage; enact and implement laws that set the legal minimum age for marriage at 18 years or above with no exceptions and applicable under all legal systems, and implement all continental policies and legal instruments applicable to human rights, gender equality, maternal and child health and harmful traditional practices for the empowerment and participation of girls and women. The AU confirmed that it will monitor progress toward this goal as part of its Agenda 2063 strategy, which aims to ensure positive socio-economic transformation within the next 50 years.

REFERENCES

Amnesty International (2010) Combating Exclusion: Why Human Rights Are Essential for the MDGs. *International Journal on Human Rights* 55.

Cook, RJ, Dickens, BM, Wilson, OAF and Scarrow, SE (2001) *Advancing safe motherhood through human rights* pp.23-26. World Health Organization. Available at: http://apps.who.int/iris/bitstream/10665/66810/1/WHO_RHR_01.5.pdf [Accessed 16 January 2016]

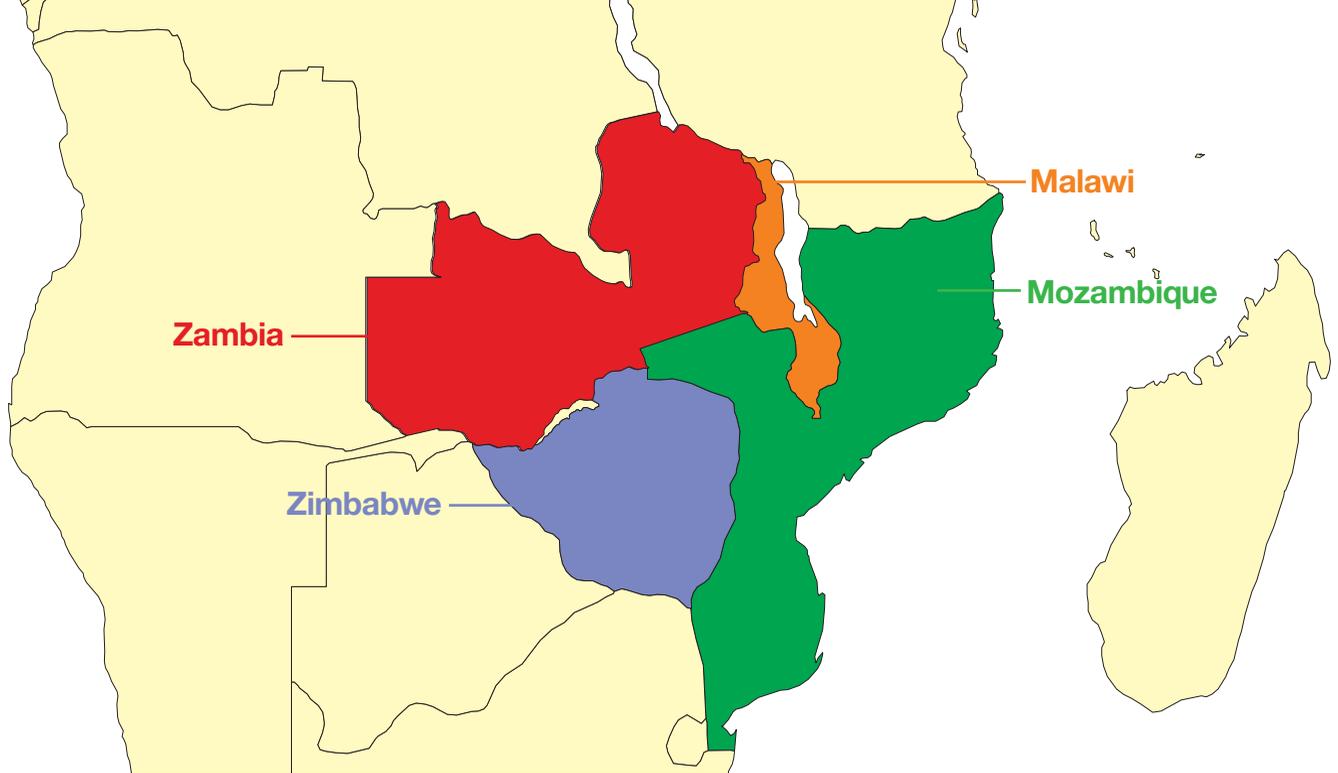
IPAS (2002) Human Rights, *Unwanted Pregnancy and Abortion-Related Care* Available at www.ipas.org/~media/Files/Ipas%20Publications/HRUPregAb.ashx

IPAS (2006) *A handbook for advocacy in the African human rights system: Advancing reproductive and sexual health*. Second edition, available at: www.ipas.org/~media/Files/Ipas%20Publications/AFRIHR2E06Resources.ashx?utm_source=resource&utm_medium=meta&utm_campaign=AFRIHR2E06Resources

Kurukulasuriya, L and Robinson, NA (eds) (2006) *Training Manual on International Environmental Law*. Available at: www.unep.org/environmentalgovernance/Portals/8/documents/training_Manual.pdf [Accessed 16 January 2016]

UDHR (1948) The Universal Declaration of Human Rights. Available at: www.un.org/en/universal-declaration-human-rights

UNICEF (n.d.) *A post-2015 world fit for children*. Available at www.unicef.org/post2015/files/Post_2015_OWG_review_CR_FINAL.pdf [Accessed 16 January 2016]



The 18+ Programme on Ending Child Marriage in Southern Africa is hosted at:

Plan International Zambia Country Office, Plot 87A, Kabulonga Road, Lusaka, Zambia, Southern Africa
Email: zambiacountryoffice

@plan-international.org

Tel: +260 211 260074

or +260 211 260075

Fax: +260 211 260093

Website: <https://plan-international.org/what-we-do/because-i-am-girl>

 Twitter: @Planzambia
(<http://twitter.com/PlanZambia>)

 Facebook: Plan International Zambia (www.facebook.com/PlanInternationalZambia)



Zambia

Plan International Zambia Country Office, Plot 87A, Kabulonga Road, Lusaka, Zambia, Southern Africa
Email: zambiacountryoffice
@plan-international.org

Tel: +260 211 260074

or +260 211 260075

Fax: +260 211 260093

Website: <https://plan-international.org/what-we-do/because-i-am-girl>

 Twitter: @Planzambia
(<http://twitter.com/PlanZambia>)

 Facebook: Plan International Zambia (www.facebook.com/PlanInternationalZambia)

Zimbabwe

Plan International Zimbabwe Country Office, 7 Lezard Avenue, Milton Park, PO Box HG 7232, Highlands, Harare, Zimbabwe, Southern Africa
Email: Zimbabwe.CO@plan-international.org

Tel: +263 772124124-6

Website: <https://plan-international.org/what-we-do/because-i-am-girl>

 Twitter: @Planzimbabwe
(<http://twitter.com/Planzimbabwe>)

 Facebook: Plan International Zimbabwe (www.facebook.com/PlanInternationalZimbabwe)

Malawi

Malawi

Plan International Malawi Country Office, Off Presidential Way, Area 14/100 Block A Ground and First Floors, PO Box 2053, Lilongwe, Malawi
Tel: +265 999970400/401/402/403/404
Website: <https://plan-international.org/what-we-do/because-i-am-girl>

 Twitter: @Planmalawi
(<http://twitter.com/PlanMalawi>)

 Facebook: Plan International Malawi (www.facebook.com/PlanInternationalMalawi)

Mozambique

Plan International Mozambique Country Office, Justino Chemane Road #271, Sommershield II, Maputo, Mozambique

Email: mozambique.co@Plan-international.org

Tel: +258 21485602

Or + 258 21485607

Fax : + 258 21485609

Website: <https://plan-international.org/mozambique>

 Twitter: @planmozambique
(<http://twitter.com/planmozambique>)

 Facebook: Plan International Mozambique (www.facebook.com/plan.mozambique)