

The contribution of laws to change the practice of child marriage in Africa

Authors: Joar Svanemyr, Elisa Scolaro, Karel Blondeel, Venkatraman Chandra-Mouli, and Marleen Temmerman.

Inter-Parliamentarian Union
Geneva, October 2013.

Content

Foreword

Acknowledgements

Acronyms

Executive summary

1. Introduction

Objectives

Definitions

2. Methods

3. Background

Prevalence

Trends

Socio-economic causes underpinning child marriage

Health consequences of child marriage

International and regional legal frameworks – commitments among African countries

Parliamentarian roles and responsibilities

4. Findings

National legislations

Child marriage as a criminal act

Plural legal system

Comparative assessment of 10 countries

5. Discussion

Impact of laws on the practice of child marriage and other harmful practices

Laws as an enabling environment for child marriage prevention programs

Implementation and enforcement of laws

Programs to support legal reforms and mechanisms

Possible adverse effects of enforcement

Research needs

6. Recommendations

Legislation and legal mechanisms

Implementation

Enforcement

Other laws

Contextual factors

Recommendations for research

7. Conclusions

FOREWORD

As part of the democratic process Parliamentarians perform several key functions. In addition to representing their Constituents Parliamentarians develop policies and legislation, approve public expenditure budgets, and hold government to account. Having access to current analysis and relevant information assists Parliamentarians in making informed decisions when shaping legislation and public policy. In this context Parliamentarians perform a critical role in positioning women's health at the centre of the political discourse and ultimately in promoting the rights of women and girls.

The Pan Africa Parliament (PAP) and Inter-Parliamentary Union (IPU) share a commitment to facilitating parliamentary action in order to promote woman, newborn and child health issues. A key area of concern is the wide spread practice of early marriage throughout the African continent. In October 2012 the PAP, with the support of the IPU, hosted the Annual African Women Parliamentarian's Conference in Johannesburg.. The October 2012 conference resulted in a set of resolutions adopted by the PAP. The IPU and the PAP continue to pursue collaborative initiatives on the implementation of some of the resolutions, thereby contributing to the implementation of the resolution on maternal, newborn and child health adopted by the IPU in March 2012 in Kampala, including resolution 3:

Resolution 3- "To work towards specific parliamentary review and harmonize national registration and child marriage with the Maputo Protocol on African Women's Rights and call for the removal of negative clauses and inconsistencies such as so called 'parental consent' that permit criminal and early marriage of children below the age of 18".

IPU and PAP hope that this report will endeavor to inform and enable decision makers to utilize the findings to develop improved policies and programmes to address child marriage. In the long term, it is the objective of PAP and IPU to contribute to strengthening legislation that discourages the practice of early marriage in African countries.

ACKNOWLEDGEMENTS

This report on the contribution of legislation to change the practice of child marriage in Africa was prepared by the Department of Reproductive Health and Research, World Health Organization. IPU and PAP greatly extends its appreciation to all institutions and individuals who contributed in one way or another to the successful completion of this study.

We also thank development partners, national agencies, Non-Governmental Organizations and individuals who were interviewed or commented on the draft report for providing their time, ideas and mainly sharing experiences from which this report draws.

ACRONYMS

ACFP	African Child Policy Forum
ACERWC	African Committee of Experts on the Rights and Welfare of the Child
ACRWC	African Charter on the Rights and Welfare of the Child
AWEPA	Association of European Parliamentarians with Africa
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CRC	Convention on the Rights of the Child
DHS	Demographic Health Survey
FGM/C	Female Genital Mutilation/Cutting
IPU	Inter-Parliamentary Union
MDG	Millennium Development Goals
MICS	Multiple Indicators Cluster Survey
PAP	Pan-African Parliament
UNFPA	United Nations Population Fund
UNICEF	United Nations Children's Fund
WHO	World Health Organization

EXECUTIVE SUMMARY

Despite the increasing attention to the custom of child marriage, the practice is still very widespread. According to recent data, one in three girls (34%) in the developing world (excluding China) enters marriage by the age of 18. One in nine girls (12%) is married before the age of 15. Nine out of the ten countries with the highest rates of child marriage are in sub-Saharan Africa.

The main objective of this report is to provide Parliamentarians with 1) a clear overview on the practice of child marriage throughout Africa; 2) assess the status of laws on child marriage in 10 African countries; and, 3) examine the impact of legislation on the practice of child marriage, and 4) present recommendations for laws, policies and research.

Gender inequality, poverty, exclusion, marginalization and insecurity are some of the factors that contribute to the practice of early marriage. The consequences of child marriage include poorer health outcomes, lower level of education attainment, higher risk of violence and abuse, together with persistent poverty and missed opportunities for girls and women's empowerment.

With the adoption of the Universal Declaration on Human Rights (1948), and similar international conventions on human rights and on the rights of the child, child marriage is considered a violation of human rights. In line with international and regional standards, 32 African countries have set the minimum age of marriage at 18 or higher for both girls and boys.

Although several countries have adopted strong legal systems setting the minimum age of marriage and criminalizing the practice the impact of these laws and associated efforts seems to be very limited. Despite a lack of information and research on the topic, the review demonstrates that there is little or no correspondence between the strength of the legislation on the minimum age of marriage and child marriage rates. Where changes have been observed the causal relation with legal reforms or legal mechanisms has yet to be demonstrated. As the case studies presented in the report suggest, declining rates of child marriage are commonly explained by societal factors such as increased education for girls, community outreach programmes and in some cases, violent conflicts. Overall there is a glaring lack of programs to build awareness about the law and of systematic enforcement.

In order to set a strong legal framework for protecting girls from child marriage key recommendations include: 1) setting a minimum age for marriage at 18 years old; 2) providing for no exceptions upon parental consent or Court's authorisation; 3) criminalising child marriage and enforcing clear sanctions. Although legislation to set a minimal age has a central role in the definition of a strong legal framework, legal reforms need to be combined with clear implementation measures, including budget allocation, practical action plans, and development of relevant tools and mechanisms to train public officials and set up specialized courts.

Laws can be effective only if enforcement measures are in place. However, enactment and enforcement must be carefully designed in order to avoid the practice to go underground and cause increased disobedience and lower compliance with the laws. Legal reform in this area will only be effective if combined with other tools to raise awareness among the local communities, and comprehensive strategies to address the main drivers of child marriage, such as poverty, gender inequality and security.

1. Introduction

One in three girls (34%) in the developing world (excluding China) is married by the age of 18. One in nine girls (12%) marries before the age of 15. Nine out of the ten countries with the highest rates of child marriage are in sub-Saharan Africa. Child marriage has a devastating impact on many aspects of children's lives including their physical, psychological, and emotional development but also in terms of social and economic outcomes. This is a public health issue as well as a human rights violation.

To enact and enforce national legislation that raises the legal age of marriage for boys and girls to 18 is frequently presented as one of the most important measures to be taken in order to address this problem.¹ International declarations and conventions, which have been developed and endorsed by the international community, provide the longstanding legal framework to prohibit and reduce child marriage to a form of human rights violation. Legal instruments have been developed and adopted by most countries. Despite this, with a few exceptions, little change of the practice has been observed globally.

Parliamentarians can provide an important contribution to creating awareness of child marriage and signaling that the practice needs to end. Parliamentarian's role however should not be limited to drafting laws and regulations. Parliamentarians should strive to ensure that child marriage is a critical issue on the political agenda and follow up in close collaboration with civil society. Recent practice has indicated that active parliamentary leadership and engagement on abandonment can work as a catalyst in galvanizing the attention of community leaders and the media. This speaks to the representational role of legislators more than their strictly law-making task.²

Objectives

First, this report aims to provide the International Parliamentary Union (IPU) and Pan-African Parliamentarians (PAP) with an assessment of the status and implementation of laws on child marriage and to review how legislation has contributed to changes in the practice of child marriage in Africa. Second, the report seeks to present recommendations for research, laws, policies and parliamentary action that can advance the efforts to end the practice of child marriage. The report seeks to provide answers to these objectives through a general overview of the situation and by comparing legislation and child marriage rates in 10 selected countries.

Definitions

The term *child marriage* is conventionally used to describe a legal or customary union between people, of whom one or both spouses is below the age of 18. In contrast some use "early marriage" to describe the union of marriage before age 20 or 21. Child marriages may or may not be also *forced* marriages. Regardless of these definitions children, given their young age, are often not able to give full and free consent to the choice of the partner or the timing of their marriage.

Article 2 of the African Charter on the Rights and Welfare of the Child (ACRWC) and Article 1 of the Convention on the Rights of the Child (CRC), define a child as a person aged below 18. In line with this

¹ See for example UNFPA, *Marrying Too Young. End Child Marriage*, 2012 and WHO, *Guidelines on preventing early pregnancy and poor reproductive outcomes among adolescents in developing countries*. Geneva, 2011

² The IPU document "Priority Actions for Parliaments" and other recommendations of two IPU regional seminars in Africa organized in Burkina Faso in 2011 and in Tanzania in 2012 offers a series of recommendations for parliamentary action.

framework the report will use the term *child marriage* to describe a marriage or union where one or both spouses are below the age of 18.

2. Methodology

The desk based review started by conducting searches in PubMed, Popline, African Index Medicus, Google Scholar and Google for articles and other publications with the keywords marriage, child, early, law and Africa and various combinations of these words. We checked the references of the selected articles for further identification of relevant articles. In order to gather additional information interviews were undertaken with a small purposeful sample of researchers and NGO representatives working in countries where early marriage is common³.

As requested in the Terms of Reference outlined by the IPU and PAP, the review exercise focuses on the legal environment pertaining to early marriage in two groups of countries in the Africa region – one group where the incidence of early marriage is very high compared to other countries and a second group of countries where the incidence is relatively low. The criteria for choice of countries were: prevalence and incidence rates (low vs high), trends (decline or stability), strength of the legal framework and PAP region (North-, West-, Central, Eastern- and Southern-Africa).

3. Background and context

Prevalence

In 41 countries in the world, 30% or more of women aged 20 to 24, were married or in union when they were still children. South Asia and West and Central Africa are the most affected regions. In Africa the average prevalence is 37%, but it varies substantially among countries, ranging from only 1.8% in Algeria to 74.5% in Niger⁴. In 14 African countries more than 40% of women aged 20-24 were married before they reached the age of 18 and in six of them the rates are above 50% (Central African Republic, Chad, Guinea, Mali, Mozambique and Niger). In 11 countries the rates are under 20% and in six countries they are under 10% (Algeria, Djibouti, Namibia, Rwanda, South Africa and Swaziland). In the remaining 18 countries with known prevalence the rates are between 20% and 40% (see full table in Annex 1).

In terms of number of girls affected, although its national prevalence rate is moderately high (39.4%), Nigeria has due to its large population by far the highest number: more than 15 million were married as girls. The second highest number is found in Ethiopia where close to 9 million girls were married before the age of 18 according to the last surveys.

In many countries with high overall rates, the rates are more than twice as high in rural as compared to urban parts of the countries (cf full table in Annex 1). In most countries there is a strong correlation with education and income level. In particular, the early marriage rates are much lower among women who have received secondary education and belonging to households in the richest quintile. Even in Mali and Chad that have the highest rates of child marriage among the most educated and richest, having

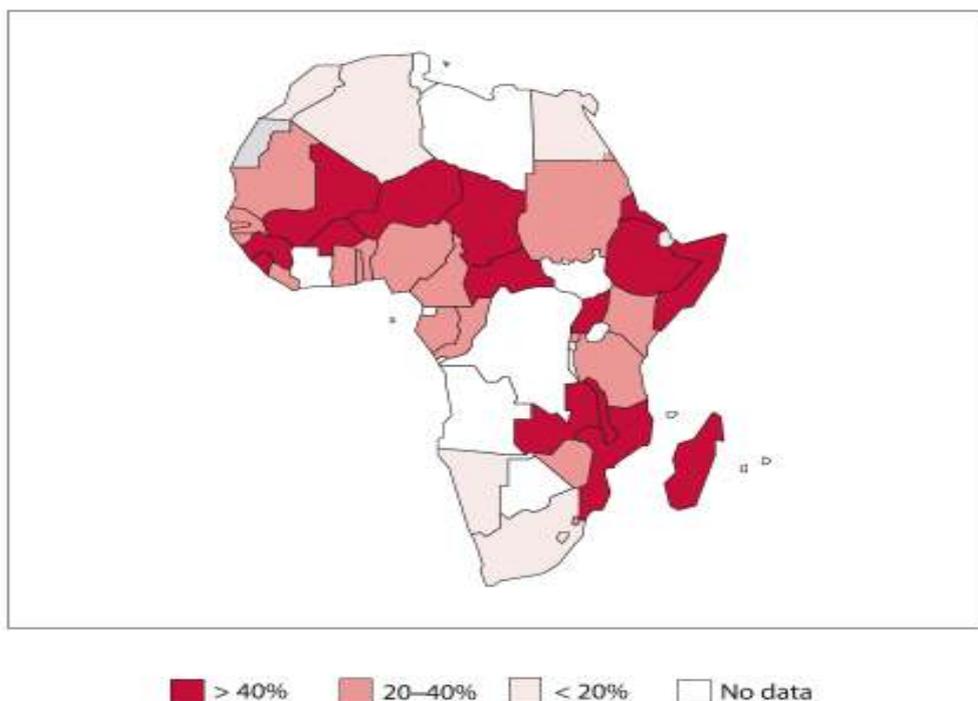
³ Girls Not Brides, Pathfinder International and PLAN International. In addition we've had electronic communication with Anabel Erulcar, Population Council and Gerry Mackie, University of California San Diego. Girls Not Brides. Pathfinder International and PLAN International.

⁴ All numbers in this chapter, unless otherwise indicated, are from UNFPA, *Marrying Too Young. End Child Marriage*. New York, 2012.

secondary education halves the risk of being married as a girl. A survey in Ethiopia found that the younger a woman had been at the time of her marriage, the more likely it was that her parents had no education⁵.

The statistics on this practice should be interpreted with some caution. Respondents, particularly those with relatively little education, may misreport their age, their age at marriage or their husband’s age (Erulkar 2013). Prohibition of a common practice can lead people to not report it when asked in surveys.⁶

Figure 1: Prevalence of child marriage at last DHS (women ages 20 – 24 reported being married by age 18).



Child marriage trends among African countries

At the *global* level child marriage rates have remained relatively constant over the last 10 years. 12 African countries have seen a significant decline in at least some areas of the country (see table 1). Countries that are showing significant *overall* decreases of 10% or more in the prevalence of child marriage include Ethiopia, Rwanda, Uganda and the United Republic of Tanzania.

Table 1: Countries with significant decline in early marriage rates measured as changes of 10% or more in the prevalence of child marriage between two surveys (source: UNFPA, 2012).

Countries with more than 10% decline in rates of child	Prevalence at last survey
--	---------------------------

⁵ Erulkar A., Early marriage, marital relations and intimate partner violence in Ethiopia. *International Perspectives on Sexual and Reproductive health*. 2013, 39(1):6–13

⁶ UNICEF, Female Genital Mutilation/Cutting: a statistical overview and exploration of the dynamics of change, 2013

marriage. U=Urban areas only, R=Rural areas only.	overall (urban, rural) / year
Benin (U)	34% (46,6, 18.6) / 2006
Cameroon (U)	36% (56.5, 22.7) / 2006
Congo (R)	33% (43.0, 28.7) / 2009
Ethiopia	41% (49.0, 21.7) / 2011
Lesotho	19% (21.4, 13.6) / 2009
Liberia	38% (48.6, 24.9) / 2007
Rwanda	8% (8.2, 7,5) / 2010
Sierra Leone	48% (61.1, 30.4) / 2008
Togo	25% (40.8, 16.9) / 2010
Uganda	46% (51.8, 26.9) / 2006
United Republic of Tanzania	37% (43.9, 22.5) / 2010
Zimbabwe (R)	31% (38.5, 19.8) / 2010-11

Consequences and causes of child marriage

Considerable evidence shows that child marriage can have harmful consequences on children, which are then reflected in their future life, in the life of their children and of the whole community. Poorer health outcomes, lower level of education, higher risk of violence and abuse, together with persistent poverty and missed opportunity for empowerment, are some of the main consequences a married child is likely to face in her/his life.⁷ Being married early normally precludes the possibility to continue education whereas additional years of education delays marriage. Girls who are married at a young age are especially vulnerable to sexual and reproductive ill health, with potentially life-threatening consequences.⁸

Married girls are in most cases expected to become pregnant immediately or soon after marriage and early marriage is associated with elevated total fertility rates.⁹ Complications of pregnancy and childbirth are the main causes of death among adolescent girls 15-19 years old in developing countries. The risk of dying from pregnancy-related causes is 4 times higher for adolescents under 16 years than for women in their early twenties.¹⁰ Health consequences for the mother affect negatively also on the health and life of the newborn.

The causes of child marriage are complex, interrelated and very often dependent on social and economic circumstances and the cultural context relevant to that country. Gender inequality, poverty, social exclusion, marginalization and insecurity are some of the factors that drive and underpin the practice of early marriage. Poverty is a major factor underlying child marriage. In families with a low household income children, and especially girls, can be viewed as an economic burden, and early marriage is perceived as a solution to remove this burden.

⁷ See Annex 3 for further details on some of the many consequences of child marriage.

⁸ Clark S., Early Marriage and HIV Risks in Sub-Saharan Africa. *Studies in Family Planning*, 2004, 35(3): 149-160. Nour, NM., Health Consequences of Child Marriage in Africa. *Emerging Infectious Diseases*, 2006, 12(11): 1644-1649. Svanemyr J. et al., Preventing Child Marriages: First International Day of the Girl Child "my Life, my Right, end Child Marriage". *Reproductive Health*, 2012, 9:31.

⁹ Neal S., Matthews Z., Frost M., Fogstad H., Camacho A. V. and Laski L., Childbearing in adolescents aged 12–15 years in low resource countries: a neglected issue. New estimates from demographic and household surveys in 42 countries. *Acta Obstetrica et Gynecologica Scandinavica*, 2012, 91: 1114–1118.

¹⁰ Conde-Agudelo A., Belizán J.M., Lammers C., Maternal-perinatal morbidity and mortality associated with adolescent pregnancy in Latin America: cross-sectional study. *American Journal for Obstetrics and Gynecology*, 2005, 192:342–349

Parents may force young girls into marriage with the ultimate aim of preserving their pre-marital virginity and to protect them from any kind of sexual behavior considered immoral or inappropriate before or outside marriage. Especially in particular circumstances such as in times of conflicts, emergency situations or natural disaster the family can see the arrangement of a marriage as a last resort to offer the girl some sort of protection, particularly in contexts where sexual violence is common^{11 12}. In places where child marriage is common it is often a social convention. Not being married before the age of 18 can lead to stigmatization and social isolation both for the young woman herself and her family. It can be difficult to find a husband at an older age.

Finally, as the report will describe, weak legislative instruments, the failure in their enforcement or resistance against the law may be central elements to explain the lack of progress towards communities abandoning the practice. This process is not straightforward especially in countries where plural legal systems co-exist, and where marriages are also conducted under customary, traditional or religious laws.

International and regional legal frameworks – commitments among African countries

International agreements underpin the notion that marrying girls before they are 18 years old is a human rights violation. Several international legal instruments have analyzed child marriage through the lenses of both civil and political rights and economic, social and cultural rights. These covenants suggest that child marriage is a violation of interconnected rights, including, the right to equality on grounds of sex and age, the right to marry and establish a family, the right to life, the right to the education, development and the highest attainable standard of health. These rights are stated in the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; the Convention on the Elimination of All Forms of Discrimination against Women; the Convention on the Rights of the Child; the Convention on the Consent to Marriage; Minimum Age for Marriage and Registration of Marriages; the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery and the Protocol to the Convention on the sale of children, children prostitution and child pornography. In addition, child marriage is also prohibited by regional standards, most notably the African Charter on the Rights and Welfare of the Child; the African Charter on Human and People's Rights and the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (known as the Maputo Protocol).¹³

4. Findings

This section of the report will present the current legal status of child marriage at national levels across Africa. Subsequently a comparison is made of the legal status and legislative frameworks with prevalence and incidence rates for child marriage in 10 countries.

National legislation

¹¹ UNFPA, 2012.

¹² Walker JA., Early Marriage in Africa – Trends, Harmful Effects and Interventions. African Journal of Reproductive Health, 2012 (Special Edition), 16(2): 231-240.

¹³ Annex 3 provides an overview of which countries have ratified the various conventions.

In line with international and regional standards, 32 African countries¹⁴ have set the minimum age of marriage at 18 years old for both girls and boys, and sometimes above, as is the case in Algeria, Lesotho, Libya and Rwanda¹⁵. While 18 African countries have a discriminatory minimum age, meaning that girls and boys are allowed to marry at different ages, or below 18 (see table 2).

Some countries, despite setting guidance for a minimum age of marriage, provide for an exception to that minimum age upon parental consent or with the law court's authorization. This is the case for Burkina Faso, Angola, Ethiopia and Malawi.

Table 2: Minimum age for marriage according to national legislation in African countries.

18 years or above	18 or above with exceptions	Below 18
<ul style="list-style-type: none"> • Algeria, • Benin, • Botswana, • Burundi, • Cape Verde, • Central African Republic, • Côte d'Ivoire, • Egypt, • Ethiopia, • Kenya, • Libya, • Mauritania, • Morocco, • Namibia, • Nigeria (in 18 states) • Rwanda, • Seychelles 	<ul style="list-style-type: none"> • Angola (15 based on physical development), • Congo (Republic of) (18 but younger with permission from court), • Eritrea (18 but 16 if pregnant), • Ghana (18 but varies under customary law), • Madagascar (18 but 14 with parental consent and court order), • Malawi (18 but 15 with consent), • Mauritius (16 with parental consent), • Mozambique (18 but 16 with consent), • Senegal (18 but 16 with consent (13-16 with court order), • Somalia (18 but 16 with consent), • South Africa (21 but 15 with parental consent), • Swaziland (21 but 16 with consent), • Tunisia (20 but 17 with consent), • Uganda (18 but 16 with consent), • Zambia (21 but 16 with parental consent) 	<ul style="list-style-type: none"> • Burkina Faso (17 but 15 with court waiver), • Cameroon (15), • Chad (13), • Democratic Republic of Congo (15), • Equatorial Guinea (none), • Gabon (15), • Gambia (none), • Guinea (17), • Guinea-Bissau (17), • Lesotho (none), • Mali (15), • Niger (15), • Sierra Leone (none under customary law, 21 but younger with consent under Christian marriage act), • Sudan (16), • Tanzania (15, 14 with court order, 12 under customary/religious law), • Togo (17), • Tunisia (17), • Zimbabwe (16)

Some countries set a minimum age of sexual consent that differs from the minimum age of marriage. In Malawi for example the minimum age of marriage is 15 while the age of sexual consent is 16. While in Sudan, where the minimum age of sexual consent for girls is 18 years, but girls are allowed to marry at puberty for marriages within the Muslim community, and at the age of 13 for all other marriages. Misperceptions that equate sexual maturity with readiness for marriage do not take into account the ongoing physical, psychological and emotional development of girl child brides. The Committee on the Rights of the Child has found that physical development does not connote maturity, particularly when social and mental development is still in progress¹⁶.

¹⁴ These are Angola, Benin, Botswana, Cape Verde, Central African Republic, Comoros, Djibouti, Egypt, Eritrea, Ethiopia, Gambia, Ghana, Guinea, Kenya, Liberia, Madagascar, Mali, Mauritania, Mauritius, Morocco, Mozambique, Namibia, Nigeria, Sao Tome, Sierra Leone, Somalia, South Africa, South Sudan, Togo, Tunisia and Uganda.

¹⁵ Algeria (19), Lesotho (21), Libya (20), Rwanda (21)

¹⁶ OHCHR Fact Sheet No 23

Three different types of approach exist concerning criminalization of child marriage in Africa¹⁷:

1. Countries that criminalize the practice (Botswana, Burkina Faso, Cameroon , Central African Republic, Chad, Congo Brazzaville, Democratic Republic of Congo, Egypt, Ethiopia, Gabon Ghana, Kenya, Liberia, Malawi, Mali, Mauritania, Nigeria, Rwanda, Senegal, Sierra Leone, South Sudan, Swaziland, Togo, Zambia and Zimbabwe, Angola, Burundi, Cape Verde, The Gambia, Mauritius, Mozambique, Namibia, Sao Tome and Principe, South Africa, Tanzania and Uganda)
2. Countries that ban or invalidate marriages below the minimum age (Angola, Burundi, Cape Verde, The Gambia, Mauritius, Mozambique, Namibia, Sao Tome and Principe, South Africa, Tanzania and Uganda)
3. Countries that prescribe a minimum age of marriage without criminalizing or banning the practice (Algeria, Benin, Comoros, Cote d'Ivoire, Djibouti, Eritrea, Guinea, Guinea Bissau, Lesotho, Libya, Madagascar, Morocco, Niger, Seychelles and Tunisia)

At least 24 countries have legally prescribed clear sanctions for early marriage, considering criminalization as a deterrent¹⁸. However, nine of these countries have discriminatory minimum ages of marriage and two have set the minimum age of marriage below 18 years. The penalty for violating the law on child marriage varies widely among the countries from small fines and short imprisonment and up to 10 years imprisonment in Malawi¹⁹.

Plural legal systems

In many African countries, customary laws need to be taken in account as a component of the national legal framework. A plural legal system is very often in place, where two or more systems based on formal laws, religious laws and traditional systems based on customary laws co-exist. It is a widespread practice that marriages are first of all entered through traditional rites and approved by traditional institutions. In such cases there may be customary laws which have an age limit for marriage that differs from the one defined by national legislation.

Within some plural legal systems in Africa, customary laws are given Constitutional recognition as part of the State's law. In relation to marriage, ten Constitutions in Africa recognize customary marriages²⁰. "The major problem with plural legal systems in addressing child marriage is that in most cases, traditional and religious laws may not be in harmony with international and regional standards and sometimes with the national Constitution" (Odala, 2013). On the basis of beliefs sometimes associated with cultural or religious norms, child marriage is not viewed as a criminal offence, but as a culturally legitimate practice. As recognized by the United Nations Committee on the Rights of the Child (UN Committee) and the African Committee of Experts on the Rights and Welfare of the Child (ACERWC), the harmonization of the different sets and kind of norms is instrumental to the fight against child marriages.

¹⁷ Adapted from Odala, 2013.

¹⁸ Botswana, Burkina Faso, Cameroon, Central African Republic, Chad, Congo Brazzaville, Democratic Republic of Congo, Egypt, Ethiopia, Gabon, Ghana, Kenya, Liberia, Mali, Malawi, Mauritania, Nigeria, Rwanda, Senegal, Sierra Leone, South Sudan, Togo, Zambia, and Zimbabwe

¹⁹ Odala 2013

²⁰ Kenya, Liberia, Malawi, Mozambique, Namibia, Uganda, Sudan, Sierra Leone, Eritrea, and Ethiopia.

Comparative assessment of 10 countries

In the following section comparisons are drawn between the legal frameworks in five countries with high incidence and five countries with low incidence of child marriage. The criteria for choice of countries include: prevalence and incidence rates (low vs high), trends (decline, increase, stability), the strength of the legal framework, and the PAP region. Additional information for each country on the legal framework and ratification of international conventions can be found in annex 2. As will be demonstrated below, there is very little data about the implementation of the laws and information about their enforcement and impact is at the best fragmented and partial.

5 countries with comparatively <u>high</u> rates	5 countries with comparatively <u>low</u> rates
<p>Egypt (North Africa)</p> <p><u>Rates:</u> Egypt has the highest rates of child marriage among the North African countries and is home to the largest number of child brides in the region although the rates are relatively low in the African context (16.6%). The rates declined from 20% in 2000 to 17% in 2008^{21, 22}</p> <p><u>Legislation:</u> Egypt is one of 15 African countries where the minimum age of sexual consent is 18²³. The amendment to Child Law 126, 2008 Article 31 introduced a new provision rising the age of marriage for girls from 16 to 18 years old (added to the Civil Status Act No. 143 of 1994) and prescribes administrative punishment for failing to meet this condition. Marriages are only legal if both parties have given their consent.</p> <p><u>Contextual factors:</u> Reports show that parents seek various ways to avoid being punished such as forged birth certificates and <i>urfi</i> contracts which is an informal contract between the two families that does not involve the state²⁴. In some poor communities girls who are not married before age 17 risk ostracism and social exclusion.</p>	<p>Algeria (North Africa)</p> <p><u>Rates:</u> Algeria has the lowest rates of child marriage in Northern Africa and in Africa overall with 1.8%. The average age of marriage for women is now 29.9 years, and is increasing annually in both urban and rural areas, according to the 2010 CEDAW report. However, early marriage is still prevalent in some rural areas where strong family traditions prevail.</p> <p><u>Legislation:</u> Algeria is among the countries that prescribe a minimum age of marriage without criminalising or banning the practice. The 2005 amendment to the Family Code sets the minimum age for marriage to 19 for both women and men. According to the new Family Code, women cannot marry without the consent of their male guardians²⁵ and the Algerian and Islamic laws (Shari'a) contain provisions that give women and men different rights.</p> <p><u>Contextual factors:</u> The low prevalence of child marriage seems first of all to reflect that it has been a tradition only among certain small ethnic groups. However, data may be skewed due to weak statistics particularly for remote rural areas.</p>

²¹ No national data available after 2008 when the law was modified.

²² Population Reference Bureau: Ending Child Marriage in the Arab Region. Policy Brief. PRB, 2013.

²³ The other countries are: Benin, Burundi, Democratic Republic of Congo, Equatorial Guinea, Eritrea, Ethiopia, Libya, Mauritania, Niger, Rwanda, Somalia, South Sudan, Tanzania and Uganda

²⁴ <http://www.dailynewsegypt.com/2012/12/05/under-reported-and-underage-early-marriage-in-egypt>. Accessed 15th of August 2013.

²⁵ Marzouki Nadia, 'Algeria', in Sanja Kelly and Julia Breslin, eds., Women's Rights in the Middle East and North Africa. New York, 2010, p. 37.

Niger (West Africa)	Ghana (West Africa)
<p><u>Rates:</u> Niger has the highest child marriage prevalence rate in the world. On average, three out of four girls will be married before their 18th birthday. 44% of women who are 20-24 years were married under the age of 15 years²⁶. Child marriage occurs more frequently among girls less educated and living in poorer and rural areas. Data shows little to no change since 1998 (77%)²⁷.</p> <p><u>Legislation:</u> For persons with legal status, the Civil Code sets the minimum age of marriage at 18 for men and 15 for women. For persons living under customary status, on the other hand, the minimum age of marriage is 14 for girls and 16 for boys pursuant to the Decree of 13 July 1939.²⁸ Both civil marriages and customary marriages must be legally registered. Legislation adopted in 2004 stated that customary law should only be applied if it complies with ‘ratified international conventions, the legislative provisions or fundamental rules concerning public order or personal freedom’.</p> <p><u>Contextual factors:</u> The tradition of child marriage is deeply rooted in the traditions of the dominant ethnic groups.²⁹ The legislation from 2004 provides better legal protection for women in theory, but in practice, given widespread ignorance of the law, and the ongoing influence of customary and Sharia law, the law has not had much impact³⁰.</p>	<p><u>Rates:</u> Ghana has the lowest rate of child marriage in West Africa (24.6%). In 2008, about 25% of women aged 20-24 were married/in union before the age of 18. According to the 2011 Multiple Indicator Cluster Survey (MICS) there was a marginal decline of 1% from 28% in 2003 to 27% in 2011.</p> <p><u>Legislation:</u> Ghana’s Children’s Act of 1998 (Act 560) establishes the minimum age for marriage at 18 years (Art. 14). The law anticipates the possibility of parents or guardians promising a child for future marriage and states that no one can force a child, defined as someone under the age of 18 years, to be married, betrothed or the subject of dowry (Art. 1, 14). Punishment ranges from 5 million Cedis, one-year imprisonment or both (Art. 15). Also, Ghana’s Criminal Code makes it a misdemeanor to cause a person, using duress, to marry against his or her will (Article 109)³¹.</p> <p><u>Contextual factors:</u> The low national prevalence is most likely due to the practice being common only in some parts of the country and among some ethnic groups. Desk based analysis suggests that no studies have been conducted on the implementation of the law, its impact or its contribution to creating an enabling environment.</p>

Central African Republic (Central Africa)	Rwanda (Central Africa)
<p><u>Rates:</u> With 60.6% prevalence rates Central African Republic ranks number four in the early marriage statistics for the continent. Given the fact that available data is not disaggregated and that only one survey has been conducted, little is known</p>	<p><u>Rates:</u> According to the DHS 2010 the prevalence rates of early marriage was 8.1%. It has observed an important decline. The median age at first marriage also increased from 19.3 years in 1992 to</p>

26 United Nations Children Fund, Early Marriages: Child Spouses. UNICEF, New York, 2001.

27 UNFPA 2012

28 2nd periodic report on the Convention on the Rights of the Child: Niger, 2007, quoted in Odala, 2013

29 CEDAW, 2005, p.28

30 CEDAW, 2007, p.25

31 <http://www.endvawnow.org/en/modules/view/8-legislation.html>.

<p>about trends or distribution in the population.</p> <p>Legislation: Central African Republic is among the countries considered to have adopted a strong legal framework to protect children from early marriage by setting the minimum age at 18 years for women and men and criminalizing child marriages³². An exemption to the minimum age provision can be granted by the public prosecutor on serious grounds. Clear and strong sanctions are prescribed with imprisonment from two months up to two years.</p> <p>Contextual factors: The ability to enforce laws has in general been very weak due to decades of political violence, displacement and insecurity. It is probably an example of a context where a violent conflict leads people to consider early marriage as a way to protect girls who otherwise may have an increased risk of being exposed to sexual violence and abuse. The country has in common with Niger extremely high levels of poverty, lack of access to health and education, and widespread use of children as labour force.^{33 34}</p>	<p>19.9 years in 2000 and further to 20.1 years in 2005 (RDHS, 1992; RDHS, 2000; RDHS, 2005).³⁵</p> <p>Legislation: The Civil Code, (1988) Article 171 stipulates that a man and a woman under 21 may not enter into marriage. However, the Minister of Justice or his representative may grant special permission to marry younger³⁶. Article 194 makes it a crime to force a child into marriage, and Article 195 increases the sentence if the perpetrator is the child's parents or guardian.</p> <p>Contextual factors: The low rates reflect that early marriage has not been a strong tradition in Rwanda. Anecdotal evidence indicates that people think the law is important to discourage young people to marry early but no evaluation of its effect has been identified. There is evidence to suggest that the high number of male deaths in the genocide led to a situation where women could marry later because either their social networks were destroyed or there was a shortage of men.³⁷ Rwanda is an example where the law is not a stand-alone statement, but it is framed in the context of a comprehensive and ambitious policy for gender equality including many other correlated components such as improved access to health services and education.</p>
<p>Ethiopia (East Africa)</p>	<p>Kenya (East Africa)</p>
<p>Rates: Ethiopia has above medium high rates (41%) but the prevalence of child marriage <i>declined substantially</i> (20 per cent or more) during a short period of five years from 2005 to 2011. The decrease has been observed across regions: SNNPR, Tigray and Gambella (UNFPA 2012). The highest rates of early marriage are found in the Amhara region, the country's second largest, where the median age at marriage among females</p>	<p>Rates: Kenya actually presents a very mixed picture but the national child marriage rate of 26.4% is considerably lower than in neighboring Tanzania and Ethiopia.</p> <p>Legislation: The Kenya's new Marriage Bill from 2010 outlaws marriage below the age of 18 and states that no person shall get engaged or betrothed to a person under the age of 18 years.</p>

³² Odala, 2013

³³ <http://www.irinnews.org/report/92069/central-african-republic-struggling-for-healthcare> and http://en.wikipedia.org/wiki/Central_African_Republic.

³⁴ <http://www.unhcr.org/cgi-bin/txis/vtx/search?page=search&docid=4ec26587f&query=child%20marriage%20republic>

³⁵ Jayaraman, Anuja, Gebreselassie, Tesfayi and Chandrasekhar, S: The Impact of Conflict on Age at Marriage and Childbirth in Rwanda. DHS Working Paper, MEASURE DHS, November 2007.

³⁶ Abbott P. and Sapsford F., Legal and Policy Framework for Children's Rights in Rwanda. Institute of Policy Analysis and Research, Kigali, 2012.

³⁷ Jayaraman et al, 2007.

<p>aged 20–49 is 14.4 years.</p> <p><u>Legislation:</u> Ethiopia has adopted a rather strong legal framework by setting the minimum age at 18 years and criminalizing child marriages (up to seven years imprisonment depending on the age of the minor). The law, however, allows the Minister of Justice to authorize marriages of persons aged below 18. The Article I of the Family Code recognizes various Forms of Marriage. The customary law of <i>Dahomey</i>, which severely discriminated against women, was nullified with a uniform civil code. According to the Article 28 of the Family code a competent officer of civil status, irrespective of the form according to which the marriage is celebrated, shall register the marriage. However, there is no specific law on registration which is coupled with lack of awareness.</p> <p><u>Contextual factors:</u> The enforcement of the law on child marriage has been almost non-existent³⁸ and large sections of the are unaware that the minimum age is 18 or don't know who can be punished if a girl gets married before the legal minimum age.³⁹ The Early Marriage Evaluation Study (EMES)⁴⁰ undertaken in the Amhara region, found that police intervened to stop only four percent of planned marriages of under-age girls.⁴¹ The decline in child marriage is most likely due to numerous community-based programs addressing harmful practices including child marriages and FGM/C as well as progress in access to education</p>	<p>The Children's Act of 2001 also expressly forbids early or forced marriage. The law imposes stiff penalties to anyone who gets engaged or betrothed to a person under the age of 18 years.</p> <p><u>Contextual factors:</u> Parents in rural Kenya marry off their girl children as young as 14 to escape to pangs of poverty and out of the fear and stigma associated with teenage pregnancies and children born out of wedlock. Girls are either seen as an economic burden or valued as capital for their exchange value in terms of goods, money and livestock. Combinations of cultural, traditional and religious factors are used to justify child marriages. In some cases child marriages are even sanctified by Imams or the church.^{42,43} In areas hit but drought there are indications of increased incidence rates.</p> <p>A documented increase in the age of marriage and age of first birth has been attributed to increased retention of girls in schools as well as the success of female economic interventions.⁴⁴ Working with spiritual leaders is reported to have been successful among the Maasai⁴⁵ but in other cases Chiefs from the affected communities have failed to fight the practice.⁴⁶ Many marriages are not officially registered, but are instead performed under customary or Islamic law, where there is no age limit.⁴⁷</p>
--	---

³⁸ Erulkar A.S., Muthengi E., Evaluation of Berhane Hewan: a program to delay child marriage in rural Ethiopia. Int Perspect Sex Reprod Health. 2009, 35(1): 6-14..

³⁹ Gage, Anastasia J. (Ed.): Coverage and Effects of Child Marriage Prevention Activities in Amhara Region, Ethiopia Findings from a 2007 Study. USAID, 2009.

⁴⁰ The 2007 EMES is the first large-scale household survey in Ethiopia to provide population-based estimates on levels of exposure to early marriage prevention messages and their influence on knowledge, attitudes, and skills conducive to delaying marriage.

⁴¹ Gage, 2009.

⁴² Plan Kenya, Because I am a Girl - Kenya Country Report, 2012. Study of the Factors Influencing Girls' Access, Retention and Completion of Primary and Secondary School Education. Plan International Inc. Kenya, 2012.

⁴³ The study found that 43.3% of females were married as children in the area where the study was undertaken, i.e in Nairobi, Coastal, Nyanza and Eastern counties where Plan operates.

⁴⁴ Walker, 2012.

⁴⁵ <http://www.girlsnotbrides.org/mobilising-spiritual-leaders-to-prevent-child-marriage-in-kenya/>

⁴⁶ <http://www.fgmnetwork.org/gonews.php?subaction=showfull&id=1214254352&ucat=1&>

⁴⁷ <http://genderindex.org/country/kenya>

and health services.	
Malawi (Southern Africa)	Namibia (Southern Africa)
<p><u>Rates:</u> Malawi has the highest rates of child marriage in southern Africa (49.6). Data collected on child marriage shows little change since 2000 (47%).</p> <p><u>Legislation:</u> The Constitution of the Republic of Malawi of 1994 states under the Section 22 articles 4 to 8 that the state is obliged to ‘discourage’ marriages where either party is under the age of 15. However, rather contradictory, the common law Marriage Act states that 21 years of age is the minimum age of marriage. For persons between the age of 15 and 18 years a marriage shall only be entered into with the consent of parents or guardians.</p> <p><u>Contextual factors:</u> In line with strong social and cultural norms, rather than giving consent, parents are pushing or forcing girls to get married. Under local customs, attainment of puberty is seen as readiness for marriage, particularly for young girls.⁴⁸ In particular in rural areas families choose to marry their daughters off very young to improve their financial status. A practice known as <i>kupimbira</i> practiced in the northern part of Malawi is a form of debt repayment where a young daughter may be transferred to the creditor for marriage for failure to pay the debt back⁴⁹. Attitudes that tolerate and accept the practice persist.⁵⁰</p>	<p><u>Rates:</u> Namibia has very low rates (8.6%) compared to Zambia, Zimbabwe and Zambia. The percent of 20-24 year old females who are married by age 18 varies widely from 0.8% to 26.7% according to region.⁵¹ The rates have declined only marginally since 1960 when it was 11%⁵².</p> <p><u>Legislation:</u> The Married Persons Equality Act, adopted in 1996, provides that the minimum legal age for marriage in 21 years for both men and women. This is only applicable to civil marriages and not customary marriages for which there is no defined minimum age of marriage. The Child Care and Protection Bill defines “marriage” to include civil and customary marriage, and requires that a child must give his or her own consent and have permission from one or both parents to get married under civil or customary law.⁵³</p> <p><u>Contextual factors:</u> Arranged marriages and forced marriages for young women are common practices in only some communities in Namibia. Pre-marriage pregnancies and childbirths are common among 15-19 year old girls. At national level approximately twice as many girls had been pregnant or had a child before age 19 as compared to the number being married by age 18. Cohabitation is also a common and accepted practice.</p>

5. Discussion

As set out in the preceding chapters, many African countries with high rates of child marriage have laws prohibiting the practice. Over the years policy efforts to further strengthen and/or enforce laws on child

48 United Nations Department of Economic and Social Affairs, Population Division – 2008.

49 CEDAW, 2008, p.48

50 Women and Law in Southern Africa Research and Educational Trust, Shadow Report to the Malawi Government Sixth Periodic Report on the Implementation of the Convention on the Elimination of all forms of Discrimination Against Women, 2009. Submitted to the CEDAW Committee’s 45th Session, 15 January – 2 February 2010.

51 Population Council and United Nations Population Fund (UNFPA), The Adolescent Experience In-depth: Using Data to Identify and Reach the Most Vulnerable Young People, Namibia 2006/07. New York, 2009.

52 United Nations Department of Economic and Social Affairs, Population Division, 2008.

53 <http://genderindex.org/country/namibia>

marriage have been initiated. The available information about the implementation and enforcement of the laws is very scarce but findings of this review indicate that the contribution of legislation to change the practice has been very limited.

First, there is little correlation between the strength of the legislation on child marriages and prevalence rates or incidence trends⁵⁴. Among the 12 countries that have had more than 10% decrease in general or in either rural or urban areas, only three countries are considered to have a strong legal framework (Ethiopia, Liberia, Sierra Leone). All the countries that have adopted a strong legal framework by setting the minimum age at 18 years and criminalising child marriages have comparatively high rates of early marriage. The presence of strong legal frameworks probably reflects that the authorities in those countries have recognized the need to address the issue through the legislation.

Second, in the few countries where declining rates have been observed it is not possible to ascribe the changes to legal reforms or legal mechanisms. As presented in several case studies in the previous chapter, declining rates are commonly explained by societal factors as increased education for girls, community outreach programmes and in some cases violent conflicts. Actually no study has been found that refers to legislation as a factor that has contributed to the changes.

Third, no countries including the 10 countries studied in this report, have followed up legal reforms with large-scale nationwide programmes to promote awareness and understanding about the law or with systematic implementation and enforcement of the law. This observation has been pointed out by numerous studies.^{55,56}

As a practice embedded in beliefs associated with cultural, and sometimes religious norms, early marriage is not viewed as a criminal offence regardless of the formal legal status. Gerry Mackie who has published influential articles comparing change in the practice of foot binding in China with FGM/C in Africa, claims that “Criminalization fails where there is no social norm of legal obedience, when a new legal norm is too far from a current social norm, or both. When a new legal norm is too far from a current social norm, law enforcement personnel have reasons not to enforce and citizens have reasons to disobey”. (p. 4-5).⁵⁷ This is not unique to early marriages but is also observed in relation to other traditional harmful practices such as female genital mutilation/cutting. Skeptics would argue that many governments adopt laws first of all to look good and to satisfy development aid donors and other powerful international actors.⁵⁸

⁵⁴ Based on a statistical analysis of data from 114 poor and middle-income countries Kim et al., (2013) found that “Strict marriage laws are associated with a greater reduction in adolescent marriage rates while laws with exceptions were associated with a higher level of adolescent marriage rates over time or have no significant effects on adolescent marriage rates” (footnote 8, p. 600). However, they do not provide any explanation of how strict laws may have caused a reduction in adolescent marriage rates. The article contains no information of implementation and enforcement policies that would support the hypothesis of a *causal* relationship between laws and marriage rates. It is also probable that the results would have been different if the sample had been limited to African countries.

⁵⁵ Jensen R. and Thornton R., Early Female Marriage in the Developing World. *Gender and Development*, 2003, 11(2): 9-19

⁵⁶ Mackie G., Effective Rule of Law Requires Construction of A Social Norm of Legal Obedience. Forthcoming, edited volume on Antanas Mockus, Harvard University Press.

⁵⁷ Mackie, 2012.

⁵⁸ Kim M., Longhofer W., Boyle E.H. and Nyseth H., When Do Laws Matter? National Minimum-Age-of-Marriage Laws, Child Rights and Adolescent Fertility, 1989-2007. *Law & Society*, 2013, 47(3): 589-619.

That the laws have had little or no effect could theoretically be explained by the fact that many of the laws have only recently been enacted and have not had time to bring about significant change. However, no evidence give reason to believe that the duration of a law in place makes any difference. India is a country that illustrates this because it was the first country to ban child marriage in 1929. Yet, 47% of girls are married before age 18.^{59,60}

Laws as an enabling environment for child marriage prevention programs

Despite the lack of documented evidence in favor of the effectiveness of laws and legislation, there are some robust reasons to continue to support such action. Enacting a law allows the government to clarify its position. National policies may be symbolically important in constituting global consensus around a controversial or sensitive issue. A law can be aspirational, expressive in intent and not necessarily followed up with rigorous enforcement. In such a form the law can become a resource in communities that want to abandon the practice and provide a source of legitimacy for activists. A clear and strong law creates good legal ground for advocacy work. UNICEF (2005: 29) has described the role of legislation in terms of “creating an enabling environment”; they emphasize that, beyond serving as a deterrent, legal bans provide a support mechanism for those who wish to abandon FGM/C.

In the absence of a law prohibiting marriage before the age of 18 it may be difficult to have constructive discussions with people who want to uphold the tradition since apparently the government does not oppose it.⁶¹ Pathfinder International reports from the Amhara Region in Ethiopia that community leaders, women’s associations, or kebele administration members have been able to cancel quite a number of weddings with reference to the law.⁶²

Societal shifts away from condoning child marriage are a necessary part of ending the practice and legislation can contribute to an attitudinal shift. An interesting case study of Malawi indicates that legislation on domestic violence⁶³ – even when unimplemented – can have a positive effect by changing people’s attitudes on domestic violence.⁶⁴ A 14.9% decrease between 2004 and 2010 in the number of women who consider wife beating acceptable under any circumstances and a 3.65% decrease in the number of men who deem it acceptable, suggests that legislation can decrease people’s acceptability of violence.

Implementation and enforcement of laws

Implementation and enforcement of laws on child marriage across Africa experience several common problems. These include: weak judicial systems in general; lack of effective monitoring and enforcement mechanisms that could prevent or sanction child marriages; poor understanding of the laws; lack of adequate training and poor coordination between relevant government ministries; lack of a clear

⁵⁹ <http://www.icrw.org/child-marriage-facts-and-figures>

⁶⁰ Mackie, 2012.

⁶¹ Françoise Kpeglo Moudouthe, Africa Regional Officer, Girls Not Brides, personal communication

⁶² Pathfinder International/Ethiopia, Report on causes and consequences of early marriage in Amhara region. Addis Abeba, 2006.

⁶³ The Protection Against Domestic Violence Act in 2006 criminalizes domestic violence by making changes to the penal code and trained police and service providers to work with domestic violence survivors (Malawi Human Rights Resource Center, 2006).

⁶⁴ Nisha G., The Global Spread of Domestic Violence Legislation: Causes and Effects, International Relations Honors Thesis, New York University, 2012.

delegation of responsibilities to specific authorities, a lack of guidelines on how to handle child marriage cases, and ad hoc responses.⁶⁵

Across the African continent very few examples of **prosecutions** are mentioned in the literature. Where laws have been enforced it has resulted in the practice going underground and possibly lead to increased disrespect for the law in general (see below). There are no known cases of **litigation** in the context of child marriage. Litigation can, in theory, be used to protect against child marriage or to obtain compensation for not having been protected in the first case.⁶⁶

Programs to support legal reforms and mechanisms

There are very few programmes that target legal mechanism which are supported by legal initiatives. A review by ICRW identified only four programmes globally with evaluations for a strategy with policy and legal initiatives. Of these, three programmes had a multi-strategy approach, combining legal advocacy with other community or girl-focused approaches.⁶⁷

In another review dating from 2007 found 10 programmes in the sub-category "legal mechanisms" and in total 14 programs targeting policy-makers.⁶⁸ The general finding was that the programmes scan was unable to answer whether existing programmes are in fact reducing the prevalence of child marriage because evaluation results were not available from most of them. Of the 66 programmes captured in the scan, reports on results were found in only about 10 percent of programmes. Even fewer programmes provided information on evaluation mechanisms, or on how results were determined.

Possible adverse effects of enforcement

Child marriage is most common in remote rural areas where populations have limited access to information and infrastructure. Laws can often be seen as outside, foreign or irrelevant to these remote rural populations. There is evidence that enforcement of laws against early marriages (and FGM/C) in several cases have done more harm than good. As pointed out by Boyden et al (2012: 519): rather than bringing an end to prohibited practices, punitive measures tend to either transform them, or drive them underground.⁶⁹ In the Arab region families may bypass the law by arranging a religious marriage ceremony for their underage daughters and then wait to officially register the marriage after she reaches age 18.⁷⁰ It has been observed in Ethiopia that parents arrange the marriage ceremonies at night to avoid being noticed.

Rigorous enforcement of the law may create more problems for the vulnerable groups that the law is meant to protect. Stopping one marriage at a time can have a negative effect on the girl and the family because the perpetrator is typically the household head/father.⁷¹

⁶⁵ Human Rights Watch. <http://www.hrw.org/news/2013/06/14/q-child-marriage-and-violations-girls-rights>. Accessed 29th of August.

⁶⁶ UNICEF, 2008.

⁶⁷ Malhotra A., et al., Solutions to End Child Marriage: What the evidence shows. International Center for Research on Women, Washington DC, 2011.

⁶⁸ Jain S. and Kurz K., New insights on preventing child marriage: a global analysis of factors and programs. International Center for Research on Women, Washington DC, 2007.

⁶⁹ Boyden J., Pankhurst A. and Tafere Y., Child protection and harmful traditional practices: female early marriage and genital modification in Ethiopia. *Development in Practice* 2012, 22(4): 510-522.

⁷⁰ Population Reference Bureau, Ending Child Marriage in the Arab Region. Policy Brief, PRB, May 2013.

⁷¹ Annabel Erulkar, Population Council; personal communication.

Research gaps

The findings of this report should be seen in the light of the serious dearth of research on the implementation and effect of laws. Current literature on child marriage has primarily examined the prevalence, consequences and reported reasons for child marriage. No research has been conducted in any African country on the enactment and implementation of the laws on child marriage and the effect of the legal status. There is also a lack of any systematic data on enforcement. It is nearly impossible to find counts of cases registered, cases prosecuted etc. The absence of scientific studies is partly related to methodological challenges in measuring the effectiveness or impact of laws seeking to modify social behavior. The universal application of laws and policies excludes the possibility to differentiate secular trends from those spurred by legal or policy change.⁷²

Looking beyond Africa, only one study has evaluated the impact of a relevant legal reform, and that is Indonesia's 1974 National Marriage Act. The results indicated that there was no significant deviation from the "secular decline" in the number of child marriages from 1960 to 1985.⁷³

6. Recommendations

Legislation and legal mechanisms

This report has identified examples where various organizations and entities have previously formulated clear advice for the enactment of laws, the establishment of legal frameworks and effective implementation. As emphasized by Girls Not Brides/ACPF a strong framework should align with international and regional standards for protecting against child marriage⁷⁴.

The key elements of a strong law include:

1. Setting a minimum age for marriage at 18 years old
2. Providing for no exceptions upon parental consent or Court's authorisation
3. Criminalising child marriage and enforcing clear sanctions

In addition, these complementary elements should be put in place

4. Adopt a consolidated law on children
5. Establish effective birth and marriage registration systems
6. Establish an institutional framework and enforcement mechanisms such as specialised Children's Courts, and Child Protection Police Units. Institutions such as National Human Rights Institutions, the Office of an Ombudsperson for Children, National Commission for Children, with the responsibility for coordinating the implementation of children's rights should be established and operational.
7. Establish a strong holistic child protection system that incorporates interventions education, health and social protection sectors to tackle child marriage.

⁷² Malhotra A., et al., Solutions to End Child Marriage: What the evidence shows. International Center for Research on Women, Washington DC, 2011.

⁷³ Malhotra et al, 2011.

⁷⁴ Odala, 2013.

8. Remain accountable to treaty bodies by submitting reports explaining measures put in place to prevent child marriage and to protect children.

In the process of law reform local traditions and customs should be seen in light of international standards. The CEDAW binds States to eliminate discrimination in national constitutions or appropriate legislation and to modify or abolish to customs, practices and laws that discriminate against women.⁷⁵

Legal reform will not lead to change if it is followed up by a range of concrete actions including the development and establishment of relevant tools and mechanisms. The following critical components should be addressed:⁷⁶

- National or local action plans on child marriage including an interagency approach or coordinated community response mechanism
- Budget allocations
- Training and capacity building for public officials
- Specialized police and criminal prosecutorial units
- Specialized courts or other dispute resolution mechanisms
- Protocols, guidelines, standards and regulations
- Time limit on activating legislative provisions
- Penalties for non-compliance by relevant authorities.

Large national campaigns to raise awareness of the law are needed to make the law and the sanctions known in the communities where child marriage is practiced.

Enforcement

Where a progressive child marriage law is in place improved enforcement would help make the law more effective. However, enactment and enforcement will only be effective if implemented in parallel with other tools and strategies to change the dominant social norms within local communities.

In summary, related to enforcement of laws, it is recommended that:

- Police officers, judiciary officials, local government representatives and community leaders in areas where child marriage levels are high need training on how to enforce national child marriage laws.
- Efforts should be made to communicate elements and details of the law and the punishments for breaking them aimed at the public at large through public education campaigns.
- Strengthen the capacity of law enforcement bodies to work more closely with communities, schools, and governmental and non-governmental associations to prevent child marriages.

Other laws (birth and marriage registration)

The marriage registration process should require that both parties list their birth dates to ensure that the parties are of legal age to be married. Proof of age should be compulsory for marriage. Where

⁷⁵ United Nations Children's Fund, Child marriage and the law. UNICEF, New York, 2008.

⁷⁶ UN Women, Handbook for Legislation on Violence Against Women. UN, New York, 2012, pp. 17-21
<http://www.endvawnow.org/en/articles/123-introduction.html?next=127>

official birth records are not available, laws should provide for alternative means of age validation, such as witness affidavits and school, baptismal and medical records. Also, laws should take into account illiteracy rates that may prevent parties from registering their marriages, for example there should be provisions for oral registration and an alternative signature, such as fingerprints. Article 34(1) of Sierra Leone's *Child Rights Act (2007)* provides a good example of this approach.⁷⁷

Other laws on gender-based violence, or discrimination against women and girls in the formal sector, property rights, etc should also be strengthened.

Contextual factors

Finally, there is a need to address the wider context that underpins child marriages. As this report has stated, poverty may contribute to the practice in which child marriage is taken underground despite it being made criminal. It is therefore important for any legal system to formulate and implement social and economic policies and social protection programmes that build the capacity of children, families and communities and strengthen their resilience against economic challenges that lead them to marry off their children and in particular girls.^{78, 79} Governments should ensure that girls' access to education is actively promoted and ensure that there are substantive skills-enhancing programmes and opportunities for girls between the onset of puberty and the time of marriage.⁸⁰ Governments should also ensure girls already in marriages or relationships are able to access reproductive and sexual health care, including contraception and support for survivors of domestic violence.

Recommendations for research

This report has found a critical scarcity of scientific studies on the effect of laws on harmful practices like child marriage. There is a need for further studies both to review good examples and promising approaches as well as to look more ahead in terms of appropriate interventions. Some of the research questions that need to be studied include:

- To what extent do the various groups including parents, community leaders, teachers and health personnel know the law on child marriage?
- What are effective approaches to build awareness about the law and understanding for its existence among various population groups?
- How can legislators and law enforcements units work in collaboration with community-based initiatives?

Data targeted at different levels on different issues is a powerful tool to demonstrate the negative consequences of child marriage. Data should be collected on the incidence and prevalence of child marriage and on the the status of the married girls (education, access to health care, education and the socio economic status of the family). Data on cases registered and prosecuted, number of marriages stopped etc. would also be useful.

⁷⁷ UN Women, Good practices in legislation on “harmful practices” against women. UN, New York, 2009.

⁷⁸ Odala, 2013.

⁷⁹ See also recommendations made for Southern Asia that are highly relevant also for Africa: ICRW, Child Marriage in Southern Asia. Policy Options for Action. 2012.

⁸⁰ Save the Children South Africa, Legal and Policy Frameworks to Protect the Rights Of Vulnerable Children in Southern Africa. Save the Children UK, 2006.

7. Conclusion

The review of the literature on legislation on the minimum age of marriage in Africa, trends in the practice of child marriage, studies on the reasons for its existence and perpetuation as well as reviews of promising approaches, has shown that there are very few – if any - indications that laws and legal reforms have contributed to discouraging and eradicating the practice of child marriage. Where decreases in child marriage have been observed, they are by and large explained by other interventions and factors such as community programs and violent conflicts.

This do not imply, however, that laws do not matter. Enacting a strong law is a starting point and is the basis for further action both at national and community levels. For activists and field workers it is important to be able to refer to the law and a clear government position when they aim to change beliefs, attitudes and practices.

Some countries have a strong legal framework that can be considered as “promising practices”, whereas others need to revise their legislation in line with international standards and commitments.

In general there is a need to reconsider and strengthen enforcement policies. Enforcement of these laws is weak, both because of a resistance from local officials due to prevailing social norms and practices, and because of practical difficulties in enforcing them. Law enforcement training and child marriage education for police and other law enforcement officials, judiciary personnel and community leaders is highly needed.

This report does *not* advise that policymakers strengthen punishments for those who violate child marriage laws unless such efforts are preceded or run in parallel with programmes that aim to change local social norms and build understanding for the need to change the practice. Moreover, legal reform and enactment of laws will only be effective if implemented in coordination with strategies to address the socio-economic factors that are the main drivers of child marriage. This includes programmes aimed at reducing poverty and addressing gender inequality, increasing school enrollment and improving non-formal education. Interventions that target and sensitize traditional opinion leaders such as community and religious leaders should be encouraged. Legislation must be part of an integrated approach including community-based programs that target girls, parents, and community leaders, media campaigns and active parliamentary leadership and engagement.

Literature

2nd periodic report on the Convention on the Rights of the Child, Niger, 2007.

Abbott P. and Sapsford F., Legal and Policy Framework for Children's Rights in Rwanda. Institute of Policy Analysis and Research, Kigali, 2012.

AWEPA, Guidelines for Parliamentarians – Abandoning Female Genital Mutilation/Cutting. 2009.

Boyden J., Pankhurst A. and Tafere Y., Child protection and harmful traditional practices: female early marriage and genital modification in Ethiopia. Development in Practice 2012, 22(4): 510-522.

Clark S., Early Marriage and HIV Risks in Sub-Saharan Africa. Studies in Family Planning, 2004, 35(3): 149-160.

Conde-Agudelo A., Belizán J.M., Lammers C., Maternal-perinatal morbidity and mortality associated with adolescent pregnancy in Latin America: cross-sectional study. American Journal for Obstetrics and Gynecology, 2005, 192:342–349

Erulkar A., Early marriage, marital relations and intimate partner violence in Ethiopia. International Perspectives on Sexual and Reproductive health. 2013, 39(1):6–13.

Erulkar A.S., Muthengi E., Evaluation of Berhane Hewan: a program to delay child marriage in rural Ethiopia. Int Perspect Sex Reprod Health. 2009, 35(1): 6-14.

Federal Negarit Gazetta of the Federal Democratic Republic of Ethiopia, The Revised Family Code, Federal Negarit Gazetta Extra Ordinary Issue No. 1/2000 The Revised Family Code Proclamation No. 213/2000.

Gage, A. J. (Ed.), Coverage and Effects of Child Marriage Prevention Activities in Amhara Region, Ethiopia Findings from a 2007 Study. USAID, 2009.

ICRW, Child Marriage in Southern Asia. Policy Options for Action. 2012.

Ikamari L., The effect of education on the timing of marriage in Kenya. Demographic Research, 2005, 12(1): 1-28.

Jain S. and Kurz K., New insights on preventing child marriage: a global analysis of factors and programs. International Center for Research on Women, Washington DC, 2007.

Jayaraman A., Gebreselassie T. and Chandrasekhar S., The Impact of Conflict on Age at Marriage and Childbirth in Rwanda. DHS Working Paper, MEASURE DHS, November 2007.

Jensen R. and Thornton R., Early Female Marriage in the Developing World. Gender and Development, 2003, 11(2): 9-19.

Khan N. and Lynch M., Recognizing Child Maltreatment in Bangladesh. Child Abuse and Neglect, 1997, 21(8): 815-818.

Kim M., Longhofer W., Boyle E.H. and Nyseth H., When Do Laws Matter? National Minimum-Age-of-Marriage Laws, Child Rights and Adolescent Fertility, 1989-2007. Law & Society, 2013, 47(3): 589-619.

Lee-Rife S., Malhotra A., Warner A. and Glinski A.M., What works to prevent child marriage: a review of the evidence. Studies on Family Planning. 2012, 43(4):287-303.

Lloyd C.B. and Mensch B. S., Marriage and Childbirth as Factors in School Exit: An Analysis of DHS Data from sub-Saharan Africa. Population Council, Working Paper No. 2019, 2006.

Lloyd C.B. and Mensch B. S., Marriage and childbirth as factors in dropping out from school: an analysis of DHS data from sub-Saharan Africa. Population Studies, 2008, 62(1): 1-13.

Mackie G., Effective Rule of Law Requires Construction of A Social Norm of Legal Obedience. Forthcoming, edited volume on Antanas Mockus, Harvard University Press. Malawi Human Rights Resource Center, 2006.

Malhotra A., et al., Solutions to End Child Marriage: What the evidence shows. International Center for Research on Women, Washington DC, 2011.

Malhotra A., et al., Solutions to End Child Marriage: What the evidence shows. International Center for Research on Women, Washington DC, 2011.

Marzouki Nadia, 'Algeria', in Sanja Kelly and Julia Breslin, eds., Women's Rights in the Middle East and North Africa. New York, 2010, p. 37.

Miller S. and Lester F., Improving the health and well-being of married young first-time mothers. Technical Consultation on Married Adolescents. Geneva, 2003.

Neal S., Matthews Z., Frost M., Fogstad H., Camacho A. V. and Laski L., Childbearing in adolescents aged 12–15 years in low resource countries: a neglected issue. New estimates from demographic and household surveys in 42 countries. Acta Obstetrica et Gynecologica Scandinavica, 2012, 91: 1114–1118.

Nisha G., The Global Spread of Domestic Violence Legislation: Causes and Effects, International Relations Honors Thesis, New York University, 2012.

Nour, N.M., Health Consequences of Child Marriage in Africa. Emerging Infectious Diseases, 2006, 12(11): 1644-1649.

Odala V., Why is it important for countries to have a minimum legal age of marriage?. African Child Policy Forum (ACPF), 2013.

OHCHR, Fact Sheet No 23.

Ouattara M., Sen P. and Thomson M., Forced marriage, forced sex: the perils of childhood for girls. Gender and Development, 1998, 6(3): 27-33.

Pathfinder International/Ethiopia, Report on causes and consequences of early marriage in Amhara region. Addis Abeba, 2006.

Plan Kenya, Because I am a Girl - Kenya Country Report, 2012. Study of the Factors Influencing Girls' Access, Retention and Completion of Primary and Secondary School Education. Plan International Inc. Kenya, 2012.

PMNCH/IPU, Taking the lead: Parliamentarians engage with maternal, newborn and child health. Geneva, 2010.

Population Council and United Nations Population Fund (UNFPA), The Adolescent Experience In-depth: Using Data to Identify and Reach the Most Vulnerable Young People, Namibia 2006/07. New York, 2009.

Population Reference Bureau, Ending Child Marriage in the Arab Region. Policy Brief, PRB, 2013.

Raj A., et al., The effect of maternal child marriage on morbidity and mortality of children under 5 in India. Cross-sectional study of a national representative sample. British Medical Journal, 2010, 340: b4258.

Royal Tropical Institute, Building skills for life for adolescent girls programme: global baseline report. Plan UK, London, 2012.

Save the Children South Africa, Legal and Policy Frameworks to Protect the Rights Of Vulnerable Children in Southern Africa. Save the Children UK, 2006.

Save the Children, State of the World's Mothers 2004. Save the Children UK, Westport, 2004.

Shell-Duncan B., Wander K., Hernlund Y. and Moreau A., Legislating Change? Responses to Criminalizing Female Genital Cutting in Senegal. In press at Law and Society Review.

Svanemyr J. et al., Preventing Child Marriages: First International Day of the Girl Child "my Life, my Right, end Child Marriage". Reproductive Health, 2012, 9:31.

Thomas L.M., 'Ngaitana (I will circumcise myself)': Lessons from Colonial Campaigns to Ban Excision in Meru, Kenya. In Shell-Duncan B., Hernlund Y., eds., Female 'circumcision' in Africa: culture, controversy and change. Boulder, Colorado, 2000.

UN Women, Good practices in legislation on "harmful practices" against women. UN, New York, 2009.

UN Women, Handbook for Legislation on Violence Against Women. UN, New York, 2012, pp. 17-21.

UNFPA, Marrying Too Young. End Child Marriage, New York, 2012.

United Nations Children Fund, Early Marriages: Child Spouses. UNICEF, New York, 2001.

United Nations Children's Fund, 2005.

United Nations Children's Fund, Progress for children. Achieving the millennium development goals with equity. UNICEF, New York, 2010.

United Nations Children's Fund, Child marriage and the law. UNICEF, New York, 2008.

Walker J.A., Early Marriage in Africa – Trends, Harmful Effects and Interventions. African Journal of Reproductive Health, 2012 (Special Edition), 16(2): 231-240.

WHO, Guidelines on preventing early pregnancy and poor reproductive outcomes among adolescents in developing countries. Geneva, 2011.

Women and Law in Southern Africa Research and Educational Trust, Shadow Report to the Malawi Government Sixth Periodic Report on the Implementation of the Convention on the Elimination of all forms of Discrimination Against Women, 2009. Submitted to the CEDAW Committee's 45th Session, 15 January – 2 February 2010.

ANNEX 1

PERCENTAGE OF WOMEN 20-24 MARRIED/IN UNION BEFORE AGE 18 BY BACKGROUND CHARACTERISTICS. 2000-2011.
(Source: Marrying Too Young. End Child Marriage. UNFPA, New York, 2012.)

Yellow = over 40% **Green** = under 20%

Country or territory	Total (%)	Residence (percent)		Level of Education (percent)			Household wealth (Wealth Index Quintiles) (percent)					Source
		Rural	Urban	No Education	Primary	Secondary or higher	Poorest 20%	Second	Middle	Fourth	Richest 20%	
Algeria	1.8	-	-	-	-	-	-	-	-	-	-	MICS 2006
Benin	34.4	46.8	18.8	47.1	27.8	6.1	56.9	51.1	45.1	27.2	10.5	DHS 2006
Burkina Faso	47.8	61.2	26.8	59.8	41.5	3.0	60.6	63.5	60.2	56.5	25.6	MICS 2006
Burundi	17.8	18.1	13.4	20.9	18.4	4.0	20.6	22.5	19.9	13.2	12.6	MICS 2005
Cameroon	36.3	56.5	22.7	79.0	44.7	12.5	70.9	53.5	46.8	28.3	11.2	MICS 2006
Cape Verde	18.0	-	-	-	-	-	-	-	-	-	-	DHS 2005
Central African Republic	60.6	-	-	-	-	-	-	-	-	-	-	MICS 2006
Chad	71.5	73.9	65.4	78.3	67.1	37.0	67.3	70.2	82	75.2	66.2	DHS 2004
Congo	33.3	43.0	28.7	38.4	45.6	28.0	43.9	38.6	41.7	24.2	17.2	AISS 2009
Djibouti	5.4	12.7	5.2	9.6	6.8	1.1	-	-	-	-	-	MICS 2006
Egypt	16.6	22.0	9.4	34.1	32.5	14.8	30.1	19.4	19.4	11.9	4.8	DHS 2008
Eritrea	47.0	59.8	30.5	64.1	53.3	12.0	46.4	63.7	66.2	47.8	20.6	DHS 2002
Ethiopia	41.2	49.0	21.7	62.9	37.5	10.3	59.2	56.4	46.8	42.2	22.0	DHS 2011
Gabon	33.6	48.6	30.3	41.1	44.7	27.4	-	-	-	-	-	DHS 2000
Gambia	35.9	45.3	24.4	51.1	42.1	10.5	56.3	42.2	39.5	35.1	18.1	MICS 2005-06

Ghana	24.6	37.7	12.7	46.5	41.6	15.3	22.4	31.0	51.8	5.2	26.9	DHS 2008
Guinea	63.1	74.9	44.5	72.7	47.9	27.3	78.9	74.2	74.8	54.9	45.7	DHS 2005
Guinea-Bissau	22.0	31.5	14.2	32.7	21.1	7.9	33.2	32.8	28.3	24.9	10.1	MICS 2010
Kenya	26.4	31.3	15.6	66.7	35.9	5.6	52.3	28.9	29.2	22.8	13.9	DHS 2008-09
Lesotho	18.8	21.4	13.6	63.1	32.6	9.4	35.3	26.7	19.9	15.1	8.5	DHS 2009
Liberia	37.9	48.6	24.9	56.3	42.3	17.3	56.9	48.0	42.9	30.5	17.7	DHS 2007
Madagascar	48.2	51.0	35.4	67.9	52.9	27.6	65.4	59.4	47.2	41.2	31.9	DHS 2008-09
Malawi	49.6	54.4	31.0	65.6	62.2	16.4	59.8	61.7	56.7	48.9	25.7	DHS 2010
Mali	55.0	76.5	60.4	77.0	64.3	37.9	72.6	77.9	76.3	75.8	57.7	MICS 2010
Mauritania	35.4	44.1	27.3	51.0	41.3	15.3	50.7	45.5	38.7	33.1	19.7	MICS 2007
Morocco	15.9	21.1	12.0	24.1	16.4	6.2	22.7	22	15.8	11.4	8.3	DHS 2003-04
Mozambique	51.8	65.5	40.6	67.2	56.6	11.5	69.8	63.8	63.9	54.6	32.1	MICS 2008
Namibia	8.6	11.4	5.6	32.5	18.7	5.1	18.3	7.2	13.4	5.9	1.1	DHS 2006-07
Niger	74.5	83.5	42.1	81.2	62.7	17.2	80.5	83.3	84.3	83.5	47.5	DHS 2006
Nigeria	39.4	49.8	21.6	82.1	53.8	12.5	70.8	64.7	43.1	23.1	10.6	DHS 2008
Rwanda	8.1	8.2	7.5	19.6	8.1	3.1	12.9	7.5	7.8	7.1	6.0	DHS 2010
Senegal	32.9	49.3	16.9	48.1	26.0	6.2	65.9	46.2	32.1	22.2	13.2	DHS 2010-11
Sierra Leone	47.9	61.1	30.4	64.2	51.8	12.1	61.8	63.1	65.2	45.4	23.1	DHS 2008
Somalia	45.3	52.4	35.2	51.7	41.0	11.2	43.7	58.7	56.4	43.4	27.9	MICS 2006
South Africa	5.6	12.3	4.7	17.6	16.2	6.3	11.0	13.0	9.4	2.2	4.4	DHS 2003

Sudan	34.0	-	-	-	-	-	-	-	-	-	-	SHHS 2006
Swaziland	5.0	6.4	1.4	15	11.1	2.0	12.9	5.8	6.0	1.7	1.5	DHS 2006-07
Togo	25.2	40.8	16.9	43.6	29.2	8.0	49.3	47.9	34.6	22.2	15.6	MICS 2010
Uganda	46.3	51.8	26.9	66.8	58.4	13.8	61.8	58.6	46.8	48.8	26.3	DHS 2006
United Republic of Tanzania	36.9	43.9	22.5	60.9	39.2	4.9	50.1	45.7	45.3	33.7	18.6	DHS 2010
Zambia	41.6	53.3	26.2	64.8	57.5	17.1	63.2	54.5	48.0	41.0	13.0	DHS 2007
Zimbabwe	30.5	38.5	19.8	33.0	55.0	23.4	47.3	45.0	37.9	24.5	11.1	DHS 2010-11

Annex 2

Ratification of international conventions by the ten countries studied

Egypt has ratified the Convention on the Elimination of all Forms of Discrimination against Women (1981), the Convention on the Rights of the Child (1990) as well as the African Charter on Human and People's Rights (1984), but not the Protocol to the African Charter on Human and People's Rights of Women in Africa.

Niger is one of the only 12 African countries⁸¹ having ratified upon accession the Convention on Consent to Marriage (1964). It also ratified upon accession the Convention on the Elimination of all Forms of Discrimination against Women (1999), the Convention on the Rights of the Child (1990) as well as the African Charter on Human and People's Rights (1986) and signed in 2004 the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa. In the area of personal and family law, customary law and Sharia co-exist with legislative provisions. Legislation in 2004 stated that customary law should only be applied if it complies with 'ratified international conventions, the legislative provisions or fundamental rules concerning public order or personal freedom'.

Central African Republic has ratified upon accession the Convention on the Elimination of all Forms of Discrimination against Women (1991), and the Convention on the Rights of the Child (1992) as well as the African Charter on Human and people's Rights (1986). At a national level, there is ongoing debate on the modification of the Family Code adopted in 1997 to align it to the international instruments ratified by the country.

Ethiopia has ratified the Convention on the Elimination of all Forms of Discrimination (1981), and the Convention on the Rights of the Child upon accession, as well as the African Charter on Human and People's Rights (1998) and signed in 2004 the Protocol to the African Charter on Human and People's Rights of Women in Africa.

Malawi has ratified upon accession the Convention on the Elimination of all Forms of Discrimination against Women (1987) and the Convention on the Rights of the Child (1991), as well as the regional instruments of the African Charter on Human and People's Rights (1989) and the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (2005).

Algeria has ratified upon accession the Convention on the Elimination of all Forms of Discrimination against Women (1996) and the Convention on the Rights of the Child, (1993), as well as the regional instruments of the African Charter on Human and People's Rights (1987) and signed in 2003 the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa.

Ghana has ratified upon accession the Convention on the Elimination of all Forms of Discrimination against Women (1986) and the Convention on the Rights of the Child, (1990), as well as the regional instruments as the African Charter on Human and People's Rights (1989) and the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (2007).

81 The other countries are: Benin, Burkina Faso, Cote d'Ivoire, Guinea, Liberia, Libya, Mali, Rwanda, South Africa, Tunisia and Zimbabwe.

Rwanda is one among only 12 African countries that have ratified the Convention on Consent to Marriage, minimum Age for Marriage and Registration of Marriages (2003). It also ratified the Convention on the Elimination of all Forms of Discrimination against Women (1981) and the Convention on the Rights of the Child (1991). Regionally it has ratified both the African Charter on Human and People’s Rights (1983) and the Protocol to the African Charter on Human and People’s Rights on the Rights of Women in Africa (2004).

Kenya has ratified upon accession the Convention on the Elimination of all Forms of Discrimination against Women (1984) and the Convention on the Rights of the Child (1990). Regionally it has ratified the African Charter on Human and People’s Rights (1992) but only signed in 2003 the Protocol to the African Charter on Human and People’s Rights on the Rights of Women in Africa.

Namibia has ratified upon accession the Convention on the Elimination of all Forms of Discrimination against Women (1992) and the Convention on the Rights of the Child (1990). Regionally it has ratified the African Charter on Human and People’s Rights (1992) as well as the Protocol to the African Charter on Human and People’s Rights on the Rights of Women in Africa (2004).

ANNEX 3

Main international and regional legal frameworks. Overview on the ratification process

Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages

New York, 10 December 1962

Participant	Signature	Ratification, Accession(a), Succession(d)
Benin		19 Oct 1965 a
Burkina Faso		8 Dec 1964 a
Côte d'Ivoire		18 Dec 1995 a
Guinea	10 Dec 1962	24 Jan 1978
Liberia		16 Sep 2005 a
Libya		6 Sep 2005 a
Mali		19 Aug 1964 a
Niger		1 Dec 1964 a
Rwanda		26 Sep 2003 a
South Africa		29 Jan 1993 a
Tunisia		24 Jan 1968 a
Zimbabwe		23 Nov 1994 a

http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVI-3&chapter=16&lang=en

Convention on the Elimination of All Forms of Discrimination against Women

New York, 18 December 1979

Participant	Signature	Ratification, Accession(a), Succession(d)
Algeria		22 May 1996 a
Angola		17 Sep 1986 a

Benin	11 Nov 1981	12 Mar 1992
Botswana		13 Aug 1996 a
Burkina Faso		14 Oct 1987 a
Burundi	17 Jul 1980	8 Jan 1992
Cameroon	6 Jun 1983	23 Aug 1994
Cape Verde		5 Dec 1980 a
Central African Republic		21 Jun 1991 a
Chad		9 Jun 1995 a
Comoros		31 Oct 1994 a
Congo	29 Jul 1980	26 Jul 1982
Côte d'Ivoire	17 Jul 1980	18 Dec 1995
Democratic Republic of the Congo	17 Jul 1980	17 Oct 1986
Djibouti		2 Dec 1998 a
Egypt	16 Jul 1980	18 Sep 1981
Equatorial Guinea		23 Oct 1984 a
Eritrea		5 Sep 1995 a
Ethiopia	8 Jul 1980	10 Sep 1981
Gabon	17 Jul 1980	21 Jan 1983
Gambia	29 Jul 1980	16 Apr 1993
Ghana	17 Jul 1980	2 Jan 1986
Guinea	17 Jul 1980	9 Aug 1982
Guinea-Bissau	17 Jul 1980	23 Aug 1985
Kenya		9 Mar 1984 a
Lesotho	17 Jul 1980	22 Aug 1995
Liberia		17 Jul 1984 a
Libya		16 May 1989 a
Madagascar	17 Jul 1980	17 Mar 1989
Malawi		12 Mar 1987 a
Mali	5 Feb 1985	10 Sep 1985
Mauritania		10 May 2001 a
Mauritius		9 Jul 1984 a
Morocco		21 Jun 1993 a
Mozambique		21 Apr 1997 a
Namibia		23 Nov 1992 a
Niger		8 Oct 1999 a
Nigeria	23 Apr 1984	13 Jun 1985
Rwanda	1 May 1980	2 Mar 1981
Sao Tome and Principe	31 Oct 1995	3 Jun 2003
Senegal	29 Jul 1980	5 Feb 1985
Sierra Leone	21 Sep 1988	11 Nov 1988
South Africa	29 Jan 1993	15 Dec 1995
Swaziland		26 Mar 2004 a
Togo		26 Sep 1983 a
Tunisia	24 Jul 1980	20 Sep 1985

Uganda	30 Jul 1980	22 Jul 1985
United Republic of Tanzania	17 Jul 1980	20 Aug 1985
Zambia	17 Jul 1980	21 Jun 1985
Zimbabwe		13 May 1991 a

http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en

Convention on the Rights of the Child

New York, 20 November 1989

Participant	Signature	Ratification, Acceptance(A), Accession(a), Succession(d)
Algeria	26 Jan 1990	16 Apr 1993
Angola	14 Feb 1990	5 Dec 1990
Benin	25 Apr 1990	3 Aug 1990
Botswana		14 Mar 1995 a
Burkina Faso	26 Jan 1990	31 Aug 1990
Burundi	8 May 1990	19 Oct 1990
Cameroon	25 Sep 1990	11 Jan 1993
Cape Verde		4 Jun 1992 a
Central African Republic	30 Jul 1990	23 Apr 1992
Chad	30 Sep 1990	2 Oct 1990
Comoros	30 Sep 1990	22 Jun 1993
Congo		14 Oct 1993 a
Côte d'Ivoire	26 Jan 1990	4 Feb 1991
Democratic Republic of the Congo	20 Mar 1990	27 Sep 1990
Djibouti	30 Sep 1990	6 Dec 1990
Egypt ⁸	5 Feb 1990	6 Jul 1990
Equatorial Guinea		15 Jun 1992 a
Eritrea	20 Dec 1993	3 Aug 1994
Ethiopia		14 May 1991 a
Gabon	26 Jan 1990	9 Feb 1994
Gambia	5 Feb 1990	8 Aug 1990
Ghana	29 Jan 1990	5 Feb 1990
Guinea		13 Jul 1990 a
Guinea-Bissau	26 Jan 1990	20 Aug 1990
Kenya	26 Jan 1990	30 Jul 1990
Lesotho	21 Aug 1990	10 Mar 1992
Liberia	26 Apr 1990	4 Jun 1993
Libya		15 Apr 1993 a
Madagascar	19 Apr 1990	19 Mar 1991
Malawi		2 Jan 1991 a
Mali	26 Jan 1990	20 Sep 1990
Mauritania	26 Jan 1990	16 May 1991
Mauritius		26 Jul 1990 a

Morocco	26 Jan 1990	21 Jun 1993
Mozambique	30 Sep 1990	26 Apr 1994
Namibia	26 Sep 1990	30 Sep 1990
Niger	26 Jan 1990	30 Sep 1990
Nigeria	26 Jan 1990	19 Apr 1991
Rwanda	26 Jan 1990	24 Jan 1991
Sao Tome and Principe		14 May 1991 a
Senegal	26 Jan 1990	31 Jul 1990
Sierra Leone	13 Feb 1990	18 Jun 1990
Somalia	9 May 2002	
South Africa	29 Jan 1993	16 Jun 1995
Sudan	24 Jul 1990	3 Aug 1990
Swaziland	22 Aug 1990	7 Sep 1995
Togo	26 Jan 1990	1 Aug 1990
Tunisia	26 Feb 1990	30 Jan 1992
Uganda	17 Aug 1990	17 Aug 1990
United Republic of Tanzania	1 Jun 1990	10 Jun 1991
Zambia	30 Sep 1990	6 Dec 1991
Zimbabwe	8 Mar 1990	11 Sep 1990

http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en

The African Charter on Human and People's Rights

Nairobi, June 1981

<u>State</u>	<u>Signed</u>	<u>Ratified</u>	<u>Deposited</u>
Algeria	10/04/1986	01/03/1987	20/03/1987
Angola		02/03/1990	09/10/1990
Benin	11/02/2004	20/01/1986	25/02/1986
Botswana		17/07/1986	22/07/1986
Burkina Faso	05/03/1984	06/07/1984	21/09/1984
Burundi		28/07/1989	30/08/1989
Cameroon	23/07/1987	20/06/1989	18/09/1989
Cape Verde	31/03/1986	02/06/1987	06/08/1987
Central African Republic	04/02/2003	26/04/1986	27/07/1986
Chad	29/05/1986	09/10/1986	11/11/1986
Comoros	07/12/2004	01/06/1986	18/07/1986
Congo	27/11/1981	09/12/1982	17/01/1983
Cote d'Ivoire	30/08/2005	06/01/1992	31/03/1992
Democratic Republic of the Congo	23/07/1987	20/07/1987	28/07/1987
Djibouti	20/12/1991	11/11/1991	20/12/1991
Egypt	16/11/1981	20/03/1984	03/04/1984
Equatorial Guinea	18/08/1986	07/04/1986	18/08/1986
Eritrea		14/01/1999	15/03/1999
Ethiopia		15/06/1998	22/06/1998
Gabon	26/02/1982	20/02/1986	26/06/1986

<u>State</u>	<u>Signed</u>	<u>Ratified</u>	<u>Deposited</u>
Gambia	11/02/1983	08/06/1983	13/06/1983
Ghana	03/07/2004	24/01/1989	01/03/1989
Guinea	09/12/1981	16/02/1982	13/05/1982
Guinea-Bissau	08/03/2005	04/12/1985	06/03/1986
Kenya		23/01/1992	10/02/1992
Lesotho	07/03/1984	10/02/1992	27/02/1992
Liberia	31/01/1983	04/08/1982	29/12/1982
Libya	30/05/1985	19/07/1986	26/03/1987
Madagascar		09/03/1992	19/03/1992
Malawi	23/02/1990	17/11/1989	23/02/1990
Mali	13/11/1981	21/12/1981	22/01/1982
Mauritania	25/02/1982	14/06/1986	26/06/1986
Mauritius	27/02/1992	19/06/1992	01/07/1992
Mozambique		22/02/1989	07/03/1990
Namibia		30/07/1992	16/09/1992
Niger	09/07/1986	15/07/1986	21/07/1986
Nigeria	31/08/1982	22/06/1983	22/07/1983
Rwanda	11/11/1981	15/07/1983	22/07/1983
Sahrawi Arab Democratic Republic	10/04/1986	02/05/1986	23/05/1986
Sao Tome and Principe		23/05/1986	28/07/1986
Senegal	23/09/1981	13/08/1982	25/10/1982
Seychelles		13/04/1992	30/04/1992
Sierra Leone	27/08/1981	21/09/1983	27/01/1984
Somalia	26/02/1982	31/07/1985	20/03/1986
South Africa	09/07/1996	09/07/1996	09/07/1996
South Sudan			
Sudan	03/09/1982	18/02/1986	11/03/1986
Swaziland	20/12/1991	15/09/1995	09/10/1995
Tanzania	31/05/1982	18/02/1984	09/03/1984
Togo	26/02/1982	05/11/1982	22/11/1982
Tunisia		16/03/1983	22/04/1983
Uganda	18/08/1986	10/05/1986	27/05/1986
Zambia	17/01/1983	10/01/1984	02/02/1984
Zimbabwe	20/02/1986	30/05/1986	12/06/1986

<http://www.achpr.org/instruments/achpr/>

Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa
Maputo, 11 July 2003

<u>State</u>	<u>Signed</u>	<u>Ratified</u>	<u>Deposited</u>
Algeria	29/12/2003		
Angola	22/01/2007	30/09/2007	

<u>State</u>	<u>Signed</u>	<u>Ratified</u>	<u>Deposited</u>
Benin	11/02/2004	30/09/2005	13/10/2005
Botswana			
Burkina Faso	26/02/2004	09/06/2006	09/08/2006
Burundi	03/12/2003		
Cameroon	25/07/2006		
Cape Verde		21/06/2005	22/07/2005
Central African Republic			
Chad	06/12/2004		
Comoros	26/02/2004	18/03/2004	16/04/2004
Congo	27/02/2004		
Cote d'Ivoire	27/02/2004		
Democratic Republic of the Congo	05/12/2003	09/06/2008	
Djibouti	18/12/2003	02/02/2005	04/02/2005
Egypt			
Equatorial Guinea	30/01/2005		
Eritrea			
Ethiopia	01/06/2004		
Gabon	27/01/2005		
Gambia	11/09/2003	25/05/2005	06/09/2005
Ghana	31/10/2003	13/06/2007	
Guinea	16/12/2003		
Guinea-Bissau	08/03/2005	19/06/2008	
Kenya	17/12/2003		
Lesotho	27/02/2004	26/10/2004	05/11/2004
Liberia	16/12/2003	14/12/2007	
Libya	05/11/2003	23/05/2004	30/06/2004
Madagascar	28/02/2004		
Malawi		20/05/2005	29/06/2005
Mali	09/12/2003	13/01/2005	03/02/2005
Mauritania		21/09/2005	14/12/2005
Mauritius	29/01/2005		
Mozambique	15/12/2003	09/12/2005	30/12/2005
Namibia	09/12/2003	11/08/2004	26/08/2004
Niger	06/07/2004		
Nigeria	16/12/2003	16/12/2004	18/02/2005
Rwanda	19/12/2003	25/06/2004	01/07/2004
Sahrawi Arab Democratic Republic	20/06/2006		
Sao Tome and Principe			
Senegal	26/12/2003	27/12/2004	30/01/2005
Seychelles	24/01/2006	09/03/2006	25/04/2006
Sierra Leone	09/12/2003		
Somalia	23/02/2006		
South Africa	16/03/2004	17/12/2004	14/01/2005
South Sudan			

State	Signed	Ratified	Deposited
Sudan			
Swaziland	07/12/2004		
Tanzania	05/11/2003	03/03/2007	07/05/2007
Togo	30/12/2003	12/10/2005	26/10/2005
Tunisia			
Uganda	18/12/2003	22/07/2010	
Zambia	03/08/2005	02/05/2006	07/06/2006
Zimbabwe	18/11/2003	15/04/2008	

ANNEX 4

Terms of reference

Study of Laws Relating to Early Marriage in Africa
 A Collaborative Activity by the
 Inter-Parliamentary Union and Pan African Parliament

1. CONTEXT

According to UNFPA between 2011 and 2020, more than 140 million girls worldwide will marry before they reach the age of 18. Of these, 50 million will be under the age of 15. Many of these are in Africa where the prevalence of the practice is very high.

Early marriage is a complex issue. It deeply rooted in gender inequality, traditional practice and poverty. In many cases, under-aged girls who marry are forced into those unions in contravention of their rights. This undermines their opportunity to enjoy their childhood with social and psychological implications. In most cases early marriage also results in girls losing the opportunity to continue with school in order to focus on family responsibilities. This has negative implications for their capacity to benefit from economic development programmes and their potential to contribute meaningfully to society.

Early marriage is accompanied by significant health implications. Complications from pregnancy and childbirth are the leading causes of death for girls aged between 15 and 19 years in developing countries. Stillbirths and newborn deaths are 50 per cent higher among mothers under the age of 20 than in women who get pregnant in their 20s. Girls between the ages of 10 and 14 years have five times the risk of dying during pregnancy and birth compared to women aged 20-24. Early onset of childbearing is associated with numerous childbirths and, accordingly, negative maternal health outcomes. This undermines the commitment made towards maternal and child health in the Millennium Development Goals. Young girls who marry before the age of 18 have a greater risk of becoming victims of violence within marriage than women who marry at an older age. This is especially true in cases of a large age

gap between the spouses. In this context violence increases the vulnerability of girls and young women to HIV and other sexually-transmitted infections. All these impacts hamper the physical, mental, emotional and psychological development of girls who marry early.

In spite of the dire and numerous implications of early and forced marriage for girls, the practice remains prevalent particularly in Asia and Africa. Every effort should be made to address and end early marriage. In this context, in 2012, Member Parliaments of the Inter-Parliamentary Union unanimously adopted the resolution, 'Access to health as a basic right: The role of parliaments in addressing key challenges to securing the health of women and children.' In adopting the IPU resolution, parliaments highlighted the devastating consequences of the practice of early marriage. They also committed themselves to taking required legislative action to preventing early marriage and to providing support to those affected by the practice. This includes, inter alia, ensuring appropriate legislation is in place, legislation amended to address contradictions which provide loopholes, that outdated legislation which perpetuates the practice is repealed, and the inclusions of provisions to punish perpetrators.

2. PROPOSED ACTIVITY

The Pan Africa Parliament (PAP) and Inter-Parliamentary Union (IPU) have a shared commitment to facilitating parliamentary action which promotes maternal, newborn and child health. In 2012 the IPU provided financial and technical support to the PAP in its hosting of the Annual African Women Parliamentarians in Johannesburg in October 2012. The Conference resulted in a set of resolutions adopted by the 3rd sitting of the PAP in October 2012. The IPU and the PAP now propose to collaborate on the implementation of some of the resolutions adopted by the PAP and which would contribute to the implementation of the resolution on maternal, newborn and child health adopted by the IPU in March 2012, including resolution 3; "To work towards specific parliamentary review and harmonize national registration and child marriage with the Maputo Protocol on African Women's Rights and call for the removal of negative clauses and inconsistencies such as so called 'parental consent' that permit criminal and early marriage of children below the age of 18".

3. SCOPE OF STUDY

This collaboration will primarily involve a review the extent to which countries in Africa have in place legislation to prevent early marriage. The study will attempt to draw conclusions on the contribution of legislation to discouraging and eradicate the practice of early (and often forced) marriage. The review exercise will focus on the legal environment pertaining to early marriage in two groups of countries in the Africa region – one group where the incidence of early marriage is very high in relation to other countries – and a second group of countries where the incidence is relatively low.

The IPU will engage a consultant to undertake the study. In conducting the study, the consultant will consider legislative provisions such as to the age of marriage, the age of consent, registration of marriages, annulling of early marriage, enforcement mechanisms, punitive measures for those who directly or indirectly permit the practice and any others as may be relevant. In addition to the existence (or otherwise) of such legal provisions, the consultant will also assess the legal environment for congruency between existing laws, for loopholes, especially provisions which recognize customary laws where the latter permit early marriage and also to assess the primacy of legal provisions relating to preventing early marriage.

4. CONSULTANT TERMS OF REFERENCE

The Consultant is expected to deliver the English language version of the draft report and finalize the text based on feedback received from PAP and IPU. The duties and responsibilities of the Consultant include but will not necessarily be limited to the following tasks:

The Consultant will:

- ☐ _Develop a tool to guide the research component of the research.
- ☐ _Identify and draw together the different sources of information to contribute prepare a well-

structured and exhaustive text on the extent to which countries have in place legislation to prevent early marriage. The consultant will identify any gendered dimensions and their implications.

☐ _Conduct interviews with key selected informants in selected countries

☐ _Develop a draft report based on observations. Draw conclusions on the extent to which legislation contribute to the situation of early marriage in the two groups of countries

☐ _Liaise with the IPU focal point and IPU partners to identify relevant case studies, best practices, lessons learned on parliamentary involvement in developing legislation relating to early marriage

☐ _Finalize the draft text for review by IPU and PAP

☐ _Address any deficiencies, inconsistencies, etc. identified IPU and PAP and produce the final text of the report based on feedback from PAP and IPU

☐ _Present the report at the PAP Women's Conference in September 2013 as may be required