

**PLAN 18+ PROGRAMME ON ENDING
CHILD MARRIAGE IN SOUTHERN AFRICA**

POLICY BRIEF

ENDING CHILD MARRIAGE IN ZIMBABWE: GAPS AND OPPORTUNITIES IN LEGAL AND REGULATORY FRAMEWORKS

Child marriage, also referred to as early marriage, is any marriage where at least one of the parties is under 18 years of age. The overwhelming majority of child marriages, both formal and informal, involve girls under 18 years old, although at times their spouses are also underage. A child marriage is considered as a form of forced marriage given that one or both parties have not expressed their full, free and informed consent.

[Joint General Recommendation/General Comment No. 31 of the Committee on the Elimination of Discrimination against Women (CEDAW) and No. 18 of the Committee on the Rights of the Child (CRC) on Harmful Practices (2014), paragraph 19]

The high prevalence of child marriage in Zimbabwe is inconsistent with the country's growth and development aspirations. The government of Zimbabwe has a duty to use practical and effective legal, policy and programmatic measures to halt any phenomenon that destabilises the health, the education, the social and economic well-

being, and the general security of its citizens, and to further the development of girls in particular. Child marriage is an impediment to development, and appropriate action is required by the human rights commitments to which Zimbabwe has subscribed. This policy brief puts forward recommendations to utilise opportunities and address limitations in

relation to legal and regulatory frameworks on child marriage. These initiatives include:

- international frameworks that address child marriage; and treaty body reporting;
- legal and policy initiatives on gender equality and child rights; and
- coordination and leadership, including campaigns to end child marriage supported by traditional leaders.

Key statistics on child marriage in Zimbabwe

- Currently as many as 31 per cent of girls under the age of 18 are married.
- Of these, 4 per cent were married under 15 years of age.
- HIV prevalence is higher among women than men.
- Gender-based violence is a matter of serious concern, with one in five women having experienced sexual violence.
- Whilst Zimbabwe has commendable statistics for women's participation in some domains, such as the judiciary, only 9 per

cent of traditional chiefs are women and, in 2011, only 12 per cent of parliamentarians were female.

- 60 per cent of women aged between 18 and 24 have had sexual intercourse before the age of 18 years.
- indicates that far more women are in polygamous relationships than men, which can have harmful consequences for their access to economic resources.
- There is often a substantial age difference between men and their spouses, with 2014 data indicating that the percentage of young women aged 15-19 years who are married or in union and whose spouse is 10 or more years older was 19.9 per cent (see Table 1).
- The unmet need for family planning services amongst married girls is 17.1 per cent, significantly higher than the unmet need among women of child bearing age overall.

Child marriage results in higher than average maternal morbidity and mortality rates for 15-19 year olds; higher infant mortality among their children; diminished capacity to responsibly raise their children to be productive citizens; higher rates of violence in

Table 1: Key indicators of child marriage in Zimbabwe

Indicator	Gender/age	Percentage
Marriage or union before age 15	(a) Women aged 15-49 years	5.0%
	(b) Men aged 15-49 years	0.3%
	(c) Men aged 15-54 years	0.3%
Marriage or union before age of 18	(a) Women aged 20-49 years	32.8%
	(b) Men aged 20-49 years	3.7%
	(c) Men aged 20-54 years	3.9%
Young people age 15-19 years currently married or in union	(a) Women	24.5%
	(b) Men	1.7%
In a polygynous union	(a) Women aged 15-49 years	10.1%
	(b) Men aged 15-49 years	3.8%
	(c) Men aged 15-54 years	4.1%
Spousal age difference	Young women married or in union and whose spouse is 10 or more years older:	
	(a) among women aged 15-19 years (b) among women aged 20-24 years	19.9% 17.5%

Source: Multiple Cluster Indicator Survey (MICS) 2014

marriage; increased prevalence of HIV; lack of personal and economic autonomy; limited participation in development; limited decision-making in relation to their own lives; weaker economic indicators and ability to climb out of poverty; loss of educational opportunities; social isolation and restricted social mobility.

Increased economic well-being is key to combatting child marriage

Household wealth influences the prevalence of child marriage among all wealth quintiles in Zimbabwe. Girls from the poorest 20 per cent of households are more than four times as likely to be married/in union before the age of 18 as girls from the richest 20 per cent of households. This indicates that poverty is often the cause of child marriage and that the government must make more efforts towards poverty eradication.

Child marriage is not uniformly prevalent in Zimbabwe: prevalence is highest in Mashonaland Central (50 per cent), followed by Mashonaland West (42 per cent), Masvingo (39 per cent), Mashonaland East (36 per cent), Midlands (31 per cent), Manicaland (30 per cent), Matabeleland North (27 per cent), Harare (19 per cent), Matabeleland South (18 per cent), and Bulawayo (10 per cent).

According to the United Nations Population Fund (UNFPA), urgent action is needed to take solutions to scale and prevent thousands of young girls in Zimbabwe today from being married in the next decade(s). In 2010, 231,000 women aged 20-24 were married/in union before age 18. If the present trends continue, 246,000 of the young girls born in Zimbabwe between 2005 and 2010 will be married/in union before the age of 18 by 2030.

Improved access to education is also a key factor in ending child marriage

Access to education has declined due to economic factors and the imposition of school fees; net enrolment ratio has declined from 98.5 per cent in 2002 to 91 per cent in 2009, while about 30 per cent of children are unable

to complete their primary education. More than 300,000 secondary school age children are out of school per annum.

- The government should endeavour to broaden the reach of the Basic Education Assistance Module (BEAM) programme of educational support to target more girls at risk of dropping out of education and who are therefore at risk of early marriage, particularly in the most affected provinces.
- The government should consider taking steps towards gradually returning to the era of free and compulsory primary education. This again requires the concentration of more resources in the education sector, while seeking assistance from development partners.

The legislative reform of marriage laws remains the most urgent priority for the government of Zimbabwe

Child marriage and the betrothal of girls and boys shall be prohibited and effective action including legislation, shall be taken to specify the minimum age of marriage to be 18 years and make registration of all marriages in an official registry compulsory.

[African Charter on the Rights and Welfare of the Child, Article 21]

Zimbabwe's commitment to its international treaty body obligations

- Zimbabwe submitted its initial report to the African Committee of Experts and the Rights and Welfare of the Child which was reviewed at the April 2015 meeting of the Committee.
- Zimbabwe submitted its second periodic report to the CRC Committee which monitors the implementation of the UN Convention on the Rights of the Child, and this report was considered in January 2016.

Legal steps that Zimbabwe has subscribed to, as indicators of progress

The 2013 Constitution

- Zimbabwe has adopted a progressive Constitution which enshrines gender equality and which provides for justiciable rights.
- An elaborate array of children's rights enjoy constitutional protection.
- Section 78 of the Constitution (Marriage Rights) sets a minimum age for marriage at 18, and prohibits forced marriage. It states: "no person shall be compelled to marry against their will".
- Section 26(1) of the Constitution requires the State to take appropriate measures to ensure that no marriage is entered into without the free and full consent of the intended spouses.
- Section 26(2) of the Constitution requires the State to take measures to ensure that children are not pledged in marriage.
- Section 56 governs gender equality and non-discrimination, including that all persons are equal before the law and have the right to equal protection and benefit of the law, and that women and men have the right to equal treatment.
- Child marriage is thus constitutionally not permissible, as recently found by the Constitutional Court of Zimbabwe.

Domestic Violence Act

Parliament has enacted progressive legislation on domestic violence which includes child marriage as a form of domestic violence.

Customary Marriage Act

Customary marriage has long been subject to the requirement of registration, so that the concept of registration of these unions is not new. This is a good starting point to build upon as regards making registration of all unions compulsory.

Marital rape and human trafficking

Marital rape has been criminalised, and in 2014, legislation against human trafficking was adopted.

Policy steps that Zimbabwe has taken, as indicators of progress

Gender Policy

- Zimbabwe has reviewed the 2004 Gender Policy for strengths and weaknesses, and formulated a second National Gender Policy 2013–2017, which has eight targeted areas, including gender constitutional and legal rights, gender education and training, and reduction of gender-based violence.
- The government created a Ministry of Gender and Child Development in 2012, indicating high level political commitment to the advancement of the interests of women and children. Gender focal points have been created within other ministries and departments.
- High level political leadership has been provided by the Minister of Local Government and Traditional Affairs.
- An attempt has been made to coordinate services to survivors of sexual violence through the revised Protocol on the Multisectoral Management of Sexual Violence in a process led by the Judicial Services Commission.

Coordination and leadership

- Zimbabwe launched the African Union Campaign to end child marriage.
- Traditional leaders have been approached to support the campaign to end child marriage.
- NGOs and women's organisations have been vocal in their condemnation of the reported comments by the Attorney General of Zimbabwe condoning child marriage for girls as young as 12 years of age.

- Zimbabwean Nyaradzai Gumbonzvanda has been appointed as the African Union Goodwill Ambassador for Ending Child Marriage, and serves as a focal point and inspirational figure in the country.

Challenges remaining in the legal sphere relating to marriage laws

- The minimum age for marriage under civil law (the Marriage Act) was set at 18 for boys and 16 for girls with parental consent, with the possibility of legal marriage below this age with ministerial consent; however this provision has now been ruled unconstitutional, although the finding is not retroactive.
- Currently under the Customary Marriages Act there is no minimum age of marriage, and children could be married from puberty onwards until the ruling of the Constitutional Court in 2016 confriing the minimum constitutional age of marriage at 18 for all types of unions.
- The Marriage Act does not actually expressly require the free and informed consent of prospective spouses including children – it is merely implied.
- Under the Customary Marriages Act, the consent of a woman’s customary law guardian (a male) is required, even when she is an adult.
- Even though *lobola* is not an official requirement for the validity of a customary marriage, the payment of (and receipt) of bridewealth continues to act as a driver of child and forced marriage.
- The government has promised that harmonisaion of the age of marriage with the Constitution will occur via an omnibus General Law Amendent Act, but the General Law Amendment Bill tabled on 8 May 2015 contains no references to the age of marriage or anything else to do with marriage.

- The constitutional court decision on the challenge brought to the age of marriage under marriage laws has confirmed that an overhaul of all marriage laws is required to harmonise with the Constitution.

As pointed out by CSOs during treaty body reporting processes, it does not seem that the drafting of a unified Marriage Act has reached fruition. The government of Zimbabwe has been promising a harmonised marriage law for some time (for more than two decades according to the CEDAW Committee), yet a draft does not appear to have seen the light of day. It is debateable whether a few amendments to existing laws will constitute sufficient compliance with treaty body recommendations, given the strong statements made by treaty bodies for the need for an overhaul of marriage legislation and the creation of a harmonised Marriage Act.

Challenges remaining in the legal sphere concerning child law and policy

- The government is yet to adopt legislation which harmonises child law with the international treaty obligations it has assumed.
- The government has indicated that a child poicy was being drafted in 2011, but it has not seen the light of day.
- Coordination in the child rights’ sector remains fragmented amongst different ministries.
- Unfortunate remarks by the Attorney General supporting child marriage for girls as young as 12 years call into question the legal leadership on this issue, with reports indicating that the attitudes of some judicial officials, such as magistrates, undermine the fight against child marriage by imposing light sentences for statutory rape or acquitting perpetrators.
- The debate has sown confusion about what the minimum age of consent to sexual intercourse actually is, and it needs to be strongly advocated by the government to show that the age of sexual consent under penal law is 16 years.

Challenges regarding implementation and access to justice

- Births, death and marriage registration systems must be strengthened and optimally utilised to detect, prevent and combat child marriage; proof of age must be a requirement for all forms of marriage, either by sworn statement or affidavit or production of a birth certificate.
- The implementation, enforcement and monitoring of existing legal provisions that prohibit harmful practices, child marriage, statutory rape (defilement) and domestic violence are weak. In practice, they are not reported due to cultural attitudes and women's economic dependency on men, or due to the distance required to get to victim friendly units.
- The designation of persons to serve as registrars of marriage needs to be extended to rural areas, focusing where child marriage is rife; these functionaries will require training in order for them to play the necessary role in preventing and deterring child marriage under customary law.

Recommended actions

For policymakers:

- The National Child Policy, promised in 2011, should be drafted as a priority and submitted for public consultation.
- A National Task Force On Child Marriage should be assembled incorporating key stakeholder ministries and NGOs, and a National Plan of Action to End Child Marriage drafted as soon as possible.
- The various NGOs in Zimbabwe should be encouraged to coalesce into a strong, coordinated structure to unite to run the campaign to end child marriage.
- Advocacy for clarification of roles at government level regarding coordination should be uppermost, and these issues must be seen as being of primary importance in drafting a new comprehensive children's code.

- Credible social awareness programmes about polygamy and its negative consequences will have spins-offs for the national project of women's and girls' empowerment, and contribute to the fight to end child marriage.
- The Constitutional Court decision about the minimum age of marriage should be widely disseminated in easy to understand formats, and in local languages

For parliamentarians:

- Parliament must insist on at least amendments to the Marriage Act and Customary Marriage Act as a matter of urgency, pending a complete review of marriage laws to cover all forms of marriage.
- Parliament should call on the Attorney General and the Minister of Justice to publically state that adolescent girls are ineligible for marriage.
- Parliament should be reminded of its progressive stance on the definition of domestic violence and encouraged to form a working group on child marriage at the parliamentary level to indicate the seriousness with which it views the legal vacuum currently prevailing.

For the Constitutional Court and the judiciary:

- Having delivered judgment in the case challenging the constitutionality of the Marriage Act and the Customary Marriage Act, the Constitutional Court should indicate a fixed period of time in which Parliament must remedy the breach.
- The judiciary should be reminded that statutory rape (defilment) is a serious offence which irretrievably harms the life chances of girls, and that appropriate severe sentences should be imposed.
- Judicial training should be enhanced to ensure a more gender responsive judicial approach.

For the Ministry of Justice, Legal and Parliamentary affairs:

- The Ministry should explain where the omnibus legislation concerning the age of marriage referred to in its written replies to the African Committee of Experts on the Rights and Welfare of the Child can be found, and what specific timeframes for its introduction are contemplated.
- The Ministry should clarify as a matter of urgency that the age of consent under Zimbabwe Penal Law is 16 years, and ensure that appropriate messages reach the public in this regard.
- The Ministry should issue guidelines for the judiciary on dealing with issues related to child marriage, and drive better implementation of the Domestic Violence Act.
- The Ministry should harness all available resources to assist in the drafting of new marriage and child laws, including by employing consultants, approaching CSOs to join forces and take on specific sections of the drafting, and the borrowing or drawing upon other country's legislation, where appropriate and desirable.
- The Ministry should undertake an audit of treaty body recommendations and draft a plan as to how these are going to be systematically addressed

For the education sector:

- The government should endeavour to broaden the reach of the Basic Education Assistance Module (BEAM) programme of educational support to target more girls at risk of dropping out of education and who are therefore at risk of early marriage, particularly in the most affected provinces.
- The government should consider taking steps towards gradually returning to the era of free and compulsory primary education. This again requires the concentration of more resources in the education sector, while seeking assistance from development partners.

For the marriage registration system:

- More personnel for the registration of marriages should be made available and proper training given on (for instance) establishing proof of age.
- Particular attention should be paid to the registration of marriage facilities in rural areas, where distances prohibit people accessing registration facilities/marriage officers in more urban areas.



About Plan International

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

About the 18+ Programme

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

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

About the study

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

Acknowledgements

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This policy brief

This policy brief is part of the four-country review of domestic and regional legislation relating to the practice of child, early and forced marriage in Malawi, Mozambique, Zambia, and Zimbabwe. Each policy brief is accompanied by a longer report which provides an in-depth review of the legal and regulatory frameworks in each country. An overview report is also available which reviews applicable international and regional law and policy on child, early and forced marriage.

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