

ENDING CHILD MARRIAGE IN EASTERN AND SOUTHERN AFRICA: CHALLENGES IN IMPLEMENTING DOMESTIC LAWS AND THE SADC MODEL LAW ON CHILD MARRIAGE

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ABOUT EQUALITY NOW

Since its founding in 1992, Equality Now has been using a unique combination of legal advocacy, regional partnership-building, and community mobilization to encourage governments to adopt, improve and enforce laws that protect and promote the human rights of women and girls around the world. With an international team, our campaigns are centered on four program areas: Achieve Legal Equality, End Sexual Violence, End Harmful Practices, and End Sexual Exploitation, with a cross-cutting focus on the unique needs of adolescent girls.

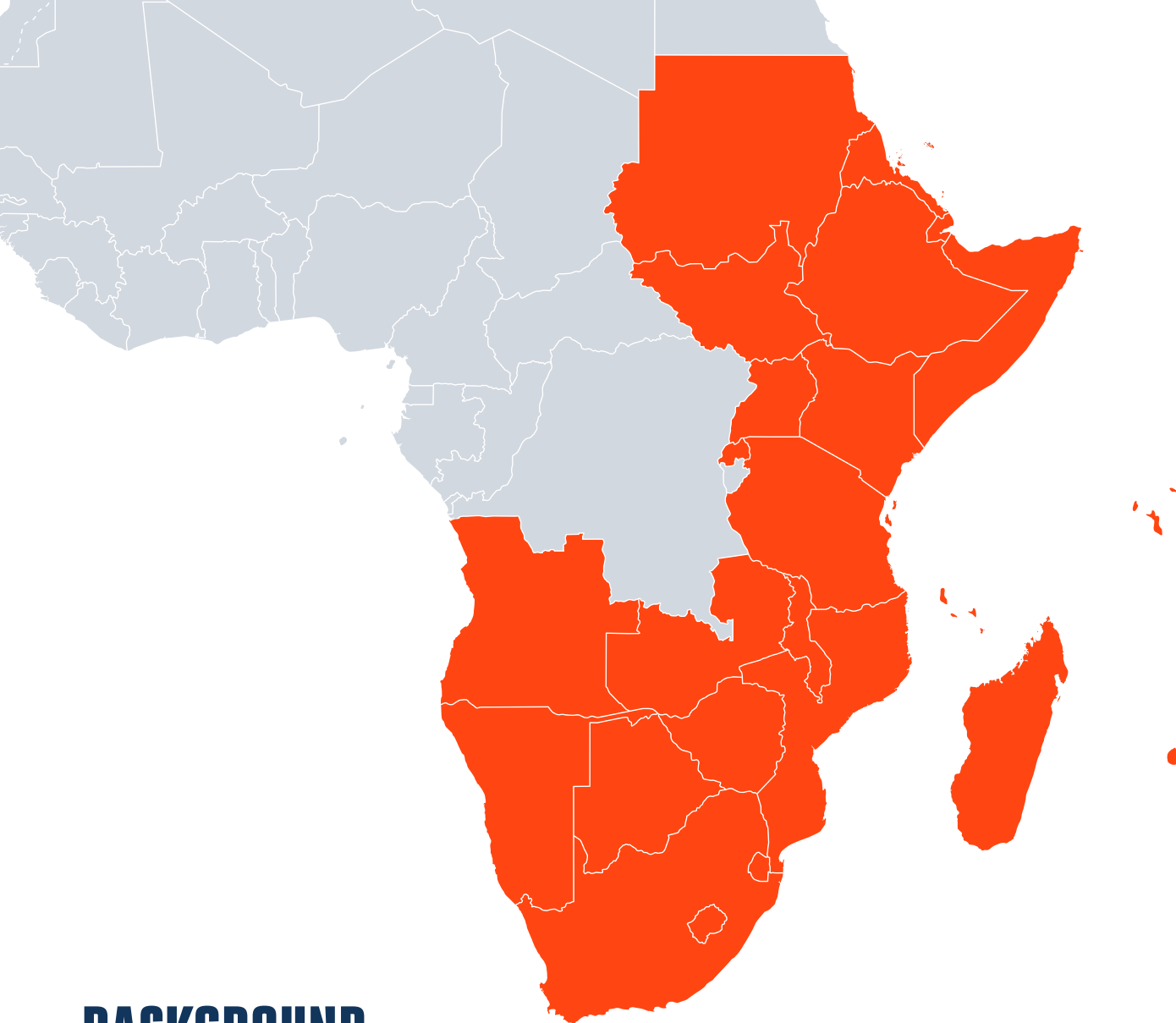
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BACKGROUND

The Eastern and Southern African region has some of the highest rates of child marriage in the world, with an estimated 31% of young women/children being married before the age of 18.¹ The enactment of robust legislative and policy frameworks is one of the strategies that can be effective in tackling the issue of child marriage. Laws that are clear, consistent, and in line with international human rights standards help to reduce the incidence of child marriage in different countries. These laws should contain provisions for the protection of children, for example setting the minimum age of marriage at 18 for both boys and girls without any exceptions, including eliminating exceptions for parental or judicial consent to circumvent the minimum age requirement. The minimum age of marriage and other provisions are clearly captured in the Southern African Development Community Model Law on Eradicating Child Marriage and Protecting Children Already in Marriage (SADC Model Law or simply the Model Law).

However, for these laws and provisions to be effective in contributing to the eradication of child marriage they need to be implemented in earnest. So far, there has been some uptake of the Model Law within the region with several countries having incorporated in one form or another the provisions/standards in their domestic laws and/or administrative procedures.² While the Model Law is primarily applicable to countries in the SADC region, many East African countries have also incorporated international and regional human rights standards in their legislative frameworks to work towards ending child marriages. This publication focuses on the implementation of the Model Law in the SADC region by assessing Malawi and Zambia, as well as the implementation of laws on child marriage in East Africa using Uganda as a case study. This publication highlights the challenges in implementation, best practices and recommendations on how implementation can be improved within the East and Southern Africa region.

¹ UNFPA State of the World Population Report 2023.

² UNFPA ESARO and Equality Now. 2023. Ending Child Marriage in Southern Africa: Domesticating the SADC Model Law on Child Marriage, UNFPA ESARO.

CURRENT CONTEXT

East Africa UGANDA

Uganda acceded to the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) on 22nd July 1985 and ratified the Convention on the Rights of the Child (CRC) on 17th August 1990. Within the African Human Rights system, Uganda ratified the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (the Maputo Protocol) on 22nd July 2010 and the African Charter on the Rights and Welfare of the Child (the ACRWC) on 17th August 1994. This means that Uganda is obligated to domesticate these instruments which are relevant to the prohibition of child marriage, all of which define a child as a person under the age of 18. To comply with its obligations, Uganda needs to ensure that the minimum age of marriage is 18 without exceptions.

Uganda's 1995 Constitution, the supreme law of the country, provides for the right to marry in Article 31 (1), which is accorded to individuals 18 years and above, thereby setting it as the minimum age of marriage. The laws governing marriage had been split into the different types of marriage, each setting a different minimum age of marriage, as illustrated in Table 1 below.

Table 1: Laws relating to child marriage in Uganda

Law	Minimum age of marriage	Exceptions
Constitution of Uganda of 1995	18 for both boys and girls	No
Marriage Act Chapter 251 of 1904 (for civil marriages)	21 for both boys and girls	Yes, parental, or judicial consent may be granted to marry below 21
Customary Marriage (Registration Act) Chapter 248 of 1973	16 for girls and 18 for boys The lower age of marriage for girls has been declared unconstitutional by the <i>Aboneka</i> case.	No, but parental consent is required for marriage under 21 but older than 16 or 18 as applicable. Returning the decision to parents was detrimental as it undermined free consent of an individual and often parents are custodians of culture and norms which perpetuate child abuse. The <i>Aboneka</i> case declared the parental consent exception unconstitutional.
Hindu Marriages and Divorce Act Chapter 250 of 1961	16 for girls and 18 for boys. The lower age of marriage for girls has been declared unconstitutional by the <i>Aboneka</i> case.	No, but girls under 18 but older than 16 require parental consent to get married (declared unconstitutional by the <i>Aboneka</i> case). Parents tend to be perpetrators of child abuse in the name of culture and religion.
Marriage and Divorce of Mahommedans Act Chapter 252 of 1906	Does not specify minimum age but refers to marriage of minors The <i>Aboneka</i> case declared that the minimum age of marriage should be set at 18.	No
Children's Act Chapter 51 of 1997	18 for both boys and girls	No
Penal Code Act 2007	18 for both boys and girls	No

However, on the 20th February 2023, the Constitutional Court of Uganda in *Kirya Martins & Aboneka Michael v. Attorney General*³, in a ground-breaking decision, held that the provisions of the Customary Marriage Act, Hindu Marriages and Divorce Act and the Marriage and Divorce of Mahommedans Act, insofar as they contradicted the minimum age of marriage set out in Article 31 of the Constitution, were null and void.

3 Constitutional Petition No. 135 of 2021; judgment dated 20th February 2023. <https://ulii.org/akn/ug/judgment/ughccd/2022/1/eng@2022-01-10>

Aboneka Michael & Kirya Martins v Attorney General

Summary of Issues

The petitioners challenged Section 11(a) of the Customary Marriage (Registration) Act Cap 248, Section 4(a) and 5(1)(a) of the Marriage and Divorce of Mohammedans Act Cap 252 (Section 5 to the extent that it allowed the registration of marriages of persons below the age of 18) and Section 2(1)(c) of the Hindu Marriage and Divorce Act Cap 250 which all allowed the marriage of girls before they reached the age of 18. These provisions were in contravention of article 31(1) of the 1995 Constitution which sets the minimum age of marriage as 18. Additionally, the petitioners challenged section 11(a) of the Customary Marriage (Registration) Act which provided for different minimum age for boys and girls (16 for girls and 18 for boys) as it contravenes the right to equal treatment of women in terms of articles 2, 21 and 33(4) of the Constitution. Further, section 3 of the Hindu Marriage and Divorce Act provided for the appointment of a guardian to give consent to marriage before the age of 18 which again contravenes the Constitution which prohibits the marriage of minors.

Decision

The Court declared that the impugned provisions were null and void in as far as they contravened the provisions of the Constitution that allowed marriage only for persons older than 18. It further then declared that the said provisions should be construed as permitting marriage only when both the man and the woman are 18 years or older.

The legislative framework of Uganda was thus harmonised by the *Aboneka* decision Constitutional ruling which directs the government to ensure that all the laws pertaining to marriage clearly indicate the minimum age of marriage as 18 without exception. This will finally ensure that the laws are in line with international human rights obligations that Uganda affirmed. **Therefore, the Ugandan Parliament should take steps to amend these legal provisions in line with the constitutional ruling to ensure smooth implementation of the laws and remove any confusion in terms of applicability of provisions.**

There has also been a milestone in Uganda's policy and strategic framework, through the adoption of the *National Strategy to end Child Marriage and Teenage Pregnancy 2014/2015-2019/2020* whose guiding principles included positive peer approach and participation of children, multi-sectoral partnership building, and engagement of traditional and community leadership. It also focused on increased access to education as well as reproductive health services. The strategy expired at the end of 2020 and a revised strategy was developed in 2022, *The National Strategy to end Child Marriage and Teenage Pregnancy (2022/2023-2026/2027)*, which outlines the Government of Uganda's current commitment to reverse the negative trend with the goal to end child marriage and teenage pregnancy for inclusive growth and socio-economic transformation.

Uganda has also developed the [National Children's Policy](#) in addition to the specific [National Orphans and Vulnerable Children Policy](#) and has set up the Uganda Parliamentary Forum for Children, all geared to realise the full potential of a child and ending child marriage by harmonisation of laws

and policies. Uganda also launched a nation-wide campaign dubbed "Protect the Girl, Save the Nation campaign" to address defilement, child marriage, teenage pregnancy as well as promote positive parenting. As the harmonisation of laws and policies takes shape, the legislative atmosphere sets a progressive foundation which government programming and stakeholder campaigns can use to end child marriage.

Despite these noteworthy efforts, the incidence of child marriage remains alarmingly high. There is an urgent need to carry out an assessment to determine what the impact would be following the harmonization of the subsidiary laws for enhancing evidence informed initiatives to harmonise laws and policies.

Regardless of its international obligations and its domestic laws and policies, Uganda still has a concerning rate of child marriage with 1.5 million girls getting married before the age of 15 and 4.9 million before the age of 18.⁴ This represents 34% of the girls in the country⁵ implying that one in every three girls has been married as a child. The rate of child marriage is highest within the poorest communities, with limited education and located in the rural areas. While all three intersecting identities can be present at the same time, UNFPA-UNICEF Global Programme to End Child Marriage deals with them as three separate points of vulnerability. For example, more women in the poorest communities married before 18 as compared to those in the richest communities (54% v 17% respectively), women with no education married before 18 as compared to those with secondary or higher education (66% v 15% respectively) and more women in rural areas married before 18 as compared to those in the

4 UNICEF (n1)

5 UNFPA State of World Population Report 2023

urban areas (40% v 20% respectively).¹ It is reported that arranged marriages of children is common in the rural areas.⁶ It is important to note that marriages in Uganda are not always formal or registered therefore, these statistics might not reflect the full extent of the problem.

Challenges in implementing laws on child marriage

Without effective implementation, the laws prohibiting child marriage remain good only on paper. The statistics above provide evidence of the uphill task faced in implementing the laws. Some of the challenges are set out below:

- Poor awareness of existing laws in communities. Many people do not know the legal ramifications of child marriages and the laws themselves are not translated into vernacular languages for the locals to understand.⁷
- The lack of harmonisation among laws on marriage creates an implementation conundrum. Though the recent Constitutional Court decision is a progressive and positive step, the laws allowing marriage below the age of 18 contrary to the objective and provisions of the Constitution have to be amended in line with this decision. There is a lack of a consolidated law on sexual offences, which could be remedied by the pending Sexual Offences Bill. The Bill is the first legislation that specifically addresses the issue of child marriage and child sexual abuse.
- It is estimated that approximately 66% of child brides are in informal unions, thus making it difficult for law enforcement to track and prosecute cases of child marriage.⁸
- Many traditional and religious beliefs and practices hinder the implementation of the laws on child marriage. In many settings, ingrained patriarchal notions base the value of a girl on her virtue thus, they are married off early to maintain their purity by controlling their sexuality, despite this leading to child sexual abuse within marriages. In some communities, it is considered a religious taboo for a girl to start her initial menstrual cycle while still at her natal home.⁹ Dismantling these cultural and religious beliefs is a task that the law alone cannot tackle as any overt sanctioning of these practices will only drive them underground rather than solve the problem. There is the risk of communities perceiving laws that alter their way of living as imperial and trying to erase their culture.
- Poverty, as a driver of child marriage, is also a hindrance to the implementation of the law. It is reported that 30.1% of Ugandans lived below the poverty line as at 2019/2020.¹⁰ Young girls in the poorest communities are most at risk of being married off to reduce the financial burden on the family, as well as to gain financially from the bride price and expected support from the new husband. If poverty is not alleviated, the risk of child marriages will remain, creating a continuous cycle as child marriages also contribute to women's economic dis-empowerment.
- International standards require that children who are victims of child marriage be given the support necessary, physically and psychologically.¹¹ Research shows that adolescent mothers have negative experiences with health care personnel when they try to access services which contribute to negative maternal outcomes.¹²
- Women and girls do not have sufficient information to understand and claim their rights. Legal empowerment of girls is central to creating a culture of justice, as it improves access to justice as well as the quality of justice they receive. There is also a lack of understanding amongst parliamentarians and government officials on their obligations under international human rights laws and the need to utilise a human rights based approach while implementing laws on child marriage.

6 Government of Uganda *National Strategy to end Child Marriage and Teenage Pregnancy 2014/2015-2019/2020*.

7 Joy for Children Uganda 'Child, Early and Forced Marriage in Uganda'.

8 UNICEF 'Child marriages in Eastern and Southern Africa: A statistical overview and reflections on ending the practice' (2022)

9 Government of Uganda *National Strategy to end Child Marriage and Teenage Pregnancy 2014/2015-2019/2020*.

10 Afrobarometer <https://www.afrobarometer.org/publication/ad531-lived-poverty-remains-high-despite-ugandas-poverty-alleviation-initiatives/>

11 SADC Model Law on Eradicating Child Marriage and Protecting Children already in Marriage.

12 R Apolot et al 'Maternal Health Challenges experienced by adolescents; could community score cards address them? A case study of Kibuku District-Uganda' (2020) *International Journal for Equity in Health* 19.



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Southern Africa

MALAWI

Malawi has ratified the major international human rights instruments dealing with child marriage. It acceded to Convention on the Elimination of all forms of Discrimination Against Women on 12th March 1987 and the Convention on the Rights of the Child on 2nd January 1991. Within the African Human Rights System, it ratified the African Charter on the Rights and Welfare of the Child on 16th September 1999 and the Maputo Protocol on 20th May 2005. Following the adoption of the SADC Model Law, Malawi amended its Constitution in February 2017 to raise the absolute minimum age of marriage to 18 without exception. This demonstrated that the commitments that Malawi made at the SADC Parliamentary Forum (SADC PF) were being replicated at domestic level.

The Marriage, Divorce and Family Act of 2015 already set the age of marriage as 18 without any exception. It applies to all forms of marriage, including civil, religious and customary marriage by repute or permanent cohabitation, thus making it comprehensive enough to ensure all these types of marriages are between adults aged 18 and above. However, the Child Care, Protection and Justice Act of 2011 which prohibits forced marriage of children, defines children as persons under the age of 16. While the Constitution supersedes this piece of legislation, this creates difficulties in the application of the law if it remains unreformed. Malawi also adopted a National Strategy on Ending Child Marriage (2018-2023) which aimed to reduce the prevalence of child marriage in the country by 20% by 2023. The strategy embodies the standards set by the SADC Model

Law as it adopts a multi-sectoral approach to tackling child marriage.

One of the triumphs that the country has had is the engagement of traditional leaders as champions for ending child marriage. In February 2020, more than 100 female chiefs committed to help end child marriage.¹³ Through the implementation of the multisectoral approach, this commitment has started to bear fruits. The John Hopkins Centre for Communication Programmes took up the commitment by the traditional leaders and supported them through their Breakthrough ACTION programme which has seen some tangible changes in the district of Chikwawa.¹⁴ This resulted in 184 child marriages being annulled between January 2021 and March 2022, as well as 104 girls being re-admitted to school.¹⁵

Despite this progress, the rate of child marriage in Malawi remains high. 38% of its girls are married before the age of 18.¹⁶ The COVID-19 pandemic set back some of the gains that had been made on reducing child marriage due to the school closures which discontinued intervention programmes and limited access to sexual and reproductive health services, as well as re-socialised them into the traditional social structures that encourage child marriage.¹⁷ From April to June 2020, the national youth helpline recorded 669 child marriages, an 83% increase from the same period in the previous year.¹⁸

13 ReliefWeb <https://reliefweb.int/report/malawi/female-chiefs-vow-end-child-marriage-malawi>

14 John Hopkins CCP <https://ccp.jhu.edu/2022/09/19/married-child-stopping-malawi/>

15 UNICEF (n9)

16 UNFPA State of World Population Report 2023

17 The Telegraph <https://www.telegraph.co.uk/global-health/women-and-girls/child-marriages-skyrocket-malawi-covid-19-closes-schools-figures/>

18 ReliefWeb (n13)

Challenges in implementing the SADC Model Law and laws on child marriage

Some of the aspirational provisions in the domestic laws and the SADC Model Law require more effective implementation by the government.

- To enforce the minimum age of marriage, verification of the age of the parties is important. This process is linked to the birth registration system in the country. Malawi is still struggling with birth registration, with completeness of birth registration standing at 67.5%.¹⁹ There are challenges with low resources and lack of understanding of the benefits of the registration system by some members of the community. This results in some children either not being registered or their parents not collecting birth certificates after registering their birth in health centres.²⁰ However, civil registration through the National Registration Bureau (NRB) plans to register 600,000 births in 2023.²¹
 - The same challenges regarding registration affect the registration of marriages. Where marriages are conducted according to customary rites and in the rural areas where literacy levels are low, there is a high probability that marriages will not be registered despite the requirement to register all marriages in the Marriage, Divorce and Family Relations Act.²² In Malawi, only 14% of women who were child brides were in informal unions.²³ However, in comparison to the overall high number of child brides in the country, the overall number of girls in informal unions is still large. It becomes difficult to enforce marriage laws, annul marriages or re-integrate children into the education system if their data is unrecorded and unknown, or if their birth has been registered late.
 - Half of the Malawian population lives in poverty.²⁴ As a result, some families marry off young girls to boost their financial welfare. Children living in poor communities are also likely to drop out of school due to lack of resources, thereby becoming at risk of child marriage. Research shows that 48% of children married before the age of 18 were from the poorest households.²⁵
- Additionally, some girls are exchanged in marriage or betrothal in the traditional practice of *kupimbira* which is a form of debt repayment, especially in the northern part of the country.²⁶ Inadequate social protections, the commodification of girls in many communities and the low economic empowerment of communities will continue to make the implementation of the SADC Model Law difficult.
- Like Uganda, Malawi's incidence of child marriage is driven up by cultural beliefs and patriarchal practices. In many communities in Malawi, the puberty rite of passage ceremony called *chinamwali*²⁷ where, upon graduation, young girls (sometimes as young as 10-12) are encouraged to have sex with an older man as a mark of womanhood and readiness for sex and marriage is still practised. In another practice called '*fisi*', an older man called a 'hyena' is hired by the parents of a girl who has just been initiated to sleep with her and teach her how to please her future husband.²⁸ In a 2019 report, it was reported that in 80% of the villages in the South of Malawi, the majority of girls had participated in initiation rituals.²⁹ Further, 2.61% of girls surveyed indicated that they had participated in the *fisi* ritual.³⁰ Many of these young girls are forced into marriage especially if they become pregnant as a pregnant young girl is expected to marry to avoid bringing 'dishonour' to the family. The continuing practice of these harmful traditions undermines efforts to implement the SADC Model Law. It is worth noting that changing of harmful practices is not a process that happens overnight, therefore resistance towards laws prohibiting child marriage remains an issue within the community and amongst traditional leaders.³¹

19 The latest available statistics on this are as at 2016, see Centre for Excellence for CRVS Systems 'Snapshot of the Civil Registration and Vital Statistics systems of Malawi' (2021).

20 MS Msiska 'An assessment of birth registration processes among the rural population in Malawi: A case study of Traditional Authority Kasisi in Chikwawa district' (2020) *International Journal of Science and Research* 1281.

21 NRB Strategic Plan, 2019-2023

22 Part VIII of the Marriage, Divorce and Family Relations Act of 2015.

23 UNICEF (n1)

24 World Bank <https://data.worldbank.org/country/malawi>

25 Malawi National Statistical Office *Multiple Indicator Cluster Survey 2019-2020: Monitoring the situation of children and women*.

26 Human Rights Watch *I have never experienced happiness: Child marriage in Malawi* (2014).

27 UN Women *Multi-country analytical study of legislation, policies and interventions and cultural practices on child marriage in Africa* (2019).

28 UN Women (n27).

29 UN Women (n27).

30 UN Women (n27).

31 Bantwana World Education Initiative' Learning event on ending child marriages in Malawi' (2019).



Photo: Zach Lucero/Unsplash

- Implementation of the laws also requires that the people whom the law is meant to protect are aware of its content and how to seek assistance. Human Rights Watch found that many of the girls and women in Malawi who were victims of child marriage were not aware of their rights under the law, and therefore did not know where to seek assistance.³² Malawi thus has a gap in information dissemination.
- The legislative framework of Malawi includes community by-laws which are commonly used in informal courts within the rural areas. However, there is concern that these laws are seldom reviewed to ensure that they align with statutory law, yet they are widely applied within the communities thus potentially perpetuating child marriages.³³
- Although Malawi facilitates the annulment of marriages and re-integration of children, the services currently being provided do not meet the needs of children as envisaged by the SADC Model Law. The follow-up mechanism after the children are returned home needs to be strengthened as many children struggle with re-integration into their families on their return - in some cases the parents are reluctant to take back their children especially, if they have had children of their own.³⁴ Support given to the returned children including counselling, parenting skills, and advice needs to be improved. These issues undermine the effectiveness of the re-unification exercise.
- The budget allocated to child protection services in Malawi has been low and this affects the implementation of child marriage laws and the standards set by the SADC Model Law. UNICEF reports that the budget allocation is estimated at US\$0.08 per child for the year 2022/2023 (which is 0.02% of the national budget) which is very low and inadequate.³⁵ Also, the National Children's Commission was allocated only MK 275 million (approx. US\$335,000) instead of the estimated MK 2 Billion (approx. US\$2.4 million) required for its establishment.³⁶ This limits their ability to provide child protection services (including birth registration, protection from harmful practices, violence, support services etc.) which are crucial especially in programmatic activities that support children at risk of child marriage and children already in marriage.

³² Human Rights Watch (n26).

³³ UN Women 'Realising the African Union Campaign to end child marriage: emerging lessons from child marriage programming from Malawi and Zambia' *Policy Paper* (2020).

³⁴ Bantwana (n31).

³⁵ UNICEF Child Protection Budget Brief: Malawi 2022-2023.

³⁶ UNICEF (n35).

Like many African countries, Zambia is party to the major international and regional instruments that prohibit child marriage. It ratified Convention on the Elimination of all forms of Discrimination Against Women on 21st June 1985 and the Convention on the Rights of the Child on 6th December 1991. In the African Human Rights System, Zambia ratified the African Charter on the Rights and Welfare of the Child on 2nd December 2008, and the Maputo Protocol on 2nd May 2006. The domestic laws do not yet fully incorporate the standards set by these international instruments nor the SADC Model Law. Zambia has a dual legal system that recognises both customary and statutory law and is applicable to the marriage laws. The Marriage Act of 1964 declares void a marriage where either of the parties is below the age of 16, however parental and judicial consent may be given for marriage under 21 and above 16 years. This provision only applies to civil marriages as customary marriages are not subject to any age restrictions by virtue of Article 23(4) of the Constitution on non-discrimination, which excludes statutory law from applying to customary marriages. However in June 2023, the cabinet of Zambia approved the publication and introduction in parliament of the Marriage (Amendment) Bill of 2023 which if adopted into law will raise the age of marriage from 16 to 19.³⁷ The move will be a step towards harmonising the laws in Zambia as the Constitution recognises the age of majority as 18 and the Childrens Act already prohibits child marriage. It is hoped that the Bill will be passed into law as soon as possible to adequately protect children from marriage.

Zambia enacted legislative reform with the Anti-Gender Based Violence Act, No. 1 of 2011, which comprehensively defines acts amounting to gender based violence to include forced marriage and child marriage. The Act defines a child to be under the age of 16. The Education Act of 2011 also prohibits the marrying of learners. However, the Education Act still defines learners as children under 16, which leaves children between the ages of 16-18 unprotected.

The Gender Equity and Equality Act, No. 22 of 2015, domesticates CEDAW, the Maputo Protocol and the SADC Protocol on Gender and Development. It defines a child to be a person who is below the age of 18. Similarly, the Children's Code Act of 2022, which domesticates the Convention on the Rights of the Child and the ACRWC, prohibits marriage under 18 for both boys and girls. **Therefore, this shows that there is a need to harmonise the laws in line with the SADC Model Law which calls for an absolute standard of 18 as the minimum age of marriage without exception, and for the harmonisation of laws to remove ambiguity in interpretation.**

Zambia's [National Strategy on Ending Child Marriage \(2016-2021\)](#) was designed with a goal to reduce child marriages by 40% by 2021. This target has not been met, but the strategy forms a good foundation for programmatic activities to end child marriage. Like the standards set in the SADC Model Law, the strategy adopts a multi-sectoral approach which includes capacity training for youths, parents and communities, media engagement, social mobilization, community engagement with traditional and religious leaders and multi-stakeholder coordinating mechanisms. Zambia has also adopted the National Prevention and Response Plan on ending Violence against Children (2021-2025) which is relevant as child marriage is a form of violence against children.

The statistics for child marriage in Zambia are undoubtedly worrisome. It is estimated that 29% of women between the ages of 20 and 24 were married before the age of 18.³⁸ It is estimated to be as high as 60% in the eastern region of the country.³⁹ According to UNFPA and UNICEF, in 2020, there were 1.7 million child brides in Zambia with about 400, 000 of them having been married before the age of 15.⁴⁰ Orphans and stepchildren are especially vulnerable to child marriage, the latter being at a higher risk of being married off to reduce the financial burden on the family.⁴¹ While studies show that child marriage is generally on a slow decline, especially compared with statistics from 30 years ago, the progress is not fast enough to achieve total eradication in line with the Sustainable Development Goals target to be attained by 2030.⁴²

37 <https://www.thestar.com.my/news/world/2023/07/01/zambia-considers-raising-marriage-legal-age>

38 Zambia Demographic Health Survey 2018

39 National Assembly of Zambia: Information brief: Child Marriage in Zambia (2022).

40 UNFPA-UNICEF Global Programme to End Child Marriage *Zambia Country Profile* (2020)

41 Bantwana (n31).

42 UN Women (n33).

Challenges in implementing the SADC Model Law

- Evidence from Zambia indicates that education plays a key role in the fight against child marriage. While it has been established that children dropping out of school makes them vulnerable to child marriage, it is also indicated that the level of education of the parents plays a key role in determining whether they are likely to make the decision to marry off their children at an early age.⁴³ In sub-Saharan Africa generally, as in Zambia, there is a disparity in levels of education between urban and rural dwellers,⁴⁴ which contributes to child marriage being more prevalent in the rural areas of Zambia. Evidence shows that 39% of women in rural areas were child brides as compared to 19% in the urban centres.⁴⁵
- As a short term solution, targeted awareness raising on child marriage needs to be implemented in areas where general education levels are currently low. In the long term, and using the multisectoral approach, access to education for families based in the rural areas needs to be prioritised as a strategy for ending child marriage. The definition of a 'child' is inconsistent across Zambian laws, for example, the Constitution, the Gender Equality and Equity Act and the Children's Code Act define a child as a person below the age of 18. However, the Education Act only protects children below the age of 16, while under the Penal Code, the age of a child for purposes of defining defilement is a person below 16 years. Furthermore, the Marriage Act permits the marriage of persons above 16 with the written consent of a parent, guardian, or judge. **While the enactment of the Children's Code Act was expected to bring about consequential amendments in these other laws, these amendments need to be fast-tracked to remove inconsistencies .**
- Resource constraints hamper the effective implementation of programmes that support ending child marriage. Inadequate resources affect the appointment of adequate child protection officers, and other support structures thus becoming a stumbling block to effectively implementing these programmes.⁴⁶
- Raising awareness of the relevant stakeholders is important for the effective implementation of programmes such as the learner re-admission process or comprehensive sexuality education. Additionally, learners who are re-admitted to school require extensive psychological support to heal and regain their confidence after having suffered the trauma of marital responsibilities, rape and possibly early motherhood or unsafe abortion.
- Like Uganda and Malawi, Zambian communities have some cultural beliefs and practices that have the effect of fuelling child marriages. Puberty initiation rites contribute to child sexual abuse, early sexual debut for children and the pressure to enter into marriage.⁴⁷
- Lack of capacity amongst key institutions hampers the proper implementation of child marriage laws. While the country has established fast-track courts to deal with gender-based violence cases, including child marriage (four established as of 2018), the number of courts is still not enough to service the population. The ordinary lower courts in Zambia have applied customary law to criminal offences in some instances, and have not been very effective at providing adequate remedies for these types of offences.⁴⁸
- Information on child marriage and its consequences is sometimes shrouded in mystery and therefore fuels the spread of disinformation or lack of understanding. In some communities of Zambia, conversations on child marriage have been taboo, leading to continued child marriages.⁴⁹ **Although the situation is now improving, open conversations need to be encouraged.**

43 UNICEF (n35).

44 S Sumida and K Kawata 'An analysis of the learning performance gap between urban and rural areas in sub-Saharan Africa' (2021) *South African Journal of Education* 1.

45 UNICEF (n1).

46 World Vision <https://www.wvi.org/zambia/article/situation-report-child-marriages-zambia>

47 REPSSI Child marriage Fact Sheet

48 T Braun 'The role of the law in eliminating child marriage in the Commonwealth' (2018) *Commonwealth Lawyers Association*.

49 <https://www.bushcenter.org/publications/protecting-childhoods-and-empowering-girls-first-ladies-lend-their-platforms-to-end-child-marriage>

RECOMMENDATIONS

LEGAL

- As per their obligations under international, continental and regional human rights treaties, States in Eastern and Southern Africa should align their domestic laws in line with international human rights standards, particularly in fixing the age of marriage at 18 with no exceptions in line with article 6(b) of the Maputo Protocol and article 21(2) of the African Charter on the Rights and Welfare of the Child which prohibit marriage and betrothal of children below the age of 18. This should apply to all forms of marriage, including customary and religious marriage. Harmonisation of laws should also include the review and amendment of by-laws that are applied by local informal courts to ensure that they are in line with the statutory laws; as well as aligning the definition of a child in related laws to under 18.
- The laws pertaining to child marriage should explicitly prohibit betrothals below the age of 18 with clear penalties for contravention of these provisions. Betrothals across the board should also be prevented, for individuals of all ages since it constitutes an infringement of the human right to free consent to marry somebody of one's choice, which is an extension of the right to freedom of expression and the right to physical integrity.
- Laws on inheritance should be robust enough to ensure that girl children or children born out of wedlock are not disinherited and left destitute. Laws on inheritance should also be amended to ensure they do not discriminate based on sex or gender.

FINANCIAL

- States should ensure sustainable financing, including adequate yearly appropriations in the budget and exploring opportunities to establish sustainable anti-child marriage funds as a best practice, to finance programmes aimed at supporting the eradication of child marriage..
- As a part of adopting a multi-sectoral approach, budget allocation to different government sectors should include budget lines for mainstreaming activities that contribute to eliminating child marriage. For example, the budget for the Department of Education should include specific funding for scholarships targeted at at-risk children and re-admitted children recovering from child marriages, as well as dedicated curricula development on comprehensive sexuality education (CSE). The Department of Health should have dedicated funding for sexual and reproductive health services for adolescents as well as for enhancing linkages between CSE and services. .
- Budgetary allocations should be increased for social protection programmes aimed at alleviating poverty within the most vulnerable communities. As recommended by the SADC Model Law, governments should provide cash transfers to families to prevent child marriages and provide funds to girl children to enable them to complete secondary school.
- Budgets should be increased to improve the civil registration processes and to ensure 100% birth registrations as well as registrations of marriages as a strategy to reduce child marriage. This includes increasing personnel and de-centralizing registration services.
- Continued cooperation with international development partners is important to increase funding for programmes.
- States should consider providing incentives to private corporations to engage in corporate social responsibility programmes that are geared towards ending child marriage, under the coordination of the ministry responsible for gender and children matters.
- States should strengthen legal aid programmes to facilitate access to justice for children in need.

PROTECTION

- States should create peer and community support groups for children at risk of child marriage, in marriage or returned from marriages. These can be in the form of voluntary groups utilizing existing community structures like church groups, cooperatives, and burial societies. These can be trained to correct misinformation on child marriages and equipped with skills to deal with the myriad of challenges these children face emotionally and physically.
- Support groups should also be trained on the content of the law, to create accessible referral pathways for children in need of services (including removal from marriage, medical or psychological services) and access to justice.
- Teachers and other school authorities should be trained on how to handle re-admitted learners, with a view to reducing discrimination and stigmatisation of survivors of child marriage and young mothers. Schools can also periodically carry out sensitisation exercises, including publicising the referral pathways, and integrate comprehensive sexuality education within the curricula.
- The provision of toll free national helplines help to protect at risk children that are as accessible as possible. In the case of rural children without access to the telephone, clear referral pathways should be established at public institutions and publicized. These should be linked to the support groups highlighted above, who will be better equipped to provide swift assistance.
- Safe shelters and homes should be established where girls at-risk of child marriage can seek protection.

INFORMATION DISSEMINATION

- States need to ensure that any new laws or amendments when passed, are accompanied by a clear information dissemination strategy. This can be done by cascading information down to local government structures and conducting awareness programmes in their constituencies. For example, Uganda, through a series of regional and district meetings disseminated the National Strategy to End Child Marriage in order to build consensus and support at district levels.
- States should translate new and existing laws into local languages to ensure that they are accessible to community members.
- States should address any disinformation that might be circulating on child marriages, and correct the narrative through clear, consistent information campaigns. The media can be engaged as an important partner.
- Civil society organisations are important stakeholders to help spread information on the risk and consequences of child marriage. Community-based organisations in particular, have networks that can help educate the community, thus States should partner with them in order to make the programmes more effective.
- Parliamentarians should play a leadership role within communities as advocates to demystify taboos to prevent child marriages and betrothals.

CAPACITY BUILDING

- As part of implementing strategies, States should conduct continuous training and capacity-building of relevant stakeholders. This includes law enforcement officials, judicial officers, child protection and social welfare personnel, health care workers and education personnel. Training should not be ad hoc, but conducted in a systematic way, for both new personnel and continuous education for existing ones. The training should include sensitivity in handling child marriage survivors, correct information on the effect of child marriage, as well as tackling prejudices.
- In addition, States should devise culturally-respectful and appropriate ways to engage with communities and alert them about the dangers of child marriage. Malawi, as a best practice, has managed to get champions in the form of traditional chiefs who have authority in the deeply cultural communities to advocate for an end to child marriage. Zambia has piloted a Community Welfare Assistance Programme in Katete and Senanga regions which is focused on sensitivity to community values by utilising community-based workers who understand the community and already have their trust. The workers look for vulnerability and risk factors for young girls, identify and engage their families and bring in support through community members.⁵⁰

⁵⁰ <https://borgenproject.org/child-marriage-in-zambia/>

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