

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

POLICY BRIEF

ENDING CHILD MARRIAGE IN ZAMBIA: 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]

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The prevalence of child marriage in Zambia destabilises the health, education, social and economic well-being and the general security of its citizens; and of girls and their families in particular. Action to end child marriage is urgently required by the international human rights commitments to which Zambia has subscribed, such as the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Convention

on the Rights of the Child (CRC). The government has a duty to use practical and effective legal, policy and programmatic measures to stop early, child and forced marriage. This policy brief puts forward recommendations to utilise opportunities and address limitations in relation to legal and regulatory frameworks on child marriage, including:

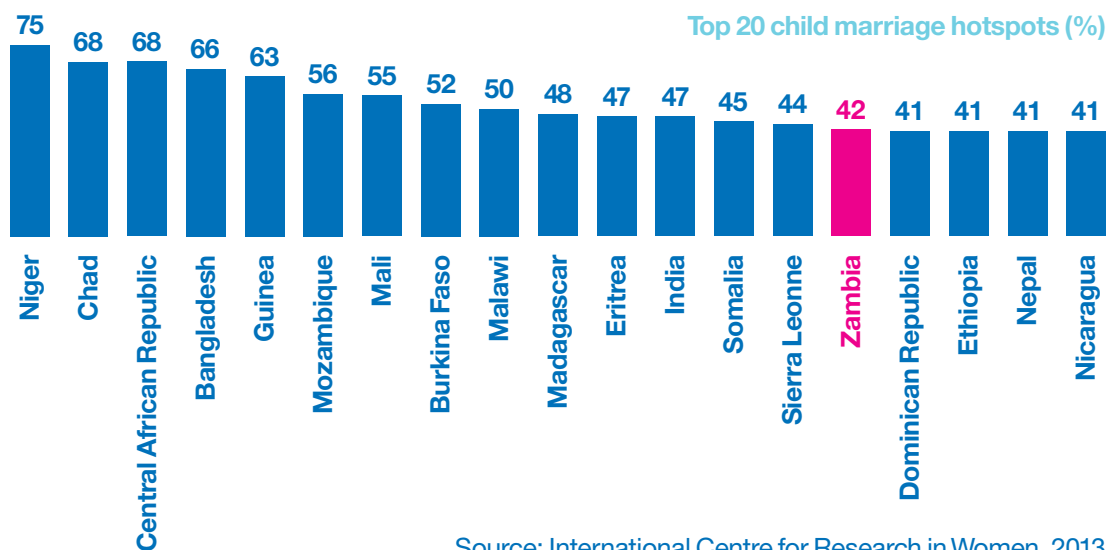
- implementation of treaty body recommendations;
- legislative reform to harmonise laws relating to early marriage;
- improved civil registration systems;
- awareness-raising and campaigns to end child marriage, particularly regarding customary laws on child marriage; and
- investment in education for girls and strengthening of social protection programmes.

Key statistics on child marriage in Zambia

- Currently 42 per cent of girls under the age of 18 are married, meaning that two in five girls in Zambia are child brides.

- Zambia is amongst the 20 hotspots in the world as regards the incidence of child marriage (see Figure 1).
- Of the 42 per cent, 9 per cent are married under 15 years of age.
- Of those married, 65 per cent have no education, and only 28 per cent use contraceptives to space births.
- Girls in the poorest 20 per cent of households are five times more likely to be married before the age of 18 years than those in the richest 20 per cent of households.
- Data from the 2007 Demographic and Health Survey and the 2010 Census showed that there has been little to no change in the national prevalence rate of child marriage since 2002.
- The maternal mortality rate has dropped significantly by 39 per cent since 1996, but remains below the MDG target; currently it is 162 per 100,000 live births; and this is related to teenage pregnancy, harmful cultural practices, and lack of female decision-making powers.
- Zambia, with a Gini coefficient of 0.65, has some of the highest levels of inequality in the world today. HIV prevalence is higher amongst women than men.

Figure 1: Comparative statistics on child marriage amongst 20 hotspots



Source: International Centre for Research in Women, 2013

Table 1: Percentage distribution of women and men aged 15-19 by current marital status: Zambia 2013-14

	Never married	Married	Living together	Divorced separated or widowed	Currently in union
Girls 15-19	81.4%	16.5%	0.4%	1.7%	16.9%
Boys 15-19	98.7%	1.0%	0.1%	0.2%	3.337%

Source: 2013/2014 Zambia Demographic Health Survey, p. 56

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 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.

Gender disparity, fertility rates and child marriage

According to the 2013/2014 Zambia Demographic Health Survey, early marriage disproportionately affects girls and boys as shown in Table 1 above:

Fertility rates in Zambia are high, with the overall pattern indicating that fertility begins early. For girls aged 15-18 the figures are:

- 97 per 1,000 women (urban areas); and
- 184 per 1,000 women (rural areas).

This gives an average fertility rate of 141 per 1,000 women in this age group.

Table 2 shows that 29 per cent of women aged 15-19 have already given birth or are pregnant with their first child.

Twice as many teenagers with no education have begun childbearing as those with secondary education (53 per cent and 23 per cent, respectively). The percentage of teenagers who have begun childbearing is highest (45 per cent) in the lowest wealth quintile and lowest in the highest wealth quintile (10 per cent). At the national level, the proportion of teenage pregnancies has hardly changed in the last six years.

Legal steps that Zambia has subscribed to, as indicators of progress:

- The Zambia Law Development Commission has undertaken a comprehensive study of customary law, and as well as field work, conducted key informant interviews across the country, which has significantly raised

Table 2: Percentage of women by age who have commenced child bearing before the age of 20 years

Age	Have had a live birth	Are pregnant with first child	Have begun childbearing
15	2.5%	2.4%	4.9%
16	7.2%	4.7%	11.9%
17	17.3%	8.3%	25.7%
18	37.0%	4.1%	41.7%
19	52.4%	6.5%	58.9%

Source: Zambia Demographic Health Survey 2013/2014

awareness of the practice on the ground. This was a precursor to developing legislation. However, the study was undertaken more than a decade ago in 2002.

- A draft Constitution (2014) which will in future contain progressive children's rights provisions and provide for gender equality awaits adoption at a referendum.
- A Constitution Amendment Act (Act 2 of 2016) was adopted. In the preamble, and as a national value, the equality of men and women is asserted, and Article 8 commits Zambia to a society with human dignity, equity, social justice, equality and non-discrimination as core national values.
- The constitutional definition of a child is a person who has attained or is below the age of 18 years, whilst an adult is a person who has attained or is above the age of 19 years, according to Article 266.
- A Marriage Bill (2015) covering various forms of marriage including civil, religious and customary marriages has been prepared and is ready to be tabled. A Children's Code Bill (2014) to domesticate international treaties has also been prepared and is ready for parliamentary consideration.
- A well-thought through Anti-Gender Based Violence Act (2011) has been adopted, which includes progressive references to child marriage as a form of violence against girls. Victim support units have been rolled out and trained in dealing with reported cases.
- A Gender Equity and Equality Bill (2015) is at an advanced stage of the parliamentary process, having entered its third reading. A girl is defined as a person below 18 years; harmful social and cultural practices are outlawed; and women's equality in marriage is assured including to freely choose a spouse and to enter and leave a marriage.

Policy responses that Zambia has subscribed to, as indicators of progress:

- A National Campaign to End Child Marriage has been launched. A technical working

committee on child marriage has been established to drive responses to child marriage, and a National Action Plan is being drafted.

- High level political leadership has been provided by the Minister of Traditional Affairs and Chiefs, supported by the (then) First Lady. Traditional leaders have been approached to support the campaign to end child marriage and many have committed publically to this. Chiefs and traditional leaders have themselves intervened and taken girl brides back to school. This heightened consciousness of the negative impact of child marriage bodes quite well provided it is sustained and continues to inform practice at community level. The media reports regularly on child marriage in support of the campaign.
- Internationally, Zambia has played a lead role in gaining UN support for a resolution targeting child marriage: Zambia garnered praise for co-sponsoring the 2014 United Nations General Assembly (UNGA) Resolution on Child Marriage.
- Zambia hosted the First African Girls' Summit to End Child Marriage in November 2015.
- Civil society is also organising around the issue of child and early marriage, so that there are high hopes of improved co-ordination throughout the sector.

However many challenges still remain.

Treaty body recommendations need to be addressed and promises made to international bodies fulfilled

Zambia has ratified numerous relevant international and regional treaties and is evidently conscious of its reporting requirements under treaty law, as well as the need to domesticate relevant treaty provisions.

Zambia has a documented history of committing to fulfilling treaty obligations and promising to harmonise laws and policy, which does not always come to fruition. An audit of treaty body and Universal Periodic Review

(UPR) commitments is required. Undertakings must be systematically addressed so that Zambia can demonstrate progress in the implementation of its human rights obligations; this is also required for commitments regarding treaties at the regional and sub-regional level.

Zambia received Concluding Observations from the CEDAW Committee in 2011, and presented its State Party Report to the CRC Committee in 2016.

The CRC Committee has responded on the issue of child marriage as follows:

The Committee recommends that the State party take all necessary measures to address its previous recommendations of 2003 (CRC/C/15/Add.206) that have not been implemented or not sufficiently implemented and, in particular, those related to the need to adopt and implement child-related legislation ... and implement the prohibition of child marriage in practice. [CRC/C/ZMB/2-4 (2016) para 6]

Zambia is also bound by regional commitments such as the African Charter on the Rights and Welfare of the Child 1990, and the 2008 SADC Protocol on Gender and Development.

Zambia's marriage laws need to be consistent with international treaty obligations

The Marriage Bill (2015) will see that all marriages (customary, civil and religious) are placed on an equal footing. All marriages will have to be registered; child marriage will be proscribed and minimum age of 18 set; marriages concluded without the free and informed consent of the spouses will be void; and registrars will be liable for committing an offence if they register marriages where a party is aged below 18 years. These provisions, amongst others, will ensure that Zambia's marriage laws are, to this extent, consistent with international treaty obligations.

The Marriage Bill, which has been years in the making, must therefore be urgently tabled and passed by parliament and fully implemented; until this occurs, the minimum age for marriage under civil law (the existing Marriage Act of 1918)

is set at 21 years, but with parental consent, children can validly conclude a marriage at 16 years, and under customary law (which is unwritten), there is no minimum age because children can marry from the age of puberty, which for girls can be as low as 12 years of age. Without legislative reform, the inconsistent use of age in various statutes and the tolerance of child marriage cannot be addressed.

Until this reform takes place, as the CRC Committee points out [at para 23], the Marriage Act is now inconsistent with the Constitution. The CRC Committee recommends Zambia to implement in practice a minimum age of marriage at 18 years [para 24]. At paragraph 40, the Committee expressed concern about the incidence of child marriage and "recommends that the State party disseminate the Marriage Act widely at the local level and particularly among traditional leaders, and undertake comprehensive awareness-raising campaigns on the provisions on the minimum age of marriage and on the negative consequences of child marriage on girls, targeting in particular parents, teachers and community leaders".

There is a pressing need to domesticate core children's rights treaties via the Children's Code Bill (2014). Further delays that seem to characterise legislative processes give cause for great concern. The fact that the Children's Code Bill utilises the age of 18, whilst other texts, such as the new constitutional text and the Marriage Bill, apply other ages, is also problematic. Harmonised legislation as far as age and the definition of childhood is concerned is a necessity.

Suggestions that the Marriage Bill (2015) should raise the age of marriage to 21 years should be resisted if they arise. This is not only contrary to the autonomy of persons who will be constitutionally regarded as adults, but is unrealistic and risks sowing even more confusion.

Without consistent and 'joined up' legislative reform, different terms such as 'minors', 'juveniles' and 'young people', will continue to be used, resulting in confusion and a lack of harmonisation across the legal system.

Furthermore, until the new Constitution is fully in place, including the human rights provisions, the contradictory situation remains that while gender equality is constitutionally guaranteed for some women, customary law still reigns supreme in the sphere of personal law relating to marriage, succession and division of matrimonial property. This has negative implications for child marriage and supports practices that are *de facto* discriminatory against girls and women. Thus constitutionally-compliant marriage legislation to entrench gender equality in customary marriages is a *sine qua non*.

The legislation prepared thus far should be debated as a matter of extreme urgency, given that it has been decades in the making and that human rights treaty bodies have called for these reforms for many years.

Civil registration including registration of marriages must be strengthened to detect and prevent child marriage

Zambia's birth registration rate stands at about 10 per cent, and it must be noted that in the most recent African Child Wellbeing Index, Zambia fell in the child protection rankings to 42 (out of 50 countries);¹ efforts should be made to increase birth registration rates dramatically, as this will in time be one of the most effective means to prevent and detect early marriage.

As the CRC Committee noted in 2016, it is concerned that official birth registration is still not systematic. It is also concerned at the low number of births registered and the low numbers who possess a birth certificate, particularly in the rural areas; and that groups of children – such as children born at home and refugee children – may be excluded.

Therefore, birth, 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 designations of persons to serve as registrars of marriage as proposed under the Marriage Bill should be extended to rural areas, focusing on areas where child marriage is rife, and the functionaries designated to register marriages will require training in order for them to play the necessary role in preventing and deterring child marriage under customary law, *inter alia* by requiring adequate proof of age, and of free and informed consent to marriage.

The implementation of enacted laws must be scaled up to prohibit harmful practices and raise public awareness

The implementation, enforcement and monitoring of existing legal provisions that prohibit harmful practices, child betrothal and forced child marriage are weak. In practice, cases of indecent assault, defilement and rape tend to be considered as customary issues and are therefore often dealt with by customary courts rather than criminal courts. Adolescent pregnancy often results in the conclusion of a marriage, as having a child outside of marriage is not culturally condoned.

Knowledge about child marriage, related impacts and laws is not widespread among the police, judicial personnel and the public; extensive publicity will have to be accorded the provisions of the harmonised Marriage Bill once adopted.

Investment in girls' secondary education is key to stemming the drop off in girls' education and increasing the prosperity of the nation

Gender parity in secondary education has fallen from 0.92 in 1990 to 0.86 in 2010, primarily driven by a high dropout rate for girls. Girls are being socialised to become wives, mothers and care-givers, which results in more

1. African Child Policy Forum, 2013, African Child Wellbeing Report, Addis Ababa.

domestic responsibilities (chores and care tasks), teenage pregnancies and early marriages. The CRC Committee recently expressed as a key concern girls dropping out of school due to early marriage, teenage pregnancy, discriminatory traditional and cultural practices and poverty, especially in rural areas [para 53(b) of the Concluding Observations].

Recommendations for policy makers:

A. Legislative reform

1. **Speedily finalise** the full text of the Constitution, including child and human rights provisions, to provide the basis for the harmonisation of other laws affecting early marriage and gender equality.
2. **Introduce** the Marriage Bill to parliament as soon as possible and ensure maximum public consultation and debate during its passage in the parliamentary process.
3. **Ensure** harmonisation between the age for marriage set in the Marriage Bill and international treaties such as the CRC and the African Children's Charter, whilst also ensuring consistency with other laws, such as the Children's Code Bill (2014).
4. **Advocate** that comprehensive children legislation is adopted with the necessary protections against abuse, neglect, and the sale and trafficking of children in marriage practices, and with enabling provisions concerning girl's access to reproductive health services and their competence to make independent decisions in this regard.

B. National campaign to end child marriage

1. Support **the ongoing development and implementation** of the proposed National Action Plan on Combating Child Marriage and ensure that the monitoring of its implementation and access to justice at all levels is strengthened.
2. **Continue awareness-raising** amongst chiefs and traditional authorities as partners in ending child marriage.

3. Continue to **budget for girl's access to education** and strengthen programmes aimed at poverty reduction and social assistance schemes.
4. **Support** the scaling-up of social protection programmes, life skills, recreational opportunities and economic support to keep children in education. Creating awareness is not enough if there are no alternative options available to diminish the 'drivers' of child marriage, such as poverty and lack of life chances.

C. Civil registration systems

1. **Expand** efforts to improve the national system of civil registration and vital statistics in all domains including marriage and birth registration.
2. **Train** those who will be responsible for administering the registration system so that they are fully equipped to detect early, child and forced marriage.

D. Implementation of treaty body recommendations

1. A full audit of undertakings given, promises made, and recommendations received from treaty bodies should be undertaken and a priority list developed to ensure that these are implemented. Timeframes should be set and a monitoring mechanism put in place to ensure that they are addressed by the relevant ministries and departments.
2. Parliamentarians – who are the custodians of legislative development – should be briefed at periodic intervals concerning the extent to which Zambian law is consistent with international law precepts, and they should be appraised of the content of treaty body recommendations.
3. Support should be provided to parliamentarians and parliamentary groupings once the Marriage Bill and the Children's Code Bill are under debate to ensure that deliberations remain focused and that key messages remain intact.



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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