

This report provides an overview of child marriage in Africa, focusing in particular on information about child marriage in the following ten countries: Cameroon, the DRC, the Gambia, Kenya, Malawi, Mali, Mauritania, Mozambique, South Africa and Uganda. It examines the prevalence, causes and impacts of child marriage in Africa. It also sets out the legal frameworks that prohibit child marriage and describes some of the circumstances that result in laws being ineffective in practice.

The outcomes of the study in this report is intended to assist States Parties to the Maputo Protocol and other stakeholders to strengthen implementation of the legal prohibitions on child marriage, adopt appropriate strategies for eradicating child marriage and protect the human rights of all children and especially girls.



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A REPORT ON

CHILD MARRIAGE IN AFRICA

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2018

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The African Commission Special Rapporteur on Rights of Women. The Special Rapporteur on Rights of Women in Africa was established by the African Commission at the 23rd Ordinary Session which was held in Banjul, The Gambia, in April 1998, in recognition of the need to place particular emphasis on the problems and rights specific to women in Africa.

The Centre for Human Rights. The Centre for Human Rights at the University of Pretoria is both an academic department and a non-governmental organisation, and works towards human rights education in Africa, greater awareness of human rights, the wide dissemination of publications on human rights in Africa and the improvement of the rights of women, people living with HIV, indigenous peoples, sexual minorities and other disadvantaged or marginalised persons and groups across the continent.

LIST OF ACRONYMS AND ABBREVIATIONS

- ACERWC:** African Committee of Experts on the Rights and Welfare of the Child
- ACHPR:** African Commission on Human and Peoples' Rights
- AIDS:** Acquired Immune Deficiency Syndrome
- APRM:** African Peer Review Mechanism
- CAT:** Convention against Torture
- CEDAW:** Convention on the Elimination of all Forms of Discrimination Against Women
- CHR:** Centre for Human Rights
- CRC:** Convention on the Rights of the Child
- DHS:** Demographic and Health Surveys
- DRC:** Democratic Republic of the Congo
- FGM:** Female genital mutilation
- HIV:** Human Immunodeficiency Virus
- ICCPR:** International Covenant on Civil and Political Rights
- ICRW:** International Centre for Research on Women
- MICS:** Multiple Indicator Cluster Surveys
- NGO:** Non-Governmental Organisation
- OHCHR:** Office of the High Commissioner of Human Rights
- SRRWA:** Special Rapporteur on the Rights of Women in Africa
- UNFPA:** United Nations Population Fund
- UNICEF:** United Nations Children's Fund
- UPR:** Universal Periodic Review

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CHAPTER 1: INTRODUCTION



CHAPTER 1: INTRODUCTION

1.1 Background

This report has been prepared at the request of the Special Rapporteur on the Rights of Women in Africa (SRRWA), a special mechanism of the African Commission on Human and Peoples' Rights (African Commission). The SRRWA is mandated to follow up on implementation of the African Charter on Human and Peoples' Rights (African Charter) and its Protocol on the Rights of Women in Africa (Maputo Protocol) by, among other things, preparing reports on the situation of women's rights in Africa and proposing recommendations to be adopted by the African Commission.¹

With reference to the prohibition against child marriage in the Maputo Protocol and consistent with its campaign to combat child marriage, during the 16th Extraordinary Session in Kigali, Rwanda in 2014, the African Commission adopted a resolution on the need to conduct a study on child marriage in Africa.² According to the resolution, the report was to be informed by country studies which have since been carried out in Cameroon, the Democratic Republic of Congo (DRC), the Gambia, Kenya, Malawi, Mali, Mauritania, Mozambique, South Africa and Uganda.

The African Commission's campaign to combat child marriage in Africa complements an increased global focus on eradicating child marriage: in 2013, the United Nations Human Rights Council adopted a resolution aimed at strengthening efforts to prevent and eliminate child marriage³ and in 2014, the United Nations Office of the High Commissioner for Human Rights (OHCHR) issued a global report on preventing and eliminating child, early and forced

1 Commissioner Lucy Asuagbor is the current Special Rapporteur on the Rights of Women in Africa, although at the time of the adoption of the resolution on the preparation of this report, the mandate of Commissioner Soyata Maiga was still under way. The responsibilities of the Commissioner's mandate are also part of the mandate of the Special Rapporteur on the Rights of Women in Africa: for more information on the mechanism and its mandate, please visit the Committee's website and visit the website. Mandate page at <http://www.achpr.org/mechanisms/rights-of-women/about/> (opened 26 February 2016).

2 Resolution 292 adopted at the 16th Extraordinary Session of the African Commission held in Rwanda from 20 to 29 July 2014, available at <http://www.achpr.org/sessions/16th-eo/resolutions/292/> (accessed 26 February 2016).

3 United Nations Office of the High Commissioner on Human Rights, "Preventing and eliminating child, early and forced marriage" (2014), available at http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session26/Documents/A-HRC-26-22_en.doc (accessed 26 February 2016).



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marriage.⁴ Regionally, there have been a number of African mechanisms and institutions that have recognised and taken steps to address the harmful impact of child marriage.⁵ In May 2014, the African Union (AU) launched a campaign to end child marriage in Africa, by enhancing continental awareness of its harmful impacts and requiring states to take appropriate legal, social and economic measures to address child marriage. Also in 2014, the AU appointed a Goodwill Ambassador for Ending Child Marriage and the African Committee of Experts on the Rights and Welfare of the Child (Committee) appointed a Special Rapporteur

4 In addition to those outlined in this report, the Southern Africa Development Community (SADC) is in the process of drafting a model law on child marriage. In November 2015, the Heads of State and African Governments, together with Ministers in Charge of Gender, Traditional Affairs and Children, First Ladies, UN Agencies, Development Partners, Civil Society Organizations, young people, girls and young women who have experienced child marriage, traditional and religious leaders gathered in Lusaka, Zambia for the First African Girls' Summit on Ending Child Marriage in Africa, hosted by the AU and the Government of the Republic of Zambia.

5 African Union Common Position on the Campaign to End Child Marriage in Africa, adopted by the Heads of State and Governments of the African Union in July 2015 (available at http://pages.au.int/sites/default/files/CAP%20on%20Ending%20Child%20Marriage%20-English_0.pdf).

on Child Marriage. In 2015, the Heads of State and Governments of the AU announced that they had formally adopted an African common position on the AU Campaign to End Child Marriage in Africa (the AU Common Position).⁶ This AU Common Position urges all member states of the AU to, among other things, (i) develop national strategies and action plans aimed at ending child marriage,⁷ (ii) enact and implement laws that set the legal minimum age for marriage at 18 years of age or above, with no exceptions and applicable under all legal systems⁸ and (iii) implement all continental policies and legal instruments relating to human rights, gender equality, maternal and child health, and harmful traditional practices for the empowerment and participation of girls and women in development.⁹

These global and regional declarations, reports and positions consistently emphasise the adverse impact of child marriage and frame it as a hindrance to human development and as a violation of human rights. Global and regional opinion on child marriage is also consistent in recognising the disproportionately adverse effect which child marriage has on girls. Girls who marry young tend to have children younger and more frequently, which puts them at increased risk of maternal morbidity and mortality and their children at risk of infant mortality. Girls who marry young are more likely to drop out of school and this precludes their full participation in economic, political and social endeavours. Africa has the world's highest proportion of young people to total population size, with 32% of the total population being between the ages of 10 and 24.¹⁰ Countries with large populations of young people have enormous potential for economic growth and social development but in order to realise that growth, the right kinds of investments in human and social capital are needed. Child marriage is not only a violation of human rights but also a significant hindrance to Africa's development.¹¹ Its persistence on our continent has hindered Africa's efforts to achieve six of the eight Millennium Development Goals: to eliminate extreme poverty, to achieve universal primary education, to promote gender equality, to

6 Commitment A1 and A3.

7 Commitment A5.

8 Commitment A4.

9 UNFPA "The Power of 1.8 Billion: Adolescents, Youth and the Transformation of the Future" (2014), p. 115, available at http://www.unfpa.org/sites/default/files/pub-pdf/EN-SWOP14-Report_FINAL-web.pdf (accessed 26 February 2016).

10 *Ibid.*

11 Girls Not Brides "Child Marriage in Africa: A Brief" available at www.girlsnotbrides.org/wp-content/uploads/2015/02/Child-marriage-in-Africa-A-brief-by-Girls-Not-Brides.pdf (accessed 26 February 2016).

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reduce child mortality, to improve maternal health, and to combat HIV/AIDS.¹²

Increasingly, child marriage is being viewed as a symptom of the profound gender inequality that exists in Africa. In one sense, it is a manifestation of gender inequality, which constitutes discrimination based on sex and gender. This is reflected by the overwhelmingly disproportionate prevalence of child marriage amongst girls. However, in another sense child marriage is a practice that reinforces gender inequality and the social constructions that entrench patriarchy and discrimination. Gender inequality lies at the root of child marriage and must therefore shape our perspectives and inform our approaches to ending it.

1.2 Study objectives

This report examines the prevalence, causes and impacts of child marriage in Africa. It sets out the legal frameworks that prohibit child marriage and describes some of the circumstances that result in laws being ineffective in practice. Without discounting the needs of children who are already married or adults who were married as children, it outlines a selection of successful interventions and makes recommendations towards the progressive elimination of child marriage in Africa.

The objective of this study is to provide an overview of child marriage in Africa, focusing in particular on information about child marriage in the following ten countries: Cameroon, the DRC, the Gambia, Kenya, Malawi, Mali, Mauritania, Mozambique, South Africa and Uganda. Specific objectives include identifying the root causes, prevalence, practices, customs and beliefs that perpetuate child marriage, assessing the level of compliance with international and regional obligations requiring states to prevent child marriage and reporting on legislative and policy frameworks and selected initiatives to address child marriage. This study is intended to assist States Parties to the Maputo Protocol and other stakeholders to strengthen implementation of the legal prohibitions on child marriage, adopt appropriate strategies for eradicating child marriage and protect the human rights of all children and especially girls.¹³

12 Resolution 292 adopted at the 16th Extraordinary Session of the African Commission held in Rwanda from 20 to 29 July 2014, available at <http://www.achpr.org/sessions/16th-eo/resolutions/292/> (accessed 8 June 2015).

13 Resolution 292 adopted at the 16th Extraordinary Session of the African Commission held in Rwanda from 20 to 29 July 2014, available at <http://www.achpr.org/sessions/16th-eo/resolutions/292/> (accessed 8 June 2015).

Figure 1: Countries covered by the study

1.3 Methodology

In order to provide a detailed picture of child marriage in Africa, research was conducted in ten countries across the region: Cameroon, the DRC, the Gambia, Kenya, Malawi, Mali, Mauritania, Mozambique, South Africa and Uganda. These ten countries, which were specified in the resolution that prompted the study, are amongst the countries with the highest prevalence rates of child marriage in the world. Although not providing a continentally comprehensive view of the issue, the study gives a general impression of trends, causes and interventions from across the region. Countries from the North (Mauritania), West (the Gambia, Mali), Central (Cameroon, DRC) East (Kenya, Uganda) and South (South Africa, Mozambique and Malawi) of Africa have been included and on this basis, the selection is sufficiently representative of the geography of our continent and its rich diversity of religious, cultural, political, social and economic contexts.

Country researchers in each of the ten countries were asked to conduct desktop research on child marriage from a human rights perspective in line with a standard template attached as Annexure 1.¹⁴ The template required that researchers collect information about prevalence, root causes, the status of international and regional

¹⁴ Research was conducted by the following 10 country researchers: Cameroon: Hermine Patricia Ndjandjo, DRC: Prisca Ntabaza, Mauritania: Saleck Ould Jeireb, Mozambique: Christina Hanguana, Mali: Zoumana Fane, Malawi: Chisomo Kaufulu-Kumwenda, Uganda: Dorah Mafabi, Kenya: Carole Osero-Ageng'o, South Africa: Yvonne Oyieke and in The Gambia: Satang Nabaneh.



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laws prohibiting child marriage in each country, the broader legal framework including religious and customary law where relevant and any case law relating to child marriage, policies and national action plans on child marriage, enforcement and monitoring of the prohibition on child marriage in each country, information on education laws and policies in each country and promising interventions which support efforts aimed at ending child marriage. Where possible, researchers were asked to corroborate their findings through key informant interviews with relevant stakeholders. Relevant stakeholders with whom interviews were conducted included policy makers, child and girls' rights activists and experts within civil society and international organisations and others deemed to be well placed to inform the study. Country reports were then submitted to the Centre for Human Rights (CHR) at the University of Pretoria for consolidation and analysis.

To validate the reports, a workshop was held in Pretoria in March 2014, and each report was studied and adopted by participants. The CHR then studied the reports to identify trends and themes and to prepare this consolidated report. The consolidated report has been supplemented by additional desktop research on child marriage and updated information as required.

Except where otherwise stated, all references to particular countries in the remainder of this report are drawn from these detailed country reports, which are available on the website of the CHR.

1.4 Key terms and assumptions

In this report, the following terms find the following meanings:

- **Child** means a person under the age of 18 years, even if the laws of a particular country set an earlier legal age for adulthood or allow for majority to be attained at an earlier age.¹⁵ The term child includes both **girls** and **boys**.
- As contemplated in the Maputo Protocol, **marriage** implies a union between a man and woman entered into with the free and full consent of both parties and in which both parties enjoy equal rights. However, for purposes of this report, the terms marriage and “union” shall mean any of the diverse forms of interpersonal union, whether formal or informal and whether formalised or recognised under any system of law, custom, society or religion, which are established to form a familial bond.¹⁶ This wide definition is deliberate and is intended to include rather than exclude the significant proportion of unions that are not legally constituted or recognised by the laws of a country concerned.
- **Free and full consent**¹⁷ in the context of marriage entails non-coercive agreement to the marriage with full understanding of the consequences of giving consent. Consent is not free and full in circumstances where one of the individuals involved is not sufficiently mature to make an informed decision about a life partner. A child’s inability to give full and free consent cannot be supplemented or cured with the addition of parental consent, as full consent requires the complete consent by the person consenting.¹⁸

15 This definition has been based on the definitions contained in article 1 of the United Nations Convention on the Rights of the Child and article 2 of the African Children’s Charter. The African Children’s Charter is silent on whether exceptions to this definition are permitted while the United Nations Convention on the Rights of the Child explicitly provides that the definition shall apply except when the national laws of a particular country set the age of legal adulthood younger.

16 This definition of marriage is much wider than definition provided by, for example, the United Nations Economic and Social Affairs but we believe it necessary to use a wide definition for purposes of this report. See United Nations Economic and Social Affairs “Principles and recommendations for a vital statistics system: Revision 2” (2001) 11 available at http://unstats.un.org/unsd/publication/SeriesM/SeriesM_19rev2e.pdf (accessed 26 February 2016).

17 Article 16(2) of the Universal Declaration of Human Rights and a wide variety of other international and regional human rights instruments.

18 Article 16(2) of the Universal Declaration of Human Rights and the UN Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (1964) which requires that free and full consent is expressed in the presence of the authority competent to solemnize the marriage and of witnesses, and as prescribed by law.

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- **Child marriage** is a marriage in which at least one of the parties is or was a child at the time of the marriage.¹⁹ The term child marriage is often used interchangeably with the terms forced marriage and early marriage but in this report, child marriage should be understood as distinct from forced or early marriage.
- **Forced marriage** refers to a marriage in which either or both of the parties have not personally expressed their full and free consent. Although many child marriages are also forced marriages, forced marriages include marriages that are not child marriages, such as where a widow is forced to marry a relative of her deceased husband.
- **Early marriage** refers to a marriage in which even though one of the parties to the marriage may not have reached the minimum marriageable age, majority status will nevertheless be conferred at marriage through a legal process of emancipation.²⁰

There is a sense in which any child marriage is also a forced marriage, in that children are not normally accorded the legal ability to give their full and free consent to marriage. It is for this reason that the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) states that the 'betrothal and the marriage of a child shall have no legal effect.'²¹ This is not to deny that children do exercise autonomy and may genuinely want to enter into marriages of their own accord, nor to deny that there are differing degrees of social and family pressure to marry, not all of which should necessarily be characterised as coercive. Nevertheless, it is a premise of this report that child marriage is legally problematic and is both a cause and consequence of various social ills.

Although boys are sometimes married as children, this is comparatively less common²² and for that reason, this report focuses predominantly on the marriage of girls.

19 Article 16(1) of the Universal Declaration of Human Rights stipulates that only men and women of full age, without any limitation due to race, nationality or religion, have a right to marry and to found a family.

20 Report of the Office of the United Nations High Commissioner for Human Rights, 2014 "Preventing and Eliminating Early, Child and Forced Marriages" at page 3.

21 Article 16, paragraph 2, available at <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm> (accessed 11 June 2015).

22 N Otoo-Oyortey & S Pobi (2003) 'Early marriage and poverty: exploring links and key policy issues' in C Sweetman (ed.) *Gender, Development and Marriage*.

CHAPTER 2: CONTEXT AND CAUSES



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2.1 Prevalence of child marriage in Africa

2.1.1 Overview

The overall prevalence of child marriage in Africa is higher than the global average and if current trends continue, Africa will become the region with the largest number and global share of child marriages by 2050.¹ Although child marriage is prevalent across Africa, prevalence is greatest in West and Central Africa where it is estimated that four out of ten women aged 20 to 24 were married before age 18.² In some individual countries, the reported prevalence is even higher. For instance, Mali, which is one of the countries under study, reported a child marriage prevalence rate of 71% in 2006 and 55% in 2010.

Although trends have shown a slow and uneven decline in the overall prevalence of child marriage in Africa, the continent is home to a young and rapidly growing population and without economic growth and social development and increased efforts to end child marriage, the number of girls married by age 18 is expected to rise.³ This trend is most pronounced amongst poorer households and in rural areas, where child marriage is twice as prevalent as in urban areas and showing little sign of decline.⁴ Overwhelmingly, statistics show that although boys are sometimes married as children, child marriage affects girls in far greater numbers.

There are several methods for calculating and reporting on the prevalence of child marriage. In some instances, prevalence is measured according to the number of adolescents aged between 15 and 19 who are currently in a marriage or union. One weakness of this statistic is that it includes 18 and 19 year olds who are no longer children under the international definition. It also fails to count

1 UNICEF, 2015. A Profile of Child Marriage in Africa. Available at: [http://www.unicef.org/wcaro/english/UNICEF-Child-Marriage-Brochure-low-Single\(1\).pdf](http://www.unicef.org/wcaro/english/UNICEF-Child-Marriage-Brochure-low-Single(1).pdf).

2 UNICEF, 2015 'A Profile of Child Marriage in Africa' available at http://data.unicef.org/corecode/uploads/document6/uploaded_pdfs/corecode/UNICEF-Child-Marriage-Brochure-High-Single_246.pdf (accessed 26 January 2016).

3 UNICEF, 2015 'A Profile of Child Marriage in Africa' available at http://data.unicef.org/corecode/uploads/document6/uploaded_pdfs/corecode/UNICEF-Child-Marriage-Brochure-High-Single_246.pdf (accessed 26 January 2016).

4 UNICEF, 2015. A Profile of Child Marriage in Africa. Available at: [http://www.unicef.org/wcaro/english/UNICEF-Child-Marriage-Brochure-low-Single\(1\).pdf](http://www.unicef.org/wcaro/english/UNICEF-Child-Marriage-Brochure-low-Single(1).pdf).

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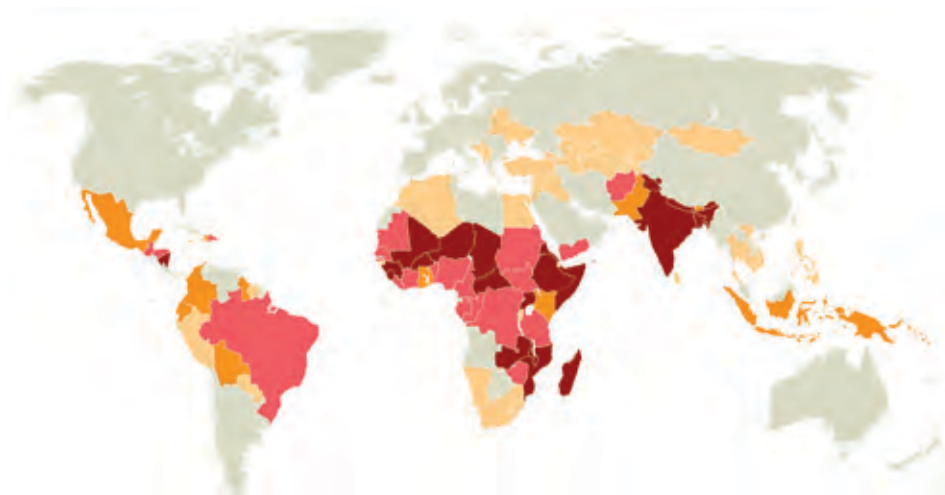
younger children who may go on to be married before they are 18.⁵ Therefore, unless otherwise stated, in this report prevalence statistics will be measured retrospectively, by counting the proportion of women aged 20 - 24 who were married before the age of 18 relative to the total number of women aged 20 - 24. Although surveying older cohorts of women would capture the prevalence of child marriage at earlier periods, these statistics may be less reliable as some women may die or move away from the study area.

Reliable statistics on child marriage can be difficult to produce because of the unregistered nature of many child marriages that occur and also because of inadequate birth registration systems that can make it difficult to account for the age of parties to a marriage. In addition, although prevalence rates are an important measure for tracking progress towards the elimination of child marriage, it is important to remember that prevalence rates generally only provide average estimates which do not describe the variability of prevalence between regions or cohorts within a country. Data on the prevalence of child marriage is typically produced from the results of national surveys which collect data on the age at first marriage, most notably the Demographic and Health Surveys (DHS) and Multiple Indicator Cluster Surveys (MICS). This data is then extrapolated to be representative of the broader population. In some cases, this data is also processed to disaggregate for regional, age and other variance.

In 2014, UNICEF compiled a global database of statistics on the prevalence of child marriage, based on DHS, MICS and other nationally representative surveys. Trend forecasts based on the data collected suggest that unless efforts to end child marriage are scaled up significantly, the impact of population growth will mean that prevalence rates will stay roughly the same.⁶ Current global prevalence of child marriage is indicated in the table below, showing variance in prevalence by country.

5 See chapter 2 of the 2012 report by UNFPA "Marrying Too Young" available at <http://www.unfpa.org/sites/default/files/pub-pdf/MarryingTooYoung.pdf> (accessed 10 June 2015).

6 UNFPA "Marrying Too Young" (2012), available at <http://www.unfpa.org/sites/default/files/pub-pdf/MarryingTooYoung.pdf> (accessed 10 June 2015).

Figure 2: Global child marriage prevalence

Percentage of women 20-24 years old who were married or in union by age 18, 2000-2011

Source: UNFPA database using DHS, MICS and other household surveys.

2.1.2 Prevalence by country

The prevalence of child marriage in Africa varies by country and by region of any given country. An overview of variation by country and by setting in the countries studied is provided below.

- In **Cameroon**, DHS data from 2011 indicate that 13.4% of women aged 20 to 24 reported being married by the age of 15 and 38.4% by the age of 18.⁷ Child marriage is prevalent in the north, in the east, in the northwest and in the southwest.⁸
- In the **Democratic Republic of Congo (DRC)**, MICS data from 2010 suggest that 39% of women aged 20 to 24 were married before 18, and 9% were married before the age of 15.⁹ There has been an increase in the prevalence of child marriage since 2007 and projections suggest that this trend will continue in the coming years. Prevalence is highest in the Katanga (50%) and Orientale (50%) regions.¹⁰
- In **the Gambia**, 36% of women aged 20 to 24 reported having married before the age of 18 and 7% reported having married before the age of 15, based on

7 UNICEF 2015 based on the Demographic Health Survey for Republique du Cameroun published in 2011. Data available at <https://data.unicef.org/topic/child-protection/child-marriage/> (accessed 11 June 2015).

8 Cameroon submission to CHR.

9 UNICEF 2015 (n 7 above) based on MICS data for the DRC published in 2010.

10 UNFPA, "Child Marriage Country profile: Democratic Republic of the Congo" (2012), available at http://www.devinfo.info/mdg5b/profiles/files/profiles/4/Child_Marriage_Country_Profile_AFRCOD_Democratic%20Republic%20of%20the%20Congo.pdf (accessed 11 June 2015).

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data from a MICS survey published in 2010.¹¹ Prevalence rates are highest in Basse (66%) and Kuntaur (61%) regions.¹²

- In **Kenya** the prevalence rate for women aged 20 to 24 who were married before the age of 15 is 6% and the prevalence of women aged 20 to 24 who were married before the age of 18 is 26%.¹³ These statistics are taken from a DHS survey conducted in Kenya in 2008/2009, which also indicates that there has been a shift in early entry into marriages over time, with the proportion of women marrying by age 15 having declined over the past 20 to 30 years. Statistics on the median age at first marriage in Kenya indicate clearly that urban women tend to marry almost three years later than their rural counterparts.¹⁴ Differences in child marriage prevalence rates by province of residence are pronounced: the Kilifi region recorded the highest prevalence of child marriage at 48% with Homa Bay recording 39%, Kwale 38%, Bondo 30% and Tharaka at 25%.¹⁵
- In **Malawi**, statistics from a 2010 DHS survey indicate that 50% of women aged 20 to 24 were married before age 18 and 12% of women aged 20 to 24 were married before the age of 15.¹⁶ A comparison with results from the 2000 and 2004 DHS surveys for Malawi indicate an increase in the prevalence of child marriage. While statistics from the DHS survey published in 2000 indicate that 47% of women aged 20 to 24 were married by age 18¹⁷ this figure rose to 49% in 2004.¹⁸ The percentage of women aged 20 to 24 who were married by age 15 has also increased, from 11% in 2004 to 12% in 2010.¹⁹ Prevalence is highest in central Malawi (57%) and lowest in the South (44%).

11 Report of the Office of the United Nations High Commissioner for Human Rights, 2014 "Preventing and Eliminating Early, Child and Forced Marriages", based on MICS data for the Gambia published in 2010.

12 UNICEF 2015 (n 7 above) based on MICS data for the Gambia published in 2010.

13 Kenya National Bureau of Statistics, "Kenya Demographic and Health Survey 2008/2009", available at <http://dhsprogram.com/pubs/pdf/fr229/fr229.pdf> (accessed 11 June 2015) at pages 82 and 83.

14 Ibid.

15 Because I am a Girl (BIAAG), "Kenya Country Report 2012: Study of the Factors Influencing Girls Access Retention and Completion of Primary and Secondary Education", p 6, available at http://www.plcc-nairobi.org/xist4c/download/web/Because-I-am-a-girl--Kenya-Country-Report-2012_uplId_16867_cold_5580_.pdf. (Accessed 11 June 2015).

16 UNICEF 2015 (n 7 above) based on data obtained from a 2010 DHS survey for Malawi

17 2000 Malawian DHS available at <http://www.dhsprogram.com/pubs/pdf/FR123/FR123.pdf> page 78 (accessed 26 January 2016).

18 Malawi DHS 2004 at page 97 available at <https://www.dhsprogram.com/pubs/pdf/FR175/FR-175-MW04.pdf> (accessed 26 January 2016).

19 Ibid.

WorldFish/Peter Fredenburg



- **Mali** has one of the highest child marriage prevalence rates in the world, with an estimated 55% of girls being married before they turn 18 and 15% being married before they turn 15.²⁰ Although common throughout the country, child marriage rates are highest in the Kayes region (87%), followed by Kidal (84%) and Koulikoro (78%). The prevalence of child marriage in Mali has declined since 2006, when it was at 71%.
- In **Mauritania** it is estimated that just 2% of child marriages are registered by the civil status office. As at 2011, an estimated 34% of women aged 20 to 24 were married before the age of 18 and 14% before the age of 15.²¹ Prevalence is highest in the Hodh Charghi (55%) and Gorgol (50%) regions.²²
- **Mozambique** has a higher prevalence of child marriage than the rest of sub-Saharan Africa, with 48% of women aged between 20 and 24 years estimated to be married before they are 18 and 14% before they are 15.²³ There has been a slow decline in the prevalence of child marriage in Mozambique since 2003 when it stood at 56% in respect of marriages concluded before age 18 and

20 UNICEF 2015 (n 7 above) and based on a 2010 MICS survey conducted in Mali.

21 UNICEF 2015 (n 7 above) and based on a 2011 MICS survey conducted in Mauritania.

22 UNICEF "Country Profile on Mauritania: Maternal, New-born and Child Survival" (2012), available at <http://www.childinfo.org/files/maternal/DI%20Profile%20-%20Mauritania.pdf> (accessed 11 June 2015).

23 UNICEF 2015 (n 7 above) and based on a 2011 DHS survey for Mozambique.

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18% for marriages before age 15.²⁴ However, Mozambique's child marriage prevalence rate still ranks as the seventh highest rate in the world. Prevalence is highest in Cabo Delgado (68%), Manica (64%) and Zambezia (62%).²⁵

- The prevalence of child marriage in **South Africa** is relatively low, although reliable statistics have not been reported since 2003. A DHS survey from 2003 indicates that 0.8% of girls in South Africa between the ages of 20 and 24 married before the age of 15 and 5.6% before the age of 18.²⁶ South Africa is unusual in that child marriage manifests itself mainly in the traditional practice of *ukuthwala* (bride abduction), which is practiced predominantly in rural areas of the Eastern Cape and Kwa-Zulu Natal.²⁷
- In **Uganda**, 40% of women aged 20 to 24 reported being married before the age of 18 and 10% before the age of 15, according to results of a DHS survey published in 2011.²⁸ This reflects a decrease in prevalence rates since 2006, when 46% of women aged 20 to 24 reported being marriage before age 18 and 12% of the same cohort reporting having married by age 15.²⁹ Child marriage is practiced across Uganda but is disproportionately prevalent in Ndagwe, Lwengo³⁰ and in the Acholi, Lango, Sabiny and Karamoja regions.³¹

24 Compare results from the 2003 DHS survey page 92 available at <http://dhsprogram.com/pubs/pdf/FR161/FR161.pdf> (accessed 26 January 2016).

25 Mozambican National Statistics Institute 'Multiple Indicators Cluster Survey' (2008).

26 Department of Health, Republic of South Africa "South Africa Demographic and Health Survey" (2003), p. 32, available at <http://dhsprogram.com/pubs/pdf/FR206/FR206.pdf> (accessed 11 June 2015). This data is roughly consistent with data published by UNICEF suggesting that in 2012, 1% of girls were marriage before the age of 15 and 6% of girls were married before they were 18. See UNICEF South Africa Report 2012 (2013).

27 South African Law Reform Commission 'Project 138-The practice of *ukuthwala*' Discussion paper 132 (2014) 16 available at <http://www.justice.gov.za/salrc/dpapers/dp132-Ukutwala.pdf> (accessed 11 February 2016).

28 UNICEF 2015 (n 7 above), based on a 2011 DHS survey conducted in Uganda, pages 51, 52 and 53 available at <https://dhsprogram.com/pubs/pdf/FR264/FR264.pdf> (accessed 26 January 2016).

29 2006 Ugandan DHS on page 88 available at <http://www.dhsprogram.com/pubs/pdf/FR194/FR194.pdf> (accessed 26 January 2016).

30 Interview with Community Transformation Foundation Network, 24 January 2014.

31 Child Protection in Crisis Network for Research "Learning and Action: Mapping community based child protection mechanisms in Nebbi and Arua districts" (2012) 2-39 available at http://www.cpcnetwork.org/wp-content/uploads/2014/04/CBCPM-Mapping_Uganda_Report-3.pdf (accessed 09 June 2015).

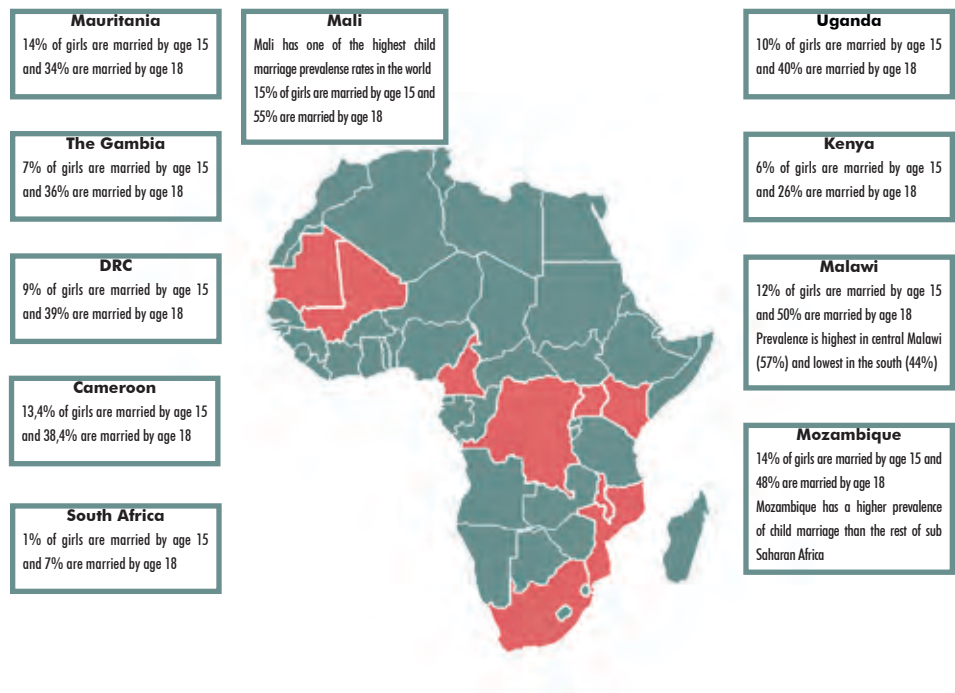


Figure 3: Prevalence of child marriage in the ten countries studied

2.2 Causes of child marriage in Africa

Any account of the causes of child marriage must acknowledge that many factors are interrelated, and that many factors are both a cause and consequence of child marriage. For instance, family poverty places girls at risk of child marriage, but being married young also tends to limit educational and economic opportunity for girls, which in turn perpetuates poverty. This section provides an overview of how various factors tend to result in child marriage in Africa, focusing on examples from the particular countries studied for this report.

2.2.1 Gender inequality

Child marriage is overwhelmingly a phenomenon of younger girls being married to older men. As such, none of the other social, cultural and economic factors of child marriage can be understood without reference to the inferior status accorded to girls and women in all the societies under consideration. Gender inequality is a cause, a result and an exacerbating factor of child marriage.

Africa is an enormously diverse continent, with substantial variation in the cultural beliefs and practices often apparent even in very small areas. It is therefore a grave fallacy to speak of any single 'African' culture. Nevertheless,



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many groups believe in strongly differentiated gender roles and family relations between men and women that tend to disadvantage women. These beliefs may have origins in traditional practices, in colonial-era laws and customs, and in the two most widespread religions in the region, Islam and Christianity.

Discriminatory formal and informal laws, social norms and cultural and religious practices directly and indirectly influence women's social and economic roles, making girls more vulnerable to child marriage than boys. In many societies, women are excluded from decisions about themselves, their families and the community. Control of land and property, together with formal family headship, typically pass through the male line. Accordingly, greater social value is generally ascribed to boys, resulting in the underinvestment of girls' health, education and development. These social inequalities systematically render girls subservient and vulnerable and put them at risk of child marriage and other social harms.

2.2.2 Cultural and religious norms that promote or perpetuate child marriage

In many of the countries studied, patriarchal attitudes towards women and girls

perpetuated by cultural and religious norms not only render girls more vulnerable to child marriage, but also may actively promote it.

In several countries with longstanding Islamic populations, local traditions interpret Islamic scripture as permitting and in some instances even encouraging child marriage. This is a key reason why the prevalence of child marriage is high in countries with relatively large Islamic populations across the region. In these countries, influential religious leaders sometimes explicitly support the practice of child marriage and voice strong opposition to campaigns against it. The Gambia, for example, has a large Muslim majority, at 95% of the population and in the same country, child marriage is not regarded by society at large as wrong or against the best interests of the child. A number of community members reportedly believe that child marriage is a positive part of life and tradition and prepares girls for life. These same community members also tend to prescribe particular roles for women and girls, with an emphasis on childbearing and housekeeping. Child marriage is also common in Mali and in Mauritania, where it is supported by local interpretations of Islamic scripture.

In Cameroon, although Islam is only practiced by around 20% of the population, child marriage is widely considered by practising Muslim Cameroonians to be consistent with the Quran. A local interpretation of religious texts reportedly states that a girl should have her first menstruation under her in-laws' roof. The practice of child marriage is so deeply rooted in some parts of Cameroon that one local Islamic religious leader has said that even if it means confronting the law, he cannot go against the religious book. Similarly, in Malawi's Mangochi district, where Islam is prevalent, the incidence of arranged marriages for girls as young as 12 years old have been reported. Some rural Islamists regard these marriages as being consistent with their beliefs. Muslims in the Sabiny region of Uganda are similarly encouraged to marry their young daughters to fellow Muslims, and marriage is itself considered a rite of passage bringing girls to womanhood.

In addition to the sway of religious beliefs that perpetuate child marriage, the practice is often culturally accepted as a means of controlling the sexuality of girls. For instance, in the Kivu region of the DRC, great importance is placed on a girl's virginity before marriage. After the wedding day (whether a traditional or civil marriage), a groom's family is supposed to give a gift to the bride's mother if she is a virgin. The absence of a gift is a grave dishonour, and a sign that the mother did not raise her daughter properly. Hence, the sooner a girl is married, the higher the chances of getting a gift and the lower the chances that dishonour will befall the family. Similarly, if an unmarried teenager becomes pregnant, she may be forced or pressured into a marriage to prevent rejection by her family or

the community. This occurs even in instances where girls do not want to marry, and sometimes even if pregnancy is the result of rape.

In Uganda, child marriage is seen to delay the onset of sexual activity of girls and prevent unintended pregnancy and pregnancy outside of wedlock. In Kenya, Uganda and in the Gambia, child marriage is commonly perceived to offer some form of child protection in that it prevents girls from being propelled into sex work. The nomadic Samburu community of Kenya, for example, encourages girls to marry at an early age on the basis that marriage will prevent them from becoming sex workers. In many of these communities if a girl is not married by age 15 she is considered flawed, and outcast under the perception that she will bring bad luck to her family.

The sexual control of girls and child marriage are also connected via the practice of female genital mutilation (FGM). Among the Sabinu and Karamojong populations of eastern and north-eastern Uganda, FGM is conducted as a rite of passage into adulthood, sometimes from as early as 12 years of age. This rite of passage qualifies girls to sit with elders, is regarded an important mark of adulthood and signifies readiness for marriage. Very similar customs are also practiced by some of the Maasai people in Kenya.

Patriarchal customary laws and traditions in Uganda give women and girls diminished negotiating power in marriage and in issues relating to their sexual and reproductive health. This is another manifestation of gender inequality, which renders women and girls second-class citizens, and denies them the power to make decisions about their futures. Marriage is viewed in some communities as a rite of passage and a girl's moment to fulfil her role in life. Equally, women and girls are sometimes viewed as property and may be used to consolidate family ties or settle feuds.

The practice of *ukuthwala* in South Africa involves the kidnapping of a girl or young woman by a man and his friends or peers with the intention of compelling the girl or young woman's family to approve marriage negotiations.³² In some cases and in older forms of this tradition, the kidnapping is purely ritualistic, in that the girl and her abductor are of similar ages and are in a consensual relationship, but have been unable to secure the approval of the girl's parents by normal means. In most contemporary cases however, it appears that the practice involves genuine non-consensual abduction and forced marriage. Both police and traditional leaders

³² Department of Justice and Constitutional Development 'Ukuthwala: Let's protect our children' (2009) available at http://www.justice.gov.za/docs/articles/2009_ukuthwala-kidnapping-girls.html as cited by South Africa submission to CHR.



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in affected areas have shown reluctance to act against the practice.³³

2.2.3 Poverty

Poverty is a major cause of child marriage and is also a factor that worsens its impact and the consequences of being married at an early age.³⁴ Poverty is linked to a number of other factors that are strongly associated with child marriage, including lack of access to education and inadequate birth and marriage registration systems that are discussed below. It is a repeated pattern that child

33 Nomboniso Gasa as quoted by R Davis 'When culture and policing collide: circumcision deaths and *ukuthwala*' The Daily Maverick, 11 October 2013, available at <http://www.dailymaverick.co.za/article/2013-10-11-when-culture-and-policing-collide-circumcision-deaths-and-ukuthwala-unpunished-crimes/> (accessed 12 March 2014) as cited in the South Africa submission to CHR.

34 Human Rights Watch, 2013 'This Old Man Can Feed Us, You Must Marry Him: child and forced marriage in South Sudan' available at https://www.hrw.org/sites/default/files/reports/southSudan0313_forinsertWebVersion_0.pdf (accessed 26 January 2016). See also Caroline Harper; Nicola Jones; Elizabeth Presler-Marshall; David Walker, 2014 'Unhappily Ever After: slow and uneven progress in the fight against early marriage' published by the Overseas Development International and available at <http://www.odl.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/9088.pdf> (accessed 26 January 2016). See also International Centre for Research on Women, 2006. 'Child Marriage and Poverty Fact Sheet' available at <http://www.icrw.org/files/images/Child-Marriage-Fact-Sheet-Poverty.pdf> (accessed 26 January 2016).

marriage tends to be more prevalent in poorer countries and among the poorest sections of any given country.³⁵ It has also been established that countries with low Gross Domestic Product have a higher prevalence of child marriage.³⁶ In Mali and Mozambique, two countries in which roughly half of girls are married before 18, at least three quarters of the population live on less than \$2 a day.³⁷

The correlation between poverty and child marriage is also evident at the level of sub-national regions, as the regions with high prevalence listed in the previous section are overwhelmingly also the poorest and/or most rural regions of respective countries. For instance, in Mozambique, the prevalence of child marriage is 56.4% in rural areas against 42.4% in urban areas. In DRC, the prevalence is 50% in rural Katanga and Province Orientale against only 18% in urban Kinshasa. The practice of *ukuthwala* in South Africa is only found in rural areas.

This correlation is also evident at the household level, with girls from poorer families being more likely to be married as children. For instance, in the Gambia, poverty and low levels of education are consistently correlated with high rates of child marriage. Children from the poorest Gambian households are more likely to be married before 18 years of age (with a prevalence rate of 62.7%) than those from richer household (with a prevalence of 28.7%).³⁸

The mechanism through which poverty promotes child marriage is by exacerbating the vulnerabilities of children and the economic burden of parents to care for them. Economic difficulties can make child marriage seem like an attractive option for parents and possibly even for children themselves. For example, post conflict economic instability in the DRC prevented women from accessing resources, basic services and power and this in turn resulted in the feminization of poverty and in widespread gender discrimination in all areas of development. Findings from several countries studied suggest that teenage girls are sometimes forced to marry older men to ensure the economic prospects of their families and their brothers' education. In this way, although the whole family is affected by

35 Cheryl Thomas, 2009. 'Forced and Early Marriage: a Focus on Central and Eastern Europe and Former Soviet Union Countries with Selected Laws from Other Countries' prepared for Expert Group Meeting on good practices in legislation to address harmful practices against women in Ethiopia, 2009 at page 3. Available at http://www.un.org/womenwatch/daw/egm/vaw_legislation_2009/Expert%20Paper%20EGMGPLHP%20_Cheryl%20Thomas%20revised_.pdf. (accessed 26 January 2016).

36 International Centre for Research on Women, 2006 Fact Sheet on Child Marriage and Poverty available at <http://www.icrw.org/files/images/Child-Marriage-Fact-Sheet-Poverty.pdf> (accessed 26 February 2016).

37 International Centre for Research on Women, 2006 Fact Sheet on Child Marriage and Poverty available at <http://www.icrw.org/files/images/Child-Marriage-Fact-Sheet-Poverty.pdf> (accessed 26 February 2016).

38 UNICEF, "The Gambia Multiple Indicator Cluster Survey 2010 (MICS IV)", available at <http://mics.unicef.org/surveys> (accessed 11 June 2015).

poverty, the impact falls disproportionately on girls and women.

In the Gambia, it has been reported that girls as young as 13 years are married off by parents who have large families in order to conserve household resources. Similarly, among the Maasai in Kenya, giving a daughter in marriage is often viewed as a means to reduce family expenses by ensuring that there is one less person to feed, clothe and educate. This understanding of girls as an economic burden is in part self-reinforcing: parents are often reluctant to invest in educating daughters because they expect that they will be married before they are able to generate income, and so education will only add to the wealth of their husbands' families. Girls in South Africa who have been forced into marriages through *ukuthwala* report being pressured by their families to remain in marriages because of the financial strain of providing for the sustenance and schooling of the girl.³⁹

Similarly, in the context of Mozambique, Osório⁴⁰ argues that girls are sometimes viewed primarily as an economic resource. They are denied basic material benefits such as education, health and food to avoid costs to their family. When they attain their adolescence they are exchanged for their families' gain, in the form of a dowry payment. For the men who take them as wives, the gain is in the form of the labour they provide and of the children they give birth to.

Child marriage is not only a means for preserving existing economic resources, but may be a means for economic and social advancement. In Cameroon and Mali, it is reported that poor parents sometimes specifically seek out well-off men in order to provide their daughters a way out of destitution. In rural as well as in urban areas of Mali, almost three quarters of the men who married a child bride were financially well off relative to other members of Malian society.

In many parts of Africa, the family of the bride receives a bride price or dowry in the form of livestock, money or other commodities over the course of a marriage proceeding. In communities where economic transactions are integral to the marriage process, dowry or bride price negotiations can become a strategy for the financial survival of poor families.⁴¹ In South Africa, *ukuthwala* typically results in customary marriages that involve the payment of bride price or *lobola* to the abducted girl's family. This gives an incentive to impoverished families to

39 Legal Resources Centre (2013) "Submissions made in respect of child, early and forced marriage". Available <http://www.ohchr.org/Documents/Issues/Women/WRGS/ForcedMarriage/NGO/LegalResourceCentre.pdf> (accessed 14 September 2015).

40 C Osório 'Direitos humanos, direitos humanos das mulheres' in X Andrade et al. (eds) *Direitos humanos das mulheres em quatro tópicos* (2000).

41 Hague, Thiara and MIFUMI, "Bride Price, Poverty and Domestic Violence in Uganda" (2009), available at <http://www.bristol.ac.uk/sps/research/projects/completed/2009/rg2292/rg2292finalreport.doc> (accessed 12 June 2015).

comply with an abductor's wish to marry their daughters.

Poverty also plays a role in making children vulnerable to transactional relationships, which in some cases lead to child marriage. In Uganda, South Africa and Kenya the phenomenon of 'sugar daddies' is reported, where older men seek sex from children and adolescents in exchange for money or other goods. In some instances, parents encourage transactional sex and relationships in order to secure resources for the family, even though these relationships frequently lead to child marriage and premarital pregnancy.

2.2.4 Lack of access to education

Education empowers girls to be economically and socially independent and therefore reduces their vulnerability to child marriage. This explains why rates of child marriage are highest in countries with lower education and why there is a consistent correlation between lack of access to education and child marriage within countries. It also explains why educating adolescent girls has been an important factor in the increases in the age of marriage observed across the region thus far.⁴²

Although levels of education are low for boys and girls in many countries across the region, socio-cultural factors hinder access to education for girls in particular. This is an area where several risk factors come together. If education is costly, either directly or because it prevents a child from contributing to the household economy, a family in poverty may decide to educate only some of its children. In this case, a cultural understanding that boys represent the family line means that they will be favoured for educational opportunities over girls. For example, although Mozambique has a relatively low overall literacy rate, at 56.1%, there is also considerable gender disparity, with only 42.8% of women who are literate, compared with 70.8% of men.⁴³ In Mozambique, lack of access to education is directly correlated with child marriage: 57.2% of women who never went to school reported being married by age 18 while only 20.6% of women with secondary education reported the same.

In Kenya, Mali and Mauritania levels of education are still very low, especially among girls. Several factors have been identified as barriers to girls' access to education. These include socio-economic factors, such as poverty and a lack of access to adequate and appropriate resources, including infrastructure.

42 UNICEF 'Ending child marriage: Progress and prospects' (2013) available at http://data.unicef.org/corecode/uploads/document6/uploaded_pdfs/corecode/Child-Marriage-Brochure-7_17-HR_164.pdf (accessed 15 October 2014).

43 Index Mundi, available at www.indexmundi.com/pt/mocambique/taxa_de_alfabetizacao.html (accessed 30 March 2014).



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Institutional factors, including the lack of gender responsive budgets, gender imbalances among teachers and the lack of teacher training on gender equality also affect girls' access to education.

In Uganda, low educational attainment is sometimes quite explicitly linked to child marriage, setting precedents that repeat over generations. For instance, in the Sabinu region of Uganda, girls who consistently perform poorly at school are given away in marriage. Educational attainment for women is also strongly correlated with household income, with women living in richer households being more than two times more likely to be literate (65.8%) as compared with those from poorer households (26.9%).

Cultural ideas that position women and girls as responsible for care work can also be a barrier to girls' education, and reports from South Africa suggest girls have been pulled out of school to care for sick family members, especially in the context of the HIV/AIDS pandemic.⁴⁴

44 United Nations Girls' Education Initiative (2010) "Gender Review in South Africa based Education: Final Report". Available: <http://www.ungei.org/paris2011/docs/GenderReviewFinalReportRevisedNov23.pdf>.



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2.2.5 Legal frameworks

There are features of the legal systems prevailing across the region that allow and even promote child marriage. In this section, the term legal framework is used in a wider sense, and refers to codes and other non-statutory frameworks that contribute to the persistence of child marriage. Although statutory laws are a part of the legal system, domestic statutory laws relating to child marriage are discussed in the section below.

One feature common to the countries under study is that they have plural legal systems. Usually, a common or civil law system influenced by European law operates alongside one or more traditional, religious or customary legal systems that may or may not be constitutionally recognised but are nevertheless observed. The existence of at least two forms of law makes it difficult to determine which law prevails and, because almost all religious and customary systems seek to regulate matters involving the family, these difficulties arise frequently in the context of child marriage. For example, no fewer than four types of marriage are legally recognised in the Gambia, Mali and Mauritania: Christian, Muslim, customary and civil. Because many versions of customary and Sharia law tolerate

child marriage, the legal status of such marriages in these countries is unclear.

Legal uncertainty around child marriage is also caused by ambiguity as to the status of two different and conflicting laws within the same statutory legal system. For example, while one part of a country's civil law might set the minimum age for marriage at 18, another part of the same civil law might recognise certain exceptions. For example, in Malawi while the new Marriage, Divorce and Family Relations Act establishes 18 as the minimum age for marriage, the constitution of Malawi still allows children aged between 15 and 18 to marry with the consent of their parents, giving rise to some degree of legal uncertainty.

The continuing prevalence of child marriage across the continent illustrates the difficulties of bringing actual practice into conformity with 'top-down' legal frameworks like national constitutions and international treaties. For instance, the Gambian state has put in place legislative and policy frameworks for the promotion and protection of the rights of children. The Gambia has also harmonised its legislation with child related international legal instruments that it has ratified. However, gaps remain in the effective implementation and enforcement of these laws and policies and there remains legal ambiguity on child marriage, with the result that they are carried out with impunity.

In South Africa, while customary law is recognised as binding by the state and courts, it is formally subordinate to the national constitution and some customary marriage practices have been ruled unlawful on the grounds of incompatibility with the constitution. Nevertheless, with the consent of a legal guardian, a child between the ages of 12 and 18 can legally be married, despite South Africa's assent to binding instruments that prohibit child marriage. The result is that traditional forms of child marriage continue to be practiced, often accompanied by severe social stigma that attaches to girls who refuse marriage or attempt to leave a marriage.

In Malawi, there has been confusion over the legal minimum age for marriage. Section 22(8) of the constitution of Malawi *discourages* marriage between persons where either one of them is under 15. However, persons between the ages of 15 and 18 may nevertheless enter into a marriage provided they obtain parental consent.⁴⁵ However, in terms of a new Marriage, Divorce and Family Relations Act, it is provided that subject to section 22 of the constitution, two persons of the opposite sex who are both not below the age of 18 and are of sound mind may enter into a marriage with one another. Unless the courts apply a generous and progressive interpretation to the constitution, this discrepancy in the law may give rise to legal uncertainty and problematic enforcement. Although the Marriage, Divorce and Family Relations Act is widely considered to be a victory, harmonisation with the constitution may be

45 Section 22(7), Constitution of the Malawi.

required to ensure maximum impact of the prohibition against child marriages.

2.2.6 Inadequacy of registration procedures

The lack of adequate registration procedures for birth and marriage in some African countries, particularly in rural areas, is a significant impediment to the prohibition of child marriage. Despite the requirement in Article 6(d) of the Maputo Protocol that all marriages ‘shall be registered,’ unrecorded and unregistered marriages are common throughout Africa.⁴⁶

There are a number of reasons why marriages in Africa are not recorded or registered. In at least 6 countries in Africa, domestic laws simply do not stipulate requirements or procedures for the compulsory registration of all forms of marriage.⁴⁷ There is a particular scarcity of laws regulating the registration of marriages conducted in terms of religious and customary law. In plural legal contexts, marriage registries and registration processes tend to differ according to the form of marriage. Different types of marriage are often regulated under separate laws that are commonly unconnected.⁴⁸ These differences lead to confusion, defective registration and ultimately to non-compliance with registration procedures.⁴⁹ Finally, even in instances where the law does require and stipulate clear procedures for the registration of marriage, marriages still go unrecorded and unregistered because of logistical and administrative difficulties that make registration onerous and expensive. At least twenty countries in Africa charge fees for registration of a marriage and at least 24 countries charge a fee on the first copy of a marriage certificate.⁵⁰ The overall cost of registration is made worse by the cost incurred travelling to the nearest registration point, explaining why people living in rural areas routinely have the lowest levels of marriage registration.⁵¹

The inaccessibility of marriage registration has the greatest effect on those

46 See, for example: http://www.uneca.org/sites/default/files/uploaded-documents/Statistics/CRMC3/md_registration_en.pdf that suggests that civil registration of marriages is “*virtually unknown*.”

47 See page 4 of a report by the United Nations Economic Commission for Africa titled “*Report of the Regional Assessment Study of Civil Registration and Vital Statistics Systems in Africa*” available at http://www.uneca.org/sites/default/files/uploaded-documents/Statistics/CRVS/regional-assessment-report_en.pdf.

48 See a 2012 report published by the United Nations Economic Commission for Africa titled “*Report of the Regional Assessment Study of Civil Registration and Vital Statistics Systems in Africa*” at page 4.

49 See, for example, a report by Human Rights Watch published in 2003 “*Double Standards: Women’s Property Rights Violations in Kenya*” available at <http://www.hrw.org/sites/default/files/reports/africa1203.pdf>.

50 See page 7 of a report by the United Nations Economic Commission for Africa titled “*Report of the Regional Assessment Study of Civil Registration and Vital Statistics Systems in Africa*” available at http://www.uneca.org/sites/default/files/uploaded-documents/Statistics/CRVS/regional-assessment-report_en.pdf.

51 United Nations Economic Commission for Africa (n 50 above) at page 8.



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communities most susceptible to child marriage, including those in rural areas and those poorer and less educated. Additionally, child marriages often take the form of traditional or customary marriages, which go unregistered more often than other forms of marriage.

Related to this, the absence of birth registration procedures in some parts of Africa makes enforcement of the prohibition against child marriage an impossible task. Birth certificates produced on marriage are the most effective way of ensuring that parties meet the minimum age requirements and can consent to a marriage. The inadequacy of birth registration across Africa is well established and prompted the African Committee of Experts on the Rights and Welfare of the Child (ACERWC) to issue, in 2014, a General Comment on the right to birth registration, name and nationality.⁵² The absence of birth registration was reported as a cause of child marriage in Cameroon, Mozambique and the DRC, particularly in rural areas. In the DRC girls reportedly provide fake birth certificates or forge electoral cards in order to marry.

52 General Comment Number 2 on Article 6 of the African Children's Charter, issued by the ACERWC in April 2014 available at <http://www.acerwc.org/?wpdmdl=8606> (accessed 26 February 2016).

2.2.7 Armed conflict and sexual violence

Situations of armed conflict and instability significantly increase the likelihood of child marriage. Rebel groups and members of national armies rely extensively on rape, sexual violence, abduction, torture and other harms to control and exert dominance over communities. Women and children are at particular risk and child marriages occur as both a direct and indirect result of these violations.

Conflict also exacerbates existing risk factors that lead to child marriage. This is true of the conflict in northern Uganda, Mali and the DRC, where large numbers of people have become refugees or fallen into poverty. Conflict is disruptive of education and other basic services and together; these factors all result in young girls being traded into marriage as a means to mitigate economic pressure.⁵³ Amongst the refugee population in Uganda, child marriage is reportedly motivated more by economic and physical security than by cultural factors.⁵⁴ Military conflict in the eastern DRC has also created a climate conducive to child marriage: limited rule of law and economic insecurity have made girls more vulnerable to child marriage.

In the context of conflict, many parents believe that it is in the interest of their daughters to be married young. For example, one father in North Kivu in the DRC reported marrying his 14-year-old daughter to a military officer, arguing that this would protect her against rebel groups and rape. Similarly, there is evidence to suggest that following the conflict in Northern Uganda, some families forced their daughters to marry military officers in an attempt to defend family honour and secure protection for themselves and the girls.⁵⁵ This happened alongside systematic abduction of young girls by the Lord's Resistance Army, particularly in the Acholi region of northern Uganda, and resulted in just over half of those young women being forced to serve as wives to rebels.⁵⁶ Along the Busia border of Kenya and Uganda, a region where there is on-going tribal conflict, child marriage is sometimes seen as a means for girls to escape the conflict. This is evident in the relatively high prevalence of child marriage, and in the number of girls who are married to men from outside the community.

53 Isis Wicce "Child Marriage and Its Impact on Development: the case of Kasesses district in Uganda" (2001) 21.

54 N Gottschalk "Uganda: Early Marriage as a form of sexual violence" *Forced Migration Review* No. 27 (2007).

55 Human Rights Watch and Amnesty International "The Scars of Death: children abducted by the Lord's Resistance Army in Uganda" (1997) 37.

56 Human Rights Watch and Amnesty International "The Scars of Death: children abducted by the Lord's Resistance Army in Uganda" (1997) and see also K Carlson and D Mazurana *Forced Marriage Within the Lord's Resistance Army Uganda* Feinstein International Centre, Tufts University (2008) 14.

CHAPTER 3: IMPACTS OF CHILD MARRIAGE



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Examining the impact of child marriage can be complicated, since many of the social circumstances that result from child marriage also tend to increase its prevalence. The cycle of poverty is a good example of this: poverty renders girls vulnerable to child marriage and is thus a cause but girls who marry young tend to become trapped in poverty and it is therefore also a consequence. Because poverty was discussed above in relation to the causes of child marriage, this section focuses on how child marriage impacts education and girls' sexual and reproductive health and rights.

3.1 Girls' education

There is a strong correlation between early marriage and low levels of enrolment and retention of girls in school. The reasons for this correlation are complex, since lack of access to formal education is a prime example of a social factor that both results from and renders girls more vulnerable to child marriage. Married girls tend to have lower educational outcomes because they are taken out of school when they marry. But it is also true that the lower a girls' educational attainment, the higher her chances are of being married young. For instance, in the Gambia, 59% of girls with no formal education are married before the age of 18, compared to 48% of girls with primary education and 15% with secondary education.

In some cases, girls and their parents are unaware or unconvinced of the long-term importance of education and are persuaded by the perceived benefits of marriage, assuming their husbands will support them economically. This leads to poor enrolment and retention rates, with girls eventually dropping out of school completely. Rigid school schedules can also be a significant barrier to participation for girls, as many have responsibilities that may clash with traditional school timetables. Girls who are married are more likely to have children of their own and are more likely to be responsible for household tasks. These domestic burdens, childbearing responsibilities and social norms that fail to prioritise their education limit girls' access to formal and informal education throughout the world.¹

All countries studied have policies or legislation that guarantees the right to education for all children on a non-discriminatory basis. In some countries, basic education is free and compulsory for all and both governments and parents have an obligation to ensure that children go to school.

1 ICRW, (2003), "Too Young to Wed: The Lives, Rights and Health of Young Married Girls", (2003). Available: <http://www.icrw.org/publications/too-young-wed-0>.

In the Gambia, the Children's Act stipulates that every child has the right to a free and compulsory basic education, placing an obligation on the government to provide access to education. Parents and guardians have the responsibility for ensuring that the children in their care attend and complete basic education.² The Women's Act of Gambia also obligates government to promote the enrolment and retention of girls in schools and other training institutions and to organise programmes for women who leave school prematurely.³ In the DRC, the constitution provides that every child has the right to education. Parents are obliged to send their children to school and the government guarantees the right to free and compulsory education.⁴

Many of the countries under study also have policies aimed specifically at ensuring gender parity in education beyond primary education. These include policies that allow girls who become pregnant to continue school after giving birth. In the Gambia, for instance, the policy is that girls are allowed to return to school after delivering their child. Similarly in Uganda girls are permitted either return to school after giving birth or else they have the right to an alternative education. In Malawi, the Ministry of Education is establishing mothers' groups in areas where significant numbers of girls drop out of school because of pregnancy. Also in Malawi, special scholarships and subsidies have been created to encourage girls to stay in school.

Yet unfortunately, many of these policies have not translated into increased access to education for girls. Even in countries with free and compulsory primary education, boys are still privileged and girls stay home to provide support for the family. Even girls whose families can afford for them to study often drop out of school when they are married or become pregnant, because of the relatively lower priority placed on girls' education.

3.2 Sexual and reproductive health and rights

There are many negative health consequences of child marriage. Girls who marry young are often unable to use or access contraception and quickly become pregnant. In Mozambique, the likelihood that a woman has 3 or more children is seven times higher among girls who were married by age 15.⁵ Because girls are not physically,

2 Article 18(2) of Children's Act of Gambia (2005), available at http://www.africanchildforum.org/clr/Legislation%20Per%20Country/Gambia/gambia_children_2005_en.pdf (accessed 23 June 2015).

3 Section 26 of the Women's Act of Gambia, available at <http://www.ilo.org/dyn/natlex/docs/MONOGRAPH/90619/115464/F-1335047347/GMB90619.pdf> (accessed 09 June 2015).

4 Article 40 of the Constitution of DRC (2005), available at https://www.constituteproject.org/constitution/Democratic_Republic_of_the_Congo_2011?lang=en#66 (accessed 23 June 2015).

5 Unicef, 2015 'A Profile of Child Marriage in Africa' available at http://data.unicef.org/corecode/uploads/document6/uploaded_pdfs/corecode/UNICEF-Child-Marriage-Brochure-High-Single_246.pdf (accessed 26 January 2016).

physiologically or psychologically prepared, early and teen pregnancy puts girls at enormous risk of premature labour, complications during delivery and maternal mortality.⁶ In Mali, girls who were married before the age of 15 are 21% less likely to receive medical care during pregnancy than women who married as adults.⁷ Girls between 10 and 14 years old are five times more likely to die during pregnancy or childbirth as compared to older women.⁸ In Mozambique, 24% of deaths among women aged 15 to 19 is attributed to maternal causes, but this proportion decreases to 16% among women aged 25 to 29 and 8% among women aged 45 to 49 years. The table below shows child marriage prevalence rates against the ratio of maternal mortality and adolescent birth rates in the 10 countries studied. The table shows that high child marriage prevalence rates are correlated with higher maternal mortality ratios and with higher adolescent birth rates.⁹

Table 1: Child Marriage Prevalence Rates against selected health indicators in the ten countries studied

Country	Total population in millions 2014	Prevalence of child marriage (percentage married by 18)	Maternal mortality ratio (deaths per 100 000) 2013	Adolescent birth rate per 1000 women aged 15-19 2012
Cameroon	22.8	36	590	128
DRC	69.4	39	730	135
The Gambia	1.9	36	430	88
Kenya	45.5	34	400	106
Malawi	16.8	50	510	157
Mali	15.8	55	550	172
Mauritania	4.0	35	320	88
Mozambique	26.5	52	480	166
South Africa	53.1	6	140	54
Uganda	38.8	46	360	146

6 UNICEF, *Early Marriage: Child Spouses*, Innocenti Digest No.7, 4 (2001) available at <http://www.unicef-irc.org/publications/pdf/digest7e.pdf>. JA Walker 'Early marriage in Africa – Trends, harmful effects and interventions' (2012) 16 *African Journal of Reproductive Health* 2 231.

7 Unicef, 2014 'Ending Child Marriage: Progress and Prospects' available at http://data.unicef.org/corecode/uploads/document6/uploaded_pdfs/corecode/Child-Marriage-Brochure-HR_164.pdf (accessed 26 January 2016).

8 Mutyaba, R., 'Early Marriage: A Violation of Girls' Fundamental Human Rights in Africa', *International Journal of Children's Rights* 19 (2011) 339–355.

9 UNFPA, 2014 "The Power of 1.8 Billion: State of the World Population Report" Taken from selected ICPD demographic indicators from page 104 onwards available at http://www.unfpa.org/sites/default/files/pub-pdf/EN-SWOP14-Report_FINAL-web.pdf (accessed 22 March 2016).

CHAPTER 3 IMPACTS OF CHILD MARRIAGE

The risks associated with early childbearing are exacerbated by the generally poor access to contraception and sexual and reproductive services across Africa. This means that girls in child marriages are not able to control their fertility. For instance, in Mali it is reported that after being married, just 7.7% of girls use contraception. Furthermore, in many of the countries under study, it was widely accepted that men make decisions regarding when sex happens and whether contraception is used in a marriage. Because girls often marry significantly older men, their negotiating power is further reduced by the age difference and by possible economic and social dependence. In Mauritania, 60% of married adolescent girls have husbands who are at least 10 years older than they are.¹⁰ These power and age differentials constrain and disempower girls in many situations but in particular, they limit girls' abilities to negotiate safer sex and the use of condoms or other contraception. They also increase girls' vulnerability to physical and sexual violence.

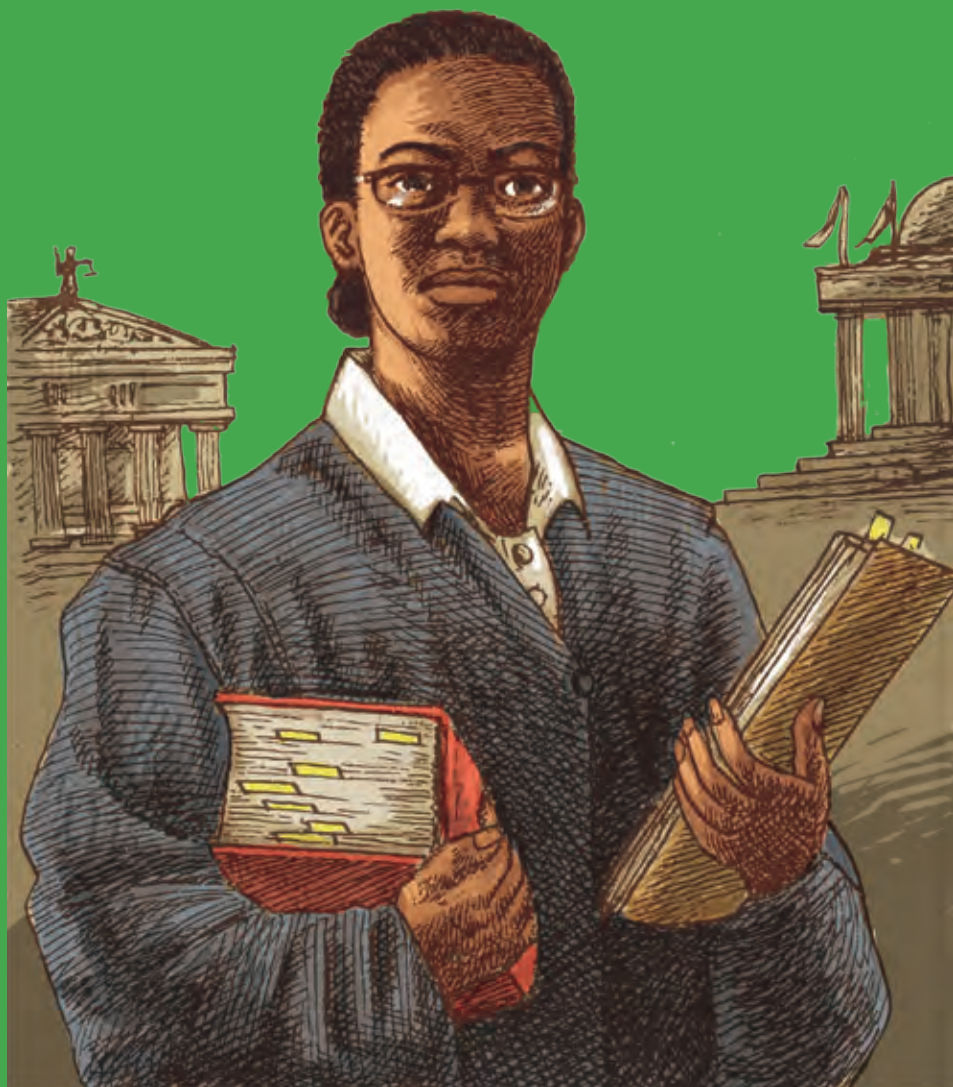
Girls in child marriages are especially vulnerable to infection by HIV and other sexually transmitted infections (STIs). This is partly related to their reduced ability to negotiate condom use but also because the tendency is for girls to marry older, more sexually experienced men who are more likely to have been exposed to STIs. This may also be because some child marriages are also polygynous marriages, which increases girls' exposure to their husband's lifetime sexual experiences. In Cameroon, 20% of married adolescent girls are in polygynous unions.¹¹ In sub-Saharan Africa, adolescent girls are between 2 and 6 times more likely to be HIV positive than boys.¹² Girls may also be biologically more vulnerable to HIV infection, as their vaginas are not well lined with protective cells and the cervix may therefore be more easily eroded.

10 Unicef, 2015 'A Profile of Child Marriage in Africa' available at http://data.unicef.org/corecode/uploads/document6/uploaded_pdfs/corecode/UNICEF-Child-Marriage-Brochure-High-Single_246.pdf (accessed 26 January 2016).

11 Unicef, 2015 'A Profile of Child Marriage in Africa' available at http://data.unicef.org/corecode/uploads/document6/uploaded_pdfs/corecode/UNICEF-Child-Marriage-Brochure-High-Single_246.pdf (accessed 26 January 2016).

12 International Centre for Women's Research, 2010 "Child Marriage Facts and Figures" available at <http://www.icrw.org/child-marriage-facts-and-figures> (accessed 26 February 2016).

CHAPTER 4: LAW



4.1 International and regional law on child marriage

4.1.1 International and regional legal frameworks

Child marriage is unequivocally identified as a human rights violation under both international and regional human rights law. The Universal Declaration of Human Rights, 1948 (UDHR) and the International Covenant on Civil and Political Rights, 1966 (ICCPR) both provide that no marriage shall be entered into without the free and full consent of the intending spouses.¹ Based on the assumption that many children, and especially younger child, are not sufficiently mature and therefore not able to give their free and full consent to marry, consensus under international law is that children should not be permitted to enter into marriage.

Under international law, an absolute minimum age of marriage is not immediately clear. Article 16(2) of CEDAW provides only that a minimum age for marriage must be specified and that the registration of all marriages in an official registry must be made compulsory.² However, in a General Recommendation issued by the CEDAW Committee in 1994, Article 16(2) was interpreted to require that the minimum age of marriage should be 18 for both men and women and that marriage should not be permitted unless both parties have attained the ‘full maturity and capacity to act’.³ Similarly, the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages provides that marriage shall not be entered into without the free consent of both parties.⁴

Regionally, the African Charter on the Rights and Welfare of the Child (African Children’s Charter) prohibits child marriage and the betrothal of boys and girls and requires States Parties to specify the minimum age of marriage to be 18 years.⁵ The Maputo Protocol similarly imposes a clear obligation on states to set the

1 Article 16(2) of the UDHR, available at <http://www.un.org/en/documents/udhr/> (accessed 10 June 2015), and article 23(3) of the ICCPR, available at <https://treaties.un.org/doc/Publication/UNTS/Volume%20999/volume-999-I-14668-English.pdf> (accessed 10 June 2015).

2 The Convention is available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CEDAW.aspx> (accessed 24 June 2015).

3 UN Committee on the Elimination of Discrimination Against Women (CEDAW), *CEDAW General Recommendation No. 21: Equality in Marriage and Family Relations*, 1994, paragraphs 36 to 39 available at: <http://www.refworld.org/docid/48abd52c0.html> (accessed 26 February 2016).

4 United Nations General Assembly resolution 1763 A (XVII) (1962), available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/MinimumAgeForMarriage.aspx> (accessed 24 June 2015).

5 Article 21(2), available at http://www.au.int/en/sites/default/files/Charter_En_African_Charter_on_the_Rights_and_Welfare_of_the_Child_AddisAbaba_July1990.pdf (accessed 10 June 2015).



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minimum age of marriage for women to be 18 years.⁶ The better view is that that these provisions are intended to apply to marriages in all its forms, whether civil, religious or customary as neither the African Children's Charter nor the Maputo Protocol provide for any exceptions to the minimum marriageable age of 18 years.

International and regional legal frameworks also contain a number of provisions aimed at the elimination of discrimination against women and at ending harmful practices. These provisions are relevant to child marriage because harmful practices have been determined either explicitly to include⁷ or accepted as including child marriage.⁸ Child marriage is both a manifestation of gender inequality and a reflection of the social norms that perpetuate discrimination against women. Child marriage has discriminatory effects, is incompatible with

6 Article 6(b).

7 The prohibition against child marriage contained in Article 21 of the African Children's Charter is contained in the provision that enshrines protection against harmful social and cultural practices.

8 See in this regard the criteria for determining harmful practices as prohibited by articles 19 and 24(3) of the CRC and article 2, 5 and 16 of CEDAW as developed by the CRC and CEDAW Committees and outlined in section V. of the Joint General Recommendation/Comment No. 31 of the CEDAW Committee and No. 18 of the CRC Committee on Harmful Practices, 2014.

the objects of equality and is a practice that is harmful and prejudicial to women and children. The prohibition against child marriage therefore also finds basis in provisions that prohibit discrimination and harmful practices. A number of these provisions create positive obligations on States Parties, requiring them actively to take measures aimed at combating discrimination and at modifying the social and cultural patterns that perpetuate gender inequality.⁹ Article 5 of the Maputo Protocol, which provides for the elimination of harmful practices, requires that States Parties take measures aimed at eradicating all practices that affect the rights of women. More broadly, however, the elimination of discrimination is also given as the overall purpose and object of the Maputo Protocol. It is this commitment that should be understood as having informed the design of the treaty generally and the prohibition against child marriage in particular.¹⁰

The commitment to ending discrimination, harmful practices and child marriage are interrelated not only with each other but also with a number of other rights. These include the right to education and training, economic and social welfare rights, the right to adequate housing and the right to a positive cultural context. If implemented, these provisions could see the eradication of many of the root causes of child marriage and would provide protection to women and girls who are married young.

All African countries have ratified at least one of the international or regional instruments mentioned above. In addition, many African countries have specified that international legal commitments should be taken into consideration when adjudicating domestic cases. Section 39(b) of the South African constitution, for example, dictates that international law must be considered when adjudicating a case. Similarly, section 215 of the 2006 constitution of the DRC provides that duly ratified international law is superior to national law.

In most countries studied, legal change required by treaty ratification is not always made at the constitutional level. One exception to this is Kenya, where the new constitution incorporates several aspects of treaties that the state has signed and ratified. Elsewhere, countries have passed legislation after ratification to create legally enforceable obligations on the government at the domestic level. After ratification of an instrument, a legislative act of the national assembly or parliament is generally required in order for that particular law to have force locally. For example, following ratification of CEDAW and the Maputo Protocol, the Gambia passed the Women's Act into law in 2010, which had as its object to incorporate and enforce provisions of CEDAW and the Maputo Protocol. In the same vein, Uganda passed the Prohibition of Female Genital Mutilation Act in 2010 and Kenya adopted a similar law in 2011.

9 Article 2, Maputo Protocol.

10 Preamble to the Maputo Protocol.

4.1.2 Jurisprudence

In 2014, the CEDAW Committee and the Committee on the Rights of the Child issued a joint general recommendation on harmful practices.¹¹ The joint General Comment contains authoritative guidance on legislative, policy and other measures recommended for full compliance with obligations under the two conventions. The Committees jointly acknowledged that harmful practices are deeply rooted in societal attitudes and are often based on stereotyped roles.

Obligations set out in both CEDAW and the Convention on the Rights of the Child (CRC) require that States Parties take effective and appropriate measures to address and eliminate harmful practices. In their joint General Comment, the committees noted that this includes but is not limited to:

- The establishment of well-defined rights-based and locally relevant holistic strategies which also encompass supportive legal and policy measures; and
- The promotion of educational programmes and changes at local, regional and national levels.

Concluding Observations issued at the United Nations level have included recommendations on specific action to end child marriage, such as amending legislation. Increasingly, however, they suggest that although legislative frameworks are important, legal change is a necessary but not sufficient factor in eradicating child marriage. In respect of Kenya and South Africa, for example, it has been noted in Concluding Observations that despite relatively strong legal provisions, child marriage still takes place in both countries.¹² The CRC Committee have recently stressed the need for Kenya to ensure implementation of existing laws that prohibit child marriage.¹³ Additionally, both the CEDAW and CRC Committees have made recommendations on non-legal measures. As an example, the CEDAW Committee recommended that Malawi adopt a comprehensive strategy aimed at modifying attitudes, stereotypes and practices that are harmful to women.¹⁴ Similarly, the CRC Committee have recommended

11 Joint General Recommendation No. 31 of the Committee on the Elimination of Discrimination against Women and General Comment No. 18 of the Committee on the Rights of the Child on harmful practices, available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15250&LangID=E> (accessed 25 June 2015).

12 CEDAW Committee's Concluding Observations for Kenya 5 April 2011; CEDAW Committee's concluding observation for South Africa 5 April 2011.

13 CRC Committee, 2016 Concluding Observations issued in respect of Kenya's third to fifth periodic reports available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16980&LangID=E> (accessed 16 March 2016).

14 CEDAW Committee, 2010 Concluding Observations issued in respect of Malawi's 6th periodic state report available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2FC%2FMW%2FCO%2F6 (accessed 16 March 2016).



that Uganda undertake sensitisation campaigns, particularly with local traditional leaders, on the negative impact that child marriage has on girls.¹⁵

There has been limited jurisprudence from the African Commission or the ACERWC in the form of concluding observations, perhaps because reporting has been very irregular. However, recommendations issued in respect of state reports submitted by the countries studied have covered issues relating to child marriage, such as increasing access to education, creating awareness about child marriage and reducing teenage pregnancy.

The African Peer Review Mechanism (APRM) is paying increasing attention to the prevalence and impact of child marriage in Africa. On several occasions, the Africa Peer Review Panel has recognised child marriage as an impediment to both the right to education and the achievement of gender equality. In 2006, a Country Review Report issued in respect of Kenya highlighted child marriages

¹⁵ CRC Committee, 2005 Concluding Observations issued in respect of the second periodic report submitted by Uganda available at <http://www.refworld.org/publisher,CRC,CONCOBSERVATION,S,UGA,45377eb70,0.html> (accessed 16 March 2016).



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as a constraint to the educational advancement of girls.¹⁶ The African Peer Review Panel proposed, under objective 8 of the Programme of Action for Kenya, the enactment of laws that protect children from child marriage.¹⁷ A 2009 Country Review Mission for Uganda similarly identified child marriage as one of the practices or norms that support the violation of women's rights and contribute to the high dropout rate of girls from school.¹⁸ The Country Review Mission recommended that, to address these challenges, Uganda needs to pass laws that discourage child marriage.¹⁹ The African Peer Review Panel has also recommended that Tanzania reform its legislation pertaining to the age of marriage, with a view to eliminating exceptions that allow for girls aged 14 and boys age 16 to marry, in contravention of regional and international commitments to which Tanzania is a

16 APRM Country Review Report for Kenya, 2006 at page 222. Available at: <http://aprm-au.org/view-publication?nxtpbdi=10&&publd=161> (accessed 26 January 2016).

17 APRM Country Review Report for Kenya n 16 above at page 336

18 APRM Country Review Report for Uganda No. 7, 2009 at page 101. Available at: <http://aprm-au.org/view-publication?nxtpbdi=10&&publd=164> (accessed 26 January 2016).

19 APRM Country Review Report for Uganda n18 above at page 271.

party.²⁰ Finally, a Country Review Report for Mozambique, issued in 2010 noted child marriage as a challenge to the realisation of women's rights in the country.²¹

4.2 Domestic law

4.2.1 Statutory law

Of the countries examined for this study, the Gambia, Kenya, Malawi, Mozambique, South Africa and Uganda have a legal framework that is largely based on British common law. The DRC, Mali and Mauritania, by contrast, have based their legal systems on French civil law. Cameroon is a bijural system, with the English common law operating in the two Anglophone regions of North West and South West and the French civil law operating in the eight francophone regions of Adamaoua, Centre, East, Far North, Littoral, North, West and South. Despite these broad differences of legal systems, most of the countries under study have formal legal prohibitions on or obstacles to child marriage.

In instances where child marriage is not addressed overtly by law, broader pieces of legislation and constitutional human rights protections can be inferred to limit or prohibit child marriage. For instance, many of the countries under study establish the right to form a family, the right to marry, the right to equality and the right to protection from discrimination in their respective constitutions. Legal commitments to gender equality and to the principle of the best interests of the child are also firmly established in a number of jurisdictions. Beyond the constitution, there are also other laws that seek to promote, protect and fulfil women and children's rights. Many countries have specific legislation seeking to regulate the rights and interests of children, including Kenya, Uganda, South Africa, Malawi, Mozambique and the Gambia. Generally, the existence of such legislation shows increased awareness of issues relating to children.

All of the countries under study define a minimum age for civil marriage and customary or other forms of marriage, where these are legally recognised. The Table below gives the formal minimum age of marriage for the different countries studied, citing relevant legislation.

20 APRM Country Review Report for Tanzania No. 17, 2013 at page 102. Available at: <http://aprm-au.org/view-publication?nxtpbdi=10&&pubId=174> (accessed 26 January 2016).

21 APRM Country Review Report for Mozambique, 2010 at page 147. Available at https://www.issafrica.org/uploads/APRM_Mozambique.pdf (accessed 23 January 2016).

Table 2: Domestic law on child marriage in the ten countries studied

Country	Legislation
Cameroon	The Civil Status Registration Ordinance No 81-02, 1981 provides that the minimum age of marriage is 15 for women and 18 for men.
DRC	In terms of the Child Protection Code of 2009, the engagement and marriage of a child is prohibited. According to Article 352 of the Family Code, boys below age 18 and girls below age 15 may not enter a marriage.
The Gambia	With regard to family law, four different legal systems are in operation and are recognised under article 7 of the 1997 Constitution – civil, customary, Christian and Sharia. While child marriage and betrothal are formally prohibited under civil law, this law defers to customary and religious systems of law, which typically allow child marriage.
Kenya	The Marriage Act of 2008 and the Constitution of 2010 provide 18 as the minimum age for marriage for both women and men.
Malawi	The Marriage, Divorce and Family Relations Act specifies 18 as the minimum age of marriage for women and men. This is however subject to the Constitution of Malawi which provides under section 22(7) that ‘for persons between the age of fifteen and eighteen years, a marriages shall only be entered into with the consent of their parents or guardians.’ It proceeds to indicate under sub section 8 that the state shall actively discourage marriage between persons where either of them is under the age of fifteen years.’
Mali	The Code of Persons and the Family 2011 provides 18 years as the minimum legal age for civil marriage for both women and men.
Mauritania	The Personal Status Code of 2001 provides 18 years as the minimum age for civil marriage for both women and men.
Mozambique	The Family Law of 2004 provides 18 years as the minimum legal age for marriage for both men and women. Exceptionally, marriage can be authorised from the age of 16 years, in the event of pregnancy or with consent of the parents or legal representatives.
South Africa	The Marriage Act of 1961, the Civil Union Act of 2006 and the Recognition of Customary Marriages Act of 1998 provide that the minimum age of marriage is 18 years but both the Marriage Act and the Recognition of Customary Marriages Act recognise exceptions.
Uganda	The Constitution sets the minimum age for marriage at 18, and specifies ‘men and women are entitled to equal rights in marriage, during marriage and at its dissolution.’ However, the Customary Marriages (Registration) Act 1973 states that the minimum age for customary marriage is 18 years for men and 16 years for women.

It should be clear that, with a few exceptions, most of the countries under study adopt the international standard of requiring 18 years as the legal minimum age of marriage for both women and men in the main statutes governing marriage. However, exceptions to this minimum age are often recognised, either in the same of other statutes. Very frequently, for example, the law will allow for a child to be married provided that the parent or guardian of the child consents.

In South Africa, both girls and boys below age 18 may be married with the consent of a guardian, and girls below the age of 15 can be married with

permission from the Minister of Home Affairs. Mozambique similarly allows for marriages to take place where an intended spouse is younger than 18, provided it is supported by the child's guardians. While the constitution of Uganda establishes the minimum age for marriage to be 18, the only minimum age mentioned in the Marriage Act is 21 years and persons younger than this can be married with the consent of a guardian. In Kenya, the Marriage Act allows for a child to be married if a guardian of the child provides written consent.

In most of the countries studied, sanctions for non compliance with statutory laws on the minimum age of marriage have done little to curb the practice of child marriage. In Kenya, the Marriage Act criminalises the act of marrying or marrying off a child with the caveat that this is excusable where the person with custody of the child swears by affidavit. However, although marrying or marrying off a child constitutes a criminal offence, the crime is not punishable in terms of the Marriage Act. The consummation of the marriage will be punishable in terms of the Sexual Offences Act, although this serves only to criminalise acts and events that happen after the marriage has taken place.

In South Africa there are no direct legal sanctions for child marriage. The newly signed Prevention and Combating of Trafficking in Persons Act is, however, clear on the legal sanctions that apply if a person concludes a forced marriage with another person and presumably, this could see application even in circumstances where parental consent is obtained. Upon conviction, a person who concludes a forced marriage is liable for a fine or imprisonment or both.²² In Malawi, the Child Care Protection and Justice Act (sections 81 and 83) provides that a person who forces a child into marriage shall be liable to imprisonment for 10 years.

Whether legal sanctions and remedies are likely to have a deterrent effect on the practice of child marriage depends ultimately on enforcement, which is discussed separately.

4.2.2 Customary and religious law

All countries that were the focus of this study operate under regimes of legal pluralism where both civil legislation and customary or religious law is applicable simultaneously. Consequently, customary and religious law is constitutionally recognised in most of the countries studied, although the extent to which it is authoritative varies. The recognition of customary law is, however, generally subject to national legislation.

Not all countries studied specify a minimum age for marriage under customary or religious law. In the Gambia, Mali and Mauritania, there is no minimum age of

22 South Africa submission to CHR.

marriage under Islamic Shariah law, which is the dominant tradition governing family law. In the Children's Act of the Gambia, it is stipulated that 'subject to the provisions of any applicable personal law, no child is capable of contracting a valid marriage, and a marriage so contracted is voidable.' But 'any applicable personal law' includes Shariah law, which permits marriage upon physical maturity, a life event that often occurs well before the age of 18. Since approximately 95% of the population falls under Shariah law, child marriage therefore remains a common and effectively legal practice in the Gambia.

4.3 Enforcement of laws on child marriage

Laws that prohibit child marriage are necessary but not sufficient to eliminate the practice in reality. In most of the countries studied, the introduction of new statutory legal sanctions and remedies determined by courts has in fact gone alongside increasing prevalence of the practice. A large part of the explanation for this is that legal sanctions and remedies are only likely to have a deterrent effect if they are effectively enforced. Such enforcement presents a challenge in the countries under study, particularly because these laws concern 'private' family matters.

Enforcement and monitoring mechanisms are mostly judicial and institutional, taking the form of courts and National Human Rights Commissions, Ombudspersons and Equality Commissions. While some countries have relatively strong judicial systems with good access to justice for women and children, in other countries those seeking to use judicial mechanisms to deal with child marriage face tremendous obstacles. In the most extreme instances, namely the DRC and Mali, the enforcement of statutes and constitutional protections have been severely weakened in general by on going civil strife. In the DRC, conditions in prison are deplorable and many of those convicted are released fraudulently because of the high level of corruption.²³

Even in countries where the administration of law operates effectively, cases of child marriage are often diverted from the state legal system. A major reason for this is that child marriage mostly occurs under customary or religious law, and any disputes that arise tend to be resolved under the auspices of customary or religious authorities. The legal proceedings conducted by these authorities often do not generate a written record, which limits the possibility of developing a nationally consistent body of law. Taking the example of Malawi, it is reported that customary proceedings often tend to prioritise community cohesion over

²³ United Nations Mission in the Democratic Republic of the Congo 'Report on Detention in DRC Prisons and Dungeons' (2004); Treasure Kibangula 'Prisons in the DRC: Conditions deemed "catastrophic" by the ICRC' *Jeune Afrique*, 25 April 2013

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justice for victims, meaning that criminal sanctions are not applied.²⁴ Moreover, the authorities charged with adjudicating the case may support the practice of child marriage, and may even have been involved in deciding that the marriage at issue would take place.

Even in the state justice system, judges in many jurisdictions are in support of customs that condone child marriage and so will not apply criminal sanctions if cases appear in court. In South Africa, a High Court judge has publicly argued that a child marriage conducted according to the *ukuthwala* custom should be recognised as valid. In the Gambia, a court ordered the refund of a dowry paid for the marriage of a 15-year-old child instead of ordering the prosecution of the husband who had clearly married the girl as a child in contravention of the law.

There are various other reasons why it is difficult to prosecute perpetrators of child marriage via formal legal proceedings. In the Gambia, it is reported that lawyers are unaffordable to most people, which means that cases cannot

²⁴ Human Rights Watch "I've never experienced happiness: Child marriage in Malawi" (March 2014), available at http://www.hrw.org/sites/default/files/reports/malawi0314_ForUpload.pdf (accessed 26 June 2015).

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be brought to court. In many instances, girls are forced into marriage by their own families, which make it unlikely for the child marriage to be reported at all. Even where relevant authorities are notified, it is often immensely difficult to prosecute because the offenders are also the main witnesses to the events. Even where matters are reported to the police and brought to court, cases often collapse because of societal and economic pressure on the girl to withdraw her complaint.

There have, however, been a number of cases where authorities have successfully secured convictions of perpetrators. In South Africa, the High Court sentenced 32-year-old Mvumeleni Jezile to 22 years in prison for abducting and forcibly marrying a 14 year-old girl under the *ukuthwala* custom, with the assistance of the girl's grandmother. In the Gambia successful prosecution was initiated against a family after they married off a 16-year-old girl to a man who had abducted the girl and took her to Angola. Very recently, in a bold judgment handed down by the constitutional court in Zimbabwe in early 2016, the court ruled that marriage before the age of 18 is illegal following an application by two women who sought to have the legal age of married changed to 18 for both women and men.

With regards to non-judicial mechanisms, the National Human Rights Institutions in Uganda and Kenya have been active in dealing with cases related to child marriage. The ombudsperson in Mozambique has also been relatively active about issues concerning children. Continentally, a number of national human rights institutions belonging to the Commonwealth signed onto the Kigali Declaration in 2015 to declare their support to ending child marriage, including through monitoring and enforcement of legislation, improving data collection and promoting compulsory education for girls.

CHAPTER 5: INTERVENTIONS



CHAPTER 5: INTERVENTIONS

Many states and non-governmental organisations in the countries under study have attempted to reduce the prevalence of child marriage or mitigate its impact by means other than advocating for legal prohibitions of the practice. Similarly, local community initiatives and organisations working at the continental level have led effective interventions aimed at ending child marriage.

5.1 Improved enforcement and remedial measures

Although many countries in the region criminalise child marriage and other harmful practices, they generally fail to enforce the relevant laws effectively. In part, this is attributable to commonly held perceptions that regard matters relating to marriage and family life as private and outside of the purview of the law. These characterisations, which are used to justify restrictive interpretations of state accountability for child marriage, complicate enforcement. However, several countries studied have taken measures to improve enforcement capacity, either in the national judicial system or at the local and extrajudicial level.

In Malawi, for example, there has been a significant drive to improve support services for women and children who are survivors of rape, gender-based violence and abuse within the family. Police Victim Support Units, Community Victim Support Units and a National Child Helpline have been established. A 2011 impact study of judicial and quasi-judicial activities in Malawi suggests that these efforts have been effective. The study identified the child justice system as working remarkably well and framed it as a model for the region.¹ Attempts have also been made to involve customary authorities in the protection of children's rights in Malawi. For instance, local chiefs in the Karonga district have been trained to create stringent local bylaws around child marriage, which typically involve a fine for anyone forcing a child to marry before they have completed their education. These bylaws have not only been effective in deterring child marriage, but the money from fines is usually donated to local schools, amplifying the positive impact of this intervention. In Malawi's Dedza district, female chief Theresa Kachindamoto required 51 sub chiefs to sign an agreement in 2007 forbidding the marriage of children under the age of 18.

1 Frontier Consulting 2003 "SSAJ Impact Study: Malawi" as quoted in UNICEF "Malawi Child Protection Strategy 2012–2016" (2011), available at http://www.unicef.org/malawi/MLW_resources_childprotecstrategy.pdf (accessed 28 June 2015).



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Undeterred by strong opposition and threats of violence, chief Kachindamoto has conducted door to door tours, arranged sit downs with community groups, persuaded people in the value of education and annulled over 850 unions in the past two years.²

A number of local districts in Uganda have also enacted bylaws to address the child marriage at the community level. District local councils in Lwengo, Kasese, Ntoroko and Kabarole have all passed bylaws on child marriages and they are assisted by administrative unit councils in the implementation of these laws.

FGM is sometimes a precursor to child marriage and in Kenya the government's response has been to tackle the two practices jointly. In 2013 the government of Kenya established an Anti-FGM Advisory Board, to coordinate implementation of Kenya's FGM Act of 2011. Through this, a dedicated Anti FGM and Child Marriage Prosecution Office was established in the Office of the Director of Public Prosecutions to fast track the prosecution of FGM and child marriage cases.

² Hannah McNeish. 2016 "How Malawi Chief Theresa Kachindamoto is working to stop child marriage" available at <http://www.one.org/international/blog/how-malawi-chief-theresa-kachindamoto-is-working-to-stop-child-marriage/> (accessed 15 March 2016).

Importantly, the Anti FGM Board is resourced to carry out activities and has been able to staff and train relevant units to carry out its objectives. Law enforcement campaigns have been conducted at the community level, working with religious leaders and the Council of Elders as an entry point to communities.

National Human Rights Institutions in the countries studied and across the continent are also taking an increasingly active role in enforcing the prohibition on child marriage. In 2015, Human Rights Commissions in Cameroon, Kenya, Malawi, Uganda and a number of other commonwealth nations signed on to the Kigali Declaration on the prevention and elimination of child marriage. Among other things, this declaration commits national human rights institutions to develop their institutional capacities to handle complaints and conduct investigations on child marriage, strengthen their monitoring and enforcement of relevant laws on child marriage, develop practical plans for preventing child marriage and develop mechanisms of referral to appropriate services.³

The South African Commission for Gender Equality, an independent statutory body created by the constitution, carried out an investigation into the practice of *ukuthwala* in 2012. The investigation assessed gaps in the state's prevention and response efforts and a number of recommendations were made, including around the development of clearer protocols, training in how to report and respond to cases of *ukuthwala* and the need for improved monitoring, oversight and accountability.⁴

In 2013, South Africa passed the Prevention and Combating of Trafficking in Persons Act, which may make it easier to prosecute some abuses associated with child marriage. Section 4(2)(b) provides that any person who concludes a forced marriage with another person for the purposes of exploitation of that person is guilty of an offence. Parents and relatives who force a child into marriage for financial or other gain can potentially be prosecuted under provisions which criminalise the transfer, harbouring or receipt of persons by means of force, intimidation or other forms of coercion or by abusing vulnerability, for the purpose of exploitation. Similarly, the Prevention of Trafficking in Persons Act of Uganda could be used to prevent child marriages from taking place. However, since being passed in 2009 it has not been used as extensively as it could be as a means for enforcing the prohibition against child marriage.

3 The Kigali Declaration signed in Kigali in May 2015 available at <http://thecommonwealth.org/sites/default/files/press-release/documents/Early%20and%20Forced%20Marriage%20-%20Kigali%20Declaration.pdf> (accessed 16 March 2016).

4 South African Commission for Gender Equality. 2012 *Ukuthwala in KwaZulu Natal: An Investigation into State Prevention and Response* available at <http://pmg-assets.s3-website-eu-west-1.amazonaws.com/130320ukuthwala.pdf> (accessed 16 March 2016).

5.2 Education policies

Recognising the connections between poverty and low educational achievement for girls and child marriage, many governments across the region have attempted to address child marriage by tackling the unequal effects of poverty on women. This has seen a push to make schooling and healthcare more accessible to girls. In the Gambia, Kenya, Mozambique and Uganda, national policies on reproductive and child health, national youth policies and national gender and empowerment policies have been implemented. These policies often involve coordination between different government departments, including those responsible for health, social welfare, gender, and education and family matters. Cameroon has adopted a National Policy on Gender, which aims at the eradication of inequalities between men and women, including child marriage, and focuses on access to education for girls and the creation of economic opportunities for women. Similarly, in Mozambique a Gender Strategy for the Education Sector was adopted in 2011 and set goals for the achievement of equal rights and opportunities for girls by 2015. This policy recognised the need to promote girls' secondary school attendance, including through scholarships and thematic campaigns which addressed the barriers to education.

Education is considered to be the most significant factor delaying the age at which girls are married and for this reason, it is not surprising that there are a significant number of child marriage programmes which are aimed at keeping girls in school.⁵ Malawi has put in place a number of programmes to promote education for women and girls. For instance, school feeding programmes have been instituted in primary schools and government have attempted to provide more toilet facilities in schools. This is important since issues around sanitation often discourage girls from attending school once they reach puberty. Since 2007, Malawi has also had a policy for readmitting and reintegrating girls who have dropped out of school due to pregnancy, which includes the subsidisation of school fees. Girls are being encouraged to pursue secondary education by the provision of government bursaries, the introduction of evening classes for day schools, and by the construction of more public boarding schools. The Safe School Programme aims to address the prevalence of gender-based violence in schools. Finally, to mitigate gender disparities in tertiary education, more university residences have been constructed for female students and universities now face a quota for the admission of women.

In Kenya, attempts have been made to accommodate more flexible school timetables that allow children to attend schools in the evenings or shift the annual

5 Mathur, S. M. Greene and A. Malhotra. 2003 "Too Young to Wed: The Lives, Rights and Health of Young Married Girls" International Centre for Research on Women, Washington, DC.



Stephan Gladieu/World Bank

school programme so that those involved in seasonal tasks like harvesting crops are not excluded. These changes have been shown to reduce the dropout rate in areas where outside social and economic factors pose a serious threat to consistent attendance, particularly for girls. Organisations in Kenya have also tried to incentivise girls' attendance at school through payment of a stipend to the families of girls who stay in school to substitute for any bride wealth that might otherwise be collected.⁶ In addition to cash incentives, one programme in Western Kenya provided free school uniforms to girls as an incentive for them to stay in school. This led to a 17% reduction in the incidence of child marriage at the schools which participated in the programme.⁷ The Ministry of Basic and Secondary Education in the Gambia recently introduced a School Improvement Grant aimed at reducing

6 This initiative was established by the Christian Children's Fund in 1999 and is an approach which targets the prevention of child marriage amongst members of the Massai community in Kenya available at <https://www.childfund.org/media/article.aspx?id=426.aspx> (accessed 15 March 2016).

7 Esther Duflo, Pascaline Dupas, Michael Kremer and Samuel Sinei. 2006. "Preventing HIV and Teen Pregnancy in Kenya: The Role of Teacher Training and Education Subsidies" Poverty Action Lab available at <https://www.povertyactionlab.org/evaluation/preventing-hiv-and-teen-pregnancy-kenya-roles-teacher-training-and-education-subsidies> (accessed 15 March 2016).



UK Department for International Development

the burden of school fees and setting limits on costs associated with school going.

Although progress was made in the DRC between 2003 and 2007 to accelerate the education of girls, conflict since 2010 resulted in a decrease in the enrolment rate for girls.⁸ The government of the DRC is providing support to some civil society organisations so as to ensure that girls are able to access education.

Policies that allow for the expulsion of pregnant girls from schools or bar their re-entry after giving birth impact negatively on girls' retention in schools and fuel child marriages, as girls are often expected to marry the men responsible for their pregnancy. Article 11 of the African Children's Charter provides for the protection of pregnant girls and gives them the right to continue their education after giving birth. The Addis Ababa Declaration on Population and Development in Africa underlines these protections, calling on governments to create supportive environments that allow for married and pregnant girls to stay in or return to school.⁹ Despite these commitments, a number of countries still do not have clear policies around the management of learner pregnancy. For example, although the Ugandan National Examination Policy allows for pregnant girls to sit for their exams, it is unclear

8 Open Society Initiative for Southern Africa. 2012. "Cursed by Conflict: Education in the DRC" available at <http://www.osisa.org/education/blog/cursed-conflict-education-drc> (accessed 15 March 2015).

9 Addis Ababa Declaration on Population and Development in Africa Beyond 2014 available at <http://icpdbeyondbeyond2014.org/pages/view/6-africa> (accessed 16 March 2016).

whether they may attend classes. Similarly, while a 1993 policy established by the Malawian Ministry of Education provides that mothers may return to school after giving birth, they can only be readmitted once and only after they have sent written requests to both the Ministry of Education and the school they wish to attend. In South Africa, a 2007 National Pregnancy Prevention Measures made it permissible for schools to exclude pregnant learners for a period of up to two years. This policy was found to be unconstitutional and is currently being revised.

Where laws and policies do not provide clearly for the management of learner pregnancy, they are often treated from a punitive and discriminatory perspective. Generally, in the absence of laws and policies, boys are allowed to continue with schooling after they become fathers but young mothers are alienated and prevented from continuing with their education if they give birth. Kenya is a notable exception in this regard and the Kenyan National School Health Policy articulates specific actions that should be taken to support girls in returning to school after they have a child.¹⁰ The policy encourage girls to stay in school for as long as possible and places significant emphasis on counselling and the need to avoid emotional trauma. The Gambian Women's Act prohibits the expulsion of a female learner from a school on account of her pregnancy. In terms of section 27, girls are allowed to take absence from school during the period of pregnancy but must be afforded the opportunity to return to school and may expressly not be expelled on account of the pregnancy.

5.3 Public education

Because there is often significant support for the practice of child marriage in communities, the problem cannot be definitively tackled without changes in attitude. Therefore many governments and NGOs, both international and domestic, as well as local community groups, have put in place public education and awareness-raising programmes to address attitudes.

In the Gambia, Uganda and Mozambique, the international NGO Save the Children runs projects to help create awareness about child marriage. Organisations in the Gambia, South Africa, Kenya, Mozambique and Uganda have also joined the international organisation *Girls not Brides*, which aims to coordinate the work of various NGOs in campaigning against child marriage.

In Uganda, the international NGO BRAC has set up youth clubs with the consent of village leaders to provide a forum for girls to socialise, write songs and poetry, play games and receive training in financial literacy, tailoring, agricultural and other skills. These clubs facilitate the discussion of issues such as rape, family planning

¹⁰ Kenya National School Health Policy 2011 to 2015 available at <https://child.org/sites/default/files/KenyaNationalSchoolHealthStrategy.pdf> (accessed 16 March 2016).

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and contraception, with an overriding message that child marriage and early pregnancy end in poverty. A mentor, who is a girl selected from the community and trained by BRAC, heads the group discussion. The NGO Plan International has also launched the campaign 18+ in four countries, including Malawi and Mozambique, to encourage girls themselves to participate in advocacy for ending child marriage.

A Parliament for the Youth and the Child has been established in the DRC and gives children the opportunity to express themselves on problems affecting their lives. The aim is to build relations with relevant NGOs, political parties and individuals in order to raise awareness about child rights. Also in the DRC, the *I denounce* campaign aims to help women publicly discuss sexual violence. In Kenya, the Co-exist Initiative, a community-based organisation, is working with men and boys to eliminate all forms of gender-based violence. It focuses on raising awareness of the harmful impact of child marriage through media and entertainment, and also reaches out to traditional leaders and communities.

At the continental level, the approach of working with men and boys and engaging traditional and religious leaders is widely endorsed. Commitments 9 and 10 of the Kigali Declaration support this approach and in the Common Position on the AU's Campaign to End Child Marriage, African Heads of State and Government of the AU's member states agreed on the need to promote the participation of men, particularly fathers, and religious leaders in opposing child marriage.¹¹ In September 2015, African leaders joined other governments in adopting the UN Sustainable Development Goals, which include a target to ending child marriage by 2030. Declarations and political commitments which are issued collectively and in the public eye can help to generate awareness about child marriage and reinforce legal commitment to ending it. However, following through on these commitments requires that at the national level, promises are matched with comprehensive, well-resourced, coordinated and sustained national strategies and action.¹²

In 2014, the government of Mali launched a wide scale national campaign together with local organisations to sensitise the citizens of Mali on the root causes and consequences of child marriage. Civil society also has a role to play and, in the Gambia, have been active in generating public knowledge around child marriage.

11 Commitments 9 and 10 of the Kigali Declaration, adopted in May 2015 by national human rights institutions in several commonwealth countries and available at <http://thecommonwealth.org/sites/default/files/press-release/documents/Early%20and%20Forced%20Marriage%20-%20Kigali%20Declaration.pdf> (accessed 16 March 2016) and Commitment 9 of the African union Common Position on the AU Campaign to End Child Marriage, adopted by African Heads of State and Government in July 2015 available at <http://pages.au.int/cecm/documents/african-common-position-au-campaign-end-child-marriage-africa> (accessed 16 March 2016).

12 Human Rights Watch, 2015 "Africa: Strengthen Steps to End Child Marriage" available at <https://www.hrw.org/news/2015/12/09/africa-strengthen-steps-end-child-marriage> (accessed 16 March 2016).



The Child Protection Alliance conducts training for parents and communities and produces fortnightly radio programmes. Through their child rights advocacy group, Voice of the Young, children below 18 years are encouraged to advocate for the promotion and protection of their rights. The Gambia Committee on Traditional Practices Affecting the Health of Women and Children undertakes advocacy on sexual and reproductive health and rights and children's rights, through community sensitisation, action research, capacity building and training of community educators.

There have also been successful advocacy campaigns in Malawi. The Girls Empowerment Network in Malawi (GENET) has implemented a widespread advocacy campaign to call for the elimination of harmful traditional practices that subject girls to sexual, emotional and physical abuse and violence. Through collaborative effort, GENET has rescued several girls from forced marriages. The UNFPA has worked with Malawi's National Youth Council to lobby parliamentarians in an effort that led to the adoption of legislation in 2015 that set 18 as the minimum age of marriage. The campaign also resulted in a Joint United Nations Programme on Adolescent Girls that supports the Malawian government and partners to target girls at risk of child marriage for non-formal education, protection from violence,

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mentorship, and access to sexual and reproductive health and HIV services. Through this programme, girls in the area of Masache in Chikhwawa district who dropped out of school because of child marriage and pregnancy have been able to resume their studies. Since its commencement in 2011, Senior Village Headman Lombe boasts that no cases of child marriage in this area have been reported to him. The National Youth Council of Malawi launched a 'Stop early marriage' campaign in 2009, alongside improved life-skills education in primary school, to help girls make informed decisions about sexual health and help them remain in school. 'Mother Groups' have also been established in Malawi to advocate for girls' education in the community, and to influence policy decisions through lobbying.

In South Africa the Department of Social Development is the lead department for the national multi-sectoral Child Protection Week campaign, during which awareness is raised through educational talks, radio talks and promotional materials. The campaign is specifically focused on marginalised communities. The South African government has also produced radio campaigns on various topics, including the Child Justice Act, to inform community members in their home languages about the criminal justice system as it relates to children. In Uganda in 2012, the UNFPA organised an online twitter discussion between officials from the government, UNICEF and the UNFPA on issues of concern about girls, including the issue of child marriage.

5.4 Poverty reduction and basic service delivery

Poverty, unemployment and child marriage create a vicious cycle in many countries. Recognising these links, the governments of the Gambia and Uganda have introduced initiatives to address poverty. National action plans to create more jobs have been created, such as the Programme for Accelerated Growth and Employment (PAGE) in the Gambia. Uganda and Kenya have also introduced national action plans in the health domain to address issues such as HIV, and these have the added benefit of combating some negative effects of child marriage. In Uganda, the National Guidelines and Service Standards on Sexual and Reproductive Health and Rights and the National Population Policy Action Plan address the issue of responsible sexual behaviour and HIV and AIDS. Some African countries appreciate the importance of sexual and reproductive health and rights and have adopted policies to ensure that these rights are protected. The Gambia Committee on Traditional Practices Affecting the Health of Women and Children, for example, focuses on advocacy on sexual and reproductive health and rights as well as children's rights. In South Africa, the National Adolescent Friendly Clinic Initiative is an attempt to make health care facilities, and particularly reproductive health services, more accessible to young people.

CHAPTER 6: RECOMMENDATIONS



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Child marriage is a complex issue and ending it requires that a range of stakeholders address the multiple social and economic drivers that cause and perpetuate it. Alongside stronger laws and policies to prevent child marriage, there is a need for better implementation and enforcement of laws and policies and increased public awareness about the risks and laws relating to child marriage. Recognising that there are strong links between poverty and child marriage, the most recent research and recommendations emphasise the need to address poverty and suggest providing incentives to families and girls that delay marriage.¹ These approaches recognise that child marriage has roots in economic needs. The focus of these recommendations is to address the difficult contexts in which families are forced to make decisions about their daughters' marriages.² However, although these recommendations emphasise the need to address economic drivers, they also stress that it is important to address, simultaneously, the social drivers of child marriage and the perceptions about women and girls in society that cause harm.³

The recommendations set out below suggest a range of social and economic interventions around prevention, protection and responses to child marriage. Although these recommendations target specific stakeholders, it is important to emphasise that for any of them to be effective, interventions must be well coordinated, comprehensive (covering a range of social and economic drivers) and adequately resourced.

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- 1 Parsons, J and McCleary-Sills, J for the World Bank Group, 2014 "Preventing Child Marriage: Lessons from World Bank Group Gender Impact Evaluations" available at <http://www.worldbank.org/content/dam/Worldbank/document/Gender/enGENDER%20IMPACT%20-%20Research%20Brief%20Early%20Marriage%2008.07.pdf> (accessed 17 March 2016) and see also recommendations following research conducted by the Population Council and released in 2015 "Building an Evidence Base to Delay Marriage in Sub-Saharan Africa" available at <http://www.popcouncil.org/research/building-an-evidence-base-to-delay-marriage-in-sub-saharan-africa> (accessed 17 March 2016) and see also Jain, S and Kurz, K for the International Center for Research on women on behalf of Pact Inc, 2007 "New Insights on preventing Child Marriage: A Global Analysis of Factors and Programmes" available at <http://www.icrw.org/sites/default/files/publications/New-Insights-on-Preventing-Child-Marriage.pdf> (accessed 16 March 2016).
 - 2 Population Council, 2015 "New Research from the Population Council Shows Child Marriage Can be Delayed" available at <http://www.popcouncil.org/news/new-research-from-the-population-council-shows-child-marriage-can-be-delaye> (accessed 16 March 2016).
 - 3 Ibid.



Albert Gonzalez Farran/UNAMID

6.1 Recommendations for prevention

To prevent child marriages from occurring, it is recommended that:

- The African Union continues to take a leading role in promoting and coordinating continental efforts to prevent child marriage. In addition, the African Union should also deepen its role in promoting and protecting women's rights and development across the continent. The year 2016 has been declared as the African Year of Human Rights with a Particular Focus on the Rights of Women.⁴ Against this context, a number of campaigns and efforts have been dedicated to pursue and support realisation of the rights of women across Africa. The prevention of child marriage is fundamental to this objective and should be a key priority until such time that child marriage is totally eradicated.

At the state level, it is recommended that legislators and policy makers undertake

4 Press Release issued by the African Union available at <http://www.au.int/en/pressreleases/19615/2016-african-year-human-rights-particular-focus-rights-women> (accessed August 2016).

law reform, whether through the enactment, amendment or harmonisation of laws to prevent child marriage. These laws should meet the following requirements:

- Laws should set the minimum age of marriage at 18 years for both boys and girls. This prohibition on child marriage must extend to all forms of marriage, including customary and religious marriages, and no exceptions or qualification to this minimum age should be tolerated.
- Where systems of law or laws within a system are in conflict, they must be harmonised.
- To aid in enforcing the prohibition against child marriage, national laws must require and facilitate the registration of all births and marriages.
- Laws and policies must support girls' education and encourage girls to stay in school for as long as possible and to return to school after pregnancy.

To ensure that laws and policies which prohibit child marriage are implemented effectively, it is recommended that states:

- Improve mechanisms to facilitate birth and marriage registration, including by making it free and accessible.
- Ensure that all officers of the state are adequately trained on issues relating to child marriage. Marriage officers must be trained on the prohibition against child marriage, marriage registration procedures and how to check and require that parties to a marriage are 18 years or older. The police and other law enforcement officers should be trained on how to prevent, react and respond to potential child marriages. All relevant officers of the state should be trained on where to refer parties at risk of or involved in a child marriage. This includes referral to counseling, healthcare and other services and legal and remedial actions that may be taken.
- School teachers should be made aware of laws relating to child marriage and should be encouraged to (i) raise awareness amongst children and parents about the illegal and harmful nature of child marriage and the benefits of staying in school; (ii) report suspected child marriage; (iii) facilitate referral to service providers; and (iv) encourage and help to facilitate girls re-entry to schools following pregnancy.

It is further recommended that states take measures to enforce the prohibition against child marriage and related offences. Enforcement measures should include:

- Strong policy frameworks that prohibit child marriage.
- Facilitating and enforcing the requirement that all births and marriages are registered.
- Monitoring data to ensure that child marriages are not being concluded or

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- registered and, if they are, taking action against marriage officers as required.
- Establishing strong referral mechanisms and a strong network of service providers to respond to potential child marriages.
 - Establishing specialised prosecutorial units to handle and resolve cases of child marriage. These units may be most effective if they are based in areas with high concentrations of child marriage.
 - Judicial officers should be trained to enforce compliance with the legal prohibition against child marriage.
 - To support enforcement, states must design campaigns and interventions aimed at generating broad public awareness about the prohibition against child marriage and actions that can be taken to enforce this prohibition. State and independent media agencies should be engaged to support information and public awareness campaigns and a variety of media channels, including print media, television, radio and community radio stations should be used.

Measures taken to enact, implement and enforce laws relating to child marriage need to be supported by clear policies. Comprehensive National Action Plans should be developed to serve as the primary policy guide for child marriage prevention and response. National Action Plans should ensure that interventions are coordinated and supported across all levels of state and non-state actors. It is recommended that National Action Plans:

- Are developed collaboratively between representatives of the state, civil society, nongovernmental organisations, national human rights institutions, religious leaders, legislators, the judiciary, children at risk or affected by child marriage and their families and any other relevant stakeholders.
- National Action Plans should be guided by the principle of the best interests of the child, appropriate for the particular cultural context and consistent with international and regional human rights law.
- National Action Plans should set out clear strategies to:
 - Build awareness about child marriage, its impacts and the laws that prohibit child marriage;
 - Ensure the availability of courts in which victims can seek protection of their rights;
 - Encourage people to report child marriage and suspected child marriage; and
 - Train government officials, judicial officers, law enforcement officials, teachers, health and other service providers, those working with immigrants and asylum seekers and other relevant stakeholders on

applicable laws and policies, how to identify girls at risk, how to respond to suspected child marriage and how to address the needs of victims. A core component of training programmes must be focused on training civil status officers on the importance of marriage registration and the age and consent requirements that are intended to prevent child marriage.

It is further recommended that through all relevant machinery, states undertake institutional and other measures, including policy interventions, aimed at preventing child marriage. To prevent child marriage, these measures should:

- Improve girls' access to formal education and keep girls in school. Girls should be encouraged to stay in school as long as possible and to return to school after pregnancy. It is recommended that states consider schemes like cash subsidies or free school uniforms to encourage girls and their families to value girl's education. Flexible timetabling is also recommended where it may help to promote girls attendance in schools.
- Address poverty and in particular, extend economic opportunities to girls and families in areas where child marriage is highly prevalent. Investments should be made in alternatives to child marriage that enhance the economic and employment prospects of girls, such as building factories or schools.
- Address gender inequality and eliminate discrimination against women. States should take measures which are aimed at changing attitudes and beliefs that cause harm to women and girls. Discrimination, whether in law or in fact, should not be tolerated and corrective measures and positive action should be taken to combat it. Practices that perpetuate child marriage must be tackled through advocacy, awareness raising and community engagement.
- Ensure that adequate sexual and reproductive health services are accessible and sufficient to meet the needs of adolescent girls. Services should be complemented by comprehensive sexuality education policies.
- Improve on data collection efforts. The lack of a data collection, collation and analysis system for child rights and protection issues was noted as a concern in several of the countries analysed for this study. Adequate and disaggregated data should be collected to inform planning and programmatic interventions and it is urgent that states institute systems that will make data more readily available. Data, which is disaggregated by age, gender and other relevant characteristics, should be collected on marriage, birth, school attendance and health indicators. This data should be reviewed regularly to inform programme revisions and should be submitted to relevant treaty bodies on a regular basis.

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- Similarly, monitoring and evaluation mechanisms at the state level, which are often weak or inadequate, can help to determine the efficiency and cost-effectiveness of programmes, projects and other measures taken by state and non-state actors to prevent child marriage. Effective monitoring and evaluation mechanisms should be established and should be adequately resourced at all levels, including at the local level in particular.
- Develop hotlines as a low cost mechanism that could assist greatly in the detection and prevention of child marriages.
- Before, during and after conflict, develop special protective measures to prevent children from child marriage.

National Human Rights Institutions (NHRI's) should also take an active role in preventing child marriages. It is recommended that NHRI's:

- Handle complaints and carry out investigations relating to child marriage.
- Help to generate public awareness about the need for a prohibition against child marriage and the legal position on child marriage.
- Facilitate dialogue and engagement at the community level, in collaboration with religious and traditional leaders to encourage acceptance of the prohibition and to emphasise the benefits of delayed marriage, continued education and sexual and reproductive good health.
- Assist in referrals to relevant service providers.

The role of non-state actors in the prevention of child marriage cannot be overstated. It is recommended that civil society organisations, technical, financial and development partners, religious and traditional leaders, community based organisations and academic and research institutions:

- Align their efforts with National Action Plans.
- Continue to provide technical and financial support to efforts aimed at ending child marriage, its causes and its consequences.
- Help to build broad momentum and public awareness about child marriage and the campaign to end it, through media, social media, churches, schools and other networks and communities.
- Undertake legal advocacy if laws do not conform to international and regional standards.
- Assist in data collection, monitoring, research and evaluation, including in relation to the cost and efficacy of different prevention programmes and assist in promoting best practice.
- In relation to academics and research institutions in particular, generate academic interest in understanding the causes and consequences of child

marriage and build a stronger research, theory and evidence base on child marriage.

- Ensure that collective prevention efforts address both the social and the economic causes of child marriage. In particular, priority should be given to projects aimed at promoting girls' education as an approach to preventing marriage.
- Challenge the rationale for child marriage at the community level. This recommendation is aimed especially at traditional and religious leaders who have enormous potential to challenge the hearts and minds of communities.
- Engage with men and boys and emphasise the value and status of women and girls.

6.2 Recommendations for protection

The focus on preventing child marriage should not detract from addressing the needs of children who were forced into marriage. To protect the needs of children who have already been forced into marriage, it is recommended that:

- States must ensure that the sexual and reproductive health rights of girls who marry young are a top priority. This is critical noting that the risk of complications relating to pregnancy and child birth is significantly higher among girls who marry young. Girls must be able to access sexual and reproductive health services and must be promoted and encouraged to do so. Family planning services must be in place to give women and girls the ability to decide on the number and spacing of children.
- States must take measures to protect all people and especially women from domestic violence. Child marriage exposes girls to an increased risk of domestic and sexual violence and states must ensure that victims of violence or abuse have access to protective, healthcare, counseling and other services. Non state actors should also assist, by providing services and promoting redress for victims of domestic and sexual violence.
- State and non-state actors should design safety nets and mechanisms for the victims of child marriage. Shelters and safety schemes should provide girls with a safe space for counseling and should encourage girls to seek justice, redress, healthcare and other services and continue with their education.
- During and after conflict, special effort should be made by state and non state actors alike to ensure that sexual and gender based crimes that occur during times of conflict, including forced and child marriages, are not treated with impunity.

ANNEXURE 1: RESEARCH TEMPLATE FOR COUNTRY LEVEL CHILD MARRIAGES STUDIES

1. Background

Country overview/situational analysis (to include women's/girls human rights challenges generally, prevalence of early and forced marriage):

2. International and regional human rights obligations

- 2.1 Ratification of international human rights treaties
- 2.2 Status of state reporting
- 2.3 Relevant jurisprudence of UN treaty bodies (includes COs, general comments, reports of special mechanisms) and ACHPR

3. Legal framework

- 3.1 General: women's and children's rights in the constitution and other laws
- 3.2 Laws relating to early and forced marriage
 - Minimum age of marriage and age of consent and exceptions
 - Sanctions
 - Remedies

4. Policies and National Plans of Action

5. Enforcement and monitoring mechanisms (judicial and institutional)

6. Case law

7. Customary and religious law and traditional Practices

- 7.1 Status of customary/religious law in the country
- 7.2 Laws, practices or beliefs that promote (enable? perpetuate?) early and forced marriages

8. Access to formal education

- 8.1 Progress on MDG 3 (and relevant data)
- 8.2 Relevant laws and policies
- 8.3 Challenges

9. Sexual and reproductive health rights

- 9.1 Progress on MDG 5 (and relevant data)
- 9.2 Access to pre- and post-natal health care
- 9.3 Access to contraceptives
- 9.4 Access to HIV prevention, treatment and care services
- 9.5 Sexuality education
- 9.6 Challenges

10. Promising interventions (that can be considered for replication)

- 10.1 Empowering girls
- 10.2 Sensitising parents, community members and traditional/religious leaders
- 10.3 Strengthening access to, and quality of, education for girls
- 10.4 Economic support and incentives
- 10.5 Legal interventions