



POLICY BRIEF

Imperative Legal, Policy and Institutional Reforms
for Enhanced Support and Protection of Child
Marriage Victims and Survivors.



Women and Law
in Southern Africa
Zimbabwe



Equality Now
A just world for women and girls.

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1. Executive Summary

Women and Law in Southern Africa [WLSA], supported by Equality Now, commissioned A survey on child marriage and analysis of the laws and policies in place for protection and support of victims/survivors of child marriage in Zimbabwe. The study which particularly focused on Epworth as a case study, took stock of the various policies, action plans, legal instruments and other measures put in place, to date, regarding child marriage. The objective of the survey was to analyse the adequacy of measures in place in facilitating the required protection and support of child marriage victims and survivors. The study unveiled some key challenges faced by the victims/survivors following child marriage, as well those relating to the implementation of laws, policies and other systems in place. It further assessed the applicable regional and international standards on support and protection to survivors of child marriage, as well as the extent to which local laws and policies mirror these. The study recommended a number of other support measures, in addition to the ones already in place, targeting key decision makers for stronger institutional, legal and policy support mechanisms.

2. Introduction / Problem Statement

There are numerous ongoing state and non-state initiatives on child marriage in Zimbabwe, but these have mainly focused on prevention of child marriage and the enactment of laws to outlaw child marriage, at the expense of an equally critical focus on the required protection and support mechanisms for victims and survivors of child marriages. Resultantly, despite the commendable policy and legislative measures taken to date, the ensuing consequences of child marriages have been overlooked to the detriment of the victims and survivors, often with life-long impact. Against this background, this policy brief seeks to draw stakeholders attention and heighten awareness on the key needs, gaps, challenges as well as the required policy, legislative and other actions, in order to enhance support and protection of children already affected by child marriage. If these are not addressed, then child marriage will continue to have a lasting and irreversible effect on the lives of affected children, their offspring and families.

3. Background / Context

Provisions prohibiting child marriage are well articulated in international and regional human rights instruments such as the Convention on the Elimination of all forms of Discrimination against Women (CEDAW), the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (the Maputo Protocol), the African Charter on the Rights and Welfare of the Child [ACRWC], and the

Convention of the Rights of the Child (CRC). Further the Southern African Development Community (SADC) Model law on eradicating child marriage and protecting children already in Marriage, (SADC Model Law on Child Marriage), provides guidance on how Member States can reform and adopt marriage and other relevant laws, towards expressly outlawing child marriage and provision of support to children already in marriage.

Zimbabwe is among the 20 African countries where child marriages are most prevalent with about 34% of girls getting married before they attain the age of 18 years . Epworth, which was the field research site^[1] is one of Harare's densely populated areas with an estimated population of over 200 000 people. The area is characterised by various socio-economic challenges including high rates of poverty and drug use, all of which may arguably be contributing to the high prevalence of child marriages that the area has witnessed^[2]

Mindful of the pressing need to combat child marriages as a country, the Government of Zimbabwe has commendably put in place a number of policies, legislative and other institutional measures in response to this scourge. Amongst others, progressive measures are found in the Constitution of Zimbabwe (2013), the Marriages Act (Chapter 5:17), as well as the Children's Act (Chapter 5:06) and the Criminal Law (Codification and Reform) Act (Chapter 9:23), as recently amended. There are also governmental and non-governmental structures undertaking various initiatives aimed at combating child marriage such as support rendered through Victim Friendly Initiatives, the Ministry of Women's Affairs, Community, Small and Medium Enterprises Development, the Department of Social Development, national and international organisations and community-based organisations (CBOs) such as RhonaFLO and Shanduko Yeupenyu Trust. Despite these said measures, the scourge continues unabated, and more worrying, the challenges facing victims/survivors of child marriages.

The study revealed the following critical issues faced by child marriage victims and survivors in Zimbabwe, include the following;

- Susceptibility to gender-based violence (GBV), lack of financial and moral support and inability to continue with their education during the subsistence of the marriage.
- Post the 'marriages,' survivors contend with extreme poverty, lack of employment and sources of income, lack of acceptance by their own families, difficulties obtaining birth registration certificates for their offspring, and lack of support to pursue their education, amongst other concerns. These challenges

define their common support and protection needs.

- Despite commendable legislative effort made by the Government of Zimbabwe in prohibiting child marriages through laws such as the Marriages Act and subsequent alignment of related laws, there is still no comprehensive framework for the provision of adequate support and protection of the victims/survivors of child marriage. Existing laws are weak on support and protection mechanisms for children already in marriage or who have survived such.
- Various implementation and structural gaps are hampering the required accessibility of the support and protection of child marriage victims and survivors, and these include:
 - Inaccessible and, at times, unaffordable maternal, sexual and reproductive health and psychosocial support services.
 - Lack of support for community level health personnel such as Traditional Birth Attendants (TBAs) who play a critical support role in the communities. Amongst other things, the TBAs are in dire need of requisite medical supplies and related equipment as well as finances to enable their work.
 - Inadequate resourcing of critical support institutions, including those providing social services and related support.
 - Poor coordination, and duplication of roles amongst key support institutions which create detrimental support gaps.
 - Inadequate training, human and financial resources amongst key stakeholders, which is hampering required support to victims/survivors.

4. Policy and legislative gaps on protection and support for child marriage victims and survivors

4.1 Criminal laws amendment (Protection of Children and Young Persons) Act No.1 of 2024

The Amendment Act introduces a new provision conditionally exempting children or adults who have sexual intercourse with a child in instances where there is not more than a three-year age difference between the perpetrator and the child involved. Such persons can only be prosecuted at the instance of the Prosecutor-General, after consideration of a report by a probation officer appointed in terms of the Children's Act [Chapter 5:06].

Gaps: This provision is most likely to prejudice girls above 16 or 17 years of age who may have sexual relations with older young men who may take advantage of this provision. It will be interesting to track how the Prosecutor General will make use of

his powers under the provision vis-a vis differences in ages but where one of the parties is a minor and another one an adult, to avoid criminalizing consensual sexual activity, while at the same time ensuring accountability for adults who coerce, exploit, intimidate or pressure children into having sex.

Additionally, the current laws applicable to child marriage give too much discretion to Magistrates during the sentencing perpetrators in terms of Section 70 of the Criminal Law (Codification and Reform) Act and in terms of the Marriages Act, which has led to instances of offenders receiving community service as has been reported in media reports.^[3]

Recommendation:

- There should be efforts to educate the key demographic that is likely to be victimized by abusers - young girls - on the new amendments to the Criminal Code which raised age of consent for sex to 18, in order to arm them with knowledge on what their rights are and to ensure they know the multiplicity of reporting channels that are available to them.
- The disparities in sentences relating to child marriage offences in various laws, such as the Criminal Code and the Marriages Act, for example, should be addressed. This can be cured through the introduction of Sentencing Guidelines to promote uniformity in sentencing by the judiciary and to ensure that the discretion afforded to them under the law does not result in disproportionately light sentences. Such guidelines would also critically provide clarity that certain penalties are not appropriate for child marriage or GBV cases as they do not reflect the gravity of the offence and the lifelong impact on the survivors / victims

4.2 Marriages Act (Chapter 5:17)

Gap- Limited support measures in the Marriage Act

While the Act progressively prohibits and criminalises child marriages, beyond this, it is scant of any measures applicable to persons who are already in or have been in marriage. Further the study also revealed that there is a dearth of knowledge about the provisions of this law on child marriage and the ensuing implications of related offences.

While Zimbabwe provides for legal aid services under the Legal Aid Act, access to legal representation for child marriage survivors is not always guaranteed as the department is underfunded and can be inaccessible. Some of the survivors may not

have the necessary resources to challenge child marriage or its consequences in court.

Zimbabwe does have some provisions for support services for survivors of child marriage such as access to counselling and shelters particularly under the Domestic Violence Act, but the services are often limited in scope and availability. There is a lack of comprehensive support mechanisms specifically designed for survivors that integrate psychological, educational, medical and economic support.

Recommendations-

- Concerted efforts are needed in providing detailed citizenry awareness on the provisions of this law regarding child marriages. According to the ZGC, such initiatives should also involve traditional leadership as they live in the communities where child marriages are occurring and are mostly likely to promote change of perception as well as influence required changes through customary law and outlawing these practices within their jurisdictions.^[4]
- Having a single section on the prohibition of child marriage without extensively providing for other measures can focus merely on criminal prohibition of child marriage, without adoption of a holistic approach towards prevention, education, and provision of protection and support services to victims of child marriage. More effort is needed to make the enjoyment of this right fully accessible for those at risk and those already in child 'marriage'. It is important therefore for the nation to consider a standalone law on ending child marriage, which includes comprehensive provisions in line with the guidelines established by the SADC Model Law.
- There are notable gaps in Zimbabwe's legal framework when compared to the SADC Model Law on Child Marriage. The laws fail to ensure full and clear inheritance rights for survivors of child marriage. Customary law often neglects the property rights of women and girls, making them vulnerable, particularly in rural areas where child marriage is also rife. The law lacks a clear and strong mechanism to protect survivors of child marriage from losing their inheritance rights upon the death of their spouse.
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4.3 The Termination of Pregnancy Act (15.10)

Gap- The permissible grounds for termination of pregnancy provided in section 4 of this Act are restrictive and expose many children who fall pregnant to unsafe abortions or giving birth to unwanted children. In terms of this provision, termination is only allowed where the pregnancy poses a serious risk to either the mother or the

unborn child and where the pregnancy is a result of unlawful intercourse. Unlawful intercourse however is defined as rape or incest,^[5] excluding other forms of sexual abuse and exploitation of the child which may result in pregnancies.

Recommendation- The Act should be amended to allow for termination of pregnancy in any circumstance of sexual exploitation of children; including in the cases where survivors of child marriage have become pregnant. This is more-so because any sexual activity with a child is an offence in terms of section 70 of the Criminal Code, thus children should be allowed to terminate any pregnancy which result from the same, particularly where girls as young as 12^[6] fall pregnant because of consensual relations. The statistics on teenage pregnancy are staggering.^[7]

4.4 The Birth and Deaths Registration Act (Chapter 5.02)

Gap- Section 12 of the Act also provides that men who father children out of wedlock are not compelled to register their children's birth, with such children only registering in their mothers' maiden surnames, while the father's details do not show on their birth certificates. This is discriminatory and detrimental to the children and the mothers at various levels. This position of the law compounds the challenges that child marriage victims are currently facing in as far as registration of their offspring is concerned, especially in cases where the unions end before the child is registered.

Recommendations- Section 12 of the Births and Deaths Registration Act should be amended to cover children born in unregistered customary law unions and civil partnerships, and to compel men who would have been adjudged by the courts, implied through a court order (maintenance order) or determined by paternity tests to be fathers of the children, to register them.

4.5 The National Gender Policy (beyond 2017)

Gap- With the lapsing of the 2017 National Gender Policy, the country still awaits the launching of a new policy years later, despite indications that progress has been made in the development of the expected incoming policy.

Recommendation- There is need for the urgent introduction of a current and responsive gender policy to guide and consolidate gains on child marriages. The long delays in between the lapsing of one policy and the introduction of the other are retrogressive to envisaged progress and targets towards the elimination of child marriages and related effects.

4.6 The National Action Plan and Communication Strategy on Ending Child Marriages (NAP on ECM)

Gap- Since the lapsing of the National Action Plan on Ending Child Marriage (2019-2021) in 2021, no new action plan has been put in place creating a yawning gap at a time when the strategies of the policy that lapsed were yet to be fully implemented

Recommendation- A new, costed NAP on ECM should be adopted as a matter of urgency and accompanied by adequate resources for its effective implementation. The NAP should be comprehensive, addressing the root causes, barriers and necessary conditions for transformative change. A leaf could be taken from countries such as Malawi, with respect to how it has ensured that there is timeous adoption of key policies and action plans on child marriages, avoiding lengthy gaps as has been the case in Zimbabwe, which has facilitated much needed continuity in their implementation.

4.7 The National Development Strategy (NDS-1)

Gap- Beyond its recognition of children as part of persons in need of care and protection, the strategy does not make an express link between national development and child marriage which arguably detracts from much needed national and even budgetary attention required to effectively mitigate the scourge as well as provide required support and protection measures.

Recommendation- Wide mainstreaming of child marriage as a theme in national policies, action plans and key strategies such as the NDS is critical. A leaf can be taken from the approach employed by countries such as Uganda which has mainstreamed child marriages in various national policies including its National Development Plan (NDPIII), an equivalent of Zimbabwe's National Development Strategy-1. The incoming NDS-2 is a good opportunity to ensure that child marriage issues are more recognized and strategized on, through this key national blue-print.

4.8 Education Policy and Education Act

Gap: There is no current comprehensive policy guiding the sector on matters relating to child marriage, and which particularly provides comprehensive support and protection of affected children. The Education Act as amended in 2019 for example, is yet to see key policy provisions to guide the implementation of section 68C of the Education Act (Chapter 25:04), on the prohibition of exclusion of children from school on the basis of pregnancy.

Gap- Despite the progressive provisions introduced by the Education Amendment Act No. 15 of 2020, these are yet to be operationalised through regulations. Section 15 of the Amendment for example requires the amendment of section 69 of the principal Act to come up with regulations on use of technologies, feeding schemes in

schools and management of sexual abuse in schools.

Recommendations

- Measures should be taken to urgently pass all outstanding regulations to fully operationalise provisions of the Education Act as Amended.
- A comprehensive national policy on education should be put in place which amongst other things, makes clear provision for the rights of all children with respect to access to education, including children affected by child marriages

4.9 Other general Legal/Policy recommendations

- Harmonization of laws- In light of the penalty discrepancy between the Domestic Violence Act [DVA] and the Marriages Act with respect to offences related to facilitating of child marriage, there is need for harmonization of all applicable laws including with respect to applicable penalties, and provision of sentencing guidelines on related offences.
- Need for a dedicated child marriage law and focal point- Enact a stand-alone law on child marriage, with broader provisions beyond criminalization of child marriage or related sexual abuse, to facilitate adequate support and protection to persons already affected by child marriage. Lessons can be learnt from other jurisdictions. India's 2007 Prohibition of Child marriage Act,[8] has been instrumental in helping the country reduce incidences of marriages which were rife in the country. A structure, such as that proposed in the U.S. Child Marriage Prevention Bill of 2024, which seeks to establish a child marriage specific focal point i.e. the National Commission to Combat Child Marriage,[9] at the federal level which will conduct research, provide recommendations and report to Parliament on initiatives to combat child marriage in the country. A structure such as the proposed 'National Commission to Combat Child Marriage', would require dedicated budgetary support, which would go a long way in mitigating current challenges of lack of support of the multi-stakeholder initiatives on child marriages, that have been established to date in Zimbabwe.
- Improved coordination and resourcing of critical support mechanisms- Put in place an effective monitoring and evaluation framework to assess the various support mechanisms relating to child marriages in Zimbabwe, coupled with effective accountability pathways to promote their improved efficacy.
- Improved access to information and awareness raising- Implement awareness campaigns and encourage more public discourse, including on the age of consent, applicable laws and related implications, and available support services, as a means to empower affected girls and their families.
- Mainstreaming of child marriage as a common theme in key national and

multi-sectoral policies and strategies - Ensure mainstreaming of the issue of child marriage so that the impact on national development and the critical need for resources to be availed, is well recognized and accommodated.

End Notes

[1] A research study conducted by WLSA in October 2024

[2] R.D Muchawaya et al-The Lived Experiences of Survivors of Child Marriage: The Case of Epworth, A Harare Municipality in Zimbabwe- E-Journal of Humanities, Arts and Social Sciences - Volume 4 Issue 8-August 2023 pp 992-1005 Available at: <https://noyam.org/journals/ehass/> <https://doi.org/10.38159/ehass.2023488>- page 996

[3] see [PressReader.com](https://www.pressreader.com) - Digital Newspaper & Magazine Subscriptions ; and Community Service For Man (21) Who "Raped" 14-year-old Girl ([pindula.co.zw](https://www.pindula.co.zw))

[4] The ZGC were part of the study Respondents

[5] Section 2 of the Termination of Pregnancy Act [Chapter 15:10]

[6] UNICEF, National Assessment of Adolescent Pregnancies in Zimbabwe, June 2023

[7] 680 minors impregnated in six months, The Herald, 22 June 2024

[8] A2007-06.pdf ([indiacode.nic.in](https://www.indiacode.nic.in))

[9] New federal law aims to accelerate action to end child marriage in the U.S. - Girls Not Brides

ABOUT WOMEN AND LAW IN SOUTHERN AFRICA (WLSA)

WLSA work incorporate into research by questioning and challenging the law, instigating campaigns for changes in laws, policies and plans of action, educating women and girls about their rights, providing legal advice and gender sensitizing communities and leadership.



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Tel: +263 242 253001-3 / 2928337 Toll Free: 08080479
Website: <https://wlsazim.co.zw> / Email: admin@wlsazim.co.zw