



Zimbabwe
Gender
Commission

The Role of the **Zimbabwe Gender Commission** in ending child marriages



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Abbreviations

ACERWC	African Committee of Experts on the Rights and Welfare of the Child
ACRWC	African Charter on the Rights and Welfare of the Child
AU	African Union
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CEO	Chief Executive Officer
CGE	Commission for Gender Equality
CRC	Convention on the Rights of the Child
HIV	Human Immunodeficiency Virus
MWGACD	Ministry of Women Affairs, Gender, and Community Development
NAP	National Action Plan on Ending Child Marriage
OHCHR	Office of the High Commissioner for Human Rights
RAU	Research and Advocacy Unit
SADC	Southern African Development Community
SADC-PF	Southern African Development Community Parliamentary Forum
TALI	Tag a Life International
UDACIZA	Union for the Development of Apostolic Churches in Zimbabwe
UN	United Nations
UNCRC	United Nations Committee on the Rights of the Child
UNFPA	United Nations Population Fund
UNICEF	United Nations Children's Fund
ZGC	Zimbabwe Gender Commission
ZHRC	Zimbabwe Human Rights Commission
ZWLA	Zimbabwe Women Lawyers Association

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INTRODUCTION



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1. INTRODUCTION

Child marriage is prevalent in Zimbabwe, with 34 percent of girls getting married before the age of 18.¹ Child marriage is a violation of children's rights, affecting girls disproportionately and impeding their full enjoyment of human rights as enshrined in the Constitution of Zimbabwe (Constitution) and in various international human rights instruments that Zimbabwe has ratified.²

The United Nations Entity for Gender Equality and the Empowerment of Women (UN Women) in Zimbabwe, supports the implementation of the existing international commitments to advance gender equality and women's empowerment in line with Zimbabwe's national priorities. In this regard, UN Women is providing capacity development support to the Zimbabwe Gender Commission (ZGC). UN Women and the ZGC have identified child marriage as one of the priority issues to be addressed. In order to ensure an effective, coordinated response, this study was undertaken to provide an overview of child marriage in Zimbabwe, to map existing national initiatives to address the problem and, to define the role that the ZGC can play in ending child marriage in Zimbabwe.

The ZGC is established by the Constitution with a broad mandate to "do everything necessary to promote gender equality".³

According to the Constitution, the functions of the ZGC are set out as follows:⁴

1. to monitor issues concerning gender equality to ensure gender equality as provided in this Constitution;
2. to investigate possible violations of rights relating to gender;
3. to receive and consider complaints from the public and to take such action in regard to the complaints as it considers appropriate;
4. to conduct research into issues relating to gender and social justice, and to recommend changes to laws and practices which lead to discrimination based on gender;
5. to advise public and private institutions on steps to be taken to ensure gender equality;
6. to recommend affirmative action programmes to achieve gender equality;
7. to recommend prosecution for criminal violations of rights relating to gender;
8. to secure appropriate redress where rights relating to gender have been violated; and
9. to do everything necessary to promote gender equality.

¹ Zimbabwe Multiple Indication Cluster Survey (MICS) 2014, as cited by UNICEF Statistical Database on Child Marriage <<http://data.unicef.org/child-protection/child-marriage.html>> accessed 5 September 2016.

² Constitution of Zimbabwe Amendment No 20, 2013.

³ *ibid* s 246(9).

⁴ *Ibid* s 246.

The Gender Commission Act [Chapter 10:31] tasks the Commission with addressing “systemic barriers prejudicial to gender equality”. The Act elaborates on the impediments that the ZGC should be preoccupied with addressing and accordingly provides that:⁵

Any barrier, practice, custom, law or other impediment prejudicial to the achievement of gender equality, gender equity or gender mainstreaming, including equality of opportunities and outcomes, in the following spheres of activity or sectors of the society or economy (whose itemisation here is not to be taken as exhaustive or as limiting the generality of the foregoing) –

- (a) accessing social services, including those relating to education, health and housing;
- (b) accessing resources, including land, capital and finance;
- (c) employment in and upward mobility within the public, private and parastatal sectors and civil society organisations, including the provision of conditions in the workplace conducive to the employment of both genders;
- (d) engagement in and upward mobility of members within the professions and occupations, including the provision of conditions conducive to the engagement of individuals of both genders in the professions and occupations;

- (e) in the sphere of family law (including marriage, divorce and custody and guardianship of minors), children’s rights, succession and inheritance;
- (f) any other sphere or activity specified by the Commission in pursuance of its constitutional mandate.

The above elaboration would necessarily include issues such as child marriage, which is recognised as a systemic barrier prejudicial to gender equality. Child marriage disproportionately impedes girl-children from realising their rights, and it is therefore within the Commission’s mandate to ensure that this problem is addressed.

1.1. Background

According to a report by Save the Children, out of 149 countries, Zimbabwe is currently ranked 109 as one of the worst places to be a girl.⁶ One of the reasons for Zimbabwe’s low rank is attributable to the existence of child marriage, which disproportionately affects girl-children, severely impeding the full enjoyment of their human rights. According to available statistics, 34 percent of girls in Zimbabwe are married before the age of 18 years. The prevalence rate per region is as follows: Mashonaland Central (50 percent), followed by Mashonaland West (42 percent), Masvingo (39 percent), Mashonaland East (36 percent), Midlands (31 percent), Manicaland (30 percent), Matabeleland North (27 percent),

⁵ Gender Commission Act No 7, 2015, s 2(2).

⁶ Save the Children, *Every Last Girl* (2016) p 25.

Harare (19 per cent), Matabeleland South (18 per cent), and Bulawayo (10 per cent).⁷

Child marriage is a marriage in which at least one of the parties is a child, which is anyone under 18 years.⁸ Child marriage infringes on a number of fundamental human rights including the right to education, the right to dignity, the right to be protected from all forms of violence, including sexual abuse, and the right to enjoyment of the highest standard of attainable health.

Furthermore, married girls have limited decision-making power in relation to their own lives.⁹ Girls who marry before the age of 18 are at a heightened risk of HIV infection.¹⁰ Often, their husbands are much older and are more likely to have had multiple sex partners. The power relations in these marriages are unequal, making it impossible for children to negotiate safe sex. Forced sex is traumatic, and can leave cuts and abrasions on the vaginal wall, leading to susceptibility to HIV-infection. The girl children will, in most cases, be school dropouts and may not easily access information on sex, in general, and HIV prevention in particular. Adolescent health programmes are most often focused on girls

enrolled in school.¹¹

1.2. Methodology

A review of existing literature was undertaken to inform the study, with a focus on research and reports from Zimbabwe, in order to explore and understand child marriage in the local context. Key informant interviews supplemented the desk review. The interviews with the key actors engaged in efforts to address child marriage in Zimbabwe were held in Harare. The purpose of the interviews was primarily to capture initiatives that exist at the national level aimed at addressing child marriage and to identify gaps and challenges, as well as to try to establish the potential role of the ZGC. In instances where key informants were not available to meet with the consultant, interviews were conducted via Skype.

1.3. Scope

The study synthesizes information gleaned from the desktop review and key informant interviews to provide the contextual background on child marriage in Zimbabwe. It maps current efforts to end child marriage in Zimbabwe. Finally, it provides an analysis of the role that the ZGC should play, proposing key interventions, activities and initiatives.

⁷ Zimbabwe Multiple Indicator Cluster Survey (n 1).

⁸ UN Human Rights Council, *Preventing and Eliminating Child, Early and Forced Marriage: Report of the Office of the United Nations High Commissioner for Human Rights (April 2014)*.

⁹ CEDAW and UNCRC, 'Joint General Recommendation No 31 of the Committee on the Elimination of Discrimination against Women/General Comment No 18 of the Committee on the Rights of the Child on Harmful Practices' (4 November 2014) UN Doc CEDAW/C/GC/31/CRC/C/GC/18 para 22.

¹⁰ AIDS Free World, 'Child marriage: A Risk Factor for HIV' <<http://www.aidsfreeworld.org/Our-Issues/Child-Marriage/Child-marriage-and-HIV.aspx>> accessed 14 October 2016.

¹¹ Ibid.

The study focuses on the girl child because whereas boys are sometimes married before the age of 18, girls are disproportionately affected by the practice of child marriage.¹² The consequences of child marriage for girls, including possible death during childbirth, far outweigh the impact that it could have on boys. The scope of the study is aligned with existing evidence that child marriage is a manifestation of gender inequality affecting girls and women disproportionately.

1.4. Literature Review

In recent years, the subject of child marriage has received significant global attention in literature, providing an evidence base for child marriage interventions. Child marriage is a complex subject that cuts across various disciplines and has therefore been extensively studied. For purposes of this study, the literature review is not exhaustive but rather refers to selected reports, particularly, from international organisations that are working in the human rights sector. Research conducted by local organisations and researchers in Zimbabwe is also reviewed.

Too Young to Wed, a 2012 report by UNFPA, provides global trends on child marriage and an agenda for action that includes

recommendations for policy and programming based on the findings illustrated in the report. The proposed recommendations in the report are relevant to Zimbabwe. These recommendations include the need to mobilise communities to transform detrimental societal norms, improving girls' access to quality formal education, enhancement of the economic situation of girls and their families, and the need to generate an enabling legal and policy environment.¹³

A report by the United Nations Office of the High Commissioner for Human Rights (OHCHR) succinctly details the problem of child marriage globally.¹⁴ The report draws on submissions from states, UN agencies, civil society groups and other relevant stakeholders, in order to analyse existing measures and strategies to address child marriage.¹⁵ It includes best practices and identifies implementation gaps, noting that “despite progress made, significant challenges remain in the adoption and implementation of laws, policies and strategies to address the systemic and underlying factors which allow the marriage of children to persist.” Finally, it provides numerous recommendations for states.

¹² According to the Zimbabwe Multiple Indicator Cluster Survey (n 1) only 1.4% of boys aged 15-19 years are currently married or are in a union.

¹³ UNFPA, *Too Young to Wed* (2012).

¹⁴ UN Human Rights Council (n 8).

¹⁵ Zimbabwe did not respond to the call for submission by the OHCHR and therefore examples from Zimbabwe are not featured in the report.

A multi-country report by Human Rights Watch reported on child marriage based on research in Malawi, South Sudan, Tanzania, Zimbabwe, Afghanistan, Bangladesh, Nepal, and Yemen.¹⁶ In Zimbabwe, the case of the Apostolic churches is highlighted to illustrate how religious beliefs are a driver of child marriage. The report notes that girls often marry much older men at a very young age. It also refers to church doctrine, which prohibits married girls from continuing school.¹⁷

As part of the AU Campaign on Ending Child Marriage, a review of research, reports and toolkits from Africa was undertaken in relation to the effects of religious and traditional practices of child marriage on Africa's socio-economic development.¹⁸ The review provides a number of examples of interventions, including good practices drawn from across Africa, which, for instance, require inclusion of religious and traditional leaders in addressing the issue of child marriage.

There is a growing body of literature on child marriage in Zimbabwe. While the findings

are generally consistent with the international studies with respect to the causes and consequences of child marriage, the national reports contribute to a deeper understanding of how the issue manifests and is perpetuated in the national context.

Since 2011, the Research and Advocacy Unit (RAU) has published at least three studies on child marriage in Zimbabwe. One of the studies, titled *Married Too Soon*, provides a comprehensive overview of the prevalence and reasons for child marriage in Zimbabwe.¹⁹ The study advocates for the application of internal discourse, a strategy that is promoted by the prominent human rights scholar An-Naim, towards transforming cultural practices in line with human rights normative standards.²⁰ The other two RAU studies qualitatively investigate how community members in Goromonzi District perceive child marriage.²¹

Hodzi offers a unique perspective on child marriage within the Apostolic Sects in Zimbabwe.²² She uses a women's law approach, which explores the lived realities of affected girls and questions assumptions

¹⁶ Human Rights Watch, *Ending Child Marriage in Africa: Opening the Door for Girls' Education, Health, and Freedom from Violence* (2015).

¹⁷ *Ibid* p 7.

¹⁸ African Union, 'The Effects of Religious and Traditional Practices of Child Marriage on Africa's Socio-Economic Development: A Review of Research, Reports and Toolkits from Africa' <http://pages.au.int/sites/default/files/5465_CCMC_Africa_report.pdf> accessed 1 October 2016.

¹⁹ Research & Advocacy Unit, *Married Too soon* (Harare 2011).

²⁰ A An-Naim, 'Cultural Transformation and Normative Consensus on the Best Interests of the Child', *International Journal of Law and the Family*, vol. 8, 1994, pp. 62 – 81.

²¹ Research and Advocacy Unit, *Let them Grow first: Early Marriage in Goromonzi, Zimbabwe* (March 2014) and Research and Advocacy Unit, *Marriage in Goromonzi District* (May 2015).

²² C. Hodzi, 'Peadophilia not 'Child Marriage': A Critical Analysis of 'Child Marriages' in the Apostolic Sects in Zimbabwe', Masters Thesis, University of Zimbabwe, 2014.

about child marriage and whether or not accepted terminology masks the true nature of the violation which she argues should be more accurately defined as paedophilia or sexual abuse instead of marriage. She documents evidence gathered to support her assertions based on the extent and nature of the harmful practice amongst the Apostolic churches.

Other stakeholders have investigated the extent of child marriage as well as views from community members through public consultations and focus group discussions in various districts in Zimbabwe and have reported their findings. For example, members of the Parliamentary Portfolio Committee on Women Affairs, Gender and Community Development (Portfolio Committee on Women's Affairs) held public consultations in Mashonaland Central Province and documented and confirmed that a high prevalence of child marriages existed, which is largely accepted, as reflected in the views from community members.²³

The Ministry of Women, Gender, and Community Development (MWG&CD) prepared the *Zimbabwe National Action Plan and Communication Strategy on Ending Child Marriage Report* (NAP report) to inform the development of a National Action Plan on Ending Child Marriage (NAP).²⁴ The report presents findings based on a desk review and consultations with key community, civic and government structures in Harare, Mashonaland West, Bulawayo and Mashonaland Central. The report contributes to an understanding of the perceptions, drivers, and consequences of child marriage in the communities consulted for the study, while insight into the extent and complexity of the problem of child marriage is gleaned from the anecdotal evidence provided. A vulnerability profile, created from an analysis of the consultative discussions, is provided in the report, which effectively illustrates that several possible intersecting factors lend themselves to girls' vulnerability to marriage at a young age.

Based on the analysis of the above literature, the main causes of child marriage in Zimbabwe can be synthesised as follows.

²³ 'Report of the Portfolio Committee on Women's Affairs, Gender and Community Development on the High Prevalence of Child Marriages in Mashonaland Central Province' National Assembly Hansard vol 42 no 81 (16 August 2016).

²⁴ Ministry of Women, Gender, and Community Development, *Zimbabwe National Action Plan and Communication Strategy on Ending Child Marriage Report*, (Harare 2016).

CAUSES OF CHILD MARRIAGE



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2. CAUSES OF CHILD MARRIAGE

Child marriage is foremost a result of discrimination against women and girls. Zimbabwe is a patriarchal society in which women and girls occupy a position subordinate to men and boys. The existing hierarchical social structure is enforced by social norms and values. Child marriage is one of the manifestations of inequality and discrimination that exists in Zimbabwean society. Child marriage is a complex problem, driven by numerous, intersecting factors. These include the following:

2.1. Poverty

According to UNICEF, girls from the poorest households are twice as likely to marry before they reach 18 years of age when compared to girls from richer households.²⁵ Studies in Zimbabwe consistently indicate poverty as one of the main drivers of child marriage. For example, a baseline study undertaken by PLAN Zimbabwe revealed that for some families, marriage is considered as the only viable option to safeguard girls' futures and lighten the economic burden on families.²⁶ Another study found that it was very common for girls to get married because there was no money for school fees.²⁷ The study found that older men took advantage of poor families'

financial problems to coerce parents into marrying off their girl children.²⁸

2.2. Food Insecurity

Related to the issue of poverty, a less reported cause of child marriage in Zimbabwe is food insecurity in large parts of rural Zimbabwe. For example, drought has been a constant problem in Zimbabwe. As recently as February 2016, President Robert Mugabe declared a state of disaster in areas severely affected by drought after these areas experienced two seasons without rain.²⁹ Such dire situations result in girls being betrothed at an early age due to lack of means to feed them or their families. According to UNICEF, girls in rural Zimbabwe are at risk of child marriage because of the drought.³⁰ UNICEF has seen an increase in child marriages as food shortages have worsened.³¹ Social workers in Mbire, which is one of Zimbabwe's ten most food insecure districts, have indicated that child marriages have increased and they partly blame food shortages for the increase in the trend.³²

²⁵ UNICEF, 'A Profile of Child Marriage in Africa', <[http://www.unicef.org/media/files/UNICEF-Child-Marriage-Brochure-low-Single\(1\).pdf](http://www.unicef.org/media/files/UNICEF-Child-Marriage-Brochure-low-Single(1).pdf)> accessed 3 October 2016.

²⁶ PLAN Zimbabwe, Responsive Approaches to Child Marriage Baseline Research in Bulawayo, Kwekwe and Mutoko Districts (Harare 2014).

²⁷ Research & Advocacy Unit.

²⁸ Research & Advocacy Unit, p 24.

²⁹ T Mugabe and T Chimutambi, 'State of Disaster Declared' The Herald, 5 February 2016

<<http://www.herald.co.zw/state-of-disaster-declared/>> accessed 10 October 2016.

³⁰ UNICEF Zimbabwe, 'The impact of drought and hunger in Zimbabwe's rural areas'

<http://www.unicef.org/zimbabwe/media_17956.htm> accessed 10 October 2016.

³¹ G. Mutizwa, 'Zimbabwe's Child Marriages on the Rise as Food Runs Short'

<<http://www.cnbc africa.com/news/southern-africa/2016/08/16/zimbabwes-child-marriages/>> accessed 10 October 2016.

³² Ibid.

2.3. Negative Religious Practices

Religion plays a part in child marriage. For example, some members of the Apostolic Church in Zimbabwe, one of the largest religious groups with an estimated following of 33.9 per cent of the country's population, practise child marriage.³³ According to church doctrine, girls must marry when they are between 12 and 16 years old.³⁴ Part of the driving force is based on what are identified as divinations, revelations or spiritual entitlements that sometimes justify child marriage.³⁵ Church members themselves acknowledge the problem, having noted that harmful practices such as child marriage, forced marriages, child pledging, sexual abuse and forced virginity testing are still prevalent in some of the Apostolic and Zionist churches.³⁶

Focus group discussions in Chinhoyi revealed that virginity testing is conducted regularly within some Apostolic churches. Girls who are deemed not to be virgins are seated in the front row at church services, facing older men, where they are then identified for marriage at a cheaper bride price due to their 'diminished' value.³⁷

Hodzi's research confirmed that girls have their virginity status tested on a weekly basis in some Apostolic churches.³⁸

It must be noted however, that while child marriage is condoned and perpetuated within the Apostolic churches, there are many within the faith who are committed to advancing gender equality and ending the practice of child marriage. Interventions, targeting church leaders and members, to end the practice of child marriage are led by the Union for the Development of Apostolic Churches in Zimbabwe (UDACIZA).³⁹ Leaders within the Union have intervened in several cases of child marriage to ensure that child marriages are averted or that married girls return home and continue with their education.⁴⁰

2.4. Harmful Cultural Practices

Not always or entirely distinct from religious norms, cultural norms, values, and practices contribute to the perpetuation of child marriage. In relation to the challenge of child marriage, a Member of Parliament aptly noted that 'the biggest problem that we have is the distance between our ears – that is our mindset'.⁴¹

³³ Hodzi (n 22).

³⁴ Human Rights Watch (n 16) p 7.

³⁵ Focus group discussions with Apostolic Sect members in Dzivarasekwa, Epworth and Hopley_NAP Desk Review.

³⁶ UDACIZA Gender Equality and Gender-Based Violence Policy 2016-2022.

³⁷ Focus group discussion with Apostolic Sect members.

³⁸ Hodzi (n 22).

³⁹ Interview with members of UDACIZA on 4 October 2016 at the Office of the Zimbabwe Gender Commission. See also UDACIZA Gender Equality and Gender-Based Violence Policy 2016-2022.

⁴⁰ Ibid.

⁴¹ Portfolio Committee (n 23).

Culture shapes the attitudes and behaviour of community members. For example:

*In the Shona culture, once a girl reaches puberty all teachings are directed towards pleasing one's future husband as well as being a gentle and obedient wife. Her sexuality is further defined for her, as she is taught how to use it for the benefit of the male race.*⁴²

*... the persistence of harmful norms, practices and traditions, patriarchal attitudes and deep-rooted stereotypes, regarding the roles, responsibilities and identities of women and men in all spheres of life.*⁴⁵

Girls' inferior status in society is socialised and deeply entrenched in Zimbabwe. Only one in three girls in Zimbabwe feels confident to speak up and be heard when in the presence of boys and men.⁴³ According to Cook, 'the most globally pervasive of the harmful cultural practices...is the stereotyping of women exclusively as mothers and housewives in a way that limits their opportunities to participate in public life whether political or economic.'⁴⁴ In its Concluding Observations on Zimbabwe's CEDAW Report the CEDAW Committee expressed its 'serious concern' over what it termed as:

The linkage between religion and culture can be best illustrated in the issue of virginity testing in the Apostolic Church, which places a high premium on girls' virginity, such that early marriage is a way of increasing the chances that a girl will not lose her virginity outside of marriage. The view is that the earlier a girl is married the better, because chances of a girl remaining chaste decrease with age.⁴⁶ Mothers therefore perpetuate a culture in which they become complicit in facilitating the marriage of daughters while they are still girls, as a virgin bride is a reflection of a good mother.⁴⁷ If a girl loses her virginity, even if through an incident of forced sex, marriage is perceived as the most viable option for restoring honour to the family.⁴⁸

⁴² M Kambarami, *Femininity, Sexuality and Culture: Patriarchy and Female Subordination in Zimbabwe*, (Fort Hare 2006) p 2.

⁴³ Plan International, *State of the World's Girls 2015: The Unfinished Business of Girls' Rights*, (2015). 44 RJ Cook and S Cusack, *Gender Stereotyping: Transnational and Legal Perspectives*, (Pennsylvania 2010) p 22.

⁴⁴ RJ Cook and S Cusack, *Gender Stereotyping: Transnational and Legal Perspectives*, (Pennsylvania 2010) p 22.

⁴⁵ CEDAW Concluding Observations of the Committee on the Elimination of Discrimination against Women: Zimbabwe (1 March, 2012) UN Doc CEDAW/C/ZWE/CO/2-5, para 21.

⁴⁶ Hodzi (n 22) p 43.

⁴⁷ *ibid.*

⁴⁸ *Ibid.*

2.5. Adolescent Pregnancy

According to statistics, two thirds of 15 to 19 year olds in Zimbabwe are sexually active with only half of them using protection and contraceptives.⁴⁹ Just over 21 per cent of 15 to 19 year olds in Zimbabwe have begun childbearing.⁵⁰ Adolescent pregnancy is a cause of child marriage, as many girls are forced to get married once they become pregnant, since motherhood outside of wedlock is considered taboo amongst many people in Zimbabwe.⁵¹ According to a girl in Epworth who participated in a focus group discussion conducted by PLAN Zimbabwe:⁵²

Girls are always not prepared for sex. They find themselves forced into it and cannot even think about protection. They are silent participants and whether they fall pregnant and get married it is not at their level to determine.

High incidences of unprotected sex and early pregnancy are an indicator of violations of adolescent sexual and reproductive health rights. There is no effective comprehensive sexuality education at school and girls therefore do not know where to find the relevant information or services or how to

protect themselves from unwanted pregnancy.⁵³

2.6. Lack of Education

There is a correlation between the level of education attained and the age of marriage. Data drawn from 78 developing countries indicates that, between 2000 and 2011, 45 per cent of women between the ages of 20 and 24 who were married or in a union before the age 18 had primary education while 20 per cent of the same category of women had secondary education.⁵⁴

Responding to Zimbabwe's CEDAW report, the CEDAW Committee expressed its concern at the high dropout rate and the low retention and completion rates for girl children, especially at the secondary and tertiary levels in Zimbabwe. It noted that education is key to the advancement of women and the low level of education of women and girls remains one of the most serious obstacles to the full enjoyment of their human rights.⁵⁵

Low levels of education are not only a cause of child marriage, but also a consequence whereby, in most instances, girls who were still in school at the time of marrying subsequently drop out of school.

⁴⁹ Guttmacher Institute, *Sexual and Reproductive Health Needs of Adolescents in Zimbabwe*, (New York 2014).

⁵⁰ UNFPA, *Adolescent Sexual and Reproductive Health: ZDHS Key Findings Fact Sheet*

<[http://zimbabwe.unfpa.org/sites/esaro/files/pub-pdf/ASRH%20Factsheet%20FINAL%20\(1\).pdf](http://zimbabwe.unfpa.org/sites/esaro/files/pub-pdf/ASRH%20Factsheet%20FINAL%20(1).pdf)> accessed 12 October 2016.

⁵¹ Research and Advocacy Unit, *Marriage in Goromonzi District* (n 21) p 14.

⁵² PLAN Zimbabwe (n 26) p 30.

⁵³ Girls not Brides, 'Sex Education and the SADC Model Law: The Key to Ending Child Marriage in Zimbabwe?'

<<http://www.girlsnotbrides.org/education-sadc-model-law-zimbabwe/>> accessed 20 October 2016.

⁵⁴ UNFPA, *Married Too Young* (2012) p 35.

⁵⁵ CEDAW (n 44) para 29.

2.7. Weak Law Enforcement

States have an obligation to prevent acts that impair the recognition, enjoyment or exercise of rights by women and girl children and as such they should ensure that private actors do not engage in discrimination against women and girl children and should, for example, protect them from gender-based violence.⁵⁶

There is evidence to suggest that Zimbabwe is failing to meet this obligation. The Portfolio Committee on Women's Affairs reported to Parliament that during public hearings they were informed of 'poor investigation or even lack of concern for marriage cases by police as well as lenient sentences given to those convicted of having sex with minors'.⁵⁷

⁵⁶ CEDAW and UNCRC (n 9) para 11. The General Recommendation explains that "[d]ue diligence should be understood as an obligation of States parties to the Conventions to prevent violence or violations of human rights, protect victims and witnesses from violations, investigate and punish those responsible, including private actors, and provide access to redress for human rights violations."

⁵⁷ Portfolio Committee (n 23).

NATIONAL LEGAL FRAMEWORK



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3. NATIONAL LEGAL FRAMEWORK

The Constitution advances a range of human rights principles. These principles are violated in instances when child marriage is practised. For instance, the Constitution advances gender equality as one of its founding values and principles.⁵⁸ Section 56 provides for equality and non-discrimination on a number of grounds including sex and gender.⁵⁹

Rights relating to marriage are specified in Section 78 and include the right to found a family for those having attained the age of 18 years.⁶⁰ The Constitution stipulates that no person may be compelled to enter into marriage against his or her will.⁶¹

The Constitution in Section 81 defines a child as a boy or girl under the age of 18 and enumerates children's rights as including the following:⁶²

- equal treatment before the law, including the right to be heard;
- the prompt provision of a birth certificate;⁶³
- the right to family or parental care, or to appropriate care when removed from the family environment;
- protection from economic and sexual exploitation, from child labour, and from maltreatment, neglect or any form of abuse;
- education, health care services, nutrition and shelter.

Furthermore, Section 81 states that a child's best interests are of paramount importance in every matter concerning the child.⁶⁴ The Constitution further stipulates that, children are entitled to adequate protection by the courts, with the High Court being the upper guardian of all children.⁶⁵

While the Constitution provides standards of protection of children's rights that meet international human rights standards, in reality there is a discord between the Constitutional provisions and the high prevalence of child marriage in Zimbabwe. The disparity between the theory and reality was emphasised by the Constitutional Court of Zimbabwe in its judgment of January 2016 in which the Court confirmed that the practice of child marriage is unconstitutional.⁶⁶ In its judgment, while explaining the effect of Section 78(1) as read with Section 81(1) of the Constitution, the Court held that:⁶⁷

A child cannot found a family. There are no provisions in the Constitution for exceptional circumstances. It is an absolute prohibition in line with the provisions of Article 21(2) of the ACRWC. The prohibition affects any kind of marriage whether based on civil, customary or religious law ... As a result, a child has acquired a right to be protected from any form of marriage.

⁵⁸ Constitution (n 2) s 3(1)(g) & (c).

⁵⁹ Ibid s 56(3).

⁶⁰ Ibid s 78(1).

⁶¹ Ibid s 78(2).

⁶² Ibid s 81(a)(c)(d)(e)(d)&(f).

⁶³ Ibid s 81(c). The right is granted to children born in Zimbabwe or children born outside of Zimbabwe who are citizens by descent.

⁶⁴ Ibid s 81(2).

⁶⁵ Ibid s 81(3).

⁶⁶ *Mudzuru & Another v Ministry of Justice, Legal & Parliamentary Affairs (N.O.) & Others*, [2015] ZWCC 12.

⁶⁷ Ibid.

This judgment received much publicity and has provided impetus for widespread action in Zimbabwe not only towards necessary legal reform, but also with respect to creating public awareness of the issue and its negative consequences.

Despite the fact that the Constitutional Court has left no room for ambiguity regarding the illegality of child marriage in Zimbabwe, there are statutes that are not aligned with the Constitution in this respect. For example, the Marriage Act (Chapter 5:11) provides for a minimum age of 18 for boys to marry, and 16 years for girls if their parents or legal guardians consent.⁶⁸ The Customary Marriages Act (Chapter 5:07) does not stipulate a minimum age for marriage.

The Maintenance Act (Chapter 5:09) legitimizes child marriages when it states that maintenance for a child shall cease when the child marries.⁶⁹ The Children's Act (Chapter 5:06) is also problematic in that it defines a child as a person under the age of 16 years and a young person as someone aged 16 years but below 18 years.⁷⁰ According to the Act, a legal guardian can also mean a husband of a girl who is under 18 years of age, which implicitly legitimizes child marriage.⁷¹

The above statutes are invalid, and they need to be repealed or amended. Section 2(1) of the Constitution provides that the Constitution is the supreme law of Zimbabwe and any law, practice,

custom or conduct inconsistent with it is invalid to the extent of the inconsistency. The Constitutional Court clarified that the 'invalidity of existing legislation inconsistent with a constitutional provision occurs at the time the constitutional provision comes into force and not at the time a fundamental right is said to be infringed'.⁷²

Legal reform concerning marriage is currently underway. The Government of Zimbabwe noted in its report to the UN Committee on the Rights of the Child (UNCRC) that the Government has approved amendments to the different marriage laws to align the minimum age of marriage with the legal age of majority, which is 18 years. The proposed Bill is still in draft form and is awaiting presentation to Parliament.⁷³ President Mugabe indicated that the Marriage Bill would be enacted in 2016.⁷⁴

Aside from the laws noted above that necessitate reform, there are other existing laws that prohibit child marriage, such as the Domestic Violence Act [Chapter 5:16] and the Criminal Law Codification and Reform Act [Chapter 9:06]. These laws provide protection from harmful cultural and social practices and prohibit and criminalise *inter alia*, forced virginity testing, forced marriage, child marriage, and the pledging of girls to relatives of a deceased person for purposes of appeasing the deceased person's spirit.⁷⁵ Key informants interviewed were not aware of any child marriage cases ever reported under the Domestic Violence Act.

⁶⁸ Marriage Act, s 22(1).

⁶⁹ Maintenance Act, s 11.

⁷⁰ Children's Act, s 2.

⁷¹ Ibid.

⁷² *Mudzuru & Another* (n 66) p 22.

⁷³ UNCRC 'Second Periodic Report of Zimbabwe' (13 April, 2015) Un Doc CRC/C/ZWE/2 p 33 para 95.

⁷⁴ National Assembly Hansard 6 October 2016 Vol 43 No 01.

⁷⁵ Domestic Violence Act s 3(1)(l) and s 4(1) and Criminal Law Codification and Reform Act s 94.

The Southern African Development Community Parliamentary Forum (SADC-PF) adopted the SADC Model Law on Eradicating Child Marriage and Protecting Children Already in Marriage (Model Law) on 3 June 2016. The Model Law should inform future legal reform efforts in relation to any of the following types of laws that may in some way have a bearing on child marriage:⁷⁶

- laws relating to gender equity and equality;
- laws against gender based violence;
- penal laws;
- anti-trafficking laws
- child justice laws;
- marriage laws;
- adoption laws;
- legitimacy laws;
- citizenship laws;
- laws on refugees;
- maintenance and affiliation laws;
- termination of pregnancy laws;
- education laws;
- health laws;

- empowerment laws; and
- labour laws.

The model law provides legislators in the Southern African Development Community (SADC) member states with guidance in line with international standards and can assist towards strengthening legislation related to the elimination of child marriage. The purpose of the law is that '[m]ember States should use this Model Law to develop their national laws as it creates a robust and uniform legal framework relating to the prohibition and prevention of child marriage and is a key path to addressing sexual reproductive health rights'.⁷⁷

Legislators may replicate the model law in its entirety or rely on selected sections depending on their local context and the required reform of existing laws. The Model Law can be a valuable tool for the process of harmonising laws with international human rights standards.

⁷⁶ SADC Model Law on Eradicating Child Marriage and Protecting Children Already in Marriage.

⁷⁷ Ibid p 3.

INTERNATIONAL HUMAN RIGHTS FRAMEWORK



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4. INTERNATIONAL HUMAN RIGHTS FRAMEWORK

Given the complexity of child marriage, in that it violates numerous fundamental rights and is driven by several intertwining factors, there is a plethora of international law and policy that emanates from the UN, African Union (AU) and SADC that establish obligations and commitments for state parties to prohibit child marriage and to protect girls from violations of their rights which can lead to early marriage. A comprehensive review of all relevant provisions, including those relating to education, health, and economic empowerment, for example, is beyond the scope of this study. Key provisions from the most relevant treaties and policies are highlighted below.

4.1. The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa

Zimbabwe ratified the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Protocol or African Women's Rights Protocol) in 2008. The Protocol was adopted in 2003 and entered into force in 2005. It is the most comprehensive international treaty on the human rights of women and girls.⁷⁸ While several of the articles of the Protocol are important for the eradication of child marriage, only a few key provisions are highlighted in this study.

The Protocol provides that the minimum age for marriage is 18.⁷⁹ Concerning rights in marriage it provides for full and free consent of both parties and for the rights of women in polygamous relationships to be protected.⁸⁰ Challenges in implementation notwithstanding, the protection of women in polygamous relationships is an important provision to protect girls in such marriages.

In accordance with Article 2 of the Protocol, the Government of Zimbabwe must enact and effectively implement appropriate legislative or regulatory measures, including those prohibiting and curbing all forms of discrimination particularly those harmful practices, which endanger the health and general well-being of women.⁸¹ The Protocol defines harmful practices as "all behaviour, attitudes and/or practices which negatively affect the fundamental rights of women and girls, such as their right to life, health, dignity, education and physical integrity. There is no question that Article 2 places an obligation on states to take legislative measures to prohibit child marriage. Notably, states must not only enact legislative measures but they must effectively implement the measures in order to comply with the Protocol.

⁷⁸ Art 1(k) of the Protocol defines women to include girls.

⁷⁹ Art 6(b).

⁸⁰ Ibid art 6(a) and (c).

⁸¹ Ibid art 2(b). Art 1(g) defines harmful practices as follows: all behaviour, attitudes and/or practices which negatively affect the fundamental rights of women and girls, such as their right to life, health, dignity, education and physical integrity.

The Protocol requires a holistic approach to eliminate harmful practices beyond legislative measures.⁸² Other measures include: the creation of information and outreach programmes, the provision of support to victims of harmful practices such as health services, legal support, counselling, and vocational training. The state should also protect women who are at risk of being subjected to harmful practices.⁸³

Article 2(2) of the Protocol is extremely important in relation to ending child marriage requiring that:

States Parties shall commit themselves to modify the social and cultural patterns of conduct of women and men through public education, information, education and communication strategies, with a view to achieving the elimination of harmful cultural and traditional practices and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes, or on stereotyped roles for women and men.

State actors charged with implementing the Protocol's provisions often overlook this article and tend to prioritise legislative and policy measures that are often not implemented. However, the failure to effectively implement legislation and policy is in part, due to the lack of measures taken to comply with Article 2(2).

The Protocol addresses violence against women more comprehensively than any other international treaty on the rights of women.⁸⁴ While a review of the extensive provisions is beyond the scope of this study, it is important to note the obligation on states to enact and enforce laws to prohibit all forms of violence against women including unwanted or forced sex, whether the violence takes place in private or public.⁸⁵ Notably, the Protocol advances the prohibition of marital rape.

Finally, concerning reproductive health rights, the lack of which contributes to high prevalence rates of child marriage, the Protocol provides for a comprehensive range, including the right to control fertility and, to decide whether to have children, the number of children and the spacing of children; and to choose any method of contraception. This is important in addressing adolescent pregnancy, as the Protocol includes girls and therefore provides for girls' right to access contraception.⁸⁶

4.2. UN Convention on the Elimination of all Forms of Discrimination against Women

Many provisions of the Protocol are similar to and informed by the UN Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), which was adopted in 1979 and ratified by Zimbabwe in

⁸² Ibid art 5.

⁸³ Ibid.

⁸⁴ Ibid art 4.

⁸⁵ Ibid art 4(2)(a).

⁸⁶ Ibid art 14(1)(a)(b)(c).

1991. For example, CEDAW prohibits child marriage although it does not specify a minimum age.⁸⁷ It establishes the same state obligation that is found in the Protocol to modify the social and cultural patterns of conduct towards eliminating harmful practices.⁸⁸ States must also take all appropriate measures, including legislation to modify or abolish customs and practices, which constitute discrimination against women.⁸⁹ As does the Protocol, CEDAW contains provisions on the rights to education and health.⁹⁰

CEDAW and the African Women's Protocol provide a 'blueprint' for gender equality. Implementation of these treaties eliminates the drivers of child marriage and leads to gender equality.

4.3. UN Convention on the Rights of the Child

Zimbabwe ratified the UN Convention on the Rights of the Child (CRC) in 1990 and has numerous obligations under the treaty aimed at the realisation of children's rights. In terms of the CRC, a child is defined as a person under 18 years although the CRC allows for discretion according to the applicable national law.⁹¹

An important principle established in the CRC is that of the best interests of the child; namely that in all actions concerning children the best interests of the child shall be the primary consideration.⁹²

The CRC provides for the right to protection from all forms of physical or mental violence, injury or abuse, maltreatment or exploitation, including sexual abuse. The state must provide necessary social programmes for children who have been mistreated.⁹³ Children are also to be protected from all forms of sexual exploitation and abuse.⁹⁴

Effective and appropriate measures are to be taken by the state with a view to abolishing traditional practices prejudicial to the health of children.⁹⁵ The CRC states that children have the right to the highest attainable standard of health and the right to education.⁹⁶ Finally, all births must be registered.⁹⁷ All these rights can contribute to the elimination of child marriage if consistently observed. For example, registration of marriage helps in determination of whether a person is of an appropriate age when a marriage is being contemplated.

⁸⁷ CEDAW art 16(2).

⁸⁸ Ibid art 5.

⁸⁹ Ibid art 1(f).

⁹⁰ Ibid arts 10 and 12.

⁹¹ Ibid art 1.

⁹² Ibid art 3.

⁹³ Ibid art 19.

⁹⁴ Ibid art 34.

⁹⁵ Ibid art 24(3).

⁹⁶ Ibid art 24 and 28.

⁹⁷ Ibid art 7.

4.4. The African Charter on the Rights and Welfare of the Child

Zimbabwe ratified in 1995 the African Charter on the Rights and Welfare of the Child (ACRWC) which, in many respects, is similar to the CRC. It defines a child as a person below the age of 18 years, but unlike the CRC it makes no exception for national law to define a child otherwise.⁹⁸ Harmful practices are addressed in the ACRWC more explicitly than in the CRC, offering stronger protection. Article 21 of the ACRWC requires that appropriate measures should be taken to eliminate harmful social and cultural practices and it refers to the need to eliminate child marriage by explicitly stating that:

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

Numerous other provisions in the ACRWC are relevant to addressing child marriage, most reinforcing those that are provided for in the CRC. Some of the relevant examples are:

- Right to birth registration.⁹⁹
- Right to an education. The state should take measures to encourage regular attendance and reduce school dropout rates.¹⁰⁰
- Children should be protected from all forms of torture, inhuman or degrading treatment and especially physical or mental injury or abuse, neglect or maltreatment, including sexual abuse.¹⁰¹
- Right to live with parents and not to be separated from parents unless in the best interest of the child as deemed by authorities.¹⁰²
- Parents or other persons responsible for the child should always act in the best interest of the child.¹⁰³
- Children should be protected from all forms of sexual exploitation and sexual abuse.¹⁰⁴

4.5. SADC Protocol on Gender and Development

At the sub-regional level, SADC member states adopted a Protocol on Gender and Development in 2008, which was ratified by Zimbabwe. As the SADC Protocol included time measurable commitments to be achieved by 2015, it was updated in June 2016 to align it with the Sustainable Development Goals, the Beijing +20

⁹⁸ Ibid art 2.

⁹⁹ Ibid art 6.

¹⁰⁰ Ibid art 11.

¹⁰¹ Ibid art 16.

¹⁰² Ibid art 19.

¹⁰³ Ibid art 20.

¹⁰⁴ Ibid art 27.

Review, and the Africa Agenda 2016. Article 8 of the Protocol prohibits the marriage of persons under the age of 18 years and provides for the full and free consent of both parties.¹⁰⁵ It also stipulates measures to be taken by state parties relating to education, gender-based violence, and harmful cultural practices and health including reproductive health.

However, concerns have been expressed in some quarters that 'Zimbabwe has a reputation for signing up to human rights instruments but not pursuing their full implementation or domestication into national law'.¹⁰⁶ The ZGC has an important monitoring role to play, in particular with respect to monitoring Zimbabwe's compliance with its international obligations to eliminate all forms of discrimination against women.

¹⁰⁵ SADC Protocol on Gender and Development art 8(2)(a) &(b).

¹⁰⁶ C Damiso and J Stewart, 'Zimbabwe and CEDAW Compliance: Pursuing Women's Equality in Fits and Starts', in A. Hellum and H. Sinding Aasen (eds.), *Women's Human Rights: CEDAW in International, Regional, and National Law*, (Cambridge 2013) p 474.

INITIATIVES TO ADDRESS CHILD MARRIAGE IN ZIMBABWE



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5. INITIATIVES TO ADDRESS CHILD MARRIAGE IN ZIMBABWE

The high prevalence of child marriage and its devastating consequences has inspired numerous stakeholders at the national level to address the issue. Some international and regional campaigns have also provided impetus for action. The table below maps activities on child marriage and identifies possible opportunities for the ZGC.

5.1. Mapping of National-level Interventions to End Child Marriage in Zimbabwe

Stakeholder(s)	Intervention	Key outputs	Opportunity for ZGC
AU	Campaign to End Child Marriage in Africa	Common Position on the AU Campaign to End Child Marriage AU Goodwill Ambassador on Ending Child Marriage Zimbabwe launch of AU campaign (2015)	Leverage campaign for awareness-raising activities. Seek support for child marriage interventions from the AU Goodwill Ambassador Ms Nyaradzayi Gumbonzvanda.
SADC-PF	Model Law	Adoption of model law	Use the model law as an advocacy tool for law reform and to guide recommendations for reform.
MWGACD Inter-Ministerial Committee to End Child Marriage (led by MWGACD)	Draft National Action Plan on Ending Child Marriage and Communication Strategy (NAP)	Zimbabwe National Action Plan and Communication Strategy on Ending Child Marriage Report Mapping of organisations working on child marriage ¹⁰⁷	Convene a dialogue with WGACD to identify the role of the ZGC to support the Inter-Ministerial Committee and implementation of the NAP. ¹⁰⁸ Leverage on the process of the implementation of the NAP to partner with organisations working on child marriage.

¹⁰⁷ https://www.google.com/maps/d/viewer?mid=1v9Toysudf1Ka_elmUYdbuLYJ0

¹⁰⁸ The Draft NAP identifies the ZGC as a key partner in a multi-sectorial approach to ending child marriage.

Stakeholder(s)	Intervention	Key outputs	Opportunity for ZGC
Ministry of Justice	Law Reform	Marriage Bill	Follow up on the status of the Bill and advocate for its enactment.
Council of Chiefs	Awareness-raising, behavioural change within traditional leadership	The Zimbabwe National Chiefs' Council Meeting on Ending Child Marriages Communiqué	Enter into an MoU with the Council of Chiefs to secure support and formalise collaboration on engaging traditional leaders to end child marriage in Zimbabwe.
UDACIZA	Awareness-raising, behavioural change within Apostolic Church Access to education	Gender Equality and Gender-Based Violence Policy 2016-2022 Partnership with World Vision to implement Improving Girls' Access through Transforming Education (IGATE) and Channels of Hope	Enter into a MoU with UDACIZA to secure support and formalise collaboration on engaging religious leaders to end child marriage in Zimbabwe. Work with UDACIZA leadership to identify child marriage cases for prosecution referrals.
PLAN International Zimbabwe	Awareness-raising, behavioural change	18+ Campaign	Engage PLAN to support and collaborate in the implementation of the 18+ campaign.
ROOTS	Awareness-raising, behaviour change	Not Ripe for Marriage Campaign	Liaise with ROOTS for awareness-raising activities and to increase visibility of Commission; receive complaints referred by ROOTS.
Zimbabwe Women Lawyer's Association (ZWLA)	Legal reform and training	Workshops with law enforcement	Partner with ZWLA to monitor progress in law enforcement, in particular implementation of provisions that criminalise child marriage, child pledging and forced marriage.
Tag a Life International (TALI)	Leadership development, HIV and SRHR awareness, psycho-social support	Education Fund	Liaise with TALI for awareness-raising activities and to increase visibility of Commission; seek anecdotal information from TALI on SRHR at community level when conducting investigation on SRHR.

Stakeholder(s)	Intervention	Key outputs	Opportunity for ZGC
Southern and Eastern African Regional Centre for Women's Law	Research	Masters theses on child marriage and issues relating to drivers of child marriage ¹⁰⁹	Refer to existing research to inform interventions by ZGC; source researchers for investigations, if required.
Research and Advocacy Unit	Research	Qualitative studies on child marriage	Refer to existing research to inform interventions by ZGC; source researchers for investigations, if required.
Girls not Brides (International and national chapter)	Advocacy to end child marriage and knowledge management	Guidance on ending child marriage, including theory of change on child marriage Website with an extensive library of electronic resources on child marriage ¹¹⁰	Refer to resources on ending child marriage including information briefs, fact sheets, good practices, and advocacy tools. Refer to theory of change on child marriage. Collaborate with national chapter on awareness raising activities.
Girls' Legacy	Leadership development, mentoring and girls' empowerment	Twenty-nine girls' clubs nation-wide for peer support and education, including on sexual and reproductive health issues.	Request roster of girl club members and recruit them as speakers for road shows and other awareness raising activities in their respective districts.
Portfolio Committee on Women's Affairs, Gender and Community Development	Investigation, documentation and reporting to Parliament	Report of the Portfolio Committee on Women's Affairs, Gender and Community Development on the High Prevalence of Child Marriages in Mashonaland Central Province	Follow up with Portfolio Committee regarding the way forward to address the findings of the report and, based on the response, support the planned interventions.
Zimbabwe Human Rights Commission (ZHRC)	Human rights monitoring and investigations.	Dialogues on child marriage	Collaborate on monitoring implementation of human rights obligations relating to child marriage.

¹⁰⁹ 'Women's Law Master's Degree Dissertations 2004-2014' <<http://www.searawl.ac.zw>> accessed 30 October 2016.

¹¹⁰ www.girlsnotbrides.org

Stakeholder(s)	Intervention	Key outputs	Opportunity for ZGC
Hon Jesse Majome (MP) and coalition of civil society	Law reform	Draft Elimination of Child Marriages Bill	Monitor the inclusion of the issues raised in the draft Bill as presented to the Minister of Justice in the final Bill that the Ministry of Justice will draft and table before Parliament.
Parliament of Zimbabwe	Pledge to protect girls	The pledge to protect girls also includes commitments to end child marriage, child pledging and forced marriage.	Monitor and track parliamentary efforts to protect girls.

GAPS ANALYSIS



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6. GAPS ANALYSIS

The mapping of stakeholders and child marriage interventions in place reveals some gaps with respect to ending child marriage. It appears that, while the majority of activities are focused on behavioural change and transforming cultural norms, which are important and necessary interventions, there are few interventions aimed at other causes of child marriage such as low education levels and teenage pregnancy. Child marriage cannot be tackled in isolation as it is linked to abuses that affect many girls and women throughout their lives.¹¹¹

6.1. Human Rights Framework

One apparent gap is that, despite some initiatives for law reform, the issue of child marriage is not being sufficiently addressed within a human rights framework. Child marriage is a violation of human rights. International human rights instruments are powerful tools for advocacy, yet the analysis reveals that they are only used to a limited extent and that much more needs to be done to hold the state accountable for fulfilling its commitments under the applicable international human rights instruments.

For example, girls and women have the right to dignity, to be protected from all forms of violence including sexual abuse in the public or private spheres. Child marriage and sexual abuse are two sides of the same coin yet there are insufficient and ineffective interventions to hold the state to account for

its failure to act with due diligence to prevent violence, protect girls, prosecute and punish perpetrators, and provide redress for victims of violence. The shortcomings in this regard are manifested through high levels of violence against women and girls, continued practice of child marriage, and low conviction rates regarding violence and child marriages.

6.2. Sexual and Reproductive Health Rights

Adolescent pregnancy is consistently cited as a driver of child marriage in Zimbabwe requiring targeted interventions. Interventions to curb teenage pregnancy or address adolescents' unmet needs for contraception are insufficient. Where they do exist, they only reach a small portion of the adolescent population rather than being widespread and systematic.

6.3. Married Girls

There are limited activities aimed at married girls and for the most part these activities are directed at skills development towards economic empowerment of married girls. Programmes to address the sexual and reproductive health rights of married girls could not be established through the mapping. It may be that such programmes exist but are not implemented by the stakeholders who were interviewed for this study. It may also be that such programmes do not exist or only exist on a very limited scale.

¹¹¹ Equality Now, 'Using the law to end child, early and forced marriage and related human rights violations' <http://www.equalitynow.org/sites/default/files/Protecting_the_Girl_Child.pdf> accessed 5 October 2016.

It appears that insufficient attention is given to facilitating access to justice for married girls. The baseline studies cited incidents of rape and sexual violence. There is no evidence of a sustained follow-up in relation to these accounts or the related conclusions to be drawn from the anecdotal evidence that married girls experience sexual violence. Targeted interventions, if any, informed by the baseline studies, are not apparent or yielding results that are measured and impactful.

6.4. Masculinities and Gender Stereotyping

There are activities by national stakeholders that focus on changing the behaviour of boys and men. Changing the mind-set of some traditional and religious leaders and other males in communities in arguably superficial ways may spare some girls from an early marriage but it will not end the harmful practice. The social constructs of gender roles need to be addressed systematically. For example, the school curricula nation-wide needs to be reviewed to ensure that gender stereotypes and messaging are corrected to be in sync with the promotion of gender equality. The media needs to understand its role in perpetuating negative gender

stereotypes. Female role models need to be identified and promoted. More strategic, macro-level interventions, informed by international good practices are required to address child marriage in as much as gender stereotyping drives the practice.

6.5. Research

Research gaps exist. Despite few exceptions, the literature review indicates that there is limited research of academic rigour and that research is confined, for the most part, to understanding drivers and perceptions of child marriage. The outcome is the repackaging of the same story and a dearth of evidence on the peripheral issues that intersect with and perpetuate child marriage. Some possible areas for research include: the cost of child marriage on the economy; the psycho-social impact of child marriage on girls; the impact of child marriage and early motherhood on the children of married girls; the needs of married girls beyond skills development; the availability and relevance of services for girls who leave early marriages and cannot return home; and the drivers and impact of child marriage on boys, if and where the problem does affect boys.



GOOD PRACTICE: THE SOUTH AFRICAN COMMISSION ON GENDER EQUALITY



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7. GOOD PRACTICE: THE SOUTH AFRICAN COMMISSION ON GENDER EQUALITY

The work of the ZGC can be informed by the activities of South Africa's Commission for Gender Equality (CGE) towards addressing *ukuthwala*, which is a practice involving the abduction and forced marriage of girls that is prevalent in the Eastern Cape and KwaZulu Natal provinces of South Africa.

The CGE is an independent institution mandated by the Constitution of South Africa to advance gender equality in all spheres of society and make recommendations on any legislation affecting the status of women.¹¹² It was established by the Commission for Gender Equality Act 1996 and has in its 20 year of existence gained a lot of experience from which the ZGC could benefit.

The CGE's annual report for the period 2013/2014 lists the following interventions to respond to the problem of *ukuthwala* in South Africa:¹¹³

- Convened consultative dialogues with communities in the provinces of KwaZulu-Natal, Mpumalanga and the Eastern Cape, to establish the extent and impact of *ukuthwala*.
- Investigations into provincial government responses to *ukuthwala*, and monitoring in this regard, to establish whether the

provincial government is responding adequately to ensure that the best interests of the child are protected and promoted.

- Tabling of KwaZulu-Natal investigation findings with provincial Cabinet, leading to the convening of a provincial conference on *ukuthwala* in November 2013, in collaboration with the provincial Department of Cooperative Governance and Traditional Affairs.
- Monitoring of the National Prosecuting Authority's prosecution of individual cases of *ukuthwala*, and developing recommendations on the prosecution of known cases.
- Tabling of reports and recommendations in Parliament on *ukuthwala*.¹¹⁴
- Entering into MoUs with provincial houses of traditional leaders in the three provinces, to raise awareness about the practice of *ukuthwala* and secure the collaboration of traditional leaders in eradicating such harmful practices.

The above examples could be relied upon to guide the ZGC in its efforts to address the issue of child marriage in Zimbabwe.

¹¹² South African Constitution s 187.

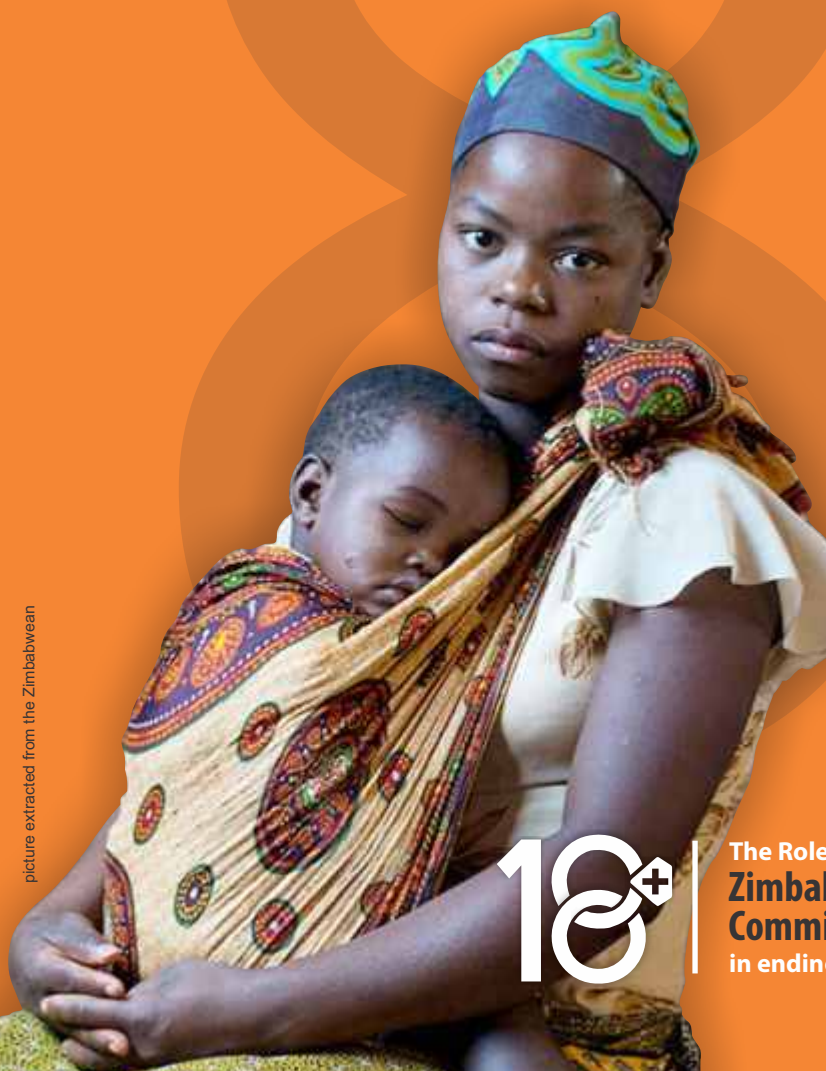
¹¹³ CGE, 'Annual Report 2013/2014'

<<https://drive.google.com/file/d/0B43RY8hVdugGQ3JvaWF5RFFZVTg/view>> accessed 12 October 2016.

¹¹⁴ See for eg, CGE, 'Ukuthwala in KwaZulu Natal: An Investigation into State Prevention and Response' <<http://pmg-assets.s3-website-eu-west-1.amazonaws.com/130320ukuthwala.pdf>> accessed 12 October 2016.

Depending on the availability of resources, the ZGC should consider establishing contact with the CGE with a view to undertaking a study visit to the CGE. Alternatively, one or more Commissioners and the CEO of the CGE could visit the ZGC to conduct a workshop for the ZGC Commissioners and Secretariat, with the focus being on information sharing, particularly with respect to lessons learned on how the CGE has handled the issue of *ukuthwala*.

THE ROLE OF THE ZIMBABWE GENDER COMMISSION IN ENDING CHILD MARRIAGE



picture extracted from the Zimbabwean

18+

The Role of the
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8. THE ROLE OF THE ZIMBABWE GENDER COMMISSION IN ENDING CHILD MARRIAGE

The attainment of gender equality, particularly in societies such as Zimbabwe where patriarchy is deeply entrenched, is a challenge. The reality is that Zimbabwe is not an isolated case as there is no country in the world that has attained full substantive gender equality. Rather than approaching gender equality broadly, it is strategic to identify barriers prejudicial to gender equality and design interventions to address the specific barriers. In so doing, there will be broad gains towards gender equality.

Child marriage is a systemic barrier prejudicial to gender equality. Given the high prevalence of child marriage in Zimbabwe and the negative consequences it has on girls, it is an issue ripe for focused attention by the Gender Commission. The ZGC therefore has a central role to play in ending child marriage.

Cognisant of the role and activities of other stakeholders, the role of the ZGC in addressing child marriage is to apply a human rights based

approach to monitor effective implementation of the country's commitments at the international, regional and sub-regional levels. In addition, it should push for the necessary legal reform in relation to child marriage and monitor implementation of all relevant national laws and policies.

The ZGC is well placed to target and address specific drivers of child marriage. Violations of adolescent sexual and reproductive health rights, as well as gender stereotyping, require urgent interventions in line with human rights obligations. The ZGC must seek to be innovative, bold and effective and avoid replication of interventions that do not address the causes of child marriage. There is a need to ensure that the identified gaps in the national response are addressed. Without macro-level interventions to address the drivers of child marriage, the problem will persist in Zimbabwe. The problem must be tackled at a national level and should receive consistent attention.

Proposed child marriage interventions and activities can be aligned with the existing functions of the ZGC as follows:

Function of the Commission	Child Marriage Intervention	Recommended Activities
<p>To monitor issues concerning gender equality to ensure gender equality as provided for in the Constitution</p>	<p>Monitor reform of marriage laws and effective implementation of new and existing laws.</p> <p>Monitor timely state reporting to UN and AU treaty bodies and contribute content on child marriage where applicable. Disseminate concluding observations of the treaty bodies and follow up on implementation of treaty body recommendations</p>	<p>Urgent follow up with Minister of Justice regarding status of Marriage Bill</p> <p>Follow up on status of Draft Protocol Report and lobby for Cabinet approval followed by urgent submission to the African Commission on Human and Peoples' Rights; follow up on status of CEDAW report and push for immediate commencement of drafting of periodic report; contribute content on child marriage.</p>
<p>To investigate possible violations of rights relating to gender</p>	<p>Investigate systemic drivers of child marriage, namely: violations of sexual and reproductive rights, masculinities and gender stereotyping.</p>	<p>In cooperation with the Ministry of Health and Child Welfare, undertake a review of the legal and policy framework relating to sexual and reproductive health, particularly as concerns adolescents, and report documented findings to Parliament with recommendations for reform. The review should include laws and policies relating in particular, to access to contraception and comprehensive sexuality education.</p> <p>In cooperation with the Ministry of Education, undertake a review of school curricula at primary and secondary school level to identify gender stereotyping and report documented findings to Parliament with recommendations for reform. The review should include a review of guidance and counselling (also known as life skills) curricula.</p>

Function of the Commission	Child Marriage Intervention	Recommended Activities
To receive and consider complaints from the public and to take such action in regard to the complaints as it considers appropriate	Create awareness of child marriage as a human rights violation and popularise the complaints function of the ZGC.	Introduce child-friendly complaint procedures and mechanisms that would enable children to bring cases to the attention of the ZGC
To advise public and private institutions on steps to be taken to ensure gender equality	Popularise international human rights instruments relating to gender equality, including Zimbabwe's obligations to prohibit child marriage and address the causes of child marriage under the treaties.	Draft position papers on findings from investigations outlined above. The position papers should clearly outline steps to be taken by public and private institutions based on the findings of the investigations.
To recommend prosecution for criminal violations of rights relating to gender.	Receive and investigate child marriage complaints.	Recommend child marriage cases for prosecution to the police or National Prosecuting Authority following an investigation or hearing by the ZGC.
To secure appropriate redress where rights relating to gender have been violated.	Monitor the prosecution of cases involving child marriage.	Collaborate with the Ministry of Justice to collect data on reported cases and outcomes in justice system, including number of prosecutions. Make recommendations to Parliament based on the data for measures to increase prosecution of perpetrators.
To do everything necessary to promote gender equality.	Mainstream child marriage into strategic plan of the ZGC.	Mainstream child marriage into activities to be undertaken as identified in the strategic plan of the ZGC.

The interventions and activities outlined are not exhaustive. Activities were identified that would result in tangible outputs realised within the period of the strategic plan from 2016 to 2021. In other words, the table does not present a 'wish list' but rather a 'to do' list. The ZGC will not exclusively be addressing child marriage, so the number of activities proposed relating to ending child marriage must not be such that the ZGC's human and financial resources would be overstretched. The ZGC should consider working collaboratively with other stakeholders to overcome both human and financial limitations. The ZHRC, for example, is currently better resourced than the ZGC with an overlapping mandate in many respects. It would be strategic for the ZGC to identify synergies with the ZHRC and initiate collaborative approaches, particularly with respect to complaints and investigations.

Other activities that it is recommended that the ZGC could undertake and that would help to address the problem of child marriage in Zimbabwe are the following:

8.1. Gender Forum

In addition to the interventions and activities proposed above the ZGC is tasked with

convening a Gender Forum annually.¹¹⁵ The mandated Gender Forum presents a further entry point for the ZGC to address child marriage. In order to increase the visibility of the ZGC, the 2017 Gender Forum should be convened in a province with a high prevalence of child marriage, such as Mashonaland Central, for example.¹¹⁶ The specific theme of the Gender Forum should be determined in consultation with stakeholders although it should be related to ending child marriage. It should be innovative and create a platform for the gathering and sharing of new information that can inform practical interventions. The conclusions of every Gender Forum should be embodied in written resolutions for presentation to the ZGC and the relevant ministry.¹¹⁷

8.2. Reports

The ZGC must submit to Parliament an annual report describing fully its operations and activities.¹¹⁸ In addition, the ZGC may submit reports to Parliament on particular matters relating to gender issues, which, in the ZGC's opinion, should be brought to the attention of Parliament.¹¹⁹ These Constitutional provisions, particularly in the latter respect, create an important entry point for monitoring state action on child

¹¹⁵ S 8(1) Gender Commission Act provides that the Commission shall annually...organise, convene and host a gender forum to discuss any issue or issues of concern related to its constitutional and statutory functions.

¹¹⁶ S 8(1) of the Gender Commission Act provides that the Gender Forum shall rotate annually through every provincial centre of Zimbabwe.

¹¹⁷ Ibid s 9(4).

¹¹⁸ Ibid (n 2) s 323.

¹¹⁹ Ibid s 247.

marriage. As an independent institution, the ZGC is well placed to challenge the state where shortcomings have been identified. However, the ZGC must be bold and seize the platform for accountability. The Portfolio Committee has already brought evidence of the high prevalence and grave consequences of child marriage before Parliament. The ZGC must avoid only reiterating the problem. It should rather highlight failures of the state to take appropriate measures to end child marriage and call for measures to remedy the failures. Recommendations should be provided and monitored. In this process, the ZGC should consult broadly with civil society to prepare the reports, thus providing access indirectly, for civil society voices to also be heard in Parliament.

8.3. Monitoring International Reporting Obligations

Zimbabwe has numerous reporting obligations to international treaty bodies. The timely submission of state reports on compliance with international treaty obligations is important for advancing human rights. Not only does reporting demonstrate a commitment to fulfilment of human rights obligations, but it is an opportunity to take stock of progress and identify challenges with respect to implementing human rights instruments at the domestic level.

As part of a human rights based approach, the ZGC has an important role to play in monitoring the state's compliance with its treaty reporting obligations, namely, with regards to the African Women's Rights Protocol and CEDAW. Gender equality cuts across all of the major treaties, but it is strategic for the Commission to focus on the international and regional women's rights treaties, to avoid diluting its interventions or stretching its capacity. Monitoring reporting obligations includes following up on the status of reports and advocating timely submissions, as well as proposing relevant content for reports. Once concluding observations are published by the treaty monitoring body, the ZGC has a role to play in disseminating and publicising these as well as in monitoring implementation of the recommendations.

In consultation with state institutions and stakeholders from civil society, the ZGC has developed its first Strategic Plan for the period 2016 to 2021.¹²⁰ The Strategic Plan lists key result areas and time measurable strategic goals. The Strategic Plan identified a number of activities to be undertaken by the Commission towards the fulfilment of the identified objectives. Child marriage interventions should be mainstreamed into the activities identified in the strategic plan where possible.¹²¹

¹²⁰ Final draft is on file with author.

¹²¹ The strategy is included as an annexure to this report.

CONCLUSION



The Role of the
**Zimbabwe Gender
Commission**
in ending child marriages

9. CONCLUSION

Child marriage is a violation of human rights and it disproportionately affects girls. Child marriage undermines efforts at achieving gender equality as it affects the ability of girls to realise their full potential. In addition, it perpetuates the subservient position of girls in patriarchal societies. Numerous drivers exist that perpetuate child marriage. These include poverty, patriarchy, religious beliefs and traditional practices, adolescent pregnancy and weak enforcement of laws.

The ZGC, as a newly instituted independent body charged with promotion of gender equality, has

an opportunity to participate in addressing this problem, which unless addressed will continue to undermine any efforts at ensuring gender equality in Zimbabwe. Accordingly, the ZGC has the mandate to undertake activities to end child marriage and has an important role to play in this respect. The ZGC should ensure a human rights based approach, targeting the causes of child marriage and addressing identified gaps in the current response to child marriage by the variety of stakeholders. The approach of the ZGC should be collaborative and should leverage on existing expertise and commitment by the identified stakeholders.

SUMMARY OF RECOMMENDATIONS



The Role of the
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10. SUMMARY OF RECOMMENDATIONS

In the immediate term, without delay, the ZGC should take the following actions:

- Continue to build the capacity of the ZGC, particularly with respect to a human rights based approach to child marriage, and gender equality broadly.
- Request and organize a study visit to the SACGE, or extend an invitation to the SACGE to visit the ZGC for information sharing on addressing child marriage.
- Follow-up with the Department of Justice regarding the status of the Marriage Bill at frequent regular intervals until it is enacted.
- Issue periodic press releases that draw attention to the need for law reform to address child marriage, highlight government obligations and commitment in this respect, and urge the government to pass the Marriage Bill without further delay.
- Increase visibility of the Commission through participation in international commemorative days and campaigns, such as the International Women's Day, International Rural Women's Day, and the annual 16 Days of Activism against Gender Based Violence.
- Follow-up on the status of Zimbabwe's reports on the African Women's Rights Protocol and CEDAW and prepare shadow reports to the state reports.
- Convene a dialogue with the MWGACD to clarify the role of the ZGC in the implementation of the NAP.
- Convene a dialogue with the ZHRC to identify possible areas of collaboration, including handling of complaints, investigations, and awareness-raising.

- Enter into an MoU with the National Council of Chiefs and UDACIZA to secure support and formalise collaboration on engaging religious and traditional leaders to end child marriage in Zimbabwe.

In the long term, on an on-going basis, the ZGC should take the following actions:

- Convene a Gender Forum annually with broad stakeholder involvement and documentation of resolutions.
- Undertake investigations on child marriages, beginning with the research gaps identified in this study; prepare a report on the findings for Parliament; and publicise the findings and recommendations widely.
- Draft and publicise position papers on findings from investigations.
- Prepare annual reports to Parliament, highlighting the persistence of child marriage and the causes.
- Monitor progress of law reform and state reporting on the African Women's Rights Protocol and CEDAW.
- Receive and resolve complaints relating to child marriage and recommend cases for prosecution to the police or the National Prosecuting Authority.
- Collaborate with the Ministry of Justice to collect data on reported cases of child marriage and outcomes in the justice system, including the number of prosecutions; based on the data, make recommendations to Parliament for measures to increase prosecution of perpetrators.
- Mainstream actions to address child marriage into activities identified in the Strategic Plan 2016–2021.

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