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# MEDIA BRIEF

## ON ENDING CHILD MARRIAGES IN ZAMBIA





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IN ZAMBIA

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# Acronyms

ACHPR	-	African Charter on Human and People's Rights
ACRWC	-	African Charter on the Rights and Welfare of the Child
CEDAW	-	Convention on the Elimination of all forms of Discrimination Against Women
CRC	-	Convention on the Rights of the Child
CSOs	-	Civil Society Organisations
GBV	-	Gender-Based Violence
GIDD	-	Gender in Development Division
ICCPR	-	International Covenant on Civil and Political Rights
ICESCR	-	International Covenant on Economic, Social and Cultural Rights
IHRF	-	International Human Rights Framework
ILO	-	International Labour Organisations
SNDP	-	Sixth National Development Plan
STIs	-	Sexually Transmitted Infections
UDHR	-	Universal Declaration of Human Rights
UNCRC	-	United Nations Convention on the Rights of the Child
UNDP	-	United Nations Development Programme
UNFPA	-	United Nations Fund for Population Activities
UNGASS	-	United Nations General Assembly
UNZA	-	University of Zambia
ZARAN	-	Zambia AIDS Law Research and Advocacy Network
ZDHS	-	Zambia Demographic Health Survey

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## Foreword

The media is a key stakeholder in ensuring that the public is well sensitized about the consequences of child marriages, that law enforcement agencies and their officers are alerted about such practices, and that they create a platform for other stakeholders such as children to share experiences on child marriage.

Child marriage is a violation of children's rights whether it happens to a girl or a boy. It represents perhaps the most prevalent form of sexual abuse and exploitation of girls. It is also a direct form of discrimination against the girl child, who, as a result of the practice, is often deprived of her basic rights to health, education, development, and equality.

Child marriage adversely impacts upon the well-being of children generally, and the girl child in particular, in numerous other ways. For example, given that most girls get married to much older men early marriage renders them susceptible to physical, emotional and sexual abuse, as well as early widowhood.

Children should be protected from early marriages considering the physical and mental burdens these relationships entail and the need to develop the child intellectually, physically and psychologically. Child marriages undermine almost all the foundational principles of child rights- non-discrimination, the right to life, survival and development, participation and the child's best interests. Much as the girl child is adversely affected by the inaccessibility of all four principles, the issue of non-discrimination is a key driver with regards to the position of the girl child.

Child marriage is a multi-faceted phenomenon that requires involvement of the, physical, social, cultural and legal support from different stakeholders. It needs a multi-sectoral approach in order to win the fight. There is therefore need for an informed citizenry that will respond positively to the initiatives that are intended to fight against the vice.

Despite the power and influence they wield, however, media houses and journalists do not often adequately report on development issues in their reporting.

Panos Institute Southern Africa (PSAf) acknowledges the need for effective capacity building of the media to address the issues of child marriages. This is in the form of relevant information to enhance their role in raising awareness and influencing behavior change as the public questions harmful cultural and traditional practices and improving their contribution in the fight against child marriages.

It is my hope that the media personnel will find this brief helpful in closing this lacuna by enhancing their understanding child marriages in an in-depth and effective way.



Lilian Kiefer  
Executive Director  
Panos Institute Southern Africa

# CHAPTER ONE: BACKGROUND

## 1.1 Introduction

Child marriages are marriages in which one or both parties to the marriage are children. Child marriage is a violation of children's rights whether it happens to a girl or a boy. It represents perhaps the most prevalent form of sexual abuse and exploitation of children. It is also a direct form of discrimination against the child, who, as a result of the practice, is often deprived of basic rights to health, education, development and equality, forcing the child to be exposed to harmful practices and dangerous cultural beliefs. The harmful consequences include separation from family and friends, lack of freedom to interact with peers and participate in community activities, and decreased opportunities for education. This is particularly true for female children who cannot abstain from sex or insist on condom use. This exposes them to such serious health risks as premature pregnancy, sexually transmitted infections and increasing HIV and AIDS.

Tradition, religion and poverty continue to fuel the practice of child marriage, despite its strong association with adverse reproductive health outcomes and the disempowering effects it has on girls whose opportunities to get a formal education are diminished. Although the practice is more prevalent in rural areas, it generally affects poor families in both rural and urban areas.

Media plays a critical role to create and raise awareness, influence both behaviour and policy change around issues of child marriages and offer possible solutions to the problems and thus improve social transformation. Through accurate and in-depth information, media can educate the public on the dangers of child marriages on children, families and society at large. The media can report and record cases of child marriages to give evidence on how rampant the practice is, induce debate and influence policy makers to design appropriate laws and policy interventions.

The media has the ability to inform the public and provide a platform for children and their families to share their experiences and discuss the impact child marriages have on the well-being of children. This provides them with an opportunity to directly influence discussions to address the challenges on implementation of the laws on ending child marriages. Through the media, we are able to determine what is acceptable and what is not. The media, therefore, can either positively or negatively influence public opinion on child marriage. The media also has the power to determine what news is and to construct stories and select words in ways that affect people in a positive way.

## 1.2 Rationale and background of this media brief

Globally, it is generally accepted that the media plays a critical role in the development of any country. This is no less so in Zambia. Because of its "mass communication" attributes and potential to disseminate information, it is able to reach wide audiences across great distances that would otherwise be

impossible to reach, in some cases in real time. With this potential, the media, such as television and radio, the printed press and, in more recent years, the new communication platforms such as ICTs and social media, can play a great role in changing attitudes in communities and society at large and thus be an important vehicle for development.

Journalists, therefore, need enhanced capacity to report on the matters that are critical to development for the ordinary citizen. They need to be equipped with information that will ensure correct and consistent debates that will improve information flow and understanding of the factors leading to child marriages and challenge the interventions and policies that are not providing solutions to the problem.

This media brief, therefore, is aimed at closing this lacuna and improving the knowledge of Journalists to enhance their reporting on child marriages in an in-depth and effective way and trigger the necessary social, cultural, legal and policy influence. It is also aimed at increasing awareness and understanding about child marriage and children's rights through media platforms and create visibility of the issues around the scourge in the media arena. The brief provides the media with information on child marriages to support and inform their reporting in a manner that not only helps to curb child marriages but also helps the identification of diverse opportunities for girls in communities, particularly those in the underprivileged rural areas.

# CHAPTER TWO: SOME KEY CONCEPTS IN UNDERSTANDING CHILD MARRIAGES

In order to understand the nature of child marriages in Zambia, it is important to first appreciate the key concepts that form part of the child marriages discourse.

## 2.1 Definition of a Child

The United Nations (UN) has defined a child as someone under the age of 18 years, with permission to member states to lower this age. This means that depending on the social, economic, cultural and other relevant factors, a member-state of the UN may decide to lower the age of a person to be considered a child.

Zambia has signed two declarations regarding Children's Rights: The United Nations Convention on the Rights of the Child (UNCRC) and the African Charter on the Rights and Welfare of the Child (The Children's Charter). Both these instruments state that a child is any person under the age of 18 years. However, the definition of "who is a child in Zambia" is still a challenge. This is due to the specific pieces of legislation that have different definitions. For example, the Penal Code under Chapter 87 of the Laws of Zambia states that a 15-year-old may be liable for the crime of defilement.

The child is thus exposed to adult criminal prosecution before the general age of majority which is 18 years. In addition, the Marriage Act states that the legal age for marriage is at 21 years of age, but allows for marriage below this age with the consent of an adult. In customary law, under which most child marriages take place, a child can be married when he/she reaches puberty.

## 2.2 Complexities in defining a child

It is evident from the above that the status of a child is a complex one in law as one may be a child for one purpose but an adult for another. Even though the status of childhood lasts until a person reaches the general age of majority (i.e. 18 years according to the Zambian Constitution), this general age does not determine adult status for all purposes, as alluded to above. Ramsey and Abrams state to this effect that "sometimes children assume some adult rights and obligations before they reach the general age of majority. The general age thus permits predictable administration, but ignores individual differences." It is important to note that not all children are homogenous. The law must therefore allow some level of flexibility in protecting children's rights whilst seeking to maintain law and order.

For matrimonial causes, a child is also defined by whether one is a subject of marriage or whether they are a subject of child maintenance. For one to be considered an adult for marriage purposes, according to the Marriage Act, they must be above the age of 21 years. However, the law (in the

Matrimonial Causes Act) may consider a 25 year old person as a child entitled to maintenance from the parents.

## 2.3 Definition of Marriage

Marriage is a union between two consenting adults of opposite sex, to the exclusion of all others. In Zambia there are principally two ways by which marriage can be contracted. There are:

### 2.3.1 Civil marriages

Civil marriages are those contracted in accordance with an Act of Parliament (they are also known as statutory marriages because they emanate from statute). In this marriage, two people can contract a marriage and have it solemnized by the registrar of marriage or a gazetted minister of religion. Under the Zambian civil law, a person aged 21 years is eligible for marriage.

### 2.3.2 Customary marriages

In customary law, a marriage is a union between people in accordance with their customary practices. Many customs in Zambia do not limit the number of people who would be part of this union, but the practice is that the union comprises of one man and one or more women. The marriages contracted under Zambian laws and tradition are usually valid only after definite steps are taken. According to the Zambian customary law, a child who attains puberty is old enough to be married.

## 2.4 Child marriage

The Report on the Situational Analysis of Child Marriages in Southern Africa (p1, unpublished) refers to child marriage as both formal marriages and informal unions in which a girl lives with a partner as if married before age of 18. Child marriage is defined as “any marriage carried out below the age 18 years, before the girl is physically, physiologically and psychologically ready to shoulder the responsibilities of marriage and child bearing. Further to this, child marriage involves either one or both spouses being children and may take place with or without formal registration under civil, religious or customary laws.”

Child marriage, therefore, has to do with age and the psychological and physical development of the parties to a marriage. As such, the term is often used interchangeably with the term “early marriage”, to signify that one or more of the parties to a marriage are not ready for the responsibilities that come with marriage.

A report by the UN General Assembly (UNGASS) entitled Child Marriage Study: Preventing and Eliminating Child Marriages states that “[e]arly marriage also refer[s] to marriages where both spouses are 18 or older but other factors make them unready to consent to marriage, such as their level of physical, emotional, sexual or psychological development, or lack of information regarding the person’s

life options." Thus, whereas age is a major consideration in defining child marriages, it is not the only consideration. A person who consents to a marriage must be mature enough to understand the nature and consequences of marriage and must be willing and able to meet their obligations under the marriage, whilst enjoying their rights.

## 2.5 Conflicts between customary and national law on child marriage

Zambia has a dual legal system. This leads to customary law contradicting national law and both Zambia's customary and national laws conflicting with the UNCRC and the Children's Charter. The application of customary law and English law in Zambia gives rise to difficulties. Given the fact that most marriages are contracted under customary law, the Constitutional exception provided in Article 23(4)(c) excluding the gender equality principle in matters such as "adoption, marriage, divorce, burial, devolution of property on death" are of particular importance. Discriminatory practices related to marriage and family are still widespread. Since they create a hostile atmosphere against women, it is worth mentioning some of them such as early marriages. This demonstrates the direct relationship between inequality and vices such as early marriages.

# CHAPTER THREE: THE STATE OF CHILD MARRIAGES IN ZAMBIA

Child marriage is a prevalent social problem in Zambia arising from various socio-economic causes.

## 3.1 Prevalence of Child Marriages in Zambia

Zambia is the third highest country with cases of child marriages in the SADC region and 19th in the world. In Zambia, about 42 per cent of women aged 20-24 years are married by the age of 18 – a rate that has not evolved since 2002. The rates of child marriages vary from province to province, and are as high as 60 per cent in the Eastern Province. ([www.girlsnotbrides.org](http://www.girlsnotbrides.org).) accessed on 20th November 2014. At 13.42)

The ZDHS [Zambia Demographic Health Survey] indicates that among married girls aged 15-19 in Zambia, 68 percent have already given birth. In addition, most of the births occurring to girls before age 18 are first births (85 percent), and a majority of these first births occur within marriage.

A Central Statistical Office (CSO) report of 2010 carried out by Plan Zambia indicates that “only a few adolescent girls and boys complete upper primary education while the enrolment ratio in secondary education is 13.4% for males and 12.9% for females.” The report concludes that child marriage is the critical driver for this state of affairs.

The above statistics are alarming considering the effects of child marriages discussed above. If this state of affairs is allowed to continue, there is a very high chance that the mortality rate in Zambia will grow to uncontrollable levels and will increase the burden on the health sector. This will also increase the burden on families, communities and ultimately, society.

## 3.2 Drivers of child marriages

Research conducted by Plan Zambia in conjunction with the University of Zambia in September 2008 ascertains the extent and impact of child marriages in four districts. The causes of child marriages ranged from poverty where child marriage is seen primarily as arising from high poverty levels experienced by most families, poverty forces families to marry their daughters at a young age as a way of improving the economic status of the family. Poverty is also believed to compel girls, particularly orphans, to get married with a hope of leading a better life.

A Report by “Girls not Brides” from the website [www.girlsnotbrides.org](http://www.girlsnotbrides.org) states that in Zambia, girls who are affected by poverty, lack of education and longstanding traditional practices that discriminate against girls and women, are most vulnerable to child marriage. For example, the United Nations Fund for Population Activities (UNFPA) found that 65 per cent of women aged 20-24 with no education

and 58 per cent with primary education were married or in a union at age 18, compared to only 17 per cent of women with secondary education or higher.

The following factors contribute to child marriages:

i. Poverty:

There is a direct link between poverty, the existence of large families and child marriages. Poverty and the existence of large families make children vulnerable to early marriages as they have inadequate or no social security and survival essentials from the family. Impoverished families are unable to educate their children, provide them with healthcare and social or recreational facilities (among other essentials). Although the proportion of child brides has generally decreased over the last 30 years, child marriage remains common in rural areas and among the poorest communities. However, it can also be a factor that exacerbates poverty in their lives as many women are subjected to harsh economic situations when they get divorced or when they are widowed.

ii. Limited access to formal education:

Limited access to formal education for many children often leaves them impoverished and thus susceptible to early marriage. This is because without education, many children have limited options for survival and alternative social and other activities. Lack of education also subjects children to perpetual poverty as they often don't have opportunities for employment. This makes them dependant on anyone who is capable of providing for them. This dependence makes them susceptible to abuse by care-givers and spouses.

iii. Lack of Information:

Lack of information for parents and community on dangers of child marriages, harmful cultural practices, importance of education for both girls and boys, respect for children's rights and other such relevant information makes children vulnerable to abuse and to early marriages. Like lack of formal education, lack of information limits the options for survival available to children. The importance of access to information in eradicating child marriages, therefore, cannot be overemphasized. The failure of these girls and their families to access information that would help them mitigate the threats to their lives aggravates the dangers.

iv. Cultural beliefs and practices:

Culturally, women and children are viewed as "second class citizens" inferior to men. This has created unequal status and power relations between the sexes and ages in Zambia. The patriarchal principles of women's subordination within the family form the principles of Family Law. Various components of Customary Law treat women as property of their husbands. In fact, most customs embedded in customary law are now a conduit for rampant violence against women and children.

Cultural beliefs and practices influence child marriages in many ways. For example, initiation ceremonies for children who become of age and other socialisation processes mostly prepare children for marriage and gender responsibilities as defined by culture. This creates the attitude that such children are ready for marriage. Another example is that of polygamy that often sees children married to old men who are considered wealthy and respected in their communities. Cultural beliefs and practices also dictate what kind of information is shared between sexes and also people of different ages. This often curtails freedom of information and expression and limits the exchange of accurate life-saving information and information that helps people make informed decisions for themselves and in the best interests of their children.

### 3.3 Consequences of Child Marriages

Child marriages are undesirable because they have negative consequences on children. A UNICEF report on Child Marriages of 2005 reveals that child marriages have physical, psychological and psychosocial effects on children. Some of the other effects of child marriages are social and economic. This affects their general wellbeing.

#### 3.3.1 Physical Effects:

Child marriage exerts physical effects on children. A Report by Plan Zambia 2013 on the Situational Child Marriages in Southern Africa include the following:

##### i. Reproductive health complications

One of the serious consequences of child marriages, especially on the part of girls is that it exposes them to serious reproductive health problems. Among the consequences of early marriages on the reproductive health of children is maternal mortality. This is evidenced by studies which reveal that the risk of deaths associated with pregnancy and child birth is 5 times higher in under 15 girls than their counterparts aged 20-24. This is due to the fact that child marriages inevitably expose children to early child-bearing. At this stage, children may not be physically and psychologically mature to assume the roles of child-bearing and child-rearing. These health problems are a result of physical immaturity at a time at which a person is having sex, conceiving and rearing children. The body of the child is not ready for carrying out these duties that come with marriage.

It should be noted that one is susceptible to sexually transmitted diseases, including HIV, by the very fact that one is married. This is obviously exacerbated when one marries young and, worse still, when a child marries someone who is much older than they are – as is the case in many cases of child marriages. This situation is exacerbated by the fact that many children in marriages do not have access to life-saving drugs and healthcare as well as information that would help mitigate these threats to their health and lives.

The Zambia Mode of Transmission Report states that people married or living together are the largest group with the most HIV infected people. In almost one in five couples, either one or both people are HIV positive. Couples with large age gaps between partners have a higher risk of being HIV positive. More of the 19% of couples in which the man is 10 or more years older than the woman are HIV positive than where the age difference is smaller.

ii. Vulnerability to physical violence

Because of the socially weak position in which girls and women are, they are susceptible to violence, including physical violence. When in a marriage setting, such violence is institutionalised and makes it much difficult for them to report it or take any positive action in averting it. Closely related to the exposure to violence is the likelihood to contracting HIV and other sexually transmitted diseases. HIV is not just associated with gender-based violence, but also with marriage.

3.3.2 Psychological and Psychosocial effects:

Child marriages have also been associated with negative psycho-socio effects on children, as well as psychological, emotional and intellectual consequences on them. Children who marry at an early age are often illiterate due to the disruption of their education and education opportunities. This makes them vulnerable to poverty and social and economic abuse. When children are exposed to such abuse, they have a higher chance of experiencing psycho-socio, emotional and psychological problems.

3.3.4 Economic effects

As earlier mentioned, children who are married often become victims of economic abuse as they do not have the means of supporting themselves financially. Many child marriages are also a consequence of poverty, a factor well known to their spouses, and which the latter exploit to the full. This makes many children stay in unhappy marriages because they have nowhere else to go and no other means of survival. Another aspect of economic abuse emanates from the fact that culturally, women are supposed to be dependent on their husbands for financial and other support. Some men do not allow their spouses to be in gainful employment, because they want to make the women dependant on them. This was one of the findings of the ZARAN report on the Engagement with Women on their vulnerabilities to HIV. The converse of this would thus be that male children are subjected to the tough responsibility of ensuring that they provide for their families. If they fail to do so, they too could be victims of economic abuse by their spouses and families.

The practice of child marriage, even though wide-spread, has far reaching effects on children who get married and on society. The vice must, therefore, be eradicated.

### 3.4 Efforts to Improve Child Welfare in Zambia as a means to end child marriages

International and regional human rights instruments impose an obligation on states to ensure the development and wellbeing of children. The preamble to the African Charter on the Rights and Welfare of the Child (ACRWC) states that “the situation of most African children remains critical due to the unique factors of their socio-economic, cultural, traditional and developmental circumstances.” For this reason, children need special protection and care. In line with this, Article 6(2) of the Charter imposes an obligation on member states to “ensure to the maximum extent possible the survival and development of the child.”

#### 3.4.1 Creation of the relevant Ministry

The Zambian government has over the years put in place a mix of measures to improve the welfare of the child in Zambia. One of the measures is the creation of a line ministry aimed at addressing children's welfare. The Government has also put in place policies to address poverty generally such as the National Development Plans, and also to address the welfare of children, more specifically.

#### 3.4.2 The National Child Policy

The National Child Policy is the principal policy that is concerned with children's welfare. It addresses a wide range of issues from poverty to health and education of a child. According to the UN Committee on the Rights of the Child, the Zambian government has also prioritised and targeted social services for children belonging to the most vulnerable groups. (Cogen. P.367) The Zambian government also established a Youth Parliament to help youths deliberate on matters affecting their lives, with the hope that these could influence the development of laws and policies affecting them.

#### 3.4.3 Enactment of laws and policies

The government has also enacted laws and policies addressing different aspects of child welfare. Some of the laws enacted and amended over a period of time and intended to address children's rights. The discussion on the legal and policy framework for addressing child marriages in Zambia provides more details on the content of the related statutes.

From the above, it is clear that whilst our legislative drafters are conversant with the principle of best interests of the child, they have not fully taken this principle into consideration when enacting laws. The effect of this is partial consideration or selective application of the principle. This in turn affects our ability to holistically address factors that make children vulnerable to early marriages and the consequences thereof. It is a fact that human rights are interrelated and interdependent. Thus, failure to address some aspects of children's rights will inevitably affect the extent to which those that are respected and protected are realised and enjoyed.

In practice, the Government is currently reviewing the child related laws and aligning them to the standards in the international child rights systems. The legislative audit is already completed and bills are being worked on for submission to Parliament.

Whilst this development is welcome and long overdue, it is important for the law review to be comprehensive and to be based on empirical evidence. It must take into account all the major reports affecting various children's rights and interests and must conform to both international and regional human rights instruments.

### 3.5 Existing Interventions for Addressing Child Marriages in Zambia

Interventions for addressing child marriages in Zambia have taken a multi-sectorial and multifaceted approach. This is necessitated by the fact that many factors influence child marriages. Some of the steps that the Government of Zambia has undertaken in addressing child marriages in Zambia include the following:

#### 3.5.1 Enactment and review of relevant laws and policies

Enacting and reviewing of laws and policies to ensure that there is a conducive legislative environment that protects children's rights: The Government enacted the Matrimonial Causes Act in 2007 to include better protection of children in the event of divorce between their parents. This helps reduce their vulnerability to early marriages. The Government also formulated the Gender Policy.

#### 3.5.2 Anti-Gender Based Violence Act

The Act seeks to address all forms of gender-based violence. Child marriages can be viewed as a form of gender-based violence, particularly against female children who suffer disproportionate physical and psychological injury that flows directly from child marriages. The Act also provides for a fund and for shelter to support victims of Anti-Gender Based Violence. In pursuance of this law, the Government has started constructing shelters in three districts in Zambia. In the last five years or so, the Government has also reviewed laws such as the Penal Code to increase protection of children from sexual violence.

#### 3.5.3 Collaboration with Civil Society Organisations

The Government and Civil Society Organisations have also played their role in raising awareness on the evils of child marriages. Hence, there has been widespread sensitization and community awareness. The Government and Civil Society Organisations have also engaged with various traditional leaders on the dangers of child marriages.

Further, UNFPA and other UN agencies such as UNICEF and UNDP are supporting Government to do the following in addressing child marriages in Zambia:

- i. Support children and their families to enable them access formal education and thus reduce their vulnerabilities to early marriages;
- ii. Strengthen developmental programmes targeted at alleviating poverty and improving the lives of families to better provide for children; and
- iii. Supporting relevant line ministries to achieve the aforementioned.

### 3.6 Challenges in addressing child marriages

The aforementioned interventions have not yielded much fruit in addressing the problem since the status of child marriages in Zambia has not changed significantly in the past few years. We do not have empirical evidence which explains why these have not worked, but one could attribute this to the following:

- i. Inappropriate packaging of key messages and lack of sustained and appropriate messages against child marriages which leads to low information levels;
- ii. High poverty levels;
- iii. No clear link between interventions for addressing child marriages and those aimed at other vices and social problems; and
- iv. Lack of transformative programmes targeted at changing societal attitudes towards child marriages.

It is important to note that if the rights of children are not well respected, promoted and protected, it is very difficult to fight child or early marriages. This follows from the interdependent nature of human rights. Children's access to basic necessities including food, shelter, education and healthcare is essential in ensuring that the factors that influence child marriages are averted and that the consequences that flow from such marriages are mitigated.

#### 3.6.1 Access to health care services

The welfare of a Zambian child is worsened by inadequate or no access to health care services, including information that would help one live a healthy life. The physical, mental and psychological health of a Zambian child is strained as a result of the many factors already discussed above. The life of many married children is threatened by HIV, particularly for those in polygamous marriages and marriages with spouses who are at least 10 years older than them.

#### 3.6.2 Cultural beliefs and practices

Many Zambian children are likely to suffer one or more forms of discrimination based on a number of harmful cultural practices and beliefs as well as legal frameworks that support these practices. The legal and policy frameworks that seek to address this situation are not themselves in line with international human rights standards. This has had negative consequences on children, particularly those who are vulnerable and marginalized.

### 3.6.3. Fragmented laws

It is noteworthy at this point to state that many of these laws have not yielded much with regard to curbing child marriages in Zambia. This is because the laws have some lacunas in addressing the vice. Many of these laws do not specifically address the issue of child marriages, their causes or effects on children and how to prevent them. There has also been little sensitization on the gravity of the problem in Zambia which is specifically targeted at involving all stakeholders, including parliamentarians, to address the vice. Advocacy for law reform to address the vice has also been very low, if any at all. This has, in effect, prevented the problem of child marriages from being on the legislative agenda. There has also been a fragmented response to legislating children's rights generally. This is evidenced by the inconsistencies and, sometimes, overlapping of the efforts that exist in addressing issues relating to children.

### 3.6.4 Best interest of the child

Most legislation also do not generally take into account the best interest of the child. This is evidenced by the observations made by the Committee on the Rights of the Child concerning Zambia which notes that the principle of the best interests of the child is taken into consideration in various pieces of legislation, but remains concerned that it is not fully taken into consideration in domestic law. The Committee also regrets that customary law and traditions are an impediment to the implementation of this principle.

# CHAPTER FOUR: THE LEGAL AND POLICY FRAMEWORK ON CHILD MARRIAGES IN ZAMBIA

This section briefly outlines the key laws and policies that affect child marriages in Zambia. It focusses on the international laws applicable to Zambia on the subject, as well as national laws and policies that have the effect of eradicating child marriages and situations that make children vulnerable to early marriages.

## 4.1 Policy review

If children's rights are better protected, there is a likelihood that the incidents of child marriages will significantly reduce. As regards policy and other national strategic documents, the following national documents have been developed to improve the welfare of children in Zambia:

### i. The Education Policy

The Education Policy provides guidelines to government for enhancing education in Zambia. It is a key tool in addressing the challenges of low education – a fact that exacerbates child marriages and that affects the ability of children who are in abusive marriages to free themselves of the bad marriages.

### ii. The National Gender Policy

The National Gender policy, on the other hand, is the comprehensive policy on addressing gender disparities in Zambia. The government adopted the National Gender Policy in 2000. Following its development, a Gender in Development Division (GIDD) was established with the role of implementing the policy.

### iii. Reproductive Health Policy

The policy provides a comprehensive approach to Reproductive Health from increased demand for family planning, greater awareness of maternal and neonatal mortality and morbidity, and a growing burden of reproductive ill health. Reproductive ill health will result from reproductive tract infections, cancers, STDs including HIV and AIDS, infertility and the results of violence related to sexuality and reproduction. The urgent need to respond to the threat posed by the AIDS pandemic further encourages the recognition of sexuality and health as a major component of Reproductive Health.

iv. The HIV/AIDS Policy

This Policy provides a framework for addressing the HIV/AIDS/STI/TB situation in Zambia, outlining the causes and factors that perpetuate the transmission and the impact of HIV/AIDS/STI/TB on the Zambian population.

v. The Sixth National Development Plan

The Sixth National Development Plan aims at generating wealth to improve the quality of life and reduce extreme poverty by 50 per cent by 2015, and accelerating comprehensive and quality treatment, care and support.

vi. Plan of Action on Women, Girls and HIV/AIDS

The primary purpose of the National Plan of Action on Women, Girls and HIV and AIDS is to address the identified gaps and mainstream gender in the implementation of HIV and AIDS programmes by ensuring that such programmes meet both short-term practical and long-term strategic needs of women and girls, while working together with men and boys as partners, especially at community level. It is evident from the spirit and purpose of the Plan of Action that it is meant to guide key stakeholders to formulate programmes aimed at eliminating discrimination between sexes, which exacerbate the vulnerability of women and girls to HIV.

In addition to the formulation of laws and policies and other national strategic documents, the Zambian Government has signed and ratified international instruments related to children. This is often questioned by the Government's reluctance to domesticate the international human rights instruments. However, it is worth noting that the Government's actions of signing and ratifying these instruments demonstrates some level of willingness to guaranteeing children's rights. These are discussed in detail below.

## 4.2 International Human Rights Framework

Zambia is as a member state of the UN and is influenced by the Universal Declaration of Human Rights and other forms of International soft law that are not binding but provide guidelines for adherence to human rights. The Country is thus expected to adhere to the principles of the UDHR. The UDHR sets the context for which international human rights instruments must be interpreted and applied. Zambia has signed and ratified key international human rights instruments aimed at promoting and protecting the welfare of women and children against discrimination. These international instruments oblige the Zambian Government to ensure equality between women and men, and girls and boys. They also guarantee the right to life and to the highest attainable standard of health to all persons, irrespective of sex or age. They also guarantee security of person and freedom from inhuman and degrading treatment. This includes protection from harmful cultural practices such as child or forced marriages. Further, these human rights instruments guarantee the right to information and freedom of expression to women and children.

#### 4.2.1 The UN Convention on the Elimination of All forms of Discrimination Against Women (CEDAW);

Article 16 of CEDAW provides for equality in marriage and family law. It imposes an obligation on member states to take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family life. Article 16(1)(b) specifically outlaws forced marriages and further guarantees to spouses the same rights and responsibilities during and at the dissolution of marriage.

In addition, article 16(1)(b) provides:

- i. That spouses should have same rights and responsibilities as parents, irrespective of their marital status in matters relating to their children, in all cases taking into account the best interests of the child;
- ii. That spouses should have same rights to decide freely and responsibly on the number and spacing of their children and to have access to information, education and means to enable them exercise these rights;
- iii. That spouses should have the same rights and responsibilities relating to guardianship, adoption and related issues;
- iv. That spouses should have same personal rights including the right to choose a family name and their professions; and
- v. That spouses should have same rights to ownership, acquisition, management, enjoyment and disposition of property.

Article 16(2) of CEDAW further provides that “the betrothal and marriage of a child shall have no legal effect and all necessary action, including legislation shall be taken to specify a minimum age for marriage and to make the registration of marriage in an official marriage compulsory”. Article 16 does not just prohibit child marriages, but also guarantees equality in a marriage. This Article can be relied upon to prevent a member state of CEDAW, like Zambia, from encouraging child marriages in its laws, policies and practice. However, the article can also be relied on to alleviate some of the negative circumstances of child marriages that result in breach of fundamental rights such as personal security or liberty, equality, right to property, freedom of expression and right to information and freedom from inhuman and degrading treatment.

#### 4.2.2 The UN on the Convention on the Rights of the Child (CRC)

The CRC specifically recognises the children's right to information which is appropriate to their age. It also states that the views of a child must be taken into account in making decisions affecting the child in so far as the child is capable of expressing such views.

The CRC sets the standards by which all programs concerning children should be developed and evaluated focussing on the best interest of the child. Article 19 of the CRC states that children must be protected from all forms of physical and mental violence, injury or abuse, maltreatment and exploitation, including sexual abuse, while in the care of parents, guardians or any other person. The CRC also protects the right to education on equal opportunity (Article 28 and 29).

Further, Articles 34 and 36 guarantee the right to protection from all forms of sexual exploitation and sexual abuse and protection from all forms of exploitation prejudicial to any aspect of a child's welfare. The CRC also provides for children's right to life, to the highest attainable standard of health and freedom from discrimination, torture and inhuman treatment. These provisions are relevant for addressing both factors that make children vulnerable to early marriages as well as consequences of early marriages.

#### 4.2.3 The International Covenant on Civil and Political Rights (ICCPR)

The ICCPR is the principal international human rights instrument which promotes and protects civil and political rights. These rights include the right to life, personal autonomy, privacy, human dignity, freedom from inhuman and degrading treatment, freedom of expression, right to information, freedom of movement and freedom from discrimination. Zambia is a state party to the ICCPR. It is, therefore, obligated to adhere to the provisions in the ICCPR.

Article 2 of the Covenant imposes an obligation on Zambia and other member states to adopt legislative and other measures to ensure that it promotes and protects the rights in the Covenant. The covenant does not expressly prohibit child marriages but could be relied on to enhance the protection of children's civil and political rights. This is because the covenant does not discriminate between individuals, but requires that rights of human beings (including those of children) should be protected.

Zambia can thus be said to breach its duties to uphold and give effect to the ICCPR by permitting or acquiescing to the practice of child marriages in the country. It could also be argued that by allowing child marriages to continue, Zambia breaches provisions of the treaty relating to the rights to life, human dignity, information, security of person and freedom from inhuman and degrading treatment, freedom from discrimination and freedom of expression.

#### 4.2.4 The International Covenant on Economic, Social and Cultural Rights (ICESCR)

The ICESCR is the "twin" of the ICCPR. It is concerned with economic, social and cultural rights, which includes rights such as the right to education, right to housing, right to health care, right to food, clean water and other such basic necessities. The ICESCR imposes a duty on member states such as Zambia to guarantee these rights to its citizens by progressively realising these rights and to the maximum of its available resources. In relation to child marriages, the ICESCR creates a conducive

environment for member states to address factors that make children vulnerable to early marriage as well as the negative consequences of child marriages.

#### 4.2.5 International Labour Organisation Convention 182 on the Elimination of the Worst forms of Child Labour (ILO C182)

Zambia became a state party to the Convention on the Elimination of all forms of Child Labour (C182) on 10th December 2001. Article 2 of the convention defines a child as a person under the age of 18 years. Article 3 defines “worst forms of child labour” to include “all forms of slavery or practices similar to slavery” as well as “work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.” From this definition, one could classify child and forced marriages involving children as a worst form of child labour.

The Child Marriage Study by the UN General Assembly refers to the Supplementary Convention on the Abolition of Slavery, Slave Trade and Institutions and Practices similar to Slavery (Supplementary Convention) which obligates states to undertake all “practicable and necessary legislative and other measures” to bring about the abolition or abandonment of various institutions and practices which amount to forced marriage, such as promising or giving a woman in marriage, where she does not have the right to refuse, following payment to her parents, guardians, family or another person or group; the right of a husband, his family or clan to transfer his wife to another person for value received or for any other reason; and the inheriting by another person of a woman on the death of her husband... [F]orced marriage can under certain circumstances amount to slavery and slavery-like practices.

From the above, one can conclude that not only does the solemnization of a forced marriage amount to slave-like treatment, but also the state on remaining in such a marriage. Because a person is forced to remain in an unhappy environment and expected to perform matrimonial duties against their will, this would qualify them as being slave-like.

### 4.3 Regional Human Rights Framework

Zambia is party to regional instruments that similarly promote and protect the rights of women and children from discrimination and guarantee their enjoyment of fundamental rights.

#### 4.3.1 The African Charter on Human and Peoples’ Rights (ACHPR);

The ACHPR is sometimes referred to as the Banjul Charter. Zambia is a state party to the ACHPR. The Charter is unique from other international treaties because it recognises the rights of individuals as well as the rights of ‘people’, i.e. the rights that people have as a collective group. It is the principal human rights treaty in Africa. Article 3(2) provides the right to equal protection of the law to every person including children. Thus, the law that protects adults must also protect children. The law must ensure that everyone enjoys substantive equality. This means that it must not just treat everyone

similarly, but ensure that it takes into account people's peculiarities and vulnerabilities when seeking to protect people.

Article 5 also protects all individuals (including children) from cruel, inhuman and degrading treatment, including slavery. Other relevant provisions are Article 6, which guarantees security of person; Article 10 which guarantees the right to information and freedom of expression; article 12 on freedom of movement; article 14 on right to property and articles 16 and 17 which protect the right to health and education respectively. Article 18 specifically protects the rights of women and children by imposing a duty on states to ensure the elimination of "every discrimination against women and also ensure the protection of the rights of the woman and child as stipulated in international declarations and conventions."

The ACHPR does not specifically address the issue of child marriages. However, through the above provisions, it could be relied on to respond to some factors that exacerbate child marriages as well as mitigate the negative consequences of children who are married.

#### 4.3.2 Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa

This protocol was adopted in Maputo, Mozambique in 2003. Article 1 of the Protocol defines women to mean "persons of female gender, including girls." It also defines "harmful cultural practices" to mean "all behaviour, attitudes and/or practices which negatively affect the fundamental rights of women and girls, such as the right to life, health, dignity, education and physical integrity."

Further, Article 1 defines "violence against women" as "all acts perpetrated against women which cause or could cause them physical, sexual, psychological and economic harm, including the threat to take such acts, or to undertake the imposition of arbitrary restrictions on or deprivation of fundamental freedoms in private or public life in peace time and during situations of armed conflicts or of war."

Child marriage of a girl child constitutes violence against women which should be eliminated in line with the provisions of the protocol. Specifically, Article 5 of the Protocol imposes a duty on member states to eliminate all harmful practices, which by necessary implication includes child marriages. Article 2 provides for the elimination of discrimination against women and Article 5 provide for the equal protection of parties to a marriage. Article 5 further states that "the minimum age for marriage is 18 years."

#### 4.3.3 The African Charter on the Rights and Welfare of Children (ACRWC);

According to the ACRWC child marriages are a violation of human rights. Article 21(2) of the ACRWC states that "child marriages and 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.” This instrument recognises the rights of only persons of “full age” to marry and found a family. This instrument also provides that children must be treated with humanity, respect and dignity inherent to them and in accordance with their provisions.

Article 11 of the ACRWC specifically provides that children who get pregnant before completing their education must be given an opportunity to continue their education. This provision takes into account the practice in many African countries, including Zambia, where the girl-child was discriminated against and precluded from completing their education if they became pregnant, whereas the boy-child who made the girl pregnant could continue with his education. This practice exacerbated the girl-child’s vulnerability and increased the practice of child marriages.

#### **4.4 Compliance with International and Regional Human Rights Instruments**

The above-mentioned international and regional instruments are binding on Zambia. This means that, at international and regional levels, Zambia could be made to account for its failure to respect, promote, protect and remedy violations against women and children. However, these instruments have not mitigated the situation of child marriages in Zambia.

##### **4.4.1 Limitations of the international and regional instruments**

The following have been identified as the limitation to the international and regional instruments that Zambia has been party to.

###### **4.4.1.1 Domestication of the International and regional instruments**

This means that these instruments have not gone through a process in which Parliament enacts them into national law, thereby making them enforceable within the Zambian courts of law. This is necessary because Zambia is a dualist state, as is the case with most common law countries (i.e. countries that follow the common law system). This means that once it signs and ratifies an international instrument, the instrument is binding between the country and other member states to that instrument. It is however not binding between the State and its citizens. For it to become binding between the State and its citizens, it must go through a legislative process for the enactment of laws. This is the process referred to as domestication. Thus, if an international instrument is not domesticated, citizens cannot sue the Government for non-compliance as a matter of right. Such international instruments can only be of persuasive value in national courts.

###### **4.4.1.2 Compliance with the legal instruments**

Each of these instruments has mechanisms meant to ensure compliance with the provisions of the treaty. One prominent mechanism is the use of periodic reports which must be submitted to monitoring bodies that are created under the treaties. When Zambia does not submit its reports on time and/or

does not at all, it makes it difficult for the monitoring bodies to determine our progress in realising the rights contained in the instruments, as well as to get best practices and recommendations for how we can address some of the challenges we experience in our efforts to curb child marriages.

#### 4.4.1.3 Popularisation of the signed and ratified instruments

Many international instruments are not publicised once signed and ratified. This means that the average Zambia will not know of their existence until some form of sensitization is done. The sensitization will enhance a rights based approach that enhances people's participation in different issues affecting society. The Rights based approach entails that duty bearers will account to the people on why they have spent huge sums of money to ratify a treaty that they do not intend on implementing.

It also entails that rights holders will be empowered to claim their rights and question government on issues of compliance.

## 4.5 National Legal Framework

The following are the relevant national laws that affect child marriages in Zambia:

### 4.5.1 Zambian customary laws

Zambia has a dual legal system under which it applies customary law side by side with statutory or civil law. The customary law is recognised and upheld provided that it does not conflict with the statutory law. Customary law is often unwritten whereas the statutory law is written. The Zambian Constitution recognises and protects customary law. One cannot exhaustively discuss the various customary laws, including those relating to child marriages as they vary from one culture to the next and often change over a period of time. However, it is important to note that some of the common cultural norms and practices that form part of customary law on child marriages are discussed throughout this document.

### 4.5.2 The Constitution

The Constitution, is the highest law of the land. Under Chapter 1 of the Laws of Zambia, the Constitution guarantees the rights of "all persons" in Zambia, including children. Thus, whereas the Constitution guarantees the rights of "all persons" to life, equal protection of the law, equality, freedom of expression and right to information, security of person, freedom from inhuman and degrading treatment, the right to movement and other fundamental civil and political rights, it does not take into consideration the particular vulnerability of children.

#### 4.5.2.1 Limitations of the Constitution

##### i. Limited protection of children's rights

The Constitution does not expressly and directly guarantee children's rights. It does not define a child although it defines a young person, which leads to contradictions and less protection. The Constitution does not protect children (especially female children) from the harsh effects of cultural norms and practices that discriminate against them and make them susceptible to vices like child marriages.

##### ii. Protection of customary law

The Constitution of Zambia protects every action of customary personal law - the area of law most affected by culture and which includes such things as marriage, gender roles in the home and community, divorce, child custody and maintenance, death and devolution of property, etc. This makes it difficult to change a lot of the bad cultural practices that exacerbate discrimination against women and children including early and forced marriages. These practices cannot be deemed to be discriminatory against children, or indeed even between children of different sexes, if it can be shown that such practices are the norm under a particular culture. Further, this is so, irrespective of any violation of the provisions of international and regional human rights instruments discussed above.

As long as the Zambian Constitution continues protecting things done under personal law from the anti-discrimination clause, vices such as child marriages cannot be fully addressed. The ongoing constitutional review process gives Zambians an opportunity to better protect the rights of children. The Constitution can be strengthened to protect and guarantee the right to life, which should not just protect the right to be alive, but must safeguard a high standard or quality of life.

#### 4.5.3 Anti-Gender Based Violence Act

This is Act no. 1 of 2011 which provides for the protection of victims of gender based violence. The Act specifically states that physical, mental, social and economic abuse refers to any act, omission or behaviour or threat of any such act, omission or behaviour which results in death, or is likely to result in direct infliction of physical, sexual or mental injury to any person and including sexual abuse, emotional and psychological abuse, economic abuse, controlling behaviour such as restricting a person's access to information or assistance, and abuse emanating from cultural or customary practices.

It provides that such protection should be made within the provisions of the Penal Code and any other laws applicable to Zambia. The Act defines gender based violence as "any physical, mental,

social or economic abuse against a person because of that person's gender." In particular, the Act lists the following as amounting to gender based violence:

- i. Violence that results in or is likely to cause physical, sexual or psychological harm or suffering to a person, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life; and
- ii. Actual or threatened physical, mental, social or economic abuse that occurs in a domestic relationship.

It lists the types of abuses arising from cultural practices to include forced virginity testing, forced marriages, sexual cleansing and child marriages. It also defines such abuse to include "abuse perpetrated on a person by virtue of the person's age, physical or mental incapability, disability or illness." Child marriage is, therefore, a form of gender-based violence within the meaning of the Act which identifies child marriages as a form of gender based violence, particularly one which disproportionately affects women.

#### 4.5.4 Marriage Act

The Marriage Act is Chapter 50 of the Laws of Zambia. The Marriage Act lays down the formalities for concluding a civil or statutory marriage. Section 10 of the Act provides that each party to an intended marriage (not being a widower or widow) must be 21 years or above to be eligible for marriage. Section 10 further provides that if any party to an intending marriage is underage, such party must obtain written consent to marry from their parents or guardians, and that where such consent is denied, they may apply to the High Court for consent. (See Sections 17,18 and 19 of the Act). Thus, under civil marriage, the legal age for marriage is 21 years. This provision is progressive to the extent that it sets an appropriate legal age for a civil marriage in accordance with international human rights standards.

##### 4.5.4.1 Limitations of the Marriage Act

- i. Contradiction on the age of consent between customary and civil law

Section 10 of the Marriage Act stipulates that if someone younger than 21 years was married under customary law and their spouse died, such a person could be eligible for a civil marriage, regardless of the fact that they are still under the age of 21 years. This means, therefore, that a child can still be forced into another marriage.

- ii. Parental consent

The provisions of the Marriage Act on obtaining consent for a person under the age of 21 is problematic. It requires such party to first seek the permission of the father, if the father is dead or unable to give consent, then the consent of the mother must be sought. The mother to such

a party, therefore, has no say in whether to grant consent or not in her own child's marriage unless the father of the child is dead or unable to. The Report on Violence Against Women in Southern Africa states that this provision fails to address violence against women that occurs when a mother opposes an early marriage of her child. It instead reinforces gender inequality by granting more powers to the male sex to decide issues concerning the welfare of the child. The mother of the child only has a say in deciding whether a child should be married if the father of the child is dead or has a severe mental disability.

### iii. Conflicting legal pieces

Section 17 of the Marriage Act goes against the provisions of CEDAW and the Protocol on the Rights of Women which recognise equal parenting rights of parents to a child. By granting unequal decision making authority over the life of a child to only one sex further hinders the efforts of the country in combating the practice of child marriages through dialogue and compromise.

#### 4.5.5 Births and Deaths Registration Act

This is Chapter 52 of the Laws of Zambia which provides for the registration of children. Some International human rights instruments require that countries keep registers of all children and details of their parents so as to record and monitor the relevant demographic information to enable them effectively plan their interventions for human rights and other developments purposes. To this extent, the existence of this statute is progressive.

##### 4.5.5.1 Limitation of the Births and Deaths Registration Act

Sections 2 and 15 of the Births and Deaths Registration Act use the word 'child' as defined in section 2 makes reference to an illegitimate child. This is discriminatory between children. It has the effect of regulating births and deaths of children only considered to be 'legitimate'. The statute is not in conformity with the international human rights standards and does not ensure that its records fully capture all the relevant particulars.

#### 4.5.6 Matrimonial Causes Act, Affiliation and Maintenance of Children Act, Juveniles Act, Intestate Succession Act, Wills and Testate of Estates Act and Adoption Act

These statutes could be used to address the factors that make children vulnerable to child marriages. The Matrimonial Causes Act (Act no. 20 of 2007), the Affiliation and Maintenance of Children Act (Chapter 64 of the Laws of Zambia), the Juveniles Act, (Chapter 53 of the Laws of Zambia), Intestate Succession Act (Chapter 59 of the Laws of Zambia), Wills and Testate of Estates Act (Chapter 60 of the Laws of Zambia) and the Adoption Act (Chapter 54 of the Laws of Zambia) provide a social safety net for children by ensuring that they have basic needs in the event of marriage, divorce, death or birth outside marriage. The Adoption and Juveniles' Acts, for example, provide for children in need of care,

whereas the Matrimonial Causes Act and the Affiliation and Maintenance of Children's Act provide for factors the courts must take into account when awarding maintenance (and Affiliation) orders. In addition, they also provide for the custody or guardianship of children of the marriage to which the matrimonial or affiliation proceedings relate.

These provisions help address the vulnerabilities that children are faced with, that force them and their families to wed them off at an early age. By enacting laws that address the welfare of children, parliament has put in place measures that mitigate the practice of early child marriages. However, a lot has to be done to sensitize the public on the existence of these laws and to ensure that law enforcement agencies actually enforce them.

#### 4.5.7 Penal Code

Chapter 87 of the Laws of Zambia, under Section 157 of the Penal Code, proscribes harmful cultural practices on children. It states that any person who commits a harmful cultural practice on children commits a felony (i.e. a serious crime) and is liable to a minimum of 15years imprisonment and a maximum of life imprisonment. This provision can be used to challenge the practice of child marriages, although the constitutional provision that protects discrimination in personal law could be invoked to rebut the challenge.

It is evident from the above discussion that whilst Zambia has some progressive laws that could be used to curtail child marriages and mitigate its effects, the Zambian law could nonetheless be strengthened by a holistic law review. This would help the Zambian legal framework provide an effective tool for responding to child and forced marriages.

# CHAPTER FIVE: RECOMMENDATIONS FOR STAKEHOLDERS IN ENDING CHILD MARRIAGE

There are several stakeholders in the fight against child marriages. In this document, these stakeholders are broadly defined as the leaders and the community.

## 5.1 The Role of the Members of Parliament and Policy Makers

Leaders are expected to create a conducive regulatory environment that ensures that factors that exacerbate child marriages are curtailed. They are also supposed to ensure that those that perpetrate this vice are punished and that victims of child marriages have access to effective remedies.

### 5.1.1 Enactment of laws and policies

The principal role of leaders, therefore, is to ensure that they enact laws and create policies that create such a conducive environment to address child and forced marriages. Legislators and policy makers are expected to enact laws in line with their international human rights obligations which prevent child marriages.

At national level, such laws and policies are enacted and created by the legislature and the executive wings of government, respectively, and interpreted by the judiciary. They need to ensure that the laws and policies provide for the age of majority that is favourable to children considering the negative consequences of child marriages. The laws and policies should also prevent discrimination against children both in rural and urban settings or between different sexes and any other unfair grounds for discrimination between children

## 5.2 The role of Traditional Leaders

At community level, traditional leaders ensure implementation of the laws and policies that are enacted. Traditional leaders such as chiefs and village headmen are expected to assist in keeping customary laws and practices in line with such national laws. They create space for dialogue with the community for the development of a conducive legal and policy environment at all levels as well as favourable programmes for a holistic and effective national regulatory framework aimed at eradicating child marriages. They facilitate the development of civil and customary laws and practices to enable them prevent child labour, punish perpetrators and mitigate its consequences on children. In practice, they ensure that children are not married off until they attain the age of majority; ensure that those who perpetrate child marriages are punished; and that children's rights are protected and that they have effective remedies for the violation of their rights.

### 5.3 The Role of the Community

The community, on the other hand, consists of groups such as members of the public, civil society organisations such as the media and institutions of learning. The key role of community members is to ensure that they provide a safe environment for children under their care and meet all their needs.

#### 5.3.1 Reporting on child rights violations

Article 27 of the African Charter on Human and Peoples' Rights states that every individual has a duty towards his or her family, society and the state. Article 29(1) further provides that every person has the duty to preserve the harmonious development of the family and to work for the cohesion and respect of the family. Community members are also expected to report incidents of child marriages and ensure that the law is enforced against those who perpetrate child marriages. The Zambian Government's Report to CEDAW recognises that the family is regarded as a very important institution in Zambia and that it has put laws and policies in place to safeguard its sanctity. The practice of child marriages defies this sanctity of marriage and communities must ensure that they do not encourage it.

#### 5.3.2 Community education on the rights of the child

Community members dialogue around child marriages and child protection issues guarantee the end to child marriages. This can be done through discussions at the community level that would challenge the attitudes and beliefs that drive and fuel child marriages. Understanding the child rights ensures better child protection through enforcing laws and policies against child marriages. The education on the dangers of child marriages can help community members to dialogue with the aim of finding lasting solutions in addressing child marriages in their communities

## CHAPTER SIX: CONCLUSION

Child marriage is a vice that is detrimental to children and to society. While we have laws that seek to address the factors that make children vulnerable to early marriages and mitigate the effects of such marriages, these are inadequate. The laws need both strengthening, and stringent enforcement.

The brief discusses the country situation on child marriages; reviews the strengths and weaknesses of the international, regional and domestic laws and policies on child marriages; reviews how traditional, cultural and customary practices that encourage child marriages and the impact of child marriages on the development of a child.

The brief aims to provide basic information on child marriages to assist journalists to have a clear understanding on the legal, cultural and policy issues to be presented to the public and thus enabling them to report from an informed point of view. The brief therefore provides basic information on the legal and policy issues on child marriages; provides information on the consequences of child marriages on the development of children; informs the journalists on the traditional and customary practices that hinder compliance to the international, regional and domestic laws and policies as well as providing information on the role of different stakeholders; policy makers, community members and traditional leaders in ending child marriages.

Key advocacy issues that arise from this brief are:

Issue	Description	Recommendation
Poverty as the main driver of child marriages	Poverty forces families to marry their daughters at a young age as a way of improving the economic status of the family. Lack of knowledge by ignorant parents who approve child marriage with believe of improved economic status.	Government and stakeholders need to ensure compliance with the international instruments of human rights. This entails and includes domestication of the instruments on human rights to warrant better compliance to the principle of equality and non-discrimination.
Legal and policy programming	Among the numerous laws that were analysed, it was evident that national instruments have different ways in protecting and guaranteeing children's rights as envisaged in the international human rights instruments which does not fully protect children.	There is need to intensify advocacy for legal reforms and compliance with international instruments to guarantee better protection and enjoyment of human rights by all through domestication of these instruments.

Issue	Description	Recommendation
Complexities in defining the child	In Zambia, a child is defined differently depending on the legal instruments. Under the customary law, under which most child marriages take place, a child can be married when he/she reaches puberty.	There is need to develop structures, strategies and interventions that empower communities to promote cultural practices that guarantee child protection.
Lack of human rights understanding	The publication has found that there is a lack of understanding and contextualising the laws on child protection. This is mostly affected by the customary and traditional beliefs that form culture which also defines who the child is.	There is need empowerment of communities through education to ensure that people understand the rights of children and ensure their protection.

*Summary of Advocacy Issues and Recommendations*

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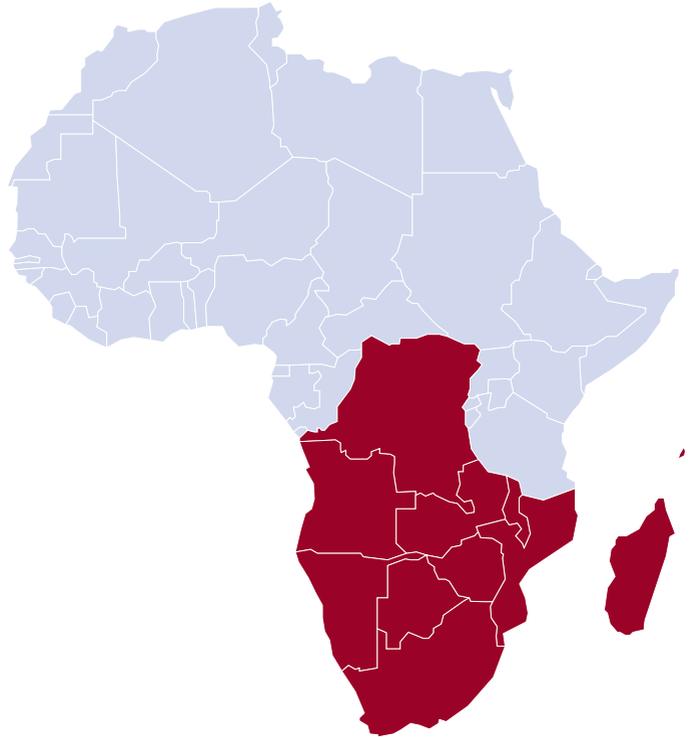
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