



The Children In Need Network

Policy Brief

**Title: Child Marriage- a
Fundamental violation of human rights:
causes and health consequences.**

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Executive summary

Child marriage is a fundamental violation of human rights. Many girls are married without their full free and full consent. By international standards, 18 years has been established as the legal age of consent to marriage.

Zambia is characterised by a dual legal system where written statutory law and unwritten customary law exist side by side. Whilst statutory law is based on English law, customary law is said to stem from traditions and customs that existed in Zambia before the country was colonized. Customary law is resorted to especially in the rural areas and varies from one ethnic group to another. It has a particular impact on issues relating to marriage, custody of children rights. It is this basis that child marriages have been common.

Marriage and family in Zambia

Women are frequently discriminated against in the application of family law in Zambia, for example, while the legal age for statutory marriage is 21 years for men, it is only 18 years for women and many women are married under customary law at a much younger age. Early marriage exposes

women to increased risks of violence including marital rape as well as to teenage

pregnancy and the health risks that this may entail---- Lewis Mwanangombe

The early marriage of girls is closely linked to the payment of *malobolo* and also frequently exposes girls to an increased risk of domestic violence including wife battering and marital rape.

Child marriage is a fundamental violation of human rights. Many girls (and a smaller number of boys) are married without their free and full consent. By international conventions-UNCRC, 18 years has been established as the legal age of consent to marriage.

Causes

Child marriage is closely associated with no or low levels of schooling for girls. Poverty leads many families to withdraw their daughters from school and arrange marriage for them at a young age. These girls are denied the proven benefits of education, which include improved health, lower fertility, and increased economic productivity.

One important impetus for marrying girls at an early age is that it helps prevent

premarital sex. Many societies prize virginity before marriage especially the Bemba culture and this can manifest in a number of practices designed to protect a girl from un-sanctioned sexual activity. In effect the amount of strict controls imposed upon the girl herself.

Consequences

Child marriage, in many instances, marks an abrupt transition into sexual relations with a husband who is considerably older and unchosen. The younger a bride is, the more likely it is that she enters marriage as a virgin, and the larger the age difference between her and her spouse. Parents frequently arrange marriages for their daughters without their input or consent. In some settings it appears that the younger a girl is when she gets married, the less say she has in the choice of her husband.

First births carry special risks for both mother and child.

The vast majority of births to adolescent girls are first births that occur within marriage. The foremost risk first births carry is prolonged or obstructed labor, which can result in obstetric fistulas in settings where access to care is limited. First births also have elevated risks of malaria, and infant mortality. Girls who give birth during adolescence require special attention because they are less mature and are simultaneously coping with their own and their baby's physiological, emotional, and economic needs. Globally, adolescent mothers tend to be poorer, less educated, and less adequately nourished than older mothers; they also face greater social disadvantage.

The conditions of girls' sexual lives in early marriage may place child brides in a particularly vulnerable position in the context of the HIV epidemic

Child brides typically experience high rates of unprotected sex; have significantly older (and thus more sexually experienced) spouses, and are largely unable to negotiate safer sex. In settings with generalized HIV/AIDS epidemics, these factors may leave married girls vulnerable to infection. Indeed, a study in Ndola, Zambia not only found strikingly high HIV prevalence rates among married girls (32.9 percent and 27.3 percent respectively), but also found that these rates were about 11 percentage points higher than the rates among unmarried sexually active girls.

Critique of policy option(s)

Family Code

Marriages in Zambia can be customary, legal or religious, but religious unions are not recognised by the state. Although rare in general, customary marriages sometimes disregard the law in that they are arranged, without the bride's consent, between the future husband and the bride's parents. Most marriages proceed through the mutual consent of both parties.

Zambian women have extremely limited rights in relation to family matters. The minimum legal age for marriage in Zambia is 16 years for both men and women, and parental consent is required if either party is below 21 years of age. The incidence of early marriage is high, primarily because customary marriages usually take place soon after a girl reaches puberty. A 2004 United Nations report estimated that 24% of girls between 15 and 19 years of age were married, divorced or widowed.

Polygamy is legally permitted within every type of marriage in Zambia and is very widespread. In legal marriages, the first wife

is required to consent to polygamy at the time of marrying; in practice, men rarely consider their wives' opinions before taking a second (or subsequent) wife. A 2003 Demographic and Health Survey found that polygamy affected 16% of married women in Zambia. The prevalence of the practice varies according to region and level of education: it is more common in rural areas, although the figures have recently risen in urban areas, and the incidence is very low among women who have received higher education.

Husbands are traditionally the heads of families in Zambia. They have sole parental authority and make most of the important household decisions, including those regarding the use of contraception. In the event of divorce following a legal marriage, the courts grant child custody in the best interests of the children. In the case of separation after a customary marriage, the children typically stay with the father.

Zambian women face discrimination in the area of inheritance. According to a 1989 law, widows have the right to inherit 20% of their husbands' property; by contrast, widowers are entitled to inherit all of their wives' property. In polygamous marriages, half of the inheritance is divided between the children (irrespective of gender) and the remainder is split equally between the wives. Despite the 1989 law, most families follow customary practice in which the deceased's family claims it is entitled to seize the estate. This practice leaves the widow and children in a precarious situation, unless the family of the deceased agrees to take them in as part of the estate. As the courts rarely intervene to apply the law in such cases, customary law prevails although it does appear to be losing ground.

Customary law

The continued administration of customary law by Local Courts throughout Zambia has wide-ranging implications for the status of women. Under Chapter 29 of the Laws of

Zambia, local courts are charged with the application of customary laws in relation to non-statutory marriages, divorce, reconciliation, child custody, payment of *malobolo* or *lobola*, pregnancy suits, compensation for adultery and the distribution of the property.

In 1998, only 16 out of a total of 907 local court justices were female and the lack of female representation amongst the judiciary at this level has had an important impact on the interpretation of customary law----- Afronet, *The dilemma of local courts in Zambia*, 1998, p. 17.

Customary law marriages are not valid unless a *malobolo* or *lobola* payment is made to the wife's family. If the payment of *malobolo* is not made within a certain time following the marriage, actions for elopement and for the payment of the outstanding *malobolo* can be begun at the local court¹⁶----- customary law, as it is currently applied by local courts in Zambia, may lead to and perpetuate violence and other forms of discrimination against women. While local court justices are well-versed in the various customary laws, they are not trained in human rights law and, as a result, seldom take into consideration the gender dimensions or criminal aspects of the cases before them.

Physical Integrity

The physical integrity of women in Zambia is not protected. The situation is alarming: nearly half of Zambian women have been subjected to violence in one of its many forms. Married women are the main victims and the perpetrators are almost always their husbands. Parents and teachers are frequently responsible for violence against women. The fact that women who have received higher education are the most likely victims suggests that education is not improving the situation. Sexual violence is common within couples and affects one-third of all victims of violence. The custom of

paying a dowry incites domestic violence: having paid for his wife, the husband and other men in the family consider the woman to be their joint property. Women are subjected to such strong social and psychological pressure that they rarely speak about this issue.

Zambia's Penal Code entitles victims of violence to press charges and recognises violence as grounds for divorce, but civil servants often encourage women to drop their complaints and return to their husbands. Women are not protected by specific legislation.

The Penal Code provides for heavy sentences for rapists, but most offenders are given just a small fine. Spousal rape is not recognized under the law. In villages, the custom is to pay a sum of money to the victim's family to avoid rape charges being pressed. In Zambia, 15% of the adult population is HIV positive, so the repercussions of rape can be fatal.

There is no evidence to suggest that female genital mutilation is a common practice in Zambia.

The statistics suggest that Zambia is unlikely to be a country of concern in relation to missing women.

Policy recommendations to promote later, chosen, legal marriage.

- ✓ Raise awareness of the extent of early marriage and the human rights abuse it constitutes.
- ✓ Publicize and enforce the national law that establishes 21 as the legal age of marriage.
- ✓ Engage communities through public campaigns, pledges, or incentive schemes to reduce early marriages.
- ✓ Raise the awareness of parents, community leaders, and policymakers about the health and rights implications of young girls marrying much older men.

- ✓ Develop special social and health support structures for young, first-time mothers.
- ✓ Encourage governments and communities to commit to getting girls to school on time and to keeping them in school through the secondary level. Being in school during adolescence has important health and development benefits for girls.
- ✓ Develop social and economic programs for out-of-school girls, including non formal education programs.
- ✓ study the possibility of codifying the customary laws so that those found to be in violation of the Convention could be reformed or abolished

- ✓ Customary law, as it is currently applied by local courts in Zambia, may lead to and perpetuate violence and other forms of discrimination against women. For this reason, government of Zambia needs to consider adopting the recommendations made by the Committee on the Elimination of Discrimination Against Women in 1994 with regard to the codification of customary law and the abolition of any practices that are incompatible with international and national human rights norms.
- ✓ The government should ensure that measures are taken to guarantee that increased numbers of women are appointed to serve as local court judges and to ensure that local court judges are provided with adequate training in human rights law.

- ✓ The payment of bride price (*malobolo*) and the practice of early marriages under customary law in Zambia may have the effect of increasing the vulnerability of women and girls to violence at the hands of their husbands and parents-in-law. Given that customary law is enforced by local courts, these courts have a direct responsibility in this area and should be

required to take more active measures to prevent all social practices, including the payment of bride price and early marriages, that place women and girls at risk of violence.

✓ Measures should be taken to ensure that greater numbers of women are appointed as local court justices and that all of these justices are provided with appropriate training in human rights law.

✓ The government should take urgent action to amend legislation concerning the age of statutory marriage, family law, inheritance rights and nationality so as to guarantee women equal rights with men in these areas.

✓ All Zambian customs recognize the right of parents or guardians to sue a person for making their child or ward pregnant. Importantly, under customary law, the action cannot be brought by the girl who is the victim of the illegal sexual relationship as the right to sue is derived from the family's status and can only be claimed by the family. Moreover, in these cases, the girl who is the subject of the claim is actually joined with the man as a co-defendant.

Conclusion

More research is needed for better understanding of the social and economic phenomena now surrounding Zambian marriage. Informed and culturally sensitive policies and programmes and their timely and successful implementation are needed to address such issues of young people who want to marry as well as needs of women who differ marriage or who remain single need to be respected. The majority of people residing in rural areas give primacy to customary law in most parts of the country. This customary law is applied by Traditional Courts that are

run by traditional leaders who are not acknowledged as part of the judicial system in the Zambian Constitution. Because of inaccessibility of the state system, many citizens are thus forced to turn to customary justice. And thus in many instances they rule in favour norms of the culture not what is internationally or nationally cherished as human rights issue.

Sources consulted or recommended for further reading

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