

Thematic Paper: Child Marriages in South Africa



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Synopsis

This thematic paper looks at child marriages in South Africa as a component of gender-based violence (GBV) from national to provincial levels, with a focus on KwaZulu-Natal. Child marriages deny the rights of children and subject them to a multitude of abuses hence the rise in concern in South Africa of the phenomenon. The paper provides recent statistics on child marriages, drivers of child marriages and what different stakeholders are doing to end the scourge. This thematic paper highlights laws and policies to strengthen the fight against child marriages. The thematic paper forms a basis and part of the efforts to fight GBV and is targeted at different actors, including the government, civil society, policy makers, the education sector, the private sector, funders, as well as community members, who are working tirelessly to find ways to improve the justice system.

Background

Child marriage is defined as any formal marriage or informal union between a child under the age of 18 and an adult or another child.¹ In 2018, the Centre for Child Law raised concern regarding a report from the Commission for Gender Equality (CGE), stating that approximately 91 000 children of school-going-age are married.² 'The Centre is extremely concerned about the increasing incidence of child marriage in the country and the impact that this has on children and children's rights. The married child is often prevented from returning to school due to the commonly held view that schooling interferes with the child's duty as a "wife". Further, child marriage is likely to cause life-long trauma to children; particularly as children are removed from their family and peers and as stated by the CGE, required to "perform a wife's duties".'

A recent analysis of the National Strategic Plan on GBV and femicide raised concerns that children were excluded from the plan, yet cases of child abuse and child marriage are slowly on the rise.³ In 2017, civil marriages were registered of two bridegrooms and 70 brides that were less than 18 years old, with 62 of these brides marrying for the first time. A further eight bridegrooms and 77 brides who were younger than 18 years were registered in customary marriages. In 2019, three bridegrooms and 68 brides under the age of 18 were married in civil marriages.

These figures demonstrate that girls are disproportionately affected by child marriages compared to boys. This practice is contrary to the country's constitutional, international and regional obligations, which aim to protect children and to act in their best interests. Currently, South Africa's legislation allows for minors to be married if they receive consent from their parents and this is submitted, in writing, to the marriage officer.

¹ UNICEF. (June 2022)

² CENTRE FOR CHILD LAW. (2018)

³ CENTRE FOR CHILD LAW. (2022) *An Assessment of the NSP On Gender Based Violence & Femicide A Child Rights Perspective, 2022*, Centre For Child Law

The United Nations estimates that every day around 37,000 girls under the age of 18 are married. Of the girls forced into marriage, one in three girls experience child marriage before the age of 18 and one in nine experience it before the age of 15. UNICEF estimates that if no change occurs, the rate of child marriages in Africa alone may double by 2050.⁴

KwaZulu-Natal had the highest number of child brides in 2017 at 25,205 followed by Gauteng at 15,929. In 2017, at least 122 girls between the age of 12 and 17 went through divorce in the KwaZulu-Natal Province. KwaZulu-Natal is the leading province for forced marriages known as *ukuthwala*.

Legal and Policy framework

While child marriages are technically legal in SA, government seems to be planning to completely outlaw them.⁵ The existing legislation makes provision for the marriage of minors provided that the legally required consent has been granted and submitted to the marriage officer in writing. This practice is contrary to the country's constitutional, international and regional obligations, which aim to protect children and to act in their best interests.

The Children's Act 38 of 2005 has already legislated 18 years as the age of majority. In this regard, the African Union has embarked on an extensive campaign to end child marriages on the continent. South Africa has also signed the Southern African Development Community Protocol on Gender and Development, which states that 'no person under the age of 18 shall marry, unless otherwise specified by law, which takes into account the best interests and welfare of the child.' Furthermore, the African Charter on the Rights and Welfare of the child states that child marriage and the betrothal of girls and boys shall be prohibited and that effective action including legislation shall be taken to specify the minimum age of marriage to be 18 years.

The legislation that regulates marriages in South Africa is a combination of legacy legislation (colonial and apartheid era) and new law that was introduced post-1994 to redress historical injustices. Marriages in SA are regulated through the Marriage Act 25 of 1961, The Recognition of Customary Marriages Act 120 of 1998 and The Civil Union Act 17 of 2006.

Children's rights are not only set out in and protected by the Constitution. Legislation, regulations, policies and other documents give flesh to the rights set out in the Constitution and provide guidance on implementation necessary to protect these rights. The key legal policy frameworks include: the Children's Act 38 of 2005 and aligned regulations; consolidated forms in terms of the Regulations under the Children's Act 38 of 2005; regulations relating to children's courts and international child abduction, April 2010 - Part 1; Regulations relating to Children's Courts and International Child Abduction, April 2010 – Part

⁴ UNICEF. (2019) *Child Marriages on the Rise*.

⁵ DEPARTMENT OF HOME AFFAIRS. (2022) *White Paper on child marriages, 2022*. Available at: www.dha.gov.za/images/PDFs/White-Paper-on-Marriage-in-SA-5-May2022.pdf [Accessed 13 March 2023]

2. Other frameworks include the Child Justice Act 75 of 2008; the Criminal Law (Sexual Offences and related matters) Amendment Act 32 of 2007 and the File Names Births and Deaths Registration Act 51 of 1991.

Registering officers can also get the courts involved to determine the ages. The Recognition of Customary Marriages Act 120 of 1998 states that:

“If the age of the person who allegedly is a minor is uncertain or is in dispute, and that person’s age is relevant for purposes of this Act, the registering officer may in the prescribed manner submit the matter to a magistrate’s court established in terms of the Magistrate’s Court Act, 1944 (Act 32 of 1944), which must determine the person’s age and issue the prescribed certificate in regard thereto, which constitutes proof of the person’s age,”

Conclusion and Recommendations

South Africa should harmonise its laws to that of international and regional normative frameworks in order to protect child rights. No person under the age of 18 years should be permitted to marry, regardless of gender. Although the Recognition of Customary Marriages Act Act 120 of 1998 provides for the registration of customary marriages, it is not compulsory for the marriage to be registered. In other words, failure to register a customary marriage does not affect its validity. This generally leaves women and children vulnerable. The vulnerability is amplified when the existence of such a marriage is contested during divorce or when either of the spouses passes away. This also has an impact on the proprietary consequences of the marriage.

The registration of customary marriages should be made compulsory in order to curb fraudulent registration of child marriages. The provision that allows one partner to register marriage should only apply when the marriage is registered posthumously; that is, if the other partner is deceased in order to track any child marriages.

Girls are disproportionately affected by child marriages compared to boys. This practice is contrary to the country’s constitutional, international and regional obligations, which aim to protect children and to act in their best interests. The existing legislation must be amended in order to outlaw child marriages. According to Girls Not Brides⁶, child marriage looks different from one community to the next. There is no single solution, no single actor or sector that can end it; we must all work together. Solutions must be local, contextual and integrated. Girls affected by child marriage must be the center of the solution.

Addressing child marriage requires recognition of the factors that enable it. While the roots of the practice vary across countries and cultures, poverty, lack of educational opportunities

⁶ GIRLS NOT BRIDES is a global partnership working collectively to end child marriage so that girls can fulfill their potential, see <https://www.girlsnotbrides.org/> [Accessed April 2 2023]

and limited access to health care perpetuate it. Some families marry off their daughters to reduce their economic burden or earn income. Others may do so because they believe it will secure their daughters' futures or protect them. Norms and stereotypes around gender roles and marriage age, as well as the socio-economic risk of pregnancy outside of marriage, also uphold the practice.⁷

DISCLAIMER

This policy brief is for the “Strengthening Local Governance to Improve Gender Based Violence” Project also known as the “Masiphephe Network” (“Let’s Be Safe”). The project is funded by the United States Agency for International Development (USAID), through its Democracy, Human Rights and Governance (DRG) unit, and led by the Centre for Communication Impact (CCI). The Masiphephe Network community-based gender-based violence (GBV) prevention and response partners across three provinces in South Africa, believe that GBV is the grave consequence of complex social and structural problems. Our programme encourages inclusive GBV interventions through strategic policy advocacy, community-led collaborative supportive multi-sectoral partnerships, building awareness and promoting behaviour change to shift GBV social norms. Our views are informed by community engagements and recommendations. The contents of this policy brief are the responsibility of CCI and do not necessarily reflect the views of USAID.

BREAK THE SILENCE, CALL 0800 428 428 (GBV COMMAND CENTRE) TO REPORT AND GET GBV SUPPORT.

⁷ UNICEF. (June 2022) *Child Marriage Programme*.

Masiphephe Network Implementing Partners

ORGANISATION	IMPLEMENTATION SITE/ LOCATION	CONTACT #
CCI	Pretoria, Gauteng	012 366 9300
GHJRU	University of Cape Town	021 406 6023
Agisanang Domestic Abuse Prevention and Training (ADAPT)	City of Johannesburg Region E, Gauteng	011 786 6608
Sonke Gender Justice (Sonke)	City of Johannesburg Region D, Gauteng	011 339 3589
Ethembeni Crisis Care Centre (ECCC)	eThekwini West, KwaZulu Natal	031 704 6860
Gugu Dlamini Foundation	eThekwini INK Area, KwaZulu Natal	031 292 2852
Project Support Association Southern Africa (PSASA)	Emalahleni Local Municipality and City of Mbombela	013 752 5624

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