

Policy Brief: Child Marriages in South Africa



Key Issues

- Worldwide, 12 million girls are married before the age of 18 annually.
- Globally, child marriage occurs at the highest rate in sub-Saharan Africa, where four in 10 young women are married before the age of 18.
- In South Africa, 4% of girls are married before the age of 18 and 1% of both girls and boys are married before their 15th birthday.
- In 2018, 91 000 children of school-going-age were married in South Africa.
- 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.
- 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.
- 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 have gone through divorce in KwaZulu-Natal.
- KwaZulu-Natal is the leading province for forced marriages known as *ukuthwala*.
- Children in child marriages normally abandon school largely because their marriage lives come in the way of their education.

Introduction

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 Child marriage is a global issue. It is fuelled by gender inequality, poverty, social norms and insecurity, and has devastating consequences all over the world. Child marriage is rooted in gender inequality and the belief that girls and women are inferior to boys and men. It is made worse by poverty, lack of education, harmful social norms and practices, and insecurity. Its drivers vary between communities, and it looks different across the world.² Child marriage is a form of gender-based violence (GBV).

There is limited information on child marriage in South Africa, but evidence suggests that it may be driven by harmful traditional practices. In recent years, the practice of *ukuthwala* has been invoked to justify the abduction of girls as young as 12 to be married off to older men. Although it is prohibited, it still reportedly occurs in Western Cape, Eastern Cape and KwaZulu-Natal provinces. In many cases, some money or gifts are given to parents in a distortion of traditional *ilobolo* (dowry) practices.³

Under the Children's Act 38 of 2005 the minimum legal age of marriage is 18 years for girls and boys. However, inconsistencies and loopholes exist throughout the legislation. The Marriage Act 25 of 1961 allows girls to be married at the age of 15 with parental consent but maintains the minimum age of 18 for boys. The Recognition of Customary Marriages Act 120 of 1998 further allows minors to enter into customary marriages with parental consent,

¹ UNICEF, June 2022

² GIRLS NOT BRIDES, Child Marriage programme.

³ GIRLS NOT BRIDES, South Africa country profile.

without specifying a minimum age limit for boys or girls. In 2015 the former President, Jacob Zuma, promulgated the Prevention and Combating of Trafficking in Persons Bill that prohibits non-consensual *ukuthwala* and classifies it as a trafficking offence.

In 2018, the Commission for Gender Equality (CGE) told the portfolio committee on social development in Parliament that 91,000 underage children as young as 14 have been forced into marriage in South Africa. The CGE said the number was highest in KwaZulu-Natal at 25000, followed by Gauteng at 15000 and the Eastern Cape with 9000.⁴

Drivers and risks of child marriages

- **Bodily sovereignty is often lost** – Children in child marriages are often subjected to non-consensual sex.
- **Girls often experience suppressed education** - Most girls who are in a child marriage do not get an education higher than the mandated primary education of grades one through nine. This is due to social stereotypes that categorise girls as domestic wives who stay in the home to cook, clean and bear children.
- **Poverty is a major driver for child marriages** - Most child marriages take place in poverty-stricken areas and they cannot afford to pay for an education or do not have access to education near them.
- **Children involved in child marriages are at greater risk of domestic violence** - A high percentage of girls in a child marriage experience domestic and sometimes sexual violence. According to the International Center for Research on Women (ICRW), girls who marry before the age of 18 are twice as likely to experience domestic violence when compared to girls who marry after the age of 18. Many girls cannot escape this violence because of poverty and the lack of education.
- **Having a daughter is seen as a burden in some parts of Africa** - Most child marriages take place in poverty-stricken areas where families consider daughters to be economic and financial burdens. Many families, wanting to make up for the money they put into raising a daughter, require a dowry for their daughter's marriage. The high cost of a dowry means that most men will work for years to save up for a wife. As a result, most child marriages are between a young girl and a much older man.
- **Child brides have a greater risk of contracting HIV and other sexually transmitted diseases (STD)** - Since men are typically much older when they marry a child bride, they tend to have had multiple partners before they are married. As a result, girls involved in child marriages are more susceptible to contracting HIV and other STDs. Additionally, the research found that many young people lack the proper knowledge of HIV and other STDs and safe sexual education. Sex education is a mandatory curriculum in Africa, but religious and cultural taboos prevent schools from properly teaching this curriculum.⁵
- **Many child brides face high-risk pregnancies** - Since girls marry at such young ages, many girls have high-risk pregnancies due to their underdeveloped bodies. As a result, they often have a difficult childbirth. Additionally, pregnancy lessens the body's immune

⁴ COMMISSION FOR GENDER EQUALITY. (2018) *Report to the social development committee in Parliament.*

⁵ THE BORGEN PROJECT (n.d) *7 Facts about Child Marriage in Africa.*

system, leaving young girls easily susceptible to illnesses such as malaria. Malaria is harder to treat when one is HIV positive and can lead to death in young pregnant girls.

- **Ultimately, child marriage violates human rights.** Child marriages involving boys is significantly rarer than those involving girls. The primary difference in a marriage involving young boys is they do not pose the same health risks as girls. However, child marriages involving young boys or girls take away a child's basic human rights. In 1948, in an attempt to discourage child marriages, the United Nations declared child marriage an act against human rights, as stated in Article 16 of the Universal Declaration of Human Rights.

Legal and Policy framework

South Africa has committed to eliminating child, early and forced marriage by 2030 in line with target 5.3 of the Sustainable Development Goals. During its Voluntary National Review at the 2019 High Level Political Forum, the government of South Africa reported progress on this target and recognised that the exceptions for marriage under the age of 18 was one of the shortcomings that remained in the legal framework.

South Africa co-sponsored the 2019 Human Rights Council resolution on the consequences of child marriage. South Africa signed a joint statement at the 2014 Human Rights Council calling for a resolution on child marriage. South Africa also co-sponsored the 2018 UN General Assembly resolutions on child, early and forced marriage. South Africa ratified the Convention on the Rights of the Child in 1995, which sets a minimum age of marriage of 18, and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in 1995, which obligates states to ensure free and full consent to marriage.

During its 2016 review, the UN Child Rights Committee expressed deep concerns about the persistence of child marriage, virginity testing and *ukuthwala*. It also raised concerns that the Children's Act 38 of 2005 sets the minimum age of marriage at 12 for girls, and that the Marriage Act of 25 of 1961 and the Recognition of Customary Marriages Act 120 of 1998, set different conditions for marriages of girls under the age of 18. The Committee urged the South African government to harmonise legislation in order to ensure the minimum age of marriage is 18 for both girls and boys.

During its 2017 Universal Periodic Review, South Africa agreed to review recommendations to harmonise legislation to ensure that the minimum age for marriage is established at 18 years for both boys and girls and develop specific measures to educate society on customary practices leading to forced and child marriage. In 2000 South Africa ratified the African Charter on the Rights and Welfare of the Child, including Article 21 regarding the prohibition of child marriage. In 2004 South Africa ratified the African Charter on Human and People's Rights on the Rights of Women in Africa, including Article 6 which sets the minimum age for marriage as 18.

South Africa is one of 20 countries which has committed to ending child marriage by the end of 2020 under the Ministerial Commitment on comprehensive sexuality education and sexual and reproductive health services for adolescents and young people in Eastern and Southern Africa. South Africa is a pathfinder country for the Global Partnership to End Violence Against

Children and one of the countries where the U.S. President's Emergency Plan for AIDS Relief (PEPFAR)/DREAMS Initiative is working to reduce rates of HIV among adolescent girls and young women.

While child marriages are technically legal in SA, there seem to be plans by government to completely outlaw them.⁶ 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.

Key Stakeholder Efforts

The Commission for Gender Equality (CGE) is concerned with the incidence of under-age arranged marriages within certain religious communities, in terms of which girls below the permissible age of 18, are either engaged to be married by their parents, or actually married, in contravention of the law. CGE made a presentation to the KwaZulu-Natal (KZN) Provincial Executive Council in 2013 on the findings of its investigation into *ukuthwala* and underage marriages in KwaZulu-Natal. One of the resolutions taken by the Executive Council was that the Department of Co-operative Governance and Traditional Affairs (COGTA) together with the Commission should initiate a dialogue with amaKhosi and other stakeholders to deliberate on the harmful manner in which this custom is being practised, contrary to tradition.

The Commission and COGTA KZN convened a dialogue on the customs of *ukuthwala*, and the practice of forced, arranged and under-age marriages within traditional and religious communities, and their relevance within the context of a Constitutional democracy. The intention of the dialogue was to secure traditional and religious leaders as champions in eradicating these practices, and establish appropriate reporting, response and awareness interventions to this end.

As a result of such practices within traditional and religious communities, girls below the age of 18 are either abducted, committed or forced into marriage, in violation of their constitutional rights and South African legislation, with disastrous impacts on their education, health and emotional well-being.

The Department of Justice and Correctional Development defines the practice of *ukuthwala* as a form of abduction of a young woman or a girl by a man with the intention of marrying her. The negotiation process is done without the consent of the young woman or girl and the family is at most times aware of what will happen to their child. According to a discussion paper, the South African Law Reform Commission proposed a

⁶ 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 April 1 2023]

law to criminalise forced marriage. This came after shocking stories of sexual abuse of young girls in cases of forced child marriages in South Africa. The South African Human Rights Commission (SAHRC) highlights that the issue of forced child marriage has always been a concern to the SAHRC.

The Department of Home Affairs says since 2015, 287 girls in South Africa were married before turning 18. This was brought to light after EFF MP Andrew Arnolds asked about child marriage in the country during a recent parliamentary sitting. Since then, Justice Minister Ronald Lamola has talked about plans to outlaw *ukuthwala*, a practice that sees young girls being forced into marriage by older men who abduct young girls and then force the girls' families to agree.

The Justice and Peace Commission of the Southern African Catholic Bishops' Conference has joined forces with United Nations Women to end child marriages. The Commission and United Nations Women will hold consultative processes aimed at identifying risk areas, and strategies to address the problem.

Policy Recommendations

Policy and legal

- 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.
- The Constitution should be adhered to in terms of protecting child rights.⁷
- Statutory rape, namely, consensual sex with a child below the age of 16 years, assault, rape and kidnapping, all implicit in the modern-day practice of *ukuthwala*, are criminally sanctioned in terms of the Sexual Offences Act 32 of 2007. Should a bill against *ukuthwala* be passed, the country will be one step close to making it illegal to force, conspire, aid, abet, induce, incite, instigate, instruct, command, counsel, or procure another person to enter a child into a marriage.

Stakeholder involvement

- All stakeholders in the Masiphephe Network and GBV Forum should be involved in the Child Marriage policy development by the City of Ethekewini.
- Preventing Child Marriages requires a multi-stakeholder approach including ultimately holding the Department of Social Development accountable as the protector of the child.
- There is a need to involve community leaders including traditional and religious leaders to mobilise families, communities and young people that are engaged to change attitudes and behaviours related to child marriage.
- The Department of Education and Home Affairs should collaborate in empowering girls through a wide range of programmes that invest in girls, their participation and their well-being.

⁷ MASIPHEPHE. [February 2023] Masiphephe policy dialogue on child marriages.

- The Zulu monarchy must be involved in the fight against child marriages considering the increase in such cases.

Raising awareness

- There is a need for increased accountability and monitoring of national and community institutions responsible for protecting child rights.
- Awareness of the intersection of sexual reproductive health and rights (SRHR) and child marriages should be promoted in communities.⁸
- Education programmes on safe use of social media for children to prevent peer pressure and abuse must be promoted in communities and schools.
- Establishment of child rights roadshows including the awareness of statutory rape is important and will attract youth and adolescents to participate.

Facilities

- There should be increased access to safe, quality formal and non-formal education for girls, including those who are already married.
- There is a need for the South African government to establish services across sectors that reinforce one another and are tailored to the specific needs of girls at risk of child marriage and married girls.
- The Department of Education should ensure that the Life Skills curriculum includes education on child marriages and the dangers to a child's health. Joint sessions with parents and communities should be established including in rural areas.
- Health and education services should establish protocols for identifying the warning signs and address the risks of child marriage.
- The government should promote increased access to health services for adolescent girls, married and unmarried.
- The government should strengthen civil registration systems for birth and marriage in order to prevent registration of child marriages.
- Government should invest in child-friendly spaces where social workers and child victims can talk freely.

Societal

- Communities should not forget the boy child when guidance is given on child rights to encourage role modelling that will yield positive results in adulthood.
- More stringent ways to eradicate the increasing inequality and poverty in the South African society are needed as a tool to prevent child marriages for economic reasons.
- The community should be discouraged from holding grooming sessions for children to be married and rather encouraged to promote children to realise their full potential in society.⁹
- Parents and guardians should be guided on how to communicate with children on their rights and enlightened on referral systems in cases of abuse.

⁸ MASIPHEPHE. [February 2023] Masiphephe policy dialogue on child marriages.

⁹ Ibid

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.

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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