

## ORIGINAL RESEARCH ARTICLE

# Child Marriages, Child Protection and Sustainable Development in Kenya: Is Legislation Sufficient?

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## Abstract

Globally, 15 million girls are married before the age of 18, with Kenya having one of the highest child marriages prevalence in the world, estimated at 25-30%. Child marriages in Kenya are rampant in rural areas. Child marriages are part of customary practices in communities where they are prevalent. Child marriages have also been used as a survival strategy by families. Child marriages compromise a child's development and threaten the achievement of Sustainable Development Goals. This paper highlights international conventions and analyses Kenyan legislative framework that have been put in place to protect children from child marriages. A review of literature was undertaken and the analysis showed that Kenya has a strong legal framework to fight child marriages and to prosecute perpetrators. However, the practice still remains rampant and is on the increase in certain areas. Indeed, child marriage policies and reproductive health measures targeting children should reflect a child-rights approach and also focus on socioeconomic vulnerabilities to address the root causes. In addition, it should be acknowledged that child protection and reproductive well-being are collective processes requiring collective responsibility and not only legislative and policy reforms. (*Afr J Reprod Health 2019; 23[2]: 121-133*).

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**Keywords:** Child marriages; Child protection; Legislation; Reproductive well-being; Sustainable development; Kenya

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## Résumé

Au niveau mondial, 15 millions de filles sont mariées avant l'âge de 18 ans, le Kenya enregistrant l'une des prévalences de mariages d'enfants les plus élevées au monde, estimée entre 25 et 30%. Les mariages d'enfants au Kenya sont monnaie courante dans les zones rurales. Les mariages d'enfants font partie des pratiques coutumières dans les communautés où ils sont répandus. Les mariages d'enfants ont également été utilisés comme stratégie de survie par les familles. Les mariages d'enfants compromettent le développement de l'enfant et menacent la réalisation des objectifs de développement durable. Ce document met en évidence les conventions internationales et analyse le cadre législatif kényan mis en place pour protéger les enfants des mariages d'enfants. Une revue de la documentation a été entreprise et l'analyse a montré que le Kenya dispose d'un cadre juridique solide pour lutter contre les mariages d'enfants et poursuivre les auteurs de tels actes. Cependant, la pratique reste généralisée et est en augmentation dans certaines régions. En effet, les politiques relatives au mariage des enfants et les mesures de santé de la reproduction visant les enfants devraient refléter une approche axée sur les droits de l'enfant et se concentrer également sur les vulnérabilités socio-économiques pour s'attaquer aux causes profondes. En outre, il convient de reconnaître que la protection des enfants et le bien-être en matière de procréation sont des processus collectifs nécessitant une responsabilité collective et non pas uniquement des réformes législatives et politiques. (*Afr J Reprod Health 2019; 23[2]:121-133*).

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**Mots-clés:** Mariages d'enfants, protection de l'enfant, législation, bien-être de la reproduction, le développement durable Kenya

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## Introduction

Child marriages are prevalent in sub-Saharan African countries, with negative consequences on

the child's education and psychosocial functioning and development. Child brides' status are elevated, glorified and celebrated. Unfortunately, in majority of these marriages, the young bride

rarely meets and/ or gets to know her future husband prior to the marriage and may not see her family after the marriage<sup>1</sup>. Forced and early marriages impact reproductive well-being. Child marriage is a gender-based and human right violation that undermines strategies to promote and achieve sustainable development<sup>2-5</sup>. Ending child marriages is critical towards realizing half of the Sustainable Development Goals (SDG) such as poverty, gender equality, zero hunger, and reducing inequalities.

In discussing child marriages, it is important to note that not all child marriages between children are forced and not all early marriages mean that children are involved. There are indeed successful teenage love marriages. Self-initiated child marriages can be a way to show self-determination and personal independence though these can also be influenced by compulsion<sup>3</sup>. In this paper, child marriages will mean an early and sometimes forced (formal or informal) marriage that a child enters without their full consent whilst under the age of 18. Child marriages also include boys, although most studies report that mainly girls are married off before they turn 18 years<sup>1,3</sup>. This is emphasized in a report by the United Nations International Children's Emergency Fund (UNICEF) that at present, 720 million women were child brides in comparison to 156 million men<sup>6</sup>.

Most child marriages worldwide, including in Kenya, have been reported in pre-adolescent and adolescent girls<sup>7,8</sup>. 76% of children in Kenya have experienced at least one type of abuse before they turned 18 years, which put them at risk of early marriage<sup>9</sup>. Although there are programmes that focus on adolescents, they usually target child protection, and gender and reproductive health programmes<sup>10</sup>. This should not be so because the adolescent stage is an age of heightened vulnerability whereby adolescents are at risk by virtue of being both a child and a girl. This finding on gender inequalities and child protection concerns during adolescence resonates with earlier

findings from a situational analysis conducted in Kenya<sup>9</sup>.

In this paper, the nexus between child marriages and child protection is examined whilst using a child rights lens to interrogate the legislative framework in Kenya. A review of literature was undertaken to understand the nature of child marriages in Kenya. The initial search for material used key words "child marriages", "child marriages and child protection/rights Kenya", "child marriages Africa", "child marriages Kenya" and child marriages legislation Kenya." A grey literature search was also conducted in October 2017 and an updated search conducted from February to May 2018. The selection criteria used for the peer-reviewed journal articles was that they should not be older than 15 years. Reports commissioned by organizations such as UNICEF, United Nations Population Fund (UNFPA) and Save the Children were also reviewed. A brief background on child marriages is provided. The discussions then shift and focus on the laws in Kenya. Finally, recommendations for practice and policy are put forward. This paper contributes to child marriage and sexual and reproductive health debates as links to sustainable development and SDG Target 5.3 on elimination of harmful practices.

### ***Child marriages***

Harmful consequences are associated with child (forced) marriages, yet these marriages are still prevalent due to the enmeshment between culture and community which influences lifestyles and being married young can indeed be a norm and a way of life<sup>11,12</sup>. Other factors which influence child marriages include customary, religious and cultural practices weak child protection systems in a country, poverty, gender inequality and humanitarian settings (with cases of *famine brides* in Kenya, *tsunami widowers* in Indonesia and *bush wives* in Uganda)<sup>1,3,4,13-21</sup>. In addition, child marriages are often used to cement alliances, as a

source of wealth and in justifying discriminatory social norms which prioritize feminine roles and family reputation such as virginity<sup>1, 7,10,14,16,21-23</sup>. Child marriages in Mauritania are common and justified as an instrument to reject modernisation<sup>14</sup>. It is worth noting that these highlighted reasons associated with child marriages are often complex and not driven by a single factor<sup>2,24</sup>. The causes are also interrelated, interdependent and country-specific<sup>25</sup>.

Bangladesh, Niger, Ethiopia, Mali, Chad, Guinea, Nepal, Central African Republic, Burkina Faso and India are the ten countries with the highest prevalence of child marriages<sup>4</sup>. Although the prevalence of child marriages in Kenya is not as high as those from these ten countries, the relatively high numbers are still a concern. According to Kenya Democratic and Health Survey, 6% of girls are married by the age of 15 and 26% (one in four) are married by the age of 18<sup>9</sup>. Thus, gender inequalities are more significant in teenage girls and specific protection concerns arise due to risk of violence, abuse, exploitation and early marriages.

In Kenya, the national child marriage rate is 26.4% although it highly varies depending on the region. In Nyanza Province and in North Eastern Province inhabited by pastoral communities such as the Samburu, Maasai and the Pokot early arranged marriages are used to bolster the family wealth when cattle is used as bride price<sup>8,11</sup>. "Romantic kidnappings" contribute to early marriages among the Kikuyu, Turkana, and Maasai to avoid shame and stigma attached to the defilement of a girl child<sup>8</sup>. In these communities, the girl's viewpoint does not count and adult male members of the family usually make the decisions<sup>26</sup>. Though parental and judicial consent to early marriage has been outlawed in Kenya, girls are still being married off before attaining the minimum age in rural areas Kenya with parental consent. Contradictorily, girls in Africa (in comparison to South Asia) have more autonomy when selecting a marriage partner since sexual

relations, unplanned pregnancies and school dropout precede the early marriage<sup>7</sup>.

Serious over-lapping reproductive health and psychosocial risks are reported in young brides. They include, but are not limited to maternal mortality due to postpartum haemorrhage, obstetric fistula and obstructed labour, sexually transmitted infections, and cervical cancer<sup>18,27</sup>. A study carried out in Kisumu (Kenya) and Ndola (Zambia) reported that HIV prevalence was higher in married adolescent girls in comparison to their age mates who were sexually active<sup>28</sup>. The risks are because child brides are not able to reject unsafe sexual practices and there is societal pressure to prove their fertility, which may also result in pregnancies when their bodies are not well-developed<sup>4</sup>. The negative health consequence may lead to socio-cultural consequences such as an obstructed labour leading to fistula and shame, humiliation and stigma from urine leakage if it remains untreated.

When girls drop out of school and leave home due to early and forced marriages, it is a double tear in the safety net<sup>3</sup>. This is because the girls are leaving familiar settings into an unknown territory where they are less equipped to protect themselves. When girl's education is disrupted either before or because of the marriage, they lose valued exposure to benefits such as mobility and access to social networks associated with formal education, thus rendering young girls powerless and vulnerable and it challenges their transition to adulthood and their later dual roles as mothers and wives<sup>16</sup>. Domestic and sexual servitude are forms of exploitation that can occur in marital contexts especially in marriage-migration situations<sup>29</sup>. Early transnational marriages place the local older spouse in a position of power and the migrant in a position of dependence (which can be abused and exploited). Child marriage has been linked to the exploitation and trafficking of girls<sup>3,23,24,30</sup>.

The consequences of child marriages show that ending child marriages is critical to the achievement of Sustainable Development Goals

(SDGs)<sup>5</sup>. SDG Target 5.3 was set to eliminate child marriage under 18 by 2030 globally. The achievement of this target is underway as evidence by the UNICEF report which indicates that child marriage numbers are decreasing with 1 in 5 as opposed to 1 in 4 girls now married before 18 which was not the norm 10 years ago<sup>31</sup>. However, the same report by UNICEF noted that burden of child marriages was shifting to sub-Saharan Africa, with 1 in 3 child marriages reported in the region<sup>31</sup>.

### ***International and Africa-regional conventions***

The Universal Declaration of Human Rights, the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages and the Convention on the Rights of the Child highlights minimum age, mutual informed consent, violence, and exploitation as relates to child marriages<sup>3,32,33,34</sup>. The right to free and full consent to marriage is acknowledge and emphasized. It is crucial to note that consent cannot be “free and full” when one of the parties entering the marriage is not mature enough to make informed decisions, even if the caregivers are present and they give consent on behalf of the child. Violation of international norms has been reported in Pakistan where boys and girls are treated differently in respect to marriage age i.e. 18 for boys and 16 for girls<sup>4</sup>.

Child marriage violates children's rights. All the five categories of children's rights are violated when the child is married off<sup>30</sup>. According to the Universal Declaration of Human Rights, a person may enter marriage freely, when 18 years and above and with their full consent. This is not the case in most forced marriages involving children<sup>35</sup>. When a child is forced into a marriage before, they reach an age where and a time when they are able to give informed consent, it violates their basic rights. This new status bestowed on them can also infringe on the delivery of rights entitled to them as children<sup>3,36</sup>. Locating and

categorizing child marriages as a child rights violation raises public concerns and debates, highlights their prevalence and exposes these private agreements between individuals and families<sup>30</sup>.

In Africa, the 2005 Women's Protocol states that the minimum age for marriage for women is 18 years<sup>36</sup>. However, it does not provide the same for men. The 2006 African Youth Charter requires that during celebration of the marriage, both parties should be of full age with consent being the primary factor for consideration<sup>37</sup>. In the 1990 African Charter on the Rights and Welfare of the Child (ACRWC), betrothal and marriage of a child under 18 years is prohibited and calls for appropriate national legislation to be developed and enacted to curb child marriages and to identify victims<sup>38</sup>. Kenya has signed all the above international and regional conventions and accompanying protocols. Interestingly, the 2005 Council of Europe Resolution 1468 on Forced Marriages and Child Marriages does not recognize these marriages which happened elsewhere except if they were done in the child's best interest<sup>39</sup>.

### ***Kenyan legislative frameworks***

Kenya has a dual legal system, which recognises both statutory and customary laws, provided these laws do not infringe on the rights of the people. The adopted legislations and policies as relate to child marriages in Kenya will be presented next in conjunction with barriers to their implementation and leading to child marriages not being reduced effectively.

### ***The Constitution (2010)***

According to Sec. 11(1), the Constitution acknowledges “culture as the foundation of the nation...” This supports an earlier clause (Sec. 2(a)) which notes that the states seek to promote all forms of national and cultural expressions through traditional ceremonies and other forms of cultural

heritage. These clauses are further supported by Sec. 56(d) which indicates that “the State shall put in place affirmative action programmes designed to ensure that minorities and marginalized groups develop their cultural values, languages and practices.” However, these cultural rights should not infringe on the rights of others. These tensions speak to contestations between cultural rights and western law<sup>15</sup>. Achieving unity in diversity is challenging to attain in practice due to lack of robust national debates about complexities on cultural rights.

Chapter 4 is on the Bill of Rights and Sec. 28 states that “every person has inherent dignity and the right to have that dignity respected and protected. When children are married off by their caregivers, it is a degrading act. Child marriages can be a form of child trafficking as children are kept in marital situations that resemble enslavement and are at times required to perform forced labour as instructed by her husband or his family<sup>30</sup>. Therefore, Sec 30(1), stating that “no person shall be held in slavery or servitude” and Sec 30(2) which states that “a person shall not be required to perform forced labour” condemn child marriages.

Sec. 44(1) states that “every person has the right to ...participate in the cultural life of their choice.” However Sec 44(3) states that “a person shall not compel another person to perform, observe or undergo any practice or rite.” This clause can be interpreted to mean that family or even close relatives should not entice or make a child go through a marriage even if it is part of their culture. Furthermore, Sec. 53 outlines children’s rights with Sec 53(d) stating that every child has the right “to be protected from abuse, neglect, harmful cultural practices, all forms of violence, inhuman treatment and punishment, and hazardous or exploitative labour.” Sec. 55(d) further states that the youth should be safe-guarded from harmful cultural practices. The Constitution requires that there is free will between adults when they are getting married. Sec. 45(2) states that

“every adult has the right to marry a person of the opposite sex, based on the free consent of the parties.” This shows a further emphasis on minimum age of marriage and free consent and it is aligned to the international conventions.

### ***The children’s act***

The Children’s Act is currently undergoing a review process so that it can be aligned to the “new” Constitution. Sec. 14 protects children from harmful cultural rights and indicates that nobody should make child undergo “...early marriage or other cultural rites, customs or traditional practices that are likely to negatively affect the child’s life, health, social welfare, dignity or physical or psychological development.” Although no punishments are outlined for convictions of early marriages, it is assumed that the Sexual Offences Act provisions can be applied in like cases.

Sec. 21 is on duties and responsibilities of the child to include work for the cohesion of the family, respecting elders and superiors and preserve and strengthen positive cultural values in his or her community, with due regard for their age and ability. However, this in the past has been misinterpreted to support and show acceptability of child marriages due to cultural family values. Child brides are often young, under-educated and dependent on their families for their best interest determination and therefore unable to speak out against acts of abuse being perpetrated through a marriage organized by parents or caregivers. Child brides often lack options, obey their elders and do as they are told<sup>30</sup>.

In Sec. 23(2), the duties of the parents shall include protecting the child from neglect, discrimination and abuse (b) and they have the right to give parental guidance in religious, moral, social, cultural and other values. However, it should be noted that most times, it is the same parents entrusted with protecting the children who actually arrange for and transact these child marriages on behalf of their children. In

communities where gender inequalities are rife, girls are considered an economic burden and they are married off for cash, cattle or other acceptable transaction(s) as a financial survival strategy for the family.

Education can delay marriage<sup>40</sup>. A single year pursuing primary or secondary school correlates to increments in women's wages later in life<sup>4</sup>. This means that educating a girl advances economic development for a country whilst increasing incomes for the girl and her family. Sec. 7 of the Kenyan Children's Act supports this by stating that every child is entitled to education. This provision is the responsibility of the parents and the government. In Kenya, although there is free primary school education and it has opened up opportunities, not all children have access to schools. If they have access to schools, especially in the rural areas, the schools are not well-resourced or they are far from their homes thus a security issue arises for girl children and most drop out. Insecurity decreases school attendance and gives rise to early marriage being socially acceptable as a path to adulthood. Thus, when a girl child drops out of school, her chances of getting married early are higher. However, recent arguments suggest that investment in girl's education only is not enough when other crucial avenues to fight child marriages such as safety of girls, discrimination, social norms, reproductive health services and cash transfer programmes are neglected<sup>2,5</sup>.

### ***The marriage act (No. 4 of 2014)***

This Act consolidated all marriage laws in Kenya and removed all discriminatory provisions regarding different ages for boys and girls for marrying, in line with international conventions. The Act provides for the definition of marriage in Sec. 3(1) as "the voluntary union of a man and a woman whether in a monogamous or a polygamous union and registered". This means that consent and registration of the marriage is compulsory.

In Sec 3(2), all parties have equal rights at the time of, during and at dissolution of a marriage. However, in child marriages the rights are skewed and tilted more towards the older man marrying the under-age girl. Most young girls who are married off do not have a voice and their sense of agency is discouraged. It has also been noted that certain customary laws allow for under-age pregnant girls to be married off with their parent's consent<sup>24</sup>. Sec. 3(3) notes that all marriages under the Act have the same legal status. When the legal status of marriage is regulated by a combination of three parallel legal frameworks, limited consistency can be observed reflecting the competing laws as such and further weakening protection remedies.

Consistent minimum marriage age laws protect girls from early child bearing and from being abused and exploited in early marriages. Sec. 4 requires that both parties getting married be 18 years and above. In addition, no person under the age of 18 shall be considered to be a competent witness to any marriage. This is supported further by Sec 11(1)(a), (b) and (c) i.e. the union will not be considered a marriage if at the time of marriage either party was below 18 or the consent was not freely given or they were absent from the ceremony. In addition, Sec. 11(2) states issues of free consent. Consent is also not freely provided if the child bride or groom is under 18 and the nature of the proceedings have not been clearly explained to them in such a manner that they can participate in the decision-making process and provide full consent. According to Sec. 87 marrying a person who is under the age of 18 is a criminal offence and if convicted, he or she is liable to imprisonment for a maximum of 5 years or fined a maximum of KSh 1,000,000 (\$10,000) or to both. This could also include witnesses (Sec. 87(3)). However, in as much as people may be aware of the legal age of marriage, they might not fear being convicted and punished<sup>16</sup>.

Marriage registration is crucial to ensure minimum marriage age<sup>3</sup>. Several regional instruments such as Addis Ababa Declaration on

Ending Child Marriages, ACRWC and the Women's Protocol make marriage registration obligatory. Sec 12 indicates that marriage is voidable if it was not registered. Most child marriages, worldwide including in Kenya, are often not registered. The anecdotal reasons for non-registration vary to include lack of registration facilities, fear of being caught and punished, not seeing value in registering the marriage, proper protocols not followed during marriage ceremony, lack of proper documentation required and lack of money. It is a crime in Kenya not to register a marriage according to Sec. 42(3), and if convicted the person liable to a fine not exceeding KSh 5000 (\$500) or community service or both. That said, clarity is required if compulsory marriage registration equates to minimum marriage age always being reflected correctly.

Marriage registration will not be effective if the actual age of the bride and groom are unknown. Birth registration is a fundamental right and a foundation for marriage registration and towards fulfilment of other essential rights. Documents which are required for marriage registration have not been specified in the Act. Birth registration might not occur due to lack of awareness and poor access to health and registration facilities. In as much as 60% of children in Kenya are registered, only 24% of children under 5 have a birth certificate, with a big discrepancy in the rural versus the urban areas<sup>9</sup>. Registration services should thus be extended to these rural areas where child marriages are more widespread.

Customary marriages should be registered within 3 months of the completion of the relevant ceremonies, and both parties should be 18 years and above and should have freely consented to the marriage. Part IV and V of the Act are on Hindu and Islamic marriages respectively which should also be recorded but the clauses do not provide the minimum age for the marriages. This is a matter of concern as lower age for marriages has been allowed in certain countries where Hindu or Islam

religions are predominant. In as much as a best practice has been observed in Saudi Arabia, where marriage contracts ask for the brides' age, it is not guaranteed that the actual age is always provided.

According to Sec. 71(1), the marriage can be annulled if the petitioners' consent was not freely given and if they were absent during the celebration of the marriage. However, in Sec. 71(2)(a), the court shall grant a decree of annulment if the petition is made within one year of the marriage. This is an unreasonable legal requirement since most young brides may not have access to resources and knowledge of their rights to terminate these under-age marriages. Social workers can advocate for an amendment to this one-year period as a legal obstacle to a local legal remedy<sup>41</sup>.

In Sec. 91(1)(a), it is a criminal offence to celebrate or witness a marriage knowing very well that one of the parties is under the age of 18. The person can be convicted and is liable to a maximum of 6 months imprisonment or a maximum fine of KSh 50,000 (\$500) or to both (Sec 92(2)). These clauses address the impunity of perpetrators and also ensure accountability of duty-bearers. However, it should be noted that when the state decides to pursue criminalisation, it ignores the poverty-family complicity nexus<sup>15</sup>. Anecdotal reports indicate that there is general unwillingness to report celebrating or witnessing under-age marriages because of possibilities of ripping apart the extended family, being instrumental in sending significant family members to jail, being accused of embracing western culture at the expense of cultural norms and practices.

### ***The counter-trafficking in persons act (No. 8 of 2010)***

If child marriages may be for sexual exploitation, then the explanation provided for trafficking for sexual exploitation as stated in Part I the Counter-Trafficking in Persons Act is applicable, i.e. that:

*Trafficking for sexual exploitation means trafficking:*

- (a) *With the intention of doing anything or in respect of a particular person during or after a journey within Kenya or in any part of the world, which if done will involve the commission of an offence under the Sexual Offences Act, 2006; or*
- (b) *In the belief that another person is likely to do something to or in respect of the person trafficked, during or after a journey within Kenya or in any part of the world, which if done will involve the commission of an offence under the Sexual Offences Act, 2006*

Although the Act does not make explicit mention to trafficking for purposes of (forced) marriages similar to the South African Trafficking Act (2013), in Part II the abuse of power or of position of vulnerability can be directly implied and linked to child marriages (Sec. 3(1)(e)). The purposes of trafficking as listed in Sec 4(1) include for adoption, fostering or guardianship, but trafficking for marriage purposes is not recognised as an act that could potentially promote child trafficking though this has been supported in other studies<sup>3,30</sup>. Connections between child exploitation and trafficking, child marriages and child labour should be made more explicit and strategic action planned around them.

### ***The prohibition of female genital mutilation (FGM) act (No. 32 of 2011)***

Women's and girl's reproductive health, rights and general well-being is affected when they undergo FGM. This Act criminalizes FGM or cutting performed on anyone irrespective of their age or status. This act does not make any allowance on FGM being carried out in honour of the girl and/or her family. Sec. 25 bans stigmatization as well as condemns use of offensive language towards girls and women who have not undergone FGM or towards a man who either supports or has married a woman who has not undergone FGM. However,

the Act is silent on under-age girls who are considered adults and married off after undergoing FGM.

### ***Sexual offences act (No. 3 of 2006)***

In the Act, Sec. 8(1) defines defilement as penetration with a child. Sec. 8(2), 8(3) and 8(4) show that there are harsher sentences accorded when a person defiles younger girls. However, Sec. (5)(a) and (b) states that defence to the charge of defilement can be allowed if it can be proven that the child deceived the accused person into believing that she was above 18 years at the time of the defilement and/ or the accused reasonable believed that the child was over 18 and took steps to ascertain the age of the child. Sec. 9(1) and (2) indicates that attempted defilement is when somebody attempts a penetrative act on a child and if found guilty, they are liable to maximum 10 years imprisonment. Sec. 29 is on cultural and religious sexual offences and it states that any individual who coerces another to take part in a sexual activity for religious or cultural reasons commits an offence and is liable for a maximum 10-year imprisonment.

In terms of consent, Sec. 42 notes that "a person consents if he or she agrees by choice, and has the freedom and capacity to make that choice." This implies that children in child marriages might not have the capacity to make informed choices about the union and it ties in with Sec 43 as an intentional act. These unlawful acts include those committed through force, threat of harm or abuse of power/authority, under false pretences or by fraudulent means or where the person is not capable of appreciating the nature of the act which causes the offence.

### ***The national plan of action for children, 2015-2022***

This Plan of Action is aligned to the UNCRC and it provides an operational framework to guide



stakeholders in coordinating, planning and implementing programmes for children, whilst outlining priorities and interventions necessary for children's rights to be achieved. However, the Kenyan Plan of Action does not clearly lay out details of a child protection system. This subsequently means that child marriage prevention and response measures are not well developed and aligned with different government sectors in the country.

### **Implication for Child Protection, Reproductive Health and Sustainable Development**

Kenya has a well-developed and strong legal framework to protect children, which reflects regional and international rights standards. This has been reflected in the previous section. Effective implementation and enforcement of child marriage laws and policies can prevent such marriages and weak implementation processes can undermine the law's potential effectiveness. In Kenya, existing laws are poorly implemented and often superseded by customary laws especially in the rural area. This requires that community and traditional leaders and reproductive health advocates are part of any intervention process that is planned especially at grassroots levels<sup>4</sup>. In addition, the country generally lacks well-trained and skilled office duty-bearers with an in-depth understanding of the laws and policies as relates to child marriages. This subsequently affects service delivery as volunteers end up delivering these services through formal and informal arrangements. The complaints reported by the girls at-risk are at times not taken seriously and the obligatory legal action not followed through<sup>41</sup>. Thus, vulnerable children and those needing care and protection end up falling through the would-be protection nets.

Kenya has criminalized child marriages. However, criminalising child marriages and defilement may deter victims from exposing parents or other relatives and therefore,

accompanying legal reforms should ensure adequate awareness campaigns with families and within communities. In addition, advocacy work around re-examination of national laws can help identify gaps and any inconsistencies and if the penalties and corrective measures put in place are working to reduce prevalence. It should also be noted that interventions to support legal literacy and paralegal services are crucial prevention strategies, since laws to prohibit and penalize child marriages are not enough. Therefore, the child protection system with strong referral systems, legal and psychosocial support should be developed.

Legislating change is not enough. With legal reforms which set the age of marriage at 18 and above and also eliminates parental and judicial exceptions, there must also be additional policies and varied interventions<sup>5,25</sup>. There is also need for well-developed action plans, with clear intervention strategies that support delayed marriages, reproductive well-health, children's rights and improved investment in poor and marginalized girls. Social workers and child protection advocates must reach out to young boys so that they (boys) can be partners in child marriage prevention, advocates for girls' reproductive rights and change agents in their communities. Efforts should also involve men who are perpetuating and benefiting from this practice and they need to be engaged because of their roles in these communities<sup>27,42-45</sup>. However, it should be noted that working with individual genders can be ineffective, can encourage and strengthen benevolent sexism, generate backlash, increase compliance with negative social norms, does not eradicate the root causes of gender inequality, and prevent achievement of transformative change<sup>17,21</sup>. There have been numerous calls for community-level intervention strategies that engage men and women, boys and girls together<sup>4,17,42,46</sup>. There have also been counter arguments for individual-level interventions with a focus on empowerment of girls<sup>26,27</sup>. Whichever way, boys and men must be

part of the feminist movement<sup>44,45,47</sup>. Ultimately, culturally-relevant interventions which encourage dialogues involving both genders can lead to collaborative social transformation, increase in and access to resources for women and more equitable norms in communities<sup>16,26</sup>.

Child marriages continue in the face of economic strains, social network tensions and cultural norms. Similar to gender-based violence, child marriages can be prevented and eradicated through interventions that target root causes of the problem such as poverty, lack of education, availability and access to well-resourced reproductive health facilities, unequal power dynamics and harmful social norms which drive and make the practice thrive<sup>21,22,43</sup>. Expanding opportunities can support change in social norms that view marriage as the only way out of poverty, safety and security and to cement alliances. Therefore, child marriage interventions should be incorporated into broader developmental programmes such as food security, land distribution, economic growth, gender equality, reproductive health and rights and child protection.

The power of community mobilization and the application of social norms theory should not be under estimated since sustainable change efforts usually take place in communities. Communities can be mobilized to shift and/or change norms, laws, rituals and practices which perpetuate child marriages. However, this requires multi-level support based on collective efforts from local and international players<sup>27,35,41</sup>. Child marriages are often considered private, family matters (governed by culture and religion). Thus, cross and multi-cultural programming efforts must be sensitive to these contexts when tackling deep-rooted social norms, attitudes and practices. Programming efforts must have adequate resources to ensure actual realisation of goals<sup>41</sup>. Furthermore, girls under 18 should also have access to sexual and reproductive health and rights programmes and services<sup>3</sup>.

In addition, social workers and other service providers ought to be prepared to recognise and have targeted responses to the existing multiple forms of violence in families other than child marriages. Furthermore, engaging with families and communities (including children) to identify indigenous appropriate strategies and viable alternatives which advance cultural norms, family's interest and the best interests of the child is recommended. This is critical in ensuring the outcomes of the interventions are sustainable and positive. Participatory approach, integrated with the indigenous culture and positive parenting practices, are important for transitioning towards rights-based social norms and practices.

## Conclusion

A child marriage is a cross-cutting issue which harms all aspects of a girl's life throughout her lifetime. It demands attention from multiple sectors and all stakeholders and not only legislative reforms as in Kenya's case. It requires a shift from small-scale programming to prevention and other interventions being placed within broader structural efforts and activities whilst also acknowledging that customary law can also advance the realisation and protection of children's rights<sup>13</sup>.

Child marriages reveal tensions between international, regional, and national discourses. From discussions on child marriages in Kenya, it is evident that in as much as laws can change national narratives, legislation is not enough. Pertinent underlying issues such as rights, culture and traditions, poverty and socialization exist and should be tackled alongside policy reforms. This is because a protective environment for children is influenced by the socio-economic and the socio-cultural context in which they grow and develop. Indeed, people's values matter in international development<sup>48</sup>. The public should also be made aware of the laws and policies and they should be

invited to contribute to their development. Furthermore, well-trained and skilled social workers can play a crucial role, as they are more suited to help with legislative implementation processes at grassroots levels.

Child brides are an invisible yet emerging category of population that social workers work with due to their vulnerability, social isolation and marginalization. There is need to tackle the unique needs of married children. Services should be available for those who want to leave or annul such marriages and those at risk of forced marriages. If there are cases of child brides who decide to remain in the marriage, interventions should ensure that they are offered the necessary protection, opportunities and resources to thrive in these environments and caution taken not to expose them to additional risk(s). For example, their reproductive well-being must be prioritized.

Research and services which focus on one form of violence and neglects the others may overlook crucial risks, vulnerabilities and consequences on sustainable development and the inter-generational impact of oppression and violence<sup>10,49,50</sup>. It is crucial to note that prevention of violence in children is critical for long-term prevention of violence in women and in promoting equity.

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