



The African Women's
Development and
Communication Network



From Theory to Practice:

**Utilizing the Joint
General Comment to
Intensify Collective
Efforts towards Ending
Child, Early and Forced
Marriage in Africa**

List of Definitions

According to the Joint General Comment of the African Commission on Human and Peoples' Rights (ACHPR) and the African Committee of Experts on the Rights and Welfare of the Child (ACERWC) On Ending Child Marriage:

"Child" means a human being aged below 18 years of age, even if majority is attained earlier under national law.

"Child marriage" is a marriage in which either one of the parties, or both, is or was a child under the age of 18 at the time of union.

"Betrothal" means an engagement or a promise to marry. It can also refer to the act of promising or offering a child or young person in marriage, whether by a parent, guardian or family elder.

"Free and full consent" in the context of marriage it entails a non-coercive agreement to the marriage with full understanding of the consequences of giving consent. The Commission and Committee recognize that older children may have the capacity to make decisions about their lives and may have the capacity to consent to sex, medical treatment and other acts. However, despite such evolving capacities, the language of the Maputo Protocol and the African Children's Charter clearly stipulates that children under the age of 18 are not capable of giving full and free consent to a marriage. It is further noted that a child's inability to consent to marriage cannot be supplemented or cured with the addition of parental consent given on behalf of a child, as the requirement of "full" requires total consent on the part of the person consenting.

Abbreviations

- ACHPR** African Commission on Human and Peoples' Rights
- ACERWC** African Committee of Experts on the Rights and Welfare of the Child
- AU** African Union
- CEFM** Child Early and Forced Marriage
- FEMNET** African Women's Development and Communication Network
- SOAWR** The Solidarity of African Women's Rights Coalition
- CEDAW** Convention on the Elimination of all Forms of Discrimination against Women
- CRC** Convention on the Rights of the Child

FEMNET acknowledges the ACHPR and ACERWC for adopting the Joint General Comment on Ending Child Marriage in 2017, which is an interpretive guidance that outlines legislative, institutional and other measures that should be taken by States Parties to prohibit child marriage.

http://www.achpr.org/files/news/2018/01/d321/joint_gc_acerwc_achpr_ending_child_marriage_eng.pdf

Acknowledgement



In the successful compilation of this crucial *Quick Guide*, FEMNET is profoundly appreciative of the collaboration and support of partners who heeded the call for its production.

The strategic partners include: **SOAWR coalition, Rozaria Memorial Trust, Center for Human Rights-University of Pretoria, Girls Not Brides, Inter-African Committee on Traditional Practices affecting the Health of Women and Children (IAC), Make Every Woman Count (MEWC), Equality Now, International Commission of Jurists (ICJ) and Ipas Africa Alliance.**

FEMNET specifically appreciates our partner the **Embassy of Sweden in Zambia** and **Ms. Nyaradzayi Gumbonzvanda**, the African Union Goodwill Ambassador on the campaign to End Child Marriage who has honored this *Quick Guide* with a critical Foreword.

The ultimate objective of this *Quick Guide* is that the advocacy fraternity for the empowerment of Africa's women and girls will use it as a practical tool to enhance the understanding of the Joint General Comment and how it can be used as a strategy for collective advocacy to end Child, Early and Forced Marriages (CEFM).

Memory Kachambwa

Executive Director, FEMNET

Women's Rights Organizations and Activists Call for a shift in narratives!

The term Child, Early and Forced Marriage (CEFM) has been used throughout this document because this is the commonly used terminology and agreed language at the intergovernmental level. However, continued use of this term continues to affirm what we consider to be a practice embedded in patriarchal norms. This term in itself is deeply problematic and is a direct violation of the basic tenets of women's human rights. The concept of "marriage" includes two consenting persons over the age of 18. In light of this, the terms that correctly describe this practice that must end is child sexual abuse, exploitation and violation. It also includes child abduction and forced labor.

African Government's political will to end CEFM is a first step towards ending these child rights violations. Resourcing must be seen as a fundamental underpinning factor without which the vision to end CEFM cannot be realized. Efforts to end CEFM must be backed by sufficient resources, including financial, technical and human resources. There is growing debate regarding how Africa can source financial resources to fund its' development agenda. Possible sources could come from progressive tax systems that curb tax evasions, ensure fair collection and equitable distribution of taxes to fund development. According to the African Union, on a global level, Africa loses between \$80 - 100 billion annually through Illicit Financial Flows. By curbing these flows, it would mean there is a percentage of recovered resources that could be opened up for use to invest in the elimination of Child, Early and Forced Marriage.

Foreword



Being deliberate, grounded and guided by collective action is the only way to deliver for women and girls. It is the surest way for Africa to emancipate her girls from violations such as child, early and forced marriages.

Africa has set on a journey, bold enough to articulate the continent's development's pathway and priorities through a 50-year blueprint embodied in the Africa Agenda 2063. This Herculean Agenda grounded in the vision of "An integrated, prosperous and peaceful Africa, driven by its citizens and representing a dynamic force in international arena" is impossible to realize if African girls are bound in the chains of child, early and forced marriages. CEFM is in itself a practice that depicts the very patriarchal norms that have savagely lowered the standards for our African girls and women and continues to deny them their fundamental rights and freedoms.

Since its inception in 2002, the African Union (AU) has taken pride in placing the concept of human rights at the core of its mandate. The rights of women and the youth continue to feature prominently within the AU's priorities. This commitment is demonstrated through diverse processes such as; the Decade on Youth Development in Africa (2009-2018), the African Women's Decade (2010 to 2020) and Decade of Human Rights (2016-2025).

Additionally, the AU Summit themes in the past 3 years have been in line with these commitments through providing a continental platform to reignite political obligation to gender equality and women's empowerment, women's human rights and critically to young people also through 'Harnessing the Demographic Dividend Through Investments in the Youth'. It is heartening that the African Union Campaign on ending child marriage is extended to 2023. This general comment and the guide is a critical resource in supporting implementation.

In Africa today, more than ever before, we have advocates from diverse constituencies working at different levels towards the elimination of child, early and forced marriages. Tools such as this guide leverage existing opportunities to frame our advocacy and drive accountability on the vision for change that we envisage for African girls. Moreover, they provide a practical way to guide efforts to realize gender equality and women's empowerment. Such tools recognize the need for collective effort in advancing gender equality and women's empowerment, which is vital in embodying the spirit of the 2030 Agenda for Sustainable Development (SDGs). In this same spirit, we must galvanize all efforts to ensure that no one is left behind and that those furthest behind are reached first in the achievement of gender equality and empowerment for women and girls everywhere. It is for this reason that resource materials such as this Guide are critical to the work that we do and ultimately for the benefits of Africa's women and girls.

I am honored to affirm FEMNET's work in compiling and delivering this guide that will go a long way in ensuring that African women and girls live in dignity, enjoy their human rights and have the agency to control their futures.

Ms Nyaradzayi Gumbonzvanda is a human rights lawyer, and current Chief Executive for Rozaria Memorial Trust. Ms Nyaradzayi also serves as the African Union Goodwill Ambassador for the Campaign to End Child Marriage

Did you know that child, early and forced marriage is prohibited in Africa?

But.....

39% of girls in sub-Saharan Africa are forcibly married before the age of 18?

Yet.....

Africa has some of the most progressive policies and strategies for ending child, early and forced marriage including the Maputo Protocol and the African Children's Charter.

Background



According to UNICEF, **child, early and forced Marriage** is defined as a formal marriage or informal union before age 18. Girls are much more affected by child, early and forced marriages because of persistent patriarchal gender inequalities and discrimination against women and girls. A combination of extensive poverty, conflicts and harmful cultural practices in many African countries has exacerbated child, early and forced marriages.

According to UNICEF, Child, early and forced marriage violates the fundamental rights and freedoms of women and girls. Approximately 39% of girls in sub-Saharan Africa are married before the age of 18. Child marriage is widespread in West and Central Africa (42%) with Niger, Central Africa Republic and Chad being the top 3 countries with the highest prevalence rates in the world.

In the last few years, the issue of child marriage has received attention in high-level forums all over the world. The African Union launched a campaign to End Child Marriage in Africa in 2014-2017 and this campaign has been extended to 2021. In 2015, African heads of state and governments adopted the Common African Position to end child marriage at the 1st African Girls Summit.

Currently, the **2 main African legal instruments and frameworks that prohibit child marriage** are:

- The 2005 Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (also known as the Maputo Protocol)
- The 1990 African Charter on the Rights and Welfare of the Child (also known as the African Children's Charter)
- **Article 21(2) of the African Children's Charter prohibits the betrothal and marriage of all children before the age of 18**

Both instruments specify that the minimum age of marriage shall be 18 years. Therefore, all state parties to either or both treaties are REQUIRED to take ALL measures including legislative and institutional measures to ensure that this prohibition is respected and honored. Such progressive **legal instruments and frameworks** on ending CEFM require much more than just rhetoric (however well meaning) to result in real action towards ending CEFM. In addition to other policy and legal instruments the **joint general comment** provides an opportunity to accelerate advocacy efforts and additional tools for advocates working to end child, early and forced marriages.

The general comment specifically complements other regional instruments such as the Maputo protocol and augments African governments' commitments and obligations to respect and uphold human rights including for women and girls through commitments such as the Convention on the Rights of the Child as African countries. In particular, the convention on the rights of the child is of specific importance as it was the only one to receive near universal ratification, with African countries comprising half of the first 20 to sign the convention". Globally there are other commitments such as the convention on the Elimination of all forms of Discrimination against Women (CEDAW) which articulates Consent to Marriage, Minimum Age for Marriage and Registration of Marriage.

It is IMPORTANT that Women's' Rights Organizations keep holding their leaders accountable to their obligations & commitments.

What is a General Comment?

A General Comment provides guidance for the practical implementation and evaluation of delivery of human rights by governments. It gives a common understanding and guidelines of how a particular instrument (like the Maputo Protocol and the Children's Charter) can be implemented at the national level.

The First Ever General Comment on child, early and forced marriage

In July 2018, the ACHPR and ACERWC adopted the first ever Joint General Comment¹ on Ending Child Marriage to intensify and harmonize the fight against child, early and forced marriage in Africa². The Joint General Comment is based on the Article 6(b) of the Maputo Protocol and Article 21(2) of the African Children's Charter which prohibit CEFM.

- **The joint general comment on child marriage is built on article 6b of the Maputo protocol and article 21(2) of the African children's charter and aims to elaborate and describe the different measures that should be taken by state parties to prevent child marriage and protect the rights of those at risk and the affected parties.**

¹ <http://www.acerwc.org/acerwc-and-achpr-adopt-their-first-ever-joint-general-comment>

² It is important to note that girls are much more at risk of and affected by child marriage - however boys at risk of or affected by child marriage are also included in the scope of the joint general comment.

Principles of interpretation of the Joint General Comment

The following grounding principles guide the interpretation of the Joint General Comment:-

1. The best interest of the child
2. The child's right to freedom from discrimination
3. The child's right to survival, development and protection
4. The child's right to participate in matters that affect and concern them

1. The best interest of the child

- **Article 4(1) of the African Children's Charter states that the best interest of the child shall be the primary consideration in all actions undertaken by any person or authority concerning the child**

Child marriage has numerous negative physical, psychological, economical and social consequences to the child and is therefore not in the best interest of the child and is in direct violation of Article 4(1) of the African Children's Charter.

Governments must adopt and enforce legislation to ensure that without exception, the minimum age for marriage is **18 years**. Additionally, governments must collaborate with stakeholders such as parents, teachers, religious & cultural leaders to develop effective prevention measures to address those at risk of child rights violations. Governments must also respond to the root causes of child marriages in order to address the issue using a holistic approach. Even in Africa, it is important to recognise that the root causes will differ from region to region and are contextually driven by religion and culture.

2. Freedom from discrimination

- **Article 2 of the Maputo Protocol and Article 3 of the African Children's Charter stipulate the right to freedom from discrimination based on gender**

Freedom from discrimination for women and girls is central to the Maputo Protocol. Child, early and forced marriage is a manifestation of persistent gender inequality and perpetuates discrimination against women and girls.

Governments have made a commitment to protect citizens from discrimination based on gender and as such must recognize child, early and forced marriage as a form of discrimination and implement measures and ensure sufficient resourcing towards its elimination.

3. Right to survival, development and protection

- **Article 5(2) of the African Children's Charter and the preamble of the Maputo Protocol condemns practices that hinder or endanger the normal growth or affect the physical and psychological development of women and girls**

According to the African Union Policy Brief for the International Conference on Maternal, Newborn and Child Health (MNCH) in Africa, child marriage poses threat to the survival and development of children. Girls under the age of 15 are

five times more likely than older women to die in childbirth. Infants are 60% more likely to die in their first year of life if their mothers are under 18 since they have most likely not completed secondary school. Among female adolescents, maternal conditions are responsible for 15% of all deaths. This compounds vulnerability through multiple and intersecting discrimination especially when it comes to children with disabilities, migrant children, children who are refugees and children in child headed households. A multi country study³ done on the Association between child marriage and reproductive health outcomes and service utilization showed that child marriage is significantly associated with a history of rapid repeat childbirth, current modern contraceptive use, female sterilization, not using contraception before first childbirth, pregnancy termination, unintended pregnancy and inadequate use of maternal health services.

Girls who are forced into marriages are burdened with adult responsibilities and realities for which their bodies are ill prepared for. They are usually at higher risk of violence during the course of the marriage and their health and wellbeing is highly compromised. Most are forced to drop out of school trapping them in a cycle of poverty. Some of the health consequences include high risk of sexual transmitted infection, early, closely spaced and frequent pregnancy with poor outcomes for both the mother and child. The young girls have limited access to contraception and health-related information that they need to make informed healthcare decisions. They are also at high risk of reproductive health conditions such as obstetric fistula, and the psychological and mental health consequences of early motherhood.

Source: Centre for Human Rights University of Pretoria

Governments are therefore obligated to ensure that the rights to survival, development and protection are respected and protected.

4. Participation

- **Article 4(2) of the African Children's Charter: A child has the right to communicate and express their views and opinions, subject to such restrictions as prescribed by law**
- **Article (7) of the African Children's Charter: The views of the child must be heard and taken into consideration in all judicial and administrative proceedings affecting and concerning the child**

At a very fundamental level, every child has a right to have choice and voice (without coercion or fear) in decisions that affect them and this would definitely include saying no to child, early and forced marriage. Statutory, customary or religious laws that gives parents powers to make decisions on behalf of their children is a complete violation of the African Children's Charter. In situations where children are raped, the common practice for the rapist to marry the girl child victim is a multiple violation. Governments must enforce legislative and administrative measures and commit sufficient resources towards ending child, early and forced marriage.

A CHILD'S VOICE including that of the Girl Child MATTERS!

³ <https://www.ncbi.nlm.nih.gov/pubmed/23608719>

This Quick Guide outlines what you need to know and do!

Which AU human rights institutions are mandated to end to CEFM in Africa?

- **The African Commission on Human and Peoples' Rights (ACHPR)** was established in 1987 with a mandate to protect and promote human rights by interpreting the African Charter on Human and People's Rights. The ACHPR also considers individual complaints and hears cases from the 54 member states of the African Union (all except South Sudan). The ACHPR is located in Banjul, The Gambia and as such is also popularly known as the Banjul Commission.
- **The African Committee of Experts on the Rights and Welfare of the Child (ACERWC)** is an African Union treaty body in charge of monitoring the implementation of the African Charter on the Rights and Welfare of the Child popularly known as the African Children's Charter. The ACERWC is mandated to promote, protect and monitor the implementation of the Charter as well as interpreting the Charter's provisions of the Charter at the request of a state party, an institution of the AU or any other person or institution recognized by AU.

The mandate of the AU institutions highlighted above cannot be overstated, especially at a time when the African Union is undergoing reforms. However most importantly is the widespread attack and structurally driven weakening of human rights through attacks on human rights institutions. This not only jeopardizes human rights for African women and girls but underscores the relevance of core mandates of such institutions in providing guidance to operationalize rights with development of General Comments as a function of their mandate.

Women's Rights Organizations and General Comments

What to DO!

Women's rights organizations and activists have the opportunity to influence these General Comments to ensure that the realities of women and girls in Africa are taken into consideration. They can also use these General Comments as practical tools to hold their governments accountable.

What are the Responsibilities of Governments towards ending Child, Early and Forced Marriage?

Legislative measures:

- Prohibit child, early and forced marriage and ensure legislative measures take precedence over customary, religious, traditional practices. Constitutional reform and legislation must specify the minimum age of marriage as 18 years.
- Legislation must also ensure that both parties to all forms of marriage give full and free consent. Persons below the age of 18 are not able to give full and free consent to a marriage or similar union. The absence of personal, full and free

consent should be clearly established as a legal ground for the annulment of a presumed marriage.

Institutional measures:

- ◆ Invest in improving civil registration and vital statistics (CRVS) systems and verification procedures such as birth registration, age verification and marriage registration to facilitate transparency and accountability.
- ◆ Fully enforce laws, penalties and sanctions where child, early and forced marriage persist.
- ◆ As required by article 11(3)(d) and article 11(6) of the African Children's charter, it is compulsory for state parties to facilitate the retention and re-entry of pregnant or married girls in schools and to develop alternative educational programmes for extenuating circumstances.
- ◆ Institute measures to keep all children especially girls in school and raise awareness on the importance of education. Retention of children in school is essential in preventing child, early and forced marriage and mitigating its effects.
- ◆ Ensure access to and uptake of health services – child marriage deprives children of the full complement of their right to health and increases the risk to exposure of STI's including HIV and AIDS. As explained in General Comment Number 1 on Article 14(1)(d) and (e) of the Maputo Protocol, women have the right to be protected from HIV and do not enjoy this right in circumstances where they face significant risk of HIV exposure or transmission.
- ◆ State parties are obligated to ensure access to comprehensive sexual and reproductive health and services as stated in Article 14 of the Maputo Protocol and the African Children's charter.
- ◆ Promote access to justice- the systematic inadequacies in the administration of the justice department prevent governments from reaching their obligations to ensure access to justice and protect girls from child marriage. Some solutions include providing toll-free helplines, providing free legal aid and conduct awareness raising activities about the laws on child marriage.
- ◆ Provide redress and support for those already married- children who have already been affected by child marriage should be provided with comprehensive social protection and health services, assisted to continue their education and encouraged to seek advice and assistance in response to the violation of their rights, especially in cases of domestic violence.
- ◆ Article 12(2)(c) of the Maputo protocol and Article 11(3)(d)(e) of the African children's charter stipulate that girls have the right to enjoy their best attainable state of physical and mental health.
- ◆ Capacity building and training- state parties must organize and conduct capacity building sessions for relevant government officials and various stakeholders including teachers, health providers and the police.
- ◆ Develop and institute credible gendered data to include qualitative and quantitative data in line with the Africa Data Consensus to end child, early and forced marriage.
- ◆ Resource allocation and budgeting- it is imperative that governments meet the obligations outlined in the joint general comment and as such, governments must allocate sufficient budgetary resources towards ending child marriage.

Opportunities and interventions aimed at ending Child Marriage in Africa

- ◆ ***African Union Campaign to End Child Marriage*** - The Campaign is aimed at promoting, protecting and advocating for the rights of women and girls in Africa. The overall purpose for the Campaign is to catalyze and galvanize political will and resources to accelerate an end of child marriage in Africa. The campaign which has been extended to 2023 is currently chaperoned by Ms Nyaradzayi Gumbonzvanda who is the African Union Goodwill ambassador on ending child marriage. Over 20 countries have launched the Campaign So Far.
- ◆ ***Inter-African Committee on Traditional Practices*** - The Inter-African Committee on Traditional Practices affecting the Health of Women and Children (IAC) is an international and African regional umbrella body that has been working on policy programmes and actions to eliminate Harmful Traditional Practices including child, early and forced marriage in the African Region and worldwide.
- ◆ ***The African Girls Summit***- Hosted in 2015 in Zambia for the first time under the patronage of President Lungu, the summit provides an opportunity to mobilize political will and accelerate momentum on government prioritization towards elimination of child, early and forced marriages. The 1st summit bore the Common Africa Position on ending child marriage. The 2nd summit focused on the adolescent girls right to universal access to sexual and reproductive rights.
- ◆ ***The Common African Position⁴ on Ending Child Marriage***- The common African Position was adopted in 2015 at the 1st African Girls summit. It provides a heads of state commitment illustrating strong political commitment from African governments to enact and implement laws and to invest resources towards ending child, early and forced marriages.
- ◆ ***SADC Model Law***- Adopted by the Southern African Development Community Parliamentary forum, in June 2016, the model law is the first ever law on child, early and forced marriage in the Southern Africa region. The model law requires member states to harmonize their national laws to prevent child, early and forced marriages in support of the African Union campaign.
- ◆ ***Economic Community of West African States (ECOWAS) Strategic Framework for Strengthening National Child Protection Systems***. Adopted in 2017, the framework contains a range of concrete measures to protect children from violence, abuse and exploitation. Child, early and forced marriage is one of the identified priority areas. The adoption came earlier than the High Level ministerial meeting on ending child marriage in west and central Africa which provided stronger political momentum in a region where prevalence is high.
- ◆ ***Ministerial commitment on Comprehensive sexuality Education (CSE) and sexual and reproductive health (SRH) services in Eastern***

⁴ http://www.africanchildinfo.net/index2.php?option=com_sobi2&sobi2Task=dd_download&fid=1507&-format=html&Itemid

& Southern Africa. The commitment is lauded for being a strong regional accountability framework on adolescent and youth SRHR. The commitment specifically outlines child marriage as a target with a time-bound and measurable target to eliminate this harmful practice by 2020. The commitment has been key in mobilizing high-level political support.

- ◆ **Demographic Dividend Discourse-** In 2017, the African Union theme was 'harnessing demographic dividend through investments in youth. This provides an opportunity to articulate the diversity of young people and highlight the specific needs of adolescent girls and young women. The four pillars investments for harnessing demographic dividend also provide an opportunity to define the intersectionality of child, early marriage with pillars such as education, civic participation and governance, health and employment. Child, early and forced marriage is barrier to harnessing demographic dividend.

Key Asks

- ◆ Child, early and forced marriage is a violation of girls' sexual and reproductive health rights. Culture, religion or tradition should never justify marrying or betrothing a child below the age of 18.
- ◆ Child, early and forced marriage should be clearly defined as exploitation and abuse of children especially girls.
- ◆ There must be criminalization and serious punishment of perpetrators and gate-keepers of child marriage.
- ◆ Member states are obligated to uphold their commitments to end all forms of discrimination against women and girls and integrate efforts to end child, early and forced marriage as part of continental efforts to advance gender equality, women and girls empowerment in Africa.
- ◆ Governments should finance all efforts in ending child marriage and have multi-sectoral approach in making it happen.
- ◆ Girls and young women coming out of child, early and forced marriages need robust support through social protection measures. Governments should allocate resources to increase the number of shelters and counselling services available for those at risk of child marriage.



**The African Women's
Development and
Communication Network**

KUSCCO Center, Kilimanjaro Road, off Mara Road
PO Box 54562 -00200, Nairobi

Tel: +254 20 2712971/2 Cell: + (254)725 766932 Fax: +254 20 2712974
admin@femnet.or.ke www.femnet.org



FEMNET Secretariat



@femnetprog



FEMNET1



@femnetprog