



Early-Childhood-Marriages

**A Report On The Practice of Early Childhood
Marriages In Namibia by The Young Feminists
Movement Trust Namibia 2022**





Prepared by the Young Feminist Trust Namibia (Y-Fem)

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“

Child marriage not only puts a stop to girls' hopes and dreams. It also hampers efforts to end poverty and achieve economic growth and equity

- Quentin Wodon

”

Our Role as Duty Bearers

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The practice of childhood marriages is a deeply and widely recognized as a practice that is extremely harmful to girls and women, in Namibia. These groups are disproportionately impacted by this practice and we hereby recognize and acknowledge that, it is essential for us to ensure that all persons are able to enjoy all rights they are accorded and are not restricted by practices of unfair discrimination.





Meeting With Some Church Leaders



Acknowledgements

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Table of Contents

Chapter	Title	Page
	Abbreviations	7
	Background	8
1	The main causes for the practice of Early Childhood Marriages in Namibia.	10
2	The Practice of Early Childhood Marriages Regressing the Namibian Feminist Movement	19
3	Universality of Human Rights and Cultural Relativism In Relation to the Practice of Early Childhood Marriages in Namibia	25
4	The Refusal of Early Childhood Marriages in Namibia	30
5	What allows for the practice of Early Childhood marriages to continue in Namibia?	37
6	Are there rehabilitative mechanisms in place for individuals who have undergone early childhood marriages in Namibia?	56
7	Scorecard Analysis	61
8	Young Feminist Action	79
9	Advocacy Guide	107
	Bibliography	119

Abbreviations

AIDS- Acquired Immune Deficiency Syndrome

CCPA- Child Care and Protection Act 3 of 2015

CSO- Civil Society Organisation

ECM- Early Childhood Marriages

GBV- Gender Based Violence

HIV- Human Immunodeficiency Virus

LBQ- Lesbian Bisexual and Queer

MGECW- Ministry of Gender Equality and Child Welfare

MHSS- Ministry of Health and Social Services

SRHR- Sexual and Reproductive Health and Rights

UDHR- Universal Declaration of Human Rights

UNICEF- United Nations International Children's Emergency Fund

YFEM- Young Feminist Movement

YFO- Young Feminist Organizers

YFL- Young Feminist Leaders

Background

The practice of childhood marriage involves the act of minors committing to or being committed to marital relationships before they attain the age of majority. According to the Office of the High Commissioner for Human Rights, it is any marriage where at least one party is below the age of 18 years.¹ The campaign against Early Childhood Marriages by Y-Fem began in 2020. The Namibian



legislators have created and become signatories to various tools intended to protect children and women as well as to eliminate social norms that infringe on human rights. Unfortunately, despite these efforts the practice of childhood marriages has persisted in Namibia.

Some members of the Y-Fem team

This project has been driven towards identifying and outlining protective mechanisms that the Namibian law has incorporated to protect young children who undergo this practice, it also seeks to find legal gaps that allow for this practice to continue.

¹ Office of the High Commissioner for Human Rights. *Child and forced marriage, including in humanitarian settings: OHCHR and women's human rights and gender equality*. Available at <https://www.ohchr.org/en/women/child-and-forced-marriage-including-humanitarian-settings> last accessed on 12 May 2022

The goal of the task was to provide a holistic framework to analyse the laws created to protect children as well as the practical application and implementation of these laws. In the fight against the phenomenon in pursuit of restorative justice, the following legal issues were explored;

- 1) Universality of human rights and cultural relativism in relation to the practice of childhood marriages in Namibia.
 - 2) Whether or not there are laws that refuse the practice of early childhood marriages.
 - 3) What are the main issues that are allowing for the practice to persist?
 - 4) Whether or not there are effective means of rehabilitation in place.
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The Main Causes For The Practice of Early Childhood Marriages In Namibia

The practice of childhood marriages in Namibia results from several factors and requires attention on policy and social intervention in different spheres. According to the MGECSW, the following are common causes for the practice of childhood marriages in Namibia. We have also confirmed these causes through our field research.

1) Poverty

Upon assessment of the dimensions of living standards, health and education, measured across 11 indicators, it was found that 43.3% of the Namibian population experience multidimensional poverty with 59.3% of those in rural areas experiencing this and 25.3% of the population in urban areas.² Respondents in the National Formative Study on Child Marriage indicated that there is a prevalence of childhood marriages among very low income families with orphans, the study also revealed that in relation to this, it may not always be abject poverty that results in the practice of childhood marriages but, specifically the desire for material objects.³

² Namibia Statistics Agency. (2021). Namibia Multidimensional Poverty (MPI) Index Report.

³ Ministry of Gender Equality, Poverty Eradication and Social Welfare. (2020). *National Formative Study on Child Marriage*. p39

The study also showed that people in situations of poverty are more likely to engage in the practice of ECM.⁴

2) Customary and Religious Beliefs⁵

The study used two proxies to conclude that certain customary practices in Namibia are driving forces for the practice of childhood marriages;

i) The first was the region or place of residence which showed that the practice is dominant in the Kavango, Zambezi, Kunene, Omaheke, and Otjozondjupa, while Oshana, Khomas, Ohangwena region with Omusati scoring the lowest.

ii) Next was the language mostly spoken at home which showed that there was a positive correlation between the language spoken at home and the practice of early childhood marriages. The languages with the highest relationships with early childhood marriages were Kwangali (39%); San (29%); Lozi (24%), Damara/ Nama (23%); and Herero (20%).

With regards to religious practice there was no definitive evidence shown to suggest that religious practices in Namibia have a cause-effect relationship with the practice of childhood marriages. Comparatively, in Zimbabwe the practice of childhood marriages has been known to take place due to the beliefs of the Johanne Marange apostolic sect religious group which accounts for 33% of women and 4% of men who are married before the age of 18 years.⁶

⁴ Ibid

⁵ Ibid at 40

⁶ Mujuru L. 2022. Religious Sect Accused of Condoning Child Marriage. Global Press Journal. Available at <https://globalpressjournal.com/africa/zimbabwe/law-soon-ban-child-marriage-effective/> last accessed on 26 May 2022.

3) Teenage Pregnancy and early sexual debut

The last National Demographic Health Study showed that an estimated 7% of women have their first sex between 12 and 14 years of age, 35% between 15 and 17 years of age.⁷ 1% of girls aged between 15-19 years had been married, separated or divorced, 2% of the survey participants aged between 20-49 in this study stated that they had been married by the time they were 15 years and nearly 37% of participants of the same study reported that their first sexual encounter was not consensual.⁸ These statistics only reflect the cases that have been reported, it is common for individuals not to report pregnancies resulting from ECM because in many communities is more of a norm than an act that requires reporting. The social shame that has been associated with teenage pregnancy is what commonly pushes young women into engaging in the practice of ECM, as well as parents who feel the need to consent to marriage on behalf of their children. It is generally believed, in instances such as these, that marriage is a positive source of security.⁹ However, the practice has been seen to do more harm than good.¹⁰

For instance, teenage pregnancy is among the highest causes for childhood marriage in the Kavango West region and it is a social norm in that region that children who are pregnant should become married, while in the past the main driver was customary practice, it has become more of a way of dealing with early and unplanned marriages.¹¹

⁷ *Namibia Demographic and Health Survey 2013*. 2014. Ministry of Health and Social Services and ICF International.

⁸ Ibid

⁹ Ministry of Gender Equality, Poverty Eradication and Social Welfare. (2020). *National Formative Study on Child Marriage*. Namibia.

¹⁰ Ibid

¹¹ Ibid

4) Alcoholism

This cause primarily contributes to the aforementioned teenage pregnancies and early sexual debut through the heightened instances of sexual abuse and greater likelihood of engagement in intercourse by teenage couples.¹² It can be seen as a subsidiary cause to the abovementioned cause as well as that of poverty, however for the purposes of this study, we have listed it separately because of the immense manner in which it contributes to the practice. Alcoholism has not only been seen as a contributory factor to teenage pregnancy and early sexual debut, but it has also been seen to contribute to maintaining abuse in households and perpetuating instances of poverty. These negative consequences have been seen to increase the likelihood of children being married off by their caregivers¹³

Due to how alcohol increases likelihood of ECM, it is clear that early introduction to alcohol and subsequent alcoholism need to be eliminated. In a study by the Legal Assistance Centre, it was revealed that underage drinking is a huge problem in Namibia, 65% of respondents in the study agreed that it was easy for the youth to get access to alcohol at shops in their community.¹⁴ 57% of respondents believed that it was easy for the youth to get access to home-brewed alcohol in their communities.¹⁵ 49% of respondents agreed that in their community, early exposure and reliance on alcohol is present as very young children are commonly given home-brewed alcohol to ease their hunger or stop them from crying.¹⁶ 41% of

¹² Peltzer, K., & Pengpid, S. (2018). Concurrent alcohol and tobacco use among school-going adolescents in Namibia: Prevalence and risk factors. *Journal of Psychology in Africa*, 28(2), 141-146.

¹³ Ministry of Gender Equality, Poverty Eradication and Social Welfare. (2020). *National Formative Study on Child Marriage*. Namibia.

¹⁴ Legal Assistance Center. (2010). *Preventing Underage Drinking: A Guide to Individual and Community Action*. Gender Research and Advocacy Project. Windhoek. Namibia.

¹⁵ Ibid

¹⁶ Ibid

respondents felt that their communities had become more tolerant of underage drinking.¹⁷

5) Insufficient Access to Education

The National Formative Study on Child Marriage showed that lack of education was a particularly high cause of childhood marriages in the Kavango West, Omusati and Ohangwena regions.¹⁸ Additionally it was shown that uneducated girls are at a higher risk of getting married than those who have attended secondary or higher education.¹⁹ This results in a lack of appreciation for education among the children and guardians and perpetuation of the perception that marriage is the ultimate source of security. The Convention on the Rights of the Child has pointed out that the right to education is a state obligation that should be protected and promoted amongst children.²⁰



Regional community engagement with youths in the Omaheke region

¹⁷ Ibid

¹⁸ Ministry of Gender Equality, Poverty Eradication and Social Welfare. (2020). *National Formative Study on Child Marriage*. Namibia.

¹⁹ Ibid

²⁰ Convention on the Elimination of All Forms of Discrimination against Women, at Article 32

Customary Practices Related to Early Childhood Marriages In Namibia

The practice of early childhood marriage in Namibia much like in other African regions is closely related to customary practices. The last census conducted in Namibia in 2011 revealed that some communities are allowed to practice child marriage under customary law particularly for children who have reached an age of puberty, around 11 or 12 years.²¹ Additionally, the *Demographic and Health Survey of 2013* revealed that while 20% of women aged 15 and above were married in civil marriages and 8% in customary marriages, 7,5% of the women were living informally with their partner.²²

1) Polygamy

This is when a man marries more than one wife. This practice is not legal in Namibia but has been reported to practice in the Zambezi, Oshana, Otjozondjupa and Kavango West in Namibia.²³ In some instances it is practised openly and accepted by the community at large while in other areas it is carried on secretly.²⁴

2) Testing for Fertility²⁵

This is a custom that is practised in the Kavango West region. This involves the coercion of young girls into falling pregnant by a certain age in order to prove their

²¹ Gender Research and Advocacy Project. 2017. *Briefing Document on Child Marriage and Teenage Pregnancy*. Legal Assistance Center. Windhoek. Namibia.

²² *Namibia Demographic and Health Survey 2013*. 2014. Ministry of Health and Social Services and ICF International.

²³ Ministry of Health and Social Services. NATIONAL FORMATIVE CHILD MARRIAGE STUDY IN NAMIBIA. 2022 . *CHILD MARRIAGE STUDY REPORT - CABINET DECISION NO: 4/17.03.20/006 RESOLUTIONS*. Ministry of Health and Social Services. Namibia. Also see; Nakanyete, N. F., Nghitevelekwa, R. V., Matsa, M. M., Mendelsohn, J., Lendelvo, S., & Shikale, F. (2020). Communal land tenure security for widows in the Eenhana Constituency of the Ohangwena Region, Namibia. *Journal of International Women's Studies*, 21(1), 131-147.

²⁴ Ibid

²⁵ Ministry of Gender Equality, Poverty Eradication and Social Welfare. (2020). *National Formative Study on Child Marriage*.

ability to reproduce. It places a great deal of pressure on girls to be sexually active and to be a mother at a young age. The practice is decreasing greatly however it is still associated with childhood marriages in the present day.

3) Arranged Marriages

This is when parents select a partner for their child. This often involves pressuring the child to take on the intended spouse, who in many instances, is significantly older than the child. This practice takes away the child's right to liberty and to choose whom to marry.²⁶

4) Eengoma²⁷

This is a custom commonly practised in the Ohangwena region. Eengoma is an initiation ceremony for young women who have just gone through their menstruation for the first time. During the ceremony, men are allowed to pick a bride by placing a mark on them. The practice has been decreasing however many parents are quick to make their child go through it in order to avoid shame associated with teenage pregnancy. It is common for parents to send their children to Angola as well, where the custom is more widely practised in order to make sure their child is selected to be someone's bride.²⁸

5) Holy Fire

This is a practice that takes place among the Ovaherero, Ovambanderu and Ovahimba communities. During this practice married men are held in high regard

²⁶ Ibid

²⁷ Ibid.

²⁸ Ibid

while unmarried men are belittled for not having spouses often through acts that may be considered to be demeaning such as having to move around on their knees. This practice has been seen to encourage men to desire marriage for the honour and notoriety rather than due to any care for their wife, older married men teach that marrying is an essential rite to manhood.²⁹

6) Widow inheritance³⁰

This practice involves the marrying of an individual as replacement for a deceased spouse. It puts women in vulnerable situations as they often risk losing their property if they refuse to be taken on as a spouse. In some instances, children are taken as the replacement spouse.

7) Tjiramue

This practice is common in Otjiherero customary groups. It involves the marriage of cousins also referred to as "omuramwe." There are two types of identification in this practice, mainly "eanda" drawn from the matri-clan and brother and sisters' children.³¹ The practice, much like widow inheritance, allows for girls to be seen as property and for abuse to take place as a result of a sense of entitlement by their male counterparts, it has often led to early sexual debut for girls as well.³²

²⁹ Ibid

³⁰ Legal Assistance Centre. (2017). Namibia Gender Analysis. Delegation of the European Union to Namibia. Also See; Gaoes, I. (2015). The controversial Otjiramue. *Sister Namibia*, 27(2), 20-22.

³¹ Gaoes, I. (2015). The controversial Otjiramue. *Sister Namibia*, 27(2), 20-22.

³² Ibid

8) Sikenge

This is an initiation practice largely from the Zambezi region. It is conducted when a young woman begins her menstruation and is taken away to be taught about womanhood, being a good wife and a good member of the community as a woman.³³ The practice has been closely linked to the persistence of GBV.³⁴

9) Olufuko

This is a traditional festival that takes place in the northern region of Namibia wherein young women are taught about their tradition as they essentially transition from being girls to being women.³⁵ While the practice greatly encourages young women to keep their virginity, it has been accused of perpetuating the practice of childhood marriages.

³³ Titus, H. (2017). Ending harmful cultural practices. *Sister Namibia*, 29(1), 24-26.

³⁴ Swetu, R. (2016). *An assessment of the intergration of anti-gender based violence component in pre-marriage training in Lusaka district* (Doctoral dissertation, University of Zambia).

³⁵ Williams, T. M. (2021). Girl-Child, Health, and Education in Africa. In *The Palgrave Handbook of African Women's Studies* (pp. 2409-2423). Cham: Springer International Publishing

The Practice of Early Childhood Marriages Regressing the Namibian Feminist Movement

The practice of child marriage, does in many dimensions, allow for women to continue to be subordinate to men. It undermines and hinders the efforts and progress that the feminist movement in Namibia has managed to achieve.

1) Continued undermining of womens' rights

The practice of early childhood marriages is primarily disadvantageous to girls and



to women they grow into. This report shall explore the various ways in which childhood marriages encourage a violation of human rights such as that to education which often results from young girls dropping out due to their responsibilities as wives and mothers. In addition to

Discussing feminist perspectives

this there is evidence that this practice also contributes to sexual and physical violence against the girls.

Girls Not Brides has identified a few key ways in which the practice of early childhood marriages undermines women and girls' rights.³⁶ These are;³⁷



A. **Increased risk of experiencing gender based violence;** Young individuals who get married are usually not able to defend themselves and often fear reporting due to the nature of dependency that is usually present in such marriages. The relationship

Discussing feminist perspectives

dynamics make them victims of unhealthy gender norms, such as the idea of a wife as a subservient child bearer . In 2021, it was found that among the age group of 15 to 49, 28% of women and 22% of men in Namibia believe a husband beating his wife as a form of discipline constitutes a justifiable act. ³⁸ It is clear that there women and girls are significantly disadvantaged in this regard.

³⁶ Girls Not Brides: The Global Partnership to End Child Marriage. 2020. ENDING CHILD, EARLY AND FORCED MARRIAGE IS CRUCIAL TO GENDER EQUALITY. 2020 Advocacy Brief. Available at https://www.girlsnotbrides.org/documents/953/Ending-child-marriage-is-crucial-to-gender-equality_2020-July.pdf last accessed on 28 May 2022.

³⁷ Ministry of Health and Social Services. NATIONAL FORMATIVE CHILD MARRIAGE STUDY IN NAMIBIA. 2022 . CHILD MARRIAGE STUDY REPORT - CABINET DECISION NO: 4/17.03.20/006 RESOLUTIONS. Ministry of Health and Social Services. Namibia

³⁸ Helmendach, A. 2021. The Gender Wage Gap in Namibia. Available at <https://borgenproject.org/gender-wage-gap-in-namibia/> last accessed on 28 May 2022.

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- B. **Infringement of economic justice and rights;** Child marriage contributes to 9% in loss of income for women who get married as children.³⁹ Presently in Namibia, women are already at a disadvantage economically as labour force participation is presently at 57%, significantly lower than the 64% of their male counterparts.⁴⁰ Unequal childcare responsibilities often limit young girls' availability for work, and this problem is exacerbated and experienced in their adulthood as children who get married are more likely to have more children as they often begin child bearing from an early age.⁴¹ Additionally the increased likelihood to drop out of school decreases their ability to develop professionally.
- C. **Bodily Autonomy and SRHR;** ECM is perpetuated by beliefs that a girls' worth and value are tied to her virginity.⁴² Ultimately, girls are forced to conform to the practice due to these beliefs and to maintain the family's honour.⁴³ There is a loss of individuality amongst the girls and often pressure from the family and community to follow rules of 'honour' by getting married.
- D. **Feminist action on climate justice;** Those who often engage in the practice of early childhood are from communities that rely on natural resources for their survival and this can lead to unsustainable use of natural

³⁹ ICRW and World Bank. 2017. Economic Impacts of Child Marriage. Available at <https://documents1.worldbank.org/curated/en/530891498511398503/pdf/116829-WP-P151842-PUBLIC-EICM-Global-Conference-Edition-June-27.pdf> last accessed on 28 May 2022.

⁴⁰ Helmendach, A. 2021. The Gender Wage Gap in Namibia. Available at <https://borgenproject.org/gender-wage-gap-in-namibia/> last accessed on 28 May 2022.

⁴¹ Ibid

⁴² Girls Not Brides: The Global Partnership to End Child Marriage. 2020. ENDING CHILD, EARLY AND FORCED MARRIAGE IS CRUCIAL TO GENDER EQUALITY. 2020 *Advocacy Brief*. Available at https://www.girlsnotbrides.org/documents/953/Ending-child-marriage-is-crucial-to-gender-equality_2020-July.pdf last accessed on 28 May 2022.

⁴³ Ibid

resources.⁴⁴ ECM results in young women becoming stuck in poverty and unable to break out of this, they grow up and become mothers whose daughters are similarly given to the practice and cycle is continued with little ability to escape.⁴⁵ Men in such communities often have multiple children from different partners.⁴⁶ The Himba tribe have found a way against this through the community fathering of non-biological children.⁴⁷ However, the practice of ECM results in many childbirths and risk of land degradation due to unsustainable use of portions of land at a time.

- E. **Technology and Innovation for Gender Equality;** The practice of ECM greatly impedes young women's access to technology and innovative measures to fight ECM due to risks of cyberbullying for having engaged in the practice, additionally, social media has subjected young girls to ECM through human trafficking.⁴⁸ It is noted that technology and social media can be used to fight against ECM if more effort is put into coming up with more innovative measures, such as leading more discussions and campaigns against the practice.⁴⁹

⁴⁴ Republic of Namibia Ministry of Environment and Tourism. 2014. Third National Action Programme for Namibia to Implement the United Nations Convention to Combat Desertification 2014 - 2024. *Ministry of Environment and Tourism*. Available at <https://www.unccd.int/sites/default/files/naps/Namibia-2014-2024-eng.pdf> last accessed on 29 May 2022.

⁴⁵ See under "Kamanjab" in chapter on *Young Feminist Action*

⁴⁶ Gierse-Arsten, S. (2020). Transition towards gender equality-Namibia between the empowerment of women and violence of men.

⁴⁷ Prall, S. P., & Scelza, B. A. (2020). Why men invest in non-biological offspring: paternal care and paternity confidence among Himba pastoralists. *Proceedings of the Royal Society B*, 287(1922), 20192890.

⁴⁸ Girls Not Brides: The Global Partnership to End Child Marriage. 2020. ENDING CHILD, EARLY AND FORCED MARRIAGE IS CRUCIAL TO GENDER EQUALITY. *2020 Advocacy Brief*. Available at https://www.girlsnotbrides.org/documents/953/Ending-child-marriage-is-crucial-to-gender-equality_2020-July.pdf last accessed on 28 May 2022.

⁴⁹ Ibid

2) Feminist leadership

Namibian feminist leaders and allies to the feminist movement, have made very significant strides in their efforts to achieve gender equality in Namibia. As of 2021, 44.2% of the seats in parliament were occupied by women, a statistic reflecting improvement when compared to the prior 42% representation.⁵⁰ Many of the young girls who get married are unlikely to enter parliament or roles as local authorities due to the restrictions in sociopolitical activity and development that are associated with early childhood marriage. The trouble with the restriction created by early childhood marriages is not only that there is a reduction in women who can take leadership roles, but it also makes the disconnect between the present feminist movement and the Namibian leadership, despite female representation. While an increase in female leadership is a significant improvement with regards to gender parity, it is of no use to the achievement of true gender equality if the women in power hold patriarchal perspectives. While there are different genders present, it is of little benefit to the feminist movement if the ideals of the majority representatives are not diverse from the oppressive, paternal ones we seek to improve. There is a need to have a relationship between the women's movements that advocate for change and the women who can effect change.



⁵⁰ Helmendach, A. 2021. The Gender Wage Gap in Namibia. Available at <https://borgenproject.org/gender-wage-gap-in-namibia/> last accessed on 28 May 2022.

It is clear that such a relationship does not exist between the feminist social movement and the leadership of Namibia mainly due to differing perspectives. This was captured in an open letter to the Minister of Gender Equality, Poverty Eradication and Child Welfare, Doreen Sioka.⁵¹ Despite the ministry's research in the practice of child marriage.⁵² There is the looming question of the extent to which preventative measures will be taken and to what extent the issues surrounding this are prioritised. Another key example to the disregard for feminist priorities by the female leaders who are currently in power can be seen through a statement made by parliamentarian, Elma Dienda, that "Marital rape does not exist." Contrary to this view, we believe that the practice of early childhood marriage allows for the facilitation of statutory rape. The Combatting Immoral Practices Act certainly allows for that, in stating that sexual acts with a child are forbidden unless an individual is married to that child.⁵³ Allowing for the practice of childhood marriages ultimately stops women who are suffering at the hands of patriarchal laws from being able to take action, it creates room for these young women to continue to suffer. Moreover, for representation that does not truly concern itself with feminist issues and in some instances even speaks in favour of issues that have been harmful to women for generations to continue to thrive.

⁵¹ BIG Coalition. 2021. Open Letter to Doreen Sioka. *The Namibian*. Available at <https://www.namibian.com.na/213459/archive-read/Open-Letter-to-Doreen-Sioka> last accessed on 27 May 2022.

⁵² Ministry of Health and Social Services. NATIONAL FORMATIVE CHILD MARRIAGE STUDY IN NAMIBIA. 2022 . *CHILD MARRIAGE STUDY REPORT - CABINET DECISION NO: 4/17.03.20/006 RESOLUTIONS*. Ministry of Health and Social Services. Namibia.

⁵³ Combatting Immoral Practices Act 7 of 2000, at section 14

Universality of human rights and cultural relativism in relation to the practice of childhood marriages in Namibia

One of the greatest causes of childhood marriages in Namibia is customary practices.⁵⁴ Human rights that we are referring to in this document, which are restricted by the practice of childhood marriage, are based on the human rights established by the United Nations, and can be found in international tools such as Universal Declaration of Human Rights (UDHR), the source of which has primarily been the socio-economic developments in Europe.⁵⁵ As a result of this, there is the question of whether or not these rights are established with true consideration for local contexts.⁵⁶ The concept of cultural relativism takes into consideration the realisation of diverse cultural, social and religious beliefs, holding that each group is different and should be allowed to create morals, and abide by norms in accordance with those differences.⁵⁷ Universalists would argue that norms such as

⁵⁴ Ministry of Health and Social Services. NATIONAL FORMATIVE CHILD MARRIAGE STUDY IN NAMIBIA. 2022 . *CHILD MARRIAGE STUDY REPORT - CABINET DECISION NO: 4/17.03.20/006 RESOLUTIONS*. Ministry of Health and Social Services. Namibia

⁵⁵ Constantinides, A.(2008). *Questioning the Universal Relevance of the Universal Declaration of Human Rights*. University of Cyprus, Nicosia. Cyprus.

⁵⁶ Ibid

⁵⁷ Tilley, J. J. (2000). Cultural relativism. *Human Rights Quarterly*, p 22, 635.

child marriage within different groups can impede the enjoyment of rights despite them being born out of the uniqueness of that group.

This question is often extended to tools established by African legislators such as the African Charter and national constitutions, however these have faced the criticism that many of these legislators have received western education and have been accused of mainly considering and reasoning through the lens of un-African ideals, they have also been accused of putting their own oligarchical and patriarchal interests ahead of the interests of the people for whom they legislate.⁵⁸ With these factors in mind, one may question why early childhood marriages are considered to be a matter of human rights violations and not an unfair imposition of foreign ideals on African customs. The idea of the universality of human rights came up after the immense war crimes and genocide that were committed by the Third Reich, undoing harm that some may do on others as a result of the idea that they are somehow superior.⁵⁹ However, in this instance it is a matter of not only admitting an inadequacy in the formation of one's ideals, but also further pointing out that this ideal is harmful to one's own group despite it having been sustained for centuries.

This question must be closely assessed with the matter of contextual changes. Changes in circumstances and changes that come with the realisation of ideals that

⁵⁸ Olowu, Dejo. (2002). Protecting children's rights in Africa: a critique of the African Charter on the Rights and Welfare of the Child. *Int'l J. Child. Rts.*, 10, 127.

⁵⁹ Rosenfeld, M. (1998). Can Human Rights Bridge the Gap between Universalism and Cultural Relativism-A Pluralist Assessment Based on the Rights of Minorities. *Colum. Hum. Rts. L. Rev.*, 30, 249.

may yield greater satisfaction, have been seen to affect what should be considered to be an acceptable 'right' and 'wrong'.⁶⁰ Such changes allow for individuals to chalk out their lives in ways that suit them best.⁶¹ Any society that intends to fully allow for its citizens to enjoy its rights also accepts that change is inevitable.⁶² The international community has acknowledged that societies need to allow for flexibility and change of norms through a tool and state obligation known as 'progressive realisation'.⁶³ Katherine Young defined progressive realisation as 'the lapse of time between rights recognition and rights fulfilment'.⁶⁴

International agreements such as the ICESCR acknowledge that societies change identify the need for immediate and progressive realisation as the obligation of states to consistently make changes that suit the contemporary society and to make sure that the state makes as much effort as possible to ensure that this is successfully fulfilled.⁶⁵

The state of Namibia has clearly stated that the supreme descriptor of what is to be considered acceptable can only be drawn from the Constitution of Namibia.⁶⁶ While the legislators of this legal tool can also be accused of creating and imposing something that is drawn from western ideals, the question of human rights in this continent is one that considers the need to avoid harms to its own people.⁶⁷ It has

⁶⁰ Constantinides, A.(2008). *Questioning the Universal Relevance of the Universal Declaration of Human Rights*. University of Cyprus, Nicosia. Cyprus.

⁶¹ Bwana, R. (2021). Progressive Realization of Socio-Economic Rights: Nonsense on Stilts?. Available at SSRN 3986266.

⁶² Belck, N. (1998). Change is constant... change is inevitable. *Journal of Family and Consumer Sciences*, 90(4), 12.

⁶³International Covenant on Economic, Social and Cultural Rights, Article 2

⁶⁴ Young K. G. 2019. *Waiting for Rights: Progressive Realization and Lost Time*. Cambridge University Press, p1.

⁶⁵ International Covenant on Economic, Social and Cultural Rights, Article 2.

⁶⁶ Constitution of Namibia, Article 1(6)

⁶⁷ Constitution of Namibia, Preamble.

been recognized through historical experience that unregulated power can often lead to the harm of another.⁶⁸ As such, human rights that are expressed rather than dependent upon the authority of social figures are necessary in order to avoid repeating the errors of the past.

The idea that “my rights end where yours begin” is something that is essential in this regard, it is a question of the extent to which one’s actions result in harm to another. The practice of early childhood marriages has resulted in a lot of harm for young girls who undergo the practice. The following are some ways in which girls are harmed through the practice of childhood marriage;⁶⁹

- Child marriage can have life-threatening health consequences for girls. Under pressure to become mothers soon after marriage, many child brides become pregnant before their bodies can safely carry or deliver children.
- Complications in pregnancy can put them at risk of injury, and even death, as girls who give birth under age 15 are five times more likely to die in childbirth than young women in their early 20s. Child brides are particularly vulnerable to injury in pregnancy or childbirth: 65% of all cases of obstetric fistula occur in girls under the age of 18.
- Child marriage denies girls their right to education. Millions of child brides drop out of school to devote their time to house chores and child rearing – if they were in school in the first place. Over 60% of child brides in developing countries have had no formal education². In Malawi, nearly two thirds of

⁶⁸ Lamb, G. (2002). *Debasing democracy: Security forces and human rights Abuses in post-liberation Namibia and South Africa*. Melber, H.(comp.) *Measuring Democracy and Human Rights in Southern Africa. Discussion Paper, 18*, 30-49.

⁶⁹ Girls Not Brides. (2015). *Ending Child Marriage In Africa; A Brief by Girls Not Brides*. Girls Not Brides: The Global Partnership To End Child Marriage.

women with no formal education were child brides compared to 5% of women who attended secondary school or higher levels of education³ .

- Child marriage puts girls at risk of sexual, physical and psychological violence throughout their lives. Girls who marry as children are more likely to be beaten or threatened by their husbands than girls who marry later and are more likely to describe their first sexual experience as forced.
- As minors, child brides are rarely able to assert their wishes, such as whether to use family planning methods or practice safe sexual relations. Married girls can be particularly vulnerable to HIV/AIDS and other sexually transmitted diseases.
- Child marriage has negative implications for Africa's economic prosperity and development. Because of child marriage, millions of girls miss the skills, knowledge and employment prospects that would enable them to lift their family out of poverty and contribute to their country's economic development and prosperity. The persistence of child marriage has hindered Africa's efforts to achieve six of the eight Millennium Development Goals (to eliminate extreme poverty, to achieve universal primary education, to promote gender equality, to reduce child mortality, to improve maternal health, and to combat HIV/AIDS).

It is clear that the practice of early childhood marriages ultimately causes harm to those who go through it. The fight to end the practice of early childhood marriages by eliminating some cultural practices, therefore, should not be limited or restricted by the idea that human rights are foreign and possibly colonial ideals, rather, the elimination of these practices should be viewed as a positive way of sustaining the customary group and benefiting the individuals who are usually affected by this practice.

4

The Refusal of Early Childhood Marriages in Namibia



Child marriage report launched



News - National | 2020-10-30 Page no: 6

by **Tutalení Pinehas**

THE minister of gender equality, poverty eradication and welfare, Doreen Sioka, says the elimination of child marriages has become a priority since teenage girls are dying due to complications from early child marriages. Sioka said this yesterday at the launch of a report on child marriages in Windhoek. "Both boys and girls continue to drop out of school before completing education, therefore, reducing their chances of escaping poverty," she said. Sioka said Namibia

the African charter on the rights and welfare of the child (ACRWC) and the rights of women in Africa to the African charter on human and people's rights. These national instruments specify that the minimum age to get married is 18, and require consent. Section 10 of the Child Care and Protection Act number 3 of 2015 stipulates that under the age of 21 requires their parents' consent to enter into a marriage.

Section 226 stipulates that a person may not offer a child for marriage or engagement if such person does not consent to the marriage and is below the minimum age for marriage contemplated in section 226 of the Child Marriage Act of 1963 as amended.

Sioka said: "The consequences of child marriages are grave. Findings indicate some cases are linked to gender-based violence, educational attainment, poor sexual and reproductive health outcomes, physical, emotional and sexual abuse, deprivation of childhood experiences and abandonment by husbands." Namibia hosted the African Union special ending child marriage in September last year, she said. "The commissioner held a consultative meeting with a range of stakeholders to engage on the issue of child marriages and other issues faced by younger women, she said. The gender minister announced that the outcome of the meeting indicated that the government has made good progress on child protection – particularly on ending child marriages.

"We have legislation to criminalise child marriages. We have a strong coordination system with other stakeholders and we are complying with the African charter on the rights and welfare of the child," she said. Sioka applauded Childline/Lifeline which has created community awareness on child marriage. The director of child welfare services at the gender ministry, Helena Andjamba said customary marriages and cohabitation were the two most common forms of union. According to the report, the youngest age at marriage is estimated to be 11 years old. The report found that child marriages are seldom reported to the authorities, and that statutory rape is not being reported. It happens between close family members. When cases did come to light, law-enforcers' structures tend to be lenient due to their own cultural background, the report stated. The report recommends law reforms and the consistent implementation of laws to prevent and respond to child marriages.

Introduction

The Namibian legal framework makes provisions to protect individuals against the practice of early childhood marriages. The supreme law of the state is guided by the constitution. The Namibian Constitution protects the right to cultural practices for as

long as they do not cause harm to other persons.⁷⁰ Prevention in this state is mainly tackled through the creation of a three layered consent process and through the rejection of harmful cultural, social and religious practices.

1) Consent

Article 14(2) of the constitution provides that; Marriage shall be entered into only with the free and full consent of the intending spouses.

Article 14 of the constitution protects the institution of family⁷¹ (3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State. Additionally, section 24 of the Marriage Act Act No. 25 of 1961 states that, "a person may not give a child out in marriage or engagement if such child does not consent"⁷² Subsection (3) allows for children to get married provided they have the consent of the minister as well as the consent of the child's parents or legal guardian. Ultimately, we see that there are three layers of consent that must be applied before a child is involved in a civil or customary marriage;⁷³

- i) consent of the parties that intend to get married,
- ii) consent from the minister of home affairs and
- iii) consent from the parents or legal guardian.

The punishment for forcing a child to get married without adequate consent is a fine of up to N\$50 000 or imprisonment for up to ten years or both.⁷⁴ The Legal

⁷⁰ Constitution of the Republic of Namibia

⁷¹ Ibid

⁷² Marriage Act No. 25 of 1961, section 24 (2)

⁷³ Gender Research and Advocacy Project. 2017. *Briefing Document on Child Marriage and Teenage Pregnancy*. Legal Assistance Center. Windhoek. Namibia. Also see Guide to Namibia's Child Care and Protection Act 3 of 2015. 2019. *Chapter 20 : Harmful Social, Cultural Or Religious Practices*. Legal Assistance Center. Windhoek. Namibia. p. 8-9

⁷⁴ Child Care and Protection Act 3 of 2015, section 226 (3). Note that there are two subsections in section 226 labeled as (3).

Assistance Centre has further made clear who can give parental consent, in a document which elaborates on the CCPA⁷⁵

- i) Married parents must both consent.
- ii) If the parents were never married, the parent with guardianship must consent.
- iii) If the parents are divorced, the parent with guardianship must consent. If the divorce order makes both parents equal guardians then the consent of either of them would suffice- unless the divorce order contains a special requirement for consent to marriage.
- iv) Minister of Gender and Child Welfare (if there are no parents or guardians present in the child's life)

The law makes consent a slightly strenuous process by layering in this way, in order to protect young children. Allowing the child to consent allows for respect to the child's views,⁷⁶ and the inclusion of guardians and the state can be said to have been done to allow for review of the decision by more competent persons.

The LAC has stated that if a child gets married without all the necessary consent the marriage may be void or voidable.⁷⁷ Additionally, the 7th periodic review on the

⁷⁵ Guide to Namibia's Child Care and Protection Act 3 of 2015. 2019 . *Chapter 20 : Harmful Social, Cultural Or Religious Practices*. Legal Assistance Center. Windhoek. Namibia. p. 9 Also See section 25 of the Marriage Act 25 of 1961.

⁷⁶ The Guiding Principles of the Convention of the Rights of Children. Available at <https://www.humanium.org/en/the-guiding-principles-of-the-childrens-rights-convention/> last accessed on 13 May 2022. Also see Four Principles of the Convention of the Rights of the Children. Available at <https://www.unicef.org/armenia/en/stories/four-principles-convention-rights-child> last accessed on 13 May 2022

⁷⁷ Guide to Namibia's Child Care and Protection Act 3 of 2015. 2019 . *Chapter 3 : Age of Majority*. Legal Assistance Center. Windhoek. Namibia. p.15

African Charter for Women's Rights published by the Ministry of Justice ⁷⁸ states that one can seek redress through making a claim for statutory rape

The Marriage Act 25 of 1961 additionally prohibits the solemnisation of marriages for children wherein consent has not been obtained. It states that if parties appear before a marriage officer for the purpose of contracting a marriage with each other and such marriage officer reasonably suspects that either of them is of an age which debars him or her from contracting a valid marriage without the consent or permission of some other person, he (or she) may refuse to solemnise a marriage between them unless he is furnished with such consent or permission in writing or with satisfactory proof showing that the party in question is entitled to contract a marriage without such consent or permission.⁷⁹

2) Rejection of Harmful Social, Cultural and Religious Practices:

The CCPA rejects the practice of harmful social, cultural and religious practices in section 226,⁸⁰ which disallows the subjection of children to harmful social, cultural or religious practices and further emphasised in sub-sections (2) and (3) that anyone who gives a child off for marriage or engagement without consent from the child, the minister of home affairs and the child's guardian or parents shall be guilty of an offence and liable to a maximum of ten years in prison or a fine of \$50 000 or both,⁸¹ additionally Namibia is a signatory to international agreements that also prohibit the practice of childhood marriage such as the Convention on the

⁷⁸ Ministry of Justice. 2020. 7th Periodic Report (2015-2019) On the African Charter on Human and Peoples' Rights and the Second Report Under The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa

⁷⁹ Marriage Act 25 of 1961

⁸⁰ Child Care and Protection Act 3 of 2015,

⁸¹ Ibid

Elimination of All Forms of Discrimination against Women (CEDAW)⁸² and the African Charter on the Rights and Welfare of the Child (ACRWC),⁸³ and as per the terms of Article 144, Namibia is bound to these agreements.⁸⁴ Additionally, the Constitution makes customary laws subsidiary to those of the constitution and acts of parliament in terms of Article 19⁸⁵ and Article 66.⁸⁶

Conclusion

To answer the question regarding whether or not Namibia refuses the practice of ECM, it does. However, despite these protective mechanisms there are still some elements of the law that allow for this practice to continue, we shall explore these in the following chapter.



A WOMAN WHO MARRIED BEFORE THE AGE OF 18 YEARS - KUNENE REGION⁸⁷

"I got married at 15 years to a 26-year-old husband. It was a traditional wedding and I was just forced into marriage by my parents; it was never my will or desire. Though me and my husband were fine, I was grade 7 and I didn't return to school. I dropped out. I'm not an educated person at all; instead, I have little education and I am just a house lady. The case was not reported, I don't know, it should be left and not be investigated. But I feel it should not be allowed for an underage child to get married, it's not a good thing at

⁸² Convention on the Elimination of All Forms of Discrimination against Women, Article 14

⁸³ African Charter on the Rights and Welfare of the Child, Article 21(2)

⁸⁴ The Constitution of the Republic of Namibia

⁸⁵ The Constitution of the Republic of Namibia.

⁸⁶ Ibid

⁸⁷ Ministry of Gender Equality, Poverty Eradication and Social Welfare. (2020). *National Formative Study on Child Marriage*. p53.

all to give your child to be married while under age. I should have been in nursing or even part of this research group journey that you guys are busy with. if it was not for this thing of being married while under age.”

What Allows For Early Childhood Marriages To Continue In Namibia?

Introduction

Unfortunately despite the punitive measures for the practice and the refusal mechanisms listed in the previous chapter, it still persists in the country.⁸⁸ This may be attributed to the conflicting statutory provisions that govern childhood marriages within Namibia as well as insufficient knowledge on . The main groups of interest that are put at risk through this practice are women and children.⁸⁹

For the purposes of this study, we shall explore opposing legislative provisions which have allowed for the practice to continue through blurring the definition of the term ‘minor’; as well as relaxed provisions on the registration of customary marriages which allows for childhood marriages to be practised through cohabitation; and how lack of clarity in these areas ultimately hinders the possibility

⁸⁸ Ministry of Justice. 2020. 7th Periodic Report (2015-2019) On the African Charter on Human and Peoples’ Rights and the Second Report Under The Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa. at p 20

⁸⁹ Office of the High Commissioner for Human Rights. *Child and forced marriage, including in humanitarian settings: OHCHR and women’s human rights and gender equality*. Available at <https://www.ohchr.org/en/women/child-and-forced-marriage-including-humanitarian-settings> last accessed on 12 May 2022

of intervention and retrieval of children who have been affected through this practice as well as reporting the offence.

1) Unclear definition of the term 'minor'

The need to specify the term minor is an important issue in order to allow young individuals to be able to enjoy the protection that is accorded to them by law. In relation to child marriages, the need to set out in clear terms what is meant by 'minor' is a crucial measure to protect children from the practice of early or forced marriages by clearly qualifying those with the capacity to marry.⁹⁰ The importance of the differentiation between a child and an adult is of priority due to a distinct difference in the maturity and development level of individuals.⁹¹ As such, there is a need for legislators to make such considerations when making provisions, it is always crucial to do so for the sake of their best interest.⁹² Determining this definition is also important in order to make sure that children are protected in terms of the other general principles that underpin children's rights including protection from discrimination, protection of the child's survival and protection of the views of the child.⁹³ The main right holders in this matter are women and

⁹⁰ Office of the High Commissioner for Human Rights. *Child and forced marriage, including in humanitarian settings: OHCHR and women's human rights and gender equality*. Available at <https://www.ohchr.org/en/women/child-and-forced-marriage-including-humanitarian-settings> last accessed on 12 May 2022 also see Africa Union Commission. 2017. 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. at p 5. Available at https://www.acerwc.africa/wp-content/uploads/2018/07/Website_Joint_GC_ACERWC-ACHPR_Ending_Child_Marriage_20_January_2018.pdf last accessed on 13 May 2022

⁹¹ Convention on the Rights of the Child, Preamble

⁹² Act 3 of 2015, section 3. Also see ACRW, Article 4

⁹³ The Guiding Principles of the Convention of the Rights of Children. Available at <https://www.humanium.org/en/the-guiding-principles-of-the-childrens-rights-convention/> last accessed on 13 May 2022. Also see Four Principles of the Convention of the Rights of the Children. Available at <https://www.unicef.org/armenia/en/stories/four-principles-convention-rights-child> last accessed on 13 May 2022

children with primary focus on the girl child because the practice has disproportionately affected young girls and women more.⁹⁴

The Convention on the Rights of the Child (CRC)⁹⁵ as well as the African Charter of the Rights and Welfare of the Child (ACRWC),⁹⁶ outline that the age of a child shall be considered as anyone below the age of 18 years, section 1 of the CCPA also identifies individuals below 18 years of age as children. The Constitution of Namibia introduces a conflict through defining children as individuals below 16 years in Article 15 which provides for children's rights and failure to specify the meaning of 'full age' in the Article 14(1) which provides for the right to marry.⁹⁷ In terms of constitutional protection, this leaves individuals between the ages of 16 and 18 years vulnerable to harm without a fortified guarantee of protection from human rights violations accorded to children in terms of the legal provisions that are subsidiary to the constitution such as the CCPA, ACRWC and CRC.

This issue is highlighted in section 16 of the General Comment number 4 of the CRC which discusses how a failure to create this specification deprives children of the special protection they need.⁹⁸ This is also pointed out in section 36 of General Comment 21 of the CEDAW.⁹⁹

⁹⁴ Office of the High Commissioner for Human Rights. *Child and forced marriage, including in humanitarian settings: OHCHR and women's human rights and gender equality*. Available at <https://www.ohchr.org/en/women/child-and-forced-marriage-including-humanitarian-settings> last accessed on 12 May 2022

⁹⁵ Ibid, Article 1

⁹⁶ African Charter on the Rights and Welfare of the Child, Article 2

⁹⁷ Constitution of the Republic of Namibia

⁹⁸ UN Committee on the Rights of the Child (CRC), *General comment No. 4 (2003): Adolescent Health and Development in the Context of the Convention on the Rights of the Child*, 1 July 2003, CRC/GC/2003/4, available at: <https://www.refworld.org/docid/4538834f0.html> last accessed on 13 May 2022.

⁹⁹ UN Committee on the Elimination of Discrimination Against Women (CEDAW), *General Comment No. 21 (1994): Equality in Marriage and Family Relations*, available at

How this acts against the best interest of the child

The Namibian law provides for a three tier consent mechanism to protect children who may be subject to this practice as well as to include them in the decision making process. This can be said to be in fulfilment of the need to incorporate the child's views which is provided in Article 4 of the ACRW as well as Article 12 of the CRC. The law in the section 24 (1) of the Married Persons Equality Act 1 of 1996,¹⁰⁰ as well as section 226 of the CCPA provide that in order for a child to marry there is indeed to obtain consent from the child, the child's parents or guardian and the Minister responsible for home affairs. On one hand this is a great mechanism to ensure that the child's decision is appropriately reviewed by more competent persons, on the other hand the matter of who may consent individually in terms of the Constitution is obscured by the conflict that rises regarding the term 'full age' in Article 14(1),¹⁰¹ additionally upon consideration of the common instances that have given rise to the practice of child marriage, it is apparent that the requirement for the 'best interest,' of the child may be impaired by the entire permission for underage persons to marry.

According to a study carried out by the Ministry of Gender Equality, Poverty Eradication and Social Welfare,¹⁰² the practice of childhood marriage in Namibia often results from situations of poverty wherein the practice is viewed as a source

[https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/A_49_38\(SUPP\)_4733_E.pdf](https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/A_49_38(SUPP)_4733_E.pdf) last accessed on 13 May 2022.

¹⁰⁰ Married Persons Equality Act 1 of 1996

¹⁰¹ Constitution of the Republic of Namibia

¹⁰² Ministry of Gender Equality, Poverty Eradication and Social Welfare. (2020). *National Formative Study on Child Marriage*.

of income; customary beliefs which are closely tied to one's identity and can create a harmful sense of duty to the custom rather than to the individual, such that the children in question are merely an end to a cause rather than humans with autonomy;¹⁰³ teenage pregnancy and early sexual debut which often result in marriage being a form of security for both the teen and their child and inaccess to education which has often led to the belief that marriage is a greater source of security primarily in the Omusati, Ohangwena and Kavango West regions.¹⁰⁴ Subsequent effects of this include health risks associated with expectations of motherhood after marriage, sexual physical and psychological violence associated with an inability to assert themselves, possible exposure to HIV with insufficient intervention.¹⁰⁵

The child's best interest is compromised by the nature of dependency that is posited by these situations which can leave them being viewed as property which subsequently infringes on Article 7 of the ACRWC,¹⁰⁶ or neglecting the protection of one's rights due to a sense of being trapped in the situation ultimately infringing on the right to personal liberty which guarantees a protection of individual autonomy.¹⁰⁷ Oftentimes children who are subject to the practice of childhood marriage end up forfeiting measures that can be self-empowering such as pursuing education which restricts their capacity to earn greater income and ultimately gain

¹⁰³ Legal Assistance Centre. (2017). Namibia Gender Analysis. Delegation of the European Union to Namibia. Also See; Gaoes, I. (2015). The controversial Otjiramue. *Sister Namibia*, 27(2), 20-22.

¹⁰⁴ Ministry of Gender Equality, Poverty Eradication and Social Welfare. (2020). *National Formative Study on Child Marriage*.

¹⁰⁵ Ibid. Also see Girls Not Brides. (2015). *Ending Child Marriage In Africa; A Brief by Girls Not Brides*. Girls Not Brides: The Global Partnership To End Child Marriage.

¹⁰⁶ African Charter on the Rights and Welfare of the Child, Article 7

¹⁰⁷ Constitution of the Republic of Namibia, Article 7. Also see ACRWC, Article 17(2) and CRC, Article 37(b)

independence.¹⁰⁸ This has often been attributed to the immense nature of household responsibilities that one is expected to undertake once they have undergone marriage.

The insufficient consideration for the expectations of marriage *vis a vis* the capacity and ability of a child to fulfil these while in pivotal stages of development may give rise to a question of whether or not the three tier consent structure is sufficient. For example, the household duties which are significantly more demanding than those ordinarily required of a child, may arguably, present a violation of the right to freedom from slavery guaranteed by Article 9 of the constitution¹⁰⁹ which includes forced labour, and in terms of the Labour Act¹¹⁰ include work that is carried out under threat of a penalty, which in this case may be possible loss of their found source of dependency. The nature of the dependency subsequently restricts the ability to enjoy the right to human dignity enshrined in Article 8 as it entails inhuman treatment¹¹¹ and the fundamental freedoms guaranteed by Article 21.¹¹² This was also expressed by participants discussed with, who are based in Kamanjab where the practice is rampant, they also expressed a lack of ability to free themselves as they have no say in the matter, they are simply informed that they will get married with no room for objection.

¹⁰⁸ Girls Not Brides. (2015). *Ending Child Marriage In Africa; A Brief by Girls Not Brides*. Girls Not Brides: The Global Partnership To End Child Marriage.

¹⁰⁹ Constitution of the Republic of Namibia

¹¹⁰ Labour Act 11 of 2007, Section 4(2)(a)

¹¹¹ Constitution of the Republic of Namibia

¹¹² Ibid

Moreover, the ACRWC states that child labour includes work which may interfere with the child's 'social development',¹¹³ and the CRC provides that it is inclusive of work that in addition to this this type of work interferes with the child's education.¹¹⁴ As previously stated, the practice does involve a disturbance regarding the child's development as there is a greater risk of experiencing various forms of violence and their inability to access education results from a heightened likelihood to dropout due to increased responsibilities.¹¹⁵ The nature of these responsibilities in relation to how they are ultimately not appropriate and are effectively harmful for individuals below the age of 18 years is discussed in section 36 and 37 of the General Comment No. 4 of the CRC by the Committee of the Rights of the Child.¹¹⁶ Section 38 further adds that even if a child has a particularly outstanding level of maturity and intelligence, the practice should not be permitted as it allows for the harm of women's rights and such a provision ultimately contravenes the CRC.¹¹⁷

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 has also recognized that the practice of childhood marriage does not serve the best interest of the child because of how it "gives rise to negative physical, psychological, economical and social consequences and curtails the enjoyment of children's human rights and

¹¹³ African Charter on the Rights and Welfare of the Child, Article 15

¹¹⁴ Convention on the Elimination of All Forms of Discrimination against Women, at Article 32

¹¹⁵ Ministry of Gender Equality, Poverty Eradication and Social Welfare. (2020). *National Formative Study on Child Marriage*.

¹¹⁶ UN Committee on the Rights of the Child (CRC), *General comment No. 4 (2003): Adolescent Health and Development in the Context of the Convention on the Rights of the Child*, 1 July 2003, CRC/GC/2003/4, available at: <https://www.refworld.org/docid/4538834f0.html> last accessed on 13 May 2022.

¹¹⁷ Ibid

fundamental freedoms.”¹¹⁸ The general comment further states that the practice of child marriage cannot be said to be in the best interest of the child and should not be justified as being for the benefit of the child, making reference to the findings of the Zimbabwean case of *Mudzuru and another v Minister of Justice, Legal & Parliamentary Affairs N.O and Others* wherein Malaba DCJ stated that;

There is a difference between making a man take responsibility for the pregnancy of a girl and the maintenance of the baby once it is born and compelling a girl child to get married because she got pregnant. It would, in fact, be a form of abuse of a girl child to compel her to be married because she got pregnant. What is clear is that pregnancy can no longer be an excuse for child marriage.¹¹⁹

The practice of childhood marriage infringes on the ability for a child who has been married to enjoy the mechanisms that have been created to protect children from violations of their rights due to the transition from minor to major that takes place when a child has been married. Section 24 (2) of the Marriage Act¹²⁰ as well as section 10 (10) of the CCPA¹²¹ provide that the status of majority is accorded to children who have been previously married. The very acceptance of marriage in these provisions creates a contradiction with section 226 of the CCPA,¹²² Article 14

¹¹⁸ Africa Union Commission. 2017. 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. at p 5. Available at https://www.acerwc.africa/wp-content/uploads/2018/07/Website_Joint_GC_ACERWC-ACHPR_Ending_Child_Marriage_20_January_2018.pdf last accessed on 13 May 2022

¹¹⁹ *Mudzuru & Anor v Ministry of Justice, Legal & Parliamentary Affairs N.O. & Ors* (Constitutional Application 79 of 2014, CC 12 of 2015) [2016] ZWCC 12 (20 January 2016)

¹²⁰ Marriage Act 25 of 1961

¹²¹ Child Care and Protection Act 3 of 2015

¹²² Ibid

of the CEDAW¹²³ and Article 21 (2) of ACRWC,¹²⁴ which all prohibit the practice of childhood marriage.

The confusion regarding this carries on by allowing for the facilitation of sexual assault to children through section 14 of the Combatting Immoral Practices Act (CIPA) 7 of 2000 which criminalizes sexual acts with children unless such an individual is married to the child.¹²⁵ Contradictorily, Article 16 of the ACRWC¹²⁶ along with Article 19 of the CRC¹²⁷ prohibit sexual abuse additionally section 3 (a)(iii)(bb)(B) states that a sexual offence is inclusive of sexual acts with an individual who, by reason of age, is vulnerable and section 2(3) further stated that marriage is not a defence for the commission of sexually violent act.¹²⁸ Additionally as per *Ge v Ge*,¹²⁹ consummation of a marriage is a requirement in Namibian law. The very inclusion of sex can be said to infringe on the right to human dignity in terms of Article 2(b)¹³⁰ of the constitution and section 3 of CEDAW¹³¹ as the nature of it can be considered to be degrading.

¹²³ Convention on the Rights and Welfare of the Child

¹²⁴ African Charter on the Rights and Welfare of the Child

¹²⁵ Combatting Immoral Practices Act 7 of 2000, section 14

¹²⁶ African Charter on the Rights and welfare of the Child

¹²⁷ Convention on the Rights and Welfare of the Child

¹²⁸ Child Care and Protection Act 3 of 2015

¹²⁹ *Ge v Ge* (I 208/2016) [2017] NAHCNLD 58 (23 June 2017).

¹³⁰ Constitution of the Republic of Namibia

¹³¹ CEDAW Article 3

How this harms the right to the survival of the child

The Convention on the Rights of the Child also sets provisions which protect the survival of the child.¹³² This is particularly specified in Article 6 of the CRC¹³³ which guarantees a protection of life, the constitution of Namibia also guarantees this in Article 6.¹³⁴ The possibility of health risks discussed in the research conducted by the Ministry of Gender Equality, Poverty Eradication and Social Welfare,¹³⁵ illustrate the risk of harm and difficulty in enjoying the right to life in Namibia. 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 states that the practice violates the terms of the preamble of the Maputo Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, and further adds that the violation to the survival of the child is compromised because;¹³⁶

Child marriage is correlated with early and frequent pregnancy, which in turn is associated with significantly higher rates of maternal morbidity, maternal mortality and infant mortality. Child marriage also curtails the right to development, as those who marry young are often forced to drop out of school or are precluded from participating in economic, political, social and

¹³² The Guiding Principles of the Convention of the Rights of Children. Available at <https://www.humanium.org/en/the-guiding-principles-of-the-childrens-rights-convention/> last accessed on 13 May 2022. Also see Four Principles of the Convention of the Rights of the Children. Available at <https://www.unicef.org/armenia/en/stories/four-principles-convention-rights-child> last accessed on 13 May 2022

¹³³ Convention on the Rights of the Child

¹³⁴ Constitution of the Republic of Namibia

¹³⁵ Ministry of Gender Equality, Poverty Eradication and Social Welfare. (2020). *National Formative Study on Child Marriage* Also see Girls Not Brides. (2015). *Ending Child Marriage In Africa; A Brief by Girls Not Brides*. Girls Not Brides: The Global Partnership To End Child Marriage.

¹³⁶ 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. at p 7-8. Available at https://www.acerwc.africa/wp-content/uploads/2018/07/Website_Joint_GC_ACERWC-ACHPR_Ending_Child_Marriage_20_January_2018.pdf last accessed on 13 May 2022

other activities. Child marriage is also connected with increased exposure to the risk of domestic violence and because child marriage frequently results in social isolation, the protection needs of children and women in a child marriage often are not readily detected or met.

The practice of childhood marriages ultimately restricts the government's ability to fulfil their obligation to protect children's right to life.

Conclusively the issue of the contradictory statutes illustrates the government's failure as a duty bearer to respect human rights of girls and women who are subject to this practice by introducing section 14 of the CIPA¹³⁷ and the attainment of majority through the CCPA¹³⁸ and the Marriage Act,¹³⁹ which all interfere with the ability for children to enjoy individual rights. The provisions also weaken the government's role as duty bearer regarding their obligation to protect, due to the risks to personal well being associated with child marriage, as well as the lack of clarity regarding whether or not they may be accorded protective measures from violence in terms of the CCPA¹⁴⁰ particularly between the ages of 16 and 18 years. While there are measures against such a practice and inclusive policies on education,¹⁴¹ the practice of child marriages, in relation to the contradictory provisions, does not adequately include measures that allow for the children's full realisation of rights, especially due to how the practice can infringe on the right to human dignity and education. The practice of childhood marriages ultimately

¹³⁷ Combating Immoral Practices Act 7 of 2000.

¹³⁸ Child Care and Protection Act 3 of 2015

¹³⁹ Marriage Act 25 of 1961

¹⁴⁰ Child Care and Protection Act 3 of 2015, sections 220-237

¹⁴¹ Ministry of Education Sector Policy on Inclusive Education. 2013. Available at https://planipolis.iiep.unesco.org/sites/default/files/ressources/namibia_sector_policy_on_inclusive_education.pdf last accessed on 14 May 2022

restricts the government's ability to fulfil their obligation to protect children's right to life which can be interfered with by the decision makers responsible for them, particularly parents, guardians and intended spouses. This also brings to light the parental duty bearers to cater to the child's well being that are guaranteed by Article 3 of the CRC¹⁴² as well as Article 15 (1) of the Constitution.¹⁴³

2) Obscure laws surrounding customary marriages

The conclusion of a Marriage in Namibia can be either civil, with recognition in formal law through a process that requires a marriage licence officiated by a marriage officer, or, a marriage can be customary, that is, in accordance with indigenous cultural beliefs without the specific call for the registration of a marriage licence.¹⁴⁴

The lack of a specified need to have customary marriages registered is particularly troublesome because it directly opposes the terms of the CEDAW which states that, "The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory."¹⁴⁵ It is important for the government to incorporate this in order to fulfil their obligation to progressive realisation and to make use of maximum available resources to eliminate the practice in terms of Article 2 of the

¹⁴² Convention on the Rights of the Child

¹⁴³ Constitution of the Republic of Namibia

¹⁴⁴ Legal assistance Centre, 2009. *Gender Research and Advocacy Project: Guide to the Married Persons Equality Act*. Legal Assistance Centre, Namibia at p 3.

¹⁴⁵ Ibid, at Article 16(2)

International Convention on Economic, Social and Cultural Rights.¹⁴⁶ Maximum available resources involves sensitising customary groups on how this is harmful, promoting change as well as rehabilitating victims who were taught that this is a necessary norm.

Customary practices account for some major causes of childhood marriages in Namibia. The last census held in 2011 revealed that some customs encourage the marriage of young girls who have just reached puberty, which is around 11 or 12 years of age.¹⁴⁷ Additionally the 2013 Namibian Demographic Health Survey revealed that it is commonplace for cohabitation and customary marriage to be considered to be synonymous by some.¹⁴⁸ Through the data gathered during the qualitative interviews, it was found that the average age of first marriage/cohabitation was 11 years.¹⁴⁹ When coupled with the hazy definition of the term 'full age', the permissibility of customary marriages with minors also inhibits and confuses the reportability of such a union. Ultimately, it makes is unclear as to whether or not members of the community who witness this should report it because technically, customary unions are allowed and customary practices of marrying individuals below the age of 18 years have been known to be encouraged in customs such as;

¹⁴⁶ International Convention on Economic, Cultural and Social Rights (ICESR)

¹⁴⁷ Gender Research and Advocacy Project. 2017. *Briefing Document on Child Marriage and Teenage Pregnancy*. Legal Assistance Centre. Windhoek. Namibia. p 2.

¹⁴⁸ Ibid at p32 Also see

Gender Research and Advocacy Project. 2010. *A Family Affair: The Status of Cohabitation in Namibia and Recommendations for Law Reform*. Legal Assistance Centre. Windhoek Namibia. p52.

¹⁴⁹ Ministry of Gender Equality, Poverty Eradication and Social Welfare. (2020). *National Formative Study on Child Marriage*. p 1.

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- a) Polygamy, wherein a man marries more than one wife. It is not legal but has been known to take place both privately and publicly in Zambezi, Oshana, Otjozondjupa and Kavango West in Namibia.¹⁵⁰
 - b) The practice of testing for fertility which is practised in the Kavango west region which has been known to pressure young girls into early pregnancy and often early marriage.¹⁵¹
 - c) The practice of arranged marriages commonly practised in the Kunene region which involves the usurping of the child's rights to choose as the parent or guardian selects a spouse for them.¹⁵²
 - d) Eengoma which is mainly practised in the Ohangwena region and involves the marrying off of young girls who have just undergone their first menstruation. It is contemporarily used as a means to avoid the shame associated with teenage pregnancy and consists of placing a mark on a child and allowing grooms to select their bride during the ceremony. It has decreased in Namibia, however, parents have been known to visit the neighbouring Angola, to make their daughter become a prospective bride in the ceremony. The following are some of the practices;¹⁵³
 - e) Widow inheritance which is prejudicial against women, and intersects with disproportionate intestate laws. It is essentially the forcing of a widow to take

¹⁵⁰ Ministry of Health and Social Services. NATIONAL FORMATIVE CHILD MARRIAGE STUDY IN NAMIBIA. 2022 . *CHILD MARRIAGE STUDY REPORT - CABINET DECISION NO: 4/17.03.20/006 RESOLUTIONS*. Ministry of Health and Social Services. Namibia. Also see; Nakanyete, N. F., Nghitevelekwa, R. V., Matsa, M. M., Mendelsohn, J., Lendelvo, S., & Shikale, F. (2020). Communal land tenure security for widows in the Eenhana Constituency of the Ohangwena Region, Namibia. *Journal of International Women's Studies*, 21(1), 131-147.

¹⁵¹ Ministry of Gender Equality, Poverty Eradication and Social Welfare. (2020). *National Formative Study on Child Marriage*.

¹⁵² Ibid

¹⁵³ Ibid

on a new spouse in order to maintain use and partial ownership of property from the previous marriage.¹⁵⁴

- f) The practice of Tjiramue, which is common amongs the Otjiherero customary group, involve marriage to a maternal cousin or cousins from the children of a brother and sister, it has often been said to contribute to childhood marriages through an introduction to early sexual debut and the general view of the child as property.
- g) The Sikenge custom commonly practised in the Zambezi region and has been identified as a major contributor to GBV due to its emphasis on the need for young girls in marriage to be submissive. It is primarily targeted towards girls who have just gotten their first menstrual period.¹⁵⁵
- h) The Olufuko festival, a right of passage for girls in the Northern region of Namibia, was, in a memorable case, accused of contributing significantly to child marriages by NamRights¹⁵⁶

How this contributes to a violation of the right to freedom from discrimination

The state has an obligation to protect children from discrimination. This is provided in Article 10 of the Constitution of Namibia,¹⁵⁷ which protects against discrimination on the grounds of sex, race, colour, ethnic origin, religion, creed or social or economic status. This is further provided for in Article 3 of the ACRWC,¹⁵⁸ Article 2 of

¹⁵⁴ Ibid

¹⁵⁵ Swetu, R. (2016). *An assessment of the integration of anti-gender based violence component in pre-marriage training in Lusaka district* (Doctoral dissertation, University of Zambia).

¹⁵⁶ *Namrights Inc v Government of Namibia and Others* (HC-MD-CIV-MOT-GEN 243 of 2019) [2019] NAHCMD 538 (06 December 2019)

¹⁵⁷ Constitution of the Republic of Namibia

¹⁵⁸ African Charter on the Rights and Welfare of the Child

the CRC,¹⁵⁹ and Articles 2 and 3 of the Maputo Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa.¹⁶⁰ Due to how the practice mainly affects individuals who are female, from specific cultural groups and particularly low income status, it can be said that the current laws on customary marriages allow for indirectly discriminate against these individuals based on sex, creed and economic status as well. The existence of discrimination is also discussed by 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.¹⁶¹ Additionally, regarding how it primarily affects women, we may adopt the rationale from the case of *S v Damaseb and Another*¹⁶² wherein the court stated that given that the vast majority of persons affected by this are female, it can be concluded that such laws serve, "no other purpose than to discriminate against women," and are, "probably contrary to Article 10 of the Namibian Constitution which provides for equality of all persons regardless of sex."

The 1994 General Comment 4 by the UN Committee on the Rights of Women,¹⁶³ states that tradition and culture has played a significant role in shaping how men

¹⁵⁹ Commission on the Rights of the Child

¹⁶⁰ Maputo Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa

¹⁶¹ 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. at p 6. Available at

https://www.acerwc.africa/wp-content/uploads/2018/07/Website_Joint_GC_ACERWC-ACHPR_Ending_Child_Marriage_20_January_2018.pdf last accessed on 13 May 2022

¹⁶² *S v Damaseb and Another* 1991 NR 371 (HC)

¹⁶³ UN Committee on the Rights of the Child (CRC), *General comment No. 4 (2003): Adolescent Health and Development in the Context of the Convention on the Rights of the Child*, 1 July 2003, CRC/GC/2003/4, available at: <https://www.refworld.org/docid/4538834f0.html> last accessed on 13 May 2022.

and women think, which has often resulted in a restriction in many women's ability to enjoy and exercise fundamental rights.¹⁶⁴ This has been seen through how women and girls who are part of the above mentioned customary groups are often more susceptible to the practice.¹⁶⁵ Additionally it has been found that the primary regional groups affected are those from areas where conservative perspectives regarding customary practices are prevalent, including the Kavango region (East and West combined) (40%), Kunene (24.0%), Zambezi (24%), Omaheke (23%) and Otjozondjupa (23%) and the Oshana region at 7%.¹⁶⁶ Apart from this, the majority of individuals who are subject to this practice are from lower income households wherein marrying off the daughter is seen as a solid source of income despite the infringement on her capacity to adequately enjoy the rights that are conferred to her.¹⁶⁷

Ultimately the lack of an obligation to register marriages, allows for cohabitation with minors to take place under the guise of marriage. The lack of registration also allows for customs that allow for childhood marriage to persist and likelihood that they are unreported. The nature of customary laws allows for others to infringe on the rights of the girls' rights which speaks to a failure to protect, and to fulfil in terms of their own restriction to the enjoyment of rights which results from the unfair discrimination.

¹⁶⁴ Ibid at p 1

¹⁶⁵ Ministry of Gender Equality, Poverty Eradication and Social Welfare. (2020). *National Formative Study on Child Marriage*. p 35

¹⁶⁶ Ibid at p 36

¹⁶⁷ Ibid

Conclusion and Recommendations

It is of great importance that the practice of early childhood marriages be eliminated in totality in Namibia. Despite the government having provided measures such as criminalization of harmful social, cultural and religious practices.¹⁶⁸ There are still barriers that foster its existence. It is clear that the government has not made maximum use of available resources to prohibit this practice or to progressively realise human rights.

We have the following recommendations;

- 1) Specifying that a minor includes anyone below the age of 18 years in the Constitution
- 2) Repealing section 14 of the Combatting Immoral Practices Act 7 of 2000
- 3) Creating provision that insists on the registration of customary marriages and creating measures of review in all communities
- 4) Creating statutory measures that provide for rehabilitative and protective measures for children who have been married and are vulnerable to the practice
- 5) Creating awareness on the illegal nature of the practice and encouraging reporting¹⁶⁹
- 6) Outlawing or regulating customary practices such that underage individuals are not married.

¹⁶⁸ Child Care and Protection Act, section 226.


¹⁶⁹ Ministry of Gender Equality, Poverty Eradication and Social Welfare. (2020). *National Formative Study on Child Marriage*.

The current legislation and implementation thereof needs to reflect, in totality, that the government of Namibia abhors and fully criminalises this practice in order to sufficiently allow the individuals affected. At present the 7th periodic review on the African Charter for Women's Rights published by the Ministry of Justice¹⁷⁰ states that one can seek redress through making a claim for statutory rape in these instances, but the current legislation does not communicate that very well and the protective measures in place are ineffective when mirrored against the laws and legal gaps making the practice continue.

¹⁷⁰ Ministry of Justice. 2020. 7th Periodic Report (2015-2019) On the African Charter on Human and Peoples' Rights and the Second Report Under The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa

6

Are There Rehabilitative Mechanisms in Place For Individuals Who Have Undergone Early Childhood Marriage In Namibia?



Testimonial

A WOMAN WHO MARRIED EARLY AND EXPERIENCED GBV - OHANGWENA REGION¹⁷¹

"I was married at 16 years to a man between 40 and 45 years. We are now separated. The marriage was traditional and not registered. We got married through the initiation when I was grade 7. After I was initiated, he told me to go stay with him. I regret doing that, but my parents are the ones that forced me. It was not my will to get married. I dropped out of school, when I went to be initiated through traditional weddings, one cannot go back to school afterwards, but sometimes one can do that. I did not go back.

¹⁷¹ Ministry of Gender Equality, Poverty Eradication and Social Welfare. (2020). *National Formative Study on Child Marriage*. p53

My husband was always mistreating me. He would beat me up and abuse me because I had no income. Even you are pregnant; you are still subjected to abuse. You could be asking for something and the person will not give it to you. If you say something further, you will be beaten. I only go work during summer when people are ploughing. And then after I could be the cleaner or something else. I did not report, in the past we did not really have that knowledge to bring something forth when you realise that something is wrong or right. Child marriage is not good. It is because I have never liked it, it was not something good, I did not want it. It was not my will. I would not have done it. If I knew, I would tell them at least to wait a little bit because I am still young. To end child marriage, I think advise children that education is very important and they should take it serious."

Introduction

The law fulfils the requirement to extract children from harmful situations with as little damage to the child as possible when it has been identified that the child or children in question are in harmful situations, as discussed in sections 134-137 of the Child Care and Protection Act.¹⁷² These sections do not however specifically speak towards the issue of child marriages, only to instances wherein harm is clear in the life of a child. In such instances, where children need to be extracted from abusive situations, the law provides for the following mechanisms: dissolving an invalid marriage, a quick response, psycho-social intervention from a social worker. However there is no specific legislation in place to absolve children of consequences of child marriages.¹⁷³ That is to say it is not clear whether or not they

¹⁷² Child Care and Protection Act 3 of 2015

¹⁷³ https://www.unicef.org/namibia/DAC_2015_Press_release_Final.pdf Page 2, Paragraph 5

are accorded protection as children, after their status changes to that of majority and whether or not there are mechanisms for bringing survivors from child marriages – both girls & boys – back into their families, communities & peer groups as is safe and appropriate.

1) Dissolving an invalid marriage

Section 26 of the Marriage Act 1 of 1996 ensures that a marriage with invalid consent is declared void. In addition to this, if it is found that consent was not properly obtained and the child was forced into marry, sexual engagement with the child amounts to statutory rape. This does, however conflict the terms of the Combatting Immoral Practices Act¹⁷⁴ which allows for sexual acts to occur with a minor as long as one is married to them.

2) State and Parental Obligations to Protect in Terms of the Namibian Law

In terms of creating extraction measures for children who are in harmful children, the law obliges police officials and state-social workers to respond to reports of child abuse by making an investigation within the first 24 hours.¹⁷⁵ In addition to this parents are obliged to provide care to their children.¹⁷⁶

The Constitution of the Republic of Namibia:

Article 15(1): Children's Rights

Children shall have the right from birth to acquire a name and, subject to

¹⁷⁴ Act 7 of 2000, at section 14

¹⁷⁵ Child Care and Protection Act 3 of 2015

¹⁷⁶ Constitution of the Republic of Namibia.

enacted in the best interest of children, **as far as possible the right to know and be cared for by their parents.**

This therefore means that there is a legal requirement and obligation upon parents to provide care to their child once their child has been extracted from a harmful environment. However, in this regard, there is no specific legislation that discusses returning of children who have been married back into society.

3) Are there measures to re-integrate survivors with peers?

There are instances where youths manage to escape marriages. In such instances we looked at whether or not there are measures in place to stabilise childhood experiences. With regards to restoring childhood to survivors from child marriages and re-creating life opportunities in line with their peers, the main aspect that is addressed with regards to restoring childhood is ensuring that the right to education is provided for and that there is intervention from a social worker if a child is being abused.¹⁷⁷ However, this is not specific to the practice of ECM and the matter of whether or not this applies to survivors of ECM is unclear due to the obscure laws around the term 'minor' and customary marriages.

The practice of childhood marriages often results in children who undergo the practice falling out of the education system as they become overwhelmed with the responsibilities that come with being a wife and mother.¹⁷⁸ Insufficient support and emphasis on the value of education is very closely linked to the difficulties that exist with reintegrating the girls and young women in schools because, they often take on a greater focus on seeking an immediate source of income and in many cases will have given birth to children and feel trapped and often become stuck in a situation where the lack of education limits their employment options and the role of mother and wife limits

¹⁷⁷ Indongo, N. (2020). Analysis of factors influencing teenage pregnancy in Namibia. *Medical Research Archives*, 8(6). Also See; Ministry of Education and Culture. (1997). *Policy on Pregnancy among Learners in School*. Namibia.

¹⁷⁸ Ministry of Gender Equality, Poverty Eradication and Social Welfare. (2020). *National Formative Study on Child Marriage*. Windhoek. Namibia.

their ability to go back to school.¹⁷⁹

4) Conclusion and Recommendations

At present there are no rehabilitative measures that are specific to young children who have been married.

We have the following recommendations;

- 1) Creating sustainable childcare and supportive programs for young mothers who would like to go back to school.
- 2) Legislation on the extraction and rehabilitation which is specific to young children who have been married.
- 3) The option to denounce the status of majority in order to enjoy protective measures that are guaranteed for children.
- 4) Peer group reintegration and sensitisation mechanisms to allow for children who have been married to engage with peers within the same age groups as well as to do away with stigmas.
- 5) Parental sensitisation and social support systems especially for parents who have relied on ECM to know the dangers of doing so and to take preventative measures. This is also intended to keep parents accountable to their obligation to their children.

¹⁷⁹ Ibid

Scorecard Analysis

The scorecard analysis below focuses on more specific questions regarding the 5 measures analysis regarding the elimination of ECM and steps toward achieving this through restoration justice namely Refusing, Reporting, Resolving, & Reintegrating.

Refusing (Preventing)

About creating a climate in which it becomes the norm for everyone to know that child marriage is both immoral and illegal, and that good people will refuse to either perform or condone it.

The measures needed and measured are:

LAW REFORM

	No	Yes	Act & Clauses:	Search:
1. Is there legislation that forbids child marriage under 18 with no exceptions?	*		<p>Married Person Equality Act 1996 does not set any minimum age for customary marriage for boys or girls. This depends on the customs of the community but it is not entirely clear whether or not the consent of both parents is required if this is not the custom of the community.</p> <p>If a child under the age of 21 wants to enter into a CIVIL marriage, that child needs the consent of both mother and father or the legal</p>	<p>Search:</p> <p>https://www.lac.org.na/projects/grap/Pdf/MP_EAGuideENG.pdf</p> <p>Child Care Protection Act 3 of 2015</p> <p>Married Persons Equality Act of 1996.</p> <p>Child Care and Protection Act 3 of 2015.</p>

		<p>guardian.</p> <p>The minimum age for civil marriage is 18 for both boys and girls, in terms of the Marriage Act of 1961 (26) as amended by the Married Persons Equality Act 1 of 1996.</p> <p>The Child Care and Protection Act 3 of 2015 enacted by Parliament but not yet in force goes farther by setting the minimum age of marriage at 18 for all marriages, thereby bringing the minimum age for customary marriage in line with that for civil marriages (s. 226).</p> <p>Section 14(c)(iii) of the Combatting Immoral Practices Act allows for sexual acts to go on with a child for as long as one is married to that child. It does not refuse the practice of child marriage and possibly allows for the occurrence of statutory rape.</p>	
		<p>At present, marriage under customary law in some communities is allowed when the child reaches puberty — but the age of puberty has been getting lower and lower in recent years, with many girls reaching puberty as early as age 11 or 12. Setting the minimum age for all marriage at 18 gives equal protection to children who live under customary law and those who do not and also brings Namibia in line with the African Charter which requires states to prohibit marriages for children under age 18. The Act will also forbid forced marriage</p>	

			<p>or betrothal. Violating this rule is a crime in terms of the Child Care and Protection Act, punishable by a fine of up to N\$50 000 or imprisonment for up to ten years, or both. The unlawfulness of child marriage is not without exception in Namibia.</p>	
2. Is there legislation that classifies sex in child marriage as abuse with no exceptions?	No *	Yes	<p>Act/Clauses:</p> <p>“Circumstances where the complainant is under the age of fourteen years and the perpetrator is more than three years older than the complainant” The Combatting of Rape Act section 2(2)(d)</p> <p>Section 14(c)(iii) of the Combatting of Immoral Practices Act 7 of 2000 allows for sex with a married child.</p>	<p>Searched:</p> <p>Combatting of Rape Act 3 of 2000</p> <p>Combating of Immoral Practices Amendment Act 7 of 2000 GOVERNMENT GAZETTE REPUBLIC OF NAMIBIA</p>

NATIONAL ALLOCATION

3. Is there a budgeted national strategy for ending child marriage?	No *	Yes	<p>State:</p> <p>The 2021 Medium term Expenditure Report allocated NAD 1 024 746 372 to the care and protection of children however it is not specified to early childhood marriages.</p> <p>The National Budget for Ministry of Gender Equality, Poverty Eradication and Social Welfare does not have a set budget or underlined budget.</p>	<p>Searched:</p> <p>Ministry of Finance (2021) Medium Term Expenditure Report 2021/22-2023/24. Ministry of Finance.</p> <p>Guide to Namibia's Child Care and Protection Act B of 2015, Chapter 20: Harmful Social, Cultural or Religious Practices</p>
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			<p>allocation that focuses on Child marriage. However it focuses on the improved care and protection of children. However, when regarding the legal repercussion towards child marriage under the Child Care and Protection Act 3 of 2015 it forbids child marriage by making it a crime to give a child out in marriage or engagement if the child is below age 18, or does not consent to the marriage or engagement. The prohibition applies to civil, customary and religious marriages. This crime is punishable by a fine of up to N\$50 000 or imprisonment for up to ten years or both.</p>	
<p>4. Does it include nationally rolled out SBCC?</p>	<p>No *</p>	<p>Yes</p>	<p>List where:</p> <p>There is no available data stated regarding child marriage, the data available is more focused on HIV and Aids data, within Namibia. However, according to the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa, Article 5: Elimination of Harmful Practices section a) creation of public awareness in all</p>	<p>Searched:</p> <p>Guide to Namibia's Child Care and Protection Act of 2015, Chapter 20: Harmful Social, Cultural or Religious Practices</p>

			sectors of society regarding harmful practices through information, formal and informal education and outreach programmes.	
5. Is child marriage dealt with in the school curriculum?	No	Yes *	<p>Where:</p> <p>Under Ministry of Education Junior Secondary phase, the school curriculum only covers Child marriage defined as early child marriage within the grade 9 syllabus under Life skills. Championed by the Ministry of Education the Education Sector Policy on the Prevention and Management of Learner Pregnancy was approved by Cabinet in 2009, but widespread and consistent roll-out began only in 2013. The key points regarding this Policy is that it implements the constitutional right to education which must apply without discrimination to both sexes, and that it is aimed at prevention of learner pregnancy as well as management.</p>	<p>Searched:</p> <p>http://www.nied.edu.na/assets/documents/02Syllabuses/04JuniorSecondary/LifeSkills/JSC_TeachersManual_Life-skills_Apr2008.Pdf#page66</p> <p>Gender Research & Advocacy Project, Legal Assistance Centre, September 2017</p>

<p>6. Have traditional and religious leaders been engaged in ending child marriage?</p>	<p>No *</p>	<p>Yes *</p>	<p>How:</p> <p>President Hage Geingob addressed it at the 22nd annual meeting of the Council of Traditional Leaders.</p> <p>Enforcing S226 of Act 2015 of the Child Care and Protection Act, which protects all children from being subjected to harmful social, cultural or religious practices.</p> <p>Additionally, the proposed bill on “The Recognition of Customary Marriages” was done in consultation with many traditional leaders and traditional leaders and with organisations such as the Legal Assistance Centre, the Law Society of Namibia and the Council of Churches in Namibia. Among the new minimum requirements for customary marriages is an age 18 for both men and women.</p> <p>Despite this there is evidence to show that some traditional leaders apply the law with greater consideration for their customary practices rather than the constitution and that in many traditional communities, cohabitation is permitted and often viewed as marriage.</p>	<p>Searched:</p> <p>Smit, E. (2019). DON'T ALLOW CHILD MARRIAGE - GEINGOB: The president has urged traditional leaders to help stamp out violent crime and discrimination. <i>Namibian Sun.</i></p> <p>Child Care and Protection Act of Act 3, 2015 S226</p> <p>Ministry of Health and Social Services. NATIONAL FORMATIVE CHILD MARRIAGE STUDY IN NAMIBIA. 2022 . CHILD MARRIAGE STUDY REPORT - CABINET DECISION NO: 4/17.03.20/006 RESOLUTIONS. Ministry of Health and Social Services. Namibia</p>
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<p>7. Does the strategy recognise key drivers of child marriage including pregnancy, lack of knowledge; lack of access to contraceptives; poverty; & school drop outs?</p>	No	Yes *	<p>What and where:</p> <p>S226(4) of the Act protects children from, “social, cultural or religious practice, including, but not limited to any form of sexual initiation which in the Minister’s opinion may be detrimental to the well being of the child.”</p> <p>Restricting it to a matter of the Minister’s opinion rather than outlining specific cultural practices leaves room for ambiguity and misinterpretation.</p> <p>Though there is no specific strategy, the Education Sector Policy for the Prevention and Management of Learner Pregnancy states that schools must strive to ensure that boys and girls are educated about the benefits of abstinence, the risks of engaging in sexual activity at a young age, appropriate use of contraception and the right of both male and female learners to free and informed choice in respect of sexual matters.</p>	<p>Searched:</p> <p>S226 of Act B, 2015 of the Child Care and Protection Act</p> <p>Gender Research & Advocacy Project, Legal Assistance Centre, September 2017</p>
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Reporting is about an architecture that compels reporting, allows for easy reporting, follows reporting, and punishes child marriage

8. Is there legislation that makes reporting compulsory by law it is/should be for sexual assault?	No *	Yes *	State Act & Clause:	Searched:
			<p>Article 14 of the Namibian Constitution clearly states that “Marriage shall be entered into only with the free and full consent of the intending spouses.” therefore anyone that is forced into marriage without consent they have the right to go to the police and report the case. A child should tell a trusted adult. The trusted adult then either reports to the police or to a social worker and they can prevent the forced marriage from going ahead.</p> <p>Mandatory reporting requires certain professionals to make a report if they suspect that a child needs help. Failure to report is a crime. People who perform professional duties involving children are required to make a report if, during the course of their duties, they come across “information that gives rise to a suspicion that a child is or may be in need of protective services.” The term “protective services” means services aimed at providing care or protection to a child to safeguard that child’s “safety security and well-being”. In such a case, they must alert police or any State employed social worker. Failure to report is a crime punishable by a fine of up to N\$20 000, or imprisonment for up to five years, both. The mandatory reporting duty applies even if the information on which the belief is based is protected by a professional privilege such as doctor-patient privilege. The only exception is “legal professional privilege”.</p> <p>Voluntary reporting encourages the</p>	<p>The Constitution of the Republic of Namibia Page 16, Article 14, (2) Age of Marriage and Consent to Marriage by a Minor Child Care And Protection Act section 226</p> <p>Combating Immoral Practices Act 7 of 2000</p>

			<p>general public to make good faith reports if they suspect that a child needs help. But failure to report is not a crime.</p> <p>On the other hand section 14 of the Combatting of Immoral Practices Act 7 of 2000 allows for one to engage in sex with a child if they are married to that child.</p>	
9. Is there a national database of reported cases?	No	Yes	<p>Describe:</p> <p>The national database of reported cases of child marriage in Namibia is yet to be set up, however there has been a study concluded by the state to investigate child marriages. In addition the Child Care and Protection Act provides that child-headed households must operate under the supervision of children's court or the Minister or an NGO designated by the Minister. It is not clear whether or not children who are married are included in this statute or access to this is stripped away by their status as being married.</p>	<p>Searched:</p> <p>Child Care and Protection Act, Section 225(2) Mutanga, M. (2019). Namibia in the dark with child marriage statistics. Informante News. Namibia</p>

10. Is there policy or agreed practice that mandates the Human Rights Commission to take up child marriage as a human rights issue across the country and to report regularly and make recommendations?	No	Yes	<p>Describe Policy:</p> <p>Namibia is a signatory to several treaties and agreements that aim to decrease and eventually eradicate forced marriage. Examples are the Convention on the Rights of the Child in 1990, the United Nations Convention on the Elimination of All Forms of Discrimination against Women, the International Covenant on Economic, Social and Cultural Rights, the International</p>	<p>Searched:</p> <p>The Constitution of Namibia, section 144 Ombudsman Act 7 of 1990 section 2(a)</p>
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			<p>Covenant on Civil and Political Rights, the Universal Declaration of Human Rights and the African Charter of Human and People's Rights. This means that Namibia has an international obligation and agreed practice to remove all forms of sex discrimination in its national laws.</p> <p>The Constitution of the Republic of Namibia as well as the Ombudsman Act (Act no. 7 of 1990) provide functions to the Ombudsman to investigate allegations concerning the breach of Fundamental Rights. In addition to those provisions, the Namibian Bill of Rights provides for the enforcement of Fundamental Rights and Freedoms. These are not however specified to the practice of child marriages.</p>	
<p>11. Does government report annually to Parliament on the state of elimination of child marriage?</p>	<p>No *</p>	<p>Yes</p>	<p>Describe:</p> <p>The government passed the Child Care and Protection Act 3 of 2015. The Ministry of Gender Equality, Poverty Eradication and Social Welfare produced research on the practice of childhood marriages in Namibia. However we are yet to see any specific evidence of annual reports on the matter.</p>	<p>Searched:</p> <p>Ministry of Gender Equality, Poverty Eradication and Social Welfare. (2020). National Formative Study on Child Marriage Windhoek. Namibia</p>

12. Has the HRC ever reported on child marriage?	No	Yes *	<p>State when:</p> <p>In a report in 2016. The Office of the Ombudsman has been given a unique mandate as a Human Rights Commission and they released a report last in 2016</p>	<p>Searched:</p> <p>https://www.girlsnotbrides.org/child-marriage/namibia/ under "What Has This Country Committed to"</p>
13. Has the Government ever reported to parliament on child marriage?	No *	Yes	<p>State when:</p> <p>The government gave shared the statistics of child marriage through the census in 2011. In the statement they discuss addressing child marriage through the Ministry of Gender Equality and Child Welfare which is a part of parliament.</p> <p>In addition the Ministry of Ministry of Gender Equality, Poverty Eradication and Social Welfare, published a formative study on early childhood marriages however it is unclear as to whether or not this matter was brought up in parliament.</p>	<p>Searched:</p> <p>Ministry of Gender Equality, Poverty Eradication and Social Welfare. (2020). National Formative Study on Child Marriage Windhoek. Namibia</p> <p>https://www.girlsnotbrides.org/child-marriage/namibia/</p>

Resolving is about extracting children from child marriages with as little damage to the possible.

<p>14. Is there legislation or are there sentencing guidelines in place that absolve children under 18 years of age from legal penalties for engaging in a child marriage?</p>	No *	Yes	<p>Describe:</p> <p>There are no direct laws that absolve children from legal repercussions mostly because the government is still aiming to educate, inform and empower said vulnerable women to prevent child marriages in the first place.</p>	<p>Searched:</p> <p>https://www.unicef.org/namibia/DAC_2015_Press_release_Final.pdf Page 2, Paragraph 5</p>
<p>15. Is there legislation dealing with children born in a child marriage that covers registration of the child? Rights to access to the child? Obligations of both biological parents to the child?</p>	No	Yes *	<p>Describe:</p> <p>A child marriage without the right approval can be deemed void however the children's act protects custody of both parents to the child. The terms which a marriage can be found void are under The Marriage Act 1961, Article 26-30</p>	<p>Searched:</p> <p>Child Care and Protection Act under Custody Article 99 https://laws.parliament.na/cms_documents/child-care-and-protection-act-15-of-2015---regulations-2019-006--7f862c7b15.pdf The Marriage Act 1961, Section 26-30 The Constitution of the Republic of Namibia, Article 14</p>

16. Are there rolled out guidelines on child marriage for the judiciary and state prosecutors?	No	Yes *	Describe: There are rolled out guidelines on the approval of child marriages by the Minister of Home Affairs, the parents and the child. There are guidelines that assist in protecting children in these scenarios as advised by the Guide to the Children In Need of Protective Services. Additionally the Marriage Act of 1961 prohibits the solemnization of a marriage with inadequate consent.	Searched: The Marriage Act 1961 Article 26 https://namiblii.org/akn/na.act/1961/25 Guide to the Children In Need of Protective Services Page 45 Marriage Act 25 of 1961
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Returning is about bringing survivors from child marriages - both girls & boys - back in their families, communities & peer groups as is safe and appropriate

17. Are national guidelines in place that covers responsibilities of state services in returning child marriage survivors to safe spaces/ communities?	No	Yes *	Describe: The Child Care and Protection Act requires the state to step in when it has been reported that a child is in an abusive situation however it is not clear as to whether or not this extends to children who have been married.	Searched: Child Care and Protection Act Section 134-149
18. Are medical examinations for child marriage survivors a compulsory obligation on state services?	No	Yes *	Source: There are no direct initiatives or policies that obligates the state to give medical examination to child marriage survivors. However the state developed National Agenda for children 2012 to 2016 a call to action to put the constitutional mandate on the rights of the children into implementable strategies which focus on cross cutting issues including health and nourishment .	Searched: Namibian National Agenda for children 2012 to 2016. Guide to Namibia's Child Care and Protective Act 13 of 2015. Chapter 14 p.6

			<p>The law is vague regarding aid towards provision of protective measure for children who have been victim to child marriage practices. There is provision for those who have been exploited sexually, however there is a blurred line because this does not account for those who were coerced into providing consent or those whose guardians and parents consented for them. It is a matter of assessing the extent to which consent is allowed and measures to assess the authenticity of the consent given by a minor.</p>	
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19. Are there nationwide local authority standard operating procedures to register child marriage survivors on local "vulnerability registers" and supported and track them accordingly?	No	Yes	<p>Describe:</p> <p>There are no direct initiatives from the state to register child marriages.</p> <p>However the Namibian government ratified CEDAW, which is a legally binding agreement. The Committee that review the state report gave recommendations for the state ensure that the ministry of Gender equality and child welfare, in conjunction with the law reform, conduct thorough gender analysis of all laws in the country to identify all customary laws that are in conflict with the convention so as to harmonise them with statutory laws and the convention.</p>	<p>Searched:</p> <p>Convention on the elimination of all forms of discrimination against women. Final observations for Namibia.</p>
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Reintegrating is about restoring childhood to survivors from child marriages and re-creating life opportunities in line with their peers.

<p>20. Are policies and resources in place to support survivors re-entry into school?</p>	<p>No</p>	<p>Yes</p>	<p>Describe:</p> <p>* State that a pregnant child may return school and should be given the opportunity to complete school no matter the barriers. The Policy further outlines the roles and responsibilities of various stakeholders affected by the prevention and management of learners pregnancy.</p> <p>The Child Care and Protection Act clearly states in section 3 that one must act in what is in the best interest of the child, taking all circumstances into account; as well elaborates on section 5(d)(i) that no child shall be discriminated on grounds of pregnancy nor on any of his/her status. Section 11 further elaborates that a child who is pregnant shall be given the opportunity to complete school on the basis of their own individual ability. This Act does not specify on child marriage; however it can extend to cover such survivors especially when they have fallen pregnant or have a child.</p>	<p>Searched:</p> <p>Education Sector Policy for the Prevention and management of Learners Pregnant (Re-entry Policy in Namibia).</p> <p>Child Care and Protection Act 3 of 2015 section 3</p>
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	No	Yes *	<p>Describe:</p> <p>There is no specific resource on child marriage taking place in Namibia, however there is a lot of resources protecting children that is acting in the best interest of the child.</p> <p>Child Marriage remains a serious challenge for young people right, especially to young women girls and it negatively impact their education, health and social status.</p> <p>This review also focus on lifting barriers to marginalized children and this may be extended to children involved in child marriage as one of the main aims is to make sure that children complete school.</p>	<p>Searched:</p> <p>Ministerial Commitment on comprehensive sexuality education and sexual and reproductive health services for adolescents and young people in Eastern and Southern African (ESA).</p> <p>Global Initiative on Out-of-School Children, School Drop-Out and Out-Of-School Children in Namibia: A National Review December 2015</p>
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21. Are policies and practices in place in state services to support survivors' independent and uninterrupted access to a range of modern contraceptives?	No	Yes *	<p>Describe:</p> <p>There is no specific policy that support the survivors with an independent and uninterrupted access to a range of modern contraceptive.</p> <p>There are contraceptive practices in Namibia in fact there is a steady increase in these practices, however it focuses more on family planning and married couples such as young married women, there</p>	<p>Searched:</p> <p>Namibian Demographic Health Survey (NDHS), DRAFT of the Consolidated National Reproductive and Child Health Policy.</p> <p>Ensuring human rights in the provision of contraceptive information and services, Guidance and Recommendations, World Health Organisation.</p> <p>REPUBLIC OF NAMIBIA MINISTRY OF HEALTH AND</p>
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		<p>is no specific practice for survivors but it may be extended to them in order to provide independent and uninterrupted access to survivors of a range of modern contraceptives.</p> <p>There is emergency contraceptives provided to a victim as long as there is evidence provided for the urgent need of the contraceptive. There is as well free of charge contraceptives provided at public health facilities in Namibia. They are safe and relevant to any age group, one of the contraceptives that are available to everyone's condoms (male and female), however, other methods ranges of contraceptives are not all available to survivors depending on their age as children with a young age can be negatively infected by some methods of contraceptives. They must be approved by a medical facility such as pharmacist.</p>	<p>SOCIAL SERVICES.</p>
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<p>22. Are policies and practices in place for survivors' access to psycho-social support?</p>	No	Yes *	<p>Describe:</p> <p>There are no clear policy or practice that give access to psycho-social support to survivors, however, child marriage survivors are included in a target group of the gender-based violence groups and collaborate with organizations such as WHO to provide psycho-social support that include young women or children/girls. Part 4 of the Child and protection act 2015 mentions Appointment of designation of social workers, child protection organizations, social auxiliary workers and probation offices. The third pillar of the Education Sector Policy on the Prevention and Management of Learner Pregnancy is gender-specific support and mentoring for learners. The Policy requires school principals to designate one or more female teachers to act as mentors for female learners and one or more male teachers to act as mentors for male learners. Those teachers will monitor the progress of female or male learners, act as support persons for gender issues and encourage men's and women's organisations, churches and other civil society groups to arrange mentors or appropriate motivational activities. Counselling must be available for both female and male learners.</p>	<p>Searched:</p> <p>National Youth Council of Namibia (NYCN). Combating of Domestic Violence Act 4 of 2003. The protection of children's rights in Namibia: Law and policy, Lotta N Ambunda and Willard T Mugadza. Child Care and Protection Act 2015 Gender Research & Advocacy Project Legal Assistance Centre, September 2017. Page 6-7</p>
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Young Feminist Action

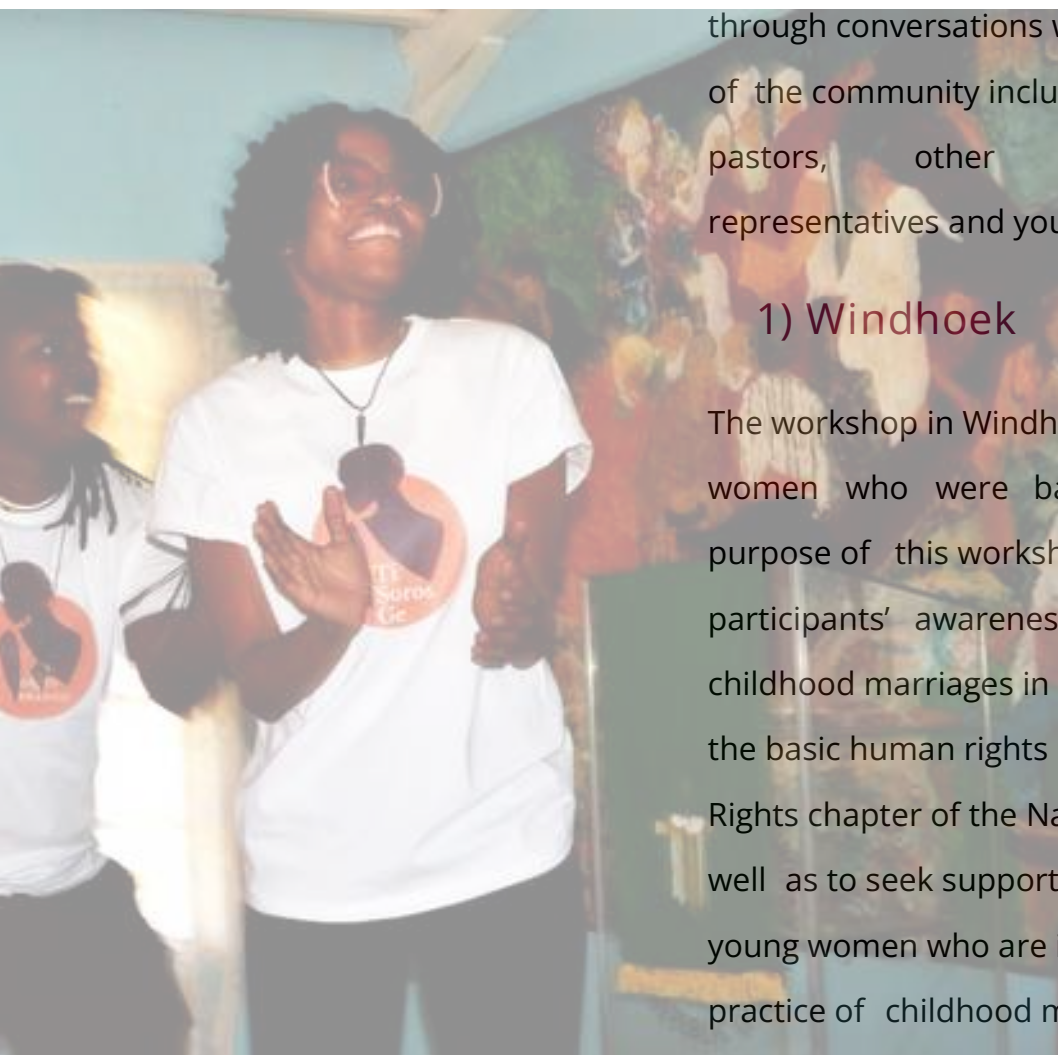
Introduction

The workshops conducted primarily on assessing the situation on the ground

through conversations with different members of the community including traditional leaders, pastors, other CSO's, government representatives and young girls.

1) Windhoek

The workshop in Windhoek consisted of young women who were based in Windhoek. The purpose of this workshop was to find out the participants' awareness of the occurrence of childhood marriages in Namibia, to teach about the basic human rights provided for in the Bill of Rights chapter of the Namibian Constitution, as well as to seek support and solidarity for the young women who are in regions where the practice of childhood marriages are particularly dominant. During the workshop some interviews



were conducted wherein the following questions were asked;

1) How do you think community members can protect young children from the practice of marriage?

Justification: We intend to find out methods in which community members can stop playing the role of facilitators and take on more protective roles for the children who undergo this practice. Community intervention is a necessary part of the deconstruction of this practice, this in particular would be helpful for community members who may wish for the practice to end but are not sure of how they can effect change.

Responses:

- i) Implementation of awareness programs for the communities wherein there is active unlearning of harmful social norms especially for older generations.
- ii) Counselling Programs for both the members of the community and the children who go through this practice.
- iii) Older generations actively denounce the practice through regular conversations between the senior members of the community and the children.

2) Why do you think young children and community members often do not report instances of underage marriage?

Justification: Research surrounding this subject has shown that instances of child marriage are underreported and childhood marriages are often not recorded by the state. Through this question we intend to find out possible reasons for this as well as the general attitude towards reporting among our research participants.

Responses:

i) Lack of education and awareness of rights

ii) Threats from the elders

iii) Financial benefits

3) Following the issue of consent, the government requires three layers of consent to be surpassed before a child can be married; the consent of the child, the parents or guardian as well as the consent of the state. Do you think it is enough for the government to provide this or should the practice of child marriage be completely criminalized?

Justification: The practice of childhood marriages is closely related to culture and customary practice, such factors are commonly associated with one's identity. The intention of this question was to assess whether or not our participants felt this was an important customary practice or if the elimination of this was an imposed perspective by those outside of Namibian customs.

Responses:

All participants present believed it should be criminalised for the following reasons;

i) The children who enter marriages too early risk becoming overly dependent on their spouses.

ii) Children may not be sent to school fearing that they may become too aware of their rights and less submissive.

iii) The children's state of mind may be too immature for marriage

iv) Marriage often obliges one to engage in sex, and sex affects a lot more than just the body.

v) A possible risk of mental health issues after having lost rights and being subjected to abuse.

vi) The children often have very limited skills and this may be detrimental when confronted with the responsibility of being a wife and mother.

4) The government allows for individuals who are 16 years to consent to sex. Do you think they should be allowed to consent to marriage as well? Why?

Justification: Our participants in this research consisted of young women whose ages ranged below and above the age of consent for sex. Through this question we intended to gain their perspectives and understanding regarding the matter of consenting to sex and consenting to a marital relationship.

Response:

i) Children still need parental support

ii) Marriage is a more permanent decision

iii) It may encourage more instances of child marriages (especially where children may feel pressured to marry due to a desire for material objects)

5) The practice of child marriage is often a result of compromise in situations of poverty. How do you think the state can improve its intervention so that people do not marry off their children?

Justification: This question is intended to explore the other common cause for

childhood marriages, which is a compromise of being in very low income households. We intended for our research participants to view this outside of the scope of customary practice and to see if they may have innovative ideas in which the state may intervene for the purpose of poverty eradication.

Responses:

- i) Provision of support with goods and products as well as financial aid programs.
- ii) Provision of affordable loans which can allow those affected to start their own small scale businesses.
- iii) Provision of safe shelters for the homeless

6) Should the men practising this be excused for merely practising culture and providing support to people who have been afflicted by poverty, especially if they've obtained consent or should they also be punished for encouraging a practice that is harmful to children? Why?

Justification: The research conducted shows that it is mostly girls who are negatively affected by the practice of childhood marriages. Through this question we intended to find out our participants' perspective on whether or not there should be a focus on punitive measures against men who practice the marriage of underage girls.

Responses:

- i) Some participants were in favour of punishment believing that these men are taking advantage of these girls.
 - ii) Other participants believed that punishments should not be implemented
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against these men where consent is obtained from the child's parents as these are the appropriate people to approach in such instances. They also stated that punitive measures should not be the focus for those who choose to divorce the child if the marriage does not go well.

Solidarity statements regarding why childhood marriages should end in Namibia

"Some children are forced into it"

"Some, during the marriage get abused by the person they are married to."

"Parents (who give off their children) are the ones who benefit from this practice"

"Some children are not yet mature enough for marriage."

"Early child marriage should end because the children are young and need parental support."

"Early marriage must end because it's making some children not know their rights."

"...because children cannot get time to go to school"

"Because their bodies are not mature enough for sex"

"There is no freedom of speech."

"The kids' state of mind is immature that they can't decide for themselves and aren't ready for the activities that happen in marriage."

"Early child marriages should stop because the men that are involved are educated...they are just taking advantage of the educated girls out there who don't know their rightful rights."

"...because young adolescents are forced into doing it regardless of if they are aware of their rights, and they think when their elders agree then it's the best for them!!!"

2) Kamanjab

This workshop was conducted by Pots of Hope in collaboration with YFem. Sessions were conducted with mothers and girls separately. The Girls Not Brides Trainer manual was used in both instances. The workshop was attended by a total of 42 participants; 20 mothers and 22 young girls. The group included a mix of individuals attending school and some who are not in school. During this workshop the following factors were assessed;

- What is child marriage?
- Causes of child marriage?
- What are the changes you want to see? /Developing an advocacy strategy?/Recommendations.

Additionally after the workshop, a petition to end childhood marriages was signed by a total of 575 people; 167 males and 575 female. An interesting development was the Himba people who signed the petition stating that, "it is my culture but I am not supporting this practice but it is happening."

What is a child marriage?

It was observed that both groups of mothers and girls had a sound understanding of what child marriage is. Although It is the minority group of Himbas who practise early childhood marriages the majority are not in favour of the practice. It was also noted that most young girls are cohabitating while going to school due to poverty

and it seems that this is a normal practice that is accepted by parents. It was also shared that there are a lot of child-headed households, in such cases many of them it was reported that the parents of these children are working on farms and that is a common development among orphans.

Causes of child marriages.

The following are causes that were reported of child marriages:

- Poverty- Lack of food can lead children to opt to live with their boyfriends.
- Cultural beliefs- Some cultures believe that a child should get married early.
- Societal/Peer Pressure- The notion that “everyone is doing it so I should too.”
- Lack of Activities in the Community- Boredom can lead to children getting married early.
- Upbringing- Child grew up where everyone gets married early so they follow this as the norm.
- Trafficking- Sold against will. Parents encourage and allow girls to date sugar daddies for financial and in-kind support. Parents view the girls as a source of income and wealth.

Of these reasons it was identified that poverty is viewed as the main cause of child marriage, this came up many times during the workshop. The following are other reasons identified as causes of childhood marriages;

- Financial instability
 - Unemployment
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- No guidance from parents
 - No access to education
 - No support from parents
 - Alcohol and drug abuse
 - Parental attitude towards the girl child
 - Child abuse
 - Desire of 'luxury' items such as smartphones

Early engagement in sex

It was further revealed that parents living in informal settlements find it hard to discipline a child and that children mimic their parents behaviour which leads to early engagements in sex. An example given of how this comes to be is a common instance wherein the family lives in one room and the parents abuse alcohol and the father comes home drunk and demands sex from the mother, this has been seen to result in the child's desire to engage early in sex.

Girls in the community also felt that the way the parental techniques push them away and results in the children living on the streets as well as early alcohol abuse and early sex.

It was also shared that people don't report early childhood marriages or girls cohabitating because of the financial gains that the girl's partner becomes a provider for the girl's family. For the Himbas, it was reported that the girls are given away at a tender age as a result of tradition. Poverty silences the women and stops

them from fighting for the rights of their little girls.

The general feeling was that these kinds of marriages should not be allowed and should be criminalised. Even consent at the age of 16 years should not be allowed by the government.

Recommendations:

- Different clubs should be established; Women's clubs and a girls support group.
- Greater involvement of traditional leaders because they are the custodians of culture.
- Men should be held accountable for their actions or be exposed.
- Workshops with mothers and girls to work on behaviour change and how to bond and show love.
- Revisit good cultural practices such as !khae-om #uis (Dark room sitting) whereby a girl was educated during the passage of puberty.
- Traditional leaders need to be trained to champion women's rights and fight gender based violence
- Vocational training centres to provide skills and to add constructive preoccupation within the community.

3) Groot Aub

The workshop in Groot Aub was a youth awareness workshop conducted by Y-Fem

and attended by 22 young women with ages ranging between 12 years and 19 years. The purpose of the workshop was to sensitise young women in Groot Aub on the ongoing practice of child marriages in Namibia, to seek their solidarity and support for the young women who are currently going through this as well as to find out if there are instances of underage marriages in this part of Namibia.



The workshop began with an introductory lesson on their human rights mainly focusing on the lesson that human rights are not given by anyone, therefore no one can take them away, on

Discussing ECM with youths from Groot Aub

the specific human rights provided for in the Bill of Rights chapter of the Namibian Constitution and the right to report and obligation of professionals who work with them to attend to them as per section 132 of the Child Care and Protection Act 3 of 2015, as well as a discussion on how early childhood marriage can result in an infringement of these rights.

We concluded the meeting with one on one interviews with the girls wherein the following questions were asked;

- 1) How do you think community members can protect young children from the practice of marriage?
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- 2) Why do you think young children and community members often do not report instances of underage marriage?
 - 3) Following the issue of consent, the government requires three layers of consent to be surpassed before a child can be married; the consent of the



child, the parents or guardian as well as the consent of the state. Do you think it is enough for the government to provide this or should the practice of child marriage be completely criminalized?

Preparing care-packages for workshop

- 4) The government allows for individuals who are 16 years to consent to sex. Do you think they should be allowed to consent to marriage as well? Why?
 - 5) The practice of child marriage is often a result of compromise in situations of poverty. How do you think the state can improve its intervention so that people do not marry off their children?
 - 6) Should the men practising this be excused for merely practising culture and providing support to people who have been afflicted by poverty, especially if they've obtained consent or should they also be punished for encouraging a practice that is harmful to children? Why?
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Recommendations and Resolutions

The attendees of the workshop intend to continue to show solidarity and support to agemates who are experiencing the practice of early childhood marriages. As the discussions were occurring the young women indicated an awareness of the practice of early childhood marriages. On several occasions they stated that in their region relationships of this nature manifest in the form of cohabitation between older men and underage girls ranging from the age of sixteen years, usually as a result of situations of poverty. The discussion had the following noteworthy feedback;

- 1) Children and members of the community often do not report as a result of violent threats from the men who primarily pursue relationships with children, some of them are influential within the community and have ties to officers of the law.
 - 2) Some of the older men identifying and approaching these young women are professionals whom they are supposed to report to such as doctors and police officers.
 - 3) A recommendation for the state and other organisations to provide safe shelters where young ladies in this situation can go to.
 - 4) Greater intervention in cases of GBV in relationships of this nature
 - 5) Some young girls are pressured to enter such relationships by parents or guardians while others enter the relationships after being orphaned resulting in false consent. There seems to be a need for intervention to allow escape in instances of such pressure.
 - 6) There needs to be stricter enforcement of sections 134 and 135 of the Child Care and Protection Act.
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4) Katima Mulilo

Workshop was attended by representatives of the Gender, Child Equality and Social Welfare Ministry, Local Feminist organisations, children's centre representatives as well as social workers. First point of order was to determine whether anyone present was aware of any instances of early forced marriages and the group established that for every two known cases there are at least 10 unknown. They then recognised and pointed out that some of the reasons the reported cases were so is because of fear of backlash from community and community leaders, people don't know it's wrong, child marriages have been normalised (harmful cultural practices). They also recognized that there has been a lack of sensitization in this regard. They pointed out that the elders in the community are perpetrators which makes it more difficult for these cases to be reported. They stated that these practices mainly take in areas like the San Community (Cheto Village) and the Zambian immigrant community- communities that are already generally not supported and protected. Another alarming practice is that in this area there seems to be cases of teenagers marrying one another. Orphans are being forced to head households and take care of younger siblings and choose to be married off to older men in order to sustain a living. Children in less fortunate households are pressured by adults to be providers for their families and are therefore married off to elders in the community for this.

Recommendations and Resolutions

The attendees will form a working group with all key stakeholders that will take

the lead on this in the region, this is to be facilitated by Dennis Matomola of Ministry of Gender and he will give feedback by Friday, 2 October 2020

The Ministry of Gender is due to have a workshop with Traditional Authorities to sensitise them on the Child Care Protection Act (CCPA). The newly formed working group will join this workshop, as Traditional Authorities are influential in impacting change, especially culturally. The group will identify focal people in communities to train as local trainers. They will also look into how we can ensure people's anonymity and confidentiality. Take action on the existing cases that they've been made aware of and formulate a working plan to navigate out of it. They will lastly introduce community based projects, so the solution is behavioural change oriented and more long lasting.

5) Social Workers

The discussion was headed by Venicia Shanjeka and Paulina Alweendo. Namibia has shown commitment in the past to ending child marriage, in 2015 Namibia co-sponsored the Human Rights Council Resolution to End Child Marriage & it was recognized that this culture practice is indeed a violation of human rights.

In 2004 Namibia did make considerations for the African Charter on Human and People's Rights prohibiting child marriage & aimed to provide Ministerial support to victims. At a national level the MGECW is in partnership with UNICEF to join efforts to end child marriage. Their aim is to identify root causes of child marriage & the strategies to combat it. Some of the barriers in curbing child marriage were identified as the delay of the government to fully enforce the Child Act of 2015 that outlines to prohibit marriage of individuals under 18 under customary law. There is

also a lack of sexual education & awareness of consent making it easy to pressure children into marriage. A lack of updated statistics leads to assumptions that child marriage is not an active problem. Traditional leaders & church leaders haven't been transparent about the practise and this makes it even more difficult to successfully curb the issue. There also isn't enough resources and support from the government to infiltrate communities that commonly practise child marriages. Namibia has a lot of outdated laws with loopholes that enable child marriages.

Recommendations and resolution;

Educate communities respectfully on cultural practices that infringe child protection laws. Engage Ministry of child welfare on safe houses & rehabilitation programmes to assist victims of childhood marriage. Provide Psycho-social support by healthcare professionals. Have regular house assessments in rural communities to closely observe the conditions of children & lived experiences. Request medical examinations & adolescent friendly sexual education to be requested to be provided or sponsored by MHSS. Make support groups and counsellors available for immediate response with regards to aiding children who are at risk for child marriage(to be identified by regular house assessments). Request for complete transparency from traditional leaders with regards to all cultural practices done with children. Social workers should request for a thorough training & workshop on how to effectively & respectfully work to combat child marriage.

6) Ombeitje Youth Organisation

The Meeting was attended by the Executive director, Phillipe Talavera, of the

Organization which is based in Windhoek. The organisation has been working on ECM in the Kunene and Kavango region with a focus at Omega1 where they worked with the San community on trying to end child marriages in the area. They have successfully worked with 10 schools and produced a DVD to raise awareness on the matter. They had started girls clubs in Kunene but the breakout of COVID-19 has put the project on hold.

The Ministry of Gender Equality and Child Welfare requested a National Formative Study on Child Marriage. Results were supposed to have been released in 2019 but have been blocked at parliamentary level. Preliminary leaked results mentioned that the prevalence of early marriage in Namibia is 18.4%. By region, the highest prevalence of early marriage was reported in Kavango (39.7%) while Kunene (24%), Zambezi (23.8%), Omaheke (23%) and Otjozondjupa (22.6%) also recorded high levels. Oshana region (7%) had the lowest prevalence of child marriages. There are more early marriages in rural areas (22%) than in urban areas (15%).¹⁸⁰

Challenges as presented in the meeting include the fact that there is limited funding provided for the proper research and initiatives needed in order to successfully curb child marriages. Offices that are mandated to assist in this plight, such as that of the First Lady, do not prioritise ECM. Child marriage takes place deep in rural areas and it is difficult for CSO to reach those communities as it is expensive to reach those areas. There is little to no data available on child marriages in Namibia which makes it challenging to know the impact it has on the Namibian community.

¹⁸⁰ Ministry of Health and Social Services. NATIONAL FORMATIVE CHILD MARRIAGE STUDY IN NAMIBIA. 2022 . *CHILD MARRIAGE STUDY REPORT - CABINET DECISION NO: 4/17.03.20/006 RESOLUTIONS*. Ministry of Health and Social Services. Namibia.

Resolutions and recommendations;

ECM presents opportunities for CSO active participation. There is a need to adopt a collective approach to end child marriages in Namibia. Organizations need to find creative ways to secure funding to support ECM projects. We need to work together as the Namibian Nation and raise as much awareness on child marriages as possible.

7) Kunene Region

The meeting was attended by a Social Worker, a member of the Opuwo Police Force, a member of a local women's group and the Mayor of Opuwo, his Worship Albert Tjiuma. The police stated that they have not to date registered or reported any cases on child marriages in Kunene region. Most reports submitted are those on rape be it by family members and strangers. The social worker added the region has a lot of undocumented or reported child marriages, but since these cases are mostly hear/say it makes it difficult to report them and have action taken against this.

In the olden customs and traditions of the people residing in the Kunene region, children were initially married off before they were born. Once they are all grown up, they marry the man that had asked for her hand in marriage whilst still in the womb. Though these customs have changed over the years, child marriages are still being practised secretly but this number has reduced significantly over the years. Mr. Tjiuma stated that he knew of a girl that was married off in Grade 7 and as a result had to drop out of school.

Children married off miss out on an education and opportunities to improve theirs and their family's living standards. These victims most likely fall pregnant very early on and are then required for the rest of their lives to be caretakers and nurturers as opposed to being the drivers of change in their communities. Child marriages are carried out secretly and denied by both the victims and their families because they are afraid of the repercussions of the law. Some are afraid to report child marriages as they are afraid to be stigmatised or cast out by the community.

It was reported in this meeting that there is a need to educate members of the Ovahimba community on the laws of this country. This could be done through the Traditional Authorities and in their own set-up (at their respective village to get a higher number of attendees). Sex education and the use of contraceptives is done mostly at school because parents and community leaders find it difficult to talk about it with the younger ones.

Kunene has one school counsellor in the region who is based in Khorixas and is the supervisor of all Life Skills teachers. Life Skills Teachers are trained as counsellors and they serve as school counsellors at their respective schools. Life Skills teachers/School Counsellors can give learners referral letters to consult a social worker at the Ministry of Health and Social Services when they feel they cannot help a learner effectively.

There haven't been any rape cases reported by schools or school going girls. There was however, a case reported of molestation by older boys molesting the younger boys in one of the school hostels. The case has been dealt with accordingly by the

relevant authorities.

Teen pregnancies are on the rise in the region and fear more pregnancies in the months to come because it was observed that there always is a rise of teenage pregnancy cases during school holidays. The lockdown due to COVID 19 has forced schools to close and there is a general fear of the spike of teen pregnancies.

8) Gobabis

This meeting was attended by Pastors, representatives from MOHSS, CSO's, a Government official and the community. This is what they had to say:

Pastors: they were totally against it as they explained that marriage is a big deal and it needs maturity, understanding and proper consent. Boys and girls are not old enough to understand marriage and how it should be plus how the bible intended it to be. They added that churches should talk more about the topic to educate their congregations on the topic.

Representative from MHSS: educated us on the body of a child so we could fully understand how this affects the child. They said the body of a young girl is not fully developed and this can cause severe damage to the child when having sex which can even lead to death in some cases. They also said that if a girl should fall pregnant this may cause a lot of complications during and after pregnancy. When asked if they have practices that deal with children that went through child marriage in Namibia they said yes as the Ministry of Social welfare takes charge of dealing with such cases and MHSS assists by giving the girl proper medical care.

CSO's: were very fast to point out how they would work hand in hand to fight the practice and how they want to keep the Namibian government on their toes to stop such practices. None of the CSO's ever had projects or anything to do with child marriage and they decided that going forward they would tackle the issue by mobilizing the community and to educate them on this harmful practice.

Community: most didn't know about child marriage and also confused it with rape which at the end of the day we decided this two does indeed go hand in hand. Many were fast to share how this practice still happens within their cultures and how it mostly also linked to poverty. They concluded that traditional leaders are the ones close to them and they (traditional leaders) should be educated more so that they remove or change some of their traditional laws so that the practice ends.

Government officials: the office of the Governor and the office of the Gobabis constituency councillor said that the government has measures in place to end child marriage but they can not do it alone as they need help from the CSO's and the community to make it happen. They said this is a practice that they have been fighting for a long time in their capacity as the government and it is still a long fight. They welcomed the topic and said one must keep pushing, educating and mobilising communities especially those in the rural areas as most cases start from there and this is mainly also due to poverty. They said organisations such as Y-Fem should work closely with them as they play an important role in society.

Addressing Early Childhood marriage in Namibia: A Discussion With a Front line Worker

This interview was with Agnes, a front line advocate who works with adolescent girls and young women in Opuwo. She has worked with the National Rural Women's Assembly, YFem and independently in her fight to end early childhood marriages.

1) What are some of the most common reasons for childhood marriage that you have encountered?

"Some may say is the tradition but I will then say is no more traditional thing but giving our child in exchange of something for living and women which a decision by the head of house who is the father it's mostly not a house discussion but a one person decision"

2) What is the age range of marriage for children?

"As to what I have encountered and interviewed the lowest age was 9, 12,14"

3) What are the impacts or consequences of childhood marriages that you have seen?

"Because they are not given a chance to marry the man they want they are being given by force to men, some who fit to be their fathers. All the young girls that I have interviewed are all divorced which let them be left with kids. No education as a married wife you should be home and look after your family early, childhood marriage is

followed by teenage pregnancy high number of unemployed due to illiteracy in the community that leads to drunk and alcohol abuse that's where gender violation comes in"

4) Regarding culture, where should we draw the line; the practice of child marriages has been a customary tradition for ages, is ending child marriages a foreign concept or something we actually need?

"Human rights training [is needed] especially for women because the women are the only people to change life [significantly after marriage] ...The culture can be respected once its practised right but not to violate us"

5) How do you think community members can protect young children from the practice of marriage?

"The community can only be able to protect them after they are trained on their rights with motivation among one another (communal solidarity and support is needed)."

6) Why do you think young children and community members often do not report instances of underage marriage?

"When you come in the areas where you see those early childhood marriages being practised, it's one of those areas you wouldn't expect people of the community to advise

or to help each other because it's been done everywhere. And with the power vested in the head of houses, it's the only thing that is being followed. So a woman from another house wouldn't have the power to advise or to educate someone from a different family or a different house because what she wants to advise is something that is already being practised in her family. So that is why I'm saying you cannot find people within the community to advise or to help because come in Opuwo for instance, an area that I can say was a reality to me, speak of land, women do not know they have rights on land, speak of rights in general, they do not know their rights, they do not know they have rights, they do not even know they have the right to say 'no, I do not want my daughter to get married to that man.' So it's just the men that decide and the women have no say, the men simply say, "you are going, get ready, you are not coming back." It is something that is being practised in families. If it had never happened in my family then I would have the power to go and try to advise someone else not to do it or to help. We need to work on awareness, human rights, customary land rights and understand what rights are to those people. Those are the reasons my people do not help. They don't know whether it is something that needs to be reported, its abuse, yes. What these people have been saying is that if we make more effort to bring in more social workers, educating our own girls our own young women within the community on social work and counselling maybe that is when you can truly hear the voice of the people.'

7) Following the issue of consent, the government requires three layers of consent to be surpassed before a child can be married; the consent of the child, the parents or guardian as well as the consent of the state. Do you think it is enough for the government to provide this or should the practice of child marriage be completely criminalized?

"When the government intervenes regarding child marriage, and they ask about this issue of consent, they hold public meetings where people are supposed to stand up and speak, this is hard when you are asking someone to break the silence. I had a meeting in Opuwo and the meeting began with the issue of land and that was deep in Opuwo. There were only two men and seventy women sitting in the meeting, those women would never open their mouths to say anything about that, until I realised the point of where this is coming from. I had to ask the two men to excuse us for a minute to see if they would be able to express themselves. Just after those two men left, you could hear the voices of these women coming out in different ways, different sounds, the pain, everything. So to tell you the truth, if the government wants to do some works and missions to end this, not to say they have to necessarily look for these people, but, when they are holding these meetings, when they are looking into this consent, they need to go deep, not holding their meetings in central places only with people that speak English, such that they are being translated to them, it's high time the government works and looks into working with organisations that work closely with these women, looking for whether or not women want consent on this, they need to involve the actual people that need to work on it, they should delegate this to women's organisations so we can walk around and make sure they are getting support from the right people. Not from a committee that just visits Opuwo and goes back to Windhoek saying, "this is what the people of Kunene have said." Kunene is not just represented by the people of Opuwo, Opuwo is just a central town, that people only come to for shopping, they are almost like outsiders, the main people are out there, deep, and if you want to work nicely, you need to go there deeper in Kunene."

8) The government allows for individuals who are 16 years to consent to sex. Do you think they should be allowed to consent to marriage as well? Why?

"About sex and marriage, I don't know why the life skills lessons have been removed from school the government should look into that, because its that person's right to sex, but then we need to look into a way to educate those young girls before marriage. One should only get married once they are ready. Once they feel they have the right to say yes or no. Marriage is all about love, you need to marry someone you want not someone you are given and love is a reaction that comes within me, no one should tell me that I love a person, that I should marry that person, no. By the age of sixteen , I'm telling you, it won't happen, you won't be able to differentiate between love and sex, so I disagree with it."

9) The practice of child marriage is often a result of compromise in situations of poverty. How do you think the state can improve its intervention so that people do not marry off their children?

" The practice has led to poverty. All the ladies that I interviewed, they were all divorced, and they had three, four kids left with them because I was just in Opuwo, I'm just speaking from that, where men marry more than one wife, and then if you are a divorced you go with your kids there. And just imagine, I am not educated, I never went to school, in order for you to get a job, for you to have money, you need to at least speak English, you need to do calculations, so illiteracy is one of the things we need to say no to, and to say yes to education so that is why I am saying when government is

giving consent on the kids or rights to kids with sixteen years they should also make sure that they educate the kids, you need to be educated in order to feed your family, if we do not want poverty in this country

NRWA STATEMENT

The 11th October marks the International Day of a Girl Child, and coming up to the date we are learning about families in the Kunene Region in Namibia who are selling off their young daughters to older men and tourists at a price. All this for the family to just survive. The Namibian Rural Women's Assembly (NRWA) strongly condemns this act of selling off and marrying off young women stripping them of their education and freedom of choice especially on reproduction and marriage. In last month's constituency engagement in Kunene Region by our leaders, we became aware of what happened in that particular region where 45 girls shared their experiences of being married off young. Some women shared about the traditional practice of being they have been sold off as brides, at the age as young as of 8 years old. The women testified that they had no choice to say NO to these early marriages and that this usually happened soon after their first menstrual cycle. As NRWA we cannot allow these actions to continue, as our young girls continue to carry the burden of care for families who are frantically struggling and being exploited by outside forces, like tourists and more influential men in society! These young girls are saddled with the burden of care for their older husbands to conceive many children at a very young age, caring for the home, the children and the larger family structure while being children themselves. Fawled to bring young brides, girl children are being sold off to tourists for as little compensation of N\$ 2500.00, to be sexually exploited at the will of these travelers. This is another form of Capitalism exploiting our transmutables. This **MUST** stop! The NRWA is alarmed and concerned with young women being stripped from their ability to live full lives where they can make their own choices about their futures. We are further appalled at the justice system, with its state-of-the-art children's rights policies, which is doing nothing to protect our children against this threat of early child marriage, rape and human trafficking.

Young women bear the brunt of the poverty cycle created by capitalist venture and misappropriation of power and resources. Join us in the region to hold the Namibian governments and community leaders accountable for the violent and violating experiences the young women in the Kunene Region in Namibia are enduring. Remain with us as we demand for access to land, decent work, good education, better housing and basic human rights as Rural Women in Namibia.

ALLTA CONTINUA!!!

Rural Women's Assembly

The NRWA is among the organisations that have been working closely with rural women who have been married early and is pivotal in this fight. Gathering from the discussion with Agnes, we can draw the following conclusions regarding the situation in Opuwo;

- The practice comes more as a result of patriarchal oppression rather than a traditional norm.

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- Divorce leads to the mother being left with the child and the responsibilities of caregiver and provider without any support from the man.
 - Women in these areas do not know their rights.
 - Government led public hearings are insufficient means of intervention because;

People are afraid of speaking up publicly regarding a norm.

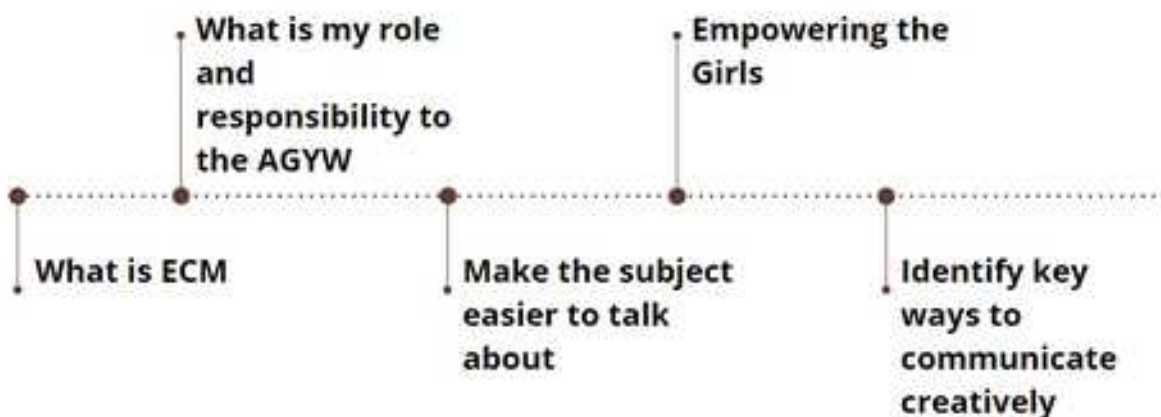
The hearings lead to outsiders being the voice of the community. This may not sufficiently address and communicate the problem.

It is alleged that the government mainly uses data from Opuwo to represent the whole of the Kunene region which lets the rest of the region become neglected.

- People do not report because they do not know if it is something they should report.
 - There is a great need for psycho-social intervention.
 - Women are not always comfortable expressing themselves in front of men.
 - ECM perpetuates generational poverty.
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Advocacy Guide

Our strategy



It is essential to first establish the advocacy strategy before embarking on the desired activities. Y-Fem Trust has taken the following strategic plan when leading workshops.

- 1) Find out if participants know and understand the harms of Early Childhood Marriages. It is important for the facilitators to be able to fully describe this before they go up to speak about it. This aspect focuses on
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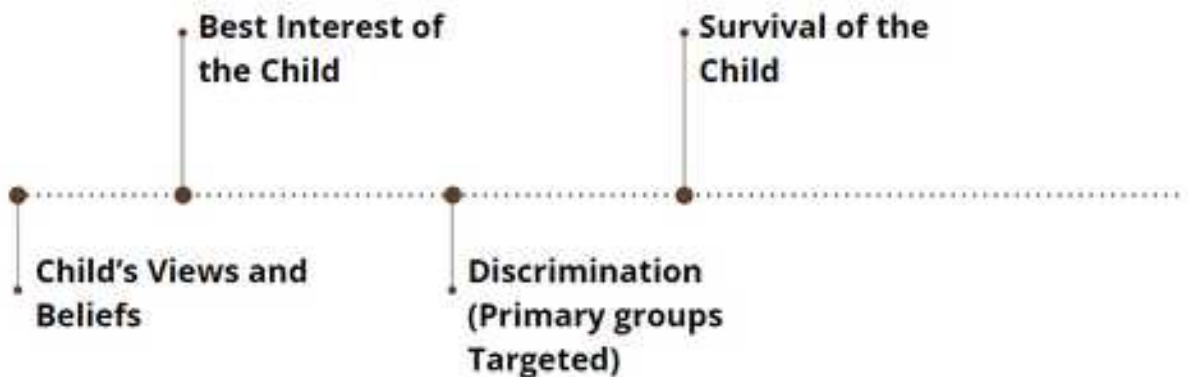
educating, to the fullest extent, participants and facilitators.

- 2) The second factor is for facilitators to fully determine their role and responsibilities to Adolescent Girls and Young Women who are vulnerable to the practice and its effects.
 - 3) In many communities the subject of ending ECM is taboo and can often cause fear amongst women and girls. It is important that the discussions with target participants are done in safe environments. Additionally, it is the responsibility of the facilitators to ensure that the sense of safety is present. Participants may, for example, feel uncomfortable having the discussions in the presence of certain community leaders. In such instances it may be helpful to respectfully remove those who are making the space feel unsafe. Another aspect of this is that a lot of participants may not be aware of how to articulate, to the fullest extent, their experiences. This may be due to language barriers, make sure a translator is present, if necessary, and ensure that participants trust the translator.
 - 4) The next step after making the subject easier to explore, is the need to make those who are vulnerable to the practice aware of their right, capacity and ability to stand up against the practice. It is important to give them educational tools regarding the; political issues surrounding the practice with a focus on the feminist fights against patriarchal ideals; legal steps and remedies including submission of a petition, reporting abuse and seeking legal aid; and psycho-social support to strengthen them in their mental wellbeing and ability to handle difficulties they may encounter as they stand up for themselves. Y-Fem seeks to empower them fully in their individual capacity in order for them to be able to stand on their own in the fight to end
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ECM.

- 5) Throughout the advocacy project, it is important to make sure that key ways to communicate the issues surrounding ECM are identified. Not every group is addressed in the same way, for example; while it may be helpful to try to make the AGYW feel comfortable by using casual language, community leaders and parents may find this to be disrespectful.

Addressing Gendered Norms and Beliefs



This aspect of the activities is mainly aimed at keeping the government accountable to the general principles that underpin children's rights in terms of international law. The following are the measures of assessment and improvement that are serving as our guiding principle in accordance with the terms of the Convention of the Rights of the Child;

- 1) Upholding the views of the child; in this regard it is necessary as advocates for children to identify what their views are on the practice of ECM and why
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they have these views. Then beyond that, to make the authorities and the general population aware of these views and to hold them accountable to the children.

2) **The best interest of the child;** It is the duty and responsibility of the advocate to hold the government and society accountable to the best interest of the child. The major aspect here is to show how ECM ultimately does not serve the best interest of the child.¹⁸¹

3) **The right to non-discrimination;** In our study we have seen that the practice of ECM is primarily harmful to;

- Women and girls
- From low income households
- And specific customary groups

In line with the terms of Article 10 (2) of the Constitution of Namibia, it is essential to show how these individuals are being unfairly discriminated against by the Namibian government. In this regard the facilitator should make participants aware of this unfair discrimination as well as to carry out activities that hold the local authorities accountable to this obligation, this can be done by circulating an informative petition to raise awareness and by promoting authorities' attention to this petition.

4) **The survival of the child;** In this regard, it is important to gather evidence of harm against victims of ECM as well as to point out how the practice of ECM interrupts young girls' ability to enjoy a fulfilling and enriching life. It would be helpful to point out the rights that are violated in their day to day lives as well

¹⁸¹ See chapter above *What allows for Early Childhood Marriages to continue in Namibia?*

as to gather more numeric data showing an average of children and family households who are harmed in each community.

Gendered Norms and Beliefs Contributing to Child Marriages

Economic Systems	Entrapping Factors	Legal systems
<p>-Addressing beliefs about marriage being a source of protection (how do we do this without also shaming the whole institute of marriage?)</p>	<p>-Once a child is married they stop being a minor (losing protection from CCPA) -Customary practices (communicating while addressing specific practices) - Instruction of authorities such as parents and LA</p>	<p>-Definition of minor in the constitution leaves those between 16-18 years vulnerable to harm - Customary marriages are not registered in Namibia, which makes CM permissible as cohabitation -Section 14 of the combatting immoral practices act 7 of 2000</p>

Next is to highlight and address specific gendered norms that encourage the practice of ECM. It is more effective to point out specific policies and beliefs that uphold patriarchal views than it is to simply say that it is a result of patriarchy. In this regard the facilitator must identify how a specific factor contributes to ECM and how it ultimately is harmful to women and girls as compared to their male counterparts. It is important to gather evidence of this as well and to point out how this is ultimately harmful to the entire community.¹⁸²

¹⁸² See chapter above *What allows for Early Childhood Marriages to continue in Namibia?*

How ECM Harms AGYW in General



Loss of Childhood

Responsibilities of marriage are too much for children.

How do we allow for the reintegration of childhood experiences?



Abuse

Coming from different angles

Different types of abuse

What are these and how do we show them?



Silenced

Social constructs can make it difficult for AGYW to speak out against the practice. How do we actively engage with the people influencing this?



Entrapment

Because of the nature of social structures, the law and economic situations, it can be difficult to escape. What are some creative and effective ways we can address this?

Above are some key guiding ways, we identified in our research, in which the gendered norms are disproportionately disadvantageous to AGYW. Facilitators can use these as the base line of their advocacy and research work as they seek to undo these and uncover any other aspects of harm that may still be existing.



Placing marginalised women at the forefront of discussions is a key goal of the advocacy process. It is important to understand that an important aspect of the goal to end Early Childhood Marriages is empowering those who are vulnerable to the practice and avoid taking over their empowerment process.

Some Important Target Groups

1) Girls

The girls in this regard are those who have undergone the practice; are in communities where they are at risk of experiencing childhood marriage and girls

in other communities who would like to show support and stand in solidarity with those who are victims of the practice. Girls are the primary target rather than boys because this practice is of greater harm to the girl child in Namibia. Mobilisation for the purpose of solidarity is especially important to actively show those in favour of the practice that times have changed and that a hierarchical reverence of human rights based on gender is not favoured and that there is no justification for this. Allowing girls to be at the forefront of this is to fulfil the goal of empowerment.

2) Elders, Local Authorities and Community Leaders

Community elders are important because they can leverage their influence within the community to end the practice. They also stand a greater chance and capacity to ensure that protective measures are applied. It is also important to let them be a leading voice in advocating for the necessary changes through challenging values and culture. Some strategies that can be used in this regard are:¹⁸³

- Special campaign addressing parliamentarians
- A continuous assessment of the number and importance of parliamentarians, deputies, mayors, etc. engaged
- Call to action to end child marriage: award for promising or best practices and investments
- Stage, online and offline award events

¹⁸³ UNICEF. (2021). Key Results For Children 6: Ending Child Marriage. *Advocacy Toolkit*.

3) National Leaders

In a 2021 report on ending child marriages, the United Nations gave the following reasons regarding why it is important to address national and sub-national governments;¹⁸⁴

- Ensure ending child marriage is a national development priority
- Facilitate supportive environments to change social norms
- Promote national laws, policy frameworks and mechanisms to protect and promote adolescent girls' rights, and ensure that these are aligned with international standards and that adequate resources are available to implement them
- Promote integrated strategies (birth registration, health, education, social protection) to end child marriage
- Supporting adolescent girls at risk of, or affected by, child marriage to stay in school through the primary and the lower secondary cycles and acquire life skills, enabling them to make choices and exercise their rights

4) The General Public

The general public is a key group for awareness and support gained through solidarity. The involvement of the general public is very important in order to ensure that legislators can see that this matter is of great importance to the state. Change for young women and girls can be effectively applied with the active

¹⁸⁴ Ibid

involvement of the whole community.

Social Media Advocacy

Social media can be an important tool for the Monitoring and Evaluation process and can be a very useful way to reach various groups to effect change. It is very important for the purposes of adapting to COVID-19 regulations as well.

Our Hashtags:

#EndECM #EndECMNa #endearlychildhoodmarriages #protectwomenandgirls
#endharmfulculturalpractices

General Principles When Using Social Media¹⁸⁵

- 1) **Be genuine:** Don't embellish anything to try and project a certain image, speak authentically about ECM, impact and how others can support. Use humour and a voice that reflects your organisation's image. For example a youthful organisation may best rely on youthfulness rather than corporate language.
- 2) **Stay focused and be reliable:** Post relevant content relating to ECM and comment on other user's pages as well.
- 3) **Get social:** Above all else, create a conversation to meaningfully engage with your audience. The more you engage with like-minded individuals and organisations, the more you'll be able to build a connection that can extend outside of the Internet. But keep in mind not everyone will use this medium so don't base all communication solely around social media!

¹⁸⁵ FoodArc. *FoodARC Social Media Tool*. FoodARC: Research Inspiring Change.

Establishing a Facebook or Twitter Account

Twitter¹⁸⁶



Account set up: You will need to set up a username (Twitter handles), character profile description and an image that represents your organisation.

Messaging: The maximum message size is 140 characters. Try to keep your tweets to a maximum of 120 characters.

Getting Noticed: Use relevant hashtags (#feminism, #endchildmarriages, #ECMna,) so users can follow the conversation – who knows, your topic may even start trending.

Know Who To Tweet: Find out the usernames of well-known professionals in the field, politicians, or even celebrities that may support your discussion.

Followers: Track how many new followers (the people that see your tweets) you get per week. Gaining more followers allows your message to have the potential to spread to larger networks as more people are re-tweeting your posts.

¹⁸⁶ Ibid

Facebook¹⁸⁷



Communication – Create a Facebook page for your organization to share information and people in discussion\

Posting – Try to keep your posts short, on-topic, conversational, and include an image when possible.

Outreach – If you have a meeting, rally or any other event that you want the community to – you can create a Facebook event and link it to your page for greater reach.

Sharing – Don't forget to get people to click the "share" button so your messages can be shared on their social networks.

¹⁸⁷ Ibid

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