



Child Marriage and the Law: An Unacceptable Cohabitation

In July 2019, Mozambican Parliament passed the *Law on the Prevention and Fight against Child Marriage*, raising hopes that the country may be on course to eradicating child marriage. Yet, like other laws passed before it such as the *Penal Code*, the *Family Law*, and the *Law for the Promotion and Protection of Children's Rights* that clearly prohibit and criminalize sex activities with minors, this law, if not enforced, will do very little to protect and rescue girls from child marriages.

According to Mozambican law, sexual activity with a

minor, defined as any person under the age of 18, is a crime and punished with prison and fines. Although the 2004 *Family Law* made provisions for marriage of minors over 16 years of age when exceptional and known circumstances of public and family interest arise and when there is parental consent (Article 30.2), the same article emphatically voided any marriage involving a minor for whatsoever reason other than the exceptions stated above (Article 30.1.a). In fact, Article 19 of the same law voided any promise of marriage made by any person under the age of 18. The Penal



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Code leaves no room at all for marriage with a minor under the age of 16 as its article 220 punishes anyone who commits any sexual act with a minor under the age of sixteen, with or without the minor's consent.

The country has taken steps to improve the legal environment and strategies to wage a winning war against child marriage. In its seventh chapter on crimes against sexual liberty, the new Penal Code approved in 2014 has taken attention to protect minors from sexual abuse and modern practices and crimes such as pornography (Article 226). In 2015 the council of ministers approved the *National Strategy for the Prevention of and Fight against Child Marriage* for the period 2016-2019. The 2019 Family Law has maintained the voidance of any promise of marriage by a minor (Article 21.2) and any marriage involving a minor save for the exceptions stated above (Article 32.a). Based on *SADC Model Law on Eradicating Child Marriage and Protecting Children Already in Marriage*, the Law on the Prevention of and Fight against Child Marriage is the country's specific and robust legal document promising to unleash decisive blows against child marriage.

Existing legal instruments prior to the *Law on the Prevention of and Fight against Child Marriage* had power to prevent and fight child marriage, yet evidence of their impact is flimsy at best. According to

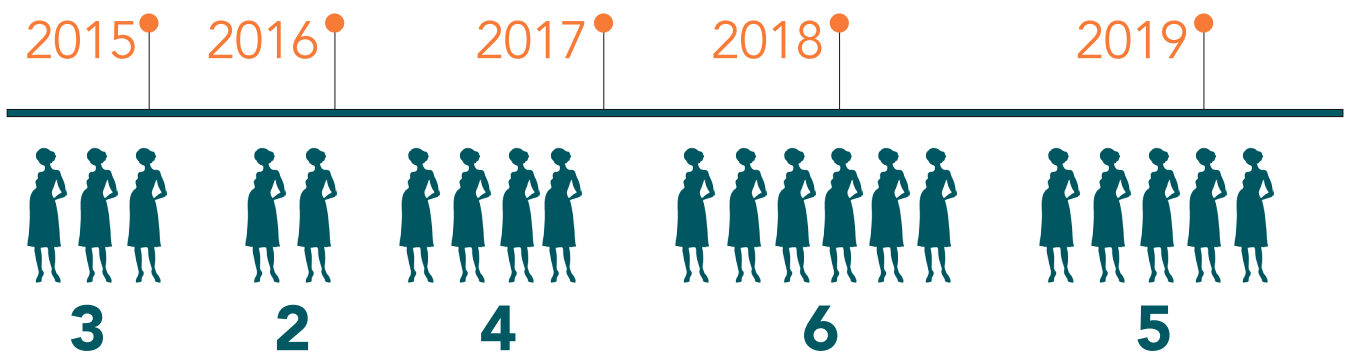
the 2011 *Demographic and Health Index* (IDS 2011) published in 2013, 14% of married women between the ages of 20 and 24 got married before the age of 15, and 48% of them got married before the age of 18 ranking Mozambique the 10th country with the highest rate of child marriage in the world. According to the 2015 Survey of Immunization, Malaria and HIV/AIDS (IMASIDA 2015) in Mozambique published in 2018, child marriage is on the rise. 12.9% of girls between the ages of 15 and 19 were married before the age of 15, and 52.9% of girls between 20 and 24 years of age got married before the age of 18. The 2017 *Mozambique Population Census* revealed that, in both urban and rural areas combined, 4.04% of girls between the ages of 12 and 14 were or had been married; 40.98% of girls between the ages of 15 and 19 were or had been married; and 74.54% of girls between the ages of 20 and 24 were or had been married.

Disaggregated data by area of residence shows that child marriage is higher in rural areas where 5% of girls aged 12-14 were either married or had been married; 49.13% of girls aged 15-19 were either married or had been married; and 82.43 of girls aged 20-24 were either married or had been married.

Also, anecdotal evidence and local community data support the rising trend of child marriage in the coun-

try. Nhanale, the largest community in Chigubo, one of the two districts with the highest rates of child marriage in Gaza (Arnaldo et al., 2016), has several cases of child marriage and the trend is rising. Neusa Moiane, a sixteen-year-old girl who escaped from the manacles of child marriage in January 2020, mentioned 27 names of girls under the age of 18 and as young as 14, she used to go to school with and play with in Nhanale who, since 2018 had lived in some form of marital life. In a phone interview for this article, key state officers in Nhanale including Ercílio Matsinhe, the top police officer, Wilson Sumbe, the primary school headmaster, Carlos Chaúque, the top gover-

ment officer, have described child marriage along with teenage pregnancy as the greatest challenge to girl empowerment in Nhanale. Carlos Chaúque has conducted a study, yet to be published, on child marriage in Nhanale as part of his final project for his bachelor's degree. According to him, 17 teenage girls did not return for the new school year in 2019 and 2020 after the summer vacation due to child marriage. Data from the EP1 and EP2, which also houses a secondary school distant learning program since 2017, show the following number of girls under the age of 18 who did not return for the new school year since 2015.



Speaking from Xai-Xai where she now lives, Neusa wondered why police officers stationed in Nhanale were not collecting to jail every adult who gives and takes minors in marriage. In Nhanale and certainly in most communities across the country, laws against child marriage are not enforced and this explains the rising trend in child marriage despite the existence of laws against it. Knowing that child marriage is a public crime, we, like Neusa, may ask why these state officers, for instance, do not report to law enforcement officers all the many cases of child marriage that happen right under their watch. Could it be that their desire to fight against child marriages is weaker than the fear of upsetting their societal status quo? After all, child marriages may be as old as their culture. Standing

against it headlong may earn them enemies.

There is, therefore, a need for a new approach for a winning war against child marriage. It is an approach that must be centered on changing societal pro-child-marriage values and attitudes from the root beginning with teenage girls and boys. The new approach must shelter teenage boys and girls from pro-child-marriage values and attitudes and equip them with values and attitudes too strong to tolerate and condone child marriages. The country needs a new generation of transformational leaders whose values and attitudes are strong enough to overcome the fear of upsetting societal status quo in search for social justice for all. Child marriage and the law against it must not cohabit.

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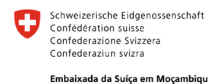
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