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AFTER THE LAW: FROM LEGISLATIVE SUCCESS TO COMMUNITY-LEVEL ACTION TO END CHILD MARRIAGE IN KENYA

Celestine Nyamu Musembi* Evance Ndong** Charles Nyukuri***

Abstract

This article explores the paradox of pockets of persistently high prevalence of child marriage in Kenya's Northern counties against the backdrop of national legislative success and declining prevalence overall. Through a legal pluralism lens, it analyzes disaggregated county data which makes visible the bidirectional link between child marriage and poverty. An examination of community-level initiatives by government and civil society reveals a greater focus on norm change than on economic empowerment. The impact of interventions is poorly documented since the potential of initiatives such as county-level Child Protection Centers and the national helpline 116 to routinely gather in-depth localized data has not been fully harnessed. The article recommends investment in a robust evidence base to inform targeted localized interventions, integration of evaluation of impact on child marriage in all projects regardless of sector, and investment in educational and economic opportunities for girls. Unless legal reform is accompanied by such investment, formal legal norms will lose the contest for legitimacy at the local level.

*S.J.D. Harvard Law School; Senior Lecturer, University of Nairobi Faculty of Law; celestine.musembi@uonbi.ac.ke

**LL.M Candidate, University of Nairobi, LL. B (Hons) University of Nairobi, Columnist—Law and Order, Standard Newspaper; evancendong@gmail.com

***LL.M. University of Nairobi; Regional Policy Advocacy and Research Advisor, Plan International; Charles.nyukuri@plan-international.org

I. Introduction

Child, early, and forced marriages and unions¹ have been declining globally, but in sub-Saharan Africa, the rate of decline has been slow, with some countries remaining stagnant in the last decade. When African nations adopted *African's Agenda for Children 2040* in 2016, the sub-Saharan African region's percentage of women married before the age of 18 stood at 39%.² UNICEF at the time observed that rates of child marriage among the poorest in Africa had seen no change since 1990.³ The highest national rates then stood at 76% (Niger) and 68% (Central African Republic).⁴ As of November 2024, the most current statistics, the sub-Saharan African region's rate of child marriage stands at 31%. When broken down into sub-regions, Eastern and Southern Africa's rate stands at 30%. Niger still retains the rate of 76%, while the Central African Republic is tied at second place with Chad at 61%.⁵

Set within this regional and sub-regional context, Kenya has made progress, posting a 13% prevalence rate of child marriage nationally as of 2024. Kenya's progress is also commendable when viewed from the perspective of historical trends: 26.4% in 2009, 22.9% in 2014, and down to 13% in the intervening decade till 2024.⁶ The median age at first marriage for women aged 25-49 nationally stood at 20.2 in 2014, compared to 21 in 2022, indicating that women are marrying later, or that child marriage is becoming a thing of the past.⁷ In addition, Kenya has made significant strides in the past decade in aligning its laws and policies with international standards to address

1 The abbreviation CEFMU is popularly used for 'child, early and forced marriages and unions' in NGO and donor agency literature on programmatic interventions to end child marriage. In this article (and in Chuma Himonga, 'The End of Child Marriages in Zambia? An Appraisal of the Marriage (Amendment) Act of 2023 and the Matrimonial Causes (Amendment) Act of 2024' [2025] Special Issue: Marriage, Property and Equality: Reflecting on a Decade of Family Law Reform in Kenya, *East African Law Journal*, 61 (hereinafter Himonga, this volume), 'child marriage' is the preferred shorthand.

2 See UNICEF, *The State of the World's Children (UNICEF 2016)* 153 <<https://www.unicef.org/reports/state-worlds-children-2016>> accessed 16 May 2025.

3 Ibid 16, .

4 See African Union, '*Africa's Agenda for Children 2040: Fostering an Africa Fit for Children*' (African Union, 2015) 21 <https://au.int/sites/default/files/newsevents/agendas/africas_agenda_for_children-english.pdf> [hereinafter African Union Agenda 2040], accessed 16 May 2025.

5 See UNICEF, *The State of the World's Children, 2024: Statistical Compendium* (UNICEF 2024) <<https://www.unicef.org/reports/state-of-worlds-children/2024#downloads>> accessed 16 May 2025.

6 Ibid., UNICEF bases the figure for Kenya on the 2022 demographic and health survey, which in turn is based on population data from 2019. See Kenya National Bureau of Statistics and others *Kenya Demographic and Health Survey: Key Indicators Report* (KNBS 2022) <<https://dhsprogram.com/pubs/pdf/PR143/PR143.pdf>> accessed 26 May 2025, [hereinafter Kenya DHS 2022]. Compare against the 2014 data: Kenya National Bureau of Statistics and others *Kenya Demographic and Health Survey 2014*, (Government of Kenya, 2014), <<https://dhsprogram.com/pubs/pdf/fr308/fr308.pdf>> accessed 26 May 2025, [hereinafter Kenya DHS 2014]. The 2014 DHS survey data is what is reflected in UNICEF (n 2), , 151 .

7 See StatsKenya, 'Child Marriages in Kenya by County' (StatsKenya 26 May 2025) <<https://statskenya.co.ke/at-stats-kenya/about/child-marriages-in-kenya-by-county/66/>> (based on 2019 Kenya Population and Health Census: Analytical Report on Fertility and Nuptiality, Vol. VI), accessed 26 May 2025.

child marriage.⁸ The enactment of the Marriage Act in 2014⁹ marked a significant moment in finally achieving harmony between the Constitution, the law relating to children, and the law relating to marriage.

While Kenya is certainly to be commended for this progress in ending child marriage, national average figures can hide wide variation across counties and pockets of high prevalence within counties. By way of illustration, when the national prevalence rate for marriage under 18 stood at 22.9% in 2014, the rate in the Northern counties of Turkana, Mandera and Samburu was as high as 43%, some sub-counties recording an increase between 2009 and 2014.¹⁰

As this article reflects on the past decade of reforms in family law and initiatives toward ending child marriage, these county-level statistics signal the need to go beyond macro-level analysis of national legal and policy frameworks. They point to the need for comprehensive and context-specific analysis of the underlying drivers of child marriage, and reflection on the factors that facilitate or impede the effectiveness of existing interventions in specific localities.

The theoretical premise of this article is legal pluralism and the semi-autonomy of social spheres, which attempts to analytically capture the dynamic of law and social change.¹¹

Formal law enacted by the state operates in a social context in which it does not enjoy a monopoly of social regulation.¹² Its dominance is never unambiguous or unchallenged.¹³ In any social setting, especially in a post-colonial context typified by a layering of official law over a variety of local norms, there are plural sites of norm generation and norm enforcement to govern social interaction.¹⁴ Official law

8 Amy Harrison, 'Evidence Review: Child Marriage Interventions and Research from 2020 to 2022' (Child Marriage Research to Action Network- CRANK, January 2023), <<https://www.girlsnotbrides.org/learning-resources/resource-centre/crank-evidence-review-child-marriage-interventions-and-research-from-2020-to-2022/>> accessed 23 May 2025, [hereinafter Harrison CRANK Evidence Review], 3. Note: CRANK is an initiative of the Girls Not Brides coalition, in conjunction with two UN agencies: the UN Fund for Population Activities (UNFPA) and the UN children's agency, UNICEF 25; See also Ajwang' Warria, 'Child Marriages, Child Protection and Sustainable Development in Kenya: Is Legislation Sufficient?' (2019) 23(2) *African Journal of Reproductive Health* 121–133

9 Marriage Act, No.4 of 2014.

10 Fraym, 'Analysing Girl Child Marriage: Kenya Deep Dive', prepared for the Child Marriage Learning Partners Consortium (Girls Not Brides 2021), <<https://www.girlsnotbrides.org/learning-resources/resource-centre/analyzing-girl-child-marriage-kenya-deep-dive/>>, 22, 64, accessed 16 May 2025, [hereinafter Fraym, Deep Dive].

11 The concept of semi-autonomous social spheres originates in the work of Sally Falk Moore, which analyses the interaction of local norms and processes with the larger matrix of state laws. See Sally Falk Moore, 'Law and Social Change: The Semi-autonomous Social Field as an Appropriate Subject of Study', in Sally Falk Moore, *Law as Process: An Anthropological Approach* (Routledge and Kegan Paul 1978) (hereinafter Moore, Semi-autonomous Social Field).

12 See Sally Engle Merry, 'Legal Pluralism and Legal Culture: Mapping the Terrain' in Brian Z. Tamanaha, Caroline Sage, and Michael J.V. Woolcock (eds), *Legal pluralism and development: scholars and practitioners in dialogue* (Cambridge University Press 2012) 66.

13 Chris Fuller, 'Legal Anthropology, Legal Pluralism and Legal Thought' (1994) 10:3 *Anthropology Today* 9, 10.

14 For a discussion of classical legal pluralism which is typical of post-colonial settings see John Griffiths, 'What is Legal pluralism?' (1986) 24 *Journal of Legal Pluralism and Unofficial Law* 1.

shares the local space with a variety of norms drawn from sources of authority such as custom or religion. The relationship between formal law and local norms is a symbiotic one which may be defined by harmony or tension or both. Their interaction may lead to adoption, adaptation or sabotage of formal legal norms.¹⁵

This theoretical framing provides the lens through which to understand the puzzle of pockets of persistence of child marriage in the face of success in legislation and decades of programmatic intervention. Certainly, competing legitimacy of plural normative orders has something to do with it. However, how this legitimacy contest plays out is also influenced by economic factors. People's expectations and choices are informed by their perception of the livelihood options available to them in the context in which they live. The strong correlation between high poverty rates and the prevalence of child marriage brings out this dynamic, as is discussed in the section that follows.

This article is organised into six sections, beginning with this introduction. The second section discusses the data illustrating wide inter-county and intra-county variation in the prevalence of child marriage in Kenya, drawing attention to the bidirectional relationship between child marriage and poverty. The third section lays out regional and international standards on ending child marriage, focusing on binding treaties, soft law instruments, and interpretive statements by treaty bodies. The fourth section evaluates how Kenya's legal and policy framework aligns with the clear stipulation of 18 years as the minimum age for marriage. The fifth section takes stock of government and civil society initiatives toward ending child marriage at the community level. The conclusion reflects on the next frontier in the effort to end child marriage, offering recommendations on strategic priorities for greater impact where it is needed the most.

II. Hidden in Plain Stats: A County-Level View of the Prevalence of Child Marriage

This section puts more detail to the observation that the national narrative of progress in ending child marriage conceals a much more varied picture at county level. The section draws mainly from county by county comparisons made in a 2021 study commissioned by the campaign Girls Not Brides, which draws from Kenya's demographic and health survey data for 2003 and 2014.¹⁶ This analysis is supplemented with data from the latest demographic and health survey data (2022), which is itself based on the 2019 population census.¹⁷ The 2021 study contains a wealth of insights drawn from disaggregated data on child marriage. For the purposes of this section, we will focus on three aspects of the disaggregated data: juxtaposition

15 Moore, *Semi-autonomous Social Field* (n 11).

16 Fraym, *Deep Dive*, (n 10).

17 Kenya National Bureau of Statistics and others (Kenya DHS 2022) (n 6).

of prevalence of child marriage with county-level poverty rates, analysis of trends in child marriage over time, specific focus on data on marriage under the age of 15.

First, comparative county data on girls aged between 12 and 18 who were actually in marriages or informal unions as of 2019, in relation to the overall poverty rate by county, based on the 2022 Demographic and Health Survey (DHS). The highest and the lowest rates of child marriage are juxtaposed with data on poverty, and it shows clearly that the counties with the highest prevalence of child marriage are also the counties with the highest overall poverty rate. Table 1 below captures this correlation.

Table 1: Highest and Lowest Levels of Marriage of Girls Aged Between 12 and 18 by County¹⁸ Compared to Overall Poverty Rate¹⁹

County	Percentage of girls 12-18 married in 2019	Overall Poverty rate
Highest:		
Mandera	13.6%	72.9%
Samburu	13.4%	71.9%
Tana River	12.4%	66.7%
West Pokot	11.5%	60.1%
Wajir	11.4%	64.3%
Marsabit	11%	66.1%
Garissa	10.4%	67.8%
Turkana	8%	82.7%
Lowest:		
Nairobi	3.2%	16.5%
Kiambu	3.3%	19.9%
Nyeri	3.4%	26%
Makueni	3.6%	44.7%
Nyandarua	3.7%	34.5%
Uasin Gishu	4%	39.9%

¹⁸ Based on analysis by StasKenya (n 7).

¹⁹ Overall poverty rate is defined as the percentage of individuals whose consumption per adult equivalent was less than the overall poverty line of Kshs. 4,358 per month in rural areas and less than Kshs. 8,006 per month in urban areas. See StatsKenya, 'Overall Poverty Rates in Kenya by County' (StatsKenya, 26 May 2025 <<https://statskenya.co.ke/at-stats-kenya/about/overall-poverty-rates-in-kenya-by-county/62/#:~:text=Poverty%20in%20Kenya%20is%20more,and%20Homa%20Bay%20at%2028.2%25>> accessed 26 May 2025).

The counties posting the highest child marriage prevalence rates as well as the highest overall poverty rates are located in the North of the country. The 2021 study came to the same conclusion, disaggregating the 2014 DHS data further to the sub-county level and below to identify ‘hot spots’ in which rates of child marriage averaged as high as 43%, almost twice the national prevalence at the time.²⁰

The evidence linking child marriage to poverty is robust. Among women aged 20-24, those in the lowest quintile of the wealth index are four times more likely to have married before the age of 18 than those in the highest quintile. Those married before the age of 18 are also more likely to work in unskilled manual labour or to be self-employed in agriculture, reinforcing the bidirectional relationship between child marriage and poverty.²¹

It is no coincidence that the counties in which the prevalence of child marriage is highest also fall within the arid and semi-arid zone of the country, with ecosystems classified as fragile and prone to both acute and chronic adverse effects of climate related emergencies, as well as conflict. The literature acknowledges that the impact of these intersecting factors on the dynamic between poverty and child marriage is intuitive, but not fully explored and documented.²² This will be revisited in the fifth section of this article, which discusses initiatives to end child marriage and the challenges they encounter.

The second aspect of interest is the data on trends in child marriage, from a county-level perspective. While nationally the data shows a declining trend, when disaggregated to the county level, it becomes evident that in some counties the rate has either stayed constant over the last two successive decades or gone up. The 2021 study tracks trends from 2003 to 2014 and finds that overall, 60% of Kenya’s 47 counties saw a decrease in prevalence of marriage under 18 between 2003 and 2014. However, several counties recorded an increase. The same variation is observed in relation to marriage under 15. The data is captured in Tables 2 and 3 below:

20 Fraym, Deep Dive (n 10) 64, 66. The study identified the three Northern counties of Turkana, Mandera and Samburu as the ‘hot spots’ for prevalence of child marriage. Turkana’s 8% prevalence contrasts with other Northern counties’ double-digit prevalence, despite having the highest poverty rate. This may be explained by the interventions that were focused on the pockets of high prevalence within Turkana County after the 2014 DHS data analysed in Fraym, Deep Dive (n 10) 67-72. Examples of such interventions include the *Imarisha Msichana* project by the Forum of African Women Educationalists (FAWE), <<https://fawe.or.ke/programs/imarisha-msichana-project/>> accessed 20 June 2025 [hereinafter FAWE, *Imarisha Msichana*].

21 Ibid 47.

22 Harrison CRANK Evidence Review (n 8), 25.

Table 2: Counties with largest increase/ decrease in prevalence of marriage under-18 (2003 to 2014)²³

Largest percentage point (pp) increase		Largest percentage point (pp) decrease	
Isiolo	+18pp	West Pokot	-14pp
Meru	+14pp	Wajir	-14pp
Samburu	+13pp	Kwale	-13pp
Laikipia	+9pp	Kilifi	-12pp
Bomet	+9pp	Narok	-12pp
Nyeri	+7pp	Taita Taveta	-12pp
Kirinyaga	+6pp	Garissa	-11pp
Siaya	+6pp	Mandera	-11pp
Nyamira	+5pp	Mombasa	-9pp
Kisii	+3pp	Makueni	-8pp

Table 3: Counties with largest increase/ decrease in prevalence of marriage under-15 (2003 to 2014)²⁴

Largest percentage point (pp) increase		Largest percentage point (pp) decrease	
Samburu	+16pp	Mandera	-10pp
Tana River	+11pp	Taita Taveta	-6pp
Migori	+6pp	Wajir	-5pp
Laikipia	+5pp	Kilifi	-4pp
Kisumu	+5pp	Baringo	-4pp
Homa Bay	+3pp	Elgeyo-Marakwet	-3pp
Turkana	+3pp	Kitui	-3pp
Kakamega	+2pp	Lamu	-3pp
Narok	+2pp	Nyandarua	-3pp
Garissa	+2pp	Makueni	-2pp

The data on increase and decrease is useful in bringing into focus counties whose prevalence rates may not, by themselves, raise concerns, but ought to be a concern due to the upward trend. This signals the importance of interventions against child marriage in counties such as Meru, Laikipia, Migori and Bomet, which would otherwise escape attention, and calls for analysis of the factors accounting for the upward trend.

²³ Fraym, Deep Dive (n 10) 17.

²⁴ Ibid 23.

The third point of interest in reinforcing the difference that county-level disaggregated data makes is the data on marriage of girls under 15 years of age, shining a spotlight on the worst forms of child marriage, relatively speaking. Anyone looking at the national prevalence of marriage under-15 in 2014 might have dismissed the low figure of 3.8% (rounded off to 4% in data sets)²⁵ as insignificant. However, concern would be triggered by two facts: first, the figure did not vary much from the 2003 prevalence of 3.7%²⁶, putting a question mark on a decade's worth of efforts to end child marriage. The current national figure based on the 2022 DHS stands at 2%, signaling progress in tackling this extreme form of child marriage.²⁷ Of greater concern though, is the disaggregated data by county, which shows that county rates are considerably higher than the national rate. It brings into the spotlight counties that might have appeared to be doing well when the focus was on the broader statistics of marriage under-18, but for which marriage under 15 is a real concern. The disaggregated data on marriage under 15 by county is captured in Table 4 below:

Table 4: Marriage Under-15 by County²⁸

County	Percentage of girls aged 12-15 married in 2019
West Pokot	7.8%
Samburu	7.5%
Mandera	7.2%
Wajir	6.7%
Garissa	6.7%
Marsabit	6.6%
Elgeyo Marakwet	6.2%
Meru	5.9%
Narok	5.9%
Tana River	5.9%

Child marriage in general has adverse effects on child survival and development and goes against the best interests of the child. Marriage under 15, however, has the additionally deleterious effect of curtailing girls' education, thereby denying them the benefit of the one factor that has been shown to be most significant in reducing

25 Ibid 24.

26 Ibid 18; The figure is based on women between the ages of 20 and 24. .

27 See Child Marriage Data, 'Country Profiles: Kenya' (Child Marriage Data, 26 May 2025) <<https://childmarriedata.org/country-profiles/kenya/>> (using KNBS, DHS 2022 data), accessed 26 May 2025.

28 Based on analysis by StasKenya (n 7).

child marriage, thus killing the prospects of a better life for themselves and for their children.²⁹

With this county-level data foregrounding the social, cultural and economic reality that needs to be transformed, the next section discusses the international and regional standards that should guide legal and policy initiatives toward ending child marriage.

III. Regional and international standards on ending child marriage

At the international and regional level treaties and non-binding guidelines have provided a useful benchmark for governments in taking legislative and policy measures to address child marriage. These supra-national measures provide a common reference point for assessing the progress made by governments and other relevant duty bearers toward ending child marriage and other negative practices that impede the realisation of the rights of children, particularly girls who bear the disproportionately disruptive impact³⁰ of child marriage and related practices.

A. Binding treaties

At the international level various treaties set clear expectations regarding the minimum age for marriage and the principle of full consent. The two main ones are the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)³¹ and the United Nations Convention on the Rights of the Child (CRC).³²

CEDAW mandates states parties to ensure that “marriage shall be entered into only with the free and full consent of the intending spouses.”³³ It also calls upon states to eliminate child betrothal.³⁴ Importantly, CEDAW requires states to legally establish a minimum age for marriage, but the text of CEDAW does not set a benchmark for such minimum age. It is significant to note that at the time CEDAW was adopted

29 Female educational attainment (e.g. a mother in a household) has been shown to have a very significant effect in reducing child marriage prevalence. See Fraym Deep Dive (n 10) 30, 37.

30 The child marriage prevalence rate for boys is one-sixth of that experienced by girls. See Anju Malhotra and Shatha Elnakib, ‘20 Years of the Evidence Base on What Works to Prevent Child Marriage: A Systematic Review’ (2021) 68(5) *Journal of Adolescent Health* S51 [https://www.jahonline.org/article/S1054-139X\(20\)30686-8/fulltext](https://www.jahonline.org/article/S1054-139X(20)30686-8/fulltext) accessed 26 May 2025

31 United Nations, convention on the elimination of all forms of discrimination against women (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13 (CEDAW).

32 United Nations, Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3 (CRC) 27531. Other relevant international instruments include: the International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR); International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 (ICESCR); Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (adopted 7 November 1962, entered into force 9 December 1964) 521 UNTS 231; Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (adopted 30 April 1956, entered into force 30 April 1957) 266 UNTS 3.

33 CEDAW (n 32) art 16.

34 Ibid.

(1979), it was not uncommon for the legal age of marriage to be set at 16 years or lower, or for there to be no legal stipulation at all.³⁵

Similarly, the United Nations Convention on the Rights of the Child (CRC) does not stipulate a minimum age for marriage. However, it defines a child as anyone under the age of 18, signaling its stance on the minimum age for marriage.³⁶ In addition, the CRC upholds the child's inherent right to life, survival, and development³⁷ and the right to the highest attainable standard of health.³⁸ Child marriage cuts against these rights.³⁹

At the regional level, the African Charter on the Rights and Welfare of the Child (African Children's Charter) expressly sets 18 as the minimum age of marriage and mandates compulsory registration of marriage.⁴⁰ The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol)⁴¹ similarly stipulates 18 as the minimum age for marriage for women and requires registration of marriages.⁴² The regional standards surpass the international standards in terms of specificity.

The legal clarity of these binding treaties has the potential to reshape national laws, but their incorporation into national laws and their implementation takes place in local spaces, and this entails negotiation with other normative orders such as religion, local customs and traditions. The regional treaties recognise this reality of normative pluralism on the African continent. The Maputo Protocol, for instance, in article 17, calls upon states to guarantee to women the right to live in a 'positive

35 In legal systems originating from the English common law tradition, for instance, a person below the age of 16 could marry with the consent of a parent or a judge. Even now, although all but four jurisdictions globally have enacted 18 as the minimum age of marriage, nearly two-thirds of countries and territories still retain exceptions that allow earlier marriage with parental or judicial consent. See UN Women, *Families in a Changing World: Progress of the World's Women, 2019-2020* (UN-Women 2019) 84.

36 CRC (n 32) art 1.

37 Ibid art 6(1).

38 Ibid, art 24; Humanists International, 'Child Marriage: A Violation of Human Rights' (23 April 2007) <https://humanists.international/2007/04/child-marriage-violationhuman-rights/> accessed 8 May 2025 [arguing that girls aged 10–14 are five times more likely to die in pregnancy or childbirth than women aged 20–24, and girls aged 15–19 are twice as likely to die in pregnancy and childbirth than women aged 20–24].

39 John Mukum Mbaku, 'International Law and Child Marriage in Africa' (2020) 7 *Indonesian Journal of International & Comparative Law* 103, 116.

40 African Charter on the Rights and Welfare of the Child (adopted 11 July 1990, entered into force 29 November 1999) OAU Doc CAB/LEG/24.9/49, art 21(2); see also African Commission on Human and Peoples' Rights and African Committee of Experts on the Rights and Welfare of the Child, Joint General Comment on Ending Child Marriage (2017) 1–2; For countries that have not ratified it, see also African Union, Status List of the African Charter on the Rights and Welfare of the Child (14 February 2023) <https://au.int/sites/default/files/treaties/36804-sl-african_charter_on_the_rights_and_welfare_of_the_child.pdf> accessed 6 May 2025.

41 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (hereinafter the Maputo Protocol) (adopted 11 July 2003, entered into force 25 November 2005) <<https://au.int/en/treaties/protocol-african-charter-human-and-peoples-rights-rights-women-africa>> accessed 13 May 2025.

42 Ibid art 6(b). For a detailed discussion of the Maputo Protocol's provisions on minimum age and consent to marriage, and progress in their implementation see Celestine Nyamu Musembi, 'Article 6: Marriage', in Annika Rudman, Celestine Nyamu Musembi and Tresor Makunya (eds), *The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa: A Commentary* (PULP, 2023).

cultural context', and the opportunity to participate in shaping cultural policies. The African Children's Charter seeks the same outcome for children by calling upon states to take measures to discourage any custom, cultural or religious practice that is inconsistent with the rights contained in the charter.⁴³ Kenya's Constitution reflects this position in Article 2(4) by providing that 'any law, including customary law, that is inconsistent with this Constitution is void to the extent of its inconsistency'.

B. Soft law

'Soft law' refers to the non-binding guidelines that states adopt as a benchmark and further guidance in implementation of their treaty obligations. Soft law frameworks such as Africa's Agenda for Children 2040 provide a complementary strategy to address child marriage within the broader context of child protection and development.⁴⁴ Adopted by the African Union on the recommendation of the African Committee on the Rights and Welfare of Children (ACERWC, the body that oversees implementation of the African Children's Charter), Agenda 2040 makes a ten-point continent-wide commitment to improving the lives of African children by 2040.⁴⁵ It specifically identifies ending child marriage as a key component of the aspiration to protect every child against violence, exploitation, neglect and abuse, one of the ten aspirations.⁴⁶ Agenda 2040 underlines the need for a coordinated approach across governments, civil society, and development organizations.⁴⁷ While not legally binding, this framework serves as a blueprint for action and adopts a multi-sectoral approach that calls for legal reforms to align national laws with human rights treaty standards, social protection programs, education campaigns, and poverty reduction initiatives.

Agenda 2040 refers to the Sustainable Development Goals (SDGs)⁴⁸. Goal 5.3 sets a target for the elimination of child marriage by 2030 as part of attaining gender equality.

Agenda 2040 urges states to adopt national strategies on ending child marriage, as part of a National Plan of Action for Children.⁴⁹ Agenda 2040 is no doubt an essential tool for a coordinated approach to long-term, sustainable change across the continent, but its success is contingent on the political will and resources allocated by member states. Some, like Kenya, have made progress on alignment of national

43 African Children's Charter (n 40), art 21. See also UN Human Rights Committee, 'CCPR General Comment No. 28: Article 3 (The Equality of Rights Between Men and Women)' CCPR/C/21/Rev.1/Add.10 (29 March 2000) para 23.

44 African Union Agenda 2040 (n 4).

45 Ibid 33.

46 African Union Agenda 2040 (n 4) 15, see Aspiration #7: 'Every child is protected against violence, exploitation, neglect and abuse'.

47 Ibid 13, 15.

48 African Union Agenda 2040 (n 4); See also UN General Assembly, *Transforming our World: the 2030 Agenda for Sustainable Development*, (21 October 2015) UN Doc A/RES/70/1 <<https://sdgs.un.org/2030agenda>> accessed 20 May 2025.

49 African Union Agenda 2040 (n 4) 31.

laws with international and regional standards, but have not adopted strategies on ending child marriage.⁵⁰ Agenda 2040 expresses concern about some states, such as Botswana and Sudan, which are yet to accept the international and regional standards, having made reservations to the African Children's Charter itself.⁵¹

The African Union (AU) has also had an ongoing campaign, launched in 2014, toward ending child marriage.⁵² The campaign urges states to eliminate child marriage through legislative reforms, education, and awareness campaigns. Kenya adopted and launched the AU campaign in 2017.⁵³ In 2022, the AU adopted an accountability framework for elimination of practices that are harmful to women and girls, singling out female genital mutilation and child marriage.⁵⁴ The accountability framework is hinged on the regional human rights instruments, combined with investment of resources to guarantee educational and economic opportunities, as well as in engaging men and boys in social change.⁵⁵

Similar guidelines at the sub-regional level can ensure even greater depth of detail and closer coordination. The sub-region of Southern Africa has gone even further to adopt a model law on ending child marriage.⁵⁶ This has been achieved under the auspices of the Southern Africa Development Cooperation (SADC)⁵⁷ Parliamentary Forum. The SADC Model Law adopts the standards in the Maputo Protocol and the African Children's Charter. It incorporates not only sanctions against parties found guilty of child marriage, but also remedies for victims of child marriage, and supportive legal infrastructure such as universal registration of births and marriages. It also calls for measures to address the socio-economic conditions that drive child marriage.⁵⁸

50 Kenya had not finalized its national strategy against child marriage as of 2024. Confirmed by Deputy Director of Children Services at Second Seminar on Marriage, Property and Equality: Reflecting on a Decade of Family Law Reform in Kenya (University of Nairobi and Plan International, Nairobi, 18th June 2024) (seminar report on file with authors) [hereinafter Second Seminar].

51 African Union Agenda 2040 (n 4) 3. Botswana entered a reservation to the African Children's Charter's definition of a child as a person under 18, terming it inflexible and expressing preference for the more fluid approach taken by the UN CRC. Sudan entered a reservation to article 21(2) which calls on states to abolish child marriage, and also to article 11(6) on the right to education as far as it applies to girls who get pregnant.

52 African Union, Campaign to end child marriage in africa: call for action (African Union, November 2013) <https://au.int/sites/default/files/pages/32905-file-campaign_to_end_child_marriage_in_africa_call_for_action-english.pdf> accessed 5 May 2025.

53 See African Union, 'Kenya Launches AU Campaign to End Child Marriage' (African Union, 1 June 2025) <https://au.int/sites/default/files/pressreleases/32188-pr-pr_kenya_launches_au_campaign_to_end_child_marriage-1.pdf> accessed 1 June 2025.

54 African Union, *Accountability Framework on the Elimination of Harmful Practices* (African Union 2022) 4 <https://au.int/sites/default/files/newsevents/workingdocuments/41106-wd-au_accountability_framework_on_the_elimination_of_harmful_practices-english.pdf> accessed 20 May 2025) [hereinafter AU Accountability Framework].

55 Ibid 8-9.

56 See SADC Parliamentary Forum, *SADC Model Law on Eradicating Child Marriage and Protecting Children Already in Marriage* (SADC 2018) <<https://www.girlsnotbrides.org/documents/484/model-law-on-eradicating-child-marriage-and-protecting-children-already-in-marriage.pdf>> accessed 12 June 2025. [hereinafter SADC Model Law].

57 The Southern Africa Development Cooperation (SADC) consists of 15 states in the southern Africa region.

58 See, for example, SADC Model Law (n 56) sections 15, 26.

The East African Community adopted a Child Policy in 2016, whose main focus is harmonization of national frameworks with the regional treaties on children's rights.⁵⁹ It does address child marriage, but the sub-region is yet to agree on an initiative such as the SADC Model Law on Eradicating Child Marriage and Protecting Children Already in Marriage.⁶⁰

Interpretive statements by treaty bodies

The bodies that oversee the implementation of the treaties discussed above have played a critical role in interpreting and clarifying international and regional commitments on ending child marriage. At the regional level, ACERWC and the African Commission on Human and Peoples' Rights (African Commission) in 2017 issued a key interpretive statement: the Joint General Comment on Ending Child Marriage.⁶¹ The Joint General Comment reiterates that the stipulation of 18 years as the minimum age for marriage is binding regardless of any national law stipulating a different age of majority. Significantly, the Joint General Comment expounds on the definition of 'marriage' to cover both formal and informal unions, including those concluded under systems governed by custom or religion.⁶² This ensures that the plurality of systems of marriage that characterises the continent's legal systems is not deployed to defeat the purpose of the treaties.

The Joint General Comment also expounds on the concept of 'free and full consent' and makes it clear that consent in child marriage is inherently flawed, as children are incapable of providing consent. Moreover, the document emphasizes that the consent of a parent or guardian, even when required by law, cannot substitute for the consent of the parties to a marriage.⁶³

The African Court of Human and Peoples' Rights (African Court) has also had opportunity to give authoritative direction on state obligations regarding minimum age and consent to marriage under the Maputo Protocol and the African Children's Charter. In its 2018 judgment in the case of *APDF and IHRDA v Mali*⁶⁴, the African Court ruled that Mali's Family Code offended both the Maputo Protocol and the African Children's Charter. The Code set the age of marriage for males at 18 years, and for females at 16. The Code also made marriage permissible at 15 with parental

59 East African Community, *The east african community child policy 2016* (East African Community Secretariat, 2016) <<https://faolex.fao.org/docs/pdf/mul214449.pdf>> accessed 10 May 2025.

60 Girls Not Brides, 'Youth in Action: Leading the Movement to End Child Marriage in East Africa' (Girls Not Brides, 30 March 2021) <<https://www.girlsnotbrides.org/articles/youth-action-leading-movement-end-child-marriage-east-africa/>> accessed 7 May 2025.

61 African Commission on Human and Peoples' Rights and African Committee of Experts on the Rights and Welfare of the Child, 'Joint General Comment on Ending Child Marriage' (2017) <https://www.acerwc.africa/wp-content/uploads/2018/07/Website_Joint_GeneralComment_acerwc-africancommission_Ending_Child_Marriage_20_January_2018.pdf> accessed 3 May 2025 [hereinafter Joint General Comment].

62 Ibid [6].

63 Ibid [6, 22].

64 *Association Pour le Progrès et la Défense des Droits des Femmes Maliennes (APDF) and The Institute for Human Rights and Development in Africa (IHRDA) v Republic of Mali* (2018), Vol.2 *African Court Law Report* (2017-2018), 380 (hereinafter, *APDF & IHRDA-v-Mali*).

consent. In addition, the African Court ruled that the code's provisions on consent were non-compliant: no sanctions were imposed on religious marriage ceremonies that did not require the physical presence of the parties and ascertainment of the parties' consent, yet these sanctions were imposed on civil marriage ceremonies.⁶⁵

The Court's decision is an important milestone, offering legal clarity on the application of these treaties and setting a precedent for future cases involving child marriage.

At the international level, the CEDAW Committee and the CRC Committee have issued joint declarations emphasising the harmful consequences of child marriage.⁶⁶ Their 2019 joint declaration on harmful practices defines child marriage as a form of forced marriage,⁶⁷ underlining the need for both parties to give full, free, and informed consent to the union.

Interpretive statements at the regional and international level serve as a useful guide to states on aligning their national laws with international human rights standards, ensuring that the legal age for marriage is upheld and that the rights of children, particularly girls, are protected in line with global commitments.

IV. Evaluating Kenya's legal and policy framework

Kenya has made considerable strides in aligning its legal framework with international standards to address child marriage.⁶⁸ Enactment of the Marriage Act in 2014 marked the attainment of this alignment.⁶⁹ For the first time, there was harmony between the Constitution, the law on children, and the law on marriage.

A. The State of the Law Prior to 2014

The journey toward alignment of Kenya's legal framework with international standards on children's rights scored a significant victory in 2001, with the enactment of the Children Act.⁷⁰ The provisions of the Children Act of 2001 were aligned with

65 Ibid [79]- [95].

66 CEDAW Committee and CRC Committee, 'Joint General Recommendation No. 31 of the Committee on the Elimination of Discrimination Against Women/General Comment No. 18 of the Committee on the Rights of the Child on Harmful Practices' (8 May 2019) UN Doc CEDAW/C/GC/31/Rev.1-CRC/C/GC/18/Rev.1. This document, initially adopted in 2014 and revised in 2019, provides comprehensive guidance on state obligations to prevent and eliminate harmful practices, including child marriage, that affect women and children.

67 Ibid, [20, 21, 23]. It defines child marriage as any union where at least one party is under 18 years of age and considers it a form of forced marriage, as one or both parties have not provided full, free, and informed consent.

68 See Republic of Kenya, 'Violence Against Children Survey Report 2023' (Ministry of Labour and Social Protection, 2023) <<https://www.socialprotection.go.ke/sites/default/files/Downloads/vac-report-2023-report-9.pdf>> accessed 10 May 2025.

69 The Marriage Act, No.4 of 2014 consolidated all the laws on marriage, including customary and Islamic law, bringing them under a single statutory framework. It repealed the disparate laws on marriage operating until then. These included the Marriage Act, Chapter 150, Laws of Kenya, and the African Christian Marriage and Divorce Act, Chapter 151, Laws of Kenya.

70 Children Act, No.8 of 2001 (repealed in 2022).

the African Children's Charter. Section 15 prohibited the subjecting of a child to practices such as 'early marriage', which it defined as marriage or cohabitation with a child. It then defined a 'child' as any human being under the age of 18 years, effectively prohibiting the marriage of persons under the age of 18.

However, for 13 years, Kenya's legal framework was caught up in an anomaly: the standard in the Children Act differed from the approach taken by the various laws on marriage operating in Kenya at the time. The marriage laws at the time left room for marriage of persons under 18 years of age. First, both African customary law and Islamic family law's approval of the marriage of girls soon after attaining puberty was regarded as valid. Not only were customary and religious norms on marriage regarded as a valid part of Kenya's family law, these systems of personal law enjoyed special constitutional protection, making it difficult to challenge any discriminatory application or impact of their norms and practices.⁷¹ Second, even the formal statutory laws on marriage at the time anticipated the marriage of persons below 18 years of age. Section 19 of the then Marriage Act required that a person aged below 18 intending to get married must produce written consent from a parent or guardian before a licence or certificate could be issued. Furthermore, the requirement for parental consent could be waived in three instances: if such minor was a widow or widower seeking to remarry⁷²; if no parent or guardian was available, in which case a minister of religion, a judge or a registrar could give consent⁷³; or where a parent or guardian refused consent, in which case the High Court could examine the circumstances and give consent if it deemed it appropriate.⁷⁴

Since the pre-2010 Constitution was silent on a minimum age for marriage, indeed, on the rights of children in general, there was no constitutional standard by which to resolve this anomaly between the Children Act and the laws on marriage.⁷⁵ The enactment of the 2010 Constitution advanced the resolution of this anomaly

71 This special protection was conferred via section 82(4) of the repealed constitution, which introduced an exception to the prohibition of discrimination by stating that the provision on discrimination would not apply 'with respect to adoption, marriage, divorce, burial, devolution of property on death or other matters of personal law'. The constitutions of some African states still contain such personal law exemption clauses. One example is Zambia, discussed in Himonga, this volume (n 1). These clauses exempting customary and religious family law from constitutional scrutiny make it challenging to adopt minimum age and other children's rights standards applicable across the multiple marriage systems. For information on the progress of legislative reforms toward ending child marriage in other African Union member states see African Union, *Marriage Laws in Africa: A Compendium from 55 African Union Member States* (UN-Women & Plan International, 2019) <https://africa.unwomen.org/en/digital-library/publications/2019/03/marriage-laws-in-africa> accessed 16 June 2025.

72 Marriage Act, (Chapter 150, Laws of Kenya) (repealed in 2014), s 11(1)(b).

73 Ibid, sec 21; A similar provision was contained in section 8 of the African Christian Marriage and Divorce Act, Chapter 151, Laws of Kenya (repealed in 2014).

74 Marriage Act, Chapter 150, Laws of Kenya (repealed in 2014), s 22.

75 For criticism of Kenya for non-compliance with international and regional treaty obligations during this anomalous period see ACERWC, 'Recommendations and Observations to the Government of Kenya by the African Committee of Experts on the Rights and Welfare of the Child Concerning the Initial Report on the Implementation of the African Charter on the Rights and Welfare of the Child' <<https://www.acerwc.africa/ar/states-parties/reporting/overview>>accessed 19 May 2025; UN CRC, 'Concluding observations: Kenya' (2007) UN Doc CRC/C/KEN/CO/2, [22]; See also African Child Policy Forum, *Harmonisation of Children's Laws in Eastern and Southern Africa: Country Briefs* (ACPF, 2012), 67.

a great deal. It contains robust provisions on children's rights⁷⁶ as well as an explicit provision recognising that only adults have the right to marry, defining adults as persons who have attained the age of 18 years.⁷⁷ The 2010 Constitution required parliament to enact or amend the existing laws to ensure alignment with the constitution. Specifically, article 45(4) required parliament to enact a law on marriage, recognising the various marriage systems based on custom and religion, but only to the extent that they are consistent with the Constitution.

B. The State of the Law After 2014

The Marriage Act 2014, while recognising Kenya's diverse systems of marriage,⁷⁸ subjects all marriages to the stipulated minimum age of 18 years. It states in section 4 that a person shall not marry unless he/she has attained the age of 18 years. Section 11 makes it clear that a marriage involving a party below 18 years of age is void⁷⁹, which means that such a relationship is incapable of conferring any rights or obligations. It must be pointed out that there is a gap in the law here, which is adversarial to children caught up in child marriage. There ought to be a saving clause giving limited recognition to some rights accruing to such a party. For instance, the pre-2014 applicable law recognized the legitimate status of any child resulting from a void marriage. Zambian law recognizes the proprietary and financial benefits accruing under a void marriage notwithstanding a decree of nullity.⁸⁰ This ensures protection of the interests of child parties to such relationships, and that parties who otherwise bear responsibility for them do not absolve themselves of duties owed. This issue will be picked up again in making recommendations in the concluding section.

In 2022, the law relating to children was overhauled, and the 2001 statute replaced with the Children Act, 2022. The Children Act, 2022 does a thorough job of incorporating the provisions of the African Children Charter⁸¹, including its prohibition of child marriage and 'any other cultural or religious rite, custom or practice that is likely to negatively affect the child's life, health, social wellbeing, dignity, physical emotional or psychological development'.⁸²

76 Constitution of Kenya, 2010 art 53.

77 See Ibid arts 45(2), art 260. The ACERWC committee commended Kenya for this stipulation of 18 as the minimum age of marriage; See ACERWC, 'Concluding Observations by the African Committee of Experts on the Rights and Welfare of the Child (ACERWC) on Kenya's 1st Periodic Report on the Status of Implementation of the African Charter on the Rights and Welfare of the Child', [14]. (2013), <<https://www.acerwc.africa/ar/states-parties/reporting/overview>> accessed 19 May 2025.

78 The Marriage Act, 2014 (Cap 150 of the Laws of Kenya) s 6, recognises five systems of marriage in Kenya: Christian, civil, customary, Hindu and Islamic.

79 Ibid, ss. 4, 11(1)(a).

80 For further discussion of the idea of a saving clause that protects the child's proprietary interests see Himonga, this volume, (n 1). However, even in Zambia this protection is not complete, as it applies only to civil/statutory marriages and not to marriages under customary law.

81 Children Act, 2022 ss 5-9. See enumeration of rights in sections 5 to 29, which mirrors the African Children's Charter.

82 Ibid s 23.

Both the Marriage Act and the Children Act impose criminal penalties for non-compliance with the ban on child marriage. Under section 87 of the Marriage Act, 'any person' found guilty of marrying a person below the minimum age commits an offence and is liable to imprisonment for a term not exceeding five years or to a fine not exceeding one million shillings, or to both. The wording ('any person') suggests that even the under-age person involved may be charged.

The penalty under section 23 of the Children Act (which applies to child marriage as well as other harmful cultural practices) is a minimum prison term of three years or a minimum fine of half a million shillings, or both. The penalty graduates to life imprisonment if the child dies as a result of the harmful practice.

There is an internal inconsistency in the Marriage Act's articulation of the minimum age for marriage. Under section 49(3) it provides as follows: 'Any provision of this Act which is inconsistent with Islamic law and practices shall not apply to persons who profess the Islamic faith.' Without a qualification at the beginning of this provision, this clause can have the effect of ousting sections 4 and 11(1)(b) which invalidate marriages of persons below the age of 18, since under Islamic family law, girls may marry upon attaining puberty. For the record, the High Court's Constitutional and Human Rights Division has ruled unequivocally in the case of *Council of Imams and Preachers of Kenya, Malindi & 4 others -v- Attorney General & 5 others* that the prohibition of child marriage applies across the board to all types of marriages, including Islamic marriages.⁸³ The Children Act 2022 provides an additional safeguard by stating that the Children Act will prevail over any other piece of legislation inconsistent with it, subject to consideration of the best interests of the child.⁸⁴ Nonetheless, this anomaly in the text of the Marriage Act needs to be resolved, as Ndong, this volume, argues in analysing the constitutional petition in question.⁸⁵

These two main statutes on minimum age of marriage are backed up by other legal and institutional measures that support their implementation. Examples of these are the law prohibiting female genital mutilation⁸⁶, the law against sexual offences⁸⁷, and legal requirements for registration of all births and all marriages.⁸⁸ The anti-FGM law along with other laws on sexual and gender-based violence are discussed

83 See *Council of Imams and Preachers of Kenya, Malindi & 4 others -v- Attorney General & 5 others*, (2015) eKLR. Since the facts of the case arose prior to the enactment of the Marriage Act, 2014, it was decided on the basis of section 20 the then Children Act of 2001 (repealed by Children Act 2022), which prohibited exposing a child to harmful cultural practices such as child marriage.

84 Children Act 2022 (Cap. 141, Laws of Kenya) s 4.

85 Evance Ndong, 'Case Review: Key Judicial Pronouncements on Constitutionality of Aspects of Family Law in Post-2014 Kenya' [2025] Special Issue: Marriage, Property and Equality: Reflecting on a Decade of Family Law Reform in Kenya, *East African Law Journal*, 253.

86 Prohibition of Female Genital Mutilation Act, (Cap. 62B of the Laws of Kenya).

87 Sexual Offences At (CAP 63A Laws of Kenya) 2006.

88 See Births and Deaths Registration Act (Cap. 149 of the Laws of Kenya).

extensively in Meroka-Mutua, this volume, highlighting their prospects and the challenges encountered in their enforcement.⁸⁹

The registration of births and marriages are both critical to enforcing minimum age of marriage stipulations.⁹⁰ Indeed, Aspiration #3 of Agenda 2040 is that every birth and other vital statistics are registered, as part of a civil registration system that extends to registration of marriages and deaths. Agenda 2040 observes that such registration is not only vital in curbing child marriage, but also improves access to health care, education, social services and justice institutions.⁹¹ Decentralization of registration systems for accessibility is desperately needed, yet its attainment has been slow, leading to low uptake. The uptake of registration of customary marriage, introduced for the first time under the Marriage Act, has been particularly slow, as is discussed in detail by Njogu and Wameru, this volume.⁹²

A legal framework is only as good as its ability to deliver justice at the community level, and so the challenge of implementation is one that needs to be addressed.

A legal framework also benefits from clear policies, setting out goals and strategies for achieving those goals. Kenya has a National Plan of Action for Children, adopted in 2015.⁹³

Agenda 2040 expected states to have adopted a national strategy on child marriage by 2020, as part of a National Action Plan for Children.⁹⁴ Kenya failed to meet that aspiration; its national plan on ending child marriage is still in draft form.⁹⁵ However, Kenya adopted a National Plan against Sexual Exploitation of Children (2019-2023), which addresses child marriage.⁹⁶ Kenya has also instituted a policy on school re-entry for girls who are pregnant or have had children. The National School Re-Entry Program was instituted in 2020 as a government initiative to reduce school dropout rates among adolescent girl by allowing pregnant students to remain in school until delivery, and guaranteeing them the right, after six months, to either return

89 See Agnes Meroka-Mutua, 'Kenya's Legal Responses to Gender-based Violence: Implications for Women in the Context of Family' [2025] Special Issue: Marriage, Property and Equality: Reflecting on a Decade of Family Law Reform in Kenya, *East African Law Journal*, 183.

90 Girls Not Brides, 'The Law and Child Marriage' (Girls Not Brides, 2023) <<https://www.girlsnotbrides.org/about-child-marriage/law-and-child-marriage/>> accessed 6 May 2025.

91 African Union Agenda 2040), (n 4) 9-10.

92 V. Nyokabi Njogu and E. Gatura Wameru, 'Registration of Customary Marriages in Kenya: A Legal Solution for a Social Problem?' [2025] Special Issue: Marriage, Property and Equality: Reflecting on a Decade of Family Law Reform in Kenya, *East African Law Journal*, 89.

93 Republic of Kenya, National plan of action for children in kenya 2015–2022 (National Council for Children's Services, 2015) <<https://bettercarenetwork.org/sites/default/files/2020-10/National-Plan-of-Action-for-Children-in-Kenya-2015-2022.pdf>> accessed 7 May 2025. There is no indication that the plan has been updated since its expiry in 2022.

94 African Union Agenda 2040 (n 4) 31.

95 Remarks of Deputy Director of Children Services. See Second Seminar (n 50).

96 Republic of Kenya, NATIONAL PREVENTION AND RESPONSE PLAN ON VIOLENCE AGAINST CHILDREN 2019–2023 (Ministry of Labour and Social Protection, 2019) <<https://www.socialprotection.go.ke/sites/default/files/Downloads/National-Prevention-Response-Plan-on-VAC-WEB-v5-July-3-2020.pdf>> accessed 10 May 2025.

to the same school or transfer to another one.⁹⁷ In 2023, a private member's bill was introduced in the Senate, attempting to turn this policy into a law.⁹⁸ However, there has been no progress in its enactment.

The potential impact of a school re-entry law or policy is significant, because being out of school subjects a girl- particularly in the low-income bracket- as a candidate for marriage.⁹⁹ An evaluation of a civil society-led programme intervention in Kajiado West found that vigilant enforcement of the school re-entry program by local officials had played a big role in keeping girls away from child marriage, where the girl had either supportive parents or could get to a rescue center.¹⁰⁰

V. Evaluation of Initiatives Undertaken at Community Level Toward Ending Child Marriage

Studies and policy and programme documents on tackling child marriage invariably identify four factors as the root causes: poverty or lack of economic opportunity; lack of educational opportunities; early pregnancy; and harmful socio-cultural norms that devalue girls (sometimes expressed as attitudes and behaviors that go against the rights and wellbeing of women and children).¹⁰¹ These factors intersect with each other; they are not stand-alone drivers of child marriage.¹⁰²

This section will discuss community level initiatives on tackling child marriage, commenting on the extent to which they address these root causes and complement the legal and policy framework discussed in the preceding sections. The scope of this article does not permit a first-hand evaluation of interventions through primary data. Rather, this article draws from available existing evaluations, whether internal to an organisation or external to it. The focus is on evaluations of initiatives

97 Republic of Kenya, National guidelines for school re-entry in early learning and basic education (Ministry of Education, 2020) <https://www.education.go.ke/sites/default/files/2022-05/2020RH_NationalSchoolReEntryGuidelines.pdf> accessed 10 May 2025.

98 See Care and Protection of Child Parent Bill 2023(Kenya Gazette Supplement No 107 Senate Bill No 29 of 2013)), introduced by Senator Miraj Abdillahi Abdulrahman.

99 Mara Steinhaus and others *"She Cannot Just Sit Around Waiting to Turn Twenty": Understanding Why Child Marriage Persists in Kenya and Zambia* (International Center for Research on Women, ICRW 2016) [hereinafter Steinhaus and others 2016], 6.

100 Joyce Olenja and others, *From "Etigila Entito Enkalamu" to "Eitia Entito Enkalamu": How the YES I DO Programme Changed Lives in Kajiado County in Kenya (Endline Study)* (Royal Tropical Institute, KIT, 2020) [hereinafter *Yes I Do* Endline Assessment].

101 See, for example, the AU Accountability Framework(n 54) 8; Fraym Deep Dive (n 10) 39; Steinhaus and others (n 99) 5,13; Tabither Gitau, and others, *YES I DO: A Baseline Study on Child Marriage, Teenage Pregnancy and Female Genital Mutilation/Cutting in Kenya* (Royal Tropical Institute, KIT, 2016) [hereinafter *Yes I Do* Baseline Study]; Olenja and others *Yes I Do* Endline Assessment (n 100) (; World Vision, 'Ending Child Marriage in Kenya' (WVI, *Evidence Brief*, November 2024); Plan International, 18+ Center of Excellence on Ending Child Marriage <https://plan-international.org/srhr/child-marriage-early-forced/> accessed 23 May 2025; Harrison (CRANK Evidence Review) (n 8) 3-4; Human Rights Watch, Ending child marriage in africa: opening the door for girls' education, health, and freedom from violence (Human Rights Watch 9 December 2015) <<https://www.hrw.org/news/2015/12/09/ending-child-marriage-africa>> accessed 8 May 2025.

102 Harrison (CRANK Evidence Review) (n 8), 4.

undertaken since the enactment of the first Children Act in 2001, with an emphasis on initiatives in the post-2014 period.¹⁰³ The section considers both government-led and civil society-led initiatives.

A. Government-led Initiatives

A frequently cited article written in 2020 undertook a systematic review of 30 evaluations of programmatic interventions across the globe that sought to address child marriage undertaken between 2000 and 2019.¹⁰⁴ Two of the 30 evaluations are of government-led programs in Kenya.¹⁰⁵ The Kenya government relies heavily on funding partners and civil society organisations to carry out work toward ending child marriage, so the initiatives cannot be accurately described as purely government. The programs will therefore be discussed with this in mind.

The first study of a Kenya government-led initiative evaluated a national unconditional cash transfer program targeting orphans and vulnerable children, which is the Kenya government's main anti-poverty programme, examining its impact on pregnancy and child marriage. Launched in 2007, it had been rolled out nationally by mid-2014 and had reached 240,000 households.¹⁰⁶ The programme targeted the ultra-poor, defined as those falling within the lowest expenditure quintile. The qualifying households had to have at least one orphan or vulnerable child (OVC) under the age of 18. Under the program, a monthly sum is paid, covering roughly 20% of the household's expenditure budget.¹⁰⁷ The evaluation took place after the programme had been in operation for four years in the study sites. It concluded that even though delayed marriage was not an explicit objective of the OVC cash transfer programme, it significantly reduced the probability of child pregnancy¹⁰⁸, which is a proven trigger for child marriage.¹⁰⁹

The second study evaluated two programs operated by Kenya's Ministry of Education, the Kenya National AIDS Control Council and an NGO named ICS Africa: an educational subsidy program and an HIV education programme which trained three teachers in each primary school to deliver the national HIV/AIDS curriculum developed with the assistance of UNICEF. This evaluation covered a

103 The scope of the evaluation is also limited by the degree to which an initiative is documented and backed up by reliable data.

104 Malhotra and Elnakib, (n 30).

105 Sudhanshu Handa and others, 'Impact of the Kenya Cash Transfer for Orphans and Vulnerable Children on Early Pregnancy and Marriage of Adolescent Girls' (2015) 141 *Social science & medicine* 36; Esther Duflo, Pascaline Dupas, and Michael Kremer, 'Education, HIV, and Early Fertility: Experimental Evidence From Kenya' (2015) 105 (9) *American Economic Review* 2757.

106 Handa and others (n 105) 6.

107 Ibid. 7.

108 Ibid 11. The study found that the probability of child pregnancy was reduced by five percentage points, compared to sites where the program had not been introduced yet.

109 A comprehensive analysis of demographic and health survey data established that among Kenyan women married under 18, 24% gave birth either before marriage or within 6 months of marriage. Therefore pregnancy outside marriage is quickly followed by marriage. See Fraym (Deep Dive) (n 10) 41.

7-year implementation period in Western Kenya.¹¹⁰ The evaluation found that a reduction in the school dropout rate and a lower rate in pregnancy could be attributed to the education subsidy when implemented as a standalone programme.¹¹¹ One of the study's findings is that for girls who were at risk of dropping out of school (poor), the education subsidy had the combined effect of reducing the dropout rate, delaying pregnancy for up to three years after secondary school completion, and reducing the likelihood of child marriage.¹¹² Poor girls who had benefitted from the subsidy programme were 20% less likely to be married than their counterparts who had not.¹¹³ This is the finding that is significant for purposes of this article, since both school disruption and pregnancy are pathways to child marriage.¹¹⁴

In addition to bursaries from the national government, county governments also operate bursary programmes intended for learners from poor households. These too do not explicitly reckon reduction in child marriages and child pregnancies among their objectives, but the studies discussed above suggest that such a link is to be expected.

B. Civil Society-led Initiatives

This subsection focuses on civil society initiatives. Most civil society organisations engaged in work on ending child marriage belong to the global coalition known as Girls Not Brides, and so this discussion will draw primarily from the coalition's literature, supplemented by organisation-specific literature.

It is accurate to observe that most civil society initiatives have focused on attempting to transform social norms through engagement with community influencers and attitude and behaviour change programmes with adolescents. They support community outreach programs that aim to change social perceptions of child marriage. These initiatives may aptly be characterized as intervening in the contest of legitimacy among the plural normative orders operating at the local level. They try to harness local sources of authority and forums of influence as allies in the entrenching of norms that support the ending of child marriage. Some interventions undertake peer influencing through clubs in schools and other youth forums.¹¹⁵ Some use media such as drama and radio shows to engage youth and their communities in transformative dialogue.¹¹⁶

110 Duflo and others (n 105) 2, 6.

111 Ibid. 2.

112 Ibid. 4,13, 17, 19. The study also presents findings on impact on sexually transmitted diseases, STIs, but that data is not relevant for purposes of this article.

113 Ibid. 14.

114 Fraym (Deep Dive) n 10) 41; Gitau and others *Yes I Do*, Baseline Study (n 101) 12.

115 See, for example, Olenja and others *Yes I Do* Endline Assessment (n 100), 31, 33.

116 See, for example, World Vision, 'Kenya Big Dream: End FGM and Child Marriage', (World Vision 2019) (Program flyer) [hereinafter World Vision, Big Dream].

Others employ the approach of alternative rites of passage to replace FGM which is linked to child marriage since it is seen as the doorway from girlhood to womanhood.¹¹⁷

Community engagement has also been intentional about engaging men and boys as champions against child marriage.¹¹⁸ The Kenya MenEngage Alliance (KEMEA), together with the Margaret Wanzuu Foundation and the UCLA Fielding School of Public Health, implemented the Baba Bora Project. The initiative included workshops that aimed to increase knowledge about sexual reproductive health and masculinities while also discouraging early marriages.¹¹⁹

Civil society initiatives have also emphasised engagement with community leaders such as traditional and religious leaders. In 2020 Plan International's 18+ Center of Excellence on Ending Child Marriage documented its work with traditional leaders in three counties in Kenya: Homa Bay, Kajiado, and Tharaka Nithi.¹²⁰ The engagement entailed working with them to design alternative rites of passage, develop and disseminate social messaging against child marriage, and ways of working in collaboration with government agencies such as the Directorate of Children's Services the police and the judiciary to respond to cases.¹²¹

In Marsabit, the engagement of local elders from the Boran and Gabra communities has fostered support for school re-entry programs, particularly for teenage mothers.¹²² The endline assessment of the *Yes I Do* Alliance's program in Kajiado West found that participants in focus group discussions spoke highly of the role played by churches in prevention of FGM and child marriage. In addition, they appreciated the fact that the NGOs involved in the program held joint training events for religious and traditional leaders rather than separate ones, which ensured consistent transmission of key messages.¹²³ Save the Children has developed a manual on engaging with traditional leaders on issues such as child marriage.¹²⁴ The Inter-Religious Council of Kenya has developed a guide for faith leaders on

117 Ibid.

118 World Vision, *Big Dream* (n 116).

119 MenEngage Africa Alliance, 'Our Generation has the Power to end FGM and Child Marriage' (MenEngage Africa, 2022). <https://menengageafrica.org/news-item/our-generation-has-the-power-to-end-fgm-and-child-marriage/?utm_source=chatgpt.com> accessed 28 May 2025.

120 The publication covers the larger Middle East, Eastern and Southern Africa region. See Plan International, 'Working with Traditional Leaders to End Child Marriage' (Plan International 2020) [hereinafter Plan International, *Working with Traditional Leaders*].

121 Ibid. 13. Plan's 18+ programme also facilitated exchange visits between traditional leaders across Kenya, Malawi, Tanzania and Zimbabwe.

122 County Government of Marsabit, *Marsabit County Magazine 2023* (County Government of Marsabit 2023) 17 <<https://www.marsabit.go.ke/uploads/Marsabit%20County%20Magazine%202023.pdf>>accessed 8 May 2025.

123 Olenja and other *Yes I Do* Endline Assessment (n 100) 30.

124 Save the Children, 'Guidance for Engaging : Child Marriage', <<https://resourcecentre.savethechildren.net/document/guidance-engaging-traditional-leaders-child-marriage>>accessed 23 May 2025.

advocating against child marriage.¹²⁵ Further, World Vision through its Channels of Hope workshops aims to get Christian religious leaders to become champions of child protection and to engage their congregations to take action against abuses such as child marriage.¹²⁶

Some initiatives have components that offer direct support to girls at risk, such as rescue centers that offer shelter and care. In Kajiado West, the *Yes I Do* programme supported religious institutions to provide shelter for girls escaping FGM and child marriage.¹²⁷

Some civil society initiatives have invested in equipping youth and their communities to advocate for responsiveness and accountability from government agencies charged with the obligation of enforcing laws against child marriage and ensuring broader child protection. Examples include World Vision's Citizen Voice and Action groups.¹²⁸

The available information suggests that civil society initiatives have tended to invest in the 'software' of social norm transformation and safe spaces for girls, and not directly in the 'hardware' that is needed to tackle the key root cause of child marriage, namely, poverty. Programming around livelihoods and life skills is rare.¹²⁹ The endline evaluation of the *Yes I Do* alliance's programme in Kajiado West observed that even though the programme's theory of change had a component on addressing poverty and empowering girls with the resources to resist the pull toward child marriage, there was a dearth of economic empowerment interventions in the programme. The only economic activity noted was a Village Savings and Loans initiative, and even that did not feature in participants' evaluation of the programme.¹³⁰ The evaluation noted that opportunities for growing savings were limited, with the main avenue being livestock trading groups that tended to be dominated by groups of young men, with not many opportunities for young women.¹³¹ World Vision's Big Dream programme too features a savings and loans initiative as its only economic empowerment component.¹³² The dearth of livelihood and skills-oriented interventions might be on account of three factors. First, the significant financial investment needed. For instance, it might entail construction or equipping of vocational training institutions, or provision of seed capital for small and medium-scale businesses. Such initiatives have long-term cost implications such as infrastructure maintenance, salaries or advisory and other support services.

125 Inter-Religious Council of Kenya, Walk Free & Global Freedom Network, 'Kenyan Advocacy on Child and Forced Marriage: A Guide for Faith Leaders' (IRCK, WF, GFN, 2023), <<https://cdn.walkfree.org/content/uploads/2023/06/12153750/WF-Forced-and-Child-Marriage-Report.pdf>> accessed 26 May 2025.

126 World Vision, Big Dream (n 116). Available information does not evaluate the success of this approach so far.

127 Olenja and others *Yes I Do* Endline Assessment (n 100) 30.

128 See World Vision, Big Dream (n 116).

129 Harrison, CRANK Evidence Review (n 8) 10, 16-17.

130 Olenja and others *Yes I Do* endline Assessment (n 100) 60, 67.

131 Ibid 32.

132 World Vision refers to them as 'Savings for Transformation' groups, and they incorporate 'wage earners', including former practitioners of FGM. See World Vision Big Dream (n 116).

The second explanatory factor is that the mode of funding of NGOs is oriented toward projects and the duration of projects tends to be limited to an average of two to five years, resulting in a mismatch with the kind of long-term investment needed for social change. Thirdly, a general global trend since the early 2000s has seen NGO programming shift from direct service delivery to advocacy in the name of a rights-based approach to development, which partially accounts for the thin investment in livelihood interventions.¹³³

Nonetheless, there is evidence that some civil society initiatives do invest in equipping young women with the skills that would open up economic opportunity. An example is featured in a 2016 study on the persistence of child marriage in Kenya and Zambia. The Kenya component focused on Kisumu county and featured the Kisumu Medical Education Trust (KMET), which offered vocational training to girls married before the age of 18.¹³⁴ Plan International's programme documents on child marriage identify economic empowerment and employability for women and girls as a key component, but there is no information on actual projects undertaken toward this end in Kenya.¹³⁵ An indirect contribution by civil society toward creating economic opportunities for young women is by working with government to improve school infrastructure and the quality of education. Examples include the Imarisha Msichana project by the Forum of African Women Educationalists (FAWE), which provides practical support to girls to enable them to take advantage of the school re-entry policy. This is expected to have a positive effect on school retention for all children, including adolescent girls, thus preventing child marriage.¹³⁶

C. Joint Initiatives

There are also partnerships between government and civil society that support the enforcement of child protection laws and prevention of child abuse and neglect.

Childline Kenya was founded in 2006 with the support of Plan International, SOS Children's Villages, and the Kenya Alliance for the Advancement of Children (KAACR).¹³⁷ It works as an NGO in partnership with the Directorate of Children Services and a telecommunications company to offer the only toll-free service for reporting child abuse. The government has provided the premises and the network

133 Matilda Aberese Ako, Nana Akua Anyidoho and Gordon Crawford, 'NGOs, Rights-based Approaches and the Potential for Progressive Development in Local Contexts: Constraints and Challenges in Northern Ghana' (2013) 5:1 *Journal of Human Rights Practice* 46; Morten Broberg and Hans-Otto Sano 'Strengths and Weaknesses in a Human Rights-based Approach to International Development – an Analysis of a Rights-based Approach to Development Assistance Based on Practical Experiences' (2018) 22(5) *International Journal of Human Rights* 664, 673; Celestine Nyamu-Musembi and Samuel Musyoki, 'Kenyan Civil Society Perspectives on Rights, Rights-based Approaches to Development and Participation', (2004) *IDS Working Paper No.236*, (Institute of Development Studies, Sussex); Andrea Cornwall and Celestine Nyamu-Musembi, 'Putting the 'Rights-Based Approach to Development' into Perspective' (2004) 25(8) *Third World Quarterly* 1415.

134 Steinhaus and others (n 99) 2.

135 Plan International, 'Economic Empowerment in the World of Work' <https://plan-international.org/publications/economic-empowerment-in-the-world-of-work/> accessed 23 May 2025.

136 FAWE, *Imarisha Msichana* (n 20); See also World Vision Big Dream (n 116).

137 See Childline Kenya, 'About US' <<https://www.childlinekenya.co.ke/>> accessed 28 May 2025.

of Children's Officers who coordinate the response at county and sub-county level. The telecommunications company avails the toll-free number (116), and the NGO employs full-time counsellors and volunteers, made possible by the financial support of a wide range of donors¹³⁸, and partnership with organisations offering services such as medical, legal and rescue services. The service operates on a 24/7 basis. Childline Kenya is part of the global network Child Helpline International, whose goal is to launch the 116 toll-free number as the universally recognized helpline for children.¹³⁹ Twenty-eight African countries have child helplines.¹⁴⁰

Call data shows that child marriage is among the spectrum of child abuse cases reported to the helpline. In 2019 Childline Kenya released a data analysis report, which showed that child marriage reports accounted for 57 of the 962 cases of abuse and neglect reported to the helpline.¹⁴¹ A subsequent report in 2023 showed that of the 3,259 cases of abuse and violence reported to the helpline, 37 related to 'harmful cultural practices' and 790 related to sexual abuse.¹⁴² Child marriage was not reported as a sub-category and no analysis similar to the 2019 data analysis report has been published for subsequent years. Raw data on calls for the period 2014 to 2024 availed to the authors suggests a growing volume of calls year-on-year reporting child marriage.¹⁴³ The helpline data is supposed to be fed into the national Child Protection Information Management System (CPIMS), but it proved impossible to ascertain whether this is operational. The helpline definitely has potential not only as a response service, but also as a mechanism for documenting and tracking child marriage trends and levels of public awareness on the issue in specific localities. The final section of the article picks up on this in making recommendations.

The government has also partnered with civil society organisations to set up Child Protection Centers (CPCs) in various counties. As of 2020, seven such centers had been set up, with the support of organisations such as Plan International.¹⁴⁴ The CPCs have the noble aim of providing integrated services: 'individual assessment, counselling, psychosocial support, legal aid, tracing, reintegration and family

138 Donors and technical support organisations include UNICEF; Terre des hommes, Netherlands; GlobalGiving; CAF America; Child Helpline International; Sexual and Reproductive Health and Rights Alliance-Kenya; and individuals. See Child Helpline International, 'Helplines' <<https://www.childlinekenya.co.ke/>>accessed 28 May 2025.

139 See Child Helpline International, 'Kenya; Childline Kenya' <<https://childhelplineinternational.org/kenya-childline-kenya/>>accessed 28 May 2025.

140 See Child Helpline International, 'Helplines' <<https://childhelplineinternational.org/helplines/>>accessed 28 May 2025.

141 See Child Helpline Kenya, 'Helpline Data Analysis Report January- December 2019' <[https://childlinekenya.co.ke/assets/files/2019\(JanDec\)Helpline%20Data%20Analysis%20Report.pdf](https://childlinekenya.co.ke/assets/files/2019(JanDec)Helpline%20Data%20Analysis%20Report.pdf)> accessed 28 May 2025.

142 Childline Kenya, 'Childline Kenya's Impact Report 2023' (on file with authors. Of the 3,259 abuse and neglect cases reported, 1,351 involved females, 844 involved males, 1,064 were undisclosed).

143 Childline Kenya, 'Child Marriage Data January 2014 to December 2024' (Updated 27 May 2025; on file with authors).

144 See Ministry of Labour and Social Protection, 'Speech by Simon Chelugui, Cabinet Secretary, Ministry of Labour and Social Protection during the official opening of Kilifi Child Protection Centre' (3 February 2020) <<https://www.labour.go.ke/sites/default/files/2022-10/CS-Speech-Handing-over-of-Child-Protection-Centre-Kilifi.pdf>>accessed 23 May 2025.

reunion, rescue services, outreach services, referrals for other services, resource center, and child friendly recreational spaces.¹⁴⁵ The county governments of Kwale and Kilifi, for instance, have partnered with civil society organisations to provide mobile clinics and legal aid services.¹⁴⁶ In some cases, legal support services have entailed something as simple as availing a paralegal to help family members make sense of court proceedings, and providing them with transport money to attend court sessions, meet with Children's Officers, or access other services.¹⁴⁷

Unfortunately, the CPCs are not present in every county. According to the Ministry of Labour and Social Protection, as of February 2020, the government had established six CPCs located in Malindi, Garissa, Nairobi, Nakuru, Kakamega, and Kilifi.¹⁴⁸ Performance and sustainability has been uneven in the counties in which the projects have been handed over to the government. Additionally, the CPCs were intended to contribute to monitoring by keeping child protection data and feeding into a national Child Protection Information Management System (CPIMS). This too has floundered.

Plan International Kenya had a Universal Registration Campaign, which aimed to increase birth registration rates across the country. Despite these efforts, Kenya still registered only 1.19 million out of the expected 1.55 million birth registrations, which is about 300,000 less than the target they had set to achieve by the end of 2023.¹⁴⁹ This highlights the persistent *lacuna* in the civil registration system, especially in the marginalised areas like Wajir, Samburu, Turkana and Marsabit.

Through the assistance of donors and civil society organisations, some county governments have developed child protection policies. Examples so far include the counties of Kwale,¹⁵⁰ Bungoma,¹⁵¹ and Homa Bay.¹⁵² As of October 2024, Nairobi

¹⁴⁵ Ibid.

¹⁴⁶ County Government of Kwale, Kwale County Child Protection Policy 2024 (County Government of Kwale, 2024) <<https://kwale.go.ke/wp-content/uploads/2024/12/kwale-gender-and-social-inclusion-policy-2024-draft.pdf>> (note: the file is mis-named; it contains the Kwale County Child Protection Policy; accessed 23 May 2025; See also <<https://www.labour.go.ke/sites/default/files/2022-10/CS-Speech-Handing-over-of-Child-Protection-Centre-Kilifi.pdf>> accessed 23 May 2025, [hereinafter Kwale County Child Protection Policy].

¹⁴⁷ Remarks of Plan-Kenya staff on their work with local paralegal organisations and Court Users Committees in Kwale County, at First Seminar on Marriage, Property and Equality: Reflecting on a Decade of Family Law Reform in Kenya (University of Nairobi and Plan International, Nairobi, 25th April 2024).

¹⁴⁸ Ministry of Labour and Social Protection, 'Speech by Simon Chelugui, (n 144).

¹⁴⁹ Civil Registration Services, *Kenya Vital Statistics Report (KNBS 2023)*; <<https://www.knbs.or.ke/wp-content/uploads/2025/01/2023-Kenya-Vital-Statistics-Report.pdf>> accessed 29 May 2025.

¹⁵⁰ Kwale County Child Protection Policy, (n143). Kwale's policy was developed with support from the International Labour Organisation's CAPSA project (Capacity Strengthening of Governments to Address Child Labour, Forced Labour, and Violations of Acceptable Conditions of Work in Sub-Saharan Africa).

¹⁵¹ County Government of Bungoma, *Children Policy* (County Government of Bungoma 2023), <<https://www.bungomaassembly.go.ke/sites/default/files/download/Public%20Participation/Bungoma%20County%20Children%20Protection%20Policy%202023.pdf>> accessed 27 May 2025. The county government acknowledges the support of civil society and faith-based organisations in the making of the policy.

¹⁵² County Government of Homa Bay, *Homa Bay County Child Welfare and Protection Policy* (County Government of Homa Bay 2024) <<https://www.kenyanews.go.ke/child-protection-policy-launched-in-homa-bay/>> accessed 27 May 2025.

County was also in the advanced stages of finalizing its Child Protection and Safeguarding Policy.¹⁵³ A Technical Working Group (TWG), comprising county officials, legal experts and representatives from organizations such as World Vision, was convened to refine the policy based on feedback from previous cabinet presentations.

The adoption of county level child protection policies needs to expand to cover all county governments to ensure ownership, which should be followed up with implementation measures at sub-county level.

VI. Conclusion: What is the Next Frontier in the Fight against Child Marriage?

"When we ask ourselves whether a social or legal practice works, we must ask ourselves, 'works for whom?'..."¹⁵⁴

It is plausible to argue that Kenya's legal framework against child marriage works. It firmly entrenches 18 as the minimum age for marriage in its constitution, in the law on marriage, and in the law on children. Besides, statistics show the national prevalence of child marriage declining steadily over the last two decades to stand at 13%. From a human rights perspective, however, thirteen girls in a hundred getting married is 6,815,678 too many.¹⁵⁵ Even one, for that matter, would be one too many. The legal framework cannot be said to work for them. Each childhood lost matters; it is not about aggregates, as utilitarian thinking would have it.

This article started out by presenting county-disaggregated data to make the point that the national narrative can mask a varied picture and risk minimising the urgency of taking action in the pockets of child marriage in various counties. Agenda 2040 calls on states to invest in data collection so as to provide a foundation for evidence-based interventions and targeted action tailored to the specific needs of different regions and communities.¹⁵⁶ County-disaggregated data must translate into targeted action and tangible change at community level and ultimately, in the lives of the girls at risk. Data matters, but more important is what data matters for.

This article also reviewed evaluations of initiatives undertaken by government and civil society at the community level in the effort to end child marriage. Here too the

153 County Government of Nairobi, Technical Working Group (TWG) Workshop: Fine-Tuning the Child Protection Policy (County Government of Nairobi 2024) <<https://nairobi.go.ke/technical-working-group-twg-workshop-fine-tuning-the-child-protection-policy/>>accessed 29 May 2025.

154 Joseph Singer, 'Property and Coercion in Federal Indian Law: the Conflict Between Critical and Complacent Pragmatism' (1990) 63 *Southern California Law Review* 1821, 1841.

155 This figure is based on the Kenya National Bureau of Statistics' estimate of Kenya's population as of mid-2024, at 52,428,290<<https://www.knbs.or.ke/>> accessed 27 May 2025. Other estimates give a higher figure; See, for example, an estimate of 57,323,930 by Macrotrends, 'Kenya Population' <<https://www.macrotrends.net/global-metrics/countries/ken/kenya/population>> accessed 27 May 2025.

156 African Union Agenda 2040 (n 4) 26.

paucity of data was acknowledged.¹⁵⁷ Initiatives at the community level are poorly documented, whether by government or civil society, and whatever documentation exists had to be supplemented by numerous in-person inquiries where possible. There is certainly room for improvement to ensure timely and relevant data on what works. Evaluation of the impact of initiatives at the community level must take the long view because processes of social and economic change generally unfold over a long period of time. Data from an evaluation that is constrained within short donor-driven project timelines can only be indicative at best.¹⁵⁸ UNICEF and UNFPA have acknowledged the need for longer evaluation frameworks, with clearer definition of target groups, a wider range of both quantitative and qualitative data sources, including participatory research with adolescents.¹⁵⁹

Such long-term comprehensive research requires investment by bodies that have more permanence in a community, such as government agencies. It is therefore important for the Kenya government itself to invest in robust research, monitoring and evaluation processes that take the long view and that are contextualized beyond county and sub-county to community level. Some studies have shown that such detailed contextualization is possible and immensely useful in identifying hot spots and tailoring strategies to each locality's unique dynamics.¹⁶⁰ In order for this to be sustainable, government budgeting and financing would need to prioritise research, monitoring and evaluation. At the moment, it does not seem to be a priority, as witnessed in the underfunding of the CPIMS.

This article also analysed the state of Kenya's legal framework before and after the enactment of the Marriage Act in 2014. It is aligned with international and regional human rights standards on ending child marriage, save for the need for a saving clause to safeguard interests of 'child spouses' and their children following annulment of a void marriage. This calls for an amendment to insert such saving clause in section 11 and section 73 of the Marriage Act. One other legislative reform proposed here is the qualification of section 49(3) of the Marriage Act on application of the Islamic law of marriage, to indicate that it is subject to the minimum age provision in section 4.

The article noted initiatives by government and civil society to implement Kenya's legal framework. It argued for robust implementation measures such as strengthening and resourcing child protection systems, and commended efforts that have engaged with local institutions and community members to address child marriage. Keeping the dialogue on awareness and accountability alive at the community level is

157 Handa and others (n 105) 5.

158 The constraint of donor-driven project timelines plagues virtually all the child marriage impact evaluations discussed here. The *Yes I Do* programme was a four-year program. The Handa study took place four years after the launch of the cash transfer programme evaluated. Some studies cited in Malhotra & Elnakib had only a two-year time frame.

159 Harrison CRANK Evidence Review (n 8) 29.

160 Fraym, Deep Dive (n 10).

part of moving away from a culture of impunity which is crucial to changing the social norms that perpetuate child marriage. Importantly, engagement with local institutions is indispensable, bearing in mind the legitimacy contest among plural sites of norm generation. The campaign against child marriage will have higher chances of success if local structures of authority that already enjoy a measure of legitimacy are consistently harnessed for the cause.

This article also recommends doing more to harness the immense potential that the 116 toll-free helpline and county and local level child protection centers offer for detailed documenting and monitoring of child marriage trends and levels of public awareness in specific localities, thus enabling customised response measures. This calls for adequate resourcing of child protection centers and Childline Kenya's monitoring and evaluation, as well as partnerships with research entities for in-depth analysis of data from the helpline.¹⁶¹

There must be concomitant investment in a comprehensive civil registration system that incorporates universal registration of births and marriages. This is an indispensable component of the legal and institutional framework on ending child marriage. Njogu and Wameru, this volume, discuss the low uptake of registration of customary marriages, despite the Marriage Act 2014 having made it mandatory.¹⁶² Gaps such as this have implications for child marriage and must be addressed.

The article has also made it clear that although the existence of a favorable constitutional and legal framework is a crucial foundation in the fight against child marriage, it is not sufficient on its own.¹⁶³ Measures must address the intersecting root causes of child marriage, which have been identified as poverty and lack of economic opportunities, lack of educational opportunities, early pregnancy and the continuing acceptance of social norms that devalue girls.

Efforts to end child marriage must respond appropriately to the evidence of a bidirectional relationship between poverty and child marriage, which was vividly illustrated in Kenya's county-level data. Being poor increases the risk of child marriage, and being married as a child predisposes one to poverty.¹⁶⁴ Additionally, survey data shows that low rates of adult employment were the factor most strongly associated with higher prevalence of child marriage. Female adult employment, like higher female educational attainment shows the highest correlation with low

161 Currently, available research based on analysis of child helpline services tends to be on the European and Australian helplines, even when it claims to be 'international'. See, for example, Cristian Dogaru and Emma Bond, 'Awareness of the 116 111 child helpline number' (Child Helpline International & University of Suffolk 2017); Christopherson, R. James. 'The impact of children's helplines: An international comparison' (1992) 6 (4) *Practice* 299 (comparing UK, Irish Republic and the Netherlands). The classification of issues in 'global' reviews available does not isolate child marriage; See Ruben Georges Fukkink, Suzan Bruns and Rudy Ligtvoet, 'Voices of children from around the globe; An international analysis of children's issues at child helplines' (2016) 30(6) *Children & Society* 510.

162 Njogu and Wameru, 'this volume', (n 92).

163 Harrison CRANK Evidence Review (n 8), 20, 22.

164 Handa (n 105) 2.

prevalence of child marriage.¹⁶⁵ This signals the need to incorporate impact on child marriage among the objectives of programmes in education and programmes on employment creation or capital support to small and medium scale enterprises.

A word of caution is in order nonetheless: the data linking lower prevalence of child marriage to higher rates of female adult employment and female educational attainment may make it seem intuitive to argue that it would be sufficient to intervene only at the level of livelihoods. It seems intuitive to argue that raising income levels for poor households and targeting economic opportunities at women would address child marriage. However, there is concern in the literature that economic interventions must still be accompanied by an intentional focus on norm transformation, otherwise improved livelihood security may very well reduce rates of child marriage but leave intact the underlying devaluing of girls and women in the social attitudes that undergird practices such as child marriage.¹⁶⁶ There must also be an intentional focus on fostering healthy attitudes and behaviour around sexuality among young people, which is essential in addressing early pregnancy.¹⁶⁷

There is near-universal consensus that education, specifically, free secondary education, is a non-negotiable component of any intervention on child marriage.¹⁶⁸ The Malhotra and Elnakib study of evaluations of child marriage interventions concluded that globally, cash or in-kind programmes that supported girls' school attendance and progression showed 'the most definitive pattern of success in preventing child marriage'.¹⁶⁹ However, such interventions address the demand side of education and must be accompanied by investment in supply side interventions, namely, improvement in quality of education so as to guarantee transition into economic opportunities. Visible failure of educational attainment to translate into economic opportunity has dampened perception of the value of education.¹⁷⁰ Vocational and entrepreneurship training must be a key component. Without these complementary investments, cash transfers and bursaries will be no match for the social and economic pressure to marry early.¹⁷¹

In the education sector too, the potential for collection of data in the course of routine operations could be harnessed further. School-level data on learner progression disaggregated by gender and age could be made available at local, county and national level on a timely and regular basis. This would prove useful in identifying points of vulnerability to school drop-out, which has been shown to correlate with child marriage, permitting timely and targeted preventive intervention. Education

165 Fraym, Deep Dive (n 10) 28-30.

166 Harrison CRANK Evidence Review (n 8) 11, 18.

167 Ibid 12-14.

168 Ibid 6; Steinhaus and other (n 99) 6; Duflo and others (n 105) 2.

169 Malhotra and Elnakib, (n 30) 13. Eight out of 10 such interventions were rated highly successful.

170 Olenja and others *Yes I Do* Endline Assessment (n 100) 60-61.

171 Harrison CRANK Evidence Review (n 8) 9.

sector data can be triangulated with localized health data to strengthen the evidence base for interventions.

Without the investments outlined here, legal stipulations to end child marriage will find themselves outpaced in the fierce contest of legitimacy among the plural normative orders operating at the local level.

A Journey of Five Decades: Family Law Reform in Post-Colonial Kenya (1967-2015)

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School of Law, University of Nairobi
P. O. Box 30197-00100, Nairobi, Kenya

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