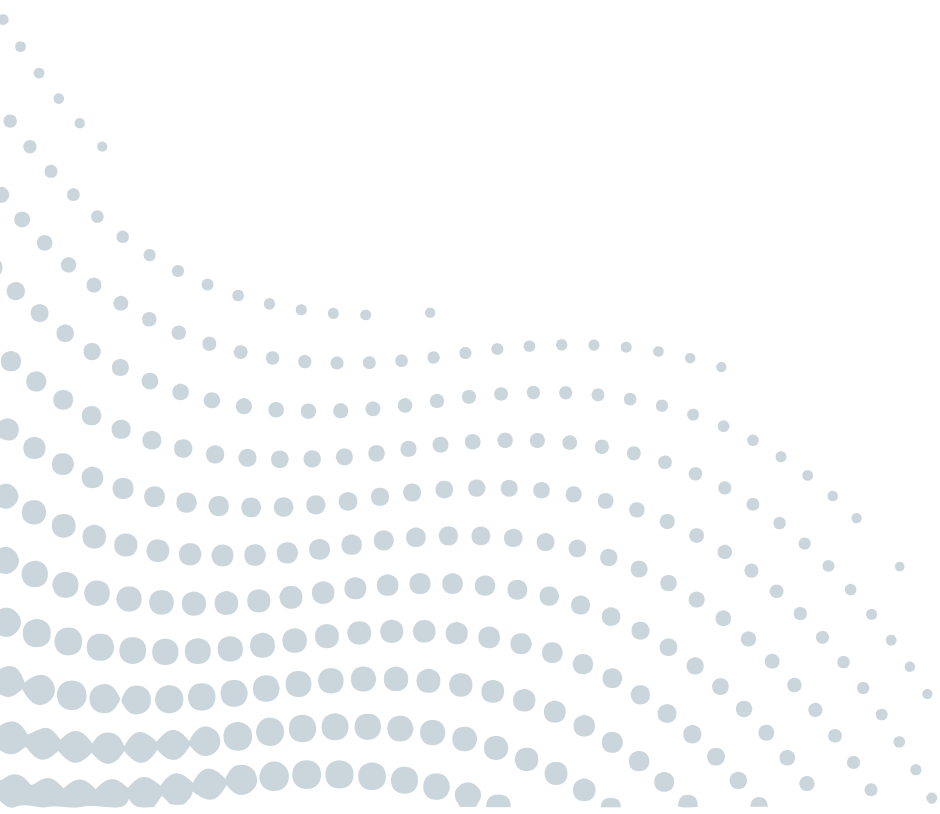


**ENDING CHILD MARRIAGE IN ZAMBIA:
IMPLICATIONS AND CONSIDERATIONS FOR
ACCELERATING PROGRESS IN THE CONTEXT OF
ZAMBIA'S MARRIAGE (AMENDMENT)
ACT NO. 13 OF 2023**

POLICY BRIEF



The development of this policy brief was led by Population Council Zambia in collaboration with the Gender Division under the Office of the President and the CSO Network on Ending Child Marriage, UNFPA, UNICEF and other actors in the aftermath of the historic Marriage (Amendment) Act on 26 December 2023. The work was made possible with existing funding support from the Government of Sweden to UNFPA and its partners, who are implementing the Gender, Adolescent Pregnancy and Social Norms (GAPS) Programme. The programme has an ambitious goal of reducing adolescent pregnancy by 5% in Eastern and Southern Provinces by 2024, by addressing gender and social norms. Using a socio-ecological model approach, the GAPS programme champions community-driven initiatives. This work was also made possible with support from the governments of Belgium, Canada, Ireland, the Netherlands, the United Kingdom, the European Union, Nora, and ZONTA International through the Ending Child Marriage (ECM) programme.



BACKGROUND

Summary of the Problem and Renewed hope

- Despite worldwide recognition of child marriage as a human rights violation, many girls remain silent victims of the scourge.
- Child marriage deprives children of their ability to enjoy healthy childhood as it exposes them to various health and physical risks that compromise their wellbeing.
- Girls who are married as children are more likely to be of school-going age, putting them at heightened risk of
 - Deaths during pregnancy and childbirth, HIV vulnerability, gender-based violence (GBV) depression and emotional distress;
 - Compromised opportunities for their participation in socio-economic development.
- Yet in Zambia, child marriage and its adverse consequences have persisted;
- Inequitable gender norms that hinder decision-making by female counterparts, including gender-based violence GBV, increase vulnerability of adolescent girls to child marriage and early unintended pregnancy.

The Zambia Marriage (Amendment) Act No. 13 of 2023 offers a promising legal tool to counter the harmful practice of child marriage and bring hope to the girl child. It presents an urgent need to accelerate elimination of child marriage. This policy brief, developed by taking into account views from multiple consultations, explains how we can all be involved.

Current law and policy framework - why this policy brief is needed now.

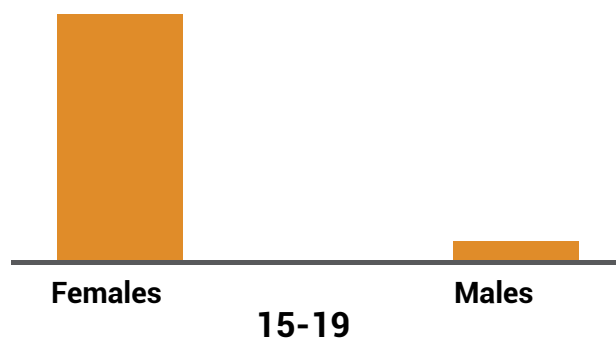
While there is UN-led world-wide recognition that child marriage is a violation of girls' and women's human rights, many girls remain unsuspecting victims of the global misfortune (United Nations Secretary General's Envoy on Youth, 2016). Defined as a formal marriage of a person below the age of 18 (UNICEF, 2021), child marriage not only deprives children of their ability to enjoy their childhood, go to or complete school, aspire to and realize a future of their choice; but it also exposes them to various health and physical risks that compromise their wellbeing. Girls who are married as children are more likely to be of school-going age and are subjected to suffering in many forms. Often, they suffer various negative consequences such as vulnerability to HIV, physical injury due to gender-based violence; psychological problems that may include depression and emotional distress; dissatisfaction with marital life that creates stressful situations leading to mental health challenges; and early and unintended pregnancy that may contribute

to adverse health consequences such as low birth weight of their offsprings, and unsafe abortions that may cause injury and death (Yoosefi Lebni J, 2023). Early pregnancies could also contribute to their deaths from complications during pregnancy and childbirth. The impact of child marriage extends to undermining national economic growth by contributing to inter-generational poverty. Despite the array of negative consequences of child marriage, this practice still persists in Zambia. However, in a promising move, the government of the Republic of Zambia recently enacted the Marriage Amendment Act No. 13 (2023). This policy brief is in response to this recent positive development, and discusses the details of this legislation, as well as its potential benefits. It further espouses the implications of the Amendment Act, highlighting roles and responsibilities of various actors who can contribute towards ensuring an end to child

Current data, who is affected?

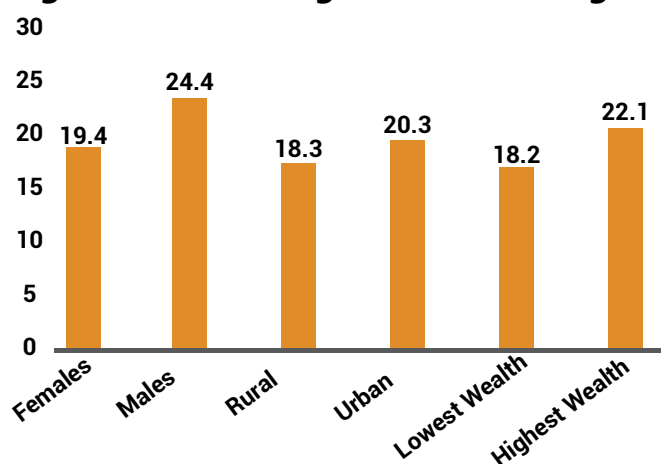
Although child marriage affects both boys and girls, girls are disproportionately more affected. According to the 2013–2014 Zambia Demographic Health Survey (ZDHS), Zambia is home to 1.7 million child brides. Of these, 400,000 were married before age 15 (UNFPA-UNICEF).

Figure 1: Percent distribution of adolescents aged 15–19 years currently married.



The 2018 ZDHS reports that among adolescents 15–19 years old, 14.4% females are currently married as compared with only 1.1% males of the same age and 9% of women aged 25 to 49 years were first married by the age of 15, as compared to less than one percent of men.

Figure 2: Median age at first marriage for 25–49-year-olds.



The median age for first marriage for females is 19.4 years compared to 24.4 years for males which suggests that close to half of girls in Zambia are married before age 19. Child marriages are more prevalent in rural than urban areas, and those in the lowest wealth quintile. In rural areas the median age at first marriage for 25–49-year-olds is 18.3 compared to 20.3 among their urban areas counterparts, while it is 18.2 among those in the lowest wealth quintile compared to 22.1 years among those in the highest wealth quintile.

Geographically, of Zambia's 10 provinces girls get married younger in Eastern and Luapula provinces, with a median age at first marriage of 17 and 18 years respectively, when compared to Northwestern and Lusaka provinces where it is 19.1 and 20.1 respectively (Zambia Statistics Agency, Ministry of Health, and ICF, 2019).

Historical snapshot of Zambian policy and legislation to combat child marriage

To end child marriages, Zambia, which has ratified the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), United Nations Convention on the Rights of the Child (UNCRC) and the African Charter on the Rights and Welfare of the Child (ACRWC) has enacted laws to protect children, particularly girls, from child marriage. The Education Act No. 23 of 2011 in section 18 (1) and 2 (a), (b) prohibits a learner who is a child to marry or anybody to marry off a learner who is a child. The 2022 Child Code Act No. 12 of 2022, which domesticates the UNCRC and the ACRWC, in section 18(2)(a) prohibits child marriage stating that "a person shall not subject a child to child marriage," and provides a penal sanction in section 27 for any person who infringes this right. It empowers the courts, in section 170(1)(g) to render the marriage of a child void. In December 2023, Zambia amended the Marriage Act by enacting the Marriage (Amendment) Act No. 13 of 2023 hereinafter referred to as the Marriage (Amendment) Act 2023, which has declared a marriage between persons either of whom is a child to be void. Such a marriage cannot be recognised and is deemed to have not existed from the outset. The Amendment Act now categorically prohibits child marriages, whether conducted under customary or statutory law. This amendment is in accordance with the Constitution of Zambia's definition of a child which provides that a child is a person below the age of eighteen.

The enactment of this Marriage Amendment signifies an important step towards reducing and eventually ending child marriage in Zambia. It can also be seen as laying the groundwork for progressive legislation towards transformative gender norms, where adolescent girls can access opportunities accorded to their male counterparts, and also has potential to spur a positive impact towards Zambia's quest for equitable socio-economic development. The Act further provides a legal framework that is consistent with the global need to protect children from the risk of early marriage.

The significance of the Marriage (Amendment) Act 2023: What it means and its implications for ending child marriage in Zambia

Marriage in Zambia is regulated by a dual legal system – statutory law and customary law. Under statutory law, the principal law that governs marriage is the Marriage Act, Chapter 50 of the laws of Zambia (referred to as principal Act), which prescribes what constitutes a marriage, solemnises marriages, and provides for penalties on breach of the law. Customary law on the other hand, regulates marriages dependent on customs of ethnic groups that exist in Zambia. The Amendment Act has amended sections 33 and 34 of the principal Act and has regulated customary law as it applies to marriages. The significance of these amendments is described below.

Definition of the term “Child”

Section 2 of the Marriage (Amendment) Act 2023 has amended the principal Act by inserting a definition of a child. The term child has the same meaning assigned to it in the Constitution. The Constitution in Article 266 defines a child as “a person who has attained, or is below, the age of eighteen years.” This means that 18 years is the age of majority, and as per the Marriage (Amendment) Act 2023, it is illegal to marry before a person has attained the age of 18 years. This is significant because, given that the Constitution is the supreme law of the land, it sets a standard age that will guide other laws that deal with child marriages. For instance, the Education Act that prohibits marriage among school learners and the Anti-Gender Based Violence Act, No. 1 of 2011 that includes forced marriage and child marriage as part of gender-based violence defines a child as a person under the age of 16. Under customary law, there is no numeric age to determine adulthood. A person is regarded to have become an adult when they have reached puberty and have undergone some form of initiation into adulthood which can occur at an age as early as 12 years. Such loopholes in the statutory and customary law enabled child marriages in Zambia. Therefore, applying a standard definition of a child protects children from child marriages.

Section 3 of the Marriage (Amendment) Act 2023 repeals Section 33 of the principal Act, replacing it with the following: “a marriage between persons either of whom is a child, is void.” Prior to the amendment, Section 33 in the principal Act allowed child marriages. Although the Act specified that a marriage between persons either of whom is under the age of sixteen years shall be void, it however allowed children below sixteen to be married provided a Judge of the High Court gave consent if he or she deemed that the marriage of a child was not contrary to public interest. This conflicted with Article 3(1) of the UNCRC, that dictates that when dealing with matters concerning children, the best interest of the child is the primary consideration and not public interest. The repeal of section 33 therefore has taken away the power of the high court to accept marriage of a child as valid. If a person who is below the age of 18 contracts a marriage, that marriage is void right from the beginning – it cannot be recognised at law.

Amendment Act comprehensively prohibits child marriage

Customs vary across different ethnic groups in Zambia, however, there are five criteria that validates a customary law marriage: a) the person should reach puberty, b) there should be parental or guardian consent, c) marriage negotiations should take place, d) there should be payment of dowry (lo-bola), and e) a specific selected ritual signifying marriage should be performed (e.g., a wedding) (Mushota, 2005). In the 1949 case of *R v Chinjamba* (which has not been overturned), the court affirmed that a child below 16 can be lawfully married under customary law. In that case the court was asked to determine whether a villager who had married a girl who was under the age of sixteen and the village headman who knew of this development but did not disclose nor report the matter to the authorities should be held liable for the offence of defilement of a minor. The Court ruled that one cannot defile a girl lawfully married to him under customary law (Zambia Law Development Commission). If a child is legally married, the offence of defilement does not apply.

In summary, the amendment nullified section 33 of the Marriage Act, which previously permitted the marriage of children, even those as young as 15. Instead, the law now renders any marriage involving a child void. It is noteworthy that this restriction now extends to marriages conducted under customary rites, closing a significant legal loophole that previously allowed child marriages to persist within cultural contexts.

Prosecutorial challenges will no longer be compounded by the lack of application of the Defilement provision under Section 138 of the Penal Code, Chapter 87 of the Laws of Zambia, in instances of child marriage under customary rites. The earlier case of *Rex V Chinjamba* (1949) set a precedent that permitted sexual relations with a girl under sixteen within the context of lawful marriage. However, the 2023 Amendment Act now criminalizes this, ensuring that girls are now protected from sexual offenses, including defilements committed under the guise of legitimacy within customary marriage. This means that prosecutors can robustly prosecute perpetrators of this vice.

The amendment of Section 34 of the principal Act has outlawed contracting child marriages under customary law and therefore this legal precedence no longer applies. In section 4 of the Marriage (Amendment) Act 2023, the principal Act is amended by the repeal of section 34 and the substitution of that section with a new section that recognises the validity of customary marriage, and subjugates customary law marriages to section 33. Section 33 is the one that declares that a marriage between persons either of whom is a child, is void rendering all customary law marriages of persons under the age of 18 invalid. No child can be subject to a marriage.

Penalties for breaching the law.

The observance nature of the law is in its sanctions against those that violate it. A person violating the law against child marriage will be liable to punishment as prescribed in Section 45 of the Principal Act which states that “whoever goes through the ceremony of marriage, or any ceremony which he or she represents to be a ceremony of marriage, knowing that the marriage is void on any ground and that the other person believes it to be valid, shall be liable on conviction to imprisonment with or without hard labour for a period not exceeding five years.” In addition, the Children’s Code Act which also prohibits child marriage in Section 27 prescribes penalties for violating a child’s rights and it states “except as otherwise provided in any other written law, a person who willfully or negligently infringes a right of a child specified in this Act commits an offence and is liable, on conviction (a) to a fine

not exceeding one million penalty units or to imprisonment for a term not exceeding ten years, or to both; or (b) depending on the facts of the case, to community service.”

The Education Act in Section 18 further provides penal sanctions for any person who:

- 1) marries or marries off a learner who is a child;
- 2) who prevents or stops a learner who is a child from attending school for the purpose of marrying or marrying off the learner who is a child, to imprisonment for a minimum of 15 years and may be liable to imprisonment for life. With the protective measures under these three laws, that is the Children’s Code Act, the Education Act and the Marriage (Amendment) Act 2023, Zambia’s legislative framework now offers robust protection of all children, in diverse contexts, from the practice of child marriage.

What will it take for Zambia to eradicate child marriage, and what actions have worked globally?

Although Zambia has introduced progressive laws against child marriage, it will take more than the law to end it. Children and society at large will more fully benefit from the law when Zambia embarks on a transformative process that both addresses social, cultural, and gender norms that perpetuate child marriages, and also creates a community-owned supportive environment for its full enforcement. Norms consist of a complex array of powerful shared beliefs, rules, and practices that have evolved over a long period of history that influence people’s behaviours (Manji, 2016). Globally, factors that have been shown to contribute to ending child marriage include keeping girls in school (World Bank, 2017), improving livelihoods and economic rights; shifting individual and collective norms, increasing the voice, choice and agency of girls and women and enforcing laws against child marriage, and empowering girls through creating spaces for them to speak openly about education, identity and sexuality (UNICEF, 2023). As such, various stakeholders need to work together to begin to transform norms and systems that have over many years enabled and perpetuated child marriages. The following are some of the key stakeholders and their roles, while working toward ending child marriages in Zambia.

For Zambia to realise the benefits of this progressive law towards ending child marriage, the law ought to be observed & enforced. The following are needed to ensure its fulfilment.

- a) Have strong community-owned and community-led programmes that will transform negative social, cultural, and gender norms that perpetuate child marriage and to empower people to despise and abandon child marriages.
- b) Ensure citizen participation in social accountability frameworks through civil society, cooperating partners, and parliamentarians to hold duty bearers accountable for eliminating child marriage.
- c) Empower families with knowledge on why they should not consent to child marriage.
- d) Enable effective coordination among law enforcement agencies prosecution service and the judiciary (courts systems) to ensure that people that violate the law are arrested, prosecuted, and if found guilty punished.

Enforcement activities needed and the roles of traditional, faith and other leaders to achieve positive results and accelerate progress are highlighted below, within a 10-point action levels acceleration agenda

1. Parents and positive parenting: The family is the basic unit in which children learn norms, including gender norms. To overcome norms that view child marriages as acceptable, families must promote positive parenting that protects children against child marriages even if adolescents themselves express the desire to marry. This entails treating girls and boys equally from the beginning, nurturing their development regardless of gender and helping to create a foundation where children, regardless of gender, can grow into individuals empowered to make their own decisions and resist pressures towards early marriage.

2. Chiefs and other traditional leaders: There are 283 chiefs in Zambia who are custodians of customs and cultural practices among the people they oversee. Each Chief is supported by an array of other traditional leaders that include village headpersons and advisors who together, further the cultural wellbeing of their communities. Traditional leadership can play a role in shifting norms that promote, or condone child marriages. They should not only sensitize their people on the law against child marriage, but should take proactive steps that stop families from giving consent to marriage of persons that are below the age of 18 years and act against those that violate the law. Chiefs should also encourage people to register every child's birth to limit disputes regarding a child's age. Birth registration remains very low in Zambia with only 14% of under five children having been registered (Zambia Statistics Agency, Ministry of Health, and ICF, 2019). Therefore, there is a need to advocate for wider birth registration including under local authorities. Section 5 (S5) of the Anti-Gender Based Violence Act mandates traditional leaders to assist victims of GBV to access services and necessary help. Because child marriage is a form of GBV, this duty to assist has to be reinforced in the traditional structures so that mechanisms are put in place to address cases of child marriage when they arise. Additionally, they should encourage in their communities, adoption of supportive gender norms which involve men, faith leaders, and other community leaders to empower women in decision-making.

3. Teachers and learners in schools: Schools are ecosystems where parents, teachers, and children interface to educate children. The Ministry of Education has introduced value based life skills and health education (LSHE) that builds learners' life skills. Teachers and parents should therefore ensure that children not only learn about child marriage but that they participate in acting against those that engage in it. Schools can use both the existing LSHE curriculum and extra-curricular activities such as school clubs and sports to inform and educate children about their right not to be married before they reach 18 years old, be empowered to access SRHR services and information that will help them safeguard their health and future. Teachers are mandated in S5 of the Anti- Gender Based Violence Act to report or seek assistance for a victim of GBV, therefore, teachers are mandated to report any instances of suspected child marriages to the law enforcement agencies and the Department of Social Welfare. Robust sensitizations must be carried out for all teachers to equip them with knowledge on what the law provides and where they can report cases. In addition, teachers should observe UNESCO guidelines toward the provision of comprehensive sexuality education (CSE) most recently adapted to and provided as LSHE, as well as the research evidence on the benefits of linkages with health services that are responsive/receptive to the needs of adolescents.

4. Engaging men and boys: Men and boys can be engaged as allies in the fight against child marriage. By promoting positive messages about gender equality, respect for women and girls, and non-violence, we can create a more inclusive and effective approach to ending this harmful practice.

5. Law enforcement agencies, prosecution services and judicial bodies: The police who are mandated to enforce the law, the prosecution authorities who prosecute crime on behalf of the people, and the courts that adjudicate on cases brought before them, should all work in unison to ensure the implementation of the anti-child marriage laws. In carrying out their duties, they should sensitize the community on the changes on the law and administer justice fairly in the best interest of the child. All actors in the criminal justice sector must be trained to understand that marriage to a child is no longer a defense to the offence of defilement, all reported cases must be prosecuted expeditiously in the specialized GBV Fast Track Courts (FTCs). Extend coverage of the FTC to all districts in Zambia and ensure that special measures such as screens and closed circuit televisions are used to enable child victims to testify in a child friendly manner, without feeling intimidated. Furthermore, child friendly investigation and prosecution must be implemented in order to reduce re-traumatization of child victims. This entails creating child friendly interview rooms in both the police and prosecution offices, equipping the juveniles and children's courts with IT equipment to facilitate the reception of Child's evidence without facing the perpetrator in court.

6. Faith leaders: Faith leaders have the ability and are in a strong position to serve as advocates for ending child marriage within their communities. By leveraging their influence, moral authority, structures and resources, they can contribute to creating a more just and equitable society where every child has the opportunity to thrive.

7. Health sector professionals: The health sector plays an important role in raising awareness of the negative physical and mental health consequences associated with adolescent pregnancy, a common consequence of child marriage. We should ensure support to health sector to disseminate information on women's health and key policies and laws that can contribute to improvements in health outcomes. Sustained efforts should be made towards ending child marriage by implementing and advocating for initiatives that build upon the Amendment Act 13 of 2023. It should provide youth-friendly services to ensure that adolescents have access to contraception and maternal health services that are tailored to their needs. In addition, health education campaigns should highlight health benefits associated with preventing early marriage and the need to empower adolescents, particularly girls, to help them make informed decisions about their bodies and future reproductive health. Importantly, health care providers are well positioned to identify girls at risk of child marriage and ensuring they are referred to social welfare and police for case management. Therefore, integrating child marriage prevention into health programs is critical for addressing associated ill-health and social contributory factors.

8. Parliamentarians, UN agencies, development partners and civil society organizations: Parliamentarians should understand the Marriage (Amendment) Act 2023 and get involved in activities that include educating their respective constituencies on the law against child marriage, carry out advocacy and otherwise hold duty bearers accountable for not only the enforcement of the law. They also should ensure sustained lobbying for empowering adolescent girls and young women to gain agency over their human rights and by extension, their future. Parliamentarians and local authorities must ensure that a component of the Child Development Fund (CDF) is dedicated to child marriage. Funds from CDF can be used to support girls who escaped from a marriage, for instance to send them back to school and cover school fees and, for those who may not be able to return to their homes, to pay for basic necessities such as food and shelter or safe houses.

UN agencies, development partners and civil society organizations should advocate for increased social, political and economic support for programs aimed at ending child marriage. This advocacy should focus on raising awareness about the legal provisions that protect children's rights, and also ensure the implementation of existing laws.

9. The Gender Division: must ensure that it co-ordinates with the Ministry of Finance to ensure that gender is mainstreamed in all government budgets. This will ensure that the health sector, criminal justice sectors, education sector, social services and social protection sectors all budget and plan for the implementation of the Children’s Code Act and the Marriage Amendment Act. The robust implementation of the Marriage Amendment act requires resources from the govt and partners. In addition, the Gender Division should collaborate with ZAMSTATS and partners to ensure that a child marriage analysis is conducted using the 2022 population and housing census and the 2023 Zambia Demographic Health Survey, to help understand the prevalence and patterns of child marriage as well as providing essential insights to inform targeted interventions and policy development.

10. Media: The media including social media are encouraged to serve as advocacy champions for raising awareness around the amendment of the Marriage Act, which abolishes child marriage in any form. Media initiatives can include training of editors and journalists with a focus on provinces with high prevalence of child marriage. Conducting investigative journalism on drivers of child marriage can help duty bearers target preventive and response investments in the right places. Community radio programming that highlights positive role models of those who have stood up against child marriage, and disseminates information on where to seek support if affected by child marriage are, among others, good ways of preventing this harmful practice.

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