

VOLUME 16 NUMBER 8

CMI BRIEF

NOVEMBER 2017



Photo by Jessica Lea /
Department for International
Development (CC-license)

Counter-mobilization against child marriage reform in Africa

Legislating a minimum age of marriage at 18 has stirred counter-mobilization in some, but not all, countries where religious or traditional institutions enjoy constitutional authority. Why does counter-mobilization arise in some cases but not in others? This brief shows how differently child marriage reform processes play out in traditional-majority and Muslim-majority states. We argue that variation in the nature of family law, specifically whether it is codified or living, explains the presence or absence of counter-mobilization. The findings from this study have implications for anti-child marriage advocates across the developing world, and may inform the design and strategy taken by international agencies, national governments, and civil society organizations pressing for legal reform.

AUTHORS

Ragnhild Louise Muriaas

University of Bergen /
Chr. Michelsen Institute

Liv Tønnessen

Chr. Michelsen Institute

Vibeke Wang

Chr. Michelsen Institute

This CMI Brief is based on the article “Counter-mobilization against child marriage reform in Africa” accepted for publication in *Political Studies* October 2017.

The link between the nature of the law and counter-mobilization

Gender law reforms often meet resistance, and some gender status issues meet more resistance than others. Counter-mobilization from religious and traditional actors is more likely to take place if the gender status issue is doctrinal, that is “*contradicts the explicit doctrine, codified tradition, or sacred discourse of the dominant religion or cultural group*” (Htun and Weldon 2010: 210; forthcoming, see also Charrad, 2001; Tripp et al. 2009: 113–15). Family law is a *doctrinal* gender status issue. Thus, as child marriage legislation is part of family law, counter-mobilization against measures to prohibit child marriage is expected.

Child marriages is prevalent in Zambia (42%) and Sudan (34%). The central governments in both countries have recently led initiatives to legislate a minimum age of marriage at 18 to tackle the practice of child marriage, but counter-mobilization has *only* occurred in Sudan.

Legal structures and political battles

In most studies, religious and traditional counter-mobilizing actors are conveniently lumped together as forces inhibiting gender law reform. We argue that scholars have overlooked one or a set of underlying factors that influence religious and traditional actors. Investigating the roles of Islamists in Sudan and chiefs in Zambia in response to activism on child marriage reform, we identify variation in the nature of family law, specifically whether it is codified or living, as an explanatory factor for the presence or absence of counter-mobilization.

We define Sudan as a typical Muslim-majority state with *codified religious family law*. Sudan’s 2005 Constitution, in article 5(1), requires nationally enacted legislation to have Sharia as its source. We see Zambia as a typical traditional-majority state with a *living customary*

law. Traditional institutions and customary law are protected by the 1991 Constitution, as article 23(4c–4d) explicitly excludes customary law and family law from the anti-discrimination clause set forth in article 23(1).

There are two causal mechanisms at play: **legal power structure** and **political battle**. We propose two trajectories linking nature of law to counter-mobilization (see Figure 1): (1) codified laws create a centralized legal power structure where the political battle is over interpretation of the law. In the Sudanese case, the potential counter-mobilizers are strong at the center. The codification of a Muslim family law in 1991 has fractionalized the political and religious elites over the correct interpretation of Sharia, (2) living laws produce a decentralized legal power structure where the political battle is over administration of the law. The potential counter-mobilizers in Zambia, by contrast, are on the peripheries, allowing for a consensus at the national level in cases where government actors wholeheartedly push for reform. Also the political battle is over the administration of law rather than its interpretation. *Whether a family law is codified or not, we propose, is one likely predictor of whether counter-mobilization does or does not occur against child marriage reform.*

Child marriage reform in Sudan

In Sudan, the codification of the Muslim family law in 1991 made child marriage legal, and the age of marriage is *tamyeez*, or maturity. Also, the 1991 law allows a guardian to contract a minor in marriage when there is overriding interest in doing so, and with the permission of a judge. Here, it does stipulate the specific age of 10, effectively making 10 the minimum age of marriage in Sudan.

In the process of drafting a National Child Act, government reformers proposed progressive Islamic interpretation of maturity to argue for a minimum age of

	Nature of law	Mechanism A: Power structure	Mechanism B: Political battle	
Trajectory 1	Codified family law	<i>Centralized</i>	<i>Interpretation</i>	Counter-mobilization
Trajectory 2	Living family law	<i>Decentralized</i>	<i>Administration</i>	Cooperation

Figure 1: Two trajectories linking nature of law to counter-mobilization

marriage at 18. In brief, they say it has wrongfully been interpreted as sexual maturity, but should be understood as intellectual maturity. In an interview, former minister of welfare and social security Amira al-Fadil explained their reasoning:

Eighteen years as a minimum age for marriage does not contradict Sharia law. Muslim scholars have given us a fatwa that supports 18 as a minimum age of marriage. [...] *Bulugh* is an Islamic term that refers to a person who has reached maturity and has full responsibilities under the law. But maturity in Islam should not go hand in hand with physical signs of puberty (sexual maturity), but rather intellectual maturity. And there is no reason why intellectual maturity cannot be set at 18 years.

The 2010 Act does not, however, explicitly include a minimum age of marriage, because it was regarded as too controversial. However, since the Act defines a child as a person under the age of 18 and further includes provisions protecting the child against all forms of discrimination, reformers argued that the practice of child marriage should be covered by the Act. Moreover, since the National Child Act takes precedence over all other laws, this meant, according to reformers, that an amendment of the 1991 Muslim family law would follow as a natural second step.

The reform process became much more problematic than the reformers anticipated. Even if some religious scholars supported them, it nonetheless prompted counter-mobilization by conservatives inside the parliament, in the media and in the courts. Once the religiously conservative actors became aware of the fact that there was a conflict between the 2010 National Child Act and the Muslim family law, they claimed that the Child Act is in conflict with Sharia and thereby the 2005 Constitution and that it should be invalidated. In the view of the conservatives, child marriage is a practice sanctioned by Prophet Muhammed that keeps pubescent girls and boys from committing illicit sexual relations and preserves reproduction. While the 2010 Child Act has not been invalidated, the Muslim family law has not been amended to put 18 as the minimum age of marriage. While legislating the minimum age of marriage as 18 is perceived as too radical by counter-mobilizing actors, it was regarded as not radical enough by women activists who claim that in order to end child marriage there is a need to eradicate the whole institution of male guardianship.

The codification of religious law opens up a space for political contestation of the correct interpretation

of doctrine between political and religious elites. This has allowed reformers to advocate for progressive interpretations of Sharia. However, the debate on the Islamic legality of child marriage quickly gives rise to an argument over who has the authority to state what is or is not the correct interpretation of Sharia. Religious scholars and those well versed in religion have the upper hand in a political context where constitutional provisions guarantee Sharia a central place in national legal frameworks.

Child marriage reform in Zambia

In Zambia, the 1964 Act sets the legal age for marriage at 21 years of age but allows youth aged 16–20 to marry with parental consent. Also, a child below the age of 16 is allowed to marry if a High Court judge rules that the marriage is not “contrary to the public interest.” However, most marriages in Zambia take place under customary law, and the 1964 Act does not apply to these marriages because customary law is exempt from the anti-discrimination clauses in the Constitution. It is a common custom to understand the rites of a girl’s passage into womanhood at puberty as preparations for marriage. This in effect means that there is no minimum age of marriage in Zambia. Unlike in Sudan, in Zambia family law is not codified, but exists as living law.

The government’s campaign against child marriage has been two-pronged. They have identified law reform of the Marriage Act of 1964 and of the 1996 Constitution as a priority area to ensure legal protection from the practice, and simultaneously they have launched a nationwide sensitization campaign, targeting traditional leaders as well as the public. A key part of both the legal reform and sensitization efforts is to engage traditional chiefs as agents of change.

The national elite is relatively open to reform on child marriage, even if it is a doctrinal gender status issue. There are two principal reasons for this. First, traditional leaders, who potentially could use their authority to politically oppose the center, are not supposed to officially engage in politics under the Chiefs Act of 1965. The legal power structure is decentralized, and chiefs’ powers depend on their being perceived as beyond politics. What is at stake in the political battle for chiefs is not the power to push or oppose reforms at the national level, but their continued administration of both judicial and cultural practices in local communities.

Second, another feature of the decentralized power structure in Zambia is that those who primarily preside over domestic disputes in customary courts are situated at the village level, at the bottom of the chieftom hierarchy. As long as customary law remains a living law,

reform of statutory law is not sufficient to ensure that Zambia will comply with its international obligations. Since village headmen enforce a living law, there is no guarantee that statutory law will take precedence in practice. Consequently, even if there is consensus on the law reform nationally, it might take years for this to have an impact on local practices.

Chiefs clearly will need to play an active role if change is to occur. Chief Nzamane suggests how they might do so: “As a traditional leader, I have the right to reprimand those who cause harm to others. When I meet girls who have run away to escape a wedding that they did not choose, I go and talk to the families. But if they don’t want to listen to me, I reprimand them by making them repair communal roads for example or other facilities that we share as a community.” (Girls Not Brides, 2013). This indicates that the political battle over child marriage, as it plays out in Zambia, mainly concerns administration of the law. When chiefs cooperate, they have the powers to define how new laws are enforced and can take action to punish those who do not comply.

Designing Child Marriage Reform Campaigns

Child marriage is a human rights violation with potentially grave health consequences and it negatively affects life prospects of girls worldwide. Approximately two-thirds of African countries have legislated a minimum age of marriage at or above 18, but there is still a number of states where child marriage is legally sanctioned. Law reform is not a magic bullet to eradicate child marriage but is a key step as it provides anti-child marriage advocates with a powerful tool to argue their case vis-à-vis national governments and because it changes attitudes at the grassroots. According to Girls Not Brides, that is a global partnership of over 800 civil society organizations around the world working to eradicate child marriage; global partnership of more than 800 civil society organisations committed to ending child marriage and enabling girls to fulfil their potential. is a global partnership of more than 800 civil society organisations committed to ending child marriage and enabling girls to fulfil their potential. is a global partnership of more than 800 civil society organisations committed to ending child marriage and enabling girls

to fulfil their potential. is a global partnership of more than 800 civil society organisations committed to ending child marriage and enabling girls to fulfil their potential.

“Law and policies play an essential part in preventing child marriage. (...) A strong legal and policy system can provide an important backdrop for improvement in services, changes in social norms and girls’ empowerment”¹

The findings from this study may have implications for anti-child marriage advocates across the developing world. The crucial knowledge of how differently child marriage reform processes play out in traditional-majority and Muslim-majority states may inform the design and strategy taken by international agencies, national governments, and civil society organizations pressing for legal reform.

References

- Charrad M (2001) *States and Women’s Rights: The Making of Postcolonial Tunisia, Algeria, and Morocco*. Berkeley: University of California Press.
- Girls Not Brides (2013) “Why traditional chiefs like me must stand against child marriage,” 24 October 2013, posted on Girlsnotbrides.org.
- Htun M and Weldon L (2010) When do governments promote women’s rights? A framework for the comparative analysis of sex equality policy. *Perspectives on Politics* 8(1): 207–216.
- Htun M and Weldon L (forthcoming) *States and the Logics of Gender Justice*. Cambridge: Cambridge University Press.
- Tripp AM, Casimiro I, Kwesiga J and Mungwa A (2009) *African Women’s Movements: Transforming Political Landscapes*. Cambridge: Cambridge University Press.

1 <https://www.girlsnotbrides.org/how-can-we-end-child-marriage/#establish-and-implement-laws-and-policies>