Counter-mobilization against child marriage reform in Africa

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Abstract

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. To explore differences between states regarding likelihood of counter-mobilization, we investigate two cases in Africa. In Sudan, a government-led child marriage reform initiative has sparked counter-mobilization by conservative religious actors, while a similar initiative in Zambia has not caused visible counter-mobilization among traditional groups and has gained the support of many chiefs. With the literature on doctrinal gender status issues as theoretical background, we argue that the nature of law—codified versus living—is a factor in these distinct trajectories. We further identify variations in two mechanisms, legal power structure (centralized vs. decentralized) and type of political battle (interpretation vs. administration), that link nature of law to variation in the likelihood of counter-mobilization.

Introduction

Some gender equality law reforms meet with more fervent resistance than others. Recent scholarship on gender law reform emphasizes the importance of disaggregating gender status issues to explain this variation. If a gender status issue "contradicts the explicit doctrine, codified tradition, or sacred discourse of the dominant religion or cultural group," it is more likely that religious or traditional organizations will counter-mobilize against the reform (Htun and Weldon, 2010: 210, forthcoming; see also Charrad, 2001; Tripp et al. 2009: 113–15). In this scholarship, family law—the body of rules governing matters of marriage, divorce, custody, inheritance, and maintenance—is considered a doctrinal gender status issue. As child marriage legislation is part of family law, counter-mobilization against measures to prohibit child marriage is expected (Wodon, 2015: 2). In both Sudan and Zambia, the central government has led initiatives to legislate a minimum age of marriage at 18.[1] Yet counter-mobilization has occurred only in Sudan, even though child marriage is a doctrinal gender status issue in both countries. Why does counter-mobilization arise in some cases of doctrinal reform but not in others?

In most studies, religious and traditional counter-mobilizing actors are conveniently lumped together as forces inhibiting such reform (Charrad, 2001; Htun and Weldon, 2012; Tripp et al., 2009). We argue that scholars have overlooked one or a set of underlying factors that influence religious and traditional actors. Based on our inductive study of child marriage reform in cases where religion and tradition are politically institutionalized, we identify the nature of law—whether it is codified (written statutes, rules, and regulations) or living (oral legal tradition)—as a feature that tends to promote either counter-mobilization or cooperation on the part of religious and traditional leaders. The distinction between a codified and a living system of

[1] Child marriage is defined as a formal marriage or informal union before age 18.

family law is important because it leads to variation in the legal power structure and, by extension, in the political battle over changes to family law.

To clarify these mechanisms, we investigated the roles of conservative Islamists in Sudan and hereditary chiefs in Zambia in response to activism on child marriage reform. In Sudan, a government-led reform initiative has caused strong counter-mobilization from religious groups, and in this context we identify a centralized legal power structure in which the political battle between political and religious elites is over the proper interpretation of Sharia law. In Zambia, a similar government-led initiative has not caused any visible counter-mobilization among traditional groups. The legal power structure in this context appears clearly decentralized, and the political disputes center on administration of the law rather than on its interpretation.

Both cases illustrate the political institutionalization of religious and traditional authority (Htun and Weldon 2015: 457). Religious and traditional institutions in Sudan and Zambia, respectively, are granted authority through constitutional provisions, funding, and the de facto practice of religious and customary law (Fox 2008, 2013). In this article, 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). Few studies have looked specifically at the policy process of legislating a minimum age of marriage at 18 (notable exceptions are Prettitore, 2015; Scolaro et al., 2015), and there is a dearth of studies that consider how the constitutional role granted to religious and traditional institutions shapes the potential for counter-mobilization against child marriage reform.

Our analysis draws on field studies conducted in Sudan and Zambia. Sources of information include official and legal documents, media statements, parliamentary debates, campaign materials, and qualitative interviews. In Sudan, the authors started collecting data in November 2006 in the wake of the 2005 peace agreement and new constitution. We have conducted field visits every year since then and carried out interviews in Khartoum with more than 100 key actors, including government representatives, members of Parliament, women activists, United Nations agencies, international nongovernmental organizations (NGOs), political parties, journalists, religious scholars, and academics. In Lusaka, Zambia, we conducted semi-structured interviews with 41 people, including government officials, members of Parliament, representatives of women's organizations, international donors, secretariats of political parties, and academic consultants, from 27 June to 16 July 2015.

Counter-mobilization against doctrinal gender status reforms

Researchers studying gender equality reforms around the world emphasize that states with a history of accommodative state-building projects are those where the most restrictive family laws are found; they are also those where gender-equitable family law demands meet with the greatest resistance (Htun and Weldon, 2012, 2013; Tripp et al., 2009: 113). The term counter-mobilization can be defined as "a conscious, collective, organized attempt to resist or to reverse social change" (Mottl, 1980: 620). Such organized opposition may come from either government or civil society actors opposed to the reform and most commonly include a more or less comprehensive combination of campaigns, demonstrations and rallies, lobbying, litigation, and public statements and debates in mainstream and social media and other forums such as parliaments. According to Htun and Weldon (2012), the most restrictive family laws are seen in

postcolonial states with legal pluralism, especially former British colonies, and in countries that apply religious law to family matters. The more powerful the country's religious, cultural, and traditional organizations, the less willing and able the state will be to violate the tenets of doctrine. However, to understand this relationship between the strength of religious and traditional leaders on the one hand and resistance to family law reform on the other, it is important to emphasize how researchers define gender status policies and differentiate between doctrinal and nondoctrinal policies.

Gender status issues concern "those practices and values that constitute women as a subordinate group vulnerable to violence, marginalization, exclusion and other injustices" (Htun and Weldon, 2010: 6; see also Fraser, 2007). Reforms in such areas challenge established social patterns and gender relations, something that makes them controversial and politically costly for politicians to legislate (Htun and Weldon, 2010, forthcoming). While even nondoctrinal gender status issues (e.g., violence against women, gender parity legislation) are costly to legislate, doctrinal gender status issues like family law reform are even more so. As argued by Kang (2015: 4), states are less likely to adopt family law reform when conservative activists mobilize against it. It is important to note, however, that the doctrinal nature of family law in general and child marriage in particular varies by context (Htun and Weldon, 2010: 21). Where family law is doctrinal, it is more likely that religious and traditional organizations will "spend political capital to preclude reform" (Htun and Weldon, 2010: 210; see also Charrad, 2001). Htun and Weldon (2010: 209) argue that challenges to religious doctrine or codified cultural traditions, such as family law reforms, are likely to "invoke ecclesiastical opposition."

There are several examples in the literature that identify religious and cultural groups as counter-mobilizing actors against family law reform. In Mali, for instance, the most forceful

opposition to reform of the *code de la famille* came from a range of Islamic associations, which called for official recognition of religious marriages (Schulz, 2003: 145; Soares, 2009: 423). In Hudson et al.'s (2015: 540) worldwide cross-country study of the effects of clan governance, counter-mobilization against marriage law reform appears because marriage relates to the reproduction of clan exclusivity and the subordination of female interests. Tripp et al. (2009: 113–15), analyzing the reform of customary practices in Africa, note the difficulty of passing laws that challenge the notion of women and children as property, especially in relation to issues such as bride wealth, child custody, wife inheritance, and property grabbing.

It should be noted, however, that there is a diversity of interpretations and perspectives among religious and traditional actors, and in some cases counter-mobilization might not be an outright rejection of family law reform but the start of political bargaining (see, for example, Mbatha and Fishbayn Joffe, 2013; Muriaas et al. 2016; Salime, 2012; Villalón, 2010). Studies have also found that when traditional leaders support child marriage reform, particularly female chiefs, this might have a more positive impact on the general public acceptance of the reform than if the same law is advocated by parliamentarians (Muriaas et al. 2017). Yet few studies attempt to identify the causal mechanisms in counter-mobilization against family law reform in Africa, especially in cases with political accommodation of traditional authorities.

In our studies of government reforms aimed at ending child marriage in Sudan and Zambia, we attempt to identify causal mechanisms that link the nature of law to variation in the likelihood of counter-mobilization by religious and traditional leaders. On this basis, we put forward a theoretical argument for why nature of law is likely to be a factor in determining whether conservative Islamists or hereditary chiefs support or resist child marriage reform.

Background: Child marriage reform in Sudan and Zambia

With 34% of girls married by age 18 in Sudan and 42% in Zambia, the two cases are among the countries with the highest prevalence of child marriage worldwide (UNFPA, 2012; Wodon, 2015). Approximately two-thirds of African countries have legislated a minimum age of marriage at or above 18 for both sexes, and government actors in Sudan and Zambia have recently put the issue on their legislative agendas. Yet while conservative religious actors have mobilized against reform in Sudan, traditional leaders have cooperated with the government in Zambia. The puzzle we seek to explain is why counter-mobilization in Zambia did not occur, even though child marriage is a doctrinal gender status issue there as well. Table 1 provides a list of the most important commonalities and differences between the two cases. In the discussion that follows, we will highlight the background factors that we find most relevant for understanding the logic of our theoretical argument.

<Table 1 about here>

A key commonality is the political institutionalization of religious and traditional authorities through constitutional protection, which is assumed to facilitate counter-mobilization. The importance of Sharia in Sudan's political system cannot be overemphasized. All Sudan's constitutions, the latest in 2005, clearly state that Sharia is the most important source of law. The Islamization of the legal system reached a peak in 1989, when Islamists took power in Sudan. In the new government's founding declaration, Sharia became the guiding principle of state policy. A decree stipulated that "Islam and the Sharia are the reference of the Sudanese state and the foundation of its laws, of its organization and of politics" (Ahmad, 2007: 11). The state initiated

comprehensive Islamization of Sudan's legal system, including, in 1991, the first codification of a Muslim family law in Sudan's post-independence history.

Traditional institutions are formally strong in Zambia, even compared to neighboring former British colonies. The Zambian Constitution has contained provisions for chieftaincy since 1965. Although different governments have tried to restrict their formal powers, the chiefs still have strong de facto authority over the allocation of land. Chiefs also preside over customary law, which remains uncodified living law. The chiefdoms consist of a four-level hierarchy made up of paramount chiefs, chiefs, subchiefs, and village headmen. Customary law is excluded from the Constitution's anti-discrimination clause. The late president Michael Sata established the Ministry of Chiefs and Traditional Affairs in 2011; its purpose is to conserve Zambia's heritage and the cultural diversity of the country's chiefdoms, national heritage sites, and arts. The creation of a ministry in itself does not necessarily indicate that traditional institutions are strong in Zambia; some see it as a strategy to align the chiefs with the government.

Child marriage is doctrinal in both Sudan and Zambia, another factor that supposedly triggers resistance. In Sudan, there are strong Islamic justifications for the practice of child marriage. Conservative Islamists, Salafists, and some religious scholars argue that child marriage prevents illicit sexual relations.[2] Sex before marriage is forbidden in Islam, and since girls develop sexual urges at puberty, it is said, early marriage is the Islamic solution to deal with the risk of fornication. From an Islamic point of view, the sexual chaos (*fitna*) of Western societies can be traced back to the abandonment of child marriage. Child marriage ensures that sexual relations happen only within marriage. Puberty or sexual maturity is considered the appropriate age of marriage, and supporters point to a hadith, in the Sahih al-Bukhari and Sahih Muslim

[2] Interview with Abdul-Jalil Sheikh al-Karuriimam of Ash-Shahid mosque, a member of the Religious Scholars Committee (a religious clerical body in Sudan that has issued fatwas endorsing child marriage), 21 November 2013.

collections, reporting the Prophet Muhammad's betrothal to Aisha when she was six years old. However, evidence suggests that he did not consummate the marriage until she was at least nine years of age and had reached puberty. Child marriage reform in Sudan is a doctrinal gender status issue because it contradicts the explicit Islamic doctrine as postulated by prominent official religious leaders, and as codified and legalized in the Muslim family law of 1991 under the umbrella of Sharia.

In Africa, one formal function of traditional leaders is to be custodians of their communities' culture and they typically play a central role in the continuation of traditional marriage practices. In Zambia, certain traditional practices and beliefs, especially in the rural areas, function in combination with poverty to promote child marriage. In the event of pregnancy outside of marriage, a common expectation from the family and community is that the boy or man should enter into marriage out of duty or responsibility, and marriage at times works as a strategy to control children who are engaging in inappropriate behavior (Mann et al., 2015: 26–27). Further incentivizing child marriage are traditional initiation ceremonies that prepare girls for marriage once they reach puberty (PSAf, 2014: 7–8). Most agreements relating to marriage involve the payment of bride price, a practice deeply embedded in tradition and one that may bring sorely needed financial and material benefits to a girl and her extended family. It may also strategically enhance familial ties and improve the social standing of both families by demonstrating that the girl is desirable and the boy is ready to take on marital responsibility (Mann et al., 2015: 19, 21). Prearranged or promised marriages involve an agreement by a girl's parents to marry her to an older suitor once the girl comes of age (Mann et al., 2015: 21). Such men are often wealthy and respected in their communities, and they may have several wives (PSAf, 2014: 7–8).

Given these commonalities, one might expect similar levels of resistance towards child marriage reform in Zambia and Sudan, but this has not happened. A variety of factors may contribute to their distinct experiences, including variation in political regime type. However, we see examples of family law reform in both authoritarian and democratic regimes (Htun and Weldon, 2010; Weldon, 2002). In cases where traditional and religious institutions are strong, they are strong regardless of regime form. Hence, if tradition or religion is an important feature of the state and nation-building process, resistance from religious and traditional leaders is just as likely in an authoritarian state as in a democratic one. Another critical difference could be variation in the political power of religious leaders in Sudan versus traditional leaders in Zambia. As for instance, one could argue that the conservative Islamists in Sudan during the 1990s had more power than the chiefs have had in Zambia since independence. Rather, we suggest that a key difference that needs to be examined in detail is variation in the nature of law, that is, whether it is codified or living law. In our case studies below, we show that nature of law creates different kinds of political ambitions for counter-mobilization. Conservative Islamists in Sudan try to control the state at its core by monopolizing the right to interpret Islam, while the political authority of traditional leaders in Zambia is linked to governing culturally defined territories within Zambia.

Child marriage reform in Sudan

In Sudan, a centralized Islamic state with a codified Muslim family law, child marriage reform sparked a political battle over the interpretation of Sharia. This battle played out among Khartoum's political and religious elites, operating both inside and outside of government institutions.

The codification of the Muslim family law in 1991 made child marriage legal, and the current Islamist regime encouraged the practice during the 1990s. However, there are critical contradictions between the Muslim family law, on the one hand, and the National Child Act (2010), the nondiscrimination and gender equality clauses in the 2005 Constitution (articles 31 and 32(1)), and the Convention on the Rights of the Child (CRC), on the other.[3] The National Child Act changed the definition of a child in accordance with the CRC to stipulate that childhood ends and adulthood begins at 18 years of age. In the Muslim family law, however, the age of marriage is *tamyeez*, or maturity. While the 1991 law stipulates that both parties have to consent to marriage, even a mature woman needs a male guardian (*wali*) to validate the marriage. A subsequent provision explicitly allows the 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 (Welchman, 2007).

Some Islamist reformers advanced child marriage reform as part of the process of drafting a National Child Act. They were primarily women from the governing National Congress Party (NCP) who serve on the National Council for Child Welfare and the Ministry of Welfare and Social Security. In particular, the former minister of welfare and social security, Amira al-Fadil, who is a current member of Parliament, spearheaded the campaign. The National Child Act of 2010 was the first step in the process of raising the minimum age of marriage. It defined childhood as extending to the age of 18, a significant milestone and one that was highly controversial, given that in Islamic jurisprudence (*fiqh*) the age of marriage is traditionally set at puberty. In Islamic legal terminology, *bulugh* refers to a person who has reached maturity or

[3] Sudan ratified the CRC in 1990 and the two optional protocols in 2005, but it is among the few countries that have neither signed nor ratified the Convention on the Elimination of Discrimination against Women (CEDAW).

puberty. The concept of puberty refers to signs of physical maturity, such as ejaculation for boys and the onset of menstruation for girls. In the absence of these, classical jurists assume puberty will occur at the age of 15, 17, or 18 years, depending on the school of jurisprudence (Büchler and Schlatter, 2013). It is important to note that Muslim family law can also exist as a living law, and Sudan is an interesting example of this. The Muslim family law was codified for the first time in 1991. Before 1991, however, Muslim family law developed through judicial circulars developed by state-appointed religious clergy (*ulema*) in Khartoum, who had the entire spectrum of *fiqh* at their disposal.

Islamist reformers who pushed for setting 18 years as the threshold for adulthood do not believe that this position contradicts either Islam or the 2005 Constitution. Rather, they rely on a more progressive Islamic interpretation of maturity to argue that this legal reform conforms to Sharia, to the bill of rights in the Constitution, and to the CRC. In all schools of law in Sunni Islam, before a person can acquire legal capacity and enter into contracts, he or she must attain a condition called *rushd*, the intellectual maturity to handle one's own property and affairs (Adams, 2017). According to Islamist reformists, *bulugh* (puberty) without *rushd* (intellectual maturity) does not afford the legal capacity to enter into a marriage contract. Furthermore, they are advocating that the minimum age of marriage, taking both *bulugh* and *rushd* into consideration, should be set at 18 years of age. In an interview, 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[4] that supports 18 as a minimum age of marriage. […] *Bulugh* is an Islamic term that refers to a person who has reached

[4] The legal opinion or learned interpretation that a qualified jurist can give on issues pertaining to Islamic law.

> 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.[5]

According to interviews with Islamist reformers, it was a deliberate strategy *not* to explicitly include a minimum age of marriage in the 2010 Child Act, because it was regarded as too controversial. However, as the Act in article 5(c) does include provisions protecting the child against all forms of discrimination, reformers argued that the practice of child marriage is covered by the Act. Moreover, the National Child Act takes precedence over all other laws: article 3 states that "the provisions of this Act shall prevail over any other provision in any other law, upon inconsistency thereof, to the extent of removing such inconsistency." In the views of Islamist reformers, this meant that a reform of the 1991 Muslim family law would follow as a natural second step, setting 18, established as the age of adulthood under the Child Act, as the minimum age of marriage.[6] If child marriage is considered a form of discrimination, it clearly contradicts the 2010 Act. Islamist reformers thus attempted to slip child marriage reform in through the back door in hopes that counter-mobilizing actors would not take much notice.

When the Ministry of Welfare and Social Security later launched the reform of 88 articles in Sudan's laws that contradicted the rights granted to children and women by the 2005 Constitution, child marriage was explicitly identified as a crucial site of reform within the 1991 Muslim family law (Women's Human Rights Center, 2013). Once embedded within the context of family law reform and women's rights, child marriage quickly became controversial and

[5] Interview with Amira al-Fadil, former minister of welfare and social security and current member of Parliament for the NCP, 25 June 2013.

[6] Interviews with Amira al-Fadil, 5 May 2015; Omaima Abdel Wahab, National Council for Child Welfare, 4 May 2015; Suad Abdel Aal, Women's Human Rights Center, 6 May 2015.

contested. The reform process became much more problematic than the Islamist reformers anticipated, as it prompted not only counter-mobilization by conservatives within and outside of government institutions, but also extensive critique from the women's movement.

When Islamist reformists challenged the interpretative authority of classical understandings of Sharia, conservatives inside and outside of government institutions started a counter-campaign to oppose any change to child marriage laws. The counter-mobilization included public statements in the media and in Parliament by both politicians and religious scholars, as well as litigation. There is a conservative bloc within the NCP promoted by former member of Parliament Dafallah Hassabo, who has strong ties to the Salafist movement. In his opinion, "According to Islam, a girl can give consent to marriage at puberty."[7] He and his followers have attempted to sideline and discredit Islamist reformers in parliamentary debates and in the media. In particular, Amira al-Fadil has been accused of blindly following a Western agenda and in the process becoming a secularist, a term with negative connotations in Sudan. In addition, one of Sudan's prominent clerical councils has mobilized against child marriage reform (*Sudan Tribune*, 2012). The chair of the Religious Scholars Committee, Mohamed Osman Salih, endorsed marriage of girl children in the media as well as during a debate on the topic organized by the United Nations Population Fund (UNFPA) in collaboration with the Sudanese Ministry of Religious Guidance. He is reported to have said, "Islam encourages youth to marry to save them from perversion or any dangers of being single and to make them happy and to preserve reproduction" (Abbas, 2013).

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

[7] Interview with Dafallah Hassabo, 20 November 2013.

Child Act is in conflict with Sharia and with the 2005 Constitution.[8] Despite the Islamist reformers' more recent attempt to include progressive religious scholars through the Ministry of Guidance and Endowments,[9] with financial support from the UNFPA,[10] the counter-mobilizing actors remain unconvinced. Specifically, they demand that the 2010 National Child Act be invalidated. Recently a constitutional court case was filed to determine whether the 2010 Act contradicts the Constitution's article 5(1), which requires nationally enacted legislation to have Sharia as its source. The case is still pending.[11]

While Sudanese women activists support raising the minimum age of marriage to 18, they argue that it should be embedded within a comprehensive reform of the Muslim family law of 1991. The leading NGO active in the campaign for legal reform on the issue is the Sudanese Organization for Research and Development (SORD), which is part of the global campaign Girls Not Brides. In the view of women activists, child marriage is violence against women as defined by the Declaration on the Elimination of Violence Against Women (1993), and comprehensive family law reform is key to its eradication. It is also discriminatory, depriving girls and women of their fundamental rights to health, education, and safety. Women activists initiated debate on the discriminatory aspects of the Muslim family law in the early 2000s (see, for example, Badri and Tier, 2008). Several years ago, SORD drafted an alternative Muslim family law, known as the Adila Law, aimed at achieving gender equality in all aspects of women's civil rights (SORD, 2012a, 2012b). Women activists claim that several related aspects of marriage law need revision. They insist that merely raising the minimum age of marriage, as the Islamist reformers are

[8] Interview with Suad Abdel Aal, 6 May 2015.
[9] Among them are Sadiq al-Mahdi, former prime minister of Sudan and leader of the Umma party, as well as Sheikh Saeem Deema, who leads a Sufi forum, and Sheikh al-Yagouti, former state minister for guidance and endowment.
[10] Interview with UNFPA, 16 February 2015.
[11] Interview with Sania al-Rasheed, a constitutional court judge, 7 May 2015.

proposing, will have little effect in itself as long as the Muslim family law stipulates that a male guardian has the authority to contract both adult women and minor girls in marriage. Unless a woman can contract herself in marriage, genuine consent will never be attained. Furthermore, the Muslim family law does not allow for the "option of puberty" (*khiyar al-bulugh*), common in Hanafi *fiqh* (Masud, 2013: 130). By exercising this right, a girl who has reached puberty can repudiate a marriage that was contracted earlier on her behalf. In Sudan, a 10-year-old girl can be married off by her guardian without having the option to repudiate the marriage once she reaches puberty. Such early marriages are forced marriages because they are not based on consent, according to activists, and as such they constitute grave violence against girls. In the opinion of Asha el-Karib, the leader of SORD, "the crucial point concerning child marriage is to get rid of *wilaya*, the male guardianship."[12] Although women activists welcomed the government's move to legislate 18 as the minimum age of marriage, and they have not mobilized against the reform, they remain critical of it, claiming that it will have little or no effect unless male guardianship in marriage is also abolished.

Child marriage reform in Zambia

While child marriage reform has fractionalized the political elite in Sudan, the issue has not raised controversies among the elite in Zambia. Setting a minimum age for marriage at 18 is relatively uncontroversial there, even though typical gender issues such as increasing women's political representation frequently are politicized and tend to trigger resentment among male actors in a society where patriarchal attitudes dominate and there are deep-rooted stereotypes about women's roles and responsibilities (UN Committee on the Elimination of Discrimination

[12] Interview with Asha el-Karib, 25 May 2011.

against Women, 2011: 5). The highly decentralized legal power structure gives chiefs great discretionary powers, including in terms of administering laws, and makes it more likely that they will cooperate with government reforms.

Seeking support for the child marriage law from chiefs was a central strategy from the beginning of the process. Dr. Nkandu Luo, the former minister of chiefs and traditional affairs (2012–2015) and minister of gender and child development (2015–2016), and Dr. Christine Kaseba Sata, the former first lady (2011–2014), have played leading roles, advancing a strategy that involves multiple government ministries. The government's campaign against child marriage is two-pronged. They have identified law reform 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. Sensitization on the issue of child marriage is seen as important in and of itself, but also as a way to ensure support for law reform among potential counter-mobilizing actors. A key part of both the legal reform and sensitization efforts is to engage traditional chiefs as agents of change.

What makes legal reform particularly challenging are disparities between statutory and customary law, as well as between the national legal system and the country's international obligations.[13] The plural legal system is identified as an important reason why child marriages continue to be practiced. Government actors call for a reform of the Marriage Act of 1964 and of the 1996 Constitution. 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

[13] Zambia ratified the CRC in 1991 and CEDAW in 1985.

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 (Moyo and Müller, 2011: 3). This in effect means that there is no minimum age of marriage in Zambia. The lack of harmonization of various statutory laws is also striking in relation to the definition of a child. The national legal framework does not provide a clear definition of a child or the age of a child, and the 1996 Constitution is silent on the matter.

The scope of the campaign to end child marriage has broadened over time, and the five-year national plan of action that is being developed involves multisectoral interventions and engagements (Girls Not Brides, 2015: 5). Child marriage has mainly been advanced as a child rights issue, and the Ministry of Chiefs and Traditional Affairs stresses that it has approached the issue by focusing on the rights of the child: "For us, the interest is in the child's welfare, especially the girl child in terms of the age, consent issues, registration and so on."[14] An important part of the strategy to prevent counter-mobilization has been to stress the importance of education, particularly the need to keep girls in school. This has proved very effective in terms of silencing opposition.

Donors and civil society actors, including women's rights and children's rights organizations, have played an active part in the process, but they have typically acted in response to the initiative of the Zambian government. These actors have followed a low-key strategy, trying to sidestep controversies and avoid politicizing the issue. Accordingly, they have pushed for a piecemeal approach to law reform rather than tackling all disparities in the law at once. A national network of NGOs against child marriage was created on the basis of a child marriage

[14] Interview with Peter Mucheleka, national coordinator, Programme to End Child Marriages in Zambia, 10 July 2015.

symposium held in July 2014 (Girls Not Brides, 2015: 9). It has worked closely with the government on the national campaign against child marriage. Few key actors in the domestic women's movement and civil society more broadly have challenged the government initiative, and there seems to be a general consensus, including among development partners, that sensitization on child marriage is just as critical as achieving law reform. The mindset of pivotal actors on the ground, such as local chiefs and parents, needs to change. While paramount chiefs and chiefs were included in the process and thus sensitized early on, concern has been raised about the role of village headmen, who generally are less educated and who tend to be the ones to whom people turn with their concerns.

Child marriage in Zambia is primarily a rural phenomenon and is considered to be embedded in local customs and tradition. According to the national president of the Young Women's Christian Association (YWCA), traditional councilors emphasize that puberty marks the beginning of adolescence, and children frequently are pushed into marriage by their families and chiefs to avoid extramarital pregnancies.[15] Lower chiefs, like village headmen, appear to be both part of the problem and part of the solution. Chiefs are community leaders and play a prominent role, especially in rural areas, as mediators and problem solvers. As one experienced development partner explained, "Chiefs are very, very important. In rural areas, people know that if they have a problem they run to the chief. So once you sensitize a chief and the chief says I am not going to allow this in my chiefdom, it makes a big difference."[16] This quote illustrates that it is the rulings of the lower chiefs that matter in a plural legal system where living law prevails and the legal power structure is decentralized.

[15] Interview with Lucy Masiye-Lungu, national president, YWCA, 2 July 2015.

[16] Interview with Pezo Phiri, coordinator, Governance, Human Rights and Gender Portfolio, Swedish Embassy, 15 July 2015.

The government decision to include chiefs in the process has been a successful strategy insofar as the majority of upper chiefs appear to discourage child marriage, and some are working actively to overturn resistance from village headmen and parents in their chiefdoms. This is partly linked to the Chiefs Act of 1965, which specifies that chiefs should support the government of the day. But it also reflects the chiefs' motivation to remain relevant authorities in society, which requires them to stay on top of current trends. Commenting on the active and progressive role of some chiefs, an officer in the Ministry of Gender and Child Development remarked, "In Zambia we have had situations where traditional leaders actually withdraw these children from child marriages and ensure that they go back to school."[17] Over the past three years, there have been press releases and news stories in the national media on a regular basis about prominent chiefs who are taking an active stand against child marriage. Recently the chiefs of Chisamba, Ngabwe, and Chisome districts were reported to have outlawed child marriages. For example, Chief Chamuka of Chisamba dissolved the marriage of a girl under 16 years old and reported the matter to police; the husband was then charged with child defilement (*Zambia Daily Mail*, 2016). Similarly, Chieftainess Mwenda of the Tonga has annulled over 600 marriages involving girls between 12 and 15 years old since she joined the campaign in 2014 (Maingaila, 2016). The important role played by chiefs is now rather well established, and chiefs speaking out against child marriage are seen to have a significant impact (Mann et al., 2015: 27, 38, 41.

The chiefs' arguments are mostly in line with those of the government, attributing child marriage to poverty and underlining the role of parents in perpetuating the process. Chief Nyamphande stated, "Poverty has been a major factor leading to early marriage as parents marry

[17] Interview with Samuel G. Mwenda, chief child development officer, Ministry of Gender and Child Development, 14 July 2015.

off their girls once they reach puberty, in exchange for finances and other material things such as goats and cattle" (*Zambia Daily Mail*, 2014). 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."[18] 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.

Discussion

Based on analyses of Sudan and Zambia, we develop a theoretical argument to explain why counter-mobilization against child marriage reform is more likely to occur in countries with codified family law than in countries with living family law. We identify two causal mechanisms that link nature of law to the absence or presence of counter-mobilization: legal power structure and political battle. Using Elster's (1983: 24) definition, a mechanism provides a "continuous and contiguous chain of causal or intentional links" between the *explanans* (the explanation, in this case the nature of law) and the *explanandum* (the phenomenon to be explained, in this case the likelihood of counter-mobilization). As shown in figure 1, we hypothesize that variation in nature of law (whether there is a codified or living system of law) triggers different outcomes

[18] Chief Nzamane, "Why traditional chiefs like me must stand against child marriage," 24 October 2013, posted on Girlsnotbrides.org.

according to the two different trajectories at play. The first trajectory is that of a centralized legal system where the battle over the reform concerns interpretation of the law, whilst the latter trajectory is that of a decentralized legal system where administration of the law is the key political battle. We understand power structure (centralized and decentralized) and political battle (interpretation and administration) as attributes of a codified and a living law system. In the Sudanese case, the potential counter-mobilizers are strong at the center and the codification has been a useful tool to maintain their power and mount resistance to reformers. The codification of a Muslim family law in 1991 has fractionalized the political and religious elites over the correct interpretation of Sharia. 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. Continuation of a living law system reinforces the personalized features of traditional authority and secures traditional leaders wide discretionary powers locally. The political battle is thus one over the administration of law rather than its interpretation, and the power struggle takes place locally rather than at the national level.

<Figure 1 about here>

In Sudan, the 2005 Constitution stipulates that all laws have to conform to Sharia, which has forced the debate on child marriage reform into a political-religious battle over the correct interpretation of Islam rather than over the social realities of girl brides. In the words of a woman activist, "We cannot say 'abolish Sharia.' The regime will not allow it."[19] Efforts to enact child marriage reform, even using Islamic arguments, are met with counter-mobilization from

[19] Interview with Fahima Hashim, Salmmah Women's Resource Centre, 23 May 2011.

religious leaders and conservative Islamists because their monopoly of Islamic interpretation is at stake. Reformists become marginalized because they are seen as less schooled in Islamic scripture. The codification of religious law opens up a space for political contestation of the correct interpretation of doctrine. This has allowed women activists to advocate for progressive interpretations of Sharia and to mobilize for legal reform, especially a comprehensive reform of the Muslim family law of 1991, which the activists see as key to eradicating child marriage. 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. Legislating the minimum age of marriage as 18 is perceived as too radical by counter-mobilizing actors. 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. In the words of a government reformer, "Even the president is afraid if they say it is not Islam. […] The president does not want his name attached to something that is against Islam."[20] While religiously conservative forces have been given central positions in the Sudanese state, government reformers and women activists are increasingly marginalized and portrayed as anti-Islam and pro-Westernization, even though they make conscious use of Islamic frames in their mobilization efforts.

Unlike in Sudan, in Zambia family law is not codified but exists as living law. 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'

[20] Interview with Amira al-Fadil, 25 June 2013.

powers depend on their being perceived as beyond politics, as not interfering in politics (Muriaas, 2009). Thus their opposition to an important government reform could compromise their formal standing in Zambian society. 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 chiefdom hierarchy. Customary law remains living and is exempt from the anti-discrimination clause in the 1991 Constitution. 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. However, it is important to note that customs are flexible, constantly changing, and not necessarily in opposition to statutory law (Chanock, 1989). Chiefs presiding over domestic disputes in traditional courts are likely to draw on several legal resources. As discussed by Oomen (2005: 210), local dispute resolution is about "mixing and matching rules that refer to culture, common sense, state regulations, the Constitution, precedent and a variety of other sources." 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.

In terms of generalization, our theoretical argument provides a distinction that we propose as relevant for a certain set of Muslim-majority and traditional-majority cases in Africa. We have focused on what we see as being the two most representative African cases of law systems. We regard Sudan as a typical Muslim-majority case and Zambia as a typical traditional-majority case. Generally speaking, family laws in modern Muslim-majority African states are

codified, with traceable elements of Islamic jurisprudence (*fiqh*). Of the four schools of Sunni Islamic jurisprudence, the Maliki school is the most prominent in both western and northern Muslim Africa. Even in proclaimed secular states such as Tunisia, there are elements of Sharia. For example, the Tunisian minister of justice in 1973 referred to the place of *fiqh* in the organization of marriage (Ltaief, 2005: 334). It is important to note that Muslim majority states can have living family law. For example, in Sudan before 1991 and in Niger the family law remains uncodified despite several codification attempts (Kang, 2015; Villalón, 1996).

In most traditional-majority states in sub-Saharan Africa, such as Zambia, customary law is living law. There have been historical attempts (especially by the British colonial administration) to establish a common, codified law, as in several other countries, but the nature of the law remains living. It is up to chiefs who preside over the courts to make use of different sources in their decision-making. One notable example of a case with strong traditional institutions and a partly codified customary law system is South Africa. In the 1990s there was a large family law reform that included the codification of customary marriages, and the bill was finally enacted in 1998. In spite of this, customary law remains largely living, as many South Africans still do not register their customary marriages (Mbatha and Fishbayn Joffe, 2013).

Conclusions

Child marriage reform has evoked counter-mobilization by religious elites in Sudan but cooperation from traditional leaders in Zambia, even though child marriage is a doctrinal gender status issue in both cases. 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. There are two causal mechanisms at play: legal power structure and political battle.

Based on our analysis of Sudan and Zambia, we tease out two trajectories linking nature of law to counter-mobilization: (a) codified laws create a centralized legal power structure where the political battle is over interpretation of the law, and (b) living laws produce a decentralized legal power structure where the political battle is over administration of the law. We argue that variation in the nature of law is likely to be a relevant distinction between Muslim-majority states and traditional-majority states in Africa with regards to child marriage reform. Whether a system of law is codified or not, then, is one likely predictor of whether counter-mobilization does or does not occur.

Our main contribution to the literature on gender policy reform is to help develop an understanding of how reforms of doctrinal gender status issues are likely to play out in Africa. Until now, the theoretical literature on variation in family law reform has not sufficiently dealt with the particularities of traditional institutions. This literature to date has largely highlighted the distinction between doctrinal and nondoctrinal gender status issues, suggesting that these issues offer different potential for counter-mobilization in settings where there is constitutional recognition of religion or tradition. Nuancing this, we claim that religious and traditional institutions have distinct effects depending on the nature of law. Based on our knowledge of cases in sub-Saharan Africa, where some of the most prominent examples of traditional law systems are found, we argue that living family law triggers mechanisms that set these cases apart from typical Muslim-majority states, where family law tends to be codified. Our hypothesis about why counter-mobilization does or does not occur in cases of doctrinal reform should be explored with additional research that includes other contexts.

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