

NATIONAL PROSECUTION CONFERENCE, LUSAKA ZAMBIA AT THE MULUNGUSHI CONFERENCE CENTRE, 16<sup>TH</sup> TO 18<sup>TH</sup> SEPTEMBER 2024

PRESENTATION BY HIS ROYAL HIGHNESS CHIEF CHAMUKA VI ON THE MARRIAGE AMENDMENT ACT NO. 13 OF 2023: IMPLICATIONS ON THE OFFENCE OF CHILD MARRIAGE AND DEFILEMENT IN ZAMBIA

INTRODUCTION

child Marriage ← Health issue, Economic issue, Security issue, Cultural issue, Social issue, Spiritual issue, Criminal issue

UNICEF INDICATES THAT 1 IN EVERY 5 GIRLS IS MARRIED IN CHILDHOOD ACROSS THE GLOBE WHILE THE ZAMBIAN POLICY BRIEF REPORTS THAT 29% OF CHILDREN ARE MARRIED BEFORE THE AGE OF 18 IN ZAMBIA.

\* We make laws - perpetrators also strategize on how to dismantle or how to test the laws.

THE DEFINITION OF A CHILD

THE ZAMBIAN CONSTITUTION CLEARLY DEFINES A CHILD AS A PERSON WHO HAS ATTAINED, OR IS BELOW THE AGE OF 18 YEARS.

THE DEFINITION OF CHILD MARRIAGE

UNICEF REFERS CHILD MARRIAGE TO ANY FORMAL MARRIAGE OR INFORMAL UNION BETWEEN A CHILD UNDER THE AGE OF 18 AND AN ADULT OR ANOTHER CHILD. PARLIAMENT DEFINES CHILD MARRIAGE AS A LEGAL MARRIAGE OR INFORMAL UNION BEFORE THE AGE OF 18 (PARLIAMENT.GOV.ZM).

THE DEFINITION OF CHILD DEFILEMENT

CHILD DEFILEMENT IS DEFINED AS HAVING PENETRATIVE SEX BY AN ADULT PERSON WITH A GIRL WHO IS BELOW THE AGE OF SIXTEEN (GENDERLINKS.ORG.ZA). THE PENAL CODE OF ZAMBIA, UNDER SECTION 138, REFERS CHILD DEFILEMENT AS HAVING SEX WITH A CHILD.

THE IMPLICATIONS ON THE OFFENCE OF CHILD MARRIAGE AND DEFILEMENT IN ZAMBIA AS A RESULT OF HAVING IN PLACE, THE MARRIAGE AMENDMENT ACT NO.13 OF 2023

AS ONE OF THE 288 TRADITIONAL LEADERS IN ZAMBIA, I DO UNDERSTAND THAT THE ACT REPEALED SECTION 33 OF THE MARRIAGE ACT, WHICH PERMITTED MARRIAGE OF CHILDREN, INCLUDING THOSE UNDER THE AGE OF 15, AND REPLACED IT WITH LANGUAGE THAT RENDERS ANY MARRIAGE VOID IF ONE OR BOTH PARTIES TO IT IS A CHILD.

THE ACT EXTENDED THE RESTRICTION TO MARRIAGES CONCLUDED UNDER CUSTOMARY RITES, WHICH BEFORE ITS ENACTMENT, DID NOT IMPOSE A MARRIAGEABLE AGE LIMIT, BUT INSTEAD DEPENDED ON THE GIRL'S ATTAINMENT TO PUBERTY.

THE AMENDMENT TO THE 1918 MARRIAGE ACT RAISED THE MINIMUM MARRIAGE AGE TO 18 FOR ALL MARRIAGES, INCLUDING THOSE CONCLUDED UNDER CUSTOMARY LAW.

IN VIEW OF THE ABOVE, THE FOLLOWING ARE SOME OF THE MAJOR IMPLICATIONS:

Are we marrying off children? ~

1. CHILD MARRIAGE IN ZAMBIA HAS BEEN OUTLAWED OR CRIMINALIZED.
2. PARENTAL CONSENT/S TO ANY MARRIAGE INVOLVING A CHILD OR CHILDREN SHALL NO LONGER BE RECOGNIZED, AND SHALL BE DEEMED CRIMINAL.
3. THE HIGH COURT JUDGE SHALL NO LONGER GIVE CONSENT TO MARRIAGES INVOLVING A CHILD OR CHILDREN.

4. THE 1949 HIGH COURT RULING INVOLVING REX VRS CHINJAMBA WHERE THE HIGH COURT JUDGE GAVE CONSENT TO A MARRIAGE OF A 15 YEAR GIRL SIMPLY BECAUSE THERE WAS LEGAL MARRIAGE CONSENT FROM PARENTS SHALL NO LONGER BE A POINT OF REFERENCE AT LAW AND PRACTICE TO VINDICATE WRONG DOERS.
5. IT WILL NOW BE EASIER AND QUICKER FOR PROSECUTORS TO DEAL WITH CASES OF CHILD MARRIAGES.
6. CHILDREN MARRIED UNDER THE AGE OF 16 SUFFER BOTH CHILD MARRIAGES AND CHILD DEFILEMENT. HENCE, IT WILL BE EASIER FOR PROSECUTORS TO USE OR READ TOGETHER ALL THE AVAILABLE CHILD PROTECTION LAWS TO PUNISH THE WRONG DOERS WITH JAIL SENTENCES RANGING FROM 5 TO ABOVE 15 YEARS AND IN SOME CASES WITH LIFE IMPRISONMENT. THE AVAILABLE ASERNAIS FOR THE ZAMBIAN PROSECUTORS INCLUDE:
  - (I) THE CONSTITUTION OF ZAMBIA
  - (II) THE EDUCATION ACT NO.23 OF 2011
  - (III) THE ANTI – GENDER BASED VIOLENCE ACT NO.1 OF 2011
  - (IV) THE PENAL CODE OF ZAMBIA
  - (V) THE CHILDREN’S CODE ACT NO.12 OF 2022 AND
  - (VI) THE MARRIAGE AMENDMENT ACT NO.13 OF 2023
7. ALTHOUGH ZAMBIA’S LEGISLATIVE FRAMEWORK NOW OFFERS ROBUST PROTECTION OF ALL CHILDREN IN DIVERSE CONTEXTS, FROM THE PRACTICE OF CHILD MARRIAGE AND CHILD DEFILEMENT, THERE IS NEED TO CONTINUE WORKING HARD AS A TEAM TO END THE TWO VICES.

#### WHAT WE ARE DOING AS A CHIEFDOM

CHAMUKA ROYAL ESTABLISHMENT WHILE USING A MULTI-SECTORAL APPROACH, IS DOING THE FOLLOWING AS SUPPORTIVE MECHANISMS TO ENSURE EFFECTIVE ENFORCEMENT OF THE MARRIAGE AMENDMENT ACT NO.13 OF 2023 AND OTHER CHILD PROTECTION LAWS PENALTIES:

1. ADVOCACY FOR INCREASED BUDGETARY ALLOCATION BY GOVERNMENT AND ITS COOPERATING PARTNERS IN ALL ACTIVITIES THAT TARGET ENDING CHILD MARRIAGES AND CHILD DEFILEMENT.
2. ADVOCACY FOR DECENTRALIZED ISSUANCE OF BIRTH CERTIFICATES, *and that these should be electronically connected to various govt departments/ministries*
3. AWARENESS RAISING/COMMUNITY SENSITIZATION CAMPAIGNS ON THE CHILD PROTECTION LAWS AND RESTRAINING PARENTS AND GUARDIANS FROM CONSENTING TO CHILD MARRIAGES.
4. ALIGNMENT OF THE CHIEFDOM BY – LAWS ON ENDING CHILD MARRIAGES AND DEFILEMENT WITH EXISTING CHILD PROTECTION LAWS. *• initiation ceremonies*
5. PUTTING IN PLACE A FULLY FUNCTIONAL VILLAGE – LED ONE STOP ANTI-GBV COMMUNITY DEVELOPMENT CENTRE WHICH IS PROVIDING VARIOUS SERVICES INCLUDING BASIC LEGAL SERVICES, PSYCHO-SOCIAL COUNSELING, MEDICAL /SRHR, INFORMATION DESSEMINATION, PARA –POLICING, GBV DATA RECORDING AND MANAGEMENT, FEEDING PROGRAMME TO SURVIVORS, REFERRALS TO OTHER STAKEHOLDERS AND ICT PROGRAMMES. *• Reporting cases/Referrals.*
6. ESTABLISHMENT OF A CHIEFDOM ANTI – GBV FUND WHICH IS BEING MANAGED BY CHAMUKA ROYAL ESTABLISHMENT DEVELOPMENT TRUST.
7. REGISTRATION OF ALL CUSTOMARY MARRIAGES. *Birth certificate / Parental/own consent letter from the previous school*
8. CAPACITY BUILDING OF ALL COMMUNITY MEMBERS WHO ARE DIRECTLY INVOLVED IN ENDING GENDER BASED VIOLENCE. *level 3 Para legal Certification/TEVETA*
9. ESTABLISHMENT OF ANTI – GBV VILLAGE COMMITTEES.
10. FORMATION OF A YOUTH PALACE ADVISORY COUNCIL.

11. SUPPORT OF TEEN MOTHERS WITH SCHOLARSHIPS AND AGRICULTURAL INPUTS.
12. WORKING WITH HIGHER LEARNING INSTITUTIONS SUCH AS THE UNIVERSITY OF ZAMBIA AND OTHER STAKEHOLDERS IN RESEARCH ON CASES SURROUNDING CHILD MARRIAGES.
13. ENCOURAGING COMMUNITY MEMBERS AND CHILDREN TO TAKE ADVANTAGE OF GOVERNMENT POLICIES SUCH AS FREE EDUCATION, KEEPING GIRLS IN SCHOOLS, RE-ENTRY INTO EDUCATION AFTER SUCCESSFUL DELIVERY, BURSARY SKILLS TRAINING, EMPOWERMENT FUNDS, SOCIAL CASH TRANSFER, CASH FOR WORK, LEGAL MINING THROUGH ACQUISITION OF AMRS.
14. WORKING WITH PLAN INTERNATIONAL AND OTHER STAKEHOLDERS TO IMPLEMENT CLIMATE SMART AGRICULTURE TO ENSURE THAT OUR PEOPLE HAVE ALTERNATIVE INCOME LIVELIHOODS AS A WAY OF ERADICATING POVERTY.
15. RESTRICTIONS OF ALL CHILDREN UNDER THE AGE OF 18 YEARS FROM CONDUCTING MINING ACTIVITIES OR CONDUCTING BUSINESSES OR LOITERING IN MINING AREAS.
16. ESTABLISHMENT OF THE CHAPLAINCY DEPARTMENT AT THE PALACE.

### **CHALLENGES**

SOME CHALLENGES WE ARE FACING INCLUDE THE FOLLOWING:

1. LACK OF TRANSPORT
2. INSUFFICIENT FUNDS
3. FEW BOARDING SECONDARY SCHOOLS
4. HIGH LEVELS OF POVERTY
5. SOME LOW LEVEL OF RIGIDITY FOR SOME MEMBERS OF THE COMMUNITY TO FORGO BAD CULTURAL PRACTICES.
6. LACK OF SECURITY IN REMOTE AREAS/HOT SPOTS.
7. LACK OF SAFE HOUSES IN THE DISTRICT FOR VICTIMS/SURVIVORS.
8. LACK OF MATRONS IN SCHOOLS WITH WEEKLY BOARDING FACILITIES.
9. SOME CHILDREN ARE MARRYING THEMSELVES.
10. LACK OF ANTI – GBV FAST TRACK COURT SYSTEM AT DISTRICT LEVEL.

### **CONCLUSION**

THE MARRIAGE AMENDMENT ACT NO.13 OF 2023 IS A VERY PROGRESSIVE PIECE OF LEGISLATION. THE APPLICATION OF THIS LAW COMPELS ALL OF US TO UNDERSTAND THAT ALL FORMS OF CHILD MARRIAGES HAVE BEEN OUTLAWED IN ZAMBIA. PROSECUTORS NEED TO USE OTHER LAWS TO COMPLIMENT THIS ACT IN ORDER TO ADEQUATELY PUNISH PERPETRATORS OF CHILD MARRIAGES THAT COME WITH DEFILEMENT, DISEASE INFECTION, TEEN PREGNANCIES, TRAUMA AS WELL AS DEATH OF VICTIMS. WE ALL NEED TO CHANGE OUR MINDSETS AND GOVERNMENT AND ITS PARTNERS NEED TO INVEST MORE RESOURCES IN RURAL EDUCATION FACILITIES AND THE JUSTICE SYSTEM. WE SHOULD NOT FORGET MEN AND BOYS AS GOOD PARTNERS IN OUR EFFORTS TO END CHILD MARRIAGES AND CHILD DEFILEMENT. LADIES AND GENTLEMEN, THE ACT CALLS ON ALL THE 288 TRADITIONAL LEADERS (ROYAL HIGHNESSES) AND ALL THE STAKEHOLDERS IN ZAMBIA TO EMBARK ON A ROBUST CULTURAL TRANSFORMATION SO TO ALIGN OUR GENDER NORMS WITH THE MARRIAGE ACT AND OTHER CHILD PROTECTION LAWS. TOGETHER WE CAN END CHILD MARRIAGE IN ZAMBIA NY 2030.

**THANK YOU**