

# **Protecting Children from Adult Affairs: An Appraisal of the Prohibition of Child Marriage Act 2024 And its Implications for Sierra Leone.**

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## *Context*

On the 2<sup>nd</sup> July 2024, the President of the Republic of Sierra Leone gave his assent to the Prohibition of Child Marriage Act 2024, thereby midwifing into legal existence a specialized legislation which out rightly proscribes child marriage and also provides legal protection for victims of child marriage. The president lauded this as an accomplishment which will define his administration. It must be noted however, that child marriage was first prohibited by section 34 of the Child Right Act 2007 and subsequently criminalized by section 35 of the same Act.

Sierra Leone is among the African nations that play host the highest incents of child marriages. According to the United Nations Children’s Agency-UNICEF, 30% of women aged 20 to 24 years were first married or in a union between 15 and 18. Sierra Leone is home to some 800,000 child brides. Of these girls, 400,000 were married before age 15 and 9 percent are married before age 15. The UN estimates that if this trend continues still, 27 percent of all girls in Sierra Leone will marry before they turn 18 in 2030. Therefore the enactment of the law, which followed fevered campaigns by civil society organizations and the office of the first law of Sierra Leone, deserves an applause.

Reacting to the enactment of the new law, Samira Daoud, Director of Amnesty International for West and Central Africa said:

“We welcome this historic law banning child marriage in Sierra Leone. This legislation... Seeks to protect girls from a deeply harmful practice that has long violated their rights and hindered their education, health and well-being. This represents a major step forward in the fight against gender based violence”.

It is significant to note that child marriage does not only affect girls. According to UNICEF's State of the World's Children Report 2023, 4 percent of boys are married before age 18.

Globally, when considering exceptions for the age of marriage with parental or judicial consent, close to 100 million girls are not effectively legally protected against child marriage in their country (World Bank Child marriage Report 2017). Thus the elimination of child marriage by 20230 is a target under the sustainable development goals (SDGs).

With the above in mind, it is little surprising that the law prohibiting child marriage has received wide acclaim as a statement of the country's intention to tackle this harmful practice faced by women and girls. But what does the law provide and how best does it really prohibit child marriage? The subsequent paragraphs will discuss the details of the law. The Act itself is divided into seven parts with each part dealing with a specific issue.

### ***Who Qualifies As A Child And What Constitutes A Child Marriage?***

There is little or no confusion on who is a child under Sierra Leone laws. From the interpretation section of the Act, a child is defined as someone who is below the age of 18 years. This definition is consistent with what is contained the definition section of the Child Rights Act of 2007. It is also in sync with the definition in Article 1 of the UN Convention on the Rights of the Child as well as Article 2 of the African Charter on the Rights and Welfare of the Child. As a state, Sierra Leone is a signatory to the UN Convention on the Rights of the Child having signed same on the 12<sup>th</sup> February 1990 and ratified it on the 18<sup>th</sup> June 1990 Sierra Leone is also a signatory to the African Charter on the Rights and Welfare of the Child. These international treaties impose an obligation on Sierra Leone to take positive measures to protect children and ensure that the best interest of the child becomes the overriding consideration in any decision or action that may affect people under the age of 18 individually or collectively.

A child marriage is defined in the Act as a union in which either or both of the contracting parties is a child. The implication of this definition is that the law protects both the male child and the female. It matters not whether it is the male or the female that contracts the union. The UN defines child marriage in similar fashion, as a formal or informal union before the age of 18. (World Bank Report 2017). Article 6(b) of the Protocol to the African Charter on Human and Peoples' Rights

on the on the Rights of Women in Africa (The Maputo Protocol) prescribes that the minimum age of marriage for women is 18 years. The emphasis on the age makes the definition of child marriage as envisaged in the present Act compliant with minimum international standards. Consistency between domestic laws and international treaty obligations is key to avoid litigation. In the case of *Association Pour le Progres et la defense de droits des femmes Maliennes (APDF and the Institute for Human Rights and Development in Africa v. the Republic of Mali (app.no 046/2016-dated 11 may 2018)* the African Court of Human and Peoples' Rights was called upon to decide on a matter involving the a new version of law which was passed by the Malian national Assembly in 2011. The law allows marriage for girls from the Age of 16 and in certain circumstances the age of 15. Additionally the law recognizes religious marriages which are conducted between non consenting people, who ae sometimes minors. The two NGO challenged the law before the ACHPR to denounce the violations of the right of women and children in Mali. The African court ruled that the minimum age of marriage must be 18 for both men and women and that the free consent of those involved must be compulsory. The Judges reminded Mali of its obligations under certain provisions of the Maputo Protocol and the African charter on human and Peoples Rights, which they found, Mali had violated. Mali was therefore ordered to modify its domestic laws and bring them up to speed with its international treaty obligation.

### ***Making Child Marriage A Dangerous Adventure***

An overview of the Act would reveal that it does not only proscribe the marriage ceremony itself, but it stretches the prohibition regime include inchoate acts that may lead to the solemnization of a child marriage. Its further provides protective covering to even those who might have contracted child marriages before the enactment of the present law.

At Section 2(1) child marriage is expressly forbidden in the Republic of Sierra Leone. The subsection deploys the use of the phrase: "shall not contract" to convey the severity of the prohibition. The penalty for contravention of this section is an offence which attracts a minimum of 15 years imprisonment or a fine of not less than NLe 50,000). The law gives the leeway for the imposition of both the fine and the jail term, where a person is found guilty.

Curiously, contrary to what used to obtain prior to the coming of the present law, a parent or guardian or any person in charge of a child is prohibited from giving consent to a child marriage. To the extent that where a child who is under parental or guardianship of any individual is given off to a marriage, the law will presume that there is an implied consent from such parent or guardian; unless proven otherwise. If not, such a parent or guardian becomes liable, upon conviction, to a jail term of 15 years or a fine of NLE 50,000 or both the fine and the imprisonment.( See section 3)

Added to the above, using duress, deceit, force, torture or abandon to land a child into a marriage or betrothal is also prohibited under the law. A person found wanting is, upon conviction liable to a term of 15 years imprisonment or a fine of 50,000 or to both fine and imprisonment.(See section 4) By the severity of the punishment provided, Sierra Leone as a nation took sturdy strides to send a message that child marriages should be discouraged at all cost.

### **Conducting, Promoting, Attending, Aiding and Abetting a Child Marriage, Now a Criminal Enterprise.**

The law does not merely set out to discourage the institution of child marriage, it goes all the way to nip it in the bud in all its manifestations; whether knowingly or unknowingly, at the initial stages or the aftermath. Sections 5 to 10 the act contain these prohibitions.

At section 5, the law forbids anyone from being in conduct of a child marriage ceremony. And where a person is found conducting a child marriage, it is presumed that the person is aware that the parties are below the age of 18. This section imposes an obligation on community leaders, religious leaders to take steps in ensuring that marriages they preside over do not involve persons who are below the age of 18.

The law goes further to impose an obligation on anyone not to do acts which aid in the promotion of a child marriage. So any activity that supports or encourages the advancement of a child marriage is criminalized by the law. In essence where a person is found in activities that encourage child marriage, the law imposes an implied knowledge that the person is aware the parties are under the age of 18.

More significantly, everyone in Sierra Leone is prohibited from attending a marriage that involves parties who are under age 18. And where a person is found attending a marriage where the parties are children, there is the presumption that the person knew that the marriage involved children, unless it can be shown otherwise. Even the attempt to enter into a marriage involving a child is equally criminalized. Someone who attempts to marry a child commits an offence. Where a person is found guilty in any of the categories listed, and he is convicted, he is guilty of an offence punishable to a jail term of a minimum of 15 years or a fine of 50,000 or to both fine and imprisonment. Also, a conspiracy to cause a child to enter into a marriage made equally criminal. Aiding and abetting a child to enter into a marriage is equally punishable.

As stated earlier, these provisions are proactively couched. They attack all the roots of child marriage and ensure that the net of prohibition is cast wide to capture all facets.

#### **Cohabiting With a Child- A Criminal Offence.**

Part III of the Act deals with all aspects of cohabitation. The Act defines cohabiting as an arrangement where people live together and have a sexual relationship. So not only is the marriage criminalized, even the cohabitation with a child, without marriage is expressly made an offence. Any person having charge of a child is prohibited by the law from permitting the child to be involved in cohabitation. Where a guardian or parent is negligent and it is discovered that a child under his watch is involved in cohabitation, the law imposes an implied consent and a punishment for the said parent or guardian. The punishment, upon conviction, is a term of 15 years or a fine of 50,000 or both. The attempt at cohabiting with a child is equally punishable. The conspiracy to cohabit with a child is also punishable, and so is the aiding and abetting of cohabitation with a child. While the conspiracy attracts a term of 10 years and a fine of NLe 10,000, the aiding and abetting attracts a fine of NLe 50,000 or a term of 15 years or both; in either case.

## **The Status of Child Marriages Concluded Before and After the Prohibition of Child Marriage Act 2024**

Part IV of the law directs how the law will treat child marriages contracted after the enactment of this law. The effect is that a child marriage which is entered into after the coming into effect of this; law is void. In law this implied that the purported marriage has no legal effect whatsoever. This is understandable even when considered in simple contractual terms. Viewing marriage as a contract, it is evident people under the age of 18 lack the capacity to enter into such contracts.

A child who had been contracted into a marriage prior to the present law reserves the right to file a Petition to the court to annul or wipe out the whole marriage. The wording of section 16(1) directs that a person who was a child before the coming into effect of this Act but who has attained majority could still petition for an annulment of the marriage. Or where the child cannot petition due to want of capacity, the parent or guardian or a next friend could file the Petition on behalf of the child. In law, a next friend is someone who is appointed to act for someone who lacks the capacity to sustain an action. This is important when it is considered that most child marriages are done with the approval of the parent or guardian. The inclusion of a next friend is therefore a way to ensure that an outsider can aid the child in getting a remedy, where the parent or guardian is reluctant or complicit. Notwithstanding the annulment of the marriage contracted, any child who is the product of the marriage will be considered as a legitimate child and in custody or access proceedings, the nest interest of that child will be considered paramount.

### **Victims of Child Marriages: Compensation and Protection Regimes.**

A compensation regime is established for victims in Part V of the Act. Here, a judge is empowered to order the adult in a child marriage situation to pay compensation to the child party. The judge has the discretion to determine the compensation to be paid after taking into account the lifestyle of the child party, the earning capacity and the needs of the child. The compensation could either be a lump sum payment or a monthly basis. The discretion entirely resides with the judge.

The jurisdiction of the court is also invited under part VI of the Act in circumstances where it is believed that a child marriage is about to be conducted or arranged. In such instances, the court may issue an injunction to stall the furtherance of such a marriage. The injunction in this instance

will either be directed at the contracting parties, the parent or guardians or any person who intend to preside over the marriage.

However as a precondition, it has to be shown that the court has previously given notice to the person and has given him chance to be heard on why an injunction should not be issued. The requirement for a prior notification here is could pose challenges in practice. Where there is an incident of child marriage which is about to occur, such a requirement could serve as a delay to the actual stoppage of the ceremony by way of an injunction. However this concern seems to be cured by the powers given to the court to issue interim injunction in cases of necessity.

Quite interestingly, a disobedience to an injunction granted under this rubric does not only amount to contempt as it is usually the case, the disobedience is punished by a jail term of at least one year or a fine of NLE 30,000 Leones. It remains to be seen how this position of contempt plus a separate criminal conviction could be reconciled in light of the principle of double jeopardy.

### **The Emergence of a Harmonized Position of Law on Child Marriage.**

Prior to this law, the position of the law as it relates to child marriage was murky. While section 19 of the Sexual Offences Act 2012 as amended by section 4 of the Sexual Offences (Amendment) Act 2019 makes it a criminal offence to engage in sexual activity with someone under the age of 18, section 2(2) of the Registration of Customary Marriages and Divorce Act 2009 permits marriage of under 18s with the condition that a parent or guardian gives consent or where they are not available, a Magistrate or a Local Authority's consent is sufficient. Further, though section 34 of the Child rights Act 2007 expressly prohibited child marriage of any kind, the penal provision in section 35 made the offence a summary one with a jail term of two years maximum.

However, with the emergence of this law the prohibition of child marriage is now certain. Section 28 of the Prohibition of Child Marriage Act 2024, repeals and replaces subsections 2 and 3 of Section 2 of the Registration of Customary marriages and Divorce Act 2009 to the effect that the marriage of persons under the age of 18 is prohibited in all circumstances and no consent will allow it. The same section also repeals and replaces sections 34 and 35 of the Child Rights Act 2007 thereby making child marriage a felonious offence with a minimum of 15 years jail term; The Civil Marriages Cap 97, the Christian Marriage Cap 95, the Muslim Marriage Cap 65 and the

Mohammedi Marriage Ordinance are all amended and or repealed to make marriage an activity restricted to solely persons above the age of 18. According to the ECOWAS Roadmap On prevention and Response to Child Marriage (2019-2030) one of key the drivers of child marriages in the region is the existence of multiple/conflicting legal frameworks and a plurality of laws such as national, customary and religious laws relating to marriage. The hope is that this law creates the required certainty on the issue

### **The Role of the Ministry of Gender and Children's Affairs**

The bulk of the work of implanting this law is laid in the hands of the Ministry. At section 22, the Ministry is charged with the policy formulation, resources mobilization and advocacy in respect of this law. It also has the duty to recruit social workers to provide counselling for victims of child marriages, providing safe homes and the rehabilitation and reintegration of victims of child marriages. They will also be in charge of community engagement.

Most importantly, the Ministry will also provide Child Marriage Prohibition Officers who will have as part of their duties to prevent instances of child marriage, advice against child marriage and furnish periodic reports on the situation of child marriages as well as sensitize communities on the law. The also have the responsibility to do community engagements to ensure that the law is popularized.

### **Concluding Remarks**

With the enactment of this law and its concomitant strong penalties, Sierra Leone has placed itself among an elite group of states who have shown seriousness in ending harmful practices against women, girls and children. The law also contributes in significant ways in fulfilling the country's obligations under international treaties. The obligation under Articles 5 & 6 of the Protocol to the African Charter on Human and Peoples' Right on the Rights of Women in Africa (The Maputo Protocol) which defines the minimum age for marriage as 18 and urged state parties to eliminate all forms of harmful practices against Women. It also serves to fulfil Article 16(2) of the Convention on the Elimination of Discrimination Against Women(CEDAW) which states that:



“the betrothal and marriage of a child shall have no legal effect and all necessary action, including legislation, shall be taken to specify a minimum age for marriage...” . It also aid the fulfilment of Articles 19, 34 of the Convention on the Right of the Child; and Articles 16, 21 and 27 of the African Charter on the Rights and Welfare of the Child.

Despite these laudable steps, concerns have been raised that enacting a law on prohibition of child marriage and leaving out the prohibition of Female Genital Mutilation is could not get the desired effect. Child marriage is not the only risk faced by girls in Sierra Leone. Among women aged 18-49, just 1.3 percent are child brides while 33.7 percent of all women in this group have been subjected to both child marriage and Female Genital Mutilation-(FGM). A further 56.8 percent of the women have undergone FGM but not child marriage which translates that among women in this age bracket, only 8.3 have not been subjected to either of these harmful practices.(UNICEF). Some activist have argued that the law fell short by failing to out-rightly prohibit the practice of FGM which they have argued, is quite interwoven with child marriage. FGM in Sierra Leone affects about 83 percent of women-(SL-DHS 2019). It has been contended that: “like Child marriage, FGM is bound up with and is inseparable from, patriarchal suppression” (Josephine Kamara, Purposeful). Thus for an effective child marriage prohibition to take hold, the law has to equally prohibit FGM.

Another lawyer of concern has to do with the level of support system provided for victims of child marriage. Girls are bound to face retaliation, stigma and mental distress for causing family member to go to prison. Families can be destabilized by imprisoning family members who attend such ceremonies. Generally, it has been argued that criminalization and punitive approaches to child marriages can have unintended and negative effects on adolescent girls and their families and children. Some believe the root causes of child marriages are structural and linked with poverty and inequality. Such punitive approaches cannot substitute for these causes. Law alone cannot end the prevalence of child marriages. Some studies have even shown that laws intended to end child marriages tend to have limited impact-([girlsnotbrides.es](http://girlsnotbrides.es))

Whether this law will have its intended impact remains to be seen. It will also have to do with the level of community engagement that comes with the implementation. In the meantime, there is hope that young girls will start living without the fear that they could be sold off into a marriage while they are supposed to be enjoying childhood.

### **About the Author**

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