



THE UPR PROJECT AT BCU

Submitted by:

The UPR Project at BCU
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Birmingham City University's Centre for Human Rights was created in 2014 to promote human rights, ensure access to justice, and enhance the rule of law around the world. We seek to achieve this through leading research, education, and consultancy. We submit expert reports to international human rights regions, provide advisory services to governments and nongovernmental organisations, and draft legal opinions and file legal briefs in domestic courts and international human rights courts.

The Centre for Human Rights established the UPR Project in 2018 as part of our consultancy service. We engage with the Human Rights Council's review process in offering support to the UPR Pre-sessions, providing capacity building for UPR stakeholders and National Human Rights Institutions, and the filing of stakeholder reports in selected sessions. The UPR Project is designed to help meet the challenges facing the safeguarding of human rights around the world, and to help ensure that UPR recommendations are translated into domestic legal change in member state parliaments. We fully support the UPR ethos of encouraging the sharing of best practice globally to protect everyone's human rights. The UPR Project at BCU engages with the UPR regularly as a stakeholder and is frequently cited by the OHCHR. You can read more about the UPR Project here: www.bcu.ac.uk/law/research/centre-for-human-rights/projects-and-consultancy/upr-project-at-bcu

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INTRODUCTION

1. Gabon is party to eight of the nine core international human rights treaties for which it should be commended.¹ This includes the Convention on the Rights of the Child (CRC) and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and in line with the Covenants' protection of minors, this Stakeholder Report focuses upon children's rights.
2. We make recommendations to the Government of Gabon on this key issue, implementation of which would see Gabon move towards achieving Sustainable Development Goals 4 and 5 which aim for "gender equality and empowering all women and girls" and "inclusive and equitable quality education and promote lifelong learning opportunities for all."
3. We urge the State to make practical commitments in the fourth cycle of the UPR for the advancement of children's rights, with particular reference to child, early and forced marriage. This includes giving full and practical consideration to all recommendations made by Member States, effectively implementing the recommendations Gabon accepts, and actively engaging with civil society throughout the process.

CHILD, EARLY AND FORCED MARRIAGE

A. Gabon and International Law on Child, Early and Forced Marriage

4. Child and early marriage occurs before the age of 18 for one or both of the parties and it manifests in any formal marriage or informal union. Forced marriage can occur at any age when one and/or both parties have not provided their full and free consent to the union. A child marriage is therefore considered to be a form of forced marriage, as one and/or both parties are unable to provide their full, free and informed consent.² There are various acronyms to describe this human rights issue, but in this submission we adopt 'Child, Early and Forced Marriage' (CEFM).
5. CEFM is a human rights violation which deprives children of their agency to make decisions about their lives and future. It increases their vulnerability to various ills such as violence, discrimination, abuse, ill-health including sexual and reproductive health problems, and prevents their full participation in the economic, political and social spheres.³
6. Child marriage is prevalent in Gabon, with girls disproportionately affected. National data indicates 22% of girls are married before the age of 18 and 6% before the age of 15, whilst 5% of boys are married before the age of 18.⁴

7. Article 203 of Gabon's Civil Code establishes the legal age of marriage at 15 years old for women and 18 years old for men. A marriage below those ages is allowed subject to the authorisation of the President of the Republic, or the President of the Supreme Court. In addition, Article 205 provides that "even if the conditions required by article 203 are met, the young man or the young woman who has not reached the age of 21 may not contract marriage without the consent of his father and mother."⁵

International Law Prohibiting Child Marriage

8. The United Nations' framework for addressing CEFM comprises a corpus of international human rights law and jurisprudence. Of particular relevance are Article 16 of the Universal Declaration of Human Rights,⁶ Articles 1, 2, and 24 of CRC,⁷ Article 16 of CEDAW,⁸ the Report of the Secretary General on CEFM,⁹ and the Human Rights Committee decisions.¹⁰
9. Endorsing the worldwide legal age of marriage as 18-years-old, the Committee in its General Comment No. 20 (2016), on the implementation of the rights of the child during adolescence, reminds States parties of "the obligation to recognize that persons up to the age of 18 years are entitled to continuing protection from all forms of exploitation and abuse. It reaffirms that the minimum age limit should be 18 years for marriage".¹¹
10. Furthermore, a number of UN initiatives have identified CEFM as a human rights violation and that such practice should be outlawed worldwide. The Human Rights Council adopted the first UN resolution on CEFM in 2013¹², and in 2015, it adopted its first substantive resolution on the issue wherein it requested the High Commissioner to organise an expert workshop on the impact of the existing strategies and initiatives.¹³ This led to a further Human Rights Council resolution being adopted in 2017,¹⁴ with the most recent iteration taking place on 7th October 2021.¹⁵ In 2020, the latest Report of the Secretary General on the issue of child, early and forced marriage was presented to the General Assembly.¹⁶
11. Considerable effort has also been made to address CEFM in regional treaties and charters in Africa. This includes Article 21 of the African Charter on the Rights and Welfare of the Child 1990,¹⁷ Article 6 of the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa 2003,¹⁸ and the Commonwealth Kigali Declaration to prevent and eliminate child, early and forced marriage adopted in May 2015.¹⁹

B. Implementation of Recommendations from Cycle Three in 2017

12. Gabon received 166 recommendations in the Third Cycle of which 143 were accepted and 23 were noted.²⁰ A total of 43 recommendations were issued on rights of the child however only three focused on CEFM which is a disappointingly low number for such a serious issue. Member States should ensure all key areas are being covered in Gabon's fourth cycle of review in 2022. A further seven recommendations which indirectly related to CEFM

were also made. Nonetheless, these were all supported by Gabon which is commendable and indicates its commitment to curb child marriage.

13. **Chile** (paras 118.94 and 118.71) recommended Gabon adopt “all legislative and policy measures to eradicate child and forced marriages” and adopt “concrete measures, in the form of national awareness programmes and campaigns, to eradicate stereotypes, cultural practices and traditions contrary to the fundamental rights of women and girls”. This was echoed in a similar recommendation made by **Honduras** (para 118.77) to “adopt a policy aimed at putting an end to harmful practices against girls, such as forced early marriage and genital mutilation, among others”. This has been **not been implemented** and the provisions allowing CEFM in Gabon’s Civil Code remain in place.
14. Whilst such recommendations are welcomed, it is crucial that they remain specific and measurable in order to assess the level of implementation. Broad recommendations, whilst easy to accept, lack any impetus to bring about real change.²¹ It is recommended that States adopt a SMART approach to recommendations as recognised by UPRinfo.²² This would help Gabon initiate an incremental approach to the elimination of CEFM.
15. Additionally, it would prove more beneficial if recommending States make reference to the review criteria which includes “human rights instruments to which a State is party”.²³ For example reference to the CRC and/or CEDAW, a treaty the State under Review has ratified, would strengthen any CEFM recommendations.
16. Nonetheless, we welcome the news that in 2021 Gabon revised its 1972 Civil Code to enhance legal equality for married women, including by recognising gender-based violence as legitimate grounds for divorce. Whilst it makes reference to the changes in financial inclusion of women, prevention of economic discrimination and preventing violence against women, there is no mention of any amendment to marriage laws in the Civil Code.²⁴
17. Other states focused on Gabon’s adoption of the Children’s Code and aligning its legislative framework with international laws. These included **Burkina Faso** (para 118.2), **Chad** (para 118.19), and **Cuba** (para 118.22). However, **Namibia** (para 118.23) was the only State to specifically link the Code to curbing CEFM.
18. This has been **partially implemented**. The government has made some progress in reviewing the policy and law that bears considerable influence on child marriages. In 2019, Gabon reported that a draft Children’s Code, which will establish 18 years as the minimum age of marriage for girls and boys, is pending adoption by the Gabonese Parliament. Furthermore, in 2019, Gabon committed to “eradicate[ing] gender-based violence and harmful practices” at the Nairobi Summit on ICPD25.²⁵
19. However, as of early 2022, there is no news on the passing of the Children’s Code. The government is called upon to prioritise passing the Code into law in order to harmonise its

laws on marriage with international human rights laws, and eliminate elements of law that are discriminatory against girls and women.

20. **India** (para 118.85) recommended Gabon “intensify efforts to provide easy and free access to registration of birth to all children” and **Burkina Faso** (para 118.86) also encouraged the State to “continue its good cooperation with civil society organizations and United Nations agencies, especially UNICEF, for the full registration of children at birth”. This has been **implemented**.
21. Establishing an effective birth registration system can act as vital proof which can help protect children against CEFM. In November 2021 in greater Libreville, the Ministry for Social Affairs and Women’s Rights, with support from UNICEF, established the ‘Citizenship and Social Protection’ programme as part of its efforts to register children without birth certificates. According to UNICEF, “the programme will reach an additional 30,000 children who do not currently have any official paperwork. The first phase of the project provided birth certificates and health insurance cards to 11,780 vulnerable children in several municipalities across the Estuary Province.”²⁶

C. Further Points for Gabon to Consider

Adoption of a National Action Plan to End CEFM in Gabon

22. Gabon lacks a National Action Plan (NAP) to deal with CEFM. Taking inspiration from other African nations, such as Ghana and its National Strategic Framework on Ending Child Marriages²⁷ or Zambia and its National Strategy on Ending Child Marriage,²⁸ Gabon should also implement a similar approach.
23. The adoption of a NAP can provide an integrated vision and clear direction to all sectors, at various levels, involved in addressing CEFM in Gabon. The NAP should identify clear national goals, objectives, strategies and key interventions across different sectors in order to help Gabon adopt an incremental approach to the elimination of the practice.
24. Furthermore, a NAP will ensure effective coordination of the various initiatives to end child marriage. There is an increased need for collaboration, learning, and sharing of best practices amongst the different actors involved in preventing and responding to CEFM. This includes government, parliament, media, civil society, development partners and the private sector.
25. The introduction of a NAP to end CEFM can help guide all programmes and interventions at the national, regional, district and community levels whether implemented by Government or relevant stakeholders.

COVID-19 and the Increased Risk of CEFM

26. As a result of the COVID-19 pandemic, a further 10 million child marriages are projected globally before the end of the decade; unions that otherwise might have been prevented.²⁹ COVID-19 has exacerbated the risk of CEFM through five main routes:

- (1) interrupted education;
- (2) economic and food insecurity;
- (3) disruptions to programmes and services;
- (4) adolescent pregnancy; and,
- (5) death of a parent or primary caretaker.

27. Furthermore, families tend to make decisions about education and marriage in parallel hence school closures and suspension of educational services increase the risk of discontinuing education and promoting marriage instead. The pandemic has widened educational inequalities for vulnerable children and adolescents living in poor and/or remote rural areas as well as girls, refugees, those with disabilities, and those who are forcibly displaced.³⁰

28. Sexual and reproductive health services have also been disrupted which has a direct impact on adolescent pregnancy and marriage. A dangerous vacuum has been created as a result of curtailing awareness campaigns and community dialogues on the negative consequences of CEFM.³¹

Impact of COVID-19 on Adolescent Girls and Gender Equality

29. Humanitarian crises and the deleterious impact of COVID-19 amplify and compound gender norms that hinder girls' school attendance, risk of child marriage, early pregnancy, gender-based violence, sexual exploitation and child labour. A girl is at risk of encountering violence in every sphere, including in the classroom, no matter where she may live.

30. Global figures indicate that in comparison to boys their age, girls between 5 and 14 years old spend 40 per cent more time on unpaid household chores and care work, which compromises their education and learning. As a result of COVID-19 school closures, girls may have increased exposure to sexual activity, sexual violence and unwanted pregnancy as they may spend more time at home and unsupervised. The loss of school time may also lead families to view girls' education as a less worthwhile investment. Unfortunately, a disproportionate number of girls will simply not return to education.³²

31. Economic fragility, loss of livelihood and an increase in household poverty may limit the ability of families to provide for their children. Economic and food insecurity tend to

produce two reactions: reducing expenditure (such as education costs) and reducing the household size. Both can lead to child marriage. In addition, child marriage can benefit a household's income where the groom's family has to pay a form of bride wealth (known as 'lobola' in Southern Africa) to the bride's family.³³

32. According to UNFPA-UNICEF,

“The impact of the pandemic is likely to be felt for at least another decade, also raising the risk of child marriage for girls who are now young. Because marriage fundamentally alters the course of a girl's life, the full effect of the pandemic on human development will play out over a generation.”³⁴

The Universal Periodic Review Recommendations and the Contribution to the Sustainable Development Goals

33. Gabon should consider adopting the UPR recommendations as an expression of mutual reinforcement of the government's commitment to promoting the Sustainable Development Goals.³⁵ The human rights values expressed in both the UPR and the SDGs can be woven together to promote policy coherence.

34. SDG 5 provides for “gender equality and empower[ing] all women and girls” but the practice of CEFM is inconsistent with this goal. Specifically, SDG Target 5.3 aims to eliminate all harmful practices such as child, early and forced marriages.³⁶

35. The Special Rapporteur on the sale and sexual exploitation of children has noted in her 2022 annual report that “child marriage is rooted in gender inequality and in the relatively low value accorded to girls, and is exacerbated by poverty, insecurity and conflict.”³⁷ CEFM is therefore antithetical to female empowerment, gender equality and the fostering of human dignity of the people of Gabon.

D. Recommendations

We recommend the government of Gabon to:

- i. Prioritise passing the Children's Code into law.
- ii. Amend the Civil Code, and adopt policy that clearly defines marriage as a union between two consenting adults and prohibits child marriage.
- iii. Establish a National Action Plan to End Child Marriage in Gabon. This includes regular monitoring and tracking of progress against targets set under the Plan.
- iv. Adopt a COVID-19 response strategy that extends beyond health and prioritises the prevention and elimination of CEFM, paying particular attention to the impact of COVID-19 on vulnerable adolescents, girls, and women.

- v. Empower girls and boys to be better able to prevent and respond to child marriage. For example, supporting existing adolescents' groups to offer safe spaces to discuss sensitive issues.
- vi. Conduct, in consultation with relevant stakeholders, awareness raising and education programmes aimed at addressing the negative implications of CEFM and how to effectively address the issue. These should be targeted at community and religious leaders.
- vii. Develop a strategy for the dissemination of knowledge on CEFM, including awareness-building and mechanisms for reporting and obtaining assistance, by utilising mass media, community radio, and social media platforms. This is particularly important given the implications of COVID-19 on CEFM.

¹ See <https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=63&Lang=EN>.

² In this submission we adopt the definitions of 'child marriage,' 'early marriage,' and 'forced marriage,' as provided by the OHCHR which identifies that:

- "child marriage" is a marriage in which at least one of the parties is a child. According to the Convention on the Rights of the Child, a child is "every human being below the age of eighteen unless under the law applicable to the child, majority is attained earlier (CRC art 1).
- "early marriage" is often used interchangeably with "child marriage" and refers to marriages involving a person below 18 in countries where the age of majority is attained earlier or upon marriage. Early marriage can also refer to marriages where both spouses are 18 or older but other factors make them unready to consent to marriage, such as their level of physical, emotional, sexual and psychosocial development, or a lack of information regarding the person's life options.
- "forced marriage" is any marriage which occurs without the full and free consent of one or both of the parties and/or where one or both of the parties is/are unable to end or leave the marriage, including as a result of duress or intense social or family pressure.

See OHCHR, 'Preventing and eliminating child, early and forced marriage', (2 April 2014) UN Doc A/HRC/26/22, paras 4-6. See also 'Child and forced marriage, including in humanitarian settings: OHCHR and women's human rights and gender equality', <www.ohchr.org/en/issues/women/wrgs/pages/childmarriage.aspx>.

² Child and forced marriage, including in humanitarian settings, OHCHR, Women's Rights and Gender Section, <www.ohchr.org/en/issues/women/wrgs/pages/childmarriage.aspx>.

³ Child and forced marriage, including in humanitarian settings, OHCHR, Women's Rights and Gender Section, <www.ohchr.org/en/issues/women/wrgs/pages/childmarriage.aspx>.

⁴ 'Country Profile: Gabon' <www.girlsnotbrides.org/learning-resources/child-marriage-atlas/atlas/gabon>.

⁵ See Code Civil Du Gabon (Partie I) <<https://wipolex.wipo.int/en/text/209872>>.

⁶ The Universal Declaration of Human Rights (1948) Article 16(1): Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution. (2) Marriage shall be entered into only with the free and full consent of the intending spouses. (3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State. See <www.un.org/en/about-us/universal-declaration-of-human-rights>.

⁷ Convention on the Rights of the Child, UNGA Res 44/25, 20 November 1989. Article 1: For the purposes of the present Convention, a child means every human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier. Article 2(1): States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status. Article 2(2): States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members. Article 24(3): States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.

⁸ Convention on the Elimination of All Forms of Discrimination against Women, UNGA Res 34/180, 18 December 1979, UN Doc A/RES/34/180. Article 24(2): The betrothal and the 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 and to make the registration of marriages in an official registry compulsory.

⁹ See eg ‘Child, early and forced marriage’, UNGA Resolution 73/153 (28 July 2020) UN Doc A/75/262.

¹⁰ See eg UN Human Rights Committee, General Comment No. 20 (2016) on the implementation of the rights of the child during adolescence, CCPR/C/GC/20, 6 December 2016.

¹¹ *ibid* para 40.

¹² ‘Strengthening efforts to prevent and eliminate child, early and forced marriage: challenges, achievements, best practices and implementation gaps’, (27 September 2013) UN Doc A/HRC/RES/24/23.

¹³ ‘Strengthening efforts to prevent and eliminate child, early and forced marriage’ (22 July 2015) UN Doc A/HRC/RES/29/8.

¹⁴ ‘Child, early and forced marriage in humanitarian settings’ (22 June 2017) UN Doc A/HRC/RES/35/16.

¹⁵ ‘Child, early and forced marriage in times of crisis, including the COVID-19 pandemic’ (7 October 2021) UN Doc A/HRC/48/L.7Rev.1, para 1 states: “Urges States to respect, protect and fulfil the human rights of all women and girls, including those subject to child, early and forced marriage, which include the right to education and the right to the highest attainable standard of physical and mental health, including the right to sexual and reproductive health, to promote equality in all aspects of marriage and its dissolution...”

¹⁶ ‘Child, early and forced marriage’, UNGA Resolution 73/153 (28 July 2020) UN Doc A/75/262.

¹⁷ African Charter on the Rights and Welfare of the Child 1990, OAU Doc. CAB/LEG/24.9/49 (1990), entered into force Nov. 29, 1999. Article 21(2): Child marriage and the betrothal of girls and boys shall be prohibited and effective action, including legislation, shall be taken to specify the minimum age of marriage to be 18 years and make registration of all marriages in an official registry compulsory.

¹⁸ Protocol to the African Charter on Human and People’s Rights on the Rights of Women in Africa 2003, Adopted by the 2nd Ordinary Session of the Assembly of the Union, 11th July 2003, Entry into Force 25th November 2005. Article 6: States Parties shall ensure that women and men enjoy equal rights and are regarded as equal partners in marriage. They shall enact appropriate national legislative measures to guarantee that: a) No marriage shall take place without the free and full consent of both parties; b) The minimum age of marriage for women shall be 18 years.

¹⁹ Kigali Declaration, Moving from aspiration to action to prevent and eliminate child, early and forced marriage in the Commonwealth, May 2015.

²⁰ UNHRC, ‘Report of the Human Rights Council on its thirty seventh session’ (14 June 2018) UN Doc A/HRC/37/2, para 527.

²¹ Amna Nazir, ‘The Universal Periodic Review and the Death Penalty: A Case Study of Pakistan’ (2020) 4(1) RSIL Law Review 126, 153.

²² See UPRinfo, ‘For impact on the ground the UPR needs SMART recommendations’ (21 October 2015) <<https://www.upr-info.org/en/news/for-impact-on-the-ground-the-upr-needs-smart-recommendations>>.

²³ UNHRC Res 5/1 (18 June 2007) UN Doc A/HRC/RES/5/1, para 1(c).

²⁴ Paula Tavares, ‘Gabon revises legislation to protect women and increase their economic role’, (*World Bank*, 2 March 2022) <blogs.worldbank.org/african/gabon-revises-legislation-protect-women-and-increase-their-economic-role>; ‘Freedom in the World 2022: Gabon’, Pt. G3 (*Freedom House*) <freedomhouse.org/country/gabon/freedom-world/2022> Accessed 24 April 2022.

²⁵ Gabon, ‘Declaration of Commitment of the Gabonese Government’ (*Nairobi Summit*, 5 May 2021) <www.nairobisummitcpd.org/commitment/declaration-commitment-gabonese-government>.

²⁶ Fanja Saholiarisoa, ‘A Second Chance for Gabonese Children In Need of Birth Certificates’ (*UNICEF*, 21 February 2022) <www.unicef.org/gabon/en/stories/second-chance-gabonese-children-need-birth-certificates>.

²⁷ Ministry of Gender, Children and Social Protection, ‘National Strategic Framework on Ending Child Marriage in Ghana 2017 – 2026’ available at <www.unicef.org/ghana/media/1001/file/National%20Strategic%20Framework%20on%20Ending%20Child%20Marriage.pdf>.

²⁸ Ministry of Gender, ‘National Strategy on Ending Child Marriage in Zambia 2016-2021’ available at <www.girlsnotbrides.org/documents/1073/Zambia-National-Strategy-on-Child-Marriage-2016-2021.compressed.pdf>.

²⁹ UNFPA-UNICEF Global Programme to End Child Marriage, ‘Act Now: Accelerating Gender Equality by Eliminating Child Marriage in a Pandemic’, Annual Report, October 2020, p. 15. <www.unicef.org/media/108461/file/Act%20now.pdf>.

³⁰ *ibid* 15.

³¹ *ibid*.

³² *ibid* 16.

³³ *ibid*.

³⁴ *ibid* 15.

³⁵ See the UN Sustainable Development Goals website, <<https://sustainabledevelopment.un.org/?menu=1300>>.

³⁶ *ibid*.

³⁷ Mama Fatima Singhateh, 'A practical approach to addressing the sale and sexual exploitation of children' (10 January 2022) UN Doc A/HRC/49/51, para 25.