



THEMATIC REPORT:

Unrecognised Sexual Abuse and Exploitation of Children in Child, Early and Forced Marriage

“ Marriage shall be entered into only with the free and full consent of the intending spouses ”

The Universal Declaration of Human Rights, 1948

With the support of





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*Unrecognised Sexual Abuse and Exploitation of Children
in Child, Early and Forced Marriage*

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EXECUTIVE SUMMARY

When girls attain sexual maturity, their vulnerability to sexual violence rises, along with parental apprehension about their safety. Especially in traditional and poor communities where girls' roles are often expected to be that of mothers and wives, puberty may coincide with school dropout and early marriage. Parents who marry their children before they reach legal age are typically motivated by predetermined social and sexual norms, low value attached to daughters, poverty or humanitarian crises. Confronted with social pressure and family hardship, they may seek in marriage a form of protection to shield their children from destitution, household food insecurity and, ultimately, sexual harassment. In the reality of the 700 million women alive today who were married before their 18th birthday, however, child, early and forced marriage (CEFM) may have been a route to systematic, albeit unrecognised, sexual abuse and exploitation. No longer children, not yet adults, child brides tend to be denied fulfilment of their fundamental rights and access to social services otherwise granted to unmarried children and married women. The marginal social roles assigned to married girls discontinue the privileges of childhood, while precluding access to powers granted to adult members of their communities.

The implications of CEFM for human and social development have been placed in sharper focus in recent years, with concern especially growing for the violation of sexual and reproductive rights suffered by underage child brides and mothers, who are more prone to experiencing maternal and child mortality and malnutrition, as well as sexually transmitted diseases, including HIV and AIDS. As its significant ramifications for the survival, adequate growth and healthy development of children have been increasingly appreciated, more limited attention has been paid to the violation of the entire range of child rights to ascertain how prematurely entering a marital union increases overall vulnerability. To contribute to filling persisting gaps in knowledge and awareness, ECPAT International and Plan International have endeavoured to investigate the impact of child marriage on child protection, analysing, in particular, the various forms that sexual abuse and exploitation of children take in the context of such a universally revered social institution. Sexual violence suffered in early marriage is arguably one of the most severe levels of violation experienced by victims of a set of other rights infringements.

Deciding if, when and whom to marry is one of the most important life choices a person can make. It is also a fundamental human right. International law recognises that CEFM is a harmful practice and a serious human rights violation. While child marriage is outlawed in most countries of the world, legal provisions are widely unknown, ignored or unenforced. As efforts have been progressively mounting to address sexist gender norms and behaviours, encourage school education, especially for girls, build national birth and marriage registration systems and strengthen law enforcement mechanisms to ensure that marriage is entered into only by consenting adults, there is still a need to understand in further depth the effects of marriage on children's safety, balanced development and emotional wellbeing.

This thematic report aims to contribute to deepening the appreciation of the interconnections linking CEFM to sexual abuse and exploitation of children, also of a commercial nature. It proposes a conceptual framework through which to analytically examine the various forms

of sexual violence being perpetrated in the context of early marriage. CEFM is an important constituent in the continuum of harm affecting adolescent girls. It forces girls to live in sexually threatening environments, engage in premature regular sexual activity, and often become victims of physical, psychological, emotional and sexual abuse by their husbands and his family members. In addition to serious reproductive and sexual health consequences, such as unwanted pregnancies and higher exposure to sexually transmitted infections, girl children suffer deep psychological trauma, even displaying symptoms of child sexual abuse and post-traumatic stress. Multiple pregnancies, restricted access to education and income generation opportunities, enforced social seclusion, early widowhood and abandonment are common consequences of child marriage, trapping survivors in a cycle of sexual exploitation and violence that may continue for the rest of their lives.

The *CEFM-CSEC Conceptual Framework* developed in the paper supports the analysis of CEFM as it interfaces with sexual abuse and exploitation of children. The model examines three different, at times concurrent, levels:

- Child marriage *as a channel* to sexual abuse and exploitation of children, also for commercial purposes;
- Child marriage *as a form* of sexual abuse and exploitation of children;
- Child marriage *as a form* of commercial and economic sexual abuse and exploitation of children.

At the first level, child marriage is understood as a channel leading to various forms of sexual violence against children, such as trafficking, prostitution, pornography, or exposure to high levels of vulnerability that in turn may result in sexual victimisation. The second level focuses on how underage unions themselves can be potentially regarded *as a form* of sexual abuse and exploitation of the underage parties involved. Prevalent domestic and sexual violence by intimate partners, early forced sexual initiation, premature onset of sexual activity, non-consensual sex, unwanted adolescent pregnancy and premature child bearing, exposure to sexually transmitted diseases and female genital mutilation are highly detrimental to married girls' health and overall protection. The final level of the framework explores how economic transactions or financial gains benefitting the adult parties involved in contracting an underage union may justify relating forms of child marriage to commercial or otherwise economic sexual exploitation of children. This includes situations in which child marriage is linked to child servitude and forced child labour, slavery and bondage, or the payment of a dowry. The three levels are interlinked insofar as their determinants are concerned, and the individual child may experience one or more of the different determinants reviewed across the model, depending on specific circumstances.

In comparison to trafficking, slavery and the worst forms of child labour, sexual abuse and exploitation in child marriage have tended to be overlooked in the vast literature on child protection. This report seeks to revive a broadly missing discussion as well as a call to action by proposing a set of policy recommendations to address sexual violence against children who are at risk, victims or survivors of early marriage. *Core action areas to contrast sexual violence in child marriage* are identified to contrast sexual violence in early marriage, with a special focus on responses that address the entire range of rights to ensure child protection on all fronts. Subsequently, a *CEFM-CSEC Framework for Action* is proposed, providing a human rights-based instrument to inscribe the *core action areas* in the process adopted internationally to implement the Convention on the Rights of the Child. The framework offers a rights-based holistic platform for converging sectorial policies and placing the child at the centre of action, according to international human rights guidelines. The framework is composed of Eight Steps for action and each step is supported by a *Checklist* for implementers to ensure that the *CEFM-CSEC Framework for Action* is applied effectively and comprehensively.

It is time to reach out to children who, kept within domestic walls, are hidden from public view and child protection policies. Understanding the plea of prematurely married girls and preventing child marriage is a commitment made by the international community and national governments as a key step toward achieving the Sustainable Development Goals (SDGs) set in the post-2015 agenda for global human, social, economic and environmental development and, in particular, as a necessary route toward achieving gender equality and empowering all women and girls.

1

INTRODUCTION

Sexual violence against children in child, early and forced marriage

When a girl reaches puberty in one of the many communities where gender norms and poverty dictate the choices that families make, she may become one of over 700 million women alive today who were married before their eighteenth birthday.¹ The overwhelming majority of early, child and forced marriages taking place every year in the world, whether as formal or informal unions, affect girl children, although at times boys may also be involved.

Marriage may be viewed by parents as an opportunity to economically unburden themselves of the responsibility of providing for a child who is ultimately meant to contribute to another household. A daughter who has achieved sexual maturity is exposed to sexual attacks and transgressions by boys and men in the community, as well as within her own family, and she is – or perceived to be – no longer safe at home, especially during the long hours she remains unattended when her mother and other elderly women are away at work. Social pressure on parents who keep their girls at home grows with their daughters' vulnerability to being sexually harassed. A girl who is known not to be a virgin may be stigmatised and regarded as unworthy of marriage for having brought dishonour to herself and her family, even if the loss of virginity has been the result of sexual abuse.

The culture of sexual violence against women and girls that pervades certain societies prompts parents to minimise the risk of sexual assault and protect their children by marrying them as early as possible, regardless of them having reached legal age. Marriage is resorted to as a safeguard against disrepute and a path to giving the girl child a future, while averting actions that would bring shame to the family, such as a daughter engaging in pre-marital sex, eloping, opting for an inter-community union, or becoming the target of sexual abuse. Poor families and families with girls are more exposed to social ostracism. Poverty, social expectations, culturally-embedded sexual norms and gender stereotypes compel parents of girls to take upon themselves the societal responsibility of social and sexual reproduction, and induce daughters to leave home and start their own families when they are still children. School, where sexual harassment is also a risk, stops being an option for girls who are expected to contribute as housewives, caregivers and free labour in their husbands' households. Child marriage and school dropout are the twin events that mark the exit of teen or even pre-teen girls from the

¹ UNICEF, "Ending Child Marriage: Progress and Prospects", (New York: UNICEF, 2014).

familiar environment of their childhood and subject them to the control of an unknown family and, often, community, where they are expected to assume predetermined adult roles.

Underage weddings ceremonially seal a fundamental passage in the life of a woman. Whether solemnised with elaborate rituals, or simply started by entering into cohabitation with a man, child marriage is a rite of initiation into a trajectory of suffering, servitude, discrimination and denied rights. Early marriage abruptly sanctions the end of childhood and prematurely ushers in adulthood, depriving children of the necessary time afforded by adolescence to prepare their bodies, minds and emotions to become mature spouses, caring parents and proactive citizens. Child marriage brings to a halt the intellectual and social development of girls, who are disproportionately affected, freezing them in a state of artificial violated childhood, prevented from making adult independent choices, easily manipulated and exploited, under the control of their husbands and in-laws. Child marriage confines girls and women to fixed sex and gender roles defined by male dominated power structures that control sexuality and reproduction. An ancient custom adopted as an escape route from poverty and gender-based violence,² child marriage is a harmful practice that perpetuates both, further impoverishing and victimising women.

When their homes are no longer safe, girls leave them to move to those of their husbands. The voices of endless young brides who have started speaking up against sexual abuse and exploitation endured in their fathers', and then husbands', homes tell stories of girls who are not safe and cared for in their own families. Prepared since childhood for a future as homemakers, child brides have no place that they can call home, where they belong and are protected.

Whether families adopt child marriage as an ultimate act of care and responsibility to protect the honour of their daughters in a sexually violent world or, instead, maintain it as a discriminatory practice of abuse and neglect precluding personal fulfilment and social development throughout the life of a girl and a woman, child marriage is a complex problem that requires in depth understanding and integrated responses. ECPAT International seeks to explore the critical linkages that exist between child, early and forced marriage, and sexual abuse and exploitation of children. The paper aims to achieve this goal by conceptually analysing the reality of young brides who have entered marriage expecting care and protection and have ended up as victims of sexual violence, exploited on the streets, in brothels and religious sites, or in their husbands' homes as servants or even sexual slaves.

² Gender-based violence has been defined by the CEDAW Committee as “violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm.” CEDAW Committee, “General Recommendation No. 19: Violence against women”, (11th Session, 1992), para. 6.

2

OBJECTIVE OF THE PAPER: DEVELOPING A CONCEPTUAL FRAMEWORK TO RECOGNISE CSEC IN CHILD, EARLY AND FORCED MARRIAGE

Child marriage endangers the emotional and physical wellbeing of girls by prematurely forcing them into sexual activity and exposing them to systematic sexual violence. An appreciation is growing globally of the reality of child marriage as a serious human rights violation that undermines the enjoyment of the full range of fundamental rights and liberties to which children are entitled.³ Child brides are pushed out of childhood and forced into extremely exploitative conditions which compel them to perform adult roles despite having the capacities of children and, in fact, still being children in all respects – developmentally, biologically, physically, psychologically and emotionally.

An abrupt event that stops the natural personal and social evolution of a girl at the critical time when she is ready to move into the vital stage of adolescence, child marriage squanders the investment made in the newborn child at birth to ensure her survival and development. When puberty sets in, the adolescent – the “social newborn”, in Maria Montessori’s words – is ready to undertake a gradual transition to a healthy and productive adulthood. If unobstructed, her emergent personality can develop to its fullest potential and reach a high degree of self-realisation as a foundation for accomplished, self-aware womanhood.⁴ Child marriage interferes with the natural trajectory of growth, learning, social and emotional experimentation.

The international community has recently recognised the detrimental effects of child marriage in delaying global sustainable development. Building on the Millennium Development Goals (MDGs) framed in 2000, the *Transforming Our World: The 2030 Agenda for Sustainable Development* document was adopted in September 2015 by the United Nations to help eradicate poverty and achieve sustainable development by 2030. Among its 17 Sustainable Development Goals (SDGs) and 169 associated targets includes target 5.3, ‘Eliminate all harmful practices, such as child, early and forced marriage and female genital mutilation’, under Goal 5 ‘Achieve gender equality and empower all women and girls’. The universal framework commits all countries to make measurable efforts to end child marriage by monitoring progress on its implementation and ensuring accountability towards citizens, including children.⁵

3 United Nations Human Rights Council, “Strengthening Efforts to Prevent and Eliminate Child, Early and Forced Marriage”, UN Doc. A/HRC/29/L.15, (2015), <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=16201&LangID=E>, accessed 6 July 2015.

4 Maria Montessori, “The Adolescent: A Social Newborn”, 37th lecture of the 23rd International Course Amsterdam 1938, <http://ami-global.org/communication/adolescent%E2%80%94social-newborn-1938>, accessed 29 June 2015.

5 UN General Assembly, “Transforming our world: the 2030 Agenda for Sustainable Development”, UN Doc. A/70/L.1, (2015), http://www.un.org/ga/search/view_doc.asp?symbol=A/70/L.1&Lang=E, accessed 9 October 2015.

In parallel, international law has helped clarify the abusive nature of the harmful practice of child marriage and set new standards to guide the development of more stringent and protective responses. The current definition seeks to broaden the understanding of underage unions and merge several perspectives into one single encompassing notion of *child, early and forced marriage* (CEFM). It indicates that child and early marriage taking place at an age which potentially challenges the capacity of giving full and free consent can be considered a form of forced marriage as well. On the basis of this definition, unions contracted by individuals younger than 18, the watershed internationally demarcating the age of a child, should be regarded as being concurrently child, early *and* forced marriages. International legal frameworks further recognise that often children live in informal unions or unregistered marriages, missing even the feeble protection that a legally contracted early marriage would warrant. Therefore, the definition of child, early and forced marriage also includes underage informal unions, with the same protections being extended to children in marriages and unions.

Emerging international law, stressing the grave consequences of child, early and forced marriage (or simply *child marriage*, as a term that can be used interchangeably with *early marriage*), has coherently enhanced the level of protection for child victims, underscoring the highly exploitative nature of early unions by linking them with slavery, human trafficking and forced labour. The term “slavery” today refers to a wide range of human rights violations, ranging from traditional slavery and the slave trade, to the sale of children, child prostitution, child pornography, the exploitation of child labour, the sexual mutilation of female children, the use of children in armed conflicts, debt bondage, the traffic in persons and in the sale of human organs, the exploitation of prostitution, and certain practices under apartheid and colonial regimes.⁶

Interestingly, the perspectives evolving recently to identify forms of abuse and exploitation of children, especially of a sexual nature, in child marriage are the same that had been previously adopted to conceptually define and analyse violations affecting victims of commercial sexual exploitation of children (CSEC). Girls coerced into early marriage, on par with children forced into commercial sexual abuse and exploitation, are in situations of strong control and power imbalances. These imbalances are a result of age, gender or social differentials with sexual partners, which expose girls to several violations, increasingly interpreted as forms of slavery, trafficking and forced labour. Although the institution of marriage cannot be equated to a form of work, clearly the vulnerabilities affecting children involved in early marriage and CSEC are comparable. In both situations, victims are exposed to extreme levels of both sexual and labour exploitation.

With one in three girls in the developing world being affected, child marriage is a widespread problem of global dimensions. Within the context of child marriage, sexual abuse and exploitation of children takes place in both non-commercial and commercial/economic ways, with a potential number of victims that far outnumbers those affected by crimes so far codified in the CSEC rubric, such as prostitution, pornography, the abusive use of the Internet, or predatory practices in travel and tourism. While child marriage is not yet conceptualised as a category of CSEC, the sheer number of child brides estimated in today’s world regularly exposed to sexual abuse and exploitation may potentially make it an unprecedented CSEC challenge for the future.

⁶ UN Office of the High Commissioner for Human Rights (OHCHR), Fact Sheet No. 14, “Contemporary Forms of Slavery”, (1991), <http://www.refworld.org/docid/4794773b0.html>, accessed 29 June 2015.

Yet, despite the magnitude and complexity of the problem, early marriage remains largely unrecognised as a primary, virtually boundless reservoir of sexual abuse and exploitation of children. Among social groups where child marriage is internalised as a cultural norm perpetuating an ancient custom, parents and communities regard it as an acceptable initiation into adulthood and even as a way of safeguarding their daughters from sexual harm. Internationally, where efforts have been recently multiplying to curb such a traditional harmful practice, focus has been placed mainly on reproductive and sexual health. This is due to the concerning fact that pregnancy among child mothers puts two children simultaneously at risk, as well as being the leading cause of death among teenage girls in developing countries.

Although the health argument is important, a partial view risks weakening the understanding of the multifaceted nature of the problem caused by a full range of abusive and exploitative conditions in which children are forced to live. This leads to the infringement of their sexual rights together with the entire set of other entitlements, including those in the spheres of protection, education and participation. Among key aspects requiring more attention, recognition of the links between underage unions and CSEC is broadly absent from the debate on child marriage.

The multiple violations of children's rights stemming from the common root of child marriage need to be measured, analysed and understood in order for effective solutions to be aptly devised. An inadequate understanding can only result in continuing to disregard sexual abuse and exploitation in the context of child marriage, to the point of even condoning it, as is often the case in communities that turn a blind eye to the plea of child brides. Married girls who are forced into non-consensual sexual relationships are essentially victims of acts that would be considered crimes if they were perpetrated outside of marriage. The near-universal condemnation of sexual exploitation of children in prostitution, or sexual violence committed against children in general, finds no match with the same abuses occurring in the context of early unions. Sexual abuse and exploitation of children remain broadly unrecognised when perpetrated within marriage.

An attitude of general social acceptance grounded in deep-rooted social norms regulating girls and women's sexual behaviour is also reflected in formal norms. Law, which normally criminalises sex with a girl below a statutorily established age, often fails to protect child brides, denying their right to participate in important decisions affecting their lives and gives consent to their marriage, sometimes even failing to provide for annulment of illegally contracted unions. Weak legal provisions relating to sexual violence fail to address sexually illicit acts within marriage, including rape, and turn child marriage into a space of impunity or even outright sanction of sexual violence against children.

The result of the social and legal contradictions that make early marriage possible is that a child who would be protected by the law, society and her own family if she was a victim of rape, corporal punishment, labour exploitation and other forms of physical, psychological and sexual violence effectively remains outside the purview of both formal and informal protection mechanisms once she is married.

Today, underage brides continue to be perceived as neither children, nor adults. They are denied children's rights because they are viewed as adults and lack the decision-making power and agency of adults because they are effectively children. As marriage distorts their identity and illegitimately projects them as adults, their life is stranded in a no-man's-land where they are no longer girls and not yet women.

Marriage acts for them as a thin veil of respectability⁷ which, in the reality of their hidden away stories, turns into a heavy mantle of isolation, concealing them within the walls of their marital homes from both immediate communities and distant policy-makers. Sexually abused like peer victims of CSEC exploited and hidden in the sex trade, they are similarly unrepresented in data, policy and investments targeting children.

The objective of the paper is to contribute to unveiling and understanding CSEC in the context of child marriage. The exploration examines child, early and forced marriage from a child protection angle, to analyse the array of sexual violations that occur, including but not exclusively, in the realm of reproductive and sexual health. It seeks to interpret causes and effects of sexual violence in early marriage as these manifest themselves in the emotional, psychological and physical spheres of the child's body and personality, and identify effective responses to guarantee the right to freedom from sexual violence. Protection rights are interpreted widely as also encompassing health, education and participation rights, as well as other freedoms and civil liberties.

Child marriage is explored through the continuum of harm that it causes to affected adolescent girls. Growing up in sexually threatening environments, rather than finding safety and protection in their husbands, girls often experience marriage as a source of more sexual violence. They are frequently coerced into a violent sexual initiation, continuing with non-consensual sex and other forms of physical, psychological and sexual abuse by their partners and others in the family. In addition to serious reproductive and sexual health consequences, such as unwanted pregnancies and higher-risk exposure to sexually transmitted infections (STIs), they suffer deep psychological trauma, displaying symptoms of child sexual abuse and post-traumatic stress. Large family size, denied education and income generation opportunities, social seclusion, early widowhood, abandonment and destitution trap economically impoverished and socially disempowered girls in situations with no realistic way out, exposing them to sexual exploitation and violence throughout their lives.

In order to guide an exploration of CSEC in the ambit of child, early and forced marriage, the paper has developed a *CEFM-CSEC Conceptual Framework*, which has been applied as an analytical tool to interpret ways in which early marriage can result in sexual abuse and exploitation of children. The model is organised at three different, though possibly interlinked levels that allow for an analysis of:

1. Child marriage *as a channel to* sexual abuse and exploitation of children, also for commercial purposes;
2. Child marriage *as a form of* sexual abuse and exploitation of children;
3. Child marriage *as a form of* commercial and economic sexual abuse and exploitation of children.

Dimensions that are key to interpreting CSEC, namely, slavery, trafficking and forced labour, will be considered across the three dimensions of the model to understand how they interplay with the various manifestations of child marriage under scrutiny. Through such lenses, the intersections between CEFM and CSEC will be conceptualised with a view to providing an analytical ground for recommending coherent remedial action.

⁷ Rachel Borrell, "Behind Closed Doors: Child and Early Marriage as Slavery" (London: Anti-Slavery International, 2015), p.2.

The second part of the paper builds on the conceptual analysis to recommend responses necessary to recognise and address CSEC in child marriage, at two levels:

- Identifying a set of *core action areas to contrast sexual violence in early marriage*, and
- Proposing a *CEFM-CSEC Framework for Action* to provide a human rights-based instrument to inscribe the *core action areas to contrast sexual violence in child marriage* in the process adopted internationally to implement the Convention on the Rights of the Child. The framework offers a holistic platform for converging sectoral action placing the child at the centre, according to international guidelines.

The contribution that ECPAT seeks to make with this paper, as part of its worldwide commitment to stopping CSEC in all its forms, is to sustain the debate on sexual abuse and exploitation of children in child, early and forced marriage, in both its commercial and non-commercial manifestations, which so far has remained quite peripheral in the vast literature on child marriage. ECPAT International has already clarified that it considers “the marriage of children and adolescents under the age of 18 to be a form of commercial sexual exploitation when the child is used for sexual purposes in exchange for goods or payment in cash or in-kind.”⁸ The commitments made by ECPAT to raise awareness at the Girl Summit 2014,⁹ which launched a global movement to end child, early and forced marriage and Female Genital Mutilation (FGM) for all girls within a generation, the celebration in 2015 of 25 years since its own foundation, the preparation for the forthcoming 15th Anniversary of the Optional Protocol on the Sale of Children, Child Pornography and Child Prostitution, and the 20th anniversary of the First World Congress against the Commercial Sexual Exploitation of Children (CSEC) (Stockholm 1996) will provide many avenues to further promote the reflection on CEFM among a growing number of partners committed to protecting children from all forms of sexual violence.

The precondition to intensifying the debate, mobilising action and committing a larger platform of actors is to recognise sexual abuse and exploitation within the institution of marriage; a crime against children that has been concealed for generations. The time has come for acknowledging that child marriage forces children into conditions of systematic sexual abuse and exploitation and developing international child protection standards that specifically prevent further sexual violence against children in the context of marriage and safeguard child marriage victims.

8 ECPAT International, “Preventing and Eliminating Child, Early and Forced Marriage: Challenges, Achievements, Best Practices and Implementation Gaps”, Submission to the Office of the High Commissioner for Human Rights, (2013), p.1

9 ECPAT International, “Making a Commitment”, Girl Summit 2014.

3

DEFINING CHILD, EARLY AND FORCED MARRIAGE: A FIRST STEP TOWARD RECOGNISING THE SEXUALLY ABUSIVE NATURE OF CHILD MARRIAGE

In recent years, the international community has become increasingly concerned with young people entering marriage or informal unions before attaining the age of majority and has focused more sharply on the problem of underage unions, commonly defined as child, early and forced marriage (CEFM). A clear understanding of the definition of child, early and forced marriage is a necessary pre-condition not only to draw the contours of the issue, but also to progressively recognise its inner nature, as a sexually abusive practice severely harming children.¹⁰

“**Child marriage**” refers to a legal or customary union in which at least one of the two parties is a child.¹¹ The Convention on the Rights of the Child (CRC) defines a child as “every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier”.¹² Therefore, *child marriage* refers to a marriage or an informal union in which one or both parties are younger than 18 years.

“**Early marriage**” is a term used to describe a legal or customary union involving a person below 18 years in countries where the majority age is attained earlier or upon marriage. Anagraphical age, however, may not be the sole criterion to decree whether a marriage has been contracted prematurely. The Human Rights Council states that “[e]arly 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.” The terms child marriage and early marriage are often used interchangeably in the international literature on the subject, including in this paper.¹³ The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the CRC Committees, in their Joint General Recommendation/Comment on harmful practices, consider marriage below 18 permissible under exceptional circumstances, although never below 16 years of age.¹⁴

10 Sexual Rights Initiative, “Analysis of the Language of Child, Early, and Forced Marriages”, (2013), <http://sexualrightsinitiative.com/wp-content/uploads/SRI-Analysis-of-the-Language-of-Child-Early-and-Forced-Marriages-Sep2013.pdf>, accessed 15 April, 2015.

11 United Nations Human Rights Council, “Preventing and Eliminating Child, Early and Forced Marriage”, Report of the Office of the United Nations High Commissioner for Human Rights, UN Doc. A/HRC/26/22, (2014), p.3.

12 Convention on the Rights of the Child (1989), Article 1.

13 United Nations Human Rights Council, “Preventing and Eliminating Child, Early and Forced Marriage”, p.3.

14 United Nations Committee on the Elimination of Discrimination Against Women and United Nations Committee on the Rights of the Child, “Joint General Recommendation/General Comment No. 31 of the Committee on the Elimination of Discrimination against Women and No. 18 of the Committee on the Rights of the Child on Harmful Practices”, UN Doc. CEDAW/C/GC/31-CRC/C/GC/18, (2014), http://tbineternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f18&Lang=n, accessed 15 April 2015.

A “**forced marriage**” is a legal or customary union which occurs without the full and free consent of one or both of the parties, or one in which one or both parties are unable to end or leave the marriage.¹⁵ While the notion of forced marriage normally relates to coercive unions concerning individuals older than 18 years of age, the Committee on the Elimination of Discrimination against Women and the Committee on the Rights of the Child consider that any child/early marriage can be potentially regarded as a form of forced marriage, considering that the young age of one or both parties tends to hamper the full and free expression of consent.¹⁶ As UNICEF has pointed out, “[t]he right to ‘free and full’ consent to a marriage is recognised in the Universal Declaration of Human Rights – with the recognition that consent cannot be ‘free and full’ when one of the parties involved is not sufficiently mature to make an informed decision about a life partner.”¹⁷ In addition to the age argument, it is also a fact that child marriage victims are often coerced into marriage by family pressure, or social and economic circumstances.

Within the framework of the definitions given above, the terms child marriage and early marriage will be used interchangeably in the paper, equally implying an underage form of forced marriage. Moreover, the discussion on child/early/forced marriage will also refer to precocious unions that are recognised as marriages in either statutory or customary law, considering that the young age of affected children often bars them from entering into formal unions, especially in a growing number of countries that have enacted legislation relating to the minimum age for marriage and compulsory marriage registration. In addition, children who may live in unions that are not regarded as recognised marriages by either formal or informal norms will be included. “Cohabitation – when a couple lives together as if married – raises the same human rights concerns as marriage.”¹⁸ A girl living with a man is expected to play the adult role of a wife and a mother as if in a formal marriage. The informality of the relationship, while assigning the same degree of responsibility, is likely to aggravate the vulnerability of girls further, depriving them and their children of rights to inheritance and citizenship, for example, and potentially exposing them to similar levels of sexual abuse and exploitation endured by child brides in formally recognised marriages. Hence, while recognising that underage informal unions potentially differ from regularised child marriages and risk affording even less protection to young brides, this paper considers children living in marriages or unions, under both formal and informal law, or merely in cohabitation, with a view to exploring ways by which early unions victimise girls sexually and in other related ways. In line with the prevalent international use of the notion of *child (or early) marriage*, the discussion will use this term to indicate early, child and forced unions that may be entered into through either formal or informal means.

This paper exclusively addresses individuals who enter into marriages or informal unions before reaching their 18th birthday – and are therefore regarded as children under international law – and views early/child marriage within this age group as potentially being forced marriage. The inquiry will focus primarily on the element of coercion, in particular with reference to the specific notion of *violence against children* which, paired with *gender-based violence*, helps define several forms of sexual abuse and exploitation, particularly of girl children, occurring in early/child/forced marriage.

15 *Ibid.*, p.4.

16 CEDAW and CRC, “Joint General Recommendation/General Comment”, p.7.

17 UNICEF, “Early Marriage: A Harmful Traditional Practice. A Statistical Exploration”, (New York: UNICEF, 2005), p.1.

18 *Ibid.*

4

SETTING LEGAL STANDARDS TO DEFINE ABUSE AND EXPLOITATION IN CHILD MARRIAGE AND PROTECT VICTIMS

Deciding if, when and whom to marry is one of the most important life choices a person can make – and also a fundamental human right enshrined in international conventions. A person who is trapped in marriage against her or his will risks having the full range of rights denied. International law has been attentive to marriages contracted without the necessary consent and, particularly, to early, child and forced marriage as a grave human rights violation.

Human rights frameworks consistently protect the entitlement of both parties involved to enter marriage freely, informed and with full consent, a condition that is normally attained with maturity. Although marriage is not considered explicitly in the CRC, early marriage violates other entitlements, such as the child’s right to express his or her views freely, the right to protection from all forms of abuse, and the right to be protected from harmful traditional practices, as often recalled by the Committee on the Rights of the Child (ComRC).¹⁹ Importantly, the CRC upholds the right of all children to freely express their views in decisions that affect their lives, thus entitling them to refuse consent to early betrothal and marriage. Children are fully entitled to resist any harm that adults, even well-meaning parents, inflict on them and contrast parental decisions that are detrimental to their healthy growth and balanced development. The decision to marry should be made on the basis of sufficient information on the implications of marriage, knowledge of the spouse, freedom from coercion or pressure, and with the full consent of the two parties involved. The Universal Declaration of Human Rights (UDHR, 1948), the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (1964), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW, 1979) and the Convention on the Rights of the Child (CRC, 1989) provide the cornerstone in the fight to contrast child marriage as an abuse of human rights. The younger and more uneducated the person involved, the more the principles underpinning international law are likely to be flouted.

¹⁹ *Ibid.* Although the Convention on the Rights of the Child makes no explicit provision against child marriage, the Committee on the Rights of the Child has stressed that several articles of the Convention can apply to this issue, including article 24, paragraph 3, which provides that States parties should “take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.”

The Human Rights Council resolution on *Strengthening Efforts to Prevent and Eliminate Child, Early and Forced Marriage*

On 2 July 2015, the United Nations Human Rights Council unanimously adopted a cornerstone resolution to strengthen efforts to prevent and eliminate child, early and forced marriage and support girls who are already married. The resolution on *Strengthening Efforts to Prevent and Eliminate Child, Early and Forced Marriage* builds on the 2013 brief procedural resolution, complementing the resolution adopted in 2014 at the UN General Assembly and incorporating the recommendations from the Office of the High Commissioner for Human Rights (OHCHR)'s report on preventing and eliminating child, early and forced marriage in 2014. It explicitly recognises child marriage as a violation of human rights “that prevents individuals from living their lives free from all forms of violence” and that has “wide ranging and adverse consequences on the enjoyment of human rights, such as the right to education, the right to the highest attainable standard of health, including sexual and reproductive health” (para.1). It calls on governments to promote and protect the human rights of all women and girls, including their right to have control over their sexuality (para. 12).

Recommending the adoption of a systematic approach in order to “develop and implement holistic, comprehensive and coordinated responses” (para. 2), the resolution calls for developing “national action plans, strategies and policies to end child, early and forced marriage, and coordination mechanisms and multi-sectoral interventions” including “national comprehensive strategies to prevent and respond to all forms of violence against children and women.”

Meaningfully, the resolution calls for the active participation of children and young people to enhance their awareness and involve them as agents of change in their communities (para. 9). It also urges States to ensure free birth, marriage, divorce and death registrations as part of a comprehensive civil registration and vital statistics system.

Co-sponsored by over 85 States from all regions, including many countries facing high prevalence of child marriage, the resolution is an indication of growing global support for ending child marriage. Recognising child marriage as a “barrier to sustainable development” which “helps to perpetuate the cycle of poverty”, the resolution places it as a human rights and development priority in the post-2015 development agenda.²⁰

²⁰ United Nations Human Rights Council, “Strengthening Efforts to Prevent and Eliminate Child, Early and Forced Marriage”, (2015).

Legal vs. social norms

Child marriage is outlawed in most countries of the world, although legislation may be at times obsolete, or disregard the principles and standards set out in international law. Several countries ban harmful traditional practices, including child marriage, and penalise guardians and other adults who, in various capacities, arrange or permit child marriage. Unfortunately, where the problem is more acute, the laws are normally unknown to most, defied by practice and widely unenforced. As a result, monetary penalties, normally only nominal, or imprisonment, where envisaged, are rather ineffective in deterring offenders. Although widely banned, child marriage cannot be invalidated everywhere. While some legal systems make provision for nullifying marriages contracted below the legal age, others have no mechanisms to declare a child marriage void, even if it is illegal.²¹

The multiple causes underpinning child marriage imply that enacting legislation alone may prove insufficient to eradicate the problem from its roots. In countries where child marriage is prevalent, social norms deeply embedded in traditional customs and beliefs tend to overrule formal legal provisions. In parallel to effective implementation of the law, it is required that a cultural shift be brought about, while expanding social and economic opportunities. Preventing, rather than punishing, appears to be the approach promising sustainable results. Action aimed at transforming knowledge and beliefs is more likely to address attitudes and finally change practice.

Legal provisions themselves should be framed in such a way as to act primarily as a deterrent. Clearly, even families that are aware of the law may opt for defying its provisions if they deem that it challenges their worldviews or undermines their economic interests. In some countries where, partly as a result of mounting global pressure, law enforcement has geared up to stop child marriage, there have been reports of weddings being held clandestinely, at night, or outside the precinct where the parties are known, in obscure and, at times, faraway locations.²² In the Maldives, many families travel as far as Pakistan or India to contract illegal child marriages.²³ Forcefully halting weddings does not seem to be the answer. Experience from the field shows that attempts made by government and non-government agencies committed to implementing anti-child marriage laws, or at the initiative of the community to stop impending child marriages and bring cases to the attention of law enforcement authorities have often resulted in financial loss, hurting the family pride and threatening the bride's honour.²⁴

No longer girls, not yet women - Entrenched adverse customs and social, cultural and sexual norms persisting in certain communities sanction child marriage, perpetuating a harmful practice that defies international law accepted, in principle, by virtually all nations, as well as national legislation which is progressively banning underage marriage. Poverty also stands in the way of legal implementation, compelling children to drop out of school, even where primary education is compulsory and marrying before the legal age is criminalised.

21 Center for Reproductive Rights, "Child Marriage in South Asia: International and Constitutional Legal Standards and Jurisprudence for Promoting Accountability and Change" (New York: CRR, 2013), http://www.reproductiverights.org/sites/crr.civicactions.net/files/documents/ChildMarriage_BriefingPaper_Web.pdf, accessed 27 June 2015.

22 World Vision Bangladesh, "Report on Campaign Called 'Bride Not Before 18' to End Child Marriage", (2014), p.8; International Center for Research on Women (ICRW), United Nations Population Fund (UNFPA), Australian Agency for International Development (AusAID), Asian Forum of Parliamentarians on Population and Development (AFPPD), "Child Marriage in Southern Asia: Policy Options for Action", (2012).

23 Quoted from: U.S. Department of State's 2010 Human Rights Report, in International Center for Research on Women (ICRW), United Nations Population Fund (UNFPA), Australian Agency for International Development (AusAID), Asian Forum of Parliamentarians on Population and Development (AFPPD), "Child Marriage in Southern Asia: Policy Options for Action", (2012).

24 World Vision Bangladesh, "Bride Not Before 18", (2014), p.9.

Experience and evidence everywhere show that, when children have a choice, they normally opt for delaying marriage. At the heart of all early marriages, whether contracted by parents or initiated by children themselves, there is often a form of compulsion, by discriminatory gender norms, or socio-economic conditions. The outcome of coercion and pressure is typically violence against children which, in the context of marriage, often manifests itself as sexual abuse and exploitation.

The widespread acceptance of marriage through powerful cultural and social transmission mechanisms tends to sanction sexual violence taking place within its context. Child marriage works as a shield that physically hides married girls from public view and symbolically prevents them from availing themselves of the forms of protection available in their communities. Neither girls, nor women, child brides are denied access to legal or social entitlements that are normally provided to their peers or to their mothers. The reality of child marriage is one in which girls cannot avail themselves of the rights guaranteed to women because of their age, nor of those granted to children because of the adult-like conditions in which they are forced to exist.

Legal definitions and provisions relating to early, child and forced marriage in international and regional legal frameworks

A wide array of international and regional human rights instruments address the interconnected facets of child, early and forced marriage from various thematic perspectives. These instruments offer an articulate legal framework for states to fulfil their due diligence obligations to prevent, punish and provide redress against violations committed by both private actors, such as parents, and the state itself.²⁵ The main issues addressed by international law in relation to unions contracted by children are:

- Minimum age for marriage,
- Consent by the concerned parties, and
- Violence and exploitation.

Minimum age for marriage – The right to marry implies that states specify a minimum age for marriage in law. The prescribed age for marriage varies according to state and customary law adopted by different countries. Although international law has not conclusively established a specific age for marriage, human rights bodies have been increasingly finding a consensus on the age of 18. The recent CEDAW and CRC Committees’ Joint General Comment on harmful practices considers child marriage to be permissible under the age of 18, although only under legitimate and exceptional circumstances, and stresses that it would be never permitted under 16 years or as a form of deference to culture or tradition. By taking such a stand, the Committees severely bar underage marriage, while, importantly, giving due recognition to the child’s evolving capacities and decision-making autonomy (6.2 (19)).

²⁵ For example, see Committee on the Elimination of Discrimination Against Women, General Recommendation No. 19, “Violence Against Women”, UN Doc. A/47/38, (1992), para. 9.

Definition and Manifestations of Harmful Practices

The CEDAW and CRC Committees define harmful practices as “persistent practices and forms of behavior that are grounded in discrimination on the basis of, among other things, sex, gender and age, in addition to multiple and/or intersecting forms of discrimination that often involve violence and cause physical and/or psychological harm or suffering.”

In order to be considered harmful, practices should meet the four criteria set out by the Committees:

- Denial of dignity and/or integrity of the individual and a violation of human rights and fundamental freedoms set out in the CEDAW and CRC;
- Discrimination against women or children resulting in negative consequences and/or limitations on capacities to fully participate in society;
- Traditional, re-emerging or emerging practices, maintained by social norms that perpetuate inequality;
- Imposed by family members, communities or society, regardless of full, free and informed consent of the victim.

The Committees specifically addresses four manifestations of harmful practices: female genital mutilation, child and/or forced marriage, polygamy and crimes committed in the name of so-called honour.²⁶

In 1979, the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) first outlawed child marriage, stating that the betrothal and the marriage of a child should have no legal effect, and prompted relevant actors to take necessary action to specify a minimum age for marriage and to make the official registration of marriages compulsory (article 16(2)).²⁷ In 1989, the CRC defined a child as a person below the age of eighteen years,²⁸ a standard that was subsequently recognised by the Committee on the Elimination of Discrimination against Women (CEDAW) when it affirmed that the minimum age for marriage should be 18 years for both men and women.²⁹

The virtually universal ratification of the Convention on the Rights of the Child, however, has not automatically resulted in the revision of the minimum age for marriage by States Parties. There are still States parties with national legal frameworks that accept a lower minimum age for

²⁶ CEDAW and CRC, “Joint General Recommendation/General Comment”, (2014).

²⁷ UN Convention on the Elimination of All Forms of Discrimination Against Women, adopted by the United Nations General Assembly 18 December 1979, United Nations Treaty Series, vol. 1249, p.13.

²⁸ UN Convention on the Rights of the Child, 20 November 1989, UN Treaty Series, vol. 1577, p.3, article 1.

²⁹ CEDAW, General Recommendation No. 21, UN Doc. A/39/48, (1994), para. 36, <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom21>.

marriage, especially if with parental consent. For example, there is evidence that child marriage may be higher in Islamic communities that follow Sharia law, which allows girls to marry soon after puberty. In such cases, underage unions are carried out outside the purview of the law and are not officially registered.³⁰ A challenge is posed by the fact that 147 countries currently permit marriage below the age of 18, either with parental, spousal or caregiver consent, with court permission, or in accordance with cultural practices or religious laws. In 54 of these countries, girls are allowed to marry at a younger age than boys. In most instances, inconsistency prevails between marriage provisions in plural legal systems and international obligations.³¹ It is not uncommon for contradictions to exist even among different laws relating to child marriage enacted in one nation.³²

The landmark resolution to end child marriage agreed on 21 November 2014 during the 69th session of the UN General Assembly marked the first commitment ever made by UN Member States to take resolute action with international organisations and other partners to condemn child, early and forced marriage. The resolution recognises that child, early and forced marriage is a harmful practice and increases vulnerability to all forms of violence. The resolution requests a comprehensive report from the Secretary General by its 70th session in September 2015 on the progress achieved toward ending the harmful practice and invites discussion to take place in the 71st session.³³

It must be noted that the resolution goes one step beyond the narrow issue of age, which has tended to dominate the discussion on early marriage until recently. Omitting a minimum age for marriage all together, the resolution rather calls the attention of states to the need to adopt legal and policy measures aimed at “preventing and ending child, early and forced marriage” and promoting “the informed, free and full consent of the intending spouses”.³⁴ In current international law, treating child and early marriage on par with forced marriage seems to emerge as a higher priority than the mere prescribing of a legal age for marriage. This is an indication of a deeper concern for the coercive nature of a practice that results in multiple forms of violence against child victims and for a growing need to address such a multifaceted issue from a holistic, rather than monothematic perspective.

An important contribution has been made by the CEDAW and CRC Committees which, in their Joint General Comment, assimilate early marriage to child marriage, defined as “any marriage where at least one of the parties is under 18 years of age”. Further, they equate early/child marriage to forced marriage by stating that “[a] child marriage is considered as a form of forced marriage given that one or both parties have not expressed their full, free and informed consent.” (6.2 (19)).³⁵

Such recognition permits new interpretations of child marriage, which now tends to be assimilated to forced marriage itself. The implications for an inquiry into sexual violence in child marriage are significant since child, early and forced marriage can no longer be viewed only as a channel to violence against children, but, from a human rights perspective, also as a form of violence in itself. This is based on the admission that an underage person is potentially incapable of consciously giving her consent to marriage – and the sexual relation implicit in it – with sufficient information and freedom on account of her age, even when she is free from other compelling circumstances.

30 International Center for Research on Women (ICRW), United Nations Population Fund (UNFPA), Australian Agency for International Development (AusAID), Asian Forum of Parliamentarians on Population and Development (AFPPD), “Child Marriage in Southern Asia: Policy Options for Action”, (2012).

31 United Nations Human Rights Council, “Preventing and Eliminating Child, Early and Forced Marriage”, (2014), p.14.

32 *Ibid.*, p.15.

33 UN General Assembly Resolution, “Child, Early and Forced Marriage,” UN Doc. A/Res/69/156, (2014).

34 *Ibid.*, para. 1.

35 CEDAW and CRC, “Joint General Recommendation/General Comment”, (2014).

Regional Human Rights Instruments Addressing Child Marriage

The attention paid to curbing the harmful practice of child marriage is also reflected in a number of regional human rights instruments which have come into force in recent times.

- The African Charter of Human and Peoples' Rights has led to the adoption of a 2003 Protocol on the Rights of Women in Africa (the Maputo Protocol), which states that the minimum age for marriage for women (only) shall be 18 years.³⁶ The African Charter on the Rights and Welfare of the Child also calls for the prohibition of both betrothal and marriage of a child under 18, calling for appropriate legislation and marriage registration.³⁷ The African Union's Committee of Experts on the Rights and Welfare of the Child, in pursuance of its Declaration on Ending Child Marriage in Africa, calls on the Member States to set the "minimum age for marriage at 18 years for both boys and girls without exception," and on the African Union Commission and civil society to provide supportive mechanisms.³⁸ The African Youth Charter requires young men and women to be "of full age", referring to "youth" as persons in the age group 15 to 35,³⁹ thus implying that consent is the primary factor for consideration.
- The Association of Southeast Asian Nations (ASEAN) holds in its Human Rights Declaration that men and women have a right to marry if they are of majority age, although a minimum age is not defined, and have given their free and full consent.⁴⁰ The ASEAN Commission on the Protection and Promotion of the Rights of Women and Children identified early child marriage as an urgent regional issue in 2011.
- The South Asian Association for Regional Cooperation (SAARC) has yet to produce an instrument addressing child marriage,⁴¹ although the SAARC Secretary General did state that "[c]hild marriages limit opportunities and undermine wellbeing"⁴² and the SAARC Convention on Child Welfare calls on making the registration of marriages compulsory to enforce legal provision of the minimum marriage age.⁴³ The South

36 African Commission on Human and Peoples' Rights, 2003 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, Article 6(b).

37 Organization of African Unity (OAU), African Charter on the Rights and Welfare of the Child, Doc. No. CAB/LEG/24.9/49, (1990), Article 21(2), <http://www.carmma.org/resource/african-charter-rights-and-welfare-child>.

38 The Addis Ababa Declaration on Ending Child Marriage in Africa, 23rd Session of the African Committee of Experts on the Rights and Welfare of the Child (Addis Ababa, 2014), <http://acerwc.org/wpcontent/uploads/2014/04/ACERWC-Declaration-on-Ending-Child-Marriage-in-Africa.pdf>.

39 African Union, African Youth Charter, 2 July 2006, Article 8(2), http://www.au.int/en/sites/default/files/AFRICAN_YOUTH_CHARTER.pdf.

40 ASEAN, ASEAN Human Rights Declaration, 19 November 2012, Article 19, Civil and Political Rights, <http://www.asean.org/news/asean-statement-communicates/item/asean-human-rights-declaration>.

41 ASEAN, ASEAN Human Rights Declaration, 19 November 2012, Article 19, Civil and Political Rights, <http://www.asean.org/news/asean-statement-communicates/item/asean-human-rights-declaration>.

42 SAARC Secretary General, "Inaugural Address to the Regional Consultative Meeting to Celebrate the International Day of the Girl Child" (Kathmandu, 17-18 December 2012), http://saarc-sec.org/2012/12/17/news/SAARC_SecretaryGeneral-at-the-Reg-Consultative-Meeting-to-Celebrate-the-Intl-Day-of-the-Girl-Child-Kathmandu-17-18-December2012/108/.

43 2002 SAARC Convention on Regional Arrangements for the Promotion of Child Welfare in South Asia, (11th Summit, Katmandu), Article 4(3)(d), <http://www.saarc-sec.org/userfiles/conv-children.pdf>.

Asian Initiative to End Violence against Children (SAIEVAC), the SAARC apex body for children, has specifically focused on child marriage.⁴⁴ Objectives for the region include the incorporation of the child marriage technical discussion paper and individual country reports from the 3rd Technical Consultation on Harmful Practices into a “Regional Action Plan to End Child Marriage in South Asia 2015-2018,” which was endorsed by the Regional Girl Child Review Meeting held in December 2012.⁴⁵ The Plan calls for an increase of the minimum marriage age to 18 for both boys and girls in at least four member states by 2018.⁴⁶ SAIEVAC has prioritised the issue of child marriage by listing it among the key action areas in its workplan for the region⁴⁷ and facilitated the regional process leading to the development of the Kathmandu Call for Action to End Child Marriage in South Asia.⁴⁸

- The Council of Europe Resolution on Forced Marriages and Child Marriages defines child marriage as a union where at least one party is under 18 years of age and calls on member states to adhere to this norm.⁴⁹ The Council of Europe further urges the non-recognition of forced and child marriages that have taken place abroad, except when in the child’s best interests; to not facilitate or automatically annul such marriages; and to consider coercive sexual relations within forced marriage as rape.⁵⁰

Free, full and informed consent – An increasingly important perspective through which international law approaches child, early and forced marriage is the requirement that “marriage shall be entered into only with the free and full consent of the intending spouses,” the cornerstone provision enshrined in the Universal Declaration of Human Rights in 1948.⁵¹ This fundamental principle is further re-established in the binding 1976 UN International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights.⁵² The 1962 UN Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages provides measures to be taken to ensure that marriages are contracted consensually, such as a public declaration of consent in the presence of the competent authority and the presence of witnesses.⁵³ Regionally, the Inter-American Convention on Human Rights,⁵⁴ the

44 South Asia Initiative to End Violence Against Children (SAIEVAC), “Concept Note: 3rd Technical Consultation on Eliminating Harmful Practices Affecting Children based on Tradition, Culture, Religion and Superstition” (Bhutan, 24-29 September 2013), p.3, <http://www.saievac.org/wpcontent/uploads/2013/08/Concept-Note-3rd-TCCR.pdf>.

45 South Asia Initiative to End Violence Against Children (SAIEVAC), “In Solidarity with the Children of SAARC’, 3rd Technical Consultation Recommendations: Eliminating Harmful Practices Affecting Children in South Asia,” (Bhutan, 25-27 September 2013), p.2, <http://www.saievac.org/download/3rd%20TC%20Recommendations%20Formatted.pdf>, accessed 15 June 2015.

46 South Asia Initiative to End Violence Against Children (SAIEVAC), “Regional Action Plan to End Child Marriage in South Asia 2015-2018”, http://www.saievac.org/download/Thematic%20Area%20Resources/Child%20Marriage/RAP_Child_Marriage.pdf, accessed 1 April 2015.

47 The South Asia Initiative to End Violence Against Children (SAIEVAC), Workplan 2010-2015.

48 Kathmandu Call for Action to End Child Marriage in South Asia, 7 November 2014.

49 Council of Europe, “Resolution 1468 Forced Marriages and Child Marriages”, (2005), paras. 4, 7 and 14.2.1, <http://assembly.coe.int/main.asp?Link=/documents/adoptedtext/ta05/eres1468.htm>.

50 *Ibid.*, paras. 14.2.4, 14.2.5 and 14.3.

51 Article 16(2), Universal Declaration of Human Rights.

52 ICCPR, Article 23(3); ICESCR, Article 10(1). The ICCPR Article 23(4) also provides for “equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution.”

53 Articles 1, 2, 3.

54 Article 17(3), Inter-American Convention on Human Rights (1969).

Women’s Protocol to the African Charter,⁵⁵ and the ASEAN Human Rights Declaration⁵⁶ refer to consent in this context, although the Women’s Protocol is the only one that specifically requires a minimum age of 18.

The principle of free, full and informed consent, which stands at the core of international and national legal frameworks relating to marriage, provides critical insight into the conceptual links that exist between child marriage and slavery. Such interface bears important implications when analysing child marriage from the perspective of sexual abuse and exploitation, considering that both violations may be constructed as amounting to forms of slavery. The peremptory prohibition of slavery is regarded as *jus cogens*, i.e., as referring to fundamental principles of customary international law, from which no derogation is ever permitted. All States are obliged to prohibit and eliminate slavery. Slavery and slavery-like practices are intertwined and many cases of child marriage are addressed by one or more relevant human rights treaties.

Prohibition of all forms of violence, mistreatment and exploitation of children – A growing body of international law addresses child, early and forced marriage by way of prohibiting violence, exploitation and mistreatment of children and, more broadly, upholding economic and social rights. As the foundation of child rights protection, the UN Convention on the Rights of the Child (CRC) guarantees the right to freedom from mental or physical violence, injury, exploitation, maltreatment and abuse, including sexual abuse.⁵⁷ In a general comment, the Committee on the Rights of the Child includes in the prohibited forms of violence the sale of children for forced marriage as a manifestation of sexual abuse and exploitation,⁵⁸ and defines forced and early marriage as a harmful practice.⁵⁹

The UN Commission on the Status of Women Report 2013 urges governments to take action to address “structural and underlying causes and risk factors so as to prevent violence against women and girls” and stresses the link with child marriage by promoting the legal age for marriage.⁶⁰ Regional agreements also provide general protections relating to freedom from violence. In particular, the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women⁶¹ and the European Union Action Plan on Human Rights and Democracy foster the prevention of early and forced marriage as a means of preventing gender-based violence,⁶² while the EU Charter of Fundamental Rights ensures children the “right to such protection and care as is necessary for their well-being” and makes the provision that “their views shall be taken into consideration.”⁶³

55 Article 6(a), Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa.

56 Article 19, ASEAN Human Rights Declaration (19 November 2012), <http://www.asean.org/news/asean-statement-communicues/item/asean-human-rights-declaration>.

57 Article 19(1), UN Convention on the Rights of the Child.

58 CRC, General Comment No. 13, “The Right of the Child to Freedom from all Forms of Violence”, UN Doc. CRC/C/GC/13, (2011), http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f13&Lang=en, accessed 7 May 2015. Para. 25(d): Sexual abuse and exploitation includes: “Child prostitution, sexual slavery, sexual exploitation in travel and tourism, trafficking (within and between countries) and sale of children for sexual purposes and forced marriage. Many children experience sexual victimization which is not accompanied by physical force or restraint but which is nonetheless psychologically intrusive, exploitive and traumatic”.

59 CRC General Comment No. 13, para. 29.

60 Economic and Social Council, UN Commission on the Status of Women, Report on the 57th session (4-15 March 2013), http://www.un.org/ga/search/view_doc.asp?symbol=E/2013/27&referer=http://www.un.org/womenwatch/dacsw/57sess.htm&Lang=E, accessed 21 June 2015.

61 Article 3.

62 Council of the European Union, “EU Strategic Framework and Action Plan on Human Rights and Democracy”, Doc. No. 11855/12 (Luxembourg, 2012), Outcome 20(c).

63 Charter of Fundamental Rights of the European Union, Doc. No. 2010/C/ 83/02, (2012), Article 24, Rights of the Child, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:083:0389:0403:en:PDF>.

The CRC guarantees children the highest attainable standard of health.⁶⁴ The ComRC broadens the understanding of the provisions of article 6 and article 24,⁶⁵ and is “concerned that early marriage and pregnancy are significant factors in health problems related to sexual and reproductive health, including HIV/AIDS”.⁶⁶ The ComRC “strongly recommends” that a minimum marriage age be set at 18 in order to ensure the child’s right to health and development.⁶⁷ By stressing that measures are required to counter “traditional practices prejudicial to the health of children,”⁶⁸ the Committee holds that marriage customs embedded in the culture of a people should be practiced in a way that is not detrimental to children. Similarly, the ComEDAW dealt with the link between the marriage of girl children and health in its general recommendation interpreting CEDAW article 12 on health as requiring laws prohibiting the marriage of girls.⁶⁹

The right to education, which is also upheld in the CRC,⁷⁰ is jeopardised when children drop out of school and marry young. The World Health Organization underscores that low levels of education restrict girls’ economic autonomy, thus increasing their vulnerability.⁷¹ Furthermore, the Committee on the Rights of the Child identifies lack of education as a factor interfering with the fulfilment of the right to health when uneducated girls are unaware of the dangers of HIV/AIDS and other threats to their health.⁷²

A UN expert Joint Statement takes a comprehensive view and more holistically concludes that “child marriage is a violation of *all* the rights of the child,” calling on states to raise the age for marriage to eighteen without exception.⁷³ It further distils all previous definitions in the condensed notion that “forced early marriage” is a form of slavery.⁷⁴

Full and free consent to protect children from violations of their rights – In essence, a review of the legal approaches currently being adopted to address early marriage discloses that, although regional legal frameworks and action on the ground appear to still be oriented toward fulfilling the ideal of an objective ban on marriage focussed in particular on ensuring compliance with the minimum legal age of 18, the more specialised treaty bodies and special procedures have converged early, child and forced marriage into the same conceptual framework and have been shifting the focus of their concern toward the notion of full and free consent of the involved parties. The perspective of full, informed and free consent implies the issue of maturity as well. A person younger than 18 is normally deemed incapable of informed and free consent, even if granted the opportunity, as in the case of the potentially controversial issue of self-initiated child marriages, for example.

Contextually, international law recognises the right of children to express their views according to their evolving capacities. The Joint Recommendation of ComEDAW and ComRC may represent the most concise and unified presentation of international law as it holds that marriage where at least one party is under 18 should be prohibited, although in legitimate exceptional circumstances it may be allowed on the evidence of sufficient maturity of the child over 16, the age under which marriage must be resolutely outlawed.

64 Article 6.

65 CRC General Comment No. 4, “Adolescent Health and Development”, UN Doc. CRC/GC/2003/4 (33rd session, 2003), para. 4, http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=_CRC%2fGC%2f2003%2f4&Lang=en

66 *Ibid.*, para. 20.

67 *Ibid.*, paras. 9, 20.

68 Article 24(3), Convention on the Rights of the Child.

69 CEDAW General Recommendation No. 24, “Article 12 of the Convention: Women and Health”, UN Doc. 54/38/Rev.1, (20th session, 1999).

70 Article 28(1), Convention on the Rights of the Child.

71 CEDAW, General Comment No. 21, “Equality in Marriage and Family Relations”, UN Doc. A/49/38, (13th session, 1994), <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom21>.

72 CRC General Comment No. 3, “HIV/AIDS and the Rights of the Child”, UN Doc. CRC/GC/2003/3, (2003), para. 11.

73 United Nations, “Joint Statement by a group of UN human rights experts to mark the first International Day of the Girl Child”, (2012), para. 4, <http://www.un.org/en/events/girlchild/2012/hrexerts.shtml>, (emphasis added).

74 *Ibid.*, para. 9.

The debate over sexual abuse and exploitation in child marriage will similarly require the need to find a balance between recognition of the evolving capacities and sexual maturity of children – linked to the right to autonomously decide their emotional lives – and the vulnerability stemming from entering early unions, which may impact children’s rights and jeopardise their interests.

When it is the child who “decides” to marry

An important perspective with regard to the conceptualisation of the notions of consent and forced marriage relates to the so-called child-initiated marriages. In parallel to the custom of parents arranging marriages for their daughters when they are still children, a recent trend has been evolving whereby young people independently chose a spouse and enter a marriage or union before attaining legal age, with or without parental consent. Such occurrences challenge traditions that see parents as the parties deputed to decide on the spouse, the time of the wedding and the arrangements through which the marriage must be contracted. By circumventing customary rituals and procedures, children increasingly elude parental authority and socially shared norms.

Evidence shows that, even in traditional cultures where child marriage is prevalent, the novel practice of self-initiated child marriages is spreading rapidly among the young generations. Research from Nepal highlighted that 60 percent of young people consulted on whose responsibility they felt it was to arrange a marriage responded that the responsibility lay with parents, while 40 percent felt that the decision should rest with the couple alone. On the other hand, when household heads were interviewed about reasons for the rise in self-initiated child marriages, 30 percent stated it was because of the willingness of children themselves.⁷⁵ It was further unveiled that, although the arranged-marriage practice remained prevalent (72 percent), the remaining “love marriages” had been initiated by young people with mobile phones providing the means through which initial contact was made. Respondents felt that television and cinema were widely responsible for the evolving attitudinal changes evident in the new generations toward established sexual mores and the authority exercised by the elders.⁷⁶

Interpreting child-initiated marriages as the manifestation of a need for self-determination and personal independence among young people may be partial. A self-initiated marriage can also take place under compulsion. Poverty can be a powerful force driving a child to take refuge in marriage. When children realise that their family resources are inadequate to pay for a wedding, they may deem it more practical to take matters into their own hands and bypass formal procedures. Girls belonging to poor homes may prepone the time of marriage in the hope that their young age might compensate for a low social background, or inability to pay a dowry.

The recent practice of so-called “love marriage”, escaping the control of parents, has been spreading rapidly among young people, who may view it as a way to overcome social barriers raised by cultural and religious conventions. An evolving romantic interpretation of marriage is fast capturing the collective imagination of teenagers and replacing the

75 Plan Nepal, “Child Marriage in Nepal”, Society for Local Integrated Development Nepal (SOLID Nepal), n.d.

76 *Ibid.*

notion of marriage as a social and economic institution which has long prevailed, especially in traditional societies. Increased access to mass-media, social networks and cinema has exposed even fairly secluded communities to global sexual models. Where platforms for intergender socialisation are missing, marriage is perceived as a socially accepted space for the emotional and sexual experimentation that in certain cultural settings may be precluded to adolescents. In some areas, self-initiated unions are becoming the most common form of child marriage.

More research would be necessary to understand the evolving forms of child marriage. Initial limited evidence would suggest that increased access to education by boys and girls has been enhancing opportunities for intermingling between sexes at school. Mobile phones, in particular, have been changing the way young people communicate, favouring contacts even where girls are prohibited from socialising with boys.⁷⁷

It would be relevant to explore in further depth the factors that motivate young people to marry as children, investigating, for example, the impact that all pervasive information and communication technologies are having on reshaping social and sexual norms and behaviours, particularly in traditional cultures where early marriage is more prevalent. During a participatory process aimed to develop a theory of change to address child marriage in Bangladesh, several participants, especially religious leaders, felt that the proliferation of TV, mobile phones and the Internet in local communities were contributing to developing negative images and objectification of women, thus adversely impacting the attitudes, values and behaviours of young people. As information and communication technologies were providing the major avenue for entertainment among adolescents, it was felt that their influence played a primary role in shaping new sexual norms, including preference for child-initiated marriages.⁷⁸

To further explore reasons for the proliferation of teenage “love marriages”, it would be important to assess whether young people resort to such arrangements as a way to hastily escape the prospect of a union arranged by their families against their will. Further, the impact of social and economic compulsion on the lives of young people would deserve deeper understanding, to gauge the extent to which children may recur to marriage as a way to flee poverty, abuse, overwork, exploitation, neglect or maltreatment in the parental or marital family.

As such trends gain momentum, there is a risk that parental apprehension about a behaviour perceived as hurting the family prestige and defiance of the elders’ authority might result in families further preponing the age of marriage of their children to avert eloping or other damaging behaviours, thus triggering a vicious cycle that might result in further reducing the marriage age.⁷⁹

77 Isabel Sibley, “The Burden of Daughters: Understanding the Impact of Responses to Child Marriage and Gender Discrimination in Nepal”, MA dissertation, (University of Reading, September 2012).

78 International Center for Research on Women (ICRW), New Delhi, Plan Bangladesh, UNFPA, “Theory of Change: Ending Child Marriage in Bangladesh”, (Dhaka, 24-25 February 2014), p.6.

79 Plan Asia Regional Office, International Center for Research on Women (ICRW), “Asia Child Marriage Initiative: Summary of Research in Bangladesh, India and Nepal”, (2013), p.21.

Can child-initiated unions be considered ‘forced marriages’? – While, on the one hand, the spreading practice of child-initiated marriages may signal a growing demand for autonomy and self-determination on the part of young people, on the other, it raises questions about its intrinsically harmful nature. When children enter marriage as their own decision, is that in their best interests? Also, considering that conceptually child marriage is being increasingly identified with forced marriage, could a union that is not arranged by a third party imposing a decision on children and, in fact, initiated by children themselves, still be regarded as “forced”? To what extent can a child give consent to marriage? Although these are critical questions requiring a level of research and analysis that is presently missing, an initial perspective to take in addressing such issues may again derive from the broader debate led by the specialised human rights institutions on the necessary tension between the right of the child to influence decisions impacting her life and the right to be protected from all forms of harm with the ultimate purpose of ensuring the best interests of the child.

Barriers to the application of the law

As national legislation on child marriage expands, partly as a result of mounting global pressure, several barriers persist in the application of the fundamental principles promoted in international law. In several countries, the legal status of child marriage may still be regulated by a combination of legal frameworks, spanning from civil and criminal codes to personal laws. Limited consistency, resulting from parallel legal systems reflecting competing religious, customary or local laws, weakens the ability of child brides to seek legal protection and remedies. Even in countries where child marriage is banned, parallel systems can override statutory law and deference to personal laws may persist resulting in discrimination against girls on religious grounds.

In some cases, marriage legislation may fail to require consent of the parties to marriage, although general marriage laws normally impose parental consent for underage unions. Also, unreasonable legal requirements for terminating a marriage may prove a formidable hurdle for child brides seeking to regain their freedom. In some countries, if a married girl attempts to run away from the marital home to escape violence, she may be convicted of intent to have sex outside of marriage.⁸⁰ Further, even where compulsory registration of marriage and births are provided by law, inefficacy in establishing effective systems, such as birth and marriage registrar services, or otherwise legally enforcing such provisions allows impunity of offenders to persist. In countries where legislation requires registration, the failure to register a marriage may not result in its invalidation.

While efforts to strengthen legislation that bars child marriage give reason for hope, persisting gaps and inconsistencies in existing legal frameworks undermine the capacity of girls to fulfil their fundamental human and constitutional rights, including reproductive rights, the right to education, participation and, crucially, to be free from sexual violence. Poor implementation of the law adds to the predicament of young children who are at risk or victims of child marriage.⁸¹

80 Center for Reproductive Rights, “Child Marriage in South Asia”, (2013), p.19.

81 *Ibid.*, p.54.

The role of governments is central in ensuring protective and non-discriminatory legal frameworks, strict implementation of laws and policies, as well as provision of effective education and protection services, reproductive sexual health care and legal remedies to both married and unmarried girls. Addressing impunity of perpetrators and ensuring accountability of duty-beaters are primary challenges in combating child marriage.

Marriage registration as a necessary measure to ensure minimum marriage age

International law requiring a minimum marriage age demands that marriage registration systems be instituted as appropriate measures to support such a fundamental human right. The Convention on the Elimination of Discrimination against Women requires the state to take “all necessary action [...] to make the registration of marriages in an official registry compulsory,”⁸² a provision that should include “all marriages, whether contracted civilly, or according to custom or religious law.”⁸³ The targeted 1962 UN Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages demands that “[a]ll marriages shall be registered in an appropriate official register by the competent authority” (article 3), thus enhancing the provision of the 1956 UN Supplementary Convention on the Abolition of Slavery, which had required states to merely encourage the registration of marriages (article 2).

The registration of all marriages in an official register has also been made compulsory by several regional instruments such as, in Africa, the African Charter on the Rights and Welfare of the Child,⁸⁴ the Addis Ababa Declaration on Ending Child Marriage in Africa⁸⁵ and the Maputo Protocol on the Rights of Women in Africa⁸⁶ (the former two specifically in the context of the prohibition of child marriage). Nevertheless, at the national level legislation is uneven. Nigeria’s Marriage Act 1990, for example, regulates statutory marriage, requiring prior registration in a Marriage Notice Book. In parallel, however, customary and Islamic marriages operate outside the purview of formal law, free from a registration or, often, a minimum age requirement.⁸⁷

82 UN Convention on the Elimination of All Forms of Discrimination Against Women, adopted by the United Nations General Assembly 18 December 1979, United Nations Treaty Series, vol. 1249, p.13, Article 16(2).

83 CEDAW, General Recommendation No. 21, UN Doc. A/39/48, (1994), para. 39, <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom21>, accessed 18 June 2015.

84 Organization of African Unity, African Charter on the Rights and Welfare of the Child, Doc. No. CAB/LEG/24.9/49, (1990), Article 21(2), http://www.au.int/en/sites/default/files/Charter_En_African_Charter_on_the_Rights_and_Welfare_of_the_Child_AddisAbaba_July1990.pdf, accessed 18 June 2015.

85 African Union, The Addis Ababa Declaration on Ending Child Marriage in Africa, 23rd Session of the African Committee of Experts on the Rights and Welfare of the Child (Addis Ababa, 11 April 2014), <http://acerwc.org/wp-content/uploads/2014/04/ACERWC-Declaration-on-Ending-Child-Marriage-in-Africa.pdf>, accessed 18 June 2015.

86 African Commission on Human and Peoples’ Rights, Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa, 2003, Article 6(d), <http://www.achpr.org/instruments/women-protocol/>, accessed 18 June 2015.

87 Marriage Act, Chapter 218, Laws of the Federation of Nigeria 1990, <http://www.nigeria-law.org/Marriage%20Act.htm>, accessed 18 June 2015.

In South Asia, the South Asian Association for Regional Cooperation (SAARC) adopted a convention on child welfare that includes mandatory civil registration of marriages in an official registry “to facilitate the effective enforcement of [the minimum age for marriage]”.⁸⁸ The Council of Europe also passed a detailed resolution on forced and child marriage in 2005, which makes registration compulsory and further requires a prior interview between the bride, the groom and the registrar to allow a registrar who might have doubts about the free and full consent of either or both parties to convene additional meetings.⁸⁹ Despite efforts multiplying to implement a minimum age norm, practice continues to depart from the norm, even in communities residing in wealthier countries. In Turkey, for example, Islamic customs, rather than economic pressure, have been reported to be the primary driver of child marriage. As a result, unofficial religious unions continue to be solemnised and official figures reflecting legally recognised registered marriages fail to reflect the true extent of the problem.⁹⁰

Birth registration as the foundation for marriage registration

The registration of marriages is bound to remain an ineffective means to enforcing the minimum age of marriage if the age of the bride and the bridegroom is uncertain. Sound marriage registration is only possible if it can rely on timely and rigorous birth registration. Birth registration is a fundamental human right which supports the enjoyment of a host of other entitlements. In countries where birth registration is not compulsory or is implemented inconsistently, marriage registration is liable to hinge on non-existent or unreliable birth certificates. According to UNICEF, the gap in recording births facilitates the falsification of the age and the identity of the child, particularly of girls being sought for early marriage.⁹¹ When a girl’s birth is properly certified, her identity is protected and her capacity to access basic services and have her rights protected are greatly enhanced.

Progress has been made in promoting universal birth registration. A growing number of countries have passed legislation to regulate it, and some have established administrative mechanisms and law enforcement units to ensure its application. Knowledge and application of the norm, however, is far from being universally internalised.

88 South Asian Association for Regional Cooperation, SAARC Convention on Regional Arrangements for the Promotion of Child Welfare in South Asia, (11th Summit, Kathmandu, 2002), Article 4(3)(d), <http://www.saarc-sec.org/userfiles/conv-children.pdf>, accessed 18 June 2015.

89 Council of Europe, “Resolution 1468 Forced Marriages and Child Marriages”, (2005), Articles 14.2.2, 14.2.3, <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17380&lang=EN>, accessed 18 June 2015.

90 United Nations Population Fund, “Child Marriage in Turkey, Overview”, (UNFPA, June 2014), pp.2,3,7. <http://eeca.unfpa.org/sites/default/files/pub-pdf/unfpa%20turkey%20overview.pdf>, accessed 18 June 2015.

91 UNICEF, “Early Marriage: A Harmful Traditional Practice”, (2005).

According to UNICEF, around 290 million children in the world are denied the protection of a birth certificate.⁹² The right of every child to be “registered immediately after birth” is enshrined in article 7 of the CRC, requiring states to reflect such fundamental entitlement in national legislation. The Human Rights Council has pointed out that the CEDAW committee and other treaty bodies “require States to register births *and* marriages as a means to facilitate monitoring of the age of marriage and to support the effective implementation and enforcement of laws on the minimum age of marriage.”⁹³

The majority of unregistered children live in South Asia and sub-Saharan Africa,⁹⁴ the regions where child marriage is most prevalent. More than half of the almost 230 million children worldwide under the age of five who are unregistered are located in Asia.⁹⁵ In Africa, the Addis Ababa Declaration urges states to provide universal access to birth registration.⁹⁶ In its Convention on Regional Arrangements for the Promotion of Child Welfare in South Asia, the South Asian Association for Regional Cooperation (SAARC) has mandated member states to ensure registration of births, as well as marriages and deaths.⁹⁷ The Bangladeshi Birth and Death Registration Act was amended in 2004 to require both bride and groom to provide a birth certificate for their marriage to be registered,⁹⁸ and to punish parents with a fine if the birth of a child is not registered within 45 days.

In practice, parents tend to seek certification only if and when needed, for example, for enrolling the child in school.⁹⁹ In Sri Lanka, where birth registration is mandatory, a significant number of births remain unrecorded, typically among those who would need it most, such as refugee/returnee children, children of families living on the streets or in plantations, children of gypsy communities or indigenous Vedda communities. A similar attitude of disregarding established laws may be found in the rest of the region and in other countries where limited access to free and user-friendly civil registration systems, inadequate knowledge of the law and systematic disregard for the application of the penalties provided for offenders *de facto* invalidate legal provisions and procedures aimed to enhance the protection of children.¹⁰⁰

92 UNICEF, “Birth Registration”, http://www.unicef.org/protection/57929_58010.html, accessed 18 June 2015.

93 United Nations Human Rights Council, “Preventing and Eliminating Child, Early and Forced Marriage”, (2014), para. 15 (emphasis added).

94 UNICEF, “Birth Registration”, http://www.unicef.org/protection/57929_58010.html, accessed 18 June 2015.

95 *Ibid.*

96 African Union, The Addis Ababa Declaration on Ending Child Marriage in Africa, 23rd Session of the African Committee of Experts on the Rights and Welfare of the Child (Addis Ababa, 11 April 2014), <http://acerwc.org/wp-content/uploads/2014/04/ACERWC-Declaration-on-Ending-Child-Marriage-in-Africa.pdf>, accessed 18 June 2015.

97 African Union, The Addis Ababa Declaration on Ending Child Marriage in Africa, 23rd Session of the African Committee of Experts on the Rights and Welfare of the Child (Addis Ababa, 11 April 2014), <http://acerwc.org/wp-content/uploads/2014/04/ACERWC-Declaration-on-Ending-Child-Marriage-in-Africa.pdf>, accessed 18 June 2015.

98 Plan Asia, International Centre for Research on Women, “Asia Child Marriage Initiative: Summary of Research in Bangladesh, India and Nepal”, (Bangkok, 2013), p.7, <http://www.icrw.org/files/publications/PLAN%20ASIA%20Child%20Marriage-3%20Country%20Study.pdf>, accessed 18 June 2015, p.13.

99 Girls Not Brides, “How Birth Certificates Help Tackle Child Marriage: The Value of the Birth Certificate”, <http://www.girlsnotbrides.org/birth-certificates-help-tackle-child-marriage/>, accessed 18 June 2015.

100 UNICEF, “Birth Registration in Armed Conflict”, (2007).

Yet, timely registration of births has critical implications for the life of the newborn, throughout childhood and beyond. Especially at the time of marriage, a faultily recorded or missing date of birth can relieve the marriage registrar from the duty of certifying only persons who have reached marriageable age. Birth registration helps children avail of legal protection from underage marriage, as well as access age-appropriate social services, such as education and healthcare, which are critical to preventing harm connected with child marriage. A birth certificate may also be necessary at the time of school enrolment and establishes the age-appropriate class a pupil should attend. In addition to school, it facilitates access to other public services and programmes and the enjoyment of civil rights, such as voting. Birth certificates provide the basis for issuing identity cards, which are critical in tracking and identifying trafficked or missing children.

Several countries are making efforts to universalise birth certification and switch to online registration. An electronic registration would protect the child from false certification and preserve data more reliably than manual recording. Incentives to families may also be useful. In the Indian states of Bihar and Jharkhand, a government scheme makes it possible for a deposit to be made in a savings account opened for a newly-born girl until she reaches the age of five. The sum is subsequently released as she progresses through different school grades and upon her marriage if this takes place after the age of 18.¹⁰¹ The programme thus encourages birth and marriage registration illustrating its value with regard to increasing girls' access to education and delaying the age of marriage.

101 Breakthrough, "Nation Against Early Marriage: Prohibition of Child Marriage Act", <http://www.breakthrough.tv/earlymarriage/the-law-pcma/>, accessed on 18 June 2015.

5

WHO IS MOST AFFECTED BY CHILD MARRIAGE?

The profiling of commercial sexual exploitation of children (CSEC) victims typically, although not exclusively, refers to young people who become engaged in various forms of sexual exploitation compelled by extreme poverty, neglect and social exclusion. In contrast, the image of an early married child may lead to visualising a young person trapped in traditional cultural norms and customs. In reality, an analysis of the actual profile of early married children reveals striking similarities with peers involved in commercial sexual exploitation. The two groups, although distinct from many points of view, share social and economic backgrounds that are more common than what might be immediately perceived. Sharp gender discrimination, low educational levels, poverty, and social and geographical marginalisation emerge as key determinants in leading deprived children to either CSEC or child marriage, or both.

Estimating child marriage

The existing estimates relating to child marriage offer a stark picture of a systematic form of gender-based violence being inflicted on a large proportion of the world's children. According to UNICEF, over 700 million women alive today were married before they turned 18. More than one in three (about 250 million) entered into a union before age 15.¹⁰² In United Nations Population Fund (UNFPA)'s figures, one in three girls in the developing world (excluding China) will probably be married before they are 18.¹⁰³

South Asia has the highest prevalence of child marriage (42 percent), with India accounting for one third of the global total. The ten highest prevalence countries are concentrated in South Asia and sub-Saharan Africa. Niger has the highest overall prevalence of child marriage globally, while Bangladesh displays the highest rate of girls married below age 15.¹⁰⁴

While child marriage rates are declining among girls under age 15, the practice is still commonplace in several countries. UNICEF data indicates that of the world's 1.1 billion girls, 22 million are already married, with hundreds of millions more at increasing risk as populations grow.¹⁰⁵

102 UNICEF, "Ending Child Marriage: Progress and Prospects", (New York: UNICEF, 2014).

103 United Nations Population Fund, "Marrying Too Young. End Child Marriage", (New York: UNFPA, 2012), p.6.

104 UNICEF, "Ending Child Marriage: Progress and Prospects", (2014).

105 *Ibid.*

If the practice of child marriage continues at the current levels, up to 280 million girls alive today are at risk of being married by the time they turn 18, a number that is projected to reach 320 million by 2050 as a result of population growth. The total number of women married as children would then grow from more than 700 million today to approximately 950 million by 2030, and nearly 1.2 billion by 2050. The number of girls under age 18 married each year will grow from 15 million today to 16.5 million in 2030 to over 18 million in 2050. However, if the current rate of progress is sustained in the future, there is reason to hope that the proportion of women married in childhood will continue to decrease, with projections indicating a trend spanning from 33 percent in 1985, to 22 percent by 2030, to a further 18 percent by 2050. Unfortunately, such gains are rather unlikely to offset population growth and, even if progress continues, the total number of women married as children will still be around 700 million by 2050, although nearly 490 million girls will have averted child marriage.¹⁰⁶

10 Countries with the Highest Prevalence of Child Marriage

Rank	Country	% girls married before 18
1	Niger	77
2	Bangladesh	74
3	Chad	69
4	Mali	61
5	Central Africa Republic	60
6	India	58
7	Guinea	58
8	Ethiopia	58
9	Burkina Faso	52
10	Nepal	52

* Percentage of women aged 20 to 49 years who were married or in unions before age 18.

Source: UNICEF, *Ending Child Marriage: Progress and Prospects* (New York: UNICEF, 2014)

Regardless of geographical and cultural setting, child marriage seems to directly correlate with conditions that typically characterise poor development, such as rural residence, low or no education, and poverty, with pronounced disparities emerging in the prevalence of child marriage across the three dimensions. Across all regions, girls living in rural areas of the developing world, where ideas about modernity and interventions to counter harmful practices are slower to penetrate, are more likely to marry young. The rural/urban gap is especially pronounced in some countries in West and Central Africa and in Latin American and the Caribbean, where the prevalence of child marriage in rural areas is about twice the level found in urban areas.¹⁰⁷ Similarly, education tends to deter child marriage, with girls having attained primary education being twice as likely to marry or enter into union as those with secondary or higher education. Girl children with no education at all are three times more likely to marry as those having attained secondary or higher education. It is no surprise that the bulk of child marriages take place in South Asia and in sub-Saharan Africa, where progress in girls' education has been slower.¹⁰⁸ Finally, household wealth also appears to be a predictor of the marriage age. Girls belonging to the poorest quintile are 2.5 times more likely to marry than those in the

¹⁰⁶ *Ibid.*

¹⁰⁷ *Ibid.*

¹⁰⁸ United Nations Population Fund, "Marrying Too Young. End Child Marriage", (2012), pp.34-35.

richest quintile. In the Dominican Republic, at least half of the poorest women married at about 17 years as compared to age 21 among the richest women.¹⁰⁹

Although the issue of child marriage is clustered primarily in low-income countries, it is far from being a “native practice”, as some have defined it,¹¹⁰ and is also present among specific groups residing in middle and high-income nations. For example, in Serbia, where about 8 percent of women were married as children, the proportion rises to more than half (54 percent) in Roma communities.¹¹¹ As discussed later, among other wealthier nations, the U.K. is concerned with child marriage, as is Israel among its orthodox communities, for example.¹¹²

The magnitude of the problem, in both absolute numbers and percentages, calls for re-thinking the way sexual violence against children is measured. Children who are sexually violated in the context of early marriage need to be accounted for, in addition to those who are overtly victims of sexual abuse and exploitation, such as in human trafficking, prostitution, pornography, abusive Internet use, predatory tourism and other recognised forms of CSEC. The numbers of children in early marriage are likely to be substantially larger than those exploited in the sex industry. New indicators and research methods need to be devised to capture the size and complexity of the different forms of sexual abuse and exploitation of children, not only in recognised violations codified in the rubric of CSEC, but also in the unrecognised manifestations characterising child marriage, which, as long as they escape accurate estimates, are unlikely to receive adequate responses.

Child marriage disproportionately affects girls – Evidence clearly shows that child marriage is a form of gender-based discrimination that impacts predominantly girls and women. Boys may also be victims of early marriage, but girls are overwhelmingly more affected. Although figures on male child involvement in early marriage are more limited and information on their experiences scarce, existing estimates reveal that 33 million men today were married before the age of 15 and 156 million before the age of 18. A comparison between the proportion of girls and boys in the age group 15-19 who were married in 2003 evidenced the ratio to be 72 to 1 in Mali, 8 to 1 in the US, and 6 to 1 in El Salvador.¹¹³ Even in countries where child marriage is less practiced, gender imbalance persists. In the Republic of Moldova, 15 percent of women aged 20 to 49 were married before age 18 compared to 2 percent of men.¹¹⁴

Not only does early marriage concern girls in larger numbers, it also affects them more deeply, impacting their sexual health and curbing overall personal development. Girls’ negotiating power in the family tends to be weak, while boys are allowed higher decision-making capacity and are more involved when plans are made for their future. Where an early marriage culture prevails, adolescent girls are rarely consulted and arranging a marriage remains broadly a prerogative of parents. Girls – and sometimes boys – enter into marriage without being granted the opportunity and the right to give their full, informed and free consent. Culturally, girls are not expected to oppose their fathers’ or parents’ decisions. Extreme forms of resistance to non-consensual marriage on their part may result in self-destructing behaviours, such as fleeing or committing suicide and self-immolation.¹¹⁵ A 2010 report based on government data on

109 United Nations Children’s Fund, “Ending Child Marriage: Progress and Prospects”, 2014.

110 Nirantar Trust, “American Jewish World Service, Early and Child Marriage in India: A Landscape Analysis”, New Delhi, (n.d.), p.7.

111 UNICEF, “Ending Child Marriage: Progress and Prospects”, (2014).

112 Ruth Halperin-Kaddari, “Finally in Israel: A Girl Is a Girl, Not a Bride”, The Jerusalem Post, 2 December 13.

113 Girls Not Brides, “What Is the Impact?”, <http://www.girlsnotbrides.org/what-is-the-impact/>, accessed 3 May 2015.

114 UNICEF, “Ending Child Marriage: Progress and Prospects”, (2014).

115 A.J. Gage, “Association of Child Marriage With Suicidal Thoughts and Attempts Among Adolescent Girls in Ethiopia”, *Journal of Adolescent Health*, (2013), <http://www.cpc.unc.edu/measure/publications/ja-13-158>, accessed 8 June 2015.

harmful traditional practices in Afghanistan highlighted that about 2,400 women commit self-immolation every year in the country, mainly caused by child and forced marriages, in addition to sexual and domestic violence.¹¹⁶

The girl child – asset or burden? – In several traditional societies, where patriarchal ideologies and structures still prevail, after marriage a woman joins her husband’s family, moving physically to her in-laws’ home, or in any case taking responsibility for her husband and his relatives. Marriage sanctions the passage in a woman’s life from growing up under the authority of her father and brothers to living under that of her husband and in-laws. Such an act of subjugation is more pronounced when the woman holds low personal status, as in the case of a young girl. A child bride takes on her marital role more submissively and is more likely to accept the control of her in-laws. From birth, the fate of a girl is sealed with her husband’s family and her own parents see little merit in investing in her health, education and overall wellbeing. When a girl is sent to school, families may ensure that a minimum education level be achieved to enhance her value in determining the bride price, whereas a high educational attainment may be considered unnecessary or even detrimental to a girl who is not expected to seek employment outside the home. The responsibility of household chores and sibling care is often placed on girls’ shoulders to prepare them from childhood to pursue a vocation as a caregiver and a homemaker.

Families with limited resources may perceive it as a burden to cultivate an asset for the benefit of another household. Rather than spending on daughters, poor parents are more likely to invest in sons who are expected to support them throughout their old age and ensure their survival in the absence of social security or pension systems. With the exception of a few matriarchal societies, most communities follow a patrilineal organisation and favour sons, entrusting them with the continuation of the bloodline. Families tend to grant boys property rights bequeathing assets from father to son in order to preserve wealth from one generation to another.¹¹⁷ The cost of marrying a daughter erodes family resources; an incentive to marry girls as young as possible.

Traditional customs and social norms – In certain societies, girls are socialised on the sexual norms of virginity and chastity. Preserving what is considered the honour of their daughters puts pressure on parents responsible for defending the status of the family or the clan. Marrying girls young is seen as a means to minimising improper sexual activity or conduct.

In societies where the practice is widespread, new policies and legislation framed to contrast child marriage may generate tension between an established notion of child marriage as a community tradition and the individual right to be free from child marriage. Individual rights may not be immediately internalised in cultural settings where community norms inform personal decisions and behaviours, and decision-making processes are guided by shared values rather than individual life choices. Consent between two young individuals is often perceived as inadequate in dealing with a critical matter such as marriage, which should instead warrant the direct involvement of elder family and community members. Deviating from the norm is rare. Evidence indicates that even married women, who may have been forced into early marriage themselves, tend to internalise established social norms and practices, and echo male decision-makers as they lead the process of arranging unions for their daughters as children – an attitude that results in perpetuating the practice from generation to generation.¹¹⁸

116 International Center for Research on Women (ICRW), United Nations Population Fund (UNFPA), Australian Agency for International Development (AusAID), Asian Forum of Parliamentarians on Population and Development (AFPPD), “Child Marriage in Southern Asia: Policy Options for Action”, (2012).

117 Isabel Sibley, “The Burden of Daughters: Understanding the Impact of Responses to Child Marriage and Gender Discrimination in Nepal”, (2012).

118 PRAXIS, Institute for Participatory Practices, “Marriage Can Wait, Our Rights Can’t: A Study Exploring Causes, Impacts and Resistance in the Context of Early Marriage in Bihar and Jharkhand”, (2012), p.25.

Some cultures where children are married very young, even from birth or early childhood, recognise that girls may not be sexually prepared for marriage. Traditions such as the *gauna*, practiced in some areas of northern India, allow cohabitation to be delayed to protect physically immature brides from consummation of marriage. Nevertheless, when the child is married so young, even delaying sexual activity by a few years may not suffice to allow her to reach an acceptable age for adequate childbearing and other adult responsibilities connected with marriage.

Deep-rooted in religious beliefs – The sanctity of marriage is upheld by religious belief and practice. Marriages are solemnised in ceremonies that sanction the sacredness of wedding vows. Everywhere in the world, weddings carry ancient and profound symbolic significance for the spouses and the communities that welcome the newly formed couple into their midst. In most religions, parents play a role in legitimising the union in front of God and the community. Many believe that they have a duty to ensure that their children are married and their obligations toward them are discharged with marriage itself. Time-honoured religious traditions prescribe detailed codes with regard to how families are expected to provide for their children’s weddings, especially as far as girls are concerned. Religious prescriptions often translate into social norms and customary law, resulting in deep internalisation of standards that inform beliefs, attitudes and behaviours. Folk stories, mythological legends, traditional music, dance and various forms of art have helped transmit local marriage cultures that communities pass on across time. Social sanction against parents who fail in their duty toward the marriage of their children is normally harsh.

A literature review being conducted by the African Union to assess the impact of religious beliefs on child marriage points out that, in Africa, such practice is encouraged across a spectrum of different religions.¹¹⁹ However, not all communities adopt early marriage equally in the context of various religions or even within any given religious tradition. The cultural interpretation of duties relating to marriage varies across different groups. Some Muslim communities prescribe to marry a daughter before she attains sexual maturity, although the consent of the concerned bride is normally advised. Some orthodox Jewish circles are also characterised by arranged early marriages and large families. Hindu scriptures prescribe that parents marry both sons and daughters young, in the case of girls preferably before they reach puberty. Hindu parents can earn pious credits by practicing *kanyādān* (literally, ‘the gift of a virgin’), a wedding ritual that is carried out in a variety of ways, mainly in South Asia.¹²⁰ Even infants or young children have been given in marriage, a practice that continues in some contexts. This is in contrast, however, to the reinterpretation of religious rituals in a way that adheres to the evolution of social and gender norms, and the appreciation for the need to allow children to reach an age by which they are educated, aware and informed enough to make an adult decision about marriage.

Increased vulnerability in humanitarian crises – When conflicts or natural disasters affect a fragile context, girls are the first to be hit. As recently underscored by the Human Rights Council, political, economic or environmental crises increase children’s vulnerability,¹²¹ with evidence showing that even the practice of child marriage may intensify in the wake of hardship and violence. When humanitarian emergencies disrupt communities, social fabric and child protection structures break down and parents may resort to marrying off their children as a coping mechanism at a time of financial instability, or as a perceived way of ensuring a certain degree of safety and wellbeing, particularly when the risk of sexual violence increases.¹²² While

119 African Union, “Desk Review of Literature on the Effect of Traditional and Religious Perspectives of Child Marriage on Africa’s Socio-Economic Development”, unpublished (draft as of 4 June 2015), p.3.

120 Plan Nepal, “Child Marriage in Nepal”.

121 United Nations Human Rights Council, “Strengthening Efforts to Prevent and Eliminate Child, Early and Forced Marriage”, (2015).

122 Juliette Myers, Hannah Stevenson Doornbos, “Untying the Knot: Exploring Early Marriage in Fragile States”, (World Vision, 2013), https://www.worldvision.ca/aboutus/Media-Centre/Documents/Advocacy/Untying-the-Knot_report.pdf, accessed 8 June 2015.

boys' education tends to be prolonged as long as possible, declines in household income in Uganda or income from agriculture in Madagascar have been cited as reasons for pulling girls out of schools.¹²³

An increasing number of the world's poor live in conditions of uncertainty and instability in fragile states, most of which are also high prevalence child marriage countries.¹²⁴ In refugee and internally displaced person camps, girls are married early in a bid to escape rape, like in the Dollo Ado camps in Ethiopia, where Somali refugee girls as young as 11 years are often married off to avert dishonour caused by sexual abuse. In the Dadaab camps in Kenya, marriage of very young girls is equally common. Rape survivors reported feeling powerless in facing the prospect of marrying their attackers for fear of being rejected by their families, being removed from the camps, sent back to Somalia or even killed.¹²⁵ ECPAT International has called attention to the vulnerability of Palestinian refugee children living in Jordan to commercial sexual exploitation, especially in the context of early marriage, which is found to be more common among refugee girls than Jordanian peers as a response to the sense of insecurity stemming from displacement.¹²⁶

'Famine brides' in food-insecure Kenya; young brides of 'tsunami widowers' in Indonesia, India and Sri Lanka; 'bush wives' in conflict-torn Liberia, Uganda and Sudan, abducted and given to warlords; or girls being married in large numbers in the Syrian Arab Republic are children for whom marriage has been a desperate attempt to seek protection, although possibly resulting in a spiral of worse abuse and violence in the end.¹²⁷

Poverty, both a key determinant and a manifestation of child marriage

Poverty and child marriage are closely interlinked. Evidence shows that a correlation can be found between GDP and prevalence of child marriage, with the bulk of the problem located in South Asia and sub-Saharan Africa, the most impoverished regions in the world.¹²⁸ Children living in poor families, belonging to marginalised social groups, or residing in at-risk areas are more prone to victimisation. Several factors impoverish communities and weaken resilience in the environment where children live. Inadequate household income and food security, political instability and communal conflicts, family dislocation and migration, predatory tourism practices, humanitarian crises and natural disasters contribute to breaking down local child protection systems and weakening the capacity of children to aspire to higher goals in life.¹²⁹

123 The World Bank, In Africa, "Poverty Has a Female Face", (Washington: World bank, 2009), <http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/FRICAEXT/0,,print:Y~isCURL:Y~contentMDK%3A22182932~menuPK%3A258657~pagePK%3A2865106~piPK%3A2865128~theSitePK%3A258644,00.html>, accessed 13 June 2015.

124 Organisation for Economic Co-operation and Development (OECD), "States of Fragility 2015: Meeting Post-2015 Ambitions" (Paris: OECD Publishing, 2015).

125 Véronique Aubert, "Unspeakable Crimes Against Children", (Save the Children, 2013), p.7, http://www.savethechildren.org/atf/cf/%7B9def2ebe-10ae-432c-9bd0df91d2eba74a%7D/UNSPEAKABLE_CRIMES_AGAINST_CHILDREN.PDF

126 ECPAT International, "Global Monitoring Status of Action Against Sexual Exploitation of Children: Jordan" (Bangkok: ECPAT International, 2008), p.14, http://www.ecpat.net/sites/default/files/Global_Monitoring_Report-JORDAN.pdf, accessed 12 June 2015.

127 United Nations Population Fund, "Marrying Too Young. End Child Marriage", (2012), p.12; United Nations Human Rights Council, "Preventing and Eliminating Child, Early and Forced Marriage", (2014), p.8.

128 International Center for Research on Women (ICRW), "Child Marriage and Poverty", (2006), <http://www.icrw.org/files/images/Child-Marriage-Fact-Sheet-Poverty.pdf>, accessed 3 June 2015.

129 Isabel Sibley, "The Burden of Daughters. Understanding the Impact of Responses to Child Marriage and Gender Discrimination in Nepal", (2012).

Poverty is a deep-rooted cause of early marriage, common also to other forms of sexual abuse and exploitation. It is a hard barrier to remove, but one that, if tackled, is likely to ensure permanent and radical improvements across a range of child protection-related variables.

Child marriage and economic disparity – Not only absolute poverty but also economic disparity has been correlated statistically with child marriage. South Asia, the region displaying the highest prevalence of child marriage worldwide, is also the one with the greatest disparities. In the most disadvantaged groups, child marriage affects above 50 percent of girl children.¹³⁰

The poorer, the younger – Poor children not only marry in larger numbers but also at a younger age. In Bangladesh, one of the countries most affected both by child marriage and poverty, among women who are currently in the age group 20 to 24, the median age at marriage is 18.3 years in the highest wealth quintile, as compared to only 14.6 in the lowest one.¹³¹

A survival strategy – In poor homes, marrying a child young is often a way to cope, especially when there are several daughters. A one-time investment in paying the price of marrying a girl relieves the family of years of maintenance and education costs. Evidence from Nepal pointed out that, in families having achieved food security for one year or more, 91 percent of children married at 19 years or above.¹³² The poorer the family, the higher the pressure to marry the child young. To maximise returns on the investment made in a wedding, it is not uncommon for poor households to combine the marriage of a younger child to the one arranged for an older sibling, even if she is too young to marry.¹³³

Perpetuation of poverty – Although child marriage may be adopted as a survival mechanism in situations of poverty or emergency, the reality is that children escaping from crisis situations are likely to end up poor or even poorer. Both a symptom and a driver of poverty, child marriage precludes the possibility of education, employment and other economic development, and exposes girls to a multiplicity of vulnerabilities.¹³⁴

130 United Nations Population Fund, “Marrying Too Young. End Child Marriage”, (2012); referring to children living in the poorest 20 percent of households, having no education and residing in rural areas.

131 World Vision Bangladesh, “Bride Not Before 18”, (2014), p.5.

132 Plan Nepal, “Child Marriage in Nepal”.

133 PRAXIS, “Marriage Can Wait, Our Rights Can’t”, (2012), p.28.

134 Sanlaap, “Child Marriage: West Bengal Scenario”, (n.d.), p.4.

6

TOWARD BUILDING A CONCEPTUAL FRAMEWORK TO RECOGNISING COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN (CSEC) IN CHILD, EARLY AND FORCED MARRIAGE (CEFM)

The centuries-old practice of child marriage has drawn new attention over the recent past as its significant ramifications for the survival, adequate growth, and healthy and balanced development of children have been brought into sharper focus. At such a nascent stage, both the analysis of the problem and actions taken at the programme and policy levels have tended to prioritise a set of specific dimensions, especially with reference to the realm of reproductive and sexual health. Only marginal attention has been paid so far to issues relating to the protection of the child as a whole to ascertain how prematurely entering a marital union increases overall vulnerability.

An examination of the vast array of effects of early marriage on children from a human rights perspective would require to move beyond a single focus analysis and consider the wide ranging impacts caused by multiple and interrelated violations of fundamental entitlements. The results of being burdened with adult social and economic responsibilities from a young age and the consequences of entering a social institution that, in some cultural contexts, restricts the freedom and opportunities of girls and women, impair children not only in the physical sphere of health, but also in those relating to education and protection responsible for their cognitive, psychological and emotional development.

Sexual violence suffered in early marriage is arguably the most severe level of violation experienced by victims. In particular, a gender-sensitive inquiry would seek to explore ways by which child marriage socially sanctions the beginning of sexual life and brusquely leads girls, as they enter puberty and adolescence, to marital and maternal roles. This ensures that gender socialisation processes take place in a way to conform women's attitudes, behaviours and personalities to patriarchal social and sexual norms, before they can make adult choices according to personal preferences.

Exposing girls to higher levels of vulnerability, through physical, psychological and sexual violence, and curtailing their prospects for personal development are mechanisms by which women are confined to predetermined gender roles and sexually controlled. A deeper understanding of the social and cultural dynamics regulating the process leading to early marriage would help appreciate the nature of the unsafe environment in which girls are forced to live after marriage and the vulnerability to which they are exposed by restricting their access to education, health, nutrition, recreation, protection and participation, in addition to overall enjoyment of freedoms and civil liberties. In particular, constraining the enjoyment of protection rights may be regarded as a core determinant barring access to a wide range of other rights and increasing the risk to several kinds of violations, including sexual abuse and exploitation.

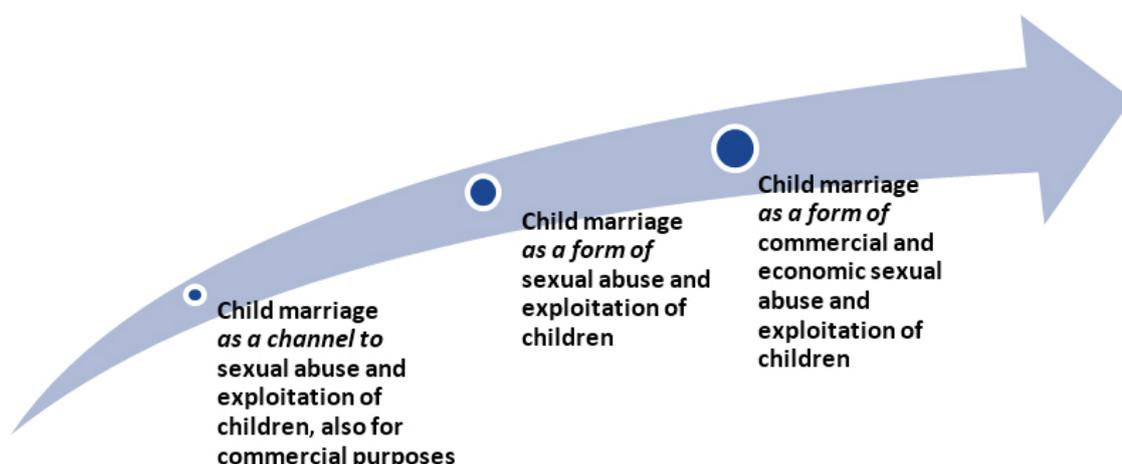
From a child protection perspective, this section of the paper seeks to develop a conceptual framework to identify violence against children in the context of child marriage. The *CEFM-CSEC Conceptual Framework* will be employed to analyse a sequence of manifestations of Commercial Sexual Exploitation of Children (CSEC) in Child, Early and Forced Marriage (CEFM). The model will explore the abuse and exploitation of children, in both its commercial and non-commercial dimensions, in the context of child, early and forced marriage at three different levels, in particular by analysing:

1. Child marriage as a *channel* to sexual abuse and exploitation of children, also for commercial purposes;
2. Child marriage *as a form of* sexual abuse and exploitation of children;
3. Child marriage *as a form of* commercial and economic sexual abuse and exploitation of children.

While the first level has been more commonly recognised both in analysis and action taken to contrast it, the second and third levels have received less attention and require a deeper degree of appreciation. At the first level of interpretation, child marriage is understood as a cause of other forms of CSEC. Rather than contrasted as a violation in itself, it is condemned as a channel leading to other forms of violence perpetrated against children. As the model moves to the subsequent levels, child marriage can be progressively understood as a potential manifestation of sexual abuse of children in itself, for non-commercial and commercial purposes. The three levels are interlinked insofar as their determinants are concerned, while the individual child may experience only one or more of the dimensions reviewed across the model.

CEFM-CSEC Conceptual Framework

3 Conceptual Steps to Recognise Sexual Exploitation of Children in Child Marriage



1. Child marriage as a channel to sexual abuse and exploitation of children, also for commercial purposes

Separation from the family: school dropout and early marriage, the gateway to child abuse and exploitation

The overbearing event of child marriage is often accompanied by a parallel and interconnected incident—school dropout. More so in a poor household, the value of pursuing children’s education is directly related to the prospect of improving employment and earning opportunities. In the case of a girl child, aspirations in the education and professional spheres may be stifled by predetermined gender roles that see a woman confined within domestic walls. In such cases, investing in girls’ education clashes with the economics of poor households, which may see the limited resources available for the future of their daughters better invested in paying for wedding expenses and a dowry, rather than extending education.¹³⁵ When girl children reach sexual maturity and drop out of school, marriage becomes an inevitable solution.¹³⁶

The responsibility of poor quality education – The low quality of education programmes accessible to the poor also play a role in keeping girls out of school. There are several powerful barriers to girls’ education, ranging from the inadequate quality of teaching and curricula, to unmaintained school buildings and lack of separate school sanitary facilities, which, in addition to costs of education, often make parents prefer to concentrate available meagre resources on boys’ education instead.¹³⁷

Schooling and safety – Schools, like families, despite being potentially protective environments, may turn into risky settings when attention is not paid to make the services inclusive and child-friendly. Often girls report *eve-teasing* and sexual harassment by male students, fellow commuters or even teachers, which they endure within the school premises, or on the way to school. Safety becomes an even more serious concern for families when their daughters consider entering secondary education. High school facilities are rarely available in remote villages or low income urban areas, and residential facilities for girls are few or unaffordable. In African countries, when insurgency and Ebola outbreaks have made boarding schools unsafe, removed girls kept at home often end up getting pregnant and marrying early. The distance separating home from a school located in a nearby urban centre may increase substantially at higher education levels. Poverty interferes with female education in several ways, cost being the major stumbling block, and security and safety also playing their part, with evidence showing that poor girls are more prone to sexual harassment on their way to school than peers from influential families.¹³⁸

Education level: a predictor of the marriage age – Both evidence and experience amply show that education directly correlates with age of marriage. Children who drop out of school are more exposed to marrying early.¹³⁹ Women who have been kept longer in school and acquired education tend to marry later, delay childbearing, and have fewer and healthier children. As education opportunities progressively expand in most countries, the global goal of ensuring

135 A., Davis, Postles, C., Rosa, G., “A Girl’s Right to Say No to Marriage: Working to End Child Marriage and Keep Girls in School”, (United Kingdom: Plan International, 2013).

136 Juliette Myers, Rowan Harvey, “Breaking Vows: Early and Forced Marriage and Girls’ Education”, (Plan International, 2011), <http://www.plan-uk.org/resources/documents/Breaking-Vows-Early-and-Forced-Marriage-and-Girls-Education/>, accessed 8 June 2015.

137 World Vision Bangladesh, “Bride Not Before 18”, (2014), p.8.

138 Plan Asia Regional Office, International Center for Research on Women (ICRW), “Asia Child Marriage Initiative: Summary of Research in Bangladesh, India and Nepal”, (2013), p.18.

139 *Ibid.*, p.8.

completion of primary education for all is becoming more within reach of the world's children, including girls. School dropout rates, however, rise at the time of entering secondary level, at an age when the crossroad between continuing education (and extending childhood), or joining the workforce and forming a family (thus stepping into adulthood) presents itself. Extending education up to at least 18 years can have a direct impact on discouraging child marriage. Combining the two worlds still seems broadly unattainable. Few students are able or permitted to continue their education after marriage, balancing personal development and housework, childbearing and childcare responsibilities. When child brides in Nepal were consulted with regard to measures that they would suggest to prevent early marriage, as many as 90 percent of them responded education and awareness.¹⁴⁰

Evidence widely shows that keeping children longer in school is the answer. As much as child marriage interferes with girls' education, the education of girls contrasts child marriage. The level of education a girl reaches is the most powerful predictor of the marriage age, according to research by the International Center for Research on Women, in 18 out of the 20 countries with the highest prevalence of child marriage. Consistently, in all regions, girls with higher education levels were less likely to marry as children. While global emphasis in the education sector is still widely on primary level schooling, secondary education provides a much wider safety net. As compared with children with little or no education, girls with secondary schooling were up to six times less likely to marry as children, with the ratio being 45 to 5 percent in Nicaragua, 41 to 14 percent in Senegal and 60 to less than 1 percent in Mozambique. Investments in girls' education have proven successful in delaying the age of marriage in a number of countries, such as Indonesia, Sri Lanka, Taiwan and Thailand.¹⁴¹ Going to school, children acquire information and knowledge, become more aware, enhance self-confidence, improve skills necessary to enter the job market and become independent economically, and develop analytical tools to articulate their needs and claims.

The double tear in the safety net: leaving home and dropping out of school – The experience of inevitability that girls face in approaching the interwoven prospects of leaving school and entering marriage opens up to two major unknowns: breaking away from the familiar environments of their school and parental home, and finding a place for themselves in the unfamiliar marital household. Leaving the reassuring precinct of childhood, even when it is far from ideal, means for a child being on her own, disconnected from the protection of her family, school and community, while finding a way to keep safe among adults in a new setting. The more uneducated and unaware the girl is, the more unequipped she likely is to protect herself.

It is a well-established fact that the parental family does not guarantee fully safety to children per se and, in fact, it is often the setting in which child abuse is perpetrated by people who are closest to the child. However, when families are not dysfunctional, and possess sufficient emotional and material resources to care for their children, parental or guardian homes can still be regarded as the best place for children to grow up in until they reach adulthood and achieve an adequate level of personal autonomy to be able to provide for themselves. When an untimely removal of the child from her caregivers takes place, the risk of exposure to violence and abuse increases. Early marriage effectively results in a premature separation from familiar environments and leaves children, who cannot yet fully fend for themselves, at the mercy of unfamiliar adults, who can take advantage of their vulnerability and exploit it. It is not uncommon for girls to lose contact with their parents after marriage, either temporarily or permanently. This is a risky situation aggravated by the isolation that their marital status

140 Plan Nepal, "Child Marriage in Nepal".

141 International Center for Research on Women (ICRW), "Child Marriage and Education", (2006), <http://www.icrw.org/files/images/Child-Marriage-Fact-Sheet-Education.pdf>, accessed 3 May 2015.

imposes on them, or by distance from their communities, which unions contracted through the mediation of outsiders may imply. In such situations, marriage can become a means through which children are trafficked and sold for sexual exploitation.

School is expected to be the other most significant child-protective institution in parallel to the family. Children who are in school are normally shielded from human trafficking, exploitative labour, street life, or simply a full-time engagement in sibling care and household chores. When a child marries, she breaks away simultaneously from the community safety net woven across the family and the school. Child marriage and school dropout can be envisioned as the pillars that, side by side, hold the gateway to child abuse, neglect and exploitation, including for commercial purposes. When girls cross that gateway, they are alone, facing adult challenges with the tools of a child. A deeper appreciation of the consequences stemming from separating children from their homes and schools would help clarify the urgent need to guard the gateway to child sexual abuse and exploitation and make all possible efforts to ensure that children are kept within the safety net afforded by their primary protective environments.

Crossing the gateway to vulnerability

Once the child is separated from her support systems, disconnected from her parental home, her school and her community, the role of the primary duty-bearers concerned with ensuring her wellbeing and safety permanently weaken. In early marriage, the child runs the risk of being caught in a limbo, half-way between the parental family that has let her go and the marital family that has received her, with the former holding legal responsibility for her, but ceasing to fulfil its duties, and the latter holding no legal responsibility at all.

The very condition of being married sharply increases exposure of the child to all forms of violations, especially of a sexual kind given her age and gender. From this point of view, child marriage is a major *channel* through which several forms of abuse and exploitation of children are perpetrated. When her husband, his family and his community fail to take full responsibility for her, a child bride risks being threatened, harmed and brutalised in unsafe situations. Violence of several kinds are inflicted on children who live in an unsafe home, which may force them to flee and find ways to survive on their own, often ending up under the control of adults who exploit them. Sexual violence is the culmination of a general situation of abuse, which also includes physical, emotional and psychological violence. From this perspective, early marriage should be regarded as a primary determinant of CSEC, leading to several forms of sexual abuse and exploitation, such as child trafficking, prostitution and pornography.

Power imbalance

A child bride typically enjoys a low status in her husband's family. Young age, gender, low education and limited capacity to articulate her needs and rights confine a girl to a marginal role in the family. As an outsider, she is likely to be kept at the periphery of the emotional communication that links other members bonded by common blood relations. Young brides normally rely on weak negotiating power, especially when significant age differentials with their husbands and in-laws are translated into pronounced power imbalance.

Girls married to older men – Evidence indicates that spousal age difference is wider in early marriages than in unions contracted in adulthood.¹⁴² Power imbalance stemming from marked age gaps is extreme when a teen, sometimes even a pre-teen, is married to a much older man. This is the case in some social and cultural settings that allow such practice, or in polygamy, common in countries such as Haiti, Nepal and Yemen, for example, and parts of Africa.¹⁴³ In Mauritania and Nigeria, more than half of girls in the age group 15-19 being currently married have husbands who are 10 or more years older.¹⁴⁴

In most of Latin America and the Caribbean, where child marriage takes place mainly through informal and consensual arrangements, male partners tend to be significantly older. A prevalent motivation in such unions characterised by cohabitation between girls in early puberty and adult male partners is for the man to associate himself with a young girl perceived as more physically and sexually attractive, and easier to control. Having a young partner at their disposal also allows men to avoid risky behaviours associated with casual sex. For the girl and her family members, the trigger is often the expectation of achieving social protection and economic security, or to deal with an unwanted pregnancy to protect the family reputation.¹⁴⁵ The myth of motherhood as the ultimate realisation for a woman prompts poor families to encourage their daughters to enter into cohabitation with a man who can provide for them and their child.

Girls who enter marriage or informal unions with men much older than them are susceptible to a high level of control which their partners, in virtue of age, social status and education level,¹⁴⁶ may feel entitled to exercise over her. Faced with an insurmountable power differential, the young wife's autonomous decision-making capacity is dwarfed and her influence over choices regarding family affairs, her own personal wellbeing and the life of her children are marginal. A very young wife may be unable to defend her sexual rights.

When the age gap separating spouses is wide, the wife is also exposed to a greater risk of untimely widowhood and may be left alone to provide for her children. In several cultures, widows are severely neglected and discriminated against and are pushed to the margins of their communities. After their husbands' deaths, they may be unable to exercise their right of inheritance, or continue to reside in their marital home and may be left with no alternative but to survive in conditions of sexual exploitation. In India, child widows may be destined to join the ranks of older widows, living in situations of exclusion and prostitution in religious establishments, or in the sex trade.

A child bridegroom

Conversely, when a girl is married to a peer of the same age, or only marginally older, the couple can be unprepared to form a new family. Gender roles, however, still disfavour the girl, who may be expected to take responsibility for childbearing, caring for family members and running household chores, while boys are generally freer from household responsibilities and allowed to find respite from family pressures outside the home. They can also pursue their education, or seek a job away from their wives. Boys, who are more easily given the alternative of finding better opportunities outside the community, may even chose to become involved in a new, steadier relationship as they achieve emotional maturity. When the marriage fails, girls may be stigmatised and remain without support, exposed to survival coping mechanisms that may

142 UNICEF, "Early Marriage: A Harmful Traditional Practice", (2005), p.8.

143 *Ibid.*, p.7.

144 UNICEF, "Ending Child Marriage: Progress and Prospects", (2014).

145 Alice Taylor, Giovanna Lauro, Marcio Segundo, Margaret Greene, "She Goes With Me in My Boat: Child and Adolescent Marriage in Brazil, Exploratory Mixed Methods Research" (Rio de Janeiro and Washington DC: Instituto Promundo & Promundo-US, 2015).

146 UNICEF, "Early Marriage: A Harmful Traditional Practice", (2005), p.9.

include sexual exploitation. Evidence from Nepal, where early marriage may affect up to 70 to 80 percent of girls belonging to high-risk populations, reported several cases of husbands growing estranged from their wives as a result of moving to town to study and engaging in new relationships. As a result, divorce or polygamy would leave the wife married in childhood to fend for herself.¹⁴⁷

Abandonment and destitution

In communities where child marriage is practiced, desertion by husbands may have a more devastating effect on girls and women who married young than the premature union itself. Once the link with her parental home has been severed by marriage, as well as the one with her husband's household by separation, the girl no longer belongs to anyone or anywhere. Abandoned married girls normally find it hard to engage gainfully in a profession after having been segregated at home and barred from the opportunity to develop marketable skills. Ostracism is also likely to affect them more than their husbands, reducing further the possibility of building a new life for themselves.

With remarriage rarely an option, in several communities, wife abandonment plunges uneducated, unemployed and socially marginalised girls into extreme poverty and homelessness, and may compel them to enter commercial sex work to survive and look after their children. Two thirds of the married girls and women engaged in prostitution in Nepal are mothers and many of them cited providing for their children as the main reason for working in the trade following their husbands' desertion.¹⁴⁸ Although across Latin America, 30 percent of women of childbearing age report being married as minors, analysis focussing on consequences of early unions in the region is limited. Research carried out in Mexico on whether child marriage and adolescent motherhood increased risk for commercial sexual exploitation of girls among women currently engaged in sex work revealed that husbands play a primary role in the entry of adolescent wives into sex work, including as a result of marital abandonment. Vulnerabilities were found to be higher in adolescent mothers, who had to bear the responsibility of providing support for their children.¹⁴⁹

Isolation, discrimination and abuse

From birth, girl children may be objects of neglect, abuse, violence and overall discrimination. There are situations that are intolerably violent, or exploitative to the point that a young bride must remove herself from her abusive home in order to ensure her safety. Girls may be faced with sexual abuse by violent or addicted husbands, or forced to make themselves available for sexual relationships with other family members. In addition to sexual abuse, young brides may also suffer severe verbal and emotional attacks, or be systematically compelled to carry out exploitative work. In several communities, abuse of married girls amounts to torture, as pointed out by the Committee on the Elimination of Discrimination against Women and the Committee against Torture. This can include systematic inflicting of physical,

147 Plan Nepal, "Child Marriage in Nepal"; International Center for Research on Women (ICRW), United Nations Population Fund (UNFPA), Australian Agency for International Development (AusAID), Asian Forum of Parliamentarians on Population and Development (AFPPD), "Child Marriage in Southern Asia", (2012).

148 Frederick J., Basnyat M., Aguetant J.L., "Trafficking and Exploitation in the Entertainment and Sex Industries in Nepal: A Handbook for Decision-Makers" (Kathmandu, Nepal: Terre des hommes Foundation, 2010), p.38.

149 Jay Silverman, "Child Marriage and Adolescent Motherhood as Vulnerabilities to Sexual Exploitation at the US- Mexico Border", Paper to be presented in panel ID 103, "Child Marriage and Adolescent Family Planning: Building the Research to Improve Program and Policy," at the 2015 International Conference on Family Planning, (Nusa Dua, Indonesia, November 2015).

mental or sexual harm,¹⁵⁰ pain through punishment, intimidation and acts of brutality, such as corporal punishment, food deprivation, limiting access to healthcare, restricting free mobility and socialisation. Confinement in the marital home normally aggravates feelings of physical and emotional separation from their childhood home and makes it difficult to seek help.

For girls who manage to start a life separated from their husbands' families, there are very few safe havens to support their rehabilitation from a disabling marriage experience and restore sufficient self-confidence to help them look after themselves autonomously. The most common scenario is one of social exclusion that prolongs the abusive situation from where battered and abused wives have fled in other exploitative settings outside of marriage.

Declining sex-ratio, fewer brides

Gender discrimination perpetrated systematically against women across the entire span of their life cycle finds its nemesis at the time of marriage. Some of the families that are unwilling to raise a daughter, perceiving her as a burden, are the same faced with a community bereft of prospect daughters-in-law when they are ready to marry their sons. There are many countries where a declining sex ratio resulting from sex-selective abortions and sheer neglect for the girl child are artificially skewing demographic growth and reducing availability of brides. The practice of *Atta Satta* prevalent in Rajasthan, an Indian state displaying a negative trend in respect to the sex ratio, is based on an agreement between two families whereby a daughter is exchanged for a daughter-in-law. Parents privilege the son to the point of bartering a daughter to allow him to continue the family bloodline and of marrying a girl even at a very young age to suit the needs of her brother.¹⁵¹ ECPAT International reported that, in some Indian states, such as Haryana and Punjab, sharp imbalance in the sex ratio caused by female feticide has been resulting in trafficking of young girls from the impoverished states Orissa, Jharkhand, Bihar, Assam and West Bengal for the purpose of marriage.¹⁵² In communities plagued by low sex ratios, intensified transfers of child brides quickly turn into illicit practices, one more scenario in which early marriage tends to overlap with human trafficking.

Child trafficking for commercial sexual exploitation

Early marriage is a terrain on which the child trafficking racket thrives. Poor families with several daughters may be forced into deprivation and even indebtedness to afford the costs associated with their marriages. From the time a girl child is born into a family, household economics are re-oriented toward giving her a husband. The outlay necessary for a dowry may leave very little to meet her education or healthcare needs. Male child preference is often associated with patriarchal family systems based on such a fundamental premise. In this situation, any escape route out of marriage and its liabilities may become an opportunity that a poor family cannot afford to turn down. Poor and unaware households reeling under the pressure of the high price they are expected to pay to marry off their daughters provide a potentially boundless reservoir for child traffickers.

150 See, for example, the Concluding Observations of the Committee on the Elimination of Discrimination against Women on Montenegro (UN Doc. CEDAW/C/MNE/CO/1), Mauritania (UN Doc. CRC/C/MRT/CO/2), Togo (UN Doc. CRC/C/TGO/CO/3-4), Zambia (UN Doc. CEDAW/C/ZMB/CO/5-6) and the Concluding Observations of the Committee against Torture on Bulgaria (UN Doc. CAT/C/BGR/CO/4-5), cited from United Nations Human Rights Council, "Preventing and Eliminating Child, Early and Force Marriage", (2014), para. 10.

151 Plan Asia Regional Office, International Center for Research on Women (ICRW), "Asia Child Marriage Initiative", (2013), p.21. On the economics of marriage, see also: Nirantar Trust, American Jewish World Service, "Early and Child Marriage in India", p.6.

152 ECPAT International, "Global Monitoring Status of Action Against Sexual Exploitation of Children: India", 2nd Edition, (Bangkok: ECPAT International, 2011), p.21.

Traffickers as middlemen of child marriages – Poverty linked to the low value attached to girl children make parents easy targets of traffickers who lure them with false promises of dowry-free marriage arrangements. Systematic recruitment of girls takes place among destitute parents with one or more uneducated daughters. They are approached by relatives, acquaintances, or unknown persons proposing to marry their girls for free or, alternatively, giving fraudulent assurances of introducing prospective bridegrooms prepared to demand no form of payment in exchange for marriage. For the service rendered to the family, traffickers may also exact a commission, as in the case of temporary marriage brokers in the Middle East,¹⁵³ although online arrangements are also on the rise.¹⁵⁴

Mobile phones have enhanced communication even in the secluded, rural peripheries that are regarded as traditional source areas for child trafficking. Children can be approached more easily through devices that help disguise the real identity of the caller. Phones also give parents the perception that they can keep in touch with their children after they are transferred out of the village. The reality is that normally it is the person who controls the victim who contacts the family, giving false information on the status of the child. Poverty and distance increase separation from the family and prevent visits in person to ascertain the actual living conditions of the child. Research findings indicate that child trafficking for the purpose of marriage is increasing in at-risk countries like Nepal, where cases have been reported of girls being trafficked for marriage as young as six years.¹⁵⁵

An ECPAT International study relating to Bangladesh highlighted that, whether they are relatives, persons known to the family, or strangers, offering deceitful marriage or job opportunities is the most common pretext on which traffickers facilitate fake or temporary marriages through which children are lured into highly exploitative occupations, such as prostitution, forced marriage, pornography and sex tourism.¹⁵⁶ Homes where children are employed as domestic labourers are also a common destination, reserving long hours of poorly paid, tedious work matched with exposure to sexual abuse.

In Kiribati and Fiji among the Indo-Fijian community, families were found to sell their daughters to foreigners.¹⁵⁷ In the Solomon Islands, children are reportedly sold for marriage to foreign workers of logging and mining companies, with some girls being later forced into prostitution in the logging and fishing areas, or in their husbands' home countries.¹⁵⁸ In Papua New Guinea, traditional customs permit parents to sell or give away their daughters for marriage to settle debts or as peace offerings.¹⁵⁹ Dowry-free marriages have been adopted for domestic sex trafficking of Indian girls,¹⁶⁰ as well as cross-border trafficking of Nepali girls to India for the purpose of sexual exploitation.¹⁶¹

153 "Too Young to Wed: Child 'Brides' in Egypt Rented for Summer", *Al Arabiya*, 16 August 2013, <http://english.alarabiya.net/en/News/middle-east/2013/08/16/Too-young-to-wed-child-brides-in-Egypt-rented-for-summer-1872.html>, accessed 11 July 2015

154 Suad Hamada, "Bahrain: Temporary Marriages over Email and Text Messaging", *Women Living Under Muslim Laws*, 6 August 2009, <http://www.wluml.org/node/5484>, accessed 11 July 2015.

155 Isabel Sibley, "The Burden of Daughters. Understanding the Impact of Responses to Child Marriage and Gender Discrimination in Nepal", (2012); Plan Nepal, "Child Marriage in Nepal".

156 ECPAT International, "Global Monitoring Status of Action Against Sexual Exploitation of Children. Bangladesh", 2nd Edition (Bangkok: ECPAT International, 2011), p.12.

157 Imrana Jalal, "Harmful Practices Against Women in Pacific Island Countries: Customary and Conventional Laws", UN Doc. EGM/GPLHP/2009/EP.15, (2009), http://www.un.org/womenwatch/daw/egm/vaw_legislation_2009/Expert%20Paper%20EGMGPLHP%20_Imrana%20Jalal_.pdf, accessed 11 July 2015.

158 U.S. Department of State, "Trafficking in Persons Report 2014: Solomon Islands", <http://www.state.gov/j/tip/rls/tiprpt/countries/2014/226814.htm>, accessed 11 July 2015.

159 U.S. Department of State, "Trafficking in Persons Report 2014: Papua New Guinea", <http://www.state.gov/j/tip/rls/tiprpt/countries/2014/226796.htm>, accessed 11 July 2015.

160 Biswajit Ghosh, Ananda Mohan Kar, "Trafficking in Women and Children in West Bengal", *Socialist Perspective*, Vol. 36, no. 1-2 (2008): 83-10, https://www.academia.edu/3840184/Trafficking_in_Women_and_Children_in_West_Bengal, accessed 11 July 2015.

161 Devaki Monani Ghansham, "Female Foeticide and the Dowry System in India", (University of Melbourne, 2002), <http://www.adfvc.unsw.edu.au/Conference%20papers/TIWC/GhanshamDevakiMonani.pdf>, accessed 11 July 2015.

In Pakistan, *walwar* (dowry) is associated with the “selling of girls”, which often results in forcing brides into prostitution, or reselling them in the sex trade.¹⁶² In Afghanistan, girls are turned into a form of currency when they are used for the relief of family debts resulting from the declining opium trade, which induces farmers to marry off their young daughters as “opium brides” to their creditors.¹⁶³ Drug traffickers are also known to transfer indebted farmers’ children to neighbouring Pakistan or Iran, including for the purpose of sexual exploitation.¹⁶⁴

In China, the escalating cost of dowries, compounded by the one-child policy decimating the female population, has been the reason prompting Chinese construction workers and labourers unable to afford wedding costs for a local wife to pay brokers to procure girls from Myanmar.¹⁶⁵ The market of child brides in China caters in parallel to prostitution, with girls being transferred from Vietnam for this purpose.¹⁶⁶ In Central Asia, the dowry practice continues in countries such as Azerbaijan, among others.¹⁶⁷ In Africa, Uganda, Mozambique, Zambia, Zimbabwe and Botswana practice *lobola*, the “bride wealth” that, having lost the initial significance of helping the girl, has been increasingly turned into an exchange of money between families, serving as grounds for trafficking and selling women and girls.¹⁶⁸

In Latin America, lowering the marriage age of the child allows for saving on dowry-related costs. In the Dominican Republic, Costa Rica and Nicaragua, early marriage is associated with child sexual exploitation in tourism, with families facilitating marriages for their daughters with older foreigners in exchange for pecuniary compensation.¹⁶⁹ An ECPAT Guatemala study revealed that nearly one quarter of the 300 respondents reported knowing about cases of children and adolescents who were married or cohabitating and believed that such unions were motivated primarily by economic interests on the part of the girls’ families, including extinguishing debts contracted by their fathers.¹⁷⁰

An alternative to child trafficking for the purpose of marriage, which normally takes place without resorting to the use of force, is kidnapping, where girls may be coercively removed and transferred from their homes. Abducting a child through sexual violence in the context of marriage is an ancient practice embedded in traditional customs. In former Soviet Union countries, forced and early marriages have been occurring since the end of the communist era through the practice of bride kidnapping or bride abductions.¹⁷¹ In Ethiopia, *telefa* implies that a man kidnaps and rapes a girl, after which he claims her for marriage on the ground of being

162 Samar Esapzai, “Pakistan: Sex Trafficking in Relation to Marriage Customs in Khyber – Pashtunkhwa”, (2012), <http://www.asafeworldforwomen.org/safe-world-blogs/sesapzai/3709-kpk-marriage-customs.html>, accessed 11 July 2015.

163 International Centre for Missing and Exploited Children (ICMEC), “Child Marriage in the Middle East and North Africa”, White Paper, (2013), http://www.icmec.org/en_X1/icmec_publications/Child_Marriage_in_the_MENA_Region.pdf, accessed 11 July 2015.

164 McCarton Ackerman, “Afghan Women Sold as ‘Opium Brides’”, *The Fix*, 2.4.2013, <http://www.thefix.com/content/afghan-women-sold-opium-brides-clear-debts91281>, accessed 11 July 2015.

165 Asma Masood, “The Economics of Human Trafficking”, *Foreign Policy Journal*, 6 July 2013, <http://www.foreignpolicyjournal.com/2013/07/06/the-economics-of-human-trafficking/>, accessed 11 July 2015.

166 UNICEF, “An Analysis of Commercial Sexual Exploitation of Children in Selected Provinces and Cities of Vietnam”, (2011), http://www.unicef.org/vietnam/bao_cao_CSEC_tiang_anh_04-12.pdf, accessed 11 July 2015.

167 United Nations Population Fund, “Child Marriage in Kazakhstan, An Overview”, (2012), <http://unfpa.org/webdav/site/eeca/shared/documents/publications/Kazakhstan%20English.pdf>, accessed 11 July 2015.

168 Gerald Businge, “Women File Petition Against Bride Price In Uganda’s Constitutional Court”, *UG Pulse*, 11 November 2007, <http://www.ugpulse.com/heritage/women-file-petition-against-bride-price-in-uganda-s-constitutional-court/752/ug.aspx>; Chabu Kamukwamba, “Zambia: Is Lobola Being Commercialised?”, *All Africa*, 27 August 2012, <http://allafrica.com/stories/201208280438.html>; Tendai Mangena, Sambulo Ndlovu, “Implications and Complications of Bride Price Payment Among the Shona and Ndebele of Zimbabwe”, *International Journal of Asian Social Science*, Vol. 3, no. 2 (2013): 472-481, <http://www.aessweb.com/pdf-files/472-481.pdf>; The Forum on Marriage and the Rights of Women and Girls, “Early Marriage: Sexual Exploitation and the Human Rights of Girls”, (2001), http://www.iiav.nl/epublications/2001/early_marriage.pdf, all links accessed 11 July 2011.

169 Rosamaría Sánchez Lang, “Explotación Sexual Comercial De Niñas, Niños Y Adolescentes En Centroamérica Y República Dominicana”, III Curso “Formación De Formadores (As) Para La Incorporación Del Enfoque De Género Y Étnico En Las Instituciones Policiales De Centroamérica Y El Caribe”, (2004), <http://www.upnfm.edu.hk/bibliod/pgenero/traficomujeres.pdf>, accessed 11 July 2015.

170 ECPAT Guatemala, “La trata de personas con fines de matrimonios forzados”, (2013), <http://ecpatguatemala.org/inicio/investigaciones-e-informes.html>, accessed 11 July 2015.

171 Cheryl Thomas, “Forced and Early Marriage: A Focus on Central and Eastern Europe and Former Soviet Union Countries with Selected Laws from Other Countries”, UN Doc. EGM/GPLHP/2009/EP.08 19, (2009).

the father of her unborn child. In South Africa, *ukuthwala* involves abducting a girl, even of pre-puberty age, and forcing her into marriage, often with the consent of parents.¹⁷²

Temporary marriages – Following the initial removal of the child from her parental home, under the cover of marriage, she can be sold into the sex trade, where traffickers can buy and sell her over and over again. A child can be repeatedly traded on the sex market, or just sold to another husband, as in the case of so-called fake or temporary child marriages. Men may engage in serial unions, marrying a girl for a time limited to having her conceive a child (often a boy, if the previous or present regular marriage has failed to produce one), or assisting in economic activities and then abandoning the young bride (and her child, if unwanted) once she is no longer required, only to marry a new one at the next time of crisis. Once girls are abandoned, they are unmarriageable and forced to continue a life of exclusion. Child marriage thus turns into a channel to human trafficking, free labour, prostitution, or, in short, enslaving a girl for the purpose of indiscriminate exploitation.

The ComEDAW and ComRC have considered specific cases of temporary marriages – also referred to as contractual marriages (as in the case of the *mut'ah* practice) – where the duration of the union is predetermined and is agreed upon in exchange for financial gains, and clearly stated that such arrangements amount to trafficking.¹⁷³ Whether they last for only a few days or years, they may effectively constitute a disguised form of child prostitution – a serious violation explicitly addressed in the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (OPSC).¹⁷⁴ In any case, such unions are highly exploitative of children and, once they are discontinued, expose girl children to social stigmatisation and destitution, which in turn can lead to other forms of commercial sexual exploitation.

Research on the status of CSEC in the Pacific region conducted by ECPAT International and other partners highlighted that, across all countries studied, temporary transactional marriages were typically short-term arrangements that allowed men to desert a wife and acquire several more, exposing girls to several forms of sexual abuse and exploitation.¹⁷⁵ In Iran, the practice of temporary marriages allows men to pay families to take a girl as a short-term “bride”.¹⁷⁶ In the Shia tradition, *mut'a* (or “pleasure marriage”) is a short-term contractual union, including a dowry (*mahr*), common in the Middle East and North Africa. *Mut'a* marriages are also widespread in Asia, in countries such as Indonesia,¹⁷⁷ Afghanistan,¹⁷⁸ India¹⁷⁹ and Bangladesh.¹⁸⁰ Similar Sunni practices are *misyar* (“traveller’s marriage”) and *urfi* (“secret marriage”). Pre-dating Islamic times, non-permanent marriages were devised to avoid fornication and adultery, crimes punishable by lashings and stoning.¹⁸¹ Today, *misyar* marriages are associated with exploitative

172 African Union, “Desk Review of Literature on the Effect of Traditional and Religious Perspectives of Child Marriage on Africa’s Socio-Economic Development”, draft as of 4 June 2015, p.4.

173 CEDAW and CRC, “Joint General Recommendation/General Comment”, (2014), para. 24.

174 Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, Article 1.

175 UNICEF, United Nations Economic and Social Commission for Asia and the Pacific, ECPAT International, “Commercial Sexual Exploitation of Children (CSEC) and Child Sexual Abuse (CSA) in the Pacific: A Regional Report”, (Suva: UNICEF, 2006), http://www.unicef.org/eapro/Pacific_CSEC_report.pdf, accessed 11 July 2015.

176 International Center for Research on Women (ICRW), United Nations Population Fund (UNFPA), Australian Agency for International Development (AusAID), Asian Forum of Parliamentarians on Population and Development (AFPPD), “Child Marriage in Southern Asia”, (2012).

177 P.K. Abdul Ghafour, “Temporary Marriages with Indonesian Women on Rise”, Arab News, 18 April 2009, <http://www.arabnews.com/node/323345>, accessed 11 July 2015.

178 Immigration and Refugee Board of Canada, “Afghanistan: Whether Seigha (Temporary Marriage) is Practiced in Afghanistan and by Which Groups”, Doc. No. AFG104238.E, (2012). <http://www.justice.gov/sites/default/files/eoir/legacy/2014/01/16/AFG104238.E.pdf>, accessed 11 July 2015.

179 Samreen Hussain, “Temporary Marriage Scars Modern India”, Global Times, 12 May 2013, <http://www.globaltimes.cn/content/780980.shtml>, accessed 11 July 2015.

180 Juliette Myers, Hannah Stevenson Doornbos, “Untying the Knot. Exploring Early Marriage in Fragile States”, (World Vision, 2013), https://www.worldvision.ca/aboutus/Media-Centre/Documents/Advocacy/Untying-the-Knot_report.pdf, accessed 11 July 2015.

181 Shoshana Shmulovitz, “Temporary Marriage in Islam: Exploitative or Liberating?”, Tel Aviv Notes, Vol. 6, No. 5, 11 March 2012, <http://>

tourism, in areas like Egypt, for instance, where wealthy men from the Gulf engage in “summer marriages” that last the time of a vacation. A survey conducted in 2010 by the Egyptian Child Anti-Trafficking Unit at the National Council for Childhood and Motherhood revealed that 81 percent of non-Egyptian spouses were found to originate from Saudi Arabia, followed by United Arab Emirates, Kuwait and Jordan. Transactional marriages worked as channels for trafficking and sexual exploitation of children in such a way that they did not imply force, fraud or coercion, with the majority of respondents reporting that marriages took place with the consent of the girl.¹⁸²

Fake marriages, temporary marriages and contractual marriages are some of the channels through which children are removed, transferred, bought and sold from their homes into the sex industry or to exploitative husbands. The illusion of marriage gives parents a socially acceptable reason to let their daughters go, law enforcement personnel an alibi to desist investigating, and policy-makers a reason to believe that children in their constituencies fare better than they actually do.

The condition of inferiority in which girls are kept weakens their resilience and exposes them to the worst forms of violence, including trafficking and commercial sexual exploitation. Preventing and eliminating early marriage are necessary steps toward eradicating CSEC from its roots – a precondition to deplete a huge reservoir of children at potential risk of sexual abuse and exploitation owing to the indifference of families and communities willing to relinquish the responsibility of ensuring their care and protection.

Mail-order brides – Originating in a colonial past when agencies published mail-order catalogues to procure foreign women for early European settlers seeking wives, the modern mail-order bride industry has successfully grown into a multimillion-dollar business relying on Internet advertising. The majority of mail-order bride websites are based in Western countries, primarily the United States and the United Kingdom, while the largest supplier of brides is the Philippines.¹⁸³

Brokered marriages offer a channel for trafficking brides, turned into commoditised sexual products, into prostitution in several countries, ranging from Japan, Malaysia, China and Taiwan (sourcing girls primarily from the Philippines, Vietnam, China, Thailand), to Cameroon, Israel, Mexico, Iraq, the United States, Moldova, Germany, Serbia, Norway and the UK.¹⁸⁴

Trafficking child brides to preserve family wealth – Although poverty fuels child marriage and trafficking, in a number of countries such crimes also occur in wealthy communities as a mechanism to preserve assets in families belonging to the same socioeconomic ranks.¹⁸⁵ Recent evidence has emerged of girl children being used as bargaining chips in communities residing outside the geographical areas where child marriage is prevalent and continuing to adopt such practice in pursuance of economic interests. An ECPAT UK study revealed that international or domestic human trafficking taking place in the United Kingdom is connected with forced

www.dayan.org/sites/default/files/S_SHMULUVITZ_TEMP_MARRIAGE_MAR_11_12.pdf, accessed 11 July 2015.

182 U.S. Department of State, “Trafficking in Persons Report 2014: Egypt”, <http://www.state.gov/j/tip/rls/tiprpt/countries/2014/226716.htm>, accessed 11 July 2015; Valentina Cattane, “A Summer Industry: Egyptian Brides for Gulf Visitors”, *Egypt Independent*, 24 July 2011, <http://www.egyptindependent.com/news/summer-industry-egyptian-brides-gulf-visitors>, accessed 11 July 2015.

183 Soroptimist, “Unhappily Ever After: The Plight of Child and Mail-Order Brides”, White Paper, (Philadelphia, n.d.), <http://www.soroptimist.org/whitepapers/whitepaperdocs/wpplightchildmailorderbrides.pdf>, accessed 11 July 2015.

184 See U.S. Department of State, “Trafficking in Persons Report 2014” publications relating to Philippines, Vietnam, China, Thailand and Cameroon; see Suzanne H. Jackson, “Marriages of Convenience: International Marriage Brokers, ‘Mail-Order Brides,’ and Domestic Servitude”, 38 U. Tol. L. Rev. 895 (2007) with references to Israel, Mexico, Iraq, the United States, Moldova, Germany, Serbia and Norway; see ECPAT UK, Willberforce Institute for the study of Slavery and Emancipation, “Stolen Futures: Trafficking for Forced Child Marriage in the UK”, (London, 2009) with regard to the United Kingdom.

185 United Nations Human Rights Council, “Preventing and eliminating child, early and forced marriage”, (2014), p.7.

marriage, with evidence showing that 30 percent of all cases relate to children.¹⁸⁶ Despite dearth of systematic data, the available information suggests that, while it has been long recognised that the UK is a point of destination and transit with regard to human trafficking,¹⁸⁷ the country is also a source of trafficking of both British-born and migrant children. The main reasons for trafficking children into forced marriages are to improve the family's economic position and maintain family ties, both in the UK and abroad, in addition to ensuring permanent residence status to the spouse.¹⁸⁸

2. Child marriage as a form of sexual abuse and exploitation of children

The first segment in the *CEFM-CSEC Conceptual Framework* sought to analyse several ways by which child, early and forced marriage acts as *a channel* to sexual abuse and exploitation of children, including of a commercial nature. The second dimension in the model designed to investigate how child marriage interrelates with sexual abuse and exploitation of children focuses on a less explored perspective, namely, how premature unions can be potentially regarded *as a form of* sexual abuse and exploitation of the underage individuals involved.

Sexual violence is often brought into focus in the context of non-domestic environments when it affects children – such as in commercial sexual exploitation of children in prostitution or child trafficking (as discussed in the previous section) – and in domestic settings when it involves women, where they are victims of marital rape, for instance. Less attention, however, has been paid to sexual violence affecting children in the domestic sphere, where it is normally perpetrated in the context of early marriage. Committed by intimate partners, rather than outsiders, the crime often risks to be disregarded as such, both for the lack of understanding of its nature and insufficient determination to address it. To expand the understanding of CSEC, it is important to explore how, contrary to child prostitution, which is widely condemned as an unacceptable form of sexual abuse and exploitation, child marriage could be considered, to echo International Parenthood Federation and the Forum on Marriage and the Rights of Women and Girls', as a form of "socially licensed sexual abuse and exploitation of a child." A debate is necessary to recognise that "[the] fact that the arrangement is socially accepted does not diminish the reality that a girl is deliberately exposed to sexual abuse and exploitation, usually by her parents and family."¹⁸⁹

General perception and codified social behaviours fail to condemn sexual abuse when it takes place in the context of marriage. Legal and social norms may view sexual activity within marriage as a right. As the World Health Organization (WHO) points out, "[i]n many cultures, women as well as men regard marriage as entailing an obligation on women to be sexually available virtually without limit".¹⁹⁰ In child marriage such rules translate into early, forced sexual initiation. Premature onset of sexual activity and adolescent pregnancy in conditions that are

186 ECPAT UK, Wilberforce Institute for the study of Slavery and Emancipation, "Stolen Futures: Trafficking for Forced Child Marriage in the UK", (London, 2009); ECAPT UK, Wilberforce Institute for the study of Slavery and Emancipation, "Child Trafficking for Forced Marriage", Discussion Paper, (2008).

187 Anti-Slavery International, "Trafficking for Forced Criminal Activities and Begging in Europe: Exploratory Study and Good Practice Examples", (2014).

188 ECPAT UK, Wilberforce Institute for the study of Slavery and Emancipation, "Stolen Futures: Trafficking for Forced Child marriage in the UK", (2009).

189 International Parenthood Federation and the Forum on Marriage and the Rights of Women and Girls, "Ending Child Marriage: A Guide for Global Policy Action" (London: International Planned Parenthood Federation (IPPF), 2007), pp.6-7.

190 World Health Organization, London School of Hygiene and Tropical Medicine, "Preventing Intimate Partner and Sexual Violence Against Women: Taking Action and Generating Evidence", (Geneva: WHO, 2010), p.29.

detrimental to the child's health and general wellbeing violate her right to exercise control over her body and sexuality and, more broadly, over her whole life. Unwilling and forced sexual relations, which girls are compelled to undergo passively, are forms of sexual violence that are likely to take place in an early, child and forced marriage in such a way that they can be defined as sexual abuse and exploitation of children.

Domestic sexual violence

Disempowered girl children are exposed to abusive power dynamics and violence, especially by an intimate partner.¹⁹¹ Sexual abuse and exploitation of married children take place mainly in domestic settings. Husbands are primary perpetrators of domestic violence, together with fathers-in-law, brothers-in-law and even mothers-in-law, while male family members hold primary responsibility for sexual abuse. In social settings where it may be culturally accepted that male or elderly family members make decisions regarding the household, it is rather customary for younger wives to be preferred precisely as a way to ensure girls' and women's subservience in the family and society. Child brides, who are more likely to have internalised fixed gender norms and expectations without sufficient critical judgement, awareness and self-esteem, are acutely vulnerable to sexual and other kinds of violence.

Intimate partner violence, which includes physical, sexual and emotional abuse, as well as controlling behaviours, takes place mainly from adolescence and early adulthood onwards, and manifests itself primarily in the context of marriage or cohabitation. Children, who may already have experience of sexual violence as perpetrated by parents, caregivers, acquaintances or strangers, continue to be harmed in marriage as they are abused by intimate partners.¹⁹²

Evidence increasingly shows that domestic violence, including sexual violence, is more frequent in early marriages as compared to unions contracted later in life. A World Health Organization multi-country study on women's health and domestic violence found that the range of lifetime prevalence of physical or sexual violence, or both, by an intimate partner was 15 to 71 percent, with women residing in urban Japan being the least likely to have ever experienced physical or sexual violence, or both, and those living in provincial or rural settings of Bangladesh, Ethiopia, Peru and the United Republic of Tanzania reporting the greatest amount of violence being perpetrated against them. Lower age and educational levels emerged as factors aggravating risk. Research carried out in Peru, where more than half of the women interviewed reported having experienced physical or sexual violence, found that child marriage distinctly increased chances of being abused.¹⁹³ According to UNICEF, girl children who marry before 18 are more likely to experience domestic violence than their peers who marry later,¹⁹⁴ a view further shared by Girls Not Brides, which highlights that married girls are more likely to report being beaten by their husbands and forced to have sex than women who marry later.¹⁹⁵

Violence and abuse, through which girls are intimidated and subjugated, involve several spheres, including sexuality. A study in the Amhara Region, in northern Ethiopia (where child marriage rates – 75 percent – are three times higher than in the capital city of Addis Ababa) indicated that the transition to marriage for girls was often traumatic, unwanted, and included forced

191 *Ibid.*

192 *Ibid.*, p.11.

193 World Health Organization, "WHO Multi-country Study on Women's Health and Domestic Violence against Women: Initial Results on Prevalence, Health Outcomes and Women's Responses, Summary Report" (Geneva: WHO, 2005), p. xiii; Flake, D., "Individual, Family, and Community Risk Markers for Domestic Violence in Peru", *Violence Against Women*, Vol. 11, no. 3, (2005): 353-373, <http://www.icrw.org/files/images/Child-Marriage-Fact-SheetDomestic-Violence.pdf>, accessed 3 May 2015.

194 UNICEF, "Early Marriage: A Harmful Traditional Practice", (2005).

195 Girls Not Brides, <http://www.girlsnotbrides.org/themes/girls-safety/>, accessed 3 May 2015.

sexual initiation, with 81 percent of the 10–19 year old child brides interviewed describing their sexual initiation as forced.¹⁹⁶ Physical violence and sexual abuse are paired together in early marriages, two faces of overall gender-based sexual violence more easily perpetrated against weaker subjects. A survey on the wellbeing of adolescents in the states of Bihar and Jharkhand, India, revealed that girls who were married before the age of 18 were twice as likely to report being beaten, slapped or threatened by their husbands and three times as likely to be forced to have sex without their consent in the previous six months as compared to women who married later.

Sexual education has proven to be inadequate among married girls.¹⁹⁷ Young brides are consistently less able than wives married after 18 to decide when to have children and how many children to have, and negotiate with their husbands child spacing and contraception use. In the developing world, only 22 percent of married adolescent girls (aged 15-19) use contraceptives as compared to 61 percent of married girls and women in the age group 15 to 49. Rates of contraceptive use are lowest in South Asia and sub-Saharan Africa, where child marriage prevalence is highest and the number of girls lagging behind or out of secondary school is largest.¹⁹⁸ A UNICEF statistical study assessed that, in more than half of the countries included in the analysis, women who had adopted only traditional contraceptive methods were more likely to be married before 18 than those who used modern contraception.¹⁹⁹ When asked about their participation in decisions about their lives, women who had been married as children were more likely to respond that they were never involved.²⁰⁰ Adolescent girls are more susceptible to be compelled into sexual activity at an older man's request or by force, and forced to rely on the man to prevent pregnancy.²⁰¹ Adolescent girls display high levels of non-satisfied demand for contraception, raising concerns that girls in child marriages who wish to protect themselves from unintended pregnancies may be unable to do so.²⁰²

Sexual violence is perpetrated against married girls in several ways that cause not only physical, but also psychological and emotional harm. Battering and dowry-related violence are commonly suffered by married girls, in homes where non-spousal violence is added to acts of brutality being inflicted by their husbands. Research has shown that brides married under the age of 15 in India were more frequently beaten and more prepared to justify beatings from their husbands than girls married over the age of 21.²⁰³ Similarly, UNICEF reported that, in Kenya, 36 percent of girl children married before 18 believed that a man was sometimes justified in beating his wife as compared to 20 percent of women who married as adults.²⁰⁴

Young brides are more vulnerable to sexual violence endured mainly from their partners, but also by older men in their marital homes. They are also more inclined to tolerate violence and less likely to leave abusive partners.²⁰⁵ Marital rape is a form of oppression that society, and often children themselves, do not recognise as a crime, as it can be condoned culturally and

196 Annabel S. Erulkar, Tekle Ab Mekbib, Negussie Simie, Tsehai Gulema, "The Experience of Adolescence in Rural Amhara Region Ethiopia", (Accra: Population Council, 2004), p.viii. See also: Foundation for Women's Health, Research and Development, ProFutures Development Initiatives (Ethiopia), "No Girl Should Be a Child Bride. Taking Action to End Child Marriage in Lay Armachiho District, Amhara Region, Ethiopia", FORWARD, PFDI, (2014); UNICEF, "Ending Child Marriage: Progress and Prospects", (2014).

197 Center for Reproductive Rights, "Child Marriage in South Asia", (2013), p.16.

198 United Nations Population Fund, "Marrying Too Young. End Child Marriage", (2012), p.39.

199 UNICEF, "Early Marriage: A Harmful Traditional Practice", (2005), p.12.

200 International Center for Research on Women (ICRW), "Development Initiative on Supporting Healthy Adolescents (DISHA) Project: Analysis of Quantitative Baseline Survey Data Collected in Select Sites in the States of Bihar and Jharkhand, India", (2005), <http://www.icrw.org/files/images/Child-Marriage-FactSheet-Domestic-Violence.pdf>, accessed 3 May 2015.

201 World Health Organization, "The World Health Report 2005: Make Every Mother and Child Count", (2005), pp.VX, 49,50.

202 United Nations Population Fund, "Marrying Too Young. End Child Marriage", (2012), p.40.

203 Robert Jensen, Rebecca Thornton, "Early Female Marriage in the Developing World", *Gender and Development*, Vol. 11, no. 2 (2003): 9-19.

204 UNICEF, "Early Marriage: A Harmful Traditional Practice", (2005), p.23.

205 International Parenthood Federation and the Forum on Marriage and the Rights of Women and Girls, "Ending Child Marriage: A Guide for Global Policy Action", (London: International Planned Parenthood Federation (IPPF), 2007), p.12.

frequently unaddressed by the law.²⁰⁶ A substantial age gap between spouses is a further risk factor associated with domestic sexual violence, exposing girls to the strong power imbalance dominating the relationship.

When married girls challenge, or are perceived as challenging the power dynamics within the family, they may be faced with harsh consequences.²⁰⁷ If child brides decide to escape sexual violence and maltreatment, run away or elope with other men, seek divorce and redress, or unmarried children try to resist marriage altogether, they may risk being accused of being promiscuous or impure, arrested, severely harmed and, in extreme cases, even murdered by their husbands or their husbands' family members to restore the integrity of both families.²⁰⁸ Human rights bodies condemn crimes committed in the name of so-called honour, which are in fact acts of violence committed by intimate partners and relatives with the aim of controlling the sexual behaviour of girls and women. Such criminal acts may result in impunity or reduced penalties for the offender, in situations where social acceptance and absence of legislation allowing for honour to be defended as an exculpatory or a mitigating circumstance sanction and perpetuate such intolerable forms of violence against women.²⁰⁹

In the lives of young brides in certain parts of the world, the daily experience of marriage has frequently betrayed parental and societal expectations to protect them from vulnerability to sexual abuse and brutality to which their gender exposes them. On the contrary, marriage isolates the child both physically and symbolically from those systems mandated to protect her. Parents often encourage their married daughters to endure violations suffered in the husbands' homes patiently, communities perceive them as adults and refrain from interfering with private family matters, and legal and judiciary systems are often unequipped to address violence against girl children when it is perpetrated within the precinct of the marital family.²¹⁰ Marriage not only fails to shield girls from sexually violent societies, but exposes them repeatedly to sexual brutality in a way that further weakens for them the already feeble safety nets available to children.

Non-consensual sex, unwanted pregnancies and premature childbearing

As a girl becomes a wife, she is forced all too soon into an adult sexual life. Such a prospect normally finds a young bride, who has enjoyed limited access to education and information, unprepared physically, psychologically and emotionally, unequipped with sufficient information and knowledge about her body, and disempowered to seek support and avail of social and health services. From a pre-marital situation in which socialising with the opposite sex and engaging in sex are socially discouraged or even sanctioned behaviours, a married girl is plunged into another reality where she is expected to perform the sexual roles of a wife. Non-consensual sex forces girls into intimacy unwillingly. Unwanted pregnancies propel them into levels of physical and emotional stress for which their bodies and minds are not prepared. Premature childbearing leaves permanent consequences which can forever mark the lives of both mother and child. Forced sexual activity and non-consensual sex, leading to un-planned,

206 Sanlaap, "Child Marriage: West Bengal Scenario", p.4.

207 Unites Nations Human Rights Council, "Preventing and Eliminating Child, Early and Force Marriage", (2014), p.9.

208 Sanlaap, "Child Marriage: West Bengal Scenario", p.5

209 CEDAW and CRC, "Joint General Recommendation/General Comment", (2014), para. 6.4 (28).

210 The Special Rapporteur on Violence against Women, its causes and consequences has pointed out that although historically States have been reluctant to intervene with regard to cultural practices in the family, often stating that this is a "private" matter and the State has no obligation in the domain of the "domestic" (resulting in domestic violence rarely rarely prosecuted), since the 1980s, international law has clearly rejected this "public/private differentiation" and called on States to take measures to eradicate violence in the family, including domestic violence. SRVAW, "Cultural practices in the family that are violent towards women", UN Doc. E/CN.4/2002/83 (2002), para. 109.

high-risk and multiple pregnancies, encompass a continuum of harms against girl children, which in turn translates into a continuum of violations of girls' sexual, health and protection rights. International voices raised against the grave consequences of early marriage for child victims on the plane of both physical and mental wellbeing have stressed that this practice is "one of the most blatant violations of girls' reproductive rights and right to freedom from sexual violence."²¹¹

In many cultures, as soon as a girl is married, pressure grows on her to demonstrate her fertility to her in-laws, husband and community. The earlier a marriage occurs, the greater may be the number of children a woman has.²¹² Levels of fertility may also increase when girls are under family pressure to conceive a boy child. In Nepal, for instance, over one third of women in a UNICEF study in the age group 20-24 who married before they turned 15 had three or more children as compared to 1 percent of women who married as adults.²¹³

But girls' bodies are not suited for giving birth. Childbearing occurs even before young brides have been able to complete their own physical and sexual growth, and achieve the psychological and emotional maturity necessary to carry a pregnancy and take responsibility for a new life. The lower the age, the worse the problem is likely to be. Although there is insufficient empirical support to accurately ascertain the maternal mortality risk in adolescent mothers,²¹⁴ the most common assertion is that girls are twice as likely to die from childbirth as women in their 20s.²¹⁵

Early frequent pregnancies and unsafe abortions can lead to permanent, debilitating injury prejudicial to the health and survival of both the mother and the child. The combination of complications from pregnancy and childbirth in underdeveloped bodies is the first cause of death among the nearly 16 million 15-19 year old teenage girls who give birth every year in developing countries,²¹⁶ a fact that is even more serious considering that most adolescent pregnancies (90 percent) occur within marriage.²¹⁷ Maternal deaths are such a concerning reality among teenage girls that, in a war-torn country like Afghanistan, maternal mortality has been found to be ten times higher than conflict-related civilian deaths.²¹⁸

Unacceptable rates of early pregnancy and pregnancy-related injuries and fatalities among adolescents, whether married or not, are symptoms of a full range of human rights violations and systematic neglect of gender and age-specific health needs.²¹⁹ If present trends are not reversed, the number of children bearing children is bound to increase along with the number of deaths among girls and their babies. The primary causes of high maternal mortality associated with teenage pregnancy, i.e., post-partum haemorrhage, obstructed labour, sepsis and eclampsia, are the result of age-specific biological and physiological factors. Obstetric fistula is a disabling injury often occurring in a young female body prematurely subjected to pregnancy. When aggravated by inadequate access to healthcare, it may lead to permanent medical complications and social stigma that may exclude the affected girl from social life and even banish her from her family.

211 Center for Reproductive Rights, "Accountability for Child Marriage: Key U.N. Recommendations to Governments in South Asia on Reproductive Health and Sexual Violence, Fact Sheet", (New York, 2013), p.2.

212 UNICEF, "Early Marriage: A Harmful Traditional Practice", (2005), p.9.

213 UNICEF, "Ending Child Marriage: Progress and Prospects", (2014).

214 A.K. Blanc, Winfrey W., Ross J., "New Findings for Maternal Mortality Age Patterns: Aggregated Results for 38 Countries", *PLoS ONE*, Vol. 8, no. 4 (2013): e59864.doi:10.1371/journal.pone.0059864.

215 United Nations Human Rights Council, "Preventing and Eliminating Child, Early and Forced Marriage", (2014), p.9.

216 United Nations Population Fund, "Marrying Too Young. End Child Marriage", (2012), pp.6,11.

217 Girls Not Brides, <http://www.girlsnotbrides.org/what-is-the-impact/>, accessed 3 May 2015.

218 International Center for Research on Women (ICRW), United Nations Population Fund (UNFPA), Australian Agency for International Development (AusAID), Asian Forum of Parliamentarians on Population and Development (AFPPD), "Child Marriage in Southern Asia", (2012).

219 Center for Reproductive Rights, "Accountability for Child Marriage", (2013), p.6.

Child mothers

Teenage mothers typically display poor birth outcomes. Early motherhood challenges the body's capacity to compensate for pregnancy during a time of intense growth spurt resulting in an aggravated state of malnutrition in frequently malnourished young mothers, who are prone to delivering low birth weight babies susceptible to disease and malnutrition. Complications during pregnancy and childbirth are not only risky for the mother, but can also lead to the death of the child. One in 14 births to young mothers in Bangladesh, India, Nepal and Pakistan results in the death of an infant within the first year of life. Evidence shows that young maternal age at birth and short inter-pregnancy intervals are core determinants of infant deaths among births to young mothers.²²⁰ As compared to adult women, young brides are also less likely to access proper health care while pregnant. Evidence shows that in countries such as Bangladesh, Ethiopia, Nepal and Niger, women who married as adults were at least twice as likely to avail of a health facility in delivering their most recent baby as compared to women who married before age 15.²²¹ Preponing the physiological time for childbearing, in a situation of limited access to reproductive and sexual health information and services, frequently results in large family size and increased burden on girls and women.

The HIV/AIDS paradox

Young girls often display a lower level of awareness and knowledge about sexually transmitted infections (STIs) than older women. In Bangladesh, research has found that only 16 percent of 15 to 24 year-old girls have a comprehensive knowledge of HIV.²²² Generally, married girls emerge as more prone to STIs, including HIV infection. An apparent paradox seems to characterise the impact of HIV/AIDS on child marriage. Ironically, marriage seems to expose rather than shield young women from HIV/AIDS, as it forces them into a sharp transition from virginity to frequent unprotected sex.²²³ Evidence from sub-Saharan Africa increasingly highlights that married girls are at greater risk of HIV infection than sexually active, unmarried peers. As a result, health, social and economic costs relating to increased pregnancies determined by early sexual initiation are further compounded by those associated with STIs. It was found that among 15 to 19 year old girls who are sexually active, being married increased their chances of being infected by HIV by over 75 percent.²²⁴

Research suggests that one reason why child brides are more vulnerable to HIV infection is because the condition of being married limits their options of changing sexual behaviour and negotiating safer sex in response to knowledge about HIV. When interviewed on how knowledge about HIV changed their sexual behaviour, unmarried girls in Zambia and Kenya reported having stopped having sex in a significantly larger proportion than married girls, who had no option of

220 Raj, Anita, et. al., "Effects of Young Maternal Age and Short Interpregnancy Interval on Infant Mortality in South Asia", *International Journal of Gynecology and Obstetrics*, Vol. 124, Issue 1 (2014): pp.86-87.

221 UNICEF, "Ending Child Marriage: Progress and Prospects", (2014).

222 International Center for Research on Women (ICRW), United Nations Population Fund (UNFPA), Australian Agency for International Development (AusAID), Asian Forum of Parliamentarians on Population and Development (AFPPD), "Child Marriage in Southern Asia", (2012).

223 International Parenthood Federation and the Forum on Marriage and the Rights of Women and Girls, "Ending Child Marriage", (2007), p.12.

224 International Center for Research on Women (ICRW), "Child Marriage and Health", (2006), <http://www.icrw.org/files/images/Child-Marriage-Fact-Sheet-Health.pdf>, accessed 3 May 2015; citing to: S. Clark, "Early Marriage and HIV Risk in Sub-Saharan Africa", *Studies in Family Planning*, Vol. 35, no. 3 (2014): pp.149-160.

abstaining from sexual activity. Also, unmarried girls were more likely to report using condoms than married ones, confirming the finding that men preferred to use condoms outside of marriage rather than with their wives.²²⁵

The risk of contracting HIV or AIDS has also been linked to young girls being married to significantly older husbands who may have had more opportunities for infection in the course of their lives. According to evidence stemming from central and western Africa, one-third of young women reported having a partner that was at least 11 years older than them in their first marriages.²²⁶ A significant age difference, which tends to be more common in early marriages in general, is the norm in polygamous unions where young girls may be the second or third wife of a much older man.²²⁷

The UN Task Force on Women, Girls and HIV/AIDS in southern Africa identified three key factors that increase the vulnerability of women and girls to HIV infection: the general culture of silence around sexuality, exploitative transactional and inter-generational sex, and violence against women. Such elements, in addition to poverty, gender inequality and some myths, such as marrying a virgin in the hope of being cured of HIV, are likely to significantly affect adolescent wives.²²⁸

While child marriage has been proven to be a channel to HIV, the opposite is also true. There is evidence that HIV/AIDS orphans may marry at a young age as a way to seek the protection and care that their parents can no longer guarantee. Child marriage is thus pursued as an escape route out of insecurity and poverty, although the groom may himself be as poor or incapable of providing support.²²⁹

Impact on mental health

While there has been growing interest in the consequences of child marriage on physical health, its impact on the psychological wellbeing of young spouses has been marginal. An investigation into the effects of sexual violence against children in early marriage requires that due attention is also paid to the trauma that physical and psychological abuse and exploitation may cause. When the body and the mind of a child have not yet reached sexual maturity, systematic abuse in the sexual sphere, aggravated by isolation and other forms of violence, not only severely impacts physical wellbeing but also seriously challenges mental health.

It has been found that married girls show signs symptomatic of child sexual abuse and post-traumatic stress.²³⁰ Although comprehensive data is not available on the consequences of sexual abuse for married children, initial evidence from Nepal indicated that early marriages tended to

225 International Center for Research on Women (ICRW), "Child Marriage and Health", (2006), <http://www.icrw.org/files/images/Child-Marriage-Fact-Sheet-Health.pdf>, accessed 3 May 2015; citing to: S. Clark, "Early Marriage and HIV Risk in Sub-Saharan Africa", *Studies in Family Planning*, Vol. 35, no. 3 (2014): pp. 149-160.

226 International Center for Research on Women (ICRW), "Child Marriage and Health", (2006), <http://www.icrw.org/files/images/Child-Marriage-Fact-Sheet-Health.pdf>, accessed 3 May 2015; citing to: The National Research Council and Institute of Medicine, "Growing Up Global: The Changing Transitions to Adulthood in Developing Countries", Panel on Transitions to Adulthood in Developing Countries, Cynthia B. Lloyd, ed., Committee on Population and Board on Children, Youth, and Families, Division of Behavioral and Social Sciences and Education (Washington, D.C.: The National Academies Press, 2005), p.448.

227 *Ibid.*

228 UNAIDS, UNFPA, UNIFEM, "Women and HIV/AIDS: Confronting the Crisis", (2004).

229 African Union, "Desk Review of Literature on the Effect of Traditional and Religious Perspectives of Child Marriage", (2015), p.18.

230 International Center for Research on Women (ICRW), "Child Marriage and Domestic Violence", (2007), <http://www.icrw.org/files/images/Child-Marriage-Fact-Sheet-DomesticViolence.pdf>, accessed 3 June 2015.

be characterised by intramarital conflicts. It also highlighted that emotional attachment between partners was harder to achieve than among couples that were formed at an older age. Married children describing their mental state revealed symptoms ascribable to depression and anxiety, while also citing suffering from a range of sexual problems.²³¹ Experiences documented in India similarly reported psychological stress and trauma stemming from pressure to engage in non-consensual sex.²³² Research on child maltreatment in Bangladesh highlighted that child brides often showed symptoms associated with child sexual abuse, such as feelings of hopelessness, helplessness and severe depression.²³³

Occurring during the formative years, the multifaceted event of marriage is likely to interfere with the entire growth and development trajectory of a person. Not only does it potentially harm health and nutrition status, but it also risks deeply hampering balanced psychological, emotional and social development, which, under more conducive circumstances, an aptly supported experience of adolescence would permit.

Female genital mutilation

Another abusive traditional custom involving girls is female genital mutilation (FGM), a form of sexual violence caused in early childhood to prepare for marriage in adolescence.²³⁴ FGM is defined as a harmful practice violating the human rights of girls and women on par with child marriage by the CEDAW and the CRC Committees. In several cultures female circumcision is perpetuated as a kind of violent initiation into other forms of sexual control which women are expected to undergo for the rest of their lives, in particular after achieving puberty and entering marriage.²³⁵ UNICEF has estimated that more than 125 million girls and women alive today have been cut in the 29 countries in Africa and the Middle East where female genital mutilation is concentrated. As many as 30 million girl children have been projected to be at risk of being cut over the next decade if current trends are not reversed.²³⁶

Female genital mutilation, otherwise known as female circumcision or female genital cutting, is a practice normally performed on young girls sometime between infancy and age 15 that intentionally removes or injures (partially or wholly) the female genital organs for non-medical reasons and with no health benefits. The procedures involved in female circumcision can cause severe bleeding and problems urinating, and later lead to medical conditions, including infertility, complications in childbirth and increased risk of newborn deaths.²³⁷

231 Plan Nepal, "Child Marriage in Nepal".

232 Sanlaap, "Child Marriage. West Bengal Scenario", p.4.

233 International Center for Research on Women (ICRW), "Child Marriage and Domestic Violence", (2006), <http://www.icrw.org/files/images/Child-Marriage-Fact-Sheet-Domestic-Violence.pdf>, accessed 3 May 2015; citing to: N. Khan, M. Lynch, "Recognizing Child Maltreatment in Bangladesh", *Child Abuse and Neglect*, Vol. 21, no. 8 (1997): pp.815-818.

234 Alula Pankhurst, "Child Marriage and Female Circumcision: Evidence from Ethiopia", *Young Lives Policy Brief 21*, (Young Lives and Save the Children, 2014), <http://www.younglives.org.uk/publications/PP/child-marriage-and-FGM-in-ethiopia/pb21-child-marriage-and-fgm-in-ethiopia>, accessed 13 June 2015.

235 CEDAW and CRC, "Joint General Recommendation/General Comment", (2014), para. 6.1.

236 UNICEF, "Female Genital Mutilation/Cutting: A Statistical Overview and Exploration of the Dynamics of Change" (New York: UNICEF, 2013).

237 World Health Organization, Fact sheet N°241 , updated February 2014, <http://www.who.int/mediacentre/factsheets/fs241/en/>, accessed 10 May 2015.

3. Child marriage as a form of commercial and economic sexual abuse and exploitation of children

The third and last level in the *CEFM-CSEC Conceptual Framework* devised to explore the linkages existing between child, early and forced marriage and sexual abuse and exploitation of children explores how economic transactions or financial gains benefitting the adult parties involved in contracting an underage union may justify relating some forms of child marriage to commercial or otherwise economic sexual exploitation of children (CSEC).

The first level of the model had guided the reflection on ways by which child marriage acts *as a channel to* sexual abuse and exploitation of children, including for commercial purposes. This section will deal instead with instances in which child marriage can be potentially regarded as a form of commercial and economic sexual abuse and exploitation of children for violations taking place *within* marriage itself, rather than *as a result* of the union. The international definitions and legal standards emerging from the contemporary interpretation of slavery offer a relevant point of departure in analysing situations in which the child is victimised by an offender who exercises powers of ownership over her, including demanding an economic compensation for marriage, exploiting the child in unpaid or non-voluntary forced work, or trafficking the child for labour or sexual exploitation purposes within marriage.

Bonded to marriage: child labour, trafficking and slavery

The right to marry upheld in a substantial body of international law underpins the equal rights of women and men to enter into, during and upon the dissolution of marriage. It mandates that both intending spouses express their free, full and informed consent to marriage, and that the marriage be registered by a competent authority according to the provision of the law. It finally entails that a minimum age for marriage be legally defined and enforced.

Married girls who find themselves secluded in an unfamiliar home, burdened with household chores and childbearing responsibilities while being themselves still children have often expressed a sense of hopelessness in considering their present and future lives. When being married is equated with a barrier to self-realisation, marriage becomes a trap. Child marriage can bring to a halt dreams and aspirations, preclude the realisation of girls' full potential, expose them to abuse and violence, and drive them to a condition from which there is limited realistic hope of escape. By being perpetrated on a victim against her will and subjugating a vulnerable party to the power of a stronger one, the level of ownership and control may be such to qualify early and child marriage as a form of both forced marriage and slavery. Although not all child marriages may amount to slavery, particularly when children are older than 16 years, "the levels of suffering, coercion and control experienced by children in marriage can often meet international legal definitions of slavery and slavery-like practices, such as servile marriage, child servitude, child trafficking and forced labour," as concluded by Anti-Slavery International on the basis of analysis stemming from reviewing fifty reports and articles on the subject.²³⁸

²³⁸ Catherine Turner, "Out of the Shadows: Child Marriage and Slavery", Executive Summary (London: Anti-Slavery International, 2013), p.43.

In establishing an equation between child marriage and slavery, it is necessary to consider how children enter marriage; how they are treated when they are in marriage; and, finally, whether they can effectively leave or dissolve the marriage. The entry into marriage by children is normally marked by a weakened position in giving free and full consent, even when they “agree” or do not refuse. During marriage, they are normally restricted in their movements and have limited control over their options, including sexual relations. Leaving or ending a marriage may be particularly challenging for children, even when the law allows it. Especially in countries that bar child marriage, young people may enter informal unions that cannot be legally dissolved or redressed for legal violations. Pressure by adults and lack of means of sustenance may further make it unrealistic for a child to exit marriage even when the situation is intolerable. Girls who flee their marriages without adequate support may become vulnerable to other forms of slavery and remain in slavery-like situations throughout adulthood.²³⁹

Slavery and slavery-like practices associated with child marriage

“Slavery is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.”²⁴⁰ Within the definition of slavery, the elements of ownership and control are core to determining whether child marriage amounts to an enslaving practice – as much as it is the central principle of free and full consent of both parties. Such conditions are likely to be more evident when a marriage involves at least one underage party and hinges on intrinsic power imbalances due to the age differential between the child and the adult husband or family members.

Child and early marriage as forced marriage – Forced marriage is any union where one of the parties is not permitted to end or leave it. In particular, “[f]orced marriages are marriages where one or both parties have not personally expressed their full and free consent to the union.”²⁴¹ Examples of forced marriages given by the CEDAW and CRC Committees are “exchange or trade-off marriages (i.e. baad and baadal), servile marriages and coercing a widow to marry a relative of her deceased husband (levirate marriages).”²⁴² Forced marriage is closely connected with servile marriage, a prohibited practice akin to slavery, which implies giving in marriage a woman deprived of the right of refusal, or in exchange for a value received. Forced marriages may occur in the context of migration when a woman is forced to marry extended family members or other persons to provide them documents necessary to live in a given destination country. They are also common among armed groups in conflict situations. Cases of forceful abduction, sale and kidnapping of girls for marriage, as those occurring in conflict times, for example, or instances when a girl victim of rape is forced to marry the perpetrator of the crime are also examples of forced marriage, by virtue of the fact that one or both parties enter the union without full and free consent.

The definition of forced marriage, based on the missing personal expression of full and free consent by one or both parties, lends itself to also include the practice of early and child marriage, in recognition of the fact that the younger the age of at least one of the spouses, the less likely it is for marriage to be contracted with full, free and informed consent. As already recalled, the Joint General Recommendation/General Comment on harmful practices by the Committee on the Elimination of Discrimination against Women and the Committee on the Rights of the Child equates child marriage to forced marriage by stating that “[a] child marriage is considered to be

239 *Ibid.*, pp.16-19.

240 League of Nations, Slavery, Servitude, Forced Labour and Similar Institutions and Practices Convention (1926), Article 1(1).

241 CEDAW and CRC, “Joint General Recommendation/General Comment”, (2014), para. 22.

242 *Ibid.*

a form of forced marriage, given that one and/or both parties have not expressed full, free and informed consent.”²⁴³ The girl child, who is normally the younger spouse as well as the more vulnerable one on account of submissive gender roles assigned to her, is likely to be the party who enters marriage with less capacity to exercise her free and full consent and, as such, be more exposed to be married forcefully.

Child/early/forced marriage as slavery – Early/child marriage has been recognised as a serious violation of human rights on par with forced marriage, a grave infringement to be associated with slavery itself. While forced marriage, whether of children or adults, can be readily understood as a form of slavery, it is now necessary to acknowledge that early and child marriage can potentially amount to slavery as well, given that it has been recognised as a form of forced marriage itself.

Further, non-consensual child/early/forced marriages often generate a situation whereby one party tends to dominate the other. Such conditions make child marriage meet the criteria laid out in the definition of slavery in recognition of the fact that the relationship between spouses is based on power of ownership being exercised over the vulnerable party.

Finally, the circumstances driving young people into a marriage often fall outside their control. They may marry according to the will of their parents, yielding to social pressure, or compelled by economic causes. Whatever the triggering factor, the decision is often taken by adults with limited or no involvement of children at all. Whether young people end up in underage unions as a result of overtly forceful means or psychological intimidation, there is scope to conclude that the conditions in which child marriage takes place are such that it often amounts to slavery or slavery-like practice.

Significantly, such multiple perspectives have also been accepted by international human rights bodies, which have been increasingly drawing parallels between child/early/forced marriage and the interlinked dimensions of forced marriage and slavery. Following the cornerstone definition of slavery contained in the League of Nations’ 1926 Slavery Convention,²⁴⁴ cited above, the 1956 UN Supplementary Convention on the Abolition of Slavery, in seeking to bar modern-day forms of slavery, obligates states to undertake legislative and other measures to abolish practices that amount to forced marriage. These practices include those in which a woman is promised or given in marriage on payment of money or in kind to her parents or family, denying her the right to refuse; the husband of a woman or his family transfers her to another person for or without compensation; or a woman is liable to be inherited by another person following the death of her husband.

While the above situations are likely to occur in cases of underage unions as well, the Supplementary Convention specifically addresses child marriage as an institution akin to forced marriage where it adds: “Any institution or practice whereby a child or young person under the age of 18 years, is delivered by either or both of his natural parents or by his guardian to another person, whether for reward or not, with a view to the exploitation of the child or young person or of his labour.”²⁴⁵ The covenant equates child marriage to forced marriage and slavery and slavery-like practices under a set of circumstances that are indeed common practice in the way early marriages are organised and carried out.

²⁴³ *Ibid.*, para. 20.

²⁴⁴ League of Nations, Slavery Convention, Article 1(1).

²⁴⁵ The Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, Article 1(d).

The Supplementary Convention calls upon States Parties to prescribe a minimum age for marriage, to encourage that the consent of both parties to a marriage be freely expressed in the presence of a competent civil or religious authority, and to foster the registration of marriages, namely the conditions in the absence of which a marriage can be equated with forced marriage and slavery.²⁴⁶

This early reference has been more recently at the heart of the reflection emerging at various levels in the scientific, technical and policy discourse, leading to initial attempts at codifying the equation between child marriage and slavery in the context of human rights. The Special Rapporteur on Contemporary Forms of Slavery, calling for raising and enforcing the minimum marriage age to 18 years, has highlighted that the victims of servile marriage, usually female, are often young, thus pairing child marriage with servile marriage.²⁴⁷ In particular, the Special Rapporteur aptly observed that “[u]nder international human rights law, a child cannot provide informed consent to a marriage. The marriage is therefore considered forced and falls under [...] slavery-like practices.”²⁴⁸ The inequality of the partners forces married girls into other slavery-like practices connected with marriage, such as domestic servitude and sexual slavery, breaching a host of other international laws as the individual is reduced to becoming a commodity of the other party.²⁴⁹

Criteria for child/early/forced marriage to amount to slavery – It is relevant to note that, moving beyond the criterion of age alone, human rights organisations and bodies have been increasingly adopting broader parameters to define enslaving forms of marriage, with a view to focusing on the violations that characterise such abusive practices. Similarly, a civil society organisation like Anti-Slavery International, referring to legal definitions of slavery, in particular the 1926 Convention, proposes a set of conditions that, if experienced partly or wholly by a married child, should help determine whether the marriage can be regarded as slavery or slavery-like practice. The framework proposes the following criteria:

- Denying the child the ability to refuse, end or leave a marriage;
- Exposing the child to exploitation or denied freedom of choice regarding personal matters, such as attending school, earning an independent income, consenting to sexual relations, and/or intimidating into working long hours through threats of violence, divorce or denying food or money;
- Subjecting the child to rape, beatings or murder denying recourse to law or society for protection or redress.²⁵⁰

The restrictions imposed on girls after marriage typically reflect such core violations relating to the fundamental issues of consent, ownership and control. Limiting access to basic social services, restricting enjoyment of free and independent movement, exercising control over the child’s belongings, impeding earning an independent income, discouraging participation in social and political life, in general making decisions for the girls’ lives and those of their children without seeking their opinions are elements that tend to characterise relationships in early marriages, rather than being rare incidences. Girl children are prepared for a life in the shadow

246 *Ibid.*, Article 2.

247 UN Special Procedures, “Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, Gulnara Shahinian, Thematic report on servile marriage”, UN Doc. A/HRC/21/41, (2012), para. 14, http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session21/A-HRC-21_41_en.pdf. Servile marriage is a practice similar to slavery where the spouse is reduced to “a person over whom any or all of the powers attaching to the right of ownership are exercised”. *Ibid.*, para. 13. Special Rapporteur on contemporary forms of slavery, referring to servile marriage using the definition of slavery in Article 7(a) of the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery.

248 *Ibid.*, para. 14.

249 *Ibid.*, paras. 16, 73-75.

250 Rachel Borrell, “Behind Closed Doors: Child and Early Marriage as Slavery”, (2015), p.8.

of their husbands' since childhood, encouraged to mould their attitudes and behaviours on traditional gender role patterns that reduce their options and undermine their self-esteem. As they enter marriage, control over their lives continues to be exercised through various tactics, ranging from psychological manipulation, to social pressure, and overt threats and violence. Sexual slavery experienced in early marriage finds parallels only with sexual slavery experienced in CSEC, where children are owned and controlled to perform sexual acts against their will.

Child servitude and forced child labour – The slavery argument relating to child marriage also helps clarify the nexus existing between the practice of child marriage, on the one hand, and the double bondage of sexual and labour exploitation of children, on the other.²⁵¹ From such a perspective, it can be recognised that child marriage victims are akin to child victims of commercial sexual exploitation as both groups are forced into the twin bondage of labour and sexual exploitation. Organisations like ECPAT and others engaged in combating CSEC have highlighted that the employment of children in prostitution and pornography (parallel forms of slavery-like practices)²⁵² turns them into economically exploited labourers in the sex trade. CSEC victims are simultaneously exploited sexually and economically, not only as sex workers, but also as a result of being engaged as child labourers in highly abusive occupations, such as in the travel and tourism sectors, the entertainment industry, or domestic work. Similarly, married children may find themselves exploited sexually as well as in the form of free labour as a result of the multi-faceted servitude that marriage imposes on them.

Frequently, early marriage results in a situation in which a child is handed over by her parents or guardians to another family, where she is exploited in domestic and/or manual labour, as well as sexually against her will and with limited capacity to contrast the situation. Instances of this kind amount to child servitude, defined as the delivery of a person below the age of 18 with the purpose of exploiting the child or his labour.²⁵³ Such conditions can also amount to forced labour. The International Labour Organization (ILO) Convention 29 defines compulsory work as “[...] all work or service which is exacted from any person under the menace of any penalty for which the said person has not offered himself voluntarily.”²⁵⁴ In the definition, forced labour also includes work that is imposed on children through more subtle forms of pressure that do not necessarily include overt violence or intimidation. Further, work as referred to in this context does not strictly entail economic activities to qualify as forced labour and can include sexual exploitation and trafficking, along with other elements that tend to characterise child marriage.²⁵⁵ From this perspective, therefore, it is key to note that the condition of individuals involved in marriage may in several cases amount to child servitude, child labour and forced labour, when children are delivered by their parents into another family where they are forced to undertake work within or outside the marital home, or engage in sexual relations, against their will and with no means of refusing or leaving the marriage.

The use of child spouses as cheap or free labour emerges in evidence gathered, for example, in some rural communities, where early marriage patterns follow a seasonality that is somehow correlated with the agricultural economy. In these contexts, child weddings intensify during

251 *Ibid.*, p.7.

252 UN Office of the High Commissioner for Human Rights (OHCHR), “Fact Sheet No. 14, Contemporary Forms of Slavery”, (1991), <http://www.ohchr.org/Documents/Publications/FactSheet14en.pdf>, accessed 12 June 2015.

253 UN Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (1956), Article 1(d).

254 International Labour Organization, Convention No.29, Article 2(1).

255 International Labour Office, “A Global Alliance against Forced Labour: Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work”, Report I(B) of the Director General, (Geneva: ILO, 2005), p.9, para. 35.

the harvest seasons when one additional member in the household means more arms in the family fields, or additional wages earned from daily labour. Similarly, child marriages have been associated with migration. When sons migrate for work, families may opt for a young bride to care for the elders.²⁵⁶ Shortage of labour created by migration in the household may also prompt families to seek a child bride to substitute for the missing male members.²⁵⁷ The collateral benefit sought by the family in hastily procuring a wife would also be to keep the young man away from the risk of promiscuity and the temptation of involving himself with women from outside his community as he relocates himself elsewhere.²⁵⁸ In the economy of a poor family, bearing the one-time cost for a wedding may be perceived as a sensible investment toward acquiring a life-long contributor to the household wealth, a down payment that may even be unrequired in systems where marriage cost or dowries are afforded by the girl's family.

A report of the Office of the United Nations High Commissioner for Human Rights on preventing and eliminating child early and forced marriage focuses sharply on the interface between child marriage and slavery. Early married girls are severely exploited to the point that child marriage can also be defined as a "worst form of child labour". Child and young brides, it is noted, are often exposed to "physical, psychological, economic and sexual violence, and restrictions on their movement."²⁵⁹ The condition of being subjugated to an older husband or in-laws and being victims of power imbalances within the family and the community limits the autonomy, agency and decision-making of girls. According to the Human Rights Council citing Anti-Slavery International, in such conditions, "[w]omen and girls in situations of child and forced marriage may experience conditions inside a marriage which meet 'international legal definitions of slavery and slavery-like practices' including servile marriage, sexual slavery, child servitude, child trafficking and forced labour", and "a potentially high proportion of child marriage cases appear to constitute the worst forms of child labour under the 1999 ILO Convention No. 182."²⁶⁰

The conditions experienced by child brides and children coerced in domestic labour, which ILO has found to amount to forced child labour, reveal striking parallels. Conceptually, the condition of a young bride trapped in an abusive non-consensual union clearly differs from the one of a child employed in forced labour, as marriage is an institution that cannot be equated to a form of work. Yet, the realities of children being exploited in marriage and in work encompass comparable vulnerabilities.²⁶¹ In both conditions, children live separated from their homes, are hidden from view, have inadequate negotiating powers to set terms for their labour, exercise limited control over their bodies and sexuality and, ultimately, are exposed to high levels of labour and sexual exploitation. As Anti-Slavery International points out "it is now time to recognise the vulnerability of children in marriage to forced child labour and slavery too."²⁶² Although ILO recognises forced marriage as a form of forced labour by including marriages leading to forced labour or service in its forced labour estimates,²⁶³ cases of child marriage that have not been contracted through overtly forceful means but nevertheless lead to situations of forced labour (such as in the widespread case of domestic labour) should also be accounted for and regarded as forced labour.

256 PRAXIS, "Marriage Can Wait, Our Rights Can't", (2012), p.33.

257 Isabel Sibley, "The Burden of Daughters", (2012).

258 PRAXIS, "Marriage Can Wait, Our Rights Can't", (2012), p.33.

259 Unites Nations Human Rights Council, "Preventing and Eliminating Child, Early and Force Marriage", (2014), p.8.

260 Unites Nations, Human Rights Council, "Preventing and Eliminating Child, Early and Force Marriage", (2014), pp.8-9; citing to: Catherine Turner, "Out of the Shadows: Child Marriage and Slavery", (2013).

261 Catherine Turner, "Out of the Shadows: Child Marriage and Slavery", (2013), p.31.

262 *Ibid.*, p.3.

263 International Labour Organization, "ILO Global Estimate of Forced Labour, Results and Methodology", (2012), p.13, footnote 2.

Trafficking for exploitation of children within marriage

Child trafficking can be considered as the modern child-targeted equivalent of the slave trade, through which masses of young human beings are moved from one location to another for the purposes of exploitation, such as slavery, forced labour or early marriage.

Trafficking is a common practice in the context of early marriage. Typically, children are removed from their homes under the pretext of marriage, and imprisoned and abused at the point of destination, in order to further force them into highly exploitative activities, such as prostitution, pornography and domestic servitude, as discussed in the first level of the *CEFM-CSEC Conceptual Framework*. Moving beyond such widely recognised situations, in which trafficking is adopted *as a means* to recruit children through the cover of marriage, international law recognises that a child may be regarded as a victim of trafficking even when she is exploited *within* her own marriage. From such an emerging perspective, child trafficking also has direct relevance within the context of child marriage itself.

Building on the ILO Convention on the Worst Forms of Child Labour, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the UN Convention against Transnational Organized Crime (Palermo Protocol) further articulates the concept of trafficking for the purpose of exploitation to also include sexual exploitation, forced labour and slavery, stating that “[t]rafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs” (Article 3 (a)).

Significantly, the Palermo Protocol expands the definition of trafficking and enhances the level of protection extended to children by stating that: “[t]he recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons” even if this does not involve any of the means set forth in subparagraph (a) of this article” (article 3 (c)).²⁶⁴

In the context of sexual exploitation of children in early marriage, it is clear that any person under the age of 18, being moved from one location to another *by whatever means* for the purpose of exploitation, is regarded as a trafficked person, even if they “agree”. Therefore, it is not necessary for a child to be transferred across borders or to a faraway location to be considered a trafficked person. It would be sufficient for a child bride, for example, to be moved to another home, even within the same village, to qualify as a victim of trafficking if the ultimate purpose is exploitation. Furthermore, even if the child is moved to another home with her manifest “consent”, her marriage would be still regarded as child trafficking insofar as, in the new household, she is exposed to any form of exploitation.²⁶⁵ The situation of children ending up exploited sexually and otherwise in the marital home where they are transferred is more the norm than the exception in the context of early marriage. The perspective offered by the Palermo Protocol, therefore, significantly strengthens the linkage between the practices of child marriage and child trafficking, adding a key dimension to the interpretation of economic exploitation of children in the context of marriage.

²⁶⁴ Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, (2000).

²⁶⁵ Rachel Borrell, “Behind Closed Doors: Child and Early Marriage as Slavery”, (2015), p.4.

The elements of sexual exploitation, forced labour and slavery included in the legal definition of exploitation and trafficking in persons younger than 18 years are integral features of the practice of child, early and forced marriage. This is manifested in several ways, ranging from sexual violence and non-consensual sex, to unpaid and exploitative labour, restricted access to basic services and limited enjoyment of rights and civil liberties as a result of the powers of ownership exercised over the victims.

The price of a daughter: the dowry system

A traditional harmful practice – In certain communities where child marriage is practiced, families are compelled to pay a price to marry their daughters. A concerning indication of the low status that girls and women enjoy in many societies, the dowry system (or bride price) is a harmful practice that, linked to marriage, increases the vulnerability of young brides. In addition to handing over an asset (a young person prepared to contribute to the wealth and wellbeing of her husband's family), the bride's parents are often expected to bear part or the full cost of the wedding and offer a payment in kind or cash (normally both) as a dowry. In a country like Bhutan, where husbands sometimes deviate from the norm prevalent in the region by moving themselves into their wives' homes, the reverse gender pattern does not seem to challenge the established economics of marriage; families still prefer to marry their daughters at young ages with the prospect of the contribution that young men can make to the household income.²⁶⁶

Evidence suggests that, rather than waning, the bride price, the payment of a dowry, or similar economic transactions are not only continuing but growing more onerous in some areas, where they may amount to the equivalent of several times the total annual household income.²⁶⁷ In poor households, the dowry is rarely retained as an endowment to meet the needs of the newly formed family, the girl herself or the children who are to be born from the union. Originally conceived in some communities as a form of inheritance for the bride from her family, the endowment is now frequently controlled by the groom, or his family, and increasingly spent to satisfy a desire to acquire consumer goods made available on a globalised market that is fast penetrating all social and economic classes.

Lowering the age for marriage – The size of the dowry often correlates with the age at marriage. A poor and uneducated child bride, relying on a small or no dowry, is unlikely to aspire to more than a similarly poor, uneducated and unemployed or underemployed bridegroom. The value attached to her by the price that is paid to give her in marriage grows with age, education and other accomplishments. The more the girl's parents invest in her health, education and care, the higher is the economic level of the bridegroom they may aspire to and, consequently, the larger the size of the dowry they are expected to pay. Investing little in the girl child makes her family save in both raising her, by shortening the time she will spend in her parental home, and marrying her, by limiting the outlay necessary to the wedding ceremony and the bride price. Such dynamics act as a powerful mechanism in lowering the age at which a girl's parents can hope to identify an affordable match.

266 International Center for Research on Women (ICRW), United Nations Population Fund (UNFPA), Australian Agency for International Development (AusAID), Asian Forum of Parliamentarians on Population and Development (AFPPD), "Child Marriage in Southern Asia", (2012).

267 Sajeda Amin, Ashish Bajracharya, "Costs of Marriage: Marriage Transactions in the Developing World", Promoting Healthy, Safe, and Productive Transitions to Adulthood, Brief no. 35, (2011), p. 2, http://www.popcouncil.org/uploads/pdfs/TABriefs/35_MarriageCosts.pdf, accessed 11 July 2015; PRAXIS, "Marriage Can Wait, Our Rights Can't", (2012), p.48.

Dowry exacerbates exploitation – From the perspective of slavery, it has been argued that not only child marriage, but also practices linked to it, such as the dowry and similar mechanisms, may exacerbate control over girls and enslave child brides further. Not all marriages involving a transaction necessarily amount to slavery. However, when a union is arranged on the basis of some kind of economic exchange, the risk of servile marriage may be high. Economic transactions taking place over weddings, calling for negotiations based on the payment of a dowry or a bride price, exchange of gifts, merging of family businesses or endowments, transfer of assets and livestock, or other exchanges aimed to enhance social or economic status of the adults involved in the contract effectively place a sense of value and ownership on the bride. Commoditising a person, transactional marriages tend to grant a presumption of ownership in the dominant party, leading to a feeling of licence to commit violence against the weaker subject.²⁶⁸

When the girl's family fails to pay the stipulated amount in full, or the gifts given to the son-in-law – a TV set, a motorcycle – become obsolete or malfunction, it is not uncommon for the child bride and her family to become the target of repeated demands for money. Failure to fulfil expectations may lead the husband and his family members to commit acts of physical and psychological violence against the young wife, including threats, brutality – such as burning and acid attacks – or even murder. Bride price systems lead to a number of other exploitative practices linked to early marriage. In Indonesia, the practice of *merarik*, implying that a girl is kidnapped when her parents do not agree to a marriage or cannot afford to pay a high bride price, is being increasingly employed to procure girls for sexual slavery and trafficking.²⁶⁹ In Zambia, once *lobola*, a dowry price, is paid, the bride essentially becomes the property of the groom and his family, and, if the marriage breaks down, she loses all entitlements.²⁷⁰

A bride as property – The dowry or bride price system involves a harmful practice that attaches an economic value to a person and exposes her to violence, abuse and exploitation. Passed down for generations, in various ways in different communities, the dowry system has lost the significance it might have had of providing a life-line to survive times of crises. It is perpetuated as a glorified mechanism to turn a child into property and overshadows the motivations leading to her exploitation. Attaching an economic value to a person supports the notion that, through the marriage contract, a young bride becomes the property of her husband's family and reinforces the perception that ownership over the child, rather than her wellbeing, lies at the foundation of the union.

Commodification of marriage: sale of children through the payment of a bride price

The parallel being drawn between child marriage and slavery, implying that such a harmful practice leads to a commercial use of children, is evoked in an important human rights document that equates child marriage to the *sale of children*, as in the case of commercial sexual exploitation of children (CSEC). Building on the Supplementary Slavery Convention, which proscribes all acts of sale or exchange of a person,²⁷¹ the 2000 Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (OPSC) specifically prohibits the sale of children.²⁷² The Special Rapporteur on the sale of children, child prostitution and child pornography recognises that, within the provisions of the Protocol, child

268 Rachel Borrell, "Behind Closed Doors: Child and Early Marriage as Slavery", (2015), p.7.

269 United Nations Human Rights Council, "Preventing and Eliminating Child, Early and Forced Marriage", (2014), p.11.

270 ECPAT International, "Global Monitoring Status of Action Against Sexual Exploitation of Children: Zambia", 2nd Edition (Bangkok: ECPAT International, 2011), pp.32-33.

271 Recital 3.

272 OPSC (2000), Article 1.

marriage “in many cases, [...] can be regarded as a form of sale of children.”²⁷³ The payment of a dowry price due for contracting a marriage can motivate parents to marry their daughters at a younger age in order to lower the bride price. In early marriage, it is recalled, children are often used as compensation or currency to settle family debts and other kinds of disputes,²⁷⁴ as is the case in parts of South Asia, where a practice like *vani*, present in Pakistan, requires giving away girls in marriage to relatives of murder victims to compensate for crimes committed, or to put an end to feuds between families or clans.²⁷⁵ In rural Ghana, Benin and Togo, *trokosi* is a practice whereby a young girl is sent to a shrine as atonement for a crime committed by a family member, normally a man.²⁷⁶ During a drought that affected Iran in 2002, a growing compulsion to make debt repayments led to young girls being forced to marry much older men.²⁷⁷

Clearly, therefore, according to international legal standards, paying a price to transfer a child to another home under exploitative conditions amounts to slavery, including the sale of children, in addition to child trafficking and exploitation of child labour, whether she is actually further transferred and sold to a third party for commercial sexual exploitation, or just retained and sexually exploited within her marital home. As the CEDAW and CRC Committees further clarify: “States parties to the CRC Optional Protocol on the sale of children, child prostitution and child pornography (OP-SC) have explicit obligations with regards to child and/or forced marriage that include dowry payments or bride price as this could constitute a ‘sale of children’ as defined in article 2(a) of the Protocol.” The CEDAW Committee has repeatedly pointed out that dowry payments violate the right to freely choose a spouse and such agreements should not be recognised as enforceable by State Parties.²⁷⁸

A socially sanctioned form of sexual exploitation of children

Commodification of child marriage is an issue deserving deeper understanding. Economic and sexual exploitation of child brides has gone long unchecked and tends to be condoned for being perpetrated in the context of the revered institution of marriage, which exists to sanction sexual relations and give legitimacy to the offspring. As Anti-Slavery International puts it: “Child marriage can operate as a thin veil of respectability behind which slavery occurs with apparent impunity.”²⁷⁹

Sexual abuse and exploitation of children is a problem that has been increasingly explored and addressed in child protection policy and programming by governments, non-government agencies and other bodies committed to curbing such a heinous crime. Rarely, however, has the condition of sexual violation been considered when the child is confined in the context of the socially upheld and legally contracted marriage institution. Although penal codes and personal laws may define a minimum age under which sex with a girl is criminalised, frequently sexual offences within marriage, such as marital rape, are not criminalised. Non-consensual sex and rape of an underage person, which would constitute a serious sexual offense outside marriage, may not be regarded as crimes once they are perpetrated in the context of the legal

273 UN Special Procedures, “Report of the Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography, Najat Maalla M’jid”, UN Doc. A/HRC/25/48, (Human Rights Council 25th Session, 2013), para. 26, <http://www.ohchr.org/EN/Issues/Children/Pages/AnnualReports.aspx>.

274 *Ibid.*

275 International Parenthood Federation and the Forum on Marriage and the Rights of Women and Girls, “Ending Child Marriage”, (2007), p.17.

276 African Union, “Desk Review of Literature on the Effect of Traditional and Religious Perspectives of Child Marriage”, (2015), p.5.

277 International Center for Research on Women (ICRW), United Nations Population Fund (UNFPA), Australian Agency for International Development (AusAID), Asian Forum of Parliamentarians on Population and Development (AFPPD), “Child Marriage in Southern Asia”, (2012).

278 CEDAW and CRC, “Joint General Recommendation/General Comment”, (2014), para. 23.

279 Rachel Borrell, “Behind Closed Doors. Child and Early Marriage as Slavery”, (2015), p.2.

recognition granted to child marriage. Marriage legitimises sex with a girl in situations where it would otherwise be illegal.²⁸⁰

While marriage has been broadly accepted as a form of legitimisation of sexual offences against children, some initial efforts have been made to reflect on child marriage from the same perspective from which, for example, child prostitution has been investigated. Although sexual violence is a component present in both child marriage and child prostitution, it appears that, paradoxically, preventing and eliminating child marriage might prove even more challenging than eradicating child prostitution. While child prostitution, though still being practiced, is universally condemned, child marriage is accepted and, in fact, respected in settings where it persists, as a way to perform parental duties and fulfil social obligations. Preventing children from entering marriage or attempting to remove girls from early unions, therefore, is likely to be an even more daunting task than rescuing child victims of the sex trade. An attempt to schematically compare the conditions associated with sexual abuse and exploitation of children involved in prostitution, on the one hand, and marriage, on the other, may help highlight a number of dimensions, including the following:²⁸¹

Sexual abuse and exploitation of children	
in child prostitution	in child marriage
Socially stigmatised and condemned	Socially accepted and promoted
Parents do not willingly drive their children into prostitution	Parents encourage early marriage of their children
Seen as an abusive practice	Perceived as a protection mechanism
Normally not consciously pursued by adults as a coping mechanism in a situation of poverty or crisis	Consciously sought by families as a way to cope with poverty or crisis situations
There are no legal barriers in removing children from prostitution and, in fact, law unconditionally prohibits commercial sexual exploitation of children	There are several legal barriers restricting removal of children from marriage. In some countries, dissolution of child marriage is not allowed by law and ostracised by social norms.
Impacting a discrete group of children	Systematically affecting 1 in 3 children in the developing world

The socially sanctioned nature of the harmful practice of child marriage makes it perhaps a more elusive problem than other codified manifestations of CSEC which are uncompromisingly censured. Social acceptance results in turning a blind eye to victims of child marriage, who remain hidden under a cover of false respectability from where they cannot be seen or helped. Children secluded in marital homes enjoy restricted access to basic services and justice. They are less recognised in social sector policy and investments, which may protect victims of sexual abuse and exploitation in prostitution, pornography, or employment, but rarely in the context of early marriage. They also have more limited opportunities for participation, and fewer avenues

280 Center for Reproductive Rights, “Child Marriage in South Asia”, (2013), p.14.

281 Susanne Louis B. Mikhail, “Child Marriage and Child Prostitution: Two Forms of Sexual Exploitation”, *Gender and Development*, Vol. 10, no. 1 (2002).

through which to articulate their problems in the public domain and claim redress for the violations suffered. As compared to women, who also experience violence and discrimination in marriage, girls are more vulnerable as their age exposes them more severely to the control of adult male decision-makers in the family and the community.

Finally, while the sheer number of children involved in sexually exploitative activities, although unacceptably high, is limited by the market demand for sex services, and by the legal and social restrictions imposed on such illicit activities, the numbers of child brides are overwhelming to the point that the practice of child marriage has been defined as “a human rights crisis”.²⁸² The magnitude of the problem and the level of social acceptance associated with it make child marriage a complex challenge of limited comprehension without an easy solution. The first step into such a maze may be recognising the criminal nature of such practice on par with other CSEC manifestations and ripping the veil of silence that has long allowed impunity.

282 Center for Reproductive Rights, “Accountability for Child Marriage”, (2013), p.2.

7

ELIMINATING CHILD MARRIAGE TO PREVENT SEXUAL VIOLENCE AGAINST CHILDREN: A CALL TO ACTION

Continuum of harm, continuum of violations of children's rights

Child marriage is both a cause and effect of violence against children. Such a harmful practice opens the floodgates of child sexual abuse and exploitation, including of a commercial nature. Grounded in the low value accorded to the girl child, it precludes women and girls the opportunity of achieving their full potential and fulfilling their human rights to the highest attainable standard of health, including physical, mental, sexual and reproductive health, nutrition, education, training, inheritance and property. It also impacts enjoyment of fundamental freedoms, such as freedom of movement and expression, and participation in social, cultural and political life. It forces married girls to live in a hostile environment, bereft of the natural protective mechanisms granted to other children. Verbal, emotional, physical and sexual abuse is matched with several kinds of sexual and labour exploitation. The multiple and mutually reinforcing harms that child marriage causes to underage brides are further amplified through intergenerational transmission of ill health, poverty, disempowerment and gender-based violence to their children as well as to themselves as child brides and mothers move from a violated childhood into a deprived adulthood as women.

Yet, international standards are clear. States parties to CEDAW are under the obligation to take all appropriate measures to “modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either sexes or on stereotyped roles for men and women” (art. 5 (a)) and to ensure that “the betrothal and the marriage of a child shall have no legal effect” (art. 16(2)). Concern mounting at international, national and local levels on the far-reaching, irreversible effects of child, early and forced marriage has resulted from a progressive understanding of the continuum of harm inflicted on young victims reflected, in parallel, in a continuum of violations of their human rights. A deeper appreciation of the role that child marriage plays in impairing the lives of one third of girls in the developing world and, in turn, delaying global development progress has prompted the international community to pay renewed attention to such a critical issue. This can be evidenced by, for example, the inclusion of harmful practices, such as child, early and forced marriage, as one of the targets of the newly-established SDGs.²⁸³

²⁸³ UN General Assembly, “Transforming our world: the 2030 Agenda for Sustainable Development”, UN Doc. A/70/L.1, (2015), http://www.un.org/ga/search/view_doc.asp?symbol=A/70/L.1&Lang=E, accessed 9 October 2015.

This paper focuses on one specific dimension of the harmful effects of child marriage, exploring to what extent child, early and forced marriage can act as a channel to sexual abuse and exploitation of children, or – as it is being increasingly recognised – constitute a form of sexual violence against children in itself. Therefore, the recommendations for action proposed here will essentially address sexual violence against children who are at risk, victims or survivors of early marriage.

A call for multiple and coordinated responses

The continuum of harms and violations caused by child marriage calls for multiple and coordinated responses. The July 2015 Human Rights Council resolution on strengthening efforts to prevent and eliminate child marriage echoes the CEDAW and CRC Committees' Joint General Comment on harmful practices in recommending that a "holistic, comprehensive and coordinated" framework be adopted to end child marriage.²⁸⁴

The CEDAW/CRC's holistic framework for addressing harmful practices

The CEDAW and CRC Committees highlight the need for States Parties to establish a "well-defined, rights-based and locally relevant holistic strategy that includes supportive legal and policy measures, including social measures that are combined with political commitment at all levels." The Committees' proposed holistic framework consists of four integral components:

Data collection and monitoring

The Committees recommend that States Parties regularly collect and analyse quantitative and qualitative data on child marriage, disaggregated by sex, age, geographical location, socioeconomic status, education level and other key factors. It is recommended that States use appropriate methodologies and include a variety of stakeholders.

Legislation and enforcement

The Committees recommend the development, enactment, implementation and monitoring of relevant legislation. Seventeen strategies are put forth to ensure States effectively address and eliminate harmful practices, such as child marriage, within their legislation. These include, *inter alia*: ensuring that all legislation that condones or allows for harmful practices be repealed, including traditional, customary or religious law and that the remaining legislation addresses the root causes of harmful practices, provides for a minimum legal age of marriage of 18 years (with 16 years as an absolute minimum in exceptional circumstances), requires marriage and birth registration and permits equal access to justice for victims.

284 United Nations Human Rights Council, "Strengthening Efforts to Prevent and Eliminate Child, Early and Forced Marriage", (2015); CEDAW and CRC, "Joint General Recommendation/General Comment", (2014), p.10.

Prevention

The Committees underline that prevention can best be achieved through establishing rights-based social and cultural norms, empowering women and girls, raising awareness through public information campaigns which are part of long-term strategies, and building capacities at all levels including the engagement of traditional and religious leaders, health and social workers, police and justice officials.

Protective measures and responsive services

The Committees recommend that States ensure protection services for children at risk and victims are mandated and adequately resourced, including the provision of medical, psychological and legal services. Child sensitive procedures/services throughout the legal process are also recommended.²⁸⁵

While the structure adopted for the eight steps of the Call for Action in this paper is built on the CRC global implementation process, the entire global analysis on child marriage is firmly grounded in the CEDAW/CRC holistic framework.

The proposals set forth in this section build on the previous conceptual analysis in recommending a set of responses to contrast CSEC in child marriage. They are framed in the context of an organic comprehensive strategy and organised at two distinct, though complementary, levels:

- In relation to the content – Suggesting a set of *core action areas to contrast sexual violence in child marriage* referring to specific policy reforms and programme interventions that are required in relevant sectoral areas to address CSEC in the context of early marriage, and
- In relation to the process – Proposing a *CEFM-CSEC Framework for Action*, namely a human rights-based approach (HRBA) instrument aimed to inscribe the *core action areas to contrast sexual violence in child marriage* in the standard process that has been internationally adopted to implement the Convention on the Rights of the Child.

The HRBA *CEFM-CSEC Framework for Action* structures sectoral responses within a holistic integrated process as repeatedly recommended by international human rights bodies committed to eradicating child marriage and its devastating consequences for the protection of children.

Core action areas to contrast sexual violence in child marriage

The multiple impacts of child marriage on the life of a child are also reflected in the development options of entire countries. It is no coincidence that nations with high levels of child marriage also have high adolescent birth rates, high levels of maternal mortality and low levels of educational attainment. Although sexual violence in marriage has not yet been comprehensively assessed, extreme vulnerability of children trapped in early marriage gives reason to assume that sexual victimisation is also high. Urgent interventions must be called to support both married and unmarried girls. Accountability for child marriage has to be strengthened on the two parallel and integrated fronts of rehabilitation and prevention. On the one hand, children who are already

²⁸⁵ CEDAW and CRC, “Joint General Recommendation/General Comment”, (2014).

in marriage should be assisted by ensuring that they are protected from sexual abuse and exploitation, forced labour, trafficking, limited access to health, education and legal services, and denied enjoyment of all rights and freedoms. On the other, systemic failures need to be corrected at all levels to prevent more children from being victimised.

■ Empowering girls to develop resilience to harmful practices

Girls who learn about their rights are sensitised about education and employment possibilities and acquire negotiating and leadership skills are better equipped to value and seek alternatives to marriage. As girls build their capacities and enhance their social assets, their status in the community grows and they are valued with more respect, thus contributing to forming new views on women's self-confidence and capabilities. Girls' empowerment can be supported through life skills training, safe spaces for girls to share experiences freely and discuss life options, and the development of peer support networks. Opportunities for socialisation for girls and boys should be multiplied, especially in societies where girls are confined to domestic precincts and marriage aggravates constraint of movement and isolation. Collective reflection and action should be encouraged by supporting adolescent peer groups in questioning social constructions of sexuality, which in some communities imply that men are taught to satisfy their sexual desires freely and women to submissively accept men's sexual expectations and behaviours.²⁸⁶ Opportunities for dialogue among adolescent boys and girls should be multiplied to create a new generation of individuals who reject early marriage, appreciate the importance of education and uphold gender equality.

Patriarchal norms and structures that bar girls from enjoying their human right to be free from sexual violence in child marriage should be challenged and actively dismantled by joint efforts of governments and civil society, involving young people. A sense of self-awareness being instilled in girls, especially as they attain puberty and enter adolescence, would help strengthen their resilience to prevent sexual attacks, pressure to marry and conceiving young. Specifically targeting boys and men may also be necessary to change attitudes and behaviours that condone, and perpetuate child marriage. In particular, it would be relevant to initiate masculinities programming, with particular attention to young men who are likely to be future husbands, fathers of girls and boys who are expected to arrange their children's marriages, and husbands of young brides who are already in an early marriage relationship.²⁸⁷

Education, information and awareness-raising activities at the community level, where children live and can realistically contribute to transforming their own lives and those of their peers, are key to turning victims into change-makers and empowering girls today, with a view to strengthening the agency of the women of tomorrow.

■ Educating girls to defer marriage

Education of girls is directly associated with deferred marriage. A girl who is in school is still perceived as a child too young for marriage. Increasing the level of compulsory education can be an effective strategy to prolong the time when girls are unavailable for marriage – more so if high school education is extended to marginalised adolescent children living in remote or underserved areas who are more prone to early marriage and sexual victimisation. Policy, programme design and social sector investments should be framed in such a way to explicitly link girls' higher education with postponing the age of marriage, preventing teenage pregnancies

286 GreeneWorks, Promundo, "Engaging Men and Boys to End the Practice of Child Marriage", (Washington, 2015).

287 GreeneWorks, Promundo, "Engaging Men and Boys to End the Practice of Child Marriage", (Washington, 2015); CARE, "Engaging Men and Boys for Gender Equality Series: Stories of Engagement", Brief 1, (2014); CARE, "Engaging Men and Boys for Gender Equality Series: Lessons Learnt", Brief 2, (2014)

and keeping girls safe until they reach adulthood. Meeting jointly the twin objectives of keeping girls out of marriage and in school would help guard the main gateway to CSEC and, in turn, contribute to achieving a comprehensive array of other related core development and human rights goals, such as strengthening child protection, improving maternal and child health, preventing maternal and child mortality, increasing employment and income opportunities thus contributing to eradicating poverty, strengthening civic sense and awareness leading to more democratic and accountable governance.²⁸⁸ At the community level, teachers, healthcare personnel, social workers, the police, members of local government institutions, parents and children's groups should act as gatekeepers to ensure that children are retained within the main safety nets provided by the family and the school.

To boost education, schools should be developed as girl-friendly services, offering relevant and inclusive curricula and safe school environments. They should help girls acquire communication skills, learn how to negotiate with peers and adults, and expand their social networks. Schools should adopt non-discriminatory enrolment and retention policies, and teachers should be sensitised to follow-up with female students, including those who are married or pregnant, to ensure that they continue their education, especially during the critical transition from primary to post-primary levels when girls reach puberty and dropout rates tend to swell. Above all, quality education should mean enabling girls to grow into empowered women, capable of articulating needs, claiming rights, and participating with equal dignity in bringing about change in the lives of their families and communities as proactive citizens.

Schools are also potential child protection institutions available in most communities, even under-resourced ones; a vital component in the safety nets which children can rely upon locally. To overcome the vicious cycle of low female educational attainment and sexually abusive practices, schools should shield children from exposure to sexual violence and make them unavailable to sexually exploitative marriage, labour and human trafficking.

All school curricula should be oriented to critically educate both girls and boys on women's and children's rights, gender equality and the risks associated with sexually violent practices, such as child marriage, female genital mutilation, child trafficking and several forms of child labour. Not only the school programmes, but the entire school environment should reflect an ethos of inclusion and respect for the value of the girl child.

Efforts to extend education should not target only unmarried girls as a preventive strategy. Special arrangements should also be made with schools and families to expand girls' opportunities for post-primary education after marriage has brought it to a halt. The right to education must also be enjoyed by child brides and schooling can give them additional tools to cope with their condition.

■ Favouring the transition into rights-based social norms and practices

Social norms are vital in strengthening the identity and the cohesion of the communities where a child grows up. Social and cultural norms and beliefs that undervalue girls, however, underlie harmful practices which impair the safe development of children and entire social groups. Communities, including girls and boys, need to be engaged in understanding the interlinked harms resulting from a web of cultural, social and sexual norms and practices that justify early marriage and condone sexual violence against young brides. The primary decision-makers who

288 Jad Chaaban, Wendy Cunningham, "Measuring the Economic Gains of Investing in Girls: The Girl Effect Dividend", Policy Research Working Paper 5753, (World Bank, 2011), <http://elibrary.worldbank.org/doi/pdf/10.1596/1813-9450-5753>, accessed 10 June 2015.

determine when and whom girls should marry, namely fathers, husbands and parents-in-law, should be engaged in changing social norms. This can start with reviewing customarily held beliefs, attitudes and behaviours, and finding ways to restate what is best for children, to finally committing to protecting underage girls from marriage and all forms of violence. The entire community should be sustained in a process of self-analysis aimed at a progressive evolution of personal and collective worldviews toward developing more gender equitable values and sexual and reproductive roles. Radical attitudinal shifts are required if behavioural change has to be brought about with regard to deep-rooted internalised practices.

Comprehensive public information, sensitisation and awareness-raising campaigns should be mounted, with the inclusive involvement of primary stakeholders, especially young people, at both national and local levels, to enhance knowledge and stimulate discussions among citizens and in the media to reinforce pride in positive norms and values, and reject harmful beliefs and practices. Culturally-sensitive information, communication and education material should be made available for different age groups and in various languages, for dissemination through folk and digital media.

The perception that child marriage may protect girls from sexual harassment needs to be challenged through culturally-sensitive collective approaches engaging practicing communities in the exploration of alternatives. Positive deviant cases of families that have opted for education and deferred their daughters' marriage can be relied upon to create a countertendency that may trigger a positive tension between gender-biased and gender-transformative processes.

Public manifestations of commitment against child marriage and awards given to champions of girls' education and empowerment at international as well as local levels may reinforce collective commitments toward contrasting harmful practices. For instance, choosing "Ending Child Marriage" as the official theme for the inaugural Day of the Girl Child in 2012, or dedicating the International Day of the African Child 2015 to ending child marriage has helped raise the profile of the issue on a global scale, while in parallel inspiring the myriad of efforts underway at the regional and local levels. On the plane of field implementation of anti-child marriage efforts, the involvement of opinion leaders and respected personalities, such as community elders, older women, religious authorities, school teachers, or policy-makers would be crucial in inspiring social transformations that value girls' education and safety, and sanction gender equality in sexual and social norms. Considering the influence of religious beliefs on the justification given by many communities for child marriage, theologians, religious teachers and authorities can play a primary role in upholding the dignity of children in the light of their respective faiths and challenging faith-based motivations for harmful practices.²⁸⁹ As Archbishop Desmond Tutu, a champion in the movement against child marriage has pointed out, "[c]hild marriage is not a religious practice – it is a tradition. There are many good traditions that bind communities together. But traditions are also not static – they evolve. Traditions that are harmful, that have outlived their purpose, must be challenged."²⁹⁰ Similarly, Islamic leaders and scholars have firmly declared that child marriage and other practices harmful to children are not rooted in Islam.²⁹¹ Such messages should be disseminated among practicing communities where change is expected to take place.

Men and boys should be sensitised and engaged in creating sexual violence-free social and physical environments where girls feel safe and protected from all forms of harm, especially

289 African Union, "Desk Review of Literature on the Effect of Traditional and Religious Perspectives of Child Marriage", (2015), p.3.

290 "A Message to Men and Boys from Archbishop Desmond Tutu", Girls Not Brides website: <http://www.girlsnotbrides.org/desmond-tutu-a-message-to-men-and-boys-about-child-marriage/>, accessed 13 June 15.

291 African Union, "Desk Review of Literature on the Effect of Traditional and Religious Perspectives of Child Marriage", (2015), p.7

sexual and domestic violence. Efforts should aim to “un-teach” boys gender inequalities to prevent intergenerational transmission of gender-based violence.²⁹² Boys should be helped to internalise the damage caused by child marriage to girls and also to the wellbeing of future families and communities, and progressively commit to marrying adult young women who have completed their studies and can competently contribute to building a home with them.

■ Addressing the economic determinants of child marriage

Child marriage is more prevalent in poor families. Eradicating child marriage implies tackling the root cause of poverty. Financial incentives should be extended to help families address the economic factors prompting them to marry their daughters as children. Economic opportunities should be targeted to impoverished or indebted families, having several daughters and living in communities that traditionally practice child marriage. Equally important is to impart girls’ training in livelihood skills, matched with entrepreneurship schemes, to help young women access independent incomes and enter marriage with more authority later, freely and without succumbing to the extortion of the bride price.

An effective way of leveraging girl’s education to eliminate child marriage, as proven by programme evaluations, is providing financial aid to vulnerable social groups in the form of scholarships or subsidies.²⁹³ Conditional cash transfer schemes can benefit recipient parents who commit to delaying the age of marriage of their daughters until majority and allow them to complete secondary education. Out-of-school or illiterate girls should avail of non-formal and technical vocational education, which could reach rural and other under-served adolescents who are more at risk of early marriage through radio or digital media.

■ Ensuring adolescent sexual and reproductive health and health education

Empowering pre-adolescent and adolescent girls with knowledge and information on their sexual and reproductive health and rights is critical to raising awareness of their bodies and taking control of their life decisions, thus fulfilling “the right to sexual health information, education and services for all women and girls.”²⁹⁴ Sexual and life-skill education, together with information of their rights and responsibilities, helps girls achieve the necessary self-esteem and confidence to decide whom and when to marry, and engage in intergenerational dialogues with adult decision-makers in their families and communities on life choices for their future.

Making available age-appropriate, culturally-relevant, confidential healthcare services specifically addressing adolescent sexual health needs would help girls enhance their knowledge about sexuality and make informed choices with regard to family planning and contraception, responsible sexual behaviours, prevention of HIV and other sexually transmitted diseases, gender relations and protection from all forms of violence, including sexual and domestic violence.

Adolescent-friendly reproductive and sexual health services need to provide education and counselling on the dangers of early pregnancy to girls and their family members, who should be guided to delay the first pregnancy and take special care of girls during pregnancy, relieving them from heavy work, and increasing the quantity and quality of food intake. Obstetric services

292 CARE, “Addressing the Intergenerational Transmission of Gender-Based Violence: Focus on Educational Settings”, (2014).

293 Anju Malhotra, Ann Warner, Allison, McGonagle, Susan Lee-Rife, “Solutions to End Child Marriage: What the Evidence Shows”, (International Center for Research on Women (ICRW), 2011).

294 CEDAW Committee, General Recommendation No. 24: article 12 of the convention (women and health), (20th Sess., 1999), in Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, at 364, para. 8, U.N. Doc. HRI/GEN/1/Rev.9 (Vol. II), (2008), para. 18.

should also be equipped to provide antenatal, delivery and infant care to pregnant teenagers and manage the complications that girls' immature, often malnourished bodies may face during pregnancy and childbirth to reduce adolescent maternal and child mortality and morbidity. Outreach health services are vital to child brides who live in underserved and unconnected rural areas. Husbands and in-laws should be involved in community health interventions aimed at sensitising family members on the special health, nutrition and care needs of an adolescent mother.

Appropriately trained health care providers, teachers and other community-based frontline workers could impart comprehensive sexuality and health education and spread information on harmful practices, promote change in sexually abusive patterns persisting among boys, and identify poor, out-of-school and socially marginalised girls belonging to early marriage-practicing communities to prevent them from becoming victims of sexual abuse and exploitation.

■ **Extending special protection measures to children at risk or victims of sexual violence in child marriage**

Child marriage often leads to other conditions that undermine child protection, such as commercial sexual exploitation of children (CSEC) and sexual abuse; child trafficking and the sale of children; early widowhood, destitution, neglect, marginalisation, and stigmatisation; domestic violence; exploitative domestic labour; forced labour, sexual slavery and bondage. Yet, as stressed, the respectability attributed to the marriage institution results in various forms of sexual abuse and violence against child brides remaining unrecognised and, consequently, unaddressed in both policy and programming. Interventions targeting children, as well as those benefitting women, may risk missing married girls. Specially designed interventions for girls who are victims of sexual violence and other forms of abuse, exploitation and neglect in marriage are necessary to reach out to a group that often escapes the notice of policy-makers.

Tailor-made interventions need to be designed for adolescent victims of child marriage to help them overcome the effects of violence, be removed from abusive situations and be fully reintegrated in their communities, by extending health, psychological and legal services relevant to their age and condition. Adolescent brides should also be assisted with mental health services to help them overcome states of anxiety and depression, and cope with the challenges of motherhood and an uncondusive family life.

Adolescent-centric protection services should be established or strengthened to support girls who suffer domestic and sexual violence in marital homes, subjected to female genital mutilation, trafficked, raped or otherwise harmed by their husbands or in-laws, or at risk of being injured or murdered in the name of so-called "honour". Both victims and survivors must be able to reach out for help and rely, for example, on toll-free dedicated helplines linked to counselling services that can help them find a way out of threatening family environments and relationships with older or controlling partners. Emergency services should be complemented by long-term psychological, social and economic recovery solutions. Shelter and income generation opportunities would be necessary for survivors of early marriage and their children to help them find an alternative to abusive unions.

Legal procedures should be reviewed to facilitate access to justice, by removing time limitations for submission of annulment petitions, for example, or requirements for brides to be supported by an adult to file a petition when they are still minors. Legal and social services should be made available to give realistic legal options to girls who seek to leave registered marriages or informal unions. Protection measures should also be extended to shield girls from retaliation

that such acts may trigger in the marital homes. Legal aid services should protect the rights of girls throughout the legal process, including the right to be heard, while also being protected from possible retaliative acts, during court proceedings. Psycho-social assistance should be extended to victims and survivors of sexual abuse and exploitation in child marriage to help them overcome the trauma and reintegrate into social life. Services should be equipped with experienced personnel trained in conditions such as post-traumatic disorders, anxiety and depression, similar to those envisaged for CSEC-victims. Basic social services should also support girls who decide to return to their communities after the dissolution of their marriage, protecting them from social stigmatisation, facilitating reintegration into their families and social groups, and preventing re-victimisation.

At the local level, efforts should be multiplied to avert using child marriage as a cover for child trafficking and the sale of children in prostitution, pornography and other highly exploitative sexual trades. Also, children who, through marriages, have become involved in exploitative child labour, especially in tourism and domestic work, should be urgently removed from their workplaces and their employers prosecuted. Girls involved in “temporary marriages” with men from other communities, tourists or travellers, “married” to pimps and engaged in brothels or in other exploitative “entertainment” establishments, exploited in pornography or through the illicit use of the Internet should receive special protection and recovery services. The role of local police is essential in identifying traffickers and stopping spurious underage unions. Enhancing awareness, information and integrity among law enforcement personnel is key in waging a fight against child marriage, child trafficking and sexual exploitation of children.

Exceptional measures are needed for children whose vulnerability is aggravated by situations of conflict, crisis, emergency or disaster. The issue of child marriage should be integrated into humanitarian assistance. Community resilience programmes should include the creation of child-friendly safe zones for girls to deter parents from resorting to marriage as a way to minimise risks for their daughters. Mechanisms to prevent early marriage, child trafficking and other forms of sexual violence against children should be built into emergency and post-emergency programmes to ensure that children are restored to their families, communities and school activities as soon as possible. Special protective interventions should target adolescent girls to protect them from all forms of sexual violence, particularly in the context of early marriage.

More strategically, the resilience of families and communities – and also young people – in defending themselves from child predators should be strengthened through appropriate awareness-raising activities and service provision. Community mapping of vulnerable families, watchdog groups, safe migration cards and other such protective mechanisms should be established in collaboration with local government institutions, police, social services, schools and community and young people’s groups to prevent children from leaving their families or schools to move to other households or locations, in the village or outside, on account of marriage. Women’s and children’s groups active locally can be effectively mobilised to support vulnerable peers and families, and strengthen child safety nets in the community.

■ **Building capacities to curb sexual abuse and exploitation of children in child marriage**

The first step toward addressing sexual violence against children in early marriage is to ensure that adults who are responsible for the care and protection of children are equipped to recognise it. The capacity of frontline professionals, policy-makers and parents need to be developed to help them understand, identify and address sexual harassment, abuse and exploitation of children, especially when they take place and, to a large extent, are accepted as inevitable within marriage. Being able to name marital rape, sexual bondage, domestic violence, spousal neglect, labour exploitation, human trafficking and sale of children for marriage is a necessary condition

to be able to recognise such blatant violations of children’s fundamental rights. Training should help child marriage and other related harmful practices, such as female genital mutilation or the dowry system, to be recognised as damaging acts rather than necessary perpetuations of traditions.

Community and religious leaders, decision-makers in the family and in the government, the police, the judiciary and immigration officials, birth and marriage registrars, media personnel, in addition to service providers in the spheres of health, nutrition, education, social welfare and child protection should be adequately oriented, trained and made aware of legal provisions and prevailing violations of children’s rights in early marriage, the functioning and requirements of the civil registration system, and the role that they can play in preventing harmful practices and rehabilitating victims. Training should focus on understanding the causes of child marriage, enhancing knowledge of existing international and national legal, policy and programme frameworks, learning about effective strategies to deter child marriage and means to mitigate the negative effects of underage marriage on child brides, together with ways to help them access remedies and child-friendly services.

In particular, parents and parents-in-law, responsible for making decisions relating to the lives of potential or actual child brides, require special information on existing legal provisions barring early marriage, and the adverse consequences that premature unions and pregnancies have for the future of their daughters, sons, grand-children and families as a whole. Religious leaders involved in solemnising marriages of underage children and individuals responsible for managing traditional courts alternative to formal justice systems should be trained on the legal, social and ethical dimensions of child marriage and the human rights of children and women, and should be further encouraged to delay the age of marriage in the communities where they are active.²⁹⁵

In countries where child marriage is practiced in pockets in which immigrant groups live, national authorities should take conscientious steps to identify prevailing issues and institute mechanisms to reach out to children who are either at risk or victims of early marriage. They should ensure that families and professionals responsible for child care and protection are fully trained in the cultural root causes of child marriage and enabled to address the problem consistently.

Realising the Right to Freedom from Sexual Violence in Child Marriage: A CEFM-CSEC Framework for Action

A continuum of care and protection

The multifaceted nature of child, early and forced marriage calls for long-term responses to tackle the several interwoven determinants that, at various levels, contribute to perpetuating such a harmful practice. A general consensus is being built around the notion that the complexity of the problem requires that effective legal, policy and programme measures be taken by coordinating efforts at international, national and local levels. Further, inter-sectoral synergy would be required to integrate action across the spheres of adolescent health, nutrition, education, child protection and participation, in addition to justice, law enforcement, social welfare, immigration, communication and media.

295 UNICEF, Religions for Peace, “From Commitment to Action: What Religious Communities Can Do to Eliminate Violence Against Children”, (2010), http://www.unicef.org/eapro/UNICEF_Religions_for_Peace_Feb2010.pdf, accessed 9 June 2015.

To address the issue of child marriage and, in particular, of gender-based sexual violence against children embedded in the practice, it is necessary to adopt a holistic, rights-based and locally-relevant approach while devising legal and policy measures, designing social programmes and services, building political commitment and ensuring accountability at all levels.

A strategy targeting children who are forced to play roles traditionally assigned to women would ideally find core points of reference in the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women. A *CEFM-CSEC Framework for Action* is proposed below as a systematic human rights-based approach (HRBA) tool to guide the development of activities aimed at ending child marriage as a primary source of sexual abuse and exploitation of children. The model hinges on eight integrated steps moulded over the process outlined in the international guidelines for implementing the Convention on the Rights of the Child.²⁹⁶

By adopting the eight steps, concerned duty-bearers will be able to help children fulfil the right to be free from sexual violence in the context of child, early and forced marriage. While the steps follow a logical order, they can be implemented in a different sequence according to opportunities emerging in local contexts. The *CEFM-CSEC Framework for Action* can be employed to address the multiplicity of issues relating to sexual violence in child marriage. Its application can be adapted to different conditions stemming from specific socio-cultural groups and geographical areas. While problems are likely to vary in nature and intensity according to the local situation, the *core action areas* identified above are likely to emerge in most contexts and can be integrated into the *Framework* along with other locally-relevant activities.

The *CEFM-CSEC Framework for Action* provides a platform for integrating vertical coordination at international, national and local levels, while bringing about greater horizontal harmonisation among policies that across sectors can contribute to tackling child marriage but, presently, are often managed as independent silos. Therefore, the *Framework* could serve as a tool for coordinating efforts unleashed by a variety of stakeholders, such as national and local governments, international and regional organisations and bodies, independent human rights institutions, health, education and law enforcement officials, civil society organisations and women and children's groups.

National governments, the international community and local groups engaged in freeing children from the sexual bondage imposed by early marriage will profit from relying on the *CEFM-CSEC Framework for Action* as they attempt to address the wide variety of interconnected problems clustering around underage unions from a child-friendly, convergent, inclusive, participatory human rights perspective.

The 8 Steps in the CEFM-CSEC Framework for Action

The *CEFM-CSEC Framework for Action* includes eight steps to developing a human-rights based system to combat sexual violence against children in early marriage. Each step is supported by a *Checklist* for implementers to help them ensure that the *CEFM-CSEC Framework for Action* is applied effectively and comprehensively.

²⁹⁶ UNICEF, "Implementation Handbook for the Convention on the Rights of the Child", (New York: UNICEF, 2007), pp.51-74.

Step 1 – Institutionalise a permanent human rights-based Coordinating Mechanism: developing permanent structures to provide a holistic response to sexual violence against children in the context of marriage

Systems responsible for child protection often tend to be organised by vertical lines of responsibility, with the risk that cross-sectoral issues, such as early marriage and sexual violence against children, remain unattended. Specific *Coordinating Mechanisms* need to be established to function as a point of reference for coordinating activities managed by different actors engaged in ending sexual violence and other forms of abuse and exploitation in child marriage. To ensure that action to contrast early marriage and sexual violence against children be sustained in the long-term, the *Coordinating Mechanism* needs to be established as a permanent institution in the government system. An intersectoral and institutionalised *Coordinating Mechanism* will seek to mobilise coordinated action across different levels of government directly or indirectly concerned with children, as well as between government and civil society, including young people's groups, as in the case, for example, of the Alliance to End Child Marriage initiated by the Ministry of Women in Ethiopia.²⁹⁷ It will offer a platform for forging partnerships among a wide variety of stakeholders, helping to build bridges among different constituencies.

At the local level, a *Coordinating Mechanism* should involve, in addition to the local government, children, families, communities, schools, service providers in the health, education and social welfare sectors, law enforcement and judiciary, non-government welfare and human rights organisations, academic and professional organisations, and the media. At the national level, a *Coordinating Mechanism* involving government, civil society, representatives of service provision, law enforcement, judiciary, human rights institutions, academic bodies, professional associations and the media would facilitate convergent action relating to the elimination of early marriage in public health, nutrition, education and child protection programmes. It would also help adopt a geographical focus, directing investments and programmatic interventions to high prevalence areas where child marriage and sexual violence against children is more deeply rooted. Special support should further be granted to international processes that seek to create a global *Coordinating Mechanism* to eradicate child marriage and its consequences for sexual violence against children by embedding such thematic areas in larger development processes, such as the Sustainable Development Goals.

Coordinating Mechanisms active at the local, national and international levels would be responsible for steering action across the other steps of the *CEFM-CSEC Framework for Action*, acting as a focal point of reference for legal, policy, programme, monitoring and evaluation activities.

CHECKLIST

- Have *Coordinating Mechanisms* been established in local and national governments to promote and monitor efforts and prepare a *Strategy* to eliminate child marriage and sexual violence against children?
- Has a *Coordinating Mechanism* been institutionalised in government and granted sufficient authority by the government and civil society?
- Have *Coordinating Mechanisms* been created at local, national and international levels and have vertical linkages been established among them?

²⁹⁷ United Nations Human Rights Council, "Preventing and Eliminating Child, Early and Forced Marriage", (2014), p.11.

- Has representation from key duty-bearers been achieved in the *Coordinating Mechanism* to ensure that all stakeholders holding responsibility for child marriage and sexual violence against children converge efforts and are made accountable for their eradication?
- Are children's views represented in the *Coordinating Mechanism* and respected in its work?

Step 2 – Devise a consistent Legal Framework: *ensuring legislation, regulatory frameworks and procedures which coherently aim to eradicate sexual violence against children in child, early and forced marriage*

Legal Frameworks relating to sexual violence against children and women should be developed in a way that clearly recognises child and early marriage as a form of forced marriage potentially leading to sexual violence. The Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women, together with a wide body of international law, establish clear obligations with regard to the necessary steps that nations must take to abolish practices harmful to children resulting in sexual violence and undermining health, education and full protection, especially of girls. A national *Legal Framework* should be developed by reviewing existing formal and customary laws to make them “fully compatible” with international and regional human rights standards, which firmly condemn child marriage and other practices resulting in sexual abuse and exploitation of children.

Discriminatory provisions of criminal codes and personal laws concerning marriage should be abolished. Legal harmonisation should take place in statutory and customary law in countries where plural legal systems persist, while establishing the primacy of national legislation. In complying with international standards, national governments should set and enforce a legal minimum age of marriage at 18 years for both men and women, with or without parental consent, establishing an absolute minimum age for marriage to be not below 16 years and only in exceptional circumstances defined by law. They should also uphold equality between males and females upon entering into, during and at the dissolution of marriage, including custodial rights over any offspring from the marriage. They need to ensure free, full and informed consent to marriage by both parties and establish civil registration and vital statistics systems to allow accessible, compulsory and free marriage and birth registrations. National legislation should provide that the betrothal and the marriage of a child have no legal effect, clarifying that non-consensual unions of underage individuals, once contracted, should be legally annulled.

National *Legal Frameworks* should criminalise early, child and forced marriage and other related forms of sexual violence against children, including sexual abuse and exploitation, marital rape, sexual bondage, slavery, torture, the sale of children and trafficking, forced labour, the payment of a bride price and domestic violence. All such crimes, which should be legally prosecuted when perpetrated against women, must call for harsher punishments when they involve children. Considering that criminalising such acts of blatant violations of children's rights may deter victims from exposing parents, special care should be put into accompanying legal reforms with adequate awareness of families and communities.

Legal Frameworks should explicitly bar child marriage as a necessary step toward ensuring that no child be subjected to sexual abuse and exploitation, slavery, torture, forced labour or other inhuman treatment. Similarly, legislation should make no concession to so-called “honour” as an exculpatory or mitigating factor in crimes committed against girls, while also ensuring that tribal councils are not allowed to trump state courts. As stressed by the Human Rights Council, law should not allow the perpetrator of rape to escape from sanctions by marrying the victim.²⁹⁸

²⁹⁸ United Nations Human Rights Council, “Strengthening Efforts to Prevent and Eliminate Child, Early and Forced Marriage”, (2015), para. 5.

All legislation should ultimately aim to protect children from sexual violence, an extreme violation which encompasses several forms of physical, psychological, emotional and moral violence causing life-long effects on the most intimate and private spheres of the child's body and personality. The international community and human rights bodies would be supporting national processes more vigorously if they ensured that international law more clearly established the interlinks existing between early, child and forced marriage and forced labour, child trafficking, slavery, torture and, ultimately, sexual abuse and exploitation of children. More advanced international law could be further supported by a global strategic action plan to be adapted for implementation at nation and local levels.

The overarching interests of the child should impose standard norms regulating marriage and barring underage unions to protect children from sexual abuse, among other harms. Overall, policies of equal rights of girls and women and zero tolerance toward all forms of violence against children, especially sexual abuse and exploitation, should inform the development of legal and programmatic standards. Legislation defining age for compulsory education should progressively align with the minimum age for marriage. Establishing a legal minimum marriage age, however, should in no way be used to restrict access to sexual and reproductive health services for underage girls.

Legislation alone is not sufficient to combat sexual violence against children in marriage. A clear commitment should be made to ensure that law is adequately enforced, more so in contexts where social and cultural norms tend to trump legal norms. Mechanisms to effectively implement the law will need to be devised and their functioning monitored. Compulsory, free and accessible birth and marriage registration systems should be established to ensure that weddings are contracted legally by adult consenting spouses. At the community level, the local government, the judiciary and law enforcement institutions should play a direct role in enforcing marriage registration of all nuptials in their constituencies, especially extending registrar services to poor remote peripheries where child marriage may be more prevalent. They should also ensure safe migration of children who are transferred to other locations, to avert child trafficking and the sale of children for marriage and other forms of sexual abuse and exploitation. Specific mechanisms aimed to ensure that no dowry or other forms of payment take place over marriage will help prevent forms of commodification and the sale of child brides.

While firmly enforcing criminal legal penalties against perpetrators, *Legal Frameworks* will ensure that mechanisms be established to protect victims seeking justice, enhancing access to legal remedies, protecting them from acts of retaliation and offering social and economic recovery services to prevent destitution, stigmatisation and further victimisation. They will further seek to provide support to girls and their children involved in dissolution of marriages and assist in the returning of bride price payments.

In the context of developing *Legal Frameworks*, communities where the practice of child marriage is prevalent should be engaged in inclusive participatory processes aimed at enacting, implementing, monitoring and disseminating the law. Young people and girls who are at risk of being married underage or are already married should contribute their views when developing *Legal Frameworks* aimed to protect children from the harmful effects of child marriage.

CHECKLIST

- Has a principled national *Legal Framework* been developed in such a way as to prohibit child marriage and prevent all forms of sexual abuse and exploitation within the framework of the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women and other relevant international human rights laws and standards?
- Is a national *Legal Framework* enacted and enforced unambiguously prohibiting child marriage before the age of 18 for both boys and girls, with or without parental consent, even where personal or customary law provides otherwise?
- Have social and cultural norms been reviewed in a way as to respect customs while uncompromisingly overcoming traditional practices that are harmful to children, such as early marriage and the dowry system?
- Have regular as well as independent legal reviews been carried out, in consultation with young people, to ensure that national *Legal Frameworks* reflect standards and principles framed in international law?
- Have mechanisms been established to ensure that child, early and forced marriage victims have access to advice, advocacy and complaint procedures to ensure remedies for breaches of their right to freedom from child marriage and sexual violence?

Step 3 – Conduct a Child Impact Assessment: *ensuring a systematic process to gather data in order to monitor, assess and evaluate the impact of anti-early marriage law, policy and practice on children – in advance, during and after implementation*

A necessary initial step toward setting in motion a coherent process aimed to end child marriage as a radical measure against child sexual abuse and exploitation is to enhance the understanding of how many children are victimised and what are the impacts on their healthy and balanced growth and development. As mentioned, sexual violence against children is best understood as a practice taking place in conventional sexually exploitative settings, such as the sex trade or pornography. Its systematic perpetration hidden in the context of marriage remains broadly unrecognised. The numbers affected by child marriage are potentially far larger than those involved in the sex industries and, despite overall progress, early marriage rates relating to the poorest, least educated girls living in marginal areas are not showing significant improvements.²⁹⁹

Overall, data on early, child and forced marriage is still scanty and at times inaccurate, even with reference to the very definition of “marriage”, with lines separating the notions of formalised marriage, informal unions, cohabitation or dating being rather blurred. While initial global and national assessments exist, it is necessary to move deeper into the analysis by gathering regular and comprehensive data, disaggregated by sex, age, geographical location, educational levels and social and economic conditions. This would support planning and accurate monitoring of action targeted to disadvantaged groups and tailored to local cultural and economic conditions. In particular, it would be relevant to disaggregate age-related data to compare the situation of pre-teen (younger than 15 years) and teenage girls to assess how pressure to marry increases throughout the adolescence years. Further, disaggregation should help analyse children who are already married versus those who are at risk of marriage in order to gauge how to balance curative with preventive responses. Gender-sensitive social, economic and anthropological assessments would help capture the web of demographic, social, cultural and economic causes responsible for the perpetuation of uncondusive attitudes and behaviours leading to harmful practices against children.

²⁹⁹ United Nations Population Fund, “Marrying Too Young. End Child Marriage”, (2012), p.56.

Targeted data should focus on indicators that are core to sexual violence in the context of marriage, such as:

- percentage of women first in unions by age 18 by age group (15–19, 20–24 and 45–49),
- percentage of girls 15–19 years of age currently in unions,
- spousal age difference,
- percentage of women currently in a polygamous union by age groups,
- percentage of ever-married women who were directly consulted in the choice of their partner,
- education levels,
- enrolment and dropout rates among girls by school years,
- family size and sex ratio,
- teenage pregnancies, obstetric complications and child and maternal deaths,
- household wealth,
- place of residence,
- migration and child labour,
- size of the dowry price or other economic transactions taking place over child marriage.

Quantitative data could be complemented by sociological and anthropological analysis of conformity to social norms and traditions, prevailing gender roles and socialisation processes, especially with reference to harmful practices, decision-making patterns and attitudes toward the law to gauge the motivations underpinning families and communities' legitimisation of child marriage, sexual violence and commercial sexual exploitation of children through marriage.

Specific aspects that have not been fully explored would need further enquiry; for example, the reasons men prefer young brides, the consequences of child marriage for boys and men, the effects of intergenerational transmission of gender-based violence,³⁰⁰ the overall impact of early unions on children who are parented by an adolescent mother and, at times, father. Data gathering should be intensified in geographical locations where the problem is most prevalent and the number of at-risk girls high. It should also be extended to under-researched areas, like Latin America and the Middle East and North Africa (MENA) regions, or among practicing migrant communities in high-income countries.³⁰¹

National statistical and research bureaux should include data relating to early marriage and sexual violence against children in the databases that they maintain for policy development and planning, so countries can start building a stronger evidence base to inform effective policy and programming. Gathering quantitative and qualitative data on the extent of the problem, the profile of victims and the effects of such intolerable violations of human rights on the individual, as well as entire societies, would provide the foundation for overcoming a generalised situation of condoning and impunity surrounding sexual violence against married children.

300 CARE, "Addressing the Intergenerational Transmission of Gender-Based Violence: Focus on Educational Settings", (2014).

301 Alice Taylor, Giovanna Lauro, Marcio Segundo, Margaret Greene, "She Goes With Me in My Boat: Child and Adolescent Marriage in Brazil", (2015); Rachel Vogelstein, "Ending Child Marriage: How Elevating the Status of Girls Advances U.S. Foreign Policy Objectives" (New York: Council on Foreign Relations, 2013), p.30.

Child Impact Assessments should ensure that data relating to problem analysis be complemented with information on the impact of initiatives that are being progressively set in motion at the international, national and local levels. Information on the effect of law, policy or budgets on curbing child marriage would lead to a continuous process of impact assessment, aimed to monitor results in advance, during and after implementation takes place. In particular, it would be relevant to assess to what extent responses targeting child marriage have been successfully integrated with broader measures in the related areas of children's health, education and protection.

Monitoring, evaluation and *Child Impact Assessments* should take place in the context of regular data collection systems to be established in coordination with the health, education, judicial, law enforcement, child protection and welfare sectors. Such analytical processes should be built into government at all levels, but also include independent studies representing the views and sensitivities of civil society, such as non-government organisations, professional associations, academic bodies, independent human rights institutions and the media. A special role should be granted to community members, including children and adolescents' groups, which can adopt participatory research, social mapping, focus groups, key informant interviews and oral history methodologies. These tools can capture issues as they manifest themselves in local settings and attract the attention of the national and international communities on the predicament of children sexually violated in early marriage in a variety of different cultural and social contexts.³⁰²

Such processes should take place with due adaptation at local, national and international levels and, based on comparable methodologies, result in the production of regular reports on the state of child victims of early marriage and sexual violence, and progress achieved toward eliminating harmful practices prejudicial to children's safety and protection.

CHECKLIST

- Is quantitative and qualitative information available on early marriage and its linkages with sexual abuse and exploitation of children adequate to inform the development of a *Strategy* encompassing policy, law and programmes aimed to overcome the problem?
- Is information disaggregated along lines of discrimination to identify groups and areas with high concentrations of child marriage, significant age differences between spouses, child trafficking, forced labour, slavery and other forms of sexual violence against children connected with marriage?
- Has a *Child Impact Assessment* process been established to ensure that the impact of law, policy and practice on child victims or at risk of early marriage and sexual violence (with reference in particular to access to legal, sexual and reproductive health, secondary education and child protection services) is assessed prior, during and following the phases of design and implementation?
- Are independent evaluative processes carried out in addition to regular *Child Impact Assessments*?
- Is a regular *Report on the state of child marriage and its impact on sexual violence against children* published and effectively used to inform policy development, and change attitudes and practices by key duty-bearers, especially policy-makers and families?

³⁰² See, for example, the innovative Sensemaker® research methodology successfully adopted to gather a large number of girls' stories in countries such as Rwanda and Ethiopia. "Using Sensemaker® to Understand Girls' Lives, Lessons Learnt from GirlHub", (2014).

- Have such *Reports* been developed and disseminated at local, national and international levels?
- Have child-friendly versions of the *Report* been developed with the involvement of young people?

Step 4 – Frame a Comprehensive Strategy: providing a holistic, intersectoral agenda to eradicate sexual violence against children in early marriage

The process of data gathering, monitoring, evaluation and impact assessment will support the development of a *Comprehensive Strategy*, agenda or action plan, aimed to protect children from sexual abuse and exploitation in marriage. The *Comprehensive Strategy* provides a unified, rights-based canvas for implementing systematically *core action areas* (identified above), defining the scope of the *Coordinating Mechanism*, ensuring the development of a *Legal Framework* and steering the implementation of initiatives to curb sexual violence in child marriage along the 8 steps in the *CEFM-CSEC Framework for Action*. The *Comprehensive Strategy* will define key objectives, set forth methodologies and activities, identify main lines of accountability and determine timelines for action. To be more effective, it should be framed through a process of consultation involving core duty-bearers and young people, particularly those who are at risk of child marriage or are already married. Some countries, such as India, Sierra Leone and Norway, have developed national strategies or action plans to combat child marriage and provide a model for other nations.³⁰³ Global as well as local civil society alliances have also engaged in theory of change or similar exercises to conceive roadmaps for comprehensive holistic action.³⁰⁴ National *Comprehensive Strategies* offer the necessary platform for further development of local action plans, primarily in areas where child marriage is prevalent, to reach out to children with location-specific initiatives. International *Comprehensive Strategies* can provide a unifying focus to eradicate child marriage globally and a point of reference for endemic regions and countries.

The *Comprehensive Strategy* will address primary issues connected with child marriage and sexual violence. On the one hand, it will focus on preventive measures aimed mainly to protect under-18 vulnerable girls in high-risk situations, such as belonging to practicing communities, being out of school or with low education levels, living in poverty or residing in remote, rural areas. On the other, it will seek to support children who are already married or in unions and confronted with various forms of sexual violence. It will indicate ways to implement activities in *core action areas*, specifically:

- promoting universal inclusive education at primary and secondary levels, especially for girls,
- eradicating the dowry and bride price systems,
- ensuring universal birth and marriage registration,
- fostering safety of girls and women from violence,
- encouraging amending legislation and strengthening law enforcement,
- bolstering mechanisms that protect children’s rights and address violations,

303 Ministry of Women and Child Development, Government of India, “Draft National Plan of Action to Prevent Child Marriages in India”, (n.d.); Ministry of Women and Child Development, Government of India, “National Strategy Document on Prevention of Child Marriage”, (2013); Ministry of Women and Child Development, Government of India, “Report on the National Consultation on Prevention of Child Marriage” held at New Delhi on 25th May 2012; United Nations Human Rights Council, “Preventing and Eliminating Child, Early and Forced Marriage”, (2014), p.11.

304 See, for example, Girls Not Brides, “A Theory of Change in Child Marriage”, (n.d.); Center for Research on Women, UNFPA, Plan Bangladesh, “Theory of Change: Ending Child Marriage in Bangladesh”, (2014).

- extending special social and economic support to poor and vulnerable families,
- enhancing opportunities for women, and
- strengthening children's participation.

Overall, it will articulate the need for ending child marriage as an urgent priority for controlling the invisible perpetration of sexual violence against children, especially in private domestic settings where child brides are kept.

To ensure that the issue of child marriage gains visibility, the *Comprehensive Strategy* will need to be endorsed at the highest level of government and commitment garnered by concerned government and non-government players. The *Comprehensive Strategy* to eradicate sexual violence against children in early marriage should converge with national development planning and budgeting, ensuring operational linkages with sectoral planning in the areas of education, healthcare, social welfare and child protection. Where National Plans of Actions for Children exist, activities should be harmonised with the national *Comprehensive Strategy* to end child marriage. The *Comprehensive Strategy* will require regular monitoring and evaluation as part of the ongoing *Child Impact Assessment* and evaluation processes, to ensure mid-course corrections and periodic reports to parliament and the public.

CHECKLIST

- Have national and local child rights-based *Comprehensive Strategies* been developed to eliminate early marriage and sexual violence against children reflecting location-specific priorities within global frameworks?
- Has the anti-child marriage *Comprehensive Strategy* been linked to the National Plan of Action for Children, or other planning processes directly or indirectly concerning children?
- Has the *Comprehensive Strategy* been accorded high priority by being adopted and promoted by the parliament?
- Does the *Comprehensive Strategy* pay special attention to children who are at risk or victims of child marriage and, in general, to girls who are out of school, live in poor families, have several sisters and belong to social groups that traditionally practice early marriage?
- Has the *Comprehensive Strategy* been designed through an inclusive process of participatory consultation and engagement of young people, including children affected by child marriage and their communities?
- Does the *Comprehensive Strategy* include specific priorities, time-bound goals, activities, roles and lines of accountability?
- Are the *Comprehensive Strategy* document and the process of preparing it well-disseminated throughout all levels of the government, young people, families, communities and organisations working with children?

Step 5 – Develop a Children’s Budget and budgetary analysis: ensuring adequate resource commitment and budget analysis to uproot sexual abuse and exploitation of children in marriage

The *Comprehensive Strategy* to eradicate sexual violence against children in early marriage would risk remaining a mere declaration of intent if adequate resources were not mobilised to operationalise it. *Child Impact Assessments* should include budgetary analyses to assess the proportion and nature of resources that are made available to tackle the sexually abusive practice of child marriage. As commitment toward curbing early marriage grows, it is vital to ascertain the extent of financial and human resources that can be accessed to reach set objectives at the local, national and international levels. Budgetary analysis can help identify untapped sources and advocate for the mobilisation of additional ones “to the maximum extent of available resources”. An accurate budgetary analysis further helps determine how well local communities, nations and the international community at large are fulfilling their obligations by ensuring that budget expenditures effectively impact upon children. The ultimate objective of budgetary analysis is to develop dedicated *Children’s Budgets* for the eradication of sexual violence against children in early marriage and ensure that resources are employed effectively.

Children’s Budgets for ending early marriage should be conceived as coherent components of the *Comprehensive Strategy* and developed in parallel with it, by adopting the same participatory approach aimed to involve key duty-bearers, in particular, policy-makers, families, communities, and young people. Similarly to the *Comprehensive Strategy*, *Children’s Budgets* should seek to elevate the visibility of child marriage-related issues, foster a sense of ownership among participating partners and ensure accountability by duty-bearers. They will also need to be regularly published, monitored, and disseminated among policy-makers and the public, including children, to inform about investments necessary to address child marriage and enhance accountability by responsible parties.

From a human rights perspective, it should be advocated that children – and in particular those who are more disadvantaged for being trapped in marriage and exposed to sexual and other forms of abuse and exploitation – are able to access their fair share, by redressing inequalities or discrimination in the application of resources. Girls and potential or actual victims of child marriage should be prioritised in both developing the *Children’s Budgets* and benefitting from them.

CHECKLIST

- Have local, national and international budgets been analysed to assess what proportion of resources has been allocated to eliminate child marriage and stop sexual abuse and exploitation of children?
- Have specific *Children’s Budgets* been developed to address early marriage and sexual violence against children at the local, national and international levels?
- Have budget expenditures been carefully analysed to assess the impact that they have made in decreasing the number of child marriages and progressively tackling sexual violence against children?
- Are budget processes transparent and accountable, and do they involve consultations with children?
- Are *Children’s Budgets* disseminated to clearly communicate the proportion of resources committed to eradicating child marriage and sexual abuse of children?

Step 6 – Make the right to freedom from sexual violence in child marriage known: raising awareness on the effects of sexual abuse and exploitation in child marriage and the child’s right to be free from sexual violence

Families and communities responsible for continuing the practice of early marriage are often unaware of the multiple, grave harms that this causes to their children. Some parents even continue the practice as a way to protect their daughters. Similarly, civil society and government may be rather indifferent to the issue of child marriage and the impact that its perpetuation can have on the social and economic development of entire communities and nations. A deeper appreciation of the ramifications of early, child and forced marriage in the life of individuals and societies is necessary to sustain action at local and global levels. The human right of children to be free from sexual violence needs to be known by both young people and adults if it is to be fulfilled, in order to bring about “the development of respect for human rights and fundamental freedoms” (art. 29, CRC).

Information on the *Comprehensive Strategy* to end sexual violence against children in early marriage, along with *Legal Framework*, *Children’s Budgets* and *Child Impact Assessment* reports will need to be widely disseminated throughout government and to the public. Child-friendly versions of the documents should be made available to children and adolescents in and out of school. Communication and awareness-raising activities should help rally motivated individuals and groups around issues relating to child marriage. Enhanced knowledge and information on the detrimental effects of child marriage on girls, families, communities and entire societies are expected to help transform social and cultural attitudes, behaviours and practices based on a view of women’s inferiority and expectations that women and men should conform to predetermined gender roles.

Children, families, communities and the public at large need to be regularly informed on progress being made by the *Coordinating Mechanism*, the *Comprehensive Strategy* and the *Children’s Budget* established to address child marriage. Schools can be relied upon to act as focal points for disseminating knowledge and raising awareness on the perils of child marriage and action being taken to contrast it. National and local governments, and international bodies should provide technical and financial support in enhancing awareness, information and knowledge, through orientation, training and public information campaigns supported by media, social services and sectoral government departments.

Political, community and religious leaders should be oriented on the damaging effects of early marriage and helped to identify roles they can play in supporting efforts mobilised to contrast it. Motivated opinion leaders can act as ideal champions of movements committed to enhancing the protection and safety of children, a relevant example stemming from the Malawi’s Girls Empowerment Network engaging traditional leaders and parents.³⁰⁵ Professionals who work with young people should be trained on the adverse effects of child marriage. Teachers and healthcare personnel, who are uniquely placed to identify actual and potential victims of sexual abuse and exploitation, should receive specialised training and supervision. Partnerships with non-governmental organisations, parents’ associations, youth groups and the media would help enhance understanding by critical groups.

Mobilisation against child marriage is mounting at different levels. Global, national and local alliances, coalitions and networks managing campaigns aimed to intensify action provide

³⁰⁵ United Nations Human Rights Council, “Preventing and Eliminating Child, Early and Forced Marriage”, (2014), p.11.

a multiplicity of models to learn from in initiating information and communication activities to contrast child marriage elsewhere. Global campaigns such as Girls Not Brides;³⁰⁶ regional efforts, such as the Asia Child Marriage Initiative (ACMI) developed in collaboration with Plan Asia as part of the Because I Am A Girl campaign's Global Girls Innovation Programme (GGIP);³⁰⁷ national coalitions, like the Canadian Network of Agencies Against Forced Marriage;³⁰⁸ or the UNICEF Uganda text message and mobile telephone-based campaign are successful examples of social mobilisation, advocacy and communication efforts seeking to stimulate awareness and action.³⁰⁹

Young people, particularly those who have had direct or indirect experiences of early marriage, can be consulted in designing inclusive information and communication initiatives. Children themselves can be engaged as effective vehicles for spreading information. They can be sensitised on the negative use of information and communication technologies in the context of child trafficking for marriage and sexual exploitation. In parallel, they can be helped to initiate communication activities through peer-to-peer interaction or via the Internet – relying on widely accessible mobile phones and similar devices – to spread positive messages on the merits of extending education to high-school levels (primarily by girls), preventing teenage pregnancies, refraining from practicing the dowry system and deferring the age of marriage after 18 years for both boys and girls.

CHECKLIST

- Do *Comprehensive Strategies* addressing child marriage include a communication and information plan to raise awareness of the negative effects of child marriage and responses being devised to address it?
- Have political and religious leaders been oriented, motivated and engaged as champions around the child right to freedom from child marriage and sexual violence?
- Are professionals engaged with children regularly trained in children's rights and the right to be free from sexual abuse and exploitation in and outside marriage?
- Have school curricula integrated the issue of child marriage and the right of children to be free from sexual violence at all levels of education?
- Have children been involved in information and communication activities aimed to enhance the understanding of issues relating to child marriage, especially among peers?
- Are regular evaluations made of the level of awareness and knowledge of the legal, social and economic consequences of early marriage for children?

Step 7 – Promote Independent Advocacy for children victims or at-risk of child marriage: involving independent human rights institutions – children's ombudspersons or commissioners for children – in promoting the child's right to freedom from sexual violence in marriage

The child's right to freedom from sexual violence in marriage should be monitored, promoted and protected by human rights institutions responsible for child rights. In countries that have not yet established independent children's rights institutions, coalitions of child-focused nongovernmental and youth-led organisations can play an ombudsperson role in promoting

306 Girls Not Brides, <http://www.girlsnotbrides.org/>, accessed 22 June, 2015.

307 A. Davis, Postles, C., Rosa, G., "A Girl's Right to Say No to Marriage: Working to End Child Marriage and Keep Girls in School", (2013).

308 Network of Agencies Against Forced Marriage (NAAFAM), <http://www.forcedmarriages.ca/get-connected/naafm-network-of-agencies-against-forced-marriages/>, accessed 22 June 2015.

309 United Nations Human Rights Council, "Preventing and Eliminating Child, Early and Forced Marriage", (2014), p.12.

the implementation of children's rights. Such systems should be supported, or created where they do not yet exist, to sustain the fulfilment of children's rights, including the right to freedom from early marriage and sexual violence against children.

Although independent human rights institutions operate mainly at the national level, *Independent Advocacy* activities could be effectively decentralised to ensure that local mechanisms are accessible to children and protect their right to be free from sexual violence, particularly in areas where early marriage is pervasive. The Committee on the Rights of the Child and other international institutions concerned with children's rights, slavery, bondage and forced labour could devise common platforms for preventing rights violations and promoting child protection rights in the context of child marriage.

CHECKLIST

- Are existing *Independent Advocacy* initiatives actively protecting children affected by child marriage, or are efforts underway to create such mechanisms where they are presently missing?
- Are independent human rights mechanisms engaged in addressing child marriage and sexual abuse and exploitation of children at the local, national and international levels?
- Do existing independent human rights institutions have the powers necessary to influence decision-making?
- Have the personnel of human rights institutions been adequately sensitised and trained on issues pertaining to sexual violence against children in early marriage and the role they can play in contrasting it within the framework of women's and children's rights?
- Are youth-led, non-governmental organisations involved in promoting and protecting the right to freedom from early marriage and sexual violence of children?

Step 8 – Foster Children's Participation: *listening to the views of children with regard to sexually-abusive child marriage and taking them into consideration in decision-making processes aimed to stop such harmful practice*

The entire process of combating early marriage and its negative consequences with regard to sexual violence against children will imply the active participation of young people, who are to be involved in the realisation of each step in the *CEFM-CSEC Framework for Action*. The last step in the model, *Children's Participation*, is in fact the one that runs across the entire process and informs it.

Young people, especially girls, should be helped to develop the necessary resilience to defend themselves from attempts made by adults, even well-meaning parents or elders, to marry them before they attain majority. In addition to protecting itself, a well-informed, aware and proactive new generation should provide the backbone of initiatives being set in motion in their communities, countries and internationally to progressively make child marriage a tradition of the past.

Young people can act as effective champions in the fight against sexual violence in child marriage. They should be consulted and engaged in disseminating information, planning action for change and monitoring progress in anti-child marriage processes. The most profound contribution that children can make is at the local level, where they can partner with local government institutions, grassroots leaders and law enforcement officials to monitor closely

life choices being made by friends and peers in the community where they live. They can access information on plans underway in families to marry young daughters, or transfer them to other locations, and try to approach them to deter marriage arrangements with the help of responsible authorities. Young people can raise a compelling voice against child marriage and organise anti-early marriage actions as part of children's groups or school activities. They can mobilise rallies, support public education campaigns, post phone text messages and foster social mobilisation in their communities.

Young people who are more prone to be victimised by harmful practices should be identified in each community and actively involved in initiatives aimed to promote school education, avert human trafficking, enhance sexuality and health education, and provide life skills and livelihood opportunities. Their experiences and opinions should receive special attention. Child marriage victims and survivors should be listened to and involved in processes aimed to assist in their recovery psychologically and socially, as well as to prevent peers from being forced into early marriage.

CHECKLIST

- Are children's views listened to and taken into serious consideration with regard to child marriage by parents, communities and governments?
- Are parents, government officials, teachers and professionals working with children oriented on the need to respect their views with regard to their choice of spouse and the time to marry?
- Are child marriage victims and survivors involved in the processes devised to assist them in recovery?
- Do children have a right to be heard in any administrative or judicial proceedings affecting them?
- Is *Children's Participation* actively supported in local initiatives mobilised to prevent child marriage and assist victims in recovery?
- Are children involved in each step of the *CEFM-CSEC Framework for Action* process leading to the elimination of early marriage and sexual violence against children?

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