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Glossary

AIDS	Acquired Immune Deficiency Syndrome
BPfA	Beijing Platform for Action
CEDAW	Committee on the Elimination of Discrimination Against Women
CCMMAMRM	Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages
CRC	Convention on the Rights of the Child
CSEC	Commercial Sexual Exploitation of Children
GSN	Global Survival Network
HIV	Human Immuno-deficiency Virus
ICCPR	International Covenant on Economic, Social and Cultural Rights
ICESCR	International Convention on Economics, Social and Cultural Rights
SBS	Southall Black Sisters
SC UK	Save the Children United Kingdom
UN	United Nations
UNDHR	Universal Declaration of Human Rights
UNHCHR	United Nations High Commissioner for Human Rights
UNICEF	United Nations Children's Fund
WHO	World Health Organisation
WCHR	World Conference on Human Rights

Mission statement

The Forum on Marriage and the Rights of Women and Girls is a network of organisations mainly based in the UK but with international affiliates, sharing a vision of marriage as a sphere in which women and girls have inalienable rights. Our shared commitment to social justice places central importance on the need to bring principles and rights which are accepted in the public sphere into effective operation in the private sphere, particularly in marriage.

As a Forum we are committed to the inalienability of the human rights of women throughout their lives, which cannot be reduced or violated by marriage, and to the breaking down of barriers (including legal, social and cultural) that impact adversely on women's and girls' rights within marriage.

Two areas of principal concern to the Forum are:

- **early marriage:** the Forum supports absolutely the need to eliminate the forced marriage of girls. We draw on the CRC age threshold to argue that marriage of people aged 18 years or under constitutes early marriage. We advocate prevention of the marriage of minors.
- **violence against women and girls:** including forced, coerced and non-consensual activities in all forms are intolerable. Our focus is on violence against women and girls in and related to marriage.

The Forum defines marriage existing in all societies as a formalised relationship with legal and/or social standing between individual men and women, in which sexual relations are legitimised and as an arena for reproduction and child rearing which has state recognition.

We promote the rights of women and girls to all recognised human rights including social rights, reproductive and political rights and the rights to full inheritance and to marry or not. Forum members work together and individually, sharing information on models of good practice and carrying out joint advocacy activities for the greater realisation of these rights.

The Forum does not advocate *against* marriage but *for* the recognition and support of the human rights of girls and their right to full and free consent to any action which impacts on their lives. We recognise that some girls under the age of eighteen do actively wish to be married and although their families perhaps make all the arrangements, that this is with the full and freely given consent of the girl. We are concerned, however, that sometimes the distinction between coercion and consent may not be clear and wish to stress that the Forum's primary concern is to promote the best interest of the child.

Position statement

Early and forced marriage constitutes multiple abuse of girls' human rights. Hidden behind the socially sanctioned cloak of marriage, under-age girls are deprived of their personal freedom, forced into non-consensual sex, exploitation of their labour and diminution of their educational development and individual life-choices. Furthermore they are subject to life-threatening damage to their health by having to go through pregnancy and childbirth before their bodies are sufficiently mature to do so.

Worldwide, early and forced marriage probably represents the most prevalent form of the sexual abuse and exploitation of girls. 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. According to the UN Convention on the Rights of the Child, if she is under the age of 18, she is a minor and is not in a position to give informed consent. Her human rights have been seriously abused. Unless the international community and national governments act on the fact that marriage itself often represents the most flagrant and brutal abuse of girls' human rights, the powerful international instruments created to protect children's rights are not likely to be implemented on a local basis.

The Forum believes that child marriage falls through the international net of legislative measures introduced and

signed up to by many countries in order to protect children. We are calling for:

- the inclusion of child marriage as a specific issue to be covered by the UN Convention on the Rights of the Child
- the ratification and *implementation* of the 1964 UNHCHR Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages
- the implementation at national level of international instruments to bring about changes in common-law practices in order to end child-marriage
- the inclusion of child marriage in measures introduced to eliminate the commercial sexual exploitation of children
- greater openness to question local cultural practices concerning early and forced marriage
- the development of further local programmes that are aimed at the recognition of the rights of the girl child, including raising the age of marriage and the age of consent
- the rights of married girls to attend school.

Section I

Early Marriage: Sexual Exploitation and the Human Rights of Girls

Introduction

Marriage is usually greeted as a joyful occasion. It displays the union of two families and the creation of a new domestic unit to continue the hopes and values of the community. In reality, however, for girl children, the event often represents a serious abuse of human rights.

For the vast majority of girl children in the world, their basic human rights are overwhelmed and constrained by power structures that measure their worth in terms of their economic value or cost as commodity items. From birth they are treated less favourably than their brothers. The child mortality rates for girls are generally higher than for boys. Girls are worked harder, receive less nourishing food and immunisations and are less likely to receive medical care when ill. Girls receive less education than boys. If girls do attend school, they complete fewer grades than boys. Marriage, relentless hard work and child-bearing are an almost inevitable premature end to a girl's childhood and formal education. Status is determined by gender and in many countries female children occupy the lowest position.

Increasing urbanisation and globalisation has resulted in the crumbling of family structures and with this family ties

and obligations. Poverty and commercialisation expose the most vulnerable individuals to exploitation and abuse whether of their labour or sexuality. There is evidence that in some parts of the world early marriage is on the increase. Parents may be forced by poverty to marry off their daughter in the hope of giving her a better life and of reducing the numbers draining their family's meagre resources. With the AIDS pandemic there is also an increasing demand for younger and younger girls to marry older men.

Family poverty

Poverty is one of the explanations for selling girls, sometimes because the family is in debt or because of the benefits of the sale. In August 2001, a Forum member was told about a ten-year-old girl in Zimbabwe who was reported in a local newspaper as having been sold to be a wife to a 40-year-old man in order for the family to obtain cash for food. She was sold for \$2000 Zim. That worked out at US\$7. This sum would perhaps have bought two sacks of maize. The previous wife of the man the child was to marry had died of AIDS.¹

Although many countries have set a minimum legal age for marriage, the age for girls is usually set 2–3 years lower than it is for boys; at a local level the majority of marriages take place without reference to the national standard. In some regions, girls continue to be betrothed before or at birth. In others, girls will be sent to live with their husband's family years before puberty and although it is not expected that the marriage will be consummated

¹ Personal informant to Forum member

immediately, available evidence would suggest that this is often not respected. In these circumstances, it is highly unlikely that the girl will have either the knowledge or the power of control over her reproductive capacity.

Early marriage consumes many years of a girl's adolescence, compromising her schooling, life choices and future health². In these situations, girls are often condemned to lives of misery, servitude, sexual abuse and premature childbirth while they are still children themselves and therefore, before they have even reached the internationally agreed age of consent.

In many countries around the world girls are given away, bought, sold or exchanged like other commodity items in the market-place in the name of marriage. This is accepted because it is a custom and because the arrangement will have been made as part of a wider framework of connections between or within social groups. However, in general, it is unlikely that as part of this process, the human rights of the girl concerned will have been considered.

Alemtsehai

"When I was 10 my parents arranged for me to marry in the forest. They pretended it was just a party. But it was a wedding and they sent me away. My mother never told me I was going to be married. They came and took me by force. I cried but it didn't make any difference."³

² For further information on the impact on girls' health, education and personal development see the Forum on Marriage report (2000) *Whose Right to Choose?*; Unicef (2001)

³ Aleksander (1998)

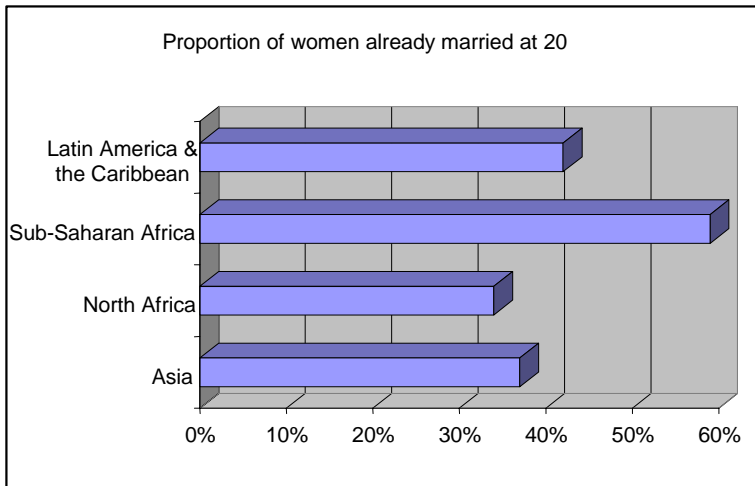


Figure 1: Proportion of women married before the age of 20, UNFPA 1997

The human rights of girls

Over the last five decades, various UN and other international legal conventions, charters, protocols and declarations concerned with the promotion of women's and children's rights have been ratified and signed up to by many, and in the case of the CRC, the majority of countries. Additional legislation aimed at the abolition of gender-based violence and the sexual exploitation of children is receiving high-level international support. It is increasingly being acknowledged that the needs and rights of girl children demand particular attention.

The 1989 UN Convention on the Rights of the Child (CRC)⁴ defines childhood as lasting until an individual

⁴ The most pertinent clauses are listed on page 35

reaches the age of eighteen. Yet in most of the countries in Africa, Asia, Latin America and the Middle East, the majority of girls will have been married before this age. Although much of the CRC is relevant to child marriage, it does not specifically refer to it. In principle, the matter of child marriage and girls' rights is covered by the Vienna Declaration and Programme of Action⁵, section B4 of which deals with the Rights of the Child. Paragraph B49 of the declaration *“urges States to repeal existing laws and regulations and remove customs and practices which discriminate against and cause harm to the girl child.”*

In spite of international agreements to implement measures to protect children from slavery, discrimination and other forms of sexual abuse and exploitation, there appears to be little recognition that the same forms of abuse occur within the domestic setting of marriage. Although several countries have a minimum legal age for marriage, each year millions of girls will be sold or exchanged in marriage ceremonies by their families at ages below the legal age. Many will have barely reached the age of puberty and their bodies not yet fully grown to maturity.

The UN Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (CCMMAMRM) was ratified in 1964; however in some cultures girls as young as nine or ten are married, in many cases to much older men. In its preamble, the CCMMAMRM⁶ recalls article 16 of the 1948 Universal Declaration of Human Rights (UNDHR)⁷ which specifically refers to: *“Men and women of full age”* and

⁵ World Conference on Human Rights, Vienna 1993

⁶ See page 36 for specific wording of clauses

⁷ See page 37

states that “*marriage shall be entered into only with the free and full consent of the intending spouses*”. Article 3 of the 1964 Convention requires that States register all marriages in an official register. However precise statistics on early marriage are difficult to obtain, as, still, few marriages are formally registered. Accurate data do not exist, but for an idea of the numbers of women married before the age of 20 see Fig 1 on page 10.

Early and forced marriages violate the human rights of girls by virtue of the fact that the fundamental basis of the marriage is often not based on the free and full consent of both parties. In addition, where the girl may have consented to the marriage on the basis of having reached the sexual age of consent, this may not equate to an age of immaturity with regard to marriage. The Platform for Action from the Fourth UN World Conference on Women spells out the human rights of women to:

“include their right to have control over and decide freely and responsibly on matters related to their sexuality, including sexual and reproductive health, free of coercion, discrimination, and violence. Equal relationships between women and men in matters of sexual relations and reproduction, including full respect for the integrity of the person, require mutual respect, consent and shared responsibility for sexual behaviour and its consequences.” (1995, Beijing Platform for Action, para. no. 86)

Furthermore, there is usually a gulf between a country’s international commitment on paper and its domestic action to ensure that these commitments are implemented in practice. It has been argued that once international instruments are applied in the domestic context, common law and practice will eventually fit. This is not proving to be the case. There is no clearer example of the mismatch between international human rights

legislation and commitments and daily lives than in the impact on girls of early and forced marriage.

What is marriage?

All societies recognise a formal arrangement between men and women which they define as marriage. Traditionally and still in many cultures today, marriage is not an arrangement between two people, but between two families. Marriage carries with it a mesh of cross-cutting rights, obligations and constraints to ensure the security and well-being of the family and its members, including its honour, the legitimacy of children and rights to inheritance. The family, however culturally defined, forms the basic social and economic production unit of societies. Marriage should provide security, both economic and emotional, for women and their children, and the laws uphold their rights in this respect.

Women are often forced to conform to their ascribed roles by their economic dependence on men. A female's status and entitlements in a society are often determined by her role in relation to her father, husband or sons and in some instances, her brother. Girls are conditioned to believe that their only important role in life is as a future wife and most importantly, a mother, especially of sons. For people working with communities to prevent early marriage, the implications of this conditioning cannot be over-emphasised. The concept of individual human rights would be alien to a girl or woman born into a society which had no recognition of her as an individual, let alone an individual entitled to make decisions or choices or to take control of her own life.

Early marriage

Early marriage is one which takes place before a child has reached the age of majority. This is commonly understood to mean marriage under the age of 18 years, although some countries (which have already signed up to the CRC) may recognise majority at a younger age than 18 years.

Zana and Nadia

During the 1980s a Yemeni-born man took his 12- and 14-year-old British-born daughters to the Yemen on the pretext of a holiday. There he sold them to two friends as wives. Imprisoned, beaten and raped and forced into appalling domestic slavery, it was eight years before Zana managed (with international but not British government help) to escape back to Birmingham having had to leave her child behind in the Yemen. Recent attempts to contact Nadia have come to nothing. When last heard of, she had six children and was in poor health. According to Zana's account of their story, the father has never been prosecuted. It was said that there was insufficient evidence. He still lives in Birmingham and has refused to make any attempt to rescue Nadia.⁸

The actual numbers of girls sold into marriage in this way are unknown. The child may be classified as a “wife” but is often little more than a slave whose body is used for sexual purposes as well as household drudgery.

⁸ Muhsen (1991)

Forced marriage

The desire to protect girls' virginity drives many parents to force their daughters into marriage at an extremely young age. In rural communities, fetching water and firewood are usually chores undertaken by young girls. There is frequently a serious fear of being raped. The rape will be devastating and have enormous implications for the girl, but, given her low status, the perpetrator is rarely if ever punished. In many communities, rape is not considered to be a crime against a girl or woman but against her father or husband or brothers.

Ayesha

escaped from a remote village in Bangladesh where her family had been holding her as a virtual prisoner. She had been taken there from London on the pretext of her brother's wedding but discovered that it was she who was to be married, to her cousin. Her father had held an engagement party without telling her. "They all said we are going on a holiday. My brother was to get married and I wanted to attend the wedding. But when we went, there was no one talking about anyone's wedding but mine..."⁹

In some societies, there is a tradition of abduction and rape as being acceptable in the procurement of a wife. There are increasing examples of girls who have been born and educated in the industrial north to parents who migrated, particularly from the Indian subcontinent and the Middle East, suddenly finding themselves captives

⁹ Carney (2001)

and tricked into marriage on a visit to their relatives in the parents' country of origin.

Marriage as sexual exploitation

We need to identify ways in which *early* and *forced* marriage can be prevented and identify the benefits both to girls, their families and their communities which accrue from this change. It is without question that human rights are being abused in child marriage. However it is too simplistic just to aim to bring an end to the practice. It will be necessary to work with the wider society to pinpoint the changes necessary to promote the girls' human rights and personal freedom and to increase the options open to girls.

Security is an issue for parents

"Here in Bangladesh early marriage most relates to poverty, gender discrimination and lack of security. In the past, early marriage took place because people had cultural as well as religious superstitions that girls should get married at an early age. Today's reality is parents want to relieved (sic) themselves of keeping the girl as a virgin before she gets married. Nowadays, insecurity increases in such a way that, if a musclemans choose a girl, anytime he will threat and pick that girl for rape, nobody can raise a single voice, since he is supported by strong powerful people. In many parts of Bangladesh parents are much aware about the effect of early marriage on girls. Often we are asked the question: 'If I delay my daughter's marriage, will you protect her?' and definitely we do not have any answer."¹⁰

¹⁰ Afrin, personal communication to Forum

Sexual exploitation or abuse of female children outside marriage is no different from sexual exploitation within a forced and early marriage; in so far as the girl is underage at marriage, she cannot be seen to consent to the sexual act. In the context of early and forced marriages the gravity of the abuse is that it is sanctioned by society and often results in repeated sexual abuse and other forms of gender-based violence.

Defining sexual abuse and exploitation

“The sexual exploitation of children refers specifically to the use of people under 18 years of age for sexual satisfaction of adults. The basis for this exploitation is the unequal power and economic relationship between the child and the adult, and children are exploited for their youth and sexuality.”¹¹

Sexual abuse includes sexual coercion (emotional, physical and economic), and often includes the most common form of sexual abuse – rape. Rape is the use of physical or emotional coercion, threats to use force in order to penetrate a person sexually without their consent. Sexual relations in the case of early marriages amounts to rape, in that it forces young women to marry and sexually service men not of their own free choice.¹²

It is evident that the traumas that women face when they are forcefully initiated into sexual relations at an early age on a regular basis may lead to a range of problems that have not yet been studied. Other women may develop a

¹¹ Save the Children UK (1996), p.1-2

¹² UNFPA (1998)

range of coping strategies that may also be worth researching¹³.

“At the time of marriage I was 14 years old and my husband 28. After initial experience of sex I started disliking it. But he wants sex all the time. As I do not enjoy it I refused to do it but my husband never listen to me and do it by force... At times he does it even during my menstruation... It mentally hurts me and I started hating myself. Now I am 28 years old. I do not like sex and have told him to go outside for enjoyment... He does it any case.”
(Informant from a study in Bangladesh by Population Council, 2000)

In spite of the international concern to develop and implement measures to protect children from slavery, rape and other forms of commercial sexual abuse and exploitation, there appears to be little open acknowledgement that the most widespread abuse occurs in the socially approved domestic setting of marriage. Quite simply, however it is culturally packaged, early marriage is socially licensed sexual abuse and exploitation of a child. So even if the child suffers appalling injuries as a result of domestic violence no one will intervene, for the abuser is her husband. There will invariably have been some transfer of goods or other resources in exchange for the child-bride. This child has been exploited commercially for sex and or services and her human rights disregarded.

¹³ For further information on an international survey on non-consensual sex in marriage contact CHANGE

Alice, married at 12 to a 74-year-old

"The tall skinny girl hides her face behind the baby in her arms like a child might do with a doll. She shoos away the chickens that roam at her feet. It is only this protective movement that gives any suggestion that the baby could actually be hers. She looks too young but, in fact, this is her second child. Like several girls who live in her tiny community, Tabitha was 12 years old when she married. Her cousin, Alice, who appears at the makeshift front door of the same shack, also married when she was 12. Her husband is 74...There is no running water inside the squalid shack, no toilet, and a family of eight share the two tiny rooms." This is not India or Africa, this home is just 650kms from Washington DC: it is Horse Creek, Kentucky, USA.¹⁴

Tradition, religion and the legal age of marriage

Consent to marriage, especially in cases where the girl is under 15 years, can be problematic in itself in that " at such as early age, a child cannot be expected to understand the implications of accepting a lifetime partner" (UNICEF, 2001). In a number of countries the legal age of sexual consent is often lower than the legal age of marriage. This means that a girl can legally consent to have sexual relations with a man and not be liable under the law. However, it can be argued that where girls who are married on reaching this legal age of sexual consent and have not consented to the marriage

¹⁴ Taken from website briefing note of the NGO Group for the CRC and ECPAT International to the 2nd World Congress against Sexual Exploitation of Children. See references for website details

cannot be considered to have consented to sexual relations in such a union.

In the penal code of a number of states that recognise offences relating to unlawful sexual intercourse with minors under the age of 14 years, the penal code is not applicable in cases where the accused is married to the girl. In this case the law allows different codes to be applied when a girl of 14 is married from when a girl of 14 is unmarried. However, if statutory rape, which is sexual relations with a minor, is deemed unlawful, then why do states apply different laws to girls who are under age and having sexual relations with an adult man?

Countries that sign the Child Rights Convention agree to *“respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child’s or his or her parent’s or legal guardian’s race, colour, sex, language, religion, political or other opinion, national ethnic or social origin, property, disability, birth or status”* (article 2, para. 1). In addition countries which ratify the Convention agree to put the best interest of the girl child as the primary consideration in all actions undertaken on behalf of the child, and to take relevant measures to ensure that tradition and religion are not used as a basis for discrimination against girls.

The 1964 Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages does not specify a minimum age for marriage and rather asks countries to specify a minimum age for marriage which should not be less than 15 years. Some countries are trying to raise the age at which families marry their daughters (e.g. Bangladesh; Burkina Faso). However, as the CRC specifies that a child is someone below the age of 18 years, in this sense we can conclude that those

countries that have set a minimum age of marriage for girls under 18 years are allowing child marriages.

As we can see in Fig.2, most countries have set the legal age of marriage to be 15 years and above; in a number of countries this often applies only to statutory marriages and does not apply to religious and customary marriages. In a number of cases, early marriages are contracted in the context of religion and tradition.

Country	Minimum marriage age for females	Age of sexual consent	Ratified CRC
Ethiopia	15	15-18	Yes
Kenya	16 (Statutory Marriages)	14	Yes
Tanzania	15 (12 if of African or Asian descent)	14	Yes
Ghana	21 (under Marriage Ordinance)	14	Yes
Nigeria	18	14	Yes
Bangladesh*	18		Yes
India*	18		Yes
Pakistan*	16		Yes
Egypt*	16		Yes
Kuwait*	Puberty		Yes

Figure 2: Age of sexual consent and minimum age of marriage
*Source: Centre for Reproductive Law and Policy, 1997*¹⁵

*In these countries there is no separate legal age of sexual consent as consent cannot be given to sex outside marriage

¹⁵ Women of the World: Laws and Policies Affecting their Reproductive Lives, Anglophone Africa: WLP, Website, Legislation and Family Laws

Although girls' rights should be covered by the international instruments, when they are *married* the acknowledgement of girls' specific rights seems to fall through the international legislation net. Furthermore, they are almost ignored under national legislation, since although they are still children, they are considered as married women. It has been argued that if and as the international instruments are applied in the domestic context, common law and practice will eventually adjust. This is not proving to be the case with early marriage. Obviously, sovereign governments must determine their own domestic agendas but international pressure can be applied to good effect.

Age for female genital mutilation reduced for daughter's brideprice to buy father new wives

Cash crops and available land for cultivation has created incentives for men to obtain plural wives as soon as possible. Fathers tend to offer their daughters in marriage at progressively earlier ages in order to obtain bridewealth payments to be used for more wives. Since "circumcision" is necessary before a girl can marry, it is undertaken at earlier ages than it was in the past.¹⁶

One of the reasons for the lack of local implementation is that, in spite of countries having national laws, in the day-to-day lives of the majority of people, it is customary law and practice that prevails. Moreover, it is almost universal that women and girls are treated as inferior to men, and even in countries where women are to be found in positions of influence and legal power, they are heavily

¹⁶ Hakansson (1988), p.195

outnumbered by men, who often have a vested interest in avoiding change. Although, as already pointed out, many countries have laws which regulate marriage both in terms of age and consent, the age for girls is usually lower than that for boys and “consent” usually refers to parents, not the girl. Infringements are rarely, if ever, challenged. Who would the girl complain to? Who would be there to hear her?

“Surrendering to Hyena”

“Women's sexual lives before marriage are dependent on male family members who decide who should marry the daughter or sister and on what terms. The woman has no choice in her partner. In some cultures the girl/woman cannot get married unless she has been sexually tested fit to enter marriage. This is called “to give to Fisi”. In English we can translate it as “surrendering to Hyena”. The family chooses a male in the community who sexually samples the girl before any other man has carnal knowledge of her. This commonly occurs between 12 and 14 years. It is only after this process that a woman is allowed to get married. Although rape is criminalised under penal codes, Sections 133 and 138, it is difficult for anybody to believe the story of a woman. It only shows that the man has the overall control of a woman's sexual life.”

*(Society for the Advancement of Women, Malawi)*¹⁷

¹⁷ CHANGE (2001)

The marriage transaction

Marriages are a significant economic activity for a family. Making the correct choices is a source of much family discussion and preoccupation in many cultures. As either or both money and goods are often exchanged in this process, it could be referred to as “a marriage-market”. It is assumed that parents make good and wise choices for their daughters. However, poverty, greed and ambition are also motivating factors as is the case with any other economic decisions.

Daughters as household capital

“With respect to marriage arrangements, women are treated as little more than economic counters and part of household capital. I was told of one man who had made the following bequests to his heirs just before he died: ‘One of my daughters I have given in an exchange marriage with [my son] Mohammad Gul, so she is Mohammad Gul’s. Another daughter is [my son] Mir Azar’s. He already has a wife, but he still has a right to property from the estate so let him take the girl, whether to give her for brideprice or to exchange her for another wife for himself. A third daughter is for Bayak to exchange for a wife. And my fourth daughter is for my widow to do with as she will, whether to give her away for free or for brideprice or whatever.’¹⁸

In the diaspora of communities from the Indian sub-continent, girls are sometimes used as the “currency” in

¹⁸ Tapper (1991), p.104

the settlement of debts, the resolution of land disputes or perhaps the acquisition of a visa for a relative who wants to migrate to Europe. The maintenance of family honour is considered paramount and marriage with relatives “back home” is perceived to strengthen the extended family links. For millions of young girls worldwide, their human rights are not only disregarded in this trading but, furthermore, the practice manifests one of the most widespread forms of the sexual abuse and exploitation of the girl child.

Dowry

The payment of some form of dowry by the bride's family to the groom's is common in many cultures, although the importance of this varies between one culture and another. It can be and is used as a reason for discrimination against the girl child whose family views her as an economic burden because of the need to accumulate wealth as a dowry for her. In the Indian sub-continent dowry demands have increased dramatically over the last few years. However, a woman's status within the marriage, particularly in the eyes of her in-laws, is often determined by the size and quality of her dowry. If they are dissatisfied, it is likely that she will be subjected to ill-treatment and harassment as a means of trying to extract more wealth from her family. This sometimes leads to her being murdered and it is unusual for cases to be proven against the killers.

Child marriage in Rajasthan

By marrying all of their young daughters off together in a single ceremony, villagers in rural Rajasthan drastically cut the prohibitive cost of dowries and marriage ceremonies either of which could eat up decades of earnings for a poor family. For example, a one-year-old was married in the same batch as a 14-year-old. A lower-caste community worker (sathin) who tried to dissuade the high-caste grandfather from treating the one-year-old in this way was severely beaten and gang-raped as a result. The sathin had been carrying out instructions from the Rajasthani government to reduce the numbers of such child marriages.¹⁹

Choola

is the word for "stove-death" in Pakistan. It is said that there is at least one reported choola death daily across the country. The victim is, typically, a married woman in her twenties who has not brought much dowry to the marriage. The stories are usually very similar — she was cooking, or boiling milk for a baby, when the stove exploded or her clothes caught on the flame and she was badly burnt. Many cases are not even reported. During one six-month period in Islamabad alone, there were 84 such cases, only three surviving. Even when near death, women are afraid to disclose their husbands' and in-laws' role in these "accidents", fearing recriminations and neglect of their children after the mother's death.²⁰

¹⁹ Dalrymple (1999), p.102

²⁰ Wheatley (1996)

Brideprice and bridewealth

This is the sum of capital or goods or both used to purchase a girl for her labour and fertility. In some communities, should a wife die without having produced children, her birth family is expected to provide a sister or other substitute. The bridewealth created is used to buy new wives for the sons of the lineage. Traditionally, in some southern African communities, *lobola* was the term used not only for brideprice/ bridewealth transfer of cattle from one family group to another but also to the associated ceremonies, obligations and other arrangements which went with this. When bridewealth was measured in cattle, there was an in-built security protection mechanism for a woman and her children, as certain beasts were earmarked for the bride and the bride's mother and enabled the women to build up independent small herds irrespective of what happened in the marriage.

Lobola purchases ownership of children

"In lobola, a man gives material goods to part of the woman so he can, and has the right to, own the children coming from that woman. (If not she gets sent back). So he has free access to her."

(Mozambique League for Human Rights)²¹

The meaning and character of the whole transaction has changed with the monetisation of bridewealth. This severely disadvantages women and trivialises *lobola* by removing the symbolic and associative ceremonies which

²¹ CHANGE (2001)

previously accompanied the marriage. It is now more likely that men will negotiate the payments, women no longer receiving cows for themselves and no longer being the key pivots in wide flung co-operative kinship networks. The arrangement is now a commercial exercise with the bride's father evaluating his investment in his daughter's education and potential financial value to her husband's family. *Lobola*²² has now become a buying and selling exercise, with the bride as the commodity between two men, not two families as in the past.

The relaxation of previous ties and in particular the movement of young people to urban centres has resulted in informal unions without bridewealth payments being made. In such unions, the wife tends to feel the husband is not taking her seriously. She fears that he will marry another woman and then she will be kicked out. Hakansson says that women feel that they are on a contract basis until bridewealth has been paid.

Bridewealth as security

"I was in perpetual fear for 10 years because I had no children...and my husband had not paid bridewealth. When bridewealth is paid a woman cannot easily be expelled, for the husband is afraid he will lose the bridewealth, that it will not be refunded."²³

²² See Ngubane (1987) for more information on these changes

²³ Hakansson (1988), p.181

Brideprice to feed the family

A widower who was the sole breadwinner of a small household comprising his elderly widowed mother, two sons and a 6-year-old daughter was accused of murder and had to flee his village. Initially, in order to survive, the small landholding was sold, then the father gave instructions that the daughter should be engaged to be married. A suitable spouse (aged 14) was found and a high brideprice agreed. This was to be paid in instalments until the child reached puberty. The payments were calculated to sustain the household in the father's absence. However, poverty forced them to accept goods as part of the brideprice at much higher than their market value.²⁴

Mail-order brides

The commercial dimension of the marriage market is taken further by the development of marriage agencies which advertise their services increasingly on the internet. The agencies charge a fee for finding wives, usually for men from the industrialised northern countries with young women from poorer countries. It could be argued that the women have made a choice, but often this is seen as their only option to escape from dire poverty, where the only other options might be domestic service or commercial sex work. While international match-making agencies are considered legitimate businesses, they are almost completely unregulated. There is generally no obligation for full disclosure, nor liability nor an obligation to give the woman information about her rights.

²⁴ Tapper (1991), p.159

In the USA an NGO, the Global Survival Network (GSN), found that marriage agencies generally do not screen their male clients, some of whom, it was found, had criminal records for violence. Another consequence of the lack of regulation is that agencies are able to advertise minors. It was reported that in 1998 there were over 200 mail-order bride agencies operating in the USA. They were bringing approximately 4000-6000 women, mostly from the Philippines or the Newly Independent States to the USA each year.²⁵

Trafficking

The trafficking of girls and women for the sex trade is increasingly becoming a profitable international trade. Much of this is conducted by organised crime networks. Trafficking essentially involves the use of force or deception to transfer women or children into situations of extreme exploitation.

A participatory-action research project on cross-border migration between China, Thailand and Burma (now known as Myanmar) investigated the concerns and needs of the increasing numbers of children and young people involved.²⁶ It was found that young women and children were trafficked into sex work, marriage, domestic work and for use in begging rackets.

²⁵ Richard (2000), p.27

²⁶ See Caouette (2001)

Purchase price is dependent on physical appearance

"Some Chinese people buy girls as wives or workers. There are many brokers. Prices will be different according to the beauty of the girls. If a girl is beautiful, they pay up to 3,000 yuan to a broker. The reason for human trade is the Chinese family planning policy allows each family to have only one child. If they have a daughter, the family name will disappear when she marries into another family. Therefore, they try to get a son rather than a daughter. This has resulted in a shortage of women there. Also, if they get married to Chinese girls, they will spend more than 10,000 yuan. So they spend 3,000 yuan to buy ethnic girls from Myanmar."

A 17-year-old male from Myanmar who migrated to a Chinese border town.²⁷

The conditioning of girls to believe that their existence is justified only as a wife and future mother continues long after social groups have undergone social change and even when girls have started to develop their potential by completing secondary school. In the context of trafficking, Renton found that as a result of the high rate of male migration from post-communist Albania (sometimes as high as 90%), girls have problems finding husbands. They thus fall easy prey to traffickers who dupe them with promises of marriage and a better life in Europe. *"There are so many more women than men in this area because of emigration — so many do not have a chance to get married. Girls want to leave because they want to find their dream."*²⁸ It is possible that the girls may have

²⁷ Caouette (2001)

²⁸ Renton (2001)

known of the sex-trade destination of some of their predecessors, but were willing to risk that *their* fate might be different, that they really were going to be married.

Marjana

In December 1998, Marjana, then a fifteen-year-old schoolgirl living in northern Albania, fell in love with XhG. He promised to marry her and take her to Italy to start a new life. Although she did not want to go, he and his older brother persuaded Marjana and another girl to take a speedboat to Italy. Once there, the girls were told that the marriage plans were over and instead they were forced to become prostitutes.²⁹

Father denounces daughter's traffickers

"I was lured by a Palaung woman with the offer of a well-paid job and taken to a China border town. I was given some drugged food. When I regained consciousness, I found myself in a Chinese town. The house belonged to a Chinese man who made fake identity cards for trafficked girls. The next day, I was taken on a long car journey to Kunming and [then] by train to a village in another province. The Palaung woman contacted several potential buyers who were looking for a bride, but each time a man arrived, I threatened to kill myself rather than marry him. When the Palaung woman and her husband returned to my village to look for another girl, my father informed the police and they were arrested. My father obtained a telephone number from them and was able to contact me." *20-year-old girl from Myanmar*³⁰

²⁹ Renton (2001)

³⁰ Caouette (2001)

Section II

International Commitments

Although the CRC, which most countries have ratified, does not specifically prohibit child marriage, the convention should be interpreted in context. Since the overall objective of the CRC is the protection of the rights of the child, and all the rights enumerated in the Convention – the civil and political rights as well as the economic, social and cultural rights – are indivisible and interrelated, with a focus on the child as a whole, it can be argued that early marriage is prohibited by the CRC. Furthermore, Clause 24 obliges states to protect the health of children from harmful traditional practices: if the argument put forward is that early marriage is a cultural tradition, it can be countered with one that shows that it is certainly harmful for girls.

It is important to note that any measure to eliminate early marriage will need to address the deep-seated cultural beliefs that underlie this practice. External attempts to change or influence cultural behaviour are likely to be viewed with deep suspicion and probable resistance. To approach the issue of early marriage solely as a human rights issue, may be perceived by the communities concerned as the imposition of outsiders' cultural values. If, however, the link is made between early marriage and health, both of the girl concerned and her future children, the matter may receive greater consideration.

Upholding the Law?

The case of Aberash in Ethiopia³¹ is a well-documented and publicised case. Aberash, who was supported by the Ethiopian Women Lawyers Association, was acquitted of the murder of the man who had kidnapped and raped her by way of claiming her as a wife when she was just sixteen. However the customary legal tribunal in her village had banished her and settled the matter by making her parents pay cattle to the "victim's" father long before the national legal process had brought her to court. She was dead as far as her birth community was concerned and can never return there as the victim's family would feel compelled to kill her.

In Bangladesh, under Muslim Personal Law, a girl under the age of eighteen can be given in marriage by a guardian. The Dissolution of Marriages Act 1939, does allow a child bride to repudiate the marriage on attaining puberty or the age of majority *provided the marriage has not been consummated*³². (Our italics)

Improving national legislation by incorporating international laws does not guarantee implementation on the ground. For women's human rights to be effected, they must become a respected part of the culture and traditions of any given society.

How should one proceed when the national lawyers do not uphold the plaintiff's rights but reduce these down to customary practice? In one example the Niger State

³¹ See Forum on Marriage and the Rights of Women and Girls (2000), p.26

³² Heissler (2001)

Ombudsman dismissed the girl's complaint by saying: "*The case went to the customary court and it was found that the girl's marriage was legitimate under traditional law. This girl should not come here and disgrace her country when the legal process has done its work.*"³³

Relevant Conventions and Clauses

The following conventions and clauses are pertinent to the rights of girls under the age of 18. They have been ratified and can be used as lobbying tools with particular governments.

***The Convention on the Rights of the Child (CRC)*³⁴ – 1989**

To date the CRC has been ratified by 191 countries (exceptions are the USA and Somalia.)

Virtually every provision of the CRC is of some relevance to the issue of early marriage. Among the most pertinent, however, are the following (paraphrased for clarity in some cases):

Article 1 A child means every human being below the age of eighteen years, unless under the law applicable to the child, majority is attained earlier.

Article 2 Freedom from discrimination on any grounds, including sex, religion, ethnic or social origin, birth or other status.

³³ Duval Smith (2001)

³⁴ This paraphrased version of the CRC was taken from UNICEF/IRC.

- Article 3** In all actions concerning children...the best interests of the child shall be a primary consideration.
- Article 6** Maximum support for survival and development.
- Article 12** The right to express his or her views freely in all matters affecting the child in accordance with age and maturity.
- Article 19** The right to protection from all forms of physical or mental violence, injury or abuse, maltreatment or exploitation, including sexual abuse, while in the care of parents, guardian or any other person.
- Article 24** The right to health, and to access to health services; and to be protected from harmful traditional practices.
- Articles 28/9** The right to education on the basis of equal opportunity.
- Article 34** The right to protection from all forms of sexual exploitation and sexual abuse.
- Article 35** The right to protection from abduction, sale or trafficking.
- Article 36** The right to protection from all forms of exploitation prejudicial to any aspect of the child's welfare.

Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages – 1964

To date, this Convention has been ratified by 49 countries

- Article 1** No marriage shall be legally entered into without the full and free consent of both parties, such consent to be expressed by them in person...as prescribed by law.

Article 2 States Parties in the present Convention shall take legislative action to specify a minimum age for marriage. No marriage shall be legally entered into by any person under this age, except where a competent authority has granted a dispensation as to age, for serious reasons, in the interests of the intending spouses.

Article 3 All marriages shall be registered in an appropriate official register by the competent authority. The Convention recalls that *certain customs, ancient laws and practices were inconsistent with the principles set forth in the UN Charter and the UNDHR*. It enjoins States to *take all appropriate measures to abolish these...and eliminate completely child marriages and the betrothal of young girls before the age of puberty, establishing appropriate penalties where necessary*.

Universal Declaration of Human Rights (UNDHR) – 1948

Article 16 states: (1) Men and women of full age ...have the right to marry and found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution. (2) Marriage shall be entered into only with the free and full consent of the intending parties.

Similar provisions to Article 16 of the UNDHR are included in:

- ***International Covenant on Economic, Social and Cultural Rights (ICESCR) – 1966***

and in the

- ***International Covenant on Civil and Political Rights (ICCPR) – 1966***

Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery – 1956

Article 1 includes in the institutions and practices similar to slavery: Article 1 (c) Any institution or practice whereby: (i) A woman, without the right to refuse, is promised or given in marriage on payment of a consideration in money or in kind to her parents, guardian, family...

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) – 1979

To date this convention has been ratified by 168 countries

Article 16.1 prescribes equally for men and women: (a) The same right to enter into marriage; (b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent;

Article 16.2 states: The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage.

African Charter on the Rights and Welfare of the Child – 1990

Article XXI states: Child marriage and the betrothal of girls and boys shall be prohibited and effective action, including legislation, shall be taken to specify the minimum age of marriage to be eighteen years.

The Beijing Platform for Action (BPfA) – 1995

Strategic Objective L: The girl child and specifically paragraph 274 (e):

Enact and strictly enforce laws to ensure that marriage is only entered into with the free and full consent of the intending spouses; in addition, enact and strictly enforce laws concerning the minimum age for marriage and raise the minimum age where necessary

Section III

Conclusions and Recommendations

"Let us prove that a society which empowers its women is a society sure to succeed" *Kofi Annan*

In this report we have shown that child marriage is an accepted cultural practice in many countries even though it is a violation of the human rights of young girls. We argue that although widely socially sanctioned, early marriage does in fact constitute sexual exploitation of young girls who are forced into sexual relations below the legal age of consent. Furthermore, in many cultures financial transactions are the basis of the marriage agreement and girls are treated as a commodity item by their own families. The impact on the health and well-being of girls of early and forced marriage has not been studied sufficiently and there are many gaps in our knowledge including children's views of early marriage.

The first piece of international legislation to deal with the issue of early marriage was signed nearly forty years ago in 1964. Of all the powerful legislative tools introduced to ensure the identification, respect and protection of the particular needs of the girl child only the UNDHR precedes that date. And yet, for the girl children born since 1964, in terms of their life-chances how much has changed when compared with those of their mothers or grandmothers?

The issue of sexual abuse and exploitation and the violation of the rights of girls within early and forced marriage is a relatively new one for international advocacy. We need to ask ourselves why international legislation is making such little difference or impact on girls' lives. The international instruments exist but what is needed is the political commitment and mechanism to make the legislation work on the ground.

The Forum on Marriage and the Rights of Women and Girls has the following recommendations to address the abuse of children's human rights with regard to early marriage.

1 International level³⁵

- 1.1 The various UN conventions and other international agreements pertaining to women, gender violence, children and human rights in the context of early and forced marriage should be examined and those countries which have not ratified the agreements should be identified.
- 1.2 In particular the ratification, monitoring and implementation of the 1964 Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriage (CCMMAMRM) and the Convention on the Rights of the Child (CRC).
- 1.3 International pressure should be exerted on those countries that have not ratified CEDAW and on others to remove their reservations. All countries should ratify the Optional Protocol to CEDAW,

³⁵ Although these recommendations have been divided into levels, there is overlapping and some will be relevant to all levels

enabling direct access of complainants or their representatives to the UN.

- 1.4 Poverty Reduction Strategies should include reduction in early marriage as an indicator for effectiveness of development programmes.
- 1.5 The declarations to eliminate the Commercial Sexual Exploitation of Children (CSEC) should include forced/ early marriage as a key emerging issue. Greater specificity is needed in international legislation and declarations on the illegality of non-consensual sex within marriage.
- 1.6 Further research is needed at an international level into:
 - a. the correlation between an increase in the age of marriage/first pregnancy and a reduction in maternal morbidity and mortality
 - b. the psychological and emotional impact of early and forced marriage on young girls
 - c. the long term impact on women of sexual abuse at an early age.

2 National level

According to the 1993 Convention on Human Rights religion and custom cannot override universal human rights, and states have the responsibility to ensure that all individuals enjoy and exercise every human right. Therefore, states should:

- 2.1. Work progressively to reform marriage and family law to meet the human rights standards which they

- have ratified and to monitor the implementation and impact of such law reform, especially the CCMMAMRM , CEDAW and the CRC with regard to the rights of girls in marriage.
- 2.2. Ensure the registration of all births to verify the age of a girl at marriage and registration of marriages to ensure compliance with the law, to ensure security under the law and to verify that the marriage is neither temporary nor false.
 - 2.3. Review laws and customs concerning dowry and brideprice, implement relevant laws where they already exist and take action to discourage these practices.
 - 2.4. Ensure the right to education for girls *including* those who are married.

3 Community level

- 3.1 An examination should be made of local customary rules in order to determine whether there is any element which might be used against early marriage.
- 3.2 Target activities to change the attitudes and behaviour of community and religious leaders with regard to early marriage.
- 3.3 Ensure access by all members of the community, irrespective of age or gender to reproductive and sexual health advice and care.
- 3.4 Support girls' and women's rights at community level by education, confidence-building and human rights awareness.

- 3.5 Combine health and human rights objectives in any programme aimed at reducing child marriage.

4 NGOs

- 4.1. Human rights organisations and NGOs should lobby for the rights of girls and women in marriage to exercise self-determination. They should ensure that their commitment to human rights includes girls and women who have been married without giving their consent.
- 4.2. Traditional and customary laws should be examined with a human rights perspective.

Section IV

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Anti-Slavery International

AVIVA: Women's World-wide Web

British Council

Centre for Gender Equality

CHANGE

Child and Woman Abuse Studies Unit

Commonwealth Secretariat

DfID Health Programme

ECPAT UK

Equality Now

FORWARD

ICI Health Rights

International Planned Parenthood Federation

Minority Rights Group

London Black Women's Health Project

Oxfam

Population Concern

Population Council

Rights and Humanity

Save the Children UK

Southall Black Sisters
UNICEF
Womankind Worldwide
World Association of Girl Guides and Girl Scouts
World Vision UK

International

Asian Human Rights Commission (Hong Kong)
Centre for Reproductive Law and Policy (USA)
Children's Concern Organisation (Uganda)
Human Rights Watch
ILO
International Women's Health Coalition
IPAS Uganda
National Council for Childhood and Motherhood (Egypt)
National Council of NGO Networks
Rayalaseema Rural Development Society
Sudan National Committee on Harmful Traditional Practices