



# Out of the Shadows

## Child marriage and slavery

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Out of the Shadows: Child Marriage and Slavery

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Cover image: Nepalese girl, who was married at fourteen, with her baby. The red mark on her forehead symbolises marriage.  
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# Foreword

This report, prepared by Anti-Slavery International, sheds light on the striking links between slavery and slavery-like practices and many child marriages. As such, it complements my own endeavours to highlight the existence of servile marriages, which are specifically prohibited in the United Nations 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery.

The shocking fact is that, today, servile marriage still affects potentially millions of children and adults in all regions of the world. As with all forms of slavery and slavery-like practices, the obligation to put an end to this practice is a cornerstone of customary international law. Despite this, the issue has been overlooked by the international community and its member States for far too long. Where it has been recognised, it has tended to be addressed in a fragmented way, for example by viewing servile marriage or the problems associated with child marriage in particular solely as a gender or health issue.

This paper deploys a wealth of material already available on the subject of child marriage to present how many of these real-life incidences in fact amount to slavery and slavery-like practices under international law, based on a thorough analysis of the most relevant UN and ILO standards. It then details the extent to which key international bodies make the link between child marriage and child slavery. The review also examines a number of obstacles at the national level that impede the realisation of rights to marry with free and full consent, and the enjoyment by both partners of equal rights during and at the dissolution of marriage. These many obstacles also increase children's vulnerability to entering into servile marriage. In addition, it draws upon Anti-Slavery International's long experience of tackling slavery and supporting anti-slavery movements in many corners of the globe by underscoring the need to examine the causes of child marriage and identify measures to address the problem in a holistic and case-specific way if our attempts to tackle the most egregious cases of child marriage are to yield positive results.

It is high time for the servile marriage of children and adults to come out of the shadows. It must be tackled in a comprehensive way, acknowledging all of its many and varied manifestations, and encompassing its complex range of causes and consequences. By identifying where child marriage amounts to slavery and slavery-like practices, this review and its recommendations will hopefully not only draw attention to the urgent need for action, but also provide a useful framework for the international community and its member States to help put an end to the gravest forms of child marriage by firstly recognising them as slavery-like practices and punishing them as such.



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*UN Special Rapporteur on contemporary forms of slavery, its causes and consequences*

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# Key Definitions

For the purposes of this report, the following definitions have been used:

**Child:** This term is defined in the 1989 UN Convention on the Rights of the Child as referring to: “*every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier.*”<sup>1</sup> The age of 18 years old is set without qualification for the application of the term ‘child servitude’ in the 1956 UN Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery.<sup>2</sup> Likewise, many other international instruments identify 18 years old without exception as a threshold of application for the purposes of their provisions relating to children. These notably include the 1999 ILO Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour.<sup>3</sup> The term ‘child’ shall therefore be used in this report to refer to any person under 18 years of age.

**Marriage:** This term is used in its widest sense to cover a betrothal or union between two people, recognised under civil law, religious law and/or customary rites, and understood to be binding by the spouses concerned, their families and the wider community, whether or not it has been formally registered in law.

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<sup>1</sup> Article 1.

<sup>2</sup> Article 1(d).

<sup>3</sup> Article 2.

# 1. Introduction

*“No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all its forms.”<sup>4</sup>*

The egregious nature of slavery spurred abolitionists to campaign against the transatlantic slave trade in the 18<sup>th</sup> century. At that time, it was legally sanctioned to transport men, women and children from their homelands, and force them into work, cultivating produce like sugar and tobacco, with control over every aspect of their lives. This practice was initially condemned in the 1815 International Declaration Relative to the Universal Abolition of the Slavery Trade. ‘Slavery’ was first defined in international law in the League of Nations’ Slavery, Servitude, Forced Labour and Similar Institutions and Practices Convention of 1926 (hereafter the 1926 Slavery Convention) as:

*“the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.”<sup>5</sup>*

Slavery is now universally so abhorred that its prohibition has attained international *jus cogens* status, a fundamental principle of customary international law from which no derogation is permitted under any circumstances.<sup>6</sup> This obliges States to address slavery and slavery-like practices as a matter of priority, whether they are committed by State representatives or private individuals.

Today, however, millions of adults and children around the world are still subject to slavery in its many contemporary forms and manifestations, including forced labour, bonded labour, and trafficking for sexual or labour exploitation. Just like their historical predecessors, these individuals are controlled, treated as property, exploited and dehumanised.

The term slavery has incredible force, both emotionally and legally, and must be applied with extreme caution. Indeed, some people may find it quite alien to attempt to associate slavery and slavery-like practices with marriage, including marriage involving individuals under 18 years old. For many, marriage represents the lifelong union of two spouses, based on love and mutual respect with a fair distribution of power, resources and responsibility, and usually providing the security in which to conceive and raise children. These notions, whether ideal or based on experience, could not appear further removed from slavery.

Increasingly, however, widespread coverage in the media and a series of reports on child marriage by academics, non-governmental organisations (NGOs) and international agencies have drawn attention to the serious human rights violations that can occur in relation to child marriage, and the vast numbers of children around the world involved. Despite this, recognition of the links between marriage, and particularly child marriage, and slavery remains largely absent from the debate.

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<sup>4</sup> Article 4, Universal Declaration on Human Rights 1948.

<sup>5</sup> Article 1(1).

<sup>6</sup> Moreover, like torture and genocide, the International Court of Justice has identified protection from slavery as an *erga omnes* obligation; that is, a responsibility owed by all individual States towards the international community as a whole. See David Weissbrodt and Anti-Slavery International, *Abolishing Slavery in its Contemporary Forms*, United Nations, New York and Geneva (2002), pp. 3-5.



It would be inappropriate to characterise all child marriage as slavery, notably where it involves young couples between 16 and 18 years old, who enter freely into happy and lasting partnerships that either spouse can leave if circumstances change. Yet this paper, the culmination of a review undertaken by Anti-Slavery International of over 50 reports and articles on child marriage, sheds light on how a relatively high proportion of child marriage cases, many involving children much younger than 16 years old, can amount to slavery. In doing so, it shows that child marriage can often operate as a shield behind which slavery occurs with apparent impunity.

Such cases can be discerned by looking primarily at: a child's ability to voice or exert his or her rights and wishes on entering into a marriage, or even to know what those rights may be; the levels of control and exploitation exercised within the marriage itself; and the ability of the child spouse to leave the union should the situation prove unsustainable. The younger the child, the greater their vulnerability to slavery will be according to these criteria. Moreover, these factors are likely to extend slavery through marriage into a lifetime of servitude for the adults that these children become.

Hopefully gaps in awareness and action around these issues are starting to diminish at the international level at least. The UN Special Rapporteur on contemporary forms of slavery, Gulnara Shahinian, recently dedicated her thematic report to the UN Human Rights Council to servile marriage. Offering recommendations to States on how to begin to address the problem, she lamented that to date the issue had been addressed by the international community in a fragmented manner, calling on the Council to take a "more comprehensive approach" going forward.<sup>7</sup> Her remarks were echoed by a number of relevant UN special rapporteurs and treaty bodies in a joint statement to mark the first international day of the girl-child, which highlighted the "slavery-like reality" many children experience when they are forced to marry.<sup>8</sup>

Bringing slavery in relation to child marriage out of the shadows is long overdue. By outlining both the potential and actual links between child marriage and slavery, it is hoped that governments, international bodies, civil society and individuals alike will be impelled with a greater sense of urgency and obligation to find effective ways finally to protect children from slavery through marriage.

## **1.1. Outline of the report**

This paper will begin by briefly identifying some key characteristics of the nature of child marriage which emerged from the literature review, as well as outlining the global scale of child marriage. There will follow a fuller description of the right to marry in international law. The international legal instruments governing slavery and slavery-like practices that are particularly relevant to child marriage will then be detailed. Each will be illustrated with key findings from the literature review to demonstrate the striking links between child marriage and slavery that exist in practice. It will also highlight the gaps in framing child marriage as a slavery issue at the international level, as well as major obstacles that impede the translation of international standards governing both freedom from slavery and the right to marry into domestic law and enforcement in this area. It is not possible within the scope of this paper adequately

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<sup>7</sup> *Thematic Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, to the UN Human Rights Council, on Servile Marriage*, UN doc. A/HRC/21/41 (July 2012).

<sup>8</sup> "Forced child marriage, slavery-like reality in every single region of the world" (11 October 2012) joint statement by the UN Committee on the Rights of the Child, the UN Committee on the Elimination of Discrimination against Women, the UN Special Representative of the Secretary General on Violence against Children, the UN Special Rapporteur on Sale of Children, Child Prostitution and Child Pornography, the UN Special Rapporteur on Contemporary Forms of Slavery, including its Causes and Consequences, the UN Special Rapporteur on Violence against Women, the UN Special Rapporteur on Trafficking in Persons, especially Women and Children and the UN Working Group on Discrimination against Women in Law and Practice, (11 October 2012), available at: <http://www.un.org/en/events/girlchild/2012/hexperts.shtml>.

to reflect the full range of economic, social, religious, cultural and indeed personal factors that give rise to children entering marriage in the first place, or the distinctive individual experiences that children in marriage have. Some of the key vulnerability factors that emerged from the review will nevertheless be highlighted in the final chapter to help provide a sense of the diversity and complexity of this issue. The root causes of child marriage and community dynamics must be better understood if the grave violations associated with child marriage, including slavery and slavery-like practices, are at last to be addressed and ultimately prevented.

# 2. Marriage and Children

## 2.1. Nature of child marriage

Successful marriages between under-18 year-olds are perfectly possible. However, Anti-Slavery International's literature review has found that vast numbers of child spouses suffer a range of human rights violations both in childhood and then as the adults they become. This indicates an enormous gap between international standards of protection and the reality experienced by those children concerned, particularly children under 15 years old.

### 2.1.1. Harms associated with child marriage

Several reports reviewed drew attention to physical violence and marital rape,<sup>9</sup> discussed further in subsequent chapters of the report. Studies also detailed the negative impact of child marriage on health and education, especially for girls. Child brides in particular face high risks associated with early sexual activity, pregnancy and childbirth.<sup>10</sup> The isolation and abrupt end to childhood that is typically associated with child marriage, combined with the physical and sexual abuse that married children commonly suffer can also have profound effects on a child's psychological health.<sup>11</sup> Children who marry overwhelmingly drop out of school in preparation for or upon marriage, restricting their life opportunities and their ability and confidence to make informed decisions about their lives.<sup>12</sup> Moreover, domestic law may confer 'adult status' for legal purposes on children who marry, and thereby effectively remove them from the special protections to which they are normally entitled as 'minors'.<sup>13</sup>

### 2.1.2. Power dynamics and age gaps

Evidence uncovered by the literature review indicates that girls are much more likely than adult women to be married or betrothed to significantly older men. For example, in Nigeria, a recent review noted that the mean age difference between husband and wife is 12 years where the wife is under 15 years old when she marries. For the youngest brides in polygamous marriages the age gap can increase to 18 years.<sup>14</sup> This is compared to a mean age difference of eight years between spouses when women are aged over 20 years old when they marry.<sup>15</sup>

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<sup>9</sup> It should be noted that not all national jurisdictions recognise 'marital rape' as an offence except in certain circumstances, notably where a wife is below a stated age. For example, although the minimum age for the marriage of females is 18 years under India's 2006 Child Marriage Act, Section 375 of the Indian Penal Code states that: "sexual intercourse by a man with his own wife, the wife not being under 15 years of age, is not rape."

<sup>10</sup> See for example, World Vision, *Before She's Ready: 15 places girls marry by 15* (2008), pp. 18-20, and Gordon Brown, *Out of Wedlock, into School: Combating child marriage through education* (2012), pp. 16-19.

<sup>11</sup> See for example, Edwige Rude-Antoine, *Forced Marriages in Council of Europe Member States: A comparative study of legislation and political initiatives*, Directorate General of Human Rights, The Council of Europe, Strasbourg (2005), p. 31; and Human Rights Watch, *How Come You Allow Little Girls to Get Married? Child marriage in Yemen* (2011), pp. 31-6.

<sup>12</sup> See for example, Gordon Brown, *Out of Wedlock*, *supra* note 10, pp. 20-28; and the International Planned Parenthood Federation (IPPF), *Ending Child Marriage: A guide for global policy action* (2007), pp. 13-14.

<sup>13</sup> For example, this concern is raised in, Yaa Yeboah and Frank Panford, *Eliminating the Worst Forms of Child Labour under Time-Bound Programmes: Guidelines for strengthening legislation, enforcement and the overall legal framework*, Time-Bound Programme Manual for Action Planning, Paper IV-3, ILO-IPEC (2003), p. 22.

<sup>14</sup> A polygamous marriage is where a man is permitted to marry several wives under national, religious and/or customary law. For example, a man may be legally entitled to have up to four wives under Islamic Law in some national jurisdictions.

<sup>15</sup> Gordon Brown, *Out of Wedlock*, *supra* note 10 (2012), p. 11.

Large age gaps can increase unequal power dynamics within a relationship as well as psychological and emotional stress. The younger the spouse, the less likely he or she will be able to understand or choose to enter into marriage or even voice an opinion about it. Equally, their youth will increase their vulnerability to being subjected to control and exploitation within marriage, as well as limit their capacity to end a union where this occurs. This then renders child spouses vulnerable to lifelong servitude in adulthood too.

### 2.1.3. Gender dimensions of child marriage

It should be noted that boys too can marry as children. This report, however, inevitably reflects the strong bias in the literature available on the subject, and so focuses on girls. This bias is almost certainly because, where relevant data on child marriage is available, the proportion of girls involved is much greater than boys.<sup>16</sup> Further, girls are generally understood to be at a disproportionate risk of physical harm and exploitation through marriage compared with boys due to biological, social and political factors.<sup>17</sup> However, the lack of research into the phenomenon of boys in marriage means that the impact of child marriage on boys is less clear and warrants closer attention.

## 2.2. Scale of child marriage

Despite the harms commonly associated with child marriage, the marriage of girls under 18 years old takes place on a massive scale. UNICEF recently estimated that, globally, almost 400 million women currently aged 20 to 49 were married or entered into a union when they were under 18 years old. This equates to 41 per cent of the total population of women in this age range. Many of these marriages involved children much younger than 16 years old. Approximately 23 million (or 11 per cent) of young women aged 20 to 24 years old entered into marriage or a similar union before reaching the age of 15, and some were under 10 years old on marrying.<sup>18</sup> These findings were borne out by Anti-Slavery International's literature review: a sizeable proportion of the children, mainly girls, featured in the reports and articles studied tended to be much younger than 18 years old. Many were under 14 years of age when they married. A few were even younger, with examples of girls who were seven and even five years old when they were married or betrothed.<sup>19</sup>

### 1. Local studies in Ethiopia

A study of 500 respondents in the Gojam and Wolayta provinces in the North and South of Ethiopia found child marriage to be the norm with girls getting married between the ages of 5 to 10 years in Gojam and 12 to 13 years in Wolayta.<sup>20</sup>

Therefore despite growing publicity around the harms associated with child marriage and indications of a proportional decrease in the overall number of child brides during the last 30 years, a strong

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<sup>16</sup> One study noted that in Niger, for example, four per cent of 15 to 19 year old boys were married compared with 70 per cent of girls in the same age-range. Where there was greater parity, such as in Guatemala, the eight per cent of 15 to 19 year-old boys who were married, was still exceeded by 24 percent of married girls of the same age; see UNICEF, "Early Marriage Child Spouses", *Innocenti Digest* (2001), p. 4.

<sup>17</sup> *Ibid.*

<sup>18</sup> UNICEF, *Committing to Child Survival: A Promise Renewed*, Progress Report (September 2012), New York, USA, p. 23.

<sup>19</sup> For example, Rajani, aged five years old, in Rajasthan, India, was betrothed in a joint ceremony with her sisters, who were being married, aged 15 and 13 years old. This case is featured in, Cynthia Gorney, "Too Young to Wed: The secret world of child brides," *National Geographic*, June 2011, p.4, available at <http://ngm.nationalgeographic.com/2011/06/child-brides/gorney-text>.

<sup>20</sup> Carron Somerset, *Early Marriage: Whose Right to Choose?* The Forum on Marriage and the Rights of Women and Girls (2000), p. 25.

commitment to child marriage persists in many quarters. While figures can vary drastically within and between continents and even countries, Sub-Saharan Africa and South Asia appear to account for the majority of child marriages. In countries like Bangladesh, Niger, Chad, Ethiopia, India and Nigeria, the proportion of girls married under the age of 15 ranged between 30 to 50 per cent. Child marriage exists elsewhere in Asia, Europe, Latin America and the Middle East too, albeit in lower numbers. For example, in Latin America, incidences appeared to be particularly high in Nicaragua where just over 43 per cent of under 18 year-olds and nearly 15 per cent of under 15 year-olds were reportedly married.<sup>21</sup>

### 2.3. The right to marry in international law

The right to marry and found a family is enshrined in international law in a number of treaties and declarations.<sup>22</sup> In order to balance the freedom to marry with protection from harm, the right to marry also provides for a number of key safeguards.

#### 2. Key protections underpinning the right to marry

**Non-discrimination:** States should ensure that men and women have equal rights to enter into marriage, during marriage and at its dissolution.<sup>23</sup>

**Free and full consent:** Marriage should be entered into only with the free and full consent of both spouses. This principle is further protected by the requirement to register marriages by a competent authority.

**Minimum age for marriage:** States should specify a minimum age for marriage in law. This reinforces the principle that children below the stated age are unlikely to be appropriate participants in marriage.

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<sup>21</sup> Based on annual Demographic and Health Survey (DHS) data (2006), as reported by the International Center for Research on Women (ICRW), *New Insights on Preventing Child Marriage: A global analysis of factors and programs*, (2007), pp. 13-19.

<sup>22</sup> See box 3, "The right to marry in International Human Rights Law," pp. 12-13

<sup>23</sup> It should be noted that this law is contested by some States. For example, Article 16 of the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) 1979, is subject to more reservations than any other Article in that Convention. It has been argued that these reservations undermine the object and purpose of the Convention itself and are therefore impermissible under international law

### 3. The right to marry in International Human Rights Law

#### The Universal Declaration of Human Rights 1948

##### Article 16:

- (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 spouses.

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

##### Article 1:

- (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 in the presence of the [competent] authority [...] as prescribed by law. [...]

##### Article 2:

States Parties [...] 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.

#### International Covenant on Civil and Political Rights 1966

##### Article 23:

- (3) No marriage shall be legally entered into without the **full and free consent** of the intending spouses.
- (4) States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.

#### International Covenant on Economic Social and Cultural Rights 1966

##### Article 10:

- (1) [...] Marriage must be entered into with the **free consent** of the intending spouses.

#### Convention on the Elimination of All Forms of Discrimination against Women 1979

##### Article 16:

- (1) States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of 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**;
  - (c) The same rights and responsibilities during marriage and at its dissolution; [...]
- (2) The **betrothal and the marriage of a child shall have no legal effect**, and all necessary action, including legislation, shall be taken to specify a **minimum age** for marriage and to make the **registration of marriages in an official register compulsory**.

#### African Charter on the Rights and Welfare of the Child 1999

##### Article 21:

- (2) Child marriage and the betrothal of girls and boys shall be prohibited and effective action, including legislation, shall be taken to **specify the minimum age of marriage to be 18 years** and make **registration of all marriages in an official registry compulsory**.

#### American Convention on Human Rights 1969

##### Article 17:

- (3) No marriage shall be entered into without the **free and full consent** of the intending spouses.
- (4) The States Parties shall take appropriate steps to ensure the **equality of rights** and the adequate balancing of responsibilities of the spouses as to marriage, during marriage, and in the event of its dissolution. In case of dissolution, provision shall be made for the necessary protection of any children solely on the basis of their own best interests.



### 2.3.1. The minimum age for marriage – the case for 18 years old

International law requires States to set a legal minimum age for marriage. However, there is some inconsistency about when an individual is said to be capable of making the important decision to enter into marriage, and consequently at what age the minimum age should be set.

The UN Convention on the Rights of the Child (hereafter the CRC) defines a child as: “*every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier.*”<sup>24</sup> This recognises that different social and cultural norms prevail in different parts of the world, though it cannot be used to justify the establishment of ages that are so low as to be incompatible with the provisions, aims and objectives of the CRC.<sup>25</sup>

The Recommendation accompanying the 1964 UN Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages specifies that any minimum age should be “*not less than 15 years.*”<sup>26</sup> However, a growing body of opinion at the international level holds that the minimum age for marriage in international law should be 18 years old. Notably, the UN Committee on the Rights of the Child (hereafter the CRC Committee), which monitors States’ conformity with the CRC, strongly recommends 18 years as the minimum age for marriage for boys and girls, with or without parental consent. The CRC Committee made this recommendation following on-going concerns about the low age limits set by many countries in domestic law, and the need to protect children from the wide-ranging negative implications of child marriage for health, education and wider social inclusion. The UN Committee that supervises the 1994 UN Convention on the Elimination of All Forms of Discrimination against Women (hereafter the CEDAW Committee) reached the same conclusion.<sup>27</sup> This recommendation was based not only on the need to avoid adverse consequences for health and education, but also on the recognition that 18 is the age at which individuals attain maturity and capacity to be able to enter into marriage.<sup>28</sup>

The 1990 African Charter on the Rights and Welfare of the Child (hereafter the ACRWC) takes a clearer position. It not only prohibits child marriage and the betrothal of girls and boys, but also explicitly obliges that effective action, including through legislation, be taken to specify the minimum age for marriage as 18 years.<sup>29</sup> This was reinforced in the 2003 Protocol to the African Charter on Human and People’s Rights on the Rights of Women in Africa (hereafter the Maputo Protocol), which also asserts 18 years old as the minimum age for marriage.<sup>30</sup>

The unequivocal establishment of 18 years as the minimum age for marriage in the ACRWC and the Maputo Protocol, and the recommendations adopted by the CRC and CEDAW Committees correspond to minimum age requirements in other areas of international law. These recognise the special vulnerability of children, particularly where matters of free and full consent arise. Notably, for example, the 2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (hereafter the Palermo Protocol) effectively establishes that any person under 18 years old who is moved from one

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<sup>24</sup> Article 1.

<sup>25</sup> Article 18, Vienna Convention on the Law of Treaties 1969; see Sharon Detrick, A Commentary on the UN Convention on the Rights of the Child, The Hague (1999), p.60.

<sup>26</sup> Principle II, Recommendation on the UN Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, General Assembly Resolution 2018 (XX), 1 November 1965, available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/RecommendationOnConsentToMarriage.aspx>.

<sup>27</sup> General Recommendation no. 21 concerning Article 16(2) on equality in marriage and family relations (1994).

<sup>28</sup> *Ibid*, para. 36. General Recommendation no. 24 concerning Article 12 on Women and health (1999), para. 28, also refers to Article 16(2) which proscribes the betrothal and marriage of children as an important factor in preventing the physical and emotional harm caused by early childbirth.

<sup>29</sup> Article 21.

<sup>30</sup> Article 6(b).

location to another for the purpose of exploitation is considered to have been trafficked. In contrast to those over the age of 18, it applies to children whether or not they ‘agreed’ to the transfer or had approached the trafficker directly themselves.<sup>31</sup>

### 2.3.2. Challenges for a minimum age of 18 years old

Adopting and enforcing a legal minimum age limit for marriage at 18 years can present a number of challenges in practice. For example, codes of acceptable behaviour in many societies forbid pre-marital sex. Thus marriage in these contexts is often inextricably linked to entering into sexual relations and accessing contraceptive, sexual and reproductive health services, as well as pre- and post natal, healthcare and advice. Any measure seeking to protect children with regard to marriage must therefore be implemented in a manner that in no way removes or limits their rights in respect of such services. Nor should such measures be used to stigmatise under-18 year olds concerning their sexual health.

Some commentators also argue powerfully for maintaining domestic laws in many countries that already permit under 18 year-olds to marry. These arguments are most persuasive where the marriages in question involve 16 to 18 year olds who wish to marry of their own free will, and where divorce is both available and accessible should either party wish to end the union. It is important that States are able to exercise a degree of flexibility, therefore, to ensure that protective laws do not lead to perverse outcomes by restricting the rights of those who genuinely and freely wish to marry, or even penalise them for it. As one Indian court noted with concern, in the event of failure in this regard:

*“judges would be left to deal with broken hearts, weeping daughters, devastated parents and petrified young husbands ... chased by serious criminal cases, when their sin is that they fell in love.”<sup>32</sup>*

In setting and implementing a minimum age for marriage at 18, challenges such as these must be carefully considered and addressed without being allowed to overshadow the need to protect children from harm through marriage. This is especially where children, often much younger than 16 years, may: be forced into marriage; lack sufficient maturity or capacity genuinely to choose to enter into marriage when they do so; or lack any real choice to leave their marriage even if they are subjected to abuse and exploitation. At present, these children are afforded little to no protection in law or practice.

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<sup>31</sup> Article 3(c) and (d), Palermo Protocol.

<sup>32</sup> As cited in Pallavi Gupta, “Child Marriages and the Law: Contemporary concerns”, *Economic and Political Weekly*, Vol. XLVII No 43, 27 October 2012, p. 53.

# 3. Slavery and Child Marriage

The next two chapters will examine when and how child marriage can amount to slavery, servile marriage, child servitude, child trafficking and forced labour. They will do so by looking closely at key treaties forming the international legal framework on slavery, and which are also relevant to child marriage. A number of examples will be drawn from the wealth of material found in the literature review to illustrate how child marriage may fall within the remit of each of these treaties in turn. It is important to note that the treaties referred to contain distinctive provisions according to their particular area of focus. However, all are firmly rooted in the 1926 Slavery Convention and cover the subjection of individuals to force, coercion, control, ownership and/or exploitation. As such, these treaties are closely intertwined. Thus, the child marriage cases cited here as examples can fall within the definition of a number if not all of the treaties relating to slavery and slavery-like practices examined here.

## 3.1. When child marriage becomes slavery

Certain cases of child marriage may require little explanation to be readily recognised as slavery. Notably, the abductions of girls to become ‘wives’ in both conflict and peacetime situations clearly amount to slavery.<sup>33</sup> In some cases, families themselves hand over young daughters to warlords and militia members for marriage during conflict in the hope of securing greater protection for the family, and possibly the girls themselves from rape or other forms of sexual exploitation and brutality. These might also be readily recognised as slavery for the girls concerned. The marriage of girls in such circumstances has been documented in many conflict settings, including Afghanistan, Somalia, Northern Uganda, Algeria, Chad, Sudan, Lebanon, and Palestine.<sup>34</sup>

### 4. Abductions in conflict: Sierra Leone

Human Rights Watch has documented cases of girls being abducted for use as ‘wives’ by combatants in Sierra Leone. Here, many rebels had polygamous ‘marriages’ involving several women, including abducted women and girls. They also changed ‘wives’ frequently when they tired of them or the girls were too ill to perform their tasks.<sup>35</sup>

A closer examination of the 1926 Slavery Convention nevertheless highlights how other child marriage cases can amount to slavery. It defines slavery as follows:

*“the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.”<sup>36</sup>*

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<sup>33</sup> For example, ‘bride kidnapping’ as widely reported to take place in Kyrgyzstan, see: “Kyrgyzstan starts anti-bride kidnapping campaign,” *The Telegraph*, 29 November 2011, <http://www.telegraph.co.uk/news/worldnews/asia/kyrgyzstan/8922962/Kyrgyzstan-starts-anti-bride-kidnapping-campaign.html#>; “Kyrgyzstan moves to stop ‘bride’ kidnappings,” *The Washington Times*, 25 November 2011, <http://www.washingtontimes.com/news/2011/nov/25/kyrgyzstan-moves-stop-bride-kidnappings/?page=all>.

<sup>34</sup> *Report of the visit of the UN Special Rapporteur on violence against women to Afghanistan*, UN doc. E/CN.4/2006/61/Add.5 (February 2006), pp. 5, 7, 9; Human Rights Watch, *No Place for Children: Child Recruitment, Forced Marriage, and Attacks on Schools in Somalia*, (2012), p. 55-56; Pernilla Ouis, “Honourable Traditions? Honour Violence, Early Marriage and Sexual Abuse of Teenage Girls in Lebanon, the Occupied Palestinian Territories and Yemen,” *International Journal of Children’s Rights*, 17/3 (2009), pp. 445-474.

<sup>35</sup> Human Rights Watch, *We’ll Kill you if You Cry: Sexual Violence in the Sierra Leonean Conflict* (2002), p. 43.

<sup>36</sup> Article 1(1).

Authoritative commentators have noted key areas to examine when assessing whether an abusive situation amounts to ‘ownership’ and therefore slavery. These are: the degree of restriction on the individual’s inherent right to freedom of movement; the level of control over their personal belongings; and the existence of informed consent, as well as a full understanding of the nature of the relationship between the parties. The subjection of an individual to control and ‘ownership’, therefore, is central to identifying slavery, and this is often accompanied by the threat of violence.<sup>37</sup> These considerations are more likely to be evident where children are involved due to the inherent power imbalance between children and adults.

Determining whether cases of child marriage constitute slavery therefore requires an examination of the extent to which the child, or the adult they become, is effectively ‘enslaved’ through the physical, psychological and/or economic powers of ‘ownership’ and control exercised over them. This can be assessed by looking at how children enter marriage, how they are treated during marriage, and whether they are realistically able to leave or dissolve the marriage should they so wish.

### **3.1.1. Entry into marriage: absence of free, full and informed consent**

Consent is central both to the right to marry and slavery. Children are in a weaker position to give free, full and informed consent than an adult may be. The unequal power dynamic between adults and children can ensure that this is the case even if a child says that they agree to a marriage, or at least do not express refusal. Children are also less able to be fully informed about the true nature or impact of a marriage or union. The meaningful consent of any child is arguably doubtful, but the younger the child the less able they are to exercise free, full and informed consent:

*“I was so young I didn’t even know what marriage meant when I got married.”<sup>38</sup>*

Children are even less likely to be able to exercise genuine consent when pressure to marry comes from within their own family, where power and influence lie firmly with parents or guardians. Even where there has been no obvious use of threats or force, most children cannot realistically question, never mind refuse, their parents’ authority:

*“I understood the situation ... I agreed with the decision. They did not ask me about it though. But, if they did I would never have refused.”<sup>39</sup>*

The primary motives of the parties responsible for arranging a child marriage, including parents/guardians or a prospective adult spouse can vary. For example, it can vary from financial gain (should a monetary or in-kind transaction be involved)<sup>40</sup> to a genuine belief that it is in the child’s best interests to marry. However, a common theme in the literature review was that the decision to marry was taken by one or both parents or guardians in the absence of free, full and informed consent on the part of the children concerned.

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<sup>37</sup> Weissbrodt and Anti-Slavery International, *Abolishing Slavery*, *supra* note 6, p. 7.

<sup>38</sup> Child bride in Bangladesh, as cited in Human Rights Watch, *Will I Get My Dues ... Before I Die? Harm to women from Bangladesh’s discriminatory laws on marriage, separation and divorce* (2012), p.19.

<sup>39</sup> Young boy in Pakistan, as cited in Samuel Lane, *Stealing Innocence: Child marriage and gender inequality in Pakistan*, Abo Academy University/Plan Finland (2011), p. 25.

<sup>40</sup> Value transactions will be discussed in more detail in relation to servile marriage in the following chapter (pp. 22-24).

### 3.1.2. Treatment in marriage: control and ownership

Equally, upon entering a new household, many children appear to have little or no bargaining power with their spouse and/or in-laws regarding their own movements, belongings or even person. Choices from earning an independent income to consent to sexual relations may not be available to these children. The question of control can be compounded for girls, who are often expected to leave the family home to live with their husband and his wider family once married or sometimes even betrothed. In this way, a girl is removed from the people and environment she knows and any familial protection she might expect.

The reports reviewed repeatedly presented lives subjected to control through violence, threats and humiliation, as well as feelings of isolation and loneliness from being confined to the house with domestic and child-rearing duties, and being prevented from pursuing activities outside the home.<sup>41</sup> One study on children in South Asia noted that despite making their husbands aware of their unwillingness to have sex, or the pain they suffered during sex, child wives continued to be raped<sup>42</sup> in 80 per cent of cases.<sup>43</sup> These risks did not appear to be reduced where both the wife and husband were young in age; girls in this situation were also found to be at risk of rape, abuse and harassment from older in-laws.<sup>44</sup> Another article indicated that in Egypt, 29 per cent of adolescent wives had been beaten by their husbands, with a large proportion experiencing this during pregnancy.<sup>45</sup>

The reports indicated that even when a child voices concerns about physical and sexual violence they have suffered, these concerns may not be taken seriously by those around them. This further compounds a child's inability to exercise any control over their situation.

### 5. Control in marriage: Nicaragua

A girl in Nicaragua, who was married at 15 years old to a man twice her age, suffered domestic violence for over five years. She had been told by her mother and mother-in-law that such abuse was "normal" and a wife's duty to bear it.<sup>46</sup>

### 3.1.3. Inability to leave or end a marriage

It has already been noted that spouses should have equal rights to the dissolution of marriage under international law. The ability to leave or end a marriage is also integral to a person's freedom of movement, and is therefore key to assessing whether a situation amounts to slavery or not. Those subject to slavery or slavery-like practices in child marriage, whether still children or the adults that such children become, are unable to choose to leave their marriage, however difficult their situation may be. An inability to end marriage was a feature of most of the cases in the literature review.

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<sup>41</sup> See for example, Pernilla Ouis, "Honourable Traditions?" *supra* note 34, pp. 462-5; FORWARD UK and Children's Dignity Forum, *Voices of Child Brides and Child Mothers in Tanzania*, (2010), pp. 19-22.

<sup>42</sup> As noted above (see note 9), this is unlikely to be viewed as 'rape' under applicable national law as most South Asian States do not recognise marital rape except in certain circumstances.

<sup>43</sup> UNICEF, *Early Marriage in South Asia*, Discussion Paper (2008), p11, available at: [http://www.unicef.org/rosa/earlymarriage\(lastversion\).doc](http://www.unicef.org/rosa/earlymarriage(lastversion).doc).

<sup>44</sup> *Ibid.* p13.

<sup>45</sup> Susanne Louis B. Mikhail, "Child Marriage and Child Prostitution: Two forms of sexual exploitation", *Gender and Development*, Vol. 10, No. 1 (March 2002), p. 47.

<sup>46</sup> Paminder Parbha, *Home Truths: Domestic violence and its impact on women and children*, Working Paper, Save the Children (1999), cited in Carron Somerset, *Early Marriage: Whose Right to Choose?* *supra* note 20, pp. 20-1.

Those who marry as children are unlikely to have an alternative means of financial support for themselves outside of marriage. For example, a girl in Bangladesh, who was abandoned by her husband for another wife, was forced to remain living with her in-laws despite the fact that they beat her. This was because neither she nor her parents could afford to support her financially, and she felt that she would not be able to obtain maintenance payments from her ex-husband.<sup>47</sup> Where a payment or transaction of another sort has been made as part of a marriage agreement, pressure can be further increased on children to remain in marriage lest their families be expected to refund the sums paid. Moreover, a girl's financial and emotional ties to her marriage will be greatly increased if she became pregnant and has children of her own.

At a minimum, it seems that many children seeking to leave their marriage can expect to face public disapproval, humiliation and even vilification, from in-laws, their own families, and the wider community. The case of the 15 year-old girl in Nicaragua cited above illustrates how those who escape from violent spouses and seek refuge within their own families may simply be told to return and endure their suffering. In the worst cases, girls can be threatened with violence or even death in retribution for, or to 'right', the perceived shame inflicted on family honour by abandoning a marriage.<sup>48</sup>

Furthermore, where marriage is not recognised under national law by a competent registrar or other official body, State authorities may be unable to establish that a marriage has taken place at all. Such a marriage cannot therefore be officially dissolved nor can any formal redress be attained for the violation of marriage safeguards in respect of that marriage. In the absence of independent legal, financial and/or emotional support, all but the most determined and resilient children will be forced to stay in marriage, whatever the circumstances.<sup>49</sup> Indeed, without alternative means of support, a girl who is abandoned or leaves her marriage and is unable to return home to her parental home may become vulnerable to other forms of slavery and exploitation in order to survive.<sup>50</sup>

## 6. Landmark court judgment on child marriage as slavery in Niger

The Economic Community of West African States (ECOWAS) Community Court of Justice cited both the 1926 Slavery Convention and its 1956 Supplementary Slavery Convention when it found in favour of Hadijatou Mani Koraou in her case against the Republic of Niger. Hadijatou had been subjected to nine years of slavery under the *wahaya* (or "fifth" wife) system. As Islam permits men to take no more than four wives, the *wahaya* custom entails acquiring a young girl to work as a servant as well as a concubine.<sup>51</sup> In Hadijatou's case, she was:

*"transferred in exchange for money at the age of twelve ... She was subject for nearly a decade to psychological pressure characterised by submission, sexual exploitation, hard labour in the house and the fields, physical violence, insults, humiliation and the permanent control of her movements by her purchaser."<sup>52</sup>*

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<sup>47</sup> Human Rights Watch, *Will I Get My Dues ... Before I Die?*, *supra* note 38, p. 1.

<sup>48</sup> See for example, Samuel Lane, *Stealing Innocence*, *supra* note 39, p. 30.

<sup>49</sup> The case of Nujood Ali in Yemen presents a rare exception: in 2008, she was married at the age of nine to a man in his thirties. At the age of ten she found a lawyer and was granted a divorce by a judge. See Human Rights Watch, *How Come You Allow Little Girls to Get Married?*, *supra* note 11, p. 19.

<sup>50</sup> See for example, European Roma Rights Centre (ERRC), *Breaking the Silence: Trafficking in Romani communities*, Budapest, Hungary (March 2011), p. 72-3.

<sup>51</sup> See Galy Kadir Abdelkader and Moussa Zangaou Wahaya: *Domestic and sexual slavery in Niger*, Anti-Slavery International and Association Timidria (November 2011).

<sup>52</sup> Unofficial translation, Judgment of the ECOWAS Community Court of Justice in the *Case of Hadijatou Mani Koraou v The Republic of Niger*, 27 October 2008.



## **7. Slavery and slavery-like practices in International Human Rights Law**

### **Slavery, Servitude, Forced Labour and Similar Institutions and Practices Convention of 1926**

#### **Article 1:**

(1) 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.

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

#### **Article 1:**

Each of the States Parties to this Convention shall take all practicable and necessary legislative and other measures to bring about progressively and as soon as possible the complete abolition or abandonment of the following institutions and practices [...]

(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 or any other person or group; or
- (ii) The husband of a woman, his family, or his clan, has the right to transfer her to another person for value received or otherwise; or
- (iii) A woman on the death of her husband is liable to be inherited by another person;

#### **Article 2:**

[...] States Parties undertake to prescribe, where appropriate suitable minimum ages of marriage, to encourage the use of facilities whereby the consent of both parties to a marriage may be freely expressed in the presence of a competent civil or religious authority, and to encourage the registration of marriages.

#### **Article 1:**

(d) 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.

### **Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime 2000**

#### **Article 3:**

(a) 'Trafficking 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;

[...]

(c) The 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;

(d) 'Child' shall mean any person under eighteen years of age.

**ILO Convention no. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour 1999**

**Article 3:**

For the purposes of this Convention, the term the **worst forms of child labour** comprises:

(a) All forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour [...]

**ILO Convention no. 29 concerning Forced or Compulsory Labour 1930**

**Article 2:**

(1) For the purposes of this Convention the term **forced or compulsory labour** shall mean all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.

# 4. Slavery-like Practices and Child Marriage

The 1956 UN Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (hereafter the 1956 Supplementary Slavery Convention) went further than the 1926 Slavery Convention in defining slavery. It calls on States to abolish a number of specific practices and institutions, denoting them collectively as conditions of “servile status”. They include debt bondage, serfdom and most pertinent to this report, servile marriage and the servitude of children and adolescents. Mindful of the overlap with its predecessor treaty, the 1956 Supplementary Slavery Convention obliges States to abolish or abandon completely those slavery-like practices explicitly identified in its provisions, whether or not they were already covered by the 1926 Slavery Convention.<sup>53</sup>

This section will address the links between these slavery-like practices and child marriage more specifically. In addition to looking at servile marriage and child servitude, this chapter will also examine the relevance of child trafficking which, with forced labour,<sup>54</sup> also forms part of the international slavery framework. In doing so, it will make reference to illustrative case studies. As outlined above, many of these examples can fall into more than one form of slavery-like practice.

## 4.1. Servile marriage

The 1956 Supplementary Slavery Convention identifies the following non-consensual practices relating to women in marriage as akin to slavery:<sup>55</sup>

- the promise or giving of a woman, without her having the right to refuse, by her parents, family or others in marriage in return for consideration in money or in kind;
- the handing over of a woman to another person by her husband or his kin for “value received or otherwise”; or
- widow inheritance, whereby a married woman is transferred to become the wife of another man upon the death of her husband.

Emphasising the intimate connection between these three forms of servile marriage and the general practice of forced marriage, the 1956 Supplementary Slavery Convention stipulates that State parties should establish suitable minimum ages to marry, and should encourage the free expression of consent to marry before “a competent civil or religious authority” and the registration of marriages.<sup>56</sup>

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<sup>53</sup> Article 1.

<sup>54</sup> See chapter 5 on Forced Labour.

<sup>55</sup> Article 1(c).

<sup>56</sup> Article 2.

## 8. Interpretations of ‘forced marriage’ in international contexts and national law

Forced marriage is intimately connected to servile marriage. Forced marriage is a term that has been adopted and defined in national legislation governing the right to marry, and can cover a wide range of practices in abusive or exploitative marriages. It is not explicitly defined in international treaties, though is primarily used in relation to the protections encompassed by the right to marry, notably that of free and full consent to marriage. A lack of free and full consent to marry on the side of either party to a marriage is central to understandings of forced marriage in both national and international contexts. For example, the UN Secretary General’s 2006 In-depth Study on Violence Against Women states:

*“[a] forced marriage is one that lacks the free and valid consent of at least one of the parties. In its most extreme form, forced marriage can involve threatening behaviour, abduction, imprisonment, physical violence, rape, and, in some cases, murder.”<sup>57</sup>*

Forced marriage can reduce a spouse to a person over whom any or all of the powers of ownership are attached, thereby rendering them subject to servile marriage.<sup>58</sup>

### 4.1.1. Servile marriage of girls

Children also appear to be protected from servile marriage under the 1956 Supplementary Slavery Convention, despite its use of the term ‘woman’ in outlining servile marriage. Whilst that Convention imposes an obligation to set minimum ages for marriage, the particular vulnerability of children regarding non-consensual marriage was apparently recognised as early as in the run up to the formulation of the 1926 Slavery Convention. The 1924 Temporary Slavery Commission identified the *“[a]cquisition of girls by purchase disguised as payment of dowry; it being understood that this does not refer to normal marriage customs”* within a list of forms of slavery subsequently approved by the League of Nations. The 1926 Slavery Convention’s subsequent reference to *“any or all of the powers of ownership”* in its definition of slavery, and its assertion that its purpose is the abolition of slavery *“in all its forms”* highlight that it was also intended to apply to the forms of slavery listed in the Report of the Temporary Slavery Commission.<sup>59</sup>

### 4.1.2. Financial transactions or payments in-kind and marriage

The promise or exchange of a woman for “money or payment in kind” also warrants closer examination. It is common in many societies to mark a marriage with the transfer of gifts, property or money in some way. Often this is no more than a symbolic gesture, such as the payment of wedding expenses by a bride’s father or parents. It clearly does not follow therefore that all marriages involving a ‘transaction’, such as a *dowry* or *bride price*, automatically equate to slavery or slavery-like practices. For example, it has been noted that *bride price* may offer some protection in more stable traditional communities. In such cases, a husband may be refused a refund of the *bride price* if his wife left him after he was generally agreed by the community to have behaved brutally towards her.<sup>60</sup> However, more commonly, *bride price* can put pressure on a child to stay in a marriage whatever the circumstances because their family may be unable or unwilling to repay the *bride price* received.

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<sup>57</sup> Report of the UN Secretary General to the UN General Assembly, *In-Depth Study on All Forms of Violence against Women* (July 2006), UN doc. A/61/122/Add.1, para. 122.

<sup>58</sup> Report of the Special Rapporteur on contemporary forms of slavery, *supra* note 7, para. 13.

<sup>59</sup> See Weissbrodt and Anti-Slavery International, *Abolishing Slavery*, *supra* note 6, pp. 4-5.

<sup>60</sup> See Debbie Taylor, *Servile Marriage*, Anti-Slavery International (March 1993), unpublished, p. 34.

## 9. Dowry and bride price

The *dowry*-system involves the transfer of gifts or payments from the bride or her family to the husband or husband's family. Whilst illegal, it remains a widespread practice in many countries, particularly in South Asia.

*Bride price* by contrast is more common in Africa. It involves the husband or husband's family giving gifts or payments to the bride's family.

### **Bride price: Romania**

A 10 year old girl was sold by her parents to be 'married' to a 17 year-old boy with a contract specifying she bear two children. The girl gave birth at the age of 12, and was warned by a doctor not to have any more children because of the risk to her health. This led the boy's parents to try to reclaim the money they paid for 'breach of contract.'<sup>61</sup>

Indeed, when a marriage or union is negotiated according to payments or transactions of any sort, particularly by the couple's parents or others on the couple's behalf, then the risk of servile marriage and a sense of 'value' being placed on the bride (or groom) is clear. There were numerous examples in the literature review illustrating the 'commoditisation' of children as something of a certain value to be 'owned' and 'exchanged' in return for goods, money or livestock by their parents, spouses and spouses' families, or to settle property disputes. The children in these examples not only did not profit from these transactions themselves, but had no control over them at all. 'Commoditising' a child in this way can also bestow a sense of ownership in the adults involved, instilling in the dominant party a feeling of licence over the child, for example, to commit violence and brutality towards them in marriage.

## 10. Bride Price: Tanzania

*"... men don't graze cattle as they think that women and children are there to do all the work ... Women do most of the work because men feel that because they have paid [bride price] for them, they should do all of the work."*<sup>62</sup>

## 4.2. Child servitude

The 1956 Supplementary Slavery Convention defines child servitude as:

*"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."*<sup>63</sup>

Many of the examples already referred to in this report could readily fit into this category of slavery-like practices. In fact, a large majority of the cases in the review involved children who were delivered by their parents or guardians for marriages in which they were exploited by their spouse and/or their spouse's family. In child marriage, exploitation generally encompasses domestic and/or manual labour, as well as the sexual relations that a child, in their role as spouse, is forced to undertake. For example,

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<sup>61</sup> ERRC, "Forced Arranged Marriage of Minors among Traditional Romani Communities in Europe", *Submission to the UN Special Rapporteur on trafficking in persons*, (15 November 2006), p. 5-6.

<sup>62</sup> Child bride in Tanzania, FORWARD UK and Children's Dignity Forum, *supra* note 41, p. 11.

<sup>63</sup> Article 1(d).

following the death of her mother, a seven year-old girl in Pakistan was sold by her father for 25,000 Pakistani Rupees (approx Euro 230). She was forced to move in with her new husband:

*“My life changed. My ‘husband’ made me do all of the domestic work, including cleaning the house, cooking and cutting grass for the cattle. It was a heavy workload and I was not able to do it all. So, he would beat me.”*<sup>68</sup>

Whatever their origins, the value attached to children and the benefit to be gained from them by the adults involved lies at the heart of certain harmful marriage practices. These forms of marriage generally disregard the free and full consent and wishes of the children involved, thus placing them at high risk of child servitude and other forms of slavery.

## **11. Harmful practices that can amount to child servitude**

### **Dispute and debt settlement**

In some cases children are married off by their families to help settle a dispute or a debt. *Vani* is the Urdu name given to an illegal custom still practised in parts of Pakistan, where a girl may be handed over from one family to another in marriage to settle family feuds.<sup>64</sup> A similar practice, known as *baad*, is used to settle disputes or even conflicts over serious crimes in Afghanistan.<sup>65</sup>

### **Exchange marriage**

*Watta Satta* is a tradition in the Punjab in Pakistan, where adult males may swap daughters through marriage. This is similar to *Shighar* marriages in Saudi Arabia where a man will ‘exchange’ one bride and her *dowry* for another bride and *dowry* with a male relative or acquaintance.<sup>66</sup>

### **Ritual sexual servitude**

This also amounts to child servitude when it involves girls under 18 years old. The most commonly known examples of this practice are *trokosi* in West Africa and *devadasi* from the Sanskrit *deva* (goddess) and *dasi* (servant) among Hindu populations in southern India and Nepal. Both practices are derived from ancient customs of marrying girls to a deity, thereby assigning them to a life of sexual exploitation by the deity’s priests or devotees. Despite being illegal, and apparently in decline, they persist today. For example, women and girls are still sold as concubines or forced to become village prostitutes in the name of *devadasi* dedication. It is also a pathway into the commercial sex trade.<sup>67</sup>

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<sup>64</sup> See for example, *ibid*, p.23-4; and also, UNICEF, *Early Marriage in South Asia*, *supra* note 43, p.7.

<sup>65</sup> UN Assistance Mission in Afghanistan and OHCHR, *Harmful Traditional Practices and Implementation of the Law on Elimination of Violence against Women in Afghanistan*, (9 December 2010), p.11.

<sup>66</sup> *Ibid*, p.23.

<sup>67</sup> Maggie Black, *Women in Ritual Slavery: Devadasi, Jogini and Mathamma in Karnataka and Andhra Pradesh, Southern India*, Anti-Slavery International, (2007).

<sup>68</sup> Samuel Lane, *Stealing Innocence*, *supra* note 39, p.24.



### 4.3. Child trafficking

Trafficking is possibly the most publicised form of contemporary slavery, and can be viewed as the modern equivalent of the slave trade.<sup>69</sup> Article 3(c) of the Palermo Protocol states that:

*“the recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered ‘trafficking in persons’.”*<sup>70</sup>

This article makes clear that this classification applies even where there is no:

*“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”.*<sup>71</sup>

Therefore any child under 18 years old who is moved from one location to another for the purpose of exploitation is considered to have been trafficked. This is the case for children whether they have been taken across borders or simply moved to another household within the same village. It is also child trafficking if the child concerned ostensibly agreed to the transfer themselves. As such, this provision recognises the special vulnerability of children.

This suggests that many more cases of child marriage beyond the most evident (such as those involving criminal networks) could, in effect, also be trafficking cases. For example, the handing over of a child to another family, even with the child’s ‘consent’, can be child trafficking if the child is then exploited in their new home. Significantly, unlike many other conventions, the Palermo Protocol obliges States to go beyond prohibition and penalties for perpetrators. States should also provide assistance and protection for individuals who have been trafficked for whatever purpose, including forced marriage. Moreover, the Palermo Protocol specifies that the special needs of children must be given particular consideration, including, for example, appropriate housing, education and care.<sup>72</sup>

The review found that trafficking also appears to be the form of slavery most readily associated with marriage. For example, there were several reports of girls trafficked into and within Europe under the pretext of marriage or engagement and promises of a better life. Upon reaching their destination these girls were imprisoned, threatened, abused and forced into prostitution and/or domestic servitude.<sup>73</sup> Girls may also be sold on or transferred to other traffickers, and taken elsewhere, including to other countries for exploitation.<sup>74</sup> Parallel cases also emerged in reports on supposed ‘*dowry free*’ marriages in South Asia. Here, traffickers convince poorer families who cannot afford a *dowry* but are eager to wed their daughters, to unwittingly hand over their children, who are then forced into sexual exploitation.<sup>75</sup> Similar cases leading to trafficking for commercial sexual exploitation in Mexico, and the trafficking of adolescent girls across borders between polygamous communities in the United States and Canada for

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<sup>69</sup> See Kevin Tessier, “The New Slave Trade: The International Crisis of Immigrant Smuggling”, *Indiana Journal of Global Legal Studies*, vol. 13 (1995-1996), p. 261.

<sup>70</sup> Article 3(d) defines the term ‘child’ as referring to those under the age of 18.

<sup>71</sup> Article 3(a).

<sup>72</sup> Article 6(4).

<sup>73</sup> See for example, Farhat Bokhari, *Stolen Futures: trafficking for Forced Child Marriage in the UK*, ECPAT UK, (2009), p. 13.

<sup>74</sup> *Ibid*, citing N. Bunyan, “I’ve run out of tears, says girls sold around Britain as a sex slave at the age of 15,” *The Telegraph*, 5 September 2005.

<sup>75</sup> UNICEF, *Early Marriage in South Asia*, *supra* note 43, p. 14.

non-consensual polygamous marriages, were among other trafficking cases that emerged from the review.<sup>76</sup>

## 12. Temporary marriages as child trafficking

‘Temporary’ or ‘short-term contract’ marriages in Egypt and Iran have been relatively well-publicised where used to facilitate child trafficking for sexual exploitation.<sup>77</sup> In Egypt, such ‘marriages’ are typically arranged between girls from poor and indebted Egyptian households and men from oil-rich Gulf countries, and are in effect commercial sexual exploitation. They are not formally registered, although a contract between ‘husband’ and ‘wife’ may be drawn up by brokers, specifying the marriage’s duration and possibly a modest fee for the girl’s parents. The young girl is usually abandoned or ‘divorced’ by her ‘husband’ within a matter of months or even hours.<sup>78</sup> Temporary marriages in this guise have frequently been raised by UN and International Labour Organization monitoring bodies as a form of trafficking.<sup>79</sup>

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<sup>76</sup> *Annual Report of the UN Special Rapporteur on trafficking in persons, especially women and children to the UN Human Rights Council*, UN doc. A/HRC/4/23, (January 2007), paras. 35-36.

<sup>77</sup> ‘Temporary’ marriages have also been used, particularly in Iran, to facilitate adult prostitution, which would otherwise carry serious penalties. It is also used, particularly by young people from poorer families, to circumvent the prohibition on unmarried sex where marriage expenses, such as dowry or wedding expenses, are seen as beyond reach. See also Susanne Mikhail, “Child Marriage and Child Prostitution” *supra* note 45, p. 45.

<sup>78</sup> World Vision, *Before She’s Ready*, *supra* note 10, p.8; UNICEF, “Early Marriage Child Spouses”, *supra* note 16, p. 6.

<sup>79</sup> Temporary marriages have been raised as a trafficking issue with regard to Egypt by the ILO’s Committee of Experts on the Application of Conventions and Recommendations (CEACR) under ILO Convention 182 as “trafficking for commercial sexual and labour exploitation.” See ILO, *Report of the CEACR to the International Labour Conference: General report concerning observations on particular countries*, Report III (Part 1A), International Labour Conference, 100th Session, International Labour Office Geneva, (2011), p.324. See also, for example, the Concluding Observations of the CEDAW Committee regarding Egypt, UN doc. CEDAW/C/EGY/CO/7, (February 2009), paras 27-8.

# 5. Worst Forms of Child Labour and Forced Labour

## 5.1. Worst forms of child labour

The links between child marriage and child labour and its worst forms are not always immediately apparent to all. However, the International Labour Organization (ILO) recommends that States legislate against cultural and religious practices that permit children to be promised or given in marriage “without right of refusal” or “in exchange for money or payment in kind to their parents or guardians”.<sup>80</sup> This is in line with the servile marriage provisions in the 1956 Supplementary Slavery Convention, referred to above. The ILO also notes that such practices can lend a sense of entitlement to ownership over a child, which in turn can lead to further abuses, such as trafficking and sexual exploitation.<sup>81</sup> The ILO treaty supervisory mechanisms have also occasionally referenced child marriage cases when examining State compliance with the 1999 ILO Convention no. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (hereafter ILO Convention 182). For example, they have highlighted the role of child marriage in the context of trafficking for sexual exploitation through temporary marriages in Egypt.<sup>82</sup>

Notably, in addition to hazardous work, Article 3 of ILO Convention 182 explicitly includes within its definition of the worst forms of child labour:

*“All forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict”.*<sup>83</sup>

This paper has already outlined the potential for a high proportion of child marriage cases to fall within the scope of the international slavery framework as it relates to servile marriage, child servitude and child trafficking. As such, it seems that many more child marriage cases than those already addressed by the ILO readily fall within the organisation’s purview under Article 3 of ILO Convention 182.

Indeed, all 174<sup>84</sup> State parties to ILO Convention 182 are required to take immediate and effective steps to end all worst forms of child labour, including slavery and slavery-like practices. This requires steps to prevent all worst forms of child labour and provide for the removal, rehabilitation and social integration of children in such situations, as well as the application of penal sanctions.<sup>85</sup> All of these measures could greatly benefit children currently in or at risk of slavery and slavery-like practices through marriage.

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<sup>80</sup> Yaa Yeboah and Frank Panford, *Time-Bound Programme Manual for Action Planning*, *supra* note 13, p. 22.

<sup>81</sup> *Ibid.*

<sup>82</sup> See the ILO *Report of the CEACR*, *supra* note 79, p. 324.

<sup>83</sup> Article 3(a).

<sup>84</sup> As at 15 March 2013. For the full list of State parties, see: <http://webfusion.ilo.org/public/db/standards/normes/appl/applbyConv.cfm?hdroff=1&conv=C182&Lang=EN>.

<sup>85</sup> Article 7(1) and (2).

## 5.2. Forced labour

Before ILO Convention 182 came into force in 2000, all forced labour cases relating specifically to children were considered under the 1930 ILO Convention No. 29 concerning Forced or Compulsory Labour (hereafter ILO Convention 29). This defines forced and compulsory labour 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.”<sup>86</sup>*

The 1926 Slavery Convention recognises forced labour as a slavery-like practice and requires State parties to:

*“take all necessary measures to prevent forced or compulsory labour from developing into conditions analogous to slavery.”<sup>87</sup>*

### 5.2.1. Forced labour and child marriage

As with the worst forms of child labour, links between forced labour and child marriage are not always immediately clear. However, the connections become more apparent from a closer examination of the child marriage cases in this review, which powerfully describe the reality of many married children’s experiences.

The work or services exacted from a child spouse would amount to forced labour if they met the conditions set out in ILO Convention 29. The term “under the menace of any penalty” has been widely interpreted to include violence at the extreme, but also economic threats, the loss of rights or privileges and subtler psychological pressure.<sup>88</sup> In addition, the work in question does not have to be officially recognised as an economic activity for it to fall under the definition of forced labour. For example, the ILO has expressly recognised the trafficking of children for sexual exploitation as forced labour.<sup>89</sup> Individuals may also start work voluntarily, but find themselves in a situation of forced labour if such ‘menaces’ are then inflicted upon them to prevent them from leaving that situation of their own free will.

Forced labour should therefore apply to child marriage whenever it can be established that a child has been exploited by being forced to engage in sexual relations,<sup>90</sup> undertake domestic duties in the home or work outside the home, for the benefit of the spouse or the spouse’s family, if they have not voluntarily offered to do so and are unable to refuse or to leave the marriage. With this in mind, a number of the aforementioned child marriage cases amounting to slavery and slavery-like practices could also fall within the rubric of forced labour. For example, whilst her case was never brought before an ILO supervisory mechanism, Hadijatou’s “*sexual exploitation, hard labour in the house and fields...*” , as

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<sup>86</sup> Article 2(1).

<sup>87</sup> Article 5. For an outline of distinctions and overlap between slavery and forced labour, see for example, Weissbrodt and Anti-Slavery International, *Abolishing Slavery*, *supra* note 6, pp.12-14.

<sup>88</sup> ILO, *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 (2005), pp. 5.

<sup>89</sup> See, for example, newer patterns of forced labour in, *ibid*, p.9, para.35; and p.44-5, para. 213.

<sup>90</sup> Sexual exploitation is not explicitly defined in international law. Nevertheless, it is clear that an act does not need to involve a commercial transaction in order to constitute such exploitation. Rather, it requires that one person exercises complete control over another for the purpose of sexual gratification. For example, the sexual slavery most commonly associated with atrocities in armed conflict, can also take place in other circumstances in which commercial transactions are not involved. Thus, a man in the US was found by national courts to have kept a woman in ‘virtual slavery’ for a period of two years by forcing her to work as a domestic maid and have sex with him in breach of the Thirteenth Amendment to the United States Constitution, which prohibits slavery and involuntary servitude. See *United States v. Sanga*, 967 F.2d 1332 (9th Cir. 1992) as cited in Weissbrodt and Anti-Slavery International, *Abolishing Slavery*, *supra* note 6, pp. 34-5.

noted in the 2008 ECOWAS case against Niger (see box 6 above) can be understood to qualify equally as forced labour as well as slavery.

If tested before the ILO, forced labour may also be found to apply to the many violent acts and threats directed against child wives featured in research on Tanzania. Such acts were used to force these girls to undertake a range of tasks, including farming cash and food crops, tending cattle, and making traditional brew, alongside domestic chores.<sup>91</sup> Furthermore, it is not uncommon for all income generated by a wife to belong to or be appropriated by her husband; in some cases this is supported by national law.<sup>92</sup>

### 5.2.2. Forced child labour: some key elements

An examination of key elements in ILO cases concerning children where breaches of ILO Convention 29 have been found should provide a useful indication of what can constitute forced child labour in particular. Previous ILO Convention 29 cases concerning child domestic workers are particularly instructive in this regard.

Millions of children, predominantly girls, and most commonly in West Africa, Latin America and many parts of Asia, are sent to work in the homes of relatives or others as domestic workers. This is often for little or no pay. Child domestic work is widely accepted as a positive way to ensure that a young girl is fed and kept safe in return for carrying out household chores. It may also be viewed as part of a girl's preparation for future (married) life and/or preferable to staying at home if her prospects for marriage are limited.<sup>93</sup> Indeed, where properly regulated, domestic service can be a perfectly legitimate occupation, including for those under 18 where the legal minimum age for admission to employment is met.

However, the reality for some child domestic workers is far from positive. The ILO recently summarised the vulnerability of live-in domestic workers to forced child labour as follows:

*“The extreme dependency on an employer, combined with the lack of rights and the isolated and unprotected nature of domestic work, can render domestic workers vulnerable to exploitation and abuse [...] When live-in domestic workers are kept in isolation, with restrictions on their freedom of movement, extreme imbalances of power can develop which can lead into situations of forced labour. Forced labour can occur when means of coercion are imposed on domestic workers to prevent them from leaving the employment situation.”<sup>94</sup>*

Despite recognition of the risks attached to child domestic work today, the vulnerability of children to forced child labour in this context went unaddressed for years. This was largely because of widely held perceptions that domestic work comprises mainly light duties and therefore could not give cause for concern, as well as the fact that domestic workers were usually hidden away in private households without any regulatory oversight. Gradually, the situation of these children has received increasing attention and action. The ILO has recorded cases of forced or compulsory labour, most notably in Haiti, where some parents have been found to have sold their children to work as domestics in urban families

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<sup>91</sup> See FORWARD and Children's Dignity Forum, *Voices of Child Brides*, *supra* note 41, pp. 10-12; and Samuel Lane, *Stealing Innocence*, *supra* note 39, p. 24.

<sup>92</sup> See for example Pakistan, Philippines, The Gambia, Kenya and Zimbabwe as cited by Debbie Taylor, *Servile Marriage*, *supra* note 60, p. 42.

<sup>93</sup> For accounts of the experiences of child domestic workers as well as the multiple reasons for entering into such service in these workers' own words, see Jonathan Blagbrough, *They Respect Their Animals More: Voices of child domestic workers*, Anti-Slavery International, 2007.

<sup>94</sup> ILO, *Domestic Workers across the World: Global and regional statistics and the extent of legal protection*, Geneva, (January 2013), pp. 44-5.

(known as “*restaveks*”).<sup>95</sup> More recently, positive steps have been taken to combat forced labour and promote protective measures in the sector with the adoption in 2011 of Convention No. 189 concerning Decent Work for Domestic Workers. This aims to advance decent working conditions, and includes special measures for children and other vulnerable groups, who because of their young age and live-in status may be exposed to additional risks.<sup>96</sup>

Cases concerning child domestic workers in situations of forced labour are clearly distinct from those of child spouses in abusive and non-consensual unions. Certainly, whilst child domestic workers are clearly supposed to be in a place of employment, marriage as an institution cannot be conceptualised as a form of ‘work’ for the purpose of better ‘conditions’ or ‘regulations.’ However, the realities of both scenarios can nevertheless often present compelling parallels. This is particularly so regarding the highly vulnerable situations in which both such children find themselves. Like child domestic workers, child spouses are often sent to live in households away from their familial homes. As children, they are immediately at a disadvantage in being surrounded by people that they may not even know and who have considerable power over their well-being. Furthermore, child spouses are effectively hidden from view in the marital home, largely ignored by child protection, welfare and enforcement agencies, as well as policy-makers, just as child domestic workers were for many years. The literature review on child marriage confirms that this situation can all too often be abused as well. It can result in exploitation, sexual and physical violence and threats, and a life from which these children have little realistic hope of escape.<sup>97</sup> For married children, this situation is compounded in many societies by their marital status, which can render them no longer entitled to the special protections afforded to other children under national law.<sup>98</sup>

The wealth of evidence that now highlights the reality for many child spouses, makes it time for child marriage along with domestic work, foster care and informal adoption, to be recognised as a potential mantle for hiding forced child labour and slavery-like practices.

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<sup>95</sup> ILO, *Report of the CEACR: General report concerning observations on particular countries*, Report III (Part 1A), International Labour Conference, 87th Session, International Labour Conference Geneva (1999), p. 124. For an analysis of when child domestic work amounts to forced child labour, see also *General Survey on the Fundamental Conventions concerning Rights at Work in light of the ILO Declaration on Social Justice for a Fair Globalization*, 2008, (Giving Globalization a Human Face), Report of the CEACR, Report III (Part 1B), International Labour Conference Geneva, (2012), p. 203, para. 469.

<sup>96</sup> For example, Articles 4, 6, 9 and 10.

<sup>97</sup> See for example, World Vision, *Before She’s Ready*, *supra* note 10, p. 12, 24-25.

<sup>98</sup> This concern is raised for example in Yeboah and Panford, *Time-Bound Programme Manual for Action Planning*, *supra* note 13, p. 22.



# 6. Gaps in International and National Law and Practice

## 6.1. International level

A number of key UN bodies and representatives have gone some way to drawing attention to the slavery dimensions of child marriage, or at least forced marriage, as they relate to their respective mandates. However, as the UN Special Rapporteur on contemporary forms of slavery commented in her report on servile marriage, the relationship between marriage and slavery is not addressed comprehensively.<sup>99</sup> Indeed, this link is rarely articulated at the international level by the UN and the ILO.

### 6.2.1. UN treaty bodies

UN treaty bodies are committees of predominantly legal experts set up under the auspices of a treaty to monitor State party compliance with its provisions and provide authoritative interpretations on how they might be implemented. Two such UN treaty bodies are the aforementioned CRC and CEDAW Committees. Both have raised a number of concerns about child marriage, particularly the issues of legal minimum age for marriage and the absence of birth certificates, during their examinations of State party periodic reports. However, a brief review of concluding observations made by these committees from a recent sample of country periodic reports (including the CRC's 2006 Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography) indicates that, beyond the most obvious cases where a marriage is in fact trafficking, consistent and explicit links between child marriage and slavery are rarely made by these committees.<sup>100</sup> Notable references that have been made in this regard relate to temporary marriages, discussed above (see box 12), as a cover for trafficking and prostitution.<sup>101</sup> Certain passing and implied links to slavery-like practices have also occasionally been made. For example, the CEDAW Committees expressed concern about “trafficking in the guise of marriage, trade in women commoners and the practice of slavery” in Niger.<sup>102</sup>

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<sup>99</sup> UN Special Rapporteur on contemporary forms of slavery, *supra* note 7, para. 95.

<sup>100</sup> While slavery is not explicitly mentioned in the main text of the CRC, that convention nevertheless contains several relevant provisions to slavery in this context. This notably includes the right of the child to protection from economic exploitation (Article 32), from sexual exploitation (Article 34), trafficking (Article 35) and use in armed conflict (Article 38). The most relevant provision in the CEDAW is exploitation through trafficking and prostitution (Article 6).

<sup>101</sup> See for example, the CRC Committee's Concluding Observations on the periodic reports of: Egypt, UN doc. CRC/C/EGY/CO/3-4, (June 2011); Yemen, UN doc. CRC/C/OPSC/YEM/CO/1, (October 2009); Iran, UN doc. CRC/C/15/Add.254, (March 2005); or the sale and trafficking of girls more generally by parents in Pakistan, UN doc. CRC/PAK/CO/3-4, (October 2009). See also the CEDAW Committee's Concluding Observations on the periodic reports of Egypt, UN doc. CEDAW/C/EGY/Co/7, (January - February 2010), and Yemen, UN doc. CEDAW/C/YEM/CO/6, (June - July 2008).

<sup>102</sup> The CEDAW Committee's Concluding Observations on the periodic report of Niger, UN doc. CEDAW/C/NER/CO/2, (May-June 2007), para. 25. See also, for example, a reference to “child marriage, giving away girls as dispute resolution, forced isolation in the home, exchange marriage and honour killings”, labelled as “early and forced marriage” in the CRC Committee's Concluding Observations on the periodic report of Afghanistan, UN doc. CRC/AFG/CO/1, (January-February 2011), para. 55; as well as “early marriages and exchanges of girls for debt settlement [...] bonded labour and economic exploitation of girls” in the CRC Committee's Concluding Observations on the periodic report of Pakistan, UN doc. CRC/PAK/CO/3-4, (October 2009), para. 28.

There are other UN treaty bodies that could also examine State parties' handling of child marriage in relation to child slavery. These include the UN Human Rights Committee, which examines State compliance with the 1966 International Covenant on Civil and Political Rights and the UN Committee on Economic, Social and Cultural Rights which monitors the 1966 International Covenant on Economic, Social and Cultural Rights. Both treaties encompass freedom from slavery and the right to marry, but neither committee appears to raise either area with States as a matter of course.

### 6.1.2. UN special procedures

Over the years, the UN has developed an independent and *ad hoc* system of special rapporteurs or working groups working outside the UN treaty framework. Typically appointed by the UN Human Rights Council, these special procedures report regularly to the UN on dedicated thematic or country human rights issues. Several of these procedures are particularly relevant to child marriage as child slavery, reflecting the complex and overlapping areas this issue engages.<sup>103</sup>

Some special procedures have raised the issue of child marriage as slavery under their mandates. In 2007, the UN Special Rapporteur on trafficking in persons devoted her thematic report to examining forced marriage in the context of trafficking for sexual exploitation, as well as forced labour or services, slavery or practices similar to slavery, and servitude of mainly women and girls.<sup>104</sup> UN Special Rapporteurs have also raised specific forced marriage practices in their country visit reports. For example, the UN Special Rapporteur on trafficking in persons commented on temporary marriages as a form of trafficking in Egypt,<sup>105</sup> and the UN Special Rapporteur on violence against women noted the same practice in Iran.<sup>106</sup> The latter also raised the issue of forced and early marriage in Somalia, including rulings by tribal leaders, which force girls to marry their rapists as part of the traditional 'justice' system.<sup>107</sup> Above all, as noted in the introduction to this paper, the UN Special Rapporteur on contemporary forms of slavery has addressed the link most comprehensively by devoting her recent thematic report to child and adult servile marriage.

### 6.1.2. The International Labour Organization

The implementation of ILO Conventions is subject to the annual scrutiny of the ILO's Committee of Experts on the Application of Conventions and Recommendations. From these cases, a few are selected by the workers' and employers' delegations to be examined by the tripartite Committee on the Application of Standards at the ILO's June Conference every year. As already noted in chapter 5 above, however, only a few child marriage cases have been presented to or taken up by the ILO mechanisms to date, despite the relevance of child marriage to ILO Convention 182, particularly where it amounts to slavery and forced child labour.

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<sup>103</sup> Relevant thematic mandates include: the UN Special Representative of the Secretary General on violence against children and the UN Special Envoy for global education, as well as the UN Special Rapporteurs on sale of children, child prostitution and child pornography; on contemporary forms of slavery, including its causes and consequences; on violence against women; on trafficking in persons, especially women and children; on the right to education; on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; and the UN Working Group on discrimination against women in law and practice. Relevant country specific mandates include the UN Special Rapporteurs on Cambodia, Côte d'Ivoire and the Islamic Republic of Iran, and the UN Independent Expert on Somalia.

<sup>104</sup> *Annual Report of the UN Special Rapporteur on trafficking in persons, especially women and children, to the UN Human Rights Council* (January 2007), UN doc. A/HRC/4/23, paras 13-63.

<sup>105</sup> *Report of the Visit of the UN Special Rapporteur on trafficking to Egypt*, *supra* note 39, para. 9.

<sup>106</sup> *Report of the Visit of the UN Special Rapporteur on violence against women to Iran*, UN doc. E/CN.4/2006/61/Add.3, (November 2009), para. 36.

<sup>107</sup> *Report of the Visit of the UN Special Rapporteur on violence against women to Somalia*, UN doc. A/HRC/20/16/Add.3, (14 May 2012), paras. 21-24.

## 6.2. National level

Few reports examined as part of Anti-Slavery International's literature review referred to the relevant international slavery framework or national anti-slavery legislation in relation to child marriage.<sup>108</sup> Nevertheless, the reports did identify numerous gaps at the national level relating to wider human rights concerns, notably right to marry standards. These are worth examining here as tackling such obstacles are equally relevant to protecting children from entering and being kept in slavery or slavery-like conditions through marriage.

There have been some encouraging legislative developments at the national level. Some States have made noteworthy strides towards adopting and implementing laws to tackle child marriage, including as slavery and slavery-like practices. However, in many more cases, States appear to have taken little concrete action to reduce child marriage and the worst violations associated with it. Governments must address these shortcomings as a matter of urgency if international norms are to have any meaning for the millions of children affected by exploitation, coercion and abuse through marriage.

### 13. Some positive steps taken at the national level

There have been some positive developments at the national level. Not only has domestic legislation relating to child marriage been adopted by several States, but some of this legislation has been formulated specifically to protect individuals in the context of slavery or slavery-like practices.

#### Norway

Norway has criminalised forced marriage, defining it as involving recourse to violence, deprivation of liberty, undue pressure or other unlawful behaviour or the threat of such behaviour. Perpetrators and accomplices face penalties of up to six years in prison.<sup>109</sup>

The Norwegian Government has widely publicised the issue of forced marriage for some time, implementing policies and approaches geared towards tackling it. Since 2000, for example, it has funded a national telephone helpline. This is run by the Norwegian Red Cross to offer help and guidance to persons who are subjected to or at risk of forced marriage, honour based violence or female genital cutting. The helpline also actively works to provide advice and information to other professionals and public authorities on these issues.

Between 2008 and 2011, the helpline handled 781 initial enquiries from actual and potential victims of forced marriage. Among those who were in forced marriages when they contacted the service, 52 were under 18 years old. A further 197 calls were from minors who were under pressure to enter into marriage.<sup>110</sup>

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<sup>108</sup> Exceptions to this included Farhat Bokhari, *Stolen Futures*, *supra* note 73, which devoted sections to servile marriage and practices similar to slavery, and forced marriage and child trafficking for forced child marriage. It also analysed current UK legislation in that framework, pp. 12-16.

<sup>109</sup> Section 222(2), The General Civil Penal Code (Chapter 21: Felonies against personal liberty), as amended. However, it should be noted that criminalising forced marriage as a specific offence is not universally welcomed. Some have voiced concerns about such a proposal in the UK, for example, suggesting that the possibility of seeing family members prosecuted and imprisoned would dissuade victims from reporting cases, as would a fear of ostracism or further violence perpetrated against them for denouncing family members in this way. See for example, Aisha Gill and Khatun Sapnara, "Forced marriages blight lives, but criminalising them would not work," *The Guardian*, 9 April 2012, available at: <http://www.guardian.co.uk/commentisfree/2012/apr/09/forced-marriages-criminalising>.

<sup>110</sup> Data provided at a seminar organised by the Norwegian Red Cross, "Forced marriage in light of the Slavery Convention", Oslo, 30 November 2012.

## The Philippines

The UN Special Rapporteur on trafficking has commended the Philippines for adopting specific legislation with regard to forced marriage. The Philippines' Anti-Trafficking in Persons Act states that it is unlawful for any person to:

*“offer or contract marriage, real or simulated, for the purpose of buying, offering, selling, or trading them[any person] to engage in prostitution, pornography, sexual exploitation, forced labour or slavery, involuntary servitude or debt bondage.”<sup>111</sup>*

### 6.2.1. Legal prohibitions and protections

Despite growing awareness and progress in many countries, there remains a poor record of prohibiting or even recognising in domestic law the sorts of abuses, which, according to reports, occur in many child marriages, such as domestic violence and marital rape. For example, the Indian Penal Code stipulates that:

*“sexual intercourse by a man with his own wife, the wife not being under 15 years of age, is not rape.”<sup>112</sup>*

### 6.2.2. Right to marry protections in national law

Reports reviewed strikingly highlighted that the domestication of international standards and protections relating to marriage and divorce, and specifically to child marriage (such as minimum age and consent) could be described as patchy at best. National marriage and divorce laws commonly discriminate against females with far-reaching consequences.<sup>113</sup> Under Moroccan law, for example, a divorced woman automatically loses custody over any children above seven years of age if she remarries and her former husband requests it. This potentially further inhibits a wife's ability to leave an abusive marriage.<sup>114</sup>

## 14. A lack of legal protection for children with regard to marriage in domestic law

### Morocco

The Penal Code in Morocco allows a kidnapper or “seducer” of a minor girl to be acquitted of rape if he then marries the girl concerned. This provision allegedly led to the suicide of 16 year-old Amina Filali, who was reportedly forced to marry her rapist.<sup>115</sup>

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<sup>111</sup> Article 4, Anti-Trafficking in Persons Act 2003 (RA No.9208), as cited in the *Report of the UN Special Rapporteur on trafficking in persons, supra* note 76, para. 60.

<sup>112</sup> Section 375, Indian Penal Code 1860.

<sup>113</sup> See, for example: the Pakistani Dissolution of Muslim Marriages Act 1939, which does not provide the same rights for women as men on ending a marriage and places many caveats on validating an underage girl's attempts to repudiate a marriage, as cited in Samuel Lane, *Stealing Innocence, supra* note 39. The CEDAW Committee has expressed concern about the discriminatory impact on women of these parallel legal systems in its Concluding Observations on the periodic report of Pakistan, UN doc. CEDAW/C/PAK/CO/4, (March 2013), paras 37-8. The CEDAW Committee has also raised concerns about a range of discriminatory marriage and divorce laws within a number of States, including in their Concluding Observations on the periodic reports of Kuwait, UN doc. CEDAW/C/KWT/CO/3-4 (October 2011), para 50; and Egypt, UN doc. CEDAW/C/EGY/CO/7, (January - February 2010), paras 47-8, 49 – 50.

<sup>114</sup> *Report of the UN Working Group on the issue of discrimination against women in law and practice, supra* note 113, para 20.

<sup>115</sup> See the *Report of the Visit of the UN Working Group on the issue of discrimination against women in law and in practice to Morocco*, UN doc. A/HRC/20/28/Add.1, (June 2012), para. 24.

## Yemen

Another well-publicised case is that of Nujood Ali, who was married to a man in his thirties when she was nine years old. At the age of ten, she managed to obtain a divorce through the courts. However, her husband was never punished for the domestic violence and sexual abuse she suffered during the marriage, and she was ordered to pay him \$200 USD upon its termination.<sup>116</sup>

### 6.2.3. Legal minimum age for marriage

Despite the international legal obligation on States to set a legal minimum age for marriage, many have failed to do so. A recent study found that 74 countries had not declared any minimum age for marriage. Moreover, where a minimum age limit existed, it varied from 22 years to as young as 12, with 16 years old being the most common, notwithstanding international recommendations in favour of 18 years.<sup>117</sup> Only 13 countries had set their minimum age for marriage at 18 years old for girls; 33 had done so for boys. Indeed, at least 44 States around the world were found to specify different minimum ages for boys and girls, thereby further violating non-discrimination standards. Where age limits differed, the higher age limit almost invariably applied to boys.<sup>118</sup>

Furthermore, children can often be permitted to marry below minimum ages under national law if parental consent is provided. Such provisions are supposed to safeguard children. However, in a majority of child marriage cases amounting to slavery, at least one parent is the main driver behind the union, it is highly questionable whether parents will always act in the best interests of the child in such matters. As one commentator noted, a child marriage with 'parental permission', might be better expressed as 'regardless of the child's wishes'.<sup>119</sup> While many parents make wise and well-considered decisions on their children's behalf, reports show that such provisions in practice often appear to place children at greater risk of slavery through marriage by removing this major life decision from their control.

### 6.2.4. Awareness-raising and enforcement of laws

National laws to protect children from marriage or abuse perpetrated within it are often poorly publicised, understood and enforced. Sometimes, parents and others may not even know they are breaking the law by marrying their under-age children. The children themselves will likely also be unaware of their rights.

## 15. Awareness of child marriage prohibitions in Bangladesh

In Bangladesh, the legal minimum age for marriage is currently 18 years for females and 21 years for males, infringement of which is punishable by imprisonment or a fine. This penalty applies to parents or guardians who allow an under-age marriage to take place or any person who solemnises it. However, one survey revealed that whilst most mothers who took part were aware that under-age marriage was a punishable offence, only 27 per cent believed that there were no exceptions to this

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<sup>116</sup> Human Rights Watch, *How Come You Allow Little Girls to get Married?*, *supra* note 11, p. 19.

<sup>117</sup> The study found that 16 years old was the minimum age set for girls in 45 states and for boys in 41; whereas an age of 18 or above was set in 13 countries for girls and 33 countries for boys. It also stated that in one country the minimum age was set at 10 years old for girls, but the name of the country in question was not provided. See Angela Melchiorre and Ed Atkins, *At What Age?... are school children employed, married and taken to court?* The Right to Education Project, Action Aid International, London (2011), p. 26.

<sup>118</sup> *Ibid*, p. 27.

<sup>119</sup> Debbie Taylor, *Servile Marriage*, *supra* note 60.

law. Worryingly, 40 per cent of parents interviewed, believed that the law did not apply if the child's parents agreed to the marriage.<sup>120</sup>

Awareness-raising is vital to the enforcement of protective laws. This is highlighted by the fact that where parents and guardians are aware of such laws and support them, these laws can enable them to refuse marriage proposals for their children where prevailing cultural norms would otherwise put pressure on them to accept.<sup>121</sup> It is also important for children themselves to be aware of the laws that affect them. Indeed, enforcement of existing law remains a problem, often due to the deeply entrenched support for child marriage in many societies.

## 16. Enforcement of child marriage prohibitions in India

India's 2006 Prohibition of Child Marriage Act prohibits child marriage. Nevertheless, in Rajasthan a woman was reportedly raped by villagers to punish her for trying to combat the longstanding practice locally. The authorities refused to take action against her alleged attackers, despite protests by women's groups.<sup>122</sup>

This case shows how, without proper enforcement, national laws will continue to be flouted with impunity.<sup>123</sup> It highlights the central role of the State in supporting awareness raising efforts, especially through law enforcement to protect children and those working to protect children.

### 6.2.5. Competing parallel legal systems

Competing religious, customary or local laws operating in some countries can present major impediments to securing protection against child marriage and slavery and slavery-like practices. They may help to explain at least some of the aforementioned problems with awareness-raising and enforcement.

Parallel systems can often contradict or undermine national legislation, overriding statutory law in the eyes of many people in practice. Their jurisdictions may overlap with national law and in some cases be treated with equal or greater weight than statutory law in domestic courts. For example, child marriage is prohibited in Bangladesh and Pakistan under the 1929 Child Marriage Restraint Act, and in India, under the 2006 Prohibition of Child Marriage Act. However, in each of these countries, parallel Muslim, Hindu and Christian religious laws permit the marriage of minors.<sup>124</sup> Notwithstanding certain protections under Islamic personal law, such as that requiring both parties to a marriage to consent to it, child marriage is valid with the consent of a child's lawful guardian. This applies equally to a child who has not attained puberty.<sup>125</sup> On reaching puberty, a child can apply to a Family Court to have the validity of such a marriage repudiated on condition that the marriage has not been consummated (or, in some cases, if it can be proved that consummation was forced). However, this provision is evidently wholly

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<sup>120</sup> International Development Law Organisation (IDLO), *Bangladesh Country Report: Strengthening the Legal Protection Framework for Girls in India, Bangladesh, Kenya and Liberia*, Rome, 2010, p. 73.

<sup>121</sup> See for example, Samuel Lane, *Stealing Innocence*, *supra* note 39, p. 26.

<sup>122</sup> See Pallavi Gupta, "Child Marriages and the Law", *supra* note 32, p. 50.

<sup>123</sup> Most reports noted lack of sanctions and enforcement as particularly problematic in terms of child marriage and consequent serious abuses. See, for example, World Vision, *Before She's Ready*, *supra* note 10, pp 16-7.

<sup>124</sup> For further discussion of this see, IDLO, *Bangladesh Country Report*, *supra* note 120, p.70; Human Rights Watch, *Will I Get My Dues?*, *supra* note 38, pp. 4-12, 28-47; and Pallavi Gupta, "Child Marriages and the Law", *supra* note 32.

<sup>125</sup> Sara Hossain and Suzanne Moore, "Abduction for Forced Marriage – Rights and Remedies in Bangladesh and Pakistan", 15-24 *International Family Law*, (April 2001), p. 15.



inadequate in protecting children in reality.<sup>126</sup> Thus, although parallel systems should never be invoked to undermine the primacy of international law,<sup>127</sup> legislative protections for children at risk of and in marriage can be rendered completely ineffective by competing parallel legal systems in practice.

## 17. Challenges to securing legislative protections for children in Yemen

Competing religious or cultural standards can sometimes also influence the passage of relevant domestic legislation. In Yemen, for example, a Sharia Legislative Committee reviews all draft laws to ensure their compliance with Islamic Sharia Law.

Despite the fact that several predominantly Muslim countries in the Middle East and North Africa have set a legal minimum age of 18 for both sexes, religious arguments were deployed by parliamentary factions in Yemen to block similar draft legislation from being adopted there. Introduced in the wake of the Nujood Ali case (see box 14), the draft bill proposed a legal minimum age for marriage of 18 years old for both sexes (subsequently reduced to 17) and punishment for those in breach of the provision. Nevertheless, opponents to the proposal argued that it went “against the interpretation of Islamic principles” and represented a threat to the culture and society of Yemen. Such arguments prevented the adoption of any minimum age for marriage in Yemen at all.<sup>128</sup>

Such is the influence of these parallel systems in some countries, that a large number of States have made reservations to various international treaties on that basis. Notably, a great many States have entered reservations to Article 16 of CEDAW concerning equality in marriage and family life, giving explicit precedence to religious or cultural laws. For example, Niger has reserved the right not to enforce equal rights and responsibilities regarding marriage and children, arguing that they are “contrary to existing custom and practices”.<sup>129</sup> Other States, including Mauritania, Morocco and Saudi Arabia, have applied blanket reservations to all CEDAW provisions deemed incompatible with Islamic Sharia Law, including Article 16.<sup>130</sup> This is in breach of State obligations under international treaty law, which prohibits reservations that are incompatible with the object and purpose of a treaty.<sup>131</sup> Consequently, the CEDAW Committee has consistently raised the invalidity of such reservations with States in relation to CEDAW’s provisions, including Article 16.<sup>132</sup>

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<sup>126</sup> *Ibid.* The Dissolution of Muslim Marriages Act in India has similar provisions. Thus, a Muslim woman can dissolve her marriage if she was wed before 15 years of age, but she must repudiate the marriage before reaching 18 years old, and only then if the marriage has not been consummated (Section 2 (vii)).

<sup>127</sup> “Whatever the legal system, religion, custom or tradition within the country, the treatment of women in the family both at law and in private must accord with the principles of equality and justice and for all people”, CEDAW Committee, General Recommendation No.21 on Article 16 concerning equality in marriage and family relations (1994); “Traditional, historical or religious attitudes are not used to justify violations of women’s right to equality before the law and to the equal enjoyment of all [UN ICCPR] rights” UN Human Rights Committee, General Comment No. 28 (2000): Equality of rights between men and women (Article 3), UN doc. CCPR/C/21/Rev.1/Add.10, para. 5.

<sup>128</sup> Human Rights Watch, *How Come You Allow Little Girls to Get Married?*, *supra* note 11, pp. 18-22.

<sup>129</sup> Reservations to CEDAW are listed in the United Nations Treaty Collection database at: [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-8&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en).

<sup>130</sup> *Ibid.*

<sup>131</sup> Article 19(3), Vienna Convention on the Law of Treaties 1969.

<sup>132</sup> CEDAW General Recommendations 4 (1987) and 20 (1992) referred to the problem of reservations to the Convention. In 1998, the CEDAW Committee stated that Articles 2 and 16 were “core provisions ... central to the objects and purpose of the Convention” and that reservations to Article 16 were impermissible: Report of the UN Committee on the Elimination of Discrimination against Women, UN doc. A/53/38/Rev.1, (1998), pp. 47-50. By 2008, it had adopted guidelines, requiring states to explain reservations and where and when they could be withdrawn: Report of the UN Committee on the Elimination of Discrimination against Women, UN doc. A/63/38 Supp, (2008), pp. 78-83.



### 6.2.6. Birth and marriage registrations

The literature review identified a lack of both birth and marriage certificates as a major obstacle to protecting children from child marriage. This is particularly common in rural areas where many births go unrecorded. Without a birth certificate, it is hard to verify a child's age at the time of marriage. It is equally hard to establish formally whether a marriage has taken place without a marriage certificate. This makes it almost impossible for a child or the adult they become to dissolve or seek redress through formal channels for their treatment in marriage later.<sup>133</sup> Moreover, despite the large number of States ratifying international treaties requiring the expression of "free and full" consent to marry before a "competent authority", facilities for officially registering marriages and establishing consent, even where minors are concerned, are rare. Arguably, the best, albeit imperfect, safeguard for ascertaining genuine comprehension and consent (and thereby compliance with minimum age requirements) is through a formal, competent and mandatory marriage registration process. This is especially important where either intended spouse is under 18 years old.

### 6.2.7. Quasi-majority status for children in marriage

In some domestic jurisdictions, the act of marriage may automatically confer quasi-majority status on a child. This can place children at greater risk of slavery and slavery-like conditions by effectively removing them from the special protections to which they should ordinarily be entitled in recognition of the greater vulnerability of children in society.<sup>134</sup> While the CRC permits under 18 year-olds to attain premature majority status in certain circumstances, this applies rather to gaining additional rights as opposed to depriving children of the protections contained in the CRC.<sup>135</sup> Certainly, the treaty was not designed to sanction the situation in Indonesia, for example, where full legal personality for women is reportedly attained either at the age of majority or upon marriage<sup>136</sup> with a minimum age for marriage being potentially as young as ten.<sup>137</sup> This issue is so prevalent that the ILO has noted that it can distort ILO statistics, where married child labourers are no longer perceived to be children within their national jurisdictions and are therefore excluded from child labour data in those countries.<sup>138</sup> This problem is likely to be exacerbated in countries where the legal definitions of 'child' and the age at which they reach maturity are not consistent across all laws protecting children.<sup>139</sup>

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<sup>133</sup> See for example, Human Rights Watch, *How Come You Allow Little Girls to Get Married?* *supra* note 11, pp. 22-3.

<sup>134</sup> See, Yeboah and Panford, *Time-Bound Programme Manual for Action Planning*, *supra* note 13, p. 22.

<sup>135</sup> As noted in the CRC Committee General Comment No.4 on adolescent health and development in the context of the Convention on the Rights of the Child, UN doc. CRC/GC/2003/4 (July 2003), para. 1: "adolescents up to 18 years old are holders of all the rights enshrined in the Convention; they are entitled to special protection measures and, according to their evolving capacities, they can progressively exercise their rights (art. 5)." The UN Human Rights Committee also noted in its General Comment No. 17 (1989), UN doc. HRI/GEN/1/Rev.8, para. 4, that: "the age ... should not be set unreasonably low and that in any case a State Party cannot absolve itself from its obligations under the Covenant regarding persons under the age of 18, notwithstanding that they have reached the age of majority under domestic law."

<sup>136</sup> *Report of the Visit of the UN Special Rapporteur on the right to education to Indonesia*, UN doc. E/CN.4/2003/9/Add.1 (November 2002), p. 4, quoting Article 50 of the 1999 Law on Human Rights: "Women of full age and/or who are married have the authority to take both criminal and civil legal action as individuals, unless determined otherwise under religious law."

<sup>137</sup> *Ibid.*, quoting the Economic and Social Commission for Asia and the Pacific, *Women in Indonesia: A Country Profile* (1998), p. 39.

<sup>138</sup> ILO, *Decent Work Indicators: Concepts and definitions*, (May 2012), p. 104.

<sup>139</sup> See for example, Human Rights Watch, *How Come You Allow Little Girls to Get Married?*, *supra* note 11, p. 23, which notes that Yemen's Personal Status Law establishes maturity for boys at ten years old, and girls at nine, but the Civil Law sets the age of maturity at 15 years for both sexes without exception.

# 7. Tackling Root Causes

Well drafted laws and their effective enforcement are essential for tackling slavery through child marriage. However, they will never be enough on their own. Preventing child marriage and providing realistic alternatives for those seeking to leave such marriages are critical. Commitment to change must come from within the communities that routinely practice child marriage. This can only be achieved with any permanence by understanding and then addressing root causes in each context to tackle prevailing and often strong commitments to child marriage.

It is impossible for this report to do justice to the diversity of factors that make children vulnerable to entering into slavery through marriage. It is equally difficult to convey the full range of individual experiences that children, and the adults they become, face during exploitative marriages. Nevertheless, it is important to examine some of the dominant issues at the root of child marriage as slavery here to highlight the need for careful study of the specific situations that can give rise to slavery in marriage. It is essential that such analysis be undertaken before adopting measures for remedial and preventative action if such measures are to be effective, and not risk further harm.

## 7.1. Poverty

Nearly all reports in the literature review cited poverty as a major cause of child marriage, which is most prevalent in rural areas and among the poorest communities. Statistics indicate that the highest rates of child marriage are in countries where 75 per cent of the population lives on US \$2 a day.<sup>140</sup> This is often attributed to the fact that girls in particular are more likely to be seen as an economic burden in such societies:

*“The community is basically desperate. Many families have to marry off their young daughters to people who can give them food.”<sup>141</sup>*

However, these links are not straightforward and should be interpreted with caution. Even where child marriage is commonly practised, it is not always confined to ‘the poor’ or ‘poorest’ within a given community. The treatment of children, especially girls, as capital or commodities to be exchanged in return for goods, money or livestock may occur in all relative income brackets in communities. Likewise, a family in particular economic distress may still be less likely to marry off their children to ease family burdens than neighbours who may be relatively more economically secure.

## 7.2. Religious beliefs and social norms

Child marriage occurs among communities practising all faiths. A national survey among relevant service providers in the USA reported that respondents had encountered forced marriage cases involving individuals from Buddhist, Christian, Hindu and Islamic backgrounds.<sup>142</sup> Regardless of the national or

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<sup>140</sup> ICRW, *Child Marriage Facts and Figures*, Factsheet (2010), available at: <http://www.icrw.org/child-marriage-facts-and-figures>. See also Gordon Brown, *Out of Wedlock*, *supra* note 10, pp. 12-14; Nowrozy Kamar Jahan, “Teenage Marriage and Educational Continuation in Thailand,” *Journal of Population and Social Studies*, Volume 17, Number 1 (July 2008), pp. 141, 148.

<sup>141</sup> World Vision Field Officer in Makueni, Kenya, speaking about the effects of poverty caused by drought on child marriage: World Vision, *Before She’s Ready*, *supra* note 10, p. 6.

<sup>142</sup> Tahirih Justice Center, *Forced Marriage in Immigrant Communities in the United States: 2011 Survey Results*, September 2011, p. 3.

even religious laws of a given State concerning child protection, however, interpretations of religious beliefs emerged frequently in the literature as underpinning an acceptance of child marriage and providing a powerful means of justifying it. One report cited individuals who believed that child marriage was not just permitted, but required, under Islam, considering it to be a sin to have an unmarried daughter reaching puberty:

*“My parents took the decision [to marry me] because it’s a teaching of Islam. After reaching adult age [puberty], marriage should be held at all costs, otherwise it’s a sin.”<sup>143</sup>*

However, religious beliefs were also found to support the opposite view, firmly indicating that it is a sin for boys and girls to be married before they are physically and psychologically mature. Such beliefs equally found it to be a sin for parents to refuse their children the right to choose their spouse, or neglect or ignore their opinions on the matter.<sup>144</sup>

Most of the cases examined for this paper linked child marriage to protecting family honour, and daughters, in particular, from the stigma of sex before marriage, whether for religious or wider societal reasons. In some instances, the stigma of girls reaching puberty itself created strong pressure on girls to marry before reaching that stage.<sup>145</sup> Added to this, many reports noted the societal pressure common to many cultures to have a large number of children, causing families to want their children to start families of their own as early as possible.<sup>146</sup>

Some parents and guardians may undoubtedly be motivated by ambition and greed in arranging marriages for their children without their consent. Certainly, many incomprehensibly cruel and violent practices take place in the name of marriage. However, most parents deciding who and when their children should marry arguably consider such decisions to be in their child’s best interests, as well as their own, in light of prevailing social norms. For example, the dominant view in many societies supports oppressive practices linked to child marriage, like confining adolescent girls to the home for their protection or initiations into marriage or womanhood, such as female genital cutting. Here, parents who insist on child marriage are complicit in perpetuating these harmful practices. However, they are also likely to do so primarily in a bid to protect both the position of the family as well as the child herself within that particular society’s norms. An inability to understand this dichotomy and engage with it is likely to render any attempt to change such practices a failure.

## **18. Community empowerment for social change in Senegal**

Tostan is an NGO, with its headquarters in Senegal and working in eight African countries. It has had considerable success with programmes that motivate whole communities to decide themselves to declare publicly for the abandonment of harmful practices, such as child marriage and female genital cutting:

*“The way you change social norms is not by fighting them or humiliating people and saying they’re backward. We’ve seen that an entire community can choose very quickly to change. It’s inspiring.”<sup>147</sup>*

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<sup>143</sup> Samuel Lane, *Stealing Innocence*, *supra* note 39, p. 25.

<sup>144</sup> *Ibid.*

<sup>145</sup> See for example, Pernilla Ouis’ discussion of ‘honour ideologies’ which can be found in some Muslim, Christian and Hindu societies: “Honourable Traditions?”, *supra* note 34, p. 452-9.

<sup>146</sup> *Ibid.*, p. 460.

<sup>147</sup> Molly Melching, founder of Tostan, featured in Cynthia Gorney, “Too Young to Wed”, *supra* note 19, p. 2.

### 7.3. Education

Education is key to securing societal change. Organisations such as Tostan also highlight the significance of children's education, in addition to community education, as a critical factor in changing prevailing harmful social norms with regard to children.

Reports in the literature review invariably highlighted that children entering marriage are forced to leave school to focus on domestic duties. A study in south western Ukraine noted that the proportion of female students in school fell from 50 per cent to 20 to 25 per cent upon reaching 12 to 13 years old for this reason.<sup>148</sup> Furthermore, in many societies where child marriage is widely accepted, education can be viewed as a barrier to marriage because it is seen to put off potential suitors. Thus, girls can find their education curtailed well in advance of marriage as it is seen as a waste of time and money, given that domestic tasks at home can better prepare them for married life.<sup>149</sup>

However, promoting education for girls as an antidote to child marriage and to improve the prospects of those children already in marriage must take account of the full range of motivations behind withdrawing children from school. For example, many parents who make a decision for their daughters to marry to protect their honour, particularly in societies where chastity is a prerequisite for marriage, may view school itself as a threatening place. Aside from the risk of sexual harassment from male students and teachers, long journeys to and from school or the need to live away from home with relatives or in dormitories to access education can heighten the perceived or actual vulnerability to sexual abuse.<sup>150</sup> Schools must therefore be able to ensure suitable facilities and strict codes of behaviour in such cases to enable parents to feel confident about allowing their young daughters to extend their education.

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<sup>148</sup> ERRC, *Forced Arranged Marriage in Romani communities in Europe*, *supra* note 61, p. 5.

<sup>149</sup> See Gordon Brown, *Out of Wedlock*, *supra* note 10, pp. 22-5; World Vision, *Before She's Ready*, *supra* note 10, pp. 20-1.

<sup>150</sup> See for example, Samuel Lane, *Stealing Innocence*, *supra* note 39, p. 31.

# 8. Conclusions and Recommendations

Awareness of the negative consequences of child marriage, especially for girls, has been growing rapidly in recent years. The impact of marriage on children's education, their physical and psychological health and long-term prospects is increasingly publicised. Nevertheless, child marriage remains a widely, culturally accepted practice in many regions of the world. Latest figures suggest that, worldwide, 11 per cent of women aged between 20 and 24 were married before they reached 15 years old. Estimates for the number of boys in marriage and information on their experiences are notably scarce.

Many marriages involving under 18-year-olds can be perfectly happy, and even if less than satisfactory, do not necessarily amount to slavery. However, the research conducted for this report has shown that 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. This is particularly the case where a child cannot exercise free, full and informed consent to enter into a marriage or union, suffers controlling and abusive treatment during marriage, and is prevented from leaving their spouse, either as children or the adults they become. The frequency with which this appeared to be the case in Anti-Slavery International's review of literature on child marriage suggests that an alarming proportion of the estimated millions of children in marriage may be living in slavery or slavery-like conditions. This should give great cause for concern. Indeed, international law obliges all governments worldwide to protect children, and adults, from all forms of slavery, including through marriage.

In spite of the wealth of information now available on the realities of child marriage, at least as it relates to girls, the links between child marriage and slavery have nevertheless remained largely in the shadows. Indeed, the connection is rarely made even among the international bodies that examine child marriage cases and do so much to raise awareness of a number of issues relating to child marriage. Where slavery is mentioned, such references are usually confined to the most obvious child trafficking cases. More must be done, therefore, to articulate and act upon the striking links between child marriage and slavery at all levels. It is hoped that the UN Special Rapporteur on contemporary forms of slavery's report on servile marriage, followed by the joint press release issued by a number of key UN special procedures and treaty bodies, mark a turning point for this to change.

Nationally, governments must take urgent action to meet their obligations to end slavery through marriage. They must implement international slavery standards where they relate to child marriage and take their commitments to the right to marry more seriously, especially in safe guarding free and full consent to marriage and setting a legal minimum age for marriage, ideally at 18 years old. Better law enforcement should reduce the most obvious slavery and slavery-like practices by punishing and deterring perpetrators, and alerting vulnerable communities to the risk that offers to organise marriages can be a cover for trafficking.

While critical, improved law enforcement alone is unlikely to reverse deeply entrenched commitments to child marriage, especially where this is widespread. It is thus crucial to understand and act upon the diverse and complex personal motives and wider social dynamics that sustain support for child marriage. Only then can policy-makers and other key actors hope to address this issue effectively and governments can finally meet their obligations to bring an end to child marriage, above all where it amounts to slavery and slavery-like practices.

# Recommendations

## International level

The international community must adopt a more comprehensive approach to child marriage, including articulating and addressing the issue within the slavery framework where it is relevant.

Anti-Slavery International calls upon:

### 1. The UN General Assembly and Human Rights Council to:

- a) Pass a resolution on forced and child marriage. This should incorporate the complex and overlapping causes and consequences of forced and child marriage, including its links to slavery; and a reaffirmation and clarification of the relevant frameworks relating both to slavery and right to marry safeguards.
- b) Call for the development of a Strategic Action Plan on Forced and Child Marriage, with cross-international agency participation, to accelerate the end of forced and child marriage world-wide in practice.

The **UN Human Rights Council** should further consider:

- a) Dedicating an annual Day of Discussion on the Rights of the Child to child marriage, reaffirming and clarifying its links to slavery; and
- b) Encouraging better adherence in national law to the international slavery framework and right to marry safeguards, including their enforcement, as they relate to forced and child marriage by all UN Member States through the Universal Periodic Review process.

### 2. UN Treaty Bodies and Special Procedures to:

- a) Systematically promote States' implementation of international slavery standards as they relate to combating forced and child marriage. This should be done by drawing upon the 1926 Slavery Convention, the 1956 Supplementary Slavery Convention, relevant ILO Conventions, as well as the Palermo Protocol in observations and recommendations to States relating to forced and child marriage. Where they have not already done so, States should be encouraged to ratify these Conventions.
- b) Continue to promote better adherence to key right to marry safeguards by States in relation to forced and child marriage. This should be achieved by examining State compliance with: setting and enforcing a legal minimum age for marriage, ideally at 18 years old for both men and women; examining both law and practice regarding equality between males and females upon entering into, during and at the dissolution of a marriage; promoting free and full consent to marriage by both parties by establishing the registration of marriages by a competent registrar or local authority.
- c) Follow up the joint press statement issued by UN Treaty Bodies and Special Procedures on 11 October 2012 with further collaborative efforts, reflecting the many overlapping areas child marriage encompasses, and incorporating the relevant international slavery framework with regard to forced and child marriage.

### **3. The International Labour Organization to:**

- a) Pay closer attention, where relevant, to the issue of child marriage when it amounts to slavery and slavery-like practices, including forced child labour. In examining State compliance with relevant ILO Conventions, notably ILO Convention 182. Such attention is particularly encouraged from the ILO Committee of Experts on the Application of Conventions and Recommendations and the ILO Conference Committee on the Application of Standards.
- b) Pay closer attention to the links between child marriage and child slavery, and the consequent direct relevance of child marriage to the ILO's mandate in those cases through the work of the ILO country offices.

### **4. Other UN specialised agencies and non-governmental organisations (NGOs)**

- a) A number of UN specialised agencies, including UNICEF and the WHO, as well as NGOs, both international and local, have collectively done an enormous amount to raise the profile of forced and child marriage. However, all specialised UN agencies and NGOs could further consider the possible application of the slavery dimension to child marriage and raise this issue within their ongoing work on forced and child marriage.

## **National level**

A number of governments welcomed the UN Special Rapporteur on contemporary forms of slavery's report on servile marriage at the UN Human Rights Council in September 2012.<sup>151</sup> This included individual States sharing progress made to adopt and amend legislation or policy in this regard. However, much more must urgently be done to bring an end to slavery through marriage in practice.

To this end, Anti-Slavery International calls upon States to:

### **1. Ratify all relevant international standards.**

Notably:

- a) All treaties relating to slavery and slavery-like practices, especially the 1926 Slavery and 1956 Supplementary Conventions, the Palermo Protocol, and ILO Conventions 29 and 182.
- b) All treaties relating to the right to marry, notably the 1964 Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages and the CEDAW.
- c) Remove all reservations seriously undermining the object and purpose of relevant treaties, including Article 16 of the CEDAW, which prohibits discrimination against women in all matters relating to marriage and family relations.

### **2. Ensure that all international standards relating to slavery, slavery-like practices and the right to marry are fully implemented in national law.**

This requires:

- a) Asserting the primacy of national legislation where such laws may conflict with other forms of law or practices operating within the State's jurisdiction, including religious, customary or local

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<sup>151</sup> A total of 22 states, including the European Union and the Holy See, made statements in support of the report at the UN Human Rights Council session on 13 September 2012.



laws. The State must ensure that relevant authorities, including religious or tribal authorities, comply with such legislation.

- b) Setting a legal minimum age for marriage, ideally at 18 years old, for both men and women. Parental authorisation or 'consent' should not be used to permit marriage at a lower age than the national minimum limit.
- c) Ensuring that no amendment of the legal minimum age for marriage is used to restrict advice or services regarding sexual and reproductive health for any person under that age.
- d) Making it a legal requirement to register births, and providing the general population with easy access to competent authorities to enable them to do so. Public campaigns must also be undertaken to raise awareness of the importance of registration.
- e) Examining both national law and practice to determine the level of equality between men and women as it relates to their rights on entering, during and at the dissolution of marriage. This includes custodial rights over any children from the marriage. States must thereafter amend any inequality identified to guarantee equal rights for both genders in all aspects of marriage.
- f) Facilitating free and full consent to marriage by both parties by encouraging the mandatory registration of marriages by a competent registrar or local authority, and ensuring such facilities are both available and accessible. Access to appropriate remedies and support for children or adults entering into or wishing to leave both registered marriages and unregistered unions should be provided.

### **3. Raise awareness of the links between slavery and child marriage, as well as the relevant applicable laws.**

This includes anti-slavery, forced child labour and child trafficking legislation, as well as right to marry safeguards, such as the legal minimum age to consent to marry, equality within marriage and mandatory birth and marriage registrations. Penalties for infringing these laws should also be widely publicised and understood.

### **4. Ensure that all of these laws and policies are strictly implemented and enforced.**

Relevant training should also be given to law enforcement agents and other relevant professionals.

### **5. Ensure awareness of and access to advice, protection and rehabilitation for all children (and adults) trapped in slavery through marriage.**

This could, where practical, initially be provided through telephone hotlines. However, it must include the provision of any medical, legal and financial support such individuals might need in respect of either themselves or their children.

### **6. Prioritise policies and measures to prevent children from entering into marriage, with a particular focus on children under 15 years.**

This requires engaging with communities where child marriage is commonly practised in the development and implementation of programmes, notably economic development and income-generating initiatives, as well as the provision of quality education that is affordable and accessible. Education provision must also address factors threatening the confidence or ability of families to keep their children in school, such as safety concerns about school attendance for girls.

## All entities

### 1. Systematic and disaggregated data-gathering

Better targeted systematic and disaggregated data on children in exploitative marriages would improve the ability of States and others to identify those vulnerable to slavery in the name of marriage and adequately protect them.

Anti-Slavery International calls on international agencies, governments and NGOs to invest resources into improving targeted data-gathering in this area as a priority, in order to:

- a) Identify communities where child marriage is commonly practised and where children are vulnerable to slavery through marriage. A good starting point is the collation of data relating to the range of objective indicators that do not automatically equate to slavery and slavery-like practices in marriage but suggest an increased vulnerability to it. These include: large age gaps between bride and groom; the continued practice of *dowry*, *bride price* or other transactions relating to marriage or unions; the low enrolment/participation of girls in education, and in particular high drop-out rates at puberty; a high rate of births accompanied by high maternal and infant mortality rates (associated with complications for girls and babies in early childbirth).
- b) Understand the full range of causes to be tackled in relation to child marriage and slavery, specific to each case or locality. Parents and communities may view child marriage as legitimate given the options available to them. This can involve considerations such as conformity to prevailing social norms, safeguarding a child's honour/chastity and economic security. These factors must be fully understood to be challenged sensitively and effectively.
- c) Gather quantitative and qualitative data on the prevalence and experiences of boys in forced and child marriage.

### 2. Establish and support fully inclusive community empowerment programmes.

This is essential if tackling the root causes of child marriage and the factors rendering children vulnerable to slavery in marriage is to be sustainable.

Anti-Slavery International calls on international agencies, governments and NGOs to:

Work directly in and with communities where child marriage is commonly practised. This can be achieved by: encouraging communities to identify and challenge harmful social norms themselves; improving access to safe education services, particularly for girls; and supporting economic development and income-generating programmes to help remove poverty as a possible push factor. Such programmes must be fully inclusive and reach out to children at risk of or involved in child marriage. Crucially, they should also involve community leaders and all other members of the community so that they can take a stand against slavery and other abuses in child marriage together.

## **Resources on child marriage and slavery**

Anti-Slavery International's review of the literature on child marriage canvassed over 50 reports and articles on the subject.

A list of articles, reports, court judgements and treaties relating to child marriage and slavery have been made available on Anti-Slavery International's website. This can be accessed at: [www.antislavery.org](http://www.antislavery.org).

For a hardcopy of this report, or any other queries in respect of the report, please contact:

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Anti-Slavery International, founded in 1839, is committed to eliminating all forms of slavery throughout the world. Slavery, servitude and forced labour are violations of individual freedoms, which deny millions of people their basic dignity and fundamental human rights. Anti-Slavery International works to end these abuses by exposing current cases of slavery, campaigning for its eradication, supporting the initiatives of local organisations to release people, and pressing for more effective implementation of international laws against slavery. For further information see: [www.antislavery.org](http://www.antislavery.org).

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