



**Non-governmental stakeholder submission in response to the request for submissions supporting the report of the Office of the High Commissioner for Human Rights (OHCHR) on child, early and forced marriage to the Human Rights Council pursuant to resolution A/HRC/RES/24/23**

**December 2013**

The Center for Reproductive Rights (the Center), an independent non-governmental organization that uses the law to advance reproductive freedom as a fundamental human right, respectfully presents the following information in support of the OHCHR's preparation of a report on preventing and eliminating child, early and forced marriage in advance of the Human Rights Council's twenty-sixth session. The Center has offices in Colombia, Kenya, Nepal, Switzerland, and the United States of America, and works globally to advocate for women's reproductive rights. In 2013, the Center prepared a briefing paper (Annex I<sup>1</sup>) and a fact sheet (Annex II<sup>2</sup>) on child marriage in South Asia, which analyze national legal standards to address child marriage—in particular in Afghanistan, Bangladesh, India, Nepal, Pakistan, and Sri Lanka—as well as set forth and discuss implementation of human rights legal standards on child marriage, early pregnancy, and sexual violence within marriage; identify examples of positive experiences and challenges in addressing child marriage and protecting the rights of married girls; and recommend measures governments must take to eliminate child marriage and ensure married girls' rights in line with their constitutional and international legal obligations. This letter will highlight portions of these materials that provide information on the national and regional situation in South Asia, which accounts for the most child marriages globally, relevant to questions a, d, and e posed in the call for submissions.

Because child marriage does not constitute a single violation of rights for girls, but triggers a continuum of harm—including reproductive health harms and sexual violence—that continues through a married girl's life, this submission discusses compliance with the human rights standards pertaining both to preventing child marriage as well as providing remedies to married girls where the practice persists.

## **I. Response to questions highlighted in the call for submissions**

### ***a. How States are implementing their obligations under international human rights conventions and treaties on child, early and forced marriage at the national level***

**Ensure a minimum legal age of marriage of 18.** Despite a clear obligation under human rights law to clearly and consistently establish a minimum legal age of marriage of 18 years and to ensure all child marriages are legally void (Annex I pp. 24, 27), states in South Asia continue to permit laws in their countries to recognize lower minimum ages of marriage (Annex I, p. 12). For example, both Afghanistan and Pakistan establish a minimum legal age of marriage for girls below 18 years under their national laws applicable to all citizens (Annex I, p. 12). Several other

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<sup>1</sup> Center for Reproductive Rights, CHILD MARRIAGE IN SOUTH ASIA, available at [http://reproductiverights.org/sites/crr.civicactions.net/files/documents/ChildMarriage\\_BriefingPaper\\_Web.pdf](http://reproductiverights.org/sites/crr.civicactions.net/files/documents/ChildMarriage_BriefingPaper_Web.pdf). Hard copy to be delivered by colleague Katrine Thomasen.

<sup>2</sup> Center for Reproductive Rights, *Accountability for Child Marriage*, available at [http://reproductiverights.org/sites/crr.civicactions.net/files/documents/ChildMarriage\\_FactSheet\\_Web.pdf](http://reproductiverights.org/sites/crr.civicactions.net/files/documents/ChildMarriage_FactSheet_Web.pdf). Hard copy to be delivered by colleague Katrine Thomasen.

countries, including India, Bangladesh, and Sri Lanka, establish 18 years as the minimum age of marriage for girls in general legislation pertaining to child marriage, but allow religiously-based personal laws to undermine this protection by establishing lower ages of marriage, allowing parental consent to permit child marriage, and failing to clarify that legislation prohibiting child marriage supersedes all other laws including personal laws (Annex I, pp. 13). Governments are obligated under human rights law to ensure that religion, including as codified in personal laws, is not permitted to result in violations of women's and girls' rights or to justify child marriage (Annex I, p. 27).

**Require free and informed consent and registration for marriage.** Additional legal barriers in South Asia that constitute violations of human rights standards include the failure of governments to require that marriages occur with the free and informed consent of the parties, which children cannot legally provide, and, as noted above, to ensure that laws do not allow parental consent to become a substitute for valid individual consent (Annex I, pp. 15-16, 24- 27). Further, governments in South Asia also have largely failed to introduce and enforce mandatory registration of marriages and births, which are necessary to monitor compliance with minimum legal ages of marriage, and to introduce the necessary infrastructure to implement these requirements (Annex I, p. 15).

**Ensure child marriages are accorded no legal status.** Further, several states in South Asia often recognize child marriage marriages as legally valid, even when 18 is established as the minimum legal age. For example, in India and Nepal, laws on child marriage criminalize promotion or participation in child marriages, but child marriages are considered valid no matter how young the parties to the marriage were unless either party who was a child at the time of the marriage takes affirmative steps to void the marriage (Annex I, pp. 13-14). Voiding a child marriage can be an onerous process for a girl once married—the legal requirements are often restrictive and require girls to have economic and personal autonomy that they practically lack (Annex I, pp. 18-19, 21). For example, in Nepal, a child marriage can only be voided if the couple has not already had children at the time of seeking to void the marriage, at 18 years of age. This is a significant barrier given the pressure girls face to become pregnant shortly after marriage in South Asia as well as girls' lack of access to contraceptive information and services which makes them unable to control the timing of their pregnancy (Annex I, pp. 16-17). Similarly, in India, several legal and practical barriers to voiding a marriage exist, including requirements that a girl has the support of an adult if she is still a minor; a two year limitation once she reaches majority for voiding the marriage despite the fact that this is the age during which she is likely to have small children or be pregnant and practically unable to end her marriage; and contradictory procedures and rights to void a child marriage set forth in personal laws which create ambiguity about the legal process (Annex I, pp. 18-19).

While India and Nepal do regard marriages entered into by force as legally void, child marriages have not been clearly recognized as falling within these provisions,

despite the fact that human rights law clearly states that children cannot provide legal consent to marriage (Annex I, p. 14). Under certain personal laws, such as in Bangladesh, parental consent is allowed to be sufficient for child marriage, which human rights law specifically condemns (Annex I, p. 15).

**Enforce child marriage laws.** Governments in South Asia have not been successful in effectively implementing and enforcing laws prohibiting child marriage, ensuring adequate penalties for child marriage and accountability where government officials allow child marriages to persist, and addressing the patriarchal and discriminatory norms and stereotypes that underlie child marriage (Annex I, p. 19). Child marriage is typically viewed as a personal or family matter by government officials, rather than an issue of public concern or as a crime, which has led to a lack of willingness to prioritize enforcement of legislation penalizing child marriage (Annex I, p. 21). Penalties for child marriage are often light, which sends the message that child marriages need not be taken seriously or prioritized for prosecution (Annex I, p. 21).

**Prevent violations of married girls' rights and provide remedies.** As a result of these legal barriers, girls are effectively trapped within child marriages that place them at significant risk of reproductive health harm, including early and unintended pregnancy, adolescent maternal mortality and morbidity, and sexual violence (Annex I, pp. 18-19). Human rights bodies have repeatedly affirmed that addressing child marriage also includes ensuring married girls' reproductive rights and right to freedom from gender-based violence are not violated. Adolescent pregnancy is the leading cause of death of girls age 15-19 in low and middle income countries, yet married girls in South Asia continue to face significant barriers in accessing contraceptive information and services, safe abortion services, and adolescent-friendly maternal health care (Annex I, pp. 16-17). The failure to ensure that adolescent girls have the information and services necessary to protect their reproductive health is a violation of human rights law (Annex I, pp. 25-26; Annex II, p. 6).

The rights of married girls are further violated by laws that fail to criminalize marital rape (Annex I, pp. 28, 34; Annex II, p. 8). Marital rape is not criminalized in any of the South Asian countries with the highest prevalence of child marriage, with the exception of Nepal. In certain South Asian countries, such as India and Sri Lanka, marriage is permitted to legitimize what would otherwise be considered child sexual abuse. In Sri Lanka, for example, sex with a girl under 16 is considered rape; however, within marriage, the age is lowered to 12 years of age (Annex I, p. 14).

***d. Steps taken to prohibit child, early and forced marriage as well as examples of positive experience and challenges encountered at the national level in adopting policies, measures and implementing strategies to address this issue***

Within the region, there have been steps taken by courts and national human rights institutions (NHRIs), including women's and children's rights commissions, relating

to child marriage that represent positive experiences. Annex I, p. 52, highlights several examples of initiatives taken by NHRIs in South Asia to address human rights violations suffered by girls as a result of child marriage, including intervening where child marriage occurs, ordering investigations to identify the scope of child marriage and gaps in legal enforcement, proposing human rights-based law reform and intervening in judicial cases concerning child marriage to strengthen laws, and convening meetings to identify and promote solutions for elimination of child marriage.

Courts in the region have also issued decisions ordering implementation of laws on child marriage in response to evidence documenting the widespread violations of legislation penalizing the practice, recognizing the legal responsibility of marriage registrars to prevent child marriages, ordering mandatory registration of marriage in part as a means to prevent child marriages, and establishing women's rights to be free from forced marriage (Annex I, pp. 42-43, 46-47). Courts have also issued groundbreaking decisions recognizing the obligation of governments to protect women's and girls' reproductive rights and rights to be free from gender-based violence, including marital rape (Annex I, pp. 49-51). These decisions lay the foundation for recognition of the legal duty of governments to prevent violations of married girls' constitutional and human rights.

The recommendations of NHRIs and orders issued by courts represent positive steps governments can take, but effective implementation has proven to be an ongoing challenge. For example, despite a recommendation by India's National Commission for Women that child marriages should be considered legally void, child marriage continues to only be voidable under limited circumstances. Similarly, despite an order by the Indian Supreme Court mandating compulsory registration of marriage, registration remains low and no national law has been introduced instating penalties for failure to register a marriage.

In addition, it should be noted that regional political and human rights bodies also may play a significant role in bringing about recognition of child marriage as a human rights crisis and the need for greater accountability for this practice. South Asian Association for Regional Cooperation (SAARC) member states have repeatedly pledged to protect children through conventions on child welfare and trafficking as well as statements relating to children's rights (Annex I, p. 32). While no SAARC convention currently specifically condemns child marriage, there have been some noteworthy developments on child marriage in SAARC statements and in advocacy work by regional organizations engaging with SAARC. For example, the SAARC Colombo Statement on Children of South Asia has recognized child marriage as a "harmful traditional practice" and resolved to "enhance and make effective child protection efforts, including eliminating child marriage" (Annex I, p. 32). Although SAARC has yet to define and condemn child marriage in a convention, two regional coalitions—the South Asia Initiative to End Violence Against Children and the South Asia Coordinating Group on Action on Violence Against Children—have begun to engage with SAARC member states to support the development of regional actions

plans that include steps to eliminate child marriage (Annex I, p. 32). SAARC could provide leadership on the issue of child marriage in the region, including by developing regional standards that reflect international human rights norms and state obligations and establishing a process of government accountability for elimination of this practice. SAARC also has the potential to issue a regional instrument that defines child marriage as a severe form of discrimination and violence against children, and can advocate with governments in the region to strengthen legal protections for girls in line with established international standards (Annex I, p. 32).

***e. Recommendations on good practices regarding possible appropriate measures and strategies to prevent and eliminate child, early and forced marriage***

Annexes I and II set forth several key recommendations on possible appropriate measures and strategies to prevent and eliminate child marriage, including preventing and addressing reproductive health harm and sexual violence experienced by married girls (Annex I, pp. 56-59; Annex II, p. 9). There are several recommendations made by U.N. bodies and experts with regards to the continuum of harms suffered by married girls which require immediate implementation, highlighted in Annex II on page 8.

## **II. Conclusion**

Human rights law is absolute and clear that where governments fail to ensure effective legal frameworks to prevent child marriage as well as provision of access to reproductive health care and legal remedies to married girls, they must be held accountable for the resulting harms to girls' lives and well-being including those that arise from early pregnancy and sexual violence. The OHCHR has affirmed that accountability requires that governments address grievances and sanction wrongdoing, as well as prevent future harm by correcting systemic failures (Annex II, p. 3). In the context of child marriage, this requires that in addition to engaging in law reform, governments must ensure that those who allow child marriages to happen are sanctioned and that the harmful impact of child marriage, including the continuum of reproductive health harm and sexual violence suffered by married girls, are addressed both on a short and long term basis. Barriers that impede girls' access to legal remedies must be removed. Implementation of laws prohibiting child marriage must be accompanied by broader efforts to end discrimination against girls and women.