

December 2013

## Child, Early and Forced Marriage

### Human Rights Watch Submission to the Office of the High Commissioner for Human Rights

Human Rights Watch welcomes the opportunity to provide input to the Office of the High Commissioner for Human Rights (OHCHR) for its report to the Human Rights Council on child, early and forced marriage. Human Rights Watch has included cases of child marriage in research in Bangladesh, Chad, Egypt, India, Iraq, Kenya, Papua New Guinea, Saudi Arabia, Syria, Uganda, and Uzbekistan, and interviewed women and girls who experienced child marriage in [Afghanistan](#), [Kyrgyzstan](#), [Yemen](#), [South Sudan](#), and currently in Malawi.

Human Rights Watch is also a member of [Girls Not Brides](#): The Global Partnership to End Child Marriage. The consequences of child marriage do not end when child brides reach adulthood, but often follow them throughout their lives as they struggle with the health effects of getting pregnant too young and too often, their lack of education and economic independence, physical, psychological and sexual violence. The following findings and recommendations are based on Human Rights Watch research and a [Q & A on child and early marriage](#) developed by Human Rights Watch. The focus is on three elements of the OHCHR call for submissions: the impact of child marriage, human rights obligations of states related to child, early and forced marriage, and recommendations to help end these practice and mitigate their consequences.

#### a) Impact on the human rights of women and girls

The testimonies of the children and women Human Rights Watch has interviewed illustrate the profoundly detrimental impact of child, early and forced marriage on their human rights, including their physical and mental well-being, and their ability to live free of violence.

### *Health-related consequences*

Early marriage contributes to violations of the right to health. The practice puts girls at greater risk of dying or ill-health as a result of early pregnancy and childbirth.<sup>1</sup> Their children also face higher mortality rates.<sup>2</sup>

These consequences often from girls' physical immaturity where the pelvis and birth canal are not fully developed. Complications in labor are exacerbated where emergency obstetric services are scarce, as is the case in many societies where child marriage is prevalent. In Yemen for example, an overwhelming majority of women deliver at home, often without the assistance of a skilled birth attendant who could handle pregnancy related emergencies.

Pregnancy in adolescent girls also carries a serious risk of obstetric fistula, since their smaller pelvises make them prone to obstructed labor. Fistula leaves its victims with urine or fecal incontinence that causes infection, pain, and a bad smell. Fistula also triggers stigma, breakdown of marriages, and loss of employment. In Afghanistan, for example 25 percent of women who developed fistula were younger than 16 years when they got married, and 67 percent were married between 16 and 20.<sup>3</sup> In South Sudan, a doctor at Juba teaching hospital told Human Rights Watch that although the hospital lacks accurate fistula statistics, they see many cases of teenagers with obstructed labor.<sup>4</sup>

### *Consequences on education*

Child marriage interrupts and frequently ends a girl's education. Girls who marry young are often expected to take on responsibilities at home, and pregnancy and childcare are prioritized over attending school. A lack of education limits girls' choices and opportunities throughout their lives, not just when they are children. The price of this exclusion is often poverty. In Yemen, one girl who married at the age of 12 told Human Rights Watch: "All that I'm good for is to be a mother, and a home maker.... I'm illiterate. They didn't teach us anything. If they did, at least I would have benefitted from something."<sup>5</sup>

---

<sup>1</sup> WHO, "Reproductive Health," undated, [http://www.who.int/topics/reproductive\\_health/en/](http://www.who.int/topics/reproductive_health/en/) (accessed December 9, 2013).

<sup>2</sup> Population Action International, "How Family Planning Protects the Health of Women and Children," May 1, 2006, pp. 1-2; Nawal M. Nour. "Health Consequences of Child Marriage in Africa," November 2006.

<sup>3</sup> Social and Health Development Program, "Survey Report: Prevalence of Obstetric Fistula among Women of Reproductive Age in Six Provinces of Afghanistan," 2011.

<sup>4</sup> "This Old Man Can Feed Us, You Will Marry Him: Child and Forced Marriage in South Sudan," Human Rights Watch report, March 7, 2013, <http://www.hrw.org/reports/2013/03/07/old-man-can-feed-us-you-will-marry-him>.

<sup>5</sup> "How Come You Allow Little Girls to Get Married?" Child Marriage in Yemen," Human Rights Watch report, December 8, 2011, <http://www.hrw.org/node/103335>.

In South Sudan, most of the girls and women Human Rights Watch interviewed who had attended school and married before age 18, left after three to five years of primary education. In Yemen, several women told Human Rights Watch that their parents had removed them from school as soon as they reached puberty. Almost all of the girls and women interviewed said that once they were married, they were unable to complete or otherwise continue their education, and many had children soon after marriage.

*Violence against married girls and girls who try to resist marriage*

Married girls and young women between the ages of 15 and 19 with low levels of education are at greater risk of domestic and sexual violence from their spouses than older and more educated women.<sup>6</sup> Research cites spousal age difference, typical of child marriage, as a significant risk factor associated with violence and sexual abuse against girls.<sup>7</sup>

Child marriage creates an environment that increases young brides' vulnerability to physical, sexual, psychological, and economic abuse. Because early marriage limits young married girls' knowledge and skills, resources, social support networks, mobility and autonomy, they often have little power in relation to their husbands or his family. In addition, the large age gap between child brides and their spouses makes them less able to negotiate when and how sex takes place in a marriage, including safer sex and family planning.

In Yemen, girls and women said that they were often exposed to gender-based violence, including domestic abuse and sexual violence. Married girls and women in Yemen often live with their husband's extended family, and some told Human Rights Watch that their husbands, in-laws, and other members of their husband's household verbally or physically assaulted them.

In South Sudan, Human Rights Watch spoke to women who were subjected to child marriage who experienced violence from their spouses, in-laws, and other family members. This includes physical, verbal, sexual, and psychological abuse. Girls and women don't always report violence to the authorities due to a number of cultural and legal barriers. Nonetheless, some women do report abuse, including forced marriages, but they rarely get the help they need, including an adequate response by the police or access to shelters.

---

<sup>6</sup> WHO, "Multi-country Study on Women's Health and Domestic Violence against Women: Initial Results on Prevalence, Health Outcomes and Women's Responses: Summary Report," 2005, [http://www.who.int/gender/violence/who\\_multicountry\\_study/summary\\_report/summary\\_report\\_English2.pdf](http://www.who.int/gender/violence/who_multicountry_study/summary_report/summary_report_English2.pdf) (accessed December 8, 2013), p. 8.

<sup>7</sup> Robert Jensen and Rebecca Thornton, "Early Female Marriage in the Developing World," *Gender and Development*, July 2003, vol. 11, no. 2, pp. 9-19.

Human Rights Watch found in South Sudan that girls who refuse to accept or stay in forced marriages, or who elope because they want to marry someone not chosen or approved of by their families, are often at risk of violence and in extreme cases, may be killed by their families or husbands.

The risk of domestic violence faced by young girls also appears linked to a high risk of suffering marital rape and other forms of sexual violence. Human Rights Watch documented rape of women and girls who were married as girls, and even death as a consequence.

In Yemen, Elham Mahdi Al-Assi, aged 12, died of internal bleeding three days after she was married. According to media reports, Elham was married to a man twice her age. Medical reports indicate that Elham died from severe bleeding caused by tears to her genital and anal area from sexual activity. Marital rape is still not criminalized in many countries around the world.

#### **b) Human rights obligations related to child, early and forced marriage**

Child marriages violate many human rights; the rights to health, to equality and non-discrimination, to information, to free and full consent to marriage, to choose one's spouse, to education, to be free from physical, mental, and sexual violence, to an effective remedy when any of these rights are violated, and to be protected from slavery, trafficking and sale. The following human rights obligations should be stipulated and addressed in the OHCHR report.

##### *Right to free and full consent to marriage*

The right to marriage based on “full and free consent” of the spouses is recognized in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR).<sup>8</sup> The Convention on the Consent to Marriage further specifies that each spouse must give his or her consent “in person ... as prescribed by law.”<sup>9</sup> The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (the Maputo Protocol) specifies in article 6 that, “no marriage shall take place without the free and full consent of

---

<sup>8</sup> Universal Declaration on Human Rights (UDHR), adopted December 10, 1948, G.A. Res. 217A(III), U.N. Doc. A/810 at 71 (1948), art. 16, ICCPR, art. 23, and ICESCR, art. 10 (1).

<sup>9</sup> Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, adopted 10 December 1962, entered into force on 9 December 1964, art. 1.

both parties.<sup>10</sup>” Consent cannot be “free and full” when one of the parties involved is not sufficiently mature to make an informed decision about a life partner. To exercise full, free and informed consent, a woman needs to have the capacity to understand the meaning and responsibility of marriage; access to full information about her future spouse; knowledge of the institution of marriage; and her right to exercise a choice as to whether or not to marry, who to marry, and when to marry.<sup>11</sup>

#### *18 as the minimum age for marriage*

The 1962 International Convention on Consent to Marriage, Minimum Age for Marriage, and Registration of Marriages calls on States to specify a minimum age of marriage. There is an evolving consensus in international law that 18 should be the minimum age for marriage. According to the Committee on the Rights of the Child, the minimum age for marriage should be 18, regardless of the wishes of the parents.<sup>12</sup> In 1994, the UN Committee on the Elimination of Discrimination against Women issued a recommendation that countries adopt a minimum age for marriage of 18 years for both sexes (General Recommendation 21, Equality in marriage and family relations, 1994, para 36).

#### *Right to equality and non-discrimination*

Child marriage is considered a form of gender-based discrimination because the practice disproportionately affects girls, and negatively impacts the realization of many other human rights for girls and women. The ICCPR calls for “the equal right of men and women to the enjoyment of all civil and political rights set forth in the ... Covenant,” which include the right to birth registration, to free and full consent to marriage, to equality of rights and responsibilities of spouses during marriage and at its dissolution, to life, to liberty and security of the person, and to freedom of expression. The ICESCR contains similar obligations in relation to economic, social and cultural rights.<sup>13</sup>

#### *Right of children to express their views freely*

Many girls are forced to marry over their expressed objections. The right of children to express their views is set out in article 12 of the Convention on the Rights of the Child (CRC) which stipulates that they have this right in all matters affecting them, according to their

---

<sup>10</sup> Protocol to the African Charter on Human and Peoples' Rights on The Rights of Women in Africa (the Maputo Protocol), adopted July 11, 2003, entered into force November 2005, article 6.

<sup>11</sup> General Comment no. 16 of the Committee on Economic, Social and Cultural Rights, which oversees implementation of the ICESCR, sets out States parties obligations to “ensure that men and women have an equal right to choose if, whom, and when to marry.”

<sup>12</sup> For example see, UN Committee on the Rights of the Child, General Comment No. 4, Adolescent Health and Development in the Context of the Convention on the Rights of the Child, (Thirty-third session, 2003), para. 20.

<sup>13</sup> ICESCR, art. 3.

age and maturity. The 2009 CRC committee's General Comment no. 12 on the right of the child to be heard affirms this right in any judicial or administrative proceeding affecting his or her well-being.<sup>14</sup> In its comment, the committee goes on to set out States Parties' obligations to establish reporting mechanisms such as telephone help lines and support mechanisms to assist children to express their views. This includes access to physicians and to teachers who can offer a safe space for children to express their views or to seek help in any matter related to their well-being.

#### *Right to the highest attainable standard of health*

Given the severe health consequences of early and child marriage, in particular reproductive health, the practice is intrinsically linked to violations of the right to the highest attainable standard of health. The ICESCR specifies that everyone has a right "to the enjoyment of the highest attainable standard of physical and mental health," and requires that it be implemented without discrimination on the basis of sex, age, or other prohibited grounds.<sup>15</sup> Article 24 of the CRC recognizes children's rights to health and to access health services, and notably the right to be protected from traditional practices prejudicial to the health of the child.

Several treaties and authoritative interpretations specifically note that reducing maternal mortality rates and improving maternal health services should be considered priorities in the progressive realization of the right to health. The ICSECR provides that the full realization of the right to health requires States Parties to take steps to reduce rates of still-births and infant mortality. The UN Committee on Economic, Social and Cultural Rights (CESCR) has noted "a need to develop and implement a comprehensive national strategy for promoting women's right to health throughout their life span," and elaborating that:

A major goal [of a national strategy] should be reducing women's health risks, particularly lowering rates of maternal mortality and protecting women from domestic violence. The realization of women's right to health requires the removal of all barriers interfering with access to health services, education and information, including in the area of sexual and reproductive health. It is also important to undertake preventive and remedial action to shield women from the impact of harmful traditional cultural practices and norms that deny them their full reproductive rights.<sup>16</sup>

---

<sup>14</sup> Committee on the Rights of the Child, General Comment No. 12, The Right of the Child to Be Heard, U.N. Doc.CRC/C/GC/12(2009), para. 2.

<sup>15</sup> ICESCR, art. 12.

<sup>16</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), "Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights," General Comment No. 14, The Right to the Highest Attainable Standard of Health, E/C.12/2000/4 (2000), para. 14. para. 21.

### *Right to education*

The ICESCR guarantees to everyone the right to education, including free and compulsory primary education.<sup>17</sup> The right to equal opportunity in education is stipulated in the CRC, the African Charter, the Maputo Protocol, and the African Charter on the Rights and Welfare of the Child.<sup>18</sup> In its general recommendation on the aims of education, the CRC committee explains the purpose of education to develop a child's "personality, talent, mental and physical abilities to full potential" and to prepare a child to assume life's responsibilities.<sup>19</sup> It observes that an education provides children with life skills such as critical thinking, the ability to make well-balanced decisions, to develop a healthy lifestyle and good social relationships; and empowers them by developing their self-esteem and confidence.<sup>20</sup>

### *Right to be free from physical, psychological and sexual violence*

States have an obligation to prevent, investigate, prosecute, and punish violence against girls and women. The responsibility is grounded in the rights of non-discrimination and equality, to security of person, to health, and to freedom from torture.<sup>21</sup> The CRC requires that states parties protect children from physical, mental, and sexual abuse or exploitation through legislation and other social and educational measures. The obligation to protect children from violence includes protection from parents or other caregivers.<sup>22</sup> Article 19 of the CRC clearly delineates the obligation of states to protect children from physical violence and sexual abuse.

## **c) Recommendations**

From macro to micro level, governments should undertake a range of comprehensive measures to combat child, early and forced marriage through legislation, policy and social measures:

### *Legal framework*

- Setting, enforcing and raising public awareness of a minimum age for marriage at 18;

---

<sup>17</sup> ICESCR, art. 13.

<sup>18</sup> CRC, art. 29, African Charter, art. 17, Maputo Protocol, art. 12, ACRWC, art. 11.

<sup>19</sup> Committee on the Rights of the Child, General Comment No. 1, The Aims of Education (Article 28), (Twenty-sixth session, 2001), Compilation of General Comments and General recommendations Adopted by Human Rights Treaty Bodies, UN Doc. HRI/gen/1/rev.7, p.294, para. 9.

<sup>20</sup> Ibid.

<sup>21</sup> Human Rights Committee, General Comment 31, para. 8; UN Committee Against Torture, General Comment 2.

<sup>22</sup> CRC, art. 19.

- Requiring verification of the full and meaningful consent of both spouses;
- Ensuring that marriages concluded under force may be voided, annulled, or dissolved without undue burden placed on the victim(s);
- Safeguarding by law a victim's right to seek financial compensation after voiding, annulling, divorcing, or otherwise dissolving the marriage and protecting the rights of children born out of such a marriage;
- Recognizing marital rape as a criminal offense;
- Protecting women's and girls' rights (including property rights, access to remedies, support for those wishing to leave a marriage, protection from violence, access to health services and sexual and reproductive health) and removing any reservations to international and regional human rights treaties which allow discrimination against girls or women including within the context of marriage and family relations;
- Signing, ratifying, and implementing international and regional human rights standards to address child, early and forced marriage (including the Convention on the Rights of the Child, the Convention on the Elimination of all Forms of Discrimination Against Women, the African Charter on the Rights and Welfare of the Child, and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa).

#### *Implementation & policy measures*

- Developing, supporting and implementing comprehensive and integrated strategies to prevent child, early and forced marriage;
- Establishing and enforcing civil registration systems, including of birth and marriage;
- Prosecuting perpetrators of forced marriage;
- Providing training to law enforcement and health officials on gender discrimination and violence against women;
- Increasing access to education for girls, including by providing incentives for families to keep their daughters in school;
- Increasing and improving access to reproductive healthcare for all girls and women in rural and urban areas by removing barriers, allocating greater resources from national health expenditure and more personnel;
- Ensuring that access to emergency obstetric care, including monitoring of labor, trained birth attendants, newborn care, and contraception, is available to all girls and women;
- Raising awareness among health workers and the public on the importance of registering births, including home deliveries;

- Involving young women and girls in developing policies and programmes to address their rights;
- Providing continuing formal education and vocational training opportunities for married girls and women;
- Providing sufficient shelter space for women and girls escaping violence.