



Memorandum

TO: Hon. Justice M. Imman Ali, Supreme Court of Bangladesh

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CC: Elizabeth Brundige, Executive Director, Avon Global Center for Women and Justice and Visiting Assistant Clinical Professor

DATE: January 10, 2013

RE: Child Marriage in Bangladesh: Causes, Consequences, and Legal Framework

I. Introduction

This Memorandum discusses the context, causes, consequences, and legal framework of child marriage in Bangladesh. Despite international, regional, and national laws that prohibit child marriage, the practice is common throughout the world. Poverty, lack of education, and discriminatory customary and religious norms all have a major impact on why this practice remains a constant international issue for women and girls. Examining the framework in which child marriage exists, including the causes and consequences of the practice, may assist Bangladesh and other countries institute and enforce meaningful legal provisions and construct policies to eradicate child marriage in the future.

Section II of this memorandum discusses the global problem of child marriage and the statistics associated with it. Section III briefly analyses the status and treatment of women in Bangladesh, and Section IV further details the problem of child marriage in Bangladesh, including general statistics, prevalence, and trends of child marriage. Section V explores the causes and context of child marriage, touching upon the most common reasons child marriage exists. Section VI moves on to address the impact and consequences that stem from child marriage. Section VII presents the fundamental human rights and legal obligations of governments, detailing these obligations at the international and nation level through analysis of the legal framework and obligations of Bangladesh regarding child marriage. Finally, Section

VIII refers to several sources, excerpts of which are provided in the addendums, that offer recommendations and discuss successful efforts to combat child marriage around the world.

II. Child Marriage: A Global Concern

Child marriage is generally defined as marriage of a child under the age of 18.¹ UNICEF provides slightly more specificity, defining child marriage as “a formal marriage or informal union before the age of

18” that occurs

throughout the world.²

Child marriage is a

widespread practice

globally, including in the wealthiest and most

developed nations. It is

most common, however,

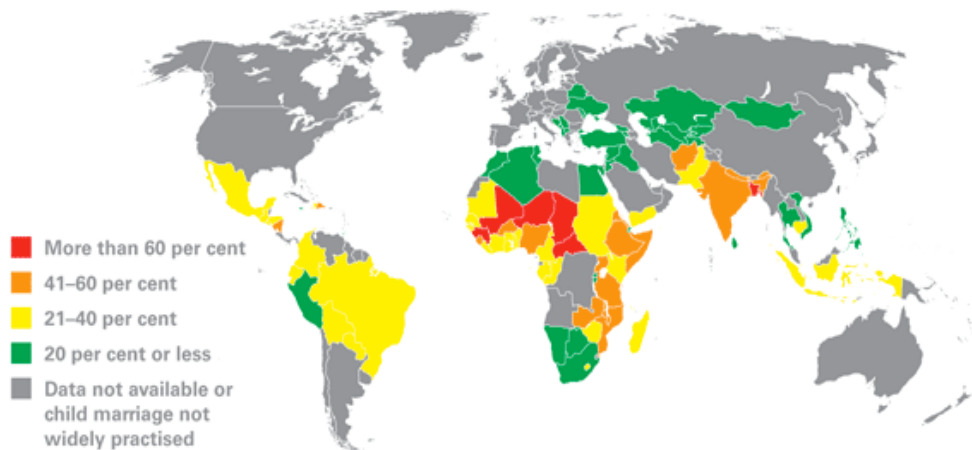
in sub-Saharan Africa,

South Asia, and parts of

Central America,

frequently in locations afflicted by unremitting poverty and lacking in economic development.³

UNICEF reported in 2007 that more than 60 million girls worldwide aged 20-24 married before their 18th birthday.⁴ In the developing world, 1 in 7 girls will marry before the age of 15, and



Percentage of women aged 20-24 who were married/in union before the age of 18

¹ Convention on the Rights of the Child, G.A. Res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), entered into force September 2, 1990; CEDAW Committee, General Recommendation No. 21, Equality in Marriage and Family Relations, (Thirteenth Session, 1994), para. 36; 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; See also, United Nations, *Assessing the Status of Women: A Guide to Reporting Under the Convention on the Elimination of All Forms of Discrimination Against Women, General Recommendation 21* (New York: United Nations, 2000).

² United Nations Children’s Fund (UNICEF), *Child protection from violence, exploitation and abuse*, available at http://www.unicef.org/protection/57929_58008.html [hereinafter UNICEF, Child Protection].

³ International Center for Research on Women (ICRW), *New Insights on Preventing Child Marriage: A Global Analysis of Factors and Programs*, April 2007.

⁴ UNICEF, Child Protection, *supra* note 2.

sometimes brides are as young as 7 or 8.⁵ Each day, an estimated 3,500 girls marry before reaching the age of 15⁶ and 21,000 girls marry before the age of 18.⁷

Child marriage is one of the most destructive demonstrations of inequality and power imbalance between women and men. Initially, child marriage was a mechanism to protect girls from unwanted sexual advances and for safeguarding their economic well-being. Today, however,

child marriage undercuts the very basis of what it was established to achieve, and generally results in a life of sexual and economic servitude for the girl.⁸ The devaluation and suppression of women and their rights underpin the practice of child marriage and lead to dire consequences for the child victims and their society.⁹

Percentage of Women Aged 25-29 Married before Age 18	
Latin America	
Guatemala	39
Dominican Republic	38
Paraguay	24
South Central and Southeast Asia	
Bangladesh	81
Nepal	68
Pakistan	37
Indonesia	34
Sub-Saharan Africa	
Niger	77
Mali	70
Burkina Faso	62
Mozambique	57
Malawi	55
Cote d'Ivoire	44
Cameroon	43
Benin	40
Middle East and North Africa	
Yemen	64
Egypt	30

Source: Population Council

Married Adolescents: Percentage of 15-19 year-olds married		
	boys	girls
Sub-Saharan Africa		
Dem. Rep. of Congo	5	74
Niger	4	70
Congo	12	56
Uganda	11	50
Mali	5	50
Asia		
Afghanistan	9	54
Bangladesh	5	51
Nepal	14	42
Middle East		
Iraq	15	28
Syria	4	25
Yemen	5	24
Latin America and Caribbean		
Honduras	7	30
Cuba	7	29
Guatemala	8	24

Source: UN Population Division, Department of Economic and Social Affairs, World Marriage Patterns 2000

III. The Status and Treatment of Women and Girls in Bangladesh

A number of factors impede the realization of children's rights in Bangladesh. There are over 60 million children in Bangladesh. According to the most recent Household Income and Expenditure Survey in 2005, roughly 40 percent of households were poor, and more than one-

⁵ Child marriage, Girls Not Brides: A Global Partnership to End Child Marriage: About Child Marriage, available at <http://www.girlsnotbrides.org/about-child-marriage/>.

⁶ Judith Bruce, "Child marriage in the context of the HIV epidemic," *Promoting Healthy, Safe, and Productive Transitions to Adulthood Brief no. 11* (New York: Population Council, Sept. 2007).

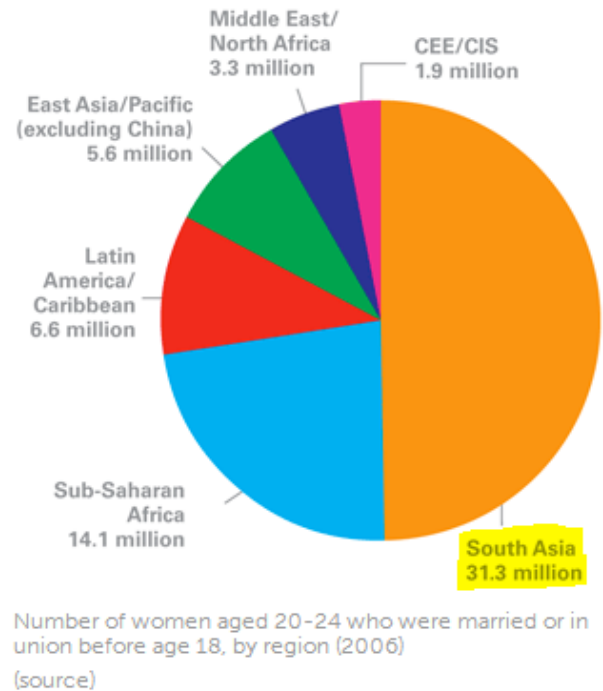
⁷ International Center for Research on Women (ICRW), "Seeking Policy Solutions," *Too Young to Wed: Education and Action Toward Ending Child Marriage* (Washington, DC: ICRW, 2005).

⁸ UNICEF Bangladesh, *Women and girls in Bangladesh* (updated June 2010), available at http://www.unicef.org/bangladesh/Women_and_girls_in_Bangladesh.pdf [hereinafter UNICEF Bangladesh, Women and Girls].

⁹ R de Silva-de-Alwis, *Child Marriage And The Law-Legislative Reform Initiative Paper Series*, UNICEF Working Paper, Division of Policy and Planning 6 (2008), available at [http://www.unicef.org/policyanalysis/files/Child_Marriage_and_the_Law\(1\).pdf](http://www.unicef.org/policyanalysis/files/Child_Marriage_and_the_Law(1).pdf).

quarter were extremely poor.¹⁰ Poverty has a negative impact on a child’s educational opportunities, health and hygiene, sanitation, and access to food, leaving children vulnerable to exploitation and disrupting family stability, which can lead to abuse. Bangladesh has a population of about 148 million people, which is projected to double over the next century.¹¹ Like poverty, population growth and urbanization have negative implications for children’s rights.¹² In addition, the highly centralized structure of the government hampers the flexibility and authority of local governments to cater to the unique needs of communities at a local level.¹³ Positive developments have been made, however, through Bangladesh’s active civil society, politically involved population, and active media.¹⁴ Despite this informal accountability, the low capacity and quality of governance in Bangladesh demand reform.

Children in Bangladesh are not generally permitted to express themselves freely, and when they do, often are not taken seriously by adults.¹⁵ When children begin to develop the capacity to participate in decision-making and form



¹⁰ UNICEF Bangladesh, *Situation Assessment and Analysis of Children and Women in Bangladesh* 24, September 2009, available at http://www.unicef.org/bangladesh/BD_Sitan_2009_lowres.pdf [hereinafter UNICEF Bangladesh, Situation Assessment].

¹¹ *Id.* at 28.

¹² *Id.* “Population growth and urbanization directly influence the realization of children’s rights. The populations of the cities and towns of Bangladesh are growing rapidly from both natural population increases and the flow of people from rural areas in search of jobs. This process places enormous strain on the capacity of the Government, city corporations, municipalities, and NGOs to provide the services needed to protect the rights of the urban poor—including children’s rights to health, nutrition, education, water and sanitation, and housing. Historically, most development programmes and projects in Bangladesh have focused on rural areas. Urban planning has been minimal, and the policy agenda has largely neglected the burgeoning urban slums and the urban poor.”

¹³ *Id.* at 31. “Various policy statements in the sectors most relevant to women’s and children’s rights, such as health, education, and water and sanitation, have encouraged the delegation of greater authority to local levels, where communities can have greater influence. In practice, however, genuine progress toward decentralization remains a challenge for the future.”

¹⁴ *Id.*

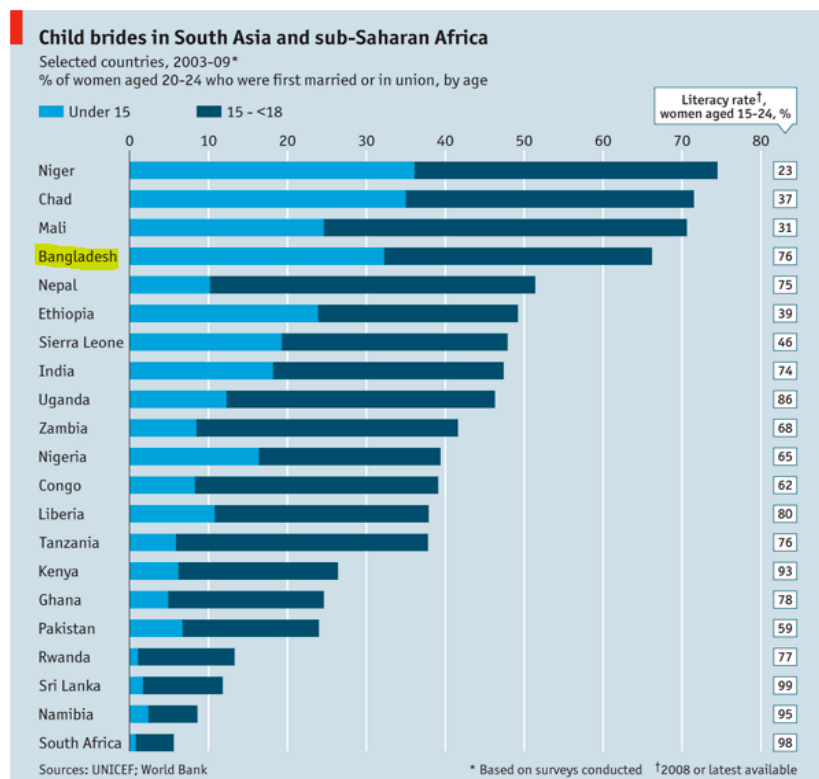
¹⁵ World Vision Bangladesh, *In Action, Children and their Rights*, available at <http://bangladesh.wvasiapacific.org/in-action-mainmenu-88/44-children-and-their-rights>.

independent opinions, parents usually maintain control and authority over their children and make key life decisions on behalf of them.¹⁶ Additionally, pervasive gender discrimination in Bangladesh's society contributes to the low social and economic status of women and girls.¹⁷ Girls are frequently considered financial burdens on their family, and their mobility is often restricted at puberty, further diminishing their livelihood, learning, and social opportunities.¹⁸

IV. Child Marriage in Bangladesh

Early marriage is a significant barrier to a girl's education, health, and employment. Usually child marriage restricts a young girl's access to education and consequently her employment opportunities. Additionally, child marriage increases the girl's vulnerability to health problems,¹⁹ as seen in the extremely high rates of maternal mortality in Bangladesh.²⁰ Early marriage also perpetrates gender inequity as young brides have no equality in their marriages.²¹

Bangladesh has the highest rate of under-16 marriage in South Asia, with about half of the nation's girls marrying before reaching their mid-teens.²² Also, statistics reported by the Bangladesh Demographic Health Survey establish that the



¹⁶ *Id.*

¹⁷ UNICEF Bangladesh, *Women and Girls*, *supra* note 8, at 1.

¹⁸ *Id.*

¹⁹ Unnayan Onneshan, *The Innovators, Gender Inequality in Bangladesh* 11, October 2011, available at <http://www.unnayan.org/reports/Gender%20Inequality%20In%20Bangladesh.pdf>.

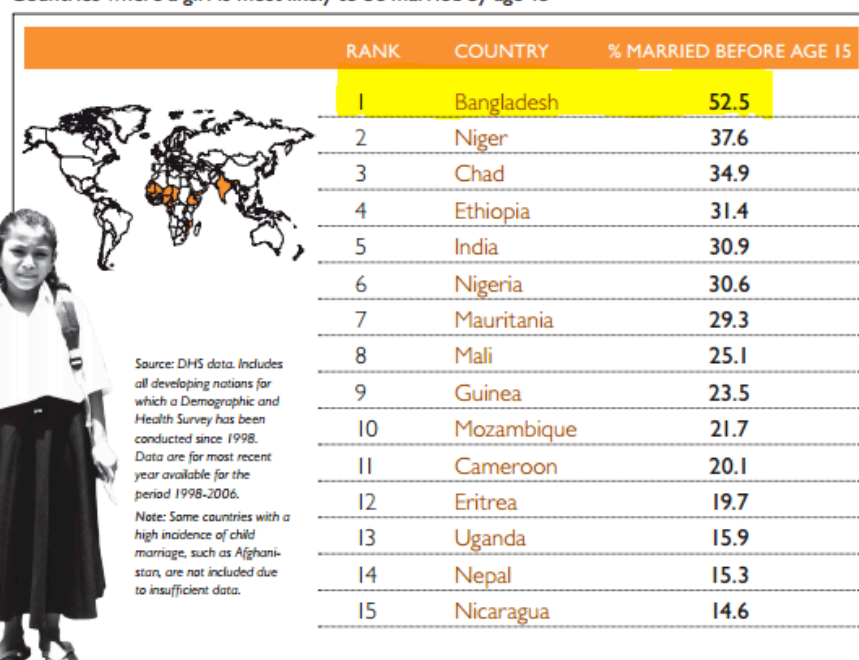
²⁰ UNICEF Bangladesh, *Women and Girls*, *supra* note 8, at 1.

²¹ Unnayan Onneshan, *supra* note 19, at 16.

²² National Institute of Population Research and Training (NIPORT), *Bangladesh Demographic and Health Survey* 75-76, March 2009, available at [http://www.measuredhs.com/pubs/pdf/FR207/FR207\[April-10-2009\].pdf](http://www.measuredhs.com/pubs/pdf/FR207/FR207[April-10-2009].pdf).

prevalence of child marriage in Bangladesh is among the highest globally.²³ Although the practice of child marriage in Bangladesh has been decreasing over the last 30 years, it continues to be a major problem.²⁴ Under the Child Marriage Restraint Act, the minimum legal age for girls to marry is 18;²⁵ however, 75 percent of women aged 20-49 were married before age 18, one of the highest rates in the world.²⁶ Disturbingly, many children in Bangladesh are married even younger; a 2006 study found that one-third of women in Bangladesh aged 20-49 were married before they reached the age of 15.²⁷ The practice of arranging child marriage remains commonplace, especially among poor in rural areas and urban slums, where most families regard the onset of puberty as the point at which a girl is ready for marriage.²⁸ The incidence of child marriage between 1998 and 2007 has been estimated at 64 percent in the country: 53 percent in urban areas and 70 percent in rural areas.²⁹ A recent UNICEF report found that the largest number of very young

Countries where a girl is most likely to be married by age 15



²³ International Center for Research on Women (ICRW), United Nations Population Fund (UNFPA), Australian Agency for International Development (AusAID), Asian Forum of Parliamentarians on Population and Development (AFPPD), *Child Marriage in Southern Asia: Policy Options for Action*, 2012, available at <http://www.icrw.org/files/publications/CHILDMARRIAGE-F-13.pdf>.

²⁴ UNICEF Bangladesh, *Women and Girls*, *supra* note 8, at 2.

²⁵ The Child Marriage Restraint Act, 1929, National Informatics Centre, n.d., available at <http://wcd.nic.in/cm1929.htm>.

²⁶ UNICEF and BBS, *Multiple Indicator Cluster Survey (MICS) 2006*, Bangladesh 2007.

²⁷ UNICEF Bangladesh, *Situation Assessment*, *supra* note 10, at 138.

²⁸ UNICEF Bangladesh, *Women and Girls*, *supra* note 8, at 2.

²⁹ International Development Law Organization (IDLO), *Strengthening the Legal Protection Framework for Girls in India, Bangladesh, Kenya and Liberia – Bangladesh Country Report 67* (2010), available at http://www.idlo.int/doccalendar/bangladeshreport_final.pdf. See also, UNICEF, *The State of the World's Children 2009: Maternal and Newborn Health*, UNICEF 150 (Dec. 2008), available at <http://www.unicef.org/sowc09/docs/SOWC09-FullReport-EN.pdf>.

brides are located in the Western and Southern regions of Bangladesh that border India.³⁰

Amid the many reasons for early marriage in Bangladesh, some of the most prominent are poverty, superstition, and lack of awareness about laws.³¹ Poverty is one of the most influential reasons for the extremely high occurrence of child marriage in Bangladesh.³² On the UNDP's 2011 Human Development Index, Bangladesh was rated 146 out of 187 countries and territories, having a GNI of only US \$1,529.³³ Among women aged 20-24, data indicates that the median age at marriage for women in the highest wealth bracket is 18.3 years, whereas it is just 14.6 years for the corresponding group of women in the lowest wealth bracket.³⁴ Studies also suggest that paying a dowry to the groom's family is becoming more common, despite its illegality. A study by the World Bank found that dowry was almost non-existent among women aged 40-46, but that 46 percent of women aged 15-25 paid a dowry at the time of their marriage.³⁵

Child marriage is a ubiquitous form of sexual exploitation of girls in Bangladesh. Young girls are removed from family, friends and their community, and they are denied education and other developmental opportunities. Furthermore, child marriage frequently results in bonded labor, enslavement, isolation, and violence. Child brides are also exposed to major health risks caused by premature pregnancy and exposure to sexual transmitted diseases, among others.³⁶ The widespread practice of child marriage in Bangladesh is extremely damaging to the lives and futures of millions of Bangladeshi girls, as well as to their families and communities, contributing to a cycle of limited development indicators and slow economic growth.

V. Causes and Context of Child Marriage

In countries where child marriage is common, the practice tends to occur as a result of a range of different socioeconomic and cultural factors. This section discusses these factors generally but with a focus on those most relevant to Bangladesh. They generally fall within the

³⁰ IDLO, *supra* note 29.

³¹ One World South, Bangladesh's child brides, May 24, 2012, *available at* <http://southasia.oneworld.net/features/bangladeshs-child-brides#.UNOI2881hw>.

³² UNICEF Bangladesh, Women and Girls, *supra* note 8, at 4.

³³ ICRW et al., *supra* note 23.

³⁴ *Id.*

³⁵ World Bank, *Whispers to Voices: Gender and Social Transformation in Bangladesh*, March 2008.

³⁶ IDLO, *supra* note 29, at 67.

themes of family status, gender inequality in society, poverty, literacy, cultural dynamics, and legal inequality.

A. Family Ties and Relationships

The marriage of children, particularly in parts of Africa and Asia, is regarded as a means of merging dominant relations between families, confirming deals relating to land or other property, or settling disputes.³⁷ Similarly, child marriage may be a mechanism for sustaining ethnic or community relationships, or for settling family feuds.³⁸ These situations reflect a lack of respect for the rights of children and societal acquiescence to viewing a child as a commodity available for negotiation.

B. Gender Inequality

Communities throughout the world support practices that discriminate against women and girls. Treated as unequal, girls learn to accept their low status and are not encouraged to participate in society.³⁹ Girls endure early marriage, sexual discomfort, and violence because discriminatory gender norms prevent them from considering the possibility of a different life.⁴⁰

Local attitudes concerning the ideal age for marriage, the expectation for submissive wives, discriminatory family norms, and other directives under customary law are often rooted in societal customs and religious norms.⁴¹ Culture may be associated with gender discrimination, family honor, safeguarding virginity, family prestige, among others.⁴² In communities where child marriage is dominant, families undergo significant social pressure to conform. Non-conformity is often met with ridicule, disapproval, or shame on the family.⁴³ Generally girls living in rural areas marry at a younger age than girls in urban area.⁴⁴ Rural households typically give more weight to traditional beliefs and customs, are less touched by external influences, and

³⁷ International Planned Parenthood Federation (IPPF), *Ending Child Marriage: A Guide for Global Policy Action* 17, (2008), available at <http://www.ippf.org/resources/publications/ending-child-marriage>.

³⁸ *Id.* at 20.

³⁹ UNICEF, *Early Marriage: Child Spouses* 18, (Florence: UNICEF Innocenti Research Centre, 2001), available at <http://www.unicef-irc.org/publications/pdf/digest7e.pdf> [hereinafter UNICEF, *Early Marriage Child Spouses*].

⁴⁰ *Id.*

⁴¹ *Id.*, at 19.

⁴² Bruce J, Clark S., *Including Married Adolescents in Adolescent Reproductive Health and HIV/AIDS Policy* (Geneva: World Health Organization, 2003).

⁴³ IPPF, *supra* note 37, at 19.

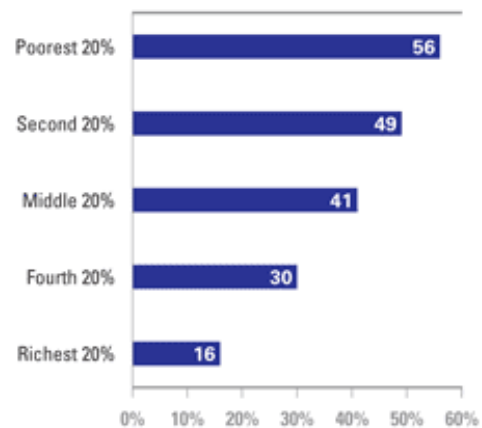
⁴⁴ Hervish, A & Feldman-Jacobs, C., *Who Speaks For Me? Ending Child Marriage*. Policy Brief, Washington, DC: Population Reference Bureau (2011), available at <http://www.prb.org/pdf11/ending-child-marriage.pdf>.

do not have as many development options for women as do urban households.⁴⁵ In many rural communities, life proceeds in accordance with customary laws, not national laws.⁴⁶ The contradiction between traditional norms and national policies is discussed further in Section VII below.

C. Poverty

Families that are unable to provide for the needs of their children may offer their young daughters for marriage in order to ensure they are supported and to have one less person in the home to provide for.⁴⁷ Poorer families may see early marriage as financially beneficial because of the increased dowry cost as a girl ages and because the family is no longer burdened with supporting their daughter.⁴⁸

Dowry payment is most common in poorer sectors of society, causing poor families to become increasingly destitute and bolstering the cycle of poverty even further.⁴⁹ Being poor also heightens a girl's vulnerability when parents want to marry her at a young age because of traditional beliefs such as protecting a girl's "honor."⁵⁰



Percentage of women aged 20-24 who were married or in union before age 18, by wealth index quintile (1987-2006)

D. Lack of Education

In addition to poverty, child marriage is related to illiteracy and lack of education.⁵¹ The marriage of girls frequently correlates with low levels of education, or no education at all.⁵² Marriage is often accepted as an option for uneducated girls who do not have any alternatives for the future.⁵³ Furthermore, uneducated parents are less likely than educated parents to be aware

⁴⁵ IPPF, *supra* note 37, at 10.

⁴⁶ *Id.* at 19.

⁴⁷ *Id.*

⁴⁸ UNICEF Bangladesh, Situation Assessment, *supra* note 10, at 2.

⁴⁹ *Id.*

⁵⁰ ICRW et al., *supra* note 23. See discussion below, *Protecting Security, Sexuality, and Honor of the Family*.

⁵¹ UNESCO, 2010, *Education for All Global Monitoring Report: Reaching the Marginalized*, UNESCO, available at <http://unesdoc.unesco.org/images/0018/001866/186606E.pdf>.

⁵² IPPF, *supra* note 37, at 10.

⁵³ World Vision, *Before She's Ready: 15 Places Girls Marry by 15* 10-11, (2008), available at [http://www.worldvision.org/resources.nsf/main/early-marriage.pdf/\\$file/early-marriage.pdf](http://www.worldvision.org/resources.nsf/main/early-marriage.pdf/$file/early-marriage.pdf).

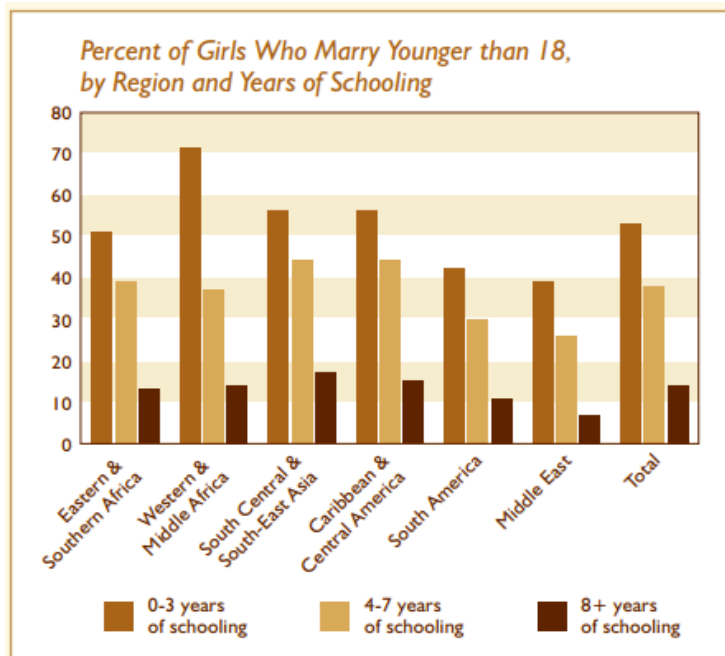
of laws prohibiting child marriage and the many consequences associated with the practice.⁵⁴ Additionally, lack of education among parents may cause them to have less appreciation for education and regard it as irrelevant rather than valuable.⁵⁵

An in-depth UNICEF statistical study on child marriage throughout the world found that in 47 countries girls between the ages of 15 and 19 with higher levels of education were least likely to be married. For women who received tertiary levels of education, child marriage rates were often negligible.⁵⁶

Without education, girls have limited alternatives for their future, particularly in cases of child marriage where young brides lack opportunity to acquire other life skills and have little confidence in their ability to become economically independent.⁵⁷ The young age of child brides coupled with their lack of education typically results in a lack of decision-making power, which in turn causes them to be vulnerable to violence and abuse.⁵⁸

Timing of Marriage and Level of Education				
	%15-19 married	Av. age at 1 st marriage	% of women with 7+ yrs school m. before 20	m. at 20 or older
Sub-Saharan Africa				
Botswana (1988)	6	25	55	71
Cameroon (1991)	44	19	27	77
Mali (1987)	75	16	6	19
Niger (1992)	59	18	1	17
Uganda (1988/89)	41	19	20	43
Latin America				
Guatemala (1987)	26	21	9	34
Mexico (1987)	20	22	32	72
Middle East				
Egypt (1992)	14	22	25	60
Yemen (1991/92)	25	21	6	21
Asia				
China (1987/88)	5	22	28	60
Indonesia (1991)	20	22	18	58
Pakistan (1990/91)	25	21	8	25

Source: Sexual Relationships and Marriage Worldwide, Alan Guttmacher Institute 1995



⁵⁴ World Vision Mali, Jean Calvin Tienou, Questionnaire Response (Nov. 2007); World Vision Niger, Ramatou Salifou, Questionnaire Response (Nov. 2007).

⁵⁵ World Vision, *supra* note 53, at 10.

⁵⁶ UNICEF, *Early Marriage, A Harmful Traditional Practice, A Statistical Exploration*, 6 (2005), available at http://www.unicef.org/publications/files/Early_Marriage_12.lo.pdf [hereinafter UNICEF, *Early Marriage, Harmful Traditional Practice*].

⁵⁷ *Id.* at 28.

⁵⁸ *Id.* at 23.

E. Protecting Security, Sexuality, and Honor of the Family

Protecting girls from dishonor is a factor that is often included among the causes of child marriage. Cultural and religious notions of a girl's virginity and chastity in many societies are directly linked to the honor and status of a family or clan. This means that there is tremendous pressure on parents to marry off girls early to preserve family honor and minimize the risk of improper sexual conduct.⁵⁹ A bride's virginity is also paramount to her worth in many cultures,⁶⁰ and child marriage may be seen as necessary for controlling girls' sexuality and reproduction.⁶¹ Parents worry that if a girl becomes pregnant outside of marriage she may never secure a husband or will be worth far less once becoming a bride.⁶² Girls in rural communities may be withdrawn from school at first menstruation in order to restrict their movements and protect their sexuality.⁶³ This is also linked to the belief that girls' education will, in the long term, adversely influence their future roles as wives and mothers.⁶⁴ Some parents explain that marrying their young daughter places her in the hands of a constant guardian and bolsters security for her future,⁶⁵ as girls are considered incapable of protecting themselves through their own means.

F. Non-Enforcement and Substantive Inconsistencies of the Law

Because of inadequate legal protection or inadequate implementation of existing laws, child marriage continues with impunity.⁶⁶ While laws prohibiting child marriage exist in most countries, they often lack enforcement in developing nations. Laws can be enforced only when cases are reported and handled by the legal system, but this frequently does not happen due to lack of awareness of national laws and because children are usually married with the endorsement of their parents.⁶⁷ Additionally, some domestic laws are weak and contain gaps that impede effective implementation. For example, some laws prohibit nonconsensual marriage and

⁵⁹ Sagade, J., *Child Marriage in India: Socio-legal and Human Rights Dimension*, Oxford: Oxford University Press, 2005.

⁶⁰ UNICEF, Early Marriage Child Spouses, *supra* note 39.

⁶¹ R de Silva-de-Alwis, *supra* note 9, at 32.

⁶² UNICEF, Early Marriage Child Spouses, *supra* note 39, at 6.

⁶³ *Id.*

⁶⁴ *Id.* at 11.

⁶⁵ *Id.* at 6.

⁶⁶ R de Silva-de-Alwis, *supra* note 9, at 34.

⁶⁷ *Id.*

marriage of children below a given age but provide no sanctions for violations of these restrictions.⁶⁸

The practice of child marriage, which often contravenes national laws, is furthered because many jurisdictions do not have a dependable system for registering births and marriages. According to the Innocenti Research Centre, approximately 40 million births are unregistered each year,⁶⁹ most commonly in indigenous and rural areas.⁷⁰ This creates a further barrier to the enforcement of the legal age for marriage.⁷¹ As Innocenti Report explained, “[W]ithout a birth certificate, a child has no defense against age-related rights abuses such as child marriage.”⁷² In the same way, many countries with a high rate of child marriage do not have requirements for the registration of marriages or do not have a dependable registration system that can track the data.⁷³ Unregistered marriages diminish a girl’s capacity to use the legal system as a means of escaping the marriage she entered into as a child. Improvements to the birth and marriage registration systems would prevent and provide redress for child marriages and discrimination.

VI. Impact and Consequences of Child Marriage

Just as the devaluing of women and girls fosters the practice of child marriage, the heightened powerlessness and vulnerability of the child bride results in further gender-based discrimination.⁷⁴ This discrimination often manifests itself in domestic violence; marital rape; deprivation of food; lack of access to information, education, and healthcare; and restrictions on mobility.⁷⁵

Child marriage violates girls’ human rights, and it impedes efforts to reduce gender-based violence, advance education, overcome poverty, and improve health indicators.⁷⁶ Child marriage reinforces the gender implications of poverty and powerlessness, diminishing the physical, mental, intellectual and social growth of the girl and intensifying her social isolation.⁷⁷ It also elevates the likelihood for sexually transmitted infection, obstetric fistulas, maternal and infant

⁶⁸ UNICEF, *Early Marriage Child Spouses*, *supra* note 39, at 7.

⁶⁹ Dow, Unity, *Birth Registration: The First Right, The Progress Of Nations*, UNICEF New York (1998).

⁷⁰ UNICEF, *Early Marriage Child Spouses*, *supra* note 39, at 15.

⁷¹ *Id.* at 5.

⁷² *Id.* at 15.

⁷³ *Id.*

⁷⁴ R de Silva-de-Alwis, *supra* note 9, at 33.

⁷⁵ *Id.*

⁷⁶ ICRW, *supra* note 23.

⁷⁷ R de Silva-de-Alwis, *supra* note 9, at 34.

mortality, and depression.⁷⁸ In fact, national and international indicators assessing maternal health, education, food security, poverty eradication, HIV/AIDS, and gender equality are all negatively linked with high child marriage rates.⁷⁹

Child marriage is form of oppression, and it perpetuates an inter-generational cycle of poverty and absence of opportunity.⁸⁰ The practice often leads to devastating consequences for the girl involved, as well as for her family and the larger community. A child bride rarely has a support system due to her lack of education and isolation from her peers, and because she typically has few skills and limited mobility, she is constrained in her capacity to overcome poverty for herself, her children, and her family.⁸¹ Societies that tolerate and support the practice of child marriage thwart social and economic development.

A. Psychosocial Harm

The loss of childhood, forced sexual relations, and denial of free will and social development resulting from early marriage have profound psychosocial and emotional consequences that are often detrimental to the young bride's life.⁸² For example, child brides frequently experience extreme depression and feelings of hopelessness.⁸³

Young brides are often forced to marry men whom they have never met and who typically are much older than they are. Still children themselves, girls are expected to cater to their husband's demands, keep the house in order, and begin giving birth to children of their own as soon as possible.⁸⁴ Child marriages commonly involve compulsory sexual intercourse, domestic violence, and loss of freedom.⁸⁵ Child marriage is life-altering for girls, sometimes as young as 7 or 8, who are forced to give up childhood in exchange for isolation, poverty, violence, and illness.⁸⁶ Child brides typically discontinue their education upon marriage, and a

⁷⁸ Nawal M. Nour, *Child Marriage: A Silent Health and Human Rights Issue*, Rev Obstet Gynecol, 2009 Winter; 2(1): 51–56, available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2672998/>.

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ Hervish, A & Feldman-Jacobs, *supra* note 44.

⁸² UNICEF, Early Marriage Statistical Exploration, *supra* note 56, at 9.

⁸³ ICRW, *supra* note 7.

⁸⁴ Forum on Marriage and the Rights of Women and Girls, *Early Marriage: Whose Right to Choose?* (2011).

⁸⁵ World Vision, *supra* note 53, at 21.

⁸⁶ UNICEF, *The State of the World's Children 2007: Women and Children, the Double Dividend of Gender Equality* vii, UNICEF: New York, NY, 2007, available at http://www.unicef.org/sowc07/report/full_report.php.

child bride frequently is forced to work in home of her husband's parents, where she has little or no freedom of choice and may be treated harshly.⁸⁷

B. Health and Reproduction

Child marriage increases the prevalence of infectious diseases, malnutrition, high child mortality rates, low life expectancy for women, and an inter-generational cycle of child abuse.⁸⁸

Child brides in Southern Asia and throughout the world are typically forced to engage in sexual

activity at a young age, which results in

childbearing at a young age.⁸⁹ Young

brides often become pregnant before

their bodies have developed, which

creates a much greater risk that

childbirth will result in life-threatening

bodily harm. These negative health

consequences include obstetric fistula,

hemorrhaging, and even death.⁹⁰

Pregnancy-related deaths are the leading

cause of mortality for girls aged 15-19

(married or unmarried) worldwide.⁹¹ In

Southern Asia, girls between 15 and 19 are twice as likely as women between the ages of 24 and

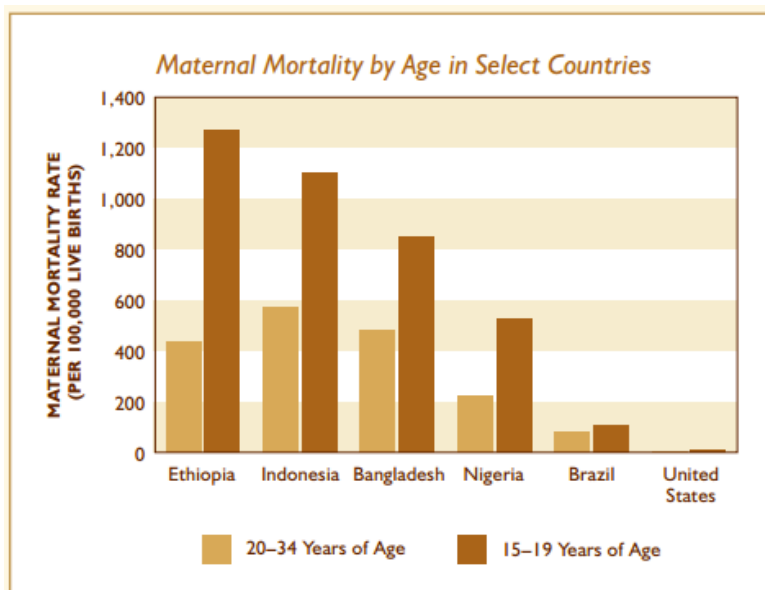
29 to die because of complications during pregnancy and childbirth.⁹² Girls under the age of 15

confront an even higher risk of complications and are five times more likely than women in their

twenties to die during pregnancy or childbirth.⁹³ The children born to immature and

underdeveloped mothers are also at a severe disadvantage from the moment their life begins. An

array of problems for children correspond with young mothers, including underweight babies at



⁸⁷ UNICEF Bangladesh, *Women and Girls*, *supra* note 8, at 2.

⁸⁸ R de Silva-de-Alwis, *supra* note 9, at 35.

⁸⁹ *Id.*

⁹⁰ ICRW et al., *supra* note 23.

⁹¹ World Vision, *supra* note 53, at 19.

⁹² Save the Children, *Every Woman's Right: How family planning saves children's lives*, 7, 2012, available at http://www.savethechildren.org/atf/cf/%7B9def2ebe-10ae-432c-9bd0-df91d2eba74a%7D/EVERY_WOMANS_RIGHT_REPORT_JUNE_2012.PDF.

⁹³ World Vision, *supra* note 53, at 19.

birth and malnutrition during crucial developmental stages, giving rise to significant physical and cognitive defects later in life.⁹⁴

Furthermore, girls are susceptible to contracting serious diseases from their husbands because the sexual experience of older husbands gives them a greater chance of being HIV-positive or having other sexually transmitted diseases.⁹⁵ Exposure to transmission increases among young brides who transition from virginity to frequent sexual activity and STDs are also more likely because young brides are under pressure to demonstrate their fertility and cannot negotiate safe sex.⁹⁶

C. Denial of Education

Just as denial of education is a significant factor causing child marriage, it emerges as a consequence of child marriage as well. When parents decide to marry off their daughter, they are less inclined to continue sending her to school.⁹⁷ For example, in Bangladesh, a girl may be withdrawn from school once a marriage possibility is presented.⁹⁸ Prevented from continuing their education, young brides are deprived of the opportunity to develop intellectually, prepare for adulthood, and contribute to the progress of her family and society.⁹⁹ Depriving girls of education also has grave repercussions on society. Studies have shown that the education of girls increases incomes, which benefits families and countries alike, reduces the number of children the girl will have, guarantees significant improvements in the health of her children, reduces the risk of HIV infection, decreases domestic violence, lessens the likelihood of harmful traditional practices, and on a broad scale, and has the ability to promote democracy and political participation.¹⁰⁰

D. Poverty, Divorce, and Abandonment

The cycle of poverty associated with child marriage is extensive. Lack of education, health issues, restricted mobility, and lack of income-generating skill-sets are contributing

⁹⁴ *Id.* At 20.

⁹⁵ ICRW et al., *supra* note 23.

⁹⁶ IPPF, *supra* note 37, at 9.

⁹⁷ World Vision, *supra* note 53, at 20.

⁹⁸ UNICEF, *supra* note 39, at 11.

⁹⁹ *Id.*

¹⁰⁰ Barbara Herz and Gene B. Sperling, *What Works in Girls' Education: Evidence and Policies from the Developing World*, New York: Council on Foreign Relations, 2004.

factors to poverty.¹⁰¹ Young brides are likely to have more children and hence a greater financial burden, especially if resources are scarce to begin with.¹⁰² As described in a report by the International Centre for Research on Women:

“Child marriage makes it harder for families, communities and countries to escape poverty. It erodes the health and well-being of girls and the overall welfare of communities. It also undercuts international efforts to fight poverty and HIV/AIDS, improve child’s health and survival, and support other international development initiatives, making billions of development assistance dollars less effective.”¹⁰³

Abandonment and divorce are additional factors contributing to the prevalence of poverty among girls who marry young. If a husband leaves his young wife, she is tremendously limited in her ability to support her family. She may also face social stigmatization and a resulting absence of community support. According to Catherine Demba, the national child protection coordinator for World Vision in Chad, “Experience has shown that many girls who marry early end up divorcing or becoming prostitutes when they are older” as a result of abandonment.¹⁰⁴

E. Domestic Violence and Abuse

Girls who are married during childhood have a much greater likelihood of experiencing domestic violence and abuse than women who marry as adults.¹⁰⁵ Due to uneven power dynamics and the girl’s dependency on her husband, young brides typically lack the resources to escape from an abusive environment.¹⁰⁶

VII. International Human Rights and Bangladesh’s Legal Obligations

Under international human rights law, states have an obligation to protect girls from early marriage and provide redress where it occurs. Major international human rights laws address the problem of child marriage, and governments have a duty to incorporate these laws into national legislation and establish mechanisms to implement them.¹⁰⁷ Many countries that are parties to international human rights treaties, however, have entered reservations to critical clauses relating

¹⁰¹ World Vision, *supra* note 53, at 24.

¹⁰² *Id.*

¹⁰³ ICRW, *supra* note 7.

¹⁰⁴ World Vision, *supra* note 53, at 25.

¹⁰⁵ *Id.* at 26.

¹⁰⁶ *Id.*

¹⁰⁷ IPPF, *supra* note 37, at 21.

to women’s rights in the context of marriage or do not follow through in implementing their international obligations

Bangladesh has ratified the major international human rights instruments relevant to the problem of child marriage, yet has also made reservations and declarations to some of these instruments that seek to limit its obligations under those instruments. Moreover, Bangladesh has not fully implemented its international obligations to prevent and punish child marriage, as evidenced by the continued pervasiveness of the practice.

This section considers Bangladesh’s legal obligations relating to child marriage. The first subsection lays out the key international human rights instruments applicable to child marriage and notes Bangladesh’s relevant reservations to these instruments. The second subsection briefly discusses Bangladesh’s national laws and policies relating to child marriage.

A. Key International Human Rights Instruments Relating to Child Marriage and Bangladesh’s Relevant Reservations and Declarations

Bangladesh has ratified all of the international human rights conventions discussed below. However, it has entered declarations and reservations to several relevant provisions of these treaties, which purport to modify or exclude the legal effect of those provisions. [See **Addendum 1** for a List of Conventions and Treaties that Bangladesh has ratified.]

The Universal Declaration of Human Rights¹⁰⁸

The Universal Declaration of Human Rights (UDHR), adopted by the United Nations General Assembly in 1948, sets out numerous basic human rights. The UDHR is not a binding treaty, but it carries great moral weight and most of its provisions have been incorporated into binding conventions. The UDHR recognizes the right to “free and full” consent to a marriage.¹⁰⁹ As consent cannot be “free and full” if a party involved is not sufficiently mature to make an informed decision about a life partner, child marriage is a violation of the UDHR.

UDHR Provisions Relating to Child Marriage:¹¹⁰

- Article 1: Inherent freedom and equality of all human beings is a basic human

¹⁰⁸ Universal Declaration of Human Rights, G.A. Res. 217A(II), U.N. Doc. A/810 at 71, United Nations (1948).

¹⁰⁹ *Id.*

¹¹⁰ Similar provisions are included in 1966 International Covenant on Economic, Social and Cultural Rights and the International Covenants on Civil and Political Rights.

right.

- Article 16: (a) 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.
(b) Marriage shall be entered into only with the free and full consent of the intending parties.

The Convention on the Rights of the Child¹¹¹

The 1989 Convention on the Rights of the Child (CRC) sets out human rights principles specifically applicable to children.¹¹² Under the CRC, the child is not simply a recipient of privileges bestowed at the discretion of the family, community, and State, but rather the bearer of legal rights under international law.¹¹³

CRC Provisions Relating to Child Marriage:¹¹⁴

- Article 1: A child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier.
- Article 2: Freedom from discrimination on any grounds, including sex, religion, ethnic or social origin, birth or other status.
- Article 3: In all actions concerning children...the best interests of the child shall be a primary consideration.
- Article 6: Maximum support for survival and development.
- Article 9: The right to not be separated from their parents against their will.
- Article 12: The right to express his or her views freely in all matters affecting the child in accordance with age and maturity.
- Article 13: The right to seek receive and impart information and ideas.
- Article 19: The right to protection from all forms of physical or mental violence, injury or abuse, maltreatment or exploitation, including sexual abuse, while in the care of parents, guardian or any other person.

¹¹¹ CRC, *supra* note 1.

¹¹² *Id.*

¹¹³ R de Silva-de-Alwis, *supra* note 9, at 19.

¹¹⁴ *Id.* at 6.

- Article 24: The right to health and to access to health services; and to be protected from harmful traditional practices.
- Articles 28 and 29: The right to education on the basis of equal opportunity.
- Article 31: The right to rest and leisure, and to participate freely in cultural life.
- Article 34: The right to protection from all forms of sexual exploitation and sexual abuse.
- Article 35: The right to protection from abduction, sale or trafficking.
- Article 36: The right to protection from all forms of exploitation prejudicial to any aspect of the child’s welfare.
- General Comment No. 4 of the Committee on the Rights of the Child¹¹⁵ on adolescent health and development: Urges increasing the minimum age for marriage with or without parental consent to 18 for both boys and girls.¹¹⁶
Emphasizes the importance of access to information for adolescents. The comment notes the obligations of state parties to promote “health education, as well as information campaigns, in particular with respect to... sexual and reproductive health, traditional practices, domestic violence.” More specifically, the comment urges governments to take “preventive, promotive and remedial action” to safeguard women from harmful traditional practices, including child marriage, that deprive girls and women their right to adequate reproductive or sexual health.¹¹⁷

*The Convention on the Elimination of All Forms of Discrimination against Women*¹¹⁸

The 1979 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) is the most comprehensive international treaty guaranteeing the basic human rights for women. CEDAW guarantees gender equality and non-discrimination and requires states to uphold these rights.¹¹⁹

¹¹⁵ The UN Committee on the Rights of the Child is a committee of experts charged with monitoring state implementation of the CRC. The Committee’s General Comments contain its interpretation of the content of relevant treaty provisions.

¹¹⁶ 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.

¹¹⁷ *Id.*, para. 21.

¹¹⁸ Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1970, 1249 U.N.T.S. 12, 19 I.L.M. 33, United Nations (entered into force Sept. 3, 1981).

¹¹⁹ *Id.* CEDAW calls on States Parties to take immediate steps towards eliminating such discrimination by refraining from future discriminatory acts or practices, as well as “to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women.” (Article 2(f)).

CEDAW Provisions Relating Specifically to Child Marriage:

- Article 2: States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:
 - (a) To embody the principle of equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;
 - (b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;
 - (c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;
 - (d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;
 - (e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;
 - (f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;
 - (g) To repeal all national penal provisions which constitute discrimination against women.”

- Article 16 (1): Prescribes equally for men and women
 - (a) The same right to enter into marriage
 - (b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent
 - (c) The same rights and responsibilities during marriage and at its dissolution.

- Article 16 (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.

- General Recommendation No. 19 of the CEDAW Committee:¹²⁰ Notes that gender-based violence perpetrated by public authorities as well as by any person, organization or enterprise constitutes discrimination. It also affirms that family violence is one of the most insidious forms of violence against women and is prevalent in all societies and recognizes that within family relationships, women of all ages are subjected to violence of all kinds, including battering, rape, other forms of sexual assault, mental and other forms of violence, which are perpetrated by traditional attitudes.
- General Recommendation No. 21 of the CEDAW Committee: “A woman’s right to choose a spouse and enter freely into marriage is central to her life and to her dignity and equality as a human being. An examination of States parties’ reports discloses that there are countries, which, on the basis of custom, religious beliefs or the ethnic origins of particular groups of people, permit forced marriages or remarriages. Other countries allow a woman’s marriage to be arranged for payment or preferment and in others; women’s poverty forces them to marry foreign nationals for financial security. Subject to reasonable restrictions based for example on a woman’s youth or consanguinity with her partner, a woman’s right to choose when, if, and whom she will marry must be protected and enforced law.”¹²¹
- Concluding Observations of the CEDAW Committee:¹²² “... the persistence of the practice of early marriage... may be perpetuated further by the non-registration of births.”¹²³

* Bangladesh’s Reservations:

At the time of acceding to the CEDAW in 1984, the government of Bangladesh entered reservations to Article 2 regarding the elimination of discrimination against women and to Article 16 (1) (c) regarding equality of rights in marriage and upon its dissolution. Bangladesh

¹²⁰ The UN CEDAW Committee a committee of experts charged with monitoring state implementation of CEDAW. The Committee’s General Recommendations contain its interpretation of the content of relevant treaty provisions.

¹²¹ CEDAW Committee, General Recommendation No. 21, Equality in Marriage and Family Relations, (Thirteenth session, 1994), paras. 16, 1 (a) and (b).

¹²² State parties to CEDAW are required to submit periodic reports to the CEDAW Committee on their compliance with the treaty. After considering the state’s submissions and other relevant information, the Committee issues concluding observations or recommendations aimed at assisting the state in complying with its treaty obligations.

¹²³ CEDAW Committee, “Concluding Observations of the Committee on the Elimination of All Forms of Discrimination against Women, Ethiopia,” CEDAW/C/ETH/4-5, January 2004, *available at* <http://www2.ohchr.org/english/bodies/cedaw/docs/co/EthiopiaCO30.pdf>, para. 253.

does not consider these provisions binding as they “conflict with Sharia law based on Holy Quran and Sunna.”¹²⁴

*The Convention on the Consent to Marriage, Minimum Age for Marriage and Registration of Marriage*¹²⁵

The Convention on the Consent to Marriage, Minimum Age for Marriage and Registration of Marriage was adopted in November 1962 and entered into force in December 1964. The Preamble to the Marriage Convention establishes both the context to the passage of the Convention and appropriate manner of interpreting its provisions. The Preamble declares that the Marriage Convention recalls Article 16(1) of the UDHR and establishes that State Parties should take all appropriate measures with a view to abolishing such customs, ancient laws, and practices, by ensuring complete freedom in the choice of a spouse, eliminating child marriages, establishing appropriate penalties where necessary, and establishing a civil or other register in which all marriages will be recorded.

The Convention calls upon state parties to eliminate the marriage of girls under the age of puberty and requires that states take legislative action to stipulate the minimum age of marriage.

Relevant Provisions of the Convention on the Consent to Marriage, Minimum Age for Marriage and Registration of Marriage:

- Article 1: No marriage shall be legally entered into without the full and free consent of both parties, such consent to be expressed by them in person...as prescribed by law.
- Article 2: State Parties to the convention shall specify a minimum age for marriage (“not less than 15 years” according to the non-binding recommendation accompanying this Convention). 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.

¹²⁴ See United Nations Treaty Collection, *available at* http://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-8&chapter=4&lang=en.

¹²⁵ Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, UN General Assembly, (7 November 1962), *available at* <http://www.unhcr.org/refworld/docid/456d89064.html>.

* Bangladesh's Reservations:

The Government of Bangladesh entered reservations to Articles 1 and 2 of the Convention on Consent to Marriage, Minimum Age for Marriage, and Registration of Marriages, 1998 to the effect that, "The Government of the People's Republic of Bangladesh reserves the right to apply the provisions Articles 1 and 2 in so far as they relate to the question of legal validity of child marriage, in accordance with the Personal Laws of different religious communities of the country."¹²⁶

*The International Covenant on Civil and Political Rights*¹²⁷

Provisions of the International Covenant on Civil and Political Rights (ICCPR) Relating to Child Marriage:

- Article 23: Establishes rights of men and women of marriageable age to marry and states that no marriage shall be entered into without the free and full consent of the intending spouse.
- General Comment No. 19 of the Human Rights Committee:¹²⁸ The marriageable age for both men and women shall be based on the ability of both spouses to give their full and free consent.¹²⁹
- General Comment No. 28 of the Human Rights Committee: The Human Rights Committee's General Comment 28 elaborates on the obligation of the State in terms of equality of rights between men and women. It states:
"Inequality in the enjoyment of rights by women is deeply embedded in tradition, history, and culture including religious attitudes. States parties should ensure that traditional, historical, religious and cultural attitudes are not used to justify violations of women's right to equality before the law and to equal enjoyment of all

¹²⁶ See United Nations Treaty Collection, *available at*

http://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XVI-3&chapter=16&lang=en.

¹²⁷ International Covenant on Civil and Political Rights, Dec. 19, 1966, 999 U.N.T.S. 171, United Nations General Assembly (entered into force Mar. 23, 1976).

¹²⁸ The UN Human Rights Committee is a committee of experts charged with monitoring state implementation of the ICCPR. The Committee's General Comments contain its interpretation of the content of relevant treaty provisions.

¹²⁹ UN Human Rights Committee, General Comment No. 19 (The Family), Protection of the Family, the Right to Marriage and Equality of the Spouses, (Article 23), (Thirty-ninth session, 1990), Compilation of General Comments and General recommendations Adopted by Human Rights Treaty bodies, UN Doc.HRI/Gen/1/Rev.7 (2004), p. 149, para. 4

Covenant rights.”

- Concluding Comments of the Human Rights Committee:¹³⁰ Raises the issue of the right to decide if, when, and whom to marry. Steps have also been recommended to be taken to prevent certain traditions and customs, such as forced marriage, that are inconsistent with the equal rights of women.¹³¹

*The International Covenant on Economic, Social and Cultural Rights*¹³²

International Covenant on Economic, Social and Cultural Rights (ICESCR) Provisions Relating to Child Marriage:

- Article 2: Provides that “everyone is entitled to the same rights without discrimination of any kind”
- Article 3: Requires states to “ensure the equal right of men and women to the enjoyment of all the rights in the treaty.”
- Article 10: Provides that marriage must be entered into with the free consent of the intending spouse.
- General Comment No. 16 of the Committee on Economic, Social and Cultural Rights:¹³³ Sets out states parties obligations to “ensure that men and women have an equal right to choose if, whom and when to marry.”¹³⁴
- Concluding Observations of the CESCR:¹³⁵ Elaborates further concerns on child marriage, such as: the practice of early marriage has a negative impact on the right to health¹³⁶, education and work.¹³⁷

¹³⁰ States parties to the ICCPR are required to submit periodic reports to the Human Rights Committee on their compliance with the treaty. After considering the state’s submissions and other relevant information, the Committee issues concluding observations or recommendations aimed at assisting the state in complying with its treaty obligations.

¹³¹ Office of the United Nations High Commissioner for Human Rights, Human Rights Committee – General Comments, *available at* <http://www2.ohchr.org/english/bodies/hrc/comments.htm>.

¹³² International Covenant on Economic, Social and Cultural Rights, United Nations General Assembly, Treaty Series, vol. 993, p. 3 (16 December 1966), *available at* <http://www.unhcr.org/refworld/docid/3ae6b36c0.html>.

¹³³ The Committee on Economic, Social, and Cultural Rights is a committee of experts charged with monitoring state implementation of the ICESCR. The Committee’s General Comments contain its interpretation of the content of relevant treaty provisions.

¹³⁴ UN Committee on Economic, Social and Cultural Rights, General Comment No. 16, The equal right of men and women to the enjoyment of all economic, social and cultural rights (Article 3), (thirty-fourth session, 2005), para. 27.

¹³⁵ States party to the ICESCR required to submit periodic reports to the Human Rights Committee on their compliance with the treaty. After considering the state’s submissions and other relevant information, the CESCR

* Bangladesh's Reservations:

Bangladesh ratified the ICESCR in 1998 with a number of declarations. For example, Bangladesh reserved the right to interpret the non-discrimination clauses of Articles 2 and 3 within the context of the national constitution and domestic law.¹³⁸

*The Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices, 1957*¹³⁹

The Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices, 1957 equates any marriage that is forced upon a girl or woman by her family or guardians to slavery and requires the state party to eliminate it. The Convention does not explicitly forbid child marriage but implicitly does so, as it requires state parties to abolish certain practices associated with early marriage.

Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices, 1957 Provisions Relating to Child Marriage:

- Article 1(c): Contracting states “shall take all practicable and necessary legislative and other measures to bring about . . . the complete abolition of any institution or practice whereby a woman without the right to refuse is promised or given in marriage in payment of consideration in money or in kind to her parents, guardian, family or other person or group.”
- Article 2: Requires state parties to specify “suitable minimum ages of

issues concluding observations or recommendations aimed at assisting the state in complying with its treaty obligations.

¹³⁶ See also The World Health Organization (WHO) Constitution, which enshrines a right to the highest attainable standard of health and defines health broadly as a “state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.” Child marriage goes against the spirit of the WHO Constitution. The Constitution was adopted by the International Health Conference held in New York from 19 June to 22 July 1946, signed on 22 July 1946 by the representatives of 61 States (Off. Rec. Wld Hlth Org., 2, 100), and entered into force on 7 April 1948. Amendments adopted by the Twenty-sixth, Twenty-ninth, Thirty-ninth and Fifty-first World Health Assemblies (resolutions WHA26.37, WHA29.38, WHA39.6 and WHA51.23) came into force on 3 February 1977, 20 January 1984, 11 July 1994 and 15 September 2005 respectively.

¹³⁷ Committee on Economic, Social and Cultural Rights, CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLES 16 AND 17 OF THE COVENANT: Concluding Observations of the Committee on Economic, Social and Cultural Rights, *available at*

<https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CDUQFjAA&url=http%3A%2F%2Fwww2.ohchr.org%2Fenglish%2Fbodies%2Fcescr%2Fdocs%2Fco%2FE.C.12.IND.CO.5.doc&ei=h7nmUIOGM8y70AHLwoDAAw&usg=AFQjCNHrycSNQEmBSi8Ew9ptTMN0jQB7Cg&bvm=bv.1355534169,d.dmQ>

¹³⁸ See United Nations Treaty Collection, *available at*

http://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XVI-3&chapter=16&lang=en.

¹³⁹ Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 226 U.N.T.S. 3 (entered into force April 30, 1957).

marriage’ and ‘to encourage the use of facilities whereby the consent of both parties may be freely expressed in the presence of a competent civil or religious authority” in order to eradicate the practice referred to in article 1(c).

*The International Labour Organization’s Convention 182 on the Elimination of the Worst Forms of Child Labour, 1999*¹⁴⁰

International Labour Organization’s Convention 182 on the Elimination of the Worst Forms of Child Labour, 1999 Provisions Relating to Child Marriage:

- Article 3:
 - (a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, forced or compulsory labour, debt bondage and serfdom;
 - (b) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;
 - (c) work which, by its nature or the circumstances in which it is carried out, is likely to jeopardize the health, safety or morals of children.

Bangladesh’s National Laws and Policies Relating to Child Marriage

In most South Asian countries there are national laws that prohibit child marriage; however, such laws commonly conflict with customary and religious laws and practice and are not always effectively implemented or enforced.¹⁴¹ This is most often the case in societies where marriages typically occur in accordance with customary rights that lack a comprehensive procedure for registration of births and marriages, and where existing laws are not implemented or enforced. Currently, Bangladesh struggles with all of these challenges, among others, with regard to regulating child marriages throughout the country. The Child Marriage Restraint Act, 1929 (CMRA) is the principal law relating to child marriage and the obligations of concerned persons to prevent child marriages.

Important CMRA Provisions:¹⁴²

¹⁴⁰ International Labour Organization (ILO), Worst Forms of Child Labour Convention, C182, C182 (17 June 1999), available at <http://www.unhcr.org/refworld/docid/3ddb6e0c4.html>.

¹⁴¹ ICRW, *supra* note 23.

¹⁴² ACT NO. XIX OF 1929, available at http://bdlaws.minlaw.gov.bd/print_sections_all.php?id=149.

- Section 2: In this Act, unless there is anything repugnant in the subject or context:
 - (a) “child” means a person who, if a male, is under twenty-one years of age, and if a female, is under eighteen years of age;
 - (b) “child marriage” means a marriage to which either of the contracting parties is a child;
 - (c) “contracting party” to a marriage means either of the parties whose marriage is or is about to be thereby solemnized; and
 - (d) “minor” means a person who, if a male, is under twenty-one years of age, and if a female, is under eighteen years of age.

- Sections 4-6: Punishments for marrying a child:¹⁴³

“Whoever, being a male above eighteen years of age, or being a female above eighteen years of age, contracts a child marriage shall be punished with simple imprisonment which may extend to one month, or with a fine which may extend to one-thousand Taka (USD 14) or both.”

- Section 8: Mandates that prosecutions follow the Code of Criminal Procedure 1898 as it applies to proceedings in complaint cases. The same punishment is prescribed for a parent/guardian who allows a child marriage to take place and any person who solemnizes a child marriage.

- Section 12: Empowers the Court to issue an injunction to prevent the occurrence of a child marriage on the basis of a credible complaint.

Under the CMRA, child marriage is a punishable offense.¹⁴⁴ Nonetheless, according to a recent report by UNICEF, the CMRA is routinely ignored and enforcement is virtually nonexistent.¹⁴⁵ Reasons identified for its ineffectiveness include the absence of systematic birth

¹⁴³ Ali, Salma. October 2004, *Report On Laws and Legal Procedures Concerning the Commercial Sexual Exploitation of Children in Bangladesh*, 25, available at http://www.ecpat.net/eng/Ecpat_inter/projects/promoting_law/bangladesh_report/Laws_Legal_Procedures_Bangladesh_Oct2004.pdf.

¹⁴⁴ United News of Bangladesh, *UNICEF Urge National Leaders to Reach Out to Vulnerable Children*, 14 December 2005. See also, UNICEF Bangladesh, *Situation Assessment*, *supra* note 10, at 18.

¹⁴⁵ IDLO, *supra* note 29, at 71.

registration and marriage registration¹⁴⁶ and a lack of awareness about the accompanying dangers of early marriage.¹⁴⁷ Although the CMRA provides penal sanctions for those who knowingly participate in the contracting of an underage marriage, the resulting marriages remain legally valid¹⁴⁸ and are supported by religious personal laws of marriage in Bangladesh.¹⁴⁹ This peculiar outcome ensues from the inherent conflicts between national and personal laws.

Marriage in Bangladesh is governed by religious personal law for Muslims, Hindus, and Christians.¹⁵⁰ In Bangladesh, an order issued by a court under the CMRA does not nullify a marriage solemnized under the personal law of the marrying persons.¹⁵¹ The absence of explicit provisions in the CMRA invalidating child marriages, along with the primacy given to religious personal laws, in effect, preserves the legal validity of child marriages despite it being a legally punishable offence.¹⁵²

Laws relating to the age of marriage are an important example of the legal paradox that generally accompanies the mandates of personal laws in Bangladesh.¹⁵³ Muslim, Hindu, and Christian religious personal laws permit marriage at an earlier age than 18 years, which is in direct contradiction to the statutory laws in Bangladesh.¹⁵⁴ According to Islamic Sharia Law, a female child may be married at the age of 14 years or upon assumption of puberty with parental consent. Under Hindu law, marriageable age is deemed to be the attainment of puberty by a girl; generally, occurring around 13 years old.¹⁵⁵ The continued application of personal laws – which are based on religious laws or customary practices and which are used to deny rights on the grounds of both sex and religion – acts as a major obstacle to protecting girls against forced

¹⁴⁶ Organisation Mondiale Contre la Torture (OMCT), *Violence Against Girls in Bangladesh: A Report to the Committee on the Rights of the Child*, 20, 2003, available at http://www.omct.org/pdf/vaw/publications/2003/eng_2003_01_bangladesh.pdf.

¹⁴⁷ *Id.*

¹⁴⁸ Women Living Under Muslim Laws (WLURL), *Bangladesh: Is the Law Fair Towards Women?*, 18 March 2004, available at <http://www.wluml.org/english/newsfulltxt.shtml?cmd%5B157%5D=x-157-40211>.

¹⁴⁹ Office of the UN High Commissioner for Human Rights (OHCHR), Committee on the Rights of the Child, *Consideration of Reports Submitted by States Parties Under Article 44 of the Convention – Bangladesh*, para. 47, 14 March 2003, available at [http://www.unhchr.ch/tbs/doc.nsf/0/c0800ae5e758a57fc1256d3a002b4951/\\$FILE/G0340776.pdf](http://www.unhchr.ch/tbs/doc.nsf/0/c0800ae5e758a57fc1256d3a002b4951/$FILE/G0340776.pdf).

¹⁵⁰ IDLO, *supra* note 29 at 70.

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ Huda, Shahnaz, *Child Marriage: Social Marginalisation of Statutory Laws*, Bangladesh Journal of Law, 1 (2), 138, 1997.

¹⁵⁴ Sultana Kamal, *Law for Muslim Women in Bangladesh*, 4, available at http://www.globalwebpost.com/farooqm/study_res/bangladesh/kamal_law_women.pdf.

¹⁵⁵ *Id.*

marriage.¹⁵⁶ The personal laws for Muslims, Hindus, and Christians have not been significantly reformed in decades and reinforce the discriminatory cycles of past generations.¹⁵⁷

Along with substantive inconsistencies involved with laws concerning child marriage, there are procedural limitations that restrict victims' access to remedies in Bangladesh.¹⁵⁸ For example, injunctions to prevent child marriage may only be applied for by the concerned authorities, and not by or on behalf of the affected individual.¹⁵⁹ Additionally, in a recent Human Rights Watch report, women lawyers commented that although Bangladesh has taken steps to establish specialized family courts that deal with marriage cases, seeking timely judgments in these courts is akin to an obstacle course.¹⁶⁰

Another factor that exacerbates the problem of child marriage in Bangladesh is that most births go unregistered, and thus, the official age of many women and girls is unknown. This greatly limits the possibility for legal remedy. The Law and Local Government Ministry put a new Birth and Death Registration Act into force in 2004, which requires birth certificates as proof of age to be presented in order to apply for several major services throughout the country, one of which is marriage registration.¹⁶¹ Consequently, there has been a remarkable improvement between 2006 and 2009 in the proportion of children 5 years old and under who have birth registration; from 9.8 percent to 53.6 percent.¹⁶²

Some legislative efforts have been made to combat child marriage in recent years and decades,¹⁶³ generally under the broader scope of promoting and protecting the rights of women and children, and reducing gender inequality.¹⁶⁴ The elimination of child marriage is one of the stated objectives under the 2002 National Plan of Action against Sexual Abuse and Exploitation of Children including Trafficking, yet the activities under the Plan primarily address sexual abuse and do not include a focus on child marriage.¹⁶⁵ The Law Commission of Bangladesh has

¹⁵⁶ Sara Hossain and Suzanne Turner, *Abduction for Forced Marriage: Rights and Remedies in Bangladesh and Pakistan*, International Family Law, April 2001.

¹⁵⁷ Human Rights Watch, *Bangladesh: Discriminatory Family Laws Fuel Female Poverty*, September 16, 2012, available at <http://www.hrw.org/news/2012/09/16/bangladesh-discriminatory-family-laws-fuel-female-poverty>.

¹⁵⁸ Hossain and Turner, *supra* note 156.

¹⁵⁹ Applications for enforcement of fundamental rights may be brought under Constitution of Bangladesh 1972, Art 102(1) and (2)(a); Constitution of Pakistan 1973, Art 199(1)(a) and (c).

¹⁶⁰ HRW, *supra* note 157.

¹⁶¹ ICRW, *supra* note 23, at 18.

¹⁶² *Id.*

¹⁶³ IDLO, *supra* note 29, at X.

¹⁶⁴ *Id.* at 75.

¹⁶⁵ *Id.*

recently taken important steps to review personal laws on marriage, separation, and divorce and recommended changes to the government in 2012.¹⁶⁶ Stronger enforcement of national child marriage and protection laws, as well as birth and marriage registration, is clearly needed.

VIII. Taking Action

National and international communities are increasingly recognizing child marriage as a serious problem, a human rights violation, and a barrier to human development. As this problem receives heightened attention worldwide, it is useful to turn to past efforts – successes, limitations, outcomes – to inform the development of future action plans. Different approaches have proved successful in different sectors, and examining the various methods provides some insight into the factors considered in efforts toward reaching a solution to the problem of child marriage. Although an analysis of global best practices and recommendations falls outside of the scope of this preliminary memorandum, we have included in **Addendum 2** a bibliography of several sources that address these issues. The sources have been selected based on their relevance, helpfulness, and the type of information they present.

IX. Conclusion

Early marriage is a serious human rights issue in Bangladesh and other countries throughout the world. It has multiple causes and results in multiple devastating consequences for the children who are subjected to it. More in-depth research is needed to understand these causes and consequences as they have played out in different communities in Bangladesh. Nonetheless, it is clear from the foregoing discussion that early marriage is perpetuated by economic deprivation and cultural practices that condone it. It often leads to injury as a result of early child bearing, social isolation, abuse, and abandonment, and it contributes to a relentless cycle of poverty and subordination, child brides relive experiences of the generations before them. As a party to numerous applicable international human rights treaties, Bangladesh has an obligation to take action at all levels to eliminate the scourge of child marriage and afford its victims redress where it occurs.

¹⁶⁶ IDLO, *supra* note 29, at 76.

Addendum 1

List of Conventions and Treaties that Bangladesh has signed

Treaty	Status
International Covenant on Civil and Political Rights (1966)	Accession on 6 September 2000.
International Covenant on Economic, Social and Cultural Rights (1966)	Accession on 5 October 1998.
Convention on the Elimination of All Forms of Racial Discrimination (1965)	Accession on 11 June 1979.
Convention on the Elimination of All Forms of Discrimination Against Women (1979)	Accession on 6 November 1984.
Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (1999)	Ratification on 6 September 2000.
Convention on the Rights of the Child (1989)	Ratification on 3 August 1990.
Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (1962)	Accession on 5 October 1998.
Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (2000)	Ratification on 6 September 2000.
Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949)	Accession on 11 January 1985.
Slavery Convention, signed at Geneva on 25 September 1926 and amended by the Protocol (1926)	Signature on 7 January 1985.
Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (1956)	Accession on 5 February 1985.
International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (1990)	Signature on 7 October 1998.
C1 Hours of Work (Industry) Convention (1919)	Ratification on 22 June 1972.
C182 Worst Forms of Child Labour Convention (1999)	Ratification on 12 Mar 2001.
C144 Tripartite Consultation (International Labour Standards) Convention (1976)	Ratification on 17 Apr 1979.
C111 Discrimination (Employment and Occupation) Convention (1958)	Ratification on 22 June 1972.
C105 Abolition of Forced Labour Convention (1957)	Ratification on 22 June 1972.
C100 Equal Remuneration Convention (1951)	Ratification on 28 January 1998.
C4 Night Work (Women) Convention (1919)	Ratification on 22 June 1972.
C6 Night Work of Young Persons (Industry) Convention (1919)	Ratification on 22 June 1972.
C29 Forced Labor Convention (1930)	Ratification on 22 June 1972.
C59 Minimum Age (Industry) Convention (Revised) (1937)	Ratification on 22 June 1972.
C89 Night Work (Women) Convention (Revised) (1948)	Ratification in 1972.
C90 Night Work of Young Persons (Industry) Convention (Revised) (1948)	Ratification in 1972.
SAARC (South Asian Association for Regional Cooperation) Convention on Preventing and Combating Trafficking in Women and Children for Prostitution (2002)	Ratification in January 2002.

Source: *Universal Human Rights Index*, above n 42.

Addendum 2

Bibliography of Useful Sources – Taking Action: Promising Approaches, Solutions, and Recommendations

- International Center for Research on Women (ICRW), United Nations Population Fund (UNFPA), Australian Agency for International Development (AusAID), Asian Forum of Parliamentarians on Population and Development (AFPPD), *Child Marriage in Southern Asia: Policy Options for Action*, 2012, available at <http://www.icrw.org/files/publications/CHILDMARRIAGE-F-13.pdf>.
 - See section – “Child Marriage in Southern Asia: Context, Evidence and Policy Options for Action”
 - See section – “Solutions to Ending Child Marriage in Southern Asia: Bangladesh”
- International Center for Research on Women (ICRW), *Solutions to End Child Marriage: What the Evidence Shows*, 2011, available at <http://www.whiteribbonalliance.org/WRA/assets/file/Solutions-to-End-Child-Marriage.pdf>.
- International Planned Parenthood Federation (IPPF), *Ending Child Marriage: A Guide for Global Policy Action* (2008), available at <http://www.ippf.org/resources/publications/ending-child-marriage>.
 - See section – “A call for global action” (p. 26)
- Hervish, A & Feldman-Jacobs, C., *Who Speaks For Me? Ending Child Marriage*. Policy Brief, Washington, DC: Population Reference Bureau (2011), available at <http://www.prb.org/pdf11/ending-child-marriage.pdf>.
- United States Agency for International Development (USAID), *Ending Child Marriage & Meeting the Needs of Married Children” The USAID Vision for Action*, October 2012, available at http://transition.usaid.gov/our_work/cross-cutting_programs/wid/Ending_Child_Marriage_2012.pdf.