

**Office of the United Nations High Commissioner for Human Rights:  
Submissions relating to two Resolutions on CEFM**

Accountability

It is clear that the law is only one - necessary - tool in ending CEFM, and more must be done to persuade governments to conduct countrywide awareness-raising and harmful norm-changing campaigns, and evidence how it has measured their effectiveness. Too often, governments in LMICs leave such campaigns to NGOs, and this is shirking their duty and is unsustainable. Including power-holders such as religious, customary and local leaders, particularly in districts where CEFM is most prevalent, is vital. Engagement with men and boys has shown considerable promise in breaking down harmful norms within the community (as in Boys' Clubs and Husband Schools in Sierra Leone). Girls must also be central to conversations. Role models should be used. Eg, governments should utilise popular figures and request their assistance in media campaigns. An example of a successful multi-pronged approach in EVAWG and HIV prevention is SASA! in specific districts in Uganda, which could be adapted to ending CEFM. It uses three vehicles: (1) mass media channels (TV, radio and posters displayed in shops, on gates, at local authority offices, health centres and in the market) (2) other media (eg, videos or dramas performed in public spaces in the community) (3) interpersonal communication with community change agents (eg, community conversations and card games facilitated by trained community activists). Governments must also develop data collation tools and indicators, and *regularly* measure impact and normative change. As duty-bearers, state actors must provide funding to NGOs if they do not have the time or expertise to do this.

Definition of CEFM

We need consistency in all national legislation that a "child" means someone under 18. However, we need to distinguish between:

1. Child marriage (under 18)
2. Early marriage (ages? 18-22? In layman's terms, "early" marriage can have severe health consequences for young women and result in stunting in babies born, perpetuating the cycle of poverty and disadvantage)
3. Forced marriage (\*does this include situations where a girl has been unable to give *valid* consent because of power and age imbalances, familial and/or societal pressure, economic pressure, or a belief/certainty that marriage will enhance her status or is the only choice due to pregnancy? Suggest not...such factors should make a marriage voidable – see below)

1 and 2 may also be 3.

1 is also 2.

2 may be 1.

3 may be neither 1 nor 2.

## Unlawfulness/criminality

Child marriage must be unlawful globally. This can be stated in a Constitution. Where no Constitution exists, or the process to amend it is time-consuming or complex, there may still be a role for the criminal law to emphasise state disapproval, gradually alter societal norms, and act as a deterrence for wilful unlawful actions by parents/relatives/solemnisers/registrars/religious and traditional leaders. What should the penalties be? We need to repeal all provisions that break up families by sending parents/relatives to prison. This will have negative repercussions for the girl and her family, and can inhibit reporting and affect the willingness to provide evidence for prosecutions and effective enforcement. As the majority of child marriages occur in poor families, fines are likely to entrench its drivers. Community service may therefore be a better and more visible penalty where child marriage is criminalised.

Forced marriage should, however, always be a criminal offence with adequate penalties and trained enforcers (including psychosocial training to avoid re-traumatisation of child victims).

## Voidable marriages and valid consent

We need to clarify that in no circumstances must young people be criminalised for a child marriage. What about where there is closeness in age? Defining this may be arbitrary. How close must the pair be in age? What about a love match between eg, a 17 year old girl and an 18 year old boy? What about, eg, a 16 year old girl and a 20 year old boy? If all child marriages are criminalised, then is “closeness in age” a defence? Or is it mitigation?

What is the status of a marriage which is unlawful because the girl is/was a child when it was entered into? The answer seems to lie in making marriage void or voidable. Given the stigmatisation of girls who cohabit or have children out of marriage in much of the world, making such marriages voidable seems preferable (though contrary to Art.16(2) of CEDAW which states that they have no legal force). [It should be noted that if some/all of the factors set out above at \* apply to a woman over the age of 18, then technically that marriage should be voidable too. However, even in technically ‘free’ western societies people get married for all sorts of reasons that may not be thought of as signifying a wish to be married to that person (eg, to wear a nice dress for a day and have a party, or to have a father figure for a child), so it is difficult to know where to draw the line here.]

Laws such as that of Bangladesh which negate the voidable nature of a marriage if it has been consummated should be repealed. Sexual intercourse within a marriage not validly consented to may often fulfil the criteria for rape (but not necessarily always – eg, a girl may long for a child).

What about a time limit for making a marriage voidable? How should we counter the improper use of this as an easier route to divorce/a way to avoid parental responsibilities in a marriage that has gone sour years later?

Given the multiple societal, familial and economic pressures on girls globally, laws need to provide clear unpressurised processes for establishing whether or not the

girl/woman in question wishes her marriage to be voided (or boy/man if the boy entered marriage when under 18). We need to define “valid consent” (which differs from “free and full consent” in Art.16(1) of CEDAW since simply being under 18 also invalidates consent), “true choice”, “autonomy”, and “agency”, and enshrine a positive right to choose a partner free from coercion within Constitutions or legislation. The concept of valid consent should not preclude arranged marriages provided that the young person has a true choice. Teasing out whether or not a child really had a choice when apparently consenting to an arranged marriage is complex, however, due to the many intersecting pressures globally that girls, in particular, face. School curriculums should teach about human rights at both primary and secondary school level so that women can make informed choices when the time comes. States should work with NGOs which run girls’ clubs that have the potential to enhance girls’ agency and confidence, and plan for sustainable takeovers and countrywide rollouts.

Community Children Committees show promise as a channel for girls to report concerns about a possible forthcoming marriage with which they do not agree, and for anonymous reporting of suspected child betrothals/marriages. Persuasion by a community committee member and awareness-raising are often much more effective tools than the enforcement of a penal code.

We need to define “evolving capacities of the child” carefully within legislation. This is complex, particularly given the concept of “parental responsibility” which means that parents are permitted - indeed, expected - by the state to impose certain parental decisions on their children in their best interests.

### Birth registration

Laws should require compulsory registration of births, and the production of birth certificates at marriage (including customary marriage). It should be an offence for a solemniser/marriage registrar to proceed with a marriage in the absence of a birth certificate, or where a birth certificate appears forged. A criminal penalty should result in a high fine and withdrawal of registration, rather than a prison sentence, except perhaps in cases where there has been flagrant collusion/monetary gain for turning a blind eye. There should be stiff penalties to discourage forging of birth certificates.

There must be penalties for non-registration, or incentives for registration. Incentives are more likely to bear fruit. Innovation would be useful here, such as assistance from the health budget to provide a free starter pack for a newborn at birth registration. This could contain, eg, nappies/formula/immunisation/baby clothes/a toy, or even free airtime – whatever is most useful/appropriate culturally. Transport money must be provided (in advance) to a place of registration to those without the means. How? Eg, governments could create public/private partnerships with banks or mobile phone providers and provide transport vouchers (perhaps supplied by a local midwife/health worker or sent to a mobile phone number) which can be cashed in by or with any transport provider.