

## ***Human Rights Without Frontiers***

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## **Child, Early, and Forced Marriage & Religion**

**By Elisa Van Ruiten**

Child, early, and forced marriage are forms of gender-based violence that pose serious threats to the rights of girls and women. They are particularly common in patriarchal societies in sub-Saharan Africa, the Middle East, and South Asia, but are found worldwide, including in Latin America, North America and Europe.

It is estimated globally that one in nine girls will marry before their fifteenth birthday, some as young as five years old.<sup>1</sup> Although boys or men may also be subject to child or forced marriage, research shows girls and women are affected on a much greater scale; even in societies that practice forced marriage, marriage for a boy under nineteen is uncommon.

Child and forced marriages take a physical and emotional toll on the individual. They are often separated from family, friends, peers, and their community. Girls are usually denied education, are more likely to have complications in pregnancy, and are more at risk of sexual abuse and domestic violence.<sup>2</sup>

In child and forced marriages, there is also a power dynamic at play between husband and wife. There are frequently large age gaps between husband and wife, often by a decade or more, which typically indicates that the husband has all the power in domestic decisions. Girls who are not physically or emotionally prepared for a sexual relationship suffer extensively.<sup>3</sup>

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<sup>1</sup> UNFPA, “Marrying Too Young – End Child Marriage”, <http://bit.ly/2e1Odhd>; “Child, early and forced marriage” *Government of Canada*, <http://www.international.gc.ca/rights-droits/childmarriage-mariageenfants/index.aspx?lang=eng>

<sup>2</sup> “Health” *Girls Not Brides*. <http://www.girlsnotbrides.org/themes/health/>

<sup>3</sup> *International Journal of Gynecology and Obstetrics* “Ethical considerations on the health consequences of child or adolescent marriage”.

While the phenomena of child and forced marriages may be one and the same, they may also be distinct from each other, depending on the context.

### ***Child and early marriage defined***

Child marriage is a marriage in which at least one partner has not reached the legal age in his/her country to marry. Child marriages are rarely the initiative of the young bride (or groom) but usually instigated by parents who impose it on the child.

Early marriage may be used synonymously with child marriage as it may indicate a person under eighteen years old, or it may also describe a marriage where the persons are over eighteen but due to underdeveloped factors (physical, emotional, sexual, etc.) or insufficient awareness of other options, they are ill equipped to consent to marriage.

This report uses child marriage when referring to either child or early marriage.

### ***Forced marriage defined***

The United Nations (UN) has defined forced marriage as “any marriage which occurs without the full and free consent of one or both of the parties and/or where one or both of the parties is/are unable to end or leave the marriage, including as a result of duress or intense social or family pressure.”<sup>4</sup>

In 2006, former Secretary-General of the UN, Kofi Annan, described the severity of forced marriages when he stated that “[i]n its most extreme form, forced marriage can involve threatening behaviour, abduction, imprisonment, physical violence, rape and, in some cases, murder.”<sup>5</sup>

Forced marriage is distinguished from an arranged marriage where two people agree to a marriage recommendation while maintaining autonomy and thus could refuse the marriage if desired; under such circumstances the refusal of the arrangement would be accepted.<sup>6</sup> However, if physical, emotional, or social pressure is applied, consent is called into question and the marriage can be considered forced.

Child marriage may also be deemed forced marriage as the UN Special Rapporteur on Slavery, Gulnara Shahinian, stated that “under international human rights law, a child cannot

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<sup>4</sup> United Nations, General Assembly, Preventing and eliminating child, early and forced marriage: report of the Office of the United Nations High Commissioner for Human Rights, A/HRC/26/22 (2 April 2014).

<sup>5</sup> United Nations General Assembly. 2006. “In-depth study on all forms of violence against women: Report of the Secretary-General.” 6 July 2006. A/61/122/Add.1, paragraph 122. Available at: <http://daccess-ddsny.un.org/doc/UNDOC/GEN/N06/419/74/PDF/N0641974.pdf?OpenElement>

<sup>6</sup> Kopelman, Loretta M. “The Forced Marriage of Minors: A Neglected Form of Child Abuse”

provide informed consent to a marriage. The marriage is therefore considered forced and falls under the slavery-like practices defined in the Convention [against Slavery”].<sup>7</sup>

### **International Human Rights Norms addressing Child and Forced Marriage**

Various UN treaties address child and forced marriage, setting standards for the conditions of which consent can be given for a marriage, including the minimum age. These treaties state that a marriage be entered into with the “free and full consent” of both individuals.<sup>8</sup>

The UN Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (“the UN Marriage Convention”),<sup>9</sup> the Convention on the Right of the Child (“CRC”),<sup>10</sup> and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)<sup>11</sup> go further to prevent such detrimental practices.

Article 1 of the UN Marriage Convention addresses the “free and full consent” requirement and Article 2 asks the states to set a minimum age for marriage, although it does not specify what that age should be. However, in its Recommendation, General Assembly resolution 2018 (XX) of 1 November 1965, Principal II establishes a minimum age of 15 as the lowest legal marriage age.<sup>12</sup> It does allow for an exception to this if “...a competent authority has granted a dispensation as to age, for serious reasons, in the interest of the intending spouses.” It does not distinguish what authority or serious reason would allow for a marriage of persons under the age of fifteen. However, religious and cultural reasons would not be considered a valid reason as it is stated in the beginning the UN Marriage Convention:

“that the General Assembly of the United Nations declared, by resolution 843 (IX) of 17 December 1954, that certain customs, ancient laws and practices relating to marriage and the family were inconsistent with the principles set forth in the Charter of the United Nations and in the Universal Declaration of Human Rights.”

Looking to the CRC, while it does not expressly prohibit child marriage, it provides the following key provisions that protect a child from marriage:

- Article 1 states eighteen is the general age at which majority is reached, although it allows the possibility of majority being reached earlier in some cases under national law;

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<sup>7</sup> United Nations General Assembly. 2012. “Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, Gulnara Shahinian.” Thematic report on servile marriage. 10 July 2012.

<sup>8</sup> This includes Article 16 of The Universal Declaration of Human Rights; Article 23 of the International Covenant on Civil and Political Rights (ICCPR); Article 10 (1) of the International Covenant on Economic, Social, and Cultural Rights (ICESCR).

<sup>9</sup> United Nations Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages <http://www.ohchr.org/EN/ProfessionalInterest/Pages/MinimumAgeForMarriage.aspx>

<sup>10</sup> The United Nations. “Convention on the Rights of the Child.” Treaty Series 1577 (1989): <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>

<sup>11</sup> United Nations Division for Social Policy and Development, *International human rights conventions and other legal instruments (Draft Article 14)* <http://bit.ly/2kVH5ov>

<sup>12</sup> <http://www.ohchr.org/EN/ProfessionalInterest/Pages/RecommendationOnConsentToMarriage.aspx>

- Article 2 stipulates that a child should be free from discrimination, specifically mentioning discrimination from religion and the belief of the child’s parents;
- Article 3 paragraph 1 puts the best interest of the child as a primary consideration;
- Article 6 protects the child’s right to life and calls for maximal support for survival and development;
- Article 12 calls for a child’s opinion to be taken into account whenever applicable;
- Article 19 establishes the protection of a child from physical and mental violence, including sexual abuse from parents and legal guardians;
- Article 24 paragraph 3 requires state parties to protect children from traditional practices that harm their health;
- Article 34 protects a child from sexual exploitation and abuse;
- and Article 36 protects a child from “all other forms of exploitation prejudicial to any aspects of the child's welfare.”<sup>13</sup>

These provisions above are particularly strong when paired with CEDAW,<sup>14</sup> and both the Committee on CRC Relating to Child Marriage and the Committee on the Elimination of Discrimination against Women monitor states and make specific recommendations on the issue.<sup>15</sup>

In addition, under certain circumstances, forced marriage may also qualify as a crime against humanity, for instance, where a government could be shown to support the widespread and systematic practice of forced marriage.<sup>16</sup>

### **Child and Forced Marriage in Practice**

The UNFPA cites poverty and the lack of opportunity for girls and women to secure their futures to be main causes of child marriage.<sup>17</sup>

In many patriarchal communities worldwide, children are not only considered to be the responsibility of their father but his property. Therefore, as economic factors play a large role in child and forced marriages, a child - usually a girl - may be reduced to chattel when she is married off in order to repay a debt, to avoid the cost of raising the child, or to ensure that land, property, and wealth remain within the family.<sup>18</sup>

Poverty is not the only factor that sustains this phenomenon, as even girls and women of high socio-economic status are victims of child and forced marriages. Endogamy as well as

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<sup>13</sup> The United Nations. “Convention on the Rights of the Child.” Treaty Series 1577 (1989): <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>

<sup>14</sup> Specifically Article 16, but generally in protecting women and girls from discrimination and violence.

<sup>15</sup> For example : <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=19999&LangID=E> and <http://www.ohchr.org/EN/HRBodies/CEDAW/Pages/JointCEDAWandCRCGRecommendation.aspx>

<sup>16</sup> Australian Red Cross “Topic 6(a) Special Court for Sierra Leone – Forced marriage as an ‘other inhumane act’”. 2010. Web accessed Dec 2016. <http://bit.ly/2kIaXtm>

<sup>17</sup> UNFPA, “Marrying Too Young – End Child Marriage”, <http://bit.ly/2e1Odhd>

<sup>18</sup> Alanen, Julia. “Custom or Crime? (Part I of IV) Catalysts and Consequences of Forced Marriage”

religious and cultural beliefs play a large role. Religious leaders have been known to encourage forced marriages for multiple reasons.

One reason for this encouragement is perhaps to consolidate influence over followers and ensure that the next generation of young people will remain members of the community. For many spiritual leaders, increasing membership is as much an economic and political concern as it is theological. The survival of a way of life depends on the continued devotion of members of the culture.

Some religious groups also view female sexuality as dangerous if not controlled, and an unmarried woman is seen as promiscuous. The importance of virginity plays a large role in child and forced marriage, and, in many cases, forced marriages are a way for parents to ensure that their girls will remain chaste by marrying them before they have an opportunity to engage in premarital sex. However, in an effort to protect young girls from premarital sex, they are instead often subjected to sexual coercion by their husbands.

Providing information and education to governments, religious leaders, communities, families, men, women, girls, and boys is needed to help overcome the phenomenon of child and forced marriage. Understanding of the groups and societies upholding the practice is also necessary.

The case studies below are organized in two categories: bad practices and their religious justifications on the one hand, and initiatives by religious groups or individuals to promote better or good practices on the other.

### ***Bad practices and their religious justifications***

A number of religious leaders and communities advocate for the marriage of children, justifying it as driven by religious texts or other religious authoritative sources. As we see from the following case studies, some religious leaders have been successful in influencing related laws or conducting religious ceremonial weddings outside the legal framework that may not be recognized by the state.

In the following cases, Islamic clergy have resisted pressure from human rights activists and the UN to conform with the international minimum age standard of eighteen.

**Bangladesh**, a Muslim majority country, is ranked number five of countries worldwide for child marriage.<sup>19</sup> On 27 February 2017, the Child Marriage Restraint Act-2017 was passed,<sup>20</sup> allowing marriage for a girl or boy under the legal age if it is in the interest of the child.<sup>21</sup>

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<sup>19</sup> <http://www.girlsnotbrides.org/child-marriage/bangladesh/>

<sup>20</sup> <http://www.jurist.org/paperchase/Child%20Marriage%20Restraint%20Act%20of%202017.pdf> ; Review in

English : <https://futrlaw.org/brief-review-child-marriage-restraint-act-2017/>

<sup>21</sup> <http://www.girlsnotbrides.org/bangladesh-child-marriage-restraint-act-2016-recap/>

Some religious leaders in the country display strong sentiments about keeping the tradition of child marriage, perpetuating this problem.

After the passing of the bill, Mahfuzul Haque, the chief of the Dhaka chapter of Hefazat-e-Islam, stated, “In the eyes of Islam, this is the correct decision. Having a law that you cannot get married before a certain age, this I cannot agree with.” And politician and Islamic scholar Fazlul Haq Amini claims that "banning child marriage will cause challenging the marriage of holy prophet of Islam. Islam permits child marriage and it will not be tolerated if any ruler will ever try to touch this issue in the name of giving more rights to women."<sup>22</sup>

In **Pakistan**, a bill that would raise the minimum age of marriage from sixteen to eighteen and create harsher punishments for those found to be arranging child marriages was rejected by the Council of Islamic Ideology (CII) because they found it "un-Islamic" and "blasphemous." Religious scholars in Pakistan have determined that under Shari'a Law the minimum age for marriage is when a child reaches puberty and a minimum age restriction would contradict Shari'a law.<sup>23</sup>

In **Saudi Arabia**, the Grand Mufti, Abdul Aziz Al ash-Sheikh, stated that it is permissible for girls to be married as young as ten years old. There is no minimum age requirement currently established in Saudi Arabia.<sup>24</sup>

In **Lebanon**, there is no minimum age for marriage or any law prohibiting child marriage. As a Muslim majority country, the practice of child marriage in the country is common. Exacerbating this phenomenon are the approximately one million (and more) Syrian refugees living in camps in Lebanon. Child marriage of young Syrian girls in the refugee camps among is a major concern.

As of November 2017, Soutien Belge (SB) Overseas told HRWF of numerous cases of child marriage within the participants of their educational programs in Lebanon. The majority of the girls married are between the ages of 12- 18, but some are even younger. The girls are usually exposed to some degree of gender-based violence in relation to their marriage. Recently, SB Overseas had an 11-year-old girl come into their center in Lebanon who told them she was soon to be married. A few days later, the teacher was informed by the community about the death of the little girl. She had passed away the day after her ‘wedding’ due to fatal wounds sustained during forced sex with her new husband.

In **Australia**, where the legal minimum marriage age is eighteen years old (or sixteen for one partner in certain court approved cases), a Muslim immigrant was convicted for forcing his twelve-year-old daughter to marry a twenty-seven-year-old man in an Islamic marriage

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<sup>22</sup> “Solving the Problem of Child Marriage” *Gatestone Institute*. 18 Sep 2013. <https://www.gatestoneinstitute.org/3981/child-marriage>

<sup>23</sup> “Pakistani clerics block ‘un-Islamic’ child marriage bill” *Al Arabiya*. 15 January 2016. <http://bit.ly/2m4Gh5V>

<sup>24</sup> “No minimum age for marriage of girls – Grand Mufti” *Arabian Business*. 22 December 2014. <http://bit.ly/1tllZOg>

ceremony at their home in order to deter her from living a life of sin after she started showing interest in boys.<sup>25</sup>

Looking to Judaism, the Orthodox, Conservative, and Reformed Jewish movements all officially oppose child and forced marriages. However, some marginal groups still force marriages of young girls within their community.

In **Canada and Central America**, the Jewish sect Lev Tahor, an ultra-orthodox anti-Zionist community which originally began in Israel but then moved to the North and Central America, has recently come under fire for some of its controversial practices.<sup>26</sup> Marriages are arranged by the leadership of the organization and interaction with the outside world is discouraged.<sup>27</sup>

In 2014, fourteen children of Lev Tahor in Quebec and Chatham, Canada, were put in child protective services by courts in Quebec and Ontario provinces because of abuse and forced marriages of young girls between the ages of thirteen and fifteen. In the official report from police in Quebec, one girl admitted that she was beaten by her family members, sexually abused by her father, and forced to marry a man twice her age when she was fifteen.<sup>28</sup>

Christian communities in general do not support the child or forced marriages, however, as found in Judaism, some fundamentalist groups have been found to sustain the phenomenon.

In **Zimbabwe**, the minimum age for marriage is sixteen for girls and eighteen for boys, but these laws do not eliminate child marriages since they are practiced under customary and religious laws for which the government has a high tolerance.<sup>29</sup>

The Apostolic faith community in Zimbabwe,<sup>30</sup> which combines Christian and African beliefs regarding marriage, specifically advocates child marriage as a religious ideal. According to Human Rights Watch, the church teaches that girls should be married between twelve and sixteen to ensure that they do not commit sexual sins. Any man in the congregation may claim a girl as his bride when she comes of age.<sup>31</sup> Church doctrines also prohibit girls from attending school.

In **Canada**, members of the Fundamentalist Church of Jesus Christ of Latter-Day Saints (FLDS) and the Church of Jesus Christ, a dissident branch of the Mormon Church, drew

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<sup>25</sup> "Father who arranged for daughter, 12, to marry man, 26, jailed for six years" *The Sydney Morning Herald*. 17 July 2015. <http://bit.ly/1Dk9uHV>

<sup>26</sup> Kroth, Maya. "A Tale of the Pure at Heart." *Foreign Policy* February 2016. <http://atfp.co/2kVyWjZ>

<sup>27</sup> *Ibid*

<sup>28</sup> "Police Documents Alleged Abuse, Forced marriage in 'Jewish Taliban' Sect". *Haaretz* 16 February 2016. <http://www.haaretz.com/jewish/news/1.574433>

<sup>29</sup> Sibanda, Maureen. "Married too soon: Child marriage in Zimbabwe". *Research and Advocacy Unit*. October 2011. <http://bit.ly/2miph80>

<sup>30</sup> "Zimbabwe" *Girls Not Brides*. <http://www.girlsnotbrides.org/child-marriage/zimbabwe/>

<sup>31</sup> "Ending Child Marriage in Africa" *Human Rights Watch*. 9 December 2015. <https://www.hrw.org/news/2015/12/09/ending-child-marriage-africa>

international attention for their illegal practices of arranging marriages for girls as young as twelve years old and the widespread practice of polygamy in the community.<sup>32</sup>

### ***Towards good practices (?)***

Governments and religious leaders in some countries are also taking more positive steps to protect the rights of girls and women who become victims of child and forced marriages. As in the previous section, religious authorities and state authorities are not always in agreement over this matter, and violations of the law are common if there is not proper implementation.

In November 2016, **Kyrgyzstan's** President Atambayev signed a law which criminalises marrying a minor, officiating a ceremony, or parental support of a marriage that is in violation of the Kyrgyzstan Family Code.<sup>33</sup> The new law, which includes a three to five year prison term for offenders, comes after a rise in the number of child marriages occurring in recent years. However, many child marriages are conducted as Muslim rites and are not officially declared. If the law is enforced properly it could encourage important social progress in Kyrgyzstan.

In **Israel**, in the 1950's, a Rabbinical National Conference held in Jerusalem created a *takkanah* (legislation within Jewish law) that forbade marriage of girls under the age of sixteen. However, as of 2013, Israel raised the minimum marriage age to eighteen. This received criticism from Haredi Jewish leaders claiming that it was “discrimination against haredim” since within their community it is a common practice for teenagers under eighteen to get married.<sup>34</sup>

In **Ethiopia**, 81% of young women from a Christian Orthodox background had their marriages arranged by parents, most were early and forced.<sup>35</sup> Religious leaders have been found to be “the number one source of anti-child marriage messages” in many Ethiopian villages, and dialogues in Ethiopia between community members are helping to raise awareness of the dangers of child marriages.<sup>36</sup>

In **Indonesia**, a Muslim-majority country where the minimum age for marriage for girls is sixteen and nineteen for boys,<sup>37</sup> female Muslim leaders issued a fatwa against child marriage and urged the government to raise the age of marriage to eighteen.<sup>38</sup>

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<sup>32</sup> <http://wwrn.org/articles/46373/>

<sup>33</sup> “Kyrgyzstan bans religious marriages with minors.” *Interfax Religion* 21 November 2016. <http://www.interfax-religion.com/?act=news&div=13428>

<sup>34</sup> <http://www.jpost.com/Diplomacy-and-Politics/Minimum-marriage-age-upped-to-18-330610>

<sup>35</sup> “Marshall, Elizabeth Prester and other authors. “Child marriage in Ethiopia” March 2016. [https://www.unicef.org/ethiopia/Evidence\\_Review.pdf](https://www.unicef.org/ethiopia/Evidence_Review.pdf)

<sup>36</sup> <http://www.jpost.com/Diplomacy-and-Politics/Minimum-marriage-age-upped-to-18-330610>

<sup>37</sup> <http://www.girlsnotbrides.org/child-marriage/indonesia/>

<sup>38</sup> <http://news.trust.org/item/20170427164406-x3kn1/?source=ticker>



## **Conclusion and recommendations**

Marriage traditions are deeply rooted in societies and individual families. They can be difficult to change through legislation alone, especially when there are many complex economic motives, spiritual beliefs, and cultural expectations driving the practice. Besides the economic advantages of marrying off daughters, other common themes in the examples discussed above, such as viewing a daughter as property, importance placed on virginity, and traditional family life, persist as important cultural and religious values in those communities, and perpetuate child and forced marriages.

International and state laws should only protect religious practices so long as they do not infringe upon the rights of girls and women. Child and forced marriage is clearly a violation of those rights.

As we have seen, some religious communities in some countries are quick to defend their rights to perform marriages consistent with their traditions, regardless of whether they respect human rights standards. Fortunately, an increasing number of states are adopting laws that protect girls and women from child and forced marriages and are fostering initiatives to open dialogues with community leaders that may still cling to harmful traditional practices in the alleged name of religion.

Education is one of the keys to solving such problems; educating religious leaders and parents and ensuring school education for girls is essential.

Domestic and international human rights organizations should play their role in the educational process and encourage all actors to move forward in the legislative field so as to bridge the gap between human rights standards and cultural/religious practices. Good practices and positive changes in legislations and societal behaviours need to be highlighted and largely publicized. Expertise needs to be shared and it can be hoped that child and forced marriages become things of the past.

### ***Human Rights Without Frontiers recommends governments of the concerned countries***

- to combat child marriage, help share best practices, and support programs to implement these strategies;
- enact and enforce law prohibiting child marriage, and make known the consequences for those who break the law, and the mechanism for reporting child marriage and obtaining assistance;
- to enact marriage laws that establish free and full consent of both spouses, and to criminalize the use of physical or psychological violence against anyone who refuses to marry;
- to set eighteen as the national minimum age of marriage for both boys and girls and develop strategies and training for enforcement;
- to ensure access to reproductive information and healthcare for all girls and women, emphasising the health risks of early pregnancy;

- run public awareness campaigns to inform the public, including parents, guardians, and community leaders, as well as girls and boys, about the harmful effects of child marriage;
- to highlight and provide information on the benefits of girls' education;
- to guarantee access to free, compulsory education for all girls and boys until majority age;
- to provide information economic incentives and support to girls' families;
- to respond to and react to religious leaders who support child and forced marriage;
- to work with and support religious leaders who combat child and forced marriage.