

THE LAW AND CHILD, EARLY AND FORCED MARRIAGE AND UNIONS

A SYNTHESIS OF RECENT EVIDENCE ON IMPACT AND IMPLICATIONS

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PICTURED ON COVER: Mithila art created by an 18-year-old high school student in Nepal. She took part in a workshop to support girls to communicate the social challenges they have faced, and their aspirations. She highlights child marriage as a key issue, which she would like to address by becoming a lawyer and advocate. Credit: Nub Raj Bhandari/Janaki Women Awareness Society. Nepal.

INTRODUCTION

Background

Girls Not Brides is a global partnership of more than 1,400 civil society organisations in over 100 countries committed to ending child marriage and ensuring girls – in all their diversity – can reach their full potential. Member organisations are based throughout Africa, Asia, Europe, the Middle East, and the Americas. Stronger together, Girls Not Brides member organisations bring child, early and forced marriage and unions (CEFMU)^a to global attention; build an understanding of what it will take to end the practice; and call for the laws, policies and programmes that will make a difference to the lives of millions of girls.

CEFMU is rooted in gender inequality and compounded by poverty and multiple overlapping forms of discrimination including racism, adultism, ableism and class. The *Girls Not Brides*' Theory of Change recognises the importance of laws and policies within a broader, holistic approach to advancing girls' rights.

^a The term "**child**, **early and forced marriage and unions**" refers to all marriages and unions where at least one party is under the age of 18. In this we recognise all girls and adolescents affected by the practice – whether in formal or informal unions – and acknowledge the culturally specific understandings of childhood and development and the complex relationship between age, consent and force.

Over the years, *Girls Not Brides* has celebrated landmark legal victories to raise the legal minimum age of marriage, which are considered a cornerstone for advocacy to prevent CEFMU. *Girls Not Brides* has also celebrated the advocacy achievements of member organisations and allies that have influenced and changed national laws and policies that ensure the right of all girls to education and sexual and reproductive health and rights. These gender-transformative laws and policies are essential to create an environment in which all girls can exercise their human rights and enjoy the protection and support that the state has a duty to provide in line with international human rights frameworks.

"In the Dominican Republic, after a constant struggle, we succeeded in ensuring that article 4 of the Civil Code prohibits marriage amongst girls under 18. Although the road has been long, we believe that we have had a win, but there were many sit-ins, marches and strikes to achieve it. We believe that if we succeed in passing more laws in favour of children, adolescents and youth, which give them strength and courage and do not disrupt their life plans, we will be able to reduce CEFMU."

Rationale

Research from the past decade speaks to the shortcomings of CEFMU laws in their design and implementation, particularly when they are not part of a holistic, rights-based approach. Further, evidence shows how implementation deficits, girls' lack of access to justice, legal plurality, and the contradiction or conflation with sexual consent laws compromise the intended impact. Given these developments, *Girls Not Brides* commissioned a project with the following objectives:

- To strengthen and update messaging and advocacy around CEFMU laws, especially
 criminalisation and age of consent to marriage. These will be aligned to a commitment to
 rights-based, gender-transformative, girl and youth-centred action and laws and support
 access to justice as an important pillar of the comprehensive approach to end child marriage
 and achieve gender equality.
- To strengthen messaging around what is needed for CEFMU laws and legal frameworks to centre the rights and needs of girls in all their diversity in terms of:
 - The laws, their application and the justice system.
 - The enabling factors (policies, investments, services and norms).
- To work with member organisations who are developing national collective strategic engagement plans.

Research questions

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b Survey response from Latin America and the Caribbean *Girls Not Brides* member organisation (September 2023). Original Spanish text: "En República Dominicana luego de una lucha constante logramos qué el artículo 4 del código civil sea prohibida la unión matrimonial en niñas menores de 18. Aunque ha sido largo el camino, creemos que hemos tenido un logro, pero fueron muchos plantones, marchas y paros para lograrlo. Creemos que si logramos la creación de más leyes a favor de las niñeces, adolescencias y juventudes, qué les de fuerza y valor y que no irrumpen sus planes de vida, podremos reducir los MUITF, no solo en América Latín, sino también en esos países donde las niñas son vendidas antes de nacer."

The first step taken towards achieving these objectives was to synthesise existing evidence around the impact of laws. Given trends globally to raise the age of sexual consent to align with the age of marriage, it was important to understand the impact of these two types of laws and the interplay between them across various contexts.

This report presents the findings of a literature review on the impact of these laws on two outcomes: CEFMU prevalence^c and girls' rights and agency – that is, their ability to make and act on their decisions. The specific research questions were articulated as follows:

- What are the impacts of CEFMU laws^d on CEFMU prevalence in different contexts?
- What are the impacts of CEFMU laws on the prevalence of informal unions in Latin America and the Caribbean (LAC)?
- What are the impacts of CEFMU laws on girls' lives, rights and agency in different contexts?
- What are the impacts of laws that criminalise sex between consenting adolescents on CEFMU prevalence and on girls' lives, rights and agency?

Additional research questions aimed to identify the drivers/factors that stand behind the positive and negative impacts of CEFMU and sexual consent laws. These questions aimed at drawing out implications for future advocacy and legal reform efforts:

- What is needed for CEFMU laws to centre the rights and needs of girls in all their diversity?
- Which safeguards are needed to minimise and mitigate against the risks of child marriage and sexual consent laws being used to punish girls and young people?

METHODOLOGY

This section explains briefly the report development process and limitations of the existing literature.

Inception phase

The research consultant engaged with *Girls Not Brides* stakeholders from the Africa, Asia, LAC and Global Advocacy teams to ensure understanding and consensus of the project objectives. An initial literature review informed an inception report, including resources to be reviewed.

Literature review

Stakeholders shared literature specific to their regions or contexts for review by the consultant. These included both academic and grey literature, and priority was given to those that outlined civil society organisations' experiences and perspectives. Additional relevant documents were added by the consultant. The final list of reviewed literature is in Annex 1.

^c "CEFMU prevalence" refers to the percentage of women aged 20 to 24 years who were married or in a union before age 18.

^d See "Legal terminology" section below for the reasoning behind the use of this term.

Using a bespoke template, the consultant reviewed the literature for material relevant to the research questions and for country examples to illustrate the broader themes using both deductive and inductive approaches.^e

Report consultations

Consultations with member organisations in LAC and *Girls Not Brides Nepal* in September and October 2023 provided insights in the form of country examples and quotations.

Limitations

There are significant shortcomings in the literature in relation to the impact of CEFMU law; while many reports touch on it, very few explore the *causal link* between laws and the population, or on individual-level changes for girls. Rather, the majority of reports explore the content of laws and the extent to which they align with existing international, regional or national human rights standards.

Most studies highlight the importance of the law in the prevention and response to CEFMU across contexts. However, many studies make assumptions about *how* and *why* the law is important, and these are grounded in popular notions of how the law works across contexts and in the lives of girls. Such assumptions include: 1) that exceptions to the minimum age of marriage drive CEFMU prevalence and 2) that the enforcement of punitive laws result in reduced prevalence. While these assumptions may hold in some contexts, there is generally little evidence to support them.

There is also a lack of "lived experience" data available in the literature. Very few studies exist beyond isolated reports from the Middle East and North Africa (MENA), India and Nepal that explore the ways in which girls and other actors experience the law and/or use it to advance girls' agency and rights. Where these experiences are explored, a range of worrying trends emerge (presented in this report). Attempts have been made not to over-rely on the India and Nepal research, but it is inevitable that they are cited more often than other studies that do not speak as strongly to the research questions.

The literature highlights the extreme diversity of specific social, political and cultural factors that influence the impact of CEFMU laws. For example, the exploration of how the law operates in LAC highlights dynamics around informal unions, which are not necessarily as socially acceptable or common in other contexts. It is crucial, therefore, to contextualise study findings, ensuring they are not applied inappropriately across contexts. The interpretation and application of human rights standards in each context also need to take into account the diverse factors that influence the implementation of laws, including norms around the respect for the rule of law and the relationship between the law and society, particularly amongst communities that have been historically marginalised.

It is also worth noting that legal impact is notoriously difficult to measure, given the way it intersects with other social, political and legal factors that impact CEFMU and girls' rights. Discretion must be exercised in heeding the findings of studies that establish or suggest a

^e These are approaches used in qualitative data analysis. In applying a deductive approach, a researcher starts with a theory or hypothesis that is tested – and either refuted or validated – during data analysis. Applying an inductive approach allows for themes or patterns to arise organically during data analysis.

causal link between the law and, for example, reductions in CEFMU prevalence. Several of the difference-in-differences and other frequently cited studies that have been used to measure the impact of the law often caveat their findings by stating that there may be other factors that account for or contribute to the documented changes in prevalence. It is almost always appropriate to talk about the *contribution* of the law to various changes measured as opposed to *attribution*.

LEGAL TERMINOLOGY

There is no international consensus on the CEFMU legal terminology. The terms used vary significantly, with some countries using "child marriage law", "forced marriage law", "early marriage" and others referring to "minimum age of marriage law". Indeed, terminology is often at the centre of national and global debates about CEFMU; this report does not engage with these debates in a substantive way, though it is noted that it may be required to do so to take some of the findings forward around differentiated legal responses.

In this document, "CEFMU law" is the default term used to refer to the national statutory or common law frameworks that exist to articulate the minimum age for marriage and the legal conditions/processes through which it may be enforced. It is used herein to refer to laws that may be enforced through the formal law enforcement and justice systems of each country/jurisdiction. Where a different term is used, this is because authors have emphasised the importance of its use in the given context; these are presented between inverted commas throughout the report.

The compilation of laws that constitute the CEFMU law framework vary significantly from country to country and may include some or all of the following types of laws:

- Specific child marriage prohibition laws that may, amongst other provisions, include the age
 of marriage; exceptions to the legal age (e.g. parental/judicial consent, pregnancy); and civil
 or criminal penalties for those who participate in acts related to child marriage (e.g. coercion
 or solemnisation).
- Civil codes that govern issues of family law, including marriage and divorce.
- Penal codes or criminal statutes that proscribe forced marriage and establish penalties for various parties.
- Constitutional laws articulating the right to remain free from child marriage or related human rights violations, as well as the establishment of consent as an essential characteristic of marriage.
- Personal or marriage laws that govern the practice of marriage across entire jurisdictions or in distinct communities.
- Child laws that provide for the protection of children/minors and articulate their rights.
- Customary or religious laws that govern the practice of marriage across specific jurisdictions or in distinct communities and are recognised as valid law by governments.

Due to the trends towards aligning the age of sexual consent with the age of marriage in law, sexual consent laws were explored alongside CEFMU laws, where such evidence was available. Sexual consent laws may include, but are not limited to, criminal laws that establish and define which acts constitute sexual offences. Within such laws, the ages at

which individuals are considered to have the capacity to consent to sexual acts are often articulated, including through so-called statutory rape laws, which consider people under a certain age to be incapable of consenting to defined sexual acts.

In addition to CEFMU and sexual consent laws, there is a range of other laws that provide protections and rights for those under the legal age of majority that are relevant in the context of CEFMU, including child protection, gender-based violence, education and sexual and reproductive health and rights (SRHR) law. Beyond this, there is also a broad set of laws that specify minimum ages for various behaviours and acts, such as voting, consumption of alcohol, driving motor vehicles, leaving school and more. None of these laws are explored in detail in this paper, though they are relevant in understanding how adolescence is constructed through law in a given society.

CEFMU AND SEXUAL CONSENT IN THE INTERNATIONAL HUMAN RIGHTS FRAMEWORK

The first international human rights instrument – the <u>Universal Declaration of Human Rights</u>, proclaimed in 1948 – stated that marriage should only be entered into with free and full consent of spouses. Since then, several human rights instruments have reiterated this right and called for a minimum age, though they have stopped short of prescribing what that age should be.

The first of these conventions was the 1957 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery followed by the 1964 Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages and the 1966 International Covenant on Civil and Political Rights. In 1979, the General Assembly of the United Nations adopted the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); article 16(2) of which requires that all parties take the necessary actions to set a minimum age of marriage. Although it does not directly address marriage, the Convention on the Rights of the Child articulated the rights and protections owed to children under the age of 18. In article 5, the Convention recognises the ways in which children attain capacities in an evolving manner and, in article 12, assures that children who are capable of forming their own views have the right to express these views and have them considered in line with their age and maturity.

Complementing the conventions are various other interpretive instruments, which since 1965 have called for states to specify a certain minimum age of marriage in law. For example, in 1965 a UN General Assembly resolution called for 15 years to be set as the lowest age for marriage. The CEDAW Committee, however, was the first to specify 18 as the minimum age of marriage and, in doing so, referenced the Convention on the Rights of the Child's definition of children as all those under the age of 18.2 The Committee on the Rights of the Child (CRC Committee) followed suit in 2004, reinforcing the CEDAW Committee's recommendation. The CRC and CEDAW Committees addressed CEFMU in a joint recommendation first issued in 2014 and re-issued in 2019. The 2014 recommendation provided for marriage before 18 in exceptional circumstances, whilst the 2019 version removed these exceptions (see below comparison).

Table 1: Comparison of original and amended versions of the joint CRC-CEDAW recommendation on harmful practices

Joint CRC-CEDAW Recommendation (2014), paragraph 54(f)

The Committees recommend that the States parties to the Conventions adopt or amend legislation with a view to effectively addressing and eliminating harmful practices. In doing so, they should ensure:

f) A minimum legal age of marriage for girls and boys is established, with or without parental consent, at 18 years. When exceptions to marriage at an earlier age are allowed in exceptional circumstances, the absolute minimum age is not below 16 years, grounds for obtaining permission are legitimate and strictly defined by law and marriage is permitted only by a court of law upon full, free and informed consent of the child or both children who appear in person before the court.

Joint CRC-CEDAW Recommendation (2019), paragraph 55(f)

The Committees recommend that the States parties to the Conventions adopt or amend legislation with a view to effectively addressing and eliminating harmful practices. In doing so, the State party should ensure:

f) That a minimum legal age of marriage for girls and boys, with or without parental consent, is established at 18 years.

In relation to the age of sexual consent, the CRC Committee has not specified what the age should be but has stipulated that states should set a minimum age.⁵ In General Comment 20, the CRC Committee makes it clear that States should avoid criminalising adolescents of similar ages for factually consensual and non-exploitative sexual activity.⁶

In addition, the CRC Committee has elaborated on various rights in the CRC that relate to children's agency and right to participate in decisions that affect them. In the introduction to its General Comment 20 on the implementation of rights during adolescence, the Committee recognises the differences for this older group of under 18 year olds:

"While the Convention recognizes the rights of all persons under 18 years, the implementation of rights should take account of children's development and their evolving capacities. Approaches adopted to ensure the realization of the rights of adolescents differ significantly from those adopted for younger children."

In this same General Comment, the Committee goes on to elaborate on the general principles that guide the fulfilment of adolescents' human rights, including: right to development (including the enabling principle of "evolving capacities"); non-discrimination; best interests; and right to be heard and participate. While the General Comment reinforces 18 as the minimum age for marriage, it also asks States to review or introduce legislation that recognises the right of adolescents to take increasing responsibility for decisions affecting their lives.

In relation to sexual and reproductive health services, the Committee states that there should be a presumption that adolescents are competent to seek and have access to preventive or time-sensitive commodities and services.

Several regional human rights or inter-governmental bodies have also addressed CEFMU. The <u>Kathmandu Call to Action to End Child Marriage in South Asia</u> was developed and adopted by government representatives of the South Asia Association for Regional Cooperation and calls on governments in the region to set the minimum age of marriage at 18.9 The Preamble to the Call recognises the children's rights principles of best interests and evolving capacities.

In LAC, the <u>American Convention on Human Rights</u> does not stipulate a minimum age of marriage but, rather, leaves the determination to States Parties. The Convention establishes consent as fundamental to marriage in article 17.

In Africa, the <u>African Charter on the Rights and Welfare of the Child</u>, Article 21(2) specifically prohibits child marriage and sets the minimum age of marriage at 18. Fifty states have ratified this Charter, with only one formal reservation to Article 21(2). In addition, Article 6 of the <u>Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa</u>, better known as the Maputo Protocol, stipulates 18 as the minimum age of marriage and calls on states to ensure equality between women and men in marriage.¹⁰ The Southern Africa Development Community (SADC) has also developed a model law, which serves as a blueprint for states in that sub-region and beyond.¹¹

BOX 1

SADC Model Law on Eradicating Child Marriage and Protecting Children Already in Marriage

The SADC model law provides a template for countries in the region to develop and/or strengthen laws that comply with international human rights standards. Among other provisions, the model law calls for the absolute prohibition of marriage under the age of 18 for all girls and boys; penalties for contravention of the law; and the voiding of child marriages that took place before enactment of the law. The law also emphasises the importance of a multi-sectoral approach to preventing CEFMU and supporting married people who were married before age 18. To date, several countries have used the SADC model law as inspiration. Mozambique, for example, references the model law in its Law on the Prevention and Combating of Premature Unions Law 19/2019.¹²

IMPACTS OF CEFMU AND SEXUAL CONSENT LAWS ON CEFMU PREVALENCE

The body of evidence that deals directly with the impacts of CEFMU and sexual consent laws on prevalence – or any other indicator – is nascent. At this juncture, **there is insufficient evidence to clearly identify the roles that laws have played in reducing CEFMU prevalence either in isolation from or in tandem with other interventions.** Even within this small body of literature, there are methodological limitations related to measuring the impact of laws and establishing any causal link with reductions in prevalence. Namely, the cross-sectional or observational data used for many studies does not allow researchers to study the before and after effects of laws.

"While national laws against child marriage are important, they are not sufficient for ending the practice. Globally, even after accounting for exceptions to the legal age of marriage with parental or judicial consent, 7.5 million girls marry illegally each year (20,000 girls per day), making up 68 percent of child marriages."

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In 2015, a paper published by Maswikwa et al concluded that "minimum age of marriage laws protect against the exploitation of girls," on the basis that CEFMU prevalence was lower in 4 of 12 African countries found to have "consistent laws". 14 While often cited to evidence the impact of CEFMU laws, this paper has been criticised for suggesting a causal relationship between the law and low CEFMU prevalence without time series data – i.e. data from before, during and after the adoption and/or implementation of a new law. Maswikwa et al presented no data on the implementation of the laws, which would contribute to greater understanding of how the laws in question contributed to lower CEFMU prevalence. 15

Even studies that have used time series data do not establish strong evidence of a causal relationship between new CEFMU laws or legal reforms and reduced overall prevalence of CEFMU.¹⁶ In other words, the existing evidence suggests that **the impact of CEFMU laws on CEFMU prevalence is limited.**

A study by Collin and Talbot, for example, examined the changes across time of the ages at which girls marry in countries that changed their minimum legal age. Their hypothesis was: if a law setting the age of marriage is adopted and enforced, there should be an increase in the proportion of girls marrying at that age (e.g. 18) compared with those marrying just below that age (e.g. 17). The authors' findings illustrated that, across more than 60 countries, there was not a drop-off in the number of girls marrying just below the age of marriage (e.g. at 16 or 17) that would be expected if laws were having the desired deterrent effect.¹⁷

Another study by Kidman and Heyman of 22 low- and middle-income countries in sub-Saharan Africa measured whether "exposure" to a CEFMU law or policy establishing the legal age of marriage as 18 had an impact on rates of CEFMU. Their findings indicate that such exposure "did not have a significant impact on the odds of marriage overall".¹⁸

Batyra and Pesando focused their analysis on six previously under-studied countries – Benin, Bhutan, Kazakhstan, Mauritania, Nepal and Tajikistan – and found that "age-at-marriage" laws had limited impact on CEFMU prevalence. In the first four countries, the study found

 $^{^{\}rm f}$ Cross-sectional research observes many individuals or – in the case of legal research – jurisdictions simultaneously at a given point in time.

that "age-at-marriage laws" were not effective at reducing "early marriage" at all, and in Nepal and Tajikistan the impact depended on which variables were included in the regression analysis conducted.¹⁹

"[T]here is a long way to go before child marriage is eradicated, and changes in legal provisions are playing only a minimal role, if any. This pushes scholars and policymakers to think about alternative policies that might be more effective in curbing early marriage or delaying age at first union."²⁰

A political economy analysis of CEFMU from the Sindh province of Pakistan found that increasing the minimum age of marriage from 16 to 18 had not decreased CEFMU prevalence. The study notes that despite the increase in the legal age, "there is limited discourse on the subject in the province beyond legal solutions, and less emphasis on girl-centred care planning and prevention."²¹ In this instance, an over-reliance on legal solutions for reducing CEFMU prevalence has led to disappointing results.

There are results from several studies that indicate that **legal reform has increased the** average age of marriage in communities where the pre-reform average age of marriage was low. McGavock, for example, has documented the effect of raising the legal minimum age of marriage from 15 to 18 years in Ethiopia, though marriage was still permitted at age 16 with parental consent. The findings - which are based on analysis of four Demographic and Health Surveys (DHS) - differ between a) the districts where CEFMU was common before the reform and b) the districts where it was not common. In districts where the average age of marriage was below 18 before the legal reform, the probability of marriage under the age of 16 decreased after the law was changed, though the probability of marriage at age 16 or 17 increased. This suggests that some parents waited until they could provide consent for their daughters to marry. In districts where the average age of marriage was already over 18 before the reform, the law was not found to have had an effect on the probability of marriage under 16, though this was already low. In these same districts, the probability of marriage at ages 16 and 17 decreased slightly, whilst the probability of marriage over 18 increased by the same percentage. McGavock's findings also indicated that amongst ethnic groups in Ethiopia with the strongest norms toward CEFMU, the effect of the law was statistically insignificant.22

Wilson studied the effects of "child marriage bans" introduced in 17 low- and middle-income countries between 1995 and 2012. While the study focused on female schooling and labour market outcomes resulting from the bans, trends in the age at marriage and CEFMU prevalence were also observed. The findings indicate that the "child marriage bans" raised the average age of marriage; this was more pronounced in areas with a lower pre-ban average age. No reduction in CEFMU prevalence was found in the overall sample, but there were significant declines in urban areas following the introduction of laws. Wilson suggests this may be due to stronger enforcement of the law in urban contexts.²³

The McGavock and Wilson studies call attention to the distinction between urban and rural populations in their research. Together with other evidence that examines the differential impact of the law across communities, this indicates that the **implementation and impact of the law varies across geographies and communities in the same country**. Urban–rural differences in the use of the parental consent exception to the minimum legal age (18) were noted in research undertaken by UN Women in Morocco. In the past several years, there have been over 30,000 applications per year for legal exemptions, the majority of which

were made for girls residing in rural areas; four out of five of these applications were granted.²⁴ Another example of the differential application of the law – this time, in terms of religious affiliation – is from Sri Lanka, where the 1995 reform that set the minimum age of marriage at 18 did not apply to the Muslim community.²⁵ Research with Muslim communities of faith in Sri Lanka has found that girls continue to be married by their parents as young as 14 years and, in some districts, the rate of registered marriages under 18 has increased in recent years. In Kattankudy, for example, the rate increased from 14% in 2014 to 22% in 2015.²⁶

Very few studies have examined the differential impact of CEFMU laws on prevalence in humanitarian settings or the cross-border impact of the laws. However, **the few studies related to the impact of CEFMU laws in humanitarian settings provide mixed results that are highly context dependent.** Research presented by the Gender and Adolescence: Global Evidence (GAGE) programme found that in Rohingya communities in Bangladesh CEFMU increased immediately following displacement. This was attributed to the challenges of enforcing the Bangladeshi minimum age of marriage law in refugee camps. However, some study participants noted anecdotally that the CEFMU prevalence decreased over time, as law enforcement efforts were enhanced within the refugee camps.²⁷

Research by Save the Children with young refugees in the MENA region showed that part of the challenge with enforcing CEFMU laws was that most people – including adolescents and their parents – did not know about them. Other challenges included economic and social pressures; lack of opportunities; fear of violence; and inconsistencies in the law, which allow for exceptions to be made to the minimum age of marriage. Study participants thought that refugee families were less likely to know about the law than host community families and less likely to register marriages formally due to their lack of familiarity with systems of the host state.²⁸

In Mali, Batyra and Pesando found that there was no greater increase in CEFMU prevalence in areas affected by conflict than in areas less affected by it. They concluded that the increasing union formation in Mali was unlikely to be related to the war.²⁹

An underexplored area of research is the implications for girls who marry in their home context and, due to conflict or other causes, migrate to a jurisdiction where different CEFMU laws apply. The outcome of a 2023 German case involving a girl who had married legally at the age of 14 in Syria illustrated the inadequacy of the law's protective function. In German marriage law, marriages under the age of 16 are invalid, whether enacted in Germany or abroad; as such, the girl's marriage was invalidated on arrival, and she was placed in a shelter for young refugees. A legal challenge to the German Act to Prevent Child Marriages brought by her husband found that the law was incompatible with Germany's Basic Law because it did not address the consequences for girls of the legal invalidation of their foreign marriage (e.g. for maintenance from the state) and because there was no option to validate marriages once both parties reach the minimum legal age in Germany.³⁰

Law reversal and the differential impact on the most marginalised women in Mali

Mali presents a different case study of the law's impact on distinct populations groups. In 2011, the Malian government <u>lowered</u> the age of marriage from 18 to 16 years. This reversal coincided with an increase in CEFMU amongst the most marginalised girls, though not an increase in the overall female population. Authors Batyra and Pesando report that: "Using educational level as the marker of disadvantage, there was an increase in the rate from 59% to 79% amongst the youngest cohort of women allowed to marry at 16. In areas of low development, the increase was 16% amongst the same cohort." The authors highlight various data collection issues that could have impacted on the findings.

Authors from various contexts have documented the unintended impacts of CEFMU and sexual consent laws, including their contribution to continued and increasing prevalence of informal and self-initiated marriages and unions amongst adolescents. Banning formal marriages has led to increases in informal unions in Mexico and has had no documented impact on informal union prevalence in other countries in Latin America. The results of a study in Mexico, where marriage under the age of 18 was banned at the federal level in 2014, found that while the prevalence of formal marriage decreased, informal unions before the age of 18 increased. Their findings suggest that in places where cohabitation is socially acceptable, "minimum-age-of-marriage laws are ineffective at avoiding the detrimental consequences of early unions."³²

This finding was echoed by Abarca Melgar and colleagues in their study of the legal reform in El Salvador, which also provided comparisons with three other countries in Latin America: Ecuador, Guatemala and Mexico. Their findings indicated that gender inequality and early pregnancy were found to be highly prevalent in these contexts and, given that the law does not address these significant drivers of CEFMU across the region, the impact of the law has been minimal.³³

While no studies highlighted the impact of CEFMU laws on informal unions elsewhere in the world, it should be noted that they are common in contexts outside of Latin America. For example, informal unions amongst adolescents remain prevalent in Romani communities in several European countries.³⁴

BOX 3

The impact of banning formal marriage under age 18 in Mexico

In 2014, the Federal Congress of Mexico enacted a law setting the minimum age of marriage at 18 without exception and urged states to incorporate this change into their sub-national legislation. This led to a 48% reduction in registered marriages amongst those under 18. Among mothers under 18, however, Bellés-Obrero and Lombardi found that the reduction in the number of those who were married was offset by an equivalent rise in the number who were in an informal union.³⁵ At the same time, the desired effects of banning formal marriage below age of 18 – including increases in girls' school enrollment and reductions in adolescent birth rates – were found not to be impacted by the law. Further, girls in informal unions could not access the protections granted to those in formal marriages.³⁶

Evidence suggests criminalising and stigmatising sexuality – and failure to respect the evolving capacities of adolescents – is one reason adolescents self-initiate marriage or union. This has been documented most clearly in India, where the Protection of Children from Sexual Offences (POCSO) Act casts all expressions of sexuality under age 18 as exploitative and harmful. Partners for Law in Development's (PLD) research in India shows that, for adolescents in this context, elopement or self-initiated marriage has become an act of agency in response to the stigmatisation and criminalisation of their sexuality.³⁷ PLD found that 65% of the cases brought under the Prohibition of Child Marriage Act (PCMA) that they studied related to consensual marriage between adolescents, while the law was used to address forced marriage in just 4% of cases.³⁸

"In the name of protecting young girls, the amendment has tightened the noose of sexual governance by family, the community, the police, the law and the state, stripping minor girls of all sexual agency and turning young boys in consensual sexual relationships with minor girls into rapists who deserve no mercy." ³⁹

Enfold Proactive Health Trust and UNICEF also found that in approximately 62% of the POCSO cases analysed from three Indian states, the girl claimed to be in a consensual romantic relationship with the (male) defendant. In these cases, parents used the law to break up relationships or marriages where their children had eloped.⁴⁰ A separate study by the same organisations found that in 17 of 25 cases analysed, high courts quashed POCSO cases, and judges clarified that the law was never intended to regulate consensual sexual activity between adolescents but, rather, to address sexual abuse.⁴¹

In Nepal, where the age of sexual consent is 18 and the age of marriage is 20, self-initiated marriages are common. Stigma surrounding relationships between girls and boys during their adolescent years mean that they often feel they have no choice except to marry once their relationships are rumoured to be sexual.⁴² No studies from Nepal have established a causal link between the age of sexual consent law and increased CEFMU prevalence among Nepali adolescents. However, findings from a study by Pandey and Shrestha, who conducted qualitative research in five districts to understand the root causes of CEFMU and consequences for girls, show that self-initiated marriages are on the rise, and one of the reasons for this is the stigmatisation of relationships among adolescents.⁴³

While not always codified in law, social norms related to adolescent sexuality and pregnancy also push girls into marriages or unions and influence the ways in which the law is applied in practice. In LAC, findings from a Plan International study that involved girls across Bolivia, Brazil, Nicaragua, El Salvador, Guatemala, Dominican Republic, Honduras and Peru found that the control of girls' sexuality forces them into CEFMU. When parents find out that their daughters are having sex, they put pressure on male partners to marry them to restore the honour of the family.⁴⁴

"The laws should provide support and information about the rights that girls and adolescents have – not only for them, but also for adults – in order to break with traditions at the community level." ⁵

IMPACTS OF CEFMU AND SEXUAL CONSENT LAWS ON GIRLS' AGENCY AND RIGHTS

As a general rule, the law does not construct "adolescence" separately from childhood. Rather, the law establishes a legal 'binary' between children and adults. Whilst administratively this has worked well, Scott and others have pointed out that there are harms that come from this general approach.⁴⁵ This binary rests on the assumption that limiting choice and agency is a protective measure for those who are legally considered children.

As explained by Hafen: "In a sense, limitations on choice rights represent a form of protection for minors, because they protect minors against their own immaturity and against their vulnerability to exploitation by others." In the face of these traditional legal approaches and assumptions, the emergence of adolescence as a distinct, extended phase of life has created challenges for the recognition of girls' (and all young people's) agency given the balance that must be struck in law between their need for protection and their capacity to make autonomous decisions.

"Therefore, whilst in 'traditional' societies the transition from childhood to adulthood tended to be rapid and distinct, in the context of increasing urbanisation, economic development and globalisation, the state of youth, a period of "in-between-ness" during which a person is no longer a child but not yet fully an adult, is emerging as a significant social category, presenting a challenge to established legal and policy institutions which have historically conferred little attention to youth as a distinct division or class. And yet the prohibition on pre-adult sexual activity, anchored in concerns about the body and ideas about childhood and sexual immaturity are strikingly resilient."⁴⁷

The transition between childhood and adulthood is longer than it used to be, and the traditional markers of that transition are changing. For example, young people are initiating sex at an earlier age and getting married later.⁴⁸ As the gap between age of sexual debut and age of marriage widens, **trends to raise the age of sexual consent and/or align it with the age of marriage are out of step with adolescents' lives.**

The age of sexual consent stipulated in law varies widely across contexts, from 11 to 21 years, though it can differ for married and unmarried individuals and for same-sex sexual acts.⁴⁹ Notably, in some contexts, all sex outside of marriage is considered illegal.⁵⁰ Several countries, including India, Zimbabwe and Botswana, have raised the age of sexual consent to 18 in the recent past; others, including Japan and Ghana, are considering raising the age of sexual consent to be closer to or aligned with the age of marriage.⁵¹ In some countries, the age of marriage and the age of sexual consent are the same (e.g. for girls in India). These and many other laws around the world do not account for the fact that most young people engage in sexual activity before age 18, whether in the context of marriage/union or not.⁵² In West,

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^g Survey response from LAC *Girls Not Brides* member (September 2023). Original Spanish text: "[Las leyes] deberían ser de acompañamiento y de información de los derechos que tienen las niñas y adolescentes, no solamente con ellas, sino con los adultos, para romper con tradiciones en las localidades."

Central, East and Southern Africa, for example, 28% of girls were married before the age of 18, whilst 57% had their sexual debut before this age.⁵³

Santinelli et al suggest that while CEFMU laws express an intention to protect girls (and boys), sexual consent laws are moralistic in nature, aimed at punishing young people for behaviours deemed unacceptable.⁵⁴ This may explain why such laws are resilient in the face of evidence of their harm to adolescents.

"As prevalence of child marriage continues to decline globally, the median age at first marriage increases, and social norms about the acceptability of premarital sex shift in many parts of the world, it is to be expected that more unmarried adolescents will engage in sexual activity in the future." ⁵⁵

Not only is criminalising adolescent sexuality out of step with adolescents' realities, it acts as a barrier to their access to sexual and reproductive health information and services.⁵⁶ A series of studies by the International Planned Parenthood Federation and Coram Children's Legal Center entitled "Overprotected and Underserved" conducted between 2014 and 2017 in eight contexts across Africa, Europe, Latin America, South Asia and Southeast Asia, found that laws relating to sexuality and marriage – alongside norms that impact their implementation – restricted adolescents' access to information and services around their sexual and reproductive health and rights.⁵⁷ This was due to adolescents' fears about how they would be treated when accessing sexual and reproductive health and rights services and, in some places, providers' refusal to provide services to those under the legal age of sexual consent or marriage.⁵⁸

"By not doing a complete analysis of the context, the decision-making capacity of adolescents and young people to form unions is made invisible, the issue of sexual and reproductive rights is made invisible, and children are vulnerable in the discourse as victims of CEFMU."

In Kenya, the tension between the moralistic and public health approaches to adolescents' rights is exemplified in the mixed messages sent by different laws and policies. While the Ministry of Health's adolescent sexual and reproductive health policy states that all adolescents should be provided with the services they need, all sexual acts with those under the age of 18 are considered sexual offences.⁵⁹

In Guatemala, the law that sets the minimum age of marriage at 18 also created a mandatory requirement for the National Registry of Persons to report as a crime any union involving a minor (under age 18). Similar to the impact of the law in India, there is evidence that this has created fear amongst medical professionals in Guatemala, who are resistant to providing services to under 18s. One effect of this law documented during a study undertaken by the Population Council was that community midwives referred pregnant adolescent girls to the official health system for antenatal care rather than providing care themselves. While the study does not elaborate further on the consequences of this for girls' rights, one possible outcome might be that they do not access care at all if required to enter into the formal

h Survey response from LAC Girls Not Brides member (September 2023). Original Spanish text: "Al no hacer un análisis completo del contexto, se invisibiliza la capacidad de decisión de las adolescencias y juventudes para unirse, se invisibiliza el tema de los derechos sexuales y reproductivos, asimismo en el discurso se vulnerabiliza a las infancias como víctimas de los MUITF."

health system, which may or may not be as easily accessible or affordable to them as midwifeled care in their community.

"This presents a serious policy challenge for the public health sector, particularly in contexts where the age of sexual consent is established at the higher end of the spectrum: that many children and young people who are not legally recognised as able to consent to sex are in fact sexually active and in need of sexual and reproductive health services. This dilemma has given rise to a hodgepodge of confused legal, policy and programmatic measures which place various age-based limitations on children's decision-making, in an attempt to negotiate a balance between the legal protection of children, on the one hand, and their access to sexual and reproductive health services on the other."

India is another example of a context where sexual activities involving those under age 18 are considered criminal, which creates a climate of fear for adolescents seeking services that promote sexual and reproductive health and rights. The POCSO Act, which criminalises sexual acts between or with those under 18, contains a mandatory requirement for medical professionals to report cases of girls who are pregnant under the age of 18. Not only does this contradict professionals' obligations to provide adolescent-friendly sexual and reproductive health services as per India's National Adolescent Health Programme (Rashtriya Kishor Swasthya Karyakram – RKSK), but research done by Pitre and Lingam highlights that some doctors are refusing to serve pregnant adolescent girls in order to avoid the legal hassle.

Increasingly, countries are harnessing the punitive power of the criminal law in their efforts to end CEFMU. This carries many risks, given the evidence that the criminal law has the potential to reinforce existing marginalisations and structural inequalities.⁶⁴ Indeed, the evidence available shows that **prioritising punitive legal responses to CEFMU has led to a range of negative impacts on girls' rights and life chances.**

Documentation from Ethiopia and Arab States indicates that punitive approaches to CEFMU drive practices underground, where young women cannot access support or justice.⁶⁵ This is echoed by a study from Malawi, in which participants suggested that the enforcement of the CEFMU law – namely, the imposition of fines – also had the effect of driving the practice underground. Study participants described marriages taking place at night or in different communities to avoid the police finding out about them.⁶⁶ In these contexts, the law is not ending the practice but, rather, making it more difficult for girls within marriages to access justice and support.

In Mexico, a law adopted in 2023 criminalises informal unions between minors or with a minor – with or without their consent. Penalties accrue to those who force, coerce, induce, solicit, manage or offer such a union and stipulates greater penalties when one or both parties are members of an Indigenous or Afro-Mexican community, thus criminalising and discriminating against already-marginalised groups in society.⁶⁷

Beyond these specific examples, several organisations, including UNICEF and Realising Sexual and Reproductive Justice (Resurj), have identified other potential negative and unintended consequences of CEFMU laws in the lives of girls, including:

- harassment or emotional abuse by law enforcement officials when they make a complaint
- social stigma, retaliation and mental distress associated with putting family members in prison if they report an attempted forced marriage

- replacement of efforts to enhance the welfare of young women and their communities
- economic impacts on families and complexities of reclaiming dowry payments and returning the bride price.⁶⁸

Parents have also harnessed the punitive power of the law against their own children. Evidence shows that **parents have weaponised sexual consent laws to undermine adolescent girls' agency and reinforce patriarchal norms.** A study in El Salvador found that youth and adult participants believed that the purpose of the sexual consent law was to prevent young people from being sexually active. This is likely because respondents were only familiar with the sexual consent law being applied when parents disapproved of their daughters' relationship and/or in situations where the adolescent girls became pregnant. ⁶⁹ In India and Nepal, there is ample evidence of parents using the law to break up marriages they disapprove of, including where they are inter-caste. ⁷⁰

At the same time that sexual consent laws are being used to punish adolescents and perpetuate norms related to their sexuality, **evidence suggests that for the girls who are most in need of protection from parents who force them to marry, the law is rarely used.** In India, while the PCMA (and related laws) are most often used by parents to end the self-initiated marriages of their daughters, they are rarely used to protect girls who are forced into marriage by their parents. Of 83 legal cases analysed by PLD, just four involved forced marriage; this was, they found, partly due to the barriers that girls under age 18 face in accessing the justice system.⁷¹

Further, the PCMA does not provide protections for married girls. In India, some marriages are void *ab initio* (void from the beginning) while others are voidable (can be voided upon petition). Marriages that are void *ab initio* include those that were forced or involved trafficking. However, there is a shortage of legal aid lawyers available, particularly for girls; this makes legal remedies difficult to obtain for girls who want to withdraw from marriages. Further, girls whose marriages are voidable are entitled to maintenance payments following the nullification of their marriage, whilst girls whose marriages are void *ab initio* are not.⁷² Two states in India – Haryana and Karnataka – have amended the PCMA and made all marriages under the legal age void *ab initio*. Despite this, in Karnataka, experts and lawyers have agreed that all efforts to end CEFMU must centre on a human rights-based approach that addresses the violations that girls face.⁷³

Many studies, including those in India, Nepal and LAC also highlight the barriers to accessing legal services and the court system to effectively remedy rights violations, particularly for marginalised girls. Notably, legal minors cannot initiate legal proceedings without the support of a guardian or other adult in many contexts and, even where they can, the cost can be prohibitive.⁷⁴

IMPLICATIONS OF THE EVIDENCE FOR LEGAL REFORM AND IMPLEMENTATION

One fairly unanimous, overarching implication in research is the need to position the law as part of a more comprehensive approach to preventing CEFMU. In other words, "raising the age of marriage is an arbitrary move if the actual barriers to good health and education for girls are not addressed."⁷⁵ While many researchers point to the disappointing impact of CEFMU laws, at the heart of this disappointment is the failure of national and sub-national governmental actors to use the law as a catalyst for further action to advance girls' rights and agency. Legal reform is, they argue, a starting point and an opportunity for change, rather than the ultimate change itself.

"We also support the view that such national marriage policies would have a more meaningful impact if part of a comprehensive, multipronged, and context-sensitive approach targeting poverty and rooted social norms in all their forms: including through raising awareness among parents and young people, better integrating women in economic, social, cultural, and political activities, and targeting explicit educational and reproductive-health interventions towards youth."

Survey question: Do you consider that the laws related to CEFMU have or could have an impact on the agency and rights of girls, adolescents and young people? If so, why? If you have any examples or specific information, please share it.

Girls Not Brides member response: "No. No, if it is not accompanied by a series of concrete mechanisms that guarantee rights, for example the right to education and reproductive rights."

Another, less explicit, implication arising from the evidence relates to the **need to engage** with the principle of evolving capacities in relation to issues of marriage and sexuality amongst adolescents. Running through many of the studies is the tension between girls' choices to marry or have sex, on the one hand, and patriarchal norms that are embodied in either the letter of the law or its implementation. Opting to place an "overwhelming trust in the universality of age as a measure of legal capacity"⁷⁷ – whilst simpler administratively – ignores the complexities of girls' lives and the influence of a range of environmental factors on their development, including culture, society, religion, family, community and education.⁷⁸

Several academics have highlighted the tensions between a rights-based approach and a more protectionist, child welfare approach in the context of CEFMU and sexuality. Hanson points out that the evaluation of whether children are able to exercise agency is often evaluated from a normative standpoint about what is right or wrong, rather than from an empirical evaluation of children's actual capacities.⁷⁹ Horii argues that human rights discourse has globalised the normative standpoint that marriage before 18 is wrong, thus rendering a girls' ability to exercise agency to marry below this age as non-existent.⁸⁰ In their estimation, the

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i Survey response from LAC Girls Not Brides member (October 2023). Original Spanish text: "¿Consideran que las leyes relacionadas con los MUIFT tienen o podrían tener un impacto en la agencia y derechos de lxs niñas, adolescentes y jóvenes? ¿Por qué? Si tienen algún ejemplo o información específica, favor de compartirlo. "No. No, si no va acompañado de una serie de mecanismos concretos para garantizar los derechos, por ejemplo el derecho a la educación y los derechos reproductivos."

result is the persistence of protectionist approaches that place girls' rights at the mercy of parents' or other adults' evaluations of what they should or should not do.

"Children's physical immaturity, relative inexperience and lack of knowledge do render them vulnerable and necessitate specific protections. However, in many cases, children are denied opportunities for decision making in accordance with their evolving capacities. Neither legal frameworks, nor policy and practice in most countries throughout the world give sufficient consideration to the importance of recognising and respecting the capacities of children."81

There are limited, but encouraging, examples of how **judicial systems have accounted for girls' and adolescents' best interests and evolving capacities in court cases involving sexual consent and marriage.** In South Africa, a ruling in 2014 recognised that consensual sexual activity between minors was developmentally natural.⁸² In that judgement, the Court found that it was "fundamentally irrational to state that adolescents do not have the capacity to make choices about their sexual activity, yet in the same breath to contend that they have the capacity to be held criminally liable for such choices."⁸³ A similar judgement was handed down in Zimbabwe. In both cases, the courts focused on the harms the law can do and attempted to balance the reality of adolescent sexual activity and their evolving capacities with the desire to protect them against abuse and exploitation.⁸⁴

In India, judges considering cases under the PCMA and POCSO Act can consider girls' own wishes and agency. In some cases analysed by PLD, the courts considered girls' capacities for differentiating between free choice, and coercion, force or enticement; and between their best interests and the relationship itself.⁸⁵

"This leeway in the statute, through which a minor's right to be heard and judicial discretion are made possible, is of paramount importance [...] Rather than compel the courts to adjudicate along binaries of void and voidability—or parental or shelter homes—this possibility allowed the Delhi courts to craft insightful responses that attempted to address the precise vulnerability of girls in such a union. By stipulating financial arrangements, securing commitment for continuing education and livelihood skills training, and mandating regular counselling to secure a girl's reproductive rights, the two cases in Delhi demonstrated that 'best interest' and 'well-being' within lived realities can go far beyond what age-centric parameters allow."

While promising, there may be drawbacks with legal and policy reforms being driven by judicial interpretation. This can, for example, lead to a lack of ownership by the executive and legislative branches of the state and, as a result, mean slow implementation and uptake. In Zimbabwe, court-driven reforms took seven years to be implemented by the state.⁸⁷ In Tanzania, it has been more than four years since the Court of Appeal upheld⁸⁸ the 2016 ruling by the High Court against child marriage, yet the Government is still to amend the Marriage Act to set the minimum age of marriage at 18 with no exceptions.⁸⁹

The shortcomings of the focus on age as an indicator of capacity to marry come into focus when considering the differential impacts of the law across geographies and communities within countries, as well as the multitude of reasons why adolescents marry. These studies highlight the challenges with treating all marriages under age 18 the same, though they still maintain that a minimum age is needed. Indeed, several authors have argued that differentiated legal responses are needed to take account of the full breadth of girls' rights.

Pandey and Shrestha suggest a "conditional criminalisation" approach in Nepal that determines the forms of CEFMU that should be punished through criminal law and those that should not. They suggest that different types of marriage under the legal age be void and others voidable.⁹⁰ In a similar manner, PLD suggests an approach in India that maintains a minimum legal age of marriage while differentiating how the law is applied to different types of marriage, including: forced marriage, parentally arranged marriage, self-arranged marriage, elopement, customary/religious marriages and informal unions.⁹¹

"Instead of child marriage law, I believe it should say the 'age at which individuals can get married.' The words 'child marriage' should be removed, and instead, it should say the recommended age for marriage is 20. Once you get to 19 or 20 it's difficult to see them as a child. For a lot of people who work [in Nepal], in the child rights field, it's difficult because the age of 20 is not the age of adolescence."

Research from LAC stops short of calling for differentiated legal responses but some studies point out the inadequacy of current laws in the region in addressing the commonplace informal unions between adolescents.⁹² For example, research by the Population Council in Guatemala identifies three different types of CEFMU: 1) marriages or unions arranged by parents without their daughters' say; 2) parents arranging marriages or unions to save family morals or hide a pregnancy outside of marriage; and 3) adolescents' self-initiated marriages or unions. The authors argue that new, responsive approaches are needed to address how marriage has evolved, including mandating comprehensive sexuality education.⁹³

Without visibility, girls in different types of marriages or unions become invisible in the eyes of the law. In Costa Rica, the government has claimed that the age of marriage law has resulted in the elimination of CEFMU. However, the national statistics on registered marriages used to make this claim hide the phenomenon of informal unions, which are harder to measure nationally and, in the words of Porras-Solís et al, provide a way "around the law". 94 Without recognition in law or visibility in statistics, the result for girls in informal unions is that they are pushed out of the formal system, with the commensurate risks to their health and well-being.

Complementing the finding with regard to differentiating legal responses is the need to **question the appropriateness of criminal, punitive approaches in relation to CEFMU and adolescent sexuality**, given the evidence of the harm caused by criminal justice systems generally and the specific evidence that girls bear a disproportionate burden of the impact in cases involving CEFMU.

"...there is something misguided in seeking stronger forms of criminalization through the law when there does not exist the necessary understanding of what is undergirding early marriage at the present time, and we are even less well informed about the actual conditions under which the situation would improve for the girls themselves." ⁹⁵

For example, in India, girls whose relationships are broken up through the application of sexual offences laws often have limited options, including returning to their parental home or living in a shelter until they reach the age of majority. In their parental home, they may experience violence or other harms, and in shelters they have limited access to opportunities

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^j Focus group discussion with *Girls Not Brides* members in Nepal (September 2023).

for education or employment.⁹⁶ Further, they may face financial ruin if a spouse or parent upon which they depend is imprisoned.⁹⁷

Save the Children's work in MENA has highlighted that, in some places, the law punishes girls for not reporting their own marriages, including by taking children away from them. 98 In yet other contexts, girls may not want to report violations of their rights where they feel that their parents will incur financial or other penalties. Where a punitive approach is their only option for remedy, it leaves girls trapped and unable to harness the law for their own protection. A recent study regarding forced marriage in England and Wales highlighted that, when given a choice, girls and young women did not want to pursue criminal proceedings against their parents; this was seen as an excessive response in relation to what they experienced. 99

Broader shortcomings of the criminal justice system should also be considered, particularly given the calls for stronger enforcement and greater punishments as so-called solutions to the limited impact of laws. EQUIS Justicia para las Mujeres, a Mexico-based organisation that seeks to enhance access to justice for women, argues that while there may be criminal penalties in place, impunity still exists in practice due to the law's failure to "activate" the justice system and/or because of barriers faced by survivors in reporting crimes.¹⁰⁰

"The attempt to reduce violence against women through the creation of new crimes that will not be prosecuted, or even through higher penalties that will never be imposed, investigated or solved by the criminal justice system, only resolves the problem in discursive terms and moves us further away from effective solutions that prevent violence." 101,k

Evidence on the detrimental effects of the criminal law on the agency and rights of (young) women and other populations who have been marginalised in the contexts of abortion, violence and HIV may provide useful insight in understanding the value of the criminal law in the context of CEFMU.¹⁰²

"Global efforts to end VAW [violence against women] are impressive and important. The ongoing challenge, particularly in the Global North, is to strike a good balance between aggressive state action against violent behaviour and state restraint to enable the unfolding of social processes that generate legitimate norms and empower women." ¹⁰³

Alongside considerations of *which* laws are appropriate, several studies pointed to the need to consider *how* laws are implemented in different communities and geographies. In many contexts, **social norms are stronger than legal norms**, **highlighting the need to contextualise the implementation of the law, even within countries.**

This was exemplified by research conducted in Indonesia that found that the failure of the National Marriage Act to have an impact on the prevalence of CEFMU lay in the fundamental opposition within certain segments of society to the law's tenets. Survey data indicated that, for most respondents, social and religious recognition of marriage was far more important than legal recognition. In other words, so long as marriages were done in accordance with

k Original Spanish: "Pretender disminuir la violencia hacia las mujeres mediante la creación de nuevos delitos que no serán denunciados, o a través de penas más altas para delitos que no suelen ser procesados, investigados ni resueltos por el sistema de justicia penal solo resuelve el problema en términos discursivos y nos aleja de soluciones eficaces preventivas de violenca."

Islamic law, people saw no need to ensure that their marriages complied with the national law.¹⁰⁴

Many, if not most, studies hint that the law may be ineffective without addressing the norms that underpin CEFMU. A 2022 synthesis of CEFMU-related interventions found that: "Programmes that take a multi-level approach to shifting individual and collective attitudes and norms can have a significant impact on both child marriage rates and the harmful underlying gender norms that surround the practice." The synthesis also highlighted the need to consider the interaction between social norms and legislation. In this regard, the impact of laws that address female genital mutilation may provide useful comparisons and learnings for consideration.

"Sometimes even the community leaders, they are involved complicitly in the process of child marriage. They attend the weddings, sometimes they might even pressure somebody to take back the appeal. These are some of the hassles and hurdles for implementation of the law that we face in the field. Everybody knows there are laws [in Nepal] that mean three years of jail and a certain amount of fine, but we have seen that very few appeals reach a verdict. Also, when you make an appeal, the person has the right to remain anonymous. But later in the process, you find out that the police ask the person to identify themselves, and so there is a threat or a risk to the person who made the appeal. [This is] because they are a person who belongs to that community, and it can become very uncomfortable and difficult to manage their relationships. This is a practical problem for the implementation of the law."

Not only are some laws misaligned with social norms, but also there are often contradictions within domestic legal frameworks. CEFMU and sexual consent laws live within a broader legal ecosystem, and **laws should be harmonised with each other to avoid confusion**, **which can compromise girls' rights.** In Malawi and Nepal, the age of marriage is higher than the age at which one becomes a "legal adult". In Malawi, the Constitution and the Marriage, Divorce and Family Relations Act set the minimum age of marriage at 18, while the child protection law defines a child as a person below age 16.108 There is a similar situation in Nepal, where the age of marriage is 20 and the age of majority is 18.109 This creates confusion about who is a "child" for the purposes of understanding "child marriage".

"The words 'child marriage' should be removed, and instead, it should say the 'recommended age' for marriage is 20. Once you get to 19 or 20, it's difficult to see them as a child. [For] a lot of people who work here in the child rights field, it's difficult because the age of 20 is not the age of adolescence."

In Uganda, different laws stipulate different ages for marriage amongst different populations. Whilst the national Constitution and Children's Act set 18 as the minimum age of marriage, an older Marriage Act (1904) sets the legal age as 21 for civil marriages with a parental consent exception at 18. The Customary Marriage (Registration) Act set the age as 18 for boys and 16 for girls, whilst marriage laws specifically for Hindus and Muslims are different. A 2023 Constitutional Court case in Uganda confirmed that the age of marriage in Uganda is 18, voiding the Customary Marriage (Registration) Act section that allowed for marriage of girls aged 16. However, a bill that would harmonise the age of marriage in law has been pending

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¹ Focus group discussion with *Girls Not Brides* members in Nepal (September 2023).

 $^{^{\}rm m}$ Focus group discussion with Nepal $\it Girls$ Not Brides members (September 2023).

in the parliament since 2017. Sri Lanka is another example of a country that has a specific marriage law for Muslims, for whom the national minimum age of marriage (18) does not apply.¹¹²

Many studies also call for the harmonisation of customary or religious law with national law, advocating that national CEFMU laws that set the age of marriage at 18 should take precedence. In Kenya, for example, Warria found that poorly implemented national CEFMU laws are superseded by customary laws, particularly in rural areas. This is, at least in part, due to poorly trained duty officers and deeply ingrained cultural norms.¹¹³

Even where laws are harmonised, government protocols and practices may not be aligned with the law. In Guatemala, even though CEFMU is prohibited under 18 by law, a study by Mesa a Favor de las Niñas y Adolescentes showed that civil officers continued to register marriages under the legal age. 114 This was, at least in part, because registry officials had not been trained on the minimum age of marriage decree and internal procedures had not been adapted. 115 Similarly, in Peru, the National Registry of Identification and Civil Status documented 4,375 marriages involving minors, 464 of which involved marriages with at least one party under the age of 16, for which there is no legal exception. 116

Several human rights instruments and reports reinforce the importance of compulsory registration of all marriages and births for effective monitoring of CEFMU and the impact of the laws.¹¹⁷ However, there are often bureaucratic barriers to birth registration and, without this documentation, it is difficult to prove one's age at the point of marriage.¹¹⁸ With varying degrees of success, **strengthening birth and marriage registration systems, including training for registry officials, has been utilised to increase the effectiveness of CEFMU laws.**

In Bangladesh, improving birth registration has been part of efforts to ensure the successful implementation of CEFMU laws. Despite this, data indicates that only 37% of children below the age of 5 are registered; in other words, 10 million Bangladeshi children do not exist in the eyes of the law. Further, many women are not aware of registration services. Additionally, some studies have shown that government officials can be bribed into providing fake birth certificates ahead of an impending child marriage. In relation to marriage registration in Bangladesh: while this is compulsory under all marriage laws in the country, there is no consequence for failing to register.¹¹⁹

Scholar Mary E John has pointed out the tension in the law between marriage registration and "child marriage". Compulsory marriage registration has been framed as a way of ensuring that marriages under the legal age do not become legal. However, where parties are unable to register their marriage due to age, they may be precluded from legal protections available for married couples. John quotes another scholar in saying: "the issue of how to successfully balance the prevention of child marriage in law with protecting the economic and legal rights of parties to child marriage remains unresolved".¹²⁰

Another way that governments and civil society actors have sought to increase the effectiveness of CEFMU law is through awareness raising. Evidence shows that legislative change is not enough to shift behaviour,¹²¹ and that **legal literacy**, **particularly following legal reforms that change the minimum age of marriage**, **plays an important role in ensuring impact**. The manner in which this is undertaken may be different across communities within the same country, given norms around the importance of and compliance with the law; the historical marginalisation and poor treatment by law

enforcement officials of certain groups; or lack of awareness of the law. Further, laws need to be translated into local languages so that they are accessible to all.¹²²

McGavock's study highlighted the importance of the Ethiopian government's information campaign in combating low levels of legal literacy and in ensuring the law's effectiveness. Amongst other activities, watchdog committees were galvanised to raise awareness at the sub-regional and sub-district levels, and to mobilise community members to speak out.¹²³

In Kenya, Warria and colleagues point to the importance of raising awareness and involving men – particularly those benefitting from child marriage – in prevention and response efforts.¹²⁴

Contradicting these studies, however, is evidence from a small study in Bangladesh in which Economic Development and Institutions (EDI) tested the hypothesis that formal laws can influence social norms and marriage behaviour in a setting with weak law enforcement. They administered two different randomised informational video "treatments" concerning the CEFMU law in Bangladesh and found that it led to a change in participants' behaviours and attitudes. However, follow up after five and ten months showed an *increase* in CEFMU in households where the father or family elders had seen the informational video, highlighting the potential for a "backlash effect" in communities where the law contradicts social norms.¹²⁵

In addition to their role in enhancing legal literacy, **civil society organisations play an important role in using the law to advocate for justice and accountability for violations of girls' rights.** Of a total of 171 organisations that responded to a recent *Girls Not Brides* legal survey, 108 organisations (over 63%) confirmed that they use legal advocacyⁿ as a tool to protect and advance human rights and achieve their advocacy goals. A further 46 organisations (almost 27%) indicated that whilst they do not currently use legal advocacy they are interested in learning how to do it.

In India, civil society organisations that have established trust and relationships with their communities are using the law to promote girls' rights outside of the legal system. When they become aware of an impending child marriage, rather than immediately commencing legal proceedings, they are able to negotiate informally with families and community members, with the law as leverage. Due to their investment in girls' and communities' well-being, they are also able to offer support for girls' continued development.¹²⁶

Civil society organisations have been involved in legal challenges of CEFMU laws that are discriminatory. In 2018, two organisations in Mali – the Association Pour le Progrès et la Défense des Droits des Femmes Maliennes and the Institute for Human Rights and Development in Africa – brought a case to the African Court on Peoples' and Human Rights, challenging the compliance of domestic laws with provisions of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol), the African Charter on the Rights and Welfare of the Child, and CEDAW. The court concluded that Mali violated regional and international standards and norms on the minimum age of marriage.¹²⁷

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Legal advocacy was defined as the process used for advocating for legal change or reform of policies, including on how laws are implemented. It is often based on international human rights standards, which states have committed to respecting.
 This may involve, for example, submitting shadow reports to UN or regional human rights bodies.

In LAC, organisations are advocating with regional and national bodies to promote girls' human rights in relation to CEFMU. Coordinadora Institucional de Promoción por los Derechos de la Niñez (CIPRODENI) in Guatemala has engaged with the Inter-American Commission on Human Rights and SENDAS in Ecuador used political advocacy in the creation, reform and updating of local and national laws relevant to CEFMU.º Another initiative in the region is "Mira que te miro" – an observatory created by civil society organisations for advocacy and accountability purposes; one of the issues monitored by the initiative is CEFMU.¹²⁸

Whilst civil society plays an important role in advocating for girls' rights, **more needs to be done to ensure that girls can access the justice system themselves**. Girls are often unaware of or unable to access the legal system and, in several contexts, evidence shows that they are not seeking justice for CEFMU-related violations of their rights.¹²⁹ In Nepal and India, for example, laws used to punish those who self-initiate marriage are enforced too readily, while others intended to protect girls from forced marriage are not enforced enough.¹³⁰ PLD's study found that just 3.5% of cases to nullify a marriage or seek legal action were initiated by girls, with the remainder initiated by parents, relatives or other adults.¹³¹

Girls' lack of access to the legal system may be due to age-related restrictions that require an adult to bring a claim on behalf of a minor; barriers in receiving legal aid to be able to afford representation and court costs; and/or the low availability of lawyers to represent girls. Even where girls are able to report violations to law enforcement officials, PLD's research illustrates how the legal system in India pushes back on those who try to access it without lawyers, social capital or resources. The system is not available to girls who have the least power in their families and communities.¹³²

Law enforcement officials are often an entry point into the legal system and may be a barrier to girls taking cases beyond the police station. Pandey and Shrestha's study illustrates that law enforcement officials are often driven by their own, personal beliefs and do not enforce laws meant to protect girls.¹³³

Beyond girls' right to access justice and receive remedies for rights violations, they have the right to participate in any and all decisions that affect them. The Convention on the Rights of the Child articles 5 and 12 highlight that under-18s should have the right to participate and be heard in relation to decisions that affect them, in a manner that is consistent with their evolving capacities. This means that girls have the right to be consulted on the formulation and implementation of laws to ensure that they address their concerns, needs and rights.

"The role of civil society organisations is to be companions and observers that encourage the meaningful participation of youth, adolescents and children in advocacy spaces. The role of young people, adolescents and children is to occupy the spaces where they can talk about the CEFMU and make proposals so that the legislative processes are not adult-centric."

[°] Responses to Girls Not Brides legal survey, 2023.

^p Survey response from LAC *Girls Not Brides* member (October 2023). Original Spanish text: "El rol de las organizaciones de la sociedad civil debe ser de acompañantes y observadoras para alentar la participación informada de las juventudes, adolescencias e infancias en espacios de incidencia. El rol de las juventudes, adolescencias e infancias es de ocupar los espacios donde se pueda hablar de los MUITF y hacer propuestas para que los procesos legislativos no sean adultocéntricos."

The majority of research does not consider children's or young people's voices in relation to the law; indeed, only two studies cited herein included them as participants. The findings presented in the Young Voices report from India indicate that young people want to be consulted in the process of amending and implementing laws that concern their lives. ¹³⁴ Save the Children's study in the MENA region that consulted young people who are refugees also reflected a similar finding. ¹³⁵

NEXT STEPS

The evidence presented in this report should compel advocates, researchers and donors to consider the impacts of CEFMU and sexual consent laws on girls and, in turn, reconsider approaches to legal advocacy and reform. This section presents two next steps for *Girls Not Brides* to take forward the findings presented in this report. The first is a series of questions that are intended to evoke discussion and deliberation among member organisations and allies, and the second is a set of pressing research needs.

Discussion questions

- 1. How does the law complement/work with other sectors and interventions for the transformation of gender norms that underlie CEFMU?
- 2. What assumptions about the way that the law works underlie our legal advocacy? For example, do we assume that the law has a deterrent effect in relation to certain acts or behaviours? If so, does this assumption apply across all communities?
- 3. Are there examples of laws, policies or strategies for which evidence exists of their positive impact on CEFMU prevalence or girls' rights and agency? What makes these examples positive? What learnings can we draw out from their implementation?
- 4. As it currently stands, is the international/regional human rights framework adequate to help states understand their obligations to respect, protect and fulfil girls' rights in relation to CEFMU? If not, what further guidance is needed and from which bodies?
- 5. How should human rights bodies and national legislative bodies conceptualise adolescents' evolving capacities in relation to decisions about sexuality and marriage? Is age a sufficient indicator of their capacity to make such decisions? If not, then what could replace it in law?
- 6. Is CEFMU prevalence a "good" or "fair" indicator in relation to the impact of child marriage or sexual consent laws? What impacts do we expect these laws to have? How can the law achieve these impacts and over what time period?
- 7. Does the finding that CEFMU laws have limited impact on CEFMU prevalence resonate with experience in all contexts and with all populations? What about with marginalised communities and those in humanitarian settings?
- 8. How do the findings with respect to the use of the criminal law resonate with understandings of how the law operates in various contexts?
- 9. How can legal empowerment initiatives enhance adolescents' understanding of their rights and increase their agency in decision making related to marriage, sexuality, health and education?

- 10. Where law makers are contemplating raising the age of sexual consent to align with the age of marriage, what rationale are they using? What evidence would be useful to present to them for advocacy purposes?
- 11. How strong are the rule of law norms in various contexts and in various populations within each context? How do these norms shape the population's relationship with the law and its impact?
- 12. What learnings can be drawn from the impact of laws that address female genital mutilation, abortion, violence against women and girls, and HIV?
- 13. In LAC and other contexts where informal unions are common, how should the legal system address such unions amongst adolescents? Which protections should adolescents in informal unions be afforded to mitigate against rights violations?
- 14. Which roles should/does civil society including young people have in formulating and implementing CEFMU laws? Are there examples of where this has happened that could provide learnings for other contexts? What are the implications of shrinking civil space for continued civil society engagement?

Future research

- 1. **Implementation of the law**: Whilst there is a lot of existing research on the *content* of laws and the extent to which they align with human rights standards, research often stops short of providing an understanding of how the law translates into practice. In other words, who is using the law, in which capacities and for what purposes. The evidence illustrates that there is an absence of information about the law and few mechanisms to ensure that girls can access the justice system. Further, the law's focus is often on punishing a perpetrator, rather than supporting survivors to exercise their rights. More research is needed to understand girls' entry points into the legal system, as well as ways to eliminate the barriers they face in accessing justice.
- 2. **Informal unions in diverse contexts**: While there is some existing evidence on the impact of CEFMU and sexual consent laws on informal unions, it is limited to the LAC region. There are, however, mentions in various reports of informal unions being common in other regions and amongst certain populations, including in Europe and West, Central, East and Southern Africa. Further research is needed on the laws that regulate informal unions in various contexts and the ways in which CEFMU and sexual consent laws impact the prevalence of informal unions amongst adolescents both in LAC and in other regions.
- 3. **Varying approaches to criminalisation**: The evidence shows that there are a variety of approaches to criminalisation. Further research is needed to understand the breadth of these approaches and their impact on girls, their families and communities, as well as the extent to which criminalisation inhibits girls from accessing the remedies that the laws intend to facilitate.
- 4. **Balancing autonomy and agency with protection**: Many studies bring to the surface the tension that exists in the law between girls having agency over their bodies and lives, on the one hand, and being in need of protection, on the other. No jurisdiction has a clear, consistent approach to applying the "evolving capacities" alongside a minimum age of marriage, though some judicial decisions have used it. There is evidence that failing to recognise girls' agency and autonomy has an impact on their rights, particularly their

sexual and reproductive rights. More research is needed on how this principle can be integrated into legal approaches.

- 5. Operation of the law in specific socio-cultural contexts between and within jurisdictions: The evidence illustrates that the law does not operate in a vacuum; it is highly context-dependent in its implementation and impact. Further understanding is needed around the "expressive" purpose of CEFMU law in other words, what is the effect that the law has on validating or contradicting social norms? What are the socio-cultural factors that impact the law's operation? The evidence also shows that the law may be received in different ways in specific subsets of the population. How do we know which ones those are? What are the determinants of whether or not the law takes hold in specific populations in each jurisdiction/country (rural, urban, resource-poor, refugee communities, marginalised or ethnic minority communities)? And, how do laws operate in communities where customary or religious law exists?
- 6. **Girls' perspectives on CEFMU and sexual consent laws**: A relatively unexplored area of research is understanding, from adolescents' perspectives, how the law shapes their lives and decision making in relation to marriage and sexuality. Is it a factor in those decisions for them? How does it impact other, related decisions about health, education and employment? How do the laws impact the decision making of marginalised groups of adolescents, including those with disabilities; LGBTQIA+ youth; married adolescents; adolescents from different socio-economic groups; and those in humanitarian settings?

CONCLUSION

Globally, advocates for gender equality invest time and resources in changing laws and policies that address human rights violations, provide survivors with access to justice, and also deter the (re)occurrence of such violations. This work is important and merited. Enacting laws and policies is one way in which governments can send strong messages about the commonly held values of society, as well as their own intentions and commitments.

The evidence presented herein does not negate this crucial work; rather, it compels us to do more to understand the roles that the law does and does not play in the face of the complex drivers of CEFMU, including patriarchal norms, poverty and low levels of education. Understanding the law's potential and its limitations in relation to gender equality broadly and CEFMU generally will help to focus advocacy on the realistic prospects of legal reform and implementation, as well as the role it plays in broader gender-transformative approaches.

ANNEX 1: LIST OF RESOURCES

This annex contains the list of the resources shared by *Girls Not Brides* staff members and/or found through searches conducted for the evidence review. Not all were reviewed in full, given that some dealt with a broad array of issues unrelated to the research questions for this review. The regional classifications used (Africa, Arab States, Asia and LAC) are those used by *Girls Not Brides*; those that cut across more than one region are classified as "Global".

| Resource | Region | Countries |
|--|--------|--------------------------------|
| Andrea J. Melnikas, Nancy Mulauzi, James Mkandawire and Sajeda Amin (2021) Perceptions of minimum age at marriage laws and their enforcement: qualitative evidence from Malawi | Africa | Malawi |
| GD Kangaude, D Bhana & A Skelton (2020) Childhood sexuality in Africa: A child rights perspective | Africa | South Africa, Kenya, Uganda |
| Admark Moyo (2023) Child Marriage and the Law in Southern Africa | Africa | Multiple |
| Equality Now (2023) Ending Child Marriage in Southern Africa: Gaps and Opportunities in the Legislative Frameworks | Africa | SADC |
| Batyra and Pesando (2023) Increases in child marriage among the poorest in Mali: 'Reverse policies' or data quality issues? | Africa | Mali |
| Svanemyr, Chandra-Mouli et al (2013) The contribution of laws to change the practice of child marriage in Africa | Africa | Multiple |
| Elden and Mosleh (2015) Impact of Change in Law on Child Marriage in Egypt A Study in Two Egyptian Governorates | Africa | Egypt |
| McGavock (2021) Here waits the bride? The effect of Ethiopia's child marriage law | Africa | Ethiopia |

| Bright Opoku Ahinkorah, Joshua Okyere, John Elvis Hagan Jr, Abdul-Aziz Seidu, Richard Gyan Aboagye & Sanni Yaya (2021) The missing link between legal age of sexual consent and age of marriage in sub-Saharan Africa: implications for sexual and reproductive health and rights | Africa | Ghana |
|---|--------|----------|
| Warria, A. (2019). Child Marriages, Child Protection and Sustainable Development in Kenya: Is Legislation Sufficient? African Journal of Reproductive Health / La Revue Africaine de La Santé Reproductive, 23(2), 121–133. https://www.jstor.org/stable/26772609 | Africa | Kenya |
| Equality Now (2023) Ending Child Marriages in Southern Africa: Domesticating the SADC Model Law on Child Marriage | Africa | SADC |
| UNFPA, SADC Parliamentary Forum, <i>Girls Not Brides</i> (2018) A Guide to Using the SADC Model Law on Eradicating Child Marriage and Protecting Children Already in Marriage | Africa | Multiple |
| African Union (2018) Marriage laws in Africa | Africa | Multiple |
| ECOWAS Commission (2019) Road Map on prevention and response to child marriage 2019-2030 | Africa | Multiple |
| International Planned Parenthood Federation, Coram Children's Legal Center (2014) Over-protected and Under-served: A multi-country study on legal barriers to young people's access to sexual and reproductive health services (Senegal case study) | Africa | Senegal |
| The Attorney General Vs Rebeca Gyumi Z. Court of Appeal, Tanzania, 8 July 2016, Civil Appeal No 204 of 2017. Judgement available at: https://d3n8a8pro7vhmx.cloudfront.net/equalitynow/pages/1911/attachments/original/1571911712/20 191023145222.pdf?1571911712 | Africa | Tanzania |
| UNFPA, Spotlight Initiative, SADC Parliamentary Forum, and Equality Now (2023) Ending Child Marriage In Eastern And Southern Africa: Challenges In Implementing Domestic Laws And The SADC Model Law On Child Marriage | Africa | Multiple |

| Save the Children (2021) Married by Exception: Child marriage policies in the Middle East and North Africa | Arab States | Lebanon, Egypt, Iraq and Turkey |
|---|-------------|------------------------------------|
| Islamic Relief (2018) An Islamic human rights perspective on early and forced marriages | Arab States | Multiple |
| Binita Pandey and Sumeera Shrestha (2020) Redefining the early and child marriage and reconsidering its elimination in Nepal, through absolute criminalisation | Asia | Nepal |
| Plan and <i>Girls Not Brides</i> (2020) A Review of the Effectiveness of the New Legal Regime to Prevent Child Marriages in Bangladesh: Call for Law Reform | Asia | Bangladesh |
| Young Voices (2020) National Report (India) | Asia | India |
| Enfold Proactive Health Trust & UNICEF (2022) "Romantic" Cases under the POCSO Act: An Analysis of Judgments of Special Courts | Asia | India |
| Enfold Proactive Health Trust, UNICEF, UNFPA (2022) Implication of the POCSO Act in India on Adolescent Sexuality: A Policy Brief | Asia | India |
| Girls Not Brides (2023) Efficient solutions to end child marriage must go beyond outlawing this practice | Asia | India |
| Amrit Amirapu, M Niaz Asadullah, and Zaki Wahhaj (2020) Can Child Marriage Law Change Attitudes and Behaviour? Experimental Evidence from an Information Intervention in Bangladesh | Asia | Bangladesh |
| Partners for Law in Development and American Jewish World Service (2022) A case for differentiated legal responses to child, early and forced marriage and unions: Lessons from India for a global audience | Asia | India |
| Partners for Law in Development (2021) Child Marriage Prosecutions in India - Case Law Analysis of Actors, Motives and Outcomes 2008-2017 | Asia | India |

| Singh M, Shekhar C, Shri N (2023) Patterns in age at first marriage and its determinants in India: A historical perspective of last 30 years (1992–2021) | Asia | India |
|---|------|-------------|
| Horii (2020) Walking a thin line: Taking children's decision to marry seriously? | Asia | Indonesia |
| Socio Legal Information Centre (2022) The Status of Child Marriage in India: A Guide for NGOs and CSOs on Using the Law to End Child Marriages in India | Asia | India |
| Iswandi Iswandi, Andi Yaqub (2019) Implications of The Revision of Law No. 16 of 2019 Against the Practice of Child Marriage | Asia | Indonesia |
| Plan International Asia (2019) Their Time is Now – Time to Act | Asia | Multiple |
| Population Council (2021) Child Marriage in Sindh: A Political Economy Analysis and Policy Options | Asia | Pakistan |
| International Planned Parenthood Federation, Coram Children's Legal Center (2018) Overprotected and Underserved: The influence of Law on Young People's Access to Sexual and Reproductive Health in Nepal | Asia | Nepal |
| International Planned Parenthood Federation, Coram Children's Legal Center (2017) Overprotected and Underserved: The influence of Law on Young People's Access to Sexual and Reproductive Health in India | Asia | India |
| International Planned Parenthood Federation, Coram Children's Legal Center (2017) Overprotected and Underserved: The influence of Law on Young People's Access to Sexual and Reproductive Health in Philippines | Asia | Philippines |

| International Planned Parenthood Federation, Coram Children's Legal Center (2017) Overprotected and Underserved: The influence of Law on Young People's Access to Sexual and Reproductive Health in Sri Lanka | Asia | Sri Lanka |
|--|--------|--------------------|
| International Planned Parenthood Federation, Coram Children's Legal Center (2018) Overprotected and Underserved: The influence of Law on Young People's Access to Sexual and Reproductive Health in Malaysia | Asia | Malaysia |
| Tim Heaton, Mark Cammack and Lawrence A. Young (1996) Legislating Social Change in an Islamic Society—Indonesia's Marriage Law | Asia | Indonesia |
| Sabra Zahid and Hyshyama Hamin (2019) Long Overdue: Breaking down the minimum age of marriage in Sri Lanka | Asia | Sri Lanka |
| Amrit Amirapu, M Niaz Asadullah, and Zaki Wahhaj (2020) Can Child Marriage Law Change Attitudes and Behaviour? Experimental Evidence from an Information Intervention in Bangladesh | Asia | Bangladesh |
| Partners for Law in Development (2019) Grassroots Experiences of Using the Prohibition of Child Marriage Act 2006 | Asia | India |
| Anitha & Gill (2023) Understanding protection and prevention responses to forced marriage in England & Wales | Europe | England & Wales |
| International Planned Parenthood Federation, Coram Children's Legal Center (2014) Over-protected and Under-served: A multi-country study on legal barriers to young people's access to sexual and reproductive health services (United Kingdom case study) | Europe | United Kingdom |
| Santelli et al (2018) Criminalising sexuality or preventing child marriage: legal interventions and girls' empowerment | Global | N/A |

| UNICEF (2020) Child marriage and the law: Technical note for the global programme to end child marriage | Global | N/A |
|---|--------|----------|
| Equality Now (2022) Words And Deeds: Sex Discrimination In Marital Status Laws | Global | Multiple |
| Girls Not Brides (2017) The case for a minimum age for marriage of 18 | Global | N/A |
| Girls Not Brides (2019) Age of marriage vs age of sexual consent | Global | N/A |
| UN Women and Equality Now (2023) Legislating and enforcing the minimum age of marriage: A comparative study of experiences and lessons learned in ending the legalization of child marriage | Global | Multiple |
| Human Rights Council Resolutions on child, early and forced marriage (2015, 2017, 2019, 2021 and 2023) | Global | N/A |
| OHCHR (2023) Adverse impact of forced marriage on the full and effective enjoyment of all human rights by all women and girls | Global | N/A |
| UN General Assembly Resolutions on child, early and forced marriage (2016, 2018, 2020, 2022) | Global | N/A |
| Commonwealth Lawyers Association (2018) The Role of the Law in Eliminating Child Marriage in the Commonwealth: Why more action is needed | Global | Multiple |
| UNFPA (2017) Harmonizing the Legal Environment for Adolescent Sexual and Reproductive Health and Rights | Global | N/A |

| Girls Not Brides (2022) Evidence review: Child marriage interventions and research from 2020 to 2022 | Global | N/A |
|--|--------|----------|
| Horii (2019) A blind spot in international human rights framework: a space between tradition and modernity within the child marriage discourse | Global | Multiple |
| Petroni et al (2018) Protection versus rights: age of marriage versus age of sexual consent | Global | N/A |
| Yarrow et al (2014) Can a restrictive law serve a protective purpose? The impact of age-restrictive laws on young people's access to sexual and reproductive health services | Global | Multiple |
| Hanson (2016) Children's participation and agency when they don't 'do the right thing' | Global | N/A |
| Malhotra et al (2011) Solutions to end child marriage: What the evidence shows | Global | Multiple |
| Wodon et al (2017) Child Marriage Laws and their Limitations | Global | Multiple |
| UN Women (2021) Shaping the law for women and girls: Experiences and lessons from UN Women's interventions (2015-2020) | Global | Multiple |
| Wilson (2022) Child Marriage Bans and Female Schooling and Labor Market Outcomes: Evidence from Natural Experiments in 17 Low- and Middle-Income Countries | Global | Multiple |

| Rachel Kidman, Jody Heymann (2016) Do protective national marriage age policies reduce the practice of child marriage? | Global | Multiple |
|--|--------|---|
| UN Women (2011) Progress of the World's Women: In pursuit of justice | Global | Multiple |
| Shipra Jha, Yvette Kathurima, Eugenia Lopez Uribe, and Nerida Nthamburi (2022) Building a Global Movement to Respond to Child Marriage | Global | Multiple |
| Batyra et al (2021) Trends in child marriage and new evidence on the selective impact of changes in age-at-marriage laws on early marriage | Global | Benin, Mauritania, Kazakhstan, Butan, Nepal, Tajikistan |
| Gender and Adolescence: Global Evidence (2021) Through their eyes: Exploring the complex drivers of child marriage in humanitarian contexts | Global | Multiple |
| Joint general recommendation No. 31 of the Committee on the Elimination of Discrimination against Women/general comment No. 18 of the Committee on the Rights of the Child on harmful practices (2014) | Global | N/A |
| Revised joint recommendation CEDAW31/CRC 18 | Global | N/A |
| CRC General comment No. 20 (2016) on the implementation of the rights of the child during adolescence | Global | N/A |
| Svanemyr & Chandra-Mouli (2015) Letters to the Editor: Consistent Laws and Child Marriage | Global | N/A |
| Collin and Talbot (2017) Do Age-of-Marriage Laws Work? Evidence from a Large Sample of Developing Countries | Global | Multiple |

| Malhotra A, Elnakib S (2021) 20 Years of the Evidence Base on What Works to Prevent Child Marriage: A Systematic Review | Global | Multiple |
|---|--------|--|
| RESURJ (2020) Beyond criminalization – A Feminist Questioning of Criminal Justice Interventions to Address Sexual and Reproductive Rights Violations | Global | Multiple |
| Megan Arthur, Alison Earle, Amy Raub, Ilona Vincent, Efe Atabay, Isabel Latz, Gabriella Kranz, Arijit Nandi & Jody Heymann (2018) Child Marriage Laws around the World: Minimum Marriage Age, Legal Exceptions, and Gender Disparities | Global | Multiple |
| International Planned Parenthood Federation, Coram Children's Legal Center (2014) Over-protected and Under-served: A multi-country study on legal barriers to young people's access to sexual and reproductive health services (El Salvador case study) | LAC | El Salvador |
| Population Council (2018) Forced child unions: From legal reform to social disruption—Formative research in five communities in Chisec, Alta Verapaz | LAC | Guatemala |
| Cando C, Gabriela E (2018) Matrimonio infantil en el Ecuador, dinámicas y problemáticas | LAC | Ecuador |
| Abarca Melgar, Erika Marielos, et al. (2019) Eficacia de la derogatoria del matrimonio infantil para garantizar el interés superior del niño, niña y adolescente en El Salvador (Universidad de El Salvador) | LAC | El Salvador, Guatemala, Costa Rica, Mexico and Ecuador |
| Bellés-Obrero and Lombardi (2019) Will you marry me, later? Age-of-marriage laws and child marriage in Mexico | LAC | Mexico |
| Girls Not Brides (2023) The absolute prohibition of unions in adolescence is not in the best interests of children | LAC | Mexico |
| Lyn (2019) Prohibition without protection: Marriageable age law reforms and adolescent fertility in Mexico | LAC | Mexico |

| Girls Not Brides (2020) Child, Early and Forced Marriage and Unions in Latin America and the Caribbean | LAC | El Salvador, Guatemala, Costa Rica, Mexico and Ecuador |
|---|-----|--|
| Plan International (no date) A hidden reality for adolescent girls: Child, Early and Forced Marriages and Unions in Latin American and the Caribbean | LAC | Bolivia, Brazil, Nicaragua, El Salvador, Guatemala, Dominican Republic, Honduras and Peru |
| Mesa a favor de las Niñas y Adolescentes and Procurador de los derechos humanos (2019) Informe de supervisión: Aplicación del decreto 13 -2017 que establece 18 años como edad mínima para el matrimonio. Not available online. | LAC | Guatemala |
| Pamela Huerta Bustamante (2023) Perú ha perpetuado el matrimonio infantil, Reniec registra uniones con menores desde los 11 años | LAC | Peru |

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 <u>and Registration of Marriages</u>, 1965, Principle II
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- 21 concerning article 16(2) on equality in marriage and family relations, 1994, para 36.

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- ⁶ Op. cit. CRC Committee, 2016, para 40.
- ⁷ Op. cit. CRC Committee, 2016, para 1.
- ⁸ Op. cit. CRC Committee, 2016, paras 14–25. (Additional CRC Committee general comments on best interests of the child and right to be heard can be found:
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- https://tbinternet.ohchr.org/ layouts/15/treatybody external/Download.aspx?symbolno=CRC%2FC%2F GC%2F12&Lang=en.
- ⁹ *Girls Not Brides*, <u>South Asian governments</u> <u>commit to end child marriage</u>, <u>2014</u>.
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- ¹³ Q. Wodon et al., *Child Marriage Laws and their Limitations*, 2017.
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- ¹⁹ E. Batyra and L. M. Pesando, 2021, <u>Trends in child</u> marriage and new evidence on the selective impact of changes in age-at-marriage laws on early marriage, *SSM Population Health*, 14, 2021, 100811.
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