

## **The Day of the African Child 30 years on, where are we now?**

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# ADVANCING THE WELFARE OF CHILDREN IN GHANA.

Presented By:  
Adelaide Benneh Prempeh  
Managing Partner  
B&P ASSOCIATES

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## OVERVIEW

- ▶ GHANAIAN HISTORICAL CONTEXT & BACKGROUND.
- ▶ THE CHILD & FAMILY PROTECTION SYSTEM IN GHANA.
- ▶ LEGAL FRAMEWORK.
- ▶ LEGISLATIVE REFORM IN GHANA'S ADOPTION LAW.
- ▶ ADVANCING CHILDREN'S RIGHTS FOR SUSTAINABLE DEVELOPMENT- EDUCATION.

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# I. GHANAIAN HISTORICAL CONTEXT & BACKGROUND

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In the Ghanaian context "Best interests of the Child" will include cultural perspective and respect for customary structure.

- Extended family environment.
- Benefits: Children are allowed to remain in a familiar environment, still connected with their natural family; safety net for children to receive support within family and community.
- Challenges: Lack of an enforced legal regime to govern this type of "informal family arrangement" for more vulnerable children, as well as the inherent difficulty in monitoring such social arrangements, lends itself to corporal punishment, domestic violence, sexual abuse, sexual violence and exploitation, ritual servitude (Trokosi).

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## II. CHILD & FAMILY PROTECTION SYSTEM IN GHANA.

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### 2013 International Social Service Report.

- Weaknesses in the alternative care system/ fosterage.
- Open adoption of children.
- Child trafficking.

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## Technical Committee Recommendations:

- Robust child protection framework;
- Strong regulatory and supervisory institutions;
- Licensing and accreditation of agencies;
- Financing of residential facilities; and
- Comprehensive Child and Family Framework.

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## Child & Family Welfare Policy 2015.

- Comprehensive legal framework for child protection.
- Recognition that there is a dichotomy between laws and community approaches.
- Need for education and sensitization of communities.
- After the launch of the Child and Family Welfare Policy in 2015 and the Justice for Children Policy in 2016, the Government of Ghana in collaboration with UNICEF embarked on a workforce strengthening initiative in 20 pilot districts.

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## Child & Family Welfare Policy 2015.

- Building on district level learning, guidelines were developed to offer a framework of reference for continued implementation of the Child and Family Welfare Policy.
- Foundation to Accession to the Hague Convention on The Protection & Cooperation in Respect of Intercountry Adoption 1993.

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## III. LEGAL FRAMEWORK

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- ▶ United Nations Convention on the Rights of the Child, 1989
- ▶ African Charter on the Rights and Welfare of the Child, 1990
- ▶ The 1992 Constitution of the 4th Republic of Ghana
- ▶ The Hague Convention of the Protection and Cooperation in respect of Intercountry Adoption, 1993
- ▶ The Children's Act, 1998 (Act 560)
- ▶ The Children's (Amendment) Act, 2016 (Act 937)
- ▶ Adoption Regulations, 2018 (LI 2360)

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## General Definition of Adoption

Process whereby a person legally assumes the parenting of another, usually a child, from that person's biological or legal parent or parents.

- ▶ Legal parent-child relationship.
- ▶ Parental Responsibility of Adoptive Parents.
- ▶ Termination of pre-existing legal rights with natural family.

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## Children's Act, 1998 (Act 560)

- ▶ Introduction of a formal framework for adoption.
- ▶ 'Best Interest' principle & wishes of the child from the child's perspective, if appropriate.
- ▶ Parental consent to adoption and the child's consent, if appropriate.
- ▶ Effect of adoption on parental rights.
- ▶ Disclosure of child's heritage.

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## Children's Act, 1998 (Act 560) (Cont.)

- ▶ Court Jurisdiction – High Court, Circuit Court, Family Court.
- ▶ Adoption Children Register.
- ▶ Notification of travel.
- ▶ Intercountry adoption in the best interest of the child.



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## IV. LEGISLATIVE REFORM IN GHANA'S ADOPTION LAW.

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### The Hague Convention on The Protection & Cooperation in Respect of Intercountry Adoption 1993.

- ▶ Accession to The Hague Convention of 1993.
- ▶ System of 'Co-operation' and Disclosure between Contracting States.
- ▶ Role of Central Authorities.
- ▶ Unified approach between Contracting States.
- ▶ Priority on support of family placements.
- ▶ Appropriate measures to prevent child abduction/ sale/ trafficking.
- ▶ Intercountry adoption in the best interests of the child.

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## Children (Amendment) Act, 2016 (Act 937)

- ▶ Incorporation of the Hague Convention on Intercountry Adoption.
- ▶ Effective 1st January 2017.
- ▶ Coherency and Accountability.
- ▶ Accreditation of adoption agencies.
- ▶ Case management processes to ensure child is adoptable.
- ▶ Emphasis on Ghanaian placement/ Ghanaian PAPs.
- ▶ Assessment and Matching of Prospective Adoptive Parents (PAPs).
- ▶ Promotion of well being and best interest of the child/

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## Institutions In Charge of Adoption:

- ▶ Central Adoption Authority (CAA) (sole mandate for Adoption)
- ▶ Adoption Secretariat
- ▶ Adoption Board
- ▶ Technical Committee

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## Institutions In Charge of Adoption:

- ▶ All Adoption Agencies are to be “not-for-profit” organisations, accredited or authorized by the CAA.
- ▶ Foreign Adoption Agencies require authorisation to operate in Ghana.
- ▶ They serve as a liaison between the CAA and adoptive parents and are part of a regime for safe intercountry adoption.
- ▶ An application for adoption is made through an accredited Adoption Agency.

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## Institutions In Charge of Adoption:

- ▶ In protecting the child's best interest, the law incorporates penalties for Adoption Agencies which act contrary to the Regulations.
- ▶ Currently, the CAA has not yet accredited any Adoption Agency.
- ▶ The Department of Social Welfare is the only State Adoption Agency facilitating adoptions in Ghana.

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## Future of Adoption In Ghana.

- ▶ The Central Adoption Authority's currently focused on assessing the applications of adoption agencies already received within the first quarter of 2021.
- ▶ Accreditation of adoption agencies
- ▶ A rigorous application process as dictated by the law in order to achieve accreditation.

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## Future of Adoption In Ghana.

- ▶ CAA's 2021 Action plan-undertaking community engagement on matters of adoption.
- ▶ Ghana's CAA oversees a well structured strong intercountry adoption system to guarantee safe intercountry adoption for the benefit of the child.



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## V. ADVANCING HUMAN RIGHTS OF CHILDREN FOR SUSTAINABLE DEVELOPMENT - EDUCATION

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### Introduction

- ▶ On 16th June of every year, the African Union and its Member States observe the Day of the African Child (DAC).
- ▶ It is celebrated in commemoration of the 16th June 1976 student uprising in Soweto, South Africa, where students who marched in protest against apartheid-inspired education, were brutally murdered.
- ▶ The Day of the African Child is a day of pride, of recognition, and of a celebration of their rights.
- ▶ However, we cannot fully rejoice unless every African child can join us.

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**Education of Children.**

**Ghana's Flagship Free SHS Program**

**SDG Goal target 4-1: Free primary and Secondary School Education**

- Transformation of Ghana's educational system, ushering in a higher quality learning experience with emphasis on science, mathematics and a strong sense of citizenship.
- Introduction of the free Senior High School programme which has been in operation since 2017 in furtherance of the human rights guaranteed children by virtue of the 1992 Constitution of Ghana and SDG 4 Goals

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**Free SHS Policy**

- 2017 marked a switch to a free senior high school policy by eliminating the financial burdens parents face in paying their children's fees.
- The Policy provides free public education for the Ghanaian child from basic to the senior high school level.

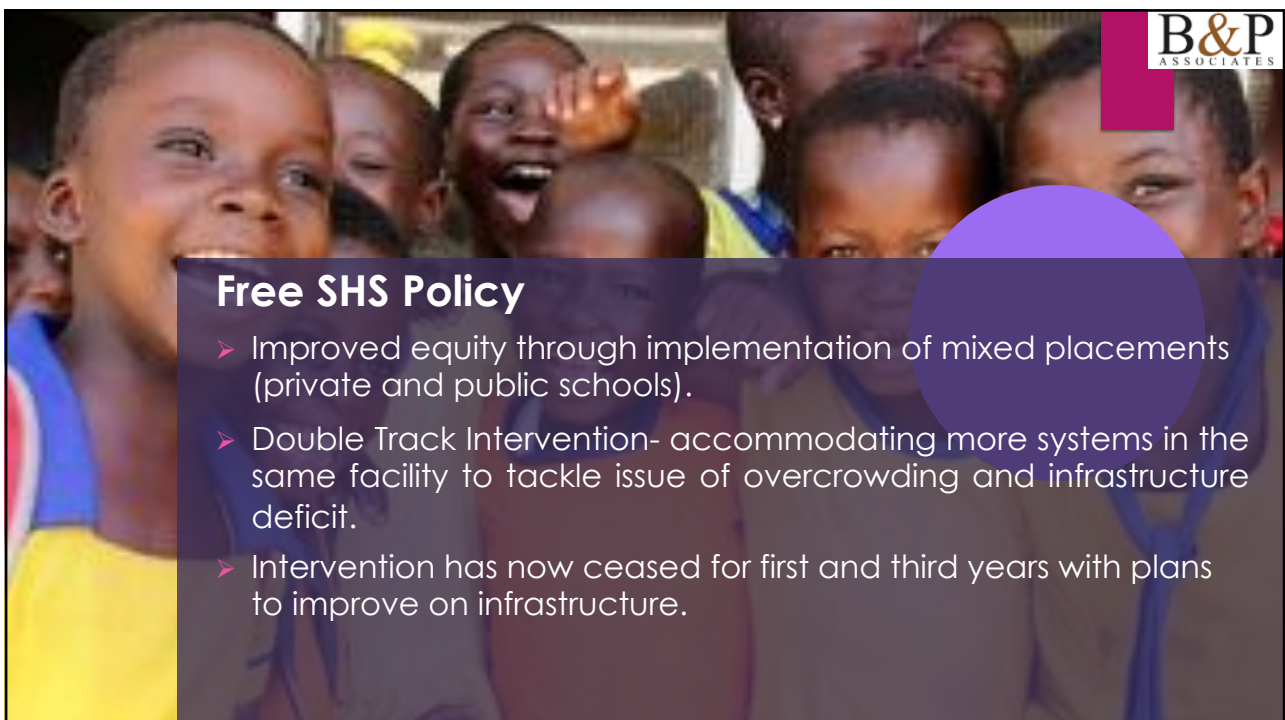
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**Free SHS Policy**

- In its first year of implementation, an 11% increase in enrolment into Senior High Schools.
- An appreciable increase of school enrolment at the senior high school level.
- Parity in access to education, with respect to the percentages of boys and girls going to school being almost identical.
- Criteria for free Education Eligibility (Computerised School Selection & Placement System).

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**Free SHS Policy**

- Improved equity through implementation of mixed placements (private and public schools).
- Double Track Intervention- accommodating more systems in the same facility to tackle issue of overcrowding and infrastructure deficit.
- Intervention has now ceased for first and third years with plans to improve on infrastructure.

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## African Countries Offering Free Secondary School Education:

- ▶ Ghana, 2017
- ▶ Kenya, 2008
- ▶ Tanzania, 2006
- ▶ The Gambia, 2015
- ▶ Uganda, 2011

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## Education for the Covid-19 Generation.

- ▶ The Covid Challenge-
- ▶ Global impact of Covid on the Education Sector- lockdowns, lapses & rapid move to digital education-
- Transition of education by:
  - ▶ Investment and scaling up in digital infrastructure;
  - ▶ Strengthening of Tech-based solutions to prevent the widening of inequality gaps that are already in existence so that the African Child achieves his/ her utmost potential.
  - ▶ SDG- Goal 4- "ensure inclusive and equitable quality education and promote lifelong learning opportunities for all"

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**THANK YOU FOR LISTENING!**

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# DAY OF THE AFRICAN CHILD

30 YEARS ON-WHERE ARE WE NOW; ASPOTLIGHT ON CHILD MARRIAGE

Maria Mbeneka – CLA Council Member (East Africa & Seychelles)

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June 16th is Day of the African Child. It was first established by the Organization of African Unity in 1991 with a focus on the improvement in education.

The CLA report on the Role of the Law in eliminating Child marriage in the Commonwealth 2018 considers the prevalence of child marriage within the 52 member states of the Commonwealth and how the Commonwealth is implicated in the wider global context of child marriage, with a specific focus on the role and status of domestic and international law in eliminating child marriage in the Commonwealth.

It makes recommendations for addressing key legal gaps by Commonwealth member states, particularly directed at law makers and the legal profession. While it is amply clear that the law is only one part of a much wider basket of solutions, it is one that is critical and concrete and from which other types of reform across the education, health, poverty-alleviation and other sectors can flow. This report is based on desktop research on the legal and factual situation in each Commonwealth country.



Women who marry as children are more likely to be uneducated, live in poverty, and subscribe to traditional gender norms. Child marriages are characterized by spousal age gaps, power imbalances, social isolation and lack of female autonomy. These factors are demonstrated risk factors for domestic violence. It may be [...] that the same inequitable gender norms that give rise to child marriages also perpetuate violence.

The 1981 UN Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) provides that the minimum age for marriage should not be lower than the age of majority<sup>53</sup> and forbids discrimination between men and women in this respect. CEDAW is also explicit in its guarantee of the right to free and full consent to marriage.<sup>54</sup> In recognition of the fact that children do not have the legal capacity to consent to marriage, CEDAW also provides that the betrothal and marriage of a child shall have no legal effect.<sup>55</sup>

The UN Convention on the rights of the child proposes 14 key provisions on the rights of the child among which two stand out i.e Article 36 where Governments are expected to protect children from sexual abuse and exploitation; as well as Article 36 which states that Governments must protect children from all other forms of exploitation that might harm them

Child marriage represents a violation of the fundamental human rights of children, predominantly girls, and results in a range of serious related issues for the child, as well as for the wider community. Among women aged 20 to 24 worldwide, one in four were child brides. More than 720 million women alive today were married as children. The Commonwealth has a disproportionate role in the problem of child marriage, and needs to be central in its elimination

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In Kenya, 23% of girls are married before the age of 18 and 4% before the age of 15. Education was a key driver in prevalence of child marriage, as 67% of women aged 20-24 with no education married as a child, in comparison to 6% of women with secondary education or higher. Women living in rural areas were twice as likely to be married before 18 than women living in urban areas. This urban-rural divide has increased by 36% since 2003.



Law The Marriage Act 2014 provides that people shall not marry unless they have attained the age of eighteen years and a marriage will be void if either party is below the minimum age, or consent to the marriage has not been freely given.

Marriage to a person under the minimum age is also criminalised pursuant to section 87 of the Act.

The age of consent is 18 years for males and females.

The Constitution provides that every adult has the right to marry a person of the opposite sex, based on the free consent of the parties. The Constitution defines a child as being an individual who has not attained the age of eighteen years, and outlines that every child has the right to free and compulsory basic education, and to be protected from 'harmful cultural practices' and 'all forms of violence'. 213 equal protection from child marriage under the law.

## Ghana

### Statistics

Among women age 20-24, the proportion who married before age 18 was 22% in 2006 and 21% in 2011;

Child marriage declined from 28% in 2003 to 25% in 2008 and 21% in 2014;

Rates of child marriage are higher in rural areas than urban, and vary significantly across regions.

In 2014, the child marriage rate in rural areas was 27% and in urban areas it was 16%; Child marriage rates among young women who have never attended school were 46% in 2008 and 2014

In 2014 the Ministry of Gender, Children and Social Protection spearheaded the development of the Child Marriage Unit to end child marriage.

National Strategic Framework for Ending Child Marriage (2017-2026), which launched in May 2017.

In February 2016, the Government of Ghana became a party to the African Union Campaign to end Child Marriage in Africa.

Active in leading child marriage work in the region with plans to take the lead in engaging the Economic Community of West African States (ECOWAS) on child marriage.





**INTERNATIONAL AND  
REGIONAL INSTRUMENTS  
RELEVANT TO CHILD  
MARRIAGE**

African Charter on the Rights and Welfare of the Child, 1990

Convention on the Rights of the Child, 1989

Universal Declaration of Human Rights, General Assembly Resolution 217 A (III), 1948

African (Banjul) Charter on Human and Peoples' Rights, 1981

Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, 2003

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**INTERNATIONAL AND  
REGIONAL INSTRUMENTS  
RELEVANT TO CHILD  
MARRIAGE**

SADC Protocol on Gender and Development, 2008

Vienna Declaration and Programme of Action, 1993

Committee on the Elimination of Discrimination against Women, General Recommendation 21, Equality in marriage and family relations, 1994

UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children ('Trafficking Protocol')

The Commonwealth Charter, 2013

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# Recommendations

## THE CLA REPORT ON CHILD MARRIAGE

The CLA report has highlighted the legal perspective on the on the structural legal dimensions that foster and enable child marriage, and therefore the recommendations relate to legal interventions and reform, particularly aimed at the legal profession across the Commonwealth, i.e. lawyers, law makers and the judiciary.

Law reform may be one but surely an important tool which we recommend and should be adopted hand in hand with other reports and recommendations carried out by other organisations.



The law should be consistent and uniform between girls and boys and mandate an absolute minimum marriageable age of 18



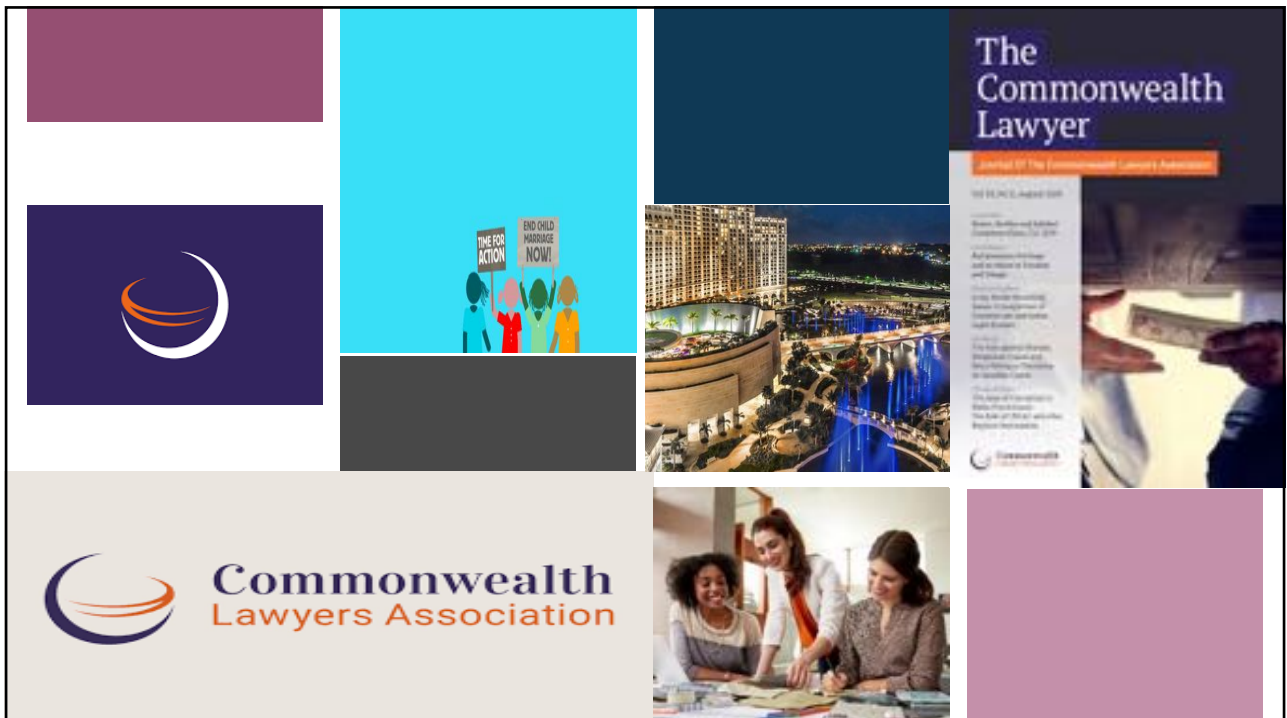
Those who enable child marriage should be criminally sanctioned, and such criminal laws should be enforced



The law should require mandatory (and free) registration of births and marriages



The legal profession should assist with enhanced use of the courts to challenge the practice of child marriage



**Does the current family and personal Code of Mali adequately protect women and children rights?**

**Judge Fatoumata Dembélé Diarra: Mali**  
***Presidente de l'Observatoire des droits de la femme et de l'enfant.***

The family Code of Mali is a mixture of certain provisions of the French civil Code, certain rules of Islam and some codified African customs. Does it adequately protect children? Does it guarantee equality between the two spouses ?

**I. The assets inherited from the French Civil Code are:**

1. The consent requirement for marriage;
2. The secular character of marriage;
3. The marriage is celebrated and registered in The civil registry;
4. Repudiation is prohibited;
5. Custody of the child is given to the survivant parent;

**II. Aspects from Islamic culture**

1. The age of marriage is set at 16 for girls and 18 for boys. With parental permission The figure of 16 can even be reduced to 15 years for the girl.
2. A married woman owes obedience to her husband. The married man is consecrated the sole head of the family and enjoys paternal power..
3. A man married under the polygamous regime may marry up to 4 wives.

**III. The remnants of customary law**

Without being included in The Code, certain customs are tolerated and coexist with the written family Code.

**Examples:**

1. The levirate which consists in assigning the widow of a deceased person as the wife of one of his brothers or cousins. Most often it is the only alternative to the widow who wants to keep her home and stay with her minor children.
2. The celebration of marriages in front of Muslim clerics is authorized, and the marriages made under these conditions are not usually registered.
3. A widow who obtains custody of her children is often accompanied by a family council for the exercise of her parental authority. The same precaution is not taken with regard to the widowers who obtain custody of their children.

**Remarks**

During Code writing, Civil Society Organisations made observations directed towards equality of spouses and greater protection of the rights of children. These observations were all rejected under pressure from the islamists. In contrast, all the suggestions from the Islamists were incorporated. Obviously, the objective of the editors of the Code was not to respect the international texts ratified by Mali in terms of respect for the rights of women and children.

**Conclusion**

The current family Code violates the Constitution of Mali, which solemnly proclaims equality between men and women, affirms its fidelity to the Universal Declaration of Human Rights. It also does not respect the CEDAW, the Convention on the Rights of the Child, and the Maputo Protocol which sets the minimum age of marriage at 18 for girls and boys. To obtain a code that respects the principles of equality between all and protects the rights of children, politicians must be freed from islamists.

**The answer to my question is therefore no.**

## THE ECONOMIC PROTECTION AWARDED CHILDREN AFTER DIVORCE

**Euridce Baptista: Angola**

Under the terms of the Angolan Family Code, on article 4<sup>o</sup>, it is established that children deserve special attention within the family, whom, in collaboration with the state should guarantee their protection and sense of equality so that they are able to achieve their total development (both physically and mentally).

In article 6<sup>o</sup> of the same code, once again its stated that “members of the family will contribute to the creation of a new moral code within that family which will be based on the principles of equal rights and obligations, in the respect for individual personality and in the special protection for children, and in the spirit of joint collaboration”.

One of the sources of family relations is the marriage, naturally. The Angolan Family Code also establishes that wife and husband are equal within the marriage and have equal rights and obligations (art. 21), including but not limited to, matters concerning raising and providing economically for their children (art. 131<sup>o</sup>).

So much so, that a divorce will not be finalised until a well-balanced parental agreement is in place.

Unfortunately, these parental agreements, that are usually well prepared and obey every legal requirement and imposition, very often are not effective.

Normally the parent who has the physical custody of the children (traditionally the mother) bears most, if not, all of the economic responsibilities towards the child.

It's well known universally that women tend to earn less than their male counterparts. Therefore, if a woman has to be solely financially responsible for the children, these children will inevitably lack most of the resources they need to flourish within the society.

So, in order to help reduce poverty in single parents' households, I believe we (Angolans) must reinforce the penalties for non-payment of child support. I believe that the situation is so severe in my country, and consequences so drastic for the children and consequently for society, that the behaviour should be criminalised.

[ Further elaboration]

Thank you for your time and attention.



# The Role of the Law in Eliminating Child Marriage in the Commonwealth

## WHY MORE ACTION IS NEEDED



Edited by : Téa Braun

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Trea (Téa) Braun is an international human rights law expert based in London, UK and a member of the Law Society of British Columbia, Canada (non-practising), specialising in the human rights of women and girls and LGBT people. For over twenty years, she has advised on legal and human rights issues in all regions of the Commonwealth. She was a member of the Executive Committee of the Commonwealth Lawyers Association from 2015–2017, and managed and edited this report on behalf of the CLA.

The principal researcher and author of this report is Rachael Taylor, an Australian qualified lawyer with significant experience in criminal, regulatory and public law matters. She worked on this report under the auspices of the Pro Bono Matters programme within the Law Department of the London School of Economics and Political Science, and was assisted with preliminary research by a team comprising Zoe Bantleman, Cillian Bracken, Anita Clifford, Dalia Damanhour, Rima Desai, Alexia De-Vaucleroy, Kasumi Maeda, Stephanie Needleman, Natasha Reurts, Alexia Staker, Paulina Tandiono, Hui Ying Tham, Sophia Underhill, Peter Wat and Sarah-Jane Wylie.

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## ■ Message from the President

Few human tragedies are as heart-breaking as those that undermine, damage and destroy the lives of children. For girls in particular, one of the most wide-spread of such tragedies is child marriage. It is a blight on the Commonwealth that almost 60 per cent of all child marriages occur within this association of countries, despite it holding only 32 per cent of the global population. That is stark, and it must change.

Clearly this is a Commonwealth problem, and clearly it is – amongst many others – a legal problem: one that we, as members of the legal profession, must collectively confront and help address. Across the Commonwealth, legislation remains insufficient to acknowledge and address child marriage. The legal frameworks of many countries actively enable marriages involving children through an absence of constitutional minimum ages for marriage, legislative ages of marriage that are or in certain circumstances can be below 18 years of age, and discriminatory ages of marriage as between males and females.

Few countries have criminal or other sanctions against those conducting or enabling a marriage involving a child. Much of the Commonwealth continues to struggle with enforcing legal systems that mandate birth and marriage registration, which would enable better monitoring of ages of marriage. Few court cases are brought challenging the institutional and societal systems and structures that enable child marriage. Whilst laws can never promise to change things overnight, or on their own, they represent the values of a society and are a symbol of how resolute societies are to protect their most vulnerable. They signal to society as a whole what is and is not acceptable. Without legal protection, there is no protection. Without legal change, there is no requirement on societies to change. We must do more, and by using the vehicle of the law we can do more.

The Commonwealth Lawyers Association is pleased to provide this pan-Commonwealth overview of the role of the law in eliminating child marriage. We hope that it will educate and inspire the legal profession around the Commonwealth to learn from the change that is happening in some of our countries in all Commonwealth regions, and to agitate for and help deliver more legal change and better law enforcement where it is still needed.

For a child to lose her childhood, a student to lose her education, a healthy young girl to lose her life – simply because she is a girl – is a Commonwealth tragedy that cannot continue. It is trite to say that children are the future. They are indeed, but they are more than that.

They are individuals in the present, with hopes and dreams and innocence, with boundless promise and potential, and – importantly – with human rights. It is those who have come before, including those who have the privilege of being in positions or professions of power and influence, who must ensure those rights are upheld, and that potential is realised, for all children, everywhere.



**R. Santhanakrishnan**  
President, Commonwealth Lawyers Association

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## Overview

- More than 720 million women alive today were married as children.
- The Commonwealth plays a disproportionate role in the problem, accounting for 58.5 per cent of all child marriages in the world, despite only having 32 per cent of the global population.
- Around 375 million women alive today, from Commonwealth member states, were married or in union before their 18th birthday. This is over 16 per cent of the Commonwealth's population, and amounts to 52 per cent of women aged over 18 years old in the Commonwealth.
- Approximately 8.8 million females in the Commonwealth are married as children annually, which is 24,000 girls every day, or 17 girls every minute.
- Child marriage leads to lower levels of education, health, economic status and social potential of girls and women; premature sexual activity akin to rape, and early childbearing; higher maternal mortality and infant mortality; serious health risks and complications during pregnancy, such as obstetric fistula, infections and heavy bleeding; higher incidences of domestic violence and abuse; and the perpetuation of illiteracy and poverty.
- Complications during pregnancy and childbirth are the leading cause of death of girls aged 15 – 19 globally.
- Worldwide, among women aged 20 to 24, one in four were child brides, married before they were 18.
- The rates of child marriage are highest in South Asia, where approximately one in two girls are married off before the age of 18. This is followed by sub-Saharan Africa, where around four in 10 girls are married before age 18.
- Child marriage is a clear instance of discrimination on grounds of sex and gender-based violence against girls.
- Of the nine known countries where more than 10 per cent of boys were married before age 18, only one is in the Commonwealth.
- Commonwealth legal systems are disproportionately deficient at addressing the problem of child marriage globally.
- Eighty-six per cent of Commonwealth countries have no constitutional provisions requiring a marriageable age of 18 or over, and only six per cent clearly mandate 18 as the minimum age for marriage.
- While 88 per cent of Commonwealth countries have constitutions that contain non-discrimination provisions that protect against discrimination on the basis of gender or sex, nearly half of those (46 per cent) maintain an exception to this protection for laws that relate to family or personal matters, including marriage.
- Only nine Commonwealth countries legislate for an absolute minimum age of marriage of 18 or higher.
- In some Commonwealth countries, girls can lawfully be married as young as 14 or 15 years old, while in ten countries there is no absolute minimum age at which children can be married.
- While sexual offences against children are criminalised to some degree in all Commonwealth countries, child marriage is only explicitly criminalised in a few countries. Even where it is criminalised, legal loopholes can mean that these crimes are rarely prosecuted.

- Nearly all Commonwealth countries have laws mandating the registration of births and marriages, however, due to poor enforcement of these laws, the rates at which births and marriages are registered remain low in many Commonwealth countries.
- International law requires the abolition of child marriage, and all Commonwealth countries have ratified at least one international treaty guaranteeing protection of their citizens from child marriage.
- While changing the law clearly does not provide a complete or immediate solution, there is evidence from sub-Saharan Africa that the prevalence of child marriage and adolescent childbearing are significantly lower in countries with laws that consistently set the minimum marriage age for girls at 18 or older, than in other countries.
- The courts remain an under-utilised branch of government for challenging child marriage in Commonwealth countries, however, there have been some promising judgments in countries such as India, Tanzania and South Africa.
- While the strategies employed effectively to tackle child marriage will differ from country to country, some measures can be seen as universally applicable, particularly those involving legal frameworks.
- All Commonwealth legal systems should provide for an absolute minimum age of marriage of 18 years for both males and females, without caveats and exemptions.
- Religious or customary personal laws that discriminate against women and girls by, amongst others, permitting child marriage, should not be permitted to override minimum ages for marriage. Where necessary, legislative changes should be made to ensure all laws align with the minimum ages for marriage.
- Further legal measures including criminal sanctions against those enabling child marriage and better enforcement of birth and marriage registration systems should be supported across the Commonwealth.
- Legal activists and lawyers should make better use of the courts to challenge laws and practices that foster and enable child marriage.
- Training of the legal profession, judicial peer-to-peer learning and public legal awareness campaigns should be amplified across the Commonwealth to better equip both the legal profession and the public to improve legal frameworks and to access legal protections against child marriage.

## Introduction

**Every year, 15 million children globally – mostly girls – are married before the age of 18. That equates to approximately 41,000 girls per day, 28 girls every minute, or one girl every two seconds.** <sup>01</sup> Without a serious, concerted effort to address child marriage at the global level, millions more children will suffer the impact of early marriage – losing their childhood, and possibly even their life – before the decade is out.

While there has been a small decline in the practice of child marriage globally in recent years, when measured using percentages,<sup>02</sup> the total absolute number of girls married before 18 will increase dramatically unless there is major reform over the next few years. More than 720 million women alive today were married as children. At the current (even slightly reduced) rates, this figure will increase to 950 million girls married by 2030 and 1.2 billion by 2050.<sup>03</sup> An increase in absolute numbers means an unfathomable number of girls globally will lose their childhood, and be forced into marriage, even if there is a continued small decline in the overall percentage of girls married.

The term ‘child marriage’ refers to any marriage where at least one of the parties is under 18 years of age.<sup>04</sup> While it is an issue that affects both girls and boys, the overwhelming majority of children betrothed into marriages, both formal and informal, are girls. Child marriages may take place under civil, religious or customary laws and are also referred to as ‘early’ or ‘forced marriages’,<sup>05</sup> as children are not legally capable of providing full, free and informed consent to marriage.<sup>06</sup>

A state’s failure to prevent and protect against child marriage is a violation of binding international human rights law and results in a range of serious issues for the children involved. Child marriage negatively impacts girls’ development in many ways by resulting in social isolation, interrupted or compromised schooling, early pregnancy and its associated risks and complications, limits to vocational and career opportunities, and an increased risk of domestic violence.


Many factors interact to place girls at risk of child marriage including poverty, social norms, customary or religious laws, the perception that marriage will provide protection for the child or her family’s reputation, poor legal frameworks surrounding marriageable age and the registration of births and marriages, and a lack of criminal sanctions for adults involved in enabling child marriages.<sup>07</sup>

This report considers the prevalence of child marriage within the 52 member states of the Commonwealth as at 1 February 2018,\* and how the Commonwealth is implicated in the wider global context of child marriage, with a specific focus on the role and status of domestic and international law in eliminating child marriage in the Commonwealth. It makes recommendations for addressing key legal gaps by Commonwealth member states, particularly directed at law makers and the legal profession. While it is amply clear that the law is only one part of a much wider basket of solutions, it is one that is critical and concrete and from which other types of reform across the education, health, poverty-alleviation and other sectors can flow.

This report is based on desktop research on the legal and factual situation in each Commonwealth country, as well as a consideration of international law and the efforts made by various international and regional organisations to eliminate child marriage. Individual country reports provide more detail in relation to child marriage in each Commonwealth country, including the current legal framework and any identifiable initiatives which are being undertaken to eliminate it (*see Annex I*).

The report is divided into four parts. The first part provides an explanation of what child marriage is and discusses its causes and consequences, with a consideration of the scale of the problem in the Commonwealth. Part two examines international and regional initiatives with a focus on legal instruments and mechanisms in place to tackle child marriage, while part three considers domestic legislation and legal outcomes in several noteworthy cases, including relevant court cases and legal interventions that have had a positive impact on decreasing rates of child marriage. Part four provides a number of recommendations aimed at further tackling child marriage. Key non-legal initiatives drawn from the work of non-governmental organisations (NGOs) and other stakeholders are considered briefly, but the primary focus is on the way in which the law or legal mechanisms can be used more effectively within the Commonwealth as a whole, and at a domestic level in member states, to eradicate child marriage.

\*The country research for this report was concluded prior to the Gambia rejoining the Commonwealth on 8 February 2018.



“ Child marriage refers to any marriage where at least one of the parties is under 18 years of age. The overwhelming majority of victims are girls. ”



## PART ONE:

# Child Marriage and its Impact

## What is child marriage?

Child marriage is generally defined as a marriage, formal or informal, where one of the parties is a child. The United Nations Convention on the Rights of the Child (CRC) defines a child as 'every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier'.<sup>08</sup> Where states parties to the CRC have set the age of majority below 18 years, the Committee on the Rights of the Child consistently calls on them to review this.<sup>09</sup>

**“Child marriage is a form of gender-based violence against girls.”**

Child marriage is a form of gender-based violence against girls. It is a discriminatory practice and a serious violation of the human rights of children. It is a practice which effectively forces millions of girls into a lifetime of state-sanctioned rape, in addition to all the other negative attendant consequences that flow from child marriage.

## Who does child marriage affect?

Worldwide, among women aged 20 to 24, one in four were child brides, married before they were 18.<sup>10</sup> The United Nations Population Fund (UNFPA) reports that the rate of marriage for girls in developing countries (excluding China) is one in three, with the majority of affected girls living in rural areas, in extreme poverty, and with limited education.<sup>11</sup>

Globally, child marriage among girls is most common in South Asia and sub-Saharan Africa, and the 10 countries with the highest rates of child marriage are found in these two regions. This includes three Commonwealth countries – Bangladesh, Mozambique and India.<sup>12</sup> The rates of child marriage are highest in South Asia, where approximately one in two girls are married off before the age of 18. This is followed by sub-Saharan Africa, where around four in 10 girls are married before the age of 18, and about one in eight are married before the age of 15.<sup>13</sup> It is difficult to find statistics in relation to the prevalence of child marriage involving boys, as it affects girls in far greater numbers, and with more adverse impacts, but there are at least nine countries where more than 10 per cent of boys were married before the age of 18. Those countries are:

- Cuba, Nepal (11 per cent);
- Marshall Islands, Comoros, Honduras, Nauru (12 per cent);
- Lao People's Democratic Republic, Madagascar (13 per cent);
- Central African Republic (28 per cent).<sup>14</sup>

Of these nine countries, only Nauru is a member of the Commonwealth. The lack of data in relation to boys makes it difficult to draw definitive conclusions on the status and impact of, and progress in eliminating, child marriage as it relates to boys. Nonetheless, all the available data confirms that globally, boys are far less likely than girls from the same region to marry before they are 18.<sup>15</sup> These statistics also confirm that child marriage within the Commonwealth overwhelmingly affects girls.

Child marriage occurs as a result of a number of different social, cultural, religious and economic factors, but its root cause is gender discrimination, which is driven by beliefs about the status of women and girls, who are often seen as having little value outside that ascribed to the traditional roles of wife and mother. Child marriage is widely recognised as a form of gender-based violence against women and girls, as whatever the justifications for it within families or communities, the result for children is often severe and sustained abuse, including increased exposure to domestic violence, marital rape and other forms of violence, decreased access to education, increased health complications from pregnancy, and a corresponding life of poverty, submission and dependence.<sup>16</sup>

Child marriage occurs in all countries of the world, in families from all major religions, as well as in non-religious families. While marriage customs vary widely around the globe, religious or cultural justifications are often used to impose marriage on children. However, it has been convincingly argued that labelling child marriage as a 'cultural' phenomenon 'encourages a semantic blanket which obscures underlying structural influences; hides the fact that culture is dynamic and fluid; and ignores that marriage customs in countries of origin are highly variable'.<sup>17</sup>

In discussing the dangers of making cultural excuses and assumptions in relation to the treatment of Aboriginal women and girls in Australia, a report by The National Children's and Youth Law Centre observed that:

**“A purely cultural lens on forced marriage does not even “see” the victims, since women and men subject to forced marriage are constructed as abiding by their cultural norms rather than as victims.”**

As the report noted, 'this kind of "cultural justification" thinking favours the perpetrators, and assumes and encourages culture to be static, rather than changing with the full participation of its members'.<sup>18</sup> This is a crucial point, as one of the results of child marriage is that girls and women are unable to fully participate in other aspects of their culture or society because

of the impact child marriage has on their lives. If 'cultural relativism' is used as an excuse or justification for child marriage, the danger arises that entire communities will remain locked in cycles of child marriage, with the result that girls and women never take their rightful place as full participants in their communities, and in the world.

## ■ The causes of child marriage

“**Child marriage is the legacy of entrenched age and gender-based discrimination against women and girls, and drives their unequal status in many of the world's poorest nations.**”<sup>20</sup>

Child marriage is driven by complex and interrelated factors and is often underpinned by rigid gender and cultural beliefs about the role of girls, including the view that once girls have reached puberty, their duty is to marry, produce children and care for the household.<sup>21</sup> Poverty plays another major role in perpetuating child marriage and is a critical factor explaining why parents frequently encourage their daughters to marry.

Child marriage is often a financial survival strategy when families are experiencing significant hardship. Where a family lives in dire poverty, and where women do not have access to economic and labour market equality, a young girl may be regarded as an economic burden and it is believed her marriage – often to a much older man – will benefit both the child and the family, financially and socially.<sup>22</sup> As examples from some of the country reports in Annex I show, in communities where child marriage occurs, marriage is regarded as a transaction, often representing a significant economic activity for a family. In these circumstances, young girls are often traded in exchange for some form of 'bride price', which provides a financial benefit for families while lessening the families' burden of providing for their daughters.

Alternatively or in addition, families may be influenced by discriminatory notions of morality or honour – believing that by marrying their daughter off they will protect her from sexual assault or rape, or the stigma of pregnancy outside wedlock.<sup>23</sup> In addition, in many countries the perceived importance of preserving family 'honour' is such that parents will push their daughters into marriage early to ensure 'family honour' is maintained.

A major component of the explanations for why these human rights violations occur is the deep-seated, underlying issue of systemic gender discrimination. Globally, women and girls continue to be forced to occupy a lower status in society than men due to patriarchal social and cultural traditions

and attitudes and beliefs that deny them the ability to participate equally in society. In turn, this discriminatory view of women directly enables the ongoing domination of women to continue, and keeps them and their communities locked in a vicious cycle of poverty.

In a briefing paper on child marriage within the Commonwealth, Plan International and the Royal Commonwealth Society (RCS) explained this as follows:

■ *'Although gender roles differ between cultures and generations, and vary in relation to other factors – including economic status, class, ethnicity, caste, sexuality, religion, HIV status or disability – gender norms generally work to the disadvantage of women of all ages, with youth reducing the status of a girl or young woman within her household and community even further. Because a girl does not have the same standing as her male peers, she is not perceived to have the same skills or capabilities, and so there is less value in educating her. This inevitably contributes to the view that a "good marriage" is the most important way to secure a girl's wellbeing. Gender inequalities also contribute to early marriage through their impact on formal legal systems such as unequal laws of consent for boys and girls, helping to reinforce the idea that it is suitable for girls to marry at an earlier age than boys.'*<sup>24</sup>

It is important to distinguish between situations in which the primary driver behind child marriage is a discriminatory traditional or religious belief and situations in which a cultural argument is used but where it is clear, when scrutinised, that the decision is actually economically driven. Large variations in the prevalence of child marriage across countries with similar cultural and religious traditions can often be explained by differences in family income, location and education levels, with poorer families from rural areas being more likely to push their children into marriage.<sup>25</sup> Conversely, across very different countries, cultures and religions, the factors that tend to correlate with high levels of child marriage are poverty, geography and lack of education.<sup>26</sup>

Further, as the country reports in Annex I illustrate, many Commonwealth countries have lax, inconsistent and/or discriminatory laws in place with respect to child marriage. While countries are increasingly imposing a minimum age of 18 years for marriage, many allow exceptions where there is the consent of parents, or for religious or customary marriages, or they set a lower marriageable age for girls from the outset. In addition, even where laws are clear, consistent and non-discriminatory, poor enforcement of laws and ineffective registration systems for births and marriages regularly contribute to a culture in which child marriage is effectively condoned.

There are also other global challenges with which

child marriage can intersect. These include issues as diverse as climate change, slavery and forced servitude, and human trafficking. While at first glance climate vulnerability may appear unrelated to child marriage, there is some evidence that the increase in disasters and climate-related events may, in fact, be having an impact on child marriage rates.<sup>27</sup> A recent Human Rights Watch (HRW) report on Bangladesh considered increases in child marriage in the context of disasters caused by climate change and found that a combination of poverty and increased natural disasters may increase the likelihood of child marriage:

■ *'When asked about how they had made decisions about when their daughters should marry, families interviewed for this report talked again and again about poverty. Girls described parents deciding to marry them off simply because the family was going hungry. Many families also linked poverty, education, and child marriage, saying that they arranged a marriage for their daughter because they were too poor to keep her in school.'*

■ *'One of the major factors pushing these families into such desperate poverty is natural disasters. Bangladesh's extreme vulnerability to natural disasters, exacerbated by climate change and combined with its large population, means that for many poor families their livelihoods, homes, and land are under threat from flooding, river erosion, cyclones, and other disasters.'*

■ *'Some families interviewed by Human Rights Watch said they had made decisions about marriage for reasons directly related to natural disasters – some, for example, rushed to marry off a daughter in anticipation of losing their home to river erosion. Other families described natural disasters as a recurring stress factor, taking food from the family's mouth and making child marriage seem like the best option for a girl and the family.'*<sup>28</sup>

## ■ The impact of child marriage

“**Child marriage constitutes a violation of human rights, limiting as it does a child's ability to reach her full potential.**”

The consequences of child marriage for girls and women are severe, with the practice harming the education levels, health, economic status and social potential of millions of girls across the Commonwealth. Child marriage generally forces girls to leave school early, limiting their education and their social and mental development, as well as their future potential to gain employment that would help them escape from poverty.<sup>29</sup> Once girls are out of school, they are often unable to return and are frequently required to remain at home, which prevents them from engaging with other forms of training or work.

In addition, a lack of education leaves many women who married early illiterate and with little knowledge about sexual health, reproduction or their bodies, which makes it more difficult to make informed decisions about sexual relations, family planning or health matters.<sup>30</sup> This, in combination with the often large age disparity and power differential that exists between a girl and her husband, makes it more likely that a child bride will be forced into sexual activity before she is physically or emotionally ready, and will become pregnant at an early age. This essentially amounts to the state-sanctioned rape of girls, which is often not protected against by the law or not punishable by law, because the sexual activity is occurring in the context of a 'marriage'.

There is a strong correlation between the age of a mother and both maternal and infant mortality. Girls aged 10–14 are five times more likely to die in pregnancy or childbirth than women aged 20–24, and girls aged 15–19 are twice as likely to die.<sup>31</sup> A child born to a mother in her teens is twice as likely to die before the age of one than a child born to a woman in her twenties.<sup>32</sup>

Children are also more likely to experience serious health risks and complications during pregnancy, such as obstetric fistula, infections and heavy bleeding, which in turn contribute to higher mortality rates for mother and child. In fact, complications during pregnancy and childbirth are the highest cause of death of girls aged 15–19.<sup>33</sup> Child brides are also at a much greater risk of contracting sexually transmitted infections (STIs), because they marry older men who are more likely to have an STI, they are forced into a sexual relationship, and they generally have limited access to or negotiating power over contraception.<sup>34</sup>

In addition to the risks associated with the physical impacts of early pregnancy, there is evidence that girls who marry early are also more likely to suffer from domestic violence and abuse, with the inevitable physical and psychological consequences that abuse entails.<sup>35</sup> A recent study surveyed women from 34 countries on incidences of domestic violence and identified whether they had been married as children. The study found that globally, in 2016, physical and/or sexual violence was higher among women who had married as children (29 per cent), compared to those who married as adults (20 per cent).<sup>36</sup>

Similar studies in individual countries have also observed that there appears to be a correlation between child marriage and higher incidences of domestic violence. In India, a 2004 survey found that girls married as children were twice as likely to report being beaten, slapped or threatened by their husbands than girls who married later. They were also three times as likely to report being raped in the previous six months.<sup>37</sup> In Kenya, 36 per cent of girls married before 18 believe a man

is sometimes justified in beating his wife, whereas only 20 per cent of women who married as adults hold this view.<sup>38</sup>

There are many reasons this may be the case:

**“ Women who marry as children are more likely to be uneducated, live in poverty, and subscribe to traditional gender norms. Child marriages are characterized by spousal age gaps, power imbalances, social isolation and lack of female autonomy. These factors are demonstrated risk factors for domestic violence. It may be [...] that the same inequitable gender norms that give rise to child marriages also perpetuate violence. ”**<sup>39</sup>

While the most severe impacts of child marriage are felt by the victims themselves, child marriage also impacts negatively on entire societies. Poverty is maintained when the female half of the population is removed prematurely from education and the workforce, and when their health is put under severe threat. Child marriage was noted in 2016 by the then UN Secretary General as a significant drain on economic growth and productivity.<sup>40</sup>

## The prevalence of child marriage within the Commonwealth

Despite the fact that child marriage is recognised internationally as a human rights violation requiring concerted action to eradicate it, the number of children affected by the practice remains extremely high. A recent report on the role of education in preventing child marriage in the Commonwealth has revealed the extent of the problem as follows:

■ Around 375 million women alive today, from Commonwealth member states, were married or in union before their 18th birthday. This is over 16 per cent of the Commonwealth's population, and amounts to 52 per cent of women aged over 18 years old in the Commonwealth.

■ At current prevalence rates:

- 43 per cent of women in the Commonwealth are married before they reach 18 years of age;
- This amounts to over 44 million 20- to 24-year-old women who were married as children;

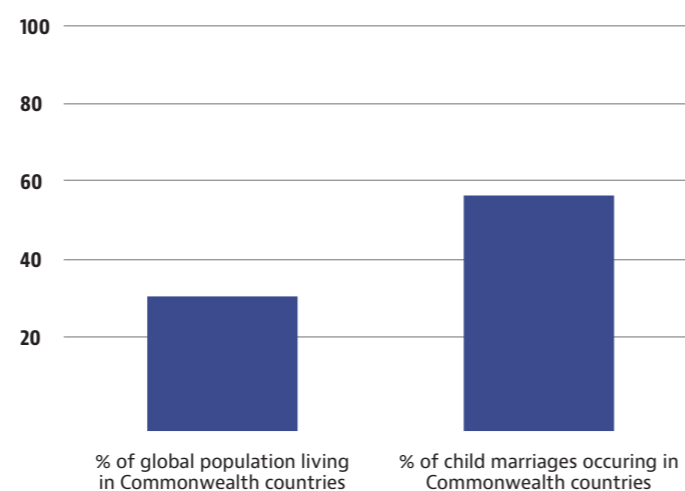
- Approximately 8.8 million females in the Commonwealth are married as children annually, which is 24,000 girls every day, or 17 girls every minute.<sup>41</sup>



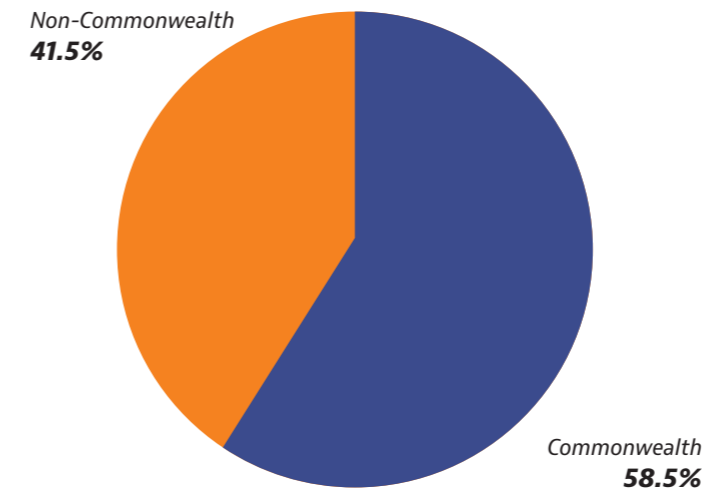
The same report found that at a global level, 720 million women alive today were married or in union before they turned 18, which is equivalent to 10 per cent of the world's population. Further, at the global level, 15 million girls a year marry before they are 18, which amounts to approximately 41,000 girls per day, 28 girls every minute, or one girl every two seconds.<sup>42</sup>

When global statistics on child marriage are compared to those from the Commonwealth, it is apparent the Commonwealth accounts for a disproportionate number of children being married off globally, with approximately 58.5 per cent of child marriages occurring in Commonwealth countries. This is despite the fact that the estimated combined population of Commonwealth member states is 2.4 billion people, or roughly one third (32 per cent) of the world's population.<sup>43</sup>

**Figure 1: Percentage of global population living in the Commonwealth compared with percentage of global child marriages occurring in the Commonwealth**

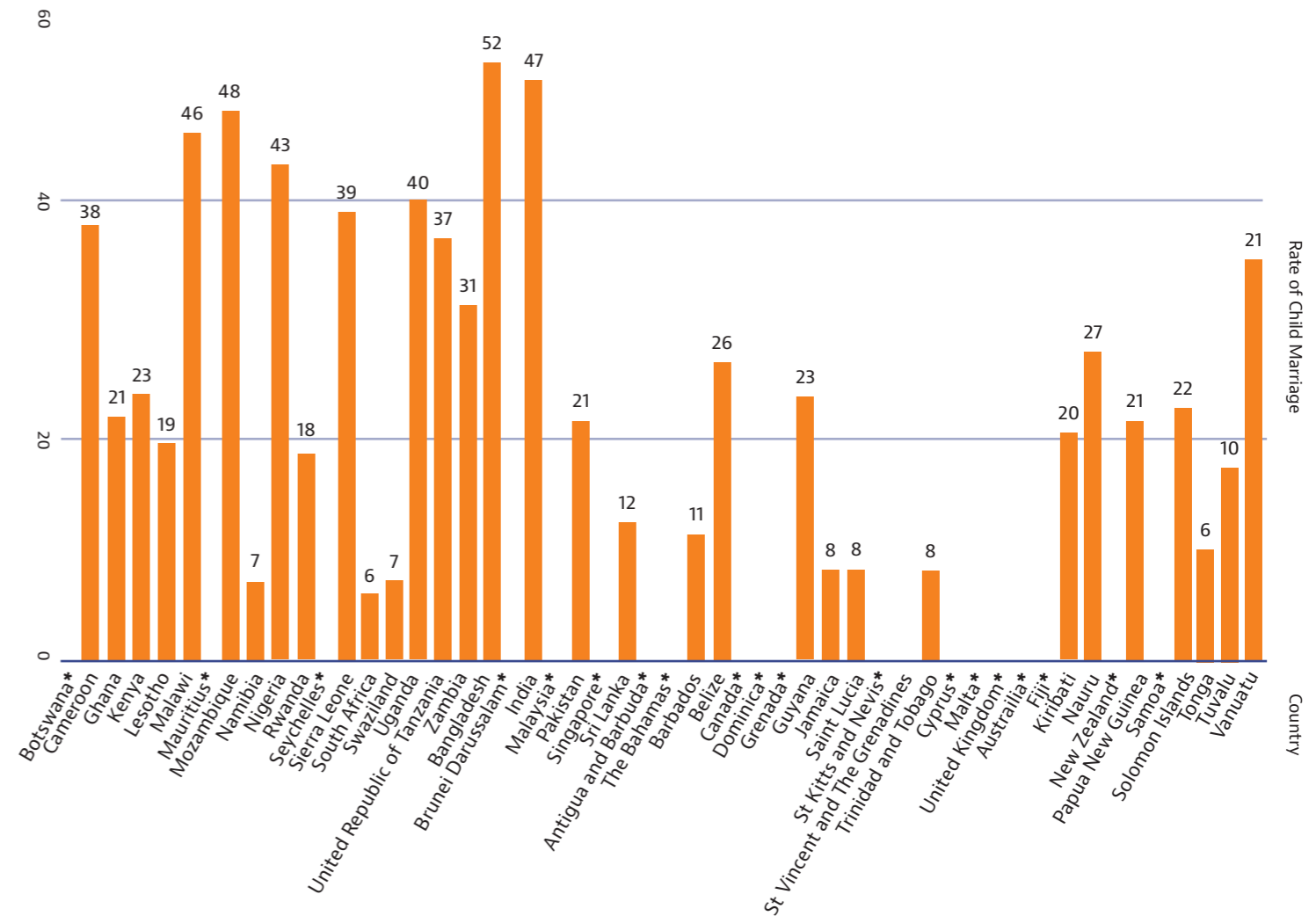


**Figure 2: Proportion of child marriage globally that occurs in the Commonwealth**



This is explained, in part, by some Commonwealth countries having very large populations and high rates of child marriage, such as Bangladesh, India, Nigeria and Pakistan. However, as Figure 3 reveals, rates of child marriage of 20 per cent or higher occur in at least 20 Commonwealth member states. These alarming figures clearly illustrate that the Commonwealth has a disproportionate problem with child marriage and that it is the responsibility of the Commonwealth, both as a whole and at the individual country level, to take the lead in accelerating efforts to eliminate child marriage.

**Figure 3: Prevalence rate of child marriage in Commonwealth member states\*\***



\* No data available \*\* Source: UNICEF, State of the World report, 2016



Each region, and indeed each individual country, within the Commonwealth has its own unique circumstances that contribute to child marriage and allow it to continue. The individual country reports in Annex I summarise the circumstances surrounding child marriage in each Commonwealth member state.

However, many issues associated with child marriage are common across countries, such as high levels of poverty and low levels of education, and there are also some parallels that can be drawn between different countries within the same region. For this reason, it is worth briefly summarising the prevalence and context of child marriage within each of the regions of the Commonwealth.

## ■ Africa



Eighteen of the 55 African Union countries – roughly one third – are members of the Commonwealth. When considering the proportion of children married before 18 as a percentage of the population (rather than in absolute numbers), Africa has the biggest problem of child marriage in the Commonwealth. When looking at numbers of children married in Africa overall, close to 50 per cent of women between the age of 20–24 were married as children.<sup>44</sup> According to *Girls Not Brides*, 14 of the 20 countries with the highest prevalence of child marriage are in Africa (four of these, Mozambique, Nigeria, Uganda and Sierra Leone are Commonwealth countries) and, without intervention, the number of children married in Africa looks set to increase due to population increases.<sup>45</sup>

Amongst African Commonwealth countries, Cameroon, Ghana, Kenya, Malawi, Mozambique, Nigeria, Sierra Leone, Tanzania, Uganda and Zambia all have prevalence rates of child marriage of between 20 and 48 per cent (see Figure 3).

## ■ Asia



The Asian region of the Commonwealth also has a very high occurrence of child marriage, with South Asia being home to almost half (42 per cent) of all child brides worldwide. India alone accounts for one third of the global total, while Bangladesh has the highest rate of marriage involving girls under 15 years of age. Although there have been improvements in recent years, more than 24 per cent of girls in Bangladesh still begin bearing children by age 18.<sup>46</sup>

In terms of absolute numbers, Asia has the highest number of children married or in union by the age of 18. For the most part this is due to the prevalence of child marriage in populous countries such as India, Bangladesh, Pakistan and Sri Lanka, which are all Commonwealth countries. While child marriage rates in Asia have declined from 63 per cent in 1985 to 45 per cent in 2010, most of the progress was in relation to girls under 15. Marriages of girls aged 15 to 18 are still very common, and therefore more effort is needed to protect them.<sup>47</sup>

The country reports in Annex I illustrate that there are both significant similarities and variations within the Commonwealth countries in Asia. Firstly, all of the countries have plural legal systems that create inconsistencies in relation to the legal age of marriage, depending on whether the marriage is religious, civil or carried out under customary law. However, the region also has major differences in terms of the prevalence of child marriage. While large, populous countries such as India and Bangladesh have significant levels of child marriage, and are characterised by plural legal systems and weak enforcement of marriage laws, smaller countries such as Brunei and Singapore have almost no issue with child marriage.

It is likely that this is a reflection of the general correlation that exists globally between poverty and higher levels of child marriage, as Singapore and Brunei are the two most prosperous Commonwealth countries in Asia. Conversely, Sri Lanka, India, Pakistan and Bangladesh are the poorest Commonwealth countries in Asia

and they have the highest rates of child marriage. Working to lift poor Commonwealth countries out of poverty clearly needs to be part of the strategy to eliminate child marriage.

## ■ Caribbean & Americas



The problem of child marriage appears to be less severe in the Caribbean & Americas than in Africa and Asia, although rates of teenage pregnancy and informal unions are higher in the region. All the Commonwealth countries in this region, except Canada, are relatively small islands with small populations, and for the most part there appear to be limited reports of child marriage. Despite this, there is some evidence in the country reports in Annex I that there may have been attempts by governments to ignore or minimise the prevalence of child marriage, at least in some of the Caribbean countries such as Trinidad & Tobago and Guyana.

## ■ Europe



The UK, Cyprus and Malta are the only Commonwealth countries in Europe, and all of them have relatively well-developed legislation in place in relation to child marriage. However, all three countries have an absolute minimum age of marriage set at 16 rather than 18. While it is difficult to gain a comprehensive picture about child marriage due to limited statistics, particularly for Malta and Cyprus, it appears that the proportion of children affected by child marriage is relatively low, particularly when compared to other regions in the Commonwealth.

However, in the UK the most recent data does indicate an increase in the practice of child marriage after years of a consistent decline. As with some other developed Commonwealth countries, such as Australia and New Zealand, the primary problem in the UK appears to be the possibility of child marriage occurring illegally within particular ethnic communities, or of children being trafficked into or out of the country for the purpose of child marriage. There appears to be a particular risk of this occurring between the UK and Pakistan.<sup>50</sup>

## ■ The Pacific



The majority of the countries in the Pacific region do not appear to have any available data in relation to the practice of child marriage.<sup>48</sup> However, it seems unlikely that this is because child marriage does not exist within the Pacific, but rather is related to the size and other features of the countries, including geography and wealth.

Australia and New Zealand both have well-developed legislative frameworks in place in relation to child marriage and related criminal offences, although both countries have exceptions to the minimum age of marriage of 18 allowing 16- and 17- year olds to marry in certain circumstances. Both countries have a relatively small problem with child marriage, however, there does appear to be a rise in anecdotal cases of child marriage occurring within particular migrant communities, or in children being flown overseas for the purpose of being married.

Virtually all of the Commonwealth island nations in the Pacific are quite small, with small populations dispersed throughout remote and rural areas. These countries face their own specific hurdles, characterised in many cases by poverty and a lack of economic development. Geography combined with infrequent registration of marriages (and often births) makes it almost impossible to provide an accurate record of the prevalence of child marriage within the Pacific region. Child marriages are often carried out under customary law – which is constitutionally protected in some countries such as Tonga and Samoa – or in remote villages. Further, there are reports that some countries, like the Solomon Islands, still engage in traditional practices that encourage child marriage, like paying bride price for a child or arranging marriage upon a child's birth.<sup>49</sup> However, it is difficult to find evidence to support these claims and therefore the true picture remains unclear.



## Child marriage and international law

There are several international conventions that prohibit child marriage, either directly, or indirectly by prohibiting discrimination against girls or the carrying out of harmful traditional practices against children. A table summarising the ratification status of these conventions by Commonwealth countries, and the relevant dates of ratification, is shown in Annex II.

The 1964 Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages is the first binding UN treaty that prohibits forced and early marriages and requires states parties to eliminate the marriage of girls under the age of puberty, to stipulate a minimum age of marriage and to establish measures for the registration of all marriages.<sup>51</sup> Only 10 Commonwealth member states are party to this convention.<sup>52</sup>

The 1981 UN Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) provides that the minimum age for marriage should not be lower than the age of majority<sup>53</sup> and forbids discrimination between men and women in this respect. CEDAW is also explicit in its guarantee of the right to free and full consent to marriage.<sup>54</sup> In recognition of the fact that children do not have the legal capacity to consent to marriage, CEDAW also provides that the betrothal and marriage of a child shall have no legal effect.<sup>55</sup>

**“ The betrothal and marriage of a child shall have no legal effect and parties to CEDAW must take action to ensure a minimum age for marriage and the compulsory registration of marriages.”**

All Commonwealth countries, except for Tonga, have ratified CEDAW, although many continue to maintain reservations relating to marriage and personal laws, which is widely seen as being inconsistent with the object and purpose of the Convention. This is because many violations of the human rights of women and girls occur in the sphere of personal law and family life and directly impact all other rights.<sup>56</sup>

The CEDAW Committee monitors implementation of Convention rights by all states parties through a periodic review process, during which the Committee makes observations and recommendations to states on measures needed to improve implementation. It also issues

General Recommendations to give general guidance to states parties on specific thematic issues relating to proper implementation of the Convention. Through these processes, the Committee has been consistent in urging states parties, including Commonwealth member states, to take necessary legal measures to eradicate child marriage.

For example, the Committee recommended in 1994 in its General Recommendation 21 that the betrothal and marriage of a child should have no legal effect and that all necessary laws should be enacted to specify a minimum age for marriage and to require the registration of marriages.<sup>57</sup>

In its General Recommendation 24 issued in 1999, the Committee went further and stated that while states parties should ensure the enactment of laws aimed at addressing violence against women and girls (including child marriage), they must also mandate the effective enforcement of such laws.<sup>58</sup>

In 2013, General Recommendation 29 provided that instances of ‘bride price’ (referred to as ‘payment or preferment transactions’), should not be required for a marriage to be valid, nor should the practice be recognised by the State party as enforceable.<sup>59</sup> This was reinforced in 2014 in General Recommendation 31, which acknowledged that the payment of dowries and bride prices may increase the vulnerability of women and girls to violence and other harmful practices. Further, it recognised that such a practice violates the right of women to freely choose a spouse.<sup>60</sup>

In General Recommendation 35 of 2017, the CEDAW Committee urged states parties to:

**“ Repeal, including in customary, religious and indigenous laws, all legal provisions that are discriminatory against women and thereby enshrine, encourage, facilitate, justify or tolerate any form of gender-based violence [...] [including] provisions that allow, tolerate or condone [...] child or forced marriage [...]”**<sup>61</sup>

Similarly, the CEDAW Committee has made direct recommendations to a number of Commonwealth states relating to the eradication of child marriage, as part of the periodic review process. By way of recent example, in their Concluding Observations on the fifth periodic report of Singapore, dated 21 November 2017, the Committee noted the efforts made by Singapore to harmonise the law governing Muslim marriages with civil marriage laws, but expressed concern regarding Singapore’s continued reservations to Articles 2 and 16 of the Convention<sup>62</sup> on the ground of protecting minorities, stating:



## PART TWO:

# Child Marriage in International and Regional Mechanisms

■ 45. The Committee recommends that the State party undertake a comprehensive review of the Administration of Muslim Law Act, taking into account the experiences of other countries with populations of similar cultural backgrounds and with similar legal norms, to provide women with rights equal to those of men with regard to marriage, divorce and inheritance. In particular, it recommends that the State party:

(a) *Abolish exceptions to the prohibition of marriage of girls under 18 years of age with regard to civil and Muslim marriages and request the full consent of the woman in all marriages.*<sup>63</sup>

Similarly, in the Concluding Observations on the eighth periodic report of Kenya, dated 17 November 2017, the Committee recognised the discriminatory impact of religious laws on women and girls from particular religious or customary groups and recommended repeal of these laws. In addition to recognising the importance of law reform, the Committee further emphasised the need for adequate training of those working within the criminal justice system to ensure the enforcement of laws aimed at eradicating harmful practices, and specifically recommended that Kenya:

■ 'Provide systematic training for judges, prosecutors, legal professionals, law enforcement officials and medical personnel on the strict application of criminal law provisions to punish child and/or forced marriage [...] and raise awareness about the criminal nature of such practices and their adverse effects on women's rights;

■ 'Ensure that women victims of harmful practices can file complaints without fear of retribution or stigma and have access to effective remedies and victim support such as legal, social, medical and psychological assistance and shelters.'<sup>64</sup>

Comparably, states parties to the CRC have committed to take 'all effective and appropriate measures with a view to abolish traditional practices prejudicial to the health of the children'<sup>65</sup> which includes, among other practices, child marriage. The Committee on the Rights of the Child strongly recommends that states parties amend or introduce legislation, where necessary, to increase the minimum age for marriage to 18 years, without any exceptions.<sup>66</sup>

The CRC outlines the rights of the child, almost all of which could be said to be relevant to the issue of child marriage. In particular, the child's right to survive, to develop to their full potential, to protection from harmful practices and abuse, and to full participation in family, cultural and social life,<sup>67</sup> are all particularly relevant given the risk of harm to reproductive and sexual health, and to educational and social development,

that child marriage presents. The CRC has been ratified by all Commonwealth countries, and in fact has been ratified by all UN member states, with the exception of the United States.<sup>68</sup>

**Figure 4: Key provisions in the UN Convention on the Rights of the Child**

- Article **1** **Definition of child**  
Everyone under the age of 18 has all the rights in the Convention.
- Article **2** **Without Discrimination**  
The Convention applies to every child whatever their ethnicity, gender, religion, abilities, whatever they think or say, no matter what type of family they come from.
- Article **3** **Best interest of the child**  
The best interests of the child must be a top priority in all actions concerning children.
- Article **4** **Protection of rights**  
Governments must do all they can to fulfil the rights of every child.
- Article **6** **Survival and development**  
Every child has the right to life. Governments must do all they can to ensure that children survive and grow up healthy.
- Article **9** **Seperation from parents**  
Children must not be separated from their parents unless it is in the best interests of the child (for example, in cases of abuse or neglect). A child must be given the chance to express their views when decisions about parental responsibilities are being made. Every child has the right to stay in contact with both parents, unless this might harm them.
- Article **11** **Kidnaping and trafficking**  
Governments must take steps to prevent children being taken out of their own country illegally or being prevented from returning.

Article **18** **Parental responsibilities; state assistance**  
Both parents share responsibility for bringing up their child and should always consider what is best for the child. Governments must help parents by providing services to support them, especially if the child's parents work.

Article **19** **Protection from all forms of violence**  
Governments must do all they can to ensure that children are protected from all forms of violence, abuse, neglect and mistreatment by their parents or anyone else who looks after them.

Article **27** **Adequate standard of living**  
Every child has the right to a standard of living that is good enough to meet their physical, social and mental needs. Governments must help families who cannot afford to provide this.

Article **28** **Right to education**  
Every child has the right to an education. Primary education must be free. Secondary education must be available to every child. Discipline in schools must respect children's human dignity. Wealthy countries must help poorer countries achieve this.

Article **31** **Leisure, play and culture**  
Every child has the right to relax, play and join in a wide range of cultural and artistic activities.

Article **34** **Sexual exploitation**  
Governments must protect children from sexual abuse and exploitation.

Article **36** **Other forms of exploitation**  
Governments must protect children from all other forms of exploitation that might harm them.

As with the CEDAW Committee, the Committee on the Rights of the Child monitors implementation of the CRC and makes observations

and recommendations to states on measures needed to improve implementation. Unsurprisingly, there is a significant focus in the Committee's observations on the need for uniform, non-discriminatory laws that provide for a minimum marriageable age of 18 and prohibit child marriage. An illustrative recent example came from the July 2017 comment of the Committee on the Combined Third to Fifth Periodic Reports of Cameroon in which the Committee urged Cameroon to finalise the revision of the Civil Code and establish a minimum age for marriage of 18 for boys and girls.<sup>69</sup> The Committee also recommended that Cameroon 'take all necessary measures in line with the State party's obligations under the Convention and the African Charter on the Rights and Welfare of the Child to eliminate the practice of child marriage, which remains prevalent throughout the State party, particularly in the North, Far North, Adamaoua and East regions'.<sup>70</sup>

Other recent illustrative comments on Commonwealth countries include:

## ■ The concluding observations on Zambia (March 2016).<sup>71</sup>

'24. The Committee recommends that the State party:

(a) *Take all necessary measures to expedite the adoption of the Bill of Rights and the Children's Code Bill in order to implement the definition of the child as any person who has not attained the age of 18 in accordance with the new Constitution and article 1 and other related principles and provisions of the Convention and to implement in practice the minimum age of marriage at 18 years.*

## ■ The concluding observations on Brunei Darussalam (February 2016).<sup>72</sup>

'23. The Committee remains deeply concerned at the very low minimum age for marriage, which is 14 under customary law, 15 for ethnic Chinese girls and not expressly defined for Muslims.

'24. The Committee urges the State party to review and amend its legislation to set the minimum age for marriage to 18 for both boys and girls, regardless of their ethnic and/or religious group.'

## ■ The concluding observations on Antigua & Barbuda (June 2017):<sup>73</sup>

'18. The Committee is concerned that the Marriage Act includes exceptions that allow marriage from the age of 16 years.

'19. The Committee recommends that the State party amend the Marriage Act to remove exceptions that allow marriage for those under the age of 18 years.'

## ■ The concluding observations on the United Kingdom (July 2016):<sup>74</sup>

'18. The Committee is concerned that the Marriage Act includes exceptions that allow marriage from the age of 16 years.

'19. The Committee recommends that the State party amend the Marriage Act to remove exceptions that allow marriage for those under the age of 18 years.'

## ■ The concluding observations on New Zealand (October 2016):<sup>75</sup>

'14. The Committee recommends that the State party take all measures necessary to address inconsistencies in national legislation concerning the definition of the child, including by defining the minimum age of marriage at 18 years for both girls and boys and extending the scope of the Children, Young Persons and Their Families Act 1989 to cover all persons under the age of 18.'

As with the CEDAW Committee, when considering the role of the law the CRC Committee does not confine its observations to law reform measures. The authoritative observations of the Committee also give recognition to the multi-faceted nature of the problem of child marriage, often with comprehensive suggestions aimed at creating change.

For example, in the 2017 CRC report on Malawi, the concluding observations stated:

'24. The Committee notes that the Childcare Protection and Justice Act criminalizes harmful practices.

However, it is concerned that:

(a) *The practice of child marriage still persists;*

(b) *Harmful practices, such as abduction, forced marriage, betrothal, kusasa fumbi (sexual cleansing) and the pledging of children as collateral, are still practised;*

(c) *Traditional and religious leaders are not fully supportive in implementing these laws;*

(d) *The support mechanisms and staff responsible for the implementation of legislation have inadequate resources.*

'25. In the light of its general comment No. 18 (2014) on harmful practices, adopted jointly with the Committee on the Elimination of Discrimination against Women, the Committee urges the State party to:

(a) *Take all measures necessary to eliminate child marriages;*

(b) *Disseminate the Childcare Protection and Justice Act and other relevant legislation at the local level, and particularly among traditional and religious leaders;*

(c) *Develop comprehensive awareness-raising campaigns and programmes on the provisions criminalizing harmful practices and on their negative consequences on children, as well as campaigns on the harmful effects of child marriage on the physical and mental health and well-being of girls, targeting households, local authorities, teachers, religious, traditional and community leaders and judges and prosecutors;*

(d) *Provide appropriate financial resources to front-line staff who implement legislation at the grass-roots level and strengthen the capacity-building of volunteers and police officers responsible for providing victim support unit services in order to ensure that they discharge their duties in the best interests of the child and in a child-sensitive manner.<sup>76</sup>*

This provides a particularly interesting example of recommendations that are not directed towards the introduction of a law, but rather are aimed at supporting its successful implementation within the community (through education amongst community leaders and legislators) and its enforcement (through the provision

of financial support to those implementing the legislation on the front-line). These recommendations are informed by submissions and observations from those organisations working on the ground in each Commonwealth country, and as a result provide some of the most useful proposals for the types of strategies that are most likely to be successful in a country, as they are based on local circumstances.

A full list of the recommendations made by the CRC Committee in relation to child marriage in Commonwealth member states is contained at Annex III.

The right to freely consent to marriage is also enshrined in numerous other international conventions and legal instruments, including the Universal Declaration of Human Rights, which provides that:

“ **Marriage shall be entered into only with the free and full consent of the intending spouses.<sup>77</sup>** ”

The International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights both contain similar reiterations of the right to consent to marriage.<sup>78</sup>

Given that children do not have the legal capacity to consent to marriage, purported child marriages are by definition both a legal oxymoron and inherently a form of violence against women and girls.

The existence of all of these widely ratified international agreements clearly illustrates that governments in all regions of the Commonwealth have a legal duty to prevent and eliminate child marriage and, in the absence of comprehensive programmes to do so and to adequately protect victims, are legally complicit in its existence and perpetuation.

## ■ United Nations resolutions and development goals

In addition to entrenched legal norms against child marriage in formal treaties, several recent United Nations resolutions and reports have focused on eliminating child marriage. For example,

on 18 December 2014, UN Resolution 69/156 on Child, Early and Forced Marriage was adopted with the broad support of 116 countries from different regions around the world. This was the first time the UN General Assembly (UNGA) had passed a substantive resolution on child marriage,<sup>79</sup> and it represented an important indication of the views of the international community on ending child marriage and ensuring gender equality for women and girls.

The Resolution recognised that child marriage: severely impairs the human rights of girls and women and threatens their health, education, economic and social status; is inherently linked to deep-rooted gender inequalities, norms and stereotypes; and is itself a barrier to development and helps perpetuate the cycle of poverty.<sup>80</sup> More importantly, it was the first time countries agreed on the steps they – and partners in international organisations and civil society – should be taking to address the problem of child marriage, including, among others:

- Enacting, enforcing and upholding laws and policies to end the practice;
- Developing and implementing holistic, comprehensive and coordinated responses and strategies in cooperation with stake holders, including civil society; and
- Promoting and protecting the human rights of all women and girls, including their right to education and to have control over, and decide freely and responsibly on, matters related to their sexuality.<sup>81</sup>

The Resolution also encouraged the UN to continue to take action on the issue, particularly noting the need for the Post-2015 Development Agenda to make clear commitments in relation to eliminating child marriage. In addition, the Resolution noted that the UNGA decided:

“ **[T]o consider the issue of child marriage at its seventy-first session under the item entitled 'Promotion and protection of the rights of children', taking into account the multifaceted and worldwide nature of the issue of child, early and forced marriage.<sup>82</sup>** ”

At the 71st session of the UNGA in December 2016, Resolution 71/175<sup>83</sup> on child, early and forced marriage was adopted. It represents a significant push to seriously address the issue and explicitly recognises the need to provide girls with education, economic opportunities and access to effective justice. The Resolution urges states to, among others, 'enact, build awareness of, enforce and uphold laws concerning a minimum age of marriage and to progressively amend laws with lower ages of marriage and/or ages of majority'; strengthen efforts to ensure timely registration of births and marriages, and:

■ 'ensure access to justice and accountability mechanisms and remedies for the effective implementation and enforcement of laws aimed at preventing and eliminating child, early and forced marriage, including by informing women, girls and boys about their rights under relevant laws, training law enforcement officers, the judiciary and professionals working with women and children and ensuring oversight of the handling of cases of child, early and forced marriage, improving legal infrastructure and removing all barriers to access to legal counselling, assistance and remedies.'

The Resolution also requested the UN Secretary General to complete a progress report for the 72nd UNGA, in preparation for consideration of the issue at the 73rd UNGA in late 2018.

The UN Human Rights Council has also unanimously adopted a resolution, co-sponsored by 88 states, to strengthen efforts to prevent and eliminate child, early and forced marriage.<sup>84</sup> Resolution 29/L15 noted in particular 'the deep-rooted gender inequalities, norms and stereotypes' and 'harmful practices, perceptions and customs' that are among the primary causes of child marriage – along with poverty and lack of education.<sup>85</sup> It also noted that in addition to the detrimental effects child marriage has on girls and women, the practice is an impediment to the development of society as a whole, since empowering girls and women is a key factor in breaking cycles of gender discrimination, violence and poverty.<sup>86</sup>

**“ Deep-rooted gender inequalities, norms and stereotypes and harmful practices, perceptions and customs are among the primary causes of child marriage which the law needs to help eliminate. ”**

Resolution 29/L15 urged states to take a number of actions aimed at tackling the problem of child marriage and ultimately requested that the UN Office of the High Commissioner for Human Rights (OHCHR) organise an expert workshop in early 2017 to 'review and discuss the impact of existing

strategies and initiatives to address child, early and forced marriages and make recommendations for further action by States and the international community'. This is yet another indication that child marriage is likely to remain at the top of the international agenda in the near future, and needs to become a much greater focus across the Commonwealth.

These two key resolutions were adopted during negotiations in relation to the Post-2015 Development Agenda. Many civil society organisations had been advocating intensely for the elimination of child marriage to be explicitly included in the Sustainable Development Goals (SDGs), which were adopted in 2015 as a replacement for the Millennium Development Goals (MDGs), which had expired.

The SDGs, entitled 'Transforming our world: the 2030 Agenda for Sustainable Development', are an intergovernmental set of aspirational goals with 169 targets that were formally adopted in United Nations Resolution 70/1 on 25 September 2015.<sup>87</sup>

In adopting the SDGs, it was noted that the goals and targets contained within it are 'integrated and indivisible, global in nature and universally applicable, taking into account different national realities, capacities and levels of development and respecting national policies and priorities'.<sup>88</sup> It was further noted that each country would face its own specific challenges in achieving sustainable development, with some countries being more vulnerable than others. The need for increased data collection in order to measure the progress of the SDGs was also noted.<sup>89</sup> This is particularly relevant for child marriage as the lack of accurate data collection makes it difficult to assess the extent of the practice in some countries, and to measure whether any progress is being made in other countries.

Goal 5 of the SDGs is to '[a]chieve gender equality and empower all women and girls'. Target 5.3 of this Goal is to '[e]liminate all harmful practices, such as child, early and forced marriage and female genital mutilation'.<sup>90</sup> This is a similar, but far more concrete goal than MDG 3, which was 'to promote gender equality and empower women'. The inclusion of a specific target regarding the elimination of child marriage (amongst other harmful practices) is clear recognition that child marriage is holding society back from achieving gender equality and empowerment of women and girls. It is also very significant that the explicit goal of eliminating child marriage was recognised and included in the SDGs, as these were adopted by the UNGA and will continue to guide international development action in the coming years. SDG 5 clearly needs to inform concrete action in the Commonwealth, given its disproportionate role in perpetuating child marriage.

**“ Sustainable Development Goal 5, which includes a target of eliminating harmful practices such as child marriage, needs to inform concrete action in the Commonwealth, given its disproportionate role in perpetuating child marriage. ”**

The conventions and resolutions discussed here represent only some of the most important recent international legal developments dealing with child marriage. There are many more international and regional instruments relevant to the issue, and a more comprehensive list of instruments and their relevant provisions is attached at Annex IV.

## ■ Universal Periodic Review

The Universal Periodic Review (UPR) process – a peer review mechanism whereby UN member states discuss and review the status of human rights implementation in all countries on a rotating cycle every four and a half years – allows for the monitoring of progress in relation to child marriage, amongst a number of other human rights issues of concern.

UPR recommendations by UN member states commonly focus on legislative change to increase the minimum age of marriage to 18, or to remove age provisions that are discriminatory on the basis of gender, and to harmonise marriage laws in countries where different religious and customary laws exist that allow child marriage.

For countries that already have a minimum marriageable age of 18 or above, the focus tends to be on enforcement of these laws. For example, in 2015 the Report of the Working Group on the UPR for Rwanda contained the following recommendations:

*'135.31 Effectively enforce existing legislation in order to prevent and prohibit the practice of early marriages (Portugal);*

*'135.32 Ensure the full application of the law in order to prevent child, early and forced marriage and to bring perpetrators of sexual violence perpetuated against children to justice (Sierra Leone).*

## ■ Commonwealth mechanisms

All Commonwealth countries agree to abide by the principles in the Commonwealth Charter, formalised in 2013, which explicitly recognises

the need for gender equality and the protection of women and girls, as well as the importance of the role of young people within the Commonwealth.<sup>91</sup> The Charter constitutes a commitment made by the member states of the Commonwealth, and eliminating child marriage is something that is required in order for members to meet that commitment.

The issue of child marriage has appeared on the agenda of the last four bi-annual Commonwealth Heads of Government Meetings (CHOGM). The 2011 CHOGM Communiqué was somewhat weak in comparison to UN commitments, providing only that 'giving due consideration to the domestic legislation of member countries, the Commonwealth may address the issue of early and forced marriage, and consider actions to support the rights of women and children and to share its best practices to promote the implementation of measures to tackle early and forced marriage'.<sup>92</sup>

This commitment was equally meagre at the 2013 CHOGM in Colombo, Sri Lanka ('Heads of Government agreed that the Commonwealth will continue to address the issue of child, early and forced marriage, giving due consideration to the domestic legislation of member countries and relevant international law' with a mandate to the Commonwealth Secretariat to work on the issue), and somewhat stronger at the 2015 CHOGM in Malta ('Heads welcomed the continuing efforts by member states and Commonwealth bodies to prevent and eliminate child, early and forced marriage [...] as [a barrier] to development and the full realisation of girls' and women's human rights; [...] encouraged support for already married girls, adolescents and women who have been affected by such practices; [and ...] encouraged cooperation with regional and global efforts, and concerted action at the national level to develop and implement holistic, comprehensive and coordinated responses and strategies to address this issue, including those aimed at the eradication of poverty, and protecting girls' and women's right to education').<sup>93</sup>

At Malta, the first ever Commonwealth Women's Forum was also held, the aim of which was to raise awareness of women's issues in Commonwealth countries – including the effects of child marriage.<sup>94</sup> This civil society forum held a special session on Preventing and Eliminating Child, Early and Forced Marriage, at which the Commonwealth agenda that had been advanced by the Kigali Declaration (also signed in 2015) was promoted.<sup>95</sup>

The 2018 CHOGM in London and Windsor in April 2018 was designed to be future-focused, with an acknowledgement that the summit's priorities would have a strong youth focus, with civil society forums held on four key topics, including 'youth' and 'women'.<sup>96</sup> This was reiterated

by UK Prime Minister Theresa May at a reception she hosted for Commonwealth leaders in September 2017, ahead of the UN General Assembly, when she stated:

■ *'[...] for the Commonwealth to have a future as vibrant as its proud past, it must remain relevant to its youngest citizens. Speak to the challenges they face and answer their ambitions for a better life. And that is why we will put young people at the heart of our Commonwealth Heads of Government meeting in London and Windsor next year.'*<sup>97</sup>

The 2018 CHOGM Communiqué, however, was again decidedly less clear and emphatic than the scale of the problem demands. It was limited to this familiar statement:

■ *'Heads are encouraged by continuing action by member countries and Commonwealth bodies to prevent and eliminate [...] child, early and forced marriage as [a barrier] to the development and the full realisation of girls' and women's human rights and to sustainable growth and development. Heads also encouraged support for already married girls, adolescents and women who have been affected by such practices.'*

These commitments are disappointing in their deference to existing domestic legislation, rather than providing a rallying call for comprehensive legislative reform wherever needed. Overall they appear to represent a watering down of the strong international calls for intensified legal reforms and interventions. Given that questions relating to the relevance of the Commonwealth abound, this is perhaps not surprising, and it remains to be seen whether future CHOGM Communiqués will show more promise for a Commonwealth that is genuinely dedicated to eradicating child marriage, including through firm and uncompromising action on law reform to protect women and girls from the devastating practice.

“ Given that questions relating to the relevance of the Commonwealth abound, it is perhaps not surprising that Commonwealth Heads of Government communiqués since 2011 have been weak on the issue of eradicating child marriage. ”

The Kigali Declaration is another Commonwealth initiative aimed at preventing and ending child marriage. Through this 6 May 2015 Declaration, 15 national human rights institutions (NHRIs) within the Commonwealth agreed to strengthen their efforts to eradicate child marriage within their respective countries.<sup>98</sup> The Declaration contains a number of commitments by NHRIs related to the law, including monitoring the enforcement of laws to combat child marriage and supporting

their governments by 'advocating for legal reform including bringing the age of marriage in line with international standards and strengthening systems for the registration of marriages and births'.<sup>99</sup> The Declaration was then to be rolled out to Commonwealth countries who were not initially involved in it, which if done successfully could assist those countries in creating stronger NHRIs that are better placed to help tackle child marriage.<sup>100</sup>

However, the focus on NHRIs, which have no legislative function or power, rather than on the legislatures and executive branch – which are responsible for legislation and policy including laws and policies to eradicate child marriage – is another example of the relative weakness of the Commonwealth. While NHRIs should certainly be contributing to the solutions by advocating for law reform, it is those who have the power to propose, enact and pass laws and policies that need to be encouraged, supported and held to account for instituting a system of law that protects all citizens including women and girls. It remains to be seen whether and to what extent Commonwealth NHRIs will have any measurable impact on influencing legislative reform and law enforcement on eliminating child marriage as a result of the Kigali Declaration commitments.

Taken together, the above measures indicate some degree of resolve within the Commonwealth to step up efforts in relation to eradicating child marriage. Compared with the developments occurring at the international level, however, this still remains well below the required mark. Concrete action, including on legislative reform and law enforcement, will be the litmus test of the Commonwealth's resolve, and the legal profession in Commonwealth member states can play a key role in encouraging, enabling and facilitating greater action.

“ The legal profession in Commonwealth member states can play a key role in encouraging, enabling and facilitating the necessary action by law makers to end child marriage. ”

## ■ Regional mechanisms applicable in Commonwealth countries

In addition to international and pan-Commonwealth mechanisms and initiatives, there are certain

regional mechanisms and instruments that are relevant to the Commonwealth countries within those regions, the principal ones of which are briefly summarised here.

## ■ Africa

There have been a number of regional legal initiatives aimed at ending child marriage in Africa. Some of these have been undertaken by the UN, with others being directed from within regional organisations like the African Union, or by individual countries. Examples of initiatives currently in place or underway in Africa (though not all involving solely Commonwealth countries) include:

### ■ The African Union Common Position on Ending Child Marriage:

On 17 June 2014 the African Union (AU) formally adopted a common position to end child marriage. As part of this push, the AU is urging member states to establish comprehensive action plans to end child marriage, including establishing and enforcing laws that set the minimum age for marriage at 18. The AU will monitor progress toward this goal as part of its Agenda 2063 strategy, which aims to ensure positive socioeconomic transformation in Africa within the next 50 years.<sup>101</sup> Seventeen AU member states have held a national launch of the common position and of these, five – Cameroon, Ghana, Nigeria, Sierra Leone and Uganda – are Commonwealth countries.<sup>102</sup>

### ■ The SADC-PF Model Law on Child Marriage:

On 3 June 2016 the Southern African Development Community-Parliamentary Forum (SADC-PF) adopted a Model Law on Child Marriage, which is intended to bring member states' laws on marriage into line with their international human rights commitments.<sup>103</sup> Eleven of the 15 member states of the SADC-PF are Commonwealth countries – Botswana, Lesotho, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, Tanzania and Zambia.<sup>104</sup> The aim of the Model Law is to trigger policy reforms and development or revision of substantive laws, including on prohibitions on child betrothal and marriage, minimum ages for marriage, and voidability of child marriages. It also provides model legal measures on the prevention of child marriage and mitigation of its effects. At the time of writing, no examples of implementation

of the Model Law were evident, though it may be too early for concrete action to have been completed within this short time-frame.

### ■ The African Charter on the Rights and Welfare of the Child (African Children's Charter):

This treaty came into effect in 1999 and is a comprehensive and binding legal instrument that sets out the rights of children. It mirrors the CRC in many important ways as it considers the whole spectrum of civil, political, economic and social rights as they apply to children. This treaty expressly prohibits child marriage or betrothal, as well as sexual exploitation or abuse of children. Seventeen of the 18 Commonwealth members in Africa have ratified the treaty, with the 18th – Swaziland – having signed the treaty, but not yet ratified it.<sup>105</sup>

### ■ The African Committee of Experts on the Rights and Welfare of the Child (African Children's Committee):

This Committee was established in 2001 and monitors states parties' implementation of the African Children's Charter. Member states must submit their first report two years after ratification, with periodic reports being submitted every three years thereafter. The African Children's Committee is mandated to monitor and report on states' fulfilment of their commitments under the African Children's Charter and provide general recommendations.<sup>106</sup> At Ordinary Sessions, held twice a year, states parties submit reports and delegates are questioned by the Committee about areas of concern. For example, in the 28th Ordinary Session, held in November 2016, two Commonwealth members – Cameroon and Ghana – submitted reports for consideration. The Committee's report indicates it raised concerns about child marriage in both countries, and in relation to Ghana they explicitly noted the conflict between the legal age of marriage and customary laws.<sup>107</sup>

One clear example of the way the Committee focuses on the need for members states' laws to comply with the African Children's Charter can be found in the General Recommendations made in response to Rwanda's periodic report, submitted in April 2015:

'[...] during the constructive dialogue the Committee learned that even though the minimum age of marriage is 21 years, there are circumstances where a girl below the age of 18 could get married by a special waiver of the Ministry of Gender and Family Promotion. The Committee is of the view that this is against the best interest of the child and therefore recommends for the State Party to forbid child marriage with no exceptions in accordance with Article 21 of African Children's Charter'.<sup>108</sup>

“ Article 21(2), African Charter on the Rights and Welfare of the Child: ‘Child marriage and the betrothal of girls and boys shall be prohibited and effective action, including legislation, shall be taken to specify the minimum age of marriage to be 18 years and make registration of all marriages in an official registry compulsory.’ ”

## ■ Asia Pacific

While there do not appear to be any regional initiatives targeted at eliminating child marriage in the Pacific, there are a number of organisations in Asia that are involved in initiatives aimed at ending violence against children (and women), including some that have recently focused on eradicating child marriage. These include:

### ■ The South Asia Initiative to End Violence Against Children:

The South Asia Association for Regional Cooperation (SAARC) is an intergovernmental union of eight nations in South Asia, four of which are Commonwealth member states – Bangladesh, India, Pakistan and Sri Lanka. The South Asia Initiative to End Violence Against Children is a regional inter-governmental body, made up of representatives from SAARC nations, whose mandate is aimed at protecting the rights of children in South Asia. In 2014, the South Asia Initiative adopted the first Regional Action Plan to End Child Marriage in South Asia. The overall objective of the Regional Action Plan was to delay the age of marriage to 18 years for girls in at least four South Asian countries by 2018. The Plan contains seven expected outcomes and identifies the activities and regional and national strategic actions necessary to achieve these outcomes. While the outcomes illustrate the manifold causes of child marriage, including poverty, lack of education and discriminatory gender norms, and focus on steps that can be taken in these areas, the first outcome identifies the importance of ensuring an appropriate legal framework is in place:

*‘Expected Outcome 1: Effective enactment, enforcement and use of national policy and legal instruments to increase the minimum age of marriage for (both boys and) girls to 18.’<sup>109</sup>*

### ■ The Asian Forum of Parliamentarians on Population and Development (AFPPD):

The AFPPD is a regional non-governmental organisation that engages with parliamentarians from the Asia-Pacific region to advocate for policies and laws that promote reproductive health and rights, gender equality and women’s empowerment. As of 2017, AFPPD consisted of National Committee Parliamentarians from 30 states, including 10 Commonwealth states – Bangladesh, India, Malaysia, Pakistan, Sri Lanka (Asia) and Australia, New Zealand, Papua New Guinea, Tonga and Tuvalu (Pacific). The AFPPD has been involved in commissioning a number of reports on child marriage, including reports focused on the existing legal and policy frameworks in the region, which should act as guides to Parliamentarians.

The 2016 report, ‘Parliamentary Good Practices for Effective Implementation of Laws and Policies for Prevention of Child Marriage’ was one such report which presented 10 case studies of good practices that have achieved measurable results across a wide variety of cultural contexts. The report sets out the major lessons learned from these efforts to eradicate child marriage through legal and policy reform. Sri Lanka, which legislated for a minimum marriageable age of 18 and compulsory marriage registration in 1995 was presented as a model country within the region, as its implementation of these laws had facilitated the creation of a legal system that enabled child marriage to be policed and reduced. However, it was noted that child marriage rates remain higher in some predominantly Muslim communities, and that religious marriages are governed by separate laws. This discrepancy in the law across Sri Lanka, and the resultant differences in the rates of child marriage by community, illustrates why countries must enact uniform laws to prohibit child marriage as a starting point towards eradicating the practice.<sup>110</sup>

## ■ Europe and Americas

Given the small number of Commonwealth countries in Europe and the relatively small scale of the problem of child marriage, there are no regional legal initiatives on this issue. However, the UK has taken a leading role globally, and within the Commonwealth, in relation to child marriage by providing significant development funding and aid for various projects aimed at eradicating the practice. Similarly, there do not appear to be any regional initiatives in the Americas, although Canada has taken a similar role globally in relation to development assistance for eliminating child marriage.



## PART THREE:

# Child Marriage and Domestic Law in the Commonwealth

## Can the law make a difference?

While clearly the law can never be a complete solution to child marriage, there is some available data that suggests that consistent legislation prohibiting child marriage leads to lower levels of child marriage. This highlights the role of the law as an important starting point and a signal from government that child marriage is not acceptable and must be eradicated.

A recent study involving 12 countries in sub-Saharan Africa found evidence to indicate that a legal age of marriage for girls of 18 or above correlated with lower rates of child marriage and adolescent pregnancy generally:

**“After adjustment for household wealth, educational attainment, religion, and rural or urban location, the prevalence of child marriage was 40% lower among women in countries with laws that consistently set the minimum marriage age for girls at 18 or older than among women in other countries, and the prevalence of adolescent childbearing was 25% lower. Our results are consistent with the hypothesis that setting consistent minimum marriage age laws of 18 or older may protect against the exploitation of girls.”**

The correlation with lower rates of child birth is also particularly important, given the high rates of maternal and infant mortality and other significant risks that exist for young girls who become pregnant.

Nonetheless, given that many countries with high rates of child marriage do have laws in place prohibiting the practice, changing the law clearly does not provide a complete or immediate solution. Often such legislation is difficult to enforce in contexts where community support for child marriage is high. However, it is nonetheless necessary for governments to commit to enacting and enforcing such legislation as doing so may assist in gradually diminishing support for child marriage and, as the practice becomes less socially acceptable, the law provides legitimacy for

those working to end child marriage, as well as ensuring there are serious consequences for those who continue to support it.<sup>112</sup>

There are also examples of ways that a range of different measures – with law at the centre – can be successful. For example, Malawi has seen recent changes to its Constitution and legislation that prohibit child marriage, which were complemented by initiatives aimed at attitude change.

Rise Up and the Girls Empowerment Network (GENET) in Malawi, which together created the Stop Child Marriage Project, have partnered with local chiefs to encourage the adoption of bylaws that protect young girls from marriage and have worked in local communities to educate them on the devastating consequences of child marriage. They have used various strategies, including assisting chiefs to create taskforces to monitor compliance with the bylaws, and making a documentary that was used as a tool to raise public awareness about child marriage.<sup>113</sup>

An independent evaluation of the Stop Child Marriage Project found that child marriage in participating communities sharply declined, while girls’ enrolment in school increased.<sup>114</sup> There has also been a transformation in community attitudes towards child marriage, with the community now viewing the practice as shameful, rather than a desirable arrangement that would result in material gain. While this is simply one example, it is an encouraging one. When combined with the evidence that a strong legislative framework can correlate with lower rates of child marriage, this supports the argument that there is a clear role for the law in working towards the end of child marriage. It must, of course, be accompanied by law enforcement, education, poverty reduction and a number of other measures, all of which need to work in harmony.

In the following sections, child marriage is considered in relation to domestic law, and a number of examples are provided of the way in which the law and child marriage interact within the Commonwealth. We also examine the ways in which the law may be utilised to assist in preventing child marriage. It is outside the scope of this report, however, to provide an exhaustive listing of relevant domestic legislation or legal action in all Commonwealth countries.

## Constitutional provisions relevant to child marriage in the Commonwealth

The vast majority of Commonwealth countries have no constitutional provisions requiring a minimum marriageable age of 18 or over. In fact,

86 per cent of Commonwealth constitutions do not specify a minimum marriageable age at all.<sup>115</sup> In total, only three Commonwealth member states (or 6 per cent) have a constitutional provision which clearly and explicitly sets the minimum age of marriage at 18 years or older. This includes Malawi and Uganda for which the minimum age is 18, and Kenya which restricts marriage to ‘adults’ and defines adult as an individual who has attained the age of 18 years (and child as an individual who has not attained the age of 18).

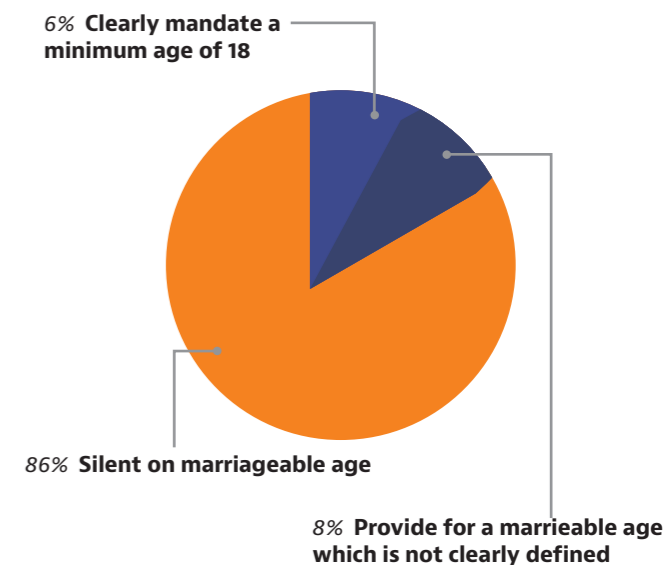
**“Only three Commonwealth member states have a constitutional provision which clearly and explicitly sets the minimum age of marriage at 18 years or older.”**

There are four other Commonwealth member states (or 8 per cent) which contain some form of provision in their constitution in relation to the age at which a person can marry. Three of these countries arguably also restrict marriage to those 18 or older, though the age requirement is less explicit. This includes Namibia, Rwanda and Swaziland, which all restrict marriage to ‘men and women’ but without clearly defining those terms. Namibia requires that men and women who marry are of ‘full age’ and Swaziland refers to men and women of ‘marriageable age’ – but those terms are also undefined. The fourth country, Cyprus, allows any person reaching a ‘nubile age’ to marry.

These provisions, particularly that of Cyprus, are arguably not sufficiently clear to restrict marriage to individuals who are 18 or over. However, even if these four countries were to be included in the number of Commonwealth countries that prohibit child marriage at a constitutional level, this analysis of constitutional provisions illustrates that only seven countries – or 13 per cent of Commonwealth member states – provide any form of constitutional protection against child marriage.

A marriageable age of under 18 is not expressly provided for in any Commonwealth constitutions, although until very recently it was a part of the Constitution of Malawi.<sup>116</sup> In April 2017, a constitutional amendment made Malawi’s Constitution consistent with a legislative enactment in 2015 that set the minimum age of marriage for both males and females at 18. It is hoped that these types of reform will help reduce and ultimately eliminate child marriage for nearly half of the female population – the rate that currently end up in marriage before the age of 18 (see Figure 3).

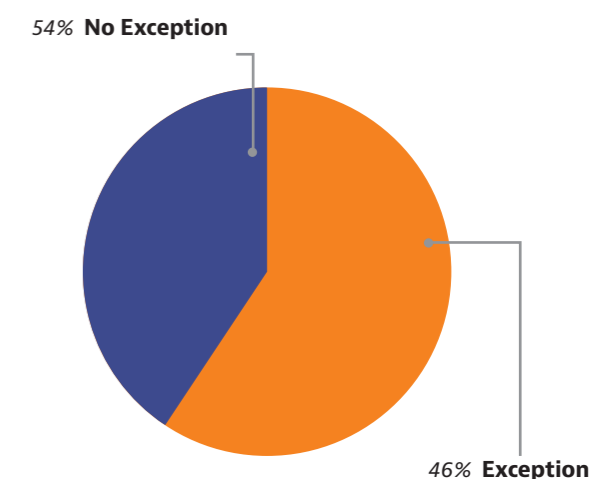
Figure 5: Percentage of Commonwealth countries with constitutions expressly meeting the international standard of a minimum marriageable age of 18



Further, while 88 per cent of Commonwealth countries have constitutions containing non-discrimination provisions that protect against discrimination on the basis of gender or sex, nearly half of those countries (46 per cent) maintain an exception or caveat to this protection for laws that relate to family or personal matters, including marriage. This presents a major legal obstacle to the elimination of child marriage and other human rights abuses that primarily affect women and girls.

**“The maintenance of exceptions to constitutional protections against discrimination on grounds of sex or gender for laws relating to family or personal matters, such as marriage, creates a major legal obstacle to the elimination of child marriage.”**

Figure 6: Commonwealth countries that have constitutional exceptions to gender equality in laws relating to marriage





These statistics reveal that constitutional provisions across much of the Commonwealth currently provide limited or no legal guarantees against child marriage. Given that the constitution is the supreme law within the vast majority of Commonwealth legal systems, these lacunae present a major problem that needs to be addressed.

## ■ Legislation on minimum ages for marriage in the Commonwealth

A constitutional prohibition on child marriage provides the best legal protection given that in most Commonwealth countries the constitution is the supreme law with which all other laws must comply. Constitutional protections are typically more firmly embedded in law and are more difficult to alter by changing governments. In the absence of such superior legal protection, however, standard legislation can be enacted to provide for minimum ages of marriage.

Despite the fact that all Commonwealth member states have ratified key international treaties requiring legal protection against child marriage, only nine Commonwealth member states (17 per cent) have legislation providing for an absolute minimum marriage age of 18 years or higher for both boys and girls, as listed in Figure 7.

**Figure 7: Commonwealth countries with a legislated absolute minimum marriage age of 18 or older**



However, there are important caveats even in some of these countries. For example, Nigeria has a federal system which requires states to expressly enact federal laws before they take effect in that state and the Child Rights Act 2003, which sets the minimum age of marriage, is a federal piece of legislation. While the majority of Nigerian states have implemented the Act, it is not in force in all parts of Nigeria. Further, there are other potential legal loopholes in Nigeria, as described in the next section. In Kenya, the Marriage Act 2014 provides that any provision which is inconsistent with Islamic law and practices shall not apply to persons who profess the Islamic faith. In Sierra Leone there is an act governing customary marriages that allows parents to consent to marriage for children under 18. However, the Child Rights Act 2007 sets the minimum age of marriage at 18 and prohibits customary practices of early and forced marriage.

“ The vast majority of Commonwealth member states do not legislate for an absolute minimum marriage age of 18. ”

In contrast, the vast majority of Commonwealth member states legislate for a minimum marriageable age – often of at least 18 – but with exceptions that allow children to marry, for example with the permission of their parents or guardians, a court or a Cabinet Minister (or similar). The absolute minimum age at which a minor can be married, with such special permission, will then be legislated – providing, in effect, the real minimum age of marriage in that country. This has the effect of lowering the absolute minimum age of marriage and, ultimately, providing a legal loophole that condones child marriage, leaving those most vulnerable to family-instigated child marriage unprotected. Figure 8 lists these countries and illustrates both the ostensible minimum age of marriage and also the real (or absolute) minimum age of marriage once the legislated exceptions are taken into account.

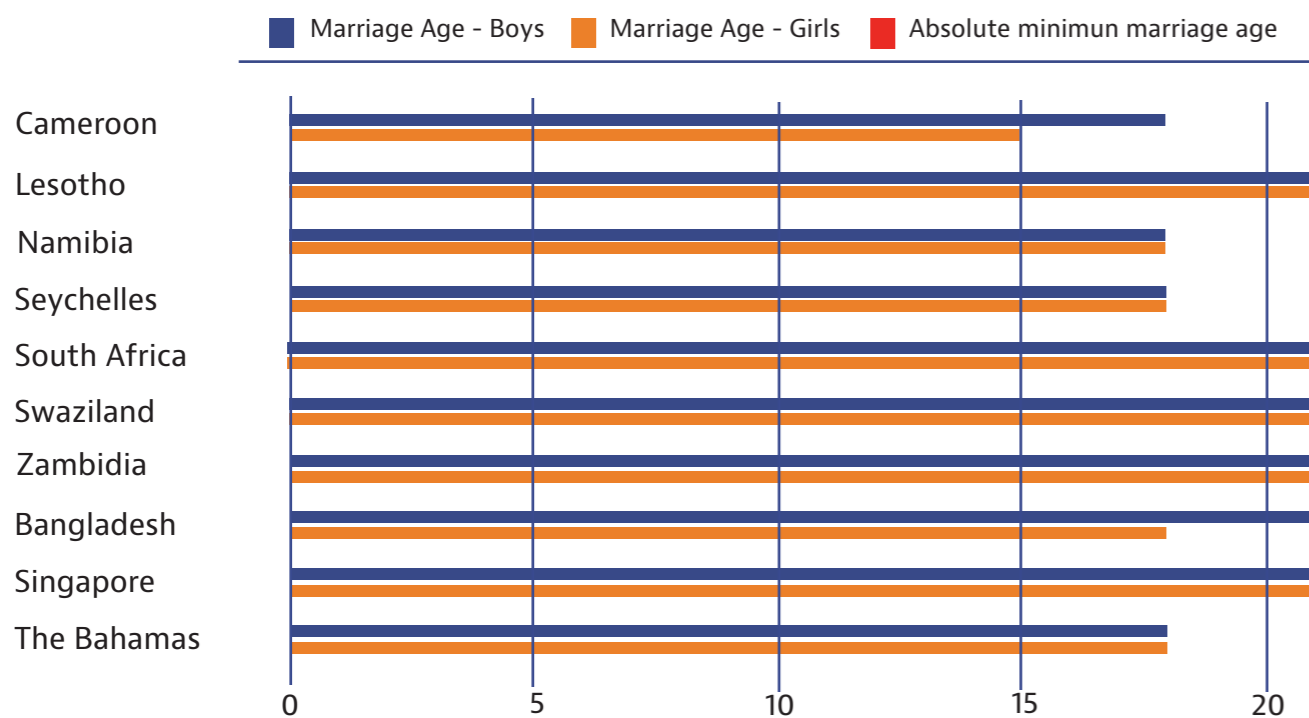
**Figure 8: Commonwealth countries with an absolute minimum marriage age of less than 18 years**



There are ten additional Commonwealth countries that provide a minimum age of marriage, with exceptions allowing minors to be married, but that do not include any clear and absolute

minimum age at which marriage can occur when those exceptions are invoked. Therefore, in effect, these countries have no absolute minimum age for marriage.

**Figure 9: Commonwealth countries with no absolute minimum age of marriage**



The legal form that the exceptions take in these countries varies significantly, and some are very vague. For example, Bangladesh allows the marriage of minors in 'special circumstances', which are not defined. Similarly, in Namibia, section 26 of the Marriage Act 1961 prohibits the marriage of minors under 18 except 'with the written permission of the Minister or any staff member in the Public Service ... in any particular case in which he or she considers such marriage desirable'. There is no indication of what factors may be taken into account in determining if a child's marriage is 'desirable'.

In Singapore, the Women's Charter provides that marriages will be void for individuals under 18, but allows the Minister to grant a special marriage licence that will authorise the marriage. The Act provides no minimum age at which the licence can be granted. In addition, the Administration of Muslim Law Act in Singapore allows an exception to the minimum marriageable age of 18 years for Muslim girls who have 'attained the age of puberty'. In Zambia the Marriage Act 1918 appears, on initial examination, to provide that marriages involving minors under 16 shall be void, but section 33 allows a Court to validate a marriage where it is 'not contrary to the public interest'. In Lesotho, while boys under 18 and girls are 16 are prohibited from marrying, an exception allows the Minister to grant permissions in any case in which he considers the marriage 'desirable'. A similar exception exists in Namibia.

Other countries, such as the Seychelles, simply fail to include any minimum age below which a parent

cannot consent to the marriage of a minor, or to include a provision prohibiting the marriage of minors of a certain age.

Finally, as the data and discussion above illustrate, a number of Commonwealth countries provide a minimum marriageable age for males that is higher than that provided for females, or that have other discriminatory laws in place in relation to customary and/or religious marriages. These states provide less legal protection against child marriage, and all of the harms it entails, for girls than they do for boys, or for girls and boys from different religious or customary backgrounds than other children.

### Other domestic laws relevant to child marriage in the Commonwealth

In addition to constitutional and legislative provisions on minimum legal ages for marriage, various other laws – and the extent to which they are enforced and implemented – can have an impact on the continued prevalence or eradication of child marriage. These include criminal laws prohibiting sexual conduct by an adult with a child; criminal laws against adults participating in, encouraging or officiating over a marriage involving a child; criminal laws against forced marriage; and laws providing for the mandatory registration of births

(to ensure everyone's age is verifiable) and marriages (to ensure all marriages whether civil, religious or customary are on record), among others.

While sexual offences against children are criminalised to some degree in all Commonwealth countries, child marriage is only explicitly criminalised in a few countries. For example, in India the Prohibition of Child Marriage Act 2006 provides that males over 18 years of age who marry a child shall be punished with imprisonment for up to two years, or a fine.<sup>117</sup> It is also an offence punishable by imprisonment for '[w]hoever performs, conducts, directs or abets any child marriage'.<sup>118</sup> The Act also provides that children forced into child marriages can void their marriage up to two years after reaching adulthood.<sup>119</sup> Despite the fact that this legislation overrides various other marriage laws in India, many religious groups argue that it does not apply because marriage should be governed by personal law.

In Nigeria, the Child's Rights Act 2003 provides that the minimum age of marriage is 18 years. The Act further criminalises some of the parties involved in child marriage as follows:

- '23. A person—
- who marries a child; or
  - to whom a child is betrothed; or
  - who promotes the marriage of a child; or
  - who betroths a child;

commits an offence and is liable on conviction to a fine of 500,000 Naira or imprisonment for a term of five years or to both such fine and imprisonment.'

However, the Child's Rights Act is federal legislation and must be passed by state governments before it is effective in those states. It is difficult to verify how many states have passed the law, but figures from 2015 indicate that only 24 of Nigeria's 36 states had passed the Act.<sup>120</sup> In addition, a provision in the Nigerian Constitution that allows citizens of 'full age' to denounce their citizenship – and provides that any woman who has been married is of full age – has long been relied on by many to argue that child marriage remains legal in Nigeria.<sup>121</sup> This provides a good example of why it is critical that child marriage is prohibited under both constitutional and legislative provisions.

In Bangladesh child marriage is illegal under the Child Marriage Restraint Act 2017, the legal age for marriage being 21 for men and 18 for women. However, as the Act provides that children can be married in 'special circumstances', and does not set a minimum age for the application of this provision,

there is effectively no minimum marriageable age. The criminal provisions are therefore unlikely to have any impact and the legislation has been widely criticised as a result.<sup>122</sup>

Kenyan legislation makes it an offence for any person to marry a person below the minimum age, with violations being punishable by five years' imprisonment, a fine of one million shillings, or both.<sup>123</sup>

In Swaziland in 2012, the introduction of the Children's Protection and Welfare Act officially outlawed child marriage. The Act states that children (anyone under the age of 18) have the right to refuse to be compelled to undergo or uphold any custom and other traditional practices which are likely to negatively affect them, including child marriage. The Act also penalises parents and guardians who collude with adult men to orchestrate child marriages. However, shortly after the law was passed, Swaziland's traditional leadership declared that child marriage was still acceptable under customary law.

Australia has introduced additional criminal offences for those involved in assisting or arranging for illegal child marriages to take place, either overseas or in Australia, as well as criminal sanctions for those who solemnise a marriage in contravention of the law.<sup>124</sup> This is positive as, ideally, those involved in assisting in the marriage of a child or officiating over such a marriage should also be considered guilty of an offence. However, as with the majority of Commonwealth countries, while the marriageable age in Australia is 18, children over 16 can be married with the permission of a Court, making it more difficult to enforce laws against child marriage.

Similarly, Canada recently amended its laws to criminalise anyone who celebrates, aids or participates in a marriage ceremony with full knowledge that one of the persons being married is under the age of 16 years, with a maximum sentence of imprisonment for five years. There is also a similar offence of removing a child from Canada, for the purpose of a forced or underage marriage ceremony.

These examples clearly illustrate the inherent difficulty with criminalising a practice that is technically excused under the law of the country. The absence of more widespread criminal sanction against child marriage in the Commonwealth is not particularly surprising given it is legal in the vast majority of member states to marry a child (in prescribed circumstances). While a number of countries do have legislative provisions prohibiting forced marriage, or marriage under duress, this does not necessarily relate to child marriage – despite the fact that children are, by definition, unable to consent to marriage. To avoid any potential difficulties

with interpretation of the law, child marriage should be covered by a separate criminal provision, or explicitly included within any laws against forced marriage. For example, in England and Wales the Anti-Social Behaviour and Policing Act 2014 criminalised forced marriage – including, by definition, child marriage. As of 2016 this appeared to have a positive effect as the data indicated there had been a decrease in the rate of child marriage.

Nearly all Commonwealth countries have laws mandating the registration of births and marriages. However, due to poor enforcement of these laws, the rates at which births and marriages are registered remain low. This is the case in many countries around the world, where there is no legal way to accurately and objectively ascertain the age of thousands or millions of people, including children, especially in poorer rural areas.

**“Mandatory registration of births and marriages, and systems set up by government to enable and monitor this in all areas of the country, are critical to identifying and eradicating practices of child marriage.”**

In 2016, the World Bank produced a paper which examined efforts to achieve legal identity for all, including through mandatory birth registration, and considered whether this could contribute to ending child marriage. The paper examines links between birth registration and development goals, and uses data on birth registration to argue that a correlation exists between high birth registration rates and low child marriage rates. While the featured case studies did not involve Commonwealth member states, the data on birth registration was cross-referenced across the 106 countries for which the World Bank also had data on child marriage, including the majority of Commonwealth countries. The evidence of correlation, while important, does not indicate that universal birth registration alone will significantly reduce child marriage – rather, that a policy of mandatory registration needs to be enforced, as well as being part and parcel of legal reform initiatives aimed at ending child marriage<sup>125</sup>.

Conversely, a Plan International study of four countries (three of which were Commonwealth member states – India, Kenya and Sierra Leone) found that birth registration did not provide any protection against child marriage. It is of note, however, that the research appeared to suggest this was because of a lack of an integrated approach to eradicating child marriage. Where laws against child marriage are weak or not enforced, the fact that births are registered cannot be expected to have much, if any, impact as the existence of birth certificates does not, of itself, assist

in enforcing laws against child marriage. Rather, an integrated approach to ending child marriage is required, of which the mandatory registration of births and marriages is a central part.

## ■ How the Commonwealth compares globally in respect of laws against child marriage

A 2015 study on child marriage by the Pew Research Centre found that of 198 countries that were examined, almost all (192) specified an age at which people could legally marry, 117 of which had a minimum age of marriage under 18.<sup>126</sup> This amounts to 59 per cent of countries globally that do not legislate or provide a constitutional mandate against child marriage.<sup>127</sup>

These statistics illustrate that the Commonwealth performs demonstrably worse proportionally, when compared against global figures, with at least 83 per cent of Commonwealth countries having a legal minimum age of marriage under 18. Further, the global figure of 59 per cent is necessarily skewed upwards given that it includes all Commonwealth countries, and therefore the real variation between global and Commonwealth figures is even greater. It must be restated that in many countries globally, as in the Commonwealth, minimum age requirements are often ignored.<sup>128</sup>

The above data presents a clear picture: the legal enablers of child marriage within the Commonwealth are disproportionately higher than they are globally.

**“Commonwealth legal systems are disproportionately deficient at addressing the problem of child marriage globally.”**

## ■ Case law on child marriage in the Commonwealth

In addition to legislation, it is important from a legal perspective to consider the extent to which domestic courts have been engaged on issues of child marriage, and how they have ruled in relevant cases. The courts are an important, independent branch of government, whose duty it is to interpret and uphold the law and constitutional rights and, to the extent possible in domestic law, to apply international legal standards.

While we have not, for the purposes of this report, attempted an exhaustive search of Commonwealth judicial decisions (and indeed it is difficult to find reported decisions from courts throughout the Commonwealth dealing specifically with child marriage), there are some illustrative decisions which demonstrate that the courts can be used successfully to challenge the apparent lawfulness of child marriage (or its apparent acceptance, even where unlawful) within communities. Some of the case law also demonstrates the different approaches adopted in Commonwealth countries when interpreting legislative provisions in relation to child marriage, particularly where tradition, custom or religion are deployed as part of the argument made in defence of the practice.

### ■ India

In October 2017, the Supreme Court of India issued a landmark ruling in *Independent Thought v Union of India*, W.P. (Civil) No. 382 of 2013, holding that sex with an underage wife constitutes rape. This, in effect, overturned a provision in the Indian Penal Code that exempted men from criminal prosecution for rape in marriage where the wife was 15 years or older. The relevant provision stated that '[s]exual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape'.<sup>129</sup> While unfortunately not striking down this entire exemption for marital rape, the judgment confirmed that men can no longer seek refuge in the law where they purport to marry underage girls.

### ■ South Africa

In South Africa, under the Recognition of Customary Marriages Act 1998, both parties to a customary marriage must consent to the marriage and must be over 18 years of age, unless the parents of a child, the Minister or a Court provide permission for the marriage to occur.<sup>130</sup> Despite this, instances of child marriage often occur in South Africa as a result of the traditional customary practice of *ukuthwala*.<sup>131</sup>

*Ukuthwala* has been reported as involving the abduction of young girls by older men, with the aim of compelling the young girl into marriage, often with the consent of the girl's family. Whatever the history of the practice, the government reports that today *ukuthwala* 'increasingly involves the kidnapping, rape and forced marriage of minor girls as young as twelve years, by grown men old enough to be their grandfathers'.<sup>132</sup> Perpetrators of *ukuthwala* continue to defend the practice by claiming it is a cultural tradition.

Although the South African Constitution protects the cultural rights of the community,<sup>133</sup>

as well as the right of individuals to participate in the cultural life of their choice,<sup>134</sup> the Constitution further states that neither right may be exercised in a way that is incompatible with any provision of the Bill of Rights.<sup>135</sup> Thus, the *ukuthwala* custom cannot be used to justify the violation of the rights of a young girl that are inherent in a child marriage.

Since 2008 a series of court cases have emerged concerning the content and limits of customary law,<sup>136</sup> as well as the abduction and forced marriage of young girls in the Eastern Cape and KwaZulu Natal.<sup>137</sup> In 2014, Nvumeleni Jezile became the first defendant to be convicted in relation to the practice (carried out on a 14-year-old victim), and sentenced to 22 years in prison for (amongst other offences) trafficking and rape.

Jezile appealed his conviction to the High Court on the basis that 'consent' within the practice of *ukuthwala* is to be determined in accordance with tradition and custom, which are recognised by the South African Constitution. He further argued it is an integral part of *ukuthwala* that the bride may not only be coerced into marriage, but will invariably pretend to object, since it is required (or at least expected), that she do so to maintain her modesty.

In coming to its decision, the Court cited numerous international conventions, alongside provisions in the Constitution aimed at protecting children from harmful traditional practices, together with previous decisions of the Constitutional Court. The Court found that the facts of the case amounted to an aberrant form of *ukuthwala* as the victim was underage (14 years old) and did not consent to the marriage at any point. The Court concluded that 'it cannot be countenanced that the practices associated with the aberrant form of *ukuthwala* could secure protection under our law'.<sup>138</sup>

The decision did not hold that customary forms of marriage, including with children under 18, could not be performed, but rather that this 'misapplied form' of the customary practice was a 'perversion' and 'aberrant'.<sup>139</sup> The expert evidence supported this decision. However, importantly, the High Court also accepted the point made by a number of interveners that these practices amounted to a 'most severe and impermissible violation of women and children's most basic rights to dignity, equality, life, freedom, security of person and freedom from slavery'.<sup>140</sup>

The conviction was upheld, as was the sentence. The government stated that this should send a strong message that *ukuthwala* will not be tolerated.<sup>141</sup>

### ■ Uganda

In Uganda, the Constitution – which is the supreme law – provides that the minimum age of marriage is 18, and that marriage should only be entered into by freely consenting parties. The Marriage and Divorce Bill, introduced in 2009,<sup>142</sup> but tabled

and shelved many times since, has as its goal the introduction of a minimum age of 18 for all marriages (civil, religious and customary), and provides that lobola (also known as 'bride price') cannot be considered a prerequisite for marriage, as some customs provide. The Bill also criminalises the practice of requiring bride price be repaid as a condition of dissolution of the marriage. However, this bill is yet to pass into law.<sup>143</sup>

In 2015 a women's rights organisation called Mifumi Ltd (together with others) appealed a decision of the Constitutional Court to the Supreme Court, challenging the constitutionality of lobola as a requirement for a valid marriage, and the return of lobola as a condition for the dissolution of a marriage.

There were a number of appeal grounds, which were essentially condensed into four grounds, with the relevant two for present purposes being as follows:

■ That the Constitutional Court had erred in law when it failed to make a declaration that the demand for, and payment of, lobola fetters the free consent of persons intending to marry contrary to Article 31(3) of the Constitution. The argument advanced was that the demand for lobola made the parties' consent contingent on the demands of a third party; and

■ That the Constitutional Court erred in law when it declined to declare the demand for a refund of lobola unconstitutional.<sup>144</sup>

The Court found the appellants had not provided evidence that valid customary marriages involving the payment of lobola had occurred in Uganda without the consent of the bride or groom – with the Court noting the parties should have provided evidence that the demands of third parties had deprived men or women of their consent to marry. Accordingly, in relation to the first ground, the Court found that free consent was not fettered by the payment of lobola.

The Court did note the existence of the practice of underage brides being married off, but explicitly found this could not be a valid marriage, given the legal age as contained in the Constitution:

■ 'The issue of parents in some communities in Uganda removing their under age daughters from school and forcing them to marry in order for the parents to get bride price (forced marriages) has been reported by Non Governmental Organizations (NGOs) concerned with children's welfare, and given wide coverage by the media. Clearly, this is an abuse of the custom of bride price and a reflection on the poor enforcement of the law by the law enforcement agencies. The Constitution prohibits marriage (whether customary or not) of persons

below the age of 18 years, and section 129 of the Penal Code punishes any person who performs a sexual act with another person who is below the age of 18 years.'<sup>145</sup>

In relation to ground two, the Court found the refund of lobola was unconstitutional, stating:

■ *'It is my firm view that the custom of refund of bride price, when the marriage between a man and a woman breaks down, falls in the category that is provided under Article 32(2) of the Constitution which states: "Laws, cultures, customs and traditions which are against the dignity, welfare or interest of women or any marginalized group to which clause (1) relates or which undermine their status, are prohibited by this Constitution". I would, therefore, declare that the custom and practice of demand for refund of bride price after the breakdown of a customary marriage is unconstitutional as it violates Articles 31(1) (b) and 31(1). It should accordingly be prohibited under Article 32(2) of the Constitution.'*<sup>146</sup>

While not directly on point, as this case largely focuses on customary practices and not exclusively on child marriage, the case does provide instructive obiter regarding the unconstitutionality of child marriage.

## ■ Tanzania

In Tanzania, the Law of the Marriage Act 1971 allows a court to give leave for girls who are 14 or older to marry where special circumstances make the marriage desirable.<sup>147</sup>

In 2016, Rebecca Gyumi, the founder and executive director of Msichana Initiative, an NGO established to advocate for the right of girls to an education, filed a petition to the High Court challenging sections 13 and 17 of the Law of the Marriage Act. These provisions allow a girl of 14 years to be married on the basis of the court's judgment or her parents' consent. The age of marriage for males is 18 years of age.

The High Court ruled these provisions were discriminatory and unconstitutional. The court ordered the government to amend the Act within one year and ruled that the legal marriageable age for men and women should be recognised as 18 years. The government appealed this decision, but at the time of writing the matter had not yet been heard in the appeal court.<sup>148</sup>

These case examples illustrate that the courts can be a key entry point for legal interventions to help eradicate child marriage, provided there are constitutional or legislative protections to support a claim challenging the practice. It is likely that the legal profession and civil society organisations across the Commonwealth could make better use of the important, independent judicial branch of government to this end.



## PART FOUR:

# Reccomendations

Child marriage is a complex and multidimensional problem that is caused and perpetuated by many social, cultural, legal and economic factors. It is therefore necessary to employ a range of strategies to 'comprehensively address the root causes, the immediate impacts, and the problematic outcomes of child marriage'.<sup>149</sup>

Our examination of each country and region in the Commonwealth illustrates that every country needs to approach child marriage based on its own specific circumstances, having regard to the reasons the practice is entrenched in that country, before considering what are likely to be the most effective initiatives for combating it. Despite this, while the strategies employed to tackle child marriage will differ from country to country, there are a number of measures that should be seen as universal in efforts to eliminate child marriage.

This report has focused on the structural legal dimensions that foster and enable child marriage, and therefore the recommendations below relate to legal interventions and reform, particularly aimed at the legal profession across the Commonwealth, including lawyers, law makers and the judiciary. Law reform is clearly only one, though an important, part of the puzzle and we refer readers to the reports and recommendations of other organisations and entities that have carried out analyses of the multiple non-legal dimensions of child marriage.

Many UN agencies and NGOs have published lengthy recommendations outlining how child marriage should be tackled, and some currently have action plans in place. For instance, the UNFPA and UNICEF have joined together to run the Global Programme to Accelerate Action to End Child Marriage, which is part of a global effort to prevent child marriage (and support girls who are already married), in 12 countries across Africa, Asia and the Middle East where child marriage rates are high.<sup>150</sup>

The Royal Commonwealth Society (RCS) and Plan International have published a report on how to combat child marriage through education,<sup>151</sup> while Girls Not Brides have collaborated with more than 150 members and partners to create the 'Theory of Change on Child Marriage', which is a diagram illustrating the range of approaches that should be utilised to address child marriage and how the approaches intersect.<sup>152</sup> Many of these stakeholders cover some of the same areas and provide detailed recommendations for policy and other changes, including (broadly) three key areas: education,<sup>153</sup> community attitudes and development<sup>154</sup> and poverty alleviation.<sup>155</sup>

The following recommendations relate specifically and uniquely to the law and its role in ending child marriage.

### ■ **The law should be consistent and uniform between girls and boys and mandate an absolute minimum marriageable age of 18**

Every country within the Commonwealth that has not already done so should enact and implement constitutional amendments or legislation to increase the legal age of marriage to 18 years old for boys and girls, with no caveats, as recommended by the CEDAW,<sup>156</sup> CRC and CESCRC Committees,<sup>157</sup> and by UNICEF and Plan International. This should be accompanied by appropriate amendments, where necessary, to ensure that religious or customary personal laws cannot override these protections.

As demonstrated in part three, at most 17 per cent of Commonwealth countries are currently in this legal position. The clear majority of states allow parents, guardians, courts or government offices to sanction the marriage of children – in complete opposition to the international legal position and the recommendations of expert human rights bodies such as the CRC and CEDAW. This position is worse still in the nine Commonwealth countries that provide no minimum age at which such exceptions can operate, effectively creating no minimum age for marriage.

While changing the legal age of marriage will not eliminate child marriage overnight, it is clear this is one concrete step that can be undertaken and that has contributed to measurable progress in countries where child marriage is a problem. This would also ensure a country's domestic law aligns with its international legal obligations and related regional commitments, including commitments as members of the Commonwealth. Further, where the political will to address child marriage exists within a country, this is a relatively straightforward recommendation to implement.

### ■ **Those who enable child marriage should be criminally sanctioned, and such criminal laws should be enforced**

While a number of countries within the Commonwealth are making moves to amend discriminatory marriage provisions, and increase the marriageable age to 18 for all, as recommended above, very few countries within the Commonwealth explicitly criminalise adults who participate in or enable child marriage. While child marriage remains lawful, this is perhaps inevitable.

However, as part of a legislative reform agenda, Commonwealth countries should consider introducing legislation that criminalises the conduct of those involved in enabling child marriage, including adult participants in the marriage,

officiants who conduct or validate the marriage and parents/guardians who put a child forward for marriage. Countries then need to focus on publicising and enforcing these provisions, so offenders cannot continue to act with impunity. If there are no legal consequences to participating in or enabling child marriage, it will be even more difficult to encourage the necessary cultural change to end child marriage.

There are many challenges to this type of reform. For example, while forced marriage is an offence in Tanzania, HRW have reported that bribery of judicial and other government officials is a major barrier to successful prosecution of crimes against women and girls. A police officer at the Police Gender and Children's Desk told Human Rights Watch:

*'Some of the cases we take to court for prosecution are delayed or are not completed because perpetrators pay money to the magistrates. When magistrates are paid, all they do is keep postponing and adjourning cases during hearing sessions. When cases are delayed, the victims and witnesses give up on the case and stop coming to court.'*<sup>158</sup>

However, there are also success stories. The strong statements made by both the Court and the government in South Africa following the result in the Jezile case<sup>159</sup> are positive examples of the fact that the criminal law can be used to deliver a deterrent message in this area and – hopefully – effect real change over the longer term.

### ■ **The law should require mandatory (and free) registration of births and marriages**

CEDAW and other international human rights treaties require states to register births and marriages, as this allows for more effective monitoring of the age at which marriages are occurring, and supports implementation and enforcement of laws regarding the minimum age of marriage.

In order to fulfil this obligation, law makers are urged to establish or improve national civil registration systems by making them free, universal and accessible for the registration of all births of children, and requiring the registration of all marriages, including marriages under customary and religious laws. Save the Children argues this would promote marriage occurring at the proper age, and should be accompanied by campaigns to raise awareness of the importance of registration in isolated or marginalised communities, where registration tends to be less common.<sup>160</sup> Regions like the Pacific are a good example of the challenges

that can be presented for civil registration systems, due to population dispersment across remote areas. However, efforts are still needed if child marriage is to be eradicated for the longer-term social and economic benefit of these nations.

One way in which civil registration systems could be improved is through a requirement that the parties to a marriage file a marriage notice (or similar) in advance of the marriage, which confirms the intended marriage meets all the legal criteria for a valid marriage within the country. The lodging of this notice should be a prerequisite for the registration of the marriage. In combination with the law reform measures outlined above, this could help create a barrier to registration (and thus to a valid marriage) for any marriages involving children.

The reform of civil registration systems also relates, importantly, to enforcement of sanctions against child marriage. Without compulsory registration of births and marriages, even where a child marriage does come to the attention of authorities and adequate laws exist to criminalise or prohibit child marriage, it may be difficult to adduce sufficient proof to prosecute offenders without clear evidence of the child's age at the time of the marriage, or the validity/existence of the marriage. Accordingly, registration of births and marriages is a key piece of the law reform picture.

### ■ **The legal profession should assist with enhanced use of the courts to challenge the practice of child marriage**

While it was outside the scope of this report to conduct an exhaustive search of reported cases in all Commonwealth countries, it appears that there are very few reported cases in which a child marriage is brought before the courts either for a challenge to its validity in law or for criminal sanction against those responsible. This is particularly startling in light of the scale of child marriage across the Commonwealth, though at the same time not surprising given the lack of proper legal frameworks under which challenges to the practice could be brought.

In those countries where there is at least some legal protection against child marriage – for example, a minimum age for marriage – affected individuals, civil society organisations and their legal representatives should consider bringing test cases to court to challenge the practice and to seek to have judicial rulings affirming the rights of children to be free from early marriage.

The cases of Jezile<sup>161</sup> and Mifumi Ltd<sup>162</sup> explored above are examples of how judicial intervention can bring recourse to victims and send messages to other offenders that child marriage will no longer be tolerated.

These examples of court cases regarding child marriage have all been pursued by NGOs. Further, where victims of child marriage have brought cases before the courts, they have almost always had the assistance and resources of an NGO to help them. Local NGOs with legal expertise are likely to be familiar with the circumstances of the country in which they operate and any obstacles (legal and non-legal) to success within the court system. They may also be in a position to complement their legal advocacy with public awareness and education programmes including media engagement around the issue of child marriage, to ensure a holistic and integrated approach.

Given the positive and enduring results that can flow from legal cases, helping NGOs obtain the necessary funding and resources to bring the right legal challenges before the courts – with the aim of improving the common law position in relation to child marriage – should also be a priority within the Commonwealth.

### ■ Alternatives to the mainstream justice system

Mainstream justice systems often lack effective monitoring and enforcement mechanisms to prevent or sanction child marriages. Serious discrepancies between regions in accessing mechanisms of redress, such as the existence of legal aid, children's advocates or a Children's Court, also means that children do not have equal access to the help that they need within each country's justice system. In addition to law reform, considering possible ways around these problems is recommended.

In Zambia in December 2015, the Government announced that it would launch a fast-track court system to deal with cases of child marriage, child sexual abuse and other gender-based violence. These courts are intended to help deal with such cases early and reduce the number of victims who withdraw their cases from court, in part due to delay.<sup>163</sup> The operation of the justice system at the time was also ineffective in providing remedies for these types of offences. A Human Rights Watch report noted in 2003:

*'The lower courts in the Zambian system – the local and magistrates' courts – are subject to restrictions on their jurisdiction to mete out sentences. Local courts cannot impose prison sentences exceeding two years. Zambian women's groups have stressed the importance of stopping lower courts from trying offenses for which they do not have jurisdiction to impose 'deterrent sentences' and from applying customary civil law to criminal offenses, including defilement, incest, rape, and assault, which should be heard in the magistrates courts.'*<sup>164</sup>

In this case, the advent of a specialised court system presents a promising alternative to the mainstream justice system.

Other more common initiatives, such as Children's Protection Units and specialist court-appointed child advocates should also be considered across the Commonwealth, where they are not already in place, to assist children in having matters brought before a court.

### ■ The introduction of a Commonwealth Model Law

One possible Commonwealth-wide initiative, which could encompass the other recommendations in this report, would be the drafting and implementing of a Commonwealth Model Law. There are advantages to this approach. It would draw upon the existing legislative and common-law framework in each member state to come up with a good practice Model Law, which considers all the relevant policy aims, such as prevention, sanction, enforcement and prosecution as well as protection and services for victims. Most Commonwealth member states share commonalities in their legal systems, which would make it easier to apply a Model Law in practice at the domestic level. Further, a Model Law has the potential to be a driver of reform, by providing a legal template that can trigger domestic discussions, be adapted to local contexts and be used as a platform for the sharing of information and experiences amongst similarly situated member states. Finally, a Model Law could be used as a springboard that assists in the formation of partnerships between Commonwealth countries aimed at eradicating child marriage, in both the development/aid sphere and the policy/legal arena.

### ■ Improved training and education within the legal profession and general public

Education about the law is critical if laws are to be understood, implemented and enforced. This includes educating members of the public about new or existing laws – particularly those that impact long-standing practices of local communities. Relevant legislation to prevent child marriage should be disseminated at the local levels, and in local languages, particularly among traditional and religious leaders in communities where child marriage is prevalent. General awareness-raising campaigns and programmes on the provisions that criminalise harmful practices and these practices' negative consequences on children should be developed and implemented. The success of the multi-faceted approach taken by GENET in Malawi<sup>165</sup> is a good example

of how effective legal education (in combination with other measures, including law reform) can be when undertaken in an inclusive manner throughout a community. While it is difficult to assess the need for such an intervention and its likelihood of success across Commonwealth countries, in the right circumstances it appears to be a promising initiative.

Members of the legal profession also need to be educated about the need for, and benefit of, advocating for law reform and implementation of laws. Lawyers are well placed to delve into the legal framework of their countries, take concrete action to advocate for law reform and support development of the law. Law makers can benefit from education about the importance of enacting a solid legal framework to tackle child marriage, and thereby become important champions for law reform. The judiciary may need to be trained in the issue of child marriage, the international legal experience with eradicating it, and the ways in which the judiciary can play a role when cases involving child marriage are presented in court. Law enforcement officials need to be trained to understand the laws and their importance, as well as in sensitivity towards and protection of victims.

## ■ Conclusion

Child marriage represents a violation of the fundamental human rights of children, predominantly girls, and results in a range of serious related issues for the child, as well as for the wider community. Among women aged 20 to 24 worldwide, one in four were child brides. More than 720 million women alive today were married as children. The Commonwealth has a disproportionate role in the problem of child marriage, and needs to be central in its elimination.

Many and varied factors interact to place children at risk of marriage including poverty, the notion that marriage will protect the child or family, social or cultural norms, religious laws that support the practice, inadequate legislative frameworks and/or civil registration systems, and weak enforcement measures.

The effects of child marriage on girls include severely compromised social development and potential social isolation, an inability to attend school and gain vocational skills, severe physical and mental risks associated with early pregnancy, and an increased risk of suffering from domestic violence and contracting STIs.

For all these reasons and more, it is imperative that child marriage is eliminated.

International legal obligations clearly prohibit child marriage, however, the practice continues around the world at an alarming rate. At most, 17 per cent of Commonwealth countries have laws in place to decisively prohibit child marriage, with the remainder maintaining express laws, exceptions or caveats which permit the practice either widely or in certain circumstances.

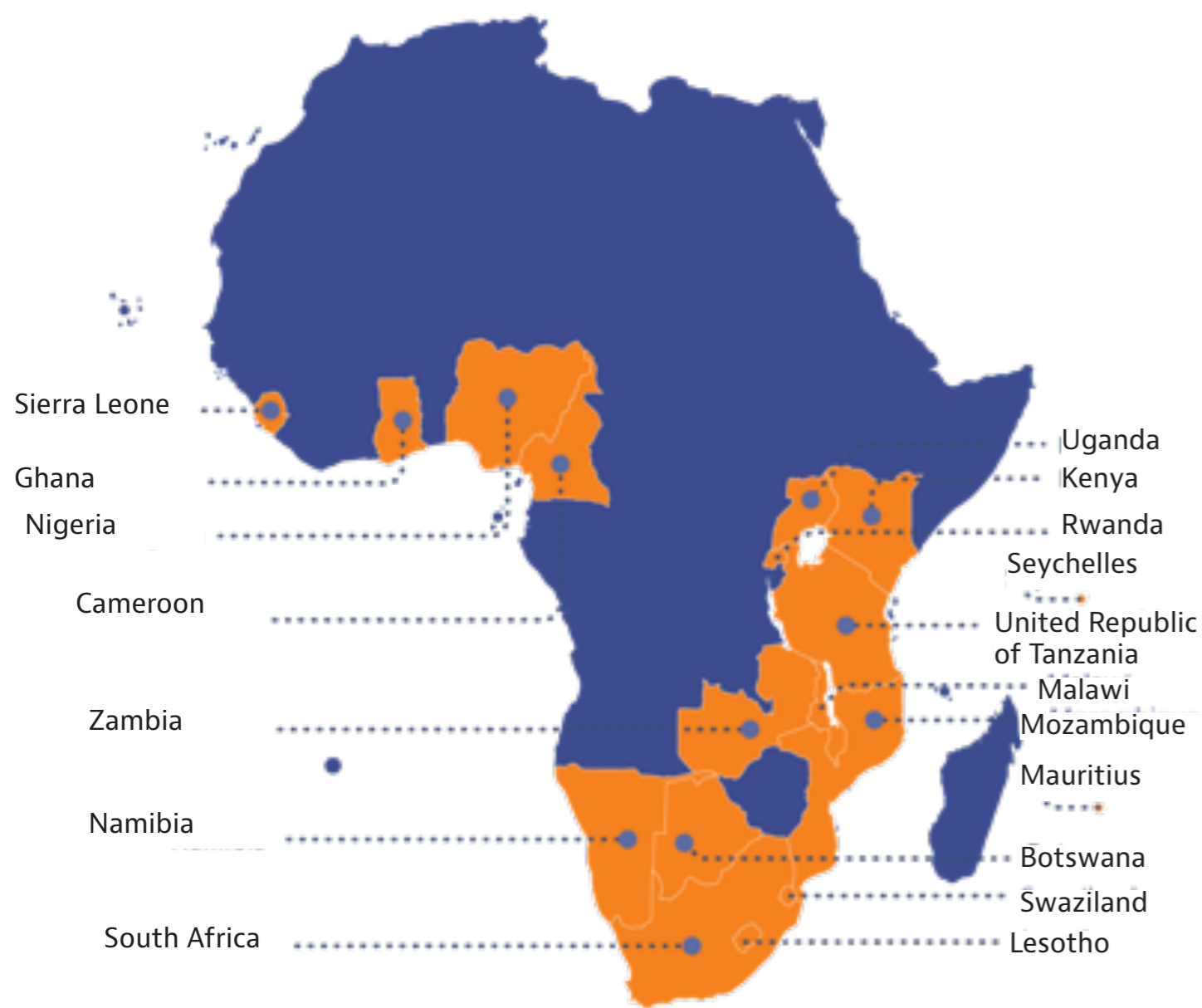
Any successful approach to combating child marriage needs to consider the complex and varied factors that contribute to its continued practice in countries throughout the Commonwealth, and the range of initiatives that will be necessary to stop it.

The law has a very specific and concrete role to play, and the law reform agenda and other associated recommendations advanced by this report should be considered for implementation throughout the Commonwealth. While the law is only one tool, it is a critical one as it signals to society at large what is and is not acceptable within the law and it has the power of sanction to prevent and dissuade practices that are harmful to individuals and society as a whole. Having a legal framework in place that: makes it clear that child marriage is not lawful, provides remedies to victims, punishes perpetrators, and deters prospective offenders, is a key starting point that is tangible and measurable. The Commonwealth as a whole should be monitoring the extent to which these measurable changes are being implemented, and technical legal assistance towards law reform should be provided where needed.

Given the high prevalence of child marriage within member states, if child marriage could be eliminated from the Commonwealth the global battle to end this insidious, destructive and illegal practice would be more than half-way won.

## ANNEX I: Country Snapshot by Region

### Africa\*



\*The country research for this report was concluded prior to The Gambia rejoining the Commonwealth on 8 February 2018.

### Botswana

Botswana is a country of approximately 2.25 million people,<sup>166</sup> with a dual legal system under which customary law is applied alongside common law. While there have been several reforms of discriminatory provisions under the common law, customary law remains particularly prejudicial to women's rights, perpetuating unequal power relations between men and women and strengthening stereotypes regarding the role of women in society.<sup>167</sup>

#### Statistics

- In 2001, UNICEF reported that few girls marry in their teens in Botswana and the prevalence of child marriage was low.<sup>168</sup> More recent statistics on child marriage are not available, so it is difficult to assess whether the rates of child marriage have changed throughout the country.
- While overall rates of child marriage are low, it has been reported child marriage is more common among certain ethnic groups in north western Botswana.<sup>169</sup>

More generally, while child marriage rates may be low, Botswana has very high rates of sexual and gender based violence:

- 67% of women have experienced some form of gender based violence in their lifetime.
- Child sexual abuse was associated with the experience of intimate partner violence (IPV) by women, and the perpetration of IPV and non-partner rape by men.<sup>170</sup>

#### Law

While the 2001 Marriage Act includes a provision that no person under the age of 18 years may marry,<sup>171</sup> it also states that no minor or person under 21 can marry without the consent of their parents, guardians, or a court.<sup>172</sup> This indicates minors can marry in certain circumstances. However, child marriage is prohibited under section 62 of the Children's Act 2009, which outlaws harmful social, cultural and religious practices, including forced marriage, child betrothal and genital mutilation or female circumcision.<sup>173</sup>

While the legislation is unclear, the government of Botswana state on their website that persons below the age of 18 can marry with the consent of parents – and (worryingly) that this is in line with the CRC,<sup>174</sup> which is incorrect.

The Constitution contains a non-discrimination provision; however, it does not apply to: 'adoption, marriage, divorce, burial, devolution of property on death or other matters of personal law'.<sup>175</sup>

The age of consent in Botswana is 16 years old.<sup>176</sup> The Penal Code criminalises sexual assault or defilement of children, rape, child stealing and trafficking, amongst other offences.<sup>177</sup>

Despite the common law ostensibly restricting child marriage, customary law (which is practiced alongside common law) remains discriminatory against women, particularly in relation to marriage, property ownership, and violence.<sup>178</sup> However, it is difficult to have a clear understanding of the precise impact of customary law on child marriage in Botswana given the lack of available data.

#### Initiatives

No specific initiatives currently addressing child marriage in Botswana were identified. International pressure and NGO work is more focussed on the high levels of HIV transmission and the prevalence of physical and sexual abuse.

### Cameroon

Cameroon is a country of approximately 23 million people, which was divided between France and Britain after World War I. Following independence, the two former colonies merged in 1961 and Cameroon joined the Commonwealth in 1995. In 2000, approximately 40% of the country lived below the poverty line. The demographics of the country are predominantly young, with 62% of the country under 24 years of age.<sup>179</sup> Cameroon has a mixed legal system modelled on English common law, French civil law and customary law.

#### Statistics

- UNICEF ranks Cameroon as 20th in terms of the prevalence of child marriage in its 2016 State of the World's Children Report. More than 1 out of 3 girls marry before they turn 18.<sup>180</sup>
- Over 20% of girls aged 15-19 are already married.<sup>181</sup>
- Prevalence rates vary widely across regions: in the North 73% of girls marry as children, while in the Littoral province the number drops to 13%.<sup>182</sup>

- Lack of education is strongly linked to the prevalence of child marriage: 79% of women aged 20-24 with no education and 45% with primary education were married by 18, compared to 13% of women with at least secondary schooling.<sup>183</sup>
- Girls from the poorest 20% of families are 6.5 times more likely to be married before 18 than girls from the richest 20%.<sup>184</sup>

## ■ Law

The Constitution states that all citizens should be equal before the law.<sup>185</sup> Article 16 provides for the right of men and women of full age to marry and found a family, with the condition that marriage shall be entered into only with free and full consent of the parties.<sup>186</sup> However, despite the provisions of the Constitution, Article 52 of the Civil Status Registration 1981 provides the minimum age for marriage is fifteen for girls and eighteen for boys, with the age of simple majority set at eighteen.<sup>187</sup> The article also provides that the President of the Republic can grant a waiver allowing for marriage at a younger age.

Forced and underage marriage is criminalised in the Penal Code, along with a number of sexual and other offences involving children. The age of sexual consent is reportedly 16 years of age.<sup>188</sup>

In July 2016, a new penal code was passed which aims to end the harmful practice of child marriage. Section 356 criminalises forced marriage. Whoever compels anyone to forcibly marry can be punished with 5-10 years in prison, as well as a fine. If the victim is under the age of 18, the punishment may not be less than two years imprisonment, whatever the mitigating circumstances.<sup>189</sup>

## ■ Initiatives

In its 2016 consideration of reports submitted by Cameroon, the CRC noted that a Civil Code had been drafted which would define a child as a person under 18 years of age and harmonise the legal age for marriage at 18 years for both sexes – however, the Code is yet to be adopted.<sup>190</sup>

In 2010, 346,000 women in Cameroon aged 20-24 were married before age 18. If present trends continue, 500,000 of the young girls born between 2005 and 2010 will be married before age 18 by 2030. This projection shows an increase of 45% from the 2010 estimate of married girls. Cameroon has launched the African Union Campaign to end Child Marriage in Africa and is a party to the African Common Position on Child Marriage in Africa.<sup>191</sup>

## ■ Ghana

Ghana has a population of just over 26 million people and was the first sub-Saharan country in colonial Africa to gain independence from Britain, in 1957. Ghana joined the Commonwealth in the same year. Approximately 24% of the country lives below the poverty line and 57% of the country is below the age of 24.<sup>193</sup> Ghana operates as a common law jurisdiction.

## ■ Statistics<sup>192</sup>

- Among women age 20-24, the proportion who married before age 18 was 22% in 2006 and 21% in 2011;
- Child marriage declined from 28% in 2003 to 25% in 2008 and 21% in 2014;
- Rates of child marriage are higher in rural areas than urban, and vary significantly across regions. In 2014, the child marriage rate in rural areas was 27% and in urban areas it was 16%;
- Child marriage rates among young women who have never attended school were 46% in 2008 and 2014.

## ■ Law

The Children's Act 1998 provides that the minimum age of marriage will be 18, and that no person shall force a child to be betrothed, the subject of a dowry transaction, or married.<sup>194</sup>

The Marriages Act 1884-1985 provides for the registration of customary or Islamic marriages (referred to as 'Mohammedans'), as well as the procedure for Christian or other marriages. Section 59 provides that parties to a marriage who are under 21 (and not widowed) are required to have written consent of their parents or guardians before getting married.

Ghana's Criminal Code<sup>195</sup> criminalises a number of sexual offences involving children,<sup>196</sup> and also criminalises female circumcision,<sup>197</sup> providing a minimum period of imprisonment of 3 years. Section 109 of the Criminal Code also provides that 'Whoever by duress causes a person to marry against his or her will, shall be guilty of a misdemeanour'.

## ■ Initiatives

In 2014 the Ministry of Gender, Children and Social Protection spearheaded the development of the Child Marriage Unit to coordinate government efforts to end child marriage.<sup>198</sup> With support from UNICEF and other donors, the ministry has developed a National Strategic Framework for Ending Child Marriage (2017-2026), which launched in May 2017. The framework includes a monitoring and evaluation framework, an operational plan for 2017-2018, and a costing framework.<sup>199</sup>

In February 2016, the Government of Ghana became a party to the African Union Campaign to end Child Marriage in Africa.

Ghana has been considerably active in leading child marriage work in the region with plans to take the lead in engaging the Economic Community of West African States (ECOWAS) on child marriage.

Ghana is also a focus country of the UNICEF-UNFPA Global Programme to Accelerate Action to End Child Marriage.

## ■ Kenya

Kenya has a population of nearly 46 million people and became independent of the United Kingdom in 1963,<sup>200</sup> joining the Commonwealth in the same year. UNICEF reports that approximately 42% of the country lives below the poverty line.<sup>201</sup>

## ■ Statistics

- In Kenya, 23% of girls are married before the age of 18 and 4% before the age of 15.<sup>202</sup>
- Education was a key driver in prevalence of child marriage, as 67% of women aged 20-24 with no education married as a child, in comparison to 6% of women with secondary education or higher.<sup>203</sup>
- Women living in rural areas were twice as likely to be married before 18 than women living in urban areas. This urban-rural divide has increased by 36% since 2003.<sup>204</sup>

## ■ Law

The Marriage Act 2014 provides that people shall not marry unless they have attained the age of eighteen years<sup>205</sup> and a marriage will be void if either party is below the minimum age, or consent to the marriage has not been freely given.<sup>206</sup> The Act provides for the registration of Christian, civil, customary, Hindu and Islamic marriages,<sup>207</sup> however the Act also states that any provisions of the Act inconsistent with Islamic law shall not apply to those who profess the Islamic faith.<sup>208</sup> Marriage to a person under the minimum age is also criminalised pursuant to section 87 of the Act.

The age of consent is 18 years for males and females.<sup>209</sup> The Children's Act 2001, which defines a child as any human being under the age of eighteen years,<sup>210</sup> provides that children are to be protected from abuse, sexual exploitation, and harmful cultural rites such as 'female circumcision, early marriage or other cultural rites, customs or traditional practices that are likely to negatively affect the child's life, health, social welfare, dignity or physical or psychological development'.<sup>211</sup>

The Constitution provides that every adult has the right to marry a person of the opposite sex, based on the free consent of the parties.<sup>212</sup> The Constitution defines a child as being an individual who has not attained the age of eighteen years, and outlines that every child has the right to free and compulsory basic education, and to be protected from 'harmful cultural practices' and 'all forms of violence'.<sup>213</sup> However, it also explicitly recognises that the application of Muslim law before the Kadhis' Court should apply to Muslims in personal matters, including marriage, as an exception to the fundamental rights and freedoms contained in the Constitution.<sup>214</sup> This results in Muslim girls being denied equal protection from child marriage under the law.

## ■ Initiatives

The Government has a range of initiatives aimed at ending child marriage, including a Universal Birth Registration Campaign,<sup>215</sup> the National Action Plan for Children (which includes the elimination of child marriage as a stated action point),<sup>216</sup> free compulsory primary school education,<sup>217</sup> the Higher Education Loans Board and Bursary Scheme (to assist with access to secondary and post-secondary education)<sup>218</sup> and a 24 hour a day FGM/Child Marriage hotline, which launched in 2014.<sup>219</sup>

Various civil society organisations also have a range of initiatives on the ground aimed at increasing access to education for girls (including through financial sponsorship,<sup>220</sup> or the provision of educational programmes),<sup>221</sup> and by working in communities where child marriage is particularly common to change attitudes. Two particularly interesting initiatives are as follows:



■ Plan International Kenya has formed a partnership with the Kilifi County Director of Children's Services to launch a mobile application called 'VuruguMapper', which helps map cases of abuse against children across communities. Volunteer Children Officers (VCO) in Kilifi County have phones with the application installed and when they suspect a case of child abuse they report it through the application and the District Children's Officer (DCO) is notified by SMS. The VCO gets an information pack of things they should be doing. Once the DCO has verified the case an SMS alert is sent automatically to the police and hospital. Unlike in the past when cases took several days to get to the authorities, such cases instantly get to the authorities. The department has so far tracked over 250 cases of child abuse, including those from the most remote of places, where locals are unable to access help from the authorities.<sup>222</sup>

■ Christian Children's Fund (CCF) - CCF's programme 'Turning Child Brides into Scholars' focuses on girls in the Masai tribe of Kenya. The Masai tribe practices the ritual of Esaiyata, whereby daughters are 'booked' for marriage, often before they are born. In response to this ritual CCF in Kenya has created a program that 'books' girls for school instead. CCF worked with the Naning'oi Girls Boarding School, which represented the role of the man in the traditional practice. Donated livestock and other gifts are offered to a girl's father in exchange for committing to his daughter's attendance at the boarding school. There are 350 girls enrolled and more than 500 additional infants and girls who have been booked to attend school when they are old enough.<sup>223</sup>

## ■ Lesotho

Basutoland became independent of the UK in 1966 and was renamed Lesotho at that time. Lesotho joined the Commonwealth in the same year. Lesotho has a population of nearly 2 million people.<sup>224</sup> UNDP estimates that 57.1% of the country lives below the poverty line.<sup>225</sup>

### ■ Statistics

- In Lesotho, 2% of women were first married before the age of 15, while 19% of women were married before the age of 18.<sup>226</sup>
- These figures mask significant differences that exist in child marriage rates between educational levels, rural/urban populations

and wealth quintiles. For example, only 1.8% of women with higher level education were married before the age of 18, while the numbers were much higher for woman with secondary (10.3%), primary (32.6%) or no education (63.1%).<sup>227</sup>

- Women from rural and poor areas were more likely to be married than women from urban areas or from the highest wealth quintiles.<sup>228</sup>

### ■ Law

The laws on child marriage in Lesotho are somewhat contradictory, in part due to the different definitions for 'minor'. The Marriage Act 1974 prohibits marriages where one or both parties are a minor, and provides 21 is the age of majority (at least for children who have never previously married).<sup>229</sup> However, parents, guardians, a District Administrator or Court are able to provide consent for minors under the age of 21 to marry. Section 27 sets a minimum age of 18 years for boys and 16 years for girls, however a further exception to this (where written permission of the Minister has been obtained) has the potential to lower the legal age of marriage below 16 for girls and 18 for boys.<sup>230</sup> The Marriage Act 1974 does prohibit forced marriage.<sup>231</sup>

In contrast, the Children's Protection and Welfare Act 2011 defines a child as a person under the age of 18.<sup>232</sup> The CEDAW committee report that this Act amended the minimum age for marriage to 18 years for both civil and customary marriages, but this was not explicitly stated in the copy of the Act that was accessible.<sup>233</sup> The Act does impose duties on the state and parents or guardians of children to protect them from abuse, including customs or traditional practices that may harm them.<sup>234</sup>

It has been reported that marriages also occur according to custom in Lesotho and that customary law does not set a minimum age for marriage.<sup>235</sup>

### ■ Initiatives

There are limited initiatives focusing specifically on child marriage in Lesotho. A National Strategic Plan on vulnerable children (defined as children whose rights to survival, development, protection and participation are not met), exists which includes programmes aimed at improving enrolment and retention in primary and secondary school, as well as improving access to healthcare, including sexual and reproductive health.<sup>236</sup>

The Lesotho Red Cross Society youth in Mafeteng Division have embarked on a programme called Bokamoso, the main mandate of which is to eliminate child marriage and to advocate

in relation to child protection issues, mostly in remote areas of Mafeteng.<sup>237</sup> There appears to have been some improvement in rates of child marriage in parts of Lesotho in recent years, with UNFPA finding a decline of 10% or more of child marriages in rural areas between 2006 and 2009.<sup>238</sup>

## ■ Malawi

Malawi has a population of nearly 18 million people and became independent of the United Kingdom in 1964.<sup>239</sup> Malawi joined the Commonwealth in the same year. UNICEF reports that approximately 62% of the country lives below the poverty line.<sup>240</sup> Though its economy has been steadily growing, as of 2012, Malawi had the lowest per capita income in the Commonwealth.<sup>241</sup>

A key challenge for ending child marriage in Malawi is entrenched attitudes that accept the practice. In poor and rural areas, certain traditions continue to promote child marriage. For example, in northern Malawi, 'kupimbira' is practiced, which involves giving a young daughter for marriage as repayment for a debt.<sup>242</sup> In southern Malawi, after girls have their first period, they are often sent to a sexual initiation camp to participate in 'kusasafumbi' a traditional practice to cleanse girls of their 'childhood curses' and prepare them to become wives. At such camps, girls may be forced to have sex with the 'hyena', an older man paid by the village to have sex with all girls attending the camp.<sup>243</sup>

### ■ Statistics

- Malawi is ranked 11th in the world in relation to the prevalence of child marriage, with one of the highest rates of the practice. Almost 1 in 2 girls are married before they turn 18.<sup>244</sup>
- In 2016, 46% of girls were married by 18 and 9% were married by 15 (often as young as 10).<sup>245</sup>

### ■ Law

In February 2017, Parliament amended the Constitution and raised the age of marriage from 15 (with parental consent) to 18 years old, for both boys and girls. The constitutional amendment was signed into law by the President at the end of April 2017. This move ensured the Constitution aligned with the Marriage, Divorce and Family Relations Act 2015 (The Marriage Act), which had raised the minimum age for marriage to 18 (from 15), but was still subject to the Constitution.<sup>246</sup> This move has resolved

the legal inconsistency in Malawi in relation to child marriage, which represents an important step towards creating a consistent legal backdrop for the protection of children.

The Marriage Act consolidates all laws on marriage and divorce. In addition to setting 18 as the minimum marriage age for boys and girls, it contains strong protections for married women, giving equal status to both parties in a marriage. It also includes a new requirement to register marriages with the government<sup>247</sup> and provides criminal sanctions for registrars who perform marriage ceremonies where they know they are not valid.<sup>248</sup>

The Child Care, Protection, and Justice Act 2010 prohibits forcing children into marriage<sup>249</sup> and local bylaws have been enacted following campaigns by NGOs that aim to protect adolescent girls from early marriage and harmful sexual initiation practices.<sup>250</sup> Within the first year of the implementation of the Stop Child Marriage project, chiefs from 22 villages ratified bylaws that protect thousands of girls from early marriage.<sup>251</sup> Girls Empowerment Network (GENET) reports that village chiefs have demonstrated an unprecedented commitment to these bylaws – one Head Chief removed her own grandson from his position as Group Village Headman for impregnating a schoolgirl.<sup>252</sup>

While the Penal Code criminalises a number of sexual offences against children, the age of sexual consent is 13<sup>253</sup> and rape within marriage is not recognised under Malawian law.<sup>254</sup> Further, under customary law while it is unlawful to have sexual intercourse with a child without their consent,<sup>255</sup> in some cases customary law allows sexual intercourse with a girl under 13, including in the context of child marriage.<sup>256</sup>

### ■ Initiatives

Key initiatives on child marriage in Malawi include the work and advocacy undertaken by GENET and Let Girls Lead through the Stop Child Marriage project, and their partnership with the organisation Rise Up.<sup>257</sup> GENET in particular have been responsible for some particularly successful initiatives, including their video, 'The Story of Florence & Harmful Traditional Practices in Malawi', which shares the experiences of one of the girls who participated in the Stop Child Marriage project. Florence married a much older man at age 15, immediately after completing a traditional girls' initiation ceremony.<sup>258</sup> Told from Florence's perspective, the documentary captures the negative physical and psychological consequences of early marriage. By strategically engaging local and national media, GENET have used this video to increase public

awareness of child marriage and its negative consequences throughout Malawi.<sup>259</sup>

GENET further reports that an independent evaluation of the Stop Child Marriage Project has found:

- Child marriage in participating communities has sharply declined, while girls' school enrolment has increased.<sup>260</sup>
- Head Chief Chitera continues to work with GENET to ensure participating communities comply with the bylaws. Each village established a taskforce to monitor and enforce implementation of the new bylaws, leading to the unprecedented near elimination of child marriage in these communities. In one case, a group of girls trained by GENET used the bylaws to advocate with local leaders, successfully annulling a marriage between their 13-year-old friend and her 19-year-old husband.<sup>261</sup>
- In addition to drastically reducing rates of child marriage, the Stop Child Marriage project has also transformed community attitudes in Malawi. The external evaluation demonstrates the community now views child marriage as shameful, rather than a desirable arrangement generating social and material gain. This broader societal shift is reflected in the creation of community-led Girls' Education Funds in some participating villages, which use local resources to promote girls' education and help child marriage victims return to school.

It has been reported that since the passage of the Marriage Act, local education campaigns are now being developed to disseminate information about the new law and to build support for girls' rights.<sup>262</sup> These legal changes, in conjunction with education campaigns, have had a positive domino effect in local communities where customary law still permits child marriage. For example, UN Women reported that in September 2015, Senior Chief Inkosi Kachindamoto annulled 330 customary marriages – of which 175 were girl wives and 155 were boy fathers – in Dedza district, in the Central Region of Malawi. The objective was to encourage the children to return to school, and continue a healthy childhood.<sup>263</sup> While civil marriages can only be terminated under civil law, customary marriages are regulated by custodians of culture. Therefore, UN Women Malawi has engaged with traditional leaders, including Chief Kachindamoto, to fight the cultural and religious practices that continue to allow child marriages to occur.<sup>264</sup>

## ■ Mauritius

Mauritius has a population of approximately 1.3 million people and gained independence from Britain in 1968, joining the Commonwealth in the same year. Approximately 8% of the country lives below the poverty line, and as of 2006 it had one of Africa's highest per capita incomes. Approximately 36% of the country is below the age of 24.<sup>265</sup>

### ■ Statistics

There are no available statistics in relation to the prevalence of child marriage in Mauritius. This may indicate a low prevalence of child marriage, but this is not certain.

### ■ Law

The Constitution in Mauritius includes a Protection from Discrimination clause, but provides an exception in relation to 'laws with respect to adoption, marriage, divorce, burial, devolution of property on death or other like matters that is the personal law applicable to persons of that description'.<sup>266</sup>

The legal age for marriage is 18 years old, though children can be married at 16 if they have parental consent.<sup>267</sup> The age of consent is 16 years, for both males and females,<sup>268</sup> and the Criminal Code Act and Child Protection Act both criminalise a number of offences in relation to children, including sexual offences, procuring and trafficking.<sup>269</sup>

The Child Protection Act defines a child as 'any unmarried person under the age of 18'.<sup>270</sup> This definition, in addition to the consent provisions in the Civil Code, have been criticised by the Committee on the Rights of the Child in its periodic review.<sup>271</sup> Further, during the periodic review in 2015, the Committee expressed concern that exceptions to the minimum age of marriage were both possible and extensively granted, stating this was illustrated by the high number of underage marriages in Mauritius.<sup>272</sup> However, it has not been possible to locate statistics to support the assertion that child marriage is a significant issue in Mauritius.

### ■ Initiatives

As child marriage does not appear to be a significant problem in Mauritius, it is perhaps unsurprising there are no initiatives dedicated solely to tackling child marriage on the ground. However, Girls Not Brides note that the 'Halley Movement', a community-based organisation focussing on marginalised women and girls in Mauritius, works to raise awareness

about the issue of child marriage and provides community workshops, girls' education programmes, and counselling for young girls.<sup>273</sup>

Mauritius is a party to the African Common Position on the AU Campaign to end Child Marriage in Africa and is also a member state of the Southern African Development Community Parliamentary Forum (SADC-PF), which on 3 June 2016 adopted the first ever African Model Law on Eradicating Child Marriage and Protecting Children Already in Marriage.<sup>274</sup>

## ■ Mozambique

Mozambique has a population of approximately 25 million and gained independence from Portugal in 1975.<sup>275</sup> Approximately 60% of the country lives below the poverty line<sup>276</sup> and 66% of the country is below the age of 24.<sup>277</sup> Mozambique joined the Commonwealth in 1995.

### ■ Statistics

- Mozambique ranks 9th in the world for child marriage.<sup>278</sup> In 2016, 48% of girls had been married by age 18 and 14% by age 15.<sup>279</sup>
- Northern provinces have the highest rates of child marriage, with over 55% of girls married before 18 and nearly a quarter before 15. Rural provinces also have higher rates of girls married by 18 (56%) compared to cities (36%).<sup>280</sup>
- Women with secondary education were 53% less likely to be married by age 18, compared to girls with no education at all.
- Girls from religious households, whether Muslim, Christian or other, are less likely to marry than households professing no faith. This is particularly the case for girls in Muslim households, who have the lowest probability of marrying before 18.
- About a fifth of married girls aged 15-19 have husbands who are 10 or more years older than themselves (according to the 2008 MICS). In some cases these young girls are also second or third spouses, with about 9% of married girls aged 15-19 having co-wives (DHS 2011).
- While the percentage of child marriages has decreased in the last decade, especially before the age of 15, population growth outpaced the progress made, leading to a growth in the absolute number of girls married.

### ■ Law

Article 47 of Mozambique's constitution recognises the rights of children, while article 119 states that 'the State shall guarantee the principle that marriage is based on free consent'. Article 121 provides further protections for 'childhood', providing that 'All children have the right to protection from the family, from society and from the State, having in mind their full development.' Article 122 contains specific protections for women.<sup>281</sup>

The legal age of marriage is 18 under the Family Law (law no 10/2004) and the Law on the Protection and Promotion of Child Rights (law no 7/2008). Children are allowed marry at 16 with the consent of parents.<sup>282</sup> The Penal Code criminalises a number of sexual offences in relation to minors.

### ■ Initiatives

In December 2015, the Mozambican Government approved the National Strategy for the Prevention and Combating of Early Marriage (2015-2019), which was officially launched in April 2016. Spearheaded by the Ministry of Gender, Children and Social Affairs, the strategy was developed through an inclusive process that involved multiple ministries, international agencies and donor partners. A secondary statistical analysis on child marriage and adolescent pregnancy also informed the implementation of the strategy.<sup>283</sup>

Mozambique is also a focus country of the UNICEF-UNFPA Global Programme to Accelerate Action to End Child Marriage, a multi-donor, multi-stakeholder programme working across 12 countries over four years to eradicate child marriage.

## ■ Namibia

Namibia has a population of approximately 2.2 million people and did not gain full independence from South Africa until 1990.<sup>284</sup> Namibia joined the Commonwealth in the same year. Approximately 29% of the country lives below the poverty line.<sup>285</sup>

### ■ Statistics

- 2.4% of girls are married in Namibia by the age of 15, while 8.6% are married by age 18.<sup>286</sup>
- The 2011 Namibian census found that child marriage affects both boys and girls, with 3,828 girls and 1,699 boys 'living in a traditional marriage or consensual unions'.<sup>287</sup>

- Approximately 26% of girls give birth to their first child before they turn 18.<sup>288</sup> Approximately 3.6% give birth before the age of 15.<sup>289</sup>

The traditional practice of 'olufuko' still takes place in Namibia. Olufuko is an archaic traditional wedding ceremony where girls, often as young as 12, are 'converted' into adult women. Part of the initiation process involves humiliating virginity and pregnancy testing. Men can choose the child they want to marry by placing a bracelet on a girl's wrist.<sup>290</sup> Although Olufuko was banned over 80 years ago, it has reportedly been revived as a cultural practice.<sup>291</sup>

## ■ Law

The Child Care and Protection Act 2015 provides a framework to address child marriage, prohibiting both traditional and civil unions for children,<sup>292</sup> and making it an offence to give a child out in marriage or engagement or subject a child to harmful social, cultural or religious practices.

However, while the Married Persons Equality Act provides a legal age of marriage of 18,<sup>293</sup> it allows children under 18 to be married with the consent of the minister responsible for home affairs or any staff person designated by the minister, on a mere test of 'desirability'.<sup>294</sup> The Legal Assistance Centre notes that where the government is asked to grant permission in relation to a child marriage, it is 'likely that the government will ask a social worker to review the case to see whether the couple are mature enough and ... are giving their consent without being put under pressure by family or community members'.<sup>295</sup>

The Constitution provides that marriage shall only be entered into with free and full consent of the intending spouses,<sup>296</sup> however, there is no express prohibition on child marriage.

## ■ Initiatives

In June 2015, the Namibian Government, in collaboration with UNICEF and other organisations, called for increased effort to end child marriage.<sup>297</sup> The Namibian Government outlined the initiatives it would take, including the promotion of access to social protection, maternal and child health, inclusive education and sexual and reproductive services for vulnerable girls, and social mobilisation initiatives that address harmful gender norms and traditional practises.<sup>298</sup> The Government is also promoting the enforcement of laws and policies which criminalize child marriage and providing public education about the existence of such laws.<sup>299</sup> To that end, Namibia's Child Care

and Protection Act 2015 has been described as a milestone piece of legislation by UNICEF, who note that it 'conforms to the country's regional and international agreements for children... and further prohibits child marriage in traditional unions'.<sup>300</sup>

Further, the Southern African Development Community-Parliamentary Forum (SADC-PF), of which Namibia is a member, recently developed the 'Model Law on Eradicating Child Marriage and Protecting Children Already in Marriage', which was adopted on 3 June 2016<sup>301</sup> and which provides a consistent standard for legislating to protect children from marriage.

## ■ Nigeria

Nigeria has a population of approximately 181.5 million people and gained independence from the UK in 1960.<sup>302</sup> Nigeria joined the Commonwealth in the same year (though its membership was suspended between 1995-99). Approximately 61% of the country lives below the poverty line.<sup>303</sup> Nigeria operates a tripartite legal system with civil, customary and Islamic law operating simultaneously.<sup>304</sup>

## ■ Statistics

- Nigeria ranks 13th in the world in relation to the prevalence of child marriage.<sup>305</sup>
- 17% of girls in Nigeria are married by the age of 15 and 43% before the age of 18.<sup>306</sup>
- Child marriage is particularly a problem in Nigeria's predominantly Muslim north, where 48% of girls are married by age 15, and 78% by age 18.<sup>307</sup> In the state of Kibbe, the average age of marriage for girls is 11 years.<sup>308</sup>
- 82% of women with no education were married before 18, as opposed to 13% of women who had completed secondary schooling.
- "In Africa, Nigeria is expected to have the largest absolute number of child brides. The country has seen a decline in child marriage of about 1% per year over the past three decades. At this pace, the total number of child brides is expected to double by 2050."<sup>309</sup>

It is reported there is reluctance by government to address the issue as, "[m]any of our northern politicians seem to think that taking a stand against

pegging the minimum age for marriage would be synonymous with taking a stand against the Muslim faith. The religion has been misinterpreted to convey that child marriage is encouraged in Islam, whereas contextual interpretations would suggest the opposite".<sup>310</sup> Compounding this issue is the fact politicians themselves have married teenagers: in 2010, Senator Ahmed Sani Yerima married a 13 year old Egyptian girl.<sup>311</sup>

## ■ Law

The Child Rights Act 2003 provides the minimum age of marriage is 18 years and it is an offence to marry a child or to permit the betrothal of a child as a parent.<sup>312</sup> However, the Act is a federal act and must be passed by state governments before it is effective. As of 2013, only 24 of Nigeria's 36 states had passed the Act.<sup>313</sup> Further, even where a state does adopt the Act, it may vary it, for example to accommodate Sharia law, which some northern states subscribe to (despite the Constitution prohibiting the adoption of state religions).<sup>314</sup> For example, the northern state of Jigawa did not adopt the section of the Act which stipulates the age of majority is 18 years; instead, it defined childhood in relation to puberty.<sup>315</sup>

Criminal laws also differ across Nigerian states, and there is no uniform age of consent, despite the Child Rights Act stipulating 18 years.<sup>316</sup>

Due to Nigeria's tripartite legal system the Constitution provides that the federal government only has control over civil marriages, not over customary and Islamic marriages.<sup>317</sup> Commentators note that when a person marries a child under Islamic law, they cannot be prosecuted even if the relevant state has enacted the Child Rights Act because the Constitution is supreme law and overrides all other legislation.<sup>318</sup>

## ■ Initiatives

In May 2015, the Violence Against Persons Prohibition Act was enacted to address the issue of female genital mutilation/cutting and other harmful traditional practices such as child marriage.

At the end of 2015, a Technical Working Group on Ending Child Marriage was formed. Led by the Ministry of Women Affairs and Social Development, the Group has more than 30 members, including NGOs. Its purpose is to 'develop and implement a holistic multi-sectoral strategy for ending child marriage in Nigeria, as well as raising awareness, encouraging behaviour change, and ensuring the monitoring and evaluation of laws and policies'.<sup>319</sup>

The Oando Foundation is a CSO that provides access

to improved quality education in Nigeria, with a particular focus on girls in the northern region. It reports that through its Adopt-A-School Initiative (AASI), 'the Foundation has adopted 47 government primary schools and provided conducive learning environments by upgrading school infrastructure, capacity building for teachers, school based management committees and local government education authorities, establishment of ICT/Creative centres, upgrade of ECCD Centres and provision of scholarships to over 800 gifted children from relatively low income background. To date, over 44,000 children have benefitted from AASI'.<sup>320</sup>

The International Centre for Reproductive Health and Sexual Rights (INCREASE) has established the Hajara Usman Girls' Leadership Training Program 'to provide at-risk girls with leadership skills, educate them about their bodies and rights, and help them develop their ability to respond to inequalities and injustice'.<sup>321</sup>

There have also been a number of African Union initiatives: the African Union has appointed a Special Rapporteur and a Goodwill Ambassador to specifically address the issue of child marriage and in 2014 launched its first official campaign to End Child Marriage in Africa.<sup>322</sup>

In November 2016, Nigeria became the 17th country to launch the African Union campaign to end child marriage. On the same day a national strategy to end child marriage was also launched, which envisions reducing reduce child marriage by 40% by 2020, and ending the practice entirely by 2030.

## ■ Rwanda

Rwanda has a population of approximately 12.7 million people and gained independence from Belgium in 1962.<sup>323</sup> Rwanda joined the Commonwealth in late 2009. Approximately 63% of the country lives below the poverty line.<sup>324</sup>

## ■ Statistics

- 1% of girls were married before the age of 15 and 8% before the age of 18.<sup>325</sup>
- The number of woman married before 18 was higher in rural areas and amongst poorer families.<sup>326</sup>

## ■ Law

The Rwandan Civil Code provides that men and women under 21 cannot marry. However, the Minister of Justice may grant an exception to those under 21 for serious reasons.<sup>327</sup> All available

information indicates that an individual must still be over the age of 18 for this exception to be exercised.

Article 17 of the Constitution provides for the right to marry and found a family and requires that marriage is only entered into with a parties free and full consent.<sup>328</sup>

The Penal Code defines a child as a person under 18 and provides that it is an offence to commit a sexual act with a child.<sup>329</sup> It is also an offence to live with or attempt to live with a child as husband or wife. Article 195 specifically criminalises the participation in the early or force marriage of a minor.

## ■ Initiatives

There appear to be very few initiatives aimed at eradicating child marriage in Rwanda. This is most likely because the prevalence of child marriage is relatively low. However, the Girls' Education Task Force (GETF), which was established in 2004 and works within the UN Girls Education Initiative Framework, was formed to implement the Girls Education Plan. This is a plan aimed at promoting the education of girls, increasing their enrolment in school, and providing specific funds for girls' education. A 'catch-up' programme also helps vulnerable children and girls who were previously excluded from school.<sup>330</sup>

The GETF initiatives appear to have been successful – Rwanda achieved gender parity in primary education in 2004 and has the highest number of female parliamentarians in the world.<sup>331</sup> Further, UNFPA reports a significant decrease of 10% or more in the prevalence of child marriage between 2000 and 2011.<sup>332</sup>

## ■ Seychelles

Seychelles has a population of 92,430 and gained independence from Britain in 1976. More than a third (37.8%) of the population lives below the poverty line, as of 2006, and the country has a high level of youth, which 34.45% of the country below the age of 24.<sup>333</sup> The Seychelles has the highest Human Development Indicator in Africa, and has achieved the majority of the Millennium Development Goals.

## ■ Statistics

- There are no statistics available in relation to the prevalence of child marriage in Seychelles.

## ■ Law

The Constitution of Seychelles provides for certain fundamental rights, including specific rights in relation to minors, including a right

to education<sup>334</sup> and recognition that young persons require particular protections against 'social and economic exploitation and physical and moral dangers to which children and young persons are exposed'.<sup>335</sup>

The age of consent for sexual activity in Seychelles is fifteen.<sup>336</sup>

The Civil Status Act contains contradictory provisions in relation to marriage. Article 40 is a discriminatory provision that provides the legal age for marriage for males is 18, while for females it is 15.<sup>337</sup> However, articles 46 and 47 provide that marriages of children will not take place without the consent of a parent, guardian or judge.<sup>338</sup> In its 2012 review, the Committee of the Convention on the Rights of the Child remained deeply concerned that Seychelles had not amended its legislation to ensure marriage was prohibited for all children under 18, male and female.<sup>339</sup>

Seychelles is considered by the WHO to have full enforcement of its laws against child marriage and partial enforcement of its laws on statutory rape. However, marital rape is not considered a crime in Seychelles.<sup>340</sup>

## ■ Initiatives

There appear to be limited initiatives aimed at combating child marriage in Seychelles, most likely due to the low prevalence of child marriages.

The Southern African Development Community-Parliamentary Forum (SADC-PF), of which the Seychelles is a member, has recently developed the Model Law on Eradicating Child Marriage and Protecting Children Already in Marriage, which was adopted on 3 June 2016.<sup>341</sup> The Model Law provides a consistent standard for how legislation should deal with child marriage and protect those children which are already married.

Seychelles is also a party to the African Common Position on the AU Campaign to end Child Marriage in Africa.

## ■ Sierra Leone

Sierra Leone has a population of approximately 5.9 million people and gained independence from the UK in 1961.<sup>342</sup> Sierra Leone joined the Commonwealth in the same year. Approximately 51.7% of the country lives below the poverty line.<sup>343</sup>

## ■ Statistics

- UNICEF ranks Sierra Leone as 19 of the 20 worst countries in the world for child marriage<sup>344</sup>.
- 39% of girls in Sierra Leone are married before they turn 18, and 13% of girls are married before they are 15.<sup>345</sup>
- However, child marriage rates have consistently declined during the past years, from 56% in 2006, to 48% in 2008, to 39% now.

## ■ Law

The minimum age of marriage is 18 pursuant to the Child Rights Act 2007. This Act also prohibits child marriage and creates an offence for persons who coerce children to participate in customary practices of child marriage or child betrothal.<sup>346</sup>

The Sexual Offences Act 2012 defines a child as a person under 18 years of age, and provides the minimum age of consent is also 18. It is an offence to have sex with a child, and the marriage of the defendant and victim is not a defence to this crime.

However, The Registration of Customary Marriage and Divorce Act, 2009 allows for the registration of customary marriages where the parties are under 18 years of age, provided their parents, guardian or a court give consent.<sup>347</sup>

Article 27 of the Constitution provides protection from discrimination, but the provision does not apply to laws in relation to 'adoption, marriage, divorce, burial, devolution of property on death or other interests of personal law'.

## ■ Initiatives

In 2013 the Government of Sierra Leone began implementing a two year national strategy aimed at the reduction of teenage pregnancy called 'Let Girls be Girls, Not Mothers'. However, it's success was hindered by the outbreak of Ebola in the country.<sup>348</sup> One assessment considered that child marriage rates may have increased during the Ebola outbreak as schools were closed for 8 months.

As a post-recovery measure, UNICEF and the Ministry of Education, Science and Technology launched an initiative in October 2015 to support learning for 11,000 pregnant and recently pregnant teenage girls, through after-hours learning sessions in schools, classes at separate Community Learning Centres and radio programmes for home study. The Government has also cancelled school fees for the next two years, as a measure to promote greater attendance.<sup>349</sup>

In August 2016, Sierra Leone became the 15th country to launch the African Union campaign to end child marriage in Africa.

Sierra Leone is also one of 12 countries selected to be part of UNFPA and UNICEF's Global Programme to Accelerate Action to End Child Marriage.

## ■ South Africa

South Africa has a population of approximately 53.7 million people and gained independence from the UK in 1961.<sup>350</sup> South Africa joined the Commonwealth in 1931 (then left in 1961 and re-joined in 1994 after the end of Apartheid). Approximately 13.8% of the country lives below the poverty line.<sup>351</sup>

## ■ Statistics

- Rates of child marriage are less significant in South Africa than a number of other African countries in the Commonwealth.
- The most recent UNICEF data reports that 6% of girls were married by the age of 18 and 1% by the age of 15.<sup>352</sup>

## ■ Law

Under the Recognition of Customary Marriages Act, both parties to a customary marriage must be over 18 years of age.<sup>353</sup> However, the Act provides that a marriage can take place between individuals under the age of 18 provided their parents or the commissioner of child welfare consent to the marriage, and that it is in the best interests of the minor.<sup>354</sup> If no one will grant consent the minor may request that a judge validate the marriage.

In South Africa, instances of child marriage often occur as a result of the traditional customary practice of 'ukuthwala'. Ukuthwala is the abduction of young girls by older men, with the aim of forcing the young girl into marriage, often with the consent of the young girl's family. According to the Department of Justice and Constitutional Development of the Republic of South Africa, the practice is currently rife with violence and rape.<sup>355</sup> Such actions violate various provisions contained within the Criminal Law (Sexual Offences) Amendment Act, which criminalise the rape, sexual assault and sexual exploitation of children.<sup>356</sup>

Perpetrators of ukuthwala often defend the practice by claiming it is a cultural tradition. Although the South African Constitution protects the cultural rights of the community,<sup>357</sup> as well as the right of individuals to participate in the cultural life of their choice,<sup>358</sup> the Constitution further states that neither right may be exercised in a way that is incompatible with any provision

of the Bill of Rights,<sup>359</sup> which also guarantees rights such as education and equality. Thus, the ukuthwala custom, which violates various human rights of the girl involved, cannot be used to justify the violation of rights of a young girl that follow from child marriage.

According to Elizabeth Thornberry of the Land and Accountability Research Centre, since 2008 a series of case law has emerged concerning abduction and forced marriage of young girls in the Eastern Cape and KwaZulu Natal.<sup>360</sup> In 2014 the first defendant, Nvumeleni Jezile, was convicted in relation to the practice, carried out on a 14 year old victim, and he was sentenced to 22 years in prison. The government have stated this should send a strong message that ukuthwala will not be tolerated.<sup>361</sup>

Following his conviction, Jezile appealed his conviction to the High Court on the basis that 'consent' within the practice of ukuthwala is to be determined in accordance with tradition and custom, which are recognised by the South African Constitution and it is an integral part of ukuthwala that the bride may not only be coerced into marriage, but will invariably pretend to object, since it is required (or at least expected), that she do so in order to maintain her modesty. The issue was whether the charges against the defendant should have been determined within the context of customary marriage (ukuthwala). The Court refused to recognise the custom of ukuthwala as a defence to the criminal charges.

In coming to their decision, the Court cited numerous international conventions and provisions in the Constitution that are aimed at protecting children from harmful traditional practices. The court found the facts of this case amounted to an aberrant form of ukuthwala as the victim was underage (14 years old) and she did not consent to the marriage at any point. The Court concluded that 'it cannot be countenanced that the practices associated with the aberrant form of ukuthwala could secure protection under our law'.<sup>362</sup>

## ■ Initiatives

In a recent report on the practice of ukuthwala, the South African Law Reform Commission (SALRC) recommended a further law be introduced in the form of a Prohibition of Forced and Child Marriages Bill, to expand the crime of forced and child marriages and provide clarity in relation to the criminalisation of the practice.<sup>363</sup> This is to be welcomed, however the case of Jezile has also confirmed that the practice of ukuthwala cannot be used as a cover to justify abuses of children.

## ■ Swaziland

Swaziland (eSwatini) is a small, land-locked monarchy with a population of approximately 1.5 million people, which gained independence from the UK in 1968.<sup>364</sup> Swaziland joined the Commonwealth that same year. Approximately 40.6% of the country lives below the poverty line.<sup>365</sup>

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## ■ Statistics

- 7% of girls in Swaziland are married before the age of 18, while 1% are married before age 15.<sup>366</sup>
- According to UN data from 2007, 6.9% of girls between 15 and 19 years of age were married, divorced or widowed, compared to 1.8% of boys in the same age range.<sup>367</sup>
- It is important to note that Swaziland has the highest prevalence of HIV in the world, and approximately 1 in 3 females experience some form of sexual abuse by age 18 according to the UNFPA.
- Girls Not Brides has noted, 'In Swaziland, the practice of child marriage has been linked to the spread of HIV. Married adolescent girls are at a higher risk of contracting the virus because many of them are married to men who are in polygamous unions, face sexual violence or are unable to negotiate safe sex with their older husbands'.<sup>368</sup>

## ■ Law

The Marriage Act 1964 provides that minors under 21 require the consent of their parents to marry, and that males below 18 and females below 16 may not marry, unless granted special dispensation by the Minister.<sup>369</sup> This introduces an exception which effectively removes any absolute minimum age of marriage. In addition to civil marriages, the government recognises traditional or customary marriages.<sup>370</sup> Under Swazi custom the age of majority for the purpose of marriage is puberty, which has resulted in very young girls being married under customary law. Further, due to the high poverty rate, girls are often forcefully married for the payment of bride price (lobola).<sup>371</sup>

The 2005 Constitution allows customary practices provided they did not conflict with constitutional clause.<sup>372</sup>

In 2012 with the introduction of the Children's Protection and Welfare Act, child marriage was officially outlawed. The Act states that children (anyone under the age of 18) have the right to refuse to be compelled to undergo or uphold any custom and other traditional practices which are likely to negatively affect them, including child marriage. The Act also penalises parents and guardians who collude with adult men to orchestrate child marriages. However, shortly after the law was passed, Swaziland's traditional leadership declared that child marriage was still acceptable under customary law.<sup>373</sup>

## ■ Initiatives

While legislative efforts have been made to prohibit child marriage, adherence to custom remains a problem and efforts are focussed on ensuring traditional leaders do not allow child marriage to continue, in breach of the Children's Protection and Welfare Act.

While there are not many initiatives directly addressing the issue of child marriage, NGO Swaziland Action Group Against Abuse (SWAGAA) works to prevent violence against women and children, and encompasses child marriage as part of its agenda.<sup>374</sup>

## ■ Uganda

Uganda has a population of approximately 37.1 million people and gained independence from the UK in 1962.<sup>375</sup> Uganda joined the Commonwealth that same year. Approximately 38% of the country lives below the poverty line.<sup>376</sup>

## ■ Statistics

- Uganda is 18th in the world for child marriage, with 40% of girls being married by age 16, and 10% of girls being married by 15.<sup>377</sup>
- Women aged 25-49 living in urban areas marry about two years later than women from rural areas (20 years compared with 17.6 years).<sup>378</sup>
- A 2013 UNFPA report also illustrated the child marriage varied by region, with the prevalence in Northern Uganda being as high as 59%, while Kampala had the lowest occurrence at 21%.<sup>379</sup>
- Girls from the poorest households with no education had higher rates of pregnancy (34% and 45% respectively) compared to those from the wealthiest households and with secondary education (16% and 16% respectively).<sup>380</sup>

## ■ Law

Uganda has several laws governing various types of marriages. Sections 10 and 17 of the Marriage Act 1904 make it possible for minors (under 21) to be married with the consent of their parents. Section 5 of the Marriage of Africans Act 1904 does not specify the age of a minor but implies minors can be married with the consent of their parents or guardian.

The Marriage and Divorce of Mohammedans Act 1906 does not specify an age of consent.

But the form of the register annexed to the Act implies that minors can be married with their guardian's permission.

Section 11 of the Customary Marriage (Registration) Act 1973 provides that a marriage shall be void if the female party has not attained 16 years of age and the male 18. Section 2 of the Hindu Marriage and Divorce Act 1961 provides that marriage can be solemnised if the groom is 18 and the bride 16, and the guardian of the bride provides consent.

The Constitution sets the minimum age of marriage as 18 and provides that all marriages, including customary marriages, should be registered by the State. The Constitution is the supreme law in Uganda and prevails over any other law or custom that is inconsistent with it. Accordingly, the provisions of the Acts outlined above which allow marriage under the age of 18 are void, however the laws are nevertheless still in operation. These contradictions in the law hinder the effective enforcement of prohibitions against child marriage in Uganda.

The Marriage and Divorce Bill 2009, which has been tabled and shelved a number of times, was reintroduced by the speaker of Parliament in February 2015<sup>381</sup> and would introduce a minimum age of 18 for all civil, Christian and customary marriages, and void underage Hindu marriages. The Bill is seen as controversial because it provides that the act of paying bride price cannot be considered a prerequisite for marriage, and also criminalises the practice of requiring bride price be repaid.<sup>382</sup>

The payment of a bride price is a common custom in Uganda and encourages parents to marry off daughters early.<sup>383</sup> The practice was unsuccessfully challenged in the Constitutional Court of Uganda in *Mifumi (U) Ltd & 12 Others v The Attorney General & Another*. In the case, petitioners argued, inter alia, that the bride price custom degraded women, caused domestic violence, and subjected women to servitude in marriage, and that it violated the various provisions of the Constitution. The Court rejected petitioners' arguments and upheld the practice as constitutional.<sup>384</sup>

However, the practice of a husband demanding a refund of the bride price in the event of dissolution of the marriage was held to be unconstitutional in the case of *Masinde v Watibini*.<sup>385</sup> It was held that the practice violated Article 31(1) of the Constitution, which protects equal rights in marriage and at its dissolution, and Article 33(6), which prohibits customs that undermine the status of women.<sup>386</sup>

## ■ Initiatives

On the 16th of June 2015, the Government of Uganda launched its first ever National Strategy to end Child Marriage and Teenage Pregnancy, which was developed in partnership with civil society organisations, including Girls Not Brides members in Uganda, and UN agencies.

The strategy is a five-year plan which aims to create a society free from child marriage and teenage pregnancy.<sup>387</sup>

The National Development Plan (NDP) 2010-2014/15 acknowledged child marriage as a negative social and cultural practice that increased the rate of early pregnancy; which is partly responsible for the country's persistently poor health outcomes for women and children especially high maternal and infant mortality ratios; and high fertility rates.

The NDP committed to delay marriages through expanding access to basic education and secondary education through Universal Primary Education (UPE) and Universal Secondary Education (USE) respectively. This is expected to be achieved by addressing the social cultural barriers to school attendance and promoting positive cultural values, norms and practices through strengthening the family unit by sensitizing communities about family values, developing school curricula on marriage and parenting, and ensuring respect and promotion of human rights. The plan indicates government commitment to promote the rule of law and due process through fostering enactment and availability of laws and their continuous revision by supporting comprehensive and demand driven law reforms to enhance access to justice and equality before the law, among others.<sup>388</sup>

A recent ODI study found that early marriage persists in the face of laws against marriage under 18 and the potential punishment under the laws pertaining to defilement.<sup>389</sup>

Further, the constitutional guarantee of age 18 as the legal age of marriage, and efforts to enforce the law on 'defilement' prohibiting relations between under-age children, rather than reinforce the rights of girls, appear to have driven child marriage underground and contributed to the rise of informal 'cohabitation' arrangements, where the rights of married girls and their children found no legal or material protection.<sup>390</sup>

## ■ United Republic of Tanzania

Tanzania has a population of approximately 51 million people and gained independence from the UK in 1961.<sup>391</sup> Tanzania joined the Commonwealth that same year. Approximately 67.9% of the country lives below the poverty line.<sup>392</sup>

### ■ Statistics

- Child marriage is still a relatively significant occurrence within Tanzania, with 37% of girls being married before 18,<sup>393</sup> and 7% of girls before 15.<sup>394</sup>

- As in many countries in Africa, the percentage of girls married is much higher in rural areas (44%) when compared to urban (23%).<sup>395</sup> This is evidence when regional differences are examined, with some regions having rates of child marriage as high as 59% (Shinyanga), while others are as low as 8% (Iringa).<sup>396</sup>
- The trends in relation to girls being more likely to marry if they are poor also hold in Tanzania.

### ■ Law

The Law of the Marriage Act 1971 provides the minimum age for marriage for women is 15, and for men is 18.<sup>397</sup> Women under the age of 18 require the consent of their father (or mother or guardian), or if consent is being unreasonably withheld, a court, before they can marry.<sup>398</sup> The Act allows a court to give leave to marry to those who are at least 14 or older, where special circumstances make the marriage desirable.<sup>399</sup>

Marriage shall not be contracted except with the consent, freely and voluntarily given, by each of the parties.<sup>400</sup> A court may annul a marriage only where a petition for annulment was filed before the wife turned 18. However, under the civil procedure code, a minor does not have standing and requires a 'friend' to bring a suit on her behalf. It is also an offence to take part in a ceremony where the intended wife is below the minimum age of marriage, or is below 18 and the requisite consent has not been provided.

The Act also provides that marriages may be contracted in civil, Islamic or customary form, according to the relevant civil, Islamic or customary law.<sup>401</sup> According to Human Rights Watch (HRW), most marriages in Tanzania at the village level are entered into under customary law.<sup>402</sup> Copies of the relevant Islamic law could not be located, but it is reported that under Islamic law every Muslim of sound mind who has attained puberty may be married,<sup>403</sup> and it is presumed males attain puberty at the age of 15 and females at the age of 9.

The Civil Procedure Code 1966<sup>404</sup> provides that it is an offence to marry someone below the minimum age for marriage,<sup>405</sup> to take part in a ceremony of marriage where the intended wife is below 18 and has not given consent. This has the effect of allowing underage girls to be guilty of an offence following their marriage.<sup>406</sup>

The Courts have recognized marriage without consent is invalid and a violation of dignity. In *Jonathan v Republic*<sup>407</sup> and *Mallya v Republic*,<sup>408</sup> Tanzanian High Courts held that tribal marriage customs of abducting and raping a girl do not constitute marriage.

- In *Jonathan* the court found the girl's consent in such situations was non-existent, and in view of the Law of Marriage Act, the UDHR, CEDAW, and the ICCPR, 'seriously offended the complainant's fundamental right to choose her spouse and marry on her own volition.'
- In *Mallya* the court deplored the use of custom as a defence for rape, finding that '[s]uch customs are dehumanizing and they contaminate human respect and dignity'.<sup>409</sup>

In 2016, Rebecca Gyumi, founder and executive director of Msichana Initiative, filed a petition to the High Court challenging sections 13 and 17 of the Marriage Act, which allows a girl of 14 years to be married on the basis of the court's judgment or her parent's consent. The High Court ruled that these provisions were unconstitutional on the basis they were discriminatory. The government appealed this decision, but at the time of writing the decision of the appeal court was still outstanding.<sup>410</sup>

While forced marriage is an offence in Tanzania, HRW have reported that bribery of judicial and other government officials is a major barrier to successful prosecution of crimes against women and girls. A police officer at the Police Gender and Children's Desk told Human Rights Watch:

*Some of the cases we take to court for prosecution are delayed or are not completed because perpetrators pay money to the magistrates. When magistrates are paid, all they do is keep postponing and adjourning cases during hearing sessions. When cases are delayed, the victims and witnesses give up on the case and stop coming to court.*<sup>411</sup>

### ■ Initiatives

In the past, the Government has introduced various national action plans and strategic roadmaps aimed at reducing violence against women, and these have included the goal of setting a minimum age for marriage of 18. However, the plans have not set out comprehensive strategies to address child marriage,<sup>412</sup> and the government's action in appealing the High Court decision (outlined above) that found child marriage provisions unconstitutional, indicates they are not serious about eradicating the practice.

The appeal contradicts earlier government acts, including the national campaign to end child marriage which was launched in 2014,<sup>413</sup> and the 2014 Education and Training Policy, which was aimed at enabling girls to return to school following pregnancy.<sup>414</sup>

Despite the mixed signals from government, the UNFPA reported a significant decrease of 10% or more in the prevalence of child marriage

in Tanzania between 2000 and 2011.<sup>415</sup> However, clearly child marriage rates remain high despite the work of numerous organisations. The law still allows for child marriage (pending the outcome of the appeal above) and the interrelationship between customary and ordinary civil/ criminal law is unclear.

## ■ Zambia

Zambia has a population of approximately 15 million people and gained independence from the UK in 1964 (at which time Zambia was called Northern Rhodesia).<sup>416</sup> Zambia joined the Commonwealth that same year. Approximately 74.5% of the country lives below the poverty line.<sup>417</sup>

### ■ Statistics

According to Girls Not Brides, Zambia has one of the highest prevalence rates of child marriage globally, with 31% of women aged 20-24 years married by the age of 18 – with little to no change in the rate since 2002. The rates of child marriage vary from one region to another, and are as high as 60% in the country's Eastern Region.<sup>418</sup> The UNFPA<sup>419</sup> noted that:

- 41.6% of women aged 20-24 were married by the age of 18 and 8% were married by age 15.
- The rate was as high as 53.3% in rural areas, and went down to 26.2% in urban areas.
- The highest rates correspond with no education and those among the poorest 20%.

The Population Council noted that:

*Child marriage is widespread in Zambia, even though the legal age of marriage is 21 for both males and females. Customary law and practice discriminate against girls and women with respect to inheritance, property, and divorce rights. Domestic violence is a serious problem, with over half of married girls reporting ever experiencing physical violence and more than a third reporting abuse in the past year.*<sup>420</sup>

### ■ Law

The legal age of marriage in Zambia is 21 years, with the consent of a parent or guardian required for a party who is under this age. If one party is under the age of 16 the marriage is void, subject to a Judge being satisfied that the marriage is in the public interest.<sup>421</sup> Other relevant legislation

includes the Anti-Human Trafficking Act (2008), which outlines the penalties for trafficking children for the purposes of sexual exploitation.

It is difficult to find cases online, however, a series of news agencies have reported on one case of child marriage that was brought before the courts. The case involved a 14 year-old girl who was forced to marry a man 31 years older than her. The case was brought to the courts by some members of the community and the man was charged with 'defilement of a minor'. One newspaper reported, 'The criminal case for Evelyn Mwale's forced marriage is now in process toward its final legal decision.... the case also includes additional separate charges made against those who arranged the illegal marriage. These charges include 'contributing to the defilement of a minor.'<sup>422</sup>

In December 2015, the Government announced that it would be launching a fast-track court system to deal with cases of child marriage and child sexual abuse. These courts are intended to help deal with such cases early and reduce withdrawals by victims.<sup>423</sup> In relation to the Zambian court system's ability to deal with child marriage and related offences, a Human Rights Watch report from 2003 noted:

*The lower courts in the Zambian system – the local and magistrates' courts – are subject to restrictions on their jurisdiction to mete out sentences. Local courts cannot impose prison sentences exceeding two years. Zambian women's groups have stressed the importance of stopping lower courts from trying offenses for which they do not have jurisdiction to impose 'deterrent sentences' and from applying customary civil law to criminal offenses, including defilement, incest, rape, and assault, which should be heard in the magistrates courts.*<sup>424</sup>

## ■ Initiatives and Impact

The organization Girls Not Brides has reported the following government initiatives taking place in Zambia:

*In March 2016, the Government of Zambia adopted a five-year national action plan to end child marriage. Zambian civil society, including the Zambia Ending Child Marriage NGO Network, was instrumental in initiating the development of the national strategy and providing input into the content. The Ministry of Gender is responsible for implementing the action plan.*

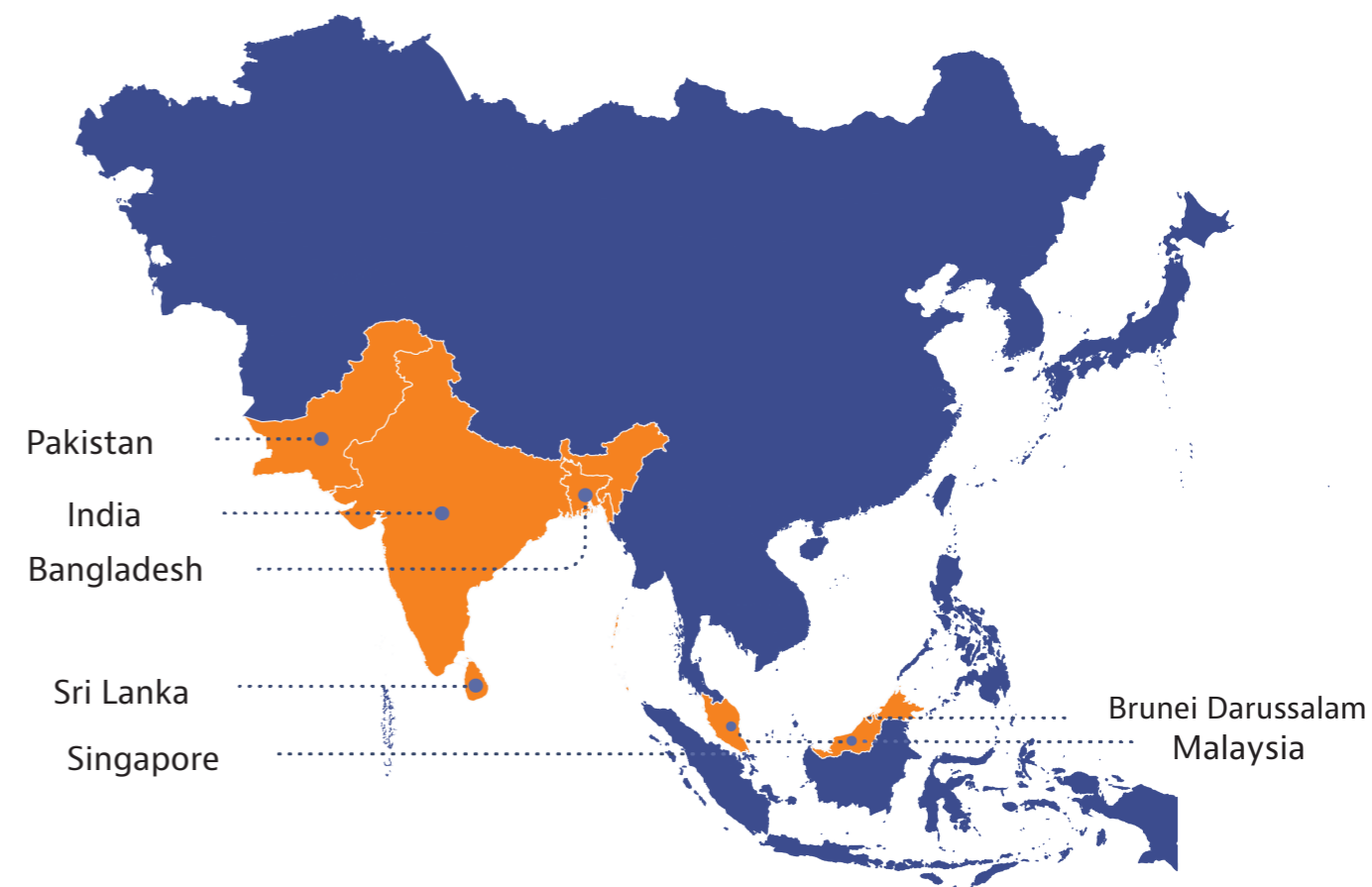
*In 2013, the Government of Zambia launched a nation-wide campaign to end child marriage.*

*Spearheaded by the Ministry of Chiefs and Traditional Affairs, the campaign prioritised engagement with traditional leaders and law reform.*

*The Government of Zambia is taking steps to put child marriage at the forefront of the regional and international agenda. In November 2015, Zambia co-hosted the first-ever African Girls' Summit on Ending Child Marriage. In September 2013, Zambia co-sponsored with Canada the first UN General Assembly resolution on child, early and forced marriage. The two countries co-sponsored another resolution on the issue at the UN General Assembly's 69th session in 2014.*<sup>425</sup>

Zambia's efforts have been noted as contributing to major progress towards the global goal to end child, early and forced marriage by the year 2030.<sup>426</sup>

## ■ Asia



## ■ Bangladesh

Bangladesh has a population of approximately 169 million people and gained independence from the UK in 1971.<sup>427</sup> Bangladesh joined the Commonwealth the following year.

Approximately 43.3% of the country lives below the poverty line<sup>428</sup>. Despite signs of progress, Bangladesh continues to have one of the highest child marriage rates worldwide, ranking fifth in the world for children married before 18. It has the highest rate of marriage involving girls under 15.

### ■ Statistics

- 52% of girls are married by their 18th birthday, and 18% by the age of 15<sup>429</sup>.
- In rural areas, 71% of girls are married before the age of 18, compared to 54% in urban areas.
- In 2005–2013, of those aged 10–19, 2% of males had been married as children, while 45% females had been married as children.
- Bangladesh has the highest absolute numbers of child marriages with 2,359,000 women aged between 20 and 24 married before they were 15.<sup>430</sup>
- In a recent survey, 83% of women reported their marriage was arranged by parents or relatives and 72% cited the reason for the marriage as the parents feeling the offer for marriage was too good to reject.

### ■ Law

The legal context in Bangladesh is characterised by poor enforcement practices and a plurality of legal sources. Child marriage is ostensibly illegal under the Child Marriage Restraint Act 2017, the legal age for marriage being 21 for men and 18 for women. However, the Act provides that girls younger than 18 can be married in 'special circumstances' and does not set a minimum age for the application of this provision. This has been criticised as a major step backwards in attempts to protect children from this practice as it essentially means there is no minimum age of marriage at all.

Around 85% of the population in Bangladesh are Muslim, and Muslim law sets out a different legal position with respect to marriage. Under Muslim law, the legality of marriage is judged based

on puberty, and puberty is presumed at age 15 for boys and 13 for girls. Whilst girls married before 18 are permitted to contest their marriage, this is only possible so long as the marriage was not consummated. The legal position on marital rape undermines any effectiveness this protection might have, as the Penal Code provides exceptions to statutory rape where a girl is married.<sup>431</sup>

### ■ Initiatives

There are a number of international, regional and domestic actors reporting on and launching initiatives to stop child marriage in Bangladesh. International actors include Girls Not Brides, Coram Children's Legal Centre, UNICEF, Plan UK, Plan International, the International Centre for Research on Women, Save the Children, World Vision, the Royal Commonwealth Society, Human Rights Watch, the South Asian Initiative to End Violence Against Children (SAIEVAC) and the Bangladesh Rural Advancement Committee (BRAC, originated in Bangladesh but has since expanded internationally).

Human Rights Watch has produced reports pertaining specifically to Bangladesh. The 2015 Report, 'Marry Before Your House is Swept Away: Child Marriage in Bangladesh', conducted a substantive qualitative and quantitative review of child marriage in Bangladesh, which considered the link between child marriage and climate change and found that girls in communities affected by climate change were more vulnerable to being married young.<sup>432</sup>

Between 2014 and 2015, Plan International commissioned a research report conducted by Coram Children's Legal Centre titled 'Getting the Evidence: Asia Child Marriage Initiative'. The report aimed to investigate the causes of child marriage in range of factors including societal norms and values, and economic, structural and environmental factors. The report drew strong links between child marriage and education, social attitudes towards women and access to sexual and reproductive health rights and protection.

The Social and Financial Empowerment of Adolescents initiative run by BRAC focuses on empowering adolescent girls socially and financially in rural areas, including the Dhaka, Rajshahi, Pabna, Comilla and Magura districts, by establishing safe spaces, conducting life skills training and promoting financial literacy. This initiative run by BRAC reports that adolescents are consequently better able to identify risks of child marriage, there is better awareness of the legal marriage age, gender equality and women's rights.

Domestically, the current administration under Prime Minister Sheikh Hasina Wazed has pledged to end child marriage involving children under 15 years of age by 2021 and to reduce marriage involving children under 18 by a third by 2021, ending child marriage altogether by 2041.

Finally, Kishori Abhijan, launched in 2001, supported by UNICEF and financially assisted by the European Commission, focuses on empowering adolescents. It is currently in its second phase which focuses on information gathering and education and its core aim is to improve the lives of adolescent girls by transforming the social environment, empowering adolescent girls to participate in decisions affecting their lives, and creating a familial and community environment which is supportive of these changes. To this end, Kishori Abhijan engages not just with adolescents but with family members, community members and influential community leaders. It has also expanded its reach to all 64 districts by promoting training aids, adopted by the Bangladesh Sishu (Children's) Academy, that increase mobility for adolescents through educational, sporting, employment, and entrepreneurial opportunities.

## ■ Brunei Darussalam

Brunei has a population of approximately half a million people and has been ruled for over six centuries by the same family. The 1959 constitution provides that the Sultan of Brunei is the head of state with full executive authority and sole power to amend the law. The Sultan is the Chief of State and Head of Government, holding concurrent positions as Prime Minister, Defence Minister and Foreign Minister.<sup>433</sup> Brunei became a British protectorate in 1888 and gained independence from the UK in 1984, joining the Commonwealth that year.<sup>434</sup> Due to its petroleum and natural gas reserves, Brunei enjoys one of the highest per capita GDPs in the world.<sup>435</sup> Brunei has a mixed legal system of based on common law and Islamic law.

### ■ Statistics

There are no recent statistics in relation to child marriage in Brunei.

### ■ Law

In Brunei, there are several pieces of legislation concerning marriage. Under the Registration of Marriages Act, any marriage solemnised within Brunei, other than a marriage where one of the parties is a Christian or Muslim, can be registered if there is evidence that a marriage took place, such as cohabitation. Evidence can be oral or documentary.<sup>436</sup> A parent or guardian of a husband or wife under the age of 18 can make an appearance before the Registrar at the time of registration to give consent to the marriage.<sup>437</sup>

The Law of Married Women also gives basic rights to wives such as the right to hold property and the right to remedies, and places a duty

on husbands to care for their wife and children, among others.<sup>438</sup>

The Marriage Act provides that if a minor (under the age of 18) is to be married, then they need to permission of the father.<sup>439</sup> There is an absolute prohibition of marriage for anyone under the age of 14 years.<sup>440</sup> This Act does not apply to Muslims, Hindus, Buddhists, Dayaks, and others who are governed by their own laws and customs.

The Women and Girls Protection Act provides that no person can be charged with an offence under the act if they were brought or taken out Brunei for the purpose of marriage or adoption.<sup>441</sup>

The Penal Code provides that anyone who kidnaps or abducts a woman to compel her to marry or forces intercourse, will be punished with imprisonment of up to 30 years and whipping of at least 12 strokes.<sup>442</sup> Forcing or seducing a girl under 18 to have intercourse also attracts the same penalty.<sup>443</sup> The Code also contains a section on offences relating to marriage, including cohabitation or intercourse caused by a man deceitfully inducing a belief of lawful marriage, polygamy, and enticing or detaining a married woman with criminal intent.<sup>444</sup>

In May 2014, the first of three phases of the Syariah Penal Code Order was implemented in Brunei – a sharia-law based code which applies to Muslims and non-Muslims and will be enforced in parallel to the existing code. A copy of the law could not be located but it has faced severe criticism for the planned reintroduction of the most severe penalties that exist under sharia law, including stoning, severing of limbs and the death penalty.<sup>445</sup>

### ■ Initiatives

There are limited initiatives in Brunei in relation to child marriage. The Committee on the Rights of the Child has reported on the issue of the age of consent for marriage, and recommended that it should be unified to the age of 18.<sup>446</sup>

## ■ India

India has a population of approximately 1.25 billion people and gained independence from the UK in 1947.<sup>447</sup> India joined the Commonwealth the same year. Approximately 32.7% of the country lives below the poverty line.<sup>448</sup>

### ■ Statistics

- India ranks 10th in the world for child marriage, with 47% of girls married before 18, and 18% of girls married before 15.<sup>449</sup>



- The 2011 Indian Census revealed 30.2% of all married women, or 103 million girls, were married before they turned 18.<sup>450</sup> The data also shows 7.85 million girls (2.3% of all women or girls married in 2011) were married while they were not yet 10 years of age, and 91% of all married women were married by the age of 25 years.<sup>451</sup>
- The rates of child marriage vary between states and are as high as 69% and 65% in Bihar and Rajasthan.<sup>452</sup>

## ■ Law

There are many pieces of legislation in India concerning child marriage. The Prevention of Child Marriage Act 2006 states that children are men under the age of 21 and women under the age of 18, and a child marriage is where either party is a child.<sup>453</sup> Child marriages are to be voidable if either person getting married was child at the time of marriage, and wishes to have the marriage nullified.<sup>454</sup> The punishment for a male adult who marries a child, or for solemnising a child marriage, can be imprisonment for up to 2 years or a fine of up to 1 lakh rupees.<sup>455</sup> Magistrates also have powers to issue injunction to prevent the solemnisation of child marriages.<sup>456</sup> Disobeying the court's injunction can be punishable by up to two years of imprisonment or a fine, or both.<sup>457</sup> The age of consent for sexual intercourse in India is 18.<sup>458</sup>

The Indian Penal Code states that any form of sexual intercourse by a man against a woman under the age of 16 is rape, unless the woman is his wife and over the age of 15.<sup>459</sup> Under the Hindu Marriage Act, which applies to all Hindus, Sikhs, Jains, and Buddhists, the parties to the marriage must have the capacity to consent and a marriage where consent is obtained through force is voidable and can be annulled by a decree of nullity.<sup>460</sup> Under the Islamic law, both the bride and groom must consent to the marriage, and also express the consent verbally and in writing.

The Constitution of India provides for the rights to equality, life, and the right against exploitation, and further reiterates India's commitment to the protection, safety, security and well-being of its entire people, including the girl child.<sup>461</sup>

There are many significant cases in India concerning child marriage, including the following three examples:

- In *Moti v Beni*, the complaint was against Chhotulal who had kept Beni's daughter, Chamelia, in wrongful confinement.<sup>462</sup> During the proceedings it was known Chamelia was married to Moti, and the District Magistrate ordered she be returned to the custody of the mother saying that as she was only 13 years old, she could not be legally married.<sup>463</sup>

- In *Ma Hari v Director of Consolidation*, Justice Sathish Chandra of the Allahabad High Court observed that the solemnisation of marriage in contravention of the provisions of the Hindu Marriage Act may result in punishment, yet the marriage would not become null and void and the marriage would remain valid in law and enforceable and recognisable in a court of law.<sup>464</sup>

- In *D. Pradhan v Bengabali Dei*, Justice Acharya of the Orissa High Court dissented from the case of *Samma* and held that violation of clause (iii) of section 5 of the Hindu Marriage Act does not vitiate the marriage.<sup>465</sup> In this case the wife's petition for maintenance and separate residence was contested with the help of the ruling in *Samma*.<sup>466</sup>

- In the landmark *Laxmi Sargara* case, Laxmi who was married at the age of 1 to a 3 year old child, successfully annulled her marriage seventeen years after the wedding.<sup>467</sup> She was informed about the marriage only in April 2012 and was given a deadline to move in with her in laws.<sup>468</sup> However, she was unhappy about the marriage and contacted a social worker who helped her convince her husband to have the marriage declared void.<sup>469</sup>

## ■ Initiatives

There are various key actors working on child marriage issues throughout India. Significant regional NGOs include Vasavya Mahila Mandali<sup>470</sup> and Saarthi Trust. Vasavya Mahila Mandali works to promote comprehensive social, economic and political development for women, children and youth in vulnerable situations including child marriages, thereby empowering communities in Andhra Pradesh to improve their quality of life.<sup>471</sup> The Saarthi Trust was set up by Kriti Bharti an award-winning anti-child-marriage activist and women and children's rights campaigner who has been working to help children in Rajasthan for over five years.<sup>472</sup> The Trust was set up in 2012 to address the child marriage crisis facing India and provides programmes, psychological support and education to women and children.<sup>473</sup>

Major international organisations that work on child marriage issues in India include Breakthrough, UNICEF, and Plan International. Breakthrough is a global human rights organisation seeking to make violence and discrimination against women and girls unacceptable.<sup>474</sup> They use the power of arts, media, pop culture, and community mobilisation to inspire people. In their program to end child marriage, they work directly within the communities in the Indian states of Bihar and Jharkhand, which have among the highest rates of child marriage in the country.<sup>475</sup> UNICEF works alongside the Indian government in its efforts to prevent child

marriage, including the implementation of the convergent national strategy.<sup>476</sup>

The National Policy for Children was adopted by the Indian government in 2013, and the Ministry for Women and Children (MWCD) oversees the implementation of this Policy.<sup>477</sup> Within its objective to strengthen the overall child protection framework, the policy provides for tracking, rescuing and rehabilitating children who are outside the school system, including married children, and ensuring them access to their right to education.<sup>478</sup> The National Strategy on Child Marriage was proposed by the MWCD and suggests linking with the Integrated Child Protection Scheme (ICPS) to allow detection and prompt referral of cases that require care and protection.<sup>479</sup> In 2009, the MWCD introduced a pilot scheme called Dhanalakshmi in selected districts of the country, as a conditional cash transfer scheme which provided cash to the family of girls (preferably the mother) upon fulfillment of certain conditions for the child, such as registration of birth, immunisation, enrolment and retention in school, and delaying her marriage beyond 18 years of age.<sup>480</sup>

India is also a member of the South Asian Initiative to End Violence Against Children, which has adopted a regional action plan to end child marriage, which is to be implemented from 2015-2018.<sup>481</sup>

## ■ Malaysia

Malaysia is a predominantly Muslim country. Under the Malaysian Constitution, all 13 states in Malaysia are given the power to create laws to govern Muslims in respect of religious offences and personal laws such as family and probate laws.<sup>482</sup> Thus, Malaysia practices a dual legal system on matters relating to marriage, where Muslims are governed by Syariah law while non-Muslims are governed by civil law.

## ■ Statistics

There are no available statistics in relation to the prevalence of child marriage in Malaysia, which makes it very difficult to determine the extent of the practice. However, there are reports of child marriage occurring, particularly in Muslim communities.

## ■ Law

The legal age for marriage between non-Muslims is 18, however females may marry at the age of 16 with the consent of the Chief Minister of a particular state.<sup>483</sup> Parties below the age of 21 require the written consent a parent or guardian.<sup>484</sup> For Muslims, the minimum age for marriage is 16 for girls and 18 for boys, but exceptions can be made for marriages below these age limits with the consent of the Syariah Court.<sup>485</sup> Of concern is the lack of guidelines or transparency

as to the exercise of this discretion, which effectively sanctions child marriage. It is also evident from the discriminatory legal provisions that girls would be disproportionately affected.

The lack of publicly available statistics on child marriage make it difficult to determine the extent of this practice. Recent data reported by Bernama (National News Agency of Malaysia) indicated a total of 2,104 marriages had been registered from 2011 until September 2015 involving girls aged 16 but below 18 years of age. Of the total, 680 girls married their partners (males) who were exactly 18 years old but below 21, while the remaining 1,424 girls married their male partners aged above 21.<sup>486</sup> It has also been revealed that the Syariah Court received more than 1,000 applications from Muslims for permission to marry minors in 2015.<sup>487</sup>

Pursuant to section 375(g) of the Penal Code (Act 574), sexual intercourse with a girl who is less than 16 years of age is a criminal offence of statutory rape. However, marital rape is not criminalized in Malaysia, thus child marriages in Malaysia have the effect of circumventing statutory rape laws. In particular, a disturbing pattern has arisen where perpetrators of statutory rape have married their victims to avoid criminal proceedings. One such reported case involved the rape of a 13 year old girl by a 40 year old restaurant manager who later approached the Syariah Court seeking approval to marry the survivor. The Syariah Court had no objection to the marriage, which drew objections from civil society organisations, media, and the wider public. Due to the overwhelming pressure and attention, charges were brought against the perpetrator. Although he was found guilty of raping the girl, and then bribing her father to consent to marriage, the marriage was still found to be legal.<sup>488</sup>

Malaysia has ratified both the Convention on the Rights of Child (CRC) and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). However, the Malaysian government has entered a reservation against Article 16(2) of CEDAW, which expressly prohibits child marriages. Pursuant to the ratification of the CRC, the Child Act 2001<sup>489</sup> was enacted primarily for the care and protection of all children in Malaysia. This Act does not explicitly address the issue of child marriage; however, it defines a child as being any person under the age of 18. Despite repeated calls to amend all marriage laws to set the minimum age of marriage at 18 (in line with the Child Act), to date this has not occurred. Although, NGOs such as the Joint Action Group for Gender Equality (JAG) and Child Rights Coalition Malaysia have continuously raised concerns about the prevalence of child marriages in Malaysia and pushed for law reform,<sup>490</sup> religious<sup>491</sup> and societal attitudes<sup>492</sup> have often been cited as obstacles to the elimination of this practice. In addition, the lack of formal sex education in Malaysia has been raised as a contributory factor.

## ■ Initiatives

The ruling government and religious authorities have in recent years expressed their public condemnation of child marriages. In 2014, the National Fatwa Committee of Malaysia published a fatwa stating that child marriages are not wajib (obligatory) or sunnah (encouraged) and acknowledged the harmful nature of child marriages.<sup>493</sup>

In 2016 the Women, Family and Community Development Minister, Rohani Abdul Karim spoke out against child marriage.<sup>494</sup> However, recent amendments to the Child Act 2001 tabled by representatives of the government failed to include an express prohibition of child marriages<sup>495</sup> despite opposition MPs raising the issue of child marriages during the tabling of the amendments in Parliament.<sup>496</sup>

In 2018, the Ministry of Women, Family and Community Development analysed data between 2007-2017 which found that 15,000 child marriages had been recorded in that period, two thirds of which were Muslim marriages.<sup>497</sup> As a result of these findings, the ministry announced it would be meeting with all of the women excos in the country to help raise the minimum age for marriage.<sup>498</sup>

Since a controversial marriage that took place in 2018 between a 41-year-old man and an 11-year-old girl, the ministry has said they are working on finding a long-term solution to child marriage laws, and that the ministry would raise the issue in Parliament.<sup>499</sup> They also report that they are seeking to understand why the number of underage marriages is so high.<sup>500</sup>

## ■ Pakistan

Pakistan has a population of approximately 200 million people and gained independence from the UK in 1947.<sup>501</sup> Pakistan joined the Commonwealth that same year (though left in 1972, re-joining in 1989). Approximately 21% of the country lives below the poverty line.<sup>502</sup> In Pakistan, male heads of the family are the key decision makers in relation to marriages, which must be sanctioned by them,<sup>503</sup> and child marriage is connected with tradition and customary practices, including the transfer of money or settlement of debts in exchange for daughters (vani/swara/watta satta).<sup>504</sup>

## ■ Statistics

- In Pakistan, 3% of girls are married before the age of 15 and 21% before the age of 18.<sup>505</sup>
- The legal age for marriage is 16 for females and 18 for males.<sup>506</sup>

- Girls living in rural areas of Pakistan are hardest hit by child marriage: 37% as opposed to 21% for girls in urban areas.<sup>507</sup>
- Birth registration is extremely low (27%), which adds to the difficulties inherent in preventing early marriage.

## ■ Law

Pakistan's Child Marriage Restraint Act 1929 (CMRA) provides the legal age for marriage is 16 for females and 18 for males.<sup>508</sup> The Act creates offences for men over 18 who marry a child, for those who solemnise child marriages,<sup>509</sup> or for parents/guardians who promote, permit or fail to prevent child marriage. In May 2017, the National Assembly rejected changes to the CMRA for the second time, which would have increased the legal age for marriage from 16 to 18 nationwide.

Child marriage is also outlawed under the Pakistan Penal Code 1860,<sup>510</sup> which defines an adult as a person who has attained 18 years of age and prohibits the practice of girls being given in marriage or otherwise in exchange for peace (a practice known as swara).<sup>511</sup> In February 2017, amendments were made to the Penal Code that increased the penalties faced by those convicted of carrying out child marriages.

Various states have introduced their own legislation in relation to child marriage, including the Sindh Child Marriage Restraint Act, which was adopted unanimously in April 2014, and which increased the minimum age of marriage to 18 and made marriage below the age of 18 a punishable offence.

Unfortunately, the move towards consistent laws prohibiting child marriage has been hindered in Pakistan, with the Council of Islamic Ideology, a constitutional body which gives Islamic legal advice to the Pakistani Government, declaring that Pakistani laws prohibiting child marriage are un-Islamic and 'blasphemous'.<sup>512</sup>

In 2012 there were reports of the following significant cases in the court system in relation to child marriage:<sup>513</sup>

- Hafeezur Rehman filed an application seeking a declaration his father and brother were killed for declining to give his minor sister under the practice of swara (to settle a dispute);
- Samar Minallah petitioned the Supreme Court to seek the implementation of a law to curb swara, which led to the Court declaring the practice unlawful;

- The Chairperson of the National Commission on the Status of Women, Anees Haroon, requested the Supreme Court declare the Jirga system (the tribal practice of settling disputes through the exchange of women) is inhuman and against the fundamental rights of citizens.

## ■ Initiatives

Pakistan is a member of the South Asia Initiative to End Violence Against Children (SAIEVAC), an inter-governmental body which has adopted a regional action plan aimed at ending child marriage.

Pakistan also pledged to prevent child marriage by supporting the Sustainable Development Goals, and was among the first countries to propose a target aimed at ending the practice by 2030.

Various initiatives aimed at increasing girls access to education have been implemented, including an amendment to the Constitution in 2010 that guarantees education for children to the age of 16,<sup>514</sup> and the introduction of a National Education Policy, with an increased education budget of 7% of GDP.<sup>515</sup> These are positive steps as increased school enrolment has been associated with a decline in marriage among girls under the age of 14.<sup>516</sup>

## ■ Singapore

Singapore has a population of approximately 5.7 million people and gained independence from the UK in 1965.<sup>517</sup> Singapore joined the Commonwealth that same year. Singapore is one of the world's most prosperous countries, with a GPD per capita equal to those of leading Western European countries.<sup>518</sup>

## ■ Statistics

There are no available statistics in relation to the prevalence of child marriage in Singapore.

## ■ Law

In Singapore, there are two major pieces of legislation concerning child marriages, the Women's Charter of 1961 and the Administration of Muslim Law Act 1966. Under the Women's Charter, a minor is under the age of 21,<sup>519</sup> and cannot marry without consent.<sup>520</sup> Marriage between persons below the age 18 shall be void, unless authorized by a special marriage licence granted

by the Minister.<sup>521</sup> Forced marriage is illegal and could result in a fine of up to \$3000 or up to 3 years of imprisonment.<sup>522</sup> However, the Women's Charter does not apply to Muslims.<sup>523</sup>

The Administration of Muslim Law Act 1966 is the law created specifically for Muslims, which states that marriageable age is 18.<sup>524</sup> However, if the girl is under the age of 18 but has attained puberty then she is able to marry.<sup>525</sup> The age in which a girl reaches puberty can be much younger than 18. Originally, sections 96(4) and 96(5) had set the marriageable age at 16, but these sections were amended to 18 years in the Administration of Muslim Law Amendment Act 2008.<sup>526</sup> However, the effect of the exception makes this amendment meaningless.

There are no additional provisions available in the constitution, and no case law has been located.

## ■ Initiatives

There do not appear to be any significant initiatives being undertaken in Singapore in relation to child marriage.

## ■ Sri Lanka

Sri Lanka has a population of approximately 22 million people and gained independence from the UK in 1948, as the Dominion of Ceylon (this dominion status continued until 1972, when the Dominion became a republic and was renamed the Republic of Sri Lanka).<sup>527</sup> Sri Lanka joined the Commonwealth in 1948. Approximately 4.1% of the country lives below the poverty line.<sup>528</sup>

## ■ Statistics

The most recent UNICEF statistics in relation to child marriage in Sri Lanka indicate that approximately 2% of girls are married by age 15 in Sri Lanka and 12% are married by age 18.<sup>529</sup>

## ■ Law

A mix of civil, customary and personal laws governs marriage in Sri Lanka, depending on the background of the party.

The Marriage Registration Ordinance<sup>530</sup> provides that no marriage in Sri Lanka will be valid unless

both parties are 18 years of age. However, the Ordinance does not apply to Sri Lankan Muslims, whom are subject to the Muslim Marriage and Divorce Act.<sup>531</sup> This Act stipulates that no marriage will be registered for a girl under 12 years of age, unless the Quazi (Islamic Magistrate) for the area in which the girl resides deems it necessary to authorise the registration of the marriage.<sup>532</sup>

For Kandyan Sinhalese Sri Lankans, they can choose whether their marriage is governed by the Kandyan Marriage and Divorce Act<sup>533</sup> (which provides a lawful marriage age of 18), or the Marriage Ordinance.<sup>534</sup> The lawful marriage age is subject to exceptions, including if the couple have cohabited prior to the marriage, or have a child together. There are similar provisions in the Marriage Ordinance and the Kandyan law to allow marriage under the age of 18, where the child has the consent of their parent, guardian or a competent Court.

In addition to the above, 'customary marriage is legally recognized and endorsed by case law and for all purposes contains the same legal rights as a registered marriage in Sri Lanka'.<sup>535</sup> Further, while the age of consent is 16 years, and carnal knowledge with a child under this age an offence, there are numerous exceptions to this prohibition related to marriage, including where the girl is over the age of 12 and not separated from the man.<sup>536</sup>

The Constitution provides that the state shall promote the special interests of children and protect them from exploitation and discrimination.<sup>537</sup> However, fundamental rights in the Constitution do not affect the validity of personal laws such as the Muslim law, Thesawalamai law and the Kandyan law, which limits any potential protective effect of the constitutional provisions.<sup>538</sup>

The case of *Guneratnam v Registrar General*<sup>539</sup> involved a case where a registrar refused to register the marriage of a girl under 18 years of age, and this was challenged by her parents on the basis they had given their consent and therefore the marriage should be solemnised. In coming to a decision, Justice Tillekawardena cited the Marriage Ordinance provision regarding the age of capacity to marry (18 years), and held an underage marriage was void, and had no legal consequence, even if the parents expressed their consent to such a marriage.<sup>540</sup> Despite the Courts clear pronouncement that 'parental consent cannot supersede the absolute prohibition of marriage under 18 years as a prohibited age cannot know any exceptions', it has been noted that 'it has become the practice of lawyers to interpret the breach of the section on the legal age of marriage under the [General Marriage Ordinance] as resulting in a 'voidable' marriage as opposed to being a 'void' marriage ...

[as such,] such unions will become valid after the relevant party/parties reach 18 years. Reports also indicate the incorrect practice of judges that declare an underage marriage to exist unless declared invalid by a court'.<sup>541</sup>

### ■ Initiatives

The Women's Action Network are campaigning to amend the Muslim Marriage and Divorce Act, to raise the minimum age for marriage to 18 years (consistently with the Marriage Registration Ordinance and the Kandyan Marriage and Divorce Act).<sup>542</sup>

Sri Lanka is also member of the South Asian Initiative to End Violence Against Children (SAIEVAC), which adopted a regional action plan to end child marriage. The regional action plan is to be implemented from 2015-2018.

## ■ Carribean & Americas



## ■ Antigua and Barbuda

Antigua and Barbuda has a population of approximately 92,500 people and gained independence from the UK in 1981.<sup>543</sup> Antigua and Barbuda joined the Commonwealth that same year.

### ■ Statistics

There are no current statistics available in relation to child marriage in Antigua and Barbuda, but it appears from an examination of the country that child marriage is not a major issue. Neither the government nor any large NGOs are actively engaged in the prevention of child marriage in Antigua and Barbuda, and no case law exists in relation to the issue either.

### ■ Law

The legal minimum age for marriage is 18 years for both men and women, however children between 15 and 18 can marry with parental consent.<sup>544</sup> Marriages that occur involving children under the age of 15 are void, but there is no criminal law punishing underage marriage.<sup>545</sup>

Marital rape is penalised in the Sexual Offences Act 1995 but only under strict conditions; a spouse can only bring rape charges if the two are separated and living in separate quarters.<sup>546</sup> The Sexual Offences Act 1995 also prescribes a penalty of imprisonment for five years for anyone who forcibly takes away or detains a woman against her will with intent to have sexual intercourse with her or marry her.

Antigua and Barbuda have additional laws dealing with domestic violence<sup>547</sup> and sexual offences such as rape, buggery, indecent assaults, serious indecency, sex trafficking, sexual offences in relation to children, abduction of any woman against her will for motives of lucre or to marry her.<sup>548</sup>

The Constitution of Antigua and Barbuda does not have any provisions relating marriage, though it protects equality between individuals, regardless of race, place of origin, political opinions or affiliations, colour, creed or sex.

### ■ Initiatives

While child marriage appears to attract minimal attention in Antigua and Barbuda, child abuse is a major issue. Neglect was the most common form of child abuse, followed by physical abuse, and regular reports of rape and sexual abuse

of children. Antigua & Barbuda also has a history of sexual exploitation of children, which is illustrated by the statistics for teenage pregnancies.

There were no initiatives directly related to child marriage, however some action has been taken in relation to the rights of children and women. Towards the end of 2003, Parliament passed a bill to create a Child Protection Agency, responsible for enforcing standards for the care of children and promoting child rights.<sup>549</sup>

In 2010, the UNiTE Campaign was launched in the Caribbean. This high-Level Meeting of over 75 participants including Attorneys-General, Judges, Heads of National women's machineries, CSOs and NGOs and other relevant stakeholders was convened by the UN in the Caribbean. The campaign had the following objectives: to launch the UN Secretary-General's Campaign: UNiTE to End Violence against Women; to deepen understanding on the causes, consequences and responses to gender-based violence in the Caribbean and to reach a consensus on law reform. A major output was the Caribbean UNiTE Consensus which provided a strong roadmap for creating a response to end gender based violence.<sup>550</sup>

## ■ The Bahamas

The Bahamas has a population of approximately 325,000 people and gained independence from the UK in 1973.<sup>551</sup> The Bahamas joined the Commonwealth that same year. Since gaining independence, the country has prospered as a result of tourism and the influx of international banking and investment.<sup>552</sup>

### ■ Statistics

No statistics are available in relation to the prevalence of child marriage in the Bahamas, which indicates it is not a significant problem. There are also no actors engaged in preventing child marriage in the Bahamas. Moreover, no case law was located that considered this issue.

### ■ Law

Marriage is regulated by the Marriage Act 1908. The legal minimum age for marriage is 18, although minors may marry at 15 with parental permission. A marriage contracted between parties either of whom is under the age of 15 years is void. Under section 50 of this Act, the Supreme Court may, upon application of either party to an intended marriage who has reached the age of 13 years, but is under the age of 15 years, grant

a dispensation, in which case the intended marriage may be lawfully solemnized.

The Sexual Offences and Domestic Violence Act Chap 99 does not protect against spousal rape, except if the couple is separating, in the process of divorce, or if there is a restraining order in place. The same acts also provides that children under sixteen years cannot in law give consent to sexual intercourse and a wide range of other sexual activities. It is a criminal offence for anyone to have sexual intercourse with a child who is under sixteen years of age.

The Constitution of the Bahamas does not contain any provisions in relation to marriage. However, it does provide in Article 26 that no law shall make any provision which is discriminatory either of itself or in its effect included 'with respect to adoption, marriage, divorce, burial, devolution of property on death or other matters of personal law'.

### ■ Initiatives

No initiatives have been found that relate directly to child marriage.

## ■ Barbados

Barbados has a population of approximately 291,000 people and gained independence from the UK in 1966.<sup>553</sup> Barbados joined the Commonwealth that same year.

### ■ Statistics

No statistics are available in relation to the prevalence of child marriage in Barbados, which indicates it is not a significant problem. In support of this, observers have estimated the rate of underage marriage at less than 1%. There are also no actors engaged in preventing child marriage in the Bahamas. Moreover, no case law was located that considered this issue.

### ■ Law

Marriage is regulated by the Family Law Act, 29/1981. The minimum legal age at which a person may enter into marriage is 16 years. The Marriage Act states that: 'a marriage solemnized between persons either of whom is under the age of sixteen is void'. However, where one of the persons intending to marry is over sixteen

years but under eighteen, a parent or guardian's consent is required, and in the absence of the consent the Court may dispense with the requirement upon an application by either party.

The Sexual Offences Act 1992 provides that Children under sixteen years of age cannot consent to sexual intercourse and a wide range of other sexual activities. Barbados also criminalise domestic violence (Domestic Violence (Protection Orders) Act 1992), and various other sexual offences against children.

The Constitution of Barbados does not contain any provisions directly relevant to marriage. It does however contain a non-discrimination clause, but this provision does not apply 'to any law so far as that law makes provision with respect to adoption, marriage, divorce.... dissolutions of property on death or other matters of personal law'.<sup>554</sup>

### ■ Initiatives

As child marriage is not a major issue in Barbados, it is unsurprising that there are no significant initiatives in place to combat it.

However, there does seem to be a problem with the sexual abuse of children. The Ministry of Family, Culture, Sports, and Youth has acknowledged that child prostitution occurs; however, no official statistics are collected to document the problem, and laws surrounding child protection are lax. For example, while pornography is illegal, specific prohibitions dealing with child pornography could be located.

## ■ Belize

Belize has a population of approximately 350,000 people and gained full independence from the UK in 1981.<sup>555</sup> Belize joined the Commonwealth that same year. The country suffers from a high foreign debt burden, high unemployment and crime rates and one of the highest HIV/AIDS prevalence rates in Central America.<sup>556</sup>

### ■ Statistics

- In Belize, 26% of girls were married before age 18, while 3% were married before 15.<sup>557</sup>

- Data from 2011 showed that in rural areas, 6% of women were married before 15 and 34% were married before 18, whereas in urban areas 3.4% were married before 15 and 24% before 18.<sup>558</sup>
- According to a study conducted by the Population Council, Mayan and Mestizo girls in Belize have the fewest educational opportunities with only 55% and 65% respectively enrolled in school. Therefore, one-third of Mayan and Mestizo girls are in child marriages and one in five gives birth to a child before age 18.<sup>559</sup>

The Abriendo project has managed to have significant positive effects, including the following:<sup>569</sup>

- All Abriendo girls had completed the 6th grade;
- 97% of Abriendo girls remained unmarried and childless during the program;
- 94% wish to delay childbearing until after age 20; and
- 44% had obtained paid employment by the end of the program.

## ■ Canada

Canada has a population of approximately 35 million people and gained full independence from the UK in 1931.<sup>570</sup> Canada joined the Commonwealth that same year. Canada is a developed country with an advanced economy that is the eleventh largest in the world.

### ■ Statistics

No statistics are available on the prevalence of child marriage in Canada.

### ■ Law

The Canadian Parliament has exclusive legislative authority over marriage and divorce in Canada under s 92(26) of the Constitution Act 1867. However, the same Act provides provincial legislatures with the power to pass laws regulating the solemnisation of marriage. In Canada, marriage ceremonies may be either civil or religious.

In 2015, the Canadian Parliament passed Bill S-7 'Zero Tolerance for Barbaric Cultural Practices Act' to amend the Immigration and Refugee Protection Act, Civil Marriage Act and Criminal Code to make a permanent resident or foreign national inadmissible due to practicing polygamy in Canada. Barbaric practices encompass gender-based violence (including early, forced and polygamous marriages and honour-based violence).<sup>571</sup> Prior to the Act there was no specific offence in the Criminal Code for forced or under aged marriages. Now, forcing a person into marriage is a criminal offence under section 293.1 of the Criminal Code.

The recent legislation also attempts to address reports of Canadian children being taken abroad for forced or underage marriages, and thus makes it a crime to take children abroad for such purposes, or to officiate, actively participate in a wedding ceremony knowing that it a forced marriage

or a party is under the age of 16.<sup>572</sup> Thus section 2.1 of the Civil Marriage Act now stipulates that marriage requires 'the free and enlightened consent of two persons to be the spouse of each other'. Across the board it also provides a minimum age of 16 years for marriage. The Act also clarifies under criminal law that it is an 'offence to celebrate, aid or participate in a marriage rite or ceremony knowing that one of the persons being married is doing so against their will or is under the age of 16 years old'.<sup>573</sup>

In Canada, the age of majority federally is 18. However, each province or territory defines its own age of majority. It is 18 in Alberta, Manitoba, Ontario, Prince Edward Island, Quebec and Saskatchewan. By contrast, the majority age is 19 in British Columbia, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nunavut, Nova Scotia and Yukon. While the minimum age for marriage in Canada is 16,<sup>574</sup> for those who are under the age of majority by province or territory (18 or 19), and are therefore minors, there may be additional restrictions to marriage (such as parental or court consent). Without parental consent, marriages can take place when both parties are 18 years of age in all provinces and territories in Canada except British Columbia,<sup>575</sup> Newfoundland and Labrador,<sup>576</sup> Nova Scotia,<sup>577</sup> and Nunavut and Yukon<sup>578</sup> (where the minimum legal age is 19). The minimum legal age with parental consent is 16 in all provinces except the Northwest Territories,<sup>579</sup> Yukon and Nunavut.

In Canada it is also a crime to take anyone who is under 18 out of Canada for the purpose of a marriage in another country, even if the person consents to the marriage.<sup>580</sup> As to marriage and its relationship with immigration, Canadian citizens may only sponsor partners if the citizen is 18 years or older. Although marriage certificates from abroad are accepted so long as they are legal in that jurisdiction, no one under the age of 16 may be sponsored.<sup>581</sup> Nevertheless, this presents an obvious loophole in the immigration protections against child brides being brought into Canada.<sup>582</sup>

The CEDAW and CRC have recommended Canada raise the minimum age of marriage to 18 for both women and men. Canada has responded to the CRC 2003 report concerning protection against forced child marriages, particularly in immigrant and certain religious communities, such as polygamous communities in Bountiful, British Columbia,<sup>583</sup> but is yet to amend its domestic legislation. The limited reports and statistics on child marriage in Canada suggest it may not be that prevalent, particularly after recent legislative reforms; nevertheless, exploitation of the age restrictions through marriage abroad should be curtailed.

### ■ Initiatives

The recent 2015 reforms by the Canadian government to tackle child marriage indicate

an appreciation of the gravity of the issue, and a willingness to combat it on the domestic front.<sup>584</sup>

Canada has also spearheaded a number of global initiatives aimed at ending child marriage.<sup>585</sup>

- In 2011, Canada helped establish the International Day of the Girl Child focusing on child marriage in its first year;
- In 2013, Canada helped to develop child marriage resolutions at the 68th UN General Assembly. In 2016, Canada and Zambia co-sponsored a second resolution on child, early and forced marriage adopted at the 71st UN General Assembly.<sup>586</sup>
- In 2015, Canada worked with partners around the world to advocate a clear target on ending child marriage in the Post-2015 Development Agenda; and ending child marriage has been included in the 2030 Agenda for Sustainable Development.<sup>587</sup>
- Canada supports the African Union Campaign to End Child Marriage, as well as the Royal Commonwealth Society to raise child marriage awareness in Commonwealth countries.<sup>588</sup>

Canada has also provided significant financial support to programmes and organisations working to end child marriage, including:

- In October 2013, Canada revealed \$5 million in programming support in Afghanistan, Ethiopia, Ghana, Lebanon, Somalia and Zimbabwe, working with PLAN, Care Canada, Save the Children, the Women's Refugee Commission and local NGOs.<sup>589</sup>
- In July 2014, Canada contributed over \$20 million over two years to UNICEF to end CEFM.
- In November 2014, Canada announced another \$10 million to projects including Care Canada (Mali and Benin), Plan Canada (Bangladesh and Zimbabwe) and Save the Children Canada (Pakistan and Nigeria), and institutional support to Girls Not Brides.
- In July 2015, Canada revealed \$2.3 million to Commonwealth of Learning project to end CEFM in Commonwealth countries via open learning and distance education.

## ■ Law

The Marriage Act Chapter 174 (2000)<sup>560</sup> provides that the marriage of anyone under 14 years of age is void, and parental consent is required for a person aged under 18 (but above 14) to get married.<sup>561</sup>

It is a misdemeanour to wilfully marry a child without their parents' consent or to induce another person to perform such marriage or assists any person in committing those offences.

The Criminal Code 2000<sup>562</sup> makes it an offence to cause a person to marry against their will by force or duress.<sup>563</sup> If a female is compelled to marry another person by force or duress, the marriage is of no effect.<sup>564</sup>

## ■ Initiatives

Belize has launched a National Plan of Action for Children and the National Plan of Action for Human Development.<sup>565</sup>

The Population Council has undertaken a project entitled 'Belize United Nations Point Programme on Adolescent Girls'. This study aimed to obtain data on the demographic, educational, work, and other characteristics of the users and beneficiaries of youth services and programs,<sup>566</sup> and was formally presented to the Belize government, to increase awareness of the status of young girls in Belize and the lack of programmes and policies to address their unique vulnerabilities.<sup>567</sup>

In collaboration with local and international partners, Guatemala launched the Abriendo Oportunidades project in 2004 which was later expanded to include Belize. The aim of the project was to increase Mayan girls' social support networks, connect them with role models and mentors, build a base of critical life and leadership skills and provide hands-on professional training and experience.<sup>568</sup>

- In July 2015, Canada also reported \$20 million to a UNFPA CEFM Project to gain health information, education and life skills training in Guatemala, Haiti, India, Niger, Nigeria and Sierra Leone.

- In July 2015, Canada declared \$8 million in support over two years for Canada Fund for Local initiatives to support ending CEFM.

Girls Not Brides have noted that Canada was one of the main reasons for progress on child marriage in 2015-6, particularly its funding for grassroots civil society organisations working on this issue.<sup>590</sup>

## ■ Dominica

Dominica has a population of approximately 73,600 people and gained full independence from the UK in 1978.<sup>591</sup> Dominica joined the Commonwealth that same year.

### ■ Statistics

Child marriage appears to be rare in Dominica. No statistics were located in relation to the prevalence of child marriage.<sup>592</sup>

### ■ Law

The legal minimum age for marriage is 18 for both men and women, but 16 with parental consent. The Marriage Act, Chapter 35:01 states that any marriage solemnised or celebrated between persons either of whom is under the age of sixteen years shall be null and void. Moreover, where either of the parties (not being a widower or widow) is under the age of eighteen years, no marriage shall take place between them without the consent of a parent, guardian or court. Persons who have reached the age of eighteen years and widowers and widows may marry without the consent of others. Section 70 prohibits forced marriages in all circumstances.

The Sexual Offences Act 1998 prohibits rape, sex with minors, incest, and sexual offences against minors.

### ■ Initiatives

There do not appear to be any significant initiatives taking place in relation to child marriage

in Dominica. However, sexual violence and domestic violence cases are common and the government has held workshops and participated in public awareness and outreach programs in an attempt to make positive changes in these areas.<sup>593</sup>

## ■ Grenada

Grenada has a population of approximately 110,700 people and gained full independence from the UK in 1974.<sup>594</sup> Grenada joined the Commonwealth that same year.

### ■ Statistics

There are currently no statistics available in relation to prevalence of child marriage in Grenada. Neither the OHCHR nor UNICEF have been able to obtain data on this topic. However, according to a UNICEF report, in 2006, 16% of live births in Grenada were to teenage mothers and 19% of these girls were giving birth to their second child, and 5% to their third child.<sup>595</sup>

A 2010 UN Report by the Committee on the Rights of the Child expressed deep concern in relation to a number of issues, including that at least one-third of the child population in Grenada is affected by sexual abuse; that incest is a significant problem; and that it is rare for children to report sexual abuse due to fear of stigmatisation.<sup>596</sup>

According to a 2012 report by UNICEF Grenada has not engaged in any specific measures to actively reduce the prevalence of child sexual abuse.<sup>597</sup>

### ■ Law

The minimum age of marriage for boys and girls is 18 years old, though younger people can marry with the consent of a parent, guardian or court.

The only provisions that mention marriage in the Constitution of Grenada relate to citizenship. There is a non-discrimination provision which prohibits discriminatory laws (including on the grounds of sex), but it includes a caveat where discrimination is 'reasonably justifiable in a democratic society'.<sup>598</sup>

In 2016 a referendum was held in relation to seven proposed reforms to the Constitution, including an expansion of the fundamental rights and freedoms which proposed ensuring gender equality in 'all spheres of life'. However, all seven of the proposed reforms were rejected at the referendum.<sup>599</sup>

## ■ Initiatives and Impact

There are no International NGOs currently working on the issue of child marriage in Grenada. The UN Human Rights Council, UNICEF, and the Committee on the Rights of the Child have all highlighted the prevalence of sexual abuse of children and have placed pressure on Grenada to address this issue.

## ■ Guyana

Guyana has a population of approximately 735,200 people and gained full independence from the UK in 1966.<sup>600</sup> Guyana joined the Commonwealth that same year.

### ■ Statistics

- In 2014, 6% of women in Guyana under the age of 15 are married, and 23% of women under the age of 18 are married.<sup>601</sup>

- While it was difficult to find much information in relation to the extent or practice of child marriage in Guyana, there are some reports that indicate child marriage is a discernible issue.<sup>602</sup>

### ■ Law

The Marriage Act 1998 and the Criminal Law (Offences) Act 1998 together legislate in relation to child marriage.

The Marriage Act states that the age of consent is 18 years old, and the marriage of minors must have the permission of a parent or guardian.<sup>603</sup> Regardless of receiving permission from a parent, no child can get married if they are under the age of 16.<sup>604</sup> However, a woman under the age of 16 can get married if they become pregnant or deliver a child.<sup>605</sup>

The Criminal Law Act provides that anyone who knows a girl, between the age of 12 and 13, carnally will be liable for imprisonment for 10 years, and those who know a girl under 12 carnally will be liable for imprisonment for life.<sup>606</sup> The age for sexual consent is 14 years old.<sup>607</sup>

There are no relevant constitutional provisions, and case law has been inaccessible.

## ■ Initiatives

There do not appear to be any significant initiatives taking place in relation to child marriage in Guyana.

## ■ Jamaica

Jamaica has a population of approximately 3 million people and gained independence from the UK in 1962.<sup>608</sup> Jamaica joined the Commonwealth that same year. Only 0.2% of the population live below the poverty line.<sup>609</sup>

### ■ Statistics

In 2014, 1% of women in Jamaica were married by the age of 15, and 8% were married by the age of 18.<sup>610</sup>

### ■ Law

The Marriage Act 1897 provides that a child is a person under the age of eighteen years,<sup>611</sup> and a child marrying under the age of 18 requires consent from parents or guardians.<sup>612</sup> However, if the parents or guardians do not give consent, either party to the intended marriage can refer themselves to a judge in the Supreme Court who can give consent in lieu of the parents.<sup>613</sup>

The legal age of consent for sexual activity is 16 for males and females.<sup>614</sup> It has been argued that this prevents marriages from occurring under the age of 16,<sup>615</sup> though that is not what the law says.

The Constitution contains no provisions relating to minimum ages of marriage.<sup>616</sup>

Case law has been inaccessible. Currently, there is concern for the fact that marriage is still possible under the age of 18 in Jamaica, even though it is contradictory to the Child Care and Protection Act, which sets the definition of a child to be a person under 18.<sup>617</sup>

### ■ Initiatives and Impact

There do not appear to be any significant initiatives taking place in relation to child marriage in Jamaica.

## ■ St. Lucia

Saint Lucia has a population of approximately 164,000 people and gained independence from the UK in 1979.<sup>618</sup> Saint Lucia joined the Commonwealth that same year.

### ■ Statistics

It is very difficult to obtain statistics on child marriage in Saint Lucia, however in general it appears that child marriage is not that common, however sexual abuse of children is of major concern.

- UNICEF's 2012 Multiple Indicator Cluster Survey (MICS) shows that about 3% of women aged 15-49 in Saint Lucia were married or entered a marital union before the age of 15.<sup>619</sup> However, this figure was difficult to corroborate as some sources stated that no statistics were maintained on child marriage.

More generally, the UNFPA database shows that in Latin America and the Caribbean there is a 29% rate of child marriage.<sup>620</sup> In terms of challenges faced in Saint Lucia specifically, UNICEF noted in 2009 that a major concern in Saint Lucia was 'the increasing reports of child abuse and neglect since 1999, particularly in reported cases of child sexual abuse'.<sup>621</sup> The UN Human Rights Council, UNICEF, and the Committee on the Rights of the Child have all highlighted the prevalence of sexual abuse of children as well as incest and are encouraging Saint Lucia to take active steps to address this.

### ■ Law

A person must be at least 16 years of age to marry in Saint Lucia, and will require consent of their parents if they are under 18.

The age of consent in Saint Lucia is 16 years old. Section 164 of the Criminal Code stipulates that sexual intercourse or connection is unlawful with persons under the age of 16.

No case law has been located that relates to child marriage in Saint Lucia.

### ■ Initiatives and Impact

There do not appear to be any initiatives specifically aimed at addressing child marriage in Saint Lucia. As mentioned, there is a lack of statistics regarding

the prevalence of child marriage, and as such it appears there is also a corresponding lack of attention paid to this issue.

International bodies are more concerned about the prevalence of sexual abuse of children and the low reporting of such instances of abuse. This appears to be a more pressing issue in Saint Lucia, whereas child marriage is not of a high priority.

## ■ St Christopher (St Kitts) and Nevis

Saint Christopher (St Kitts) and Nevis has a population of approximately 52,000 people and gained independence from the UK in 1983.<sup>622</sup> It joined the Commonwealth that same year.

### ■ Statistics

There are no statistics available regarding the prevalence of child marriage in St Kitts & Nevis.<sup>623</sup>

The Bureau of Democracy, Human Rights and Labor states in its 2014 Report on St Kitts and Nevis that 'The legal minimum age for marriage is 18 for both men and women. Underage marriage was rare, and the government did not keep statistics on it'.<sup>624</sup>

### ■ Law

The Constitution of St Kitts and Nevis is the supreme law.<sup>625</sup> Any law inconsistent with it, to the extent of the inconsistency shall be void.<sup>626</sup>

St Kitts and Nevis has ratified the Convention on the Rights of the Child (CRC) and the Convention on Elimination of all forms of Discrimination against Women (CEDAW).

The minimum age for marriage for both males and females without parental consent is 18.<sup>627</sup>

The age of majority is 18 and the law sets the age of consent at 16 for both males and females.<sup>628</sup> While several provisions exist that criminalise sexual activity with children, there are gaps in the criminal law. For example, the law prohibits rape, but does not address spousal rape. In 2010, '[t]here were 15 rapes and 23 indecent assault cases reported during the year'.<sup>629</sup> A 2014 report found that '[d]espite the re-establishment of a Special Victims Unit in the police force, rape often was underreported due to survivors' fear of stigma, retribution, further violence, or lack of confidence in the authorities'.<sup>630</sup>

Recent advances include the Department of Gender Affairs which makes counseling available for victims.<sup>631</sup> Alongside the Department of Gender Affairs, the report found that the National Council of Women was the lead civil society organisation on women's rights.<sup>632</sup>

### ■ Initiatives

There do not appear to be any on-going initiatives aimed specifically at combatting child marriage in St Kitts and Nevis. No targeted programs aimed at ending child marriage were found during research.

## ■ St. Vincent and Grenadines

Saint Vincent and the Grenadines has a population of approximately 102,000 people and gained independence from the UK in 1979.<sup>635</sup> It joined the Commonwealth that same year.

### ■ Statistics

There are no statistics available regarding the prevalence of child marriage in Saint Vincent and the Grenadines.<sup>633</sup>

The Bureau of Democracy, Human Rights and Labor states in its 2014 Report on Saint Vincent and the Grenadines that the 'legal minimum age for marriage is 18, and parental consent was required for underage marriage. Most sexual relationships involving a child and an adult tended to take place outside the bounds of legal marriage. Statistics were not available, but less than an estimated 1 percent of marriages involved persons under age 18'.<sup>634</sup>

### ■ Law

The Marriage Act states that the minimum age for marriage for males is 16 years and 15 years for females.<sup>636</sup> It is extremely difficult to verify the statutory framework of Saint Vincent and the Grenadines as the legislation is not available online. However, the CEDAW report of 2015 verifies these ages.<sup>637</sup>

Saint Vincent and the Grenadines ratified the Convention on the Rights of the Child (CRC) and the Convention on Elimination of all forms of Discrimination against Women (CEDAW) in 1981. However, they have failed to implement many obligations into domestic law.

Violence against women and girls is a significant problem in Saint Vincent and the Grenadines. In March 2007, the UN Office on Drugs and Crime (UNODC) reported that 'Saint Vincent and the Grenadines has the third highest rate of reported incidents of rape in the world', with a recorded rate of '112 incidents of rape per 100,000 people'.<sup>638</sup>

There are reports of increases in domestic violence, which is notably not criminalised in anyway,<sup>639</sup> and child abuse and sexual exploitation have also been highlighted as serious human rights issues. A 2014 Report suggests that the legal framework for protection of children is inadequate, and that '[r]eports of unlawful sexual intercourse with children under 15 remained a problem'.<sup>640</sup>

The government and NGOs have indicated child abuse, including neglect and physical, sexual, and emotional abuse, and incest are all significant problems; however, no statistics were available to confirm this.<sup>641</sup> There are also reports that mothers of girls might pressure their children to have sexual relations with older men as a means of supplementing family income.<sup>642</sup>

### ■ Initiatives

No initiatives were found that directly related to ending child marriage. However, in 2010, parliament passed the Child Care and Adoption Act, which made it mandatory to report child abuse.<sup>643</sup> This followed the publication of a 2009 report by UNICEF which characterised laws and policies regarding child protection in St. Vincent and the Grenadines as 'woefully outdated'.<sup>644</sup>

In the 2015 CEDAW report the Committee expressed concern over the 'minimum legal age for marriage being at 15 years for girls and 16 for boys', and 'urged the State party to expeditiously amend the Marriage Act to raise the minimum age of marriage to 18 years for girls and boys'.<sup>645</sup>

## ■ Trinidad and Tobago

Trinidad and Tobago gained independence from the UK in 1962 and joined the Commonwealth that same year. As of 2015, the population is 1,341,150, with 330,090 under 18 years of age.<sup>646</sup>

### ■ Statistics

- In Trinidad and Tobago, 8% of girls are married before the age of 18, while 2% are married before age 15.<sup>647</sup>

- The Attorney-General, Faris Al-Rawi, has said that between 1996 and 2016, the Registrar General recorded 3,478 child marriages, with almost 98% of those being females.<sup>648</sup>

## ■ Law

The law relating to marriage in Trinidad and Tobago was previously covered by several different acts, which provided variations in the legal age for marriage. For civil and Christian marriages, the Marriage Act 1923 provided the lawful age was 18 for men and women,<sup>649</sup> though exceptions were possible with the consent of the parents or guardians, or on religious grounds.<sup>650</sup>

The Muslim Marriage and Divorce Act 1961 provided the minimum legal age for Muslims was 16 for men and 12 for women.<sup>651</sup> However, if either party was under 18 the consent of parents or guardians was required.<sup>652</sup>

The Hindu Marriage Act 1945 provided the minimum legal age was 18 for men and 14 for women,<sup>653</sup> though consent of parents was needed if a male was under 18 or a woman under 16 (and they were not previously married).<sup>654</sup>

The Orisa Marriage Act of 1999 stipulated that members of Orisa faith were 'capable of contracting marriage' at 18 for males and 16 for females,<sup>655</sup> though with consent of the parents or guardians marriage could occur at younger ages.<sup>656</sup>

However, on 9 June 2017, The Miscellaneous Provisions (Marriage) Bill 2016 was passed, which amends, inter alia, the Marriage Act, Muslim Marriage and Divorce Act, Hindu Marriage Act and Orisa Marriage Act. The Act raises the age of marriage to 18, in line with international conventions.<sup>657</sup>

The age of consent, although 16 ordinarily, is 18 for sexual penetration.<sup>658</sup> However, it does not apply if the parties are married, and marriage provides a defence to a number of other sexual offences against children.<sup>659</sup> The onus is on the defendant to prove he and the child were lawfully married'.<sup>660</sup>

## ■ Initiatives

In recent years, much international comment on Trinidad and Tobago has focussed on the different forms of marriage that were allowed for different communities.

There were some efforts made by politicians in recent years that could be seen as cautionary tales for others wishing to push for reform

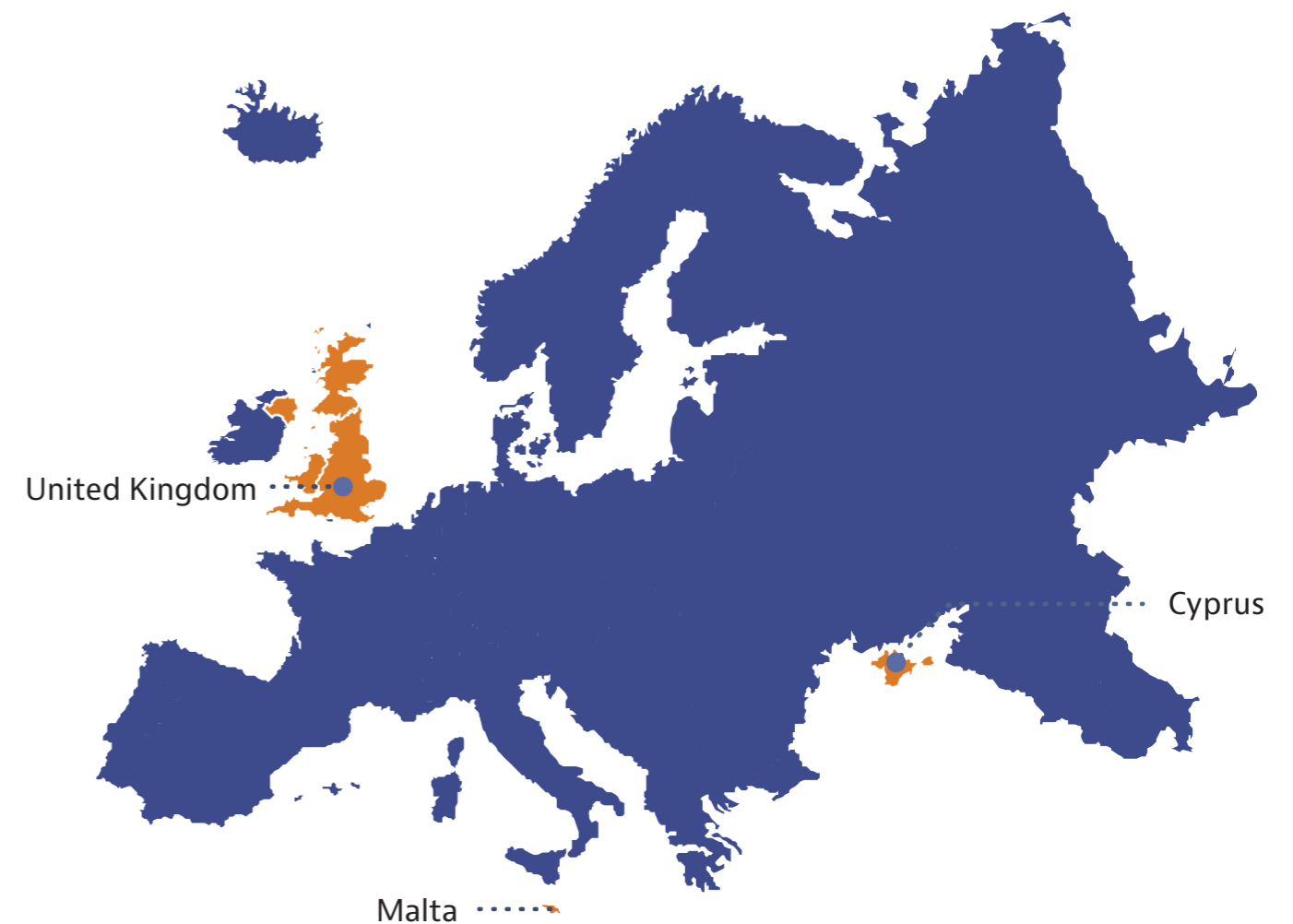
in this area. For example, in 2011, Senator Verna St Rose-Greaves was the Minister of Gender, Youth and Child Development, and she advocated strongly for an end to underage marriages for girls.<sup>661</sup> St Rose-Greaves told the National Consultation on the Legal Age of Marriage in Trinidad and Tobago that 'between 1997 and 2007 a total of 105 girls below the age of 15 were married to men all older than themselves, with four of the girls being married to men between the ages of 60 to 64'.<sup>662</sup> No males under 15 were married during that period.<sup>663</sup> In response to Rose-Greaves' statements, various religious leaders condemned her,<sup>664</sup> and shortly after making the comments, she was fired.

According to another MP, Patricia McIntosh, Senator St Rose-Greaves was fired because she 'dared to wander into forbidden territory by trying to tackle the taboo issue of child marriages'.<sup>665</sup> McIntosh has further contended the United National Congress had given 'silent consent' to the atrocity of child marriages, which cover up 'child rape'.<sup>666</sup>

In 2013, when the UN Human Rights Council in its 24th session, resolved to strengthen efforts to prevent and eliminate child, early and forced marriages, the resolution was supported by countries with high rates of child marriage such as South Sudan, Sierra Leone, Chad, Guatemala, Honduras, and Ethiopia—Trinidad and Tobago did not support the resolution.<sup>667</sup>

It is positive then, particularly in light of this history, to finally have some progressive legal change by way of the passing of The Miscellaneous Provisions (Marriage) Bill 2016.

## ■ Europe





## ■ Cyprus

Cyprus has a population of approximately 1.2 million people and gained independence from the UK in 1960.<sup>668</sup> It joined the Commonwealth the following year.

### ■ Statistics

The issue of child marriage does not appear to be a top priority for the government of Cyprus. In addition, no statistics have been found regarding the prevalence of child marriage in Cyprus, and no actors appear to be focussed on this issue in Cyprus.

### ■ Law

Marriages in Cyprus are subject to the provisions of the Law 104(I) 2003. Under section 15 of this Act, the age of consent for marriage is eighteen.<sup>669</sup> The section also contains a caveat, however, which permits the marriage of individuals aged sixteen and seventeen provided that their guardians consent to the marriage, and that 'serious grounds' exist to justify the marriage.<sup>670</sup> Subsection 2 of this section additionally allows for the District Court to alternatively permit the marriage in certain cases where the guardians of the individuals do not consent.<sup>671</sup>

In addition, sections 153 and 154 of the Criminal Code of Cyprus protect young girls under the age of 13, as well as young girls between the ages of 13 and 16, from rape and sexual assault.<sup>672</sup> Young girls between the age of 16 and 18 are not protected, however. The Constitution of Cyprus contains detailed provisions regarding marriage,<sup>673</sup> but does not contain any provisions relating to the rights of the child.

### ■ Initiatives

It appears clear from the lack of legislation, constitutional provisions, and initiatives that the issue of child marriage is not of great concern for the government of Cyprus, although laws are in place regarding the age of consent to marriage as well as the criminalisation of the sexual assault of young girls. Additionally, due to a lack of both data and key actors working in this area, it is difficult to draw any concrete conclusions regarding the prevalence of child marriage in Cyprus.

## ■ Malta

Malta has a population of approximately 414,000 people and gained independence from the UK in 1964.<sup>674</sup> It joined the Commonwealth the same year.

### ■ Statistics

The issue of child marriage does not appear to be a top priority for the government of Malta, and no key actors were found to be working solely on this issue in Malta. Although no statistics were found in relation to child marriage in Malta, statistics did show that child abuse is a problem in Malta, with physical abuse being the most common form of child abuse.<sup>675</sup>

### ■ Law

Marriages in Malta are subject to the provisions of the Marriage Act 1975. Under the Marriage Act, the legal age for marriage is 16.<sup>676</sup>

In addition, Malta's Criminal law protects against child marriage (of those younger than 16) and sexual assault of children. Article 199 of Malta's Criminal Code criminalises abduction for the purposes of marriage,<sup>677</sup> and Article 203 creates the offence of defilement of minors.<sup>678</sup> Both offences may lead to a prison sentence for the perpetrator.

Malta has enacted legislation protecting the rights of the child,<sup>679</sup> as well as the right to education.<sup>680</sup> This right to education is further entrenched in the Constitution of Malta.<sup>681</sup>

### ■ Initiatives

There were no initiatives directly concerned with child marriage in Malta, which is unsurprising given it is not a prevalent issue. Due to a lack of both data and key actors working in this area however, it is difficult to draw concrete conclusions regarding child marriage in Malta.

## ■ United Kingdom

The United Kingdom of Great Britain and Northern Ireland (UK) consists of a union of four countries, England, Wales, Scotland and Northern Ireland.

The UK parliament was responsible for passing the Statute of Westminster in 1931, which officially formed the Commonwealth of Nations (then known as the 'British Commonwealth') and gave recognition to the sovereignty of dominions.

While the issue of child marriage is predominantly prevalent within developing countries, it does also occur in the UK.<sup>682</sup> In 2009, EPCAT UK published a report stating that the issue of child marriage in the UK included children being trafficked both into and out of the country in order to be forcibly married.<sup>683</sup>

### ■ Statistics

- No UNICEF statistics exist in relation to the number of children who are married in the UK.
- In 2016, the Forced Marriage Unit (FMU) gave advice or support related to a possible forced marriage in 1,428 cases. Of these cases, 371 cases (26%) involved victims below 18 years of age; and 220 cases (15%) involved victims under 15. Most of the cases, 1,145 (80%), involved female victims, while 283 cases (20%) involved male victims.
- The total cases reported to FMU (1,428) represents an increase of 14% (208 cases) compared with the previous year, and this is the first increase since the unit was created, and the highest number of calls since 2012.
- The Home Office estimates that between 5,000 and 8,000 people are at risk of being forced into marriage every year in the UK.

The Forced Marriage Unit statistics consistently show that Pakistan is the principal country to which victims are at risk of being taken for child marriage, with other high-risk countries including Bangladesh, India, Somalia, and Afghanistan.<sup>684</sup> In 2016, 157 (11%) of the cases handled by the FMU had no overseas element, with the potential or actual forced marriage taking place within the UK.

### ■ Law

Marriages in the UK are governed by the Marriage Acts of 1949-1994. In England, Wales and Northern Ireland, the age of consent for marriage is 18, as established under section 2 of the Marriage Act 1949.<sup>685</sup> The law also contains a caveat, however,

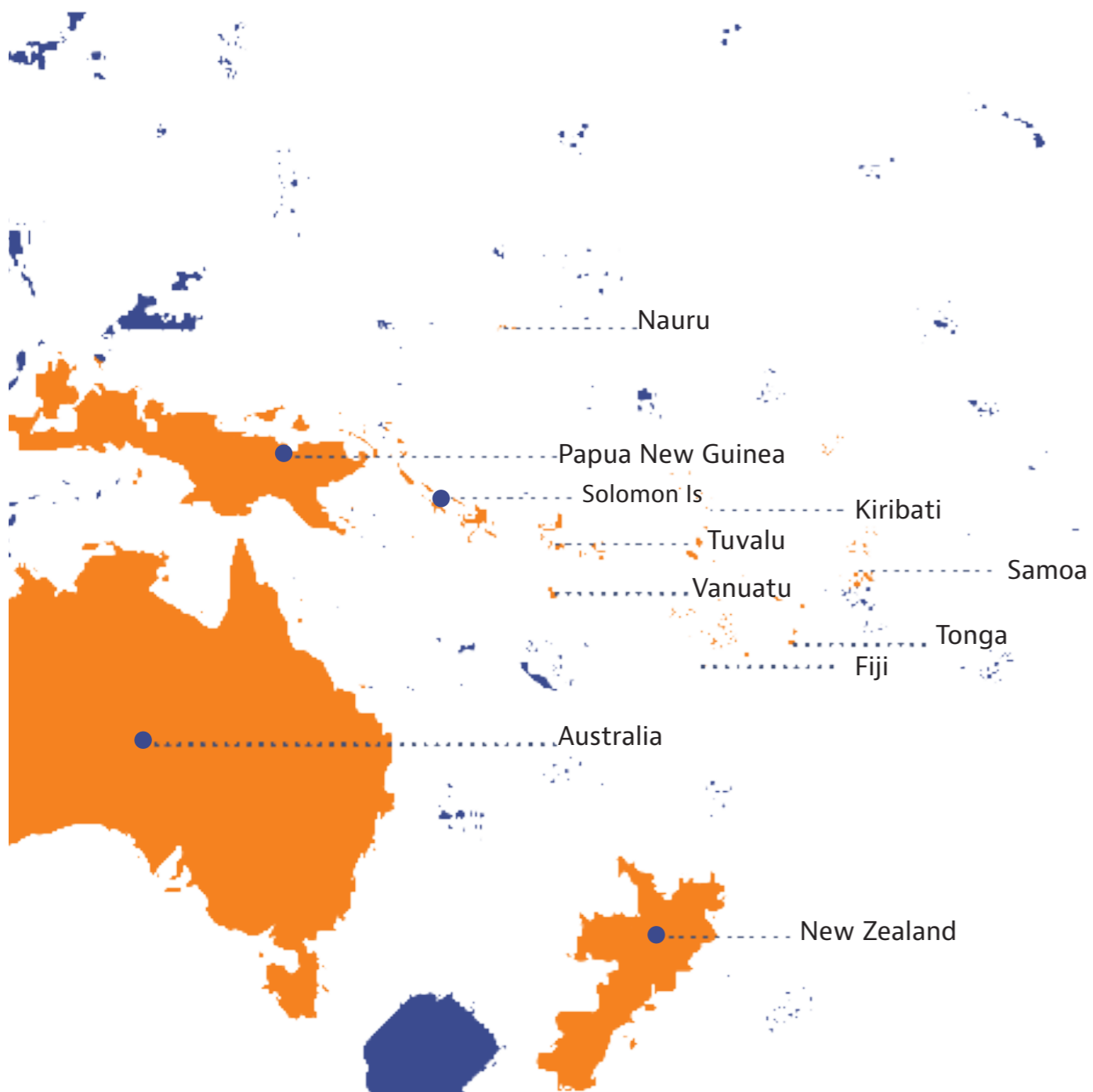
which provides for marriages between individuals aged 16 and 17 providing parental consent is obtained. In Scotland under section 1 of the Marriage (Scotland) Act 1977, the minimum age of consent for marriage is 16, regardless of parental consent.<sup>686</sup>

A number of laws operate to criminalise child marriage in the UK. In 2014, the Anti-Social Behaviour and Policing Act established the criminal offence of forced marriage, which by definition includes child marriage.<sup>687</sup> In addition, the Serious Crime Act 2015 established the offence of controlling or coercing intimate or family relationships,<sup>688</sup> and the Domestic Violence, Crime and Victims Act (as amended) 2004 included the offence of 'causing or allowing serious physical harm (equivalent to gross bodily harm) to a child or vulnerable adult'.<sup>689</sup>

Additionally, the UK government has enacted multiple pieces of legislation aimed specifically at protecting the rights of the child. For example, the Children Act 1989 provides the legislative framework within which child protection operates in the UK,<sup>690</sup> as strengthened by the Children Act 2004.<sup>691</sup> More recently, the Children and Families Act 2014 introduced an Education, Health and Care (EHC) Plan to support children from birth until age 25.<sup>692</sup>

### ■ Initiatives

The UK government has enacted an extensive range of laws criminalising child marriage, as well as laws aimed at protecting the rights of the child more generally. Child marriage in the UK appears to occur in a two-fold manner, with children being trafficked both into and out of the country in order to be forcibly married. Pakistan continues to be by far the highest-risk country in which children may be taken from the UK to be forced into marriage. Until 2016, statistics had tended to indicate the occurrence of child marriage in the UK was decreasing, though due to the hidden nature of the issue, it is unclear how reliable statistics are and exactly how prevalent the practice is in the UK.



■ Australia

Australia has a population of approximately 22.7 million people and gained full independence from the UK in 1986 with the passage of the Australia Acts (after a long process of devolution).<sup>693</sup> It joined the Commonwealth in 1931 as a founding member (at which time its independence was recognised under the Statute of Westminster).

■ Statistics

There are no international organisations with data on the prevalence of child marriage in Australia, nor any clear government statistics on the practice. However, in 2012 the NCYLC carried out a survey in relation to children at risk of, or in, forced marriages which confirmed the practice does exist in Australia, with over 250 cases identified by survey respondents in the preceding 24 months and with cases confirmed in each State and Territory in Australia.

The survey confirmed child marriage is occurring across a variety of communities, and within a range of cultures and ethnicities. Respondents who provided details on the gender of victims identified the majority as female. Of more than 250 cases noted in relation to the preceding 24 months, 15 involved a boy in or at risk of a forced marriage.

■ Law

The Australian Constitution divides powers between the states and the Federal government and outlines the powers of parliament, the executive and judiciary. It is essentially procedural in nature, containing very little by way of substantive protections. Section 51 outlines the legislative powers of the Commonwealth parliament, and states that the Parliament shall have power to make laws for the peace, order, and good government of the Commonwealth with respect to marriage.<sup>694</sup>

The Marriage Act 1961 provides that a person is of marriageable age if they have attained the age of 18 years,<sup>695</sup> with an exception that a person who is at least 16 may apply to a judge or magistrate for an order allowing them to marry in exceptional circumstances.<sup>696</sup>

Under the Criminal Code Act 1995 (Cth) forced marriage is criminalised, and under the Marriage Act 1961, participating in, solemnising or witnessing a marriage involving a child that does not fulfil the requirements of the Act is also a criminal offence. In addition to these offences there are a range of other State, Territory and Commonwealth offences that may arise

from forced child marriage, including kidnapping, abduction, false imprisonment, removal from education, sexual assault, rape or other sexual offences, child abuse, physical assault etc. Sexual conduct with a child below the age of consent (or with anyone without consent) is also a criminal offence under the criminal law in each state and territory (see age of consent section). The age of consent is governed by state law as follows:

- Australian Capital Territory, Section 55, Crimes Act 1900: The age of consent for sexual interactions is 16 years.
- New South Wales, Section 66C, Crimes Act 1900: The age of consent for sexual interactions is 16 years.
- Northern Territory, Section 127, Criminal Code Act 1983: The age of consent for sexual interactions is 16 years.
- Queensland, Section 208 & 215, Criminal Code Act 1983: The age of consent for anal sex (referred to as sodomy) is 18 years, and for all other sexual acts (referred to as carnal knowledge) is 16 years.
- South Australia, Section 49, Criminal Law Consolidation Act 1935: The age of consent for sexual interactions is 17 years.
- Tasmania, Section 124, Criminal Code Act 1924: The age of consent for sexual interactions is 17 years.
- Victoria, Section 45, Crimes Act 1958: *The age of consent for sexual interactions is 16 years.*
- Western Australia, Section 321, Criminal Code Act Compilation Act 1931: The age of consent for sexual interactions is 16 years.

■ Initiatives

The legal changes outlined above were made in response to concern over the increase in child marriages. There have been a handful of prosecutions reported as occurring under the new laws prohibiting forced/early marriage.

My Blue Sky is an initiative by Anti-Slavery Australia to provide information and education to those at risk of forced marriages in Australia through the provision of a website, educational materials and a confidential helpline that children can call to seek advice and assistance.<sup>697</sup>

## ■ Fiji

Fiji has a population of approximately 909,000 people and gained full independence from the UK in 1970.<sup>698</sup> It joined the Commonwealth that same year (though ceased membership between 1987–1997). Approximately 5.9% of the population live below the poverty line.<sup>699</sup>

### ■ Statistics

There are no statistics available in relation to child marriage in Fiji.<sup>700</sup> Although child marriage is illegal in Fiji, it is reported that Fijian girls from low socio-economic backgrounds are often forced into marriages as a result of poverty. For example, the Fiji Times recently reported that “low literacy, poverty and limited income opportunities have seen a rise in cases of young girls being forced into marriage by their families living in a community outside Lautoka City.”<sup>701</sup>

Fiji Women’s Crisis Centre co-ordinator Shamima Ali said the Centre continued to receive young girls who were pressured into marriage: “It is a cultural thing and that custom still hasn’t gone, particularly for girls in rural areas, where traditional norms and expectations for them to marry young still exist.”<sup>702</sup> The cases the centre receives are mainly Fijians of Indian descent and low-income, more traditionally-bound families.<sup>703</sup>

### ■ Law

The legal age for marriage in Fiji is 18, for both males and females. Previously, the minimum marriageable age was 16 years for females, and 18 years for males. However, in 2009 Attorney General Aiyaz Sayed-Khaiyum stated that by having a minimum marriageable age of 16 for females, Fiji was condoning child marriage and the minimum age was raised to 18.<sup>704</sup>

The age of consent in Fiji is 16 years old for males and females.<sup>705</sup> The Crimes Decree 2009 provides for the criminalisation of sexual offences involving minors.<sup>706</sup>

Fiji’s Family Law Act of 2003 is considered a model for the Pacific Island region.<sup>707</sup> It includes a no-fault divorce provision, enables women to get a divorce after a one-year separation period (when they previously had to wait for three years), and provides enforceable rights to custody of children and financial support. However, in a recent report, the United States Department of State noted that “especially in rural areas, girls often married at age 18, preventing them from completing their secondary school education. In indigenous

villages, girls under age 18 who became pregnant could live as common-law wives with their child’s father after the men presented traditional apologies to the girls’ families, thereby avoiding the filing of a complaint to police by the families. The girls frequently married the fathers as soon as legally permissible.”<sup>708</sup>

### ■ Initiatives

There are no initiatives directly related to eradicating child marriage in Fiji. However, the Fiji Women’s Rights Movement (FWRM) runs a number of programmes to help young women and girls develop leadership skills and the capacity to create positive change in their communities.<sup>709</sup> FWRM works with a diverse group of young women (including trans-women, women with disabilities and girls aged 10–12 years) to mobilise a critical mass of marginalised communities to tackle women’s issues at all levels of political and social activity. One example of this work is the GIRLS Program, which has increased visibility of the girl child by introducing young girls between 10–12 years old to human rights education, feminism, and sports that are traditionally male dominated such as soccer and rugby.

## ■ Kiribati

Kiribati has a population of approximately 106,000 people and gained independence from the UK in 1979.<sup>710</sup> It joined the Commonwealth that same year. Kiribati has an English common law system which is supplemented by customary law.

### ■ Statistics

- In Kiribati, 20% of girls are married before the age of 18 and 3% before the age of 15.<sup>711</sup>
- The average age of marriage for women has risen from 21.6 years in 1995 to 22.1 years in 2000. For cultural reasons, parents, family members or village chiefs working for families arrange marriages for children as young as 13.<sup>712</sup>
- Violence and discrimination against women, child abuse, and commercial sexual exploitation of children were the main human rights problems.

### ■ Law

The Marriage Ordinance, which governs the solemnisation and registration of marriages,

was amended by the Marriage Amendment Act 2002 to raise the minimum age of marriage from 16 to 18 years. While the legal minimum age is now 18, parental consent or a licence provided by the minister is required for both parties if they are over 18 but under 21 years of age.

In addition to the Constitution, the Laws of Kiribati Act provide that the law is made up of: (a) every ordinance and every act and every legislation made thereunder; (b) customary law; (c) the common law of Kiribati; and (d) every applied law. Accordingly, despite the existence of the Marriage Ordinance, customary law is often applied in deciding questions related to marriage. This may have the result that child marriage is more easily condoned, in accordance with customary law.

Child marriage is not criminalised under the Penal Code, but laws do exist to protect girls who are abducted or taken with an intent to marry them or have carnal knowledge of them without their consent.

### ■ Initiatives

There are no initiatives directly aimed at combatting child marriage in Kiribati, however, a recent report on child, early and forced marriage in the Asia-Pacific region confirms that children are often married off for cultural reasons or the subsidise the needs of the rest of the family. Spousal abuse and other forms of violence against women are said to be significant problems, and due to stigma, underreported. Further, prosecutions for rape and domestic assault are infrequent, in part due to widespread attitudes encouraging reconciliation rather than prosecution.

## ■ Nauru

Nauru is a tiny island of 21 square kilometres, or eight square miles, with a population of approximately 10,000 people. Nauru gained independence from the UK in 1968 and joined the Commonwealth that same year.<sup>713</sup> The island’s interior has been dramatically affected by 40 years of phosphate mining, and is mostly uninhabitable and cannot be used for agricultural purposes. Employment opportunities are scarce, and the country is poor, meaning basic services, such as health and education, are largely inadequate.<sup>714</sup>

### ■ Statistics

In Nauru, 2% of girls are married by the age of 15 and 27% by the age of 18.<sup>715</sup>

### ■ Law

There is some inconsistency in relation to the legal age of marriage in Nauru. According to the Births,

Deaths and Marriages Ordinance 1957–2009, a marriage cannot be solemnised if the bride is under 16 or the groom is under 18, except when written consent for the marriage has been given by a parent of the young person. However, The Matrimonial Causes Act of 1973, states that a marriage is voidable if either party at the time of marriage was under the age of 16 years. In those circumstances, the court must grant a decree annulling the marriage upon the application of any interested party.

The Maintenance Ordinance of 1959 defines a child as ‘anyone under the age of 16 years’.

Sexual offences against children are criminalised, as is rape, under the Criminal Code. However, marital rape is not explicitly criminalised. It is also a criminal offence to abduct or take away a woman under 21 with the intent to marry her or have sexual intercourse with her against her will. The abduction of a girl under 17, even with her consent, is also punishable under section 352 of the Code.

The Births, Deaths and Marriages Ordinance contains specific punishments for those who solemnise an under-age marriage can be punished by a fine. Marriages must also be registered and failure to comply with this requirement is punishable by a fine.<sup>716</sup>

### ■ Initiatives

There are no initiatives directly aimed at combatting child marriage in Nauru. The major issues of concern for children and women in Nauru are largely those that affect the whole nation. The island is extremely isolated and depends heavily on high levels of aid, making it extremely vulnerable to external forces like food shortages, and financial and economic crises.<sup>717</sup>

Nevertheless, the Nauru Progress Report 1990–2011 has illustrated that progress has been made towards achieving several of the MDGs, such as universal basic education (which improved from 70% in 2002 to 95% in 2011), reducing maternal mortality, providing universal access to treatment for HIV/AIDS, and reducing child mortality rates. progressive reduction of child mortality.<sup>718</sup>

## ■ New Zealand

New Zealand has a population of approximately 4.5 million people and gained full independence from the UK in 1935.<sup>719</sup> It joined the Commonwealth in 1931 as a founding member (at which time its independence was recognised under the Statute of Westminster).

## ■ Statistics

No formal statistics exist in relation to the prevalence of child marriage in New Zealand. However, New Zealand Police have stated that unofficial unions involving girls as young as 13 occur within certain communities and they note that young men can also be forced to marry against their will.<sup>720</sup>

In 2012, New Zealand Police National Family Violence Manager, Inspector Brigitte Nimmo, stated '[w]hile we don't have hard data on the number of cases in New Zealand, we do know that forced and underage marriage is happening here.'<sup>721</sup> Support and advocacy agency Shakti reports that it has seen 'dozens of cases of forced or threatened marriage.'<sup>722</sup>

The New Zealand Domestic Violence Clearinghouse reports that approximately eighty 16 and 17-year-olds marry in New Zealand each year and that 80% of these are young women.<sup>723</sup> There is concern some of these marriages may be forced marriages.<sup>724</sup> Therefore, while it seems child marriage is recognised as an issue in New Zealand, the evidence of it is anecdotal and no statistics exist to demonstrate the full extent to which it occurs.<sup>725</sup>

## ■ Law

The minimum marriageable age in New Zealand is 18 without parental consent, or 16 with parental consent or permission from the Family Court.<sup>726</sup> The process of obtaining consent is regulated by the provisions of the Marriage Act 1955 (NZ).

New Zealand does not have a written Constitution. The New Zealand Bill of Rights Act 1990 affirms, protects, and promotes human rights and fundamental freedoms in New Zealand. This Act also affirms New Zealand's commitment to the International Covenant on Civil and Political Rights. However, it contains no protections that relate directly to child marriage or women's rights.

The age of consent in New Zealand is 16 years<sup>727</sup> and the Crimes Act 1961 criminalises sexual conduct with children under the age of 12<sup>728</sup> and young persons under the age of 16, as well as trafficking in people under 18 for sexual exploitation.<sup>729</sup>

## ■ Initiatives

The New Zealand Government has undertaken the following initiatives to address underage and forced marriage in New Zealand:

- A letter of agreement committing to a collective response, should victims of forced or underage marriage come forward, has been agreed to by government agencies with relevant operational responsibilities.
- New Zealand Police has updated its manual to provide guidance on responding appropriately to any disclosures of forced and/or under-age marriage, and is working directly with local communities to build trust and confidence.
- The Registrar-General of Births, Deaths and Marriages is encouraging people from ethnic communities to become marriage celebrants, which will result in increased community understanding of marriage law in New Zealand, particularly the legal requirements for consent.
- Resources in Hindi about forced and underage marriage have been developed and these are being translated into other languages, and
- Education on forced marriage is provided to every intake of refugees at the Mangere Refugee Resettlement Centre in Auckland.<sup>730</sup>

Further initiatives for reform in New Zealand include the following:

- The NGO Shakti is advocating for requirements that people officiating at weddings be satisfied that consent to the marriage has been given freely; that marriage celebrants be monitored and that the minimum marriageable age be raised to 18 years.<sup>731</sup> However, the New Zealand Government recently stated it is not considering increasing the minimum age for marriage.<sup>732</sup>
- In 2012 a Member of Parliament, Jackie Blue, called for amendments to the Marriage Act to only allow marriage under the age of 18 with the Family Court's approval (i.e. to remove the role of parental consent).<sup>733</sup> The proposed Bill was called the Marriage (Court Consent to Marriage of Minors) Amendment Bill. Blue MP stated that requiring teenagers to seek the court's permission to marry 'would take parental coercion out of the equation'.<sup>734</sup> The amendments have not been passed to date.
- UNICEF New Zealand has called for legislation to be introduced to specifically target forced and child marriage.<sup>735</sup>

## ■ Papua New Guinea

Papua New Guinea (PNG) is a country comprising approximately 600 islands, and has a population of 7.5 million people.<sup>736</sup> Women in PNG experience high rates of violence at the hands of men, usually their male partners and particularly in certain areas, such as the Highlands. Women are also poorly represented in Parliament.<sup>737</sup>

## ■ Statistics

- In PNG, 21% of girls are married before age 18, and 2% before age 15.<sup>738</sup>
- The percentage of adolescents (aged between 10 and 19) currently married or in union is 3% for men and 15% for women.<sup>739</sup>
- A 2004 UNICEF study calculated at least 4,503 girls aged 10–14 had been married and were living in rural areas in 2000 (the figure was 633 for urban areas). Of these girls in rural areas, about 25% had already been separated, divorced or widowed.<sup>740</sup>

Most marriages in PNG are not registered with the state and instead are approved according to local custom, which makes it difficult to gain a clear picture of the prevalence of child marriage in PNG. begin to live together. However, there does appear to be a sizable child marriage problem. In addition, the statistics are potentially under-inclusive due to illiteracy and inaccurate birth and marriage registers.<sup>741</sup>

In some rural areas of PNG, girls are frequently married as young as 13 years old. Child marriages are usually arranged by 'parents, other family members, or other village chiefs on behalf of their family'. Exploitative forms of marriage are a major problem in areas where extractive industries operate, as girls are often sold as wives to logging and mining workers. A 2004 UNICEF study found that girls aged under 18 were being sold by their families to men with large amounts of disposable cash earned through mining or royalty payments.<sup>742</sup>

## ■ Law

The legal age for marriage in Papua New Guinea is discriminatory, set at age 16 for girls and age 18 for boys.<sup>743</sup> With permission from parents and courts this can be lowered even further to 14 for girls and 16 for boys. In addition, there have been reports in rural communities of traditional marriages involving children as young as 12 years

of age being performed. In many tribes it is reported that the legality of a marriage has previously been based on puberty rather than age.<sup>744</sup>

The age of consent for sexual intercourse and sexual acts is 16 for boys and girls, pursuant to section 229 of the 1974 Criminal Code. Again, the effectiveness of child protection is dependent on the enforcement of the law and undermined by Section 229G of the Criminal Code which provides a defence to any offences under Section 229 of the same act if the child was over the age of 14 and the offender was married to the child.

Polygamy, which has been linked to abuse within marriages has been outlawed by amendments to the Civil Registration Act passed in 2014.<sup>745</sup> That said, the effectiveness of the formal legal protections given depends greatly on enforcement procedures and practices. While bigamy is prohibited under the criminal code, the law does not apply to customary marriages.

The Marriage Act requires recognition of customary marriages in accordance with the custom prevailing in the tribe or group to which either of the parties belongs, while Article 3 of the Customs Recognition Act states that application of customs shall be under the purview of the courts, except where, 'in a case affecting the welfare of a child under the age of 16 years, its recognition or enforcement would not, in the opinion of the court, be in the best interests of the child'.<sup>746</sup>

## ■ Initiatives

Domestically, youth development organisations such as Voice for Change have focused on raising awareness amongst adolescent girls and their families, communities and village leaders of women's rights and the harms of child marriage. Furthermore, Voice for Change have noted that whilst domestic laws reflecting international commitments have been put in place, there is poor implementation and enforcement of these laws. In addition, there is a male dominance in legal and enforcement institutions and women are generally assigned a lower social status than men.

There have been unconfirmed reports of an upcoming legal bill to ban child marriage PNG. Although it is not clear whether the bill was or will be adopted, its potential to be effective on its own is questionable given the issue of child marriage in PNG is in large part attributable to poor legal enforcement and a lack of victim support.

A new Family Protection Bill, reinforcing the protection for women against domestic violence, was passed in February 2013.

## ■ Samoa

Samoa (formerly Western Samoa) is an archipelago of nine islands at the centre of the south-west Pacific island groups, with a population of approximately 193,000 people,<sup>747</sup> approximately 19% of whom live in urban areas. The population is predominantly Polynesian, with small minorities of Chinese, European, or other Pacific descent. People live mainly in extended family groups, known as aiga. These groups are headed by a leader, known as matai, who is elected for life. The population is largely concentrated in villages close to the shore. There has been significant emigration of the population to New Zealand, and in 2006 there were 131,103 Samoans living in New Zealand, more than half of whom were born there.<sup>748</sup>

## ■ Statistics

Recent data in relation to the prevalence of child marriage in Samoa is contradictory. The 2016 UNICEF State of the World's Children report indicates there is no data in relation to child marriage in Samoa.<sup>749</sup> However, the UNICEF website records that 22.2% of the population fall are adolescents (aged between 10 and 19), and 0.7% of men and 7% of women in this age group are currently married.<sup>750</sup> This discrepancy could be due to a difference between customary unions and registered marriages.

## ■ Law

There are no constitutional provisions relevant to child marriage, though the Freedom of Discrimination provision is indirectly relevant as it states that discriminatory laws should not exist and the marriage provisions are clearly discriminatory.

The Marriage Ordinance 1961, which applies to all marriages in Samoa, provides that the minimum age of marriage is at least 16 for girls and at least 18 for boys<sup>751</sup> and that no marriage shall be solemnised for a man under the age of 21 years or a woman under the age of 19 years, without the consent of the parents or guardians.<sup>752</sup> As noted by Humanium, there is clear inequality in the legal age of marriage in Samoa.<sup>753</sup>

The age of consent for sexual intercourse is 16 for both girls and boys,<sup>754</sup> however, no person can be convicted of an offence under the relevant provision if they can prove they were married to the person at the time – meaning there is an exception for offenders who were married to children, despite marriage not being legal

for under 16 year olds. It can be inferred this sexual conduct would need to be consensual given section 49(4) of the Crimes Act removes the marital exemption for rape that previously existed under Samoan law.

The Crimes Act 2013 also criminalises rape and other sexual conduct in relation to minors, as well as trafficking for the purposes of sexual exploitation.

## ■ Initiatives

Although the available statistics suggest that the issue of child marriage does occur in Samoa, it is difficult to find any information in relation to current initiatives in Samoa, nor any actors working on the ground specifically on this issue. However, there are actors that monitor Samoa as part of general reports on child marriage. These include the reports produced by the Royal Commonwealth Society, Plan UK and Plan International. Additionally, Humanium and UNICEF monitor child marriage in the country through statistics and summaries of the local settings in the broader context of children's rights.

## ■ Solomon Islands

The Solomon Islands is an archipelago in the south-west Pacific, which consists of a double chain of rocky islands and some small coral islands. The major islands are Guadalcanal, Choiseul, Santa Isabel, New Georgia, Malaita and Makira (or San Cristobal). The population of the Solomon Islands is 561,000 (2013) with only 21% of the population residing in urban areas.<sup>755</sup> It is a predominantly Christian country, with 91% of the population identifying with a form of Christianity in the 2009 census.<sup>756</sup>

## ■ Statistics

In the Solomon Islands, 3.1% of children are married by the age of 15 and 22.4% by age 18.<sup>757</sup> However, the Royal Commonwealth Society and Plan UK note that data gaps exist because early and forced marriage is often indirectly sanctioned as being part of customary law. For example, enforcing the legal minimum age for marriage (15 years) in the Solomon Islands is difficult because customary law has constitutional status.<sup>758</sup> Furthermore, many Solomon Islanders do not have a birth certificate and registration of marriages is voluntary, where both parties are Islanders.<sup>759</sup>

In addition, Save the Children recently conducted a study which identified a relatively new phenomenon whereby girls as young as 13 years old

are being married off to loggers.<sup>760</sup> Previously, child marriage occurred only after customary rituals were performed. However, Save the Children notes that 'the presence of wealthy foreigners in the logging and fishing industries are reshaping community attitudes towards marriages due to the financial impact these industries have on communities'.<sup>761</sup> The study identified a number of underlying factors which contribute to girls accepting offers from Solairs (intermediaries who act as messengers or go-betweens for arranging transactional sex) including 'the appeal of financial gain, the sense of boosting self-esteem through being with foreigners, or the possibility of marriage with a foreigner, which would bring high social status for her and her family'.<sup>762</sup>

The UN similarly notes that in the Solomon Islands children are traded by their families and that the practice of 'bride price' (where brides are 'bought') continues in parts of the country and may involve the sale of daughters to foreign men.<sup>763</sup> There have been reported cases of suicide and attempted suicide 'by young wives due to loneliness, lack of love, hopelessness, and mistreatment by husbands'.<sup>764</sup>

## ■ Law

Chapter II of the Constitution of Solomon Islands (1978) recognises thirteen fundamental rights and freedom of individuals, including the right to life and the right to personal liberty. Freedom from discrimination (including on the basis of sex) is contained in Article 15, however, sub-section (5) excludes the application of the provision from laws relating to marriage or to customary law.<sup>765</sup> Customary law is also afforded constitutional status.

Pursuant to section 10 of the Islanders Marriage Act it is lawful for both boys and girls to marry at the age of 15, with their father's consent.<sup>766</sup> NGO Humanium notes that "as no document of birth or any other official document is required for a wedding, it can be celebrated on simple determination of the applicant's age based on his or her physical appearance."<sup>767</sup> Further, this provision applies only to marriages that occur pursuant to the Islanders Marriage Act. It is still possible to be validly married according to customary law, and no age limit is mentioned for customary marriages.<sup>768</sup>

Section 18(1) of the Islanders Marriage Act provides that 'Any Islanders who have contracted a marriage in accordance with the custom of Islanders may apply to the District Registrar of the District in which they reside to have the marriage registered under this Act', however it is not mandatory to register customary marriages. One study noted that in Solomon culture, 'marriage is defined as any couple living together, as opposed to what is commonly defined as marriage in accordance with the law. If a man is expected

to pay bride price to the woman's family and is residing with her, they will often be considered 'married'. In most cases ... couples have not had a legal or religious marriage, nor have they registered the marriage'.<sup>769</sup>

The age of consent in the Solomon Islands is 15 years old<sup>770</sup> and the Penal Code criminalises several sexual offences involving minors including: abducting a woman with the intent to 'marry, or have sexual intercourse ... or to cause her to be married or carnally known by any other person, takes her away, or detains her, against her will';<sup>771</sup> abducting a girl under the age of 18 with the intent to have sexual intercourse;<sup>772</sup> defiling a girl under the age of 13,<sup>773</sup> or between the ages of 13 and 15;<sup>774</sup> and a householder permitting the defilement of a girl on his premises.<sup>775</sup>

Save the Children emphasises that quite apart from legislation, social practices (such as customary marriage) have a strong influence on what is considered to be socially acceptable conduct and contribute significantly to the sexual exploitation of children.<sup>776</sup> For this reason, Save the Children notes that 'a profound knowledge of customary values and cultural practices are needed to fully understand the nature of exploitation that children face'.<sup>777</sup>

## ■ Initiatives

Save the Children Solomon Islands is working to increase community awareness about the sexual exploitation of children, noting that they have been provisionally funded by the European Union to deliver a programme to prevent and protect children from commercial sexual exploitation in Guadalcanal, Western Province and Choiseul:

*The programme will train and work with teachers and community educators to increase the resilience and advocacy campaigns around children who could be at risk of commercial sexual exploitation of children. It will work with parents and caregivers to increase their knowledge of children's specific vulnerability. We will be conducting a baseline assessment of this issue, which will add valuable rigour to current research in this area and further help the government and civil society to protect vulnerable children from sexual exploitation. Through taking a broader sectoral approach to dealing with this issue, we hope to make communities safer for the children living in the Solomon Islands.*<sup>778</sup>

Save the Children also recommends reforms of the Penal Code, Islanders Marriage Act and the Islanders Divorce Act to address areas of sexual exploitation of children and forced commercial marriage.<sup>779</sup> The Solomon Islands Government has also recognised that reform in these areas is needed to prevent violence against women and children.<sup>780</sup>

## ■ Tonga

Tonga has a population of approximately 106,500 people and gained independence from the UK in 1970.<sup>781</sup> It joined the Commonwealth that same year.

### ■ Statistics

- Approximately 6% of girls are married in Tonga by the age of 18.<sup>782</sup>
- It has been reported that in the Southern province of Itezhi Tezhi, children are being given away for marriage in exchange for cattle.<sup>783</sup>

### ■ Law

The Births, Deaths and Marriages Registration Act provides the minimum marriageable age is 15 years, but requires those under 18 to obtain written consent of their guardian before being granted a marriage licence.<sup>784</sup>

The Act further provides that parties to an impending marriage shall provide a birth certificate or some other evidence of age to the satisfaction of the sub-registrar and apply to the sub-registrar of the district in which one of the parties has resided for at least 16 months prior to their application in order to be issued a licence to marry.<sup>785</sup>

The age of consent in Tonga is 15 years old. Tonga is the only Commonwealth country that has not signed the CEDAW.<sup>786</sup> In addition, UN Women note that 'Tonga has no domestic violence, sexual harassment, human trafficking, sex tourism or family legislation in place'.<sup>787</sup>

### ■ Initiatives

UNICEF, Women and Children's Crisis Centre and UN Women have all been active in Tonga in relation to child marriage in the past. The UN Women's Ending Violence Against Women (EVAW) Programme has focused on:

*... the prevention of and response to violence, exploitation and abuse of women and girls in Tonga through its Pacific EVAW Facility Fund. The fund provides financial and technical support to organisations addressing EVAW throughout the country and supports capacity development amongst government and civil society partners in order to provide multi-sectoral and survivor-focused VAW services.*<sup>788</sup>

## ■ Tuvalu

In terms of population, Tuvalu is among the smallest countries in the world with a population of about 10,000 people.<sup>789</sup> It has very few resources or sources of revenue and balance-of-payments deficits have to be made up by income from the Tuvalu Trust Fund and bilateral aid, especially from Australia and New Zealand.<sup>790</sup> Tuvalu is a patriarchal society, where property and some other rights are generally passed down the male line and strong religious rules and morals are imposed. These rules influence what is considered acceptable behaviour by men and women and contribute to gender relations between men and women, as well as family structures.<sup>791</sup>

Violence against women is often unreported, despite being quite prevalent, with 2007 statistics indicating four in 10 women have been subjected to physical violence, with their current partners being the main perpetrators (84.6%). According to the survey, women were brought up to accept, tolerate and even rationalise domestic violence and to remain silent about it.<sup>792</sup>

### ■ Statistics

- Approximately 10% of girls in Tuvalu are married before the age of 18.<sup>793</sup>

A US State Department report on Human Rights in Tuvalu outlines that from 2002 to 2012, the average annual number of marriages involving persons under the age 18 was two.<sup>794</sup> While this is not high compared to other countries in the Commonwealth, given the small population of Tuvalu it is still significant that 10% of women were married before the age of 18.

### ■ Law

The Marriage Act 1968 governs marriage in Tuvalu, and provides any marriage solemnised between persons under 16 is void.<sup>795</sup> Further, if a person is below the age of 21 and wishes to marry then the written consent of their father is required.<sup>796</sup>

Article 27 of the Constitution provides for freedom from discrimination, but there is an exception in relation to laws that relate to marriage.<sup>797</sup> Further, there are certain exceptions in relation to the application of the rights in the Constitution, including the Protection of Tuvalian values, which references the need to protect culture and tradition.

The age of consent is often reported as being 15, but this is only clearly the case in relation to girls<sup>798</sup> as boys are not mentioned in these provisions

of the Penal Code.<sup>799</sup> There are several other sexual offences criminalised in the Penal Code, including rape and incest, as well as offences relating to procuring minors for immoral purposes. Further, bigamy and marriage on fraudulent pretences are also criminalised.<sup>800</sup>

### ■ Initiatives

No initiatives have been identified relating specifically to child marriage, however in 2014 the Family Protection and Domestic Violence Act 2014 was introduced, along with the National Gender Policy of 2014, in order to improve Tuvalu's compliance with CEDAW. The Family Protection and Domestic Violence Act provided for orders to be made to protect domestic violence victims, and criminalised domestic violence offences.<sup>801</sup>

In reporting on this development, the OHCHR recognised that as a small island developing state with limited resources, Tuvalu faces many challenges in implementing its international obligations, but noted the major challenge at present is the devastating impact of climate change on the population.<sup>802</sup>

## ■ Vanuatu

Vanuatu has a population of approximately 272,200 people and gained independence from the UK in 1980 and joined the Commonwealth in that year.<sup>803</sup> Vanuatu operates a mixed legal system derived from English common law, French law and customary law.

### ■ Statistics

- In Vanuatu, 20% of girls were married before age 18, and 3% were married before age 15.<sup>804</sup>
- A 2011 case study<sup>805</sup> noted that the practice of early marriage differed widely among regions, with marriage before the age of 15 being most prevalent in the provinces of Penama (12%) and Shefa (10%) and lowest in the province of Torba (1%).
- The same study found married women aged 15-19 were from the poorest households.<sup>806</sup>
- The study suggests girls who marry at a young age are more likely to marry older men and consequently are more likely to become widows at early ages;<sup>807</sup> for example, 32% of married girls aged 15-19 were married to men 10 or more years older than them.<sup>808</sup>

## ■ Law

Pursuant to Article 95 of the Constitution, the law in Vanuatu is made up of – acts of Parliament, British and French laws as well as customary laws known as the kastom system, in addition to the provisions in the Constitution.

Marriage in Vanuatu is regulated by the Marriage Act [CAP 60] and the Control of marriage Act [CAP 45]. The Marriage Act [CAP 60] recognises civil, customary and religious marriage and outlines the requirements for the formal validity of a marriage. The Control of Marriage Act [CAP 45] provides the legal age for marriage, which is 18 years for males and 16 years for females. Section 3 of the Act qualifies this by stating that no person under the age of 21 years may lawfully marry without the consent of their parents, guardian or a Magistrate.

The Act also requires the marriage celebrant satisfy themselves that the parties are above 21 years or, if not, that relevant consent has been obtained.<sup>809</sup> Marriages that do not comply with the Act will not be valid.<sup>810</sup> Forcing a person to marry against their will is prohibited under the Act and punishable by a fine, imprisonment or both. Pursuant to the Matrimonial Causes Act, fault based divorce is practiced in Vanuatu.

Customary marriages still occur and involve practices such as the payment of 'brideprice', which is a traditional and widespread practice in the Melaesian region,<sup>811</sup> or other types of arranged marriages.

In April 2005, in an effort to control the amount of money spent on 'brideprice', the Vanuatuan Council of Chiefs (Malvatumauri) placed a limit of 80,000 Vatu on 'brideprice'.<sup>812</sup> Moreover, in conjunction with the National Council of Women, the Council of Chiefs also ruled that 'brideprice' should be paid in traditional goods (e.g. pigs, mats and kava) in lieu of money.<sup>813</sup>

In March 2009, Vanuatu became the first country in the Pacific to legislate against the harmful use of 'brideprice' as a defence to domestic violence. Section 10 of the Family Protection Act 2008 creates the offence of domestic violence. The section then provides that "it is not a defence to an offence under subsection(1) that the defendant has paid an amount of money or given other valuable consideration in relation to his or her custom marriage to the complainant".<sup>814</sup>

Other harmful practices take place under the katsom system, including a practice on the island of Tanna where the family of a murderer give a girl child to the victim's family (for the purpose of marriage) as a form of apology.<sup>815</sup> Commentators note that culture contributes to the problem in that the kastom

focuses on protecting a family from shame rather than punishing perpetrators.<sup>816</sup>

Naidu, citing the Initial Report to the Committee for CEDAW and The Elimination of All Forms of Discrimination and Violence against the Girl Child Situation Paper for the Pacific Islands Region, notes the conflict that exists between formal laws and customary law with customary practice usually requiring that girls be made available for marriage soon after menstruation begins (usually around ages 12-13).<sup>817</sup>

Naidu's observations are reiterated by Marilyn Tahu (Coordinator of the Vanuatu Women's Centre) who has stated that 'traditional perspectives [in relation to child marriage] were still prevalent'.<sup>818</sup> Tahu commented '[o]ur people even have a tradition where so long as they're menstruating, they're ready to be married off... Others say, so long as they have breasts, they're ready to be married off'.<sup>819</sup>

in 2007, reported that persistence of certain practices and traditions, patriarchal attitudes and deep-rooted stereotypes perpetuate discrimination against women and are reflected in women's disadvantageous and unequal status in many areas, including marriage and family relations.

## ■ Initiatives

In 2014 the Vanuatu Law Commission called for submissions and comments relating to a Review of the Marriage Act [CAP 60]. The review canvassed five issue areas, ranging from licensing arrangements for marriage celebrants, offences in relation to marriage celebration and same sex marriage.<sup>820</sup> No reference was made in relation to the unequal age of consent in relation to marriageable age and its inconsistency with the age of majority.

A 2013 United States Department of State report into Human Rights in Vanuatu indicated that there were no government programmes aimed at discouraging child marriage.<sup>821</sup>

The 2007 CEDAW Committee cited its concern in the law providing different marriageable ages for women and men and urged Vanuatu to raise the minimum age of marriage for women to 18 years.<sup>822</sup>

While women have equal rights under the law, they are slowly emerging from a traditional culture characterised by male dominance, a general reluctance to educate women, and a widespread belief that women should devote themselves primarily to childbearing. The majority of women entered into marriage through the use of bride-price payments, a practice that encourages men to view women as property. Women were also barred by tradition from land ownership.

The UN Committee on the Elimination of Discrimination against Women, in the concluding comments regarding Vanuatu

## ANNEX II: RATIFICATION DATES OF INTERNATIONAL CONVENTIONS

| COUNTRY                     | CONVENTION ON CONSENT TO MARRIAGE, MINIMUM AGE FOR MARRIAGE AND REGISTRATION OF MARRIAGES <sup>823</sup> | INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS <sup>824</sup> | INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS <sup>825</sup> | CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN <sup>826</sup> | CONVENTION ON THE RIGHTS OF THE CHILD <sup>827</sup> |
|-----------------------------|--|---|---|---|--|
| AFRICA                      | (9 December 1964)  | (3 January 1976)  | (23 March 1976)   | (3 September 1981)  | (2 September 1990)                                   |
| Botswana                    | Not ratified   | Not ratified  | 8 September 2000  | 13 August 1996  | 14 March 1995  |
| Cameroon                    | Not ratified   | 27 June 1984  | 27 June 1984  | 23 Aug 1994   | 11 January 1993                                      |
| Ghana                       | Not ratified   | 7 September 2000  | 7 September 2000  | 2 January 1986  | 5 February 1990                                      |
| Kenya                       | Not ratified   | 1 May 1972  | 1 May 1972  | 9 March 1984  | 30 July 1990   |
| Lesotho                     | Not ratified   | 9 September 1992  | 9 September 1992  | 22 August 1995  | 10 March 1992  |
| Malawi                      | Not ratified   | 22 December 1993  | 22 December 1993  | 12 March 1987   | 2 January 1991                                       |
| Mauritius                   | Not ratified   | 12 December 1973  | 12 December 1973  | 9 July 1984   | 26 July 1990   |
| Mozambique                  | Not ratified   | Not ratified  | 21 July 1993  | 21 April 1997   | 26 April 1994  |
| Namibia                     | Not ratified   | 28 November 1994  | 28 November 1994  | 23 November 1992  | 30 September 1990                                    |
| Nigeria                     | Not ratified   | 9 July 1993   | 29 July 1993  | 13 June 1985  | 19 April 1991  |
| Rwanda                      | 26 September 2003  | 16 April 1975   | 16 April 1975   | 2 March 1981  | 24 January 1991                                      |
| Seychelles                  | Not ratified   | 5 May 1992  | 5 May 1992  | 5 May 1992  | 7 September 1990                                     |
| Sierra Leone                | Not ratified   | 23 August 1996  | 23 August 1996  | 11 November 1988  | 18 June 1990   |
| South Africa                | Not ratified   | 12 January 2015   | 10 December 1998  | 15 December 1995  | 16 June 1995   |
| Swaziland                   | Not ratified   | 26 March 2004   | 26 March 2004   | 26 March 2004   | 7 September 1995                                     |
| Uganda                      | Not ratified   | 21 January 1987   | 21 January 1995   | 22 July 1985  | 7 August 1990  |
| United Republic of Tanzania | Not ratified   | 11 June 1976  | 11 June 1976  | 20 August 1985  | 10 June 1991   |
| Zambia                      | Not ratified   | 10 April 1984   | 10 April 1984   | 21 June 1985  | 6 December 1991                                      |



| COUNTRY           | CONVENTION ON CONSENT TO MARRIAGE, MINIMUM AGE FOR MARRIAGE AND REGISTRATION OF MARRIAGES<br>(9 December 1964) | INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS<br>(3 January 1976) | INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS<br>(23 March 1976) | CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN<br>(3 September 1981) | CONVENTION ON THE RIGHTS OF THE CHILD<br>(2 September 1990) |
|-------------------|--|--|---|--|---|
| <b>ASIA</b>       |  |  |   |  |   |
| Bangladesh        | 5 October 1998   | 5 October 1998   | 8 September 2000  | 6 November 1984  | 3 August 1990   |
| Brunei Darussalam | Not ratified   | Not ratified   | Not ratified  | 24 May 2006  | 27 December 1995  |
| India             | Not ratified   | 10 April 1979  | 10 April 1979   | 9 July 1993  | 11 December 1992  |
| Malaysia          | Not ratified   | Not ratified   | Not ratified  | 5 July 1995  | 17 February 1995  |
| Pakistan          | Not ratified   | 17 April 2008  | 23 June 2010  | 12 March 1996  | 12 November 1990  |
| Singapore         | Not ratified   | Not ratified   | Not ratified  | 5 October 1995   | 5 October 1995  |
| Sri Lanka         | Not ratified   | 11 June 1980   | 11 June 1980  | 5 October 1981   | 12 July 1991  |

| COUNTRY                         | CONVENTION ON CONSENT TO MARRIAGE, MINIMUM AGE FOR MARRIAGE AND REGISTRATION OF MARRIAGES<br>(9 December 1964) | INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS<br>(3 January 1976) | INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS<br>(23 March 1976) | CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN<br>(3 September 1981) | CONVENTION ON THE RIGHTS OF THE CHILD<br>(2 September 1990) |
|---------------------------------|--|--|---|--|---|
| <b>CARIBBEAN &amp; AMERICAS</b> |  |  |   |  |   |
| Antigua and Barbuda             | 25 October 1988  | Not ratified   | Not ratified  | 1 August 1989  | 5 October 1993  |
| The Bahamas                     | 1 October 1979   | 23 December 2008   | 23 December 2008  | 6 October 1993   | 20 February 1991  |
| Barbados                        | Not ratified   | 5 January 1973   | 5 January 1973  | 16 October 1980  | 9 October 1990  |
| Belize                          | Not ratified   | 9 March 2015   | 10 June 1996  | 16 May 1990  | 2 May 1990  |
| Canada                          | Not ratified   | 19 May 1976  | 19 May 1976   | 10 December 1981   | 13 December 1991  |
| Dominica                        | Not ratified   | 17 June 1993   | 17 June 1993  | 15 September 1980  | 13 March 1991   |
| Grenada                         | Not ratified   | 6 September 1991   | 6 September 1991  | 30 August 1990   | 5 November 1990   |

| COUNTRY                       | CONVENTION ON CONSENT TO MARRIAGE, MINIMUM AGE FOR MARRIAGE AND REGISTRATION OF MARRIAGES<br>(9 December 1964) | INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS<br>(3 January 1976) | INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS<br>(23 March 1976) | CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN<br>(3 September 1981) | CONVENTION ON THE RIGHTS OF THE CHILD<br>(2 September 1990) |
|-------------------------------|--|--|---|--|---|
| CARIBBEAN & AMERICAS          |  |  |   |  |   |
| Guyana                        | Not ratified   | 15 February 1977   | 15 February 1977  | 17 July 1980   | 14 January 1991   |
| Jamaica                       | Not ratified   | 3 October 1975   | 3 October 1975  | 19 October 1984  | 14 May 1991   |
| Saint Lucia                   | Not ratified   | Not ratified   | Not ratified  | 8 October 1982   | 16 June 1993  |
| St Kitts and Nevis            | Not ratified   | Not ratified   | Not ratified  | 25 April 1985  | 24 July 1990  |
| St Vincent and The Grenadines | 27 April 1999  | 9 November 1981  | 9 November 1981   | 4 August 1981  | 26 October 1993   |
| Trinidad and Tobago           | 2 October 1969   | 8 December 1978  | 8 December 1978   | 12 January 1990  | 5 December 1991   |

| COUNTRY        | CONVENTION ON CONSENT TO MARRIAGE, MINIMUM AGE FOR MARRIAGE AND REGISTRATION OF MARRIAGES<br>(9 December 1964) | INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS<br>(3 January 1976) | INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS<br>(23 March 1976) | CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN<br>(3 September 1981) | CONVENTION ON THE RIGHTS OF THE CHILD<br>(2 September 1990) |
|----------------|--|--|---|--|---|
| EUROPE         |  |  |   |  |   |
| Cyprus         | 30 July 2002   | 2 April 1969   | 2 April 1969  | 23 July 1985   | 7 February 1991   |
| Malta          | Not ratified   | 13 September 1990  | 13 September 1990   | 8 March 1991   | 30 September 1990   |
| United Kingdom | 9 July 1970  | 20 May 1976  | 20 May 1976   | 7 April 1986   | 16 December 1991  |

| COUNTRY          | CONVENTION ON CONSENT TO MARRIAGE, MINIMUM AGE FOR MARRIAGE AND REGISTRATION OF MARRIAGES | INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS | INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS | CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN | CONVENTION ON THE RIGHTS OF THE CHILD |
|------------------|---|--|--|--|---------------------------------------|
| THE PACIFIC      | (9 December 1964)   | (3 January 1976)   | (23 March 1976)                                      | (3 September 1981)   | (2 September 1990)                    |
| Australia        | Not ratified  | 10 December 1975   | 13 August 1980                                       | 28 July 1983   | 17 December 1990                      |
| The Bahamas      | Not ratified  | Not ratified   | Not ratified   | 28 August 1995   | 13 August 1993                        |
| Fiji             | Not ratified  | Not ratified   | Not ratified   | 17 March 2004  | 11 December 1995                      |
| Kiribati         | Not ratified  | Not ratified   | Not ratified   | 23 June 2011   | 27 July 1994                          |
| Nauru            | Not ratified  | Not ratified   | Not ratified   | 10 January 1985  | 6 April 1993                          |
| New Zealand      | Not ratified  | 28 December 1978   | 28 December 1978                                     | 12 January 1995  | 2 March 1993                          |
| Papua New Guinea | Not ratified  | 21 July 2008   | 21 July 2008   | 25 September 1992  | 29 November 1994                      |
| Samoa            | 24 August 1964  | Not ratified   | 15 February 2008                                     | 6 May 2002   | 10 April 1995                         |
| Solomon Islands  | Not ratified  | 17 March 1982  | Not ratified   | Not ratified   | 6 November 1995                       |
| Tonga            | Not ratified  | Not ratified   | Not ratified   | 6 October 1999   | 22 September 1995                     |
| Tuvalu           | Not ratified  | Not ratified   | Not ratified   | 8 September 1995   | 7 July 1993                           |
| Vanuatu          | Not ratified  | Not ratified   | 21 November 2008                                     |  |                                       |

## ANNEX III: COMMITTEE ON THE RIGHTS OF THE CHILD – COMMENTS ON CHILD MARRIAGE AND BIRTH/MARRIAGE REGISTRATION

### AFRICA

#### BOTSWANA

3 November 2004

#### RECOMMENDATIONS / CONCLUDING OBSERVATIONS

*Nil references to child marriage*

##### ■ Birth Registrations

**34.** While the Committee welcomes the amendments to the Birth and Death Registration Act of 1998 that ensures the compulsory registration of both, throughout the State party, it is concerned at the significant number of children who are not yet registered at birth, particularly in remote areas.

**35.** In the light of article 7 of the Convention, the Committee urges the State party to increase its efforts to ensure the registration of all children at birth, including through awareness-raising campaigns.<sup>828</sup>

#### CAMEROON

6 July 2017

#### RECOMMENDATIONS / CONCLUDING OBSERVATIONS

##### ■ Definition of the child (Art. 1)

**13.** While noting the adoption of Law No. 2016/007 of 12 July 2016 relating to the Penal Code, section 356, which criminalizes “forced marriage” and increases the penalty where the victims are under 18 years of age, the Committee reiterates its previous recommendation (see CRC/C/CMR/CO/2, para. 26) and urges the State party to finalize the revision of the Civil Code and establish the minimum age for marriage as 18 for both girls and boys.

##### ■ Sexual exploitation and abuse

**26.** The Committee welcomes the adoption of sections 297 and 302-1 of the amended Penal Code providing, respectively, that a rapist cannot be exonerated by marrying his victim and criminalizing sexual harassment, imposing imprisonment where the victim is a minor and considering as an aggravating factor where the perpetrator has educational authority over the victim. However, the Committee expresses grave concern that:

**(a)** Sexual violence is prevalent, including against very young children;

**(b)** Over 22 per cent of girls aged 15-19 have experienced sexual violence, notably within the context of child marriage, and that consequently the high rate of HIV/AIDS of this group persists;

**(c)** State legislation does not provide full protection for all victims of violence, including sexual violence, or guarantee their compensation or rehabilitation.

### ■ Harmful practices

**28.** The Committee, with reference to joint general recommendation No. 31 of the Committee on the Elimination of Discrimination against Women/general comment No. 18 of the Committee (2014) on harmful practices, recommends that the State party:

....  
**(e)** Take all necessary measures in line with the State party's obligations under the Convention and the African Charter on the Rights and Welfare of the Child to eliminate the practice of child marriage, which remains prevalent throughout the State party, particularly in the North, Far North, Adamaoua and East regions.

### ■ Birth registration and nationality

**18.** The Committee welcomes the revision of the legal and institutional framework to ameliorate the birth registration process, including the establishment of the National Civil Status Office and the extension of the time limit to declare births. However, it is concerned about the low level of birth registration, particularly in rural areas, owing to:

**(a)** Gaps in the law failing to address the impact on poor and vulnerable families of costs associated with birth registration and the declaration of all births outside hospitals;

**(b)** Low awareness among parents of the importance of birth registration and the time limits for registration and, upon expiration, the difficulties in obtaining a substitute birth certificate through a court order;

**(c)** Inaccessible and under resourced civil registries disproportionately affecting vulnerable populations, including indigenous groups and communities in the Bakassi Peninsula.

**19.** Taking note of target 16.9 of the Sustainable Development Goals on providing legal identity for all, including birth registration, the Committee reiterates its previous recommendation (see CRC/C/CMR/CO/2, para. 34) and urges the State party to:

**(a)** Eliminate all fees for birth registration and certificate issuance;

**(b)** Increase the financial, technical and human resources of the National Civil Status Office to increase its accessibility throughout the State party;

**(c)** Strengthen awareness-raising campaigns encouraging parents to register births.

**20.** The Committee is further concerned that children born out of wedlock must fulfil additional conditions to acquire Cameroonian nationality and that the acquisition of nationality may be denied to children with disabilities.

**21.** The Committee recommends that the State party amend the Nationality Code to repeal discriminatory provisions relating to the acquisition of nationality by children born out of wedlock and relating to the naturalization of children with disabilities.<sup>829</sup>

### ■ Harmful practices

**37.** While noting the Children's Act 1998 (Act 560) setting the minimum age of marriage at 18 years for boys and girls and the establishment of the Child Marriage Coordinating Unit, the Committee is deeply concerned about:

**(a)** The increase of forced and early marriage of children, especially of girls, in the State party;

**(b)** The prevalence of female genital mutilation (FGM), especially in rural and traditional communities despite the positive actions taken by the State party criminalizing harmful practices;

**(c)** The cultural practice of accusing some girls of being witches, thereby subjecting them to violence and confining them in 'witch camps.'

**38.** In light of general comment No. 18 on harmful practices (2014), the Committee urges the State party to:

**(a)** Take firm measures to prevent and eliminate forced and early marriage of children and implement the existing legislation;

**(b)** Raise awareness and sensitization of families, traditional and religious leaders, teachers and the public in general on the negative consequences of child marriage and FGM and the importance of education;

**(c)** Disseminate the law criminalizing FGM among all relevant ministries, police officers, law enforcement officials, teachers, traditional and religious leaders, and the general public, particularly in rural communities;

**(d)** Ensure that cases of FGM are promptly investigated and prosecuted;

**(e)** Ensure the closure of all the witch camps and raise awareness and sensitization of families, traditional and religious leaders, teachers and the public in general in the negative consequences of confining girls believed to be witches in witch camps;

**(f)** Establish protective mechanisms and services to safeguard children, especially girls, at risk of being subject to forced and early marriage, FGM and/or treated as witches and ensure that all victims of these practices have access to social, medical, psychological and rehabilitative services and legal redress.<sup>830</sup>

### ■ Birth registration

**29.** While noting the significant progress in improving birth registration coverage from 17 percent in 2002 to about 58 percent in 2014, the Committee reiterates its concerns (CRC/C/GHA/CO/2, para. 32) about the many challenges faced by the State party such as understaffing and inadequate funding and about the difficulties in ensuring, particularly, the birth registration of children in rural areas as well as of asylum-seeking and refugee children.

**30.** The Committee reiterates its previous

recommendations (CRC/C/GHA/CO/2, para. 32) and recommends that the State party:

- (a) Implement the recommendations of the "Birth Registration bottleneck analysis";
- (b) Enter into a formal partnership and collaboration agreement between the Birth and Death Registry and the Ghana Health Service;
- (c) Allocate sufficient funds for the strengthening of birth registration initiatives;
- (d) Extend free birth registration and issuance of certificates for, at least, children under five years of age; (e) Strengthen and expand mobile birth registration to reach universal coverage, particularly, for registration of children in rural areas, asylum-seeking and refugee children, and those who have never been registered;
- (f) Amend the Refugee Law (1992) to ensure that recognized refugee children born outside the State party can be issued with substitute birth certificates;
- (g) Increase public awareness about the importance of birth registration and the process by which children are registered.

## KENYA

21 March 2016

### RECOMMENDATIONS / CONCLUDING OBSERVATIONS

#### ■ Harmful practices

35. The Committee is concerned that despite its legal prohibition, harmful practices such as female genital mutilation, child marriage and "beading" of girls are still persistent. The Committee is also concerned that the medicalization of female genital mutilation has reportedly increased.

36. The Committee urges the State party to:

- (a) Enforce effectively the prohibition of female genital mutilation, including that practised by health practitioners, child marriage, and other forms of harmful practices;
- (b) Continue efforts to address the root causes of such practices and implement culturally appropriate measures to eliminate them;
- (c) Prohibit any out-of-court settlements in cases of harmful practices.

#### ■ Birth registration

29. The Committee welcomes the adoption of the Citizenship and Immigration Act (2011) which provides for Kenyan nationality for all children born in the State party and recognizes the equal right of women and men to transmit Kenyan nationality to their children, as well as the substantial increase in the number of birth registrations. Nevertheless, the Committee is concerned that:

- (a) Free and universal birth registration has not been achieved;

30. The Committee urges the State party to:

- (a) Expedite the adoption of a law that provides for universal and free birth registration at all stages of the registration process;<sup>831</sup>

## LESOTHO

21 February 2001

### RECOMMENDATIONS / CONCLUDING OBSERVATIONS

23. The Committee notes with concern the lack of clarity in the definition of the child due to the fact that on the one hand the child is defined as a person under 18 years of age while on the other hand the age of majority still remains 21. The Committee is similarly concerned by the different minimum legal ages for marriage, the absence of a defined minimum age of sexual consent for boys, the very high minimum age for consulting a doctor without parental consent and the extremely low minimum age of criminal responsibility - currently age seven.

24. The Committee recommends that the State party review, and amend as appropriate, existing legislation in order to harmonize the age of majority and the overall definition of the child, to introduce one minimum legal age for marriage, to increase the minimum age for criminal responsibility, to address concerns related to the minimum age for consulting a doctor without parental consent and to establish one minimum age for sexual consent.<sup>832</sup>

## MALAWI

6 March 2017

### RECOMMENDATIONS / CONCLUDING OBSERVATIONS

#### ■ Definition of the child (art. 1)

13. While welcoming the information provided by the State party's delegation during the dialogue about a government bill to amend the Constitution that will define a child as a person under 18 years of age and will raise the minimum age of marriage to 18 years, and about the forthcoming further harmonization of all legislation in that regard, the Committee urges the State party to expeditiously adopt those amendments to the Constitution and legislation and ensure wide public awareness of such legislative changes.

#### ■ Harmful practices

24. The Committee notes that the Childcare Protection and Justice Act criminalizes harmful practices. However, it is concerned that:

- (a) The practice of child marriage still persists;
- (b) Harmful practices, such as abduction, forced marriage, betrothal, kusasa fumbi (sexual cleansing) and the pledging of children as collateral, are still practised;
- (c) Traditional and religious leaders are not fully supportive in implementing these laws;
- (d) The support mechanisms and staff responsible for the implementation of legislation have inadequate resources.

25. In the light of its general comment No. 18 (2014) on harmful practices, adopted jointly with the Committee on the Elimination of Discrimination against Women, the Committee urges the State party to:

- (a) Take all measures necessary to eliminate child marriages;
- (b) Disseminate the Childcare Protection and Justice Act and other relevant legislation at the local level, and particularly among traditional and religious leaders;
- (c) Develop comprehensive awareness-raising campaigns and programmes on the provisions criminalizing harmful practices and on their negative consequences on children, as well as campaigns on the harmful effects of child marriage on the physical and mental health and well-being of girls, targeting households, local authorities, teachers, religious, traditional and community leaders and judges and prosecutors;
- (d) Provide appropriate financial resources to front-line staff who implement legislation at the grass-roots level and strengthen the capacity-building of volunteers and police officers responsible for providing victim support unit services in order to ensure that they discharge their duties in the best interests of the child and in a child-sensitive manner.<sup>833</sup>

## MAURITIUS

27 February 2015

### RECOMMENDATIONS / CONCLUDING OBSERVATIONS

#### ■ Definition of the child (art. 1)

25. The Committee is concerned that, while the age of marriage is set at 18 years (art. 144 of the Civil Code), exceptions to the minimum age of marriage are possible and extensively granted, as is shown by the high number of underage marriages in the State party. The Committee is also concerned that the Child Protection Act defines a child as any unmarried person under the age of 18.

26. The Committee urges the State party to ensure that the minimum age of marriage, set at 18 years, is strictly enforced, in line with the State party's obligations under the African Charter on the Rights and Welfare of the Child. The Committee recommends that the State party carry out comprehensive awareness-raising programmes on the negative consequences of child marriage, targeting in particular parents, teachers and community leaders.<sup>834</sup>

## MOZAMBIQUE

27 February 2015

### RECOMMENDATIONS / CONCLUDING OBSERVATIONS

#### ■ Harmful traditional practices

65. While noting with satisfaction that the new Family Law sets the marriage age at 18 years for boys and girls, the Committee is concerned that the State party continues to have very high rates of early marriage. The Committee is also concerned at the persistence of initiation rites which lead to early and harmful sexual behaviours. It is further concerned at the continued practice of sending children to work to settle families' financial debts and other obligations.

66. The Committee calls upon the State party to develop sensitization programmes involving families, community leaders and society at large, including children themselves, to curb the practices of early marriage and sexual initiation rites, particularly

## NAMIBIA

16 October 2012

### RECOMMENDATIONS / CONCLUDING OBSERVATIONS

in rural areas. The Committee also reiterates its previous recommendation (CRC/C/15/Add.172, para. 41 (c)) and urges the State party to take measures to end the practice of sending children to work to settle debts and other obligations. In all cases, the State party should ensure that adequate sanctions are imposed and organize awareness-raising programmes in accordance with the Optional Protocol to the Convention on the sale of children, child prostitution and child pornography.<sup>835</sup>

#### ■ Legislation

10. While welcoming the initiatives to review laws from the pre-independence period, the Committee regrets the failure of the State party to adopt and implement key national legislation concerning children, as required by the Convention. In particular, the Committee notes with concern that despite discussions that began over a decade ago, two notable laws on children's rights, the Child Care and Protection Bill and the Child Justice Bill, have not yet been adopted. Furthermore, noting the existence of plural legal systems, the Committee is concerned that the customary law and practices are not consistent with the principles and provisions of the Convention, in particular those relating to the minimum age of marriage, to divorce and to inheritance.

11. The Committee urges the State party to expedite the revision and adoption of pending legislation on children's rights, particularly the Child Care and Protection Bill, and the Child Justice Bill. The Committee also recommends that the State party incorporate into all proposed and existing legislation the principles and provisions of the Convention, and in the meantime, take measures to ensure that in case of conflict, the constitutional provisions and statutory laws prevail over the customary law, and that children and women have full access to the formal justice system

#### ■ Definition of the child (art. 1 of the Convention)

28. The Committee reiterates its previous concern that the definitions of the child in national legislation vary widely and are contradictory (CRC/C/15/Add.14, para. 6). In particular, it is concerned that the State party's Constitution defines "child" as anyone under the age of 16 years, which is not compatible with article 1 of the Convention. The Committee is gravely concerned that the Married Persons Equality Act, which sets the minimum age of marriage at 18, does not apply to customary marriages.

29. The Committee strongly recommends that the State party:

- (a) Review and amend the Constitution and all existing legislation to harmonize the overall definition of the child to comply with the provisions of the Convention, and ensure that all existing legislation affords full protection to all children under 18 as well as respects their evolving capacities and increased autonomy;
- (b) Ensure that the provision of the Married Persons Equality Act relating to the minimum age for marriage is applicable to customary marriages.

31. In the light of article 2 of the Convention, the Committee recommends that the State party:

(a) Intensify measures, including timely implementation of relevant policies and strategic plans, to reduce poverty, prevent and combat discrimination in education, health and development, particularly for girls, indigenous children, children with disabilities and other groups of children in vulnerable situations;

(b) Adopt all necessary measures to combat discrimination faced by women and girls under customary law, particularly in the areas of marriage and inheritance rights, including through efforts to prevent the application of such law in rural areas. In these efforts, the Committee calls upon the State party to ensure that girls, women, traditional leaders and civil society organizations are consulted throughout the process;

(c) Review all relevant civil laws to end legislative discrimination against women and girls. In particular, the State party should review the Married Persons Equality Act of 1996 to eliminate all discriminatory provisions, including those affecting marriage, land ownership and inheritance rights;

**37.** The Committee strongly urges the State party:

(a) To strengthen its efforts to ensure immediate and universal birth registration, including through reforms in the Birth, Marriages and Death Registration Act of 1963, and, in the meantime, take immediate special measures to register the births of all children and provide all children with free birth certificates without any discrimination;

**42.** The Committee is gravely concerned at the continued prevalence of sexual initiation practices and early marriage in the State party. In addition, the Committee is concerned that the State party has not taken any steps to systematically document and curb such harmful practices, including through the introduction of sanctions.

**43.** The Committee calls upon the State party to ensure that adequate criminal and civil sanctions are imposed on individuals, including on traditional leaders, who encourage or are involved in sexual initiation practices. In addition, the State party should implement sensitization programmes involving families, community leaders and society at large, including children themselves, to curb the practices of sexual initiation rites and early marriages, particularly in rural areas.<sup>836</sup>

**NIGERIA**

**16 October 2012**

## RECOMMENDATIONS / CONCLUDING OBSERVATIONS

### ■ Definition of the child (art. 1 of the Convention)

**26.** While noting that the Child Rights Act defines the child in accordance with the Convention and establishes the legal minimum age of marriage at 18 years, the Committee notes with serious concern that the definition of the child in some legislation domesticating the Child Rights Act at state level sets the age at 16 years (Akwa-Ibom state) or defines the child not by age but by “puberty” (Jigwa state), reportedly for the purposes of early marriages. The Committee also reiterates the earlier concern expressed in 2005 about the wide variety of minimum ages that are very low at state level (CRC/C/15/Add.257, para.

**27.** The Committee urges the State party to ensure that the definition of the child in legislation domesticating the Child Rights Act at state level is in full compliance with that of the Convention, including by amending the recently adopted Child Rights Laws in Akwa-Ibom and Jigwa states. To this end, the Committee urges the State party to intensify its ongoing dialogue with traditional and religious leaders and state authorities to enhance the understanding of the importance of conceptualizing persons under the age of 18 as children with special rights and needs guaranteed under the Convention. The State party is recommended to use the example of the recent polio eradication campaign in this respect.

### ■ Harmful traditional practices

**65.** The Committee expresses serious concern about the extremely high prevalence of early marriages among girls in the northern states and its impact on their enjoyment of other human rights, especially the right to education. In this context, the Committee notes with appreciation the adoption by some states of laws prohibiting the withdrawal of girls from school because of marriage. While noting the multidisciplinary approach adopted by the State party to raise awareness and promote attitudinal change with respect to female genital mutilation (FGM), and that cutting tattoos or marks and female genital mutilation are made punishable offences in the Child Rights Act, the Committee is concerned about the high percentage of women who have undergone female genital mutilation. The Committee regrets the lack of up-to-date information on measures taken by the State party to prevent and eliminate harmful traditional practices, including progress in the implementation of its earlier recommendations (CRC/C/15/Add.257, paras. 54-58).

**66.** The Committee urges the State party, as a matter of priority:

(a) To take prompt measures to address the practice of early marriages in the northern states;

(b) To undertake sensitization programs on the prohibition of early marriages in the Child Rights Act and ensure that state legislation incorporates such prohibition of all children under the age of 18;

(c) To develop and undertake comprehensive awareness-raising programs on the negative implications of early marriage for the girl child’s rights to health, education and development, targeting in particular traditional and religious leaders, parents and state parliamentarians, and the prohibition by law of withdrawal of children from school because of marriage;

(d) To eliminate FGM and other harmful traditional practices, including by enacting legislation to prohibit FGM and to conduct awareness raising programmes for, and involving, parents, women and girls, heads of families, religious leaders and traditional dignitaries.

**37.** The Committee recommends that the State party continue and strengthen its efforts to ensure free and compulsory birth registration for all children. The Committee urges the State party:

(a) To raise public awareness about the importance of birth registration and existing legislation;

(b) To allocate adequate financial, human and other resources to ensure easy access to registration by population in rural areas, including by strengthening ongoing training programs for birth registration personnel and midwives;

(c) To urge midwives to report administratively all births and provide midwives with training on how to undertake such reporting;



## RWANDA

8 July 2013

### RECOMMENDATIONS / CONCLUDING OBSERVATIONS

(d) To amend the Birth, Death (Compulsory Registration) Act No. 69 of 1992 so as to ensure free birth registration regardless of the time of registration and, in the meanwhile, extend the three-year waiver (2005-2008) for payment fees permanently;<sup>837</sup>

#### ■ Harmful practices

The Committee notes as positive that Law No. 42/1988, instituting the Family Code, sets the minimum age of marriage at 21 years. The Committee nevertheless remains concerned about the persistence of early marriages in the State party, particularly in refugee communities. The Committee urges the State party, in collaboration with civil society, to:

- (a) Effectively enforce the Family Code to prevent and prohibit early marriage, including among refugee communities and ensure that perpetrators of such acts are brought to justice;
- (b) Strengthen its strategies for awareness-raising and sensitization of families, traditional or religious leaders, refugee families and the general public in order to encourage a change of attitudes towards harmful practices, such as early marriage; and
- (c) Put in place effective monitoring systems to assess progress towards the eradication of early marriages.

#### ■ Birth registration

While the Committee notes that Law No. 54/2011 relating to the rights and the protection of the child provides for the right to name and nationality, it is concerned that only 63 percent of children were registered with civil authorities and less than 7 percent had birth certificates in 2010 according to the latest Rwanda Demographic and Health Survey. The Committee further notes with concern that:

- (a) Despite efforts to improve birth registration through legislative reforms and birth registration campaigns, children born to refugee parents and children of migrants are still not registered in the State party, partly due to inconsistent implementation of Law No. 14/2008 of 4 June 2008 governing the registration of the population and issuance of the national identity card;
- (b) Birth registration procedures are complicated in the State party and do not facilitate the ready issuance of birth certificates; and
- (c) Law No. 14/2008 imposes penalties, including prison sentences on families who fail to register their children within the first 45 days, which could deter parents or guardians from registering their children and result in the separation of the parents from their children, which is not in the best interests of the child.

The Committee recommends that the State party strengthen its efforts to ensure free and immediate birth registration, including

the issuance of birth certificates for all children, by means of accessible and expeditious registration procedures. The Committee further recommends that the State party:

- (a) Increase availability and access to registry services and strengthen sensitization and training for registration officers on relevant laws to ensure the registration of all children, including refugee children immediately after birth;
- (b) Intensify community sensitization and public awareness of the importance of birth registration, including among refugee populations and in urban areas;
- (c) Amend Law No. 14/2008 in order to remove penalties of imprisonment and all legal and procedural barriers that impede birth registration; and
- (d) Seek technical assistance from the Office of the United Nations High Commissioner for Refugees (UNHCR) and the United Nations Children's Fund (UNICEF) among others, for the implementation of these recommendations.<sup>838</sup>

## SEYCHELLES

8 July 2013

### RECOMMENDATIONS / CONCLUDING OBSERVATIONS

#### ■ Definition of the child (art. 1)

16. The Committee reiterates its previous recommendations and strongly urges the State party to take all necessary measures to harmonize the minimum age of marriage for girls with that for boys, by raising the minimum age of marriage for girls to 18 years, including by separating the review of article 40 of the Civil Status Act from the review of the Act as a whole and expediting its amendment.

#### ■ Civil rights and freedoms (arts. 7, 8 and 13–17)

Rights of the child to a name and nationality, to know and be cared for by his or her parents and to his or her identity  
20. The Committee remains deeply concerned that no law has been enacted to ensure the right of children born out of wedlock to know their biological father and that the State party considers implementing the Committee's recommendations to be difficult owing to sociocultural aspects. The Committee is also concerned that the Citizenship Act does not provide for the acquisition of citizenship of the State party by children born to unknown parents or abandoned by their parents on the territory of the State party, a situation which may render them stateless.

21. Taking note of target 16.9 of the Sustainable Development Goals on providing legal identity for all, including birth registration, and reiterating its previous recommendations (see CRC/C/15/Add.189, para. 31 and CRC/C/SYC/CO/2-4, para. 41), the Committee urges the State party to:

- (a) Urgently revise legislation to ensure that all children born out of wedlock have the legal right to know and maintain contact with both their biological parents;

## SIERRA LEONE

1 November 2016

### RECOMMENDATIONS / CONCLUDING OBSERVATIONS

(b) Introduce legal safeguards for children in the State party who would otherwise be stateless, in line with article 6 of the African Charter on the Rights and Welfare of the Child, and consider ratifying the Convention relating to the Status of Stateless Persons and the Convention on the Reduction of Statelessness;

(c) Seek technical assistance from the Office of the United Nations High Commissioner for Refugees and UNICEF, among others, for the implementation of these recommendations.<sup>839</sup>

#### ■ Harmful practices

22. Despite the huge success of the Government's efforts to include practitioners of female genital mutilation in the fight against submitting children to female genital mutilation, the Committee is seriously concerned that:

(a) Female genital mutilation is still practised and is not prohibited in law for children;

(b) Although the minimum age for marriage is set at 18 years, the Registration of Customary Marriage and Divorce Act 2009 allows for exceptions and child marriage, especially of girls, remains highly prevalent in the State party.

23. In the light of the 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 (2014) on harmful practices, the Committee urges the State party to:

(a) Continue its fight with the assistance of former female practitioners of female genital mutilation to eradicate the practice of female genital mutilation on children nationwide;

(b) Accelerate efforts and programmes to sensitize and assist practitioners of female genital mutilation to find alternative sources of income and encourage them to abandon the practice;

(c) Take concrete and consistent measures, including the harmonization of laws, to prevent and eliminate child marriage and undertake comprehensive awareness-raising campaigns on the negative consequences of child marriage on girls.

#### ■ Civil rights and freedoms (arts. 7, 8 and 13-17) Birth registration

16. Taking note of target 16.9 of the Sustainable Development Goals on providing legal identity for all, including birth registration, the Committee recommends that the State party:

(a) Continue its efforts to register all children, especially those in rural areas;

(b) Ensure the integration of birth registration into the general civil registration reform programme.<sup>840</sup>

## SOUTH AFRICA

27 October 2016

### RECOMMENDATIONS / CONCLUDING OBSERVATIONS

#### ■ Definition of the child (art. 1)

21. The Committee is deeply concerned that the Children's Act, of 2005, sets the minimum age for marriage at 12 years for girls and 14 years for boys and that the Marriage Act, of 1961, and the Recognition of Customary Marriages Act, of 1998, set different conditions for marriages for girls and boys under 18 years of age.

22. The Committee urges the State party to harmonize all its relevant legislation in order to ensure that the minimum age for marriage is established at 18 years for both girls and boys.

#### ■ Harmful practices

39. The Committee is concerned at the high prevalence of harmful practices in the State party, which include child and forced marriage, virginity testing, witchcraft, female genital mutilation, polygamy, violent or harmful initiation rites and intersex genital mutilation. The Committee is also concerned that, although the practice of ukuthwala involving children is considered an "abuse of ukuthwala" and is a crime, as the State party noted during the dialogue, this practice still exists.

40. In the light of its general comment No. 18 (2014) on harmful practices, adopted jointly with the Committee on the Elimination of Discrimination against Women, the Committee urges the State party to:

(a) Ensure that its legislation prohibits all forms of harmful practices carried out on children in the State party, including by, among other things, criminalizing the practice of child and forced marriage and regulating initiation schools;

(b) Develop and adopt an effective national action plan to eliminate such practices;

(c) Ensure the meaningful participation of all stakeholders, including children affected by or at risk of being affected by harmful practices, and their communities, in developing, adopting, implementing and monitoring the implementation of relevant laws and policies;

(d) Guarantee the bodily integrity, autonomy and self-determination of all children, including intersex children, by avoiding unnecessary medical or surgical treatment during infancy and childhood;

(e) Build the capacity of all professional groups working for and with children to prevent, identify and respond to incidents of harmful practices and to eliminate customary practices and rituals that are harmful to children;

(f) Ensure sanctions for perpetrators of harmful practices, including perpetrators of the abuse of ukuthwala, and provide effective remedies to the victims of harmful practices.

#### ■ Birth registration, name and nationality

32. Taking note of target 16.9 of the Sustainable Development Goals on providing legal identity for all, including birth registration, the Committee strongly recommends that the State party:

(a) Review and amend all legislation and regulations relevant to birth registration and nationality to ensure their full conformity with the Convention, including through the removal of requirements that may have punitive or discriminatory impacts on certain groups of children;

(b) Put in place regulations to grant nationality to all children under the jurisdiction of the State party who are stateless or are at risk of being stateless;

(c) Carry out regular monitoring and ensure that measures adopted in such legislation, regulations and guidelines guarantee the birth registration of all children in the State party, including non-nationals;<sup>841</sup>

## SWAZILAND

16 October 2006

### RECOMMENDATIONS / CONCLUDING OBSERVATIONS

#### ■ Definition of the child (art. 1)

23. The Committee is concerned at the lack of clarity under the common law and the customary law in the State party regarding the definition of the child and regarding the minimum age for marriage.

24. The Committee recommends that the State party develop and implement a clear definition of the child in accordance with article 1 of the Convention on the Rights of the Child, to expedite the preparation, adoption and enactment of the Marriage Bill, which intends to set the minimum age for marriage at 18 years for both boys and girls, and to prevent the practice of early marriages.

#### ■ Birth registration

34. The Committee notes with appreciation the various efforts undertaken by the State party to improve birth registration but remains concerned at the considerable number of children not registered at birth (or later).

35. In the light of article 7 of the Convention, the Committee recommends that the State party strengthen and further develop measures to ensure that all children born within the national territory are registered by, inter alia, making birth registration easy and free of charge and introducing mobile units, especially in rural areas. The Committee further urges the State party to proceed with the registration of those children who have thus far not been registered.<sup>842</sup>

## UGANDA

23 November 2005

### RECOMMENDATIONS / CONCLUDING OBSERVATIONS

#### ■ Age of marriage

28. The Committee is concerned that the different marriage laws do not conform to the definition of a child as contained in the Constitution, the Children's Act and the Convention.

29. The Committee recommends that the State party fully enforce the age of marriage set out in the law for all forms of marriage and for both boys and girls. It also recommends that the State party expedite its reform of the marriage laws undertaken by the Uganda Law Reform Commission. It further recommends that the State party undertake sensitization campaigns, especially among local traditional leaders, on the negative impact that early and forced marriage has, particularly on girls.<sup>843</sup>

## UNITED REPUBLIC OF TANZANIA

3 March 2005

### RECOMMENDATIONS / CONCLUDING OBSERVATIONS

#### ■ Definition of the child (art. 1 of the Convention)

23. The Committee is concerned that the minimum age for marriage is set at 18 for boys and 15 for girls and that exceptions for marriage at even younger ages for boys and girls are possible.

24. The Committee encourages the State party to revise its legislation in order to ensure that the minimum age for marriage is established as 18 for both girls and boys, and to take all necessary measures to eliminate child marriages, in line with the State party's obligations under the Convention and the African Charter on the Rights and Welfare of the Child.

#### ■ Harmful practices

42. The Committee is deeply concerned about the persistence of forced and early marriages of girls, and to lesser extent of boys, in the State party, sometimes even before they reach puberty. Such early marriages tend to occur particularly in poor areas and are reportedly due to religious and customary laws. The Committee is also concerned that despite the Sexual Offences Special Provisions Act (1998) criminalizing all sexual activity with girls below the age of 18, marital rape is not prohibited once the married child reaches 15 years. The Committee also notes with concern that being married is one of the grounds for exclusion from school.

43. With reference to general comment No. 18 (2014) on harmful practices, adopted jointly with the Committee on the Elimination of Discrimination against Women, the Committee urges the State party, in collaboration with civil society, to take firm measures,

## ZAMBIA

14 March 2016

### RECOMMENDATIONS / CONCLUDING OBSERVATIONS

#### ■ Definition of the child (art. 1)

23. The Committee welcomes that the new Constitution (Amendment) Act defines a child as any person who has not attained the age of 18. However, the Committee is concerned that despite this and although the Marriage Act establishes the legal age of marriage as 21 years of age, there is still a persistent practice of child marriage in the State party.

24. The Committee recommends that the State party:

(a) Take all necessary measures to expedite the adoption of the Bill of Rights and the Children's Code Bill in order to implement the definition of the child as any person who has not attained the age of 18 in accordance with the new Constitution and article 1 and other related principles and provisions of the Convention and to implement in practice the minimum age of marriage at 18 years;

(b) Adopt and implement the seven bills drafted under the criminal and correctional laws and repeal and replace the Juveniles Act with the Child Justice Administration Act;

(c) Provide adequate human, technical and financial resources for the review and audit process of child related legislation.

#### ■ Harmful practices

39. The Committee is concerned about the widespread practice of child marriage in the State party.

40. The Committee recommends that the State party disseminate the Marriage Act widely at the local level, particularly among traditional leaders, and undertake comprehensive awareness-raising campaigns on the provisions on the minimum age of marriage and on the negative consequences of child marriage on girls, targeting in particular parents, teachers and community leaders.

#### ■ Birth registration

31. The Committee notes the measures that the State party put in place to promote free birth registration in the country. However, it remains concerned that the sub-system of birth registration has still not been developed and does not feed into the Integrated National Registration System. The Committee is also concerned that official registration is still not systematic, concerned about the low number of birth registration and the low rate

including in the legislation, to prevent and prohibit forced and child marriage and ensure that marital rape is criminalized. The Committee also recommends that the State party raise awareness among families, traditional and/or religious leaders and the general public and sensitize them about the negative consequences of child marriage and the importance of education. The Committee also encourages the State party to put in place an effective monitoring system to assess progress towards the eradication of child marriage.<sup>844</sup>

of possession of a birth certificate, particularly in the rural areas, and concerned that groups of children, such as children born at home and refugee children, may be excluded.

32. The Committee recommends that the State party:

(a) Strengthen its efforts to develop and implement free birth registration procedures and issuance of birth certificates with a special focus on children in rural areas and marginalized groups of children, such as refugee children;

(b) Strengthen and expand mobile birth registration to reach universal coverage, particularly for registration of children in rural areas, refugee children and those who have never been registered;

(c) Take measures to decentralize the birth registration system and provide adequate human, technical and financial resources so that birth certificates can be processed and issued at the district and provincial levels;

(d) Increase public awareness about the importance of birth registration and the process by which children are registered.<sup>845</sup>

## ASIA

## BANGLADESH

30 October 2015

### RECOMMENDATIONS / CONCLUDING OBSERVATIONS

#### ■ Definition of the child (art. 1)

22. The Committee notes with appreciation that the Children Act of 2013 sets the minimum age of marriage at 18. Despite the assurances given by the delegation, the Committee is concerned about a new draft law that, without specifying the minimum age, would grant judges discretion to authorize marriages of children below the age of 18.

23. The Committee urges the State party to refrain from taking any legislative measure likely to reduce the age of 18 as the minimum age of marriage, as well as to prosecute violators who authorize the marriage of persons below 18 and those who forge official documents to raise the age of the child.

#### ■ General principles (arts. 2, 3, 6 and 12) Non-discrimination

24. While noting the State party's efforts to combat discrimination, the Committee reiterates its previous concern that discrimination against certain groups of children, particularly girls, children with disabilities, children of ethnic and religious minorities, in particular Dalit and indigenous children, children living in rural areas, refugee and asylum-seeking children and children in street situations still exists in practice (see CRC/C/BGD/CO/4, para. 32).

**25.** The Committee reiterates its previous recommendation (ibid., para. 33) and urges the State party to adopt a comprehensive strategy to eliminate de facto discrimination against all groups of children in marginalized and disadvantaged situations and ensure the implementation of all legal provisions in full compliance with article 2 of the Convention.

**26.** The Committee recognizes the rich culture and traditions of the State party and their importance in daily life. However, it expresses its serious concern at the persistence of adverse cultural norms, practices and traditions, as well as deep-rooted stereotypes regarding the roles and the place of children, in particular girls, in society. Such stereotyping contributes to the persistence of violence against children and harmful practices, including child marriage.

**27.** The Committee recommends that the State party take measures to eliminate stereotypes that discriminate against children. Such measures should include concerted efforts, within a clear time frame and in collaboration with civil society, the education system, the media and traditional and religious leaders, to educate and raise awareness at all levels of society.

....

#### ■ Harmful practices

**44.** The Committee is deeply concerned that although the minimum age for marriage is set at 21 for boys and 18 for girls, child marriage, especially of girls, remains highly prevalent in the State party.

**45.** The Committee urges the State party to ensure that the minimum age of marriage set in the Children Act is applied. It also recommends that the State party:

**(a)** Develop awareness-raising campaigns and programmes on the harmful effects of early marriage on the physical and mental health and well-being of girls, targeting households, local authorities, religious leaders and judges and prosecutors;

**(b)** Establish protection schemes for victims of child and forced marriage who file a complaint;

**(c)** In the light of 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), take active measures to put an end to harmful practices against children in the State party.

#### ■ Civil rights and freedoms (arts. 7, 8 and 13-17) Birth registration

**34.** While noting with appreciation the amendment to the Birth and Death Registration Act, which provides for the establishment of the Office of the Registrar General, the Committee is concerned that this permanent structure is not yet functional. It also remains concerned that despite the introduction of an online birth registration system the registration rate in 2013 remained at 37 per cent for children under the age of 5, and at less than 2 per cent for the registration of children within 45 days from birth as required by the law.

**35.** The Committee urges the State party to:

**(a)** Expedite the operation of the Office of the Registrar General, in order to guarantee birth registration and the prompt issuance of birth certificates;

**(b)** Take all measures necessary to increase the birth registration rate, including by establishing mobile registration offices, in particular in rural areas, and undertaking a campaign aimed at registering all children who have not yet been registered and who do not have birth certificates;

**(c)** Promote awareness of the importance of birth registration among parents and relevant authorities through regular mass campaigns and provide information on the procedures for birth registration and the rights and entitlements deriving from such registration.<sup>846</sup>

BRUNEI  
DARUSSALAM

24 February 2016

## RECOMMENDATIONS / CONCLUDING OBSERVATIONS

#### ■ Definition of the child (art. 1)

**23.** The Committee remains deeply concerned at the very low minimum age for marriage, which is 14 under customary law, 15 for ethnic Chinese girls and not expressly defined for Muslims.

**24.** The Committee urges the State party to review and amend its legislation to set the minimum age for marriage to 18 for both boys and girls, regardless of their ethnic and/or religious group.

**42.** In line with 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), the Committee urges the State party to:

**(a)** Fully adopt legislation to fully prohibit and criminalize the practice of female genital mutilation, including female circumcision and cutting, in all its forms;

**(b)** With the full participation of civil society and women and girls who are victims of female genital mutilation, set up awareness-raising campaigns and educational programmes on the harmful impact of female genital mutilation on the physical and psychological health of the girl child and ensure that those campaigns and programmes are systematically and consistently mainstreamed and target all segments of society, both women and men, government officials, families and all religious and community leaders;

**(c)** Provide physical and psychological recovery programmes for victims of female genital mutilation, as well as establish reporting and complaint mechanisms accessible to girls who have been victims or fear becoming victims of the practice.

**43.** The Committee is deeply concerned about the high prevalence

of child marriages among girls and about the negative effects of such marriages on young girls.

**44.** The Committee urges the State party to take effective measures to prevent and combat the practice of child marriage, including all necessary legislative measures, as well as to develop awareness-raising campaigns and programmes on the harmful effects of early marriage on the physical and mental health and well-being of girls, targeting households, local authorities, religious leaders, judges and prosecutors.

#### ■ Civil rights and freedoms (arts. 7, 8 and 13-17) Birth registration

**31.** The Committee remains concerned that, despite measures taken by the State party to ensure the registration at birth of all children, there are considerable disparities in birth registration in rural and urban areas, and that children in migration circumstances, including irregular migration, as well as children in Kampong Ayer (the "water village"), are not always registered at birth.

**32.** The Committee reiterates its previous recommendation (see CRC/C/15/Add.219, para. 34) and urges the State party to intensify its efforts in taking all the measures necessary to ensure the registration at birth of all children in both rural and urban areas; children in migration circumstances, including irregular migration; and children in Kampong Ayer.<sup>847</sup>

impeding the full implementation of the Act, such as the prevalence of social norms and traditions, the existence of different Personal Status Laws establishing their own minimum age for marriage applicable to their respective religious community and the lack of awareness of the Act by law enforcement officers. The Committee is also concerned about the prevalence of other harmful practices that are detrimental to girls, such as dowries and the practice of devadasi.

**52.** The Committee urges the State party to ensure the effective implementation of the Prohibition of Child Marriage Act, 2006, including by emphasizing that the Act supersedes the different religious-based Personal Status Laws. The Committee also recommends that the State party take the necessary measures to combat the requirement of dowries, child marriage and the practice of devadasi, including by conducting awareness-raising programmes and campaigns with a view to changing attitudes and instituting counselling and reproductive education, with a view to preventing child marriages, which are harmful to the health and well-being of girls.

#### ■ Civil rights and freedoms (arts. 7, 8 and 13-17) Birth registration

**39.** The Committee expresses its concern at the generally low rate of birth registration as well as the disparities in birth registration rates across the State party and the insufficient awareness among the relevant authorities and the population about the importance of universal birth registration. The Committee is also concerned at the discordance between the birth registration rate and the issuance of birth certificates.

**40.** The Committee strongly urges the State party to:

**(a)** Expedite the adoption of the amendments to the Registration of Births and Deaths Act, 1969; make it accessible to the population; and guarantee both birth registration and prompt issuance of birth certificates;

**(b)** Take all necessary measures to increase the birth registration rate, including by establishing mobile registration offices in particular in rural areas and undertaking a campaign aimed at registering all children who have not yet been registered and who do not have birth certificates;

**(c)** Promote awareness of the importance of birth registration among parents and relevant authorities through regular mass campaigns and provide information on the procedures for birth registration and the rights and entitlements deriving from birth registration.<sup>848</sup>

INDIA

7 July 2014

## RECOMMENDATIONS / CONCLUDING OBSERVATIONS

#### ■ Abuse and neglect

**49.** The Committee reiterates its great concern at reports of widespread violence, abuse, including sexual abuse, and neglect of children in the State party (CRC/C/15/Add.228, para. 50), including in the family, alternative care institutions, schools and the community. It expresses serious concern that:

**(a)** Under the Criminal Law (Amendment) Act, 2013, sexual abuse of married girls over the age of 15 is not a criminal offence, which is inconsistent with the Protection of Children from Sexual Offences Act, 2012;

...

**50.** In line with its previous recommendations (CRC/C/15/Add.228, para. 51), the Committee urges the State party to:

**(a)** Ensure that all forms of sexual abuse of girls under 18 years of age, including marital rape, are fully criminalized.

#### ■ Harmful practices

**51.** The Committee is deeply concerned at the high prevalence of child marriages in the State party, despite the enactment of the Prohibition of Child Marriage Act, 2006. The Committee is concerned at barriers

### ■ Definition of the child (art. 1)

**29.** The Committee shares the State party's view that laws which are not consistent with the definition of the child under article 1 of the Convention should be reviewed to ensure full compliance with the Convention. However, the Committee is concerned at the existence of disparities in national laws. For example, the Children and Young Persons (Employment) Act 1966 (Act 350) defines a child as any person who has not completed his or her fourteenth year, whereas the Child Act 2001 (Act 611) defines a child as a person under the age of 18. The Committee also notes with concern the contradictions between the provisions of the civil law and the Syariah law: for example, the Law Reform (Marriage and Divorce) Act 1976 (Act 164) and the Islamic Family Law Act (Federal Territory) 1984 (IFLA) define the minimum age for marriage inconsistently.

**30.** The Committee recommends that the State party take all necessary measures to harmonize the definition of the child, including the terminology used, in the national laws so as to eliminate inconsistencies and contradictions.

### ■ Civil rights and freedoms (arts. 7, 8, 13-17, 19 and 37 (a)) Birth registration

**44.** While commending the State party on its efficient birth registration system, including the use of mobile birth registration units, the Committee notes with concern that delays in birth registrations are subject to additional fees. It also notes with concern that non-Malaysian children born in Malaysia, such as asylum-seeking and refugee children as well as children of undocumented migrant workers, children of single mothers and children born in remote areas of the country, are at risk of not being registered at birth.

**45.** In the light of article 7 of the Convention, the Committee recommends that the State party continue to implement an efficient and at all stages free-of-charge birth registration system, which covers its territory fully, and undertake awareness-raising campaigns to reach the most remote areas of its territory. The Committee recommends that the State party improve the birth registration system of non-Malaysian children born in Malaysia, children of single mothers and children born in remote areas of the country. Meanwhile, children without official documentation should be allowed to access basic services, such as health and education, while waiting to be properly registered.<sup>849</sup>

### ■ Definition of the child (art. 1)

**16.** While it welcomes the 2013 amendments to the Sindh Child Marriage Restraint Act to increase the marriage age for both boys and girls to 18 years, the Committee remains concerned about the disparity between the minimum legal age for marriage for boys (18 years) and that for girls (16 years) in all other provinces, and that the Zina and Hadd Ordinances (1979) provide a definition of a "girl child" that only covers girls up to the age of 16 years or puberty. It is also concerned about legal inconsistencies concerning the definition of a child at the federal, provincial and territorial levels, and disparities in that regard between secular and sharia law.

**17.** The Committee reiterates its previous recommendation that the State party ensure the full harmonization of its legislation as regards the definition of the child so as to define a child as any human being below the age of 18 years. In particular, it recommends amending the Zina and Hadd Ordinances (1979) and the Child Marriages Restraint Acts in all its provinces, in order to align the age of marriage for boys and girls by raising the minimum age of marriage for girls to 18 years.

### ■ Harmful practices

**38.** The Committee welcomes the Prevention of Anti-Women Practices (Criminal Law Amendment) Act 2011, which lays down stricter punishments for traditional practices such as vanni, swara or budla-i-sulha, and the Khyber Pakhtunkhwa Elimination of the Custom of Ghag Act 2013, which criminalizes the practice of forced marriages in Khyber Pakhtunkhwa province. However, the Committee is concerned about the generally low level of public awareness of such laws, in particular among families and children, and the persistent practice of child marriage throughout the country. The Committee is particularly concerned that, although illegal, informal judicial systems (local jirga) continue to operate and take decisions about children's lives in violation of their rights. Furthermore, the Committee remains concerned about other inhuman customs and rituals threatening the lives and security of girls, such as burnings, acid attacks, mutilations, stripping and sexual harassment.

**39.** The Committee urges the State party to immediately:

**(a)** Enforce legislation to prohibit child marriage throughout the country and investigate and prosecute persons, including members of local councils (jirga), who endorse harmful practices in violation of the State party's laws and its international obligations;

**(b)** Develop awareness-raising campaigns and programmes on the harmful impact of child marriage on the physical and mental health and well-being of girls, targeting families, local authorities, religious and community leaders, judges and prosecutors and inform children, especially girls, about their rights under the Convention, including the right not to be subjected to forced marriage;

**(c)** In the light of 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), take active measures to put an end to harmful practices against children, such as burnings, acid attacks, mutilations, stripping and sexual harassment and bring perpetrators to justice.

### ■ Birth registration

**28.** The Committee welcomes the birth registration units and the optional chip-based card system introduced by the State party to encourage birth registration in all provinces. Nevertheless, it remains concerned that only around 30 per cent of children are registered at birth, with the lowest registration rates in Balochistan and the Federally Administered Tribal Areas. The Committee is particularly concerned about the low level of public awareness, the complicated procedures and high fees for birth registration and the lack of effective measures to ensure the birth registration of children belonging to marginalized and disadvantaged groups, including children born out of wedlock and refugee and internally displaced children.

**29.** Taking note of target 16.1 of the Sustainable Development Goals on providing a legal identity for all, including through birth registration, the Committee strongly urges the State party to:

**(a)** Promote the timely registration of births, especially among marginalized and disadvantaged communities, and educate the public at large about the consequences of non-registration;

**(b)** Remove all fees and simplify the procedures related to birth registration throughout the country, including through the introduction of mobile registration units;

**(c)** Undertake a survey to identify children lacking birth registration or identity documents and take immediate administrative and judicial measures to ensure retroactive birth registration and the issuance of documents for those children;

**(d)** Ensure that children lacking identity documents are not refused access to education, health and public services.<sup>850</sup>

SINGAPORE

4 May 2011

## RECOMMENDATIONS / CONCLUDING OBSERVATIONS

### ■ Definition of the child (art. 1)

**27.** The Committee welcomes the amendment of the Administration of Muslim Law Act (AMLA), which raised the minimum age for marriage from 16 to 18 years for Muslim girls. However, the Committee regrets that despite its recommendation in its previous concluding observations (para. 22), the Children and Young Persons Act (as amended by Act 15 of 2010) still does not cover children between the ages of 16 and 18.

**28.** The Committee recommends that the State party take all necessary measures to harmonize the definition of the child in the national laws, in line with the Convention. The Committee further recommends that the State party extend the Children and Young Persons Act to cover all persons under the age of 18.<sup>851</sup>

SRI LANKA

2 March 2018

## RECOMMENDATIONS / CONCLUDING OBSERVATIONS

### ■ Definition of the child (art. 1)

**14.** The Committee recommends that the State party make the necessary legal amendments to establish an overarching definition of the child and eliminate the inconsistencies regarding the age of majority, ensuring that it is raised to 18 years in every piece of legislation, without any possibility for exceptions.

**15.** Noting that, under the Muslim Marriage and Divorce Act, girls aged under 12 years may be married with the permission of a quazi (Muslim judge ruling on family matters), the Committee urges the State party to expeditiously increase the minimum age of marriage for all to 18 years of age without exceptions, including by amending article 16 of the Constitution in this regard.

### ■ Harmful practices

**26.** The Committee recommends that the State party:

**(a)** Ban, as currently under discussion, female (circumcision) for girls, a form of genital mutilation practised by the Dawoodi Bohra community and carry out awareness-raising activities, including campaigns, on the patriarchal nature of this practice and its negative effects on health;

**(b)** In the light of the prevalence of child marriage, including within the Vedda community, take all necessary steps to eliminate the practice of marriage under the age of 18 years.

### ■ Civil rights and freedoms (arts. 7, 8 and 13–17) Birth registration/Name and nationality

**19.** In spite of the high rate of birth registration in the State party, a significant number of births remain unregistered among certain marginalized groups. The Committee, taking note of target 16.9 of the Sustainable Development Goals on providing legal identity for all, including birth registration, recommends that the State party further raise awareness on the importance of birth registration and simplify the procedure, including by creating mobile registration structures, in particular for those children who were not registered within established timelines.<sup>852</sup>



### ANTIGUA AND BARBUDA

30 June 2017

### RECOMMENDATIONS / CONCLUDING OBSERVATIONS

#### ■ Definition of the child (art. 1)

18. The Committee is concerned that the Marriage Act includes exceptions that allow marriage from the age of 16 years.

19. The Committee recommends that the State party amend the Marriage Act to remove exceptions that allow marriage for those under the age of 18 years.<sup>853</sup>

### THE BAHAMAS

31 March 2005

### RECOMMENDATIONS / CONCLUDING OBSERVATIONS

#### ■ Nil references to child marriage<sup>854</sup>

### BARBADOS

3 March 2017

### RECOMMENDATIONS / CONCLUDING OBSERVATIONS

#### ■ Definition of the child (art. 1)

19. The Committee is concerned that although the minimum age of marriage is 18 years, children may still be married from the age of 16 with the consent of their parents.

20. The Committee recommends that the State party amend its Family Law Act to remove any exception to the minimum age of marriage, which is set at 18 years.

#### ■ Nationality

29. The Committee welcomes the commitment made by the State party during the universal periodic review in 2013 to amend national legislation to reflect the fact that any child born outside the State party to a citizen is entitled to citizenship by descent. However, the Committee is concerned that the Constitution and Citizenship Act contain provisions that discriminate on the basis of the gender and marital status of the parents and do not fully safeguard against children being stateless.

### BELIZE

31 March 2005

### RECOMMENDATIONS / CONCLUDING OBSERVATIONS

#### ■ Definition of the child (art. 1)

23. The Committee is deeply concerned about the practice of early marriages and the low minimum age for marriage (14 years), criminal liability (7 years), admission to hazardous work (14 years) and to part time work (12 years). With regard to the age limit for sexual consent (16 years; females only), the Committee is concerned that persons under 18 years are not allowed to have any medical counselling, including counselling on reproductive health, without parental consent. The Committee welcomes the information from the Government's delegation that efforts are being made to improve the situation.

24. The Committee recommends that the State party continue and strengthen its efforts:

(a) To raise the minimum age of criminal responsibility to an internationally acceptable level;

(b) To raise the minimum age for admission to hazardous work to 18 years;

(c) To raise the minimum legal age of marriage for both girls and boys and to undertake awareness raising campaigns concerning the many very negative consequences resulting from early marriages in order to reduce and prevent this practice;

(d) To regulate the possibility for children of a certain age to seek and receive legal and medical counselling without parental consent;

(e) To make all provisions for minimum ages more consistent with the provisions and principles of the Convention.

#### ■ Civil rights and freedoms Birth registration

32. While noting the provisions of the Registration of Births and Deaths Act (chapter 157 of the Laws of Belize), which requires registering the birth of children, the Committee remains concerned about the shortcomings in the implementation of this Act and the concrete shortcomings in the birth registration system. The birth registration system should be equally accessible to all parents in the whole territory of the State party. The Committee is also concerned about the unregistered children in the State party and the consequences of non registration on access by children to education, health and other services.

33. The Committee recommends that the State party implement

an efficient and at all stages free of charge birth registration system, which covers its territory fully, including through introducing mobile birth registration units and awareness raising campaigns to reach the most remote areas of its territory. The Committee requests the State party to pay particular attention to the need for improved access to an early birth registration by immigrant parents and parents whose children were born out of wedlock. In addition, the Committee recommends that the State party establish cooperation between the birth registration authority and maternity clinics and hospitals, midwives and traditional birth attendants in order to achieve better birth registration coverage in the country. Meanwhile, children whose births have not been registered and who are without official documentation should be allowed to access basic services, such as health and education, while waiting to be properly registered.<sup>855</sup>

## GRENADA

22 June 2010

### RECOMMENDATIONS / CONCLUDING OBSERVATIONS

- Nil references to child marriage
- Name, Identity and Birth registration

**30.** The Committee reiterates its previous concern (CRC/C/15/Add.121, para. 16) that some children are still not being registered at birth and are not given a name until their baptism, which could be three or four months after their birth and regrets that no initiatives have been put in place to address this. Furthermore, the Committee is concerned at reports of the widespread practice whereby a baptism certificate must be presented before a child can be given a birth certificate. The Committee also notes with concern that the father's name is not put on the birth certificate unless he is present for the registration of the birth.

**31.** The Committee recommends that the State party take the necessary measures to ensure that all children are registered at birth. The Committee also urges the State party to ensure that a baptism certificate is not a prerequisite for a birth certificate and that the name of the father is included on the child's birth certificate.<sup>858</sup>

## CANADA

6 December 2012

### RECOMMENDATIONS / CONCLUDING OBSERVATIONS

- Harmful practices

**50.** The Committee is concerned that there is inadequate protection against forced child marriages, especially among immigrant communities and certain religious communities such as the polygamous communities in Bountiful, British Columbia.

**51.** The Committee recommends that the State party take all necessary measures, including legislative measures and targeted improvement of investigations and law enforcement, to protect all children from underage forced marriages and to enforce the legal prohibition against polygamy.<sup>856</sup>

## GUYANA

18 June 2013

### RECOMMENDATIONS / CONCLUDING OBSERVATIONS

- Birth registration

**30.** The Committee welcomes the State party's Presidential Declaration on Universal Birth Registration of October 2011 and the Rights of the Child Commission's recommendations, in its Assessment of Legislation, Policy and Practice report (2011), for achieving this goal with equity. However, the Committee is concerned that for children in the hinterland/remote areas, obtaining an official birth certificate after birth registration remains difficult.

**31.** The Committee recommends that the State party further raise awareness on the importance of birth registration and birth certificates. Furthermore, the Committee urges the State party to further improve measures for ensuring all children are able to have access to this, particularly in rural and hinterland areas.<sup>859</sup>

## DOMINICA

30 June 2004

### RECOMMENDATIONS / CONCLUDING OBSERVATIONS

- Nil references to child marriage
- Birth registration

**26.** The Committee notes with appreciation the various actions taken by the State party. However, the Committee is concerned about children who have not been named and registered in accordance to article 7 of the Convention.

**27.** The Committee urges the State party to increase its efforts, including legislative measures and awareness-raising campaigns, to ensure the registration of all children at birth, in accordance with article 7 of the Convention.<sup>857</sup>

## JAMAICA

10 March 2015

### RECOMMENDATIONS / CONCLUDING OBSERVATIONS

- Nil references to child marriage
- Birth registration/name and nationality

28. The Committee commends the State party for the very high rate of birth registration in the State party. The Committee is concerned, however, about the number of children without birth certificates, especially in rural areas.

29. The Committee recommends that the State party strengthen efforts to ensure that all children are provided with birth certificates free of charge, including through mobile units and outreach programmes in remote areas of the State party.<sup>860</sup>

## SAINT LUCIA

8 July 2014

### RECOMMENDATIONS / CONCLUDING OBSERVATIONS

- Nil references to child marriage<sup>861</sup>

## ST. KITTS AND NEVIS

24 August 1999

### RECOMMENDATIONS / CONCLUDING OBSERVATIONS

- Nil references to child marriage<sup>862</sup>

## ST. VINCENT AND THE GRENADINES

13 March 2017

### RECOMMENDATIONS / CONCLUDING OBSERVATIONS

- Definition of the child (art. 1)

18. The Committee is seriously concerned that the age of marriage under the Marriage Act (1926) is 15 years for girls and 16 years for boys.

19. The Committee urges the State party to expeditiously take measures to amend the Marriage Act (1926) to raise the minimum age of marriage to 18 years for girls and boys, as part of the ongoing process of harmonizing national legislation with the Convention.<sup>863</sup>

## TRINIDAD AND TOBAGO

17 March 2006

### RECOMMENDATIONS / CONCLUDING OBSERVATIONS

- Nil references to child marriage<sup>864</sup>

## EUROPE

## CYPRUS

24 September 2012

### RECOMMENDATIONS / CONCLUDING OBSERVATIONS

- Nil references to child marriage<sup>865</sup>

## MALTA

18 June 2013

### RECOMMENDATIONS / CONCLUDING OBSERVATIONS

- Definition of the child (art. 1 of the Convention)

The Committee is concerned that in numerous areas of legislation, such as the provision of child welfare services and support, the State party does not provide for the coverage of children above the age of 16 years, resulting in a defacto definition of the child being a person under 16 years of age in these cases. Furthermore, the Committee is concerned that the age of marriage is set at 16 years. The Committee urges the State party to take all necessary measures to harmonize the definition of the child in its national legislation and the implementation thereof with the Convention . Furthermore, the Committee urges the State party to raise the minimum age of marriage to 18 years .

- Birth registration and nationality

The Committee is concerned that there continue to be cases of children, including those in irregular migration situations, who are not provided with birth registration. Furthermore, the Committee is concerned that there is no provision in the Maltese Citizenship Act for the acquisition of citizenship by a child born in the State party who would otherwise be stateless. The Committee urges the State party to ensure that all children born in its territory are registered at birth, regardless of the status of their parents, with particular attention to children in single-parent families

and/or irregular migration situations. Furthermore, the Committee urges the State party to ensure that a child born in the State party to parents who are foreigners, but unable to pass on their nationality, or to parents who themselves are stateless or whose nationality is unknown, is granted citizenship.<sup>866</sup>

UNITED  
KINGDOM

12 July 2016

## RECOMMENDATIONS / CONCLUDING OBSERVATIONS

### ■ Definition of the child (art. 1 of the Convention)

20. The Committee recommends that the State party raise the minimum age of marriage to 18 years across all devolved administrations, overseas territories and Crown dependencies.

### ■ Harmful practices

46. The Committee welcomes the enactment of the Serious Crime Act (2015) in England and Wales, which enables the courts to issue protection orders to protect potential or actual child victims of female genital mutilation. However the Committee is concerned at:

(a) The significant number of children who are affected by harmful practices, including female genital mutilation, and the forced marriage of girls and boys aged 16 and 17 years in some parts of the State party;

(b) Cases of medically unnecessary surgeries and other procedures on intersex children before they are able to provide their informed consent, which often entail irreversible consequences and can cause severe physical and psychological suffering, and the lack of redress and compensation in such cases.

47. With reference to its general comment No. 18 (2014) on harmful practices, the Committee recommends that the State party:

(a) Take effective measures to ensure that marriage of children aged 16 and 17 years takes place only in exceptional circumstances and is based on the full, free and informed consent of the concerned children;

(b) Continue and strengthen preventive and protection measures to address the issue of harmful practices, including the collection of data, the training of relevant professionals, awareness-raising programmes, the provision of protection and care to the child victims and the prosecution of those found guilty of perpetrating such acts;

(c) Ensure that no one is subjected to unnecessary medical or surgical treatment during infancy or childhood, guarantee bodily integrity, autonomy and self determination to children concerned and provide families with intersex children with adequate counselling and support;

(d) Provide redress to the victims of such treatment;

(e) Educate medical and psychological professionals on the range of sexual, and related biological and physical diversity and on the consequences of unnecessary interventions for intersex children.<sup>867</sup>

## THE PACIFIC

AUSTRALIA

28 August 2012

## RECOMMENDATIONS / CONCLUDING OBSERVATIONS

■ Nil references to child marriage<sup>868</sup>

## RECOMMENDATIONS / CONCLUDING OBSERVATIONS

### ■ Definition of the child (art. 1 of the Convention)

20. The Committee welcomes that the State party has raised the age of marriage from 16 to 18 years for girls, making it the same as for boys, through the Marriage Act (Amendment) Decree 2009. However, the Committee is concerned that, in spite of the definition of the child in the Constitution as a person under the age of 18, some of the State party's legislation is not yet in full conformity with the Convention.

21. The Committee recommends that the State party fully harmonize its domestic legislation regarding the definition of the child with its own Constitution, and thus with the Convention.

### ■ Harmful practices

45. The Committee is very concerned about the prevalence of arranged marriages of girls of 15 years of age, particularly in Indo-Fijian communities.

46. The Committee recommends that the State party amend legislation to ensure criminalization and prosecution of early and forced marriage, and set up awareness raising and educational programmes about the harmful effects of early and forced marriage.

### ■ Birth registration/name and nationality

24. The Committee welcomes the State party's efforts in tackling birth registration and notes with appreciation that the new Constitution guarantees the right to birth registration and citizenship. However, the Committee regrets that birth registration is still not free and that late registration is penalized with a fee. The Committee is furthermore concerned about reports indicating a decline of birth registration in the past two years, in particular in remote islands.

25. The Committee reiterates its previous recommendation (CRC/C/15/Add.89, para. 35) to launch awareness-raising programmes, regarding the parents' duty to register newborn children. In so doing, the Committee furthermore recommends that the State party:

(a) Take all the necessary measures to ensure that registration fees, including fees for late registration, are permanently abolished;

(b) Place particular focus on groups of children whose birth registration remains a serious concern, including continuing to develop measures to increase birth registration in remote areas, and among children from minority groups.<sup>869</sup>

## KIRIBATI

29 September 2006

### RECOMMENDATIONS / CONCLUDING OBSERVATIONS

- Nil references to child marriage
- Birth registration

The Committee is concerned that registration at birth registration is not a systematic procedure and that a large number of children in the State party are not registered. The Committee recommends that the State party strengthen its efforts to ensure that all children are registered at birth to ensure the full enjoyment of their rights. The Committee also recommends that the State party take measures to promote the importance of birth registration for all children, including through awareness-raising initiatives and access to free and effective registration technology in Government offices.<sup>870</sup>

## NAURU

28 October 2016

### RECOMMENDATIONS / CONCLUDING OBSERVATIONS

- Nil references to child marriage<sup>871</sup>

## NEW ZEALAND

21 October 2016

### RECOMMENDATIONS / CONCLUDING OBSERVATIONS

- Definition of the child (art. 1)

14. The Committee recommends that the State party take all measures necessary to address inconsistencies in national legislation concerning the definition of the child, including by defining the minimum age of marriage at 18 years for both girls and boys and extending the scope of the Children, Young Persons and Their Families Act 1989 to cover all persons under the age of 18.

## PAPUA NEW GUINEA

26 February 2004

### RECOMMENDATIONS / CONCLUDING OBSERVATIONS

- Harmful practices

25. The Committee recommends that the State party:

(a) Develop awareness-raising campaigns and programmes targeting households, local authorities, religious leaders and judges and prosecutors, on the harmful effects of early marriage on the physical and mental health and well-being of children, especially girls;<sup>872</sup>

- Definition of the child

24. The Committee is concerned about the difference in the minimum legal age of marriage for girls (16 years) and boys (18 years). It is also concerned that despite these provisions marriages at age 14 and 15 years are permitted.

25. The Committee recommends that the State party raise the minimum legal age of marriage for girls to that of boys and take measures to prevent early marriages.

- Birth registration

33. The Committee is concerned that the majority of parents in the State party are not aware of the importance of birth registration. It is also concerned at the lack of a comprehensive decentralized birth registration system and at the fact that parents have to pay fees to get a birth certificate for their children.

34. In the light of article 7 of the Convention, the Committee urges the State party to increase its efforts to ensure that all children are registered at birth, including through awareness-raising campaigns, and to facilitate procedures of birth registration, notably by suppressing any fees and decentralizing the system. The Committee also recommends that the State party take measures to register those who were not registered at birth.<sup>873</sup>

## SAMOA

12 July 2016

### RECOMMENDATIONS / CONCLUDING OBSERVATIONS

- Definition of the child (art. 1)

22. The Committee is concerned that under the Marriage Ordinance Act 1961 the minimum age for marriage is set at 18 years for boys and at 16 years for girls and that exceptions allowing for boys and girls to marry at even younger ages are sometimes made. The Committee is also concerned that the Young Offenders Act of 2007 applies only to persons between 10 and 17 years of age and is thus inconsistent with the definition of the child under the Convention.

**23.** The Committee encourages the State party to revise its legislation in accordance with the Samoa Law Reform Commission's recommendations in the Child Care and Protection Bill in order to ensure that the minimum age for marriage is established at 18 years for both girls and boys, and to remove all exceptions that allow marriage under that age. The Committee recommends that the State party harmonize the Young Offenders Act of 2007 with the provisions of the Convention by changing the age of children to which the Act applies to 18 years.

■ **Birth registration**

**28.** The Committee notes that the State party has made some progress in terms of birth registration coverage among children under 5 years of age, from 48 per cent in 2009 to 59 per cent in 2014, and that there is a new computerized registration system with a number of features for detecting false registrations. It remains concerned, however, that the number of registered births continues to be low and that there are differences in the number of birth notifications depending on whether a child is born in a national health facility or in a village with the help of traditional birth attendants. The Committee is also concerned that birth registration is not free and that the stigmatization of young and unwed mothers hinders the registration of correct information, as when children are reportedly registered by their grandparents.

**29.** The Committee recommends that the State party:

(a) Strengthen its efforts to implement free and early birth registration procedures and to issue birth certificates and that it place a special focus on children in rural areas;

(b) Improve the registration of births occurring outside hospital facilities and consider the use of mobile birth registration teams to cover remote communities;

(c) Ensure the accuracy of registration details for babies born to young and unwed mothers;

(d) Develop strategies to change the social mindset and negative attitudes towards unwed mothers;

(e) Provide the financial, human and technical resources necessary to improve the efficiency of the new computerized registration system;

(f) Launch extensive awareness-raising programmes on the importance of birth registration and the process by which children are registered.<sup>874</sup>

**18.** The Committee urges the State party to revise the Islanders Marriage Act promptly to ensure that the minimum age for marriage is established at 18 for girls and boys and that it take all measures necessary to eliminate child marriages.<sup>875</sup>

**TONGA**

N/A

**RECOMMENDATIONS / CONCLUDING OBSERVATIONS**

■ **Nil reports/observations by the CRC**

**TUVALU**

30 October 2013

**RECOMMENDATIONS / CONCLUDING OBSERVATIONS**

■ **Definition of the child (art. 1 of the Convention)**

**21.** The Committee is concerned that the age of marriage is 16 years.

**22.** The Committee urges the State party to raise the age of marriage to 18 years for both boys and girls.

■ **Birth registration**

**29.** The Committee is concerned that not all births are registered in a timely manner and that the registration rate is far lower among children on the outer islands than among children on Funafuti.

**30.** The Committee recommends that the State party collect accurate and comprehensive data on birth registration, map the deficiencies and identify measures to address this issue, including through a Child Protection Baseline review conducted in cooperation with UNICEF, and also raise the awareness of parents, with a view to ensuring they fulfil their legal obligations.<sup>876</sup>

**SOLOMON ISLANDS**

28 February 2018

**RECOMMENDATIONS / CONCLUDING OBSERVATIONS**

**16 (c)** The Committee recommends that the State Party ... Engage with communities and parents in discussions on children's rights, in particular on issues such as gender discrimination, child marriage and child labour.

**17.** The Committee ... is seriously concerned that the minimum age for marriage is still set at 15 under the Islanders Marriage Act.

**VANUATU**

29 September 2017

**RECOMMENDATIONS / CONCLUDING OBSERVATIONS**

■ **Definition of the child (art. 1)**

**17.** The Committee is seriously concerned that the minimum age for marriage is still set at 16 for girls under the Control of Marriage Act.

**18.** The Committee urges that the State party revise the Control of Marriage Act to ensure that the minimum age for marriage

is established at 18 for both girls and boys and take all necessary measures to eliminate child marriages.

### ■ Birth registration

**23.** The Committee notes that the State party made some progress in birth registration coverage of children through the decentralisation of birth registration services, mobile services and by strengthening the Civil Registry Department. However, it remains concerned at the differences in birth registrations depending on whether a child is born in a hospital facility or outside. The Committee is also concerned at the accuracy of the registration details for children born out-of-wedlock and to adolescent mothers.

**24.** The Committee recommends that the State party:

**(a)** Strengthen its efforts to implement early birth registration procedures and issuance of birth certificates with a special focus on birth registration at community level;

**(b)** Improve birth registration outside of hospital facilities and strengthen the use of mobile birth registration teams to cover remote communities;

**(c)** Launch extensive awareness-raising programmes about the importance of birth registration and the process by which the children are registered;

**(d)** Ensure accuracy of registration details for children born out-of-wedlock and to adolescent mothers;

**(d)** Develop strategies to change the societal mindset and negative attitudes against unmarried mothers.<sup>877</sup>

## ■ ANNEX IV: PROVISIONS OF INTERNATIONAL AND REGIONAL INSTRUMENTS RELEVANT TO CHILD MARRIAGE

### ■ African Charter on the Rights and Welfare of the Child, 1990

**Article 21:** Protection against Harmful Social and Cultural Practices

**(1):** States Parties to the present Charter shall take all appropriate measures to eliminate harmful social and cultural practices affecting the welfare, dignity, normal growth and development of the child and in particular:

**(a)** those customs and practices prejudicial to the health or life of the child; and

**(b)** those customs and practices discriminatory to the child on the grounds of sex or other status.

**(2):** Child marriage and the betrothal of girls and boys shall be prohibited and effective action, including legislation, shall be taken to specify the minimum age of marriage to be 18 years and make registration of all marriages in an official registry compulsory.

### ■ Convention on the Rights of the Child, 1989

**Article 1:** For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.

...

**Article 19(1):** States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

**Article 19(2):** Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

...

**Article 36:** States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.

### ■ Universal Declaration of Human Rights, General Assembly Resolution 217 A (III), 1948

**Article 16(1):** Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.

**Article 16(2):** Marriage shall be entered into only with the free and full consent of the intending spouses.

### ■ African (Banjul) Charter on Human and Peoples' Rights, 1981

**Article 18 (3):** The State shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions.

### ■ Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, 2003

**Article 6:** Marriage: States Parties shall ensure that women and men enjoy equal rights and are regarded as equal partners in marriage. They shall enact appropriate national legislative measures to guarantee that:

**(a)** no marriage shall take place without the free and full consent of both parties;

**(b)** the minimum age of marriage for women shall be 18 years.

### ■ SADC Protocol on Gender and Development, 2008

**Article 8(1):** States parties shall enact and adopt appropriate legislative, administrative and other measures to ensure that women and men enjoy equal rights in marriage and are regarded as equal partners in marriage.

**Article 8(2):** Legislation on marriage shall ensure that:

**(a)** no person under the age of 18 shall marry, unless otherwise specified by law, which takes into account the best interests and welfare of the child;

**(b)** every marriage takes place with the free and full consent of both parties;

**(c)** every marriage, including civil, religious, traditional or customary, is registered in accordance with national laws; and

(d) during the subsistence of their marriage the parties shall have reciprocal rights and duties towards their children with the best interests of the children always being paramount.

#### ■ Vienna Declaration and Programme of Action, 1993

**Para. 36:** The World Conference on Human Rights reaffirms the important and constructive role played by national institutions for the promotion and protection of human rights, in particular in their advisory capacity to the competent authorities, their role in remedying human rights violations, in the dissemination of human rights information, and education in human rights.

The World Conference on Human Rights encourages the establishment and strengthening of national institutions, having regard to the "Principles relating to the status of national institutions" and recognizing that it is the right of each State to choose the framework which is best suited to its particular needs at the national level.

#### ■ Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (Slavery Convention), 1956

**Article 2:** With a view to bringing to an end the institutions and practices mentioned in article 1(c) of this Convention, the States Parties undertake to prescribe, where appropriate, suitable minimum ages of marriage, to encourage the use of facilities whereby the consent of both parties to a marriage may be freely expressed in the presence of a competent civil or religious authority, and to encourage the registration of marriages.

#### ■ Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, 1964

**Article 2:** States Parties to the present Convention shall take legislative action to specify a minimum age for marriage. No marriage shall be legally entered into by any person under this age, except where a competent authority has granted a dispensation as to age, for serious reasons, in the interest of the intending spouses.

#### ■ The UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979

**Article 16(1):** States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:

(a) The same right to enter into marriage;

(b) The same right freely to choose a spouse and to enter into marriage only with their free consent and full consent;

...  
**Article 16(2):** The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.

#### ■ Committee on the Elimination of Discrimination against Women, General Recommendation 21, Equality in marriage and family relations, 1994

**(Para. 36):** In the Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights, held at Vienna from 14 to 25 June 1993, States are urged to repeal existing laws and regulations and to remove customs and practices which discriminate against and cause harm to the girl child. Article 16(2) and the provisions of the Convention on the Rights of the Child preclude States parties from permitting or giving validity to a marriage between persons who have not attained their majority. In the context of the Convention on the Rights of the Child, "a child means every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier". Notwithstanding this definition, and bearing in mind the provisions of the Vienna Declaration, the Committee considers that the minimum age for marriage should be 18 years for both man and woman. When men and women marry, they assume important responsibilities. Consequently, marriage should not be permitted before they have attained full maturity and capacity to act. According to the World Health Organization, when minors, particularly girls, marry and have children, their health can be adversely affected and their education is impeded. As a result their economic autonomy is restricted.

**(Para. 38):** Some countries provide for different ages for marriage for men and women. As such provisions assume incorrectly that women have a different rate of intellectual development from men, or that their stage of physical and intellectual development at marriage is immaterial, these provisions should be abolished. In other countries, the betrothal of girls or undertakings by family members on their behalf is permitted. Such measures contravene not only the Convention, but also a women's right freely to choose her partner.

**(Para.39):** States parties should also require the registration of all marriages whether contracted civilly or according to custom or religious law. The State can thereby ensure compliance with the Convention and establish equality between partners, a minimum age for marriage, prohibition of bigamy and polygamy and the protection of the rights of children.

#### ■ International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966

**Article 10(1):** The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.

#### ■ International Covenant on Civil and Political Rights (ICCPR), 1966

**Article 23(2):** The right of men and women of marriageable age to marry and to found a family shall be recognized.

**Article 23(3):** No marriage shall be entered into without the free and full consent of the intending spouses.

**Article 23(4):** States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution.

#### ■ 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 <sup>878</sup>

**Para. 20:** Child marriage, also referred to as early marriage, is any marriage where at least one of the parties is under 18 years of age. The overwhelming majority of child marriages, both formal and informal, involve girls, although at times their spouses are also under 18 years of age. A child marriage is considered to be a form of forced marriage, given that one and/or both parties have not expressed full, free and informed consent. As a matter of respecting the child's evolving capacities and autonomy in making decisions that affect her or his life, a marriage of a mature, capable child below the age of 18 may be allowed in exceptional circumstances, provided that the child is at least 16 years of age and that such decisions are made by a judge based on legitimate exceptional grounds defined by law and on the evidence of maturity, without deference to cultures and traditions.

**Para. 21:** In some contexts, children are betrothed or married very young and, in many cases, young girls are forced to marry a man who may be decades older. In 2012, the United Nations Children's Fund reported that almost 400 million women between 20 and 49 years of age around the world had been married or had entered into a union before reaching 18 years of age. The Committees

have therefore been paying particular attention to cases in which girls have been married against their full, free and informed consent, such as when they have been married too young to be physically and psychologically ready for adult life or to make conscious and informed decisions and thus not ready to consent to marriage. Other examples include cases in which guardians have the legal authority to consent to marriage of girls in accordance with customary or statutory law and in which girls are thus married contrary to the right to freely enter into marriage.

**Para. 22:** Child marriage is often accompanied by early and frequent pregnancy and childbirth, resulting in higher than average maternal morbidity and mortality rates. Pregnancy-related deaths are the leading cause of mortality for girls between 15 and 19 years of age, whether married or unmarried, around the world. Infant mortality among the children of very young mothers is higher (sometimes as much as two times higher) than among those of older mothers. In cases of child and/or forced marriage, in particular where the husband is significantly older than the wife, and where girls have limited education, the girls generally have limited decision-making power in relation to their own lives. Child marriage also contributes to higher rates of school dropout, especially among girls, forced exclusion from school and an increased risk of domestic violence, in addition to limiting the enjoyment of the right to freedom of movement.

#### ■ UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children ('Trafficking Protocol')

**Article 3:** For the purposes of this Protocol:

(a) "Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;

(b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;

(c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose



of exploitation shall be considered “trafficking in persons” even if this does not involve any of the means set forth in subparagraph (a) of this article;

(d) “Child” shall mean any person under eighteen years of age.

■ **Convention on Celebration and Recognition of the Validity of Marriages (Hague Convention), Concluded 14 March 1978**

*(NB: Australia is the only Commonwealth country that is a party to this treaty. Of more potential relevance to child marriage is another Hague Convention, the Convention of 25 October 1980 on the Civil Aspects of International Child Abduction. Under this treaty where a parent or guardian attempts to remove a child from their place of ‘habitual residence’, an order can be sought for their return or to prevent them leaving.)*

**Article 11:** A Contracting State may refuse to recognise the validity of a marriage only where, at the time of the marriage, under the law of that State –

(1) one of the spouses was already married; or

(2) the spouses were related to one another, by blood or by adoption, in the direct line or as brother and sister; or

(3) one of the spouses had not attained the minimum age required for marriage, nor had obtained the necessary dispensation; or

(4) one of the spouses did not have the mental capacity to consent; or

(5) one of the spouses did not freely consent to the marriage.

However, recognition may not be refused where, in the case mentioned in sub-paragraph 1 of the preceding paragraph, the marriage has subsequently become valid by reason of the dissolution or annulment of the prior marriage

■ **The Commonwealth Charter, 2013**

**II. Human Rights:** We are committed to the Universal Declaration of Human Rights and other relevant human rights covenants and international instruments.

We are committed to equality and respect for the protection and promotion of civil, political, economic, social and cultural rights, including the right to development, for all without discrimination on any grounds as the foundations

of peaceful, just and stable societies. We note that these rights are universal, indivisible, interdependent and interrelated and cannot be implemented selectively. We are implacably opposed to all forms of discrimination, whether rooted in gender, race, colour, creed, political belief or other grounds.

...  
**XII. Gender Equality:** We recognise that gender equality and women’s empowerment are essential components of human development and basic human rights. The advancement of women’s rights and the education of girls are critical preconditions for effective and sustainable development.

## ENDNOTES

- 01 Leila Asrari, ‘Preventing Child Marriage in the Commonwealth: The Role of Education’ (2015) Plan International UK and Royal Commonwealth Society, 7. Statistics are taken from UNICEF global databases 2014, based on Multiple Indicator Cluster Surveys, Demographic and Health Surveys and other national surveys. Estimates are weighted averages for countries with available data.
- 02 Girls Not Brides, ‘Understanding the Scale of Child Marriage: A User Guide by Girls Not Brides’ (2014) <[www.girlsnotbrides.org/wp-content/uploads/2014/10/GNB-factsheet-on-child-marriage-numbers-Oct-2014.pdf](http://www.girlsnotbrides.org/wp-content/uploads/2014/10/GNB-factsheet-on-child-marriage-numbers-Oct-2014.pdf)> accessed 21 January 2018
- 03 Ibid
- 04 United Nations Committee on the Elimination of Discrimination against Women and United Nations Committee on the Rights of the Child, ‘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) CEDAW/C/GC/31-CRC/C/GC/18, 7
- 05 While the terms ‘forced’ or ‘early’ marriage are often used interchangeably or as well as ‘child’ marriage, this report will use the term ‘child marriage’ throughout to refer to a person under the age of 18 who has been married or is in a marriage-like union. While most children who have been married are likely to have been coerced or forced into the position, ‘forced marriages’ can and do occur with adults as well. They are therefore a separate problem, and as the focus of this report is solely on child marriage, that is the term that will be used. Similarly, UNICEF and others criticise the use of the word ‘early’ to describe child marriage as it is equivocal and ambiguous, and in countries where the average age of marriage is nearing 30, it could refer to someone who is in their twenties; see: UNICEF, ‘Inputs to Secretary-General’s Report in Response to HRC Resolution A/HRC/RES/24/23’ (February 2014), 1
- 06 The UN Special Rapporteur on Trafficking in Persons has argued that ‘[s]ince children are, by definition, incapable of consent or of exercising the right of refusal, child marriage is forced marriage, and as such violates fundamental human rights standards and must therefore be strictly prohibited’: Sigma Huda, ‘Report of the Special Rapporteur on the Human Rights Aspects of the Victims of Trafficking in Persons, Especially Women and Children’, (24 January 2007) UN Doc A/HRC/4/23 9, 21. See also commentary on de facto forced marriages involving children: UN General Assembly, ‘Report of the Secretary-General on the girl child’ (5 August 2013) A/66/257
- 07 UNICEF ‘Child marriage is a violation of human rights, but is all too common’ (Dec 2017) <<https://data.unicef.org/topic/child-protection/child-marriage/>> accessed 28 December 2017
- 08 UN Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990), 1577 UNTS 3, art 1
- 09 UN Human Rights Council, ‘Report of the Human Rights Council at its 26th Session’ (2014) A/HRC/26/2, 3
- 10 UNICEF, ‘State of the World’s Children 2016’ <[www.unicef.org/sowc2016/](http://www.unicef.org/sowc2016/)> accessed 15 June 2017
- 11 UNFPA, ‘State of World Population 2013’, Motherhood in Childhood: Facing the challenge of adolescent pregnancy (New York, 2013)
- 12 UNICEF (n 10)
- 13 Ibid
- 14 UNICEF (n 7)
- 15 UNICEF (n 10)
- 16 Tina Jelenic and Matthew Keeley, ‘End Child Marriage Australia: Research Report on the Forced Marriage of Children in Australia’ (National Children’s and Youth Law Centre, 2013) <[www.lawstuff.org.au/](http://www.lawstuff.org.au/)>

- [org.au/\\_data/assets/pdf\\_file/0009/15759/End-Child-Marriage-NCYLC-Research-Report.pdf](http://org.au/_data/assets/pdf_file/0009/15759/End-Child-Marriage-NCYLC-Research-Report.pdf)> accessed 21 January 2018
- 17 Geetanjali Gangoli, Melanie McCarry and Amina Razak, 'Child Marriage or Forced Marriage: South Asian Communities in North East England' (2009) 23(6) *Children & Society*
  - 18 Aisha Gill and Sundari Anitha (eds), *Forced marriage: Introducing a social justice and human rights perspective* (Zed Books, 2011). Gill notes the manner in which issues such as child marriage and forced marriage are represented as 'harmful cultural practices' while instances of everyday violence against women, particularly in majority communities, such as domestic violence and marital rape are not cast as such.
  - 19 Jelenic and Keeley (n 16), 11
  - 20 Jennifer Burn and Mark Evenhuis, 'Just Married, Just a Child: Child Marriage in the Indo-Pacific Region' (2014) *Plan International*, 8 <<http://hdl.handle.net/10453/36760>> accessed 4 September 2016
  - 21 Annie Bunting, 'Stages of Development: Marriage of girls and teens as an international human rights Issue' (2005) 14(1) *Social & Legal Studies*, 17, 27; and *Women Living under Muslim Laws, 'Child, Early and Forced Marriage: A Multi-Country Study: A Submission to the UN Office of the High Commissioner on Human Rights (OCHCR)'* (2013), 13
  - 22 Forward UK, 'Child & Forced Marriage Factsheet' (2013) <[www.forwarduk.org.uk/wp-content/uploads/2013/11/FORWARD-Child-Marriage-Fact-Sheet.pdf](http://www.forwarduk.org.uk/wp-content/uploads/2013/11/FORWARD-Child-Marriage-Fact-Sheet.pdf)> accessed 28 December 2017
  - 23 Burn and Evenhuis (n 20)
  - 24 Royal Commonwealth Society and Plan International, 'Empowering girls: What the Commonwealth can do to end early and forced marriage' (2013) 4
  - 25 Ibid
  - 26 Ibid
  - 27 Human Rights Watch, 'Marry Before Your House Is Swept Away: Child Marriage in Bangladesh' (2015) <[www.hrw.org/report/2015/06/09/marry-your-house-swept-away/child-marriage-bangladesh](http://www.hrw.org/report/2015/06/09/marry-your-house-swept-away/child-marriage-bangladesh)> accessed 12 February 2018. See also: Thangavel Palanivel and others, 'Asia-Pacific Human Development Report 2016' (UNDP) in relation to the impact of natural disasters in the context of gender equality.
  - 28 Ibid
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