



Responses to Early or Forced Marriages

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Abstract

Child and forced marriage is a serious violation of fundamental human rights and countries are struggling to develop effective responses to that problem. Child marriage is related to various socio-economic factors, such as cultural and religious traditions, poverty, debt bondage, regional conflicts, and insecurity. The practice is embedded in deeply rooted social and traditional norms, including patriarchal and male-dominated family structures, gender stereotypes, and varying notions of the institution of marriage, consent, parental involvement, and sexual and reproductive freedom. Child marriage bears serious health and social consequences for women and girls, including serious maternal health problems, increased risk of intimate partner violence, a lack of access to education, and other social consequences. Lastly, the issue of child marriage is impacted by the dynamics of immigration, as girls are trafficked, displaced, and encouraged or forced to emigrate for the purpose of marriage. Many countries have relied on a legislative response to prohibit, regulate, or criminalize child and forced marriages. However, these efforts can only produce lasting and meaningful results if they are accompanied by strong community-based responses and policies to promote social change and provide support for young women and girls.

Child Marriage and Human Rights

Child marriage is a significant and complex human rights concern. While it is impossible to determine the exact extent of child marriage globally, estimates suggest that each year as many as 14.2 million girls are married prior to the age of 18, and that as much as one-third of these are entered into prior to the age of 15 (United Nations Population Fund [UNFPA], 2012; United Nations Children’s Fund [UNICEF], 2014). Child marriage overwhelmingly affects young women and girls, and victims of child marriage are often subjected to early sexualization, maternal health problems, a lack of sexual and reproductive freedom, increased risk of intimate partner violence, and other significant health and social consequences (Fonteneau & Huyse, 2014; Godha, Hotchkiss, & Gage, 2013; Raj & Boehmer, 2013; Sabbe, et al., 2015). While the practice is not restricted to a particular region, ethnicity, culture or religion, child marriage primarily affects poor, less-educated, and rural populations (Greene, 2014; Jain & Kurz, 2007; UNFPA, 2012; UNICEF, 2014).

The right to free and full consent to marriage was set out as early as 1948 in the *Universal Declaration of Human Rights* (UDHR), which states that “marriage shall be entered into only with the free and full consent of the intending spouses” (Article 16),

acknowledging that spouses are to be of full age and sufficient maturity to make a full and informed decision on whom to marry (Sabbe, et al., 2015; UNICEF, 2005). Child marriage is also explicitly mentioned in a number of other international human rights instruments. Most notably, the 1979 *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW) states that individuals have the right to choose a spouse and enter into marriage only with their free and full consent, and that “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” (CEDAW, 1979, Art. 16).

Further, the UN 1962 *Convention on Consent, Minimum Age of Marriage and Registration of Marriages* (Marriage Convention) again sets out the free and full consent of intending spouses, and states that the full consent of spouses has to be expressed in person “in the presence of an authority competent to solemnize the marriage and of witnesses” (Art. 1). Further, the Marriage Convention requires that State parties take “legislative action to specify a minimum age for marriage” and that all marriages be appropriately registered (Art. 2–3), with the complete elimination of child marriage among its central objectives.

The Nature and Consequences of Child Marriage

There is considerable evidence of the harmful health outcomes associated with child marriage on young women and girls, as well as their children. Child marriage often results in the early sexualization of girls, whose bodies may be unprepared for childbirth or have not yet reached their sexual maturity. In this regard, myriad negative sexual and maternal health outcomes and complications have been significantly associated with child marriage; including HIV infection, rapid repeat childbirth, pregnancy termination, unintended pregnancy, higher rates of maternal and infant mortality, and non-utilization of maternal health care services (Fonteneau & Huyse, 2014; Godha, et al., 2013; Jain & Kurz, 2007; Raj & Boehmer, 2013).

In addition to poor health outcomes for mother and child, there are also various negative social outcomes, including cessation of the girl’s education, and inability to effectively handle the responsibilities of marriage and motherhood (Raj, Gomez, and Silverman, 2014). Victims of child marriage are also often forced to marry significantly older men. This spousal age gap reinforces the power dynamics within these marriages, and places girls at greater risk of abuse and exploitation (Jain & Kurz, 2007; UNFPA, 2012). Empirical studies indicate that women married as adolescents (before 18 years) are at significantly greater risk of intimate partner violence, and are approximately twice as likely to report severe physical violence, compared with those married as adults (Raj, Saggurti, Lawrence, Balaiah, & Silverman, 2010).

In relation to the social consequences of child marriage, young women and girls in such marriages often lack self-determination in basic areas of personal autonomy and decision-making, particularly in relation to sexual relations, reproductive freedom, mobility, economic independence, and engaging with friends (Jain & Kurz, 2007; Nasrullah, Zakar, & Zakar, 2014; Sabbe, et al., 2015).

Global Prevalence of Child Marriage: Data Sources & Limitations

The most commonly cited data within the literature on the prevalence of child marriage globally has been collected through the Demographic and Health Survey

(DHS) and Multiple Indicators Cluster Survey (MICS), which have been conducted in collaboration with national statistics offices (UNFPA, 2012). However, these surveys provide estimates for a subset of countries covering only around 50 percent of the global population, and do not include China. Further, data sources appear commonly to use two age standards for examining child marriage; namely, (1) before the age of 15 and (2) before the age of 18.

The definition of child as set out in the *Convention on the Rights of the Child* (CRC) (1989) states that a child is “every human being below the age of eighteen unless under the law applicable to the child, majority is attained earlier” (Art. 1). This deference to national law as it exists within the CRC has allowed many states (including Western nations such as Canada) to permit a minimum age of marriage below the age of 18 (UNFPA, 2012; Greene, 2014; Sabbe, et al., 2015). As such, data on the prevalence of child marriage may in fact capture marriages that are not necessarily forceful in nature, and this lack of universally recognized appropriate minimum age standard for marriage represents a significant limitation in terms of arriving at a consensus concerning the prevalence of the child marriage globally.

Underlying Causes of Child Marriage

Socioeconomic Factors and Insecurity

Poverty is among the most commonly cited socio-economic risk factors for child marriage (Fonteneau & Huyse, 2014; Jain & Kurz, 2007; Raj & Boehmer, 2013; Raj, Gomez, & Silverman, 2014; Sabbe, et al., 2015; UNICEF, 2005). In a cross-country comparison of 49 countries, child marriage was most common among the poorest 20 percent of households (UNICEF, 2005). In this regard, those who practice child marriage largely view it as a form of financial or social security and welfare for families, by mitigating the problems of financial insecurity, and improving economic and social status (Raj, Gomez, & Silverman, 2014; Zaman, 2013).

In many cases, parents may genuinely believe that marriage will secure a future for their child. On the other hand, child marriage may also occur in the form of exchange of children for social protection or welfare, alliance formation and kinship, or settling familial debts or disputes (debt bondage), whereby the children are treated like a commodity to be exchanged (Raj, Gomez, & Silverman, 2014; UNFPA, 2012; Zaman, 2013). Customary practices such as dowries or bride prices herein also come into consideration as a significant socioeconomic factor underlying child marriage (Greene, 2014; Raj & Boehmer, 2013; UNFPA, 2012). In the case of dowries in particular—wherein the family of the bride must pay the groom (or the groom’s family) for the marriage—the later a girl marries, the higher the price her family has to pay (Greene, 2014). In this regard, financial dependence on the father/household—particularly in poor families—is among the most commonly cited factors leading to forced marriage (Sabbe, et al., 2015; Anis, et al., 2013).

Regional conflict and insecurity alongside poverty has also been shown to amplify the risk of gender-based discrimination and violence as a result of failing health, education, and legal protection systems leaving girls with even less support. A number of commentators have identified the absence of these three institutions — education, healthcare, and legal protection — as significantly contributing to the risk of child marriage (Kurz & Jain, 2007; Raj, Gomez, & Silverman, 2014). Girls with access to education and health services—who are also more likely to be from urban, more educated, and wealthier families—appear to be far less likely to be married at an early age (Raj, Gomez, & Silverman, 2014). In this regard, regional conflict and instability

create a particularly complex and sensitive environment in which girls are increasingly at-risk, or where the need for child marriage as a form of social welfare is amplified.

Social and Traditional Norms and Beliefs

The practice of child marriage appears also to be deeply rooted in social and traditional norms (Fonteneau & Huyse, 2014; Nasrullah, et al., 2014). The strong influence of culture and community perceptions, varying interpretations of religion, and protecting ‘family honour’ are commonly identified as central reasons playing a role in the continuation of child marriage (Nasrullah, et al., 2014). Further, many women and girls involved in child marriages indicate that they were satisfied by the decision of their parents in marrying them at a young age, were against banning child marriage, and even justified the practice of child marriage in order to avoid ‘social evils’, delinquency, and adultery (Nasrullah, et al., 2014).

Indeed, a number of commentators have similarly highlighted how child marriage may be viewed by those who practice it as a way to prevent the ‘sexual perversion of young girls’, including preventing premarital sex, pregnancies out of marriage, or protection from rape and disease—and avoiding the ‘dishonour’ associated with each of these (Ahmadi, et al., 2012; Fonteneau & Huyse, 2014; Jain & Kurz, 2007; Sabbe, et al., 2015). In some instances older generations strongly advocated girls and young women to make a forced marriage work to prevent problems in the relationships with the father, and other family conflict (Sabbe, et al., 2015). However, many women and children involved in child marriage have also been shown to be largely unaware of the negative health outcomes of child marriage, which may contribute to their ongoing support for marrying at a young age (Nasrullah, et al., 2014)

On the other hand, Raj, Gomez, & Silverman (2014), in their study of various perspectives on child marriage in Afghanistan, found that the majority of participants did not see any positive effect of child marriage; when positive effects were cited, participants tended to highlight the role of marriage in mitigating socio-economic factors, rather than for cultural or religious reasons. Some religious leaders who participated in that same study described child marriage as “against God”, because the Quran requires both adulthood and consent from the bride and groom (Raj, Gomez, & Silverman, 2014). However, these same participants also indicated that marriage could serve as a perfectly legitimate means of mitigating the problems of financial insecurity, improving economic and social status, and protecting girls from illegal behaviour (Raj, Gomez, & Silverman, 2014). In this regard, much of the literature has regarded child marriage as a form of gender-based discrimination that is deeply rooted in a system of patriarchy, male domination, and stereotypical gender roles (Fonteneau & Huyse, 2014; Jain & Kurz, 2007). However, while social norms may play an important contributing role, they are “reinforced by socio-economic factors” (Fonteneau & Huyse, 2014, p. 15). This again highlights the intersectionality of the various factors that underlie this complex issue.

Child Marriage and Immigration

Immigration also plays a role in the dynamics of forced and child marriage, as victims are both taken out of, and forced to come into, countries for the purpose of marriage and spousal sponsorship (Anis, et al., 2013; Dostrovsky, Cook, & Ganon, 2007; Gangoli & Chantler, 2009; Hester, et al., 2007). While immigration appears to play a much lesser role in perpetuating child marriage in the global context, it has nonetheless emerged as serious concern within the dominant political discourse particularly within migrant-receiving Western nations, which have adopted

immigration policies among their efforts to address forced marriage internally (Dostrovsky, Cook, & Ganon, 2007; Gangoli & Chantler, 2009; Hester, et al., 2007; Schmidt, 2014; South Asian Legal Clinic of Ontario [SALCO], 2014; Yurdakul & Korteweg, 2013).

Some commentators have identified that child marriage and human trafficking often overlap, as young women and girls may be trafficked overseas and across borders in order to be sold as wives and forced to undergo a marriage ceremony (Dostrovsky, Cook, & Ganon, 2007; Odera & Malinowsky, 2011; Warner, 2011). A number of other commentators have similarly highlighted the phenomenon of ‘false marriages’ or ‘immigration marriage’, whereby young people may be taken abroad on false pretexts, or pressured to marry in order to sponsor their new spouse for immigration purposes (Dostrovsky, Cook & Gagnon, 2007; Hester, et al., 2007). In particular, the threat of having sponsorship removed may serve as a serious coercion tactic for young girls to enter into unwanted marriages (Anis, et al., 2013).

GLOBAL EFFORTS TO ADDRESS CHILD MARRIAGE

To date, there has been little to no rigorous empirical evaluations on the effectiveness of various global efforts to respond to child marriage. Nonetheless, states have adopted various methods attempting to address the practice. These efforts can be examined in more detail in relation to two broad themes, namely: (1) developing an appropriate legislative and policy framework, and (2) supporting community-based responses and promoting social change.

Developing a Legal and Policy Framework

Criminalization and Minimum Age

Some states have adopted legislation to criminalize forced marriage (Gill & Van Engeland, 2014; Fonteneau & Huyse, 2014; SALCO, 2014). In 2014, the United Kingdom adopted the *Anti-social Behaviour, Crime and Policing Act*, making it a criminal offence to force someone to marry, as well as containing provisions related to taking someone overseas to force them to marry; marrying someone who lacks the mental capacity to consent; and breaching a “Forced Marriage Protection Order” — a civil remedy intended to protect victims of forced and child marriage through family courts (Foreign & Commonwealth Office, 2015).

Switzerland, Germany, Denmark, Belgium, Austria, and Norway all criminalize forced marriages and provide for severe punishment for this offence. In the United States (US) there is no criminal legislation to address forced or child marriage at the federal level (Vigil, 2014). However, a number of states have specific statutes that criminalize forced marriage in certain circumstances. Also, nearly all states have set the legal minimum age for marriage at 18, or 16 with parental consent (Vigil, 2014).

In 2013, the Australian Government amended the *Commonwealth Criminal Code Act 1995* to recognize forced marriage as a criminal offence, carrying a maximum penalty of four years imprisonment, or seven years imprisonment if the victim is under the age of 18 (Australian Government, n.d.). The amendments similarly included provisions related to taking a victim overseas for the purpose of forced marriage.

In Canada, a new legislation, *An Act to amend the Immigration and Refugee Protection Act, the Civil Marriage Act, and the Criminal Code and to make consequential amendments to other Acts* (S.C. 2015, C. 29), introduced a uniform minimum age of

marriage across the country. It also clarified the existing offence of a legally-authorized officiant to knowingly solemnize a marriage contrary to law, created two new offences prohibiting the active and knowing participation in a forced marriage ceremony, extended the existing offence of removing a child from Canada to include the removal of a child for the purpose of a forced or underage marriage ceremony, and introduce a new peace bond that gives the court the power to impose conditions on a person where there are reasonable ground to fear that a forced and underage marriage will otherwise occur.

In 2006, the Democratic Republic of Congo amended its penal code making forced marriage illegal, with a punishment of up to 12 years imprisonment (Fonteneau & Huyse, 2014). In 2004, Morocco introduced new Family Law, raising the minimum legal age for marriage to 18 years, unless authorized by a judge (Sabbe, et al., 2015). This development in Morocco has been viewed as particularly significant in terms of the social and legal framework surrounding marriage, and sexual and reproductive health and freedom for women and girls more broadly (Sabbe, et al., 2015). However, despite having established a minimum legal age for marriage, it is reported that in many cases, due to the fact that judges maintain the power to authorize unions before the legal age of 18 “in justifiable circumstances”, individual families can circumvent the law—often through bribery—, so that marriage still takes place at a younger age (Sabbe, et al., 2015).

This also raises the question the capacity, authority and legitimacy of institutions to enforce legislation, even if appropriate legal protection is in place. This concern has particularly been raised in relation to plural legal systems, where customary and religious courts are unlikely to enforce laws on child and forced marriage in countries like Niger, the Democratic Republic of Congo, or Bangladesh (Fonteneau & Huyse, 2014). Nonetheless, commentators have argued that establishing a clear legal framework serves an important role in denunciation and deterrence in relation to the practice of child marriage, as well as shaping social norms and attitudes regarding its acceptability (Flood & Pease, 2006; Fonteneau & Huyse, 2014; Quek, 2013)

Immigration Legislation

In addition to criminalization, a number of migrant-receiving Western nations have attempted to address child and forced marriage through tightening immigration controls. One of the key ways in which states have adopted immigration policies to respond to child and forced marriage is through sponsorship and family reunification provisions. In 2008, the UK government increased the sponsorship age on a spousal or fiancé visa from 18 to 21 (Gangoli & Chantler, 2009; Hester, et al., 2007; Shariff, 2012). The reasons behind this change were that raising the entry age was seen as providing for greater maturity, improved access to education, and financial independence for young women and girls, which could leave them in a stronger position to resist forced marriage (Hester, et al., 2007). Similar changes were introduced in Denmark between 2002 and 2003, requiring that couples with one person living outside of Denmark must be 24 years of age in order to reunify (Schmidt, 2014).

Civil Remedies

Additional efforts used to address child and forced marriage use civil remedies, rather than criminal. Most notably, this includes the use of civil protection orders by victims against their perpetrators (Quek, 2013). The UK in particular has adopted Forced Marriage Protection Orders, whereby victims are able to obtain a protection order through family courts in a way similar to those used in situations of

domestic violence. The perceived benefit of this approach is that victims may obtain protection, without automatically resulting in consequences for their abusers (or parties to them), who may also often be family members (Foreign & Commonwealth Office, 2015; Gangoli & Chantler, 2009; Quek, 2013; Vigil, 2014). However, a number of limitations have been identified in relation to this initiative. First, in many cases, women are taken abroad and forced to marry— often at the last minute—, at which point civil protection orders are out of reach (Quek, 2013). Also, civil remedies place the burden of preventing forced or child marriage on the victims, rather than on law enforcement and state services (Quek, 2013; Gill & Van Engeland, 2014), and therefore commentators have noted that civil remedies do not communicate that forced and child marriage is wrong and a violation of fundamental human rights to the same effect as criminalization.

Community-based Response and Social Change

It is often argued that legislative and policy measures alone cannot stop child marriage. They actually must be accompanied by community-based responses to address root causes and promote social change. The specific efforts that may be identified include: (1) promoting the education and economic empowerment of girls, (2) awareness and engagement with local communities, and (3) building capacity of services and support for victims.

Promotion of Education

Education serves as an important protective factor against child marriage (Fonteneau & Huyse, 2014; Jain & Kurz, 2007; Raj, Gomez, and Silverman 2014; Tuwor & Sossou, 2008). In their study on perceptions of child marriage in Afghanistan, Raj, Gomez & Silverman (2014) identified that as little as one percent of girls in schools in Kabul were married or engaged, compared to as much as 60 percent for those not in school. On the other hand, Tuwor & Sossou (2008) found that, in Nigeria, approximately 37 percent of school-age girls who dropped out of school have already begun bearing children before the age of 18 years. These findings demonstrate that education and child marriage are indeed intimately linked. In addition, the lack of income dependency among victims has similarly been identified as a central reason for child marriage, and highlights the importance of education as a means of increasing a girl's ability to later gain financial and economic independence (Kurz & Jain, 2007; Tuwor & Sossou, 2008; Fonteneau & Huyse, 2014).

The education of girls may be promoted in a number of ways. Creating well-established government education departments with resources to specifically oversee the enrolment and maintenance of girls in schools, and to be accompanied by supportive learning environments, qualified and well-paid teachers, and gender-appropriate resources in schools is particularly highlighted (Tuwor & Sossou, 2008). In addition to programs related to schools specifically, commentators have identified the importance of general skills development, diversification of activities, and improved accesses to markets, which all support the economic empowerment of young women (Fonteneau & Huyse, 2014; Jain & Kurz, 2007). However, a number of commentators have also pointed out that the cessation of girl's education as a result of child marriage is rooted in various social norms and beliefs that place little value in girl's education, and instead favour marriage and motherhood (Raj, Gomez & Silverman, 2014; Tuwor & Sossou, 2008). It is therefore critical to engage with communities and families to address these underlying norms and beliefs and promote change in attitudes. In this regard, mass education and information programs intended to educate the general adult

population about the importance of female education and economic development may be particularly valuable (Tuwor & Sossou, 2008).

Awareness and Engagement with Communities

Raising public awareness of the harmful effect of child marriage is also important. Studies have shown that people are often unaware of the negative (particularly health) consequences of child marriage (Fonteneau & Huyse, 2014; Nasrullah, et al., 2014; Raj, Gomez & Silverman, 2014). However, deeply entrenched social norms and beliefs are still exceedingly difficult to overcome. Some commentators highlight that engagement with community leaders should shift to transformative dialogue that recognizes socio-cultural differences and varying notions of the institution of marriage, consent, parental involvement, and individualism (Gill & Van Engeland, 2014; Shariff, 2012). For instance, Pederson, Mukred, & Qaid (2008), in their campaign and advocacy for victims of child marriage in Yemen, note that they received enhanced acceptance in local communities after changing the term ‘early marriage’ within their program to ‘safe age of marriage’—underscoring the nature of the various harms of child marriage, rather than socio-cultural differences.

Engagement with communities should also include education and awareness among practitioners. Particularly those who work with victims of child marriage, as there is little knowledge among most front-line support workers of the complexities of this issue and how to most appropriately respond (Hester, et al., 2014). Lastly, in relation to engaging with communities, the promotion of intergenerational dialogue has been particularly highlighted within the literature (Sabbe, et al., 2015; Shariff, 2012). This includes engagement and negotiations with families and between families, and of community leaders, as a response to the gap that exists between older and younger generations.

Improving Support

In order to facilitate awareness programs, advocacy, and dialogue around child marriage, it is also important to underscore the role of community agencies and advocacy groups (i.e., governmental, non-governmental, women’s health services, etc.) (Hester, et al., 2007; Sabbe, et al., 2015). Capacity building for these community agencies is central to organizing a regional and community-based response that is able to promote social change. Capacity building should occur in terms of both knowledge and resources for various victims support agencies to be able to assist victims of child marriage (Hester, et al., 2007; Fonteneau & Huyse, 2014). This may include increasing funding; developing specifically targeted services; and promoting anti-discriminatory practices within agencies (Hester, et al., 2007). Lastly improving access to and knowledge of maternal health services to be able to specifically respond to complex health needs of victims of child marriage is key in terms of improving utilization of services and mitigating the health consequences of child marriage (Godha, et al., 2013; Raj & Boehmer, 2013).

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