

حوائين زير اش مسالم قوانين  
Women Living Under Muslim Laws  
النساء في ظل قوانين المسلمين  
Femmes sous lois musulmanes

## Child, Early and Forced Marriage: A Multi-Country Study

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*A Submission to the UN Office of the High Commissioner on Human Rights (OHCHR)*

15 December 2013

Women Living Under Muslim Laws  
December 2013

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## **Acknowledgements**

We would like to acknowledge those who have directly contributed to this initiative: Rochelle Terman, as the principal researcher and writer of this report; Rima Athar who coordinated and compiled the contributions of our key partners and wrote some of the sections; Edna Aquino, Strategic Adviser on Culturally-Justified Violence against Women and Mariem Omari, Deputy Coordinator of the International Coordinating Office of WLUML for their invaluable guidance and comments on the various drafts; and most of all, to the following national partners of WLUML in its program on child/forced marriage for their country-specific information and analysis. These include BAOBAB for Women's Human Rights in Nigeria, Groupe de Recherche sur les Femmes et les Lois au Sénégal (GREFELS) in Senegal, Foundation for Solidarity and Justice (FOSJ) in Afghanistan, Justice for Iran (JIF) in UK/Iran; Salmah Resource Centre in Sudan and Shirkat Gah Women's Resource Centre in Pakistan.

We would also like to give special thanks to the Women's Empowerment Leadership and Development for Democratisation (WELDD) a consortium funded under the Dutch Ministry of Development's Funding Leadership and Opportunities for Women (FLOW) for their support.

## **About WLUML**

Women Living Under Muslim Laws (WLUML) is an international solidarity network that provides information, support and a collective space for women whose lives are shaped, conditioned or governed by laws and customs said to derive from Islam.

For more than two decades WLUML has linked individual women and organisations. It now extends to more than 70 countries ranging from South Africa to Uzbekistan, Senegal to Indonesia and Brazil to France.

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## Introduction/Summary

In 2012, a two-part study on the state of forced marriage was undertaken by Women Living Under Muslim Laws (WLUML) for its program on culturally-justified violence against women supported by the Women's Empowerment and Leadership Development for Democratisation (WELDD) consortium. This report is the documentation of that study and was subsequently revised as WLUML's submission to the Office on the High Commissioner for Human Rights (OCHCR) for its report on preventing and eliminating child, early and forced marriage.

In Chapter 1, we provide some background information on forced marriage, the gaps and shortcomings of existing literature, and a discussion on how this information is relevant to programmes aimed at eliminating this practice.

Section I explores some of the conceptual issues that underpin research and action on forced marriage. A literature review on the various definitions of forced/early marriage shows that:

- Forced and early marriage is a form of culturally-justified violence against women as well as a violation of human rights that is endemic in many countries.
- Child marriage can be considered a form of forced marriage because children are unable to give informed consent.
- Forced/child marriage may take a variety of forms, but should be distinguished from arranged marriages. Identifying forced marriage presumes a common notion of "consent" that may, in reality, differ according to cultural attitudes.
- The prevalence of forced/child marriage depends on the social, cultural, and political context of a society.

Section II details the reality of forced and early marriage, including the causes, risk factors, and consequences of these practices. The leading cause of forced/early marriage is gender inequality, wherein girls and women are perceived to be commodities and unable to make decisions about who and when to marry. Such patriarchy can manifest in notions of family honour, women as the carriers of culture, and the dangers inherent in female sexuality, all of which work to support or condone forced marriage. Other factors such as civil and international conflict, HIV/AIDS, and poverty also increase the likelihood of child marriage.

Chapter 2 scopes existing literature on the existence of laws and/or practices in forced/early marriage in the contexts of the five countries where the WELDD program will be taking place, including: Afghanistan, Iran, Nigeria, Pakistan, Senegal and Sudan. Specific contexts, challenges, and opportunities are identified to inform our country-specific strategies.

First a note about the general approach used in this paper: As some literature demonstrates (i.e. Gill and Anitha 2011), forced marriage is often discussed as part of larger debates in particular domains, namely: (a) the human rights field, (b) the role of multiculturalism, particularly its relationship to honour-based norms, and (c) the violence against women movement and its feminist framing. In the human rights domain, forced marriage is considered first and foremost a human rights abuse. In the paradigm of multiculturalism, forced marriage is often conceptualized as a form of violence endemic to, or most relevant to, the experiences of particular communities, religions, and cultures. In the violence against women framework, forced marriage is examined as gender-based violence that inseparable from patriarchy, gender roles, and the marginalization of

women from power positions in society. Other frameworks may be used to interrogate forced marriage as well, such as public health, abolition of slavery, and development.

Each conceptualization of forced marriage offers important insights, but each has limitations as well. Understanding forced marriage as a human rights issue renders the notion of “consent” problematic, as it conceptually relies entirely on the *lack* of consent, while avoiding the question of what constitutes consent and the degree to which consent can vary according to historically-situated cultural attitudes. Conceptualizing forced marriage as a multicultural issue contributes to the stigmatization of particular communities, many of which are already marginalized due to racial, ethnic, and religious bigotry. Finally, framing early/forced marriage as gender-based violence may ignore important aspects of the issue, such as the level of economic development, the effects of and on public health, and the political processes that underlie “cultural” attitudes surrounding marriage and family.

In order to build a holistic analysis of forced marriage, we must integrate multiple paradigms or frameworks for our analysis. There is perhaps also an argument to be made for challenging the distinctions between these categories, particularly as it affects advocacy on the ground and the push for state accountability. Thus in this paper, we attempt to bring multiple concerns from diverse frameworks, including human rights concerns and cultural issues, health concerns and economic structures.

# Chapter 1: General Overview of Forced And Early Marriage

## Part I: Definitions, Conceptual Issues & Contexts

### 1. Definitions and Conceptual Issues

In this section we explore the ways in which forced marriage can be defined and conceptualized. It is important to note that there does not exist one universally agreed-upon definition for either forced or early marriage. However, in order to provide a relatively stable basis for further discussions, we attempt at a reasonable proposal for a working conceptual framework while appreciating the important nuances and complications such debates bring to our understanding.

#### What is Forced Marriage?

Forced marriage is specifically recognized as an abuse of human rights in a number of UN treaties and other international instruments. However, different instruments employ different definitions of the term “forced marriage.” In his 2006 study on all forms of violence against women, the United Nations Secretary-General Kofi Annan defined forced marriage as one that “lacks the free and valid consent of at least one of the parties.” He continues:

*In its most extreme form, forced marriage can involve threatening behaviour, abduction, imprisonment, physical violence, rape and, in some cases, murder. There has been little research on this form of violence.<sup>1</sup>*

This corresponds to the most often used, if perhaps the loosest, definition of forced marriage used by campaigners, advocates, and practitioners: the absence of meaningful consent. It also affirms that forced marriage constitutes gender-based violence, as it takes women’s vulnerability into account, as well as a severe human rights abuse.

#### What is Early Marriage?

The most often used definition for early/child marriage is marriage that takes place under the age of 18—the upper age limit for protection under the 1989 Convention on the Rights of the Child (CRC). Such relationships may be recognized in statutory or customary law as marriages, or may constitute informal unions.

Forced marriage is generally viewed as encompassing child and early marriage because minors are deemed incapable of giving informed consent. For instance, the Special Rapporteur on Slavery, Gulnara Shahinian, writes in a recent report:

*Servile marriage affects both adults and children. Under international human rights law, a child cannot provide informed consent to a marriage. The marriage is therefore considered forced and falls under the slavery-like practices defined in the Convention [against Slavery].<sup>2</sup>*

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<sup>1</sup> United Nations General Assembly. 2006. “In-depth study on all forms of violence against women: Report of the Secretary-General.” 6 July 2006. A/61/122/Add.1, paragraph 122. Available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N06/419/74/PDF/N0641974.pdf?OpenElement> [Accessed 29 September 2012].

<sup>2</sup> United Nations General Assembly. 2012. “Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, Gulnara Shahinian.” Thematic report on servile marriage. 10 July 2012.

Thus early/child marriage can be considered a subset of forced marriage, while forced marriage also encompasses adult unions.<sup>3</sup> Throughout this paper, we subscribe to this understanding that forced marriage fully encompasses, but it not limited to, early/child marriage.

It is important to note that some practitioners argue that, to be effective, we must address cultural practices harming girls separately from adult women. According to this view, the problems of the girl child, including early marriage, should not be subsumed under the heading of “women” but should be maintained separately.<sup>4</sup> In light of this nuance, we attempt to bring the relevant specifics of early/child marriage to the fore, including issues that may not apply to adult forced marriage.

Marriage is not considered directly in the Convention on the Rights of the Child (CRC). Practitioners look other rights (e.g. health, education, life, development and survival) or the CRC general principles (best interests of the child, non-discrimination, respect for the views of the child) for guidance on this. Nevertheless, it is clear that the Committee places a great deal of importance on ensuring that marriage should not be concluded too early. In fact, in its approach, the monitoring body has consistently recommended that States increase the minimum age for marriage when it is too low. In this they are also aided by the most recent Guidelines for Periodic Reports which require that “[t]he State party should indicate the minimum marriage age for girls and boys.”<sup>5</sup> In its General Comment No. 4 the Committee has also specifically recommended that this minimum age should be set at 18.<sup>6</sup>

As we discuss more below, understandings of what constitutes “childhood” or “adolescence” varies widely across space and time. In order to arrive at the strongest routes for advocacy, approaches to forced/early marriage need context-specific strategies that take into consideration local discourses, ideas, and notions of women, “girlhood”, and children’s right. Differences of approaches and conceptual frameworks based in the local should enhance concerted actions to end forced marriage across contexts.

### **Forced/Early Marriage as a Form of Sexual Slavery**

The 2005 Council of Europe study, *Forced Marriage in Council of Europe Member States*, uses a very broad definition according to which forced marriage constitutes an:

*umbrella term covering marriage as slavery, arranged marriage, traditional marriage, marriage for reasons of custom, expediency of perceived respectability, child marriage, early marriage, fictitious, bogus or shame marriage, marriage of convenience,*

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A/HRC/21/41. Available at: [http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session21/A-HRC-21-41\\_en.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session21/A-HRC-21-41_en.pdf) [Accessed 29 September 2012].

<sup>3</sup> Anitha, Sundari and Aisha Gill. 2009. “Coercion, consent and the forced marriage debate in the UK.” *Feminist legal studies* 17: 165-184 and Anitha, Sundari and Aisha Gill. 2011. *Forced marriage: Introducing a social justice and human rights perspective*. Zed Books.

<sup>4</sup> C.f. Ouattara, Mariam, Purna Sen & Marilyn Thomson. 1998. “Forced marriage, forced sex: The perils of childhood for girls.” *Gender and development* 6(3): 27-33.

<sup>5</sup> CRC Committee, Treaty-specific guidelines regarding the form and content of periodic reports to be submitted by States parties under article 44, paragraph 1 (b), of the Convention on the Rights of the Child, UN document CRC/C/58/Rev.2, 2010, paragraph 22.

<sup>6</sup> CRC Committee, General Comment No. 4: adolescent health and development in the context of the Convention on the rights of the Child, 2003, UN document CRC/GC/2003/4, paragraph 9.  
[ii] Idem, paragraph 20.

*unconsummated marriage, putative marriage, marriage to acquire nationality and undesirable marriage – in all of which the concept of consent to marriage is at issue[.]*

The association between forced marriage and slavery was echoed in a recent report by the Special Rapporteur on Slavery, wherein the call was explicitly made to reconsider forced and early marriage as a form of slavery:

*Under the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, all forms of forced marriage are defined as practices similar to slavery, which reduce a spouse to a person over whom any or all of the powers attaching to the right of ownership are exercised. International law has further reiterated and reinforced the provisions within the Convention that prohibit forced and early marriages. Over the years, however, the idea that forced and early marriages are forms of slavery and, therefore, servile marriage has been lost.*

*Reaffirming forced and early marriages as slavery-like practices is important as it provides an understanding of the violations that victims endure and the kind of interventions required to prevent, monitor and prosecute servile marriage. Victim protection programmes can also be specifically tailored better to support victims of servile marriage.*

*Victims of servile marriage are often unable to escape because their families and/or the societies in which they live will not support them, whether for economic reasons or for traditional, cultural and religious beliefs. Such beliefs and practices cannot, however, be used to justify servile marriage.<sup>7</sup>*

It is important to emphasize that merely because forced marriage may involve some elements that are akin to a situation of sexual slavery, this does not detract from the recognition of forced marriage as a distinct crime, as long as it has features that justify prosecution in their own right.<sup>8</sup> Despite this nuance, we find the slavery framework useful to our understanding of and advocacy around forced marriage and encourage the further development of this framework in both U.N. processes as well as local organizing, should actors involved in the latter sphere find it appropriate.

### **Forced/Early Marriage and Arranged Marriage**

Campaigners often question the strict binary between “full consent” and “coercion” that lies at the heart of the debate over forced and early marriage, arguing that this framework assumes a “Western” norm of “marriage for love,” a standard that may not be prevalent or even relevant in many parts of the world.<sup>9</sup>

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<sup>7</sup> United Nations General Assembly. 2012. “Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, Gulnara Shahinian.” Thematic report on servile marriage. 10 July 2012. A/HRC/21/41. Available at: [http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session21/A-HRC-21-41\\_en.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session21/A-HRC-21-41_en.pdf) [Accessed 29 September 2012]

<sup>8</sup> Jain, Neha. 2008. “Forced marriage as a crime against humanity.” *Journal of international criminal justice* 6: 1013-1032.

<sup>9</sup> Anitha, Sundari and Aisha Gill. 2009. “Coercion, consent and the forced marriage debate in the UK.” *Feminist legal studies* 17: 165-184 and Anitha, Sundari and Aisha Gill. 2011. *Forced marriage: Introducing a social justice and human rights perspective*. Zed Books.

For instance, the customary practice of arranged marriage is said to differ from forced marriage in that in the former case, while no direct consent may be expressed by the parties to the marriage, their consent is indicated through the leading role played by their families or parents in negotiating the marriage process while marriage is solemnized in accordance with established rituals and practices. This is also the position taken by countries such as Austria, Canada, Germany, Norway and the United Kingdom, which distinguish arranged marriages from forced marriages on the basis that, in arranged marriages, while the families may play a dominant role in arranging the marriage, the final decision depends on the consent of the party to the marriage.<sup>10</sup> In other words, the total, direct, and active initiative of the individuals in a romantic union is not necessary to the standard of meaningful consent, and neither is the absence of a strong familial involvement in the manifestation of such unions. Indeed, the equivalence of lone, aggressive individual action to “consent” is a parochial understanding, specific to a particular Western (and at times masculinist) cultural landscape that may lack relevance to many people, including many people living in Northern countries.

Notwithstanding this distinction, the manner in which arranged marriages are carried out can closely resemble the coercion characteristic of forced marriage. Even in arranged marriages, the will of the parties, however implicit, may be entirely subordinate to their families’ desires to arrange a particular marital relationship. Intense psychological pressure and manipulation and threats of abandonment or excommunication from the family unit can sometimes be used to induce the parties to acquiesce in the marriage arrangement. These situations would almost certainly fall foul of international human rights instruments’ prescriptions of a valid marriage.<sup>11</sup>

In short, WLUML is currently studying to what extent arranged marriages can be considered a type of forced marriage. For the purposes of this report, it can be assumed that the two institutions - arranged marriages and forced – are neither equivalent nor mutually exclusive.

### **Consent and Coercion in Forced/Early Marriage**

As issues of autonomy and consent lie at the heart of the human rights approach to forced marriage, any discussion of this issue must inevitably engage with the difficulty of determining the boundaries between *consent* and *coercion*.

Testimonies from front-line campaigners indicate that the spectrum of forced marriage ranges from marriage contracted as a result of physical force, fear of injury or death, to those contracted under the undue imposition of emotional pressure or social expectations. In other words, there is a considerable range of forms of pressures that may be exerted upon, and/or perceived by the individual in the absence of an explicit threat. At the same time, wilful desire may range from implicit and internally-inhabited to obvious and ostentatious, and such signalling is profoundly mediated by intra-cultural communications and inter-cultural translations.

As such, practitioners who attempt to apply an “objective” test of coercion may find it difficult to make a definitive determination that one or both of the parties to a marriage were not able to

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<sup>10</sup> United Nations General Assembly. 2007. Implementation of General Assembly Resolution 60/251 of 15 March 2006 Entitled “Human Rights Council: Report of the Special Rapporteur on the human rights aspects of the victims of trafficking in persons, especially women and children, Sigma Huda.” 24 January 2007. A/HRC/4/23, paragraph 25.

<sup>11</sup> Jain, Neha. 2008. “Forced marriage as a crime against humanity.” *Journal of international criminal justice* 6: 1013-1032.

exercise free will, especially without falling into social or cultural stereotypes having to do with victimhood and agency.<sup>12</sup> As one researcher noted about forced marriage in Afghanistan: A number of respondents in this study described their marriages as forced but also described themselves as being happy in their marriages now. The questions, therefore, must be asked: is forced marriage only seen as a problem if the marriage is violent, the wife is abused or the man is considerably older than the woman? Is it only girls who are forced into marriages against their will?<sup>13</sup>

Those who are most at risk of forced marriage tend to experience multiple inequalities on account of their disadvantaged position within disadvantaged communities – an intersectional context that shapes their experience of coercion. For this reason, women’s own accounts remain central to understandings of consent and violation in order to provide a grounded and context-specific account of forced marriage. Unfortunately, the debate in Western contexts is often limited by the binary understandings of women’s agency and victimhood that derive from a Eurocentric cultural understanding and dominate media, legal, and policy discourses.

Further research could also probe the links between class biases and perceptions of coercion and consent. For example, are non-consensual arranged marriages in upper classes seen as less coercive, or less problematic, in the eyes of those entering such a marriage? What perceptions of consent, coercion, and rights, does lower-class status and decreased access to health and education services foster? How useful is our understanding of “choice” in contexts wherein material and emotional livelihood is significantly dependent on marital status? In places where marriage is seen as a form of economic security, how can we best proceed with actions to stop forced/early marriage? These are questions that can only be answered in a localized grammar, specific and contingent to the communities from which they arise.

## **Girls and Boys**

It is essential to recognize that boys are affected by child marriage and men by forced marriage. However, this report mainly focuses on women and girls because but the issue impacts them in far larger numbers and with more intensity.<sup>14</sup> In many societies, adolescence means an opening up of opportunity for boys – in terms of expression, education, influence, and mobility – whereas for girls it often means a closing down of opportunity and personal freedom. Due to the disproportionate vulnerability women face around the globe, the experience for boys facing child marriage is less likely to be as exploitative or physically harmful as it is for girls. Even in those societies where early marriage is common, very few boys under age 19 enter marriage compared to girls. Unequal divisions of power in marriage are likely to be exacerbated where the husband-wife age gap is wide.<sup>15</sup>

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<sup>12</sup> Anitha, Sundari and Aisha Gill. 2009. “Coercion, consent and the forced marriage debate in the UK.” *Feminist legal studies* 17: 165-184 and Anitha, Sundari and Aisha Gill. 2011. *Forced marriage: Introducing a social justice and human rights perspective*. Zed Books.

<sup>13</sup> Smith, Deborah. 2009. *Decisions, desires and diversity: Marriage practices in Afghanistan*. Afghanistan Research and Evaluation Unit: Issues Paper Series. February 2009, p. 24. Available at: <http://www.areu.org.af/Uploads/EditionPdfs/905E-Marriage%20Practices-IP-web.pdf> [Accessed 16 July 2012]

<sup>14</sup> UNICEF. 2005. *Early marriage: A harmful traditional practice*. Available at: [http://www.unicef.org/publications/files/Early\\_Marriage\\_12.lo.pdf](http://www.unicef.org/publications/files/Early_Marriage_12.lo.pdf) [Accessed 29 September 2012].

<sup>15</sup> UNICEF. 2001. *Early marriage: Child spouses*. Innocenti Digest. No. 7. UNICEF Innocenti Research Centre. Available at: <http://www.unicef-irc.org/publications/pdf/digest7e.pdf> [Accessed 29 September 2012].

## 2. Prevalence

The number of children who enter into marriage or cohabitation each year varies across country and time period. Even within a country, the prevalence can vary across specific communities according to demographic, economic, political and social positions.<sup>16</sup>

Factors that influence child marriage rates include:

- the state of the country's civil registration system, which provides proof of age for children;
- the existence of an adequate legislative framework with an accompanying enforcement mechanism to address cases of child marriage; and
- the existence of customary or religious laws that condone the practice.<sup>17</sup>

The practice of marrying girls at a young age is most common in Sub-Saharan Africa and South Asia. However, in the Middle East, North Africa and other parts of Asia, marriage at or shortly after puberty is common among those living traditional lifestyles.<sup>18</sup> There are also specific parts of West and East Africa and of South Asia where marriages much earlier than puberty are not unusual. Marriages of girls between the ages of 16 and 18 are common in parts of Latin America and in pockets of Eastern Europe.<sup>19</sup>

According to data collected by UNICEF in 2005, among women aged 15–24, 48 per cent were married before the age of 18 in South Asia (9.7 million girls), 42 per cent in Africa, and 29 per cent in Latin America and the Caribbean.<sup>20</sup>

Unfortunately, very little country data exist about forced and early marriage. Assessing the prevalence of early and forced marriages is extremely difficult because so many are unregistered and unofficial, and therefore uncounted as part of any standard data collection system conducted by intergovernmental organizations.<sup>21</sup> Among the countries that are the focus of the WELDD project on forced marriage, only Nigeria and Senegal were represented in the UNICEF's data. Small-scale studies, fieldwork, and community reporting imply that forced marriage and marriage at a very young age is more widespread than any country data suggest.

## 3. The Role and Dimensions of Contexts

Because forced marriage is wholly enmeshed in larger social systems of family, reproduction, gender and labour, we must understand a number of sociological facets or lenses – social, historical, legal and political – that determine the shape and texture of these social systems and are ultimately responsible for the variation of forced/early marriage across time and space. Here we

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<sup>16</sup> UNICEF. 2005. *Early marriage: A harmful traditional practice*. Available at: [http://www.unicef.org/publications/files/Early\\_Marriage\\_12.lo.pdf](http://www.unicef.org/publications/files/Early_Marriage_12.lo.pdf) [Accessed 29 September 2012].

<sup>17</sup> UNICEF. 2001. *Early marriage: Child spouses*. Innocenti Digest. No. 7. UNICEF Innocenti Research Centre. Available at: <http://www.unicef-irc.org/publications/pdf/digest7e.pdf> [Accessed 29 September 2012].

<sup>18</sup> In the field of Sociology, "traditional" refers to a loose umbrella category of practices and societies that is usually contrasted with industrial, urbanized, capitalist "modern" practices and societies.

<sup>19</sup> UNICEF. 2001. *Early marriage: Child spouses*. Innocenti Digest. No. 7. UNICEF Innocenti Research Centre. Available at: <http://www.unicef-irc.org/publications/pdf/digest7e.pdf> [Accessed 29 September 2012].

<sup>20</sup> UNICEF. 2005. *Early marriage: A harmful traditional practice*. Available at: [http://www.unicef.org/publications/files/Early\\_Marriage\\_12.lo.pdf](http://www.unicef.org/publications/files/Early_Marriage_12.lo.pdf) [Accessed 29 September 2012].

<sup>21</sup> UNICEF. 2001. *Early marriage: Child spouses*. Innocenti Digest. No. 7. UNICEF Innocenti Research Centre. Available at: <http://www.unicef-irc.org/publications/pdf/digest7e.pdf> [Accessed 29 September 2012].

outline their theoretical attributes, while in the next section we mobilize these theoretical understandings in order to provide empirical substance to the causes and consequences of forced marriage.

### **Social and Historical**

Norms and practices surrounding marriage, including the desirable age and the way in which a spouse is selected, depend on a society's understandings of the family – its role, structure, pattern of life, and the individual and collective responsibility of its members. The social construction of marriage is historically contingent; the idea and function of “family” varies across the world and throughout time, and is in a constant state of evolution.<sup>22</sup> In Western Europe, for instance, marriages were, until very recently, considered to be a primarily economic transaction wherein the “consent” of the parties involved was given low priority and women were associated with “property”, transferred from her father to her husband. Over time, the modern, “romantic” conception of marriage – built on consent, romantic love, and individual fulfilment – became ideal.

In the 1970s, demographic studies motivated by the development regime identified two basic family patterns that continue to serve as the pillars of the dominant paradigm today. The basic difference in family patterns identified was between the traditional “familist” system and the modern “individualist” systems. The traditional system is characterized by extended families, communal households, plural mating (including but not limited to polygamy), authoritarian exercise of power by the *paterfamilias*, young age at marriage, spouses chosen by elders, absorption of the newly-wed into an existing household, no non-household role or identity for women. In the “individualist” system, which is the norm in industrialized countries, the opposites generally apply.<sup>23</sup> In the familist model, fertility is deliberately maximized by marrying girls immediately after puberty. The family is the unit of economic production and is the only source of wealth, social status and security for its members. New children (especially boys) are needed to run the household and maintain the family's status. The need to maximize reproduction is reinforced where infant mortality is high.

The familist-individualist framework has been heavily scrutinized and challenged by a number of contemporary anthropologists, sociologists, and demographers who argue that such a paradigm constitutes an indefensible binary, rendering invisible aspects of social systems that are not encapsulated by these confined definitions. While not dismissing this criticism, we bring up the individualist/familist paradigm in order to illustrate how widely social understands of the family can vary, and the extent to which intersubjective understandings of these institutions can affect the lives of individual girls and women who live in them.

### **Legal and Political**

In many countries, forced and early marriage falls into what amounts to a sanctions limbo. It may be prohibited in the existing civil or common law, but be widely condoned by customary and religious laws and practice. This is common in places where marriages typically take place

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<sup>22</sup> UNICEF. 2001. *Early marriage: Child spouses*. Innocenti Digest. No. 7. UNICEF Innocenti Research Centre. Available at: <http://www.unicef-irc.org/publications/pdf/digest7e.pdf> [Accessed 29 September 2012]; Boyden, Jo with UNESCO. 1993. *Families: Celebration of hope in a world of change*. Gaia Books.

<sup>23</sup> Macfarlane, Alan. 1986. *Marriage and love in England: Modes of reproduction 1300-1840*. Basil Blackwell Ltd; UNICEF. 2001. *Early marriage: Child spouses*. Innocenti Digest. No. 7. UNICEF Innocenti Research Centre. Available at: <http://www.unicef-irc.org/publications/pdf/digest7e.pdf> [Accessed 29 September 2012].

according to customary rites and remain unregistered. According to a study conducted by the Right to Education Project, in their Committee on the Rights of the Child periodic reports, 17 countries provide no or unclear information regarding the minimum age for marriage and 74 countries have no minimum age set for marriage.<sup>24</sup>

Although most countries have laws that regulate marriage, both in terms of minimum age and consent, these laws may not be enforced. In some cases, sanctions are not applied to lawbreakers; rather the marriage is deemed invalid. This usually leaves the woman in an undesirable situation, especially if she has consummated the marriage or has children. The situation is further complicated by those countries with multiple legal systems, including customary or religious legal systems, working parallel with one another but often in conflict or tension. In countries such as Afghanistan, the practice of birth registration is so irregular that the actual age at marriage may not be known

In some countries, the legal minimum age of marriage differs for boys and girls, and is usually lower for girls.<sup>25</sup> In addition, even if the minimum age is set at 18, the law allows marriage to take place at much younger ages with parental consent. The CRC Committee has advocated that it “should be the same for boys and girls and closely reflect the recognition of the status of human beings under 18 years of age as rights holders, in accordance with their evolving capacity, age and maturity.”<sup>26</sup>

Country-specific legal contexts for the five focal countries are detailed below. However, it is clear from this study that although legal reform is a necessary component to ending forced and early marriage, it is in no way a panacea. Where marriages go unregistered, are sanctioned by customary or religious codes, or are untouched by the enforcement of the law, legal sanctions of forced and early marriage will remain insufficient.

## Part II: Causes and Consequences

### 1. Causes and Risk Factors

The leading cause of forced/early marriage is gender inequality, whereby girls and women are perceived to be commodities unable to make proper decisions about who and when to marry. Girls and women are forced to become brides because it is easier to control them. In the case of girls, their virginity can be guaranteed and they have longer reproductive periods in which to produce more children.

This culturally-justified patriarchy, while universal in scope, manifests in different practices and beliefs according to local context. In this section, we discuss the most relevant root causes of forced and early marriage, including controlling female behaviour and honour, protection of

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<sup>24</sup> Right to Education Project. “The minimum age for marriage.” Available at: <http://www.right-to-education.org/node/58> [Accessed 14 December 2013.]

<sup>25</sup> Right to Education Project. “The minimum age for marriage.” Available at: <http://www.right-to-education.org/node/58> [Accessed 14 December 2013.]

<sup>26</sup> CRC Committee, General Comment No. 4: adolescent health and development in the context of the Convention on the rights of the Child, 2003, UN document CRC/GC/2003/4, paragraph 9.  
[ii] Idem, paragraph 20.

culture, and strengthening family ties. Social forces that have an especially important impact on child marriage are also detailed in the following section.

## **Forced and Early Marriages**

### **1. Controlling Female Behaviour and Sexuality/“Protecting” Girls and their “Honour”**

In many societies, frameworks of “honour” underpin notions of sexual morality, the proper and improper behaviour of women, and the reputation of men within the larger community. For a man and his family, honour is understood as the sexual integrity and chastity of the women in the family, e.g. mother, wives, sisters, and daughters. Because honour is seen to reside in the bodies of women, it operates to control, direct, and regulate women’s sexuality and freedom of movement by their male relatives.<sup>27</sup>

This framework of honour also works to reinforce the high value placed on sexual integrity and virginity before marriage. A woman accused of sexual transgression can risk social and economic ruin, as well as the ruin of her entire family. Due to particular and often rigid constructions of gender, a woman’s public mobility and presence is sometimes marked as risky behaviour that will likely lead to sexual transgression, or is seen as transgression in and of itself. Thus a number of practices are designed to “protect” a girl from unsanctioned sexual activity, including strict controls on her movement, dress, social interactions, education, and even her anatomy (as in the case of female genital mutilation).

Marriage is seen to offer the ultimate “protective” measure against sexual immorality, and early marriage is ideal because it minimizes the risk of pre-marital sex. Early marriage ensures that a girl is placed firmly under male control, that she is submissive to her husband and works hard for her in-laws’ household; that the children she bears are “legitimate”; and that bonds of affection between couples do not undermine the family unit.<sup>28</sup>

These so-called protective measures can have profoundly negative consequences. For instance, in some locations the law or customary practice allows (or even requires) a perpetrator of rape to be excused of his crime if he marries his victim.<sup>29</sup> The assumption is that a woman devoid of her sexual integrity is a “lost cause” in terms of social fulfilment, and that any marriage would be restorative and charitable to her given the dearth of alternatives opportunities.

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<sup>27</sup> Sen, Purna. 2005. “Crimes Of honour’, value and meaning.” In Welchman, Lynn and Sarah Hossein (ed.) “Honour”: Crimes, paradigms, and violence against women. Zed Books; Coomaraswamy, Radhika. 2005. “Preface: Violence against women and ‘crimes of honour.’” In Welchman, Lynn and Sarah Hossein (ed.) “Honour”: Crimes, paradigms, and violence against women. Zed Books.

<sup>28</sup> Caldwell, John C. and Pat Caldwell. 1977. “Role of marital sexual abstinence in determining fertility: A study of the Yoruba in Nigeria”, *Journal of population studies*, 31(1); UNICEF. 2001. *Early marriage: Child spouses*. Innocenti Digest. No. 7. UNICEF Innocenti Research Centre. Available at: <http://www.unicef-irc.org/publications/pdf/digest7e.pdf> [Accessed 29 September 2012].

<sup>29</sup> United Nations Convention on the Rights of the Child. 1997. “Concluding observations on the Committee of the Rights of the Child: Algeria.” 18 June 1997. CRC/C/15/Add.76. Available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G97/170/02/PDF/G9717002.pdf?OpenElement> [Accessed 29 September 2012]; and UNICEF. 2001. *Early marriage: Child spouses*. Innocenti Digest. No. 7. UNICEF Innocenti Research Centre. Available at: <http://www.unicef-irc.org/publications/pdf/digest7e.pdf> [Accessed 29 September 2012].

## 2. Protection of “Culture” and Contemporary Pressures

As seen above, forced marriage is intimately related to cultural norms of marriage, family, and gender. Many informants explain forced marriage in terms of culture and religion by saying, for instance, that marriage is a duty according to Islam, that sex outside of marriage is not only sinful but harmful to society, and that single women are particularly dangerous due to their potential to cause *fitna* or social chaos by tempting sexual promiscuity.<sup>30</sup>

It should be noted that all cultures, religions, and traditions are evolving, heterogeneous, and unstable entities. In most societies, however, a few individuals enjoy the ability to speak for, represent, and articulate the cultural values and positions of many, and use this influence to legitimize some interpretations over others. Furthermore, it is often those with the most political or economic power who are privileged with the position of cultural or religious “leadership.” Due to patriarchal social structures, these representative positions are mostly filled by men who then work to reinforce patriarchy using selective interpretations of culture, religion, and tradition. For instance, many mainstream interpretations of Islam dictate that men and women must meet one another before an engagement and must both consent to the marriage freely, but these interpretations can be conveniently ignored for other purposes.<sup>31</sup>

Many theorists and practitioners assume that developing societies lose their old beliefs, customs and moral codes as they transition to urbanization and modernization. However, the empirical literature indicates that “traditional” practices continue to persist during such demographic transitions, and may become even more ingrained and inflexible as a consequence of drastic economic change. In this case, marriage and family are, in fact, vehemently defended as the last holdout of “traditional culture” in the midst of profound development pressures such as rapid urbanization, population mobility and migration, the volatility of global markets and other social upheavals. In a context of rapidly changing social structure, most of which are coming from the outside, traditional authority figures may attempt to consolidate their withering influence by focusing on the family, sexual relations, and other “private sphere” social relations. Thus the practices of forced and early marriage may be reinforced in the shorter term by the very process the outside world calls “development.”<sup>32</sup>

As populations migrate and intermingle, forced marriage is also a tool to protect the homogeneity of a particular ethnic group. Many survivors described how a relationship deemed “unsuitable” by their parents – those between ethnic, caste, or religious groups – had been the catalyst for marriage arrangements being made for them.<sup>33</sup>

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<sup>30</sup> Samad, Yunas and John Eade. 2003. “Community perceptions of forced marriage.” Analytical report for the Community Liaison Unit (CLU).

<sup>31</sup> C.f. Smith, Deborah. 2009. *Decisions, desires and diversity: Marriage practices in Afghanistan*. Afghanistan Research and Evaluation Unit: Issues Paper Series. February 2009, p. 24. Available at: <http://www.areu.org.af/Uploads/EditionPdfs/905E-Marriage%20Practices-IP-web.pdf> [Accessed 16 July 2012]

<sup>32</sup> UNICEF. 2001. *Early marriage: Child spouses*. Innocenti Digest. No. 7. UNICEF Innocenti Research Centre. Available at: <http://www.unicef-irc.org/publications/pdf/digest7e.pdf> [Accessed 29 September 2012].

<sup>33</sup> Working Group on Forced Marriage. 2000. “A Choice By Right: The Report of the Working Group on Forced Marriage.” Home Office Communications Directorate, June 2000; and Samad, Yunas and John Eade. “Community perceptions of forced marriage.” Analytical report for the Community Liaison Unit (CLU).

### 3. Family Ties and Family Honour

The literature suggests that family honour is a significant factor motivating forced and early marriage. As described above, a woman's sexual integrity is a large aspect of family honour. But a host of other factors can threaten the honour and reputation of a family, which are explored here.

Marriage is often seen as a bond between family units, not just individuals. Marriage may be particularly important to the construction, consolidation, or demise of family alliances, inter-familial economic partnerships, land holdings, and political power. In these scenarios, women are under extreme pressure to acquiesce to the marriage plan set in place by their relatives.

In societies that exhibit large, extended family structures, some parents come under significant pressure from their relatives to get their children married, even if force is required. If not, the parents may themselves threaten family honour by disobeying the larger family unit, thus portraying the family as chaotic or unstable.<sup>34</sup>

In some instances, inter-familial agreements about marriage are made when children are very young. Victims of forced marriage often described the pressure from other family members, both on them and their parents, to uphold such long-standing agreements. As one practitioner put it regarding Afghanistan: "The age children are when their marriages are decided on and engagements made is at least as important as when marriages actually happen, particularly in regard to children being able to give free and full consent."<sup>35</sup>

#### Child marriage

The literature suggests that child marriage may exhibit additional causes and risk-factors. Four aspects of child marriage – notions of childhood, economic survival, education, and conflict – are detailed below.

#### 1. Notions of Childhood, Adulthood, and Adolescence

In many societies, the idea of an adolescent period between girlhood and adulthood is foreign. A girl who reaches puberty can bear a child, and is thus considered a woman, with all of the functions, responsibilities, and socially desirable attributes that role entails. Often, women as the keeper of the household, the mother and the subservient wife are the expected roles. Early marriage often works to ensure a woman takes up these roles. In some cases, parents may withdraw their girls from school as soon as they begin to menstruate, fearing exposure to male classmates or teachers that put them at "risk" of sexual transgression. Diverging notions of childhood and womanhood make the application of international human rights standards a challenge in many places. There is also a tension between the idea of children and adolescents as autonomous and capable beings, and international human rights norms that define anyone under the age of 18 as a "pre-adult", a person in the process of development, and hence a person unable to consent to major life decisions.

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<sup>34</sup> Working Group on Forced Marriage. 2000. "A Choice By Right: The Report of the Working Group on Forced Marriage." Home Office Communications Directorate, June 2000.

<sup>35</sup> Smith, Deborah. 2009. *Decisions, desires and diversity: Marriage practices in Afghanistan*. Afghanistan Research and Evaluation Unit: Issues Paper Series. February 2009, p. 24. Available at: <http://www.areu.org.af/Uploads/EditionPdfs/905E-Marriage%20Practices-IP-web.pdf> [Accessed 16 July 2012]

Approaches to ending early and child marriage need to grapple with such tensions in the conceptions of childhood, adolescence and adulthood, with an eye to fostering more holistic paradigms and programs that engage young women as capable of making autonomous and independent decisions—including the ability to give consent—and nurture these qualities in them.

## 2. Early Marriage as a Strategy for Economic Survival

Poverty is one of the major factors underpinning early marriage. In all the countries analysed by the UNICEF study, child marriage is most common among the poorest 20 per cent of the population.<sup>36</sup> Where poverty is acute, a young girl may be regarded as an economic burden on her family. In some cases, her marriage to a much older (and even elderly) man is a family survival strategy and even considered in her best interests.<sup>37</sup> In Sub-Saharan Africa, the bride's family may receive valued goods from the groom or his family as the bride-price for their daughter.<sup>38</sup> In northern Nigeria, the average age of marriage has fallen since 1990.<sup>39</sup> In many places, economic hardship is encouraging a rise in early marriage, even among some population groups that do not normally practice it.<sup>40</sup>

## 3. Level of Education

Education is often seen as key to preventing child marriage.<sup>41</sup> In 42 of the countries analysed by UNICEF, women 20–24 years of age who had attended primary school were less likely to be married by age 18 than those who had not. The preventative effect of education was observed most strongly in Senegal, where 20 per cent of women who had attended primary school had been married by the age of 18, compared to 36 per cent of those who had not attended school.<sup>42</sup> Women who attended secondary school were less likely to be married by the age of 18 than those who did not. In the United Republic of Tanzania, for example, women with secondary education were 92 per cent less likely to be married by the age of 18 than women who had attended primary school only. For women who received tertiary levels of education, child marriage rates were often negligible.

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<sup>36</sup> UNICEF. 2005. *Early marriage: A harmful traditional practice*. Available at: [http://www.unicef.org/publications/files/Early\\_Marriage\\_12.lo.pdf](http://www.unicef.org/publications/files/Early_Marriage_12.lo.pdf) [Accessed 29 September 2012].

<sup>37</sup> International Planned Parenthood and the Forum on Marriage and the Rights of Women and Girls. 2006. "Ending child marriage: A guide for global policy action." Available at: [http://www.unfpa.org/upload/lib\\_pub\\_file/662\\_filename\\_endchildmarriage.pdf](http://www.unfpa.org/upload/lib_pub_file/662_filename_endchildmarriage.pdf) [Accessed 13 December 2013.]

<sup>38</sup> Rwezaura, Bart. 1994. "The changing context of Sub-Saharan Africa" in Philip Alston (ed.) *The best interests of the child*. Clarendon Press.

<sup>39</sup> Centre for Gender and Social Policy Studies. 1998. "Final report on national baseline survey of positive and harmful traditional practices affecting women and girls in Nigeria." Obafemi Awolowo University.

<sup>40</sup> Assani, Aliou. 2000. *Etude sur les mariages précoces et grossesses précoces au Burkina-Faso, Cameroun, Gambie, Liberia, Niger et Tchad*. UNICEF WCARO.

<sup>41</sup> UN Women, End VAW Now. "Prevention of forced and child marriages." Available at: <http://www.endvawnow.org/en/articles/639-prevention-of-forced-and-child-marriages.html?next=640> [Accessed 13 December 2013]; Office of the Special Representative of the Secretary on Violence against Children. 2012. "Protecting Children from Harmful Practices in Plural Legal Systems." Available at: [http://srsg.violenceagainstchildren.org/sites/default/files/publications\\_final/SRSG\\_Plan\\_harmful\\_practices\\_report\\_final.pdf](http://srsg.violenceagainstchildren.org/sites/default/files/publications_final/SRSG_Plan_harmful_practices_report_final.pdf) [Accessed 13 December 2013.]

<sup>42</sup> UNICEF. 2005. *Early marriage: A harmful traditional practice*. Available at: [http://www.unicef.org/publications/files/Early\\_Marriage\\_12.lo.pdf](http://www.unicef.org/publications/files/Early_Marriage_12.lo.pdf) [Accessed 29 September 2012].

#### 4. Conflict and Political Instability

Some countries in the grip of on-going civil conflict show acute symptoms of child-related social stress: rising numbers of children on the streets, very young labourers, increasing child slavery and trafficking (including sexual slavery and trafficking), and high levels of child neglect and abandonment.<sup>43</sup> Evidence suggests that in such situations, early marriage is on the rise. In Afghanistan, for instance, war and militarization have led to an increased number of forced marriages of young girls.<sup>44</sup> According to one report, in conflict-ridden Sri Lanka, a major cause for child marriage is to avoid being abducted and/or forcefully recruited to terrorist groups that operate in the area.<sup>45</sup> Wherever the incidence of rape, trafficking, domestic violence, sexual servitude and child abduction is rising, it seems reasonable to suspect that the rates of early marriage are also increasing.

This fact amplifies the need to create context-specific programs to end forced marriage; while we recognize that forced marriage is often a means to escape certain social pressures (i.e. war and trafficking), we must also recognize how laws that decry such marriages “illegal” may result in doubly negative consequences. Legislating against forced marriage may have to be accompanied by other programs that address pressing social concerns such as militarism and conflict, and political insecurity. This reaffirms the need for research and evidenced-based programs that begin with the experiences of girls and women forced into marriage, as well as the experiences of parents and other actors who may perpetuate forced marriage where they see no other choice.

## 2. Impacts and Consequences

The impact of forced and early marriage on girls and society at large is wide-ranging. While country-specific effects are described in more detail below, we can identify five main concerns that cut across borders: psychosocial disadvantage, sexual abuse and rape, child bearing and family planning, denial of education and violence and abandonment.

### 1. Psychosocial disadvantage

The loss of adolescence, the forced sexual relations, and the denial of freedom and personal development as a result of forced and early marriage have profound and deleterious psychosocial and emotional consequences such as depression, lack of self-esteem, and even suicide.<sup>46</sup> These impacts can be difficult to assess, but include a woman or girl’s isolation and confinement to the home, inadequate socialization, and physiological and emotional damage due to repeated pregnancies. Furthermore, if a child bride is widowed very young, she may experience additional discrimination, loss of status, denial of property rights and a range of other abuses. In some cases,

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<sup>43</sup> Black, Maggie. 2000. *Growing Up Alone: The Hidden Cost of Poverty*. UNICEF UK.

<sup>44</sup> Human Rights Watch. 2012. “‘I Had To Run Away’: The Imprisonment of Women and Girls for ‘Moral Crimes’ in Afghanistan.” 28 March 2012. Available at: <http://www.unhcr.org/refworld/docid/4f787d142.html> [Accessed 16 July 2012].

<sup>45</sup> Wijeyesekera, Rose. 2011. “Assessing the validity of child marriages contracted during the war: A challenge in post-war Sri Lanka.” Annual Research Symposium, 2011, University of Colombo. Available at: [http://www.cmb.ac.lk/?page\\_id=2782](http://www.cmb.ac.lk/?page_id=2782) [Accessed 28 September 2012].

<sup>46</sup> New York Times. 2012. “Where Arranged Marriages Are Customary, Suicides Grow More Common.” 12 June 2012. Available at: [http://www.nytimes.com/2012/06/07/world/middleeast/more-suicides-in-iraq-region-where-arranged-marriage-is-common.html?\\_r=0](http://www.nytimes.com/2012/06/07/world/middleeast/more-suicides-in-iraq-region-where-arranged-marriage-is-common.html?_r=0) [Accessed 28 September 2012].

a widow is remarried to a brother-in-law. In other cases, widows are rejected by their in-laws and their own families, left with no resources, little education and no means of earning.<sup>47</sup>

## 2. Sexual Abuse and Rape

For the vast majority of women and girls, sexual consent is irrelevant in the context of marriage. The assumption prevails that within marriage, sex is *a priori* consensual, and that rape is impossible. Pain and trauma are enhanced where women and girls have undergone some form of female genital mutilation or infibulations, and where they have recently given birth.<sup>48</sup> As far as preparation for sexual and reproductive life is concerned, there is little opportunity for girls to receive education on what to expect, or about their rights in terms of marriage or reproduction. This puts them at higher risk of sexual transmitted infections and HIV.<sup>49</sup>

## 3. Child-bearing and Family Planning

Very few women in forced and early marriage have access to contraception, nor would contraception be found acceptable to husbands or in-laws.<sup>50</sup> Indeed, in many societies, child-bearing soon after marriage is integral to a woman's social status. In a forced marriage, a woman's right to decide when and if she becomes pregnant is unacknowledged.

This dynamic is more intense in the case of early marriage. Women who are married before the age of 18 tend to have more children than those who marry later in life. In Nigeria, for instance, modern contraceptive usage among married 15-19 year olds is only 0.6%. There are still a number of countries in which reproductive health services are barred for adolescents, even if they are married. However, the Population Council and UNICEF found that, in Pakistan, a substantial number of young married women indicated an interest in the use of contraception in the future.<sup>51</sup>

The health risks of early pregnancy and childbirth are well documented: increased risk of dying, increased risk of premature labour, complications during delivery, low birth-weight, and a higher chance that the newborn will not survive.<sup>52</sup> Pregnancy-related deaths are known to be a leading cause of mortality for both married and unmarried girls between the ages of 15 and 19, particularly among the youngest of this cohort.<sup>53</sup> For every woman who dies in childbirth, 30 more suffer injuries, infections and disabilities, which usually go untreated and some of which are

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<sup>47</sup> UNICEF. 2001. *Early marriage: Child spouses*. Innocenti Digest. No. 7. UNICEF Innocenti Research Centre. Available at: <http://www.unicef-irc.org/publications/pdf/digest7e.pdf> [Accessed 29 September 2012].

<sup>48</sup> UNICEF. 2001. *Early marriage: Child spouses*. Innocenti Digest. No. 7. UNICEF Innocenti Research Centre. Available at: <http://www.unicef-irc.org/publications/pdf/digest7e.pdf> [Accessed 29 September 2012].

<sup>49</sup> International Planned Parenthood and the Forum on Marriage and the Rights of Women and Girls. 2006. "Ending child marriage: A guide for global policy action." Available at: [http://www.unfpa.org/upload/lib\\_pub\\_file/662\\_filename\\_endchildmarriage.pdf](http://www.unfpa.org/upload/lib_pub_file/662_filename_endchildmarriage.pdf) [Accessed 13 December 2013.]

<sup>50</sup> UNICEF. 2001. *Early marriage: Child spouses*. Innocenti Digest. No. 7. UNICEF Innocenti Research Centre. Available at: <http://www.unicef-irc.org/publications/pdf/digest7e.pdf> [Accessed 29 September 2012].

<sup>51</sup> Sathar, Z. et al. 2002. "Adolescents and youth in Pakistan 2001–2002: A nationally representative survey." UNICEF and Population Council.

<sup>52</sup> Senderowitz, Judith. 1995. "Adolescent health: Reassessing the passage to adulthood." World Bank Discussion Paper no. 272.

<sup>53</sup> Otoo-Oryortey, N. and S. Pobi. 2003. "Early marriage and poverty: Exploring links and key policy issues." *Gender and development*, 11(2), pp.42–51.

lifelong.<sup>54</sup> The health problems linked to early marriage not only affect the pregnant mother and the foetus, but also continue after childbirth.<sup>55</sup>

#### 4. Denial of Education

Marriage often means the end of educational development for women. In the case of early marriage, girls may be deprived of vital education needed for their preparation into adulthood, their effective contribution to the future wellbeing of their family and society, and their capacity to earn and make a living. In fact, the education a girl receives is the strongest predictor of the age she will marry.<sup>56</sup>

The most important documented implication of this loss is that the girl grows up with a hindered sense, or no sense at all, of the right to assert her own point of view – and little experience in articulating one.<sup>57</sup> This works to perpetuate patriarchal systems of gender-relations, as women are barred from participation in political, economic and cultural decision-making processes.

#### 5. Violence and Abandonment

The United Kingdom working group on forced marriage found that many of the victims suffered from prolonged domestic violence but felt unable to leave the marriage due to economic pressures, lack of family support and other social circumstances.<sup>58</sup> Indeed, many cases of self-harm and suicide are linked to forced marriage.<sup>59</sup>

Some evidence has shown that women who are married at younger ages are more likely to believe that it is sometimes acceptable for a husband to beat his wife, and are more likely to experience domestic violence themselves.<sup>60</sup> The age gap between partners is thought to contribute to these abusive power dynamics and to increase the risk of untimely widowhood,<sup>61</sup> although some authors note that older husbands may be better providers for the household.<sup>62</sup>

Other studies have demonstrated that girls who marry early are more likely to get divorced than those who marry later.<sup>63</sup> Divorce carries problems of its own, as divorce often plunges a woman

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<sup>54</sup> UNICEF. 2001. *Early marriage: Child spouses*. Innocenti Digest. No. 7. UNICEF Innocenti Research Centre. Available at: <http://www.unicef-irc.org/publications/pdf/digest7e.pdf> [Accessed 29 September 2012].

<sup>55</sup> UNICEF. 2001. *Early marriage: Child spouses*. Innocenti Digest. No. 7. UNICEF Innocenti Research Centre. Available at: <http://www.unicef-irc.org/publications/pdf/digest7e.pdf> [Accessed 29 September 2012].

<sup>56</sup> International Centre for Research on Women (ICRW). 2007. New insights on preventing child marriage: A global analysis of factors and programs.

<sup>57</sup> UNICEF. 2001. *Early marriage: Child spouses*. Innocenti Digest. No. 7. UNICEF Innocenti Research Centre. Available at: <http://www.unicef-irc.org/publications/pdf/digest7e.pdf> [Accessed 29 September 2012].

<sup>58</sup> Working Group on Forced Marriage. 2000. "A Choice By Right: The Report of the Working Group on Forced Marriage." Home Office Communications Directorate, June 2000

<sup>59</sup> New York Times. 2012. "Where Arranged Marriages Are Customary, Suicides Grow More Common." 12 June 2012. Available at: [http://www.nytimes.com/2012/06/07/world/middleeast/more-suicides-in-iraq-region-where-arranged-marriage-is-common.html?\\_r=0](http://www.nytimes.com/2012/06/07/world/middleeast/more-suicides-in-iraq-region-where-arranged-marriage-is-common.html?_r=0) [Accessed 28 September 2012].

<sup>60</sup> Jenson, R. and R. Thornton. 2003. "Early female marriage in the developing world." *Gender and development*, 11(2), pp. 9–19.

<sup>61</sup> Tiemoko, R. 2001. "The gender age gap: Marriage and rights in the Côte d'Ivoire." *Development* 44(2), pp. 104–106.

<sup>62</sup> Westoff, C. 2003. "Trends in marriage and early childbearing in developing countries." DHS Comparative Reports No. 5, ORC Macro.

<sup>63</sup> UNICEF. 2001. *Early marriage: Child spouses*. Innocenti Digest. No. 7. UNICEF Innocenti Research Centre. Available at: <http://www.unicef-irc.org/publications/pdf/digest7e.pdf> [Accessed 29 September 2012].

into poverty. If she is married young, she is more likely to lack the skills and resources necessary to generate income. Thus forced and early marriage contributes to the “feminization of poverty” and its resulting impact on children.

## Chapter 2: Country-Specific Information About Forced And Early Marriage

### Introduction

This chapter explores the state of forced and early marriage at the national level of WELDD focal countries, in greater detail. Here, we identify how specific contexts, challenges, and opportunities may inform our strategy on forced/early marriage. As discussed below, the data surveyed for this report contains many gaps, leaving a very partial picture of some national-level contexts.

Information for this chapter is derived from two main sources: 1) survey responses from representatives of our six partners in Afghanistan, Nigeria, Pakistan, Senegal, Iran and Sudan and 2) secondary literature, mostly in English.

### I. Afghanistan

Our partner in Afghanistan is the Foundation for Solidarity and Justice (FOSJ). FOSJ challenges harmful traditional practices through a diversity of tactics, including education, rights trainings, networking and advocacy. FOSJ efforts particularly engage grassroots women, high school and university students, and law enforcement agencies.

#### 1. Laws and Prevalence

The legal age for marriage under Afghan Law is 16 for girls and 18 for boys.<sup>64</sup> A girl who is 15 years of age can be married with the consent of her father or a court of law,<sup>65</sup> but under no circumstances may a girl under the age of 15 be married.<sup>66</sup> Under the Law on the Elimination of Violence Against Women (EVAW, a national Afghan law), both forced and underage marriage are illegal and parents, relatives, or others who arrange forced or underage marriages are subject to prosecution and imprisonment.<sup>67</sup> Underage marriage is prohibited by the EVAW law and is punishable by two to five years of imprisonment.<sup>68</sup> Forced marriage is a crime under the EVAW law and punishable by one to two years of imprisonment.<sup>69</sup>

Nonetheless, underage marriage is commonplace in Afghanistan by all accounts:

- In one study conducted by Human Rights Watch, it is estimated that 70% to 80% of women in Afghanistan face forced marriages, while 57% of girls are married before the legal marriage age of 16.<sup>70</sup> In that survey, the overwhelming majority of married women

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<sup>64</sup> Civil Law art. 70.

<sup>65</sup> Civil Law art. 71(1)

<sup>66</sup> Civil Law art. 71(2)

<sup>67</sup> EVAW was adopted in late 2009.

<sup>68</sup> EVAW Law, art. 28.

<sup>69</sup> EVAW Law, art. 26.

<sup>70</sup> Human Rights Watch. 2012. "‘I Had To Run Away’: The Imprisonment of Women and Girls for ‘Moral Crimes’ in Afghanistan." 28 March 2012. Available at: <http://www.unhcr.org/refworld/docid/4f787d142.html> [accessed 16 July 2012]. Again, some make the point that marriage in Afghanistan should not be viewed through a strict dichotomy of forced versus free but along a consent continuum. See also Deborah J. Smith. 2009. "Decisions, Desires, and Diversity: Marriage Practices in Afghanistan." Afghanistan Research and Evaluation Unit Issues Paper Series, February 2009. Available at: <http://www.areu.org.af/Uploads/EditionPdfs/905E-Marriage%20Practices-IP-web.pdf> [Accessed 16 July 2012].

and girls said that they did not marry by choice. Most married women and girls interviewed for a Human Rights Watch report were married before the age of 18. Among the women interviewed, the youngest reported age of marriage was 10-years-old and the oldest age of marriage was 20.<sup>71</sup> Out of 100,000 births, 820 result in maternal death.<sup>72</sup>

- Global Rights: Partners for Justice found that 59% of women had experienced forced marriage according to their national-level study.<sup>73</sup>
- According to one government-conducted statistic, 17.3% of 15 to 19-year-old girls married.<sup>74</sup>
- A study by the Ford Foundation concludes that 43% of girls are married by 18 years of age.<sup>75</sup> This is closely related to the high material death date: Out of 100,000 births, 820 result in maternal death.<sup>76</sup>
- UN statistics from 2008 showed that 57 per cent of marriages involved at least one party under the age of 16.<sup>77</sup> Among the women interviewed, the youngest reported age of marriage was 10-years-old and the oldest age of marriage was 20.<sup>78</sup>

## 2. Country-Specific Challenges

### Cultural Practices

Given the immense ethnic and cultural diversity in Afghanistan, it is perhaps unsurprising that there also exists great diversity in how decisions about marriages are made from family to family and within individual families. Typically, however, marriage arrangements are made by the families involved, and the brides usually have no explicit opportunity to consent or refuse. Meeting one's husband on the wedding day is not untypical. Once married, a bride immediately moves into her husband's household, where hostility and physical and emotional abuse from the husband, his other wives, or his family are common.<sup>79</sup>

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<sup>71</sup> Human Rights Watch. 2012. "I Had To Run Away": The Imprisonment of Women and Girls for 'Moral Crimes' in Afghanistan." 28 March 2012. Available at: <http://www.unhcr.org/refworld/docid/4f787d142.html> [accessed 16 July 2012].

<sup>72</sup> Ford Foundation. 2011. "2011 Annual Report on Child Marriage." Available at: <http://www.fordfoundation.org/2011-annual/youth-sexuality-and-rights/map/#/married-by-18/Afghanistan> [Access 16 July 2012].

<sup>73</sup> Global Rights: Partners for Justice. 2008. "Living with Violence: A National Report on Domestic Abuse in Afghanistan." March 2008, p. 14.

<sup>74</sup> Afghan Public Health Institute, Ministry of Public Health. 2011. "Afghanistan Mortality Survey 2010." November 2011, pp. 51. This study includes some hopeful signs that the average age of marriage for young women is increasing.

<sup>75</sup> Ford Foundation. 2011. "2011 Annual Report on Child Marriage: Afghanistan." Available at: <http://www.fordfoundation.org/2011-annual/youth-sexuality-and-rights/map/#/married-by-18/Afghanistan> [Accessed 16 July 2012].

<sup>76</sup> Ford Foundation. 2011. "2011 Annual Report on Child Marriage." Available at: <http://www.fordfoundation.org/2011-annual/youth-sexuality-and-rights/map/#/married-by-18/Afghanistan> [Access 16 July 2012].

<sup>77</sup> Human Rights Watch. 2012. "I Had To Run Away": The Imprisonment of Women and Girls for 'Moral Crimes' in Afghanistan." 28 March 2012. Available at: <http://www.unhcr.org/refworld/docid/4f787d142.html> [Accessed 16 July 2012].

<sup>78</sup> Human Rights Watch. 2012. "I Had To Run Away": The Imprisonment of Women and Girls for 'Moral Crimes' in Afghanistan." 28 March 2012. Available at: <http://www.unhcr.org/refworld/docid/4f787d142.html> [accessed 16 July 2012].

<sup>79</sup> For an extensive survey of marriage practices in Afghanistan, see: Deborah J. Smith. 2009. "Decisions, Desires, and Diversity: Marriage Practices in Afghanistan." Afghanistan Research and Evaluation Unit Issues Paper Series, February 2009.

It was noted by our partners in Afghanistan that a particular challenge is that conservative forces impact boys as well, who are also forced into marriage without choice. One challenge at the community level is raising awareness for both men and women.

### **Moral Crimes and Running Away**

According to Human Rights Watch, many unmarried women and girls run away from their families in order to avoid imminent forced marriage.<sup>80</sup> These women often end up in prison, charged with so-called “moral crimes” such as “running away” or “attempting *zina*.”<sup>81</sup> Although “running away” is not an offence found in the Afghan Penal Code, in 2010 and 2011 the Afghan Supreme Court issued an instruction to courts that “running away” is a crime. The supposed offense has been criticized by local human rights activists and by international observers, including the UN mission to Afghanistan.<sup>82</sup>

### **Traditional Practices of *Baad* and *Baadal***

*Baad* and *Baadal* refers to traditional practices common to some parts of Afghanistan in which unmarried girls are given or exchanged to resolve disputes or stand in place of a dowry.<sup>83</sup> They are generally recognized to be ethnically-based traditions that often contradict Islamic principles.<sup>84</sup> *Baad* usually occurs in the context of a past crime or local conflict. The family of the wrongdoing party resolves the matter by giving an unmarried girl or girls to the family who was been wronged. Because these girls are perceived as atoning for the wrong committed by their family members, they are often the victims of serious abuse by the receiving family.<sup>85</sup>

*Baadal* is an exchange of girls between families, who are then married to a male member of the other family. These arrangements are often made when the girls in question are very young. The purpose of *baadal* is to remove the obligation of both families to pay a dowry to facilitate marriage for their child.<sup>86</sup>

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<sup>80</sup> Human Rights Watch. 2012. “‘I Had To Run Away’: The Imprisonment of Women and Girls for ‘Moral Crimes’ in Afghanistan.” 28 March 2012. Available at: <http://www.unhcr.org/refworld/docid/4f787d142.html> [Accessed 16 July 2012].

<sup>81</sup> For more on *zina*, see Ziba Mir Hosseini. 2010. Criminalizing Sexuality: Zina Laws as Violence Against Women in Muslim Contexts. Violence Is Not Our Culture: The Global Campaign to Stop Killing and Stoning Women and Women Living under Muslim Laws.

<sup>82</sup> For more on the crime of “running away” see Human Rights Watch. 2012. “‘I Had To Run Away’: The Imprisonment of Women and Girls for ‘Moral Crimes’ in Afghanistan.” 28 March 2012. Available at: <http://www.unhcr.org/refworld/docid/4f787d142.html> [Accessed 16 July 2012].

<sup>83</sup> Human Rights Watch. 2012. “‘I Had To Run Away’: The Imprisonment of Women and Girls for ‘Moral Crimes’ in Afghanistan.” 28 March 2012. Available at: <http://www.unhcr.org/refworld/docid/4f787d142.html> [Accessed 16 July 2012].

<sup>84</sup> Max Planck Institute. 2005. Family Structures and Family Law in Afghanistan: A Report of the Fact-Finding Mission to Afghanistan January—March 2005. Available at: [http://www.mpipriv.de/files/pdf3/mpi-report\\_on\\_family\\_structures\\_and\\_family\\_law\\_in\\_afghanistan.pdf](http://www.mpipriv.de/files/pdf3/mpi-report_on_family_structures_and_family_law_in_afghanistan.pdf) [Accessed 8 December 2013].

<sup>85</sup> For more information about *baad* and *baadal*, see UNAMA. 2010. “Harmful Traditional Practices and Implementation of the Law on Elimination of Violence against Women in Afghanistan.” 9 December 2010; and Human Rights Watch. 2012. “‘I Had To Run Away’: The Imprisonment of Women and Girls for ‘Moral Crimes’ in Afghanistan.” 28 March 2012. Available at: <http://www.unhcr.org/refworld/docid/4f787d142.html> [Accessed 16 July 2012].

<sup>86</sup> Human Rights Watch. 2012. “‘I Had To Run Away’: The Imprisonment of Women and Girls for ‘Moral Crimes’ in Afghanistan.” 28 March 2012. Available at: <http://www.unhcr.org/refworld/docid/4f787d142.html> [Accessed 16 July 2012].

## Discriminatory Laws

Laws governing marriage, divorce, and child custody in Afghanistan are discriminatory against women. While men can obtain divorce very easily, women must go to court and show just cause for divorce. These legal obstacles, among a multitude of others, deter women from attempting to find justice after suffering a forced or early marriage.<sup>87</sup>

## Economic and Political Conditions:

Women are especially vulnerable in times of economic precarity since they rely heavily on their spouse for their material survival. As one study puts it:

*According to the head of the Department of Women's Affairs in Kandahar, women usually want to marry to have a better life. Since most of them don't work (only a very small number have employment in government offices), they believe that marriage is the only option to have financial security and an opportunity to live with less stress from their family. Traditionally they have depended and still depend on their husbands who have to provide for their maintenance.<sup>88</sup>*

As noted in our general report, war, militarism, and economic desperation serves greatly to constrict women's opportunities and status in every aspect of life, which in turn make forced/early marriage more intractable as well as more harmful.

Increased insecurity has also resulted in threats against women's rights organizations in Afghanistan, many of which are on the front-lines in the battle against forced/early marriage and other forms of culturally-justified violence against women. The threats are not only coming from the Taliban, but also from the very conservative elements and traditionalists within the Afghan society. Some women's rights activists have already been killed for their work, others forced to flee the country, and many face threats and attacks on a daily basis.

As Afghanistan is moving towards 2014, the year that international troops are set to withdraw, the level of funding and support to Afghanistan human rights, women's rights and civil society organizations is rapidly shrinking. Many groups, including FOSJ have had difficulty securing funding in 2012. Experience shows that donors' commitment in Afghanistan is linked to the military presence of donor country troops, and if trends continue, particularly with a lack of funding for core costs of the organizations, the issue of sustainability particularly for small and middle size organizations becomes an issue.

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<sup>87</sup> For more on family law in Afghanistan and how it affects women's status and marital patterns, see: Max Planck Institute. 2005. Family Structures and Family Law in Afghanistan: A Report of the Fact-Finding Mission to Afghanistan January—March 2005. Available at: [http://www.mpipriv.de/files/pdf3/mpi-report\\_on\\_family\\_structures\\_and\\_family\\_law\\_in\\_afghanistan.pdf](http://www.mpipriv.de/files/pdf3/mpi-report_on_family_structures_and_family_law_in_afghanistan.pdf) [Accessed 8 December 2013].

<sup>88</sup> Max Planck Institute. 2005. Family Structures and Family Law in Afghanistan: A Report of the Fact-Finding Mission to Afghanistan January—March 2005. Available at: [http://www.mpipriv.de/files/pdf3/mpi-report\\_on\\_family\\_structures\\_and\\_family\\_law\\_in\\_afghanistan.pdf](http://www.mpipriv.de/files/pdf3/mpi-report_on_family_structures_and_family_law_in_afghanistan.pdf) [Accessed 8 December 2013].

### 3. Opportunities and Room for Change

#### Popular Desire to End Early / Forced Marriage

Through in-depth field interviews, Deborah Smith has concluded that, although many children are still married at ages below that described as ideal by respondents, many Afghans expressed a desire for children in their communities to have a greater say in decisions about their marriages. This finding demonstrates that the subjects of forced and early marriage are open to discussion and change in accepted practices. She also concludes that cultural/religious norms are not only interpreted differently – even by individuals in the same community – but that they are usually in a state of flux, meaning that they are open to change given the right incentives.<sup>89</sup>

#### Use of Popular Education Tools and Techniques

Building on this opportunity for public engagement, FOSJ makes extensive use of FOSJ makes extensive use of mass media (print, electronic, and radio) to engage in outreach. Radio is the primary means of communication since over 70% Afghans are still listening to the radio particularly in the rural areas of Afghanistan. FOSJ harnesses this media power, producing radio programmes, and also produced a feature film on forced and under aged marriage which was widely broadcasted through Afghan television.

Unfortunately, the use of the media is becoming more expensive in Afghanistan for NGOs, as all media organizations are private and their charges for broadcasts of any campaign messages are almost impossible to access. Most donors are not willing to provide large amounts of funding for the use of the media, either.

According to our activist partners in Afghanistan, it is of critical importance that we find methods and strategies to reach the wider public in cost effective ways, particularly to broadcast much needed messages on women's rights to the people across Afghanistan.

## II. Iran

The data presented here is by Justice for Iran (JFI), which is making its own submission to the OHCHR on this subject. Justice For Iran was established in July 2010 with the aim of addressing and eradicating the practice of impunity prevalent among Iranian state officials and their use of systematic sexual abuse of women as a method of torture in order to extract confession. JFI uses methods such as documentation of human rights violations, collection of information, and research about authority figures who play a role in serious and widespread violations of human rights in Iran; as well as use of judicial, political and international mechanisms in place, to execute justice, remove impunity and bring about accountability to the actors and agents of human rights violations in the Islamic Republic of Iran.

### 1. Laws and Prevalence

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<sup>89</sup> Deborah J. Smith. 2009. "Decisions, Desires, and Diversity: Marriage Practices in Afghanistan." Afghanistan Research and Evaluation Unit Issues Paper Series, February 2009. Available at: <http://www.areu.org.af/Uploads/EditionPdfs/905E-Marriage%20Practices-IP-web.pdf> [Accessed 16 July 2012].

The leader of the Islamic revolution, Ayatollah Khomeini, whose vision and words inspired the post-1979 Republic, has clearly written that sexual experiences, excluding intercourse, are permitted with girls of all ages. He stated: "Anyone who has a wife less than nine years of age is not allowed to engage in sexual intercourse, whether she is his permanent or temporary wife. However, other forms of sexual pleasures are permitted, such as touching with lust, hugging, and rubbing penis between the buttocks and thighs; even if she is a nursing baby."<sup>90</sup> Three years after the establishment of the Islamic Republic in 1982, the legal age for marriage was lowered from 18 to 9 lunar years for girls and 20 to 15 lunar years for boys. Furthermore, during the process of revision of the Islamic Republic Civil Code, prohibition of marriage for individuals below the legal age was removed in its entirety. Later in 2002, the legal age for marriage in case of girls was raised to 13, while those below this age continued to face forced marriage at the consent of a legal guardian and approval by a court judge.<sup>91</sup>

In the case of the Islamic Republic of Iran, Article 1041 of the Civil Code states:

*Marriage of girls before the age of 13 and boys before the age of 15 is contingent upon the permission of the guardian and upon the condition of the child's best interests as determined by a competent court.*<sup>92</sup>

More recently, in September 2013, based on a recommendation by the Guardian Council, the Iranian Parliament revised and approved Article 27 of the Bill of Adopted and Neglected Minors and legalized marriage between adoptive parents and adopted children. Despite multiple objections by the public, Iran's Guardian Council approved.

In September 2013, the Iranian Parliament revised and approved article 27 from the Bill of Adopted and Neglected Minors, legalizing marriage between parents and adopted children (in particular girls). These signs point to an alarming development whereby children are forced into marriages that threaten their lives.

In 2012 alone, at least 1,537 girls below the age of 10 were forced to marry. During the same year, 29,827 girls between the ages of 10 and 14 faced the same fate. Experts believe Islamic Republic officials clearly do not want attention drawn to marriages involving girls younger than 13 because official statistics are not categorized according to age. This point of negligence is considered an intentional miscarriage of justice by authorities aware that marriages involving girls below the age of 13 are contingent on a judge's permission.

Statistics in Iran from the past five years show a significant drop in the number of students enrolled in (all-girl) schools. For the past five years, an increasing number of girl's schools have been

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<sup>90</sup> See Tahrirul-Vasileh, Vol. 2, p. 241, Rouhollah Khomeini.

<sup>91</sup> Justice for Iran. "Stolen Lives, Empty Classrooms: An Overview on Girl Marriages in the Islamic Republic of Iran." October 2013. Available at: <http://justiceforiran.org/wp-content/uploads/2013/10/JFI-Girl-Marriage-in-Iran-EN.pdf> [Accessed 11 October 2013].

<sup>92</sup> Justice for Iran. "Stolen Lives, Empty Classrooms: An Overview on Girl Marriages in the Islamic Republic of Iran." October 2013. Available at: <http://justiceforiran.org/wp-content/uploads/2013/10/JFI-Girl-Marriage-in-Iran-EN.pdf> [Accessed 11 October 2013].

experiencing a significant drop in the number of students enrolled. Furthermore, the mortality rate for married girls below the age of 15 is five times higher than those over the age of twenty.<sup>93</sup>

For a detailed analysis of the prevalence of child marriage in Iran, please see Justice for Iran's report on girl marriages.<sup>94</sup>

## 2. Country-Specific Challenges

### Legal Codes

Article 1 of Iran's Child Protection Law states: "All individuals below the age of 18 shall enjoy the provisions of this law." Many articles in this law clarify the protection of the aforementioned age group from any "exploitation" leading to "physical, mental or moral damage to the child endangering their physical or mental health".<sup>95</sup>

However, the civil code of the Islamic Republic does not practically set a legal minimum age for marriage, meaning that a child of any age may be legally married with no real consequences for the parties involved. Such practices are condoned by Islamic Republic laws with reference to Sharia law, despite studies by scientists that point to the harmful results of marriage at such a young age.<sup>96</sup>

### Discretion of Judges

According to JFI, the pivotal element in the rise of the number of girl marriages in Iran, compared with other countries, is the role of judicial judges. Islamic Republic codes and laws make it clear that the only condition under which an underage girl can be forced to marry is when a judge approves the marriage, and by implication, sanctions the rape of a girl child.

Furthermore, it is noteworthy that a judge has no obligation to approve such cases and is only obliged to do so if it proves beneficial to the welfare of the child. However, human rights standards emphasize that girl marriages never benefit the child.

The judge, the legal guardian or father, and the husband are all accountable for this act. While in accordance with international laws, the State is required to do its due diligence to prohibit girl marriages and punish the private actors responsible. In the case of the Islamic Republic, however, the state must first be condemned for its failure to criminalize girl marriages by allowing such practices to continue legally based on certain conditions (i.e. the discretion of the judge) and by facilitating such unions by authorizing their registration.

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<sup>93</sup> For further information please see <http://womensissues.about.com/od/violenceagainstwomen/tp/TenFactsAboutChildBrides.htm> [Accessed 7 October 2012].

<sup>94</sup> Justice for Iran. "Stolen Lives, Empty Classrooms: An Overview on Girl Marriages in the Islamic Republic of Iran." October 2013. Available at: <http://justiceforiran.org/wp-content/uploads/2013/10/JFI-Girl-Marriage-in-Iran-EN.pdf> [Accessed 11 October 2013]

<sup>95</sup> See English translation of the law at: [http://www.law.yale.edu/rcw/rcw/jurisdictions/assc/iranislamicrepof/iran\\_child\\_prot\\_law\\_eng.htm](http://www.law.yale.edu/rcw/rcw/jurisdictions/assc/iranislamicrepof/iran_child_prot_law_eng.htm) [Accessed 7 October 2012].

<sup>96</sup> See Oliayifard: <http://www.rahesabz.net/story/69084/> [Accessed 7 October 2012]

### 3. Opportunities and Room for Change

#### Mobilizing Public Support

The Iranian group Association for Support of Child Rights has recently been publicizing the issue of child marriages via interviews with Persian-language media.<sup>97</sup> According to our expert partners, these reports have alarmed the Iranian public over the disconcerting rise of early marriages in Iran, as a large portion of the Iranian population oppose such unions. The recent law approving marriages between parents and their adopted children was particularly unpopular. The state of public opinion presents the opportunity to mobilize popular support in favour of amending the laws condoning child marriage.

#### Political Change and Legal Reform

Because early marriage in Iran is so determined by the legal and judicial institutions detailed above, these same institutions provide opportunity for real change if they are reformed. Recent political openings in Iran have led many to believe that the opportunity is ripe for legal reform, especially around unpopular laws such as those detailed above.

### III. Nigeria

Our partner in Nigeria is BAOBAB for Women’s Human Rights. Since its inception, BAOBAB has continued to work to defend the rights of women particularly on issues of cultural and religious misinterpretations especially since the introduction of the Sharia legal system in some states in the country in 1999. Forms of CVAW addressed include (a) domestic violence, (b) rape and sexual harassment, and (c) forced marriages, contracted with minors.

#### 1. Laws and Prevalence

After almost 16 years of military rule characterized by corruption, an underdeveloped infrastructure, and misallocation of resources, power was peacefully transferred in Nigeria to a civilian government, and a new constitution was adopted in 1999.<sup>98</sup> This oil-rich country has the human and natural resources to prosper (its population of 133.9 million makes it the most heavily populated country in Africa),<sup>99</sup> yet it remains one of the poorest countries in the world. More than two out of three Nigerians live on less than US\$1 a day,<sup>100</sup> and life expectancy is 52 years.<sup>101</sup> The HIV/AIDS epidemic has had a devastating effect on the country; approximately 3.6 million adults

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<sup>97</sup> See, for instance, <http://www.dw.de/%D8%A7%D9%81%D8%B2%D8%A7%DB%8C%D8%B4-%D9%86%DA%AF%D8%B1%D8%A7%D9%86%DA%A9%D9%86%D9%86%D8%AF%D9%87-%D8%A7%D8%B2%D8%AF%D9%88%D8%A7%D8%AC-%D9%88-%D8%B7%D9%84%D8%A7%D9%82-%DA%A9%D9%88%D8%AF%DA%A9%D8%A7%D9%86-%D8%AF%D8%B1-%D8%A7%DB%8C%D8%B1%D8%A7%D9%86/a-16184597> [Accessed 13 December 2013.]

<sup>98</sup> Population Council. 2004. “Child Marriage Briefing: Nigeria.” Available at:

[http://www.popcouncil.org/pdfs/briefingsheets/NIGERIA\\_2005.pdf](http://www.popcouncil.org/pdfs/briefingsheets/NIGERIA_2005.pdf) [Accessed 16 July 2012].

<sup>99</sup> Population Reference Bureau (PRB). 2003. “2003 World Population Data Sheet.” Washington, DC: PRB.

<sup>100</sup> United Nations Development Programme (UNDP). 2004. “Human Development Report 2004: Cultural Liberty in Today’s Diverse World.” New York: UNDP.

<sup>101</sup> Population Reference Bureau (PRB). 2003. “2003 World Population Data Sheet.” Washington, DC: PRB, 2003.

and children are living with HIV, and 1.8 million children have been orphaned because of AIDS.<sup>102</sup>

Marriage in Nigeria takes place under three legal systems: Islamic (Maliki school of law), civil (statutory law), and customary (tribal/traditional law). In general, marriages in the north of the country are legislated under Islamic law, while those in the south fall under statutory law. However, even when couples marry under statutory law, customary laws generally prevail in personal matters.<sup>103</sup> In most customary law systems in Nigeria, there is no minimum age for marriage.<sup>104</sup>

Under Nigerian civil law, forced marriage is illegal, and can carry a jail term of seven years.<sup>105</sup> In addition, Nigeria's Marriage Act requires the parent or guardian's consent if either party to an intended marriage is under the age of 21.<sup>106</sup> The country's National Policy on Population also discourages parents from arranging marriages for girls under 18 years of age.<sup>107</sup> According to Country Reports 2004, however, the Nigerian government "did not undertake any significant measures to stop customary practices harmful to children, such as the sale of young girls into marriage."<sup>108</sup>

According to UNICEF, 39.0% of women are married by 18 years of age, while 16.4% are married by 15, and only 43.6% have secondary education. Child marriage is more prevalent in the Northern areas (more details and statistics are given below). Out of 100,000 births, 840 maternal deaths occur.<sup>109</sup>

## 2. Country-Specific Challenges

### Parallel Legal Systems and Lack of Enforcement

Nigeria, particularly northern Nigeria, has some of the highest rates of early marriage in the world. In 2003, Nigeria adopted the Child Rights Act to domesticate the Convention on the Rights of the Child. Although this law was passed at the Federal level, it is only effective if State Assemblies also

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<sup>102</sup> Joint United Nations Programme on HIV/AIDS (UNAIDS). "2004 Report on the Global AIDS Epidemic." Geneva: UNAIDS.

<sup>103</sup> Immigration and Refugee Board of Canada. 2006. Nigeria: Forced marriage among the Yoruba, Igbo, and Hausa-Fulani; prevalence, consequences for a woman or minor who refuses to participate in the marriage; availability of state protection (February 2006). 3 March 2006, NGA101044.E. Available at: <http://www.unhcr.org/refworld/docid/45f1478a11.html> [Accessed 16 July 2012].

<sup>104</sup> Immigration and Refugee Board of Canada. 2006. Nigeria: Forced marriage among the Yoruba, Igbo, and Hausa-Fulani; prevalence, consequences for a woman or minor who refuses to participate in the marriage; availability of state protection (February 2006). 3 March 2006, NGA101044.E. Available at: <http://www.unhcr.org/refworld/docid/45f1478a11.html> [Accessed 16 July 2012].

<sup>105</sup> Nigeria. 1990. *Criminal Code Act*. Chapter 77, no. 361. "Offences Against the Person and Relating to Marriage and Parental Rights and Duties and Against the Reputation of Individuals." Available at: <http://www.nigeria-law.org/Criminal%20Code%20Act-PartV.htm#Chapter%2030> [Accessed 1 August 2012].

<sup>106</sup> Nigeria. 1990. *Marriage Act*. Chapter 218 no. 18. "Consent to Marriage in Certain Cases." Available at: <http://www.nigeria-law.org/Marriage%20Act.htm> [Accessed 1 August 2012].

<sup>107</sup> Centre for Reproductive Rights. 2003. "Chapter 5: Nigeria." *Women of the World: Laws and Policies Affecting Their Reproductive Lives (Anglophone Africa)*. Available at: <http://www.crlp.org/pdf/WOWAA05.pdf> [Accessed 1 August 2012].

<sup>108</sup> United States Department of State. 2005. "Nigeria." *Country Reports on Human Rights Practices for 2004*, 28 February 2005. Available at: <http://www.state.gov/drl/rls/hrrpt/2004/41620.htm> [Accessed 1 August 2012].

<sup>109</sup> Ford Foundation. 2011. "2011 Annual Report on Child Marriage: Nigeria." Available at: <http://www.fordfoundation.org/2011-annual/youth-sexuality-and-rights/map/#/married-by-18/Nigeria> [Accessed 16 July 2012].

enact it. To date, only 16 of the country's 36 States have passed the Act. Intense advocacy continues for the other 20 States to pass it.<sup>110</sup> In 2005, the Supreme Council for Sharia in Nigeria (SCSN) made an official protest against adopting the Child Rights Act and again in 2008 the Kano House of Assembly said the Act was against the religion and culture of the North.<sup>111</sup>

In a highly publicized 2010 case, a Nigerian high court dismissed a case brought by a 26-year-old woman who says her father forced her to marry a senator. The BBC's Haruna Shehu Tangaza in Sokoto says that these days forced marriages are frowned on in the predominately Muslim north of Nigeria. He goes to say that people have generally supported Ms. Mayana and consider her courageous in bringing the case against her father and Senator Ya'u. Judge Isiyaku Mohammed said under the constitution, the federal court could not intervene in the affairs of an Islamic court.<sup>112</sup> BAOBAB was part of the campaign that signed various petitions against a Nigerian Senator (Ahmed Sani Yerima) who forcefully married a 13 year-old Egyptian girl.

### **High Rates of Child Marriage**

An ICRW study conducted in 2003 estimates that 43.3% of women below the age of 18 are married. Another study estimates that 20% of girls were married by age 15.<sup>113</sup> Child marriage is extremely prevalent in some regions; in the Northwest region, 48% of girls were married by age 15, and 78 per cent were married by age 18.<sup>114</sup> Although the practice of polygyny is decreasing in Nigeria, 27 per cent of married girls aged 15–19 are in polygynous marriages.<sup>115</sup>

According to The State of the World's Children 2006, a United Nations Children's Fund (UNICEF) publication, nearly twice as many women living in rural areas were married before the age of 18, compared with those living in urban areas.<sup>116</sup>

A 2003 Women's Advocates Research and Documentation Centre (WARDC) Women's Aid Collective (WACOL) publication noted that customary law has "encouraged" cultural attitudes towards child, or forced, marriages in Nigeria.<sup>117</sup> Reasons given to support this cultural practice include the "reduction of promiscuity, societal integration and well being, and religious

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<sup>110</sup> Population Council. 2004. "Child Marriage Briefing: Nigeria." Available at: [http://www.popcouncil.org/pdfs/briefingsheets/NIGERIA\\_2005.pdf](http://www.popcouncil.org/pdfs/briefingsheets/NIGERIA_2005.pdf) [accessed 16 July 2012]; and UNICEF. "Child rights and Participation: Nigeria." Available at: [http://www.unicef.org/nigeria/children\\_1938.html](http://www.unicef.org/nigeria/children_1938.html) [Accessed 16 July 2012].

<sup>111</sup> NigeriansTalk. 2010. "Nigeria: Forced Marriages and the Age of Consent." 26 April 2010. Available at: <http://nigerianstalk.org/2010/04/26/nigeria-forced-marriages-and-the-age-of-consent/> [Accessed 16 July 2012].

<sup>112</sup> BBC News. 2010. "Nigeria court rejects 'forced marriage' case." 22 October 2010. Available at: <http://www.bbc.co.uk/news/world-africa-11607532> [accessed 16 July 2012].

<sup>113</sup> National Population Commission (Nigeria). 2000. "Nigeria Demographic and Health Survey 1999." Calverton, MD: National Population Commission. Data are for 20–24-year-olds. Cited from Population Council. 2004. "Child Marriage Briefing: Nigeria." Available at: [http://www.popcouncil.org/pdfs/briefingsheets/NIGERIA\\_2005.pdf](http://www.popcouncil.org/pdfs/briefingsheets/NIGERIA_2005.pdf) [accessed 16 July 2012].

<sup>114</sup> National Population Commission (Nigeria). 2000. "Nigeria Demographic and Health Survey 1999." Calverton, MD: National Population Commission. Data are for 20–24-year-olds. Cited from Population Council. 2004. "Child Marriage Briefing: Nigeria." Available at: [http://www.popcouncil.org/pdfs/briefingsheets/NIGERIA\\_2005.pdf](http://www.popcouncil.org/pdfs/briefingsheets/NIGERIA_2005.pdf) [accessed 16 July 2012].

<sup>115</sup> National Population Commission (Nigeria). 2000. "Nigeria Demographic and Health Survey 1999." Calverton, MD: National Population Commission. Data are for 20–24-year-olds. Cited from Population Council. 2004. "Child Marriage Briefing: Nigeria." Available at: [http://www.popcouncil.org/pdfs/briefingsheets/NIGERIA\\_2005.pdf](http://www.popcouncil.org/pdfs/briefingsheets/NIGERIA_2005.pdf) [accessed 16 July 2012].

<sup>116</sup> UN Children's Fund (UNICEF). 2006. "The State of the World's Children 2006," p. 130. Available at: [http://www.unicef.org/sowc06/pdfs/sowc06\\_fullreport.pdf](http://www.unicef.org/sowc06/pdfs/sowc06_fullreport.pdf) [Accessed August 1, 2012]

<sup>117</sup> Women's Advocates Research and Documentation Centre (WARDC) and Women's Aid Collective (WACOL). 2003. "Sharia & Women's Human Rights in Nigeria: Strategies for Action," p. 69.

blessing”).<sup>118</sup> Prospective husbands are selected based on social, religious and monetary factors, while age parity is not considered an important factor. 119As a result, the husband is often older than the bride. Research conducted by the Population Council found that, in Nigeria, husbands of “child-brides” were, on average, 12 years older than their wives, and 18 years older in cases of polygynous marriage.<sup>120</sup>

### **Severe Consequences**

Forced and early marriage in Nigeria carries particularly severe consequences.<sup>121</sup> Virtually no married girls are in school. Large spousal age differences are common and may limit married girls’ and women’s autonomy and decision-making ability. The youngest first-time mothers and their children are especially vulnerable to poor health outcomes. Vesico Virginal Fistula (VVF) is said to affect around 150,000 women, with 80-90 per cent of these child wives divorced by their husbands.<sup>122</sup> Globally, obstetric fistula affects estimated 50,000-100,000 women each year. Finally, the HIV epidemic is selective of young females in Nigeria; girls aged 15-24 are twice as likely as boys the same age to be infected.<sup>123</sup> Thus child marriage may be a significant risk factor for adolescent girls.

## **3. Opportunities and Room for Change**

### **Use Of Mass Media For Outreach**

Like our partners in Afghanistan, BAOBAB has most recently engaged the media to build their capacity on positive reporting of violent acts against women as well as working with the media to create awareness on violence against women. BAOBAB also coordinated a call-in radio program on stoning and cultural-arguments for violence against women through the “Violence if Not Our Culture” campaign in 2010.

### **Literacy Campaign On Cultural Attitudes Underpinning VAW, Particularly Domestic Violence**

Likewise, BAOBAB has coordinated a literacy campaign, sharing posters, pamphlets and other materials to educate communities, media and policy-makers on cultural attitudes underpinning acts of violence against women, including domestic violence. Examples of messages on posters include:

*“He is educated and successful...respected in the community... Deeply religious and...he beats his wife.”*

*“Against her will is against the law.”*

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<sup>118</sup> Bamgbose, Oluyemisi. 2002. "Customary Law Practices and Violence against Women: The Position Under the Nigerian Legal System." Paper presented at 8th International Interdisciplinary Congress on Women hosted by Department of Women and Gender Studies, University of Makerere, July 2002, p. 4.

<sup>119</sup> Bamgbose, Oluyemisi. 2002. "Customary Law Practices and Violence against Women: The Position Under the Nigerian Legal System." Paper presented at 8th International Interdisciplinary Congress on Women hosted by Department of Women and Gender Studies, University of Makerere, July 2002, p. 4.

<sup>120</sup> Population Council. 2004. “Child Marriage Briefing: Nigeria.” Available at: [http://www.popcouncil.org/pdfs/briefingsheets/NIGERIA\\_2005.pdf](http://www.popcouncil.org/pdfs/briefingsheets/NIGERIA_2005.pdf) [Accessed 16 July 2012].

<sup>121</sup> Population Council. 2004. “Child Marriage Briefing: Nigeria.” Available at: [http://www.popcouncil.org/pdfs/briefingsheets/NIGERIA\\_2005.pdf](http://www.popcouncil.org/pdfs/briefingsheets/NIGERIA_2005.pdf) [Accessed 16 July 2012].

<sup>122</sup> AllAfrica. 2011. “Nigeria: Child Marriage, VVF and National Development.” 11 February 2011. By Rose Moses. Available at: <http://allafrica.com/stories/201102110578.html> [Accessed: 16 July 2012].

<sup>123</sup> UNAIDS. 2002. “Report on the Global HIV/AIDS Epidemic 2002.” Geneva: UNAIDS.

## **Creating Awareness-Raising Networks For Men**

BAOBAB has created network of Men Against Violence Against Women, providing them gender-sensitivity and human rights trainings to better equip them to appreciate and fight for women's human rights. The network currently includes about 40 men.

## **Community-Level Awareness-Raising/Education Workshops On Effects Of Forced Marriage**

BAOBAB has carried out community-level workshops against forced marriage from the perspective of reproductive health rights. BAOBAB is a member of the working group on Right to Health.

## **IV. Pakistan**

The data presented here is by Shirkat Gah Women's Resource Centre in Pakistan, which is making its own submission to the OHCHR on this subject. Shirkat Gah works to address both the physical, psychological and emotional effects of violence against women, through research and publications, advocacy, lobbying for legal reform, and community outreach. They have offices in three cities of Pakistan: Lahore, Peshawar and Islamabad.

### **1. Laws and Prevalence**

In Pakistan, most traditional marriages are arranged by the families, and the ability for a boy or a girl to openly get to know and choose their partner seldom occurs. In the process of such marriages being arranged by family members, safeguards in the law are often overlooked and minimum age of marriage and need for mutual consent are not guaranteed, resulting in a forced marriage.<sup>124</sup>

In 1990, Pakistan ratified the UN Convention on the Rights of Child, which prohibits child marriages. In addition, under the Muslim Family Law Ordinance, a girl must have attained the age of 16 and a boy must have attained the age of 18, and both need to consent before the marriage can take place.

Historically, however, the State has done very little to ensure that marriages are consensual and in many instances the age of a girl will be changed on her marriage certificate in order to avoid questions over her being underage.<sup>125</sup>

The ability of individuals to bypass the law without any fear of repercussions has also perpetuated customary practices of selling girls into "marriage" in exchange for money, settling disputes with the exchange of girls known as *vani* or *swara* and the use of girl as compensation for crimes. While the formal laws in Pakistan do not condone these practices, the courts do little to address them, allowing informal justice systems to implement a law of their own.<sup>126</sup>

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<sup>124</sup> Amnesty International in the Asia & Pacific. "Child Marriages." Stop Violence against Women Campaign. Available at: [http://asiapacific.amnesty.org/apro/aproweb.nsf/pages/svaw\\_childMarriages](http://asiapacific.amnesty.org/apro/aproweb.nsf/pages/svaw_childMarriages) [accessed 16 July 2012].

<sup>125</sup> Amnesty International in the Asia & Pacific. "Child Marriages." Stop Violence against Women Campaign. Available at: [http://asiapacific.amnesty.org/apro/aproweb.nsf/pages/svaw\\_childMarriages](http://asiapacific.amnesty.org/apro/aproweb.nsf/pages/svaw_childMarriages) [accessed 16 July 2012].

<sup>126</sup> Amnesty International in the Asia & Pacific. "Child Marriages." Stop Violence against Women Campaign. Available at: [http://asiapacific.amnesty.org/apro/aproweb.nsf/pages/svaw\\_childMarriages](http://asiapacific.amnesty.org/apro/aproweb.nsf/pages/svaw_childMarriages) [accessed 16 July 2012].

In 2011, the Pakistani legislature passed two landmark pro-woman bills aimed at protecting women from harmful traditional customs, including so-called marriage with the holy Quran and forced wedlock, and seeking severe punishments for the violators.<sup>127</sup>

## 2. Country-Specific Challenges

### Economic Hardship and Bride-Price

High levels of economic hardship and social inequality often lead families to sell their young daughters into marriage as a means of earning money. Younger girls receive higher prices. These sales are not legal and are not done with the consent of the girl. In some cases the decision is made by one member of the family without consulting any other members.<sup>128</sup>

According to Shirkat Gah, cycles of poverty, and the intersections with lack of education and access to health and other essential resources, is a major contributing factor in the perpetuation of harmful cultural practices across contexts.

### Vani or Swara

*Vani* or *Swara* refers to a customary practice common across Pakistan that serves as a method of resolving disputes and settling debts between families and tribes. According to this custom, female members from the offending male's family are married/given to the victim's family as a reparation or penance. These decisions are often made by a *jirga* or *panchayat*, a council of elders from the community who convene an informal court to decide methods for resolving disputes.<sup>129</sup> Girls are often subject to inhumane treatment, rape and torture by their in-laws.

### Migration to/from UK and Europe

According to the UK government's Forced Marriage Unit (FMU), many girls are taken by their parents to Pakistan on the pretext of a family vacation, where they have their passports taken away and are forced into marriage. In 2011, FMU recorded 1,468 instances of such forced marriage, 78 per cent of which were females and most from South Asian communities. However, the government says these figures do not reflect the full scale of the abuse as most cases go unreported, and estimates that 5,000 to 8,000 cases of forced marriage take place in the UK every year.<sup>130</sup>

## 3. Opportunities and Room for Change

### Lobbying government ministries and institutions in coalition

SG is engaged in coalitional efforts to advocate for new and improved legislation on domestic violence. An anti-domestic violence bill was passed in the Pakistan senate, but remains to be passed by the Assembly, after which it will still only be applicable in the capital territory of Islamabad. With the 18th Amendment of the constitution, all provincial assemblies would have to

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<sup>127</sup> DAWN. "Senate Passes Two Pro-Woman Bills Unanimously." 12 December 2011. Available at: <http://dawn.com/2011/12/12/senate-passes-two-pro-women-bills-unanimously/> [accessed 12 July 2012].

<sup>128</sup> Amnesty International in the Asia & Pacific. "Child Marriages." Stop Violence against Women Campaign. Available at: [http://asiapacific.amnesty.org/apro/aproweb.nsf/pages/svaw\\_childMarriages](http://asiapacific.amnesty.org/apro/aproweb.nsf/pages/svaw_childMarriages) [accessed 16 July 2012].

<sup>129</sup> Amnesty International in the Asia & Pacific. "Child Marriages." Stop Violence against Women Campaign. Available at: [http://asiapacific.amnesty.org/apro/aproweb.nsf/pages/svaw\\_childMarriages](http://asiapacific.amnesty.org/apro/aproweb.nsf/pages/svaw_childMarriages) [accessed 16 July 2012].

<sup>130</sup> Zofeen Ebrahim. 2012. "Forced Marriage: Victims Hate the Crime, Not Their Parents." *DAWN News*. 25 June 2012. Available at: <http://dawn.com/2012/06/25/forced-marriage-victims-hate-the-crime-not-their-parents/> Accessed 15 August 2012.

pass the domestic violence bill separately, with their own amendments. Currently, Punjab, Sindh and KPK have prepared draft bills. As it stands, the current bill is considered quite weak, as it is not a criminal act.

### **National campaigning for the “Safe Age for Marriage”**

SG is involved in a campaign that operates from the national level through to the provincial and district levels, and is lobbying for proper national legislation on early-age marriage. Through campaigning and general awareness raising activities, SG has developed creative outputs such as planners with messages, key chains, handouts, posters, and more.

### **Original research on causes, prevalence and forms of forced marriage as CVAW**

SG participated in a research project for the NGO Rutgers WFP to identify the incidence and causes of early age marriage in two districts of Sindh and to indicate sources of local support. SG has also engaged in research and education on the reproductive health, including consequences caused by early marriage and motherhood, the findings of which have been brought back to health policy-makers. As well, SG has produced a policy brief on the safe age of marriage.

## **V. Senegal**

GREFELS was the first Senegalese association to carry out research on VAW in Senegal, in 1998. The research led to the creation of the still active National Committee for the Struggles against Violence Against Women, with member organizations from most regions of Senegal. GREFELS' current research for action on CVAW focuses on female genital mutilation (FGM), sexual violence, physical violence, violence in conflict, and child marriage.

### **1. Laws and Prevalence**

According to UNICEF, 39% of girls are married by 18 years of age, with 9.7% married by 15. Two per cent gave birth by the age of 15 and only 14.1% have secondary education. Out of 100,000 births, 410 result in maternal death.

Unfortunately, there is a severe lack of information regarding the situation of child and forced marriage in Senegal.

### **2. Country-Specific Challenges**

#### **Lack of implementation and enforcement & impunity for perpetrators of VAW**

There is a strong anti-violence against women law in Senegal, which was passed in 1999. However, there is a lack of enforcement. Many judges often dismiss acts of VAW as lesser offences, or release offenders without condemning them. There is a recent case of a famous journalist accused of rape; and there are compromising texts that many are using to try and discredit the claim of rape, especially because of the accused's fame and status. Women's groups however are demanding a broader understanding of rape as the lack of consent, even if there were intimate relations before. Expanding understandings of rape and consent is important, and impunity is a key challenge that needs to be addressed.

### **Patriarchal cultural and religious attitudes, and the public/private divide**

According to our partners, there are strongly entrenched ideas that CVAW is a private issue, and that Islam allows CVAW by men against their spouses or daughters. As the above example demonstrates, patriarchal attitudes still obscure understandings of consent and coercion, particularly in rape.

### **Lack of state accountability to its national, regional and international commitments**

REFELS is currently undertaking research on women's experiences crossing borders, and particularly the lack of accountability and corruption of customs officers. In many cases, women are obliged to spend the night at the border, sometimes forced to give bribes, or even have sex with customs officers. REFELS seeks to demand accountability from the Ministry of Finance who employees customs officials, to put the onus away from only individual responsibility to state responsibility. This is a similar issue for child marriages and other forms of CVAW.

### **Lack of national-level data on VAW**

VAW in general is not yet integrated in the National Health and Demographic Survey, except for female genital mutilation, so there is no overarching national data on VAW. However, many smaller case studies on specific aspects of VAW in certain regions exist, and a national Programme on VAW is being drafted.

### **Marriage and Economic stability**

In Senegal, economic stability was signalled as a key reason that many young girls will more willingly enter into marriage; but the key underlying issue was that marriage itself is seen as one of the most important institutions in society.

## **3. Opportunities and Room for Change**

Original research on prevalence, causes and consequences of forced marriage as CVAW

In 2010-2011, REFELS carried out research on child marriage that exposes the physical violence faced in these marriages, including marital rape, domestic violence, and reproductive health complications.

### **Raising Awareness on Women's Rights, Religion & Culture (CVAW)**

REFELS is the first Senegalese women's organization to advocate on issue of child marriage as a form of culturally and religiously legitimized violence, which has heightened awareness and increased advocacy efforts across the country that challenge the misuse of culture and religion to excuse VAW.

### **Lobbying government ministries and institutions for legislative reform through coalitions**

REFELS and other women's rights groups are campaigning the Ministry of Justice in order to gain the right to file civil actions before the court on behalf of women, in cases where women wish to report rights violations (including sexual harassment, forced marriage, rape), but under pressure or bribery do not file on their own accord.

## **Community-level awareness-raising workshops & forums**

GREFELS has organized educational workshops and talks based on their research findings, as well as various debates and panels with specialist in diverse fields (doctors, historians, sociologists, traditional communicators).

There is evidence to suggest that community-engagements can have a profound impact on the rate of child marriage. After three years of human rights education through the human rights group Tostan's community empowerment programme, the village of Tankanto Maoundé in Kolda, Senegal, made the collective decision to invest in girls' education and to delay their marriage.<sup>131</sup>

## **Local and regional trainings on national and international level legislation**

GREFELS has provided training on the national and international level laws and policies that exist in relation to forced child marriages.

## **VI. Sudan (North Sudan)**

Salmmah serves as the primary partner representing Sudan in WLUML's program on early/ forced marriage. Priority actions of Salmmah on the issue of CVAW include lobbying for legal reforms, through advocacy, research and awareness-raising. Goals include repealing the 1991 Criminal Code Article 146 (which prescribes the punishment of death by stoning for adultery committed by either a man or woman), and Articles 151, 152, and 153 (pertaining to 'indecent acts', particularly dress codes), amongst others. Various forums are engaged for lobbying, including social media, commissioned print articles, public forums, and meetings with officials, amongst others.

### **1. Laws and Prevalence**

Early and forced marriage is common in southern Sudan. Traditionally, a girl is considered ready for marriage as soon as she reaches puberty.<sup>132</sup> Economic hardship is a primary cause of early marriage. Since the bride's family customarily receives a substantial bride-price (e.g. cattle) from the groom's family, there is strong pressure to marry off a family's girls, especially to pay for their boys' marriages.

According to a participatory study conducted by Save the Children, many girls expressed their fear of getting married early, without the possibility to choose their husband, and in particular the risk of missing out of education. The cultural and social acceptance and expectations of early marriages, as well as the economic incitements in a situation of rampant poverty are important factors to consider when trying to identify the causes of this harmful traditional practice.<sup>133</sup>

### **2. Country-Specific Challenges**

Political instability and threats to women's/human rights defenders & civil society

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<sup>131</sup> More information can be found via the Girls Not Brides Campaign, available at:

<http://www.girlsnotbrides.org/waylowaylo-girls-education-marriage-senegal/> [Accessed 15 December 2013].

<sup>132</sup> Save the Children. 2007. Violence against Children in Southern Sudan: A Participatory Study on PHP, Sexual Abuse and Early and Forced Marriage. Sweden.

<sup>133</sup> Save the Children. 2007. Violence against Children in Southern Sudan: A Participatory Study on PHP, Sexual Abuse and Early and Forced Marriage. Sweden.

Sudan has experienced on-going civil conflict in several parts of the country, and even with the secession of South Sudan, there remains continued clashes, which affects the work of rights defenders and civil society organizations.

### **Lack of international funding and support for women's/human rights NGOs.**

There is limited interest by the international community in Sudan, and much of what funding for civil society organizations did exist was re-diverted to South Sudan after its secession in 2012.

In addition, inflation and rising prices has affected existing working budgets, as well as the fluctuation of the hard currency due to the government's and the Bank of Sudan's tough economic policies, especially after the separation of South Sudan. There are also restrictions placed on the amounts of funding women's/human rights organizations can receive.

### **Increased implementation of existing discriminatory laws**

All of Salmmah's work is informed by the political context of Sudan, where the state applies various fundamentalist interpretations of Sharia laws that are anti-Islam, anti-human rights, and do not coincide with the main principles of human/women's dignity. These laws affect diverse facets of daily life, including the practices of child marriage, sexual harassment, restrictive dress codes, and restrictive cultural notions of (im)morality and sexuality.

Between 2008 and 2010 more than 20,000 girls and women were lashed publicly for defying discriminatory laws related to dress codes. In 2012, between May and August, three women were sentence to stoning, which was a new occurrence in Sudan. Even though Article 146 of the Criminal Code does prescribe stoning as a punishment, in the past the 7-8 cases tried never resulted in the actual sentencing to death by stoning. Thankfully, the recent cases in 2012 were all overturned, but the fact that this happened within a 4 month span is a very worrying sign of rising fundamentalisms, and increased threat's to women's everyday security.

## **3. Opportunities and Room for Change**

Establishing coalitions to Lobbying Government Ministries and Institutions for legislative reform

Salmmah helped establish the "149 Alliance", a network of 9 organizations campaigning to reform articles 145-159 of the 1991 Criminal Code, to strengthen cross-country lobbying efforts. These coalition-building activities bring heightened awareness of the diversity and prevalence human rights violations by state and/or non-state actors across Sudan. Engaging in mapping activities with diverse groups to assess strengths, weaknesses, threats and opportunities has also strengthened the coalition individual members' & groups' analyses of actual problems, as well as strategies to improving advocacy.

### **Trainings and capacity-building activities for allies, particularly youth groups**

Salmmah is working in 4 states in Sudan to build the capacity of women's/human rights defenders amongst 20 youth organizations.

### **Campaigning against sexual-harassment in public spaces**

Salmmah also has on-going anti-sexual harassment campaigns, raising awareness & taking actions in public spaces, markets, and universities. A next step is advocating to create secure, violence-free spaces for women in three markets in Khartoum, using stickers, posters, street-theatre and

face-to-face meetings with market goers. The new campaign is called AMNA, a female name that means “secure”.

### **Use of Creative Popular Education Tools and Tactics**

Salmmah has created numerous handbooks and training pamphlets on human rights charters and protocols as they relate to the rights of young women & girls, including rights to reject forced marriages. Other outputs include documentaries, posters, stickers, photography, and their dissemination through blogging and online media

## Conclusions

### 1. Main Points

- Early and forced marriage is defined by the lack of consent – either as decided by an adult woman or by virtue of her being under the age of 18 – in the decision to enter a marriage with a particular spouse.
- Early and forced marriage violates a number of universal human rights, and is unequivocally condemned by the international human rights regime.
- Country-level legal systems are often ill-equipped – and at times even incentivize – early and forced marriage. Where early and forced marriages are criminalized, these practices often continue unchecked by authorities.
- Patriarchal political structures, cultural attitudes, and religious interpretations lie at the heart of forced and early marriage.
- Causes and risk factors for early and forced marriage include: level of education, economic hardship, cultural/religious attitudes on honour and sexuality, and military conflict.
- The consequences of early and forced marriage are severe. For women, they result in a lack of autonomy, education, and decision-making power, as well as high risks of health problems, insecurity, abuse, and death. There are also negative consequences for society at large, from overpopulation to perpetuation of gender oppression.

### 2. Challenges

This report is part of an ongoing project that is concluding in 2015, when we expect to have a more complete scoping of the issues in the countries we are covering. But we also encourage the Office on the High Commissioner for Human Rights to make note of the following challenges we encountered.

#### **Lack of National-Level Quantitative Data**

The most severe obstacle was lack of access to national-level quantitative data on the prevalence and practice of early and forced marriages. Extracting from the data we do have, we know certain things about early marriage:

*Girls married before they turn 18 are less educated, have more children and are married to men who are significantly older. Women who married as girls are more likely to experience domestic violence and believe that in some cases a man is justified in beating his wife. Significant percentages of women who were married before 18 are in polygynous unions, and their partners are likely to be significantly older and more highly educated. In most countries, women who use traditional or folkloric contraception are more likely to have married before the age of 18 than those who used modern contraception when they are*

*trying to avoid pregnancy. At the descriptive level, they are more likely to come from poor families and from rural areas.*<sup>134</sup>

Unfortunately, we know much less about forced marriage among adult women. Indeed, while data on early marriage remains incomplete, data on forced marriage amongst adults remains practically non-existent. We simply do not know how often women are forced into marriage, where these marriages occur, and how these practices are changing over time. Instead, we must rely on anecdotal, ethnographic, and qualitative reports to sketch a picture on the state of forced marriage around the world.

### **Lack of Contextually-Specific Qualitative Data**

There is also a lack of rich qualitative data on the realities of women themselves in these marriages. Social and political taboos prevent researchers from undertaking comprehensive research on the subject. As discussed throughout this paper, we cannot develop a coherent and effective strategy to eliminate these practices without grasping the experiences of women, taking seriously their perspective on their own lives, marriages, and socio-political realities. The research that has been done is often fraught with Western-centric assumptions on coercion/consent, ideal family structure, and life-worlds, such that solutions derived from these assumptions may lead to inefficient outcomes or, worse, backlash.

Furthermore, it is clear that while the rates of early and forced marriage are mitigated by some factors, e.g. education, we remain unsure about how these factors actually affect marriage practices and women's empowerment. For instance, what kind of education – religious, secular, primary, secondary – results in lower risk of forced marriage? Does education have a direct affect on women's empowerment, for instance by changing attitudes towards gender roles, or does it simply demonstrate a selection bias in that women who are in a position to take advantage of education are also in a position to choose their partners at a later age? WLUML and its partners are currently undergoing empirical research into these questions.

Research and activism on forced and early marriage do not take place in a political or economic vacuum. For that reason, we often find ourselves with more information on a particular country or region due to higher international "interest" in that area. As a result, we find more English language documentation – although whether this documentation is of high quality is uncertain – in places such as Afghanistan where there is more focused Western international attention. Countries such as Senegal and Sudan were found to be the countries most lacking in research on early and forced marriage, perhaps because there is less international political interest, which leads to less humanitarian funding.

WLUML and partners will continue to source and collect current and up-to-date national-level data in local languages, to build a more comprehensive picture of the state of forced marriage in their contexts. This data will be collated and presented in future reports, adding to the English language data circulating at the international level.

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<sup>134</sup> UNICEF. 2001. *Early marriage: Child spouses*. Innocenti Digest. No. 7. UNICEF Innocenti Research Centre. Available at: <http://www.unicef-irc.org/publications/pdf/digest7e.pdf> [Accessed 29 September 2012].

### 3. Recommendations for Moving Forward on Forced Marriage

The following points constitute main recommendations and best practices informed from our general and country-specific research into forced and early marriage.

#### **1. All States must criminalize forced and early marriage in accord with international human rights standards.**

In all contexts, our partners emphasized the critical need for judicial and legislative authorities to set the age of maturity in accordance with international human rights standards, specifically Article 16(1) (a) and (b) of the General Recommendation 21 of CEDAW (13th session, 1994) on Equality in Marriage and Family Relations<sup>135</sup> and the General Principles given by the Committee of the CRC.

In addition, States must revise their respective legal codes in order to criminalize forced marriage, and should acknowledge that any child marriage is by definition a forced marriage. Legislation should define forced marriage broadly, including free and full consent provisions. Drafters may look to other states' laws, which have used terms, such as "free," "full," "mutual," "voluntary," and "informed," to describe consent, as well as descriptions that account for duress, such as "not extracted under pressure" or "vitiating by external factors, such as constrain."<sup>136</sup>

States should take steps to ensure that customary practices and laws do not condone or allow forced and child marriages. Laws should resolve conflicts between customary and formal laws in a manner that respects the survivor's human rights and principles of gender equality. Laws should ensure that use of a customary adjudication mechanism does not preclude the victim from accessing the formal justice system.<sup>137</sup>

We also recommend that States sign and ratify the Convention on Consent to Marriage, Minimum Age For Marriage and Registration of Marriage, as well as the Convention of Elimination of Discrimination Against Women, with no reservations.

#### **2. States must hold private parties accountable for facilitating forced and early marriage.**

Our partners reiterated the need to hold States accountability to their national and international commitments. Specifically, states must punish those private parties responsible for facilitating such unions, which may include the guardian of the child, the husband, influential community leaders, or judges and government officials who authorize such unions.

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<sup>135</sup> Equality in marriage and family relations (Thirteenth session, 1994), U.N. Doc. A/49/38 at 1, reprinted in Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.6 at 250 (2003).

<sup>136</sup> This language was derived from the UN Women, End VAW Now Campaign, "Defining and Establishing Consent", available at: <http://www.endvawnow.org/en/articles/615-defining-and-establishing-consent.html> [Accessed 14 December 2013.]

<sup>137</sup> This language was derived from the UN Women, End VAW Now Campaign, "Defining and Establishing Consent", available at: <http://www.endvawnow.org/en/articles/615-defining-and-establishing-consent.html> [Accessed 14 December 2013.]

Criminalization of forced and early marriage, we argue, is vital. Orders for protection simply limit the defendant's conduct; criminal sanctions label that conduct as wrong. We agree with the UN Women's End VAW Now Campaign's recommendation that: "criminalizing the offence of forced marriage will impact public attitudes, deter forced marriages, facilitate the public sector response, grant greater bargaining power to youth, and clarify and facilitate action against perpetrators."<sup>138</sup>

We also recommend further research into how to provide justice for those currently affected by forced and early marriages, including the possibility of reparations, considering that the automatic nullification of such unions may not be universally beneficial to survivors. We encourage a deep engagement with local communities in order to see how women themselves envision justice after experiencing a forced or early marriage.

### **3. Gender-justice agendas must be integrated into state mechanisms, particularly in post-conflict settings.**

In Afghanistan, Nigeria, Pakistan, and Sudan, on-going political conflicts were presented as a challenge to addressing culturally-justified violence against women generally and forced marriage specifically. Particularly in post-conflict situations, it is vital to tap into the abundant skills of women in rebuilding communities. Opportunities must be leveraged to insert gender equality agendas and women's initiatives.

This could include support to basic safety and security, strengthening the rule of law and initiation of security sector reform, support to political processes (including electoral processes), promoting inclusive dialogue and reconciliation, and developing conflict-management capacity at national and local levels.

In the case of popular uprisings, organisations and governments should learn to build on the invaluable experience of women exercising their rights as citizens by ensuring women's rights in new political, administrative and legal arrangements under discussion.

The structural inclusion of women into political decision-making is especially important considering the myriad connections between forced marriage and other social, economic, and political conditions. In order to get at the "root" of forced marriage, women's leadership in all spheres of life is crucial.

### **4. "Forced marriage" goes beyond "child" and "early-age" marriage.**

In most contexts, "forced marriage" is generally being engaged with from the perspective of early/child marriage, and specifically through its effects on girls. Less prevalent, in either the scholarly literature or public discourse, is a sustained engagement with forced marriages from the perspective of adults (i.e. of those over 18 years of age) or adolescents (15-18 years of age), except from a framework of domestic violence. A larger initiative on early/forced marriage ought to devote significant attention to forced marriages involving adults and adolescents, whose needs and experiences might diverge from their younger counterparts. Such a programme would start first with comprehensive quantitative research into the prevalence, causes, and consequences of adult forced marriage, and continue with a rich qualitative investigation into the experiences of women

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<sup>138</sup> UN Women, End VAW Now Campaign, "Criminalization of forced and child marriage", available at: <http://www.endvawnow.org/en/articles/629-criminalization-of-forced-and-child-marriage.html> [Accessed 14 December 2013.]

who have been affected by forced marriage. This research would inform a systematic comparison of forced marriage between adults, adolescents, and children, leading to strategic and more effective interventions.

### **5. Integrated approaches must have women’s and girls’ voices at the centre.**

Partner responses demonstrated that there are multiple, often overlapping, entry points for enacting change, and valuable actions tend to promote cooperative and integrated approaches that engage across various spheres, including those of health, reproductive rights, economic security, legal discrimination, women’s rights and gendered violence, and children’s rights.

With any strategy, however, women and girls must be placed in a leadership role. Studies have shown programs offering incentives and attempting to empower girls can be effective in preventing child marriage and can foster change relatively quickly.<sup>139</sup> Thus we encourage exploration into how we can strengthen women and girls’ empowerment, including leadership opportunities and capacities at a local level.

Placing women in a leadership role requires indigenous understandings of women’s empowerment and rights. Our partners agreed that in order to produce real change, we need strengthen our abilities to translate human rights and empowerment discourse into local languages and perspectives, so that community-level women recognize and believe that human rights are theirs to embody and own, and that they have the right to push for state accountability.

Previous work conducted by WLUML’s partners focused on documenting “indigenous” feminisms, i.e. sharing the stories of grassroots women who have not been exposed to human rights or feminist discourses from the transnational area, but who embody these principles in their own sense of justice. Finding ways to document stories (oral histories, digital stories, video documentaries) of indigenous feminisms whose language is probably more accessible than that of human rights may provide excellent teaching tools to combat forced marriage.

### **6. Locally-driven global solidarity build stronger movements.**

Our study affirms that all partners’ existing activities to end forced marriage begin with education and awareness-raising on the analysis of gender and social discrimination and rights violations at the grassroots community level. Community level actions on culturally-justified violence against women and forced marriage engage diverse groups, including youth, high school and university students, rural communities, religious and cultural leaders, adults and parents, through varying frameworks.

This community-engagement informs the varying activities brought to the provincial, federal and national levels, through both formal and informal channels and eventually to transnational solidarity actions against the practice of child/ forced marriage.

In addressing the kinds of international supports that would benefit partners’ implementation of projects on forced and early marriage, partners reported that transnational advocacy efforts and campaigns could help by:

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<sup>139</sup> Susan Lee-Rife, et al., What Works to Prevent Child Marriage: A Review of the Evidence, 43 Studies in Family Planning 2012, 287-303.

- supporting local campaign initiatives, calls to action, petitions, and disseminating these widely,
- putting pressure on national and state governments to outlaw forced marriage,
- providing financial and technical support in order to increase capacity among local activists,
- fostering networking links,
- providing forums in which common challenges and experiences can be shared, thus fostering the dissemination of research, lessons, and actions among potential allies.

In addition, ongoing assessment by governments, the private sector and civil societies on the achievement of the commitments under the Millennium Development Goals (MDGs) should recognise that child marriage directly hinders the achievement of 6 of the 8 MDGs. Simply put, the international community will not fulfil its commitments to reduce global poverty unless it tackles child marriage.<sup>140</sup> Girls who marry young do not receive the education and economic opportunities that are crucial in getting themselves and their families out of poverty (MDG1: End poverty and hunger). Girls forced into marriage tend to drop out of school (MDG2: Universal education). Forced and early marriage is caused by and works to reproduce multiple facets of gender inequality (MDG3: Gender equality). Child marriage severely hinders girls' health; when a mother is under 18, her baby is 60 percent more likely to die in its first year of life than a baby born to a mother older than 19 (MDG 4: Child health) and girls under 15 are five times more likely to die in childbirth than women in their 20s (MDG5: Maternal health). Child brides lack the information and the power to negotiate safe sexual practices with their often older and more sexually experienced husbands (MDG 6: Combat HIV/AIDS).

### **7. Popular education tools reach out to communities.**

Because socio-economic discrepancies impact upon proficiency in reading and writing and access to information (internet, radio, television, public spaces), all partners engage in a diversity of communication tactics to engage outreach audiences. In addition to policy briefs and reporting, the use of popular education techniques (such as street-theatre, radio plays and talks, posters, photography and visual arts, and video documentaries) are key to holistic communication strategies.

We need not reinvent the wheel when it comes to such strategies. In fact, the global campaign to eliminate forced and early marriage has much to learn from the richness of the global women's movement, especially its engagement with harmful traditional practices and culturally-justified violence against women. We especially encourage engagement with leaders of the struggle to end female genital mutilation, especially around their popular education tactics, in order to derive lessons that we can utilize towards the current struggle.

### **8. Engaging boys and men as a critical strategy towards enduring structural change to end culturally-justified violence.**

Several partners (Shirkat Gah and BAOBAB) have existing programs involving men, while others (FOSJ) explicitly mentioned the need to address the rights of boys who are also being forced into marriage.

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<sup>140</sup> Language taken from the Girls Not Brides Campaign, available at: <http://www.girlsnotbrides.org/what-is-the-impact> [Accessed 15 December 2013.]

There seems to be a recognition and consensus that long-term structural change will not happen without engaging boys and men. In struggles for gender-justice, its important to note whether or and how we see boys and men as also being disempowered by patriarchy, and unpack the ways in which we can explicitly incorporate/integrate boys at least, as part of the next generation of leaders, within a human rights framework of feminist leadership and transformation.

### **9. A new paradigm on religion, culture and human rights.**

All partners engage in work that challenges the patriarchal biases underpinning increasingly prominent interpretations of Islam and cultural discourses on rights. A unique and critical strength of WLUML partners is eschewing the false dichotomy of “secular vs. religious” strategies and a deep and nuanced understanding of “the right to freedom of religion and belief,” as indivisible from all other universal human, civil, economic and political rights.

Across contexts, the presence of discriminatory laws based on rigid interpretations of Sharia, and their increasing implementation – either through state structures or by vigilante non-state actors – presents an important threat and challenge.

As such, across contexts a commonly suggested action is re-educating populations by engaging religious leaders to denounce and debunk myths that forced/early marriage and violence against women more generally, are condoned or legitimated through the Quran or religious texts.

We highly encourage a deep engagement with progressive community leaders – including religious and other cultural gatekeepers – in order to invoke progressive religious or cultural arguments to counter the cultural and religious justifications for these practices. In addition, drafters of legislation should ensure that any supremacy laws include outreach to local and customary leaders to facilitate the implementation of these guarantees.<sup>141</sup>

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<sup>141</sup> UN Women, End VAW Now Campaign, “Criminalization of forced and child marriage”, available at: <http://www.endvawnow.org/en/articles/629-criminalization-of-forced-and-child-marriage.html> [Accessed 14 December 2013.]

## **Annex I: Forced Marriage in International Human Rights Standards and Mechanisms**

A number of international and regional human rights instruments lay down norms to be applied to marriage, covering issues of age, consent, equality within marriage, and the personal and property rights of women. This annex details those instruments and is divided into three sections.

- Section 1. International treaties
- Section 2. Regional treaties and mechanisms
- Section 3. Reports by international treaty bodies

Excerpts included are not exhaustive, but a sample of some of the most relevant articles, reports and recommendations that can be used in advocacy to end forced marriage. In Section 1, the status of the WELDD-focus countries vis-à-vis these treaties are given, as well as date of ratification, if applicable. In some instances, excerpts have been paraphrased for clarity.

### **Section 1. Articles in International Human Rights Treaties**

#### **Universal Declaration of Human Rights (UDHR, 1948)**

- Article 16 states: (1) Men and women of full age ... have the right to marry and found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution. (2) Marriage shall be entered into only with the free and full consent of the intending parties.
- Similar provisions are included in the 1966 International Covenant on Economic, Social and Cultural Rights and the 1966 International Covenant on Civil and Political Rights.

#### **Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (1956)**

- The Supplementary Slavery Convention prohibits any institution or practice whereby a woman, without the right to refuse, is promised or given in marriage on payment of a consideration in money or in kind to her parents, guardian, family or any other person or group; the husband of a woman, his family or his clan, has the right to transfer her to another person for value received or otherwise; or a woman on the death of her husband is liable to be inherited by another person.
- Article 1(c) describes institutions and practices similar to slavery as: Any institution or practice whereby: (i) A woman, without the right to refuse, is promised or given in marriage on payment of a consideration in money or in kind to her parents, guardian, family ...
- Article 1(d) implicitly prohibits forced child marriage: States parties are required to abolish any institution or practice whereby a child or young person under the age of 18 years is delivered by either or both of his natural parents or by his guardian to another person, whether for reward or not, with a view to the exploitation of the child or young person or of his labour.

#### **Ratification by WELDD Focal Countries**

**Afghanistan:** 16 November 1966

**Iran:** 20 December 1959

**Nigeria:** 26 June 1961

**Pakistan:** 20 March 1960

**Senegal:** 19 July 1979

**Sudan:** 9 September 1957

### **Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (1964)**

- Article (1): No marriage shall be legally entered into without the full and free consent of both parties, such consent to be expressed by them in person ... as prescribed by law.
- Article (2): States Parties to the present Convention shall ... specify a minimum age for marriage (“not less than 15 years” according to the nonbinding recommendation accompanying this Convention). 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 interests of the intending spouses ...
- Article (3): All marriages shall be registered ... by the competent authority.

#### **Ratification by WELDD Focal Countries**

**Afghanistan:** Not party

**Iran:** Not party.

**Nigeria:** Not party

**Pakistan:** Not party

**Senegal:** Not party

**Sudan:** Not party

### **International Covenant on Civil and Political Rights (ICCPR, 1966)**

- Article 23 (2) of the International Covenant on Civil and Political Rights provides for the right of men and women of a marriageable age to marry and to found a family.
- Article 23 (3) provides that no marriage is to be entered into without the free and full consent of the intending spouses

#### **Ratification by WELDD Focal Countries**

**Afghanistan:** 24 January 1983

**Iran:** 24 June 1971

**Nigeria:** 29 July 1993

**Pakistan:** 23 June 2010. Reservations made upon ratification:

Article 3: "The Government of the Islamic Republic of Pakistan declares that the provisions of Article 3 of the International Covenant on Civil and Political Rights shall be so applied as to be in conformity with Personal Law of the citizens and Qanoon-e-Shahadat."

Article 25: "The Government of the Islamic Republic of Pakistan states that the application of Article 25 of the International Covenant on Civil and Political Rights shall be subject to the principle laid down in Article 41 (2) and Article 91 (3) of the Constitution of Pakistan."

Reservations upon signature: "The Government of the Islamic Republic of Pakistan reserves its right to attach appropriate reservations, make declarations and state its understanding in respect of various provisions of the Covenant at the time of ratification."

**Senegal:** 13 February 1978: "The Government of Senegal declares, under article 41 of the International Covenant on Civil and Political Rights, that it recognizes the competence of the Human Rights Committee referred to in article 28 of the said Covenant to receive and consider communications submitted by another State Party, provided that such State Party has, not less than twelve months prior to the submission by it of a communication relating to Senegal, made a declaration under article 41 recognizing the competence of the Committee to receive and consider communications relating to itself."

**Sudan:** 28 December 1976

## **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.

### **Ratification by WELDD Focal Countries**

**Afghanistan:** 24 January 1983

**Iran:** 24 June 1975

**Nigeria:** 29 July 1993

**Pakistan:** 17 April 2008 Reservation: "Pakistan, with a view to achieving progressively the full realization of the rights recognized in the present Covenant, shall use all appropriate means to the maximum of its available resources."

**Senegal:** 13 February 1978

**Sudan:** 18 March 1986

## **Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW, 1979)**

- Article 16.1 prescribes equally for 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 and full consent; ...
- Article 16.2 states: 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.

### **Ratification by WELDD Focal Countries**

**Afghanistan:** 5 March 2003

**Iran:** Not party.

**Nigeria:** 13 June 1985

**Pakistan:** 12 March 1996. Reservation: "The Government of the Islamic Republic of Pakistan declares that it does not consider itself bound by paragraph 1 of article 29 of the Convention."

**Senegal:** 5 February 1985

**Sudan:** Not party.

## **Convention on the Rights of the Child (CRC, 1989)**

- Article 1: 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 2: Freedom from discrimination on any grounds, including sex, religion, ethnic or social origin, birth or other status.
- Article 3: In all actions concerning children ... the best interests of the child shall be a primary consideration.
- Article 6: Maximum support for survival and development.
- Article 12: The right to express his or her views freely in all matters affecting the child, in accordance with age and maturity.
- Article 19: The right to protection from all forms of physical or mental violence, injury or abuse, maltreatment or exploitation, including sexual abuse, while in the care of parents, guardian, or any other person.
- Article 24: The right to health, and to access to health services; and to be protected from harmful traditional practices.
- Articles 28 and 29: The right to education on the basis of equal opportunity.
- Article 34: The right to protection from all forms of sexual exploitation and sexual abuse.
- Article 35: The right to protection from abduction, sale or trafficking.
- Article 36: The right to protection from all forms of exploitation prejudicial to any aspect of the child's welfare.

## **Ratification by WELDD Focal Countries**

**Afghanistan:** Ratified 28 March 1994. Declaration: "The Government of the Republic of Afghanistan reserves the right to express, upon ratifying the Convention, reservations on all provisions of the Convention that are incompatible with the laws of Islamic Sharia and the local legislation in effect."

**Iran:** 13 July 1994. Declaration: "'The Government of the Islamic Republic of Iran reserves the right not to apply any provisions or articles of the Convention that are incompatible with Islamic Laws and the international legislation in effect."

**Nigeria:** 19 April 1991.

**Pakistan:** 12 November 1990.

**Senegal:** 31 July 1990

**Sudan:** 3 August 1990.

## **Section 2. Regional Human Rights Treaties and Mechanisms**

### **American Convention on Human Rights (1969)**

- Article 17 (2) guarantees the right of men and women of marriageable age to marry and to raise a family, and requires that no marriage is to be entered into without the free and full consent of the intending spouses.
- Under article 17 (3), the States parties are to take appropriate steps to ensure the equality of rights and the adequate balancing of responsibilities of the spouses as to marriage, during marriage, and in the event of its dissolution.

### **African Charter on the Rights and Welfare of the Child (1990)**

- Article 21 (2) states: 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 eighteen years.

### **Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (1994)**

- Article 3 safeguards a woman's right to be free from violence in both the public and private spheres.

### **Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (2003)**

- Article 6 states that no marriage is to take place without the free and full consent of both parties, and requires States to enact appropriate national legislative measures to guarantee that the minimum age of marriage for women is to be 18 years.

## Council of Europe Resolution 1468 on Forced Marriages and Child Marriage (2005)

- In resolution 1468, the Parliamentary Assembly of the Council of Europe defined forced marriage as “the union of two persons at least one of whom has not given their full consent to the marriage”.
- It defined child marriage as “the union of two persons at least one of whom is under 18 years of age”.
- Among other things, it urged the national parliaments of the Council of Europe member States to fix at or raise to 18 years the minimum statutory age of marriage for women and men, to make it compulsory for every marriage to be declared and entered by the competent authority in an official register, and to consider the independent criminal offence.
- In 2008, the **Appeals Chamber of the Special Court for Sierra Leone (SCSL)** became the first international criminal tribunal to recognize "forced marriage" as a crime against humanity.<sup>142</sup>

## Section 3. Reports and Recommendations by International Treaty Bodies

### CEDAW Committee

- In its general recommendation No. 24, the Committee specifically recommends that States parties enact and effectively enforce laws that prohibit the marriage of girls.
- In its general recommendation No. 21, the Committee considers that the minimum age for marriage should be 18 years for both men and women.
- This age limit, which is in line with the definition of the child provided in the Convention on the Rights of the Child, is also reflected in article 21 of the African Charter on the Rights and Welfare of the Child.
- In its general recommendation No. 21, the Committee recognizes that forced marriage may exist as a result of cultural or religious beliefs, but maintains that a woman’s right to choose a spouse and enter freely into marriage is central to her life and to her dignity and equality as a human being and that this must be protected and enforced by law.

### Committee on the Rights of the Child

- In its general comment No. 4, the Committee strongly urges States parties to develop and implement legislation aimed at changing prevailing attitudes, and address gender roles and stereotypes that contribute to harmful traditional practices.
- It also calls upon States parties to protect adolescents from all harmful traditional practices, such as early marriage, and recommends that they review and, where necessary, reform their legislation and practice to increase the minimum age for marriage with and without parental consent to 18 years, for both girls and boys.

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<sup>142</sup> Judgment, Brima, Kamara, and Kanu (SCSL-04-16-T), Appeals Chamber, 22 February 2008 (hereinafter AFRC Appeals Judgment). Discussed in Jain 2008.

## **UNSR on Violence Against Women, Its Causes and Consequences.**

- In her report on her mission to Somalia, the UNSRVAW concluded that although servile marriages occurred, especially in rural areas, the lack of data made it impossible to ascertain the extent of the practice of rape and early and/or forced marriages (A/HRC/20/16/Add.3, para. 24).

## **UNSR on Traditional Practices Affect in the Health of Women and the Girl Child**

- According to the Special Rapporteur on traditional practices affecting the health of women and the girl child, the practice of forced marriage deserved the close scrutiny of the international community, as it would not be eradicated until women were considered full and equal participants in the social, economic, cultural and political life of their communities (E/CN.4/Sub.2/2005/36, para. 82).

## **UNSR on the Human Rights Aspects of the Victims of Trafficking in Persons, especially in Women and Children**

- The Special Rapporteur on the human rights aspects of the victims of trafficking in persons, especially in women and children, concluded that there was a clear recognition in United Nations and regional agreements, as well as in national legislation, that many women and girls around the world lived under conditions where, owing to harmful patriarchal, traditional, customary and/or religious practices, they could not fully exercise their human rights to marry or refuse marriage; to full sexual autonomy; to refuse childbearing; to leave partners, including abusive partners, while retaining custody of their children, and to do so safely and without legal, economic, social, political and cultural repercussions (A/HRC/4/23, para. 38.)