

Reforming the legislation on the age of marriage:

Successful experiences and lessons learned from Latin America and the Caribbean



Guidance note on successful experiences and lessons learned on change of legislation on the age of marriage, with a special emphasis on Latin America and the Caribbean¹

¹ Commissioned by UN Women as part of the regional inter-agency flagship initiative in LAC with UNICEF, UNFPA, PAHO/WHO and UNAIDS. This flagship initiative is part of the workplan of the UN regional inter-agency group on gender equality and women's empowerment of the undg lac. Compiled by Rocío Rosero Garcés and Cecilia Valdivieso Vega.

ISBN: 978-1-63214-055-5

The views expressed in this publication are those of the authors and do not necessarily represent the views of UN Women, UNICEF, UNFPA, PAHO/WHO, UNAIDS, the United Nations or any of its affiliated organizations..

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1 INTRODUCTION

The United Nations regional inter-agency group for gender equality and women's empowerment in Latin America and the Caribbean (GIG), coordinated by UN Women, has decided to implement an inter-agency regional flagship initiative for 2015-2016, with the aim of helping to “end early and child marriage in Latin America and the Caribbean”.

This initiative is directed jointly by UNICEF, UNFPA, UNAIDS, PAHO/WHO and UN Women and seeks to contribute to the implementation of legislative changes to eliminate all exceptions to the legal age of marriage in countries in the region. These five agencies are aware that legislative changes in one area alone are not sufficient to promote the human rights of girls in the region. However, it is a practical and strategic starting point that unites agencies' agendas around a common goal. It is also understood to be one of many interventions that contributes to protecting the rights of girls and promoting their empowerment.

The regional initiative is aligned with the joint UNFPA-UNICEF Global Programme to Accelerate Action to End Child Marriage 2016-2019 and contributes to global efforts already underway to end child marriage in the region.

Joint general recommendation/general comment No. 31 of the Committee on the Elimination of Discrimination against Women and No. 18 of the Committee on the Rights of the Child calls for states to consider that harmful practices are deeply engrained in social attitudes that see women and girls as inferior to men and boys based on stereotypical roles. The Committees highlight the gender dimension of violence and state that sex- or gender-based attitudes and stereotypes, power imbalances, inequalities and discrimination perpetuate the widespread existence of practices that often involve violence or coercion. Furthermore, the Committees draw the attention of States parties to the fact that discrimination due to sex or gender is intertwined with other factors that affect women and girls, particularly those connected with, or appearing to be connected with, disadvantaged groups who are therefore more likely to be the victims of harmful practices².

This Guidance Note has been drawn up in order to inform United Nations personnel, legislators, public policy advisors and civil society organizations about the international human rights standards regarding the obligation of States to raise the minimum age of marriage; examples are provided from various Latin American and Caribbean countries in making national legislation compatible with these standards and recommendations regarding actions and approaches that can result in such processes.

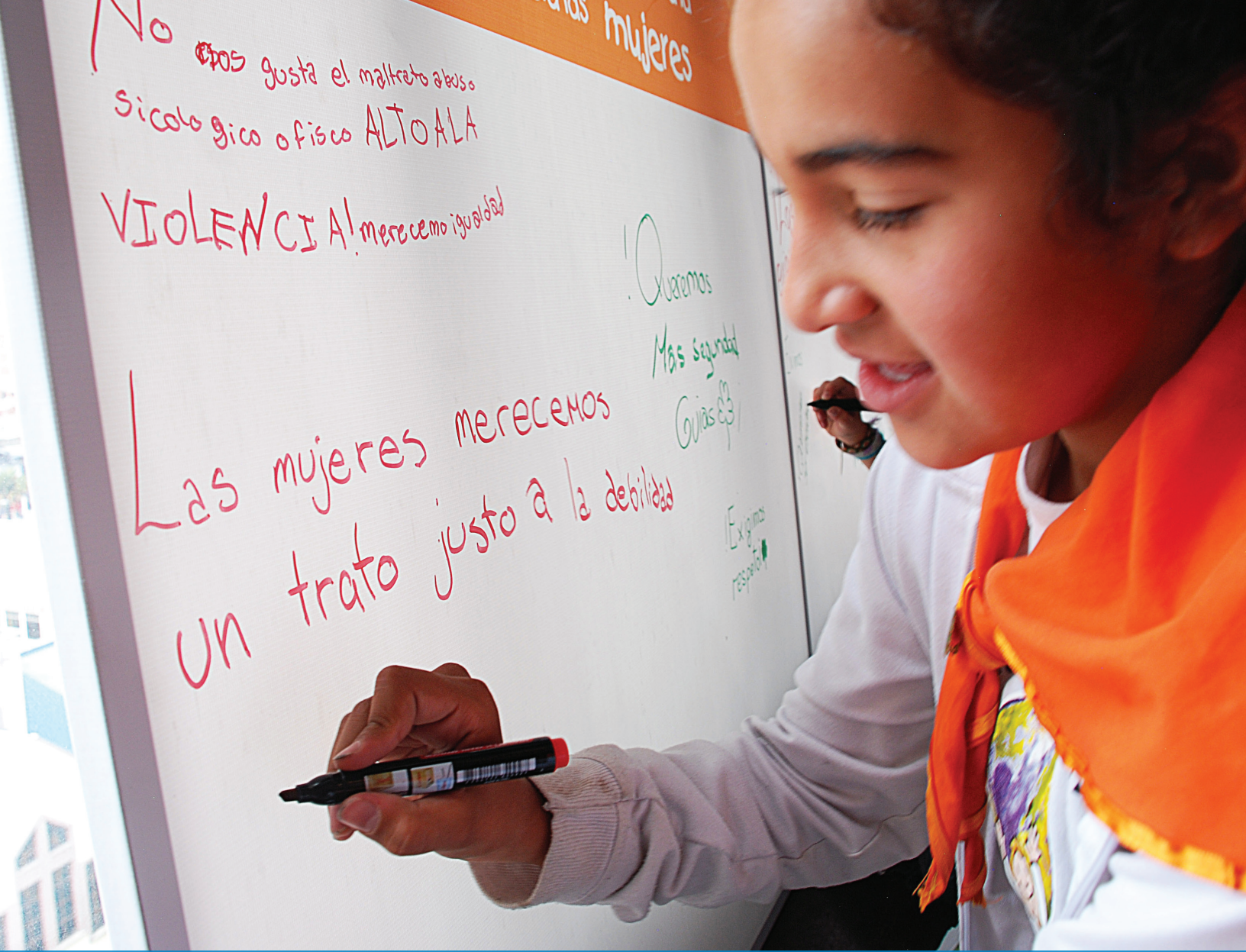
What is child or early marriage?

According to the Committee on the Elimination of Discrimination against Women and the Committee on the Rights of the Child, "Child marriage, also referred to as early marriage, is any marriage where at least one of the parties is under 18 years of age. The overwhelming majority of child marriages, both formal and informal, involve girls, although at times their spouses are also under the age of 18. A child marriage is considered as a form of forced marriage given that one or both parties have not expressed their full, free and informed consent"³.

Child marriage, such as de facto unions or early conjugal unions, have a number of long-term negative consequences that affect the rights of girls and boys, particularly the right to education, to a life free of violence, to express their opinions, and to sexual and reproductive health, which have an impact on their life plans.

2 Joint general recommendation/general comment No. 31 of the Committee on the Elimination of Discrimination against Women and No. 18 of the Committee on the Rights of the Child on harmful practices. CEDAW/C/GC/31/CRC/C/GC/18. <http://www.acnur.org/t3/fileadmin/Documentos/BDL/2014/9925.pdf?view=1>

3 Ibid.



2

REGIONAL CONTEXT

Whereas globally the practice of child marriage has slowly been decreasing since the 1980s, no significant changes have been seen in this region.

Child marriage in numbers

Globally, in developing countries, 1 in every 3 young women aged 20-24 years, i.e. 70 million women, marry before the age of 18; one-third marry before the age of 15 years⁴.

In 61 countries in all regions of the world, child marriage occurs in 20 per cent of cases. In some countries, especially in Latin America and West Africa, early marriages are commonplace and the underlying gender dimensions to this phenomenon often have negative lifelong consequences due to the seriousness of their impacts.

According to information from UNICEF⁵, 30 per cent of women between the ages of 20 and 49 in Latin America and the Caribbean were married or entered into a union before the age of 18, while 18 per cent married before the age of 15. In Mexico data from the 2014 National Survey of Demographic Dynamics (ENADID) suggest that 21.5% of women aged 20-24 entered into a union before reaching full age, and 3.8% before the age of 15. Currently 19 per cent of girls aged 15-19, or one in five, are married or in a de facto union. Child marriage rates in Latin America and the Caribbean are slightly below the world average. However, whereas globally the practice of child marriage has slowly been decreasing since the 1980s, no significant changes have been seen in this region.

In countries in the region, the prevalence of child marriage in rural areas is almost double that of urban areas; girls from poor families and those living in rural areas are particularly vulnerable. Whereas in the wealthiest quintile it is estimated that 10 per cent of women aged between 20 and 49 married before the age of 18, the proportion is as high as 38 per cent for the poorest quintile. Indigenous girls are particularly affected⁶, which contributes to the reproduction of intergenerational poverty. However, unlike rural and urban areas of Mexico, conjugal unions do not occur especially early in rural zones compared with cities; in other words, child marriage is not a problem that exclusively affects girls or adolescents in rural areas⁷.

⁴ Resolución aprobada por la Asamblea General el 18 de diciembre de 2014 69/156. Matrimonio infantil, precoz y forzado. <http://www.acnur.org/t3/fileadmin/Documentos/BDL/2015/9953.pdf?view=1>

⁵ UNICEF LACRO. Legal minimum ages and the realization of adolescents' rights. January, 2015. UNICEF Gender Action Plan 2014-2017. E/ICEF/2014/CRP.12 April 2014.

⁶ UNICEF, Regional guide on adolescents, 2014.

⁷ ONU Mujeres. El matrimonio infantil en México: niveles y diferenciales socioeconómicos por entidad federativa (*Child marriage in Mexico: socioeconomic levels and differences between federal entities*). 2015. p.3

Determining factors for child marriage

Some studies on child marriage have been published by United Nations agencies and specialized NGOs that refer to structural factors regarding problems such as teenage pregnancy and child marriage, such as poverty, geographical location, regulations that discriminate against women and young people, and limited access to education, including sex education. However, there is insufficient information to compare the situation in every country in the region.

As remarked in the UNFPA global study on child marriage, this phenomenon continues in poor rural areas in developing countries, partly due to local tradition. In some cases parents believe their daughters will be protected and in other situations conflicts push them in this direction. But above all child marriage is the result of a lack of life options: girls are removed from the education system and remain vulnerable and more exposed to child marriage.

According to the results of the study carried out by PROMUNDO⁸ in Brazil in 2015, the main factors leading to child marriage are: unwanted teenage pregnancy and the family's interest in protecting the girl's reputation and ensuring the baby's future; the desire to control adolescents' sexuality and avoid risky behavior; the pursuit of economic security by the girl's family; removal of girls from their parents' household due to the lack of educational and employment opportunities; abusive experiences or control of mobility. Another factor is the desire of men to marry younger wives, who are considered more attractive and easier to control; husbands are on average 9 years older than their wives. The study also revealed that social services are unsatisfactory and in many cases discriminatory, and also noted the lack of protection for married girls' rights. This combination of factors leads to practices that are detrimental to the rights of girls, boys and women.

Poverty levels

Although poverty is not the cause of child marriage, it considerably impacts the life projects of women and girls. In as much as girls and adolescents do not have access to education, they have fewer opportunities to make informed decisions regarding actions outside the home. As a consequence, they can be seen as an economic burden by their families, even unable to fend for themselves. This concern that some families have regarding the expenses they think their daughters

⁸ PROMUNDO. She goes with me in my boat": Child and Adolescent Marriage in Brazil. Executive Summary. July 2015. http://promundoglobal.org/wp-content/uploads/2015/07/SheGoesWithMeInMyBoat_ExecutiveSummary_ES_web.pdf

represent is something that can result in the family selling them and even allowing them to be exploited for work⁹.

Some mothers and fathers genuinely believe that marriage will guarantee the future of their daughters while others see them effectively as a burden or even a commodity. In this context child marriage is understood as a mechanism that allows girls and adolescents to lead a healthy and productive life. Yet child marriage ultimately denies girls the opportunity to fully develop their potential and grow as empowered citizens, which limits their personal chances and has a social and economic impact on communities¹⁰.

According to a study carried out in 2015 by UN Women Mexico for that country, the figures show a correlation between child marriage and the socioeconomic level; households with a higher level of education or a higher socioeconomic level have significantly lower rates of child marriage: 2 per cent among university graduates and 4.2 per cent in the highest socioeconomic stratum. The link between the level of education and the age of marriage for girls confirms that education is crucial in preventing this type of harmful practice.

The results of the UNFPA global study on child marriage show that girls living in rural areas of developing countries are twice as likely to marry or enter into a free union as their urban counterparts (44 per cent versus 22 per cent, respectively)¹¹. This is occurring in a context of urbanization and minimal decentralization in which children, adolescents and young people in rural areas have less access to quality services and fewer opportunities to continue their education.

Gender stereotypes

According to qualitative and quantitative studies on child marriage, the issue of poverty can influence and in some countries can be decisive. However, child marriage is rooted in the many gender disparities that are expressed and reproduced through practices,

language and symbolic representations that are the cause of discrimination and violence.

Child marriage is undoubtedly a problem that reflects gender inequalities. There are no disaggregated data for all countries but it is important for information to be made available to guide public policy actions and definitions. In Mexico's case¹², 3.8% of women aged 20-24 were married before the age of 15 and 21.5% of women in the same age group married before the age of 18¹³. These figures allow us to conclude that women were married as minors to men who were considerably older than them.

According to information from various studies in countries in the region, social norms regarding traditional masculine roles¹⁴ are based on factors such as productivity, initiative, heterosexuality, decision-making, autonomy, rationality, willingness to hold power, and repression of emotions; this encourages risky behavior and the violent resolution of conflicts that is confirmed by naming conventions; meanwhile norms regarding traditional female roles reproduce sociocultural patterns of subordination in all areas, perpetuating the underlying dynamic of gender power in all social relations from infancy onwards. Based on this logic, communication methods also play a role since unequal power relationships and dynamics are reproduced that make acceptable the image and role of women in a position of inferiority and dependence.

All this is played out in daily dynamics via subordinate power relationships, production relationships and emotional and sexual relations that lead to sociocultural mandates and patterns with privileged control positions for men compared with dependence and subordination for women.

(...) the persistence of a chauvinistic culture despite the significant advances girls and women have achieved in the region; the resulting gender inequality and the negative attitudes of boys and men toward girls and women; the norms that perpetuate violence

⁹ Igualdad Ya. Proteger a las niñas. El uso de la ley para erradicar los matrimonios infantiles, prematuros y forzados y otras violaciones de derechos humanos relacionadas (*Equality Already. Protecting girls. Using the law to eliminate child, early and forced marriage and other related human rights abuses*). January, 2014

¹⁰ UNFPA, *Marrying Too Young. End child marriage*. New York, 2012. Pág. 12

¹¹ The investigation "Marrying Too Young. End child marriage" carried out by UNFPA in 2012 was based exclusively on data from 48 countries.

¹² UN Women Mexico, *El matrimonio infantil en México: niveles y diferenciales socioeconómicos por entidad federativa (Child marriage in Mexico: socioeconomic levels and differences between federal entities)*. Working document, 2015.

¹³ Source: UN Women based on the National Survey of Demographic Dynamics, 2014, INEGI. Women aged 20-24 years (N=14,023).

¹⁴ See. Faur, Eleonor. *Masculinidades y familias*. En: *Democratización de las Familias (Masculinity and Families. In: The Democratization of Families)*. UNICEF Argentina. 2005

and impunity; the poverty that forces girls into sexual relations with older men as a survival strategy; and the inadequate protection of human rights¹⁵.

A combination of sociocultural representations exists regarding motherhood, adolescence, partner relationships and sexuality that place women in a position of inferiority and situations of discrimination.

Education

There are at least two important dimensions to the relationship between education and child marriage: 1) In all countries in the LAC region it is thought that child marriage is a significant cause of school desertion, with considerable implications on girls in particular; in the medium term, girls who leave school harm their economic autonomy by limiting or interrupting access and promotion to other educational levels, which also has an impact on their long-term life projects; this state of greater vulnerability makes them prone to fall into situations of poverty; 2) The second dimension is linked to deficiencies in the education system: teachers without sufficient training and support to instruct complete sex education, overburdened study plans, and a high number of pupils per class. The evaluation of sex education programs carried out by UNFPA in 2014 highlighted two additional points: the persistence of discriminatory school environments and the lack of policies and practices to address intimidation, sexual harassment, discrimination and other human rights abuses, which ultimately undermines the provision of a safe and positive learning environment¹⁶.

The combination of factors highlighted above therefore becomes an obstacle to the right to information about sexual and reproductive health and protection services.

“CSE [comprehensive sexuality education] embraces a holistic view of sexuality and sexual behaviour: it is age-appropriate, curriculum-based education that aims to equip children and young people, according to their evolving capacities, with the knowledge, skills,

¹⁵ UNICEF Ecuador – Plan Internacional. Experiences and accounts of pregnancy among adolescents: An approximation towards the cultural, social and emotional factors influencing teenage pregnancy, through a study in six countries in the region. http://www.unicef.org/lac/UNICEF_PLAN_pregnancy_amongst_adolescents_2015.pdf

¹⁶ UNFPA. The evaluation of comprehensive sexuality education programmes: A focus on the gender and empowerment outcomes. 2015. <http://www.unfpa.org/sites/default/files/pub-pdf/UNFPAEvaluationWEB4.pdf>

attitudes and values that will enable them to develop a positive view of their sexuality. When started early and provided over a long period of time, CSE empowers young people to make informed decisions regarding their sexuality and sexual behaviour, and to exercise their rights and responsibilities as citizens in school, the community and society at large.”¹⁷

Sexual initiation

The region of Latin America and the Caribbean has the highest rates of sexual initiation among girls in the world; more than 22 per cent have experienced their first sexual relationship before the age of 15. Early sexual activity is a significant cause of concern for the health and development of adolescents. Some countries in Latin America do not fully recognize the need for adolescents to access sexual and reproductive health services and restrict such access to over 18-year-olds.

It is important to distinguish between the establishment of a minimum age for marriage and the removal of age-related obstacles to health services. To protect girls and boys from the harmful consequences of exploitation and violence, various international human rights instruments are in agreement that the age of marriage should be 18 years for both girls and boys, while simultaneously recognizing that adolescents have sexual and reproductive rights that must be addressed based on their development capacity.

These two concepts are independent of each other and are not contradictory; the first is related to the legal protection of girls, boys and adolescents, while the second is related to the removal of legal obstacles preventing adolescents and young people from accessing comprehensive health services. Both are required to ensure the wellbeing and health of girls, boys and adolescents.

The average age of sexual consent in Latin America is 14 years; countries that legally allow adolescents to have sexual relationships must also ensure that they have access to health services in order to responsibly manage their sexual and reproductive health.

Due to a lack of information, adolescents are particularly vulnerable to sexually transmitted diseases, including HIV/AIDS. They do not have access to knowledge about

¹⁷ Idem.

¹⁸ UNICEF LACRO. Legal minimum ages and the realization of adolescents' rights. January, 2015

and the provision of contraception methods¹⁸ due to reticence amongst society, institutions and families in recognizing them as sexually active persons, while inequality patterns are reproduced through this set of attitudes that deprive them of opportunities for information and knowledge to exercise their rights.

Teenage pregnancy

In the last 20 years, pregnancy among girls and adolescents has become one of the most critical problems affecting women in the region¹⁹; teenage pregnancy carries greater medical and psychosocial risks, leading to problems in terms of public health, justice and education²⁰; the risk of maternal death is four times as high in adolescents under the age of 16²¹.

“...Adolescent pregnancy and motherhood, which reflect the region’s deep social, cultural, gender, race and ethnicity inequities, are more than a major barrier to overcoming poverty

¹⁹ “In Ecuador, in the past decade and according to census data, it has increased by 74%, which means that approximately 4,000 minor adolescents are pregnant or mothers. In Nicaragua it has risen by 47% in 9 years. In Guatemala in 2014 there were 5,100 reported births to girls aged 10 to 14. And in Peru approximately 50,000 births per year are to mothers aged under 20 years and, according to statistics from the Ministry of Health in 2013, more than 1,100 births are to mothers aged only 12 and 13. This means that three or four girls aged 12 and 13 become mothers every day in Peru”. Original Spanish text: “En Ecuador, en la última década y según datos censales, se ha incrementado en un 74%, lo que quiere decir, que aproximadamente 4000 adolescentes menores, están embarazadas o son madres. En Nicaragua, aumentaron el 47% en 9 años. En Guatemala en el año 2014 se reportaron 5,100 partos de niñas entre 10 y 14 años. Y en Perú, aproximadamente 50 mil nacimientos al año son de madres menores de 20 años y, según la estadística del 2013 del Ministerio de Salud, más de 1,100 partos son de madres de solo 12 y 13 años. Es decir, tres o cuatro niñas entre los 12 y 13 años se convierten en madres por día en el Perú”. Stolen Lives, Planned Parenthood Global. Dec. 2015. p.16-17

²⁰ El Comité de Expertas pone foco en embarazo adolescente y derechos sexuales y reproductivos (*Committee of Experts shines the light on adolescent pregnancy and sexual and reproductive rights*). MESECVI – Belém do Pará. 15/10/2015. Retrieved 15/12/2015. <http://belemdopara.org/comite-de-expertas-pone-foco-en-embarazo-adolescente-y-derechos-sexuales-y-reproductivos/>

²¹ 65% of cases of obstetric fistula develop during adolescent pregnancy, with serious consequences for their lives, resulting in serious health problems and social exclusion. CLADEM. Presentation of a petition to the IACHR regarding a Paraguayan girl. May 2015.

and to young women entering the workplace. They put girls and young women at greater risk of physical or sexual violence by their partners. Prevalence rates are two to three times higher for women who had their first child before the age of 17 than for women who became mothers after the age of 25, according to data from PAHO/WHO (2014)”²².

Teenage motherhood is often considered a “step towards adulthood and affords improved status within the community. To become a mother is a pathway to commanding new respect and to becoming a “complete” woman as defined by her society (Rico and Trucco, 2014). Teenage motherhood is seen as an option that gives meaning and a purpose for life, particularly in contexts where there are few or no alternatives (Binstock and Pantelides, 2006, Stern, 1997). However, it is important to note the frequent association between sexual violence and teenage pregnancy, particularly in the case of girls aged under 15 years.”²³

Although a decrease in fertility has been recorded in the region, data regarding adolescents and girls who have unwanted pregnancies show that they are no longer considered subjects with rights; their ability to make decisions regarding their bodies is denied and their access to health services, information and sex education are restricted.²⁴ The high rates of teenage pregnancies are linked to the problem of forced marriages, sexual abuse and violence, and the ban on voluntary abortions.

Violence

All forms of violence against women and girls are human rights abuses that occur with alarming frequency in countries in the region. According to information from ECLAC’s Gender Equality Observatory²⁵, there are short-term and long-term health consequences and

²² Gender Equality Observatory - ECLAC. Confronting violence against women in Latin America and the Caribbean, annual report 2013-2014. Santiago de Chile. Retrieved 15/12/2015. http://repositorio.cepal.org/bitstream/handle/11362/37185/S1500499_es.pdf?sequence=4

²³ PLAN INTERNATIONAL & UNICEF (August 2014). Experiences and accounts of pregnancy among adolescents: An approximation towards the cultural, social and emotional factors influencing teenage pregnancy, through a study in six countries in the region. Panama City, Republic of Panama http://www.unicef.org/lac/UNICEF_PLAN_pregnancy_amongst_adolescents_2015.pdf

²⁴ Gender Equality Observatory - ECLAC. Op.cit

²⁵ Ibid.

reductions in income and productivity in addition to the physical and psychological effects suffered.

Violence originates in discrimination and in the extreme exercise of authority that is seen as legitimate. It has many forms and expressions: violence against partners, violence against girls and adolescents, violence within the community, sexual harassment at work, trafficking of women, institutional violence, violence against female migrants, indigenous people and those of African descent, violence during armed conflicts, and private and public femicide (ECLAC, 2009b)²⁶.

Girls who marry at an early age are more likely to suffer various forms of violence, in general, and girls who are mothers have a reduced level of self-esteem and lack the resources necessary to confront violence and seek appropriate help²⁷. They are exposed to violence from their partners, including a range of controlling and unequal behaviors by older husbands.

WHO data show that physical or sexual violence inflicted on women by their partners or ex-partners is commonplace in all countries and at all socioeconomic levels, with territorial diversity. Many young women and girls report forced sexual initiation by their husbands, intimate partners or boyfriends during their first unwanted sexual relationship²⁸.

The Committee of Experts of MESCEVI, the Follow-up Mechanism to the Belém do Pará Convention (Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women) signed by the Organization of American States, has expressed its concern that sexual violence against women, girls and adolescents has harmful consequences on them and on society as a whole, affects their physical and reproductive health, increases the risk of maternal and infant morbidity and mortality and the transmission of HIV, leads to high-risk pregnancies and pregnancy-related problems including unsafe abortions, premature deliveries, fetal distress, depression,

post-traumatic stress, anxiety, and carries a greater risk of suicide²⁹.

The results of the study by Fundación Desafío Ecuador (2015) make it possible to state that physical, psychological and sexual violence are common in the cases of forced maternity that were studied³⁰, where, in addition to being victims, subjects remained pregnant and were forced to become mothers of unplanned children.

“Experiencing forced motherhood is equivalent to stealing the most precious thing we have as human beings, i.e. stealing time to dream, wish, decide and live the life we want”³¹.

²⁶ Ibid.

²⁷ UNICEF LACRO. Legal minimum ages and the realization of adolescents' rights. January, 2015.

²⁸ Ibid.

²⁹ Comité de Expertas pone foco en embarazo adolescente y derechos sexuales y reproductivos (*Committee of Experts shines the light on adolescent pregnancy and sexual and reproductive rights*). MESECVI – Belém do Pará. 15/10/2015. <http://belemdopara.org/comite-de-expertas-pone-foco-en-embarazo-adolescente-y-derechos-sexuales-y-reproductivos/>

³⁰ Stolen Lives. Fundación Desafío. Ecuador. November 2015. Retrieved 3 January 2016. http://media.wix.com/ugd/8313b8_5d3d813fe76542959cef9af2a17b3e43.pdf

³¹ Idem. p. 5 and 45. Original Spanish text: “Vivir una maternidad forzada, equivale a robar lo más preciado que tenemos los seres humanos, es robar el tiempo para soñar, desear, decidir y vivir la vida como yo quiera”.



3

HUMAN RIGHTS STANDARDS REGARDING THE MINIMUM AGE OF MARRIAGE

Addressing child marriage from a human rights perspective is a fundamental challenge for States and society as a whole and is closely related to the reduction of gender disparities. One of the main ways to prevent child marriage and promote equity and equality is to determine a universal minimum age for marriage in accordance with international human rights standards.

Legislation on the minimum age is a basic tool for protecting the rights of adolescents and for enabling their empowerment, which must go hand in hand with public policies that guarantee the realization of their human rights in such a way that they all have the opportunity to be responsible and active adult citizens³². This is the reason why legislation on the minimum age can either significantly boost or drastically reduce the rights of adolescents³³.

Determining the age of marriage through legislation is an obligation based on the Convention on the Rights of the Child; in Article 4 States parties are requested to “undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized” therein. The Convention on the Elimination of All Forms of Discrimination against Women does not establish a minimum age but points out that “The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.” (Art. 16, No. 2)

International standards set the minimum age for marriage at 18 years³⁴. This applies to both girls and boys; the establishment of an age difference is therefore seen as another form of discrimination.

Both the Committee on the Rights of the Child and the Committee on the Elimination of Discrimination against Women have reiterated the need for a complete ban on marriage before the age of 18. In its General Recommendation No. 21 on equality in marriage, the Committee on the Elimination of Discrimination against Women has made it clear that “the minimum age for marriage should be 18 years for both man and woman” (clause 36). It has explicitly been stated that the possibility of establishing a younger age based on the provisions of Article 1 of the Convention does not apply to marriage.

The supervisory bodies of the Convention on the Rights of the Child and CEDAW consider child marriage to be a harmful practice; the joint general recommendation/general comment No. 31 of the Committee on the Elimination of Discrimination against Women and

No. 18 of the Committee on the Rights of the Child on harmful practices explains that, like female genital mutilation, polygamy and “honor” crimes, child or forced marriage is a harmful practice based on the idea of women’s inferiority and leads to physical or psychological violence. Similarly, they state that “There is also a negative impact on their dignity, physical, psychosocial and moral integrity and development, participation, health, education and economic and social status”.

3.1 Principles of the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Violence against Women

Various international human rights instruments incorporate standards on the minimum age of marriage, but the CEDAW and Convention on the Rights of the Child – including the recommendations of their corresponding Committees – provide more relevant conceptual and legal features in order to understand the problem of child marriage as a harmful practice that affects the fundamental principles of human rights and specific rights pertaining to boys, girls and adolescents.

These principles are international standards that must be complied with in terms of the rights of girls and women, which are central to the problem of child marriage. The CEDAW contains three guiding principles: equality, non-discrimination and the obligation of States parties. The Convention on the Rights of the Child, on the other hand, establishes four principles that apply transversely to all articles: non-discrimination, the child’s best interests, the child’s opinion, and survival and development.

1. Non-discrimination: Article 1 of the CEDAW defines discrimination against women in the widest sense of the word: it is any distinction, exclusion or restriction based on sex that aims to affect or results in affecting the full realization of women’s rights. The principle of non-discrimination is found in Article 2 of the Convention on the Rights of the Child, in which it is stipulated that no child shall be treated unfairly, regardless of their race, religion, opinion or origin, among other things.

Based on the above definitions, if national legislation determines a different minimum age of marriage for boys and girls, this discriminates against girls, and therefore they do not enjoy the protection established in the Convention on the Rights of the Child for all their rights. Discrimination also occurs because there is a differentiation based on sex and gender stereotypes,

³² UNICEF LACRO, “Legal minimum ages...”, Op. Cit.

³³ Idem.

³⁴ Joint general recommendation/general comment No. 31 of the Committee on the Elimination of Discrimination against Women and No. 18 of the Committee on the Rights of the Child states that in exceptional cases judicial authorities may approve marriage by minors, provided that they have reached 16 years.

since it is considered that women – from childhood – are destined to become wives and mothers.

2. Equality: The CEDAW talks about substantive equality, which goes beyond formal equality and has three dimensions: equality of opportunities, equality of access, and equality of results. It stipulates that States parties create conditions so that women have the same opportunities and adopt measures to correct situations of inequality, including affirmative action. It is also important to mention Article 16 of the Convention, which states that “1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations”. This is the same right to enter into marriage and to freely choose one’s spouse and marry only by one’s own free will and with full consent.

The establishment of a lower age of marriage for girls promotes a harmful practice that is sustained by gender stereotypes that see women as being in need of protection from an early age.

3. Obligations of the States parties: Article 2 of the CEDAW – which is further developed by Articles 3 and 4 – establishes the need for States parties to adopt measures of any kind to make the principle of equality effective in the national legal framework and also eliminate discriminatory norms. Likewise, States must ensure that women have the option of submitting complaints to the justice system. Measures that States must adopt should also promote equality via the eradication of discriminatory actions and cultural practices.

Article 4 of the Convention on the Rights of the Child establishes the requirement to adopt measures to comply with the rights contained in the Convention; general comment No. 5 stipulates that States must “identify individual children and groups of children the recognition and realization of whose rights may demand special measures. For example, the Committee highlights, in particular, the need for data collection to be disaggregated to enable discrimination or potential discrimination to be identified”³⁵.

³⁵ Committee on the Rights of the Child, General comment No. 5 (2003) General measures of implementation of the Convention on the Rights of the Child (Articles 4 and 42, and paragraph 6 of Article 44), CRC/GC/2003/5, 27 November 2003. <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG-1d%2fPPRiCAqhKb7yhsiQql8gX5Zxh0cQqSRzx6Zd2%2fQRsDnCTcaruSeZhPr2vZQMqmhlfEo7plKbViUohP68AqgUKSq8kLJX-MNTIpf9VZbzCJMclV3cDztYhaQ2op>

This principle contains three types of duties for States in terms of child marriage: 1) Respect: States must ensure that all marriages are celebrated with the free and informed consent of both parties; 2) Protect: the obligation to protect requires States to prevent abuse by persons and organizations. Thus, for example, States must undertake to protect girls who run away from their families to avoid forced marriage or other harmful practices; 3) Guarantee: this obligation involves taking legislative, administrative, budgetary, judicial and other types of action to prevent and eliminate harmful practices, such as implementing comprehensive strategies based on the protection of rights.

4. Child’s best interests: According to Article 3 of the Convention on the Rights of the Child, in all measures that affect the life of boys, girls and adolescents, the child’s best interests must be the main consideration when governments, parliaments and judiciaries adopt measures. The Convention on the Rights of the Child has given the child’s best interests the character of a fundamental standard with a legal role projected in public policies that protect rights and guide the development of a culture that is more equal and also respectful of the rights of all persons³⁶.

The adoption of measures to eradicate child marriage must take into account the rights of children as a key priority in light of issues such as traditional practices among certain cultures, the economic situation in families, and parents’ honor.

5. Child’s opinion: Article 12 of the Convention on the Rights of the Child establishes the right of children to express their opinion freely. This principle promotes the participation of children, depending on their age and maturity, when decisions are made that affect their lives, without infringing upon the rights and responsibilities of their mothers and father regarding the lives of their children. Child marriage generally occurs in circumstances in which girls do not have the option of deciding whether or not they want to marry, since their parents make the decision for them. Since this harmful traditional practice will permanently affect the girl’s life, it is essential to guarantee her right to freely state her opinion based on appropriate information on the opportunities that will be restricted if she marries at an early age.

³⁶ Cillero, Miguel. El Interés superior del niño en el marco de la CDN (*The child’s best interests in the context of the Convention on the Rights of the Child*). http://www.iin.oea.org/el_interes_superior.pdf

The Committee on the Rights of the Child states that girls, boys and adolescents suffer various forms of violence that are generally seen as acceptable cultural practices: “120. [...] For example, they have no one to whom they can report in confidence and safety about experienced maltreatment, such as corporal punishment, genital mutilation or early marriage, and no channel to communicate their general observations to those accountable for implementation of their rights.”³⁷ Hence the need to ensure that boys, girls and adolescents are heard so that they can participate in decisions that affect them, depending on their age and maturity.

6. Life, survival and development: Article 6 of the Convention on the Rights of the Child establishes the right of any boy/girl to a life, and requires States to guarantee as far as possible their survival and development. General recommendation No. 5 states that “The Committee expects States to interpret “development” in its broadest sense as a holistic concept, embracing the child’s physical, mental, spiritual, moral, psychological and social development.” A holistic vision makes it necessary to consider the risks and threats faced by girls and boys, depending on the context, that restrict their enjoyment of a full and healthy life.

Child marriage, insofar as it infringes upon the rights of boys, girls and adolescents as a whole, affects their quality of life and limits their opportunities for development, placing their mental and physical health and integrity at risk. This kind of situation means that girls and adolescents enter into relationships of power that are characterized by inequality and discrimination.

3.2 Child marriage: a harmful traditional practice that violates human rights

Understanding that inequalities and discrimination are reproduced and strengthened by the existence of gender stereotypes that place women and girls in positions of inferiority compared with men is fundamental for defining child marriage as a harmful practice that affects girls’ rights as a whole.

Harmful practices are violations of the human rights of women and girls, and are persistent practices and forms of behavior that are rooted in discrimination based on sex, gender and age, among other things, as

well as multiple or interrelated forms of discrimination that often lead to violence and cause physical or mental suffering or injury³⁸. Child marriage results in the exclusion of girls and adolescents from opportunities for the full development of their abilities.

Due to the comprehensive and indivisible nature of human rights, child marriage affects the complete set of rights enjoyed by boys, girls and adolescents, especially those stated in the Convention on the Rights of the Child and the CEDAW, but global and regional studies on this harmful traditional practice show that the rights to health, education and a life without violence are directly violated.

Right to a life free of violence

According to the Committee on the Elimination of Discrimination against Women, the definition of discrimination against women contained in Article 1 of the Convention “includes gender-based violence, that is, violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty”³⁹.

The Committee on the Elimination of Discrimination against Women points out that forced child marriage is a traditional attitude, based on the idea that women are subordinate, which perpetuates the continuation of practices that lead to violence or coercion: “Such prejudices and practices may justify gender-based violence as a form of protection or control of women. The effect of such violence on the physical and mental integrity of women is to deprive them of the equal enjoyment, exercise and knowledge of human rights and fundamental freedoms. While this comment addresses mainly actual or threatened violence the underlying consequences of these forms of gender-based violence help to maintain women in subordinate roles and contribute to their low level of political participation and to their lower level of education, skills and work opportunities”⁴⁰. The recommendation on health states that “Since gender-based violence is a critical health issue for women, States parties should ensure [...] d) The enactment and effective enforcement

³⁷ Committee on the Rights of the Child, General comment No. 12 (2009) The right of the child to be heard, (CRC/C/GC/12), 20 July 2009. http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f12&Lang=en

³⁸ *Idem*.

³⁹ General recommendations adopted by the Committee on the Elimination of Discrimination against Women, eleventh session (1992)** General recommendation No. 19 Violence against women. <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm-sp.htm>

⁴⁰ *Idem*. Clause 11.

of laws that prohibit female genital mutilation and marriage of girl children”⁴¹.

Article 19 of the Convention on the Rights of the Child establishes the obligation of States to protect boys, girls and adolescents from “all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.”

The Committee on the Rights of the Child, in its recommendation⁴² regarding violence, expands on the terms of Article 19. It states that the definition of sexual abuse and exploitation includes forced marriage. It also establishes forced and early marriage as practices that are harmful to boys, girls and adolescents. It also highlights the importance of incorporating a gender focus when analyzing and responding to the violence experienced by boys, girls and adolescents: “States parties should ensure that policies and measures take into account the different risks facing girls and boys in respect of various forms of violence in various settings. States should address all forms of gender discrimination as part of a comprehensive violence-prevention strategy. This includes addressing gender-based stereotypes, power imbalances, inequalities and discrimination which support and perpetuate the use of violence and coercion in the home, in school and educational settings, in communities, in the workplace, in institutions and in society more broadly”.

Right to health and sexual and reproductive rights⁴³

The recognition of sexuality as a basic human condition and the recognition of health and sexual and reproductive rights as an integral part of human beings is based on universally accepted human

rights standards, as stipulated in international and regional human rights treaties as well as international documents relating to political agreements such as the Programme of Action of the International Conference on Population and Development, the Platform for Action adopted at the Fourth World Conference on Women, and the Montevideo Consensus.

Violations of the right to health and sexual and reproductive rights occur in many forms through the denial of access to sexual and reproductive health services: the subjecting of women and adolescents to third party authorizations, the lack of specialized services for adolescents, the absence of the provision of contraception methods and emergency contraception pills, the limited access for women to abortions⁴⁴, the undertaking of procedures without the informed consent of the mother, the poor quality of services, the lack of appropriate information and comprehensive sex education as a basis for responsible sexuality, mutual respect between both sexes, and the establishment of equal relationships.

Article 12 of the CEDAW refers to the requirement to adopt measures aimed at eliminating discrimination against women in the field of medical care, including family planning services. It guarantees free services.

Right to education

Article 10 of the CEDAW stipulates equality in education as a basis for the full exercise of women’s rights in all areas of life.

Article 28 of the Convention on the Rights of the Child states that every child has the right to an education and States must ensure free, mandatory primary education at the very least. Among other things, it stressed the need for primary education to be free and mandatory and ensures the regular attendance of classes and an end to leaving school early.

As stated by the Committee on the Rights of the Child, “The goal [of education] is to empower the child by developing his or her skills, learning and other capacities, human dignity, self-esteem and self-confidence. “Education” in this context goes far beyond formal schooling to embrace the broad range of life experiences and learning processes which enable children, individually and collectively, to develop their personalities, talents and abilities and to live a full

⁴¹ General recommendations adopted by the Committee on the Elimination of Discrimination against Women, twentieth session (1999)*, General recommendation No. 24 Article 12 of the Convention on the Elimination of All Forms of Discrimination against Women – Women and health.

⁴² Committee on the Rights of the Child, General comment No. 13 (2011), The right of the child to freedom from all forms of violence. CRC/C/GC/13, 18 April 2011

⁴³ General recommendations adopted by the Committee on the Elimination of Discrimination against Women, twentieth session (1999)*, General recommendation No. 24 Article 12 of the Convention on the Elimination of All Forms of Discrimination against Women – Women and health. http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/INT_CEDAW_GEC_4738_S.pdf

⁴⁴ CEDAW (2015). Final comments of the CEDAW Committee on the combined eighth and ninth periodic reports for Ecuador http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/ECU/CO/8-9&Lang=Sp

and satisfying life within society”⁴⁵. Education is the tool that makes it possible to prepare boys, girls and adolescents to make decisions regarding their lives based on adequate information, depending on their intellectual and emotional maturity.

The general comments of the Economic and Social Council have made it possible to broaden our understanding of the right to education, as stated in both the Convention on the Rights of the Child and the CEDAW. According to the Committee, the right to education “... epitomizes the indivisibility and interdependence of all human rights”. The Committee states that the lack of opportunities to access education is the cause of other human rights abuses and specifically declares that, “For instance these children, who may live in abject poverty and not lead healthy lives, are particularly vulnerable to forced labour and other forms of exploitation. Moreover, there is a direct correlation between, for example, primary school enrolment levels for girls and major reductions in child marriages.”⁴⁶

According to the Committee, “Education has a vital role in empowering women, safeguarding children from exploitative and hazardous labour and sexual exploitation, promoting human rights and democracy, protecting the environment, and controlling population growth”. It recommends that States parties avoid adopting measures that hinder or prevent the enjoyment of the right to education, take measures that prevent third parties from interfering with the enjoyment of the right to education, take positive measures that enable and assist individuals and communities to enjoy the right to education, and finally fulfil the right providing all the resources necessary for it.⁴⁷

⁴⁵ Committee on the Rights of the Child, General comment No. 1 (2001), Clause 1 of Article 29: The aims of education, CRC/GC/2001/1, 17 April 2001.

⁴⁶ Economic and Social Council, E/C.12/1999/4, 10 May 1999, Substantive issues arising in the implementation of the International Covenant on Economic, Social and Cultural Rights, General comment No. 11 (1999) Plans of action for primary education (Article 14 of the International Covenant on Economic, Social and Cultural Rights)

⁴⁷ Economic and Social Council, E/C.12/1999/10 8 December 1999, Committee on Economic, Social and Cultural Rights, twenty-first session, 15 November to 3 December 1999



4

EXPERIENCES OF LEGISLATIVE REFORM ON THE MINIMUM AGE FOR MARRIAGE IN COUNTRIES IN THE REGION OF LATIN AMERICA AND THE CARIBBEAN

The incorporation of human rights standards on children and adolescents into national regulations by countries in Latin America and the Caribbean is a process that began with the reform of laws regarding child protection and penal responsibility - a process that is still underway.

Civil failings and the conservative legal tradition in Latin America preserve regulations that date back to the mid-19th century regarding family, marriage, and definitions of children, pubescents, pre-pubescents and adolescents.

It was only in the decade after 2000 that special attention was paid to the subject of the minimum age of marriage following concerns, on the one hand, that it was discriminatory to set a different age for girls in most countries and, on the other hand, that there were differences between the age set in other regulatory texts regarding penal responsibility, contractual ability, ability to receive medical treatment or undertake sexual relations, and political participation.

Another important factor in the failings of civil rights in countries in the region is linked to sociocultural patterns regarding the gender roles assigned to women, based on which regulations are the ideal tool for reinforcing the control of women's and girls' sexuality.

Legislation on the minimum age of marriage is a basic tool for protecting the rights of adolescents and their empowerment, which must be expanded via public policies that ensure the realization of human rights in such a way that everybody has the opportunity to be responsible and active citizens and reach adult age. This is why legislation on the minimum age can either significantly strengthen or drastically undermine the rights of adolescents, hence the importance of continuing with the process of making minimum ages compatible with international standards and harmonizing ages in various regulations at a national level, which requires a review of the civil legislation already enacted in many countries in the region.

4.1 Successful experiences with legislative reform in Ecuador, Mexico and Panama

This section contains experiences of legislative reform on the minimum age of marriage carried out in three countries in Latin America and the Caribbean in 2015: Ecuador, Mexico and Panama. In all three cases, the processes culminated in recommendations by the Committee on the Rights of the Child and the Committee on the Elimination of Discrimination against Women to raise the minimum age of marriage, even though the political and technical processes, as well as the scope of the reform, were different and reported varying levels of success.

Despite the particular characteristics of each experience, it is possible to identify challenges, success factors and minimum recommendations for legislators

and decision-makers in countries that initiate reform procedures in their parliaments, based on international human rights standards.

1. Focus of reforms

The focus of the legislative reform processes in Ecuador, Mexico and Panama was based on human rights standards for boys/girls and women, with a comprehensive vision emphasizing the protection of human rights for girls/boys and women.

It is therefore important to point out that legislative reform in the three countries was motivated by the application of the general comments and recommendations and the Committee on the Rights of the Child and the Committee on the Elimination of Discrimination against Women by States parties.

Another fundamental aspect of the reforms in the three countries was the idea of adolescents as subjects with rights, guaranteeing their biological, mental, emotional and social development, as well as the comprehensive protection of their rights.

In Mexico's case especially, the actors who were interviewed recognized that the General Law on the Rights of Boys, Girls and Adolescents in Mexico marked a change in the legislative model for children in the country; the incorporation of minimum age standards for marriage involved a long-term focus aimed at preventing early unions via the implementation of public policies that bring together all federal bodies, states, municipalities, boys, girls and adolescents, as well as society as a whole.

2. Legislative reform

In the case of Ecuador, the establishment of a minimum age for marriage involved the review and reform of the Civil Code, which began in 2010 and ended in 2015. Initially the proposal for reform stated 16 years as the minimum age and it was only in 2015 that the legislative committee raised it to 18, in accordance with the recommendations of the Committee on the Rights of the Child and the Committee on the Elimination of Discrimination against Women. The draft reform paper covered various types of rights for women in marriage: administration of conjugal society, recognition of paternity and maternity (DNA test) and causes of divorce (violence and cruel, inhuman or degrading behavior) were some of the most important.

In Mexico's experience the legal reform of the minimum age of marriage used the approval process of the General Law on the Rights of Boys, Girls and Adolescents, which aims to generate public policies

for prevention or the protection of rights, as a guide. Article 45 of this Law stipulates that federal bodies shall set the minimum age of marriage at 18 years and establish requirements.

The Mexican Law establishes the creation of a comprehensive human rights protection system and provides for coordination mechanisms that connect various levels of government (federal, state and municipal) to guarantee a comprehensive vision and the management of children's rights. Similarly, the Law provides for the creation of an attorney's office to monitor the rights of boys, girls and adolescents. It contains a very important innovation since it is aimed at achieving full legislative harmonization, including in civil and penal areas. It was shown that there are states⁴⁸ that set a lower minimum age of marriage for girls (14 years), which corresponds with sexist stereotypes that view women as mothers and spouses and not as subjects with their own rights and an independent personal life project.

The legislative reform process in Panama began in 2013 following recommendations⁴⁹ made by the Committee on the Rights of the Child regarding the minimum age of marriage. The reform involved amendments to three articles of the Family Code: age and legal conditions, restrictions and prohibitions, and compliance with standards (Committee on the Rights of the Child and the Committee on the Elimination of Discrimination against Women). The national legislative framework made it possible to work with a short, concise document, with a rapid approval process of around five months and a unanimous consensus.

3. Participation of actors

In Ecuador's experience, the parliamentary group that tabled the proposal, the Parliamentary Group on Children and the Rights of Mothers, received contributions from Plan Internacional, UNICEF, UN Women and UNFPA. One of the key aspects was listening to the voices⁵⁰ of girls in various territories,

⁴⁸ Before the reform the minimum age of 16 years was the same for women and men in 15 states, and in 11 states the minimum age was 16 years for men and 14 years for women.

⁴⁹ Committee on the Rights of the Child, Consideration of reports submitted by States parties under article 44 of the Convention. Concluding observations: Panama, CRC/C/PAN/CO/3-4, 21 December 2011

⁵⁰ Collected as part of the *Cartas de Niñas (Maps of Girls)* by Plan Internacional, which gathered testimonies and aimed to give Ecuadorian girls a voice in order to understand the problems they face every day, as well as their dreams and life projects. See link: <http://plan.org.ec/17-campanas/por-ser-nina/284-cartas-de-nina.html>

which helped to "change the normal parliamentary procedure, since the girls' testimonies had an effect on parliamentarians' consciences".

The Red por los Derechos de la Infancia (Network for Children's Rights) participated in the reform carried out in Mexico. In the Senate, with the support of United Nations agencies, a consultation process was organized with the sectors involved, which included the staging of debates, forums and broad dialogues. In the communication campaign coordinated by UN Women, a joint strategy by the UN in Mexico was used, which involved the UN Women Advisory Group made up of 13 civil society organizations and 12 UN agencies under the motto "Communicating with a single voice". UNICEF Mexico provided technical support to the legal reform process and later on by monitoring legal harmonization in the states. It is important to understand that the recommendations of the Committee on the Rights of the Child were critical since they called for a review of national legislation and civil codes in the various states. Following the launch, other actors such as the Presidency of the Republic, the National Conference of Governors (CONAGO) and Congress also took part.

In Panama there was a process of coordinating strategic alliances before the presentation of a reform proposal before parliament, which made it possible to cover jointly not only the impact but also awareness of communication methods regarding the situation of adolescents, as well as to undertake campaigns via communication methods and social networks. UNICEF had a decisive role in the process, not only due to its mandate to promote the rights of children, but also because of the technical support it offered.

4. Political will

In Mexico's case, the initiative relied on political will at the highest level, such as the Presidency of the Republic, in *mujeres*, the Senate, the Secretary of State for Foreign Relations, the National Conference of Governors (CONAGO), and some local governments.

The reform initiative was presented as a point of agreement by the Senate Committee on Human Rights to encourage state congresses to reform their civil codes and the Federal Civil Code, to set the minimum age of marriage at 18 years without any exceptions. During the extensive consultation process the Senate called for the generation of resources and organized meetings with various actors including civil society and various UN agencies. CONAGO put forward the agreement to push for legislative harmonization to eliminate early marriage and the marriage of girls. In

the state of Oaxaca congress unanimously approved the establishment of 18 years as the minimum age of marriage in its civil legislation, without exceptions. In Durango the initiative for the Reform of the Civil Code and Civil Procedures was presented to stop minors from entering into marriage.

In Panama the initiative was presented to the National Assembly by the Secretary of State for Social Development, with the support of the President of the Republic, following agreement from all State and civil society actors. In order to achieve a consensus and, above all, unanimity, the strategy involved bringing forward meetings with groups that might be resistant, with the participation of partner sectors, to present the draft reform as an initiative launched not only by the government but by the country, with the guarantee of civil society.

In Ecuador's experience the establishment of strategic partnerships with organizations that deal with the rights of girls, boys, adolescents and women, such as UN Women, UNFPA, UNICEF and Plan Internacional, was vital.

5. Positioning of the issue

In all three countries it was found that child marriage is not part of the public or political agenda despite the availability of studies that highlight it as a problem requiring urgent attention; nor is it a priority for women's or children's movements, and it is not included in the agendas of political actors. Furthermore, it is not a priority for governments in the region.

In addition to the studies conducted by the United Nations and international NGOs specialized in related topics such as teenage pregnancy, there are few studies specifically about this subject. It is an unseen problem, which often persists in indigenous communities and is understood as a custom that should be accepted by the community.

In the case of Panama, the subject was presented as a human rights issue and not a family issue; it was also considered a priority in terms of protecting adolescents. The positioning was involved a series of meetings and dialogues with members of various legislative groups in the Assembly, members of the Social Cabinet, as well as UN agencies. It is also worth noting that the issue was included in the Periodic Universal Report on Human Rights of Panama.

In Mexico, the positioning strategy focused on the International Day for the Elimination of Violence against Women and the 16 days of activism. This was

achieved in three phases: 1) Alert on the issue with data: child marriage was included in the agenda of the media thanks to a press conference and dissemination on social networks; 2) Proposal of solutions: the subject was included in the commemorative actions of high-level actors, and a "call to action" was made to local governors on the International Day for the Elimination of Violence against Women. The message continued to be shared via digital platforms; 3) Free agency and life project: the sharing of messages on social networks continued and the International Day for the Elimination of Violence against Women ended with opinion columns written by Heads of Agencies. Based on the study, 11 short messages with simple images and text were developed at a national and state level adapted to different audiences, with banners and infographics on early unions and child marriage.

In Panama and Mexico studies were conducted using data on the age of marriage or early unions, pregnancy, second pregnancy, and age of the partner. In Ecuador, updated statistical information for 2014 from the National Institute of Statistics and Censuses was also used. In Mexico's case, in order to support the UNITE campaign, UN Women analyzed nationally produced information, based on the 2014 National Survey of Demographic Dynamics (ENADID) of the National Institute of Statistics and Geography (INEGI), with contributions from the UN Women Civil Society Advisory Group. In Panama, the study carried out in indigenous communities noted "...that indigenous girls are more likely to marry or enter into a union early and much more likely to suffer aggression, maltreatment or emotional, physical or sexual violence as a result of this. They also have fewer opportunities to decide how many children to have and when to have them"⁵¹. The information gathered made it possible to support the importance of reforming regulations, which was decisive in including the issue in the political agenda.

4.2 Lessons learned and challenges

According to the Mexican experience, one of the main challenges is the change of sociocultural patterns that discriminate against women and girls, which assign them traditional roles and make various forms of

⁵¹ La niña indígena: entre riesgos y vulnerabilidades (The indigenous girl: risks and vulnerabilities). Supplement to SITAN 2013, Panama, 2013, p. 32. Original Spanish text: "... las niñas indígenas tienen más posibilidades de casarse o juntarse a temprana edad y muchas posibilidad de sufrir a mano de este, agresiones, maltrato o violencia emocional, física o sexual. Tienen también, menos posibilidades de decidir cuándo y cuántos hijos tener".

violence acceptable. Addressing this challenge requires cooperation with families, schools, communities and churches.

Demonstrating that education generates opportunities in women's lives remains a challenge; in other words, education is a factor of development that represents an alternative to the role that is traditionally assigned to women at an early age; it is necessary to produce and disseminate information that makes it possible to show that greater levels of education reduce the rate of marriages and pregnancy, which means that girls and women will have more opportunities to obtain work, generate income, and fully exercise all their rights; regular education programs at all levels must include further comprehensive sex education with a human rights focus.

Another subject that received urgent attention in Mexico is pregnancy among girls aged under 15 years; many child unions are the result of early pregnancies.

All the actors consulted in Mexico stated that the problem of violence must be addressed appropriately since it normalizes behaviors in families and among partners, by accepting impunity in their immediate environment. The challenge is to question and break stereotypes about male and female roles, since they are vestiges that are reflected in legislation as well as daily life.

In terms of the legislative process itself, Mexico faces a challenge in harmonizing national legislation with federal laws, as well as the heterogeneity of civil codes in each state. Civil society organizations actively working to create the general law are now making an impact on the harmonization of local laws via state legislatures.

Although the harmonization of legislation is relevant, it must not compromise or limit the realization of children's and adolescents' rights, and therefore it is necessary to take into account the principle of the progressive nature of rights. In the field of sexual and reproductive rights, this means that no measures can be put in place to counter rights that are fundamental to the development of young people, such as the case of access to information about contraception methods and services, which may be the argument for reforms that lead to setbacks. Hence the principle of progressiveness, together with the principle of the child's best interests, which are pillars of this kind of legal reform process.

Another fundamental challenge for Mexico in terms of legislation is the elimination of the provision in some states (Campeche, Sonora and Durango) that enables rapists to marry the victim, which eliminates the crime that was committed.

It has been pointed out that there is a challenge in harmonizing different understandings of child marriage; on the one hand it is universally recognized that child marriage is a human rights violation and, on the other hand, for traditional communities it is still an accepted practice based on usage and customs as well as a religious tradition in various states (Chiapas, Oaxaca, Guerrero and Baja California Sur) that transforms early and child marriages into a social and cultural accepted fact. This phenomenon, which affects girls in territories that were previously indigenous and where usages and customs are still permitted within Mexican legislation, has also ended up being adopted by the "mestizo" population. This situation affects the most deprived citizens in isolated areas, where girls, due to the extreme poverty of their families, are sold for a dowry.

The figures presented in the first section of this report confirm that achieving legal successes is not sufficient; although it is crucial to set the minimum age of marriage at 18 years, early or de facto unions continue to occur at the margins of these legal reforms, which draws attention to the need for comprehensive public policies that recognize young people as subjects with rights who require sexual and reproductive health services and a guarantee of education, as well as guarantees of their right to be heard and be organized.

At the time at which this guidance note was finalized, 10⁵² of the 32 Mexican states had enacted legislative changes to align themselves with the General Law.

In the case of Panama, the change in legislation regarding the age of marriage opened the door for an amendment to the Comprehensive Law on the Protection of Children and Adolescents. As a result of the reform to the minimum age of marriage, a project is underway to create a public policy framework by developing a comprehensive protection system for the rights of children, which will enable the wider implementation of standards established by the Convention on the Rights of the Child and the CEDAW.

In addition, it is important to point out that in Panama the process of reform made other factors that are the cause or result of child marriage more visible: sex education, teenage pregnancy, second pregnancy,

⁵² Data provided by UNW Mexico as of 19 May 2016

pregnancy conditions, situation of indigenous girls, and the impact of cultural and religious factors.

Based on Ecuador's experience, it continues to be a challenge to change models regarding boys, girls and adolescents as subjects about whom decisions are made. This involves eliminating adult-centric and condemnatory views and practices regarding sexual relationships among adolescents and pregnancy, which are caused in part by the romantic vision that adolescents have of partner relationships.

At the end of Ecuador's reform process, a number of challenges were identified by the actors involved with policies to protect the rights of boys, girls and adolescents: review of other legal texts to guarantee integrity, privacy and respect of identity; compilation of a draft Law on the System for the Protection of Rights and reinforcement of this system in territories, which involves the creation of organic regulations in accordance with international human rights standards for children and women.

4.3 Factors of success

In the case of Panama, we highlighted factors that made it possible to successfully conclude the reform process of the Family Code. The first factor is related to the creation of strategic partnerships; from the outset a process of awareness and discussion of the draft law with potential opponents was promoted before sending it to the Assembly. The reform project was presented as a State initiative – not by the government in power – that supports compliance with the Sustainable Development Goals.

In negotiations with various actors, the need to display the importance of fulfilling the recommendations of the Committee on the Rights of the Child and the Committee on the Elimination of Discrimination against Women in Panama was a significant factor in successfully concluding the legislative reform process.

Another decisive factor was publicity about the reform via the media before and after approval, in order to avoid resistance in the community; the communication campaign was led by the Secretary of State for Children and Families. The draft law was also published via the State's communication channels.

For the parliamentarians who proposed the reform in Ecuador, it was of strategic importance to establish agreements with various parliamentary groups, on the minimum standards regarding the rights of girls, boys, adolescents and women.

In Mexico, to mark the 16 days of activism for the elimination of violence against women and girls in November 2015, the United Nations system launched the campaign “*DE LA A (AGUASCALIENTES) A LA Z (ZACATECAS), MÉXICO SIN UNIÓN TEMPRANA Y MATRIMONIO DE NIÑAS EN LA LEY Y EN LA PRÁCTICA*” (*FROM A (AGUASCALIENTES) TO Z (ZACATECAS), MEXICO WITHOUT EARLY AND CHILD MARRIAGE IN LAW AND IN PRACTICE*), which had a general goal of positively influencing the lives of girls and women by implementing legislative change and developing public policies aimed at preventing and eliminating early marriage and unions for girls.

The campaign helped to spread awareness of the situation of early union and child marriage in Mexico, and place the subject in the national debate as a harmful practice in accordance with local and national realities. The campaign also contained a call for action – “*from A (Aguascalientes) to Z (Zacatecas)*” – for all Mexican states to carry out complete legal harmonization in compliance with international standards to establish a minimum age of marriage of 18 years, without exception. The campaign also included the challenge of generating comprehensive public policies for education and social protection that address the structural causes of inequality, poverty and discrimination towards girls.

A study, analysis and collection of updated statistical data for 2014 on early conjugal unions and child marriage in Mexico, broken down by age group, location, socioeconomic stratum, education and use of an indigenous language, was carried out⁵³. The quality of the data and the fact that they were relevant, up-to-date and disaggregated, were key factors in providing robustness and support for the communication campaign.

The analysis of the data emphasized the main factors associated with early unions and areas of focus for the development of public policies. This analysis and preliminary work were essential in defining the objectives and in compiling key messages for the communication campaign.

4.4 Recommendations

1. Actors in the three countries agree on the importance of developing in-depth studies on the causes and consequences of child marriage, particularly on the type of situation and population group most commonly affected, as well as partner violence in child marriages, in order to document the importance of normative changes.

⁵³ UN Women. Final report, Unite campaign. 2015.

2. The management of qualitative and quantitative information on the causes and impacts of child marriage is a key factor, as is the development of a human rights-based discourse that helps to reveal this problem as a harmful traditional practice related to gender inequalities.

3. Although legislative reform is specific and concerns family legislation or the Civil Code, actors in the three countries agree that the framework of the reform should include the standards established by the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women, which involve the creation of systems for the protection of rights and public policies with budgets.

4. Legislative reform requires information campaigns for the population in general, with a focus on changing sociocultural patterns and the benefits this will have for the lives of girls, boys and adolescents, as well as the community and society in general.

5. It is recommended that positive messages be developed regarding the content of the reform, based on the focus of fully protecting girls and adolescents, with the vision of creating opportunities for adolescents, and not with the vision of restricting rights, particularly the right to be heard. It is also proposed that messages be adapted for different groups, with messages geared towards populations and territories where child marriage is most prevalent, with a gender and human rights focus, so that boys, girls and adolescents are seen as subjects with rights, to whom all guarantees must be provided for making free and informed decisions on questions that affect them directly, depending on their physical, intellectual and emotional maturity.

In this sense, the participation of leaders of indigenous communities and communities of African descent in support of the legislative change, as in the case of Panama, may be a factor of success.

In Ecuador's case, a joint campaign was put together regarding training and awareness of human rights, with groups of young people and adolescents in the northern part of the country.

The successful experience of the communication campaign in Mexico shows that the implementation of comprehensive awareness programs on the negative effects of child marriage on girls is an important resource and a useful practice.

6. Generate partnerships and voices inside and outside parliaments to place the issue in the public agenda and expand the message regarding the urgent need to eliminate child marriage in law and in practice.

7. Encourage religious and lay organizations to make their members and the public at large aware of the harmful character of child marriage as a cultural practice based on gender inequalities.

8. Create areas and mechanisms for cooperation between children's movements, organizations of young people and adolescents, and women's movements in order to facilitate constructive dialogue between adults and adolescents and define common agendas from a human rights perspective.

9. The enactment of new legislation in the country must involve persons and public servants who are aware of and informed about the subject. In the area of the administration of justice it is important that civil servants are familiar with the new legislation and able to understand its repercussions, which involves including it in training sessions. In the field of prevention, the role of teachers is crucial, which is why it is recommended that the subject be included in the teachers' regular training sessions. Likewise, the role of health service providers requires a new awareness and ability to comprehensively address various cases in accordance with international human rights standards.

10. Finally, the function of national monitoring to understand the progress in applying the legislative reform of child marriage has a significant impact since it is a measure related Goal 5 of the Sustainable Development Goals, which monitoring institutions in public bodies must follow closely.

Since several countries have Citizen Observatories for the rights of children and women managed by civil society organizations, the promotion and inclusion of the issue in their agendas is recommended.

COUNTRY	MINIMUM AGE FOR WOMEN	MINIMUM AGE FOR MEN	EXCEPTIONS/COMMENTS	BODY OF LAW	DATE OF MOST RECENT REFORM
Ecuador	18 years Article 83. Persons who have not reached eighteen years shall not enter into marriage. Article 95. A marriage shall be void if entered into by: 2. An under-age person	18 years Article 83. Persons who have not reached eighteen years shall not enter into marriage. Article 95. A marriage shall be void if entered into by: 2. An under-age person	All articles relating to the age of marriage are revoked.	Official Register, Second Supplement No. 526, which reforms the Civil Code.	19 June 2015
Mexico	14 years Article 148. In order to enter into marriage the man shall have reached the age of sixteen years and the woman fourteen years. The Head of the Government of the Federal District or delegates, as applicable, may allow age exemptions for serious and justified reasons.	16 years Article 148. In order to enter into marriage the man shall have reached the age of sixteen years and the woman fourteen years. The Head of the Government of the Federal District or delegates, as applicable, may allow age exemptions for serious and justified reasons.	"Age exemptions for serious and justified reasons".	Official Federal Diary, which reforms the Federal Civil Code (some states in Mexico are still governed by this regulation).	9 April 2012 * On 30 April 2015 the Chamber of Deputies approved a reform of Article 148 of the Federal Civil Code in order to establish full age (18 years) as the requirement for entering into marriage, but this reform has not officially entered into force.
Federal District, Mexico City	18 years Article 148. In order to enter into marriage it is necessary for both for both parties to be of full age.	18 years Article 148. In order to enter into marriage it is necessary for both for both parties to be of full age.	16 years for men and women, with an exemption. 14 years if the woman is pregnant. Article 148. (...) Minors can enter into marriage providing that both parties have reached sixteen years. The consent of the father or mother, or otherwise the guardian, is required for this; if such consent is lacking, negative or impossible, the Judge of the consent is lacking, negative or impossible, the Judge of the Family Court shall provide consent, which must be granted in consideration of the special circumstances of the case. If the female party is pregnant, as confirmed by the Judge of the Civil Register based on a corresponding medical certificate, an exemption may be made, upon request by the father or mother, to the requirement stipulated in the previous paragraph, but under no circumstances can this exemption be granted to persons aged under 14 years.	Official Gazette, which reforms the Civil Code of the Federal District.	13 January 2004
Panama	18 years Article 33. The following persons shall not enter into marriage: 1. Persons under the age of eighteen years of age. Article 35. Marriage is prohibited: 1. For persons under the age of eighteen years.	18 years Article 33. The following persons shall not enter into marriage: 1. Persons under the age of eighteen years of age. Article 35. Marriage is prohibited: 1. For persons under the age of eighteen years.		Official Gazette, Law 30 reforming the Family Code.	5 May 2015



5

GUIDELINES FOR THE INCORPORATION OF INTERNATIONAL HUMAN RIGHTS STANDARDS ON THE MINIMUM AGE OF MARRIAGE IN NATIONAL LEGISLATION

According to Resolution 69/156 on child, early and forced marriage, which was approved on 18 December 2014, the United Nations General Assembly “1. Urges all States to enact, enforce and uphold laws and policies aimed at preventing and ending child, early and forced marriage and protecting those at risk and to ensure that marriage is entered into only with the informed, free and full consent of the intending spouses”.

The first step in guaranteeing the rights of girls, boys and adolescents is to incorporate into national legal frameworks the standards contained in international human rights instruments.

Legislative processes of any kind must be geared towards “preventing and ending child, early and forced marriage, protecting those at risk and supporting already married women and girls, and to ensure that marriage is entered into only with the informed, free and full consent of the intending spouses and that women have equality with men in all matters pertaining to marriage, divorce, child custody and the economic consequences of marriage and its dissolution”⁵⁵.

The Committee on the Elimination of Discrimination against Women and the Committee on the Rights of the Child urge States parties to explicitly prohibit by law and adequately sanction or criminalize harmful practices, in accordance with the gravity of the offence and harm caused, provide for means of prevention, protection, recovery, reintegration and redress for victims and combat impunity for harmful practices. The standards also establish specific regulations aimed at eliminating harmful practices must include appropriate budgeting, implementing, monitoring and effective enforcement measures⁵⁶.

In terms of the obligation to protect, the Committees require States parties to establish legal structures to ensure compliance with legislation, as well as to address harmful practices (providing for mechanisms that investigate promptly, impartially and independently), and to comply effectively with the law and provide effective compensation to those who have been harmed.

5.1 Guiding principles for the legislative reform process

This kind of legislative reform process must closely comply with the obligation to set the minimum age of marriage at 18 years, without leaving any margin for subjective interpretations; the central message is that marriage below this age is illegal. In this case, the

right is a tool for changing discriminatory sociocultural patterns.

The legislative reform process must be accompanied by information programs regarding the reasons for which it is essential to adopt the measure, i.e. by providing evidence of the risks associated with early marriage, which include preventing a person from enjoying some of their rights as part of their life project and covering up situations of abuse and criminality.

The proposal must have a comprehensive focus, i.e. it must aim to harmonize national legislation with international standards and at the same time make the minimum age compatible in various legal texts.

A legislative reform process must be governed by certain principles in order to successfully incorporate human rights standards, regardless of the actor behind it.

Human rights and gender focus

The human rights-based focus involves taking the international legal framework on human rights as a conceptual and programmatic basis for questioning inequalities. “In a human rights-based approach, human rights determine the relationship between individuals and groups with valid claims (rights-holders) and State and non-State actors with correlative obligations (duty-bearers). It identifies rights-holders (and their entitlements) and corresponding duty-bearers (and their obligations), and works towards strengthening the capacities of rights-holders to make their claims, and of duty-bearers to meet their obligations”⁵⁷.

In terms of harmful practices, the standards that guarantee the protection and promotion of the human rights of girls, boys and women are contained in the Convention on the Rights of the Child and the CEDAW: it is hoped that this legislation “takes precedence over customary, traditional or religious laws that allow, condone or prescribe any harmful practice, especially in countries with plural legal system”⁵⁸.

⁵⁵ Human Rights Council. Strengthening efforts to prevent and eliminate child, early and forced marriage. A/HRC/29/L.15 <https://documents-dds-ny.un.org/doc/UNDOC/LTD/G15/139/78/PDF/G1513978.pdf?OpenElement>

⁵⁶ General Recommendation No. 28, clause 38 a), of the Committee on the Elimination of Discrimination against Women, its final comment, and General comment No. 13, clause 40, of the Committee on the Rights of the Child.

⁵⁷ Office of the United Nations High Commissioner for Human Rights, Frequently asked questions on a human-rights based approach to development cooperation, New York and Geneva, 2006, p. 44

⁵⁸ Joint general recommendation/general comment No. 31 of the Committee on the Elimination of Discrimination against Women and No. 18 of the Committee on the Rights of the Child. 14 November 2014. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N14/627/78/PDF/N1462778.pdf?OpenElement>

It is important to point out that the incorporation of a gender focus was defined by the Economic and Social Council in 1997 as: “the process of assessing the implications for women and men of any planned action, including legislation, policies or programmes, in all areas and at all levels. It is a strategy for making women’s as well as men’s concerns and experiences an integral dimension of the design, implementation, monitoring and evaluation of policies and programmes in all political, economic and societal spheres so that women and men benefit equally and inequality is not perpetuated. The ultimate goal is to achieve gender equality”⁵⁹.

Although progress has been made globally and regionally in Latin America and the Caribbean in terms of gender equality via the Millennium Development Goals (including equal access for girls and boys to primary education), women and girls continue to suffer discrimination and violence in all parts of the world.

Gender equality and the empowerment of women feature among the Millennium Development Goals and their objectives include eliminating child marriage in order to contribute to eliminating inequality and hunger. Sustainable Development Goal 5 for 2030 states the need to achieve gender equality and empower all women and girls in consideration of the fact that gender equality is not only a basic human right but the basis for a peaceful, prosperous and sustainable world. If access to education, medical care, decent work and representation in adoption processes and political and economic decisions is facilitated for women and girls, sustainable economies will be boosted and society and humanity as a whole will benefit.

Two of the nine targets of SDG 5 are related to violence against women:

- Eliminate all forms of violence against all women and girls in the public and private spheres, including trafficking and sexual and other types of exploitation.
- Eliminate all harmful practices, such as child, early and forced marriage and female genital mutilation

In this context, it is important to point out that the right is not neutral, since rules and regulations contain a bias; they have been designed based on the life experience, knowledge and expectations of a certain type of man. Hence the need for laws that integrate a gender focus, since “Practices that originate in the

⁵⁹ Report of the Economic and Social Council for 1997 (A/52/3), 18 September 1997.

process of compilation, interpretation and application of regulations concerning the expected behaviors of men and women affect the way in which people build their vision of the place and the appropriate behavior of both sexes in this society”⁶⁰.

In concrete terms, the incorporation of a gender focus in the legislative reform process to raise the minimum age of marriage is fundamental since it makes it possible to break up structures and standards that perpetuate discrimination and violence. The goal is for girls and adolescents to have opportunities for empowerment, i.e. to make decisions to transform their lives according to their wishes for their life project, and to develop the capacity to act in favor of equality.

Inclusion and participation of a variety of actors

The participation of interested actors, including girls, religious and community leaders, civil society, indigenous populations and those of African descent, women’s and human rights groups, men and boys, and youth organizations, is vital to the process of drawing up legislative reform.

The Committees recommend that States parties “guarantee that all efforts made to address harmful practices and to question and change the underlying social standards are holistic, community-minded and based on a focus on basic rights, including the active participation of all competent interested parties, especially women and girls”⁶¹.

States must “carry out specific activities to promote and inform, and also use social mobility measures to generate widespread public awareness and support for the formulation, approval, distribution and application of legislation”.

⁶⁰ Obando, Ana Elena, “Las interpretaciones del derecho” (*Interpretations of the Law*), in Facio, A and Fries, L, eds., *Género y Derecho (Gender and Law)* (1999), Santiago de Chile. p. 163. Original Spanish text: “Las prácticas que se originan en el proceso de elaboración, interpretación y aplicación de las normas relativas a los comportamientos esperados de hombres y mujeres, afectan la forma en que las personas construyen su visión de cuál es el lugar y el comportamiento apropiado para ambos sexos en esta sociedad”.

⁶¹ Ibid. Original Spanish text: “garanticen que todos los esfuerzos realizados para hacer frente a las prácticas nocivas y para cuestionar y cambiar las normas sociales subyacentes sean holísticos, comunitarios y se fundamenten en un enfoque basado en los derechos fundamentales que incluya la participación activa de todas las partes interesadas competentes, especialmente las mujeres y las niñas”.

Promotion of public dialogue and awareness

The reform of discriminatory standards requires awareness in society in general and between actors who are involved in the process. This involves generating favorable public opinion, creating official information and studies that are quantitative and qualitative, and studying the types of child marriage or de facto unions by taking into account ethnic, cultural and territorial diversity.

To achieve this, data, figures and cases of documented marriages and unions are required that make it possible to include the subject in communication campaigns based on evidence and not opinion. “This may be particularly relevant for responses if conservative arguments are presented in debates that are based on myths, beliefs of stereotypes that are traditional and highly discriminatory, or even offensive, to women”.

Political will and strategic partnerships

Political will among the highest State authorities plays a key role in national, state, and/or federal legislative processes for a change to Civil Code regulations that authorize the marriage of girls from the age of 12, considering that child marriage is a traditional practice rooted in patriarchal systems.

5.2 Guidelines and standards to be considered in legislative reform

Due diligence

Legislative reform processes must include mechanisms to enable due diligence, which is understood as the obligation of States to prevent violence or human rights abuses, investigate and punish those responsible, including private sector bodies, and facilitate access to compensation for human rights abuses⁶².

Appropriate measures, including temporary measures

States parties must also take all the appropriate measures, including special temporary measures (Art. 4 1)) to alter sociocultural behavior patterns for men and women, with the aim of eliminating prejudices and common law practices or any other type of practice based on the idea of inferiority or superiority of either of the sexes or the stereotypical roles of

⁶² See general recommendations No. 19, clause 9; 28, clause 13; and 30, clause 15, of the Committee on the Elimination of Discrimination against Women; the Committee’s rulings and decisions regarding individual communications and studies; and general comment No. 13, clause 5, of the Committee on the Rights of the Child.

men and women (Art. 5 a)), as well as guarantee that the betrothal and marriage of children has no legal consequence (Art. 16 2)).

It is recommended that temporary measures be adopted in the legislation that draw “... attention to human rights and the needs of victims, and that they fully take into account the best interests of children and women”.

Measures to decentralize the obligation to enact legislation

The Committee on the Elimination of Discrimination against Women and the Committee on the Rights of the Child recommend that States parties implement measures for the transfer and delegation of power for legislative reform, which must neither reduce nor reject the obligation to pass legislation that prohibits harmful practices and applies throughout the jurisdiction. The Committees also urge States to establish safeguards so that the decentralization or transfer of power does not lead to discrimination regarding the protection of women and children from harmful practices in various regions and cultural zones.

States with plural legal systems

The existence of common law, traditional or religious customs may support harmful practices regarding child marriage.

Similarly, the need for legislation contained in the CEDAW and the Convention on the Rights of the Child to have priority over common law, traditional or religious customs that allow, agree with or establish any type of harmful practice, especially in countries with plural legal systems, is clear.

Legal minimums to be incorporated into national legislation⁶³

“(c) That they repeal without further delay all legislation that condones, allows or leads to harmful practices, including traditional, customary or religious laws and any legislation that accepts the defense of honour as a defense or mitigating factor in the commission of crimes in the name of so-called honour;

(d) That the legislation is consistent and comprehensive and provides detailed guidance on prevention, protection, support and follow-up services and

⁶³ This section of the document comprises the observations of the Committee on the Rights of the Child and the Committee on the Elimination of Discrimination against Women contained in joint recommendation/comment 31 and 18.

assistance for victims, including towards their physical and psychological recovery and social reintegration, and is complemented by adequate civil and/or administrative legislative provisions;

(e) That the legislation adequately addresses, including by providing the basis for the adoption of temporary special measures, the root causes of harmful practices, including discrimination on the basis of sex, gender, age and other intersecting factors, focuses on the human rights and needs of the victims and fully takes into account the best interests of children and women;

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

(g) That a legal requirement of marriage registration is established and effective implementation is provided through awareness-raising, education and the existence of adequate infrastructure to make registration accessible to all persons within their jurisdiction;

(h) That a national system of compulsory, accessible and free birth registration is established in order to effectively prevent harmful practices, including child marriage;

(i) That national human rights institutions are mandated to consider individual complaints and petitions and carry out investigations, including those submitted on behalf of or directly by women and children, in a confidential, gender-sensitive and child-friendly manner;

(j) That it is made mandatory by law for professionals and institutions working for and with children and

women to report actual incidents or the risk of such incidents if they have reasonable grounds to believe that a harmful practice has occurred or may occur. Mandatory reporting responsibilities should ensure the protection of the privacy and confidentiality of those who report;

(k) That all initiatives to draft and amend criminal laws must be coupled with protection measures and services for victims and those who are at risk of being subjected to harmful practices;

(l) That legislation establishes jurisdiction over offences of harmful practices that applies to nationals of the State party and habitual residents even when they are committed in a State in which they are not criminalized;

(m) That legislation and policies relating to immigration and asylum recognize the risk of being subjected to harmful practices or being persecuted as a result of such practices as a ground for granting asylum. Consideration should also be given, on a case-by-case basis, to providing protection to a relative who may be accompanying the girl or woman;

(n) That the legislation includes provisions on regular evaluation and monitoring, including in relation to implementation, enforcement and follow-up;

(o) That women and children subjected to harmful practices have equal access to justice, including by addressing legal and practical barriers to initiating legal proceedings, such as the limitation period, and that the perpetrators and those who aid or condone such practices are held accountable;

(p) That the legislation includes mandatory restraining or protection orders to safeguard those at risk of harmful practices and provides for their safety and measures to protect victims from retribution;

(q) That victims of violations have equal access to legal remedies and appropriate reparations in practice.”

ANNEX 1:

LIST OF PERSONS INTERVIEWED**Country: Mexico**

Institution	Role	Person
UN Women - Mexico	Representative	Ana Guezmes
UNICEF - Mexico	Social Policy Officer	Ana María Guemez Pereda
UNICEF - Mexico	Child Protection Officer	Diana Díaz
GIRE - Information Group on Reproductive Choice	Director	Regina Tamés Noriega
Coalition against the Trafficking of Women and Girls in Latin America and the Caribbean	Director	Teresa Ulloa

Country: Ecuador

Institution	Role	Person
National Assembly	Parliamentarian	Ms. Marisol Peñafiel
Plan Internacional - Ecuador	Director	Ms. Rossana Viteri
Committee on the Rights of the Child	Member of the Committee on the Rights of the Child	Ms. Sara Oviedo
Un Women - Ecuador	National Programme Officer	Ms. Nidya Pesantez
UNICEF - Ecuador	Protection Officer	Ms. Ludimila Palazzo
Fundación Desafío	Director	Dr. Virginia Gómez de la Torre
San Francisco de Quito University	Dean of the School of Jurisprudence	Dr. Farith Simon Campaña

Country: Panama

UNICEF – Panama	Protection Officer	Ms. Sara Rodríguez
Ministry of Social Development	Secretary-General	Cosme Moreno

ANNEX 2:

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International Covenant on Civil and Political Rights, 1966.

Programme of Action of the International Conference on Population and Development, Cairo, 1994.

GUIDANCE NOTE ON GOOD SUCCESSFUL EXPERIENCES AND LESSONS LEARNED ON CHANGE OF LEGISLATION ON THE AGE OF MARRIAGE, WITH A SPECIAL EMPHASIS ON LATIN AMERICA AND THE CARIBBEAN

I. SUMMARY OF INTERNATIONAL HUMAN RIGHTS STANDARDS REGARDING THE MINIMUM AGE OF MARRIAGE BASED ON THE GROUPS OF AFFECTED RIGHTS

In this section of the document we have listed the principles and rights protect by the various international human rights standards, both binding and non-binding, that protect girls, boys, adolescents and women, as well as specific regulations on the age of marriage.

We begin with the definition of “child” provided in Article 1 on the Convention on the Rights of the Child: “a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier”.

We consider that it is fundamental to take into account the principle of the child’s best interests, as stipulated in Article 3 of the Convention on the Rights of the Child: “1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration”.

Right to enter into marriage with free and full consent

Universal Declaration of Human Rights (1948)

Article 16

1. Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.
2. Marriage shall be entered into only with the free and full consent of the intending spouses.

*International Covenant on Economic, Social and Cultural Rights (1966)*¹

Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.

Article 10

The States Parties to the present Covenant recognize that:

- 1 Adopted and presented for signature, ratification and membership by the General Assembly under Resolution 2200 A (XXI) on 16 December 1966. Entry into force: 3 January 1976, in accordance with Article 27.

1. The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.

*International Covenant on Civil and Political Rights (1966)*²

Article 23

2. The right of men and women of marriageable age to marry and to found a family shall be recognized.
3. No marriage shall be entered into without the free and full consent of the intending spouses.

*Convention on the Elimination of all Forms of Discrimination against Women, CEDAW (1981)*³

Article 16

- 2 Adopted and presented for signature, ratification and membership by the General Assembly under Resolution 2200 A (XXI) on 16 December 1966. Entry into force: 23 March 1976, in accordance with Article 49.
- 3 Adopted and presented for signature, ratification and membership by the General Assembly under Resolution 34/180 on 18 December 1979. Entry into force: 3 September 1981, in accordance with Article 27 (1).

1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:

(a) The same right to enter into marriage;

(b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent;

General Recommendation No. 21: Equality in marriage, CEDAW Committee (1994)⁴

36. In the Vienna Declaration and Programme of Action 12 adopted by the World Conference on Human Rights, held at Vienna from 14 to 25 June 1993, States are urged to repeal existing laws and regulations and to remove customs and practices which discriminate against and cause harm to the girl child. Article 16 (2) and the provisions of the Convention on the Rights of the Child preclude States parties from permitting or giving validity to a marriage between persons who have not attained their majority. In the context of the Convention on the Rights of the Child, “a child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier”. Notwithstanding this definition, and bearing in mind the provisions of the Vienna Declaration, the Committee considers that the minimum age for marriage should be 18 years for both man and woman. When men and women marry, they assume important responsibilities. Consequently, marriage should not be permitted before they have attained full maturity and capacity to act. According to the World Health Organization, when minors, particularly girls, marry and have children, their health can be adversely affected and their education is impeded. As a result their economic autonomy is restricted.

37. This not only affects women personally but also limits the development of their skills and independence and reduces access to employment, thereby detrimentally affecting their families and communities.

38. Some countries provide for different ages for marriage for men and women. As such provisions assume incorrectly that women have a different rate of intellectual development from men, or that their stage of physical and intellectual development at marriage

is immaterial, these provisions should be abolished. In other countries, the betrothal of girls or undertakings by family members on their behalf is permitted. Such measures contravene not only the Convention, but also a woman’s right freely to choose her partner.

39. States parties should also require the registration of all marriages whether contracted civilly or according to custom or religious law. The State can thereby ensure compliance with the Convention and establish equality between partners, a minimum age for marriage, prohibition of bigamy and polygamy and the protection of the rights of children.

Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (1962)⁵

Article 1

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 after due publicity and in the presence of the authority competent to solemnize the marriage and of witnesses, as prescribed by law.

Article 2

States Parties to the present Convention shall take legislative action to specify a minimum age for marriage. No marriage shall be legally entered into by any person under this age, except where a competent authority has granted a dispensation as to age, for serious reasons, in the interest of the intending spouse.

Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (1956)⁶

Article 1

Each of the States Parties to this Convention shall take all practicable and necessary legislative and other measures to bring about progressively and as soon as possible the complete abolition or abandonment of the following institutions and practices, where they still exist and whether or not they are covered by the definition of slavery contained in article 1 of the Slavery Convention [...]:

4 General recommendations adopted by the Committee on the Elimination of Discrimination against Women, thirteenth session (1994)*, General recommendation No. 21: Equality in marriage and family relations.

5 Presented for signature and ratification by the General Assembly under Resolution 1763 A (XVII) of 7 November 1962. Entry into force: 9 December 1964, in accordance with Article 6.

6 Adopted by a Conference of Plenipotentiaries convened by the Economic and Social Council under Resolution 608 (XXI) on 30 April 1956. Done at Geneva on 7 September 1956. Entry into force: 30 April 1957, in accordance with Article 13.

(c) 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 or any other person or group; or

(ii) 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

(iii) A woman on the death of her husband is liable to be inherited by another person;

Article 2

With a view to bringing to an end the institutions and practices mentioned in article 1 (c) of this Convention, the States Parties undertake to prescribe, where appropriate, suitable minimum ages of marriage, to encourage the use of facilities whereby the consent of both parties to a marriage may be freely expressed in the presence of a competent civil or religious authority, and to encourage the registration of marriage.

Programme of Action of the International Conference on Population and Development, Cairo (1994)⁷

Principle 9

The family is the basic unit of society and as such should be strengthened. It is entitled to receive comprehensive protection and support. In different cultural, political and social systems, various forms of the family exist. Marriage must be entered into with the free consent of the intending spouses, and husband and wife should be equal partners.

Clauses

4.21 Governments should strictly enforce laws to ensure that marriage is entered into only with the free and full consent of the intending spouses. In addition, Governments should strictly enforce laws concerning the minimum legal age of consent and the minimum age at marriage and should raise the minimum age at marriage where necessary. Governments and non-governmental organizations should generate social support for the enforcement of laws on the minimum legal age at marriage, in particular by providing educational and employment opportunities.

5.5 Governments should take effective action to eliminate all forms of coercion and discrimination in

policies and practices. Measures should be adopted and enforced to eliminate child marriages and female genital mutilation. Assistance should be provided to persons with disabilities in the exercise of their family and reproductive rights and responsibilities.

6.11 Countries should create a socio-economic environment conducive to the elimination of all child marriages and other unions as a matter of urgency, and should discourage early marriage. The social responsibilities that marriage entails should be reinforced in countries' educational programmes. Governments should take action to eliminate discrimination against young pregnant women.

Beijing Declaration and Platform for Action (1995)⁸

Strategic objective L.1. Eliminate all forms of discrimination against the girl child

Actions to be taken:

274. By Governments:

e) Enact and strictly enforce laws to ensure that marriage is only entered into with the free and full consent of the intending spouses; in addition, enact and strictly enforce laws concerning the minimum legal age of consent and the minimum age for marriage and raise the minimum age for marriage where necessary;

275. By Governments and international and non-governmental organizations:

(a) Disaggregate information and data on children by sex and age, undertake research on the situation of girls and integrate, as appropriate, the results in the formulation of policies, programmes and decision-making for the advancement of the girl child;

(b) Generate social support for the enforcement of laws on the minimum legal age for marriage, in particular by providing educational opportunities for girls.

277. By Governments and, as appropriate, international and non-governmental organizations:

d) Develop policies and programmes, giving priority to formal and informal education programmes that support girls and enable them to acquire knowledge, develop self-esteem and take responsibility for their own lives; and place special focus on programmes to educate women and men, especially parents, on the importance of girls' physical and mental health and

7 Approved at the International Conference on Population and Development, Cairo, 5-13 September 1994.

8 Resolutions approved at the Fourth World Conference on Women, Beijing, 4-15 September 1995.

well-being, including the elimination of discrimination against girls in food allocation, early marriage, violence against girls, female genital mutilation, child prostitution, sexual abuse, rape and incest.

In the Inter-American Human Rights System there are no explicit standards on the obligation for states to raise the minimum age for marriage, but there are articles that refer to rights that would be affected if national legislation is not amended in accordance with the standards established in the Convention on the Rights of the Child and CEDAW.

The **American Convention on Human Rights, known as the “Pact of San José” (1969)**, which is the main human rights instrument in the region, states in Article on the rights of the family:

2. The right of men and women of marriageable age to marry and to raise a family shall be recognized, if they meet the conditions required by domestic laws, insofar as such conditions do not affect the principle of nondiscrimination established in this Convention.

3. No marriage shall be entered into without the free and full consent of the intending spouses.

Ibero-American Convention on Young People’s Rights (2005)

Article 20. Right to found a family.

1. Youth have the right to freely choose a partner, to common life and to the constitution of marriage on the ground of equality among its members, as well as to a responsible maternity and paternity and the dissolution of the marriage according to the civil capacity established by the inner law of each country.

Right to health

Convention on the Rights of the Child (1989)⁹

Article 3

3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

9 Adopted and presented for signature and ratification by the General Assembly under Resolution 44/25 on 20 November 1989. Entry into force: 2 September 1990, in accordance with Article 49.

General Recommendation No. 21: Equality in marriage, CEDAW Committee (1999)¹⁰

15. The obligation to protect rights relating to women’s health requires States parties, their agents and officials to take action to prevent and impose sanctions for violations of rights by private persons and organizations. Since gender-based violence is a critical health issue for women, States parties should ensure:

d) The enactment and effective enforcement of laws that prohibit female genital mutilation and marriage of girl children.

General Comment No. 4 on Adolescent Health and Development in the Context of the Convention on the Rights of the Child (2003)¹¹

Legal and judicial measures and processes

5. Under article 4 of the Convention, “States parties shall undertake all appropriate legislative, administrative and other measures for the implementation of the rights recognized” therein. In the context of the rights of adolescents to health and development, States parties need to ensure that specific legal provisions are guaranteed under domestic law, including with regard to setting a minimum age for sexual consent, marriage and the possibility of medical treatment without parental consent. These minimum ages should be the same for boys and girls (article 2 of the Convention) 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 (arts. 5 and 12 to 17).

16. The Committee is concerned that early marriage and pregnancy are significant factors in health problems related to sexual and reproductive health, including HIV/AIDS. Both the legal minimum age and actual age of marriage, particularly for girls, are still very low in several States parties. There are also non-health-related concerns: children who marry, especially girls, are often obliged to leave the education system and are marginalized from social activities. Further, in some States parties married children are legally considered

10 General recommendations adopted by the Committee on the Elimination of Discrimination against Women, twentieth session (1999)*, General recommendation No. 24, Article 12 of the Convention on the Elimination of All Forms of Discrimination against Women – Women and Health.

11 Committee on the Rights of the Child, General Comment No. 4 (2003): Adolescent Health and Development in the Context of the Convention on the Rights of the Child. CRC/GC/2003/4, 21 July 2003.

adults, even if they are under 18, depriving them of all the special protection measures they are entitled under the Convention. The Committee strongly recommends that States parties 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. The Committee on the Elimination of Discrimination against Women has made a similar recommendation (general comment No. 21 of 1994).

20. Further, States parties should facilitate the establishment of multidisciplinary information and advice centres regarding the harmful aspects of some traditional practices, including early marriage and female genital mutilation.

27. Adolescent girls should have access to information on the harm that early marriage and early pregnancy can cause, and those who become pregnant should have access to health services that are sensitive to their rights and particular needs.

35. In exercising their obligations in relation to the health and development of adolescents, States parties shall always take fully into account the four general principles of the Convention. It is the view of the Committee that States parties must take all appropriate legislative, administrative and other measures for the realization and monitoring of the rights of adolescents to health and development as recognized in the Convention. To this end, States parties must notably fulfil the following obligation:

g) To protect adolescents from all harmful traditional practices, such as early marriages, honour killings and female genital mutilation;

The content of General Recommendation No. 31 expands on General Comment No. 15 on the right of the child to the enjoyment of the highest attainable standard of health (art. 24), issued by the Committee on the Rights of the Child in 2013.

This General Comment refers to the implications of harmful practices in the lives of girls and boys: “Gender-based discrimination is particularly pervasive, affecting a wide range of outcomes, from female infanticide/foeticide to discriminatory infant and young child feeding practices, gender stereotyping and access to services. Attention should be given to the differing needs of girls and boys, and the impact of gender-related social norms and values on the health and development of boys and girls. Attention also needs to be given to harmful gender-based practices and norms of behaviour that are ingrained in traditions

and customs and undermine the right to health of girls and boys”.

Right to equality and non-discrimination

Convention on the Elimination of all Forms of Discrimination against Women (1981)

Article 1

For the purposes of the present Convention, the term “discrimination against women” shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

General Comment No. 16 on Article 10 of the Committee on Economic, Social and Cultural Rights (2005)¹²

Clause 27 establishes the obligation of States: “in particular, the legal age of marriage for men and women should be the same, and boys and girls should be protected equally from practices that promote child marriage, marriage by proxy, or coercion”.

Right to be informed and heard

General Comment No. 12 on the Right of the Child to be Heard, of the Committee on the Rights of the Child (2009)¹³

120. Much of the violence perpetrated against children goes unchallenged both because certain forms of abusive behaviour are understood by children as accepted practices, and due to the lack of child-friendly reporting mechanisms. For example, they have no one to whom they can report in confidence and safety about experienced maltreatment, such as corporal punishment, genital mutilation or early marriage, and no channel to communicate their general observations to those accountable for implementation of their rights. Thus, effective inclusion of children in protective measures requires that children be informed about

¹² Substantive questions arising upon application of the International Covenant on Economic, Social and Cultural Rights. General Comment No. 16 (2005): The Equal Right of Men and Women to the Enjoyment of All Economic, Social and Cultural Rights (Article 3 of the International Covenant on Economic, Social and Cultural Rights)/C.12/2005/4, 11 August 2005.

¹³ Committee on the Rights of the Child. General Comment No. 12 (2009) The right of the child to be heard. CRC/C/GC/12, 20 July 2009.

their right to be heard and to grow up free from all forms of physical and psychological violence. States parties should oblige all children's institutions to establish easy access to individuals or organizations to which they can report in confidence and safety, including through telephone helplines, and to provide places where children can contribute their experience and views on combating violence against children.

Right to a life free of violence

General Comment No. 13 on the right of the child to freedom from all forms of violence, of the Committee on the Rights of the Child (2011)¹⁴

16. The cost of violence against children. The human, social and economic costs of denying children's rights to protection are enormous and unacceptable. Direct costs may include medical care, legal and social welfare services and alternative care. Indirect costs may include possible lasting injury or disability, psychological costs or other impacts on a victim's quality of life, disruption or discontinuation of education, and productivity losses in the future life of the child. They also include costs associated with the criminal justice system as a result of crimes committed by children who have experienced violence. The social costs arising from a demographic imbalance due to the discriminatory elimination of girls before birth are high and have potential implications for increased violence against girls including abduction, early and forced marriage, trafficking for sexual purposes and sexual violence.

25. Sexual abuse and exploitation. Sexual abuse and exploitation includes:

d) Child prostitution, sexual slavery, sexual exploitation in travel and tourism, trafficking (within and between countries) and sale of children for sexual purposes and forced marriage. Many children experience sexual victimization which is not accompanied by physical force or restraint but which is nonetheless psychologically intrusive, exploitive and traumatic.

29. Harmful practices. These include, but are not limited to:

e) Forced marriage and early marriage;

72. Elements to be mainstreamed into national coordinating frameworks. The following elements need to be mainstreamed across the measures (legislative, administrative, social and educational) and stages of

intervention (from prevention through to recovery and reintegration):

g) Children in potentially vulnerable situations: ... at risk of harmful traditional practices; in early marriage (especially girls, and especially but not exclusively forced marriage);

Joint general recommendation/general comment No. 31 of the Committee on the Elimination of Discrimination against Women and No. 18 of the Committee on the Rights of the Child on harmful practices¹⁵

Both the Committee on the Rights of the Child and the Committee on the Elimination of Discrimination against Women have brought the attention of States parties to harmful practices that are detrimental to the lives of women, girls and boys. Both Committees "acknowledge that harmful practices affect adult women, both directly and/or owing to the long-term impact of practices to which they were subjected as girls".

General recommendation No. 31 states that "... harmful practices are deeply rooted in social attitudes according to which women and girls are regarded as inferior to men and boys based on stereotyped roles. They also highlight the gender dimension of violence and indicate that sex- and gender-based attitudes and stereotypes, power imbalances, inequalities and discrimination perpetuate the widespread existence of practices that often involve violence or coercion. It is also important to recall that the Committees are concerned that the practices are also used to justify gender-based violence as a form of "protection" or control of women and children in the home or community, at school or in other educational settings and institutions and in wider society". Although various contexts and cultural realities exist, the most common and most widely documented harmful practices are female genital mutilation, child or forced marriage, polygamy, "honor" crimes, and dowry-related violence.

It should be pointed out that General Recommendation No. 21 refers to the obligations of States parties to acknowledge human rights and clearly states the need for a well-defined legal framework that incorporates international standards in national legislation and budget-related administrative measures. "The

¹⁴ Committee on the Rights of the Child. General Comment No. 13 (2011) The right of the child to freedom from all forms of violence. CRC/C/GC/13, 18 April 2011.

¹⁵ Joint general recommendation/general comment No. 31 of the Committee on the Elimination of Discrimination against Women and No. 18 of the Committee on the Rights of the Child on harmful practices, CEDAW/C/GC/31/CRC/C/GC/18, 14 November 2014.

Committees call upon States parties to explicitly prohibit by law and adequately sanction or criminalize harmful practices, in accordance with the gravity of the offence and harm caused, provide for means of prevention, protection, recovery, reintegration and redress for victims and combat impunity for harmful practices”.

It is stated that “15. Harmful practices are persistent practices and forms of behaviour that are grounded in discrimination on the basis of, among other things, sex, gender and age, in addition to multiple and/or intersecting forms of discrimination that often involve violence and cause physical and/or psychological harm or suffering. The harm that such practices cause to the victims surpasses the immediate physical and mental consequences and often has the purpose or effect of impairing the recognition, enjoyment and exercise of the human rights and fundamental freedoms of women and children. There is also a negative impact on their dignity, physical, psychosocial and moral integrity and development, participation, health, education and economic and social status”.

The **Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequence (2012)**¹⁶, established a link between child marriage and slavery. “Girls and women in servile marriage have no choice but to perform the tasks expected of them, such as domestic chores, shop or farm work and engaging in sexual intercourse with their husbands. If they refuse to do so, or if their performance is unsatisfactory, they face physical, psychological and sexual abuse”. “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”. (clauses 17 and 18)

The annual **Report of the Special Rapporteur on the sale of children, child prostitution and child pornography (2013)** stated that marriage between children can be considered a form of selling children and is often used to cancel family debts or

escape situations of poverty.¹⁷ Children, therefore, especially girls, are exposed to situations of physical, psychological and sexual violence.

According to the **Report of the Office of the United Nations High Commissioner for Human Rights on preventing and eliminating child, early and forced marriage (2014)**¹⁸, girls who enter into marriage are especially vulnerable and mention violence as one of the main consequences: “It can imply significant age and power differentials between a bride and her spouse, which undermine the agency and autonomy of girls and young women. In this context, girls and young women often face physical, psychological, economic and sexual violence, and restrictions on their movement”. (clause 21)

The main agreement in terms of health policies and sexual and reproductive health by authorities in the region is the **Montevideo consensus on population and development (2013)**¹⁹

B. RIGHTS, NEEDS, RESPONSIBILITIES AND REQUIREMENTS OF GIRLS, BOYS, ADOLESCENTS AND YOUTH

Recognizing that boys, girls, adolescents and young people are rights-holders and stakeholders in development,

7. Guarantee for all boys, girls, adolescents and young people, without any form of discrimination, the chance to live a life free from poverty and violence, and to enjoy protection and exercise of their human rights, a range of opportunities and access to health, education and social protection;

12. Implement comprehensive, timely, good-quality sexual health and reproductive health programmes for adolescents and young people, including youth-friendly sexual health and reproductive health services

¹⁶ Human Rights Council, twenty-first session, agenda item 3, Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development. A/HRC/21/41, General Assembly of the United Nations. 10 July 2012.

¹⁷ Human Rights Council. Report of the Special Rapporteur on the sale of children, child prostitution and child pornography, Najat Maalla M'jid, twenty-fifth session, A/HRC/25/48. 23 December 2013.

¹⁸ Human Rights Council, Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General, Preventing and eliminating child, early and forced marriage. A/HRC/26/22, 2 April 2014.

¹⁹ First session of the Regional Conference on Population and Development in Latin America and the Caribbean. Full integration of population dynamics into rights-based sustainable development with equality: key to the Cairo Programme of Action beyond 2014. Montevideo, 12-15 Augusts 2013. PLE-1/ES 15 August 2013.

with a gender, human rights, intergenerational and intercultural perspective, which guarantee access to safe and effective modern contraceptive methods, respecting the principles of confidentiality and privacy, to enable adolescents and young people to exercise their sexual rights and reproductive rights, to have a responsible, pleasurable and healthy sex life, avoid early and unwanted pregnancies, the transmission of HIV and other sexually transmitted infections, and to take free, informed and responsible decisions regarding their sexual and reproductive life and the exercise of their sexual orientation;

16. Guarantee for boys, girls, adolescents and young people the opportunities and the basis for harmonious coexistence and a life free from violence, through intersectoral strategies to address the factors that disrupt harmony in the community and foment violence, to provide education from early childhood that promotes tolerance, an appreciation for diversity, mutual respect and respect for human rights, conflict resolution and peace, and to ensure protection, timely access to justice and compensation for victims;

D. UNIVERSAL ACCESS TO SEXUAL AND REPRODUCTIVE HEALTH SERVICES

33. Promote, protect and guarantee sexual health and rights and reproductive rights in order to contribute to the fulfilment of persons and to social justice in a society free from all forms of discrimination and violence;

34. Promote policies that enable persons to exercise their sexual rights, which embrace the right to a safe and full sex life, as well as the right to take free, informed, voluntary and responsible decisions on their sexuality, sexual orientation and gender identity, without coercion, discrimination or violence, and that guarantee the right to information and the means necessary for their sexual health and reproductive health;

E. GENDER EQUALITY

Bearing in mind that violence against girls, women and lesbian, gay, bisexual and transgender persons, in particular sexual violence, is a critical indicator of marginalization, inequality, exclusion and gender

discrimination against women and affects their autonomy, self-determination, individual and collective health and the exercise of human rights,

57. Enforce existing policies and adopt, on the one hand, preventative and punitive measures, and on the other measures for protecting and caring for women in order to eradicate all forms of violence, including forced sterilization and stigma against women in public and private spheres and especially the gender-motivated violent murder of girls and women, and ensure effective and universal access to fundamental services for all victims and survivors of gender-based violence, with special attention to women in high-risk situations, such as older women, pregnant women, women with disabilities, culturally diverse groups, sex workers, women living with HIV/AIDS, lesbian, bisexual and transgender women, Afro-descendent, indigenous and migrant women, women living in border areas, asylum-seekers and victims of trafficking;

H. INDIGENOUS PEOPLES: INTERCULTURALISM AND RIGHTS

89. Adopt, in conjunction with indigenous peoples, the measures needed to ensure that indigenous women, boys, girls, adolescents and young people enjoy protection from and full guarantees against all forms of violence and discrimination, and take measures to ensure the restitution of rights;

I. AFRO-DESCENDANTS: RIGHTS AND COMBATING RACIAL DISCRIMINATION

95. Ensure that Afro-descendent persons, in particular Afro-descendent girls, adolescents and women, can exercise the right to health, especially the right to sexual health and reproductive health, taking into account the specific socioterritorial and cultural features and the structural factors, such as racism, that hinder the exercise of their rights;

The ***Declaration on Violence against Women, Girls and Adolescents and their Sexual and Reproductive Rights, of MESECVI***, states that gender stereotypes and violence violate women's human rights and have repercussions for States and the whole of society.

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