



PROTECTING THE GIRL CHILD LEGAL ANNEX

USING THE LAW TO END
CHILD, EARLY AND FORCED
MARRIAGE AND RELATED
HUMAN RIGHTS VIOLATIONS

JANUARY 2014



LATHAM & WATKINS LLP



FRONT COVER PHOTO Krishna is from a village near Baran, located in the northwestern state of Rajasthan. She was married when she was 11 years old. When she was 13 years old she had a difficult delivery when she gave birth to her son, losing a lot of blood and remaining in the hospital for several days. The legal age for marriage in India is 18, but marriages like these are common, especially in poor, rural areas where girls in particular, are married off young. Picture taken July 17, 2012. REUTERS/Danish Siddiqui

FOREWORD

Every three seconds, a girl under the age of 18 is married somewhere in the world to a man she has never met. In many cases, she is traded off as a commodity to pay off debts, settle disputes or cement strategic alliances between families.

Child marriage is one of the biggest obstacles to development. Every year, it steals the innocence of 10 million of girls worldwide, condemning them to a life of poverty, ignorance and poor health. Girl brides are five times more likely to die in child birth than women in their 20s. They are also more likely to suffer from fistula, contract HIV-AIDS from their husbands, and to experience abusive relationships with their in-laws.

The UN Convention on the Rights of the Child considers marriage before the age of 18 a human rights violation yet, in an evident clash between tradition and the rule of law, in countries like Niger, Chad and Mali, more than 70% of girls are married before the age of 18 (ICRW).

This report is the result of a partnership between TrustLaw, Equality Now, Latham & Watkins and a number of domestic firms. The study offers a comparative analysis of the laws that govern child marriage in Afghanistan, Bangladesh, Cambodia, Chad, Eritrea, Guatemala, India, Mauritania, Morocco, Pakistan, Panama, Papua New Guinea, Saudi Arabia, Swaziland, Tajikistan, Thailand, Uganda and Yemen. I am incredibly grateful to the contributing law firms and their team of lawyers for committing their time and expertise to this project and making this report possible.

At the Thomson Reuters Foundation we have an unwavering commitment to strengthening human rights through the rule of law. With TrustLaw, we connect the best law firms and corporate legal teams around the world with NGOs and social enterprises in need of free legal assistance. With the Trust Women Conference we forge tangible commitments to empower women to know and to defend their rights.

I am confident that this report will become a strategic tool to support advocates like Equality Now, legislators, policy makers and civil society in their fight to end the heinous practice of child marriage.

Let's carry on working together to guarantee that young girls are truly valued, kept safe, educated, and empowered to marry when and who they choose.



MONIQUE VILLA

CEO, Thomson Reuters Foundation

ACKNOWLEDGEMENTS

Equality Now is grateful to TrustLaw Connect for its assistance in securing the help of Latham & Watkins to undertake this work and its oversight and to the following law firms who provided legal research and commentary in the countries indicated: AQLAAL Advocates (Pakistan), Ashurst Australia (Papua New Guinea), Bafakih & Nassief Lawyers and Legal Consultants (Saudi Arabia), Dr Kamal Hossain & Associates (Sara Hossain) (Bangladesh), Kirthi Jayakumar (India), MMAKS Advocates (Uganda), P&A Asia (Cambodia), Tilleke & Gibbins (Thailand), and Webber Wentzel (Swaziland). Our thanks go to all of them for their considerable time and commitment. The tables below reflect a summary of the relevant jurisdiction's treatment of child marriage. They also reflect some relevant provisions on the subject of child marriage under the national legal framework, primarily if they have been made publicly available in the English language. The summaries do not constitute legal advice under any circumstance.



LATHAM & WATKINS LLP



ashurst

MASEMBE, MAKUBUYA, ADRIKO,
KARUGABA & SSEKATAWA ADVOCATES
(MMAKS ADVOCATES)



Tilleke & Gibbins



DISCLAIMER

The chapters below reflect a summary of the relevant jurisdiction's treatment of child marriage. They also reflect some relevant provisions on the subject of child marriage under the national legal framework, primarily if they have been made publicly available in the English language. The summaries do not constitute legal advice under any circumstance.

TABLE OF CONTENTS

FOREWORD	II
ACKNOWLEDGEMENTS	III
INTRODUCTION	VII
CASE STUDIES	1
AFGHANISTAN	1
BANGLADESH	12
CAMBODIA	23
CHAD	37
ERITREA	46
GUATEMALA	55
INDIA	64

MAURITANIA	75
MOROCCO	90
PAKISTAN	100
PANAMA	115
PAPUA NEW GUINEA (PNG)	125
SAUDI ARABIA	146
SWAZILAND	157
TAJIKISTAN	168
THAILAND	183
UGANDA	194
YEMEN	206

COMPILED BY LATHAM & WATKINS LLP IN COLLABORATION WITH AQLAAL ADVOCATES (PAKISTAN), ASHURST AUSTRALIA (PAPUA NEW GUINEA), BAFAKIH & NASSIEF LAWYERS AND LEGAL CONSULTANTS (SAUDI ARABIA), DR KAMAL HOSSAIN & ASSOCIATES (BANGLADESH), KIRTHI JAYAKUMAR (INDIA), MMAKS ADVOCATES (UGANDA), P&A ASIA (CAMBODIA), TILLEKE & GIBBINS (THAILAND) AND WEBBER WENTZEL (SWAZILAND).

JANUARY 2014

INTRODUCTION

When a young girl starts out in life, where will her journey take her? What if instead of being treated as someone's property to be betrothed, raped, abused, sold, with no power over her destiny, a girl is healthy, safe, educated, and empowered? What if instead she has the ability to freely make informed decisions regarding whom, when and if she marries, and when and if she wants to have children? What if instead she is respected and valued by her community and is educated, able to pursue a non-exploitative career, able to invest in the economy and participate politically in a non-discriminatory atmosphere, able to live her life to the fullest based on her own choices and abilities?

The text above is an excerpt from Equality Now's **'Protecting the Girl Child: Using the Law to End Child, Early & Forced Marriage & Related Human Rights Violations'** report to which this research contributed.

This Legal Annex considers the legislation concerning child marriage in 18 countries. The country reports look at not only the pure legal provisions relating to age of marriage, but also the extent to which they have been enforced, if at all, and the law and practice of some related issues. These include laws relating to bride price/dowry; statutory rape laws that are circumvented through marriage; availability of child protection services when escaping child marriage; legal requirements for registration of birth and/or marriage; and, schooling for girls. They also identify the intersection between child marriage and other social and legal issues, such as gender-based violence, human trafficking, exploitation, nationality, FGM, and force feeding.

The picture presented by this legal research is not encouraging. It indicates that, once married, a girl is often trapped in a system where she is at risk of further violence and discrimination. In 2014 Equality Now used this legal research to **advocate for change**. Please add your voice to the call by **signing the global petition**.

AFGHANISTAN

LEGAL AGE FOR MARRIAGE

AGE OF MARRIAGE

The minimum age of marriage for a woman is 16 and the minimum age of marriage for men is 18.¹

Exceptions

A woman can be married at the age of 15 with the approval of her father or a competent court. A girl can never be married before the age of 15.

LEGISLATION

1977 Civil Code of Afghanistan

ARTICLE 70: "Marriage shall not be considered adequate until the male completed the age of 18 and the female the age of 16."²

ARTICLE 71:

- "1. Where the girl does not complete the age provided under Article 70 of this law, the marriage may be concluded only through her father or the competent court.
2. The marriage of a minor girl whose age is less than 15 shall never be permissible."

COMMENTARY

The existing statutory framework in Afghanistan, first set out in a comprehensive fashion in 1977, is the codification of Sharia law.³ **ARTICLE 3** of the Afghan Constitution of 2004 (the "**AC**") states that "no law can be contrary to the beliefs and provisions of the sacred religion of Islam." However, the AC, unlike previous constitutions, does not give preference to Hanafi jurisprudence. Hanafi jurisprudence is the type of Islamic Sharia law adhered to by the majority of the

1 The full Dari (Persian) version of the 1977 Civil Code of Afghanistan is available at http://www.wipo.int/wipolex/en/text.jsp?file_id=242150.

2 An English translation of the 1977 Civil Code of Afghanistan is available at http://www.law.yale.edu/rcw/rcw/jurisdictions/assc/afghanistan/Afghan_Civil_Code_1976.pdf.

3 Kabeh Rastin Tehrani & Nadjma Yassari, *Max Planck Manual on Family Law in Afghanistan 2* (Max Planck Institute for Comparative Law and International Law, 2nd ed. July 2012).

Afghan population prior to the emergence of a unified legal system.⁴ [ARTICLE 130](#) of the AC does, however, allow for the application of Hanafi jurisprudence where statutory law remains silent:

“The courts shall apply this Constitution and other laws when adjudicating cases. When no provision exists in the Constitution or the law for a case under consideration, the court shall, by following the principles of the Hanafi school of law and within the limitations set forth in this Constitution, render a decision that secures justice in the best possible way.”

The AC also allows for the application of Shiite jurisprudence, as opposed to Hanafi jurisprudence, when dealing with Shiite persons. [ARTICLE 131](#) of the AC states:

“Courts shall apply Shiite law in cases dealing with personal matters involving followers of the Shiite sect in accordance with the provisions of law. In other cases, if no clarification by this constitution and other laws exists, courts shall resolve the matter according to laws of this sect.”

[ARTICLE 7](#) of the AC also recognizes Afghanistan’s commitments under international law as binding: “The state shall abide by the UN charter, international treaties, international conventions that Afghanistan has signed, and the Universal Declaration of Human Rights.” Afghanistan is a party to numerous international treaties protecting the rights of women and children, including (1) the Convention on the Rights of the Child; (2) the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography; (3) the International Covenant on Civil and Political Rights; and (4) the Convention on the Elimination of All Forms of Discrimination Against Women (“CEDAW”).⁵ In 1978, the Revolutionary Council enacted Decree no. 7 on Bride Price and Expenditure for Wedding (the “**Decree**”). [ARTICLE 4](#) of the Decree outlawed forced marriage, saying that marriage could only take place with the consent of the parties. It also reaffirmed that the minimum legal age of marriage for women was 16 and 18 for men and incorporated criminal sanctions for violation of its provisions, establishing sentences ranging from 6 months to 3 years in prison. An official annulment of the Decree is not known, but its validity is questioned as some believe that it was abolished by former President, Babrak Karmal, due to public resistance.⁶

4 *Id.* at 5.

5 *Id.* at 4.

6 See Tehrani & Yassari, *supra* note 3, at 12.

PENALTIES/CRIMINALIZATION

PUNISHMENT FOR CHILD MARRIAGE

Underage and forced marriages are illegal under EAW and are subject to criminal penalties of no less than two years' imprisonment. For so-called forced marriages, the marriage is also annulled and for underage marriages, the marriage can be annulled at the request of the girl. Marriages arranged to settle disputes are also illegal and carry a penalty of up to 10 years in prison for the person who marries the girl with a lesser sentence for accomplices.

LEGISLATION

ARTICLE 2 of Elimination of Violence Against Women⁷ states its objectives, which are as follows:

1. "Maintaining Sharia and legal rights and protecting the human dignity of women.
2. Protecting families and fighting against customs, traditions and practices causing violence against women and which are against Islamic Sharia.
3. Protecting and supporting women who are victims of, or at risk of violence.
4. Prevention of violence against women.
5. Maintain public awareness and training on violence against women.
6. Prosecuting perpetrators of violence against women.

ARTICLE 26 (FORCED MARRIAGE): "If a person, engage a woman who has reached her legal age or marries her without her consent, in accordance to the law the engagement shall be cancelled and nullified, and considering the circumstances the offender shall be sentenced to medium term imprisonment not less than 2 years."⁸

ARTICLE 28 (UNDERAGE MARRIAGE): "If a woman who has not reached her legal age of marriage, and is married without considering **ARTICLE 71** of Civil code, the offender considering the circumstances shall be sentenced to mid-term imprisonment not less than 2 years and the marriage contract shall be cancelled based on the request of the woman in accordance to the law."⁹

7 Full text of the law on the Elimination of Violence against Women is available at <http://www.saarcgenderinfobase.org/programs/?id=3>.

8 *Id.*

9 *Id.*

ARTICLE 25 (BAAD):

- “1. If a person marries a woman in retribution for a murder as blood money or for making peace, considering the circumstances the offender shall be sentenced to a long term imprisonment, not exceeding ten years.
2. In the circumstance indicated in paragraph (1) of this Article, the persons involved (the witnesses, the attorney, Aqid “one who weds the couple” and others) each, in view of circumstances, shall be sentenced to a medium imprisonment, and the marriage contract of the woman given in Baad shall be considered invalid in accordance with the provisions of the law based on the request of the woman.”¹⁰

COMMENTARY

The legal legitimacy of EVAW based on its passage by presidential decree without the approval of Parliament is questionable, though its passage was founded on [ARTICLE 79](#) of the AC which states that in cases of recess “the government can adopt legislation in an emergency situation on matters other than those related to budget and financial affairs. The legislative decrees become laws after they are signed by the President.”¹¹ However [ARTICLE 79](#) also goes on to say that the presidential decree “should be submitted to the National Assembly in the course of thirty days beginning from the first session of the National Assembly,” and that in the case of rejection by the National Assembly, the law becomes void.

Though its passage as an emergency law remains subject to debate, a number of laws have been put into place by presidential decree and remain in force despite never having been ratified by Parliament.¹² After an unsuccessful attempt to get the law ratified by Parliament in autumn 2009, another attempt was made to get the law ratified by Parliament recently on May 18, 2013. The law was only debated for 15 minutes before being sent on for further review after conservative members of Parliament declared the law contrary to Sharia law. One lawmaker is reported to have opposed the law due its rape provision, noting that adultery by a woman is a crime, even if it is by force.¹³

¹⁰ *Id.*

¹¹ Torunn Wimpelmann, *Problematic Protection: The Law on the Elimination of Violence Against Women in Afghanistan* (May 21, 2013) available at <http://www.opendemocracy.net/5050/torunn-wimpelmann/problematic-protection-law-on-elimination-of-violence-against-women-in-afghan>.

¹² *Id.*

¹³ *Bid to protect women's rights 'is against Islamic law,' Afghan lawmakers argue in blocking legislation* (May 13, 2013) available at <http://news.nationalpost.com/2013/05/18/bid-to-protect-womens-rights-is-against-islamic-law-afghan-lawmakers-argue-in-blocking-legislation/>

Controversially, the law also provides for a criminal sentence of not less than three months where a man engages in polygamy that is not in accordance with [ARTICLES 86](#) and [89](#) of the Civil Code.¹⁴ Those two provisions state that polygamy can only take place where there is (1) no fear of injustice between the wives, (2) that the man can provide financially to sustain the wives and (3) when the first wife is childless or suffers from disease. [ARTICLE 89](#) of the Civil Code allows a new wife to divorce her husband if the husband conceals the existence of a previous wife.

PROSECUTIONS FOR CHILD MARRIAGE

Despite EAW not yet having parliamentary approval, prosecutions have taken place pursuant to its provisions. The number of complaints citing violence against women increased to 4,010 in the seven months from March 21, 2012 to October 31, 2012 as compared to 2,299 reported incidents in the twelve months ended March 21, 2011, which may be as a result of increased public awareness.¹⁵

In an analysis of reported incidents of violence against women across 16 provinces from October 2011 to September 2012, 363 incidents were registered by police, 277 were registered by a prosecutor's office, 72 indictments were filed by prosecutors under the EAW law and 52 cases relied on EAW in making their decision.¹⁶ Despite the use of EAW in prosecutions, there continued to be setbacks. There have been reports that prosecutors continue to refer cases back to local traditional dispute resolution mechanisms where traditional norms, as opposed to statutory law, are used to make a decision.¹⁷ Also, [ARTICLE 39](#) of EAW requires that victim or her relative to register a crime in order for it to be prosecuted. Under [ARTICLE 39\(2\)](#), a woman can also withdraw her complaint at any time with no recourse for a prosecutor without the victim's consent for certain crimes¹⁸, thus leaving victims open to societal pressures. [ARTICLE 39\(2\)](#) is the most frequently invoked provision of EAW, even in cases of serious crimes.¹⁹

14 Article 38 (Marriage with more than one woman) of EAW states: "A person who marries with more than one woman without the observation of the provisions of Articles 86 and 89 of the Civil Code, he shall be sentenced to short term imprisonment that is not less 3 months." See the full English text at: <http://www.saarcgenderinfobase.org/programs/detail.php?aid=105&catid=3>

15 UNAMA, *Still a Long Way to Go: Implementation of the Law on Elimination of Violence Against Women in Afghanistan*, 13 (December 2012) available at <http://unama.unmissions.org/LinkClick.aspx?fileticket=Qy9mDiEa5RW%3D&ta>.

16 *Id.* at 17.

17 *Id.* at 4.

18 Certain crimes, such as rape, forced self-immolation or suicide, forced prostitution, publicizing the identity of a victim or burning or using chemical substances can be pursued by a prosecutor's office regardless.

19 See *Still a Long Way to Go: Implementation of the Law on Elimination of Violence Against Women in Afghanistan*, *supra* note 15, at 11–12.

In many areas of Afghanistan, particularly in the south and eastern portions of the country, traditional dispute resolution mechanisms, as opposed to formal courts, remain the dominant source of dispute resolution for the majority of the population. Traditional dispute resolution mechanisms oftentimes allow for the continued victimization of marginalized groups, especially women and children, as powerful community men apply local norms in resolving conflict as opposed to statutory or customary Sharia law.²⁰

LAWS WHICH PROMOTE/ENDORSE BRIDE PRICE OR DOWRY INCLUDING ANY REQUIREMENTS FOR REPAYMENT ON DIVORCE

DOWRIES

Paying a dowry for women as a precursor to marriage is not illegal under international, Afghan or Islamic customary law nor is there any basis for it in law.²¹ However, high bride prices have led to the commoditization of women and families seek to command higher prices for their daughters in order to offset the price of marrying off their sons.²²

STATUTORY RAPE LAW AND LAWS THAT CIRCUMVENT THIS THROUGH MARRIAGE

LEGISLATION

Not known.

²⁰ *Id.* at 24-25.

²¹ See Tehrani & Yassari, *supra* note 3, at 19.

²² UNAMA/OHCHR, *Harmful Traditional Practices and Implementation of the Law on Elimination of Violence against Women in Afghanistan*, 26 (December 9, 2010) available at http://unama.unmissions.org/Portals/UNAMA/Publication/HTP%20REPORT_ENG.pdf.

CHILD PROTECTION WHEN ESCAPING CHILD MARRIAGE

LEGISLATION

Elimination of Violence against Women

ARTICLE 6 (THE RIGHTS OF THE VICTIM): “The victim of violence has the following rights:

1. Prosecuting the offenders of violence based on provisions of the law.
2. To be provided with shelter or other safe place(s) with the consent of the victim.
3. To provide emergency free health services.
4. Having advocate or legal aid provider.
5. Compensation resulted from the act of violence.
6. Confidentiality related to the matter.
7. Other rights which have been stipulated in the legislative documents for the victim.”²³

ARTICLE 8 (OBLIGATION OF THE MINISTRY OF WOMEN AFFAIRS) states: “In order to prevent the violence, the Ministry of Women Affairs in cooperation with other Ministries, governmental and non governmental agencies and relevant organizations shall adopt the following protective and supportive measures:

1. Coordinating the activities of the governmental and non governmental agencies and organizations which are providing services in regard to the EVAW.
2. To improve the public awareness to both men and women related to their legal and religious rights / obligations to eliminate violence against women.
3. To pave the ground for protecting and keeping victims of violence in shelter care, or in case of no shelter is available, to keep victims in other save places, monitoring and evaluating them.
4. To conduct seminars, workshops, conferences and other training programs for the staff of governmental and nongovernmental institutions and in villages and localities in order to recognize the

²³ Full text of the law on the Elimination of Violence against Women is available at <http://www.saarcgenderinfobase.org/programs/?id=3>.

instances of violence and the consequences arising out of them and find solutions in this respect.

5. To explain the ingredients of violence and the consequences arising out of them based on provisions of Sharia and Law via related publication. To increase level of confidence in combating violence against women through the implementation of the education programs and capacity building of the non governmental institutions and relevant institutions.”²⁴

COMMENTARY

RUNNING AWAY AND ZINA: Prosecution of women for “running away,” oftentimes to escape violence, has been reported even though running away is not a crime under either statutory Afghan law or recognized under Sharia law.²⁵ Recently, the Afghan Supreme Court, relying on **ARTICLE 130** of the AC which allows courts to fill a vacuum in the law, has issued an instruction to lower courts that “running away” is a crime when women flee to a stranger as opposed to a relative.²⁶

Zina refers to sexual intercourse outside of marriage. In cases of running away, the women are often prosecuted for moral crimes or “pre-emptive zina,” referring to the intention, though not the act, of infidelity.²⁷ The Supreme Court theorized that “running away” to a stranger, even in cases of abuse, “could cause crimes like adultery and prostitution and is against Sharia principles.”²⁸

“HONOR” KILLINGS: Women have reportedly been killed, generally by their own male family members, in cases where they are perceived to have committed immoral actions that put the family’s honor in jeopardy. Oftentimes these killings are linked to forced marriage, as women have been the victims of honor killings in cases where they have fled an arranged marriage or run away in order to marry a partner of their choosing.²⁹ Women have also been victims of honor killings in cases where they are accused of infidelity, even if the sexual conduct in question was as a result of a sexual assault.³⁰

²⁴ *Id.*

²⁵ See *Still a Long Way to Go: Implementation of the Law on Elimination of Violence Against Women in Afghanistan*, *supra* note 51, at 3.

²⁶ Human Rights Watch, “I Had to Run Away”: The Imprisonment of Women and Girls for “Moral Crimes” in Afghanistan, 34–35 (March 2012) available at <http://www.hrw.org/reports/2012/03/28/i-had-run-away>.

²⁷ *Id.*

²⁸ *Id.*

²⁹ See *Harmful Traditional Practices and Implementation of the Law on Elimination of Violence against Women in Afghanistan*, *supra* note 18, at 33.

³⁰ See “I Had to Run Away”: The Imprisonment of Women and Girls for “Moral Crimes” in Afghanistan, *supra* note 33, at 66.

LEGAL REQUIREMENTS FOR REGISTRATION OF BIRTHS AND/OR MARRIAGES

BIRTH REGISTRATION, MARRIAGE REGISTRATION

Afghan law provides for the registration of marriages.

LEGISLATION

1977 Civil Code of Afghanistan

ARTICLE 61:

6. "1. Marriage contract shall be registered in the official marriage deed by the respective office and shall be prepared in three copies.
The original shall be kept with the respective office and the two copies shall be supplied to the concluding parties. After having been registered, the marriage deed shall be brought to the notice of the Identification Registration Office as provided under [ARTICLE 46](#) of this law.
2. Where the registration of marriage contract is not possible in this way, it shall be effected by other ways envisaged for registration of official documents."³¹

SCHOOLING

COMMENTARY

Basic education is compulsory and free in Afghanistan. Despite this Afghanistan has one of the world's lowest literacy rates with just 39% total adult literacy and adult female literacy estimated at just 13%.³²

31 See full English translation of the Civil Code at http://www.law.yale.edu/rcw/rcw/jurisdictions/assc/afghanistan/Afghan_Civil_Code_1976.pdf.

32 UNICEF, Afghanistan Country Office Fact Sheet (November 2011) available at http://www.unicef.org/infobycountry/files/ACO_Education_Factsheet_-_November_2011_.pdf.

LEGISLATION

Education Law, 2008

ARTICLE 3 (EQUAL RIGHTS IN EDUCATION): “The citizens of the Islamic Republic of Afghanistan have equal rights to education without any kind of discrimination.”³³

ARTICLE 4 (FREE AND COMPULSORY EDUCATION):

- “1. The intermediate (basic) education in Afghanistan is compulsory.
2. Pre-school educational level, intermediate (basic) education, secondary, technical, professional, vocational, artistic, formal Islamic education, higher education, (Thirteenth and fourteenth grades) teachers’ training, literacy and basic practical education in the public educational and training institutions are provided for free.”³⁴

INTERSECTION BETWEEN CHILD MARRIAGE AND OTHER SOCIAL ISSUES

COMMENTARY

Despite forced marriage being outlawed under statutory law as well as being against customary Sharia law, the practice in Afghanistan persists at alarming levels. A 2008 report by the United Nations Development Fund for Women (“**UNIFEM**”) reports that an estimated 70 to 80 per cent of marriages in Afghanistan are forced, inclusive of child marriage.³⁵ Child marriage by its very nature is forced because children cannot consent.³⁶ There are varying types and reasons behind forced marriages.

Baad

Baad is the practice of giving away women in marriage to settle disputes. In traditional Afghan culture, this is a mechanism whereby communities can restore peace among themselves. Under *baad*, the perpetrator’s family offers a woman of the family in marriage to the victim’s family. The crimes that women are sacrificed for in marriage can be as serious as murder, but also occur as

33 The full English translation of the Education Law is available at http://planipolis.iiep.unesco.org/upload/Afghanistan/Afghanistan_Education_Law.pdf.

34 *Id.*

35 UNAMA/OHCHR, *Harmful Traditional Practices and Implementation of the Law on Elimination of Violence Against Women in Afghanistan*, 6 (December 9, 2010) available at http://unama.unmissions.org/Portals/UNAMA/Publication/HTP%20REPORT_ENG.pdf.

36 *Id.*

restitution in the case of “moral” crimes such as rape, adultery or in cases where women have run away from forced marriages.³⁷

Both customary Sharia law as well as statutory Afghan law require consent in order to have a valid marriage, and thus *baad* as a mechanism of dispute resolution violates both legal spheres. In canvassing community perceptions of the practice, interviewed Afghans saw women as property when given over to settle disputes and noted that those women exchanged in *baad* were often mistreated by the recipient families.³⁸

Baad

Baad refers to the practice of exchanging children in marriage at a very young age.³⁹ Though the practice reportedly occurs throughout Afghanistan, it is not reported to be practiced by all ethnic communities and occurs more among rural and poor families.⁴⁰ The practice allows a family to promise their daughters in marriage without entering into drawn out financial negotiations over dowries, and, for the family of the male, allows them to arrange a marriage without going into debt at the time of the nuptials. In essence, it is reported that families engage in *baadal* to avoid paying high bride prices.⁴¹

Child Marriage

It is reported that underage marriage occurs across Afghanistan among all ethnic groups. UNIFEM and the Afghan Independent Human Rights Commission have reported that instances of marriage where one party is under the age of 16 account for 57% of all marriages.⁴² In many instances, child marriage takes place as a way to pay off debt by selling young girls to comparatively wealthier older men.⁴³ In canvassing community sentiment, many Afghans noted that child marriage was a harmful traditional practice, but that marrying off children who had reached puberty in the eyes of the community was acceptable even if still underage according to the law.⁴⁴

The chapter reflects a summary of the jurisdiction’s treatment of child marriage. It also reflects some relevant provisions on the subject of child marriage under the national legal framework, primarily if they have been made publicly available in the English language. The summary does not constitute legal advice under any circumstance.

37 *Id.* at 11.

38 *Id.* at 14.

39 *Id.* at 15.

40 *Id.* at 16.

41 *Id.* at 17.

42 *Id.* at 18.

43 *Id.* at 18.

44 *Id.* at 21.

BANGLADESH

LEGAL AGE FOR MARRIAGE

AGE OF MARRIAGE

The Child Marriage Restraint Act of 1929 establishes that any marriage under the age of 21 for males and 18 for females is a punishable offense, although it does not invalidate the marriage. This law applies to every citizen of Bangladesh, regardless of where they might be located. The Magistrate of the first class has jurisdiction over offenses of the Child Marriage Restraint Act of 1929.

The Majority Act 1875 which fixes the age of majority at eighteen for various purposes does not apply with respect to the validity of marriage. Validity of marriage is governed by the respective personal laws, applicable to different communities based on religious affiliation or ethnic identity, or the Special Marriage Act 1872. [SECTION 2 \(2\)](#) of the Special Marriage Act, 1872 provides that marriages may be solemnized under this Act if the man has completed the age of 18 years and the woman is of 14 years old. If the parties to the marriage have not attained the age of 21 years then they must obtain prior consent to the marriage from their father or guardian. The Christian Marriage Act also specifies minimum ages of marriage.

EXCEPTIONS

There are no formal exceptions to the Child Marriage Restraint Act of 1929.

LEGISLATION

The Child Marriage Restraint Act of 1929¹

[SECTION 2](#). "In this Act, unless there is anything repugnant in the subject or context,— (a) "child" means a person who, if a male, is under twenty-one years of age, and if a female, is under eighteen years of age;"

1 The Child Marriage Restraint Act (Act No. XIX of 1929), accessible at http://bdlaws.minlaw.gov.bd/print_sections_all.php?id=149.

The Special Marriage Act 1872²

SECTION 2. “Marriages may be celebrated under this Act between persons neither of whom professes the Christian or the Jewish, or the Hindu or the Muslim or the Parsi or the Buddhist, or the Sikh or the Jaina religion, or between persons each of whom professes one or other of the following religions, that is to say, the Hindu, Buddhist, Sikh or Jaina religion upon the following conditions: —

1. neither party must, at the time of the marriage, have a husband or wife living;
2. the man must have completed the age of eighteen years, and the woman the age of fourteen years, according to the Gregorian calendar;
3. each party must, if he or she has not completed the age of twenty-one years, have obtained the consent of his or her father or guardian to the marriage;
4. the parties must not be related to each other in any degree of consanguinity or affinity which would, according to any law to which either of them is subject, render a marriage between them illegal.

1ST PROVISIO — No such law or custom, other than one relating to consanguinity or affinity, shall prevent them from marrying. **2ND PROVISIO** — No law or custom as to consanguinity shall prevent them from marrying, unless a relationship can be traced between the parties through some common ancestor, who stands to each of them in a nearer relationship than that of great-great-grand-father or great-great-grand-mother, or unless one of the parties is the lineal ancestor, or the brother or sister of some lineal ancestor, of the other.”

The Christian Marriage Act 1872³

SECTION 19. “The father, if living, of any minor⁴, or, if the father be dead, the guardian of the person of such minor, and, in case there be no such guardian, then the mother of such minor, may give consent to the minor’s marriage, and such consent is hereby required for the same marriage, unless no person authorized to give such consent be resident in Bangladesh.”

2 The Special Marriage Act (Act No. III of 1872), accessible at http://bdlaws.minlaw.gov.bd/print_sections_all.php?id=25.

3 The Christian Marriage Act 1872 (Act No. XV of 1872), accessible at http://bdlaws.minlaw.gov.bd/print_sections_all.php?id=27.

4 “minor” means a person who has not completed the age of twenty-one years and who is not a widower or a widow;”

COMMENTARY

Customary law has a stronger hold in Bangladesh than the codified law. Deep tradition, coupled with relatively weak penalties and little enforcement of the codified laws, enable customary law to prevail in Bangladesh. Additionally, the lack of birth registration enables the ages of couples to be easily falsified and for duty bearers to turn a blind eye.⁵ In the fragile state, ranking 146 out of 187 countries on the UNDP's 2011 Human Development Index, many families view marriage as a means of protecting their children, particularly females.⁶ According to Odhikar (a Bangladesh-based human rights organization), from July 2011–July 2012 there were 801 incidents of rape cases among which 511 girl children aged below 18 were reportedly rape victims. They conducted their study only in 4 districts, namely, Satkhira, Sirajganji, Tangail and Munshiganj. In another report, there were 805 reported incidents of rape against women and girls (according to human rights monitors, the actual number of rape cases is much higher because many rape victims did not report the incidents due to social stigma or fear of further harassment).⁷

Under Bangladesh law, there is a very limited role for the application of Shariah law, as defined in The Muslim Personal Law (Shariat) Application Act, 1937 which is limited to the areas as prescribed in Section 2 of the Act. There is no provision for issuing fatwas (religious rulings) let alone execution of any kind of fatwas incorporated in the Act or in the Muslim Family Law Ordinance, 1961. According to Section 4 of the Act as well as Section 11 of the Muslim Family Law Ordinance 1961 only the Government has the power to make rules to carry into effect the purposes of the Act and the Ordinance. Section 14 of the Muslim Marriages and Divorces (Registration) Act, 1974 also empowers only the Government to make such rules. Application of fatwas in Bangladesh is extra-judicial as per law. The Appellate Division of the Supreme Court overruled a 2001 High Court ruling that prohibited fatwas altogether, but did declare that fatwas could be used only to settle religious matters and could not be invoked to justify meting out punishment.⁸

5 World Vision, *Untying the Knot: Exploring Early Marriage in Fragile States* (2013), [http://www.worldvision.org/resources.nsf/main/press-reports/\\$file/Untying-the-Knot_report.pdf](http://www.worldvision.org/resources.nsf/main/press-reports/$file/Untying-the-Knot_report.pdf).

6 International Center For Research on Women, *Policy Options for Action: Child Marriage in Southern Asia* (2012), <http://www.icrw.org/publications/child-marriage-southern-asia>.

7 United States Department of State, *Bangladesh 2012 Human Rights Report* (2012), <http://www.state.gov/documents/organization/204607.pdf>.

8 United States Department of State, *Bangladesh 2012 Human Rights Report* (2012), <http://www.state.gov/documents/organization/204607.pdf>.

PENALTIES/CRIMINALIZATION

PUNISHMENT FOR CHILD MARRIAGE

The Child Marriage Restraint Act of 1929 punishes three groups of actors in a child marriage: (1) the adult spouse, (2) the legal guardians of the minor spouse, and (3) any person who conducts or directs the child marriage, unless the latter believed that the marriage was not a child marriage. No female may be imprisoned under the Act. In addition, the Court has power to issue injunctions to prevent future child marriages. It may, if satisfied with the information before it through complaint or otherwise that a child marriage in contravention of the Act is to be solemnized, issue an injunction against any of the persons involved. If any actor violates an injunction of the Court under the Act, they face a more severe punishment of up to three months' imprisonment or one thousand Taka (roughly \$12 USD today), or both. The Act has a statute of limitations of one year. Once a year has passed since the child marriage, the matter cannot be prosecuted under the Child Marriage Act. This short period is part of the large enforcement problem under the Act.

LEGISLATION

Child Marriage Restraint Act of 1929

SECTION 4. Whoever, being a male above twenty-one years of age, or being a female above eighteen years of age, contracts a child marriage shall be punishable with simple imprisonment which may extend to one month, or with fine which may extend to one thousand Taka, or with both.

SECTION 5. Whoever performs, conducts or directs any child marriage shall be punishable with simple imprisonment which may extend to one month, or with fine which may extend to one thousand Taka, or with both, unless he proves that he had reason to believe that the marriage was not a child marriage.

SECTION 6.

1. Where a minor contracts a child marriage, any person having charge of the minor, whether as parent or guardian or in any other capacity, lawful or unlawful, who does any act to promote the marriage or permits it to be solemnized, or negligently fails to prevent it from being solemnized, shall be punishable with simple imprisonment which may extend to one month, or with fine which may extend to one thousand Taka, or with both:

Provided that no woman shall be punishable with imprisonment.

2. For the purposes of this section, it shall be presumed, unless and until the contrary is proved, that where a minor has contracted

a child marriage, the person having charge of such minor has negligently failed to prevent the marriage from being solemnized.

SECTION 12.

1. Notwithstanding anything to the contrary contained in this Act, the Court may, if satisfied from information laid before it through a complaint or otherwise that a child marriage in contravention of this Act has been arranged or is about to be solemnized, issue an injunction against any of the persons mentioned in sections 3, 4, 5, and 6 of this Act prohibiting such marriage.
2. No injunction under [SUB-SECTION \(1\)](#) shall be issued against any person unless the Court has previously given notice to such person, and has afforded him an opportunity to show cause against the issue of the injunction.
3. The Court may either on its own motion or on the application of any person aggrieved rescind or alter any order made under [SUB-SECTION \(1\)](#).
4. Where such an application is received, the Court shall afford the applicant an early opportunity of appearing before it either in person or by pleader; and if the Court rejects the application wholly or in part, it shall record in writing its reasons for so doing.
5. Whoever knowing that an injunction has been issued against him under [SUB-SECTION \(1\)](#) of this section disobeys such injunction shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to one thousand Taka, or with both:
6. Provided that no woman shall be punishable with imprisonment.

PROSECUTIONS FOR CHILD MARRIAGE

There are no figures for the number of prosecutions for breaching the minimum age for marriage laws.

LAWS WHICH PROMOTE/ENDORSE BRIDE PRICE OR DOWRY INCLUDING ANY REQUIREMENTS FOR REPAYMENT ON DIVORCE

DOWRIES

The Dowry Prohibition Act of 1980 makes all dowries illegal in Bangladesh. This does not apply to dower or mehr in relation to those governed by the Muslim Personal (Shariat) Law i.e. money a wife is entitled to receive from her husband as part of the marriage contract. Dowry is defined as any property or valuable security given or agreed to be given either directly or indirectly by (a) one party to a marriage to the other party to the marriage or (b) by the parents of either party to a marriage or by any other person to either party to the marriage or to any other person. There is a *de minimis* allowance for gifts under 500 Taka (currently \$6.41 USD). The Act covers anyone who gives, receives or aids and abets in the giving or receiving of a dowry.⁹ The offense is punishable with up to five years' imprisonment, and no less than one year with the possibility of a fine as well. Under the Act, all dowry arrangements are void and have no legal validity.¹⁰

The Court of magistrate of the first class has jurisdiction of offenses under the Act. Every offense under this Act shall be non-cognizable, non-bailable and compoundable with other offenses.¹¹

COMMENTARY

Similarly to the Child Marriage Restraint Act of 1929, there is a one year statute of limitations for bringing a violation of the Dowry Prohibition Act of 1980 so that one year after the marriage ceremony, no action may be brought under the Act.¹²

Despite the law, there is a dowry problem in Bangladesh, which creates heightened pressure to have young females married early. Although the law prohibits any gifts over a *de minimis* amount in connection with a marriage, the tradition continues and is a significant economic determinant in the family planning arena. This practice is not only prevalent, but also highly contentious.¹³

9 The Dowry Prohibition Act (Act No. XXXV of 1980), accessible at http://bdlaws.minlaw.gov.bd/print_sections_all.php?id=607.

10 The Dowry Prohibition Act (Act No. XXXV of 1980).

11 The Dowry Prohibition Act (Act No. XXXV of 1980).

12 The Dowry Prohibition Act (Act No. XXXV of 1980).

13 United States Department of State, *Bangladesh 2012 Human Rights Report* (2012), <http://www.state.gov/documents/organization/204607.pdf>.

This view of marriage as an economic decision, with women being seen as an economic burden, is a contributing factor to earlier marriages for females.

LEGISLATION

The Dowry Prohibition Act of 1980

SECTION 3. If any person, after the commencement of this Act, gives or takes or abets the giving or taking of dowry, he shall be punishable with imprisonment which may extend to five years and shall not be less than one year, or with fine, or with both.

SECTION 4. If any person, after the commencement of this Act, demands, directly or indirectly, from the parents or guardian of a bride or bridegroom, as the case may be, any dowry, he shall be punishable with imprisonment which may extend to five years and shall not be less than one year, or with fine, or with both.

SECTION 5. Any agreement for the giving or taking of dowry shall be void.

Exception

SECTION 2. In this Act...“dowry” means any property or valuable security given or agreed to be given either directly or indirectly...

— at the time of marriage or at any time before or after the marriage as consideration for the marriage of the said parties, but does not include dower or mehr in the case of persons to whom the Muslim Personal Law (Shariat) applies.”

STATUTORY RAPE LAW AND LAWS THAT CIRCUMVENT THIS THROUGH MARRIAGE

STATUTORY RAPE

Under the Penal Code 1860, sexual intercourse between a man and a girl under 14 is considered statutory rape. Non-consensual sex by a man with his own wife is not considered rape unless she is under the age of 13.

LEGISLATION

Penal Code of 1860¹⁴:

SECTION 375. A man is said to commit “rape” who except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the five following descriptions:

FIRSTLY. Against her will.

SECONDLY. Without her consent.

THIRDLY. With her consent, when her consent has been obtained by putting her in fear of death, or of hurt.

FOURTHLY. With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

FIFTHLY. With or without her consent, when she is under fourteen years of age.

EXPLANATION. Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

EXCEPTION. Sexual intercourse by a man with his own wife, the wife not being under thirteen years of age, is not rape.

CHILD PROTECTION WHEN ESCAPING CHILD MARRIAGE

Not known.

LEGAL REQUIREMENTS FOR REGISTRATION OF BIRTHS

The Births and Deaths Registration Act 2004 is a national law which requires all births to be registered.¹⁵

¹⁴ The Penal Code Of 1860 (Act No. XLV of 1860), accessible at http://bdlaws.minlaw.gov.bd/print_sections_all.php?id=1.1

¹⁵ International Center for Research on Women, *Policy Options for Action: Child Marriage in Southern Asia* (2012), <http://www.icrw.org/publications/child-marriage-southern-asia>.

COMMENTARY

There is said to have been a remarkable improvement between 2006 and 2009 in the proportion of children five years old and under, whose births were registered, with registered births increasing from 9.8% to 53.6%.¹⁶ Many births go unreported and enforcement of the law is very difficult. However, it should be a useful law in preventing child marriages, as it definitively determines the age of a minor at the time of the marriage (something that is difficult without a birth certificate).

LEGISLATION

The Births and Deaths Registration Act 2004

CHAPTER 3, SECTION 5: REGISTRATION (1) The Registrar shall enter all information of births and deaths in the register irrespective of race, religion, caste, clan or sex; (2) All information of births and deaths are required to be presented before the Registrar for the registration within certain period of time and in prescribed process; (3) At the time of presenting the information of births and deaths under this Act, there shall be a declaration on behalf of the informant that all information presented by him are true and such births or deaths have not ever been registered elsewhere.¹⁷

CHAPTER 3, SECTION 7: POWER OF REGISTRAR “(1) The registrar can inquire for verifying the authenticity of information for registration by himself or through any other delegated person; (2) The registrar can issue notice with the instruction for providing birth and death information to parents or son or daughter or guardian or any other prescribed person in case a birth or death is not registered on time; (3) The registrar or any person delegated by him (on his behalf) can call for the register book or issue notice to any person for his/her statement for the sake of investigation the any matter under **SUB-SECTION (1)**.”¹⁸

16 International Center for Research on Women, *Policy Options for Action: Child Marriage in Southern Asia* (2012), <http://www.icrw.org/publications/child-marriage-southern-asia>.

17 The Births and Deaths Registration Act (2004), available at <http://www.refworld.org/pdfid/511b54192.pdf>

18 The Births and Deaths Registration Act (2004), available at <http://www.refworld.org/pdfid/511b54192.pdf>

SCHOOLING

COMMENTARY

Primary education is free and compulsory through primary school. Primary education comprises five years of formal schooling (classes I-V) (see chart of classes below). Enrollment in primary education begins at the age of six years, and is usually completed by 11 years of age. Additionally, the government offers subsidies to parents to keep girls in class through Class X.¹⁹ The Government has sought to promote gender equality in education by making both primary and secondary education free for all girl children in the country, using a stipend system to cover the direct costs of schooling for the higher grades (boys only receive free education through classes I-V). The government program provides parents with monetary compensation for the loss of their daughters' domestic and agricultural labor and requires parents to sign a statement of commitment not to have their daughters marry until they reach the age of eighteen. This program also covers the cost of school fees and books for girls to remain in school.

INTERSECTION BETWEEN CHILD MARRIAGE AND OTHER SOCIAL ISSUES

COMMENTARY

Child marriage appears to be an outgrowth of the fragile state of Bangladesh. Bangladesh is an impoverished nation, ranking 146 out of 187 countries on the UNDP's 2011 Human Development Index.²⁰ As such, many parents feel a compulsion to cut economic costs, one of which they perceive to be young females. Economic incentives are thus driving parents to have their daughters married early, so that they can be provided for by a wealthier husband, and their resources can be allocated to their other children.

Moreover, there is a pervasive problem with misogyny and violence against women in general. This acts as a push factor for many parents, as they want to protect their daughters from potential rape and perceived "shame" from being the victim of violent attacks. During 2012, the Bangladesh National Women Lawyers' Association received more than 9,000 reports of violence against

19 International Center for Research on Women, *Child Marriage: Laws & Civil Society Action*, <http://www.icrw.org/files/images/Child-Marriage-Fact-Sheet-Laws.pdf>

20 International Center for Research on Women, *Policy Options for Action: Child Marriage in Southern Asia* (2012), <http://www.icrw.org/publications/child-marriage-southern-asia>.

women.²¹ Moreover, apart from dowry-related violence and rape cases, as many as 71 incidents of acid attacks were reported during July 2011-June 2012 in the four provinces of Satkhira, Sirajganj, Tangail and Munshiganj, where assailants reportedly threw acid onto the faces of women, leaving them disfigured and often blind. These attacks are said usually to be related to a woman's refusal to accept a marriage proposal or to land or dowry disputes.²²

LEVEL OF EDUCATION	CLASSES	YEARS OF SCHOOLING
PRIMARY	I-V	5
JUNIOR SECONDARY	VI-VIII	2
SECONDARY	IX-X	2
HIGHER SECONDARY	XI-XII	2 ²³

The chapter reflects a summary of the jurisdiction's treatment of child marriage. It also reflects some relevant provisions on the subject of child marriage under the national legal framework, primarily if they have been made publicly available in the English language. The summary does not constitute legal advice under any circumstance.

21 United States Department of State, *Bangladesh 2012 Human Rights Report* (2012), <http://www.state.gov/documents/organization/204607.pdf>.

22 United States Department of State, *Bangladesh 2012 Human Rights Report* (2012), <http://www.state.gov/documents/organization/204607.pdf>.

23 Table information provided by: International Development Law Organization. *Bangladesh Country Report (2010): Strengthening the Legal Protection Framework for Girls in India, Bangladesh, Kenya and Liberia*, http://www.idlo.int/doccalendar/bangladeshreport_final.pdf

CAMBODIA

LEGAL AGE FOR MARRIAGE

AGE OF MARRIAGE

Under Section 948 of the Civil Code, men and women must reach the age of 18 before they can marry.

Exceptions

However, if one of the parties is at least 18 and the other is 16 or older, such parties may marry with parental or guardian consent, as applicable.

LEGISLATION

Civil Code¹

CHAPTER 3 MARRIAGE; SECTION 1 FORMATION OF MARRIAGE; SUBSECTION 1 REQUIREMENTS FOR MARRIAGE; SECTION 948. (MARRIAGEABLE AGE)

Neither men nor women may marry until they have reached the age of 18. However, if one of the parties has attained the age of majority and the other party is a minor at least 16 years of age, the parties may marry with the consent of the parental power holders or guardian of the minor.

CHAPTER 1 NATURAL PERSONS; SECTION IV CAPACITY TO ACT SUBSECTION 1 MINORS; SECTION 17. (DEFINITION OF MINOR)

Minors are persons under the age of eighteen.

BOOK 7 RELATIVES; CHAPTER 3 MARRIAGE; SECTION 1 FORMATION OF MARRIAGE SUBSECTION 1 REQUIREMENTS FOR MARRIAGE; 953. (MARRIAGE OF MINOR)

1. If one of the parties wishing to marry is a minor, the consent of parental power holders or guardian must be obtained.
2. If one of the parental power holders does not consent, the consent of the other parental power holder shall be sufficient.
3. If the parental power holders or guardian unreasonably refuse consent, the minor wishing to marry may apply to the court for adjudication in place of consent.

¹ Civil Code of Cambodia, Royal Kram No. NS/RKM/1207/030, December 8, 2007 (the "Civil Code") (2008 reference English translation is available at http://sithi.org/temp.php?url=law_detail.php&id=201).

BOOK 7 RELATIVES; CHAPTER 3 MARRIAGE; SECTION 1 FORMATION OF MARRIAGE
SUBSECTION 1 REQUIREMENTS FOR MARRIAGE

968. (FICTIONAL ATTAINMENT OF MAJORITY UPON MARRIAGE)

In the application of this Code, a minor who marries shall be deemed to have attained his or her majority by so doing.

COMMENTARY²

The practice of marrying off minors with parental consent is more common in rural areas. The practice is not necessarily seen as acceptable (note, poor families are not the only ones to marry off their minor children; rich families may arrange a marriage between a child and a relative for property and succession reasons), but is understood to happen. Economic factors generally drive the decision to marry off children in poorer families and it is very common for female children to be married off younger because parents are always concerned that they will be more difficult to marry off at older ages. Therefore, they try to get the best to arrangements when their daughters are younger. Traditionally, the bride will be younger than her husband.

PENALTIES/CRIMINALIZATION

Punishment for child marriage There are no civil or criminal penalties for a breach of minimum age or any of the other conditions for marriage under the Civil Code. The remedy for breach is annulment of the marriage. Either party to the marriage, their parents, or the public prosecutor may apply to the court to annul a marriage that is voidable for reasons of inadequate age of the marrying parties ([ARTICLE 960](#) of the Civil Code). However, once the married party reaches marriageable age, only the married parties may petition for the annulment and such petition must be within 3 months of reaching marriageable age ([ARTICLE 961](#)).

Either party may make a complaint that he or she was forced to marry and that the marriage therefore should be deemed invalid, but such a complaint must be made within 3 months of the time the party was forced ([ARTICLE 963](#)).

² Information was provided by local counsel, Bun Huy Seng at P&A Asia.

LEGISLATION

Civil Code

BOOK 7 RELATIVES; CHAPTER 3 MARRIAGE; SECTION 1 FORMATION OF MARRIAGE SUB-SECTION II. NULLITY AND ANNULMENT OF MARRIAGE

960. (ANNULMENT OF UNLAWFUL MARRIAGE)

1. Either party to a marriage, their parents or a public prosecutor may apply to the court for annulment of a marriage effected in contravention of Articles 948 (Marriageable age) to 952 (Prohibition of marriage between relatives by affinity); provided that a public prosecutor may not make such an application after the death of one of the parties.
2. The spouse or former spouse of the party may also apply for annulment of a marriage effected in contravention of Articles 949 (Prohibition of bigamy) or 950 (Period of prohibition of remarriage).

BOOK 7 RELATIVES; CHAPTER 3 MARRIAGE; SECTION 1 FORMATION OF MARRIAGE SUB-SECTION II. NULLITY AND ANNULMENT OF MARRIAGE

961. (EXTINGUISHMENT OF RIGHT TO ANNUL MARRIAGE UNDER MARRIAGEABLE AGE)

1. No application may be made to annul a marriage effected in contravention of [ARTICLE 948 \(MARRIAGEABLE AGE\)](#) once the under-age party attains the marriageable age.
2. An under-age party to a marriage may apply for annulment of the marriage during the period of 3 months following his or her attainment of the marriageable age, except where he or she has ratified the marriage after attaining the marriageable age.

BOOK 7 RELATIVES; CHAPTER 3; MARRIAGE; SECTION 1 FORMATION OF MARRIAGE SUB-SECTION II. NULLITY AND ANNULMENT OF MARRIAGE

963. (ANNULMENT OF MARRIAGE BASED ON FRAUD OR DURESS)

1. A person who has been induced by fraud or duress to effect a marriage may apply to the court for annulment of such marriage.
2. The right of annulment described in paragraph (1) shall be extinguished if 3 months have elapsed since the party discovered the fraud or became free of the duress, or if the party has ratified the marriage.

PROSECUTIONS FOR CHILD MARRIAGE

There are no criminal sanctions available for violation of the marriage laws, only civil actions and dissolution of the offending marriage (annulment of an unlawful marriage), as detailed in the Civil Code cited above.

According to local counsel: There are no records of civil lawsuits filed. No record of any such actions could be independently found.

LAWS WHICH PROMOTE/ENDORSE BRIDE PRICE OR DOWRY INCLUDING ANY REQUIREMENTS FOR REPAYMENT ON DIVORCE

DOWRIES

Dowries are paid by the groom and/or his family and are generally used by the bride's family to host the wedding and is seen as a gift to the marriage. According to local counsel, dowry practice is still a common tradition in certain localities and is mainly practiced by persons located in rural areas. There are some people who criticize the dowry tradition and advocate for change and it is becoming more common for the bride and groom to each pay half of the cost of the wedding.

Engagement gifts and other benefits received as a result of the marriage may be demanded back under law if an engagement is dissolved or a marriage annulled.

According to local counsel, the Civil Code does not include defined terms for "dowry". The Civil Code does mention the term "engagement gift" that is likely required for purposes of an engagement.

LEGISLATION

Civil Code

BOOK 7 RELATIVES; CHAPTER 3 MARRIAGE; SECTION 1 FORMATION OF MARRIAGE
SUB-SECTION II. NULLITY AND ANNULMENT OF MARRIAGE
964. (EFFECT OF ANNULMENT OF MARRIAGE)

1. The annulment of a marriage shall have no retroactive effect.
2. If a party who was unaware at the time of the marriage of the existence of a ground for its annulment has acquired property as a result of the marriage, he or she shall return such property to the extent that he or she currently benefits thereby.

3. A party who was aware at the time of the marriage of the existence of a ground for its annulment shall return the whole of the benefit that such party has obtained as a result of the marriage, and shall furthermore be liable to compensate the other party for any damage if the other party acted bona fide.
4. The provisions of [ARTICLE 988 \(PRESUMPTION OF PATERNITY\)](#) shall apply *mutatis mutandis* to any child born to the parties to a marriage that is to be annulled.
5. If a marriage that ought to be annulled is dissolved, the provisions of [ARTICLE 980 \(DIVISION OF PROPERTY\)](#) shall apply *mutatis mutandis*.

BOOK 7 RELATIVES; CHAPTER 2 ENGAGEMENT

945. (RETURN OF ENGAGEMENT GIFT)

Where an engagement is dissolved, a party who has presented an engagement gift to the other party in the expectation of the formation of marriage may demand the return of such gift from the other party.

BOOK 7 RELATIVES; CHAPTER 2 ENGAGEMENT

946. (LIABILITY FOR IMPROPER REVOCATION)

Where an engagement is revoked by one of the parties without good reason, the other party may demand compensation for damage arising from such revocation.

BOOK 7 RELATIVES; CHAPTER 2 ENGAGEMENT; 947. (TIME LIMIT FOR FILING SUIT)

A suit relating to [ARTICLE 945 \(RETURN OF ENGAGEMENT GIFT\)](#) or to [ARTICLE 946 \(LIABILITY FOR IMPROPER REVOCATION\)](#) must be filed not later than one year following the dissolution of the engagement.

PROVISIONS IMPEDING / PREVENTING ENDING OF UNDERAGE MARRIAGE

COMMENTARY

Divorce is only available under certain circumstances, none of which applies to breach of the minimum age requirements for marriage as noted above. The annulment process sets forth the remedies and governs relief in the event of such a situation. Significantly, “a judge may refuse to grant a divorce when only one spouse, rather than both, requests it.” This provision confers excessive discretion on the judiciary, and commentators have suggested it will almost certainly be abused to the detriment of men and women seeking to establish

new lives for themselves — many of whom may be seeking to escape violent or abusive marriages. Likewise, a provision that enforceable contracts for division of marital property must be in writing ignores the reality that in the Cambodian countryside many citizens are illiterate.³

LEGISLATION

Civil Code

BOOK 7 RELATIVES; CHAPTER 3; MARRIAGE; SECTION III. THE MATRIMONIAL PROPERTY SYSTEM; SUB-SECTION II. THE STATUTORY PROPERTY SYSTEM
SUB-SECTION I. GROUNDS OF DIVORCE; 978. (GROUNDS OF DIVORCE)

1. Husband or wife can bring a suit for divorce only in the following cases:
 - (a) If the other spouse has committed an act of infidelity;
 - (b) If he or she has been deserted without good reason by the other spouse;
 - (c) If it has been unknown for a year or more whether the other spouse is alive or dead;
 - (d) If the other spouse has been living apart contrary to the spirit of marriage for one year or more continuously; or
 - (e) If the matrimonial relationship has otherwise broken down and there is no prospect of reconciliation.
2. Even in cases falling under paragraph (1), the court, taking account of all the circumstances, may dismiss [with prejudice] a demand for divorce if divorce would cause extreme hardship or anguish to the other spouse or the children.
3. Even where the grounds described in item (d) or (e) of paragraph (1) exist, the court may in its discretion dismiss [with prejudice] a demand for divorce if it finds that the demand is in bad faith because the demandant has seriously neglected to cooperate with and assist the other spouse.

BOOK 7 RELATIVES; CHAPTER 3; MARRIAGE; SECTION III. THE MATRIMONIAL PROPERTY SYSTEM; SUB-SECTION II. THE STATUTORY PROPERTY SYSTEM
SUB-SECTION I. GROUNDS OF DIVORCE; (DIVORCE BY AGREEMENT)

Where both parties to a marriage have agreed to divorce, they may petition the court for divorce; provided that the court may only grant a divorce after confirming that the parties really desire to dissolve the matrimonial relationship by divorce.

3 “The new Cambodian Civil Code”, Dolores A. Donovan, USF, East Asia Forum, February 16, 2012. Available at <http://www.eastasiaforum.org/2012/02/16/the-new-cambodian-civil-code/>.

STATUTORY RAPE LAW AND LAWS THAT CIRCUMVENT THIS THROUGH MARRIAGE

STATUTORY RAPE

There are provisions in the law to address statutory rape. In addition, rape laws provide for harsher penalties for offenses against minors. However, according to Local Counsel, if an individual is legally married, sexual intercourse is not considered “rape”.

However, because most marriages in the provinces are not registered, it might be possible to argue that the marriage was illegal and therefore the sexual intercourse was not with consent (and therefore “rape”).

LEGISLATION

Criminal Code

PART 1 FUNDAMENTAL PRINCIPLES; BOOK ONE GENERAL PROVISIONS FOR THE IMPLEMENTATION OF CRIMINAL LAW⁴; TITLE 3; SEXUAL ASSAULTS; CHAPTER 1; RAPE ARTICLE 239: ELEMENTS OF RAPE

All acts of sexual penetration, of any kind whatsoever, or an act of penetrating any object into sexual organs of a person of either the same sex or different sexes by violence, coercion, threat or surprise constitutes a rape. The rape is punishable by an imprisonment from 5 (five) to 10 (ten) years. Legality of sexual intercourse is determined from the age of 15 (fifteen) years old.

PART 1 FUNDAMENTAL PRINCIPLES; BOOK ONE GENERAL PROVISIONS FOR THE IMPLEMENTATION OF CRIMINAL LAW; TITLE 3; SEXUAL ASSAULTS; CHAPTER 1; RAPE ARTICLE 240: AGGRAVATING CIRCUMSTANCES WHICH BASED ON MEANS USED OR CONNECTION WITH THE OFFENDER

The rape is punishable by an imprisonment of between 7 (seven) to 15 (fifteen) years when it is committed:

1. with a utilization of weapon or a threat with a weapon;
2. with a utilization of drug or all other methods of any kind designed to suppress or weaken the resistance of the victim;
3. by a person who has authority over the victim;
4. by a person who abuses his/her power which was vested in him/her;

4 Criminal Code of the Kingdom of Cambodia 2009, November 30, 2009 (the “Criminal Code”) (unofficial English translation is available at <http://sithi.org/sogi/admin/upload/media/125-rlhnhfw1371009220.pdf>).

5. by several persons acting in their capacity as a perpetrator, co-perpetrators, an instigator or an accomplice.

PART 1 FUNDAMENTAL PRINCIPLES; BOOK ONE GENERAL PROVISIONS FOR THE IMPLEMENTATION OF CRIMINAL LAW; TITLE 3; SEXUAL ASSAULTS; CHAPTER 1; RAPE
ARTICLE 241: AGGRAVATING CIRCUMSTANCES IN CONNECTION WITH VICTIMS

The rape is punishable by an imprisonment of between 7 (seven) and 15 (fifteen) years when it is committed: 1. on a person particularly vulnerable due to his/her age; 2. on a woman with pregnancy where this pregnancy is apparent or known to the offender; 3. on a person particularly vulnerable because of his/her sickness or disability while his/her conditions are apparent or known to the perpetrator.

PART 1 FUNDAMENTAL PRINCIPLES; BOOK ONE GENERAL PROVISIONS FOR THE IMPLEMENTATION OF CRIMINAL LAW; TITLE 3; SEXUAL ASSAULTS; CHAPTER 1; RAPE
ARTICLE 246: ACTS OF IMMODESTY

All acts of immodesty of any kind whatsoever, committed on any person by violence, coercion, threat or by surprise is punishable by an imprisonment of between 1 (one) and 3 (three) years and a fine of between 2,000,000 riels and 6,000,000 riels (roughly \$491.40 to \$1474.19).

PART 1 FUNDAMENTAL PRINCIPLES; BOOK ONE GENERAL PROVISIONS FOR THE IMPLEMENTATION OF CRIMINAL LAW; TITLE 3; SEXUAL ASSAULTS; CHAPTER 1; RAPE
ARTICLE 247: AGGRAVATING CIRCUMSTANCES WHICH ARE BASED ON MEANS USED OR IN CONNECTION WITH OFFENDERS

The offense specified in ARTICLE 246 (ACTS OF IMMODESTY) is punishable by an imprisonment of between 2 (two) and 5 (five) years and a fine of between 4,000,000 riels (\$982.80) and 10,000,000 riels (\$2456.99) when it is committed:

1. with a utilization of a weapon or a threat with a weapon;
2. with a utilization of drug or all other methods of any kind designed to suppress or weaken the resistance of the victim;
3. by a person who has authority over the victim;
4. by a person who abuses his/her power which was vested in him/her;
5. by several persons acting in their capacity as a perpetrator, co-perpetrators, an instigator or an accomplice.

PART 1 FUNDAMENTAL PRINCIPLES; BOOK ONE GENERAL PROVISIONS FOR THE IMPLEMENTATION OF CRIMINAL LAW; TITLE 3; SEXUAL ASSAULTS; CHAPTER 1; RAPE

ARTICLE 248: AGGRAVATING CIRCUMSTANCES DEPENDING ON VICTIMS

The offense specified in [ARTICLE 246 \(ACTS OF IMMODESTY\)](#) is punishable by an imprisonment of between 2 (two) and 5 (five) years and a fine of between 4,000,000 riels (\$982.80) and 10,000,000 riels (\$2456.99) when it is committed:

1. on a person particularly vulnerable due to his/her age;
2. on a woman with pregnancy where this pregnancy is apparent or known to the offender;
3. on a person particularly vulnerable due to his/her sickness or disability while his/her conditions are apparent or known to the perpetrator;

Trafficking/Exploitation Law⁵

CHAPTER 6; INDECENCY AGAINST MINORS UNDER FIFTEEN YEARS

ARTICLE 42: SEXUAL INTERCOURSE WITH MINORS UNDER FIFTEEN YEARS

A person who has sexual intercourse with another person of the age of less than fifteen years shall be punished with imprisonment for 5 to 10 years.

CHAPTER 6; INDECENCY AGAINST MINORS UNDER FIFTEEN YEARS

ARTICLE 43: INDECENT ACT AGAINST MINORS UNDER FIFTEEN YEARS

'Indecent act' in this law shall mean an act of touching or exposing a genital or other sexual part of another, or of having another touch the actor's or a third person's genital or other sexual part, with the intent to stimulate or satisfy the actor's sexual desire. A person who commits an indecent act against another person of the age of less than 15 years shall be punished with imprisonment for 1 to 3 years and a fine of 2,000,000 to 6,000,000 riels (roughly \$491.40 to \$1474.19). A person who repeatedly commits any offense stipulated in [ARTICLE 42](#) or this article shall be punished with double the prison punishment.

CHAPTER 6; INDECENCY AGAINST MINORS UNDER FIFTEEN YEARS

ARTICLE 44: EXEMPTION FROM PUNISHMENT

A person under the age of 15 years shall be exempted from punishment of the offenses stipulated in [ARTICLES 42](#) and [43](#) of this law.

5 The Law on Suppression of Human Trafficking and Sexual Exploitation (the "Trafficking/Exploitation Law"), Royal Kram No. NS/RKM/0208/005, January 18, 2008 (March 3, 2008 unofficial English translation available at: <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/93355/109099/F-410631367/KHM93355%20Eng.pdf>).

CHILD PROTECTION WHEN ESCAPING CHILD MARRIAGE

According to local counsel, there is no clear legal mechanism providing for a safe haven in the event of girls escaping child marriage. Legal requirements for registration of births and/or marriages

BIRTH REGISTRATION

All births must be registered with the “commune” or “sangkat” office within 30 days following the birth or be subject to a fine. Failure to register births leads to discrimination and potential denial of services that require citizenship.⁶

All marriages must be announced prior to the date of the marriage. If the announcement is not made, then the marriage will be illegal. According to local counsel, the common practice is to announce the marriage after the date of the wedding. There are no penalties for unofficial or improperly announced marriages.

MARRIAGE REGISTRATION

All marriages made based on the provisions of the Law on Family and Marriage⁷ are deemed valid for the purposes of registration under [ARTICLE 955](#) of the Civil Code.

COMMENTARY

According to local counsel, the local officer may not become aware of a marriage until issues arise within the marriage (including violence or other disputes or claims for divorce or separation). This is partly due to the fact that marriages are performed at a ceremony without the accompanying marriage certificate. In light of this, there isn't a back-log of marriage certificate registration. Additionally, while a local officer may have the capacity to confirm marriage, their particular locale may lack the resources to process the registrations (i.e. they have no electronic system to record marriages). The local officers are not responsible for confirming whether or a not a couple is married.

6 United States Department of State, Bureau of Democracy, Human Rights and Labor, *Country Reports on Human Rights Practices for 2012 – Cambodia* at 22. Available at: <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204192>

7 The Law on Implementation of the Civil Code references previous articles from the old Law on the Family and Marriage, effective July, 26, 1989. Pursuant to Article 78 of the Law on Implementation of the Civil Code, from and after the Date of Application, all articles of the Law on Family and Marriage are currently ineffective with the exception of Articles 76 and 77 and certain provisions from Articles 79-81. For reference, the older laws are available at: [http://www.gocambodia.com/laws/data%20pdf/Law%20on%20Marriage%20and%20Family/Law%20on%20the%20marriage%20and%20family\(EN\).pdf](http://www.gocambodia.com/laws/data%20pdf/Law%20on%20Marriage%20and%20Family/Law%20on%20the%20marriage%20and%20family(EN).pdf)

LEGISLATION

Civil Code

BOOK 7 RELATIVES; CHAPTER 4 PARENT AND CHILDREN; SECTION I. NATURAL PARENTS-CHILDREN RELATIONSHIP; SUB-SECTION I. GENERAL PROVISIONS

985. (OBLIGATION TO NOTIFY BIRTH)

1. The father or mother of a child shall report the birth not later than 30 days from the day of birth to the commune or sangkat office. If neither the father nor the mother can report the birth, an adult relative cohabiting with the child's father or mother shall promptly report the birth.
2. If the father and mother neglect to fulfill the obligation described in paragraph (1) without good reason, they shall be subject to a fine of not more than 10,000 riels (\$2.46).

BOOK 7 RELATIVES; CHAPTER 3 MARRIAGE; SECTION I. FORMATION OF MARRIAGE; SUB-SECTION I. REQUIREMENTS FOR MARRIAGE;

955. (NOTIFICATION AND REGISTRATION OF MARRIAGE)

1. A marriage shall come into effect by virtue of notification, public notice, conclusion of the marriage contract in the presence of the family registration official and marriage registration.
2. The notification, public notice, conclusion of marriage contract and registration described in paragraph (1) shall be effected in accordance with the procedures prescribed by the [Status Registration Order].

Sub-Decree 103 on Civil Status⁸

CHAPTER 5: MARRIAGE CERTIFICATE; ARTICLE 28

Any man and woman who wish to be married shall submit a marriage application with civil status official of khum or sangkat of woman's residence. The civil status official shall examine such application based on the provisions of the Law on Family and Marriage in force of the Kingdom of Cambodia.

8 Sub-decree No 103 on Civil Status, December 29, 2000 (unofficial English translation available at http://civilparties.org/wordpress/wp-content/uploads/2013/01/Boat-Without_Anchor-Full-Annex.pdf).

CHAPTER 5: MARRIAGE CERTIFICATE; ARTICLE 30

A marriage shall be considered legitimate only if a man and woman voluntarily accepted each other as husband and wife under a marriage contract before the civil status official of the bride's residence. Such contract shall be recorded in the marriage book and signed by the civil status official with thumbprint acknowledgement of spouse and witnessed by two persons who are of majority ages.

Implementation of the Civil Code⁹

ARTICLE 60; TRANSITIONAL PROVISION FOR PUBLIC ANNOUNCEMENT OF MARRIAGE, ETC.

The public announcement of marriage that was made based on provisions from ARTICLE 11 to ARTICLE 13 of Law on Family and Marriage prior to the Date of Application shall be deemed as public notice defined in ARTICLE 955 (NOTIFICATION AND REGISTRATION OF MARRIAGE) of the Civil Code.

SCHOOLING

COMMENTARY

Education is free through grade nine for all children.¹⁰ Lower secondary education (grade seven through nine) is compulsory for children aged 12 to 14, but actual attendance varies widely by region.¹¹ A 2011 report suggests the percentage of children ages five to fourteen attending school was 46.8.¹² Transportation difficulties in rural areas are said to have particularly affected girls' attendance rates, although it is said this might also be an excuse used by parents to remove their daughters from schooling.

9 The Law on Implementation of the Civil Code (the "Implementation of the Civil Code"), promulgated May 31, 2011 (unofficial English translation available at (https://docs.google.com/file/d/0Bz69AcA2DVInNTY1NDE5ZGMtYWZiZC00NDJkZjgtMjk1Y2MyNzFjNWQx/edit?hl=en_US)).

10 Law on Education, Royal Kram No. NS/RKM/1207/032, November 21, 2007 (English translation available at: <http://www.moeys.gov.kh/en/policies-and-strategies/73-policies/97-education-law.html>)

11 "Situation Analysis of Youth in Cambodia 2009", UNICEF 42 and FN 18. Available at http://www.unicef.org/cambodia/Part2_Situation_Analysis_of_Youth_in_Cambodia_2009.pdf

12 "Findings on the Worst Forms of Child Labor 2011", United States Department of Labor, Bureau of International Labor Affairs at 106. Available at <http://www.dol.gov/ilab/reports/child-labor/cambodia.htm>.

LEGISLATION

Education Law

CHAPTER VII : EDUCATIONAL RIGHTS AND OBLIGATIONS

ARTICLE 31: RIGHT TO ACCESS EDUCATION¹³

Every citizen has the right to access qualitative education of at least 9 years in public schools free of charge. The Ministry in charge of education shall gradually prepare the policy and strategic plans to ensure that all citizens obtain qualitative education as stipulated by this law.

INTERSECTION BETWEEN CHILD MARRIAGE AND OTHER SOCIAL ISSUES

COMMENTARY

According to local counsel, rural children, especially female children do not have much of a chance to get a good education and their knowledge is often limited. As such, these girls may not have confidence in their own decision making and are very dependent on their parents. There is often gender discrimination between males and females in terms of this type of decision making. In most cases, a rural boy will be encouraged to make decisions and his desires will be a big factor in the ultimate decision by his parents. Furthermore, he will not be held liable if his decision ultimately proves to be poor. In contrast, a female's desires are often not considered in the parents' decision making (rural parents generally do not encourage their female children to make independent decisions) and they will almost always be held liable if they make a decision regardless of whether the decision is wrong or right. In 2011, Cambodia instituted a partial ban on foreign men over the age of 50 marrying Khmer women.¹⁴ Foreign women and Khmer men are not subject to the ban.¹⁵ According to a spokesperson for the Ministry of Foreign Affairs, "marrying a man over 50 years old seems like a grandfather and a granddaughter" and the reason for the ban is because

"[they] want people getting married to look like proper couples".

13 Law on Education, Royal Kram No. NS/RKM/1207/032, November 21, 2007 (English translation available at: <http://www.moeys.gov.kh/en/policies-and-strategies/73-policies/97-education-law.html>)

14 "New restrictions issued on foreign marriages," Tep Nimol. The Phenom Penh Post, March 16, 2011. Available at: <http://www.phnompenhpost.com/national/new-restrictions-issued-foreign-marriages>

15 "Cambodia sets marriage age limit for foreign husbands," Guy Delauney. BBC News – Asia-Pacific, March 21, 2011. Available at <http://www.bbc.co.uk/news/world-asia-pacific-12802339>.

Bigamy is prohibited under [ARTICLE 949](#) of the Cambodian Civil Code and is not commonly practiced extra-legally.

For additional recent statistics, please see the National Institute of Statistics, Cambodia Demographic and Health Survey 2005 (<http://nis.gov.kh/index.php/social-statistics/cdhs2005>)

The chapter reflects a summary of the jurisdiction's treatment of child marriage. It also reflects some relevant provisions on the subject of child marriage under the national legal framework, primarily if they have been made publicly available in the English language. The summary does not constitute legal advice under any circumstance.

CHAD

LEGAL AGE FOR MARRIAGE

LEGAL AGE OF MARRIAGE

The minimum legal age for marriage for girls is 15 and for boys is 18.¹ Minors require parental consent to marry. While Law No. 06/PR/2002 on the promotion of reproductive health prohibits early marriage and came into force on April 15, 2002,² no implementation order has been drafted and thus the law cannot be used in the courts.³ Further, a Family Code that would raise the minimum legal age for marriage to 17 years of age for girls and to 18 for boys was proposed in 1999, but has languished in the National Assembly since.⁴

Exceptions

The Constitution permits the application of customary laws, provided that the customary laws do not interfere with the Constitution or public order.⁵ Customary law permits marriage for girls at 13 years of age and boys at 14 years of age.⁶ This is indicated by [ARTICLE 277](#) of the Chadian Penal Code which prohibits only consummation of a customary marriage of a girl under 13 years of age.

1 Int'l Human Rights Law Society of Indiana Univ. School of Law, *Chad's Breach of the International Covenant on Civil and Political Rights: Failure to Protect the Rights of Women and Girls*, 15 (March 2009) (citing Chad C. Civ., Art. 144 (1958)) (submitted to the UN Human Rights Comm.).

2 Art. 9 of Law No. 06/PR/2002 (April 15, 2002).

3 Amnesty Int'l, *Chad: Briefing to the UN Committee of Discrimination Against Women*, 11, AFR 20/009/2011 (Oct. 11, 2011); Immigration & Refugee Board of Canada, *Chad: Forced Marriage; Application of the Law of 2002; The Existence of Organizations that Defend the Rights of Women Who Are Forced to Marry; The Family Code Project* (November 2004 – January 2007) TCD102156.FE (Jan. 23, 2007).

4 Counterpart Int'l, *Elections in Chad: The Role of Women in Strengthening Democracy*, 14–15 (Jan. 31, 2011); Comm. on the Rights of the Child, *Consideration of Reports Submitted by States Parties: Second Periodic reports of States Parties due in 1997: Chad*, ¶ 45, CRC/C/TCD/2 (Dec. 14, 2007).

5 Chad Const. Arts. 161, 162; see also U.S. State Dep't, Chad 2012 Human Rights Report 8 (2012); UN Human Rights Comm., *Consideration of reports submitted by States parties under article 40 of the Covenant: International Covenant on Civil and Political Rights: initial report: Chad*, ¶ 89, CCPR/C/TCD/1 (June, 6 2008).

6 U.S. State Dep't, Chad 2012 Human Rights Report 21 (2012).

LEGISLATION

Code Civil français de 1958 (still in force in Chad)

(not found in French, unofficial English translation)⁷

ARTICLE 144: A male, until the completion of eighteen years, a female until the completion of fifteen years, may not contract marriage.

ARTICLE 148: Minors may not contract marriage without the consent of their father and mother; in case of disagreement between the father and mother, that division implies consent.

Constitution Tchadienne⁸

ARTICLE 161

Jusqu'à leur codification, les règles coutumières et traditionnelles, ne s'appliquent que dans les communautés où elles sont reconnues. Toutefois, les coutumes contraires à l'ordre public ou celles qui prônent l'inégalité entre les citoyens sont interdites.

ARTICLE 162

Les règles coutumières et traditionnelles régissant les régimes matrimoniaux et les successions ne peuvent s'appliquer qu'avec le consentement des parties concernées. A défaut de consentement, la loi nationale est seule applicable. Il en est de même en cas de conflit entre deux (2) ou plusieurs règles coutumières.

Constitution of Chad (unofficial translation)

ARTICLE 161

Until their codification, customary and traditional rules are applicable only in the communities where they are recognized. However, those customs contrary to the public order or those which promote inequality between citizens are forbidden.

ARTICLE 162

Customary or traditional rules dictating matrimonial regimes and inheritances may be applied only with the consent of the parties concerned. The same applies in case of conflict between two or more customary rules.

7 Available at: phalhy.files.wordpress.com/2006/11/civil-code-france.doc

8 Constitution tchadienne, accessible at: http://www.eueom.eu/files/dmfile/tchad_constitution_15_juillet_2005_fr1.pdf

ARTICLE 9, LOI N°006/PR/2002 (APRIL 15, 2002) (not yet in use)

Toute personne a le droit de n'être pas soumise à la torture et à des traitements cruels, inhumains ou dégradants sur son corps en général et sur ces organes de reproduction en particulier. Toutes les formes de violences tels que les mutations génitales féminines (MGF), les mariages précoces, les violences domestiques et les sévices sexuels sur la personne humaine sont interdites."

ARTICLE 9, LAW N°006/PR/2002 (APRIL 15, 2002) (not yet in use)

Everyone has the right not to be subjected to torture and to cruel, inhuman or degrading treatment to his/her body in general and his/her reproductive organs in particular. All forms of violence, such as female genital mutilation (FGM), early marriage, domestic violence and sexual injury on the human person are forbidden.

COMMENTARY

Families are reported to arrange for marriages for girls as young as 12 or 13 years of age.⁹ The minimum age for engagement to marry for girls is said to be 11 years of age.¹⁰

PENALTIES/CRIMINALIZATION

Consummation of marriage with a girl under 13 is punished as rape. No access to original Chadian legal texts has been possible, but if the former French civil code is indeed still in force, it looks likely that an official who conducts a marriage involving a child without parental consent could be subject to a fine. It also looks possible that a marriage contracted between minors can be annulled under certain limited circumstances.

COMMENTARY

The U.S. State Department reports that Chadian law prohibits forced marriages of anyone under 18 and provides for imprisonment of six months to two years and a fine of 50,000 to 500,000 CFA (\$100 to \$1,000).¹¹ It also reports that enforcement of criminal punishments is frustrated by the practice of "dia" in Muslim areas of Chad, which involves a payment to the family of a crime victim.¹²

9 U.S. State Dep't, *Chad 2012 Human Rights Report*, 21 (2012).

10 U.S. State Dep't, *Chad 2012 Human Rights Report*, 21 (2012).

11 U.S. State Dep't, *Chad 2012 Human Rights Report*, 21 (2012).

12 U.S. State Dep't, *Chad 2012 Human Rights Report*, 9 (2012).

LEGISLATION

Art. 156 of the French Civil Code *(not accessible in French)*

(ACT OF 21 JUNE 1907) An officer of civil status who celebrates marriages contracted by sons or daughters who have not reached the full age of eighteen years, without the consent of the fathers and mothers, that of the grandfathers or grandmothers and that of the family council, when it is required, being mentioned in the record of marriage, shall be sentenced to the fine specified in **ARTICLE 192** of the Civil Code, at the suit of the parties concerned or of the Government procurator of the tribunal de grande instance of the arrondissement where the marriage was celebrated.

ARTICLE 185

However, a marriage contracted by spouses who did not yet have the required age, or of whom one of the two had not reached that age, may no longer be attacked:

1. where six months have elapsed since that spouse or the spouses have reached the competent age;
2. where the wife, who did not have that age, has conceived before six months elapsed.

Ordonnance 67-012 1967-06-09 PR/MJ:

Ordonnance portant promulgation d'un code penal¹³

ARTICLE 277: *La consommation d'un mariage coutumier avant que la fille n'ait atteint l'âge de treize ans est assimilée au viol et punie comme telle.*

ARTICLE 276: *Lorsque le viol aura été commis sur la personne d'un enfant au-dessous de l'âge de treize ans ou avec l'aide d'une ou de plusieurs personnes ou par un ascendant de la victime, la peine sera celle des travaux forcés à perpétuité.*

Ordinance 67-012 1967-06-09 PR/MJ:

Ordinance on the promulgation of a penal code *(unofficial translation)*

ARTICLE 277: Consummation of a customary marriage before the girl has attained the age of 13 is treated as rape and punished as such.

ARTICLE 276: When rape has been committed against a child under 13 years old or with the aid of one or more persons or by an older family member, punishment will be forced labor in perpetuity.

¹³ Accessible at: http://www.vertic.org/media/National%20Legislation/Chad/TD_Code_Penal.pdf

PROSECUTIONS FOR CHILD MARRIAGE

None known.

LAWS WHICH PROMOTE/ENDORSE BRIDE PRICE OR DOWRY INCLUDING ANY REQUIREMENTS FOR REPAYMENT ON DIVORCE

BRIDE PRICE

It is reported that Ordinance No. 3 INT of 1961 makes a bride price a mandatory prerequisite to marriage, although it has not been possible to access the original text.¹⁴ The bride price practice is said to encourage early marriage because many people in Chad live in poverty.¹⁵

PROVISIONS IMPEDING / PREVENTING ENDING OF UNDERAGE MARRIAGE

None known.

STATUTORY RAPE LAW AND LAWS THAT CIRCUMVENT THIS THROUGH MARRIAGE

The law in Chad is said not to recognize marital rape as a crime.¹⁶ However, as stated above, consummation of a customary marriage with a girl under 13 is considered rape. A perpetrator of kidnap of a girl of 15 without fraud or violence is exempted from criminal prosecution if he marries his victim.¹⁷

14 Africa for Women's Rights, *Dossier of Claims*, 31 (March 2010), available at <http://www.fidh.org/IMC/pdf/dossierofclaims0803eng.pdf> (citing Ordinance No. 3 INT of 1961); Center for Reproductive Rights, *Laws & Policies Affecting their Reproductive Lives: Chad*, 103 (2003), available at <http://reproductiverights.org/sites/default/files/documents/chad.pdf> (same).

15 Int'l Human Rights Law Society of Indiana Univ. School of Law, *Chad's Breach of the International Covenant on Civil and Political Rights: Failure to Protect the Rights of Women and Girls*, 16 (March 2009)

16 U.S. State Dep't, *Chad 2012 Human Rights Report*, 19 (2012); Center for Reproductive Rights, *Laws & Policies Affecting their Reproductive Lives: Chad*, 105 (2003), available at <http://reproductiverights.org/sites/default/files/documents/chad.pdf>.

17 UNICEF, *Early Marriage: Child Spouses*, *Incenti Digest* 7, 8 (Mar. 2001), available at <http://www.unicef-irc.org/publications/pdf/digest7e.pdf>.

COMMENTARY

As a consequence of the law exempting abductors from punishment if they marry their victims, despite the stipulation that it should only apply in the absence of fraud and violence, female rape victims are reported to be sometimes forced to marry the perpetrators to preserve their honor.¹⁸

LEGISLATION

Code Penal de 1967

ARTICLE 289: Celui qui, sans fraude ni violence, aura enlevé ou détourné, ou tenté d'enlever ou de détourner un mineur de quinze ans, sera puni d'un emprisonnement de deux à cinq ans et d'une amende de 5 000 à 100 000 francs. Lorsqu'une mineure ainsi enlevée ou détournée aura épousé son ravisseur, celui-ci ne pourra être poursuivi que sur la plainte des personnes qui ont qualité pour demander l'annulation du mariage et ne pourra être condamné qu'après que cette annulation aura été prononcée."

Penal Code 1967 (unofficial translation)

ARTICLE 289: Whosoever without fraud or violence kidnaps or abducts or attempts to kidnap or abduct a minor of 15 years old will be punished with imprisonment between two and five years and a fine of between 5,000 and 100,000 francs. When a minor so kidnapped or abducted marries her abductor, the latter can only be prosecuted on the complaint of those able to demand annulment of the marriage and can only be punished once the annulment is pronounced.

CHILD PROTECTION WHEN ESCAPING CHILD MARRIAGE

None known.

¹⁸ U.S. State Dep't, *Chad 2012 Human Rights Report*, 19 (2012).

LEGAL REQUIREMENTS FOR REGISTRATION OF BIRTHS AND/OR MARRIAGES

BIRTH REGISTRATION

There is no legal requirement for registration of births. In 2012, the Chadian government drafted, and sent to the National Assembly for approval, a law establishing a birth registration system.¹⁹ Other sources report that a draft law making birth registration free and compulsory has been under consideration with the Department of Political Affairs and Civil Registry (Direction des Affaires Politiques et de l'Etat Civil/DAPEC), in the Ministry of Interior, since March 2010.²⁰ The current status of these drafts is not known.

COMMENTARY

Data obtained from the World Bank indicate that only 9% of births were registered in 2004.²¹ However, UNICEF reported that in 2000, 25% of children under five were registered²², although a subsequent report puts the figure at 16%.²³ Birth registration is only free for the first two months after birth.²⁴

MARRIAGE REGISTRATION

Registration of marriage is not compulsory.²⁵

SCHOOLING

The right to education is provided under the Constitution. Primary school education is compulsory and free between the ages of six and 11.²⁶

19 U.S. State Dep't, *Trafficking in Persons Report*, 127 (June 2013).

20 Child Soldiers Int'l, *Better than Cure: Preventing the Recruitment and Use of Children in the Chadian National Army*, 19 (April 2012).

21 The World Bank, *World DataBank*, <http://databank.worldbank.org/data/home.aspx> (last accessed June 28, 2013).

22 UNICEF, *The 'Rights' Start To Life: a Statistical Analysis of Birth Registration* (2005).

23 UNICEF, *State of the World's Children 2013*, accessible at: http://www.unicef.org/sowc2013/files/SWCR2013_ENG_Lo_res_24_Apr_2013.pdf.

24 Child Soldiers Int'l, *Better than Cure: Preventing the Recruitment and Use of Children in the Chadian National Army*, 19 (April 2012).

25 UN Gender Thematic Group, *UNCT – Chad: Confidential Reports to CEDAW*, 18 (Feb. 2011), available at <http://chad.unfpa.org/drive/CEDAWUNCTsreportChadfinal.docx>.

26 U.S. State Dep't, *Chad 2012 Human Rights Report*, 20 (2012).

COMMENTARY

Gross enrollment rates²⁷ for girls is 86 percent and for boys is 115 percent.²⁸ The primary school completion rates, as a percentage of the relevant age group, is 29 percent for girls and 47 percent for boys.²⁹ Rates have improved significantly since 2000 when gross enrollment rates were 51 percent and 84 percent, respectively, and completion rates were 13 percent and 33 percent, respectively,³⁰ although secondary school rates are still very low: 12 per cent and 20 percent respectively³¹. Children without birth registration may only be enrolled provisionally and are required to obtain a birth registration.³² Schools could call on witnesses to verify the age of the child.³³ Alternatively, a supplementary judgment can be obtained from a civil registry office, which requires the child's parents and three witnesses to testify to the child's date of birth and costs 1,500 CFAF (\$3).³⁴

LEGISLATION

*La Constitution Tchadienne 1996*³⁵

ARTICLE 35: Tout citoyen a droit à l'instruction. L'enseignement public est laïc et gratuit. L'enseignement privé est reconnu et s'exerce dans les conditions définies par la loi. L'enseignement fondamental est obligatoire.

Chadian Constitution 1996 (*unofficial translation*)

ARTICLE 35: All citizens have the right to education. Public education is secular and free. Private education is recognized and is to be exercised in accordance with the conditions set down in law. Basic education is obligatory.

27 Gross enrollment rate of primary school is the share of children of any age enrolled in primary school.

28 The World Bank, *World DataBank*, <http://databank.worldbank.org/data/home.aspx> (last accessed June 28, 2013) (data for 2011).

29 The World Bank, *World DataBank*, <http://databank.worldbank.org/data/home.aspx> (last accessed June 28, 2013) (data for 2011).

30 The World Bank, *World DataBank*, <http://databank.worldbank.org/data/home.aspx> (last accessed June 28, 2013) (data for 2000).

31 UNICEF, *State of the World's Children* 2013.

32 U.S. State Dep't, *Chad 2012 Human Rights Report*, 20 (2012).

33 U.S. State Dep't, *Chad 2012 Human Rights Report*, 20 (2012).

34 Child Soldiers Int'l, *Better than Cure: Preventing the Recruitment and Use of Children in the Chadian National Army*, 19 (April 2012).

35 La Constitution Tchadienne, 1996, accessible at: http://www.eueom.eu/files/dmfile/tchad_constitution_15_juillet_2005_fr1.pdf

INTERSECTION BETWEEN CHILD MARRIAGE AND OTHER SOCIAL ISSUES

While the Chadian Civil Code requires monogamy, Ordinance No. 03 INT of 1961 provides that polygamy is the rule and monogamy must be designated.³⁶ If the husband marries a second wife, the first wife can request dissolution of her marriage.³⁷ Sources conflict on whether the bride-price and other marriage-related expenses must be repaid by the first wife.³⁸ Being in a polygamous marriage reduces the status of the child bride relative to the older wives.³⁹

Maternal mortality is 191 per 1000 live births.⁴⁰ The fertility rate in 2011 was 5.9 births per woman, having only shrunk from 6.6 births per woman in 2000.⁴¹ Girls between the ages of 15 to 19 contributed 15 percent of national pregnancies.⁴² 40 percent of 17 year old girls have had at least one child or are pregnant.⁴³ 9% of 15 year olds have had at least one child or are pregnant.⁴⁴ Girls between the ages of 12 to 15 account for 13.3 percent of the birth rate and for 13 percent of the fertility rate.⁴⁵

The chapter reflects a summary of the jurisdiction's treatment of child marriage. It also reflects some relevant provisions on the subject of child marriage under the national legal framework, primarily if they have been made publicly available in the English language. The summary does not constitute legal advice under any circumstance.

-
- 36 Center for Reproductive Rights, *Laws & Policies Affecting their Reproductive Lives: Chad*, 103 (2003), available at <http://reproductiverights.org/sites/default/files/documents/chad.pdf>.
- 37 U.S. State Dep't, *Chad 2012 Human Rights Report 20* (2012); Center For Reproductive Rights, *Laws & Policies Affecting their Reproductive Lives: Chad*, 103 (2003), available at <http://reproductiverights.org/sites/default/files/documents/chad.pdf>.
- 38 U.S. State Dep't, *Chad 2012 Human Rights Report 20* (2012) (repayment required); Center for Reproductive Rights, *Laws & Policies Affecting their Reproductive Lives: Chad*, 103 (2003), available at <http://reproductiverights.org/sites/default/files/documents/chad.pdf> ("with or without reimbursement of the bride-price"). See also Art 188 of the Civil Code.
- 39 Int'l Human Rights Law Society of Indiana Univ. School of Law, *Chad's Breach of the International Covenant on Civil and Political Rights: Failure to Protect the Rights of Women and Girls*, 20 (March 2009).
- 40 The World Bank, *Chad: Country Brief*, <http://go.worldbank.org/8U4COBBZG0> (last updated Sept. 2011).
- 41 The World Bank, *World DataBank*, <http://databank.worldbank.org/data/home.aspx> (last accessed June 28, 2013).
- 42 The World Bank, *Chad: Country Brief*, <http://go.worldbank.org/8U4COBBZG0> (last updated Sept. 2011).
- 43 Int'l Human Rights Law Society of Indiana Univ. School of Law, *Chad's Breach of the International Covenant on Civil and Political Rights: Failure to Protect the Rights of Women and Girls*, 17 (March 2009).
- 44 Int'l Human Rights Law Society of Indiana Univ. School of Law, *Chad's Breach of the International Covenant on Civil and Political Rights: Failure to Protect the Rights of Women and Girls*, 17 (March 2009).
- 45 UN Comm. on Economic, Social & Cultural Rights, *Implementation of the International Covenant on Economic, Social and Cultural Rights: consideration of reports submitted by States parties in accordance with article 16 of the International Covenant on Economic, Social and Cultural Rights: Replies by the Government of Chad to the list of issues (E/C.12/TCD/Q/3) to be taken up in connection with the consideration of the third periodic report of Chad concerning the rights referred to in articles 1 to 15 of the International Covenant on Economic, Social and Cultural Rights (E/C.12/TCD/3)*, ¶ 57, E/C.12/TCD/Q/3/Add.1 (Aug. 20, 2009).

ERITREA

LEGAL AGE FOR MARRIAGE

AGE OF MARRIAGE

The Transitional Civil Code of Eritrea (**TCCE**) as amended by Proclamation 2/1991 raised the minimum age of consent for a woman to eighteen years to equal that for a man.¹

Exceptions

The Proclamation contains many exceptions. It sets the age requirement for customary marriages at fifteen for men and women.² The TCCE states elsewhere that a customary marriage occurs when a man and a woman perform such rites as constitute a permanent union between them under the rules of the community to which at least one of them belongs.³ In addition, it granted courts the power to validate an otherwise invalid marriage contract based on the circumstances of the contracting parties or based on the best interests of the families.⁴

Additionally, a child aged 15 years and above may be permitted to conclude betrothal or marriage provided it would serve the best interest of the child and the family. In this case the court is vested with the power to assess the best interest of the child. Age for emancipation of a minor child is 15 years according to [ARTICLES 329](#) and [330](#) of TCCE and such child is presumed to attain civil majority according to [ARTICLE 328](#) of the Draft Civil Code of Eritrea.⁵

LEGISLATION

Not available.

-
- 1 "ERITREA: Implementation of the Beijing Platform for Action and The Outcome of the Twenty-Third Special Session of the General Assembly", March 2004, p 2, available at <http://www.un.org/womenwatch/daw/Review/responses/ERITREA-ENGLISH.pdf>
 - 2 Proclamation No. 2/1991 art. 46(4) (Eri.).
 - 3 Transitional Civil Code of Eritrea art. 580 (Eri.).
 - 4 Proclamation No. 2/1991 art. 46(3) (Eri.).
 - 5 The African Child Policy Forum (2012) "Harmonisation of children's laws in Eritrea", p.4. Available at <http://www.acerwc.org/wp-content/uploads/2012/05/English-ACERWC-Eritrea-Harmonisation-of-Laws-on-Children.pdf>

COMMENTARY

Alongside custom, Eritrea's longstanding system of Sharia courts is another significant impediment to preventing child marriage. Proclamation 2/1991 expressly states that provisions of the TCCE relating to betrothal, marriage and inheritance do not apply to Eritrean Muslims.⁶ It is thus implied that Sharia courts are granted jurisdiction over these matters for the Muslim population.⁷ Given the fact that 36.5% of Eritrea's population is Muslim,⁸ this means that the TCCE's protections are not available to many Eritrean girls. It is highly unlikely that these girls have the ability to bring their cases to Eritrea's secular courts.⁹

When Eritrea established its independence from Ethiopia after three decades of armed struggle in 1991, the newly-formed provisional government chose to readopt the codes of Ethiopia with amendments that reflected the progressive values of the liberation struggle.¹⁰ An important part of these values was a commitment to gender equality.¹¹ During the struggle for independence, the Eritrean People's Liberation Front (EPLF) had consistently spoken of women's rights.¹² Women had made up forty percent of the EPLF and roughly a quarter of the front-line fighters.¹³ In accordance with the ethos of the struggle, numerous patriarchal provisions of the Ethiopian civil code were thus replaced with provisions more respectful of gender equality in forming the Transitional Civil Code of Eritrea (TCCE).¹⁴

Among the most significant of the revised provisions was that regarding marriageable age. Traditionally, girls were married at an early age in most rural Eritrean societies, usually between twelve and fifteen years of age.¹⁵ Tribal customs often dictated that marriage should take place before menarche.¹⁶

In addition, the Eritrean Constitution which was ratified by the National Assembly in 1997¹⁷ but is not yet in force reads,¹⁸ "Men and women of full legal

6 Favali & Pateman, *supra* note 3, at 69.

7 *Id.*

8 *The Future of the Global Muslim Population: Muslim Population by Country* (2010), Pew Research Center <http://features.pewforum.org/muslim-population/> (last visited Jun. 29, 2013).

9 Interview with Luwam Dirar, Former Clerk to the Highest Appellate Court of Eritrea and Former Legal Advisor to the Minister of Justice of Eritrea (Jun. 26, 2013).

10 Yohannes Gebremedhin, *The Challenges of a Society in Transition: Legal Development in Eritrea* 82–86 (2004).

11 *Id.* at 86.

12 Lydia Favali & Roy Pateman, *Blood, Land and Sex: Legal and Political Pluralism in Eritrea*, 190 (2003).

13 *Id.*

14 Gebremedhin, *supra* note 1, at 189.

15 Favali & Pateman, *supra* note 3, at 174.

16 *Id.*

17 Luwam Dirar & Kibrom Tesfagabir, *Introduction to Eritrean Legal System and Research*, *Globalex* §1 (March 2011), <http://www.nyulawglobal.org/globalex/Eritrea.htm>.

18 The Constitution Of Eritrea, May 23 1997, art.22, §2, available at http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/legaldocument/wcms_126648.pdf.

age shall have the right, upon their consent, to marry and to found a family freely, without any discrimination and they shall have equal rights and duties as to all family affairs.”

The effectiveness of Eritrean laws in curbing child marriage has been questionable. The last comprehensive survey conducted in 2002 found that 49% of women were married before the age of eighteen.¹⁹ This proportion is an improvement from 59% in 1995.²⁰ However, even when the TCCE’s two exceptions to the eighteen-year age requirement are factored in, there seems to be a great distance between the *de jure* requirements set out by the Eritrean government and the *de facto* situation on the ground. The reality is most grim in rural areas, where customs remain uncontested in matters of family law.²¹ In a 2005 letter to the United Nations Office of the High Commissioner for Human Rights, the Eritrean government candidly estimated that the average age of marriage for girls in rural areas is between twelve and fourteen years.²²

In 1997, the Eritrean Ministry of Justice launched a full-scale redrafting of all the major codes inherited from Ethiopia.²³ As part of the effort, six new codes, including a new civil code and a new penal code were drafted, but they are yet to be adopted.²⁴ One of the causes for the long delay is said to be the lack of resources to translate the codes into the many native languages of Eritrea.²⁵ If adopted, the new civil code will set the minimum age for marriage at eighteen for both men and women but will provide an exception if both the man and the woman have reached the age of sixteen and the woman submits a doctor’s statement certifying that she is pregnant.²⁶

19 Eritrea: 2002 Demographic and Healthy Survey Key Findings, MEASURE DHS Demographic and Health Surveys 1 (2002), http://www.measuredhs.com/pubs/pdf/SR97/Eritrea_KF.pdf.

20 *Id.*

21 See U.N. Comm. on the Elimination of Discrimination Against Women, *Consideration of Reports Submitted by State Parties under Article 18 of the Convention: Concluding Comments: Eritrea*, ¶ 28, U.N. Doc. CEDAW/C/ERI/CO/3 (Feb.3 2006) (expressing concern that the legal minimum marriage age is not being enforced and that discriminatory customary laws and practices continue to be applied); U.N. Comm. on the Rights of the Child, *Consideration of Reports Submitted by States Parties Under Article 44 of the Convention: Concluding Observations: Eritrea*, ¶ 62, U.N. Doc. CRC/C/ERI/CO/3 (Jun.23 2008) (reiterating concerns that customary laws often supersede the legal minimum age for marriage, especially for girls).

22 Askalu Menkerios Minister of Labour & Human Welfare of Eritrea, Letter dated Jun. 8, 2005 addressed to Mr. Paulos Sergio Pinheiro of the UNOG-OHCHR 7 available at <http://www2.ohchr.org/english/bodies/CRC/docs/study/responses/eritrea.pdf>.

23 Gebremedhin, *supra* note 1, at 104.

24 *Id.*

25 Dirar & Tesfagabir, *supra* note 13, at §4.3.

26 U.N. Comm. on the Rights of the Child, *Consideration of Reports Submitted by States Parties Under Article 44 of the Convention: Addendum: Eritrea*, ¶ 69, U.N. Doc. CRC/C/41/Add.12 (Dec. 23 2002). See also *supra* note 5.

PENALTIES/CRIMINALIZATION

PUNISHMENT FOR CHILD MARRIAGE

Various articles of the TCCE inherited from the Ethiopian Code outline civil and criminal liability for violation of laws regarding child marriage. For example, [ARTICLE 607](#) states that an officer or authority who celebrated the marriage of a man under eighteen or a woman under fifteen will be liable to the punishments provided in the Penal Code if they knew or should have known such circumstances.²⁷ It also states that the bride, the bridegroom, the persons who consented to the marriage and the witnesses will be liable to the relevant punishments provided in the Penal Code.²⁸ [ARTICLE 608](#) of the TCCE states that the dissolution of the marriage will be ordered in the case of a violation stated in [ARTICLE 607](#) on the application of any interested person or of the public prosecutor. This is qualified by the statement that such dissolution will not be applied if the conditions of age required by law have since been satisfied.²⁹

In terms of criminal liability, [ARTICLE 614](#) of the Transitional Penal Code of Eritrea (TPCE) states that intentionally concealing facts that would annul a marriage on grounds specified by civil law from one's spouse is punishable upon complaint by imprisonment or fine.³⁰ [ARTICLE 615](#) states that a person who lends their religious or civil office to the solemnization of a marriage forbidden by law is also punishable with imprisonment or fine.³¹

Independently of these provisions inherited from the Ethiopian Code, [ARTICLE 46\(5\)](#) of Proclamation 2/1991 states generally that a public prosecutor or an interested party can bring a suit before a court of law if [ARTICLE 46\(3\)](#), setting the minimum age for customary marriages at fifteen, is violated. One may deduce from the selectivity of this subprovision that the amended TCCE does not allow civil suits or prosecution under [ARTICLE 46\(1\)](#) of Proclamation 2/1991 which generally sets the minimum marriageable age at eighteen.

LEGISLATION

Not available.

27 Transitional Civil Code of Eritrea art. 607 (Eri.).

28 *Id.*

29 Transitional Civil Code of Eritrea art. 608 (Eri.).

30 Transitional Penal Code of Eritrea art. 614 (Eri.).

31 Transitional Penal Code of Eritrea art. 615 (Eri.).

PROSECUTIONS FOR CHILD MARRIAGE

COMMENTARY

No publicized prosecutions for breach of the minimum marriage age requirement set forth by the TCCE have been found through an internet search. A factor significantly limiting the number of possible prosecutions or civil suits in this regard is the lack of adequately trained legal professionals in Eritrea.³² In 2003 the University of Asmara, the only law school in the country, had only 155 L.L.B. alumni and 166 degree candidates.³³

LAWS WHICH PROMOTE/ENDORSE BRIDE PRICE OR DOWRY INCLUDING ANY REQUIREMENTS FOR REPAYMENT ON DIVORCE.

DOWRIES

Along with raising the age of marriage for girls to eighteen, the Eritrean government also amended the adopted the Ethiopian Civil Code to prohibit dowry payments with Proclamation 2/1991.³⁴ It is unlikely that this prohibition has been much more successful than the prohibition of early marriage. As is the case with the marriage age law, communities continue to adhere to their old traditions even though doing so is technically illegal.³⁵ In March 1995 the Asmara Provincial Assembly resolved to enforce the prohibition of dowry, but in spite of this the practice still thrives.³⁶

LEGISLATION

Not available.

32 Interview with Luwam Dirar, *supra* note 23.

33 Dirar & Tesfagabir, *supra* note 13, at §4.4.

34 Favali & Pateman, *supra* note 3, at 192.

35 *Id.*

36 *Id.* at 192–193.

COMMENTARY

Dowry practice is traditionally prevalent in Eritrea, however it comes in a wide variety of forms depending on the specific community and its customs.³⁷ The most common type is payment by the groom or his relatives to the bride's kin.³⁸ Some communities call this payment "the price of the neck."³⁹ The second most common form is where payment is made from the bride's family to the groom when she marries.⁴⁰ The World Organization Against Torture has expressed concerns that dowry practices reduce the status of girls in many Eritrean communities to little more than pieces of chattel.⁴¹

STATUTORY RAPE LAW AND LAWS THAT CIRCUMVENT THIS THROUGH MARRIAGE

COMMENTARY

Where a rape victim agrees to marry her rapist, he is said to avoid prosecution for the rape or, if already convicted, his sentence is terminated.⁴² Marital rape is not thought to be a crime in Eritrea.

LEGISLATION

Transitional Penal Code of Eritrea (TPCE)⁴³

ARTICLE 599

[States that where the victim of rape, indecent assault or seduction freely consents to a marriage with the accused, no prosecution shall follow.]

ARTICLE 589

[Defines rape as sexual intercourse with a female victim outside marriage against the victim's will with the use of force, violence or grave intimidation.]

37 Favali & Pateman, *supra* note 3, at 178.

38 *Id.*

39 *Id.* at 179.

40 *Id.* at 178.

41 *Violence Against Girls in Eritrea: A Report to the Committee on the Rights of the Child*, World Organization Against Torture, 207 (2003), http://www.omct.org/files/2004/07/2409/eng_2003_05_eritrea.pdf.

42 Legislation not found.

43 See *supra* at note 5, p.48

LEGAL REQUIREMENTS FOR REGISTRATION OF BIRTHS AND/OR MARRIAGES

BIRTH REGISTRATION

Birth registration is a legal requirement in Eritrea. Failure to register births by relatives, doctors, midwives or medical officers is punishable with a fine or with simple imprisonment not exceeding one month.⁴⁴

Any person can make the declaration of the birth of a child to a civil status officer. The father, mother, guardian, hospital or any person taking care of the child can declare the birth of the child. The declaration must be made within ninety days to the civil status officer. A declaration made after the lapse of ninety days requires the authorization of a court.⁴⁵

MARRIAGE REGISTRATION

The TCCE recognizes three types of marriage as valid before the code. The first is Civil Marriage which takes place when a man and woman appear before a civil officer for the purpose of contracting the marriage and the officer has taken account of their respective consent.⁴⁶ The second is a Religious Marriage which takes place when a man and woman have performed such acts or rites as are deemed to constitute a valid marriage by the religion of at least one of them.⁴⁷ The last is Customary Marriage which, as mentioned above, occurs when a man and a woman perform such rites as constitute a permanent union between them under the rules of the community to which at least one of them belongs.⁴⁸

ARTICLE 62 of the TCCE provides for registration of births and marriages. Under the adopted Ethiopian code, it was ambiguous whether this registration requirement applied to customary and religious marriages as well as civil marriages.⁴⁹ Proclamation 2/1991 cleared this ambiguity by adding the explicit requirement that all marriages except marriages conducted according to Islam need to be registered.⁵⁰

Intentional failure to register marriages can incur a fine without prejudice towards the invalidation of the marriage.⁵¹ Repeated failures to make such consultations can be punished by a sentence of simple imprisonment not exceeding three months.⁵²

44 TPCE, Art. 623.

45 TCCE, Art. 37

46 Transitional Civil Code of Eritrea art. 578 (Eri.).

47 Transitional Civil Code of Eritrea art. 579 (Eri.).

48 Transitional Civil Code of Eritrea art. 580 (Eri.).

49 Interview with Luwam Dirar, *supra* note 23.

50 Proclamation No. 2/1991 art. 48 (Eri.).

51 Transitional Penal Code of Eritrea art. 428 (Eri.).

52 *Id.*

LEGISLATION

TCCE

ARTICLE 62: Records of civil status shall be drawn up within three months for records of birth and within one month for records of marriage.⁵³

Other provisions not available.

COMMENTARY

There is no available evidence that anybody has been prosecuted for omission to declare and register a child before the civil status officer. The service of the civil status office has been extremely limited. From available information, there is no national institution responsible to manage, supervise and coordinate the activities of the civil status office.⁵⁴

SCHOOLING

COMMENTARY

There is currently no clear provision that makes primary education free and compulsory in Eritrea.⁵⁵ In 2003, the Ministry of Education put forth a draft national education policy stating that eight-year Basic Education is compulsory for all school-age children and five-year elementary education is compulsory for all citizens.⁵⁶

Even if legislation regarding free and compulsory education was passed, a substantial degree of structural development is said to be necessary to make its implementation feasible. UNICEF estimates the primary gross enrollment ratio for primary school was approximately 48% for boys and 41% for girls between 2008 and 2011.⁵⁷

LEGISLATION

Not available.

⁵³ Transitional Civil Code of Eritrea art. 62 (Eri.).

⁵⁴ See *supra* note 5 at p. 51

⁵⁵ See *supra* note 5

⁵⁶ Hagos, *supra* note 57; Eritrea: National Education Policy (Draft), Ministry of Education of Eritrea 5 (February 2003) <http://www.eritreambassy-japan.org/data/National%20Education%20Policy%20Feb%202003.pdf>.

⁵⁷ Eritrea Statistics, UNICEF http://www.unicef.org/infobycountry/eritrea_statistics.html (last visited Jun. 29, 2013).

INTERSECTION BETWEEN CHILD MARRIAGE AND OTHER SOCIAL ISSUES

COMMENTARY

Two major forces working against the prohibition of child marriage in Eritrean societies are customary and religious beliefs. In many Eritrean communities, customs have historically dictated that women should get married at a very young age, often before menarche.⁵⁸ The current law, under the TCCE, accommodates such customs to a certain extent by lowering the marriage age requirement to fifteen if a marriage is carried out according to the customs of the community to which at least one spouse belongs.⁵⁹ Religious beliefs are accommodated even more comprehensively by complete deferral to Sharia law in matters relating to betrothal, marriage and inheritance.⁶⁰ These forces need to be regulated rather than simply accommodated if the practice of early marriage in Eritrea is to be put to an end.

The chapter reflects a summary of the jurisdiction's treatment of child marriage. It also reflects some relevant provisions on the subject of child marriage under the national legal framework, primarily if they have been made publicly available in the English language. The summary does not constitute legal advice under any circumstance.

58 Favali & Pateman, *supra* note 3, at 174.

59 Transitional Civil Code of Eritrea art. 580 (Eri.).

60 Favali & Pateman, *supra* note 3, at 69.

GUATEMALA

LEGAL AGE FOR MARRIAGE

AGE OF MARRIAGE

The legal age for marriage in Guatemala is 18.

Exceptions

Boys can marry at age 16 and girls at 14 with the consent of both parents or the consent of the person who exercises paternal authority or guardianship over the child. If the parents disagree or the guardian refuses to give permission, permission to marry may be granted by a judge, which is granted in the judge's discretion. If the girl is pregnant, there is no minimum age for marriage with parental consent.

LEGISLATION

*Codigo Civil de Guatemala*¹

ARTICULO 81 (APTITUD PARA CONTRAER MATRIMONIO): *La mayoría de edad determina la libre aptitud para contraer matrimonio. Sin embargo, pueden contraerlo: el varón mayor de dieciseis años y la mujer mayor de catorce, siempre que medie la autorización que determinan los artículos siguientes.*

ARTICULO 82

La autorización deberán otorgarla conjuntamente el padre y la madre, o el que de ellos ejerza, sólo la patria potestad. La del hijo adoptivo menor la dará el padre o la madre adoptante. A falta de padres, la autorización la dará el tutor.

ARTICULO 83 (AUTORIZACIÓN JUDICIAL): *Si no puede obtenerse la autorización conjunta del padre y la madre, por ausencia, enfermedad u otro motivo, bastará la autorización de uno de los progenitores; y si ninguno de los dos puede hacerlo, la dará el juez de Primera Instancia del domicilio del menor.*

ARTICULO 84

En caso de desacuerdo de los padres, o de negativa de la persona llamada a otorgar la autorización, el juez puede concederla cuando los motivos en que se funde la negativa no fueren razonables.

¹ *Codigo Civil de Guatemala*, available at http://www.oas.org/dil/esp/Codigo_Civil_Guatemala.pdf

ARTICULO 89

ARTÍCULO 6º DEL DECRETO-LEY NÚMERO 218: No podrá ser autorizado el matrimonio: **1º.** Del menor de dieciocho años, sin el consentimiento expreso de sus padres o del tutor; **2º.** Del varón menor de dieciséis años o de la mujer de catorce años cumplidos, salvo que antes de esa edad hubiere concebido la mujer y presten su consentimiento las personas que ejerzan la patria potestad o la tutela;

ARTICULO 94 (MENORES DE EDAD): Los menores de edad que soliciten contraer matrimonio, deben comparecer acompañados de sus padres, o tutores, o presentar autorización escrita de ellos, en forma auténtica, o judicial si procediere y, además, las partidas de nacimiento o, si esto no fuere posible, certificación de la calificación de edad declarada por el juez.

Civil Code of Guatemala (unofficial translation)

ARTICLE 81 (ABILITY TO CONTRACT MARRIAGE): Majority (legal adulthood) determines freedom to enter into marriage. However, a boy over sixteen years old and a girl over fourteen years old can also contract marriage, subject to receiving the authorization determined in the following articles.

ARTICLE 82

Permission should be granted jointly by the father and the mother, or whichever of them exercises parental authority. [...] In the absence of parents, authorization can be given by the legal guardian.

ARTICLE 83 (JUDICIAL AUTHORIZATION): If joint authorization of parents is not possible due to absence, illness or another reason, the authorization of one parent will be sufficient, and if neither it is possible, the judge of first instance from the child's locality can give it.

ARTICLE 84

In case of disagreement between the parents, or refusal of the person called to grant the authorization, the judge may grant it if the grounds for the refusal were not reasonable.

ARTICLE 89

ARTICLE 6. DECREE-LAW NO. 218: No marriage may be authorized: **1ST** Of a minor under eighteen without the consent of its parents or guardian; **2ND** Of a boy under sixteen — or a fourteen-year old girl, unless the girl is already pregnant and persons exercising parental authority or guardianship have given their consent,

ARTICLE 94 (MINORS): Minors who apply to be married must appear with their parents, or guardians, or present true written authorization from them or judicial authorization as appropriate as well as birth certificates or, if this is not possible, certification of qualifying age declared by a judge.

COMMENTARY

UNICEF reports² that 30 percent of women were first married or in union by age 18 (7 percent by age 15). There were no reported government efforts to combat child marriage. There have been reports of early marriages in some rural indigenous communities.³ The Center for Gender and Refugee Studies reports cases in which a girl has been raped, and then forced to marry the rapist in order to avoid the accompanying social shame and stigmatization of being a rape victim.⁴

PENALTIES/CRIMINALIZATION

PUNISHMENT FOR CHILD MARRIAGE

No punishment for child marriage generally was found. However, it is a crime to kidnap a girl aged between 12 and 16 for sexual purposes, marriage or co-habitation with her consent, punishable with between 6 months and a year imprisonment. A marriage concluded in breach of the law will still be valid.

LEGISLATION

Codigo Penal

ARTICULO 182: Quien sustrajere o retuviere a mujer mayor de doce años y menor de diez y seis, con propósitos sexuales, de matrimonio o de concubinato, con su consentimiento, será sancionado con prisión de seis meses a un año.

Penal Code (unofficial translation)

ARTICLE 182: Whosoever snatches or retains a girl older than twelve years old and younger than sixteen years old, for sexual aims, marriage or cohabitation purposes, with her consent, will be punished with imprisonment from six months to a year.

2 The State of The World's Children 2013, UNICEF http://www.unicef.org/sowc2013/files/SOWC_2012-Main_Report_EN.pdf

3 U.S. Department of State, Bureau of Democracy, Human Rights and Labor, *Country Report on Human Rights Practices for 2011*, 19 (2011).

4 Kim Thuy Seelinger, *Forced Marriage and Asylum: Perceiving the Invisible Harm*, 42 Colum. Hum. Rts. L. Rev. 57, 84 (2010).

Codigo Civil de Guatemala

ARTICULO 90 (SANCIONES): *Si no obstante lo prescrito en el artículo anterior fuere celebrado el matrimonio, éste será válido, pero tanto el funcionario como las personas culpables de la infracción serán responsables de conformidad con la ley y las personas a que se refieren los incisos 4º. y 5º., perderán la administración de los bienes de los menores, y no podrán sucederles por intestado.*

Civil Code (unofficial translation)

ARTICLE 90 (PENALTIES): If despite the provisions of the previous article, a marriage takes place, it will be valid, but the civil servant involved as well as persons guilty of the breach shall be liable in accordance with the law and the people referred to in paragraphs 4 and 5 will lose the administration of property of the minors and will not inherit them on intestacy.

COMMENTARY

There were no reported government efforts to combat child marriage, as child marriage is not perceived as a widespread, serious issue warranting the government's or law enforcement's involvement.⁵ This is despite the UNICEF report that 30% of girls in Guatemala are married before they are 18. Recently, however, the Women and Legal Reform Project of the National Women's Office has launched an effort to set the minimum age for girls to marry to 16, so that both girls and boys would be able to marry at that age.⁶

PROSECUTIONS FOR CHILD MARRIAGE

None known.

5 U.S. Department of State, Bureau of Democracy, Human Rights and Labor, *Country Report on Human Rights Practices for 2011*, 19 (2011).

6 Right to Education Project, *National Law and Policies on Minimum Ages – Guatemala*, <http://www.right-to-education.org/country-node/434/country-minimum> (last visited June 19, 2013).

LAWS WHICH PROMOTE/ENDORSE BRIDE PRICE OR DOWRY INCLUDING ANY REQUIREMENTS FOR REPAYMENT ON DIVORCE

DOWRIES

There are no laws or customs which promote or endorse bride price or dowry in Guatemala.

PROVISIONS IMPEDING / PREVENTING ENDING OF UNDERAGE MARRIAGE

COMMENTARY

None known.

STATUTORY RAPE LAW AND LAWS THAT CIRCUMVENT THIS THROUGH MARRIAGE

STATUTORY RAPE

Carnal knowledge of a girl below the age of 12 carries a criminal penalty of between 6 and 12 years' imprisonment, more with aggravating circumstances. For sexual intercourse with "honest" girls between the ages of 12 and 14, the penalty is one to two years' imprisonment for exploiting their inexperience, and for girls between 14 and 18, 6 months to a year.⁷

LEGISLATION

Codigo Penal de Guatemala

ARTICULO 173: Comete delito o violación quien yaciere, con mujer, en cualquiera de los siguientes casos:

1º Usando de violencia suficiente para conseguir su propósito.

⁷ *Codigo Penal de Guatemala* http://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/GTM_codigo_penal.pdf

2º *Aprovechando las circunstancias, provocadas o no por el agente, de encontrarse la mujer privada de razón o de sentido o incapacitada para resistir.*

3º *En todo caso, si la mujer fuere menor de doce años.*

*En los casos prescritos la pena a imponer será de seis a doce años.*⁸

ARTICULO 176: *El acceso carnal con mujer honesta, mayor de doce años y menor de catorce, aprovechando su inexperiencia u obteniendo su confianza, se sancionará con prisión de uno a dos años.*

Si la edad de la víctima estuviere comprendida entre los catorce y los diez y ocho años, la pena a imponerse será de seis meses a un año.

Penal Code (unofficial translation)

ARTICLE 173: An offense or violation is committed by whosoever find themselves with women in any of the following cases:

1ST Using sufficient violence to achieve their purpose.

2ND Taking advantage of circumstances provoked or otherwise in meeting a woman deprived of reason or sense or incapable of resisting.

3RD In any case, if the woman is younger than twelve years.

In these cases, the penalty prescribed shall be between six to twelve years.

ARTICLE 176. Intercourse with an honest woman, older than twelve and under fourteen years old, by exploiting her inexperience or obtaining her confidence, is punishable by imprisonment of one to two years.

If the victim was between the ages of fourteen and eighteen years, the penalty shall be between six months to a year.

CHILD PROTECTION WHEN ESCAPING CHILD MARRIAGE

None known.

8 *Codigo Penal de Guatemala* http://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/GTM_codigo_penal.pdf

LEGAL REQUIREMENTS FOR REGISTRATION OF BIRTHS AND/OR MARRIAGES

BIRTH AND MARRIAGE REGISTRATION

The civil registry in Guatemala was established on September 9, 1877.⁹ The civil code of 1933 made a few modifications to the 1877 civil registry regulations, but kept them widely intact.¹⁰ The entire population must be registered at birth and must also register marriages at the designated registration office in each municipality of Guatemala.¹¹ The National Registry of the People (**RENAP – Registro Nacional de las Personas**) issues a unique code at the time of the person's birth.¹² This code is then used to register marriages and receive certain government benefits, and is also used on death certificates, which also must be filed with the National Registry of the People.¹³

LEGISLATION

Acta al Registro Civil

ARTÍCULO 391: Los nacimientos que ocurran en la república deberán declararse al Registro Civil respectivo para su inscripción, dentro del plazo de treinta días del alumbramiento.

ARTICULO 102: Dentro de los quince días hábiles siguientes a la celebración del matrimonio, el alcalde que lo haya autorizado deberá enviar al Registro Civil que corresponda, copia certificada del acta y los notarios y ministros de los cultos aviso circunstanciado. La falta de cumplimiento de esta obligación sera sancionada, en cada caso, con multa de uno a cinco quetzales, que impondrá el juez local a favor de la Municipalidad.

Civil Registration Act (unofficial translation)

ARTICLE 391: Births that occur in the Republic shall be declared at the corresponding Civil Registry for registration within thirty days after delivery.

ARTICLE 102: Within fifteen working days after the marriage, the mayor who approved it shall send to the relevant Civil Registry a certified copy of the act and

9 Right to Education Project, *National Law and Policies on Minimum Ages – Guatemala*, <http://www.right-to-education.org/country-node/434/country-minimum> (last visited June 19, 2013).

10 *Id.*

11 *Id.*

12 *Id.*

13 *Id.*

notaries and the minister of religion shall send the banns to the relevant Civil Registry. Failure to comply with this obligation will be punished in each case, with a fine of one to five quetzals, imposed by the local judge in favor of the municipality.

SCHOOLING

COMMENTARY

Girls and boys are required to attend school until the age of 15.¹⁴ The legal minimum age for admission to employment, however, is age 14 for both girls and boys.¹⁵

There are no civil and/or criminal penalties in respect of child labor (neither for the children themselves nor the adults employing children under 14) in Guatemala, nor are there penalties for parents who do not keep their children in school until the required age of 15.¹⁶ Furthermore, there are no governmental bodies in place to ensure these child labor laws are enforced, such as child protective services agencies.¹⁷ Further, law enforcement officers are reported to do nothing to enforce child labor laws.¹⁸

LEGISLATION

Constitución guatemalteca de 1993

ARTÍCULO 74: Educación obligatoria. Los habitantes tienen el derecho y la obligación de recibir la educación inicial, preprimaria, primaria y básica, dentro de los límites de edad que fije la ley. [...]

Ley de Protección Integral de la Niñez y Adolescencia — Decreto numero 27 (2003)

ARTICULO 37: Educación pública. La educación pública deberá ser gratuita, laica y obligatoria hasta el último grado de diversificado.

¹⁴ Right to Education Project, *National Law and Policies on Minimum Ages – Guatemala*, <http://www.right-to-education.org/country-node/434/country-minimum> (last visited September 23, 2013).

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

1993 Guatemalan Constitution *(unofficial translation)*

ARTICLE 74 (COMPULSORY EDUCATION): People have the right and obligation to receive initial, pre-primary, primary and basic education within the age limits set by law. [...]

Law on Protection of Children

and Adolescents – Decree number 27 (2003) *(unofficial translation)*

ARTICLE 37 (PUBLIC EDUCATION): Public education should be free, secular and compulsory up until the top multi-subjects or core subjects grade.

INTERSECTION BETWEEN CHILD MARRIAGE AND OTHER SOCIAL ISSUES

Child marriage intersects with a number of problems which are widespread in Guatemala, namely, violence against women, lack of education for women and higher infant mortality rates.

The chapter reflects a summary of the jurisdiction’s treatment of child marriage. It also reflects some relevant provisions on the subject of child marriage under the national legal framework, primarily if they have been made publicly available in the English language. The summary does not constitute legal advice under any circumstance.

INDIA

LEGAL AGE FOR MARRIAGE

AGE OF MARRIAGE

The legal age for marriage in India is eighteen for girls and twenty-one for boys.¹ These age limits already existed in the predecessor act, The Child Marriage Restraint Act of 1929, and have been retained by the subsequent 2006 legislation.² Under section 16, full-time “Child Marriage Prohibition Officers” are appointed in every state and are supposed to police instances of child marriage.³ Officers have the authority to prevent child marriages, document violations, charge offenders (including parents) and remove children from dangerous situations.⁴

The age of majority in India is eighteen.⁵ However, according to Section 2 of the law, the Majority Act does not affect the capacity of anyone to act in the matter of marriage.⁶

EXCEPTIONS

There are no legal exceptions to the minimum age for marriage, neither under the Prohibition of Child Marriage Act, nor by customary law. The Act applies throughout India, except for the provinces of Jammu and Kashmir, and to all Indians, regardless of religion or race.⁷ Indian courts have ruled that the Prohibition of Child Marriage Act has overriding effect over the provisions of the Muslim Personal Status Law, which allows marriage of a girl child once she attains puberty.⁸

1 Prohibition of Child Marriage Act (2006), Section 2(a) (India).

2 Child Marriage Restraint Act (1929), Section 2(a) (India).

3 Prohibition of Child Marriage Act (2006), Section 16(1) (India).

4 US Department of State, *Bureau of Democracy, Human Rights and Labor, Country Reports on Human Rights Practices for 2012: India* (2012), <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204399>.

5 Majority Act (1875), Section 3(1) (India).

6 Majority Act (1875), Section 2(a) (India).

7 Prohibition of Child Marriage Act (2006), Section 1(2) (India); see also *Mohd. Nihal vs State*, Delhi High Court (July 8, 2008), <http://indiankanoon.org/doc/1476139/>.

8 See Harish V Nair, *Child marriage act will override personal laws: HC*, Hindustan Times (July 29, 2012), <http://www.hindustantimes.com/India-news/NewDelhi/Child-marriage-act-will-override-personal-laws-HC/Article1-903502.aspx>; *Child Marriage Act overrides Muslim Personal Law: Karnataka High Court*, The Times of India (February 27, 2013), http://articles.timesofindia.indiatimes.com/2013-02-27/india/37329549_1_child-marriage-act-karnataka-high-court-pcma.

LEGISLATION

The Prohibition of Child Marriage Act, 2006⁹

Please refer to the full copy of the Prohibition of Child Marriage Act.

The Indian Majority Act, 1875¹⁰

2. **SAVING.** Nothing herein contained shall affect:
 - (a) the capacity of any persons to act in the following matters (namely), marriage, dowry, divorce and adoption;
 - (b) the religion or religious rites and usages of any class of citizens of India; or
 - (c) the capacity of any person who before this Act comes into force has attained majority under the law applicable to him.
3. **AGE OF MAJORITY OF PERSONS DOMICILED IN INDIA.**
 - (1) Every person domiciled in India shall attain the age of majority on his completing the age of eighteen years and not before.
 - (2) In computing the age of any person, the day on which he was born is to be included as a whole day and he shall be deemed to have attained majority at the beginning of the eighteenth anniversary of that day.

COMMENTARY

Despite the legal age limits, child marriage continues to persist in India. Based on data from 2007–2008, 42.9% of all currently married women in the age group 20–24 years were married before the legal age of eighteen.¹¹ In some states, such as Bihar, Jharkhand, Rajasthan and Andhra Pradesh, the prevalence of child marriage still exceeds 60%.¹² With more than 23 million women in that age group married before their eighteenth birthday, India contributes with 40% to the world's child brides.¹³ Child marriage is more prevalent in rural areas.¹⁴ However, a recent news article in The Times of India claimed that four cases of child marriage were reported in the city of Bangalore each week.¹⁵ In rural areas

9 The Prohibition of Child Marriage Act (2006) <http://wcd.nic.in/cma2006.pdf>

10 The Indian Majority Act (1875) <http://admis.hp.nic.in/himpol/Citizen/LawLib/C0141.htm>

11 UNICEF, *Child Marriage in India – An Analysis of Available Data* (2012), at 10, <http://www.unicef.in/documents/childmarriage.pdf>.

12 International Center for Research on Women, *Asia Child Marriage Initiative: Summary of Research in Bangladesh, India and Nepal* (2013), at 13, <http://www.icrw.org/files/publications/PLAN%20ASIA%20Child%20Marriage-3%20Country%20Study.pdf>.

13 These numbers are based on the 2011 Census. See UNICEF, *Child Marriage in India – An Analysis of Available Data* (2012), at 10, <http://www.unicef.in/documents/childmarriage.pdf>.

14 UNICEF, *Child Marriage in India – An Analysis of Available Data* (2012), at 11, <http://www.unicef.in/documents/childmarriage.pdf>.

15 Robith B R, *Four cases of child marriage reported every week in Bangalore*, The Times Of India (June 4, 2013), http://articles.timesofindia.indiatimes.com/2013-06-04/india/39739844_1_child-marriage-child-labour-social-evil.

especially, officers are said to be known to turn a blind eye to child marriages in exchange for the payment of bribes.¹⁶

One factor contributing to the prevalence of child marriage in India may be a weakness in the law itself. Under the Prohibition of Child Marriage Act, child marriages are generally not considered illegal but merely voidable, with grounds for challenge in court.¹⁷ Victims of child marriage have the option of voiding their marriage up to two years after reaching adulthood.¹⁸ In some limited circumstances, such as where children have been abducted, trafficked, or compelled to marry by force or deceit, child marriages are null and void under a separate provision of the Act, even before the victims reach adulthood.¹⁹ These are two separate provisions of the Act that work differently (and independently). If the Court deems Section 12 to apply because the underage spouse was abducted, trafficked or compelled to marry, then the marriage is automatically null and void. If the court does not find that these special grounds apply (i.e., the child married “voluntarily”), then Section 3 applies and the marriage has to be voided within the two-year timeframe.

However, the vast majority of cases brought do not involve abduction or trafficking, and therefore require a successful challenge of the child marriage in court within the two-year time limit. A 2011 decision by the Madras High Court illustrates the inadequate protections afforded to married children under the Child Marriage Act. In *G Saravanan v. The Commissioner of Police*, the Court held that the petitioner’s marriage with his underage bride was neither void under Section 12, nor voidable under Section 3 because the petitioner’s underage wife was the only person with standing to question the validity of the marriage, and she had refused to do so.²⁰

Discriminatory practices targeting victims of child marriage also persist in many states. For instance, some states have policies that bar adult candidates from taking state civil service exams if they were married as children.²¹ Ratnashri Pandey was forced by her family to marry before she turned 18 and was subsequently disqualified from taking the Madhya Pradesh state civil services examination because of her child marriage.²² Pandey filed a case against the

16 Australian Aid et. al., *Child Marriage in Southern Asia, Policy Options for Action (India)*, at 10, <http://www.icrw.org/files/publications/CHILDMARRIAGE-F-13.pdf>.

17 Prohibition of Child Marriage Act (2006), Section 3 (India).

18 Prohibition of Child Marriage Act (2006), Section 3(3) (India).

19 Prohibition of Child Marriage Act (2006), Section 12 (India).

20 *G Saravanan v. the Commissioner of Police*, Madras High Court (April 6, 2011), accessible at: <http://indiankanoon.org/doc/76180/>.

21 See Human Rights Watch, *World Report 2013: India*, <http://www.hrw.org/world-report/2013/country-chapters/india>.

22 Human Rights Watch, UN: *Mark Day of Girl by Fighting Child Marriage* (October 10, 2012), <http://www.hrw.org/news/2012/10/10/un-mark-day-girl-fighting-child-marriage>; Aruna Kashyap, *Trapped after being forced to say 'I do'*, *The Hindu* (May 28, 2012), <http://www.thehindu.com/opinion/op-ed/article3462855.ece>.

government regulation in the Madhya Pradesh High Court, which upheld the rule.²³ The case is currently on appeal to the Supreme Court, although the Supreme Court in April 2012 issued an interim order that a civil service post in Madhya Pradesh may be kept vacant for Ms Pandey.²⁴ Newspaper reports assert the case led the state cabinet to reverse its rule in April 2013.²⁵ Another discriminatory government rule limits nutrition programs for pregnant mothers to women ages 19 and older.²⁶

PENALTIES/CRIMINALIZATION

PUNISHMENT FOR CHILD MARRIAGE

The Prohibition of Child Marriage Act penalizes the arrangement, performance or participation in child marriages.

Under Section 9, men older than eighteen who contract for a child marriage are punishable by imprisonment of up to two years, or may be charged with a fine of up to one lakh rupees, or both.²⁷ Section 10 extends these criminal penalties to whoever performs, conducts, directs or abets a child marriage, unless he can prove that he had reason to believe that the marriage was no child marriage.²⁸ Finally, if the child herself contracts for a child marriage, under Section 11, any parent or guardian who actively supports the marriage or negligently fails to prevent it is punishable by imprisonment and/or a fine.²⁹ Section 11(2) contains a rebuttable presumption that the child's parent or guardian negligently failed to prevent the marriage.³⁰

The girl in question has the right to approach the Court under Section 3 of the Prohibition of Child Marriage Act, 2006 to get the marriage declared void till she attains the age of 20 years, after which time the marriage is automatically considered valid. Since the girl is likely to be unaware of her rights, or simply too young to take initiative, any person representing her interest can file a case, and prove his *locus standi* before the court.

23 Aruna Kashyap, *Trapped after being forced to say 'I do'*, The Hindu (May 28, 2012), <http://www.thehindu.com/opinion/op-ed/article3462855.ece>.

24 Supreme Court of India, Record of Proceedings <http://courtnic.nic.in/supremecourt/temp/11383201211642012p.txt>

25 <http://www.hindustantimes.com/India-news/Bhopal/Child-bride-wins-fight-for-government-job/Article1-1050431.aspx>

26 Human Rights Watch, *World Report 2013: India*, <http://www.hrw.org/world-report/2013/country-chapters/india>.

27 Prohibition of Child Marriage Act (2006), Section 9 (India).

28 Prohibition of Child Marriage Act (2006), Section 10 (India).

29 Prohibition of Child Marriage Act (2006), Section 11 (India).

30 Prohibition of Child Marriage Act (2006), Section 11(2) (India).

LEGISLATION

The Prohibition of Child Marriage Act 2006³¹

Please refer to the full copy of the Prohibition of Child Marriage Act.

PROSECUTIONS FOR CHILD MARRIAGE

While the vast majority of child marriages remain unreported, there have been a number of cases brought for breaching the Prohibition of Child Marriage Act. Some of these cases are criminal prosecutions, in which the defendants are either the adult spouse, or, less frequently, the minor's family (parents, uncles or brothers).³² In 2010, of the 111 cases that were reported under the child marriage law, only 11 led to convictions.³³ The reasons for the lack of successful prosecutions are unclear.

Many cases are also brought in the form of habeas corpus petitions, in which the spouse, the minor's family members, or civil organizations seek custody of the minor, for example in situations of abduction, kidnapping, forced marriages or even elopement.³⁴ Judges sometimes adjudicate these disputes by ordering the minor or both spouses, and sometimes also their families, to counseling, while deciding custody based on the minor's stated preference.³⁵ However, in at least one case, the court ordered the child to live with her parents until reaching majority in order to preserve her right to void the marriage, despite the girl's stated preference to stay with her husband.³⁶ In doing so, the court granted the adult husband visitation rights.³⁷ This case highlights the anomalies in a system where generally child marriage is considered not illegal but merely voidable.

31 Prohibition of Child Marriage Act (2006) <http://wcd.nic.in/cma2006.pdf>

32 See, e.g., *Amnider Kaur v. State of Punjab*, Punjab-Haryana High Court (November 27, 2009), <http://indiankanoon.org/doc/942424/>; *Pratapa Ram v. State*, Rajasthan High Court – Jodhpur (July 24, 2012), <http://indiankanoon.org/doc/181568017/>; *Anurag Kumar Gangwar Deepu v. State*, Delhi High Court (March 26, 2010), <http://indiankanoon.org/doc/1866210/>.

33 Statistics according to the National Crime Records Bureau, as cited by UNICEF, *Information Sheet Child Marriage: India* (2011), at 3, http://www.unicef.org/india/Child_Marriage_Fact_Sheet_Nov2011_final.pdf.

34 See, e.g., *G Saravanan v. the Commissioner of Police*, Madras High Court (April 6, 2011), <http://indiankanoon.org/doc/76180/>; *Kammu v. State of Haryana and Others*, Punjab-Haryana High Court (February 16, 2010), <http://indiankanoon.org/doc/1725622/>; *Furqan v. State*, Delhi High Court (January 22, 2013), <http://indiankanoon.org/doc/114627385/>; *Sh. Jitender Kumar Sharma v. State*, Delhi High Court (August 11, 2010), <http://indiankanoon.org/doc/1983620/>; *Association for Social Justice v. Union of India*, Delhi High Court (May 13, 2010), <http://indiankanoon.org/doc/1652773/>.

35 See, e.g., *Bholu Khan v. State of NCT of Delhi*, Delhi High Court (February 1, 2013), <http://indiankanoon.org/doc/21988888/>; *Mohd. Nihal v. State*, Delhi High Court (July 8, 2008), <http://indiankanoon.org/doc/1476139/>; *Tahra Begum v. State of Delhi*, Delhi High Court (May 9, 2012), <http://indiankanoon.org/doc/187745978/>.

36 *Meena v. State*, Delhi High Court (October 17, 2012), <http://indiankanoon.org/doc/163357124/>.

37 *Meena v. State*, Delhi High Court (October 17, 2012), <http://indiankanoon.org/doc/163357124/>.

Finally, in very few cases, victims of child marriage themselves have successfully filed for a declaration that their marriage is void under the Prohibition of Child Marriage Act.³⁸ In at least one case, *Kanwaldeep Kaur Bhathal v. Mandeep Singh Brar*, the spouses were sent to mediation, where they entered into a settlement agreement declaring the marriage to be void, while the child bride agreed not to ask for alimony or to press criminal charges.³⁹

LAWS WHICH PROMOTE/ENDORSE BRIDE PRICE OR DOWRY INCLUDING ANY REQUIREMENTS FOR REPAYMENT ON DIVORCE

DOWRIES

The Dowry Prohibition Act (1961) forbids both the payment and the acceptance of dowries.⁴⁰ Violations are punishable with imprisonment for a minimum term of five years and a fine of no less than fifteen thousand rupees.⁴¹ Any agreement for the payment or acceptance of a dowry is void under Section 5 of the law.⁴²

Despite the strict language of the law, the practice of paying and accepting dowries is still widespread in India.⁴³ In fact, National Crime Records Bureau (NCRB) data shows that there has been an increase of deaths associated with the non-payment of dowries in recent years,⁴⁴ primarily targeting brides who were killed by their in-laws for failing to pay the bride price.⁴⁵

38 See, e.g., *Kanwaldeep Kaur Bhathal v. Mandeep Singh Brar*, Punjab-Haryana High Court (January 14, 2013), <http://indiankanoon.org/doc/33789116/>; *Indian teenager annuls her child 'marriage'*, BBC NEWS (April 25, 2012), <http://www.bbc.co.uk/news/world-asia-india-17838022>.

39 *Kanwaldeep Kaur Bhathal v. Mandeep Singh Brar*, Punjab-Haryana High Court (January 14, 2013), <http://indiankanoon.org/doc/33789116/>.

40 The Dowry Prohibition Act (1961), Section 3 (India).

41 The Dowry Prohibition Act (1961), Section 3 (India).

42 The Dowry Prohibition Act (1961), Section 5 (India).

43 US Department of State, Bureau of Democracy, Human Rights and Labor, *Country Reports on Human Rights Practices for 2012: India* (2012), <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204399>.

44 Government of India, Ministry of Women and Child Development, *Agenda No. 8 Review of Implementation of "Dowry Prohibition Act, 1961"*, wcd.nic.in/agenda16062010/agenda_16062010_item8.pdf.

45 US Department of State, Bureau of Democracy, Human Rights and Labor, *Country Report on Human Rights Practices for 2012: India* (2012), <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204399>; See also Gardiner Harris, *India's new focus on rape shows only the surface of women's perils*, The New York Times (January 12, 2013), http://www.nytimes.com/2013/01/13/world/asia/in-rapes-aftermath-india-debates-violence-against-women.html?_r=0.

LEGISLATION

Dowry Prohibition Act 1961⁴⁶

3. PENALTY FOR GIVING OR TAKING DOWRY.

- (1) If any person, after the commencement of this Act, gives or takes or abets the giving or taking of dowry, he shall be punishable with imprisonment for a term which shall not be less than five years, and with the fine which shall not be less than fifteen thousand rupees or the amount of the value of such dowry, whichever is more:

Provided that the Court may, for adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment for a term of less than five years.

- (2) Nothing in sub-section (1) shall apply to or, in relation to,
- » presents which are given at the time of a marriage to the bride (without any demand having been made in that behalf): Provided that such presents are entered in list maintained in accordance with rule made under this Act;
 - » presents which are given at the time of marriage to the bridegroom (without any demand having been made in that behalf): Provided that such presents are entered in a list maintained in accordance with rules made under this Act;

Provided further that where such presents are made by or on behalf of the bride or any person related to the bride, such presents are of a customary nature and the value thereof is not excessive having regard to the financial status of the person by whom, or on whose behalf, such presents are given.

4. PENALTY FOR DEMANDING DOWRY.

If any person demands directly or indirectly, from the parents or other relatives or guardian of a bride or bridegroom as the case may be, any dowry, he shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years and with fine which may extend to ten thousand rupees: Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months.

4-A. BAN ON ADVERTISEMENT.

[omitted here]

5. AGREEMENT FOR GIVING OR TAKING DOWRY TO BE VOID.

Any agreement for the giving or taking of dowry shall be void.

46 The Dowry Prohibition Act (1961) <http://wcd.nic.in/dowryprohibitionact.htm>

STATUTORY RAPE LAW AND LAWS THAT CIRCUMVENT THIS THROUGH MARRIAGE

STATUTORY RAPE

Following public outrage over the brutal gang rape and subsequent death of a 23-year old student in Delhi in December 2012,⁴⁷ the Indian Parliament passed several amendments to the Indian Penal Code to deter sexual violence against women.⁴⁸ This includes a provision which states sex with a person under the age of 18 with or without consent is rape. Notably, the Parliament ignored calls to turn marital rape into a criminal offense, regardless of the woman's age.⁴⁹

LEGISLATION

The Indian Penal Code, 1860

SECTIONS 375–376.

For the full and up-to-date text, please refer to the copy of the Criminal Law (Amendment) Act, 2013⁵⁰, amending the Indian Penal Code, provided together with this report.

CHILD PROTECTION WHEN ESCAPING CHILD MARRIAGE

There are no established instruments apart from foster homes — but there is no institutionalized obligation to ensure that the girls are not sent back to the family that married them off.

47 See, e.g. Heather Timmons & Sruthi Gottipati, *Woman dies after a gang rape that galvanized India*, The New York Times (December 28, 2012), <http://www.nytimes.com/2012/12/29/world/asia/condition-worsens-for-victim-of-gang-rape-in-india.html?pagewanted=all>.

48 Criminal Law (Amendment) Act (2013) (India), See also Jim Yardley & Neha Thirani Bagri, *Notorious Attack Spurs India to Approve New Rape Laws*, The New York Times (February 3, 2013), http://www.nytimes.com/2013/02/04/world/asia/india-approves-tougher-rape-laws.html?_r=0.

49 Penal Code (1860), Sect. 375 (India).

50 Criminal Law (Amendment) Act, 2013 <http://indiacode.nic.in/acts-in-pdf/132013.pdf>

LEGAL REQUIREMENTS FOR REGISTRATION OF BIRTHS AND/OR MARRIAGES

BIRTH REGISTRATION

The Registration of Births and Deaths Act (1969) provides for state governments' procedures to register child births and deaths.⁵¹ Yet, according to UNICEF estimates, only 58% of all births in India are registered each year.⁵²

MARRIAGE REGISTRATION

The registration of marriages is not compulsory by statute, but has been rendered mandatory by the Supreme Court of India in its 2006 decision *Smt. Seema vs Ashwani Kumar*.⁵³

LEGISLATION

Registration of Births and Deaths Act, 1969⁵⁴

Please refer to the full copy of the Registration of Births and Deaths Act provided together with this report.

SCHOOLING

COMMENTARY

ARTICLE 21A of the Constitution provides a fundamental right to free and compulsory education to all children aged six to fourteen years, with no exception.⁵⁵ However, the right to education is not always enforced and many children are not attending school regularly.⁵⁶

51 Registration of Births and Deaths Act (1969), (India).

52 http://www.unicef.org/india/resources_1650.htm

53 *Smt. Seema vs Ashwani Kumar*, Supreme Court of India (February 14, 2006), <http://indiankanoon.org/doc/1037437/>.

54 Registration of Births and Deaths Act (1969) <http://indiankanoon.org/doc/1636244/>.

55 The Constitution of India, Art. 21A (India).

56 US Department of State, Bureau of Democracy, Human Rights and Labor, *Country Reports on Human Rights Practices for 2012: India* (2012), <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204399>.

LEGISLATION

The Constitution of India⁵⁷

21A. The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.

INTERSECTION BETWEEN CHILD MARRIAGE AND OTHER SOCIAL ISSUES

COMMENTARY

A variety of factors contribute to the persistent practice of child marriage in India, especially in rural areas: poverty, lack of access to education, gender inequality and traditional patriarchal values connected to marriage.⁵⁸ Families suffering economic hardship may choose child marriage to reduce costs, such as for education, food, medical treatment, or by paying a lower dowry.⁵⁹ Girls are often considered property, to be married off as early as possible.⁶⁰ Since it is the parents' responsibility to protect their daughters' chastity until they are married, early marriage also ensures a reliable means to fulfill this duty.⁶¹ Moreover, the level of education is a significant factor in preventing child marriage, as Indian girls with no education are six times more likely to get married early than those with ten years or more of education.⁶²

Gender discrimination and gender-based violence targeting women are a serious problem in India. Young girls and women are at a high risk of becoming victims of sexual harassment, rape, sex-trafficking and forced marriage.⁶³

57 The Constitution of India, <http://indiacode.nic.in/coiweb/welcome.html>

58 UNICEF, *Child Marriage in India – An Analysis of Available Data* (2012), at 9, <http://www.unicef.in/documents/childmarriage.pdf>; see also Word Vision UK, *Research Report “Untying the Knot, Exploring Early Marriage in Fragile States”* (2013), at 35, [http://www.worldvision.org/resources.nsf/main/press-reports/\\$file/Untying-the-Knot_report.pdf](http://www.worldvision.org/resources.nsf/main/press-reports/$file/Untying-the-Knot_report.pdf).

59 UNICEF, *Child Marriage in India – An Analysis of Available Data* (2012), at 14, <http://www.unicef.in/documents/childmarriage.pdf>; see also R Gokul, *Child marriage cases on the rise in Trichy*, The Times Of India (June 5, 2013), http://articles.timesofindia.indiatimes.com/2013-06-05/madurai/39763061_1_child-marriage-trichy-district-girl-children.

60 Arushi Sing, *Ending child marriage in India*, The Guardian (March 3, 2011), <http://www.theguardian.com/global-development/poverty-matters/2011/mar/03/ending-child-marriage-india-health>.

61 International Center for Research on Women, *Asia Child Marriage Initiative: Summary of Research in Bangladesh, India and Nepal* (2013), at 17, <http://www.icrw.org/files/publications/PLAN%20ASIA%20Child%20Marriage-3%20Country%20Study.pdf>.

62 UNICEF, *Child Marriage in India – An Analysis of Available Data* (2012), at 15, <http://www.unicef.in/documents/childmarriage.pdf>.

63 US Department of State, Bureau of Democracy, Human Rights and Labor, *Country Reports on Human Rights Practices for 2012: India* (2012), <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204399>.

Recently, several rape cases have sparked national and international outrage.⁶⁴ Yet, despite public attention and an increase in the number of reported cases, Indian authorities have so far failed to stem sexual violence against women.⁶⁵ Sexual harassment (“eve teasing”) of women remains a widespread and largely unreported problem, as social pressure keeps victims from registering complaints.⁶⁶

So-called “honor killings” of victims who married against their families wishes also persist, especially in Punjab and Haryana, where about 10 percent of all homicides are honor killings.⁶⁷

Finally, even though prenatal sex selection is prohibited,⁶⁸ the law is hardly enforced and the practice of female infanticide or abandonment is still common.⁶⁹ As a result, the 2011 Census found that the national average male to female sex ratio at birth was 109.4 to 100.⁷⁰ In the state of Rajasthan, this declining sex ratio has in turn led to a practice known as *Atta Satta*, in which a daughter is exchanged for a daughter-in-law in marriage, even if she is still very young.⁷¹

The chapter reflects a summary of the jurisdiction’s treatment of child marriage. It also reflects some relevant provisions on the subject of child marriage under the national legal framework, primarily if they have been made publicly available in the English language. The summary does not constitute legal advice under any circumstance.

64 Gardiner Harris, *Rape of 5-year-old girl sets off new furor in India*, The New York Times (April 20, 2013), http://www.nytimes.com/2013/04/21/world/asia/reports-of-rape-of-5-year-old-in-india-set-off-furor.html?_r=0; Heather Timmons & Sruthi Gottipati, *Woman dies after a gang rape that galvanized India*, The New York Times (December 28, 2012), <http://www.nytimes.com/2012/12/29/world/asia/condition-worsens-for-victim-of-gang-rape-in-india.html?pagewanted=all>.

65 Amnesty International USA, *Annual Report 2013: India*, <http://www.amnestyusa.org/research/reports/annual-report-india-2013>.

66 US Department of State, Bureau of Democracy, Human Rights and Labor, *Country Reports on Human Rights Practices for 2012: India* (2012), <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204399>.

67 US Department of State, Bureau of Democracy, Human Rights and Labor, *Country Reports on Human Rights Practices for 2012: India* (2012), <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204399>.

68 Pre-Conception and Pre-Natal Diagnostic Techniques Act (1994), (India).

69 US Department of State, Bureau of Democracy, Human Rights and Labor, *Country Reports on Human Rights Practices for 2012: India* (2012), <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204399>.

70 US Department of State, Bureau of Democracy, Human Rights and Labor, *Country Reports on Human Rights Practices for 2012: India* (2012), <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204399>.

71 International Center for Research on Women, *Asia Child Marriage Initiative: Summary of Research in Bangladesh, India and Nepal* (2013), at 21, <http://www.icrw.org/files/publications/PLAN%20ASIA%20Child%20Marriage-3%20Country%20Study.pdf>.

MAURITANIA

LEGAL AGE FOR MARRIAGE

AGE OF MARRIAGE

Both men and women are required to be 18 or over and of sound mind at the time of marriage.¹

Exceptions

ARTICLE 6 of the Personal Status Code allows a guardian to marry off his “incapable” ward if there is an obvious interest. “Incapable” is not defined.

LEGISLATION

Loi n° 2001-052 du 19 juillet 2001 portant code du Statut Personnel

SECTION 1 : LES EPOUX

ARTICLE 6 : *La capacité de se marier est accomplie pour toute personne douée de raison et âgée de 18 ans révolus.*

L’incapable peut être marié par son tuteur «weli» s’il y voit un intérêt évident.

ARTICLE 8 : *Le mariage conclu par un incapable, sans l’autorisation de son tuteur, n’est valable que s’il est approuvé par ce dernier ou par le juge le cas échéant.*

SECTION II : DE LA TUTELLE DE MARIAGE «WILAYA»

ARTICLE 9 : *La tutelle (wilaya) est exercée dans l’intérêt de la femme. La femme majeure ne peut être mariée sans son propre consentement et la présence de son tuteur « weli ».*

Le silence de la jeune fille vaut consentement.

ARTICLE 10 : *Le tuteur « weli » doit être de sexe masculin, doué de raison, majeur, et de confession musulmane lorsque la femme est musulmane.*

1 *Loi 2001-052 du 19 juillet 2001 portant Code de Statut Personnel* [Law 2001-052 of July 19, 2001 for the establishment of the Code of Personal Conduct], *Journal officiel de la république islamique de Mauritanie* [J.O.] [Official Journal of the Islamic Republic of Mauritania], July 19, 2001 (Mauritania), (the “Personal Status Code”). Available at http://www.law.yale.edu/rcw/rcw/jurisdictions/afw/mauritania/mauritania_per_status_fr.pdf. We were unable to gain the assistance of local counsel for Mauritania. All information contained in this report, including certain of the articles of the Personal Status Code, Code of Civil Status and the Penal code, is based on English language sources.

ARTICLE 11 : *La tutelle « wilaya » est exercée, dans l'ordre qui suit:*

- *le fils ou son fils;*
- *le père ou le tuteur testamentaire;*
- *le frère;*
- *le fils du frère;*
- *le grand père paternel;*
- *l'oncle paternel;*
- *les fils de l'oncle paternel suivant le degré de parenté, les germains étant préférés aux autres;*
- *le nourricier « Kafil »;*
- *le juge;*
- *tout musulman.*

ARTICLE 12 : *Le tuteur « Weli » peut mandater une personne pour conclure le mariage à sa place. La femme tutrice testamentaire ou ayant la qualité de nourricier « Kafil » doit donner procuration à un homme pour accomplir cette mission à sa place. Dans les deux cas, la personne mandataire doit remplir les conditions prévues à l'ARTICLE 10 ci-dessus.*

ARTICLE 13 : *En cas de refus non fondé du tuteur « weli » d'autoriser le mariage de la femme ou de la fille placée sous sa tutelle « wilaya », le juge lui ordonne de la marier, s'il persiste dans son refus, le juge conclut lui-même le mariage.*

Personal Status Code (unofficial translation)

SECTION 1: THE SPOUSES

ARTICLE 6 : Any person of sound mind who is 18 years of age or older may marry. An incapacitated person may be married by her guardian “weli” if he sees an obvious interest.

ARTICLE 8: A marriage concluded by an incapacitated person without the permission of her guardian is only valid if approved by him or by a judge, as applicable.

ARTICLE 9: Guardianship (*wilaya*) is exercised in the interest of the woman. A woman cannot be married without her own consent and the presence of her guardian « weli ». The silence of a girl signifies consent.

ARTICLE 10: The guardian « weli » must be male, of sound mind and of majority. As relates to Muslim women, he must also be Muslim.

ARTICLE 11 : Guardianship « wilaya » is exercised in the following order:

- the son or his son;
- the father or the testamentary guardian;

- the brother;
- the brother's son;
- the paternal grandfather;
- the paternal uncle;
- the paternal uncle's son, following the degree of relationship, the closest being preferred;
- the foster parent « Kafil »;
- the judge;
- any Muslim man.

ARTICLE 12: The guardian « Weli » can designate a person to conclude the marriage in his place. If the testamentary guardian or foster parent « Kafil » is a woman, she must designate a man to fulfil her duties. In both these cases, the designated replacement must fulfil the conditions in **ARTICLE 10** above.

ARTICLE 13: If the guardian « weli » refuses for no good reason to authorize the marriage of the woman or the girl placed under his guardianship « wilaya », a judge can order him to authorize the marriage or, if he continues to refuse, can conclude the marriage himself.

Full text of the Personal Status Code: http://www.law.yale.edu/rcw/rcw/jurisdictions/afw/mauritania/mauritania_per_status_fr.pdf.

COMMENTARY

No marriage can take place without the presence of a guardian of the woman concerned, defined under the law to mean primarily a male relative. Guardianship [*wilaya*] is to be exercised in the interests of the woman. However, **ARTICLE 6** is frequently used to agree to child marriage. The silence of young girls is taken as consent.

Even though 18 is given as the minimum age of marriage, there are several provisions in the law, including with respect to divorce, which indicate the existence and official recognition of child marriage.

It is reported that rural marriages usually take place under customary law or are overseen by a marabou (a Muslim preacher). No state official is said to be involved, so there is no official to verify the age of the bridal parties.²

² *Girls being force-fed for marriage as fattening farms revived*, The Observer, Alex Duval Smith, February 28, 2009, Available at: <http://www.theguardian.com/world/2009/mar/01/mauritania-force-feeding-marriage>

According to UNICEF, 15% of Mauritanian children are currently married before the age of 15 and 35% before the age of 18,³ while the recent report from the International Humanist and Ethical Union (IHEU) provides that 19% of girls are married before the age of 15, and 43% before the age of 18.⁴ 19% of women give birth before the age of 18 according to UNICEF.⁵

The cultural practice of exchanging “symbolic” gifts has now evolved into a profitable business for the families of the child being married according to reports which suggest that fathers can sell their young daughters in exchange for significant profit.^{6,7}

Three types of forced marriages are said to be practiced in Mauritania: (1) when a girl from a poor family is forced to marry a rich man for financial purposes, (2) when a girl is forced into a polygamous relationship with an influential man and (3) in a practice known as maslaha, where a girl is forced to marry her cousin so that she can be financially supported by him. Maslaha is said to account for 43% of the forced marriages in Mauritania.⁸

PENALTIES/CRIMINALIZATION

PUNISHMENT FOR CHILD MARRIAGE

If a guardian is deemed to have consented to the marriage of an “incapacitated” person solely in his own interest, then he is subject to the Penal Code but the marriage will still be deemed valid.⁹ If parents or those with responsibility for a child try to register a marriage without respect for the minimum age of marriage or consent provisions they are subject to penalties. Likewise if they harm a child in order to get consent to the marriage.

3 *The State of the World's Children 2013*, UNICEF http://www.unicef.org/publications/files/SWCR2013_ENG_Lo_res_24_Apr_2013.pdf

4 *Human Rights in Mauritania*, IHEU Geneva, September 13, 2013, Available at: <http://iheu.org/files/Human%20Rights%20in%20Mauritania.pdf>

5 *The State of the World's Children*, 2013, *Id.*

6 United States Department of State, Office of Global Women's Issues, *Releases: Remarks, Testimony, Targeting Girls in the Name of Tradition: Child Marriage, A Discussion with the Tom Lantos Human Rights Commission*, Washington DC, Melanne Verveer, July 15, 2010. Available at: <http://www.state.gov/s/gwi/rls/rem/2010/144989.htm>

7 *Mauritania: Child marriage tradition turns into trafficking*, December 9, 2008, IRIN, available at: <http://www.irinnews.org/report/81891/mauritania-child-marriage-tradition-turns-into-trafficking>.

8 *Human Rights in Mauritania*, IHEU Geneva, September 13, 2013, available at: <http://iheu.org/files/Human%20Rights%20in%20Mauritania.pdf>

9 *Ordonnance 83-162 du 09 juillet 1983 portant institution d'un Code Pénal* [Ordinance 83-162 of July 9, 1983 for the establishment of the Penal code], *Journal officiel de la republique islamique de Mauritanie* [J.O.] [Official Journal of the Islamic Republic of Mauritania], July 9, 1983 (Mauritania), (the “Penal code”). Available at <http://www.droit-afrique.com/images/textes/Mauritanie/Mauritanie%20-%20Code%20penal.pdf>.

A kidnapper/abductor without force or fraud of a girl who subsequently marries her can only be prosecuted if there is a complaint from those entitled to have the marriage annulled and then only sentenced once the marriage is annulled.

LEGISLATION

Loi n° 2001-052 du 19 juillet 2001 portant code du Statut Personnel¹⁰

ARTICLE 7 : *Si le tuteur de l'incapable a marié celui-ci au mépris des dispositions de l'article ci-dessus, le mariage est valide, mais le tuteur s'expose aux peines prévues par le Code pénal s'il a agi dans son intérêt exclusif.*

Personal Status Code 2001 (unofficial translation)

ARTICLE 7: If the guardian of the incapacitated person oversaw her marriage contrary to the provisions of **ARTICLE 6**, that marriage is valid, but the guardian is liable to penalties under the Penal Code if it took place in his exclusive interest.

Ordonnance No. 2005-015 portant protection pénale de l'enfant (2005) Article 41.

[...] Sont punis de trois à six mois d'emprisonnement et d'une amende de 100.000 à 200.000 ouguiyas les parents et les personnes ayant autorité sur l'enfant qui demandent l'enregistrement de son mariage et les autorités qui procèdent à cet enregistrement sans respecter l'âge légal du mariage et du consentement.

Cette sanction est également applicable à toute personne ayant exercé sur l'enfant une contrainte physique ayant occasionné des séquelles, une mutilation ou une incapacité permanente en vue de l'amener à consentir au mariage.

Cette sanction est applicable aux parents, aux personnes ayant autorité sur l'enfant et les responsables de l'état civil qui refusent de l'enregistrer conformément aux dispositions de la loi n° 96.020 du 20 juillet 1996 portant code de l'état civil quelle que soit la nature de sa filiation.

Ordinance No. 2005-015 for the protection of children under criminal law (2005) (unofficial translation)

ARTICLE 41: [...] Are punishable by three to six months' imprisonment and a fine of 100,000 to 200,000 ouguiyas parents and people having authority over the child who apply for registration of marriage and the authorities that carry out this registration without respecting the legal age of marriage and consent.

10 Loi N° 2001-052 du 19 juillet 2001 portant Code du Statut Personnel accessed at http://www.law.yale.edu/rcw/rcw/jurisdictions/afw/mauritania/mauritania_per_status_fr.pdf

This penalty also applies to any person who has practiced on the child a physical constraint that resulted in harm, mutilation or permanent disability in order to get consent to the marriage.

This penalty applies to parents, people with authority over the child and civil servants who refuse to register the marriage according to the provisions of Law No. 96.020 of 20 July 1996 applicable to the relevant relationship.

Ordonnance 83-162 du 09 juillet 1983 portant institution d'un Code Pénal

ARTICLE 334: Celui qui, sans fraude ni violence, aura enlevé ou détourné ou tenté d'enlever ou de détourner un mineur de 18 ans sera puni d'un emprisonnement de deux à cinq ans et d'une amende de 5.000 à 20.000 UM. Dans tous les cas où le ravisseur aurait épousé la fille qu'il a enlevée, il ne pourra être poursuivi que sur la plainte des personnes qui, d'après la loi, ont le droit de demander la nullité du mariage, ni condamné qu'après que la nullité du mariage ait été prononcée.

Penal Code 1983 (unofficial translation)

ARTICLE 334: Whoever, without fraud or violence, has kidnapped, abducted, or attempted to kidnap or abduct a minor under 18 years of age will be punished with a prison term of between 2 and 5 years and a fine of 5,000–20,000 ouguiya. In all cases where the kidnapper has married the girl he kidnapped, he can only be prosecuted on the complaint of the people who by law have the right to have the marriage annulled. Sentence can only be passed once the marriage has been annulled.

PROSECUTIONS FOR CHILD MARRIAGE

None found.

LAWS WHICH PROMOTE/ENDORSE BRIDE PRICE OR DOWRY INCLUDING ANY REQUIREMENTS FOR REPAYMENT ON DIVORCE

DOWRIES

Dowry is required as one of the essential elements of marriage.

COMMENTARY

The dowry practice (“arheel”) in Mauritania involves the bride’s family assembling all of the household needs for the couple’s first year of marriage prior to the couple beginning to cohabit. The ceremony of *Arheel*, when the bride moves from her parent’s home to her husband’s with all of these possessions, is considered as important as the wedding night.¹¹

Even when grooms reject the need for a dowry, they cannot avoid it as many feel it is shameful for a bride to arrive without the dowry. The bride’s family often bears higher costs and the custom makes parents feel obliged to provide costly items. There is no distinction between the rich and the poor though poorer families may receive assistance from family and tribal members via donations.¹²

Please see the “Commentary” section under “Provisions impeding/preventing ending of underage marriage” for requirements for repayment of dowry on divorce.

LEGISLATION

Loi n° 2001-052 du 19 juillet 2001 portant code du Statut Personnel

ARTICLE 5 : Les éléments constitutifs du mariage sont: les deux époux, le tuteur « weli », la dot et le consentement.

ARTICLE 14 : La dot « sadaq » doit être fixée d’un commun accord des deux parties ou de leurs tuteurs « weli ». La dot doit être licite, connue des deux époux et exempte d’aléa. La dot peut être payée au comptant totalement ou partiellement, ou à terme dans un délai connu n’entraînant pas habituellement d’aléa. Quand la dot n’est pas citée expressément, il s’agit dans ce cas, d’un mariage de mandatement « nikahal tafwid ».

Law N° 2001-052 19 July 2001 concerning personal status (unofficial translation)

ARTICLE 5: The constituent elements of marriage are: the two spouses, the guardian (*weli*), the dowry and consent.

ARTICLE 14: The dowry (*sadaq*) must be fixed by agreement between the two parties or their guardians (*weli*). The dowry must be lawful, known to both spouses and exempt from risk. The dowry can be paid in cash in whole or in part or according to an agreed schedule which should avoid any risk. Where the dowry is not expressly specified, the marriage concerned is a “mandated marriage” (*nikahal tafwid*).¹³

11 “Bridal dowry tradition divides Mauritanian newlyweds”, Mohammed Yahya Ould Abdel Wedoud, Maghreb, March 26, 2010. Available at http://magharebia.com/en_GB/articles/awi/reportage/2010/03/22/reportage-01.

12 “Bridal dowry tradition divides Mauritanian newlyweds”, Mohammed Yahya Ould Abdel Wedoud, Maghreb, March 26, 2010, Available at: http://magharebia.com/en_GB/articles/awi/reportage/2010/03/22/reportage-01

13 Delegation from the husband to the wife of the right to divorce.

PROVISIONS IMPEDING / PREVENTING ENDING OF UNDERAGE MARRIAGE

COMMENTARY

Divorce is still perceived as a unilateral decision taken by the man and is regulated accordingly,¹⁴ although a woman can still under law petition for divorce. A father or testamentary guardian can petition for a divorce in respect of girl brides in the interest of the child through payment of compensation to the groom.

Under [ARTICLE 102](#) of the Personal Status Code, with respect to divorce, the woman owes compensation if she is found to be in the “wrong”¹⁵ (not defined), but the man owes nothing if the blame is adjudged to be his. A woman will generally lose custody of her children if she remarries.¹⁶ Formulas for property distribution have varied widely from case to case. Human rights lawyers have reported that judges treated differently cases concerning White Moor women, female slaves or other lower-caste women, and foreign women. The Personal Status Code provides a framework for the consistent application of secular law and Sharia-based family law, but it is not uniformly employed according to the U.S. State Department.¹⁷

LEGISLATION

Loi n° 2001-052 du 19 juillet 2001 portant code du Statut Personnel

ARTICLE 83 : La répudiation est la dissolution du mariage par volonté unilatérale du mari. Le mari qui désire divorcer d’avec son épouse, doit s’adresser au juge ou au conciliateur « mouslih » pour prendre acte de cette volonté. Le Juge ou le mouslih doit, dans ce cas, convoquer la femme et procéder à une tentative de conciliation. Si le mari persiste à répudier, le Juge ou le mouslih lui enregistre la répudiation et en détermine les conséquences avec l’accord des deux époux.

ARTICLE 92 : La répudiation moyennant compensation pour le mari donnée par l’épouse ou son représentant ou par renonciation à un droit que celle ci avait sur le

14 Spotlight: Mauritania, Musawah (report submitted by L’Association des Femmes Chefs de Famille (Association of Women Heads of Household)), Available at: <http://www.musawah.org/sites/default/files/Mauritania-Home%20Truths-EN.pdf>

15 Africa for women’s rights: ratify & respect, Dossier of Claims, FIDH, March 5, 2010, Available at: <http://www.fidh.org/IMG/pdf/dossierofclaims0803eng.pdf>

16 Personal Status Code, Article 130.

17 United States Department of State, Bureau of Democracy, Human Rights and Labor, Country Reports on Human Rights Practices for 2012 – Mauritania. Available at <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dld=204143>

mari est valable. L'objet de la compensation doit être licite. En cas d'irrégularité du khôl' la répudiation reste valable, et le mari n'a droit à rien.

ARTICLE 93 : *S'il est prouvé en justice que la femme a provoqué la répudiation moyennant une compensation uniquement pour se soustraire aux préjudices résultant de sévices ou d'une mauvaise cohabitation, la répudiation est effective et l'objet de la compensation est restitué. Il en est de même lorsque l'épouse est mineure ou prodigue.*

ARTICLE 94 : *L'homme majeur, même prodigue, peut provoquer la répudiation moyennant compensation.*

Le père ou le tuteur testamentaire d'un mineur peut, s'il y a intérêt pour celui-ci, provoquer la répudiation moyennant compensation.

ARTICLE 102 : *L'épouse, qui prétend être objet de quelque préjudice que ce soit de la part du mari, au point que la vie conjugale en soit devenue impossible, obtient après tentative de conciliation du juge restée infructueuse, le divorce si elle prouve le préjudice. Si la demande en divorce est rejetée et si la femme renouvelle ses plaintes sans que le préjudice soit établi, le juge déléguera deux arbitres de préférence l'un parmi les proches du mari et l'autre parmi ceux de la femme pour tenter de réconcilier les conjoints. Les arbitres chercheront les causes de la dissension existante entre les époux et s'efforceront de les réconcilier. Ils prononceront la conciliation obtenue. A défaut de conciliation ils prononcent le divorce, moyennant compensation si la femme a tort, et sans compensation si les torts sont du côté du mari. Les arbitres saisiront le juge afin de rendre exécutoire leur sentence.*

Personal Status Law (unofficial translation)

ARTICLE 83: Repudiation is the dissolution of marriage on the unilateral wish of the husband [...].

ARTICLE 92: Repudiation of the marriage through payment to the husband by the wife or her representative or by renunciation of a right of the wife over her husband is valid [...]

ARTICLE 93: If it is proved in a court of law that the woman has initiated a repudiation through compensation solely to avoid injury from abuse or a bad home environment, the repudiation will be effective and the compensation returned. This is true even where the wife is a minor [...]

ARTICLE 94:[...] The father or testamentary guardian of a minor can, if interested, initiate a repudiation of marriage by compensation.

ARTICLE 102: The wife, who claims to be the object of some harm on the part of her husband such that living together is impossible, will, if the judge's attempts at reconciliation have proved fruitless, get a divorce if she is able to prove harm.

If her request for divorce is rejected and she renews her complaint without being able to prove the harm, the judge will delegate two arbiters, preferably a relative of the husband and one of the wife, to try to reconcile the couple. The arbiters will seek the causes of disagreement between the spouses and attempt to reconcile the couple. They will announce the reconciliation, failing which they will pronounce the divorce, by means of compensation if the wife is in the wrong and without compensation if the wrongs lie with the husband. The arbiters will inform the judge to give effect to their decision.

STATUTORY RAPE LAW AND LAWS THAT CIRCUMVENT THIS THROUGH MARRIAGE

RAPE

Rape of a minor is a criminal offence with severe punishments.¹⁸

COMMENTARY

Rape, including spousal rape, is illegal; however, rape laws are generally not enforced and cases rarely go to trial. Families of the victim are said to often settle the case for monetary compensation. Human rights activists and lawyers note that rape victims have been imprisoned. Since rape was tied to the concept of Zina (i.e. unlawful sexual intercourse between unmarried people), judges may hold the victims responsible for the rape.¹⁹ According to the Penal Code, those found guilty of Zina who are single men face penalties of forced labor and flagellation and married adulterers could be subject to the death penalty.²⁰

In some instances men from the Middle East are said to contract “temporary marriages” as a means to traffic and exploit Mauritanian girls and women in the Middle East.²¹

18 *Ordonnance 83-162 du 09 juillet 1983 portant institution d'un Code Pénal* accessed at <http://www.droit-afrique.com/images/textes/Mauritanie/Mauritanie%20-%20Code%20penal.pdf>

19 United States Department of State, Bureau of Democracy, Human Rights and Labor, *Country Reports on Human Rights Practices for 2012 – Mauritania*. Available at <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dlid=204143>

20 *Code Pénal*, Art. 307

21 United States Department of State, Bureau of Democracy, Human Rights and Labor, *Country Reports on Human Rights Practices for 2012 – Mauritania* at 22. Available at <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dlid=204143>

LEGISLATION

Full text of the Penal Code in French:

<http://www.droit-afrique.com/images/textes/Mauritanie/Mauritanie%20-%20Code%20penal.pdf>.

Ordonnance No. 2005-015 portant protection pénale de l'enfant²²

ARTICLE 24. *Le viol commis sur un enfant est puni par le «had» prévu aux articles 309 et 310 du code pénal. Lorsque les conditions prévues dans le code pénal ne sont pas réunies, il est puni de cinq à dix ans d'emprisonnement.*

Voir aussi ARTICLE 25 (DU HARCELEMENT SEXUEL) et ARTICLE 26 (DES AUTRES AGRESSIONS SEXUELLES).

Ordinance No. 2005-015 on child penal protection (unofficial translation)²³

ARTICLE 24: Rape committed on a child is punished by « had » as set out in articles 309 and 310 in the Penal Code. If the conditions set out in the Penal Code are not met, rape is punished by 5 to 10 years' imprisonment.

See also **ARTICLE 25 (ON SEXUAL HARASSMENT)** and **ARTICLE 26 (ON OTHER SEXUAL ASSAULTS)**.

CHILD PROTECTION WHEN ESCAPING CHILD MARRIAGE

Information not found.

22 *Ordonnance No. 2005-015 portant protection pénale de l'enfant* (2005), available at http://legislationmauritanienne.files.wordpress.com/2011/06/ordonnance-nc2b02005-015-portant-protection-pc3a9nale-de-l_enfant.pdf

23 *Ordonnance No. 2005-015 portant protection pénale de l'enfant* (2005), available at http://legislationmauritanienne.files.wordpress.com/2011/06/ordonnance-nc2b02005-015-portant-protection-pc3a9nale-de-l_enfant.pdf

LEGAL REQUIREMENTS FOR REGISTRATION OF BIRTHS AND/OR MARRIAGES

BIRTH REGISTRATION

56% of children born in Mauritania were registered at birth in between 2005–2011 according to UNICEF.²⁴

MARRIAGE REGISTRATION

Law No. 2011-003 revoking and replacing Law No.96.019 of 19 June 1996 regarding the Civil Status Code (Loi n° 2011 - 003 abrogeant et remplaçant la loi n°96.019 du 19 Juin 1996 portant Code de l'Etat Civil) requires that every event in the life of a person has to be registered. Included in "events" are: births, marriages, "talaq" o "tatliq" (divorce), deaths, or any other event relating to civil status (ARTICLE 9).²⁵

For a marriage to be valid, it must be registered with an official or an agent of the state. Only an adult can carry out the registration (ARTICLE 18) and the silence of the girl child is again taken as consent (ARTICLE 41). Chapter VII sets out the punishments for failure to register a civil act which can include confinement and/or a fine, but it is not known if these are carried out in practice.

LEGISLATION

Loi n° 2011-003 abrogeant et remplaçant la loi n°96.019 du 19 Juin 1996 portant Code de l'Etat Civil²⁶

See full text.

24 UNICEF, « Mauritania : Maternal, Newborn and Child survival », March 2012, available at <http://www.childinfo.org/files/maternal/DI%20Profile%20-%20Mauritania.pdf>

25 Loi n° 2011 - 003 abrogeant et remplaçant la loi n°96.019 du 19 Juin 1996 portant Code de l'Etat Civil, available in French at <http://www.coursupreme.mr/NR/rdonlyres/A506209D-A5FB-4F45-B8EE-79F92237E88B/6655/loi0032011fr.pdf>

26 Loi n° 2011 - 003 abrogeant et remplaçant la loi n°96.019 du 19 Juin 1996 portant Code de l'Etat Civil, available in French at <http://www.coursupreme.mr/NR/rdonlyres/A506209D-A5FB-4F45-B8EE-79F92237E88B/6655/loi0032011fr.pdf>

SCHOOLING

Law No. 2001-054 on obligations relating to basic education of July 2001 makes education compulsory for children from 6 to 14 years of age for a period of at least six years²⁷ and also penalizes parents who contravene it.²⁸ This was seen as a means to reduce forced and early marriage.²⁹

LEGISLATION

Loi n°2001-054 portant obligation de l'enseignement fondamental³⁰

ARTICLE PREMIER : *L'enseignement fondamental est obligatoire pour les enfants des deux sexes âgés de 6 (six) à 14 (quatorze) ans révolus pour une durée de scolarité au moins égale à 6 ans.*

ARTICLE 10 : *Est punie d'une amende de 10000 (dix mille) à 30000 (trente mille) Ouguiya, toute personne responsable d'un enfant qui aura:*

- *Sans motif valable refusé d'inscrire l'enfant dont il aura la charge*
- *Sans motif valable soustrait l'enfant de la classe pendant plus de 15 jours au cours d'un trimestre*
- *Par son influence ou ses agissements, occasionné chez un enfant une rupture momentanée ou définitive de sa scolarité.*

En cas de récidive, la personne est punie d'une amende de 50000 (cinquante mille) à 100000 (cent mille) Ouguiya.

Law N°2001-054 on obligations relating to basic education (unofficial translation)

ARTICLE 1: Primary education is compulsory for children of both sexes from six (6) to fourteen (14) years of age for a period of schooling of at least 6 years.

ARTICLE 10: Is punishable by a fine of 10,000 (ten thousand) to 30,000 (thirty thousand) Ouguiya any person responsible for a child who has:

- Without good reason refused to register the child in his charge
- Without cause removed the child from the classroom for more than 15 days in a quarter

27 Mauritania, Child Labour, Legislation, Slavery in Domestic Legislation. Available at: <http://www.qub.ac.uk/slavery/?page=countries&country=108&category=10>

28 Mauritania: Children's rights references in the Universal Periodic Review, Child Rights International Network, November 16, 2010, Available at: <http://www.crin.org/resources/infoDetail.asp?ID=23514>

29 United Nations, Economic and Social Council, Commission on the Status of Women, *Forced marriage of the girl child*, Report of the Secretary General, February 25, 2008 – March 7, 2008. Available at: <http://www.ungei.org/resources/files/Girlchildreport.pdf>

30 Available in French at http://www.childsrightrights.org/html/site_en/law_download.php?id=186

- By his influence or his actions, caused a child to temporarily or permanent disrupt its schooling.

For repeat offences, the person is liable to a fine of 50,000 (fifty thousand) to 100,000 (one hundred thousand) Ouguiya.

INTERSECTION BETWEEN CHILD MARRIAGE AND OTHER SOCIAL ISSUES

COMMENTARY

Mauritanian law is a combination of civil and Sharia law.

Forced fattening of young girls (*Leblouh*) is common in rural areas and also continues in the cities. Leblouh was considered to be in decline, but it is easy to find evidence of continued practice. Fatter brides indicate wealth and success of the girl's father and prospective husband. Girls are reported to have been sent to fattening camps at ages as young as five. At the camps, girls are fed diets of 14,000 to 16,000 calories a day. Certain abusive practices are used regularly to distract the girls from the pain of consistent overeating and to force compliance with the program. Leblouh is considered to be closely linked to early childhood marriage because forced fattening accelerates puberty and makes younger girls appear more womanly and ready for marriage. Younger girls are more like to still be virgins at the time of marriage. Women also rely on prescription drugs and hormones indicated for other purposes for a more "modern" Leblouh.³¹

Trafficking: The US State Department's 2012 Trafficking in Persons Report³² indicates that Mauritanian girls are married off to wealthy Middle Eastern men through "temporary" or "secret" marriages ("siriya"), which are not recorded.³³ In 2011, Wikileaks released embassy cables between Aminetou Mint el Moctar,³⁴

31 "In Mauritania, being overweight is still marriage card!" Middle East Online, February 22, 2011. Available at <http://www.middle-east-online.com/english/?id=44538>; "Girls Force-Fed for Marriage at 'Fattening Farms' (Mauritania)", Liveleak.com, March 1, 2009. Available at http://www.liveleak.com/view?i=688_1235920828; "Women fight Mauritania's fattening tradition", Mohammed Yahya Adel Wedoud, cnn.com, October 12, 2010. Available at <http://www.cnn.com/2010/WORLD/africa/10/12/mauritania.force.feed/index.html>; and "Girls being force-fed for marriage as fattening farms revived", Alex King, The Guardian, February 28, 2009. Available at <http://www.guardian.co.uk/world/2009/mar/01/mauritania-force-feeding-marriage>.

32 United States Department of State Trafficking in Persons Report 2012 (Mauritania). Available at <http://www.state.gov/j/tip/rls/tiprpt/2012/192367.htm>.

33 "Clandestine marriages on the rise in Mauritania", Sukaina Asneeb, Al Arabiya News, July 15, 2013. Available at <http://www.alarabiya.net/articles/2010/06/24/112179.html>. See also EPCAT Global Monitoring Report on the Status of Action Against Commercial Sexual Exploitation of Children – Mauritania at 12 (2007). Available at http://www.ecpat.net/A4A_2005/PDF/AF/Global_Monitoring_Report-MAURITANIA.pdf.

34 <http://trafficking.org/heroes/aminetou-mint-moctar.aspx>.

the founder of the Association of Women Heads of Household, an NGO that advocates for women's rights and assists women victims of domestic violence, rape, and trafficking, and various diplomats stating child marriage "was the main driver of trafficking" and highlighting the problem of Mauritanian families marrying young daughters to wealthy Saudi Arabian men.³⁵ In these cables, Mint el Moctar states that prepubescent girls trafficked as "brides" are rejected once they reach puberty or become pregnant.

There are regular prosecutions for "Zina" or threats to Islam under [ARTICLE 306](#) of the Penal Code. A woman will be deemed to have committed Zina if she in any way "put herself in a position" that resulted in her being raped. A woman who becomes pregnant as a result of a rape will be determined to have committed Zina because the cultural understanding is that a true rape cannot result in a pregnancy (see [ARTICLE 309](#) of the Penal Code).

The chapter reflects a summary of the jurisdiction's treatment of child marriage. It also reflects some relevant provisions on the subject of child marriage under the national legal framework, primarily if they have been made publicly available in the English language. The summary does not constitute legal advice under any circumstance.

35 Wikileaks: "Mauritanian Child Brides Embody the Dark Side of Globalization"; Michael Busch, TRUTHOUT.ORG, May 29, 2011. Available at <http://www.truth-out.org/news/item/1337:wikileaks-mauritanian-child-brides-embody-the-dark-side-of-globalization>.

MOROCCO

LEGAL AGE FOR MARRIAGE

AGE OF MARRIAGE

In Morocco, the legal age of marriage for both men and women is eighteen.¹ A 2004 Amendment to the Family Code ("Mudawanna") increased the age from fifteen to eighteen for women.²

Exceptions

A judge may authorize marriage of a child under the age of 18 after hearing from the parents or legal guardian and receiving a medical report or conducting a review of the child's situation. No minimum age is specified. The judge must set out reasons why the marriage is justified in the interests of the child. The marriage is also contingent on the consent of the child's legal guardian, failing which the judge can rule.

COMMENTARY

Following public disquiet after several well-publicized child marriage cases³, the Ministry of Justice has recommended to parliament that judges no longer be able to authorize child marriages. Parliament has however postponed to an unspecified date discussion of the proposed amendments to the law.

LEGISLATION

Dahir n°1.04.22 du 12 hija 1424 (3 février 2004) portant promulgation de la loi n° 70.03 portant code de la famille (Version non officielle)

ARTICLE 19 : *La capacité matrimoniale s'acquiert, pour le garçon et la fille, jouissant de leurs facultés mentales, à dix huit années grégoriennes révolues.*

ARTICLE 20 : *Le juge de la famille chargé du mariage peut autoriser le mariage du garçon et de la fille avant l'âge de la capacité prévu à l'ARTICLE 19 ci-dessus, par*

1 *Mudawwana* (Family Code) Art. 21 (Morocco) accessible at <http://adala.justice.gov.ma/production/legislation/fr/civil/Code%20de%20la%20famille%20Maroc%20Texte.htm>.

2 Stephanie Willman Bordat and Saida Kouzzi, The Challenge of Implementing Morocco's New Personal Status Law, Arab Reform Bulletin, Vol. 2, No. 8.

3 See Equality Now accessible at http://www.equalitynow.org/take_action/child_marriage_action412

décision motivée précisant l'intérêt et les motifs justifiant ce mariage, après avoir entendu les parents du mineur ou son représentant légal, et après avoir eu recours à une expertise médicale ou procédé à une enquête sociale. La décision du juge autorisant le mariage d'un mineur n'est susceptible d'aucun recours.

ARTICLE 21 : Le mariage du mineur est subordonné à l'approbation de son représentant légal. L'approbation du représentant légal est constatée par sa signature apposée avec celle du mineur sur la demande d'autorisation de mariage et par sa présence lors de la conclusion du mariage. Lorsque le représentant légal du mineur s'abstient d'accorder son approbation, le juge de la famille chargé du mariage statue en l'objet.

Mudawwana (Family Code) (unofficial translation)⁴

ARTICLE 19: Men and women acquire the capacity to marry when they are of sound mind and have completed eighteen full Gregorian years of age.

ARTICLE 20: The Family Affairs Judge in charge of marriage may authorize the marriage of a girl or boy below the legal age of marriage as stipulated in preceding **ARTICLE 19**, in a well-substantiated decision explaining the interest and reasons justifying the marriage, after having heard the parents of the minor who has not yet reached the age of capacity or his/her legal tutor, with the assistance of medical expertise or after having conducted a social enquiry. The decree granting the petition to marry for a minor who has not reached the age of legal capacity for marriage is not open to appeal.

ARTICLE 21: The marriage of a minor is contingent on the consent of his/her legal tutor. The legal tutor's consent is expressed by signing, along with the minor, the marriage authorization petition and being present during the conclusion of the marriage contract. If the minor's legal tutor refuses to consent, the Family Affairs Judge rules on the matter.

4 *Mudawwana* (Family Code). Please note that all English translations come from an unofficial translation of the Family Code by Human Rights Education Associates, available at <http://www.hrea.org/moudawana.html>.

COMMENTARY

A Justice Ministry report is reported to have noted that in approximately 90% of the cases where minors apply for a special dispensation to marry, the judge grants the request.⁵ Furthermore, the Minister of Justice is said to have disclosed that 41,098 marriages in 2010 involved an underage girl, an increase of 23.59% compared to 2009.⁶ According to a 2013 UNICEF report, 16% of children in Morocco are married by the age of eighteen and 3% of children are married by the age of fifteen after receiving judicial consent.⁷

PENALTIES/CRIMINALIZATION

PUNISHMENT FOR CHILD MARRIAGE

While a condition required to contract a marriage includes the legal capacity of both the parties, which would not be true of a minor married without judicial authorization, the Family Code does not include any penalties for a breach of the minimum age to marry.

PROSECUTIONS FOR CHILD MARRIAGE

Not found in English.

5 Aida Alami, *Morocco Slow to Enforce Laws on Women's Rights*, N.Y. Times (April 20, 2013) <http://www.nytimes.com/2013/04/11/world/middleeast/morocco-slow-to-enforce-laws-on-womens-rights.html?pagewanted=all&r=0>.

6 Gianluca Mezzofiore, *Amina Filali Case: Morocco Outlaws Rape Marriage of Children*, Int'l Bus. Times (Jan. 23, 2013), <http://www.ibtimes.co.uk/articles/427015/20130123/amina-filali-case-morocco-rape-marriage.htm#>.

7 UNICEF, *The State of the World's Children 2013 Table 9* (2013), http://www.unicef.org/sowc2013/files/SWCR2013_ENG_Lo_res_24_Apr_2013.pdf.

LAWS WHICH PROMOTE/ENDORSE BRIDE PRICE OR DOWRY INCLUDING ANY REQUIREMENTS FOR REPAYMENT ON DIVORCE

DOWRIES

A dowry is legally required for marriage in Morocco. The prospective husband will present his bride with a dowry to express his desire to marry her and his ability to provide them with a stable home.⁸ The law suggests the dowry has symbolic rather than substantive value. As a result of the 2004 Amendments, the wife has a right to the entire dowry once the marriage is consummated. In a legal dispute her declaration would take precedence over her husband's.⁹

LEGISLATION

Mudawwana

ARTICLE 26 : *Le Sadaq (la dot) est ce que l'époux offre à son épouse, pour manifester sa volonté de contracter mariage, de fonder une famille stable et consolider les liens d'affection et de vie commune entre les deux époux. Le fondement légal de la dot ne se justifie pas par sa valeur matérielle mais plutôt par sa valeur morale et symbolique*

ARTICLE 32 : *l'épouse a droit à l'intégralité du sadaq, en cas de consommation du mariage ou de décès avant cette consommation.*

En cas de divorce avant la consommation du mariage, l'épouse a droit à la moitié du sadaq fixé.

L'épouse n'a pas droit au sadaq en cas de non consommation du mariage :

- 1. lorsque l'acte de mariage est résilié ;*
- 2. lorsque l'acte de mariage est dissous pour vice rédhibitoire constaté chez l'un des époux ;*
- 3. lorsqu'il y a divorce en cas de mariage où la fixation du sadaq est déléguée.*

ARTICLE 33 : *en cas de divergence sur le versement de la partie échue du sadaq, il est ajouté foi aux déclarations de l'épouse si la contestation intervient avant la consommation du mariage et à celles de l'époux dans le cas contraire.*

En cas de divergence entre les époux sur le versement de la partie du sadaq à terme, la preuve du paiement est à la charge de l'époux. Le sadaq est imprescriptible.

⁸ *Mudawwana* (Family Code) Art. 26 (Morocco).

⁹ *Mudawwana* (Family Code) Art. 32-33 (Morocco).

Mudawwana (Family Code) *(unofficial translation)*

ARTICLE 26: The dowry is that which the husband gives to his wife as an expression of his desire to marry her and to build a stable family based on affection and good amicable relations between husband and wife. Its legitimacy is based on its moral and symbolic value rather than its material value.

ARTICLE 32: The wife's right to the totality of the dowry vests with the consummation of the marriage or if she dies before the husband does. She has the right to half of the dowry if divorce occurs before the marriage is consummated. She has no right to the dowry before the marriage is consummated:

1. When the marriage contract is nullified;
2. When the marriage contract is rejected because of a defect in the wife or because of a defect in the husband;
3. When divorce occurs in a marriage of "entrustment."

ARTICLE 33: When the payment of the dowry before the marriage is consummated is in dispute, the wife's declaration takes precedence over the husband's.

When the payment of the deferred dowry is in dispute, the husband must prove that he has paid it. The dowry is not subject to prescription.

STATUTORY RAPE LAW AND LAWS THAT CIRCUMVENT THIS THROUGH MARRIAGE

RAPE/STATUTORY RAPE

Rape of a minor is punishable by a prison term of between ten and 20 years.

ARTICLE 475 of the Penal Code criminalizes abducting or diverting a minor under eighteen years old. A proviso in the law states that if a minor marries her captor, the captor may then only be prosecuted if the marriage is later annulled.¹⁰

¹⁰ Code pénal accessible at <http://adala.justice.gov.ma/production/legislation/fr/penal/Code%20Penal.htm>

COMMENTARY

ARTICLE 475 is used to justify a traditional practice of having a girl marry her rapist in order to preserve the family's honor while ensuring that the rapist was not punished.¹¹ Under this law, Amina Filali, a Moroccan girl, was forced to marry her rapist at the age of fifteen. She was accosted on the street and raped by a man who was almost ten years her senior. When her parents took her case to court, the prosecutor advised her to marry the perpetrator. Although Amina and her parents initially opposed this plan, ultimately her parents agreed that Amina would marry her rapist, who agreed in order to avoid time in prison. In March 2012, after her forced marriage and continued abuse, Amina swallowed rat poison and committed suicide.¹² There was immediate international outrage, causing the Moroccan Ministry of Justice and Liberties to recommend the amendment of **ARTICLE 475** in 2013. On 8 January 2014, a committee of the Moroccan parliament's lower house, the Commission of Justice, Legislation and Human Rights, voted unanimously to repeal the provision of **ARTICLE 475** that allows a man who "kidnaps" a minor to go free if he marries his victim. The full parliament must now act on this recommendation.¹³

LEGISLATION

Dahir n° 1-59-413 du 28 joumada II 1382 (26 novembre 1962) portant approbation du texte du Code Pénal

ARTICLE 486 : *Le viol est l'acte par lequel un homme a des relations sexuelles avec une femme contre le gré de celle-ci. Il est puni de la réclusion de cinq à dix ans.*

Toutefois si le viol a été commis sur la personne d'une mineure de moins de dix-huit ans, d'une incapable, d'une handicapée, d'une personne connue par ses facultés mentales faibles, ou d'une femme enceinte, la peine est la réclusion de dix à vingt ans.

ARTICLE 475 : *Quiconque, sans violences, menaces ou fraudes, enlève ou détourne, ou tente d'enlever ou de détourner, un mineur de moins de dix-huit ans, est puni de l'emprisonnement d'un à cinq ans et d'une amende de 200 à 500 dirhams. Lorsqu'une mineure nubile ainsi enlevée ou détournée a épousé son ravisseur, celui-ci ne peut être poursuivi que sur la plainte des personnes ayant qualité pour demander l'annulation du mariage et ne peut être condamné qu'après que cette annulation du mariage a été prononcée.*

11 Paul Schemm, *Amina Filali, Morocco Rape Victim, Commits Suicide After Forced to Marry Rapist*, Huffington Post (March 12, 2012), http://www.huffingtonpost.com/2012/03/14/amina-filali-morocco-rape_n_1345171.html.

12 *Id.* See also Equality Now at http://www.equalitynow.org/take_action/child_marriage_action412

13 Bias in Penal Code puts women and girls in danger in Morocco, Amnesty International (March 1, 2013), <http://www.amnesty.org/en/news/bias-penal-code-puts-women-and-girls-danger-morocco-2013-03-01>.

Penal Code (*unofficial translation*)

ARTICLE 486: Rape is the act by which a man has sex with a woman against the will of the latter. He is punished by imprisonment of five to ten years. However, if the rape was committed against a minor under eighteen...the penalty is imprisonment for ten to twenty years.

ARTICLE 475: Whoever, without violence, threats or fraud, abducts or attempts to remove or divert a minor under eighteen years, is punished by imprisonment of one to five years and a fine of 200 to 500 Dirhams. When a marriageable minor girl so removed or diverted marries her captor, the latter may only be prosecuted through a complaint filed by a person(s) entitled to apply for annulment of the marriage and cannot be sentenced until after the annulment of marriage been pronounced.

LEGAL REQUIREMENTS FOR REGISTRATION OF BIRTHS AND/OR MARRIAGES

BIRTH REGISTRATION

All children must be registered at the Civil Status Office where they were born. Failure to register the child's birth within 30 days is punishable by a fine.¹⁴

COMMENTARY

According to UNICEF, between 2005 and 2011, 85% of all children born were registered with the state. In rural areas, only 80% of children were registered at birth.¹⁵ Unwed mothers are generally permitted to register their child's birth. However, in order to demonstrate the unwed status of the mother, the mother must choose a first name for the fictional biological father that begins with *Abd*.¹⁶

14 Stephanie Willman Bordat and Saida Kouzzi, *Legal Empowerment of Unwed Mothers: Experiences of Moroccan NGOs* 4–5 (Int'l Dev. Law Org., Working Paper No. 14, 2010).

15 UNICEF, *At a glance: Morocco – Statistics*, UNICEF, http://www.unicef.org/infobycountry/morocco_statistics.html (last visited July 24, 2013).

16 *Id.*

MARRIAGE REGISTRATION

The Family Code has a list of requirements for a legal marriage in Morocco, but marriages traditionally were not required to be registered with the state. News reports suggest planned legislation will take effect requiring the registration of all marriages from 2014.¹⁷

LEGISLATION

Loi de Statut Civil 2002 Loi No 37-99 relative à l'état civil, Dahir 1-02-239 du 25 rejev 1423 (3 October 2002).¹⁸

See [ARTICLES 16 – 19](#) and

ARTICLE 31 : *Toute personne à laquelle incombe l'obligation de déclarer une naissance ou un décès en vertu des articles 16 et 24 et qui n'y procède pas dans le délai légal est punie d'une amende de 300 à 1.200 dirhams.*

SCHOOLING

Education for the first nine years, from ages 6 to 15, is mandatory in Morocco. Equal access to education is guaranteed as a right in the Constitution.¹⁹

COMMENTARY

Although the law states that women have equal access to education, approximately 55% of all women in Morocco are reported to be illiterate, with that rate rising to 90% in rural areas. The dropout rate of girls at the secondary school level is 50% in the cities and 89% in rural areas. Many girls drop out due to their parents' belief that it is of little value to educate a girl whose future only includes marriage and motherhood. Others drop out to join Morocco's large child labor force, with young girls working as maids, in the textile industry or as apprentices in traditional arts.²⁰

17 Nadiya Idriss Mayen, *Moroccans to Register Traditional Marriages*, Al Arabiya News (April 15, 2011), <http://english.alarabiya.net/articles/2011/04/15/145542.html>.

18 Accessible at: <http://adala.justice.gov.ma/production/legislation/fr/civil/l%20etat%20civil.htm>

19 Nick Clark, *Education in Morocco*, World Edu. News & Reviews (Apr. 2006), http://www.wes.org/ewenr/06apr/practical_morocco.htm.

20 Christie Edwards, *Women and Education in Morocco*, *Gender Across Borders* (March 28, 2011), <http://www.genderacrossborders.com/2011/03/28/women-and-education-in-morocco/>.

LEGISLATION

Constitution du 1er juillet 2011²¹

ARTICLE 31. L'Etat, les établissements publics et les collectivités territoriales oeuvrent à la mobilisation de tous les moyens à disposition pour faciliter l'égal accès des citoyennes et des citoyens aux conditions leur permettant de jouir des droits ...

- à une éducation moderne, accessible et de qualité ; ...*
- à la formation professionnelle et à l'éducation physique et artistique ;*

Constitution, 1 July, 2011 (unofficial translation)

ARTICLE 31. The State, public establishments and territorial collectives work for the mobilization of all means available to facilitate the equal access of all citizens to conditions that permit their enjoyment of the right: ... to a modern, accessible and quality education...to professional instruction and to physical and artistic education.²²

INTERSECTION BETWEEN CHILD MARRIAGE AND OTHER SOCIAL ISSUES

COMMENTARY

In Morocco, sexual relations outside of marriage are illegal, punishable with imprisonment from one month to one year.²³ Many families are concerned with the need for their daughters to be virgins when they are married, or worry that they will not be able to marry at all because of the social stigma. As a result, girls are sometimes pressured to be married before the age of eighteen.²⁴

Abortion is also criminalized as a public morality offense, and is not legally permitted in cases of rape or incest, fetal impairment, or for economic or social

21 Constitution of Morocco, accessible at http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/legaldocument/wcms_127076.pdf

22 Constitution, June 17, 2011, Art. 31 (Morocco), unofficial translation available at http://www.ancl-radc.org.za/sites/default/files/morocco_eng.pdf.

23 *Code Pénal* (Penal Code) Dahir No. 1-59-213 (Morocco).

24 Nora Fakim, *Morocco: Should pre-marital sex be legal?*, BBC News: Morocco (Aug. 8, 2012), <http://www.bbc.co.uk/news/world-africa-19049000>.

reasons.²⁵ Consequently, unwed mothers are stigmatized and receive little or no recognition or support from the government.²⁶

Implementation of the reformed Family Code with the 2004 Amendments faces several obstacles in Morocco, due to both social and legal issues. Many judges do not agree with the reformed laws and refuse to enforce them. Complicating the problem is that many lawyers do not know all of the newer provisions. In addition, a large number of women in Morocco are illiterate and consequently do not know their rights under the new laws.²⁷

Despite these reforms and the recent proposed changes to ARTICLE 475, activists argue that not enough is being done to protect Moroccan women and girls. One of the proposed amendments to ARTICLE 475 would distinguish between women who are virgins and those who are not. The “deflowering” of a woman or girl would double the sentence for the perpetrator.²⁸

Marital rape is also not a crime, and domestic violence is widespread, with few consequences for the husband. The domestic violence laws that do exist are rarely enforced due to societal pressures not to interfere with family matters.²⁹ Children forced into marriage at a young age, like Amina Filali, are often vulnerable to domestic abuse. Amina’s parents reported after her suicide that her husband and in-laws had treated her poorly and physically abused her, but, when she went to the police, she was told that they could not do anything to help her.³⁰

The chapter reflects a summary of the jurisdiction’s treatment of child marriage. It also reflects some relevant provisions on the subject of child marriage under the national legal framework, primarily if they have been made publicly available in the English language. The summary does not constitute legal advice under any circumstance.

25 *Code Pénal* (Penal Code) Dahir No. 1-59-213 (Morocco), Art. 449-452 (anyone who performs an abortion can face up to five years of imprisonment and medical professionals could also be barred from exercising their profession).

26 Bordat, *supra* note 14 at 3.

27 Bureau of Democracy, Human Rights and Labor, *Country Reports on Human Rights Practices for 2012: Morocco* (2012), <http://www.state.gov/documents/organization/204586.pdf>.

28 *Morocco to axe law allowing rapists to go free if they marry their victim*, The Guardian (January 23, 2013), <http://www.theguardian.com/world/2013/jan/23/morocco-law-rapists-marry>.

29 Bureau of Democracy, *supra* note 27.

30 *Morocco: Girl’s Death Highlights Flawed Laws*, Human Rights Watch (March 23, 2012), <http://www.hrw.org/news/2012/03/23/morocco-girl-s-death-highlights-flawed-laws>.

PAKISTAN

LEGAL AGE FOR MARRIAGE

AGE OF MARRIAGE

The minimum legal ages of 18 for men and 16 for women were set by the Child Marriage Restraint Act of 1929. A “Child Protection Bill,” proposed by the National Commission for Child Welfare and Development, would raise the federal legal age of marriage for girls from 16 to 18 and is currently under consideration.¹

COMMENTARY

Pakistan is a federal system. Some child protection efforts at the provincial level have been growing in importance in recent years, due to the devolution process initiated by the 18th Amendment, which involves the devolution of multiple federal ministries to the provinces.² For example the government of Khyber Pakhtunkhwa, a province located in the north-west of Pakistan, in 2013 considered a bill to change the minimum marriage age for girls to 18,³ although it was apparently rejected.

Exceptions

No statutory exemptions have been found.

LEGISLATION

Child Marriage Restraint Act, 1929 (XIX of 1929)⁴

AN ACT TO RESTRAINT THE SOLEMNIZATION OF CHILD MARRIAGES

-
- 1 United Nations Children’s Fund (UNICEF), *Situation Analysis of Children and Women in Pakistan* (June 2012), at 85 [hereinafter *UNICEF Situation Analysis*]; *Written Replies by the Government of Pakistan in Connection with the Consideration of the Third and Fourth Periodic Reports of Pakistan*, 52nd Sess., para. 55, U.N. DocCRC/C/PAK/Q/3-4/Add.1 (2009) [hereinafter *CRC Replies*] (stating that in 2009, the Ministry of Religious Affairs was considering raising the minimum age to 18 for girls by amending the Child Marriages Restraint Act 1929).
 - 2 *UNICEF Situation Analysis*, at 86.
 - 3 *To Stop Child Marriage; Bill to Fix Marrying Age for Girls at 18*, DAWN (Dec. 14, 2012).
 - 4 Child Marriage Restraint Act [Pakistan], XIX of 1929, available at: <http://www.refworld.org/docid/4c3f19a02.html>.

PREAMBLE.—Whereas it is expedient to restrain the solemnization of child marriages:

It is hereby enacted as follows:

1. SHORT TITLE, EXTENT AND COMMENCEMENT.

- (1) This Act may be called the Child Marriage Restraint Act, 1929.
- (2) It extends to the whole of Pakistan and applies to all citizens of Pakistan wherever they may be.
- (3) It shall come into force on the first day of April, 1930.

2. DEFINITIONS.

In this Act, unless there is anything repugnant in the subject or context,

- (a) “child” means a person who, if a male, is under eighteen years of age, and if a female, is under sixteen years of age;
- (b) “child marriage” means a marriage to which either of the contracting parties is a child;
- (c) “contracting party” to a marriage means either of the parties whose marriage is or is about to be thereby solemnized;
- (d) “minor” means person of either sex who is under eighteen years of age,
- (e) “Union Council” means the Union Council or the Town Committee constituted under the Law relating to Local Government for the time being in force.

The Majority Act, 1875⁵

1. SHORT TITLE. This Act may be called The Majority Act, 1875.

LOCAL EXTENT. It extends to the whole of Pakistan.

COMMENCEMENT AND OPERATION. And it shall come into force and have effect only on the expiration of three months from the passing thereof.

2. SAVINGS. Nothing herein contained shall effect:

- (a) the capacity of any person to act in the following matters (namely), marriage, dower, divorce and adoption;
- (b) the religion or religious rites and usages of any class of citizens of Pakistan;

3. AGE OF MAJORITY OF PERSONS DOMICILED IN PAKISTAN. Subject as aforesaid, every minor of whose person or property, or both a

⁵ Ali, Ishfaq, *Manual of Family Laws*, 965 (Al Noor Law Book House, 4th ed. 2012) [hereinafter *Manual of Family Laws*], 571.

guardian, other than a guardian for a suit within the meaning of Order 32 of the First Schedule of the Code of Civil Procedure, 1908 (V of 1908) has been or shall be appointed or declared by any Court of Justice before the minor has attained the age of eighteen years, and every minor of whose property the superintendence has been or shall be assumed by any Court of Wards before the minor has attained that age shall, notwithstanding anything contained in the Succession Act, 1925 (XXXIX of 1925) or in any other enactment, his majority when he shall have completed his age of twenty-one years and not before.

Subject as aforesaid, every other person domiciled in Pakistan shall be deemed to have attained his majority when he shall have completed his age of eighteen years, and not before.

The Offence of Zina (Enforcement of Hudood) Ordinance, 1979⁶

2. **DEFINITIONS.** In this Ordinance, unless there is anything repugnant in the subject or context,

- (a) “adult” means a person who has attained, being a male, the age of eighteen years or, being a female, the age of sixteen years, or has attained puberty

COMMENTARY

There are still reported to be many challenges to the passage of legislation that would strengthen protections against child marriage, including opposition from religious leaders.⁷ Though the Majority Act sets the age of majority as eighteen, it explicitly exempts marriage from its purview. Moreover, it has explicitly been held that the words “to act” in section 2 clause (a) include capacity to sue, and therefore a minor Muslim girl cannot sue for dissolution of her marriage without a “next friend.”⁸ Additionally, the Offence of Zina Ordinance defines as an adult a girl who is either age 16 or who has reached puberty, while a boy is an adult at 18 regardless of when he reaches puberty.

6 Offence of Zina (Enforcement of Hudood) Ordinance, 1979 [Pakistan], Ordinance No. VII of 1979, 10 February 1979, available at: <http://www.refworld.org/docid/4db999952.html>.

7 Sadiea Qasim Shah, *Legislation Needed to Stop Child Marriage*, DAWN (June 5, 2013).

8 See *Manual of Family Laws*, 572 (citing PLD 1956 Sind 201).

According to the Pakistan Demographic and Health Survey 2006–07,⁹ 12–13% of women marry before they are 15 and over a third is married by the time they are 18. 1% of girls aged 15–19 begin childbearing at 15 and 23% by 19 years of age.

PENALTIES/CRIMINALIZATION

PUNISHMENT FOR CHILD MARRIAGE

The Child Marriage Restraint Act of 1929 provides for criminal liability for violations of its minimum age requirements for: the husband (if above age 18), persons solemnizing the marriage, and the child's guardian (there is no punishment provided for the girl).¹⁰

Specifically, child marriage is punishable with imprisonment of up to one month, a fine of up to 1,000 rupees (approximately \$10), or both. While the guardian is subject to punishment only if he promotes or permits the marriage to occur or negligently fails to prevent it, there is a presumption that the guardian did behave negligently unless the contrary is proven. The person solemnizing the marriage can escape punishment if he proves that he has reason to believe that the marriage was not a child marriage.¹¹ In practice, the penalties are said to be too low to have any deterrent effect.¹²

Additionally, the Protection of Women Act of 2006 provides that kidnapping or abducting any woman with the intent to compel her to marry any person against her will is punishable with life imprisonment and by fine¹³ and the Prevention of Anti-Women Practice Amendment Act, passed in December 2011, criminalized the giving of a female in marriage to settle a dispute.

The Child Marriage Restraint Act of 1929 does not render the underage marriage invalid, and therefore the marriage with a child can continue with religious and social sanction.¹⁴ Moreover, courts have specifically held that a marriage contracted by a woman who has not attained the age of majority as

9 Pakistan: Demographic and Health Survey, 2006–07 available at: <http://www.measuredhs.com/pubs/pdf/FR200/FR200.pdf>

10 *Manual of Family Laws*, at 965.

11 *Manual of Family Laws*, at 967.

12 Bureau of Democracy, Human Rights and Labor, U.S. Department of State, *Pakistan Country Report on Human Rights Practices* (2012) [hereinafter *2012 Pakistan Country Report*], available at <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm>.

13 *Manual of Family Laws*, 1137.

14 *2012 Pakistan Country Report*; 7 UNICEF *Situation Analysis*; *Manual of Family Laws*

defined in law, but has reached puberty, is valid and not void.¹⁵ Additionally, as discussed below, the Dissolution of Muslim Marriages Act of 1939 prohibits a woman from seeking dissolution of a marriage on the grounds that she was underage at the time of the marriage once the marriage has been consummated and/or once she has reached the age of 18.

LEGISLATION

Child Marriage Restraint Act (XIX of 1929)¹⁶

4. **PUNISHMENT FOR MALE ADULT ABOVE EIGHTEEN YEARS OF AGE MARRYING A CHILD.** Whoever, being a male above eighteen years of age, contracts child marriage shall be punishable with simple imprisonment which may extend to one month, or with fine which may extend to one thousand rupees, or with both.
5. **PUNISHMENT FOR SOLEMNIZING A CHILD MARRIAGE.** Whoever performs, conducts or directs any child marriage shall be punishable with simple imprisonment which may extend to one month or with fine which may extend to one thousand rupees, or with both, unless he proves that he had reason to believe that marriage was not a child marriage.
6. **PUNISHMENT FOR PARENT OR GUARDIAN CONCERNED IN A CHILD MARRIAGE.**
 - (1) Where a minor contracts a child marriage any person having charge of the minor, whether as parent or guardian or in any other capacity, lawful or unlawful, who does any act to promote the marriage or permits it to be solemnized, or negligently fails to prevent it from being solemnized, shall be punishable with simple imprisonment which may extend to one month, or with fine which may extend to one thousand rupees, or with both:

Provided that no woman shall be punishable with imprisonment.
 - (2) For the purpose of this section, it shall be presumed, unless and until the contrary is proved, that where a minor has contracted a child marriage, the person having charge of such minor has negligently failed to prevent the marriage from being solemnized.

15 *Mst Hajra Khatoon and another (Petitioners) v. Station House Officer, Police Station, Fateh Jhang, District Attock and 2 others (Respondent)*, 2005 PLD Lahore, 316; *Allah Bakhsh (Petitioner) v. Safdar and others (Respondent)*, 2006 YLR 2936, Lahore; *Mst. Seema Jatoi (Petitioner) v. Province of Sindh through Secretary Home Department and 2 others (Respondent)*, 2008 YLR 1595, Karachi.

16 Child Marriage Restraint Act [Pakistan], XIX OF 1929, available at: <http://www.refworld.org/docid/4c3f19a02.html>.

12. POWER TO ISSUE INJUNCTION PROHIBITING MARRIAGE IN CONTRAVENTION OF THIS ACT.

- (1) Notwithstanding anything to the contrary contained in this Act, the Court may, if satisfied from information laid before it through a complaint or otherwise that a child marriage in contravention of this Act has been arranged or is about to be solemnized, issue an injunction against any of the persons mentioned in sections 3, 4, 5 and 9 of this Act prohibiting such marriage.
- (2) No injunction under **SUB-SECTION (1)** shall be issued against any person unless the Court has previously given notice to such person, and has afforded him an opportunity to show-cause against the issue of the injunction.
- (3) The Court may either on its own motion or on the application of any person aggrieved, rescind or alter any order made under **SUB-SECTION (1)**.
- (4) Where such an application is received, the Court shall afford the applicant an early opportunity of appearing before it either in person or by pleader, and if the Court rejects the application wholly or in part, it shall record in writing its reasons for so doing.
- (5) Whoever, knowing that an injunction has been issued against him under **SUB-SECTION (1)** of this section disobeys such injunction shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to one thousand rupees, or with both:

Provided that no woman shall be punishable with imprisonment.

The Dissolution of Muslim Marriages Act, 1939¹⁷

2. GROUNDS FOR DECREE FOR DISSOLUTION OF MARRIAGE.

A woman married under Muslim Law shall be entitled to obtain a decree for the dissolution of her marriage on any one or more of the following grounds, namely: ...

- (vii) that she, having been given in marriage by her father or other guardian before she attained the age of sixteen years, repudiated the marriage before attaining the age of eighteen years:

Provided that the marriage has not been consummated...

¹⁷ The Dissolution of Muslim Marriages Act [Pakistan], 1939, available at: <http://www.refworld.org/docid/4c3f1c632.html>.

Prevention of Anti-Women Practices Act, 2011^{18, 19}

310-A. PUNISHMENT FOR GIVING A FEMALE IN MARRIAGE OR OTHERWISE IN BADLA-E-SULH, WANNI OR SWARA. Whoever gives a female in marriage or otherwise compels her to enter into marriage, as badal-esulh, wanni, or swara or any other custom or practice under any name, in consideration of settling a civil dispute or a criminal liability, shall be punished with imprisonment of either description for a term which may extend to seven years but shall not be less than three years and shall also be liable to a fine of five hundred thousand rupees.

498B. PROHIBITION OF FORCED MARRIAGE. Whoever coerces or in any manner whatsoever compels a woman to enter into marriage shall be punished with imprisonment of either description for a term, which may extend to ten years or for a term which shall not be less than three years and shall also be liable to a fine of five hundred thousand rupees.

COMMENTARY

Women and girls are often bought and sold through traditional practices, called *swara* or *vani* (or *wanni*), where a young woman or girl is traded in an arranged marriage as a peace offering between feuding tribes or families.²⁰ While the Prevention of Anti-Women Practice Amendment Act, passed in December 2011, criminalized the giving of a female in marriage to settle a dispute, these practices have continued.²¹ Indeed, these “transactions” are sometimes sanctioned by extra-judicial courts.²² In some cases, the new “husbands” bring the women or young girls across the border into Iran or Afghanistan, where they are forced into prostitution.²³ No definite statistics are available regarding these practices,²⁴ and thus it is not known how many of these involved children.

Similarly, the practice of exchange marriage, known as *watta satta*, which is essentially a swap of brides between two families, continues. Reports indicate that almost 340 such cases occurred in one month of 2012 alone, though it is not clear how many involved children.²⁵ In some particularly tragic incidents, girls and women committed suicide to escape *watta satta* forced marriages.²⁶

18 Pakistan Penal Code amendment (Act XLV of 1860) accessible at: http://www.na.gov.pk/uploads/documents/1329729400_262.pdf

19 Available at: <http://www.isj.org.pk/the-prevention-of-anti-women-practices-act-2011/>

20 UNICEF Situation Analysis, at 92.

21 HRCP Report, at 192.

22 Mahrukh Abbasi, *Watta Satta: A bride for a bride*, The Express Tribune (June 14, 2013), available at <http://tribune.com.pk/story/563054/watta-satta-a-bride-for-a-bride/> (citing the HRCP Report).

23 U.S. Department of State, *Trafficking in Persons Report 2013* [hereinafter *2012 Trafficking Report*], available at <http://www.state.gov/documents/organization/210741.pdf>.

24 UNICEF Situation Analysis, at 92.

25 Mahrukh Abbasi, *Watta Satta: A bride for a bride*, The Express Tribune (June 14, 2013), available at <http://tribune.com.pk/story/563054/watta-satta-a-bride-for-a-bride/> (citing the HRCP Report).

26 *Id.*

PROSECUTIONS FOR CHILD MARRIAGE

COMMENTARY

Prosecution remains a problem.²⁷ It is reported that in at least two instances examined, no punishments were issued in cases brought for violation of the Child Marriage Restraint Act of 1929 because it was determined by a medical examination that the woman had reached puberty.²⁸ Thus, these decisions focused on custom rather than statutory provisions in these cases.

Prosecutions under the Restraint Act are said to be particularly rare in rural and tribal areas. In reality, the central government lacks authority in these regions. Instead, Jirgas and Panchayats still hold sway, which makes implementation of national legislation and criminal law difficult.²⁹

As of the date of this research, five reported cases have been brought involving *swara*, *vani*, and *Budla-e-Sulah*, under the Anti-Women Practices Act.³⁰

The National Commission on the Rights of Children Bill 2009, currently under consideration by the National Assembly, would establish a Commission to effectively coordinate and monitor implementation of the Convention on the Rights of the Child ("CRC"), which Pakistan has ratified.³¹ While not yet clear what direct impact this bill would have on child marriage, it is clear it is a positive step.

27 2012 Pakistan Country Report.

28 *Manual of Family Laws*, at 965–67 (citing 2006 YLR 2936; 2008 YLR 1595).

29 UNICEF *Situation Analysis*, at 93.

30 See *Muhammad Sultan vs. The State* (2013 PCrLJ 950, Peshawar High Court); *Akhtar Ali vs. The State* (2013 PCrLJ 1230, Lahore High Court, Lahore); *Muhammad Murad vs. The State* (2012 PLD 42, Karachi High Court, Sindh); *Mansoor Ahmed vs. The State* (2010 PCrLJ 1661, Karachi High Court, Sindh); *Muhammad Taufique vs. The State* (2007 MLD 832, Lahore High Court, Lahore).

31 UNICEF *Situation Analysis*, at 85.

LAWS WHICH PROMOTE/ENDORSE BRIDE PRICE OR DOWRY INCLUDING ANY REQUIREMENTS FOR REPAYMENT ON DIVORCE

DOWRIES

The Dowry and Bridal Gifts (Restriction) Act of 1976 provides that neither the aggregate value of the dowry³² nor bridal gifts³³ shall exceed five thousand rupees (approximately \$50).³⁴ Dowry and gifts should be registered with the government registrar. Penalties for breaching the law include imprisonment up to six months or a fine. It is not known if there have been any cases under this legislation.

LEGISLATION

Dowry and Bridal Gifts (Restriction) Act, 1976³⁵ ...

2. **DEFINITIONS.** In this Act, unless there is anything repugnant in the subject or context,
 - (a) 'bridal gift' means any property given as a gift before, at or after the marriage, either directly, by the bridegroom or his parents to the bride in connection with the marriage but does not include Mehr;
 - (b) 'dowry' means any property given before, at or after the marriage either directly or indirectly, to the bride by her parents in connection with the marriage but it does not include property which the bride may inherit under the laws of inheritance and succession applicable to her; ...
3. **RESTRICTION ON DOWRY, PRESENTS AND BRIDAL GIFTS.**
 - (1) Neither the aggregate value of the dowry and presents given to the bride by her parents nor the aggregate value of the bridal gifts or of the presents given to the bridegroom shall exceed five thousand rupees.

EXPLANATION. The ceiling of five thousand rupees specified in this sub-section does not in any way imply that the dowry, bridal gifts and presents of a lesser amount may not be given.
 - (2) No dowry, bridal gifts or presents may be given before or after six months of *nikah* and if *rukhsati* takes place sometime after *nikah*, after six months of such *rukhsati*.

32 "Dowry" is defined as property given to the bride by her parents in connection with the marriage.

33 "Bridal gift" is defined as any property given as a gift by the bridegroom or his parents to the bride in connection with the marriage.

34 *Manual of Family Laws*, at 606.

35 *Manual of Family Laws*, at 606.

4. **RESTRICTION ON PRESENTS.** No person shall give to either party to the marriage any present the value of which exceeds one hundred rupees:

Provided that the limit of one hundred rupees shall not apply to the presents given to the bridegroom by the parents of the bride under **SUB-SECTION (1)** of section 3: ...

5. **VESTING OF DOWRY, ETC., IN THE BRIDE.** All property given as dowry or bridal gifts and all property given to the bride as a present shall vest absolutely in the bride and her interest in property however derived shall hereafter not be restrictive, conditional or limited.

6. **EXPENDITURE ON MARRIAGE.** The total expenditure on a marriage, excluding the value of dowry, bridal gifts and presents, but including the expenses on mehndi, baarat and valima, incurred by or on behalf of either party to the marriage shall not exceed two thousand and five hundred rupees. ...

8. **LIST OF DOWRY, ETC. TO BE FURNISHED TO REGISTRAR.**

- (1) The parents of each party to a marriage shall furnish to the Registrar lists of dowry, bridal gifts and presents given or received in connection with the marriage. ...

9. **PENALTY AND PROCEDURE.**

- (1) Whoever, contravenes, or fails to comply with, any provision of this Act or the rules made thereunder, shall be punishable with imprisonment of either description for a term which may extend to six months, or with fine which may extend to ten thousand rupees, or with both, and the dowry, bridal gifts or presents given or accepted in contravention of the provisions of this Act shall be forfeited to the Federal Government to be utilized for the marriage of poor girls in such a way as may be prescribed by rules made under this Act:

Provided that if both the parents of a party to the marriage contravene, or fail to comply with, any provision of this Act or the rules made thereunder, action under this section shall be taken only against the father...

Commentary

UNICEF reports that in practice demand for greater dowry has led to the murder of young married women by their in-laws, including by stove burning.³⁶

36 UNICEF Situation Analysis, at 92.

STATUTORY RAPE LAW AND LAWS THAT CIRCUMVENT THIS THROUGH MARRIAGE

STATUTORY RAPE

Sexual intercourse with a girl under 16 with or without her consent is a criminal offense with severe penalties. Previously, women complaining of rape without being able to prove their case could be liable to a charge of fornication or adultery (“zina”). A welcome change to the law in 2006 expressly provides that no accusation of rape may be converted to a charge of *zina*.³⁷

COMMENTARY

While the Penal Code does not exclude marital rape from its criminal prohibition against rape (nor does Pakistani law explicitly criminalize marital rape), marital rape remains prevalent.³⁸ Moreover, the exception for consummation in the Dissolution of Muslim Marriages Act effectively encourages marital rape of young girls by making it a ground for denying dissolution of the marriage.³⁹ It is not known whether the law against rape of a 16 year old with or without consent has yet been tried in a case of child marriage where the girl was under 16.

LEGISLATION

Pakistan Penal Code⁴⁰

375. RAPE

A man is said to commit rape who has sexual intercourse with a woman under circumstances falling under any of the five following descriptions,

- (i) against her will. ...
- (v) With or without her consent when she is under sixteen years of age.

37 The Offence of *Zina* (Enforcement Of *Hudood*) Ordinance, 1979, Article 5A accessible at: http://www.pakistani.org/pakistan/legislation/zia_po_1979/ord7_1979.html. See also: <http://www.equalitynow.org/node/370#pakistan>

38 Convention on the Elimination of all Forms of Discrimination against Women, *Concluding observations on the fourth periodic report of Pakistan adopted by the Committee at its fifty fourth session* (11 February–1 March 2013), para. 21, U.N. Doc. CEDAW/C/PAK/CO/4 (2013) [hereinafter *CEDAW Concluding Observations*], available at <http://www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW.C.PAK.CO.4.pdf>.

39 Center for Reproductive Rights, *Shadow Report: Supplementary information on Pakistan, scheduled for review by the Committee on the Elimination of Discrimination against Women during its 54th session*, (January 24, 2013), available at http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/CtrForReproductiveRights_Pakistan_ForTheSession_Pakistan_CEDAW54.pdf.

40 Pakistan Penal Code (Act XLV of 1860) accessible at <http://www.pakistani.org/pakistan/legislation/1860/actXLVof1860.html>

376. PUNISHMENT FOR RAPE

- (1) Whoever commits rape shall be punished with death or imprisonment of either description for a term which shall not be less than ten years or more than twenty-five years and shall also be liable to fine.
- (2) When rape is committed by two or more persons in furtherance of common intention of all, each of such persons shall be punished with death or imprisonment for life."

LEGAL REQUIREMENTS FOR REGISTRATION OF BIRTHS AND/OR MARRIAGES

BIRTH REGISTRATION

Notwithstanding the Births, Deaths, and Marriages Registration Act, Pakistan has no universal system of birth registration and its overall birth registration rate is less than a third according to UNICEF.⁴¹ Girl children are less frequently registered than boys.⁴²

MARRIAGE REGISTRATION

All Muslim law marriages must be registered. It is reported that other marriages are registered according to a person's religious group and registration is not always easily obtained. Without a marriage registration certificate, there are reports of difficulties in obtaining property or inheritance, accessing healthcare, being able to obtain a passport etc.⁴³

LEGISLATION

The Births, Deaths and Marriages Registration Act, 1886⁴⁴

19. DUTY OF REGISTRAR TO REGISTER BIRTHS AND DEATHS OF WHICH NOTICE IS GIVEN. Every Registrar of Births and Deaths, on receipt of notice of a birth or death within the local area or among the class for which he is appointed, shall, if the notice is given within the prescribed time and in the prescribed mode by a person

41 UNICEF *Situation Analysis*, at 86.

42 UNICEF *Situation Analysis*, at 86.

43 See for example, <http://www.refworld.org/docid/51222d762.html>

44 The Births, Deaths and Marriages Registration Act, 1886, available at: <http://www.courtmarriage-nikah.com/downloads/4.%20Births,%20Deaths%20and%20Marriages%20Registration%20Act,%201886.pdf>.

authorized by this Act to give the notice, forthwith make an entry of the birth or death in the proper register book:

Provided that:

- (a) if he has reason to believe the notice to be in any respect false, he may refuse to register the birth or death until he receives an order from the Judge of the District Court directing him to make the entry and prescribing the manner in which the entry is to be made ; and
- (b) he shall not enter in the register the name of any person as father of an illegitimate child, unless at the request of the mother and of the person acknowledging himself to be the father of the child.

20. PERSONS AUTHORIZED TO GIVE NOTICE OF BIRTH. Any of the following persons may give notice of a birth, namely:

- (a) the father or mother of the child;
- (b) any person present at the birth;
- (c) any person occupying, at the time of the birth, any part of the house wherein the child was born and having knowledge of the child having been born in the house;
- (d) any medical practitioner in attendance after the birth and having personal knowledge of the birth having occurred;
- (e) any person having charge of the child.

Muslim Family Laws Ordinance, 1961⁴⁵

5. REGISTRATION OF MARRIAGE.

- (1) Every marriage solemnized under Muslim Law shall be registered in accordance with the provisions of this Ordinance.

SCHOOLING

In November 2012, the National Assembly of Pakistan passed the Right to Free and Compulsory Education Act,⁴⁶ which will provide free and compulsory education for all children, boys and girls, from age 5 to 16.⁴⁷ While the bill was meant for schools established by the federal government and within the Islamabad Capital Territory, by referring to **ARTICLE 25-A** of the Constitution,

⁴⁵ Accessible at <http://www.refworld.org/docid/4c3f1e1c2.html>

⁴⁶ Accessible at http://unesco.org.pk/education/documents/Right_to_Ed_Bill/Act-2012_RFCE.pdf

⁴⁷ *NA passes 'right to free and compulsory education bill,'* DAWN (Nov. 2012).

the National Assembly called upon all provincial governments to adopt similar bills as soon as possible, ensuring access to quality education for all school-age children.⁴⁸ There is no explicit exemption in the bill to its compulsory attendance requirement for children who are married.

COMMENTARY

Nevertheless, girls face significant challenges in trying to attend school, as highlighted by the 9 October 2012, attack on Malala Yousufzai, a female teenage activist who was shot by the Taliban.⁴⁹

LEGISLATION

The Right to Free and Compulsory Education Act, 2012⁵⁰

Whereas it is expedient to provide free and compulsory education to all children of the age of five to sixteen years in schools established by the Federal Government and Local Government in Islamabad Capital Territory;

It is hereby enacted as follows:

3. RIGHT TO FREE EDUCATION.

- (1) Every child, regardless of sex, nationality or race, shall have a fundamental right to free and compulsory education in a neighbourhood school...

INTERSECTION BETWEEN CHILD MARRIAGE AND OTHER SOCIAL ISSUES

COMMENTARY

Violence against women remains a widespread problem. Domestic violence is common, yet women and human rights defenders who try to report abuse to authorities face serious challenges. Police and judges often view domestic violence as a family problem and are reluctant to take legal action; instead, they encourage parties to reconcile, and usually return abused women to the abusive family members.⁵¹ Honor killings of women thought to have “dishonored” their

48 Chumman, Khawar, *NA adopts bill on free school education*, DAWN (Nov. 2012).

49 *Malala Shooting Shows Challenge to Girls Education*, DAWN (OCT. 2012).

50 Available at http://unesco.org.pk/education/documents/Right_to_Ed_Bill/Act-2012_RFCE.pdf.

51 *2012 Pakistan Country Report*.

families continue to occur, despite being prohibited by law.⁵² Though many cases go unreported and unpunished, it is thought that hundreds of women were victims of honor killings in 2012.⁵³ According to media monitoring by the Human Rights Commission of Pakistan, up until the end of July, at least 44 women had been targets of acid attacks in 2013, seven of whom had died as a result of their injuries. As many as 44 women had been set on fire, and 11 had died in such attacks. As many as 451 women had been killed in Pakistan in the name of honor in 2013 by the end of July, compared to 918 killed in the year 2012.⁵⁴ Human trafficking, and in particular the commercial sexual exploitation of children, remains widespread as well.⁵⁵

The chapter reflects a summary of the jurisdiction's treatment of child marriage. It also reflects some relevant provisions on the subject of child marriage under the national legal framework, primarily if they have been made publicly available in the English language. The summary does not constitute legal advice under any circumstance.

52 UNICEF *Situation Analysis*, at 97.

53 2012 *Pakistan Country Report*.

54 Human Rights Commission of Pakistan, September 2013, available at <http://hrcp-web.org/hrcpweb/hrcps-concern-over-rising-violence-against-women/>

55 *CRC Replies*, para 52; 2012 *Pakistan Country Report*.

PANAMA

LEGAL AGE FOR MARRIAGE

AGE OF MARRIAGE

The legal age for marriage in Panama is 18 years of age.

Exceptions

With parental or guardian consent, the marriage age can be reduced to 16 for boys and 14 for girls.

LEGISLATION

Codigo de la Familia (Ley No. 3 de 1994)

ARTÍCULO 35. Está prohibido el matrimonio:

- 1. Al menor de dieciocho (18) años, sin el consentimiento previo y expreso de quien ejerza en relación a él la patria potestad o la tutela en su caso.*

ARTÍCULO 33. No pueden contraer matrimonio:

- 1. Los varones menores de 16 años y las mujeres menores de 14 años [...]*

Family Code (unofficial translation)

ARTICLE 35: Marriage is forbidden:

1. Below the age of 18 without the prior express consent of a parent or guardian as appropriate.

ARTICLE 33: Not permitted to contract marriage are :

1. Boys younger than 16 years old and girls younger than 14.

COMMENTARY

The Panamanian government has been open to initiatives, largely spearheaded by foreign governments, to prevent child marriage, and has encouraged U.S. Department of Labor action to prevent child labor, and to undertake USAID HIV/AIDS training, and Peace Corps youth programming to end the effects of de facto child marriage, such as child labor and domestic violence.¹

PENALTIES/CRIMINALIZATION

PUNISHMENT FOR CHILD MARRIAGE

There are no penalties for breach of the minimum marriage age in Panama. If spouses have contracted a marriage before the minimum age, the marriage will be validated automatically once they turn the minimum age provided the couple has lived together and not petitioned the court for the marriage to be declared void and provided the woman has not conceived in this period. In the meantime, the marriage remains valid, but with restrictions on access to property.

COMMENTARY

While the Penal Code does contain a provision punishing with imprisonment anyone who contracts a marriage knowing of any impediment that would otherwise render the marriage null and void, no evidence has been found that would suggest this provision has been invoked to punish child marriage particularly since it does not appear that such marriage would be declared void under the law in any case.

LEGISLATION

Código de la Familia (Ley No. 3 de 1994)

ARTÍCULO 33. *No pueden contraer matrimonio:*

1. *Los varones menores de 16 años y las mujeres menores de 14 años. No obstante, el matrimonio contraído por éstos se tendrá por revalidado ipso facto y sin necesidad de declaratoria expresa, si un día después de haber llegado a la edad mínima legal para contraer matrimonio hubiesen vivido junto sin haber reclamado en juicio contra su validez; o si la mujer hubiese concebido antes de la edad mínima legal para contraer matrimonio o de haberse entablado la reclamación;*²

1 U.S. Department of State, Bureau of Democracy, Human Rights and Labor, *Country Report on Human Rights Practices for 2011*, 19 (2011).

2 *Id.*

ARTÍCULO 36. El matrimonio celebrado con infracción de las prohibiciones del artículo anterior es válido, pero los contrayentes, sin perjuicio de lo que dispone el Código Penal, quedarán sometidos a las siguientes reglas:

Family Code (Ley No. 3 de Mayo de 1994) (unofficial translation)

ARTICLE 33. The following cannot contract a marriage:

1. Boys under 16 and girls under 14. Notwithstanding the above, any marriage contracted by these will be validated ipso facto and without the need for an express declaration if, one day after having turned the minimum legal age for marriage, they had lived together without having petitioned the court for the marriage to be declared invalid; or if the woman has conceived before the legal minimum age for marriage or the petition lodged.

ARTICLE 36. A marriage celebrated in violation of the prohibitions of the preceding article is valid, but the parties, without prejudice to what is stated in the Penal Code, shall be subject to the following rules:

Código Penal de la República de Panamá³

(adoptado por la Ley 14 de 2007 con las modificaciones y adiciones)

ARTÍCULO 209. Quienes contraigan matrimonio a sabiendas de que existe impedimento que cause nulidad absoluta serán sancionados con prisión de seis meses a un año o su equivalente en días-multa o arresto de fines de semana. Si alguno de los contrayentes oculta al otro que existe un impedimento que cause nulidad absoluta, será sancionado con prisión de uno a dos años o su equivalente en días-multa o arresto de fines de semana. Igual sanción se aplicará a quien simule matrimonio con una persona, siempre que perjudique a terceros.

Penal Code of Panama (unofficial translation)

ARTICLE 209: Whosoever contracts marriage knowing there is an impediment to it which would cause its absolute nullity will be punished with imprisonment for six months to a year or its equivalent in fines or weekend detention. If one of the contracting parties hides from the other party that an impediment exists which would cause its absolute nullity, such person will be punished with a prison term of one to two years or its equivalent in fines or weekend detention. The same punishment applies to anyone who fakes a marriage with a person, provided always there is harm to a third party.

3 *Código Penal de la República de Panamá* <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/76183/95064/F330213768/PAN76183.pdf>

PROSECUTIONS FOR CHILD MARRIAGE

None found.

LAWS WHICH PROMOTE/ENDORSE BRIDE PRICE OR DOWRY INCLUDING ANY REQUIREMENTS FOR REPAYMENT ON DIVORCE

DOWRIES

None known.

PROVISIONS IMPEDING / PREVENTING ENDING OF UNDERAGE MARRIAGE

COMMENTARY

None known.

STATUTORY RAPE LAW AND LAWS THAT CIRCUMVENT THIS THROUGH MARRIAGE

STATUTORY RAPE

Carnal knowledge of a child under the age of 14 is punishable by 10–15 years' imprisonment.

Sex gained through a position of advantage with a child aged 14–18 years old is punishable by at least two to four years' imprisonment. However,

no penalties apply if, in order to gain consent by deception, marriage was promised if there is a duly established permanent relationship and the age difference between the couple is no more than five years.

LEGISLATION

Código Penal⁴ (adoptado por la Ley 14 de 2007 con las modificaciones y adiciones)

ARTÍCULO 174. *Quien mediante violencia o intimidación tenga acceso carnal con persona de uno u otro sexo, utilizando sus órganos genitales, será sancionado con prisión de cinco a diez años. También se impondrá esta sanción a quien se haga acceder carnalmente en iguales condiciones.*

Se impondrá la misma pena a quien, sin el consentimiento de la persona afectada, le practique actos sexuales orales o le introduzca, con fines sexuales, cualquier objeto o parte de su cuerpo no genital, en el ano o la vagina. La pena será de ocho a doce años de prisión, en cualesquiera de las siguientes circunstancias:

- 1. Cuando la violación ocasione a la víctima menoscabo de la capacidad psicológica.*
- 2. Cuando el hecho ocasione a la víctima un daño físico que produzca incapacidad superior a treinta días.*
- 3. Si la víctima quedara embarazada.*
- 4. Si el hecho fuera perpetrado por pariente cercano o tutor.*
- 5. Cuando el autor sea ministro de culto, educador o estuviera a cargo, por cualquier título, de su guarda, crianza o cuidado temporal.*
- 6. Si el hecho se cometiera con abuso de autoridad o de confianza.*
- 7. Cuando se cometa con el concurso de dos o más personas o ante observadores.*
- 8. Cuando el acceso sexual se haga empleando medios denigrantes o vejatorios.*

La pena será de diez a quince años, si la violación la comete, a sabiendas de su situación, una persona enferma o portadora de enfermedad de transmisión sexual incurable o del virus de inmunodeficiencia adquirida.

ARTÍCULO 175. *Las conductas descritas en el artículo anterior, aun cuando no medie violencia o intimidación, serán sancionadas con prisión de diez a quince años si el hecho se ejecuta:*

- 1. Con persona que tenga menos de catorce años de edad.*
- 2. Con persona privada de razón o de sentido o que padece enfermedad o tenga discapacidad física o mental que le impida consentir o que, por cualquier otra causa, no pueda resistir el acto.*

4 Código Penal de la República de Panamá <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/76183/95064/F330213768/PAN76183.pdf>

3. *Abusando de su posición, con una persona que se encuentre detenida o confiada al autor para que la custodie o conduzca de un lugar a otro.*
4. *En una persona que por su edad no pueda consentir o resistir el acto.*

ARTÍCULO 176. *Quien, valiéndose de una condición de ventaja, logre acceso sexual con persona mayor de catorce años y menor de dieciocho, aunque medie consentimiento, será sancionado con prisión de dos a cuatro años.*

La sanción será aumentada de un tercio hasta la mitad del máximo:

1. *Cuando el autor sea ministro de culto, pariente cercano, tutor, educador o estuviera a cargo, por cualquier título, de su guarda, crianza o cuidado temporal. No 26519 Gaceta Oficial Digital, lunes 26 de abril de 2010 3031*
2. *Si la víctima resultara embarazada o sufriera contagio de alguna enfermedad de transmisión sexual.*
3. *Si en razón del delito sufrido, se produjera su deserción escolar.*
4. *Cuando, mediante engaño, haya promesa de matrimonio para lograr el consentimiento de la víctima. **No se aplicarán las sanciones señaladas en este artículo cuando entre la víctima y el agente exista una relación de pareja permanente debidamente comprobada y siempre que la diferencia de edad no supere los cinco años.***

Penal Code (unofficial translation)

ARTICLE 174: Whoever uses violence or intimidation to get carnal access to a person of one or the other sex, using his genital organs will be punished with imprisonment of five to ten years [...]

ARTICLE 175: The conduct described in the previous articles, even if no violence or intimidation was used, will be punished with a prison term of 10 to 15 years if it was carried out :

1. With a person younger than 14 years old [...]

ARTICLE 176: Whoever, using a position of advantage, gains sexual access to a person aged between 14 and 18 years old will be punished with a prison term from 2 to 4 years [...]

4. When the perpetrator has used the promise of marriage to gain consent by deception, the punishment provided in this article will not apply when there is a duly established, permanent relationship between the couple, provided that the age difference between them is no more than five years.

CHILD PROTECTION WHEN ESCAPING CHILD MARRIAGE

None known.

LEGAL REQUIREMENTS FOR REGISTRATION OF BIRTHS AND/OR MARRIAGES

BIRTH REGISTRATION

All births should be registered in the civil register.

MARRIAGE REGISTRATION

In order to be married in Panama, the bride and groom must fill out an application for a marriage license before the competent court for the jurisdiction where at least one of the parties lives and provide the court with various certificates. In addition, two witnesses of at least 18 years of age not related to either party must be present at the marriage ceremony.

LEGISLATION

*Codigo de la Familia (Ley No.3 de 1994)*⁵

ARTÍCULO 38. Los que hubieren de contraer matrimonio civil presentarán al funcionario autorizado, del domicilio de cualquiera de ellos, una declaración firmada por ambos interesados, expresiva de su intención de contraer matrimonio, y en la que consten los nombres, apellidos, estado civil, nacionalidad, edad, profesión y domicilio o residencia de los futuros contrayentes y de los padres de éstos.

A esta declaración agregarán los certificados de nacimiento, salud prenupcial y soltería. El certificado de salud prenupcial comprende el examen médico y las pruebas de laboratorio que el Ministerio de Salud estime conveniente, y deberá ser expedido dentro de los quince días anteriores a la fecha del matrimonio, por un médico legalmente autorizado para el libre ejercicio de su profesión. El Ministerio de Salud reglamentará las pruebas de laboratorio y las dará a la publicidad dentro de los dos meses de la entrada en vigencia de este Código.

Cuando los interesados no pudieren presentar los certificados de nacimiento o de soltería, los suplirán con los medios comunes de prueba.

ARTÍCULO 42. El matrimonio se celebrará públicamente compareciendo los contrayentes ante un funcionario autorizado del domicilio de uno de ellos.

5 *Codigo de la Familia* (1994) available at <http://www.biblioteca.jus.gov.ar/Codigo-Familia-Panama.html>

En todos los casos, el acto se verificará en presencia de por lo menos dos testigos mayores de edad, que no estén ligados con ninguno de los contrayentes por parentesco dentro del cuarto grado de consanguinidad o adopción y del segundo grado de afinidad.

ARTÍCULO 68. *Todo funcionario autorizado para celebrar matrimonios es oficial del Registro Civil, y deberá inscribir el matrimonio en el libro respectivo y enviar a la institución registral las actas correspondientes dentro del término que la ley señala.*

Family Code (unofficial translation)

ARTICLE 38: To contract a marriage, the two future spouses have to provide a declaration signed by both of them indicating their intention to be married and showing all [relevant details] of themselves and their parents. To the declaration should be appended copies of birth certificates [...]

ARTICLE 68: All officers authorized to conduct marriage ceremonies are officials of the Civil Registry and must inscribe the marriage in the relevant book [...]

SCHOOLING

COMMENTARY

Compulsory education in Panama begins with preschool, and includes six years of primary school and three years of middle school.⁶ While education is meant to be free until university, tuition fees can be charged at high school, which does not constitute compulsory education.⁷ In practice, therefore, high school is available for children whose families have the economic wherewithal to continue their child's education. The school year runs from April to December and is usually divided into four terms.⁸

LEGISLATION

Compulsory education in Panama begins with preschool, and includes six years of primary school and three years of middle school. While education is meant to be free until university, tuition fees can be charged at high school, which does not constitute compulsory education. In practice, therefore, high school is available for children whose families have the economic wherewithal to continue their child's education. The school year runs from April to December and is usually divided into four terms.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

Constitución política de Panama (1994)⁹

ARTICULO 91. Todos tienen el derecho a la educación y la responsabilidad de educarse.

ARTICULO 95. La educación oficial es gratuita en todos los niveles pre-universitarios. Es obligatorio el primer nivel de enseñanza o educación básica general.

La gratuidad implica para el Estado proporcionar al educando todos los útiles necesarios para su aprendizaje mientras completa su educación básica general.

La gratuidad de la educación no impide el establecimiento de un derecho de matrícula pagada en los niveles no obligatorios.

Political Constitution of Panama (1994) (unofficial translation)

ARTICLE 91. All have the right to an education, and the responsibility to become educated.

ARTICLE 95. Official education is free at all pre-university levels. Primary level or general basic education is compulsory.

Free education obliges the State to furnish students with all supplies necessary for their instruction until they complete their general basic education.

Free education does not prevent a tuition fee at the non-compulsory level.

Ministry of education in Panama, National Consultation (2007)¹⁰

La Educación Básica General es la que se ofrece en el Primer Nivel de Enseñanza. Este tipo de educación es de carácter obligatorio y gratuito para los niñas, niñas y adolescentes entre las edades de 4 a 15 años.

Unofficial translation:

General Basic Education is offered in the first-level education. This kind of education is compulsory and free for children and adolescents between the ages of 4–15 years.

9 Constitution of Panama (1994), available at <http://www.asamblea.gob.pa/main/LinkClick.aspx?fileticket=fDgmRvYW8cY%3D&tabid=123>

10 Ministerio de educación, Proyecto de desarrollo educativo meduca/bid contrato de préstamos CP/1013/OC-PN Dirección Nacional de Currículo Tecnología Educativa, Consultoría Nacional (Trabajo final), “Estudio evaluativo integral de los elementos que inciden en el aprendizaje tales como: articulación entre preescolar, primaria, repetición, deserción y deficiencia en los estudiantes y su correspondencia con la aplicación y contextualización de estudio de los programas de estudio de la educación básica general en la fase de generalización.” Available at http://www.meduca.gob.pa/04unad/DNCYTE/docs/investigacion_EvaEcheverr%C3%ADa.pdf

INTERSECTION BETWEEN CHILD MARRIAGE AND OTHER SOCIAL ISSUES

COMMENTARY

Child marriage intersects with a number of problems which are widespread in Panama. Namely, violence against women, lack of education for women and higher infant mortality rates.

The chapter reflects a summary of the jurisdiction's treatment of child marriage. It also reflects some relevant provisions on the subject of child marriage under the national legal framework, primarily if they have been made publicly available in the English language. The summary does not constitute legal advice under any circumstance.

PAPUA NEW GUINEA (PNG)

LEGAL AGE FOR MARRIAGE

AGE OF MARRIAGE

The legal age for marriage is 18 years of age for boys and 16 years of age for girls.¹ For individuals under the age of 21, consent by both parents or a judge or magistrate is required.²

Exceptions

The legal age of marriage is reduced to 16 years of age for boys and 14 years of age for girls if the minor concerned applies for a court order authorizing him or her to marry a particular person of marriageable age.³ Such orders should only be granted in exceptional circumstances. However, marriages according to the customs of the group or groups to which the parties to the marriage belong are permitted.⁴ The marriageable age limits do not apply to such customary marriages.⁵ There is no set minimum age for customary marriages as this is dictated by physical maturity rather than chronological age.⁶ The government reported in 2009 girls as young as 13 and 14 entering into marriages arranged by parents, other family members, or village chiefs on behalf of the families.⁷ Consent of the child is irrelevant because her parents arrange the marriage for her.⁸

1 PNG Marriage Act, § 7 (1963).

2 PNG Marriage Act, §§ 8, 9 (1963).

3 PNG Marriage Act, § 7.

4 PNG Marriage Act, § 3 (1963).

5 PNG Marriage Act, § 6 (1963).

6 UN Comm. on the Elimination of Discrimination Against Women (CEDAW), *Consideration of reports submitted by States parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women: combined initial, 2nd and 3rd periodic report of States parties: Papua New Guinea*, 95, CEDAW/C/PNG/3 (May 22, 2009).

7 *Id.*

8 *Id.*

LEGISLATION

PNG Marriage Act (1963)

§ 7: MARRIAGEABLE AGE.

1. Subject to this section
 - (a) a male person is of marriageable age if he has attained the age of 18 years; and
 - (b) a female person is of marriageable age if she has attained the age of 16 years.
2. A male person who has attained the age of 16 years but has not attained the age of 18 years, or a female person who has attained the age of 14 years but has not attained the age of 16 years, may apply to a Judge or Magistrate for an order authorizing him or her to marry a particular person of marriageable age.
3. The Judge or Magistrate shall hold an inquiry into the relevant facts and circumstances and, if he is satisfied that
 - (a) the applicant has attained
 - (i) in the case of a male person—the age of 16 years; or
 - (ii) in the case of a female person—the age of 14 years; and
 - (a) the circumstances of the case are so exceptional and unusual as to justify the making of the order,he may, in his discretion, make the order sought, but otherwise he shall refuse the application.
4. Subject to [SUBSECTION \(7\)](#), where a Judge or Magistrate has made an order under [SUBSECTION \(3\)](#) the person on whose application the order was made is, in relation to his or her marriage to the other person specified in the order, but not otherwise, of marriageable age.
5. Where a Judge or a Magistrate to whom an application is made under [SUBSECTION \(2\)](#) is satisfied that the matter could more properly be dealt with by a Judge or a Magistrate sitting at a place nearer the place where the applicant ordinarily resides, he may, in his discretion, refuse to proceed with the hearing of the application.
6. For the purposes of Section 14, a refusal under [SUBSECTION \(5\)](#) shall not be deemed to be a refusal of the application.
7. Where an order is made under [SUBSECTION \(3\)](#) and the marriage to which the order relates does not take place within three months after the date of the order, the order ceases to have effect.

§ 8: CONSENT TO MARRIAGE OF MINOR.

1. Subject to this Part, where a party to an intended marriage
 - (a) is a minor; and

- (b) has not previously been married,
the marriage shall not be solemnized, unless there is produced to the person by whom or in whose presence the marriage is solemnized
 - (c) in respect of each person whose consent is required by this Act to the marriage of the minor (other than a person to whom Paragraph (d) is applicable)
 - (i) the written consent of the person, duly witnessed and dated not earlier than three months before the date on which the marriage is solemnized or, in such cases as are prescribed, such other evidence that the consent of that person to the intended marriage has been given not earlier than such time as the regulations declare to be sufficient for the purposes of this section; or
 - (ii) an effective written consent of a Judge or Magistrate under this Part in place of the consent of that person; or
 - (d) in respect of a person whose consent to the marriage of the minor has been dispensed with by a prescribed authority — the written dispensation signed by the prescribed authority.
2. For the purposes of Subsection (1), the consent of a person is duly witnessed if his signature was witnessed
- (a) in the case of a consent signed in Papua New Guinea—by an authorized celebrant, Commissioner for Declarations, justice, lawyer, medical practitioner or commissioned officer of the Police Force; or
 - (b) in the case of a consent signed in Australia—by a person who is a competent witness to a consent under Section 13 of the Marriage Act 1961 of Australia, as in force from time to time; or
 - (c) in the case of a consent signed in any other place — by a diplomatic officer or consular officer, a judge of a court of that place, a magistrate or justice of the peace of or for that place, or a notary public.
3. A person shall not subscribe his name as a witness to the signature of a person to a consent to a marriage unless
- (a) he is satisfied on reasonable grounds as to the identity of the person; and
 - (b) the consent bears the date on which he subscribes his name as a witness.
4. A person shall not solemnize a marriage if he has reason to believe that
- (a) a person, whose written consent to the marriage of one of the parties is or has been produced for the purposes of this section, has revoked his consent; or
 - (b) the signature of a person to a consent produced for the purposes of this section is forged or has been obtained by fraud; or
 - (c) a consent produced for the purposes of this section has been altered in a material particular without authority; or
 - (d) a dispensation with the consent of a person that has been produced in relation to the marriage has ceased to have effect.

§ 9: PERSONS WHOSE CONSENT IS REQUIRED.

1. The person or persons whose consent is required by this Act to the marriage of a minor shall, subject to this section, be ascertained by reference to Schedule 1 according to the facts and circumstances existing in relation to the minor.
2. For the purposes of Schedule 1
 - (a) a minor is an adopted child if he was adopted under—
 - (i) the law of Papua New Guinea; or
 - (ii) the law of any other place; and
 - (b) a minor born illegitimate whose parents subsequently married each other is the legitimate child of his parents.
3. Where an Act provides that a person specified in the Act is to be, or is to be deemed to be, the guardian of a minor, to the exclusion of a parent or other guardian of the minor, that person is the person whose consent is required by this Act to the marriage of the minor.
4. Where, under a law, a person specified in the law is, or is to be deemed to be, a guardian of a minor in addition to the parents or other guardian of the minor, the consent of that person is required to the marriage of the minor in addition to the consent of the person or persons ascertained in accordance with Schedule 1.

§ 3: CUSTOMARY MARRIAGES.

1. Notwithstanding the provisions of this Act or of any other law, a native, other than a native who is a party to a subsisting marriage under Part V. may enter, and shall be deemed always to have been capable of entering, into a customary marriage in accordance with the custom prevailing in the tribe or group to which the parties to the marriage or either of them belong or belongs.
2. Subject to this Act, a customary marriage is valid and effectual for all purposes.

§ 6 (1963):

1. This Part applies, notwithstanding any common law rule of private international law, in relation to marriages under Division V.2.
2. Section 7 and, so far as they have application in relation to that section, Sections 13 and 14 apply in relation to
 - (a) marriages to which Division V.3 applies; and
 - (b) the marriage of a person domiciled in the country, wherever it takes place.
3. This Part does not apply to customary marriages.

PENALTIES/CRIMINALIZATION

PUNISHMENT FOR CHILD MARRIAGE

Marrying a person not of marriageable age is a criminal offence, punishable by a prison term of up to five years, unless the offender can prove ignorance of the actual age of the minor. Conducting a marriage ceremony with a minor is also a criminal offence unless the minor had been previously married or the relevant consents obtained or the defendant believed these to be the case. Again, customary marriages are exempt from these provisions.

LEGISLATION

PNG Marriage Act (1963)

§ 58: MARRYING PERSON NOT OF MARRIAGEABLE AGE, ETC.

1. Subject to [SUBSECTION \(3\)](#), a person who goes through a form or ceremony of marriage with a person who is not of marriageable age is guilty of an offence.

PENALTY: Imprisonment for a term not exceeding five years.
2. Subject to [SUBSECTION \(4\)](#), a person must not go through a form or ceremony of marriage with a person (in this subsection referred to as “the other party to the marriage”) who is a minor unless
 - (a) the other party to the marriage has previously been married; or
 - (b) the written consent of the person, or of each of the persons, whose consent to the marriage of the other party to the marriage is required by this Act has been given or dispensed with in accordance with this Act.

PENALTY: A fine not exceeding K400.00 or imprisonment for a term not exceeding six months.
3. It is a defence to a charge of an offence against Subsection (1) if the defendant proves that he believed on reasonable grounds that the person with whom he went through the form or ceremony of marriage was of marriageable age.
4. It is a defence to a charge of an offence against Subsection (2) if the defendant proves that he believed on reasonable grounds–
 - (a) that the person with whom he went through the form or ceremony of marriage had attained the age of 21 years, or had previously been married; or
 - (b) that the consent of the person, or of each of the persons, referred to in Subsection (2)(b) had been given or dispensed with in accordance with this Act.
5. This section does not apply to or in relation to a customary marriage where the custom applying to the marriage recognizes it as being valid.

PROSECUTIONS FOR CHILD MARRIAGE

The Office of the Public Prosecutor has confirmed that it does not have any records of prosecution of a person breaching the minimum age for marriage.

LAWS WHICH PROMOTE/ENDORSE BRIDE PRICE OR DOWRY INCLUDING ANY REQUIREMENTS FOR REPAYMENT ON DIVORCE

DOWRIES

There is no specific statute law promoting or endorsing bride price or dowry.

COMMENTARY

Bride price is a customary practice and continues to be practiced widely in PNG, particularly in the Highlands and Papuan Coastal societies.⁹ It is reported that girls are often sold into forced marriages to pay family debts and compelled into domestic service.¹⁰ Men often feel that because they have paid the bride-price that they own their wives and thus feel entitled to control and abuse them.¹¹ Families who have received the payment of a bride-price are reluctant to provide support to abused women or receive them back into the family home because the family will have to return the bride price.¹² Case studies also show girls having been given in marriage for failure to pay bride price in relation to a different marriage i.e. to settle a perceived debt.

LEGISLATION

Schedule 2.3 of the Constitution of the Independent State of Papua New Guinea recognizes custom as part of the underlying law in Papua New Guinea and gives the courts ways of developing the underlying law of which includes custom.

9 CEDAW, *Consideration of reports submitted by States parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women: combined initial, 2nd and 3rd periodic report of States parties: Papua New Guinea*, 49, CEDAW/C/PNG/3 (May 22, 2009).

10 U.S. State Dep't, *Papua New Guinea 2012 Human Rights Report*, 14 (2013); U.S. State Dep't, *Trafficking in Persons Report*, 295 (June 2013).

11 UN Human Rights Council, *Report of the Special Rapporteur on violence against women, its causes and consequences, Addendum: Mission to Papua New Guinea*, ¶ 21, A/HRC/23/49/Add.2 (Mar. 18, 2013); *Papua New Guinea: Police Cite Bride Price Major Factor in Marital Violence* (Nov. 11, 2011), <http://www.violenceisnotourculture.org/News-and-Views/papua-new-guinea-police-cite-bride-price-major-factor-marital-violence>.

12 *Id.*

STATUTORY RAPE LAW AND LAWS THAT CIRCUMVENT THIS THROUGH MARRIAGE

RAPE/STATUTORY RAPE

“Sexual penetration” of a child under 16 years of age is a crime punishable by imprisonment of up to 25 years and of a child under 12 years of age is a crime punishable by up to life imprisonment.¹³ Where the perpetrator has a relationship of “trust, authority or dependency” with the child, the punishment is increased to up to life imprisonment.¹⁴ Sexual contact with a child under 16 years of age is a crime punishable by up to seven years of imprisonment and with a child under 12 years of age is a crime punishable by up to 12 years of imprisonment.¹⁵ Where the perpetrator has a relationship of “trust, authority or dependency” with the child, the punishment is increased to up to 12 years of imprisonment.¹⁶ Consent of the child is not a defense because the law does not recognize that a child under 16 has the capacity to give consent; unless the child is 12 or older and the accused no more than 2 years older than the child; or the accused reasonably believed the child to be over 16.

The Criminal Code provides a defense to the crime of sexual contact with a child if the child is over 14 and the perpetrator was married to the child.¹⁷

COMMENTARY

It is reported that when a girl is raped, in some communities she may be married off to the perpetrator in exchange for a bride price. This practice does not appear to be pursuant to statute.¹⁸

LEGISLATION

Criminal Code

DIVISION 2A.—SEXUAL OFFENCES AGAINST CHILDREN;

229A. SEXUAL PENETRATION OF A CHILD.

1. A person who engages in an act of sexual penetration with a child under the age of 16 years is guilty of a crime.

¹³ PNG Crim. Code § 229A (1974, as amended 2002).

¹⁴ *Id.*

¹⁵ PNG Crim. Code § 229B (1974, as amended 2002).

¹⁶ *Id.*

¹⁷ PNG Crim. Code § 229G (1974, as amended 2002).

¹⁸ Papua New Guinea: *Sexual violence forcing girls out of school* (April 6, 2012), <http://www.irinnews.org/report/95249/papua-new-guinea-sexual-violence-forcing-girls-out-of-school>.

PENALTY: Subject to **SUBSECTIONS (2) and (3)**, imprisonment for a term not exceeding 25 years.

2. If the child is under the age of 12 years, an offender against **SUBSECTION (1)** is guilty of a crime, and is liable, subject to Section 19, to imprisonment for life.
3. If, at the time of the offence, there was an existing relationship of trust, authority or dependency between the accused and the child, an offender against **SUBSECTION (1)** is guilty of a crime, and is liable, subject to **SECTION 19**, to imprisonment for life.

229B. SEXUAL TOUCHING.

1. A person who, for sexual purposes
 - (a) touches, with any part of his or her body, the sexual parts of a child under the age of 16 years; or
 - (b) compels a child under the age of 16 years to touch, with any part of his or her body, the sexual parts of the accused person's own body,is guilty of a crime.

PENALTY: Subject to **SUBSECTIONS (4) and (5)**, imprisonment for a term not exceeding seven years.

2. For the purposes of this section, "sexual parts" include the genital area, groin, buttocks or breasts of a person.
3. For the purposes of this section, a person touches another person if he touches the other person with his body or with an object manipulated by the person.

If the child is under the age of 12 years, an offender under **SUBSECTION (1)** is guilty of a crime, and is liable to imprisonment for a term not exceeding 12 years.

4. If, at the time of the offence, there was an existing relationship of trust, authority or dependency between the accused and the child, an offender against **SUBSECTION (1)** is guilty of a crime, and is liable to imprisonment for a term not exceeding 12 years.

229C. INDECENT ACT DIRECTED AT A CHILD.

1. A person who commits an indecent act directed at a child under the age of 16 years is guilty of a crime.

PENALTY: Subject to **SUBSECTIONS (2) and (3)**, imprisonment for a term not exceeding five years.

2. If the child is under the age of 12 years, an offender under **SUBSECTION (1)** is guilty of a crime, and is liable to imprisonment for a term not exceeding seven years.
3. If, at the time of the offence, there was an existing relationship of trust, authority or dependency between the accused and the child,

an offender against **SUBSECTION (1)** is guilty of a crime, and is liable to imprisonment for a term not exceeding seven years.

229D. PERSISTENT SEXUAL ABUSE OF A CHILD.

1. A person who, on two or more occasions, engages in conduct in relation to a particular child that constitutes an offence against this Division, is guilty of a crime of persistent sexual abuse of a child.

PENALTY: Subject to **SUBSECTION (6)**, imprisonment for a term not exceeding 15 years.

2. for the purposes of **SUBSECTION (1)**, it is immaterial whether or not the conduct is of the same nature, or constitutes the same offence, on each occasion.
3. In proceedings related to an offence against this Section, it is not necessary to specify or prove the dates or exact circumstances of the alleged occasions on which the conduct constituting the offence occurred.
4. A charge of an offence against this section
 - (a) must specify with reasonable particularity the period during which the offence against this section occurred; and
 - (b) must describe the nature of the separate offences alleged to have been committed by the accused during that period.
5. For an accused to be committed of an offence against this section
 - (a) the court must be satisfied beyond reasonable doubt that the evidence establishes at least two separate occasions, occurring on separate days during the period concerned, on which the accused engaged in conduct constituting an offence against this Division in relation to a particular child; and
 - (b) the court must be so satisfied about the material facts of the two incidents, although the court need not be so satisfied about the dates or the order of those occasions.
6. If one of more of the occasions involved an act of penetration, an offender against **SUBSECTION (1)** is guilty of a crime and is liable, subject to Section 19, to life imprisonment.

229E. ABUSE OF TRUST, AUTHORITY OR DEPENDENCY.

1. A person who engages in an act of sexual penetration or sexual touching of a child between the ages of 16 and 18 years with whom the person has an existing relationship of trust, authority or dependency is guilty of a crime.

PENALTY: Imprisonment for a term not exceeding 15 years.

2. It is not a defence of a charge under this section that the child consented unless, at the time of the alleged offence, the accused believed on reasonable grounds that the child was aged 18 years or older.

229F. CONSENT NO DEFENCE.

Subject to Section 229E, it is not a defence to a charge under this Division that the child consented unless, at the time of the alleged offence

- (a) the accused believed on reasonable grounds that the child was aged 16 years or older; or
- (b) the child was aged 12 years or older, and the accused was no more than two years older than the child.

229G. DEFENCE – MARRIAGE.

A person is not criminally responsible for an offence against this Division in respect of an act if, at the time of the act, the child was of or over the age of 14 years and the person was married to the child.

229H. CORROBORATION NOT REQUIRED.

On a charge of an offence against any provision of this Division, a person may be found guilty on the uncorroborated testimony of one witness, and a Judge shall not instruct himself or herself that it is unsafe to find the accused guilty in the absence of corroboration.

CHILD PROTECTION WHEN ESCAPING CHILD MARRIAGE

There is no specific statute which provides child protection mechanisms for girls escaping from child marriage.

The Lukautim Pikinini Act 2009 – Section 27 (d) provides that “the Director of Lukautim Pikinini is responsible for helping communities to set up programs for the protection of children and for the prevention or reduction of the incidence of abuse.”¹⁹

As yet there are no specific safe havens established for girls escaping from child marriages.

COMMENTARY

In rural areas, where customary law of the tribe or clan is prominent there is often no option for the girls escaping from child marriages but to return to their families which marry them off. Such situations can cause tensions between tribes and clans often resulting in tribal warfare and a compensation demand from the husband’s clan/tribe.

19 Section 27(d), Lukautim Pikinini Act 2009

LEGAL REQUIREMENTS FOR REGISTRATION OF BIRTHS AND/OR MARRIAGES

BIRTH REGISTRATION

Birth registration is not currently compulsory in all parts of Papua New Guinea.

COMMENTARY

In 2006, Papua New Guinea began a program to register births within the health system and to register the births of all school children.²⁰ The process for birth registration takes a long time and there have been instances where applications have been lost in the process. It is most unlikely that children born in rural areas where there are no adequate health services or government services are registered. In these instances, it is difficult to ascertain the actual ages for children, especially if the parents are uneducated. Most Papua New Guineans do not know their birth dates and in most cases often give a guesstimate of their age and date of birth.

MARRIAGE REGISTRATION

All marriages must be registered.²¹

LEGISLATION

Civil Registration Act

PART IV. REGISTRATION OF BIRTHS;

23. INTERPRETATION OF PART IV.

1. In this Part, unless the contrary intention appears
 - » “birth” includes the still-birth of a child that occurred not more than two years before the production of the prescribed particulars of the still-birth;
 - » “parent”, in relation to a legitimate child, means the father or mother of the child, and, in relation to an illegitimate child, means the mother of the child.
2. Where a child is not born in prescribed premises but is admitted to prescribed premises apparently within seven days after its birth, this Part applies as if the child had been born in those premises.

20 UNICEF, *Good Practices in Integrating Birth Registration into Health Systems* (2000-2009) 13 (Jan. 2010), available at [http://www.unicef.org/protection/Birth_Registration_Working_Paper\(2\).pdf](http://www.unicef.org/protection/Birth_Registration_Working_Paper(2).pdf); *Government launches national Birth Registration Campaign* (July 11, 2006), http://www.unicef.org/png/media_4123.html.

21 PNG Marriage Act § 45 (1963); CEDAW, “Legislative Compliance of Papua New Guinea”, in *Translating CEDAW into Law: CEDAW Legislative Compliance in Nine Pacific Island Countries*, 267, 28 (2008).

24. OCCUPIERS OF PRESCRIBED PREMISES TO MAKE RETURN OF BIRTHS.

The occupier of prescribed premises, other than a vessel or aircraft, shall, once in every month, make and forward to the Registrar in the prescribed form a return of all births that have occurred on the premises since the making of the previous return, or in the case of a first return a return of all births that have occurred since the premises were established as prescribed premises.

25. BIRTHS REQUIRED TO BE REGISTERED.

1. A person referred to in Section 17 shall give to the Registrar, and subject to Sections 27 and 31 the Registrar shall register, the prescribed particulars of the birth of a child that is born in a compulsory registration area or on prescribed premises on or after the date of publication of the notice under Section 12(1) relating to that area or those premises.
2. A parent of a child shall comply with this section within three months after the date of birth of the child, or within such time before the expiration of three months from the date of birth of the child as the Registrar in writing requires.
3. A person referred to in Section 17, other than a parent, shall comply with this section within such time as the Registrar in writing requires.

26. REGISTRATION OF BIRTHS.

Subject to Section 27, the Registrar may, in his discretion and notwithstanding Section 25, register the birth of

- (a) a child born at any time and at any place in the country; or
- (b) a child born outside the country if
 - (i) the birth is not registered under a law of a State or Territory of Australia; and
 - (ii) the child is residing in the country with a parent or, in the case of a child that is dead, the child was so residing at the time of its death; and
 - (iii) the child had not attained the age of two years when it commenced to reside in the country.

27. DELAYED REGISTRATION.

The Registrar may direct an informant of the birth of a child that occurred more than one year before the production of the prescribed particulars to apply to a Magistrate of a District Court for his consent to the registration of the birth.

28. REGISTRATION OF BIRTH AND STATUS OF ILLEGITIMATE CHILD.

The particulars of the father of an illegitimate child shall not be shown in the form prescribed for registering particulars of birth or entered in a register of births unless

- (a) the mother gives the prescribed particulars
 - (i) of the birth of the child; and
 - (ii) of the father;and the father also
 - (iii) gives those particulars; or
 - (iv) acknowledges or has acknowledged, in writing, that he is the father of the child; or
- (b) the Registrar is satisfied that the mother is dead or is otherwise incapable of giving the prescribed particulars, and
 - (i) the father gives the prescribed particulars of the birth of the child, including his own particulars; or
 - (ii) any person who satisfies the Registrar that he is acquainted with the facts gives the prescribed particulars and the father acknowledges or has acknowledged, in writing, that he is the father of the child; or
- (c) Magistrate of a District Court, on application, gives his consent to particulars of the father being entered in a register of births.²²

PNG Marriage Act (1963)

§ 45: MARRIAGE CERTIFICATES.

1. Where an authorized celebrant solemnizes a marriage, he shall–
 - (a) prepare a certificate of the marriage, in the prescribed form, for the purpose of issue to the parties to the marriage; and
 - (b) prepare two official certificates of the marriage in the prescribed form.
2. Immediately after the solemnization of the marriage, the authorized celebrant, each of the parties to the marriage and two witnesses of the marriage who are, or appear to the authorized celebrant to be, over the age of 16 years shall sign each of the certificates prepared under Subsection (1).
3. One of the official certificates shall be on the reverse side of the paper bearing the declarations made by the parties under Section 37.
4. The authorized celebrant shall–
 - (a) hand the certificate referred to in Subsection (1)(a) to one of the parties to the marriage, on behalf of the parties; and

22 Sections 23–28, Part V – Registration of Births, Civil Registration Act

- (b) forward the official certificate referred to in Subsection (3), together with the notice under Section 37 and any statutory declarations, consents and dispensations with consents relating to the marriage that are in his possession, to the Registrar-General; and
 - (c) retain the other official certificate and deal with it as prescribed.
5. Where
- (a) the authorized celebrant dies without having prepared and signed the certificates of the marriage; or
 - (b) by reason of other special circumstances the Minister thinks it necessary to do so,
- the Minister may, if he is satisfied that a marriage was duly solemnized, prepare and sign the certificates with such modifications as are appropriate.
6. A certificate by the Minister under Subsection (5) has the same force and effect as if it had been prepared and signed, in accordance with this section, by the authorized celebrant.
7. The regulations may make provision for and in relation to the furnishing of a substitute certificate in the event of the loss or destruction of a certificate previously forwarded under this section in respect of a marriage.

SCHOOLING

COMMENTARY

Primary education is not compulsory in PNG.²³ The PNG government adopted a plan in 2009 to phase out school fees by 2015.²⁴ According to the U.S. State Department, the government abolished school fees for students up to grade 10 in 2011 and introduced subsidies for students in grades 11 and 12, and for post-secondary education.²⁵ Primary school enrollment for girls was 56.5% in 2008 and for boys 63.4%.²⁶ However, the completion rate for primary school was 33% for girls and 43% for boys.²⁷ It is reported that high rates of sexual violence, sexual harassment in schools, commercial exploitation and early

23 U.S. State Dep't, *Papua New Guinea 2012 Human Rights Report*, 14 (2013).

24 Papua New Guinea: *Sexual violence forcing girls out of school* (April 6, 2012), <http://www.irinnews.org/report/95249/papua-new-guinea-sexual-violence-forcing-girls-out-of-school>.

25 U.S. State Dep't, *Papua New Guinea 2012 Human Rights Report*, 14 (2013).

26 The World Bank, *World DataBank*, <http://databank.worldbank.org/data/home.aspx> (last accessed June 28, 2013).

27 CEDAW, *Consideration of reports submitted by States parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women: combined initial, 2nd and 3rd periodic report of States parties: Papua New Guinea*, 17, CEDAW/C/PNG/3 (May 22, 2009).

marriage interfere with girls' education.²⁸ Girls are often kept at home because it is assumed that they will become homemakers.²⁹ There is no prohibition on expulsion of pregnant girls and many girls face expulsion upon pregnancy.³⁰

INTERSECTION BETWEEN CHILD MARRIAGE AND OTHER SOCIAL ISSUES

COMMENTARY

Domestic and sexual violence against women and girls is a rampant problem in PNG. PNG has one of the highest rates of sexual violence in the world.³¹ Government commissioned studies in the 1980s revealed that two-thirds of married women experienced domestic violence.³² Studies in the 1990s found that 55% of women interviewed had been forced to have sex against their will and half of married women said their husbands used beatings or threats to force them into sex.³³ Half of all reported victims of sexual abuse are under 15.³⁴ One in 5 assault victims are between 16 and 20.³⁵ Despite the high rates of gender-based violence, there is no specific legislation criminalizing domestic violence.³⁶ Instead, domestic violence is prosecuted under the Criminal Code.³⁷ The charges that can be brought under the Criminal Code are either common assault,

-
- 28 U.S. State Dep't, *Papua New Guinea 2012 Human Rights Report*, 14 (2013); *Sexual violence forcing girls out of school* (April 6, 2012), <http://www.irinnews.org/report/95249/papua-new-guinea-sexual-violence-forcing-girls-out-of-school>; CEDAW, *Consideration of reports submitted by States parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women: combined initial, 2nd and 3rd periodic report of States parties: Papua New Guinea*, 66, CEDAW/C/PNG/3 (May 22, 2009).
- 29 CEDAW, *Consideration of reports submitted by States parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women: combined initial, 2nd and 3rd periodic report of States parties: Papua New Guinea*, 66, CEDAW/C/PNG/3 (May 22, 2009).
- 30 CEDAW, *Consideration of reports submitted by States parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women: combined initial, 2nd and 3rd periodic report of States parties: Papua New Guinea*, 66, CEDAW/C/PNG/3 (May 22, 2009).
- 31 UNICEF, *UNICEF strives to help Papua New Guinea break cycle of violence* (Aug. 14, 2008), http://www.unicef.org/infobycountry/papuang_45211.html.
- 32 Medecins sans Frontieres, *Hidden & Neglected: The Medical & Emotional Needs of Survivors of Family & Sexual Violence in Papua New Guinea*, 9 (2011), available at http://www.msf.org.au/uploads/media/MSF_PNG_Hidden_and_Neglected_2011.pdf.
- 33 Medecins Sans Frontieres, *Hidden & Neglected: The Medical & Emotional Needs of Survivors of Family & Sexual Violence in Papua New Guinea*, 9 (2011), available at http://www.msf.org.au/uploads/media/MSF_PNG_Hidden_and_Neglected_2011.pdf.
- 34 CEDAW, *Consideration of reports submitted by States parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women: combined initial, 2nd and 3rd periodic report of States parties: Papua New Guinea*, 18, CEDAW/C/PNG/3 (May 22, 2009).
- 35 CEDAW, *Consideration of reports submitted by States parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women: combined initial, 2nd and 3rd periodic report of States parties: Papua New Guinea*, 18, CEDAW/C/PNG/3 (May 22, 2009).
- 36 Ellsberg, M. et al., *Violence Against Women in Melanesia and Timor-Leste: Progress Made Since the 2008 Office of Development Effectiveness Report*, 21 (2012).
- 37 Ellsberg, M. et al., *Violence Against Women in Melanesia and Timor-Leste: Progress Made Since the 2008 Office of Development Effectiveness Report*, 21 (2012).

punishable by up to six months in prison or aggravated assault, punishable by up to twelve months in prison.³⁸ In June 2011, a draft Family Planning Law, intended to criminalize domestic violence, was sent to the attorney general's office, but has yet to be sent to the National Parliament for a vote.³⁹ Rape, including marital rape, is a crime punishable by imprisonment for 15 years to life.⁴⁰ While prison sentences are imposed on convicted perpetrators, few are apprehended.⁴¹ Moreover, the legal system permits village chiefs to negotiate material compensation in lieu of criminal prosecution.⁴² Section 19 of the Criminal Code provides that "a person liable to imprisonment may be sentenced to pay a fine not exceeding K2,000.00 [\$777] in addition to, or instead of, imprisonment."

Bigamy is prohibited under the Marriage Act of 1963 and the Criminal Code, punishable with a prison term of up to 5 years; however, it does not apply to customary marriages.⁴³ Young girls are often entered into polygamous marriages.⁴⁴ Girls in polygamous marriages are often forced into domestic service for their husbands' extended families.⁴⁵

Marital rape was criminalized in 2002 with the passage of amendments to the Criminal Code and Evidence Act, both passed by Parliament in 2002.⁴⁶ Only two cases have reportedly been prosecuted since the enactment a decade ago.⁴⁷

Girls between 15 and 19 are infected with HIV/AIDS at four times the rate of boys of the same age.⁴⁸ It is thought that the source of infections are men who do not know yet that they are infected and seek young girls whom they believe are not yet infected.⁴⁹

The United Nations reports based on 1996 data that 21% of girls between 15 and 19 years of age were married, divorced or widowed. In 1980, 13% of girls aged between 15 and 19 were married, divorced or widowed which indicates that societal acceptance of early marriage has increased in recent decades.⁵⁰ UNICEF reports that early marriage is more common in rural areas, compared to urban areas on PNG.⁵¹

38 U.S. State Dep't, *Papua New Guinea 2012 Human Rights Report*, 12 (2013).

39 Human Rights Watch, *World Report*, 354 (2013).

40 PNG Crim. Code § 347 (1974, as amended 2002).

41 U.S. State Dep't, *Papua New Guinea 2012 Human Rights Report*, 12 (2013).

42 U.S. State Dep't, *Papua New Guinea 2012 Human Rights Report*, 12 (2013).

43 PNG Marriage Act, § 57 (1963); PNG Crim. Code, § 360 (1974).

44 U.S. State Dep't, *Papua New Guinea 2012 Human Rights Report*, 14 (2013).

45 U.S. State Dep't, *Trafficking In Persons Report*, 295 (June 2013).

46 Office of Development Effectiveness, AusAID, Australian Government, *Papua New Guinea Country Supplement to Violence against Women in Melanesia and East Timor: Building on Regional and Global Promising Approaches* (2008), available at http://www.ausaid.gov.au/Publications/Documents/vaw_cs_png.pdf.

47 UN Human Rights Council, *Report of the Special Rapporteur on violence against women, its causes and consequences, Addendum: Mission to Papua New Guinea*, ¶ 24, A/HRC/23/49/Add.2 (Mar. 18, 2013).

48 CEDAW, *Consideration of reports submitted by States parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women: combined initial, 2nd and 3rd periodic report of States parties: Papua New Guinea*, 29–30, CEDAW/C/PNG/3 (May 22, 2009).

49 *Id.*

50 United Nations Department of Economic and Social Affairs, *Population Division*, 2008.

51 UNICEF, 2006

Marriage is a social relationship between the husband and wife and also in a wider perspective the social relationship within their nuclear and extended family. In Pacific cultures especially in Papua New Guinea the concept of extended family is the norm, where the family is expected to consist of more than just parents, children and immediate relations such as grandparents but it includes all the other extended social relations. The early child marriage is a social issue and must be captured quite well in developing any legal framework in protecting a child. This is because in PNG cultural context these social relationships of the nuclear and extended family plays a vital part in the upbringing of a child and what is expected of a child since they are one family. This to an extent can sometimes be abuse in the case of early forced child marriage. Whether the child likes it or not she or he must get married. Those social relationships are the implementer of traditional law of early child marriage. It is strongly emphasised that the formal law is directed to those social relationships so that it prevents such forced early marriage. The better laws we have on protecting a child must be based on guiding all the social relationships to the child.⁵²

Women's role in PNG's politics and decision making remains very low. Constitutional provisions for the participation of 'nominated' women representatives to all levels of government, are intended to compensate women's negligible electoral success, but are unevenly and inconsistently implemented. Sex scandals among political, administrative and religious leaders are regularly reported in the newspapers and involve allegations, protests and court cases regarding alleged of multiple wives, mistresses, child brides and allegations of sexual assault committed against women and under-age girls. Public outrage is usually short-lived and quickly dissipated. Male political and administrative leaders commonly practice polygamy, or openly have many sexual partners, usually without public or legal sanction.

Mixed historical and social experiences affect the way in which village leaders, police, village and district courts administer, adhere to, enforce, bend or bypass domestic laws to protect girls and women, and in particular the laws on sexual violence. An isolated highlands community, where most conflict and disputes are handled by the Village Courts, may be governed more by customary law. Village courts do not have jurisdiction over rape or incest cases, yet often these cases are not referred on to the appropriate levels of the justice system. Resolution is based on male biased traditions rather than constitutional and legal rights and global human rights standards. People from poor communities in a provincial town may, in theory, have access to state family welfare services and to the police force and courts tasked with enforcing criminal law. In reality

52 *Id.*

there is no access to effective welfare services or legal aid for the majority of Papua New Guineans and most citizens cannot afford to hire a private lawyer.⁵³

PNG's serious law and order problems inhibit and prohibit development at many levels and across many sectors. Crime is a key factor in PNG's vicious cycle of underdevelopment, poverty and violence. Women and girls are made increasingly vulnerable to violence in a gender discriminatory social climate. Leaders and sometimes magistrates and judges tend to blame women and girls and advise parents to 'lock up your daughters' to guarantee their safety, rather than focus on prosecuting and punishing the violent and sexually abusive behaviors of boys and men.⁵⁴

Furthermore, complainants operate in a situation of violent threats, intimidation and silencing by people who, for various cultural, family, economic or political reasons choose to protect the offender. All social, economic and political change and development in PNG is gendered. According to HELP Resources Inc⁵⁵ a clear example given is the ease with which gender discriminatory and oppressive aspects of the culture and customs of some parts of PNG (e.g. bride price, child brides, polygamy and compensation for the families of women victims of violence) have been adopted and assimilated as normative in societies where they never existed previously. The resulting generalized low status and diminished rights of women, throughout most of PNG, has terrible consequences for the quality of male/female relationships and family life, and is the central contributing factor to the three most critical social problems facing PNG:

- Slow progress toward gender equality
- Rising levels of gender and sexual violence and;
- A rapidly growing HIV/AIDS epidemic.

These three problems define the context of family and community life and the gendering experience of children growing up in PNG today. In many parts of PNG, dual systems of customary and state law and administration, and a dual economy are maintained. Many men, especially in the culturally most male-dominated parts of PNG, act to manipulate both the traditional and modern political, economic and social systems of PNG to their own advantage, and enjoy the male privilege of both worlds. Women and children are often left behind or caught in between. Village Court is an active and approved institution (in the Highlands region particularly) that has little or no impact on high levels of gender violence and child abuse and the increasing commercial sexual exploitation of children.⁵⁶

53 HELP Resources Inc, 2005

54 *Id.*

55 *Id.*

56 Garap 1995, 2004

There is a problem with inconsistent and unreliable data collection on all crimes, including sexual offences and other crimes of gender violence. The quality of data collection is poor and not comparable across agencies or provinces. A Family and Sexual Violence Action Committee initiated pilot program to improve data collection aims to capture data on any victim of family and sexual violence and is not particularly focused on child victims. It does however require the age of the victim and offender to be entered. Once the data is collected it will be disaggregated by age, amongst other things. Only a limited number of provincial agencies have demonstrated commitment and capacity to collect data and pass it on for centralized collation and monitoring. The best data has come from The East New Britain Sexual Offences Squad and the East New Britain Family and Sexual Violence Action Committee as well as the Lae and Port Moresby Family Support Centres based on the grounds of the cities' General Hospitals. This data is informative but not representative, however, it already clearly shows that girls under the age of 18 years are the main group of victims and crimes of sexual violence are the main offences.⁵⁷

Parents in PNG border villages reported accepting large payments of up to K20,000 for handing over their daughters as child brides. In 2004 this involved wealthy adult vanilla farmers from the East Sepik province who were returning from successful sales in Jayapura. Even though one of these child victims had already presented at her nearest crisis counseling service in Maprik, East Sepik, and the counselors there were making efforts to repatriate her, no charges were being laid against the exploiters.

In Vanimo, much information about commercial sexual exploitation of children (CSCE) was discovered in the provincial court house, police station and hospital. Court officials and nurses complained that most CSEC cases only come to light when a girl becomes pregnant and tries to abort or experiences a difficult, even fatal birth due to the mothers' young age and small size. Most of these cases involved girls drawn into relationships with Asian (Malaysian, Korean) logging workers. The police claim that loggers bring young girls from very remote areas to work and live with them in the logging camps. The Catholic Family life counselors confirmed these cases, adding that young, mostly illiterate girls are disguised as domestic workers and cooks.⁵⁸ Welfare officers complained that they had reported many cases to the police but there has been no action. This is a social issue that needs proper attention by law to protect young girls.

Where local men are the perpetrators, police refer the complainant back to the village court. In some cases these relationships are permitted by the girls' family when Asian men pay large sums of money to the girls' parents. The fact that many families are complicit and have accepted large payments for their

57 Wainetti, 2005 in HELP Resources Inc, 2005

58 HELP Resources Inc, 2005:31

daughters has been documented in World Bank studies on the social impact of logging in many parts of PNG.⁵⁹

More than almost twenty such cases were known to the Vanimo court. The Sandaun Council of Women expressed alarm about this common trend in loggers exploiting local girls with parents' complicity. Few of these cases resulted in successful legal action, including maintenance and custody. The majority of cases are reportedly kept out of the court by large 'compensation' payments being made by the perpetrator to the victim's family.⁶⁰

Girls with disabilities are particularly vulnerable. A young Sepik girl from an offshore island was raised by her deserted mother and was unable to complete her grade 4 due to lack of money for fees. She is now 16 years old. Her family accepted a bride price of K1,200 from a 45 year old man and forced her to go and live with him. The increased vulnerability and potential exploitation of children with disabilities is an issue that needs to be fully investigated and addressed.⁶¹

Victimized children have various experiences with the national criminal justice systems. They cannot always count on the criminal justice system for protection. In terms of combating violence against children, there often exist gaps and ambiguities in the laws criminalizing violence to children. Laws tend to be piecemeal, focusing on specific forms of violence rather than dealing comprehensively with all forms of violence to children. When the law is in place, there is often weak law enforcement. This can lead to victim apathy and distrust and avoidance of the system. In certain situations, such as trafficking in children, corruption among police and other enforcement officials is cited as a major obstacle.⁶²

Women in Papua New Guinea lag behind men on across all indicators of gender equality, including education, economic opportunity, political empowerment and health.⁶³ Women generally suffer from excessive workloads, mal-nutrition, poor access to safe water and healthcare services, excessively repeated pregnancies, and high levels of gender-based violence.⁶⁴ Discriminatory practices such as polygamy, early marriage and 'witch hunts', based on custom, continue to perpetuate gender inequality in the family, particularly in rural areas⁶⁵ (JICA, 2010:2).

In PNG it is a tradition that husbands have more than one partner, but if a wife challenges this arrangement, she faces the risk of being beaten.⁶⁶ The government reported that in areas where polygamy was customary, an

59 Romaso, personal communication, 2004 in HELP Resources Inc, 2005:31

60 HELP Resources Inc, 2005:31

61 *Id.* 34–35.

62 Coomaraswamy, 1997.

63 JICA, 2010.

64 *Id.* 2

65 *Id.*

66 CEDAW, *Consideration of reports submitted by States parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women: combined initial, 2nd and 3rd periodic report of States parties: Papua New Guinea*, 29–30, CEDAW/C/PNG/3 (May 22, 2009).

increasing number of women were being charged with murdering one of their husband's other wives.⁶⁷ There are also concerns that the practice of polygamy is contributing to the spread of HIV/AIDS.⁶⁸ The law in Papua New Guinea grants parental authority to both spouses, who share responsibilities towards their children. However, the position of the father as the head of the family is deeply embedded in the complex system of family relationship.⁶⁹ Women's rights in marriage are limited because of the lack of laws to validate and regulate customary marriages. Divorce in PNG is based on fault based criteria including adultery, desertion and cruelty. Women also face discrimination in proving fault, particularly cruelty and adultery if they choose not to be witnesses or they do not wish to attend court proceedings.⁷⁰ PNG has adopted the 'best interests of the child' as the paramount consideration in custody disputes after separation and divorce. However, a lack of economic independence or an inability to gain custody of their children upon separation forces many women to stay in violent or difficult relationships.⁷¹ Although national legislation does guarantee equality to men and women in inheritance, it does not apply to customary land for which inheritance is based instead on patrilineal lines and can discriminate against women.⁷²

Even in matrilineal societies, there is a dominance of men who do esteem women and include their views in decision-making, yet ultimately hold the power. In Bougainville, for example, men who ran the modern institutions overlooked women's contributions to the peace process and domestic and local economies. Men in matrilineal societies are patriarchal in their ways because they are still leaders, so while descent and the custody of land is traced through women, the right to rule still remains the prerogative of the men.^{73, 74}

The chapter reflects a summary of the jurisdiction's treatment of child marriage. It also reflects some relevant provisions on the subject of child marriage under the national legal framework, primarily if they have been made publicly available in the English language. The summary does not constitute legal advice under any circumstance.

67 *Id.*

68 JICA, 2010:7

69 CEDAW, *Consideration of reports submitted by States parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women: combined initial, 2nd and 3rd periodic report of States parties: Papua New Guinea*, 29–30, CEDAW/C/PNG/3 (May 22, 2009).

70 *Id.*

71 *Id.*

72 *Id.*

73 *Id.*

74 With grateful thanks to Joshua Goa, BA Hons. MSWC, Academic at Social Work strand, School of Humanities and Social Science, University of Papua New Guinea, for providing additional information for this report.

SAUDI ARABIA

LEGAL AGE FOR MARRIAGE

AGE OF MARRIAGE

There is no legally set minimum age for marriage for either males or females in Saudi Arabia.

A Maathoon will proceed with officiating and registering a marriage provided that both the bride and the groom give verbal consent. In practice, the girl must be present and provide an indication of consent to the marriage officiant. However, through this process, there may be pressure on the girl to agree to the marriage, as her father or closest male relative will be present as well. No additional requirements need to be met even if either individual is under 18.

LEGISLATION

Draft regulations were reported to have been presented to the Al-Shoura Council (one of the King's advisory bodies) in 2011 by the Ministry of Justice for study,¹ requesting to set a minimum age for girls.² No minimum legal age was specified or suggested in the draft regulations; just that one should be established by the Al-Shoura.

The Saudi Human Rights Commission confirmed that subsequently, on 8 April 2013, the Ministry of Justice had proposed new regulations which are said to set 16 as the minimum age of marriage and to propose preconditions to any marriage below this age. These include: approval of the girl and her mother to the marriage, especially if the girl's parents are divorced; approval of a designated court of the marriage on application from the girl's male guardian; provision by the guardian to the court of a medical report from a gynecologist, psychologist and social worker to prove the competence of the girl for marriage; and a statement that the marriage does not expose the girl to danger.³ It has not been possible to obtain a copy of these regulations and therefore to verify the reported conditions. In addition, there is no set date yet as to when or if any new regulations will be approved and implemented.

1 <http://www.alarabiya.net/articles/2011/07/25/159321.html>

2 The UK Foreign and Commonwealth Office Human Rights and Democracy Report 2012 report, Children's rights sections (2012) <http://www.hrdreport.fco.gov.uk/human-rights-in-countries-of-concern/saudi-arabia/?showall=1>

3 See http://www.equalitynow.org/take_action/child_marriage_action315

COMMENTARY

The results of the 2007 National Demographic Survey show that the average age for first marriage was 27.2 for men and 24.6 for women.⁴ The same source also states that the percentage of women aged 15-19 years who had not married was at 96% in that census year (the other 4% were either married or had been married but were no longer married).

PENALTIES/CRIMINALIZATION

PUNISHMENT FOR CHILD MARRIAGE

As there is no minimum age with regard to marriage, it is not a criminal act for anyone to marry a minor or to perform the marriage ceremony, where a party is a minor. The Civil Status Code section on marriage⁵ is very broad and general, and does not provide all legal requirements for marriage and divorce, thus, traditions and local interpretations of Islamic law take its place and are accepted as legal fact. In a conversation that Saudi local counsel⁶ had with a Maathoon, when asked if he would officiate a marriage that involves a minor, he candidly responded that, if the father agrees and there is no law preventing it, he would officiate and register the marriage. The Maathoon, therefore, has a lot of power to interpret Islamic law. The practical consequence of this is that often minor girls are married off to older men.

However, a female child who has been forced to marry an older male (not necessarily above 18 but older than the female child) has the ability to request a divorce by filing a case in the Family Court although in practice she will have difficulty accessing the courts without a male guardian. A judge, at his discretion, can force a legal divorce between the bride and the groom and transfer legal guardianship of the bride to the court and she returns to her family home. Legally, the court becomes her guardian. In practice, however, since the child bride is most likely to move back with her parents, some measure of guardianship returns to her father. This is considered a civil process and not a criminal process.

In all cases, the onus is on the minor female or one of her family members to bring the case to the attention of a judge by filing a civil complaint at the local

4 Saudi Arabia Ministry of Economy and Planning, Seventh Development Plan (2010–2014), <http://www.mep.gov.sa/themes/GoldenCarpet/index.jsp#1371555707461>, pg. 322.

5 Civil Status Code, Section six. http://www.mofa.gov.sa/aboutkingdom/saudigovernment/regimesinkingdom/civilstatussystem/documents/87758_%D8%AC%D9%86%D8%B3%D9%8A%D8%A93.pdf [Official Arabic Language]

6 Bafakih & Nassief, Attorneys and Counselors, <http://www.bnfir.com/>

court and proving that she was forced to marry. In reality, the family member would usually be the father of the minor bride because, although the mother can have standing, she has less of a standing in court than the father would and will need to prove without a doubt that there are grounds for dissolution of the marriage. The father or another male relative, such as a brother or an uncle, has more standing and needs to prove less because of customs and traditions that are persuasive in judge's decision and taken as legal fact.

PROSECUTIONS FOR CHILD MARRIAGE

Only judges, social workers, and psychologists who work with children have access to court cases involving a minor, in order to protect the privacy of the child involved. Occasionally though, a case will be brought to the public's attention by the media, such as the case of 12 year old Fatima which was covered by Equality Now.⁷

Since court records are protected, it has not been possible to confirm any examples of an individual facing criminal or civil charges for forcing a minor to marry or for marrying a minor, particularly since there is no current legal definition for what constitutes a "minor" with regards to marriage. In addition, a member of the National Society for Human Rights in Saudi Arabia⁸ confirmed that although it received a few cases involving minor children being married in 2012, no cases were opened in 2013.

LAWS WHICH PROMOTE/ENDORSE BRIDE PRICE OR DOWRY INCLUDING ANY REQUIREMENTS FOR REPAYMENT ON DIVORCE

DOWRIES

Dowries are paid to the bride by the groom. They vary in amount and are set and agreed by the families of the individuals being married. Stipulations for post-wedding and post-marriage (in case of divorce) payments can be included in the official marriage contract prior to registration of the marriage.

7 Equality Now, *Saudi Arabia: End child marriages and male guardianship over women*. http://www.equalitynow.org/take_action/child_marriage_action315

8 The NSHR is a government-funded entity and can refer claimants to legal options and recourses. Read more about the National Society for Human Rights on their website (<http://nshr.org.sa/>, in Arabic). The following English-language link may serve as a helpful reference: (http://en.wikipedia.org/wiki/National_Society_for_Human_Rights)

In the case of divorce, according to locally accepted customs and traditions that follow Islamic jurisprudence, if the groom initiates the divorce process, depending on the circumstances, a maximum of 50% of the dowry could be returned. However, if the bride initiates the process and asks for a khulu (dissolution of marriage), she must return her dowry in full. If she cannot return the dowry, she cannot apply for a khulu. Assuming her husband is unwilling to divorce her, her options are to borrow or apply for a loan to return the dowry, or have a close family member (such as her mother, brother, or uncle), file a case in court requesting a dissolution of marriage due to a breakdown in the marriage, mental health concerns, or safety concerns. This would be considered a last resort and is dependent on proving a compelling enough cause for dissolution of marriage.

Although there was a break from precedent in “Fatima’s divorce” (please refer to page 5) and an important step forward for women’s rights in Saudi Arabia, it may have limited positive effect. This is because Saudi Arabia does not have a rule of precedence in which lower courts are bound to follow the decisions of the higher or highest court (as Saudi Arabia does not follow the common law system). In other words, Fatima’s case will be persuasive to other judges in similar cases, but not binding.

PROVISIONS IMPEDING / PREVENTING ENDING OF UNDERAGE MARRIAGE

COMMENTARY

The interpretation of Sharia law is preventing the ending of underage marriages. Sharia law is not codified and as such is subject to interpretation by different schools of thought.

A law that specifically mentions the minimum age of marriage is the only realistic way of putting an end to underage marriage in Saudi Arabia. Statutory law will be regarded as a legal standard that does not conflict with a Sharia right (many other Islamic countries have set a minimum statutory age for marriage). The most challenging aspect to change will include changing centuries-long traditions and customs in respect of the status of women in Saudi Arabia.

CHILD PROTECTION WHEN ESCAPING CHILD MARRIAGE

COMMENTARY

Legally, the court becomes the legal guardian of the child. Logistically speaking, a girl would not have many options other than to return to her family after a divorce – shelters are minimal and of poor quality, women are not allowed to rent apartments on their own, and unless a relative or friend is willing to take in the girl, she will return to her parents' home (where she may have been coerced into marrying in the first place).

LEGAL REQUIREMENTS FOR REGISTRATION OF BIRTHS AND/OR MARRIAGES

BIRTH REGISTRATION

All births must be registered by the child's father (or in certain cases (for example where the child had no acknowledged father), closest male relative) within 25 days of birth at the Ministry of Interior, Department of Civil Affairs.⁹ Proof of identity of both parents, the official birth report (provided by the hospital), and the family register or marriage certificate must be shown. An official birth certificate is provided after a year once proof of required vaccinations is presented.

If a child is not registered with the Department of Civil Affairs within one year of birth, s/he can only be added to the family register by order of a committee appointed by the ministry.¹⁰ An individual may face a fine of 10,000 Saudi Riyals (approximately US\$ 2,700), six months imprisonment or both for failing to register a child's birth.¹¹ It would also be difficult to enroll a child at school (particularly after elementary school), access healthcare, or apply for a passport or social benefits.

9 Civil Status Code, Article 33 http://www.mofa.gov.sa/aboutkingdom/saudigovernment/regimesinkingdom/civilstatussystem/documents/87758_%D8%AC%D9%86%D8%B3%D9%8A%D8%A93.pdf [Official Arabic Language]

10 Civil Status Code, Article 20 http://www.mofa.gov.sa/aboutkingdom/saudigovernment/regimesinkingdom/civilstatussystem/documents/87758_%D8%AC%D9%86%D8%B3%D9%8A%D8%A93.pdf [Official Arabic Language]

11 Civil Status Code, Article 79 http://www.mofa.gov.sa/aboutkingdom/saudigovernment/regimesinkingdom/civilstatussystem/documents/87758_%D8%AC%D9%86%D8%B3%D9%8A%D8%A93.pdf [Official Arabic Language]

MARRIAGE REGISTRATION

Ministry of Justice licensed individuals known as a Maathoon officiate marriage ceremonies and register marriages on behalf of couples with the department of civil status which is responsible for maintaining a marriage register. The Maathoon reports to the Ministry of Justice. In order for any man to register to become a Maathoon and make the decisions relating to marriage, a man must have Saudi Arabian nationality, be 25 years of age or older, possess an undergraduate degree in Islamic Sciences or at least a high school diploma, complete a court exam, and have no prior criminal convictions.¹²

At the official wedding registration, usually held at the bride's home, the Maathoon will ask for both the bride and the groom's individual health exam results (proving health status which mostly involves taking a blood sample from both potential spouses and running tests to determine whether there is a significant risk of genetically inherited diseases for potential children) and proof of identity. In the presence of two male witnesses (one each from the bride and the groom's side), the Maathoon will ask both parties if they consent to the marriage. In many cases, the Maathoon will also ask to see the girl aside, though in the presence of her father or designated male guardian, to confirm her consent is not being forced.

If verbal consent is provided by both parties, the marriage is recorded in the Maathoon's official register and both parties sign the pre-negotiated marriage contract.

LEGISLATION

Civil Status Code, Article 33¹³

المادة الثالثة والثلاثون: الأشخاص المكلفون بالتبليغ عن المواليد هم:

- أ- والد الطفل إذا كان موجود في البلد أثناء الولادة أو حضر أثناء التبليغ.
- ب- الأقرب درجة للمولود من الأقارب الذكور الذين تجاوزوا السابعة عشر من عمرهم القاطنين مع الوالدة في مسكن واحد.
- ت- أقرب درجة للمولود من الأقارب الذكور الذين تجاوزوا السابعة عشر من عمرهم من غير القاطنين مع الوالدة في المسكن.
- ث- عمدة المحلة أو شيخ القبيلة.
- ج- الحاكم الإداري في القرية أو المركز.

12 Saudi Arabia, Ministry of Justice, <http://www.moj.gov.sa/ar-sa/ministry/Documents/MOJSystems/nekah.doc>

13 http://www.mofa.gov.sa/aboutkingdom/saudigovernment/regimesinkingdom/civilstatussystem/documents/87758_%D8%AC%D9%86%D8%B3%D9%8A%D8%A93.pdf [Official Arabic Language]

ح- أي شخص تنص اللائحة التنفيذية على مسؤوليته وتكون التبليغ بحسب الترتيب السابق وتنتهي كل فئة في حالة وجود الفئة التي تسبقها في الترتيب.

Civil Status Code (unofficial translation)

ARTICLE 33: The persons responsible for reporting births are:

- (a) The father of the child if he was currently in the country during the birth or came during the time of reporting.
- (b) The closest relatives to the child who are male and above seventeen years of age and who live with the mother in the same home.
- (c) The closest relatives to the child who are male and above seventeen years of age and who do not live with the mother in the same home.
- (d) The mayor of the area or head of the tribe.
- (e) Head of the administration office in the village or center.
- (f) Any person that is mentioned in the internal regulation to have responsibility and the reporting is done in accordance with the aforementioned order of relation to the child.

Civil Status Code, Section 6

المادة السادسة والأربعون: يجب تقديم عقد الزواج ووثيقة الطلاق والرجعة والأحكام الصادرة بالمخالفات والتطليق متى كان طرفاها أو أحدهما سعودياً إلى أحد مكاتب الأحوال المدنية وذلك خلال شهرين من تاريخها لتسجيلها وختمها بختم الأحوال المدنية.

المادة السابعة والأربعون: تقع مسؤولية التبليغ عن الزواج والطلاق والرجعة والتطليق والمخالعة على الزوج ومع هذا يجوز للزوجة ولوالد الزوج ولوالد الزوجة وأحد أقربائهما القيام بواجب التبليغ.

المادة الثامنة والأربعون: على إدارة الأحوال المدنية فور تسليمها عقد الزواج أو وثيقة الرجعة أو الطلاق أو حكم التطليق أو المخالعة تدوين مضمونها على قيد الزوجين.

المادة التاسعة والأربعون: إذا كان أحد الزوجين سعودياً والآخر غير سعودياً فيكون التسجيل وفقاً لقواعد جودها اللائحة التنفيذية.

المادة الخمسون: يجب على الزوج مراجعة إحدى إدارات الأحوال المدنية خلال سنتين يوماً من تاريخ عقد الزواج وذلك للحصول على دفتر عائلة.

المادة الحادية والخمسون: يجب على المأذون الشرعي في نهاية كل أسبوع إشعار إدارة الأحوال المدنية التي يتبعها ببيان على النموذج المعد لذلك يتضمن جميع واقعات الزواج والطلاق والرجعة مع إرفاق صورة من الوثائق التي أعدها أو صادق عليها المأذون وعلى كتاب المحاكم في نهاية كل أسبوع إشعار إدارة الأحوال المدنية التي يتبعونها ببيان على النموذج المعد لذلك يتضمن ملخص الأحكام بالتطبيق والمخالفات وإثبات النسب واعتبار الغائب ميتاً.

Civil Status Code, Section 6 (unofficial translation)

CHAPTER VI : MARRIAGE AND DIVORCE

ARTICLE 46: It is mandatory to provide the marriage contract, divorce certificate or any judgments published in relation to any Khulu or divorce whenever one or both parties to the contract is Saudi Arabian to a civil status office within two months from the contract's date to register and certify it with the civil status stamp.

ARTICLE 47: The responsibility of reporting the marriage, divorce or Khulu is on the husband but it is also allowed for the wife or the husband's father or wife's father or one of their relatives to report the marriage.

ARTICLE 48: The personal status administration must, as soon as they receive a marriage contract, divorce certificate or any judgments published in relation to any Khulu, enter that in the official marriage register.

ARTICLE 49: If one of the married couple is Saudi Arabian and the other is not then the registration will be in accordance with the internal policy published by the related ministry.

ARTICLE 50: The husband must go to one of the civil status offices within sixty days from the date of the marriage to receive a 'family book'.

ARTICLE 51: The Maathoon must, at the end of each week, notify the civil status office he is attributed to with the template application which includes all related facts of the marriage or divorce or judgment related to Khulu and includes a copy of all required documents that he prepared or certified as a maathoon. The court registrars, at the end of each week, notify the civil status office that they are attributed to with the template report that which includes all related facts of the marriage or divorce or judgment related to Khulu and includes a copy of all required documents that he prepared or certified as a court registrar."

Civil Status Code, Article 20¹⁴

المادة العشرون: عند التبليغ عن واقعة مدنية بعد فوات المدة المحددة وقبل نهاية السنة الأولى على حدوثها فعلى كاتب السجل أن يتثبت من صحة وقوعها وله الحق في طلب الإثباتات وإجراء التحقيق اللازم وعليه بعد ثبوت الواقعة تقييدها في السجل الخاص بها، أما في الوقاعات التي يبلغ عنها بعد انتهاء سنة من تاريخ حدوثها فلا يجوز قيدها إلا بقرار من اللجنة.

14 http://www.mofa.gov.sa/aboutkingdom/saudigovernment/regimesinkingdom/civilstatussystem/documents/87758_%D8%AC%D9%86%D8%B3%D9%8A%D8%A93.pdf [Official Arabic Language]

Civil Status Code, Article 20 (unofficial translation)

ARTICLE 20: When reporting a civil incident after the passing of a specific period and before the end of the first year of the occurrence of such incident, the registrar must prove the accuracy of the fact and has the right to ask for proof and investigate to prove the occurrence of the civil incident and register it in the related register. However in relation to reporting on incidents after the passing of a year from its occurrence then entry on the register must only occur after a decision from the committee.

Civil Status Code, Article 79¹⁵

المادة التاسعة والسبعون: يعاقب بالحبس مدة لا تتجاوز ستة أشهر وبغرامة لا تزيد عن عشرة آلاف ريال أو بأحد هاتين العقوبتين:

١. كل من أدلى ببيان غير صحيح التي يوجبها تنفيذ هذا النظام

٢. كل من خالف حكم المادة (٧٣)

Civil Status Code, Article 79 (unofficial translation)

ARTICLE 79: The penalty of imprisonment for no more than six months or a fine of no more than 10,000 Saudi Riyals or both these penalties to any of the following:

1. Any person who has provided inaccurate information that is required to fulfill this law.
2. Any person who has violated the provisions of **ARTICLE 73**

Civil Status Code, Article 80¹⁶

المادة الثمانون: يعاقب على مخالفة أحكام المواد (٧١,٧٠,٥٢,٤٥,٣٩,٣٢) بغرامة لا تزيد عن عشرة آلاف ريال.

Civil Status Code, Article 81¹⁷

المادة الحادية والثمانون: يعاقب على مخالفة الأحكام الأخرى في هذا النظام وأحكام اللائحة التنفيذية والقرارات لها لا تزيد على خمسة آلاف ريال.

15 http://www.mofa.gov.sa/aboutkingdom/saudigovernment/regimesinkingdom/civilstatussystem/documents/87758_%D8%AC%D9%86%D8%B3%D9%8A%D8%A93.pdf [Official Arabic Language]

16 http://www.mofa.gov.sa/aboutkingdom/saudigovernment/regimesinkingdom/civilstatussystem/documents/87758_%D8%AC%D9%86%D8%B3%D9%8A%D8%A93.pdf [Official Arabic Language]

17 http://www.mofa.gov.sa/aboutkingdom/saudigovernment/regimesinkingdom/civilstatussystem/documents/87758_%D8%AC%D9%86%D8%B3%D9%8A%D8%A93.pdf [Official Arabic Language]

Civil Status Code (*unofficial translation*)

ARTICLE 80: Any person who has violated the provisions of Article (32, 39, 45, 52, 70, 71) with a fine of no more than 10,000 Saudi Riyals.

ARTICLE 81: Any person who has violated any of the other provisions of this law and related decisions with a fine of no more than 5,000 Saudi Riyals.

SCHOOLING

COMMENTARY

Only primary school education (up to grade 6) is compulsory for both genders.¹⁸ Although there are no laws or stipulations that prevent married girls under the age of 18 from attending public schools, in conversation with a private school administrator and a former student,¹⁹ it was admitted that at some private middle and secondary educational institutes, administrators may ask married girls to voluntarily withdraw from enrolment or not disclose their marital status to other students.

LEGISLATION

Ministry of Economy and Planning, Seventh Development Plan (2000–2004)²⁰

[under Ministry releases – development Plans] Attached in official English language.

18 Right to Education Project, National law and policies on minimum age – Saudi Arabia, (2008) <http://www.right-to-education.org/country-node/495/country-minimum>. Ministry of Economy and Planning, Seventh Development Plan (2000 – 2004) <http://www.mep.gov.sa/themes/GoldenCarpet/index.jsp#1372709764555> [under Ministry releases – development Plans]

19 Discussion with local counsel and a school administrator and student from private Saudi school in Riyadh (June, 2013).

20 <http://www.mep.gov.sa/themes/GoldenCarpet/index.jsp#1372709764555>

INTERSECTION BETWEEN CHILD MARRIAGE AND OTHER SOCIAL ISSUES

COMMENTARY

In February 2013 there was an appointment, for the first time in Saudi Arabia, of 30 women to the Al-Shoura Council. The appointment has resulted in women comprising 20% of Al-Shoura Council. This suggests significant progress for the country with regards to women's rights and is seen as a stepping stone to even further women's rights.²¹ Saudi Arabia has a system where women are considered perpetual legal minors permanently under the guardianship of male relatives. This makes women subject to the whim of their guardians resulting in all forms of State-condoned violence including forced marriage and divorce, domestic violence, restriction of movement, deprivation of an education, etc. Systems of male guardianship deny women any agency over their lives, making them vulnerable to violence and cause additional great difficulty in obtaining access justice on their own.²²

Generally speaking, the 'male guardianship system' (which, although not prescribed specifically by law, is part of the customs and traditions that have become considered as commonly accepted legal facts) is used by law enforcement and others to assert male control over women's lives and severely limits the exercise of women's rights including their legal capacity, issues of personal status, education and employment. This further leads to the issue of consent and puts into context the fact that courts will return girls forced into marriage to the very families who may have coerced them into the marriage in the first place. Practically speaking, a girl would not have many options other than to return to her family home after a divorce – shelters are minimal and of poor quality, women are not allowed to rent apartments on their own, and unless a relative or friend is willing to take in the girl, she will return to her parents' home.

The chapter reflects a summary of the jurisdiction's treatment of child marriage. It also reflects some relevant provisions on the subject of child marriage under the national legal framework, primarily if they have been made publicly available in the English language. The summary does not constitute legal advice under any circumstance.

21 The UK Foreign and Commonwealth Office Human Rights and Democracy Report 2012 report, Children's rights sections (2012) <http://www.hrdreport.fco.gov.uk/human-rights-in-countries-of-concern/saudi-arabia/quarterly-updates-saudi-arabia/>

22 Equality Now submission to CEDAW on access to justice.

SWAZILAND

LEGAL AGE FOR MARRIAGE

AGE OF MARRIAGE

The legal age of marriage is 18 years for both boys and girls pursuant to the recently enacted Children's Protection and Welfare Act. The law adopted on 8 September 2012 made illegal a centuries' old tradition of underage marriage called *Kwendzisa*. The Act provides that "A child has the right to refuse to be compelled to undergo or uphold any custom or practices that are likely to negatively affect the child's life, health, welfare, dignity or physical, emotional, psychological, mental and intellectual development."¹ A child, according to the Act, is a person under the age of 18.

Exceptions

According to the U.S. Department of State's report, with parental consent and approval from the Minister of Justice, girls can marry at 16 (age of sexual consent).² According to the information available on the official website of the Ministry of Home Affairs, under the Marriage Act, a minor may enter into marriage as long as the marriage officer receives a written consent from both parents or the guardian.³ It does not provide, however, the minimum age at which a minor can marry with such consent.

LEGISLATION

Children's Protection and Welfare Act — text not available

Marriage Act No. 17 of 1964 — text not available

-
- 1 U.S. Department of State, 2012 Human Rights Reports: Swaziland, Bureau of Democracy, Human Rights, and Labor, *2012 Country Reports on Human Rights Practices*, April 19, 2013, available at <http://www.state.gov/j/drl/rls/hrrpt/2012/af/204174.htm>
 - 2 U.S. Department of State, 2012 Human Rights Reports: Swaziland, Bureau of Democracy, Human Rights, and Labor, *2012 Country Reports on Human Rights Practices*, April 19, 2013, available at <http://www.state.gov/j/drl/rls/hrrpt/2012/af/204174.htm>
 - 3 Official website of the Ministry of Home Affairs, Civil Registration, http://www.gov.sz/index.php?option=com_content&view=article&catid=81%3Ahome-affairs&id=1368%3Acivil-registration&Itemid=95

Constitution of Swaziland⁴

SECTION 27(2): RIGHTS AND PROTECTION OF THE FAMILY

[...] 2. Marriage shall be entered into only with the free and full consent of the intending spouses.

SECTION 28(3): RIGHTS AND FREEDOMS OF WOMEN

[...] 3. A woman shall not be compelled to undergo or uphold any custom to which she is in conscience opposed.

COMMENTARY

Under the country's dual legal system, the government recognizes two types of marriages, civil marriage and marriage under traditional law and custom.⁵

Under the customary law, a girl can get married when she hits puberty. The traditional Swazi marriage is officially recognized pursuant to the Marriage Act No. 17 of 1964 and, as a result, underage marriages of 13⁶ year old girls was acceptable. Although traditional courts can apply customary law only if it is not "repugnant to natural justice and morality" or inconsistent with the provisions of any civil law, there are no reports which indicate a court's ruling that a particular customary law is null and void, because it fails to comply with natural justice.⁷ A girl's consent is not required because under traditional law a woman's consent with respect to marital issues is not acknowledged and therefore a traditional marriage is not considered "forced". Forced marriages under traditional rules includes marriages entered into after an overnight visit of a boyfriend. Also, according to custom, three visits of a girl or a woman in her boyfriend's house is interpreted as her consent to being married.⁸

4 The Constitution of The Kingdom of Swaziland Act, 2005, available at http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/legaldocument/wcms_125409.pdf

5 Swazi law and custom is the product of age-old traditions and customs that in the course of time came to be classified as "law". see Adelle. Van Schalkwyk, "The indigenous law of contract with particular reference to the Swazi in the Kingdom of Swaziland " (University of South Africa , November 2006), available at <http://uir.unisa.ac.za/bitstream/handle/10500/1084/thesis.pdf?sequence=1>

6 *Swaziland: Key human rights concerns highlighted by Amnesty International in advance of Swaziland's Universal Periodic Review hearing in October 2011*, September 21, 2011, <http://www.amnesty.org/en/library/asset/AFR55/006/2011/en/e92b3066-7d8f-47a8-aa32-3d06dff05da5/af550062011en.pdf>

U.S. Department of State, 2012 Human Rights Reports: Swaziland, Bureau of Democracy, Human Rights, and Labor, *2012 Country Reports on Human Rights Practices*, April 19, 2013, available at <http://www.state.gov/j/drl/rls/hrrpt/2012/af/204174.htm>

7 Buhle Dube, Alfred Magagula "Update: The Law and Legal Research in Swaziland", <http://www.nyulawglobal.org/globalex/Swaziland1.htm#constitution>

8 Aphane, D. (2009) *Southern African Development Community Gender Protocol Baseline Study: Swaziland*, <http://www.genderlinks.org.za/article/sadc-gender-protocol-barometer-baseline-study-swaziland-2009-10-16>

Although its status is currently unclear, “traditional marriage” with a minor is now against the newly enacted law. The traditional marriage practice has also been officially opposed in public.⁹ Nevertheless, very limited legal measures are apparently being taken to prevent it from occurring.¹⁰

In addition to the recent Children’s Protection and Welfare Act, forced marriages are illegal pursuant to Section 27(2) of the Constitution of Swaziland, adopted in 2005. Section 27(2) provides that marriage shall be entered into only with the free and full consent of the intending spouses. It has been argued that a minor cannot give her free and full consent. On that basis, all underage marriages would be considered forced. Section 28(3) of the Constitution provides that woman shall not be compelled to undergo or to uphold any custom to which she is in conscience opposed. It is hard to determine based on available materials how these constitutional rights are being interpreted *vis-a-vis* provisions of the Marriage Act, which legitimizes traditional Swazi marriage (for which a woman’s consent is not required), particularly since the Constitution also guarantees and protects tradition and custom (Section 227(1)).¹¹ Some of the influential traditional leaders¹², who are in charge of interpreting the Swazi Law and Custom, declared that they would apply for review of the newly enacted Children’s Protection and Welfare Act if it collides with Swazi customs and traditions.¹³

According to the Swaziland Multiple Indicator Cluster Survey of 2010, 10.9 percent of girls and 1.7 percent of boys married before the age of 18.¹⁴

9 At a press conference, Masuku [Deputy Prime Minister Themba Masuku] described the marriage of girls under the age of consent as “child abuse” and said the fine should be raised to R100,000 (\$12,000). “This would send a message,” Masuku said. – see “Swaziland: Child marriages banned”, IRIN, September 20, 2012, <http://www.irinnews.org/printreport.aspx?reportid=96347>

Save the Children Communications Officer, Senelile Khumalo, lauded the enactment of the Children’s Act. – see “Kwendzisa is an offence” by Kwanele Dhladhla, Times of Swaziland, October 9, 2012, <http://www.times.co.sz/News/79502.html>

In the recent past, the deputy prime minister’s office has rescued a number of underage girls, who had to drop out of school because they had been ‘forced’ into marriage by their parents. One such girl who was rescued by the DPM’s office was later enrolled at an affluent school in the Lubombo region and obtained a merit in the recent Junior Certificate examinations. Another pupil at a school north of Siteki claimed that she was already given into marriage to her teacher when ministry of education officials went to the school to investigate the relationship. This made it difficult for officers to probe the matter further. Source: The Swazi Observer, available at http://www.comesaria.org/site/en/news_details.php?chaine=kwendzisa-ok-if-girl-parents-happy-tv-mtetwa&id_news=10339&id_article=119

10 U.S. Department of State, 2012 Human Rights Reports: Swaziland, Bureau of Democracy, Human Rights, and Labor, *2012 Country Reports on Human Rights Practices*, April 19, 2013, available at <http://www.state.gov/j/drl/rls/hrrpt/2012/af/204174.htm>

11 Section 227(1) of the Constitution: The Swazi traditional government is administered according to Swazi law and custom and the traditional institutions that are pillars of the monarchy as set out in subsection (2).

12 Timothy Velabo Mtetwa, the country’s top traditional leader

13 “For now, we will abide by the order as stated in the new legislation. However, when the need arises in future, we will not resist applying for a review” — see “Kwendzisa is an offence” by Kwanele Dhladhla, Times of Swaziland, October 9, 2012, <http://www.times.co.sz/News/79502.html>

14 U.S. Department of State, 2012 Human Rights Reports: Swaziland, Bureau of Democracy, Human Rights, and Labor, *2012 Country Reports on Human Rights Practices*, April 19, 2013, available at <http://www.state.gov/j/drl/rls/hrrpt/2012/af/204174.htm>

PENALTIES/CRIMINALIZATION

PUNISHMENT FOR CHILD MARRIAGE

Sexual activity with underage girls was previously prosecuted as statutory rape but only if it occurred outside the bounds of marriage.¹⁵ Pursuant to the Sexual Offences and Domestic Violence Act,¹⁶ rape within marriage is illegal.¹⁷ This Act now awaits royal assent after being recently approved by the Senate. The Children's Protection and Welfare Act sets the age of sexual consent at 16 years old.

Although the Child Protection and Welfare Act does not stipulate a specific fine or jail term for *Kwendzisa* (i.e. the marriage of an adult man to an underage girl), offenders will be liable to a fine not exceeding the monetary jurisdiction of a magistrate or to an appropriate term of imprisonment. The jurisdiction of a magistrate is 10,000 emalangeneni (approximately currently U.S. \$1,000) for criminal matters.¹⁸

The new legislation also penalizes parents and guardians who conspire with adult men to arrange the marriage of a child.

In addition, pursuant to the Child Protection and Welfare Act, any person who takes a child without appropriate consent, whether within or outside Swaziland will be fined 20,000 emalangeneni (approximately U.S. \$2,000) or 20 years imprisonment.¹⁹

Section 19 (1) of the Sexual Offences and Domestic Violence Act of 2009,²⁰ once given royal assent, would criminalize the subjection to certain cultural practices without consent, including *Kwendzisa*.²¹

15 "Swaziland: Child marriages banned", IRIN, September 20, 2012, <http://www.irinnews.org/printreport.aspx?reportid=96347> and the Amnesty International Report

16 Recently the Sexual Offences and Domestic Violence Act was approved by Senate and now awaits royal assent by the King.

17 Stefiszyn, Karen (2008-05-12), *A Brief Overview of Recent Developments in Sexual Offences Legislation in Southern Africa*, U.N. Expert Group Meeting on good practices in legislation on violence against women, available at [http://www.un.org/womenwatch/daw/egm/vaw_legislation_2008/expertpapers/EGMGPLVAW%20Paper%20\(Karen%20Stefiszyn\).pdf](http://www.un.org/womenwatch/daw/egm/vaw_legislation_2008/expertpapers/EGMGPLVAW%20Paper%20(Karen%20Stefiszyn).pdf)

18 "Kwendzisa is an offence" by Kwanele Dhladhla, Times of Swaziland, October 9, 2012, <http://www.times.co.sz/News/79502.html>

19 "Sugar daddies could face E20 000 fine" by Kwanele Dhladhla, Times of Swaziland, October 9, 2012, <http://www.times.co.sz/News/79502.html>

20 Recently the Sexual Offences and Domestic Violence Act was approved by Senate and now awaits royal assent by King.

21 Aphane, D. (2009) *Southern African Development Community Gender Protocol Baseline Study: Swaziland*, <http://www.genderlinks.org.za/article/sadc-gender-protocol-barometer-baseline-study-swaziland-2009-10-16>

COMMENTARY

Recently, Deputy Prime Minister, Themba Masuku, referred to child marriages as “child abuse” suggesting that the fine should be significantly raised to 100,000 emalangen (R12,000) to prevent people from committing the crime.²² He declared that “any man found to contravene the Act by marrying a girl under the age of 18 faced arrest and prosecution. He is reported to have said the marriage would be annulled and the former husband could be fined R10,000 (US\$1,100) and that a man guilty of raping a girl faces a R20,000 (US\$2,200) fine and prison term of up to 20 years.”²³

Regardless of the enactment of the modern legislation forbidding underage marriage, the law might remain powerless. Thus far there has been no national awareness campaign which could help make people aware of the new law and their rights.²⁴

LEGISLATION

Children’s Protection and Welfare Act of 2012 — text not available

Sexual Offences and Domestic Violence Act of 2009 — text not available

PROSECUTIONS FOR CHILD MARRIAGE

No information was found in English-language sources.

LAWS WHICH PROMOTE/ENDORSE BRIDE PRICE OR DOWRY INCLUDING ANY REQUIREMENTS FOR REPAYMENT ON DIVORCE

DOWRIES

The Constitution protects a woman from being forced to agree to a customary practice. There is no legal requirement to pay a dowry in Swaziland.

22 “Swaziland: Child marriages banned”, IRIN, September 20, 2012, <http://www.irinnews.org/printreport.aspx?reportid=96347> and the Amnesty International Report

23 *Swaziland: In Swaziland, Child Marriage Still a Grey Area* (January 2013), available at <http://allafrica.com/stories/201301291229.html>

24 *Swaziland: In Swaziland, Child Marriage Still a Grey Area* (January 2013), available at <http://allafrica.com/stories/201301291229.html>

LEGISLATION

Constitution of Swaziland

SECTION 28(3) RIGHTS AND FREEDOMS OF WOMEN

[...] 3. A woman shall not be compelled to undergo or uphold any custom to which she is in conscience opposed.

COMMENTARY

Despite the Constitutional protections against being forced to agree a customary practice, several customs practiced are against these provisions. These include the payment of bride price (*lobola*).²⁵ While in some regions in Africa, *lobola* is often required to enter into a valid customary marriage, in Swaziland the practice is said to be still significant but not a prerequisite to a valid marriage under traditional law.²⁶ Other sources, however, indicate that according to Swazi Law and Custom, traditional marriages are actually legitimized only after the transfer of *lobola*.²⁷

Lobola is reported to consist of at least twelve cattle, some for the bride, some for the bride's mother and father.²⁸ As the employee one NGO (Swaziland Action Group Against Abuse) pointed out, "poor families are often influenced by gifts of cattle and money to give up their daughters."²⁹

Lobola might be recalled if the wife is unable to fulfill her reproductive abilities (including cases of infertility) or labor capacities.³⁰ It is not clear whether this rule applies in case of divorce for other than the above-mentioned reasons, i.e. removing a girl from child marriage.

25 Buhle Dube, Alfred Magagula, "Update: The Law and Legal Research in Swaziland", <http://www.nyulawglobal.org/globalex/Swaziland1.htm#constitution>

26 Johanna E. Bon. "Culture, Dissent, and the State: The Example of Commonwealth African Marriage Law", 14 Yale Hum. Rts. & Dev. L.J. 1 (2011)

27 The Family in Africa, edited by Man Singh Das, (1993), New Delhi: M.D. Publications

28 Sara Mvududu "Lobola: It's Implications for Women's Reproductive Rights" (2002), Weaver Press

29 Swaziland: In Swaziland, Child Marriage Still a Grey Area (January 2013), available at <http://allafrica.com/stories/201301291229.html>

30 Tenille Brown, "Women's Legal Status under Civil Law and Swazi Law and Custom", available at http://justgovernancegroup.org/en/swaziland/pdf/swaziland_dispatch_5.pdf

STATUTORY RAPE LAW AND LAWS THAT CIRCUMVENT THIS THROUGH MARRIAGE

STATUTORY RAPE

The age of sexual consent at 16 years old. The penalties for statutory rape and prostituting a girl are up to six years' imprisonment, up to 24 lashes with a whip, and a fine of emalangeneni 1,000 (\$118).³¹

LEGISLATION

Children's Protection and Welfare Act – text not available

CHILD PROTECTION WHEN ESCAPING CHILD MARRIAGE

No information was found in English-language sources.

LEGAL REQUIREMENTS FOR REGISTRATION OF BIRTHS AND/OR MARRIAGES

BIRTH REGISTRATION

The Births, Marriages and Deaths Registration Act (Part III: Registration of Births and Deaths) requires registration of birth within sixty days after the child is born.

COMMENTARY

According to the UNICEF State of the World's Children 2012 report, birth of 38% of children under 5 in urban area and 28% of children under 5 was registered,³² while according to the Swaziland Multiple Indicator Cluster Survey of 2010, 50% of children under 5 were registered and 30% had birth certificates.³³

31 U.S. Department of State, 2012 Human Rights Reports: Swaziland, Bureau of Democracy, Human Rights, and Labor, 2012 Country Reports on Human Rights Practices, April 19, 2013, available at <http://www.state.gov/j/drl/rls/hrrpt/2012/af/204174.htm>

32 UNICEF, Child Protection, Birth registration, http://www.unicef.org/esaro/5480_birth_registration.html

33 Swaziland, *Multiple Indicator Cluster Survey 2010*, Final Report, December 2011, available at: http://reliefweb.int/sites/reliefweb.int/files/resources/MICS4_Swaziland_FinalReport_2010_Eng.pdf. The Swaziland Multiple Indicator Cluster Survey (MICS) was carried out in 2010 by the Central Statistical Office in collaboration with the United Nations Children's Fund (UNICEF). Financial support was provided by the Government of the Kingdom of Swaziland, UNICEF, the United Nations Population fund (UNFPA), the National Emergency Response Council on HIV/AIDS (NERCHA) and the Joint United Nations Programme on HIV/AIDS.

Birth registration increases with age and a child is more likely to be registered at age 48–59 months.³⁴ According to the Multiple Indicator Cluster Survey, the leading reason for not registering a birth of a child is the fact that neither the mother nor the father has the requisite national identification; 41% of the unregistered children under five are not registered for this reason. 27% percent of unregistered births is a result of a mother/caretaker's ignorance as to how to register the birth. 10% percent of unregistered births are not registered because a mother/caretaker thinks it is too expensive, while 4% declared they must travel too far in order register.³⁵

Lack of birth registration can result in the denial of public services. For example, a birth certificate is necessary to enter school or to apply for a passport.³⁶

MARRIAGE REGISTRATION

Registration of both civil and customary marriages is required by law. The customary marriage needs to be registered within fourteen days from the date of such marriage.

COMMENTARY

In practice, many traditional marriages remain unregistered. A woman whose marriage has not been registered cannot claim any marital rights, including her rights to property or inheritance in the event of divorce or death of her husband. It was reported that women have been disinherited by in-laws who deny that they were ever married.³⁷

LEGISLATION

The Births, Marriages and Deaths Registration Act 1983³⁸

REGISTRATION OF BIRTHS AND DEATHS

INFORMATION AS TO BIRTHS

15.

- (1) In the case of any children whether born alive or still-born the father of the child and, in the event of the death or absence or other inability

34 Swaziland, *Multiple Indicator Cluster Survey 2010*, Final Report, December 2011, available at: http://reliefweb.int/sites/reliefweb.int/files/resources/MICS4_Swaziland_FinalReport_2010_Eng.pdf

35 Swaziland, *Multiple Indicator Cluster Survey 2010*, Final Report, December 2011, available at: http://reliefweb.int/sites/reliefweb.int/files/resources/MICS4_Swaziland_FinalReport_2010_Eng.pdf

36 U.S. Department of State, 2012 Human Rights Reports: Swaziland, Bureau of Democracy, Human Rights, and Labor, *2012 Country Reports on Human Rights Practices*, April 19, 2013, available at <http://www.state.gov/j/drl/rls/hrrpt/2012/af/204174.htm>

37 Aphane, D. (2009) *Southern African Development Community Gender Protocol Baseline Study: Swaziland*, <http://www.genderlinks.org.za/article/sadc-gender-protocol-barometer-baseline-study-swaziland-2009-10-16>

38 The Births, Marriages and Deaths Registration Act, 1983 available at <http://unstats.un.org/unsd/vitalstatkb/Attachment169.aspx>

of the father, any person present at the birth, or the occupier of the dwelling in which the child is born and, in the event of the death or absence or other inability of such occupier, the person having charge of such child, shall within sixty days after its birth give the prescribed notice thereof to a registration officer or a chief of the area or his induna or a registration information officer nominated or appointed for this purpose.

- (2) Any such chief or his induna or registration information officer shall on receipt of such notice within 10 days give written information of the birth on the prescribed form, to be filled in triplicate, to the registration officer of the district or sub-district in which such child was born for the registration and issue of a birth certificate in the prescribed form.

REGISTRATION OF MARRIAGES

TRANSMISSION OF SPECIAL MARRIAGE LICENSES

24. The marriage information form referred to in section 25(2), shall be transmitted by the officer who solemnized the marriage together with every special marriage license to the registration officer in whose district or sub-district the marriage was solemnized.

MARRIAGES SOLEMNIZED BY MARRIAGE OFFICERS

25.

- (1) The marriage officer solemnizing any marriage, the parties thereto and two or more competent witnesses shall sign a marriage information form of such marriage in triplicate before they leave the premises where the marriage took place.
- (2) The marriage officer shall keep the triplicate copy of the marriage information form for his record and shall, within seven days from the date of the marriage, transmit the original and duplicate copies of the marriage information form along with the prescribed fee in the form of revenue stamps, to the registration officer in whose district or sub-district the marriage was solemnized for issuance of a marriage certificate.
- (3) A marriage officer who fails to transmit the original and duplicate copy of the marriage information form in terms of subsection (2) shall be guilty of an offence and liable on conviction to a fine not exceeding fifty Emalangeni.

MARRIAGES SOLEMNIZED OTHER THAN BY A MARRIAGE OFFICER IN ACCORDANCE WITH SWAZI LAW AND CUSTOM OR ANY OTHER LAW OR CUSTOM.

26.

- (1) A chief in whose area a marriage in accordance with the Swazi law and custom or any other law or custom has been entered into or if he is not present at the marriage, an indvuna or umgijimi appointed by him to attend such marriage, or the person solemnizing the marriage, shall forthwith complete in triplicate a marriage information form of such

marriage in the prescribed form and, within fourteen days from the date of such marriage, transmit the original and duplicate copies of the marriage information form to the district registrar or assistant district registrar in whose district or sub-district such marriage was solemnized.

- (2) The chief or the person who solemnized the marriage shall keep the triplicate copy of marriage information form for his records.
- (3) A chief or his induna or umgijimi or the person solemnizing the marriage, as the case may be, who fails to transmit the original and duplicate copy of the marriage information form in terms of subsection (1) shall be guilty of an offence and liable on conviction to a fine not exceeding fifty Emalangen.

SCHOOLING

COMMENTARY

There is no law establishing mandatory education in Swaziland³⁹ and many children from poor families are deprived of basic education. The government is currently working on a system of free primary education. Pursuant to section 29(6) of the Constitution, adopted in 2005, children should have been provided tuition-free primary education by 2009.⁴⁰

Despite this constitutional mandate, the government has not completely complied. In 2012, tuition-free primary education was offered up to the age of fourth grade.

Primary education lasts for 7 years and begins at the age of six. Secondary education lasts for 5 years (ages 13-17).⁴¹

According to the Multiple Indicator Cluster Survey, nationally 97 percent of children aged 6–12 years attend primary or secondary school. The net primary school attendance is 96 percent for boys and 97 percent for girls, indicating gender parity in primary school attendance. School attendance is substantially lower for secondary school children, with a net secondary school attendance ratio of 47 percent. Males have a particularly lower net attendance ratio compared with females (42 percent vs. 52 percent).⁴²

39 United States Department of Labor, *2011 Findings on the Worst Forms of Child Labor – Swaziland*, 26 September 2012, <http://www.refworld.org/docid/506594255.html>

40 Section 29 (6) of the Constitution of Swaziland: “Every Swazi child shall within 3 years of the commencement of the constitution have the right to free education in public schools at least up to the end of primary, beginning with first grade.”

41 Official website of the Ministry of Education & Training, http://www.gov.sz/index.php?option=com_content&view=article&id=208&Itemid=113

42 Swaziland, *Multiple Indicator Cluster Survey 2010*, Final Report, December 2011, available at: http://reliefweb.int/sites/reliefweb.int/files/resources/MICS4_Swaziland_FinalReport_2010_Eng.pdf

Pregnant girls are suspended from school pursuant to the Education Rules No. 49 of 1977. It is not clear whether the girl can return to the same school but reports suggest they usually they go to another school after delivery.⁴³

LEGISLATION

Constitution of Swaziland

Section 29 (6): Every Swazi child shall within three years of the commencement of this Constitution have the right to free education in public schools at least up to the end of primary school, beginning with the first grade.

The Education Rules No. 49 of 1977 – text not available.

INTERSECTION BETWEEN CHILD MARRIAGE AND OTHER SOCIAL ISSUES

COMMENTARY

Swaziland maintains the dual legal system under which some of the customs are lawfully recognized. It creates contradictory sets of rights. Traditional courts can apply customary law only if it is not repugnant to natural justice or morality or inconsistent with the provisions of any civil law.⁴⁴ No reports were found indicating that those courts found any customary law null and void for its failure to comply with natural justice. Defendants in traditional courts are not permitted formal legal counsel but may speak on their own behalf, call witnesses, and be assisted by informal advisors.⁴⁵ Although civil officials seem to endorse modern legislation which aims at protecting children rights, including prohibition of underage marriage, it is suggested that the dualistic nature of the legal system may significantly delay enforcement of these laws.

The chapter reflects a summary of the jurisdiction's treatment of child marriage. It also reflects some relevant provisions on the subject of child marriage under the national legal framework, primarily if they have been made publicly available in the English language. The summary does not constitute legal advice under any circumstance.

43 Aphane, D. (2009) *Southern African Development Community Gender Protocol Baseline Study: Swaziland*, <http://www.genderlinks.org.za/article/sadc-gender-protocol-barometer-baseline-study-swaziland-2009-10-16>

44 Buhle Dube, Alfred Magagula, "Update: The Law and Legal Research in Swaziland", <http://www.nyulawglobal.org/globalex/Swaziland1.htm#constitution>

45 U.S. Department of State, 2012 Human Rights Reports: Swaziland, Bureau of Democracy, Human Rights, and Labor, *2012 Country Reports on Human Rights Practices*, April 19, 2013, available at <http://www.state.gov/j/drl/rls/hrrpt/2012/af/204174.htm>

TAJIKISTAN

LEGAL AGE FOR MARRIAGE

AGE OF MARRIAGE

Amendments to the Family Code in 2010 raised the legal age of marriage in Tajikistan from 17 to 18 for both males and females.

Exceptions

In exceptional cases the court has the right to reduce the age of consent, as stipulated in [ARTICLE 13](#) of the Family Code, outlined below.

According to the U.S. Department of State's report,¹ pregnancy is one of the circumstances in which the court grants a one-year reduction in the age of marriage. In such cases, a minor who is married legally becomes an adult, according to this and other reports,² although no identification of the legal text was possible.

COMMENTARY

According to a report by the Eurasia Foundation for the Ministry of Foreign Affairs of Finland, couples can be legally married before the age of eighteen if they petition the local government administrations (hukumat). A specially convened panel determines whether or not a couple has a compelling reason for an early marriage.³ It is unclear whether the procedure initiated in hukumat is a prerequisite for the court procedure provided for in [ARTICLE 13](#) of the Family Code.

LEGISLATION

Family Code

СТАТЬЯ 13. БРАЧНЫЙ ВОЗРАСТ

1. Брачный возраст устанавливается в восемнадцать лет.

1 U.S. Department of State, 2012 Human Rights Reports: Tajikistan, Bureau of Democracy, Human Rights, and Labor, *2012 Country Reports on Human Rights Practices*, April 19, 2013, <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper>

2 Tajikistan, Child Marriage, UNFPA report, October 2012, <http://unfpa.org/webdav/site/eeca/shared/documents/publications/Tajikistan%20English.pdf>

3 "Informal Justice in Tajikistan. The Role of Informal Leaders in Providing and Preventing Access to Justice", Eurasia Foundation for the Ministry of Foreign Affairs of Finland, January 2012, <http://equalbeforethelaw.org/sites/default/files/library/Informal%20Justice%20in%20Tajikistan.pdf>

2. В исключительных случаях суд вправе снизить брачный возраст по просьбе лиц, желающих вступить в брак, установленный настоящей статьей для мужчин и женщин, не более чем на один год.
3. Заявления рассматриваются в порядке особого производства в суде по мест жительства лица, возраст которого снижается.
4. Право обращения в суд по этому вопросу возникает с семнадцатилетнего возраста.

Family Code (unofficial translation)⁴

ARTICLE 13: AGE OF CONSENT

1. The age of consent is established in eighteen years.
2. In exceptional cases the court has the right to reduce age of consent at the desire of the persons wishing to marry, established by this Article for men and women, no more than for one year.
3. Statements are surveyed according to the procedure of special proceeding in court in the residence of the person which age decreases.
4. The right of the reference to the court on this matter arises from seventeen-year age.

Constitution

ARTICLE 33: The state shall protect the family as the basis of society. Everyone shall have the right to form a family. Men and women who have reached the age of marriage shall have the right freely to marry. In marriage and in divorce, husband and wife shall have equal rights. Polygamy shall be prohibited.⁵

COMMENTARY

Although Tajikistan is considered a secular country,⁶ the predominantly Muslim society is greatly influenced by the Koran which does not define the minimum age of marriage. The belief is that Islam encourages a woman to marry early in order to fulfill her duty of having children. Consequently, it is reported that underage girls are still being forced to marry in religious ceremonies (*nikokh*).⁷

4 Full text of the Family Code in English and in Russian is attached to this report.

5 The official translation of Constitution (Basic Law) of the Republic of Tajikistan, available at: http://www.parliament.tj/en//index.php?option=com_content&view=article&id=57

6 Constitution does not recognize religious law. Pursuant to Article 8 "Religious organizations shall be separate from the state and shall not interfere in state affairs." (http://www.parliament.tj/en//index.php?option=com_content&view=article&id=57)

7 *Tajikistan: Poverty Encourages Early Marriages*, Eurasianet.org, March 2, 2012, <http://www.eurasianet.org/node/65075>

All religious leaders interviewed for the Eurasia Foundation's report admitted that they knew about the prohibition of underage marriage. The report also indicates that parents either do not know about the prohibition or they choose to change their daughters' dates of birth in the official documents so that they can officially register the marriage of their underaged girl.

Although there are no governmental statistics, it was suggested that the new progressive law raising the age of marriage has had an unintended detrimental effect because fewer marriages are being registered and, as a result, they are not recognized by the government. Without a civil marriage certificate the wife cannot enforce any of her rights to which she would have been entitled if her marriage has been registered.⁸

PENALTIES/CRIMINALIZATION

PUNISHMENT FOR CHILD MARRIAGE

It is a criminal offense both to marry a person under the statutory age for marriage and for parents or guardians to give an underage girl in marriage. Punishments range from a fine to a prison term to a correctional labor term. The marriage can also be annulled on application.

LEGISLATION

Criminal Code

СТАТЬЯ 168. ВЫДАЧА ЗАМУЖ ДЕВОЧКИ, НЕ ДОСТИГШЕЙ БРАЧНОГО ВОЗРАСТА

Выдача замуж девочки, не достигшей брачного возраста, родителями или опекунами, либо лицами, которым она подчиняется, а равно посредничество или содействие к выдаче замуж, наказывается исправительными работами сроком до двух лет или ограничением свободы на срок до пяти лет либо арестом на срок до шести месяцев. (зрп 10.12.1999 г. № 877)

СТАТЬЯ 169. ЗАКЛЮЧЕНИЕ БРАКА В ОТНОШЕНИИ ЛИЦА, НЕ ДОСТИГШЕГО БРАЧНОГО ВОЗРАСТА

Заключение брачного соглашения в отношении лица, не достигшего брачного возраста, а равно заключение брака с данным лицом, наказывается

8 Tajikistan: Poverty Encourages Early Marriages, Eurasianet.org, March 2, 2012, <http://www.eurasianet.org/node/65075>

штрафом в размере от одной до двух тысяч показателей для расчётов либо исправительными работами сроком до двух лет, либо ограничением свободы на срок до пяти лет либо арестом на срок до шести месяцев. (зрт 10.12.1999 г № 877); (зрт 17.05. 04г.N35); (зрт 06.10.08г., №422)⁹

Family Code: Семейный Кодекс Республики

СТАТЬЯ 29. ЛИЦА, ИМЕЮЩИЕ ПРАВО ТРЕБОВАТЬ ПРИЗНАНИЕ БРАКА НЕДЕЙСТВИТЕЛЬНЫМ

1. *Требовать признание брака недействительным вправе:*
 - » *несовершеннолетний супруг, его родители (лица, их заменяющие), орган опеки и попечительства или прокурор, если брак заключен с лицом, не достигшим брачного возраста, при отсутствии разрешения на заключение брака до достижения им брачного возраста (статья 13 настоящего Кодекса). После достижения несовершеннолетним супругом восемнадцати лет требовать признания брака недействительным вправе только этот супруг;*
 - » *супруг, права которого нарушены заключением брака, а также прокурор, если брак заключен при отсутствии добровольного согласия одного из супругов на его заключение: в результате принуждения, обмана, заблуждения или невозможности в силу своего состояния в момент регистрации брака понимать значение своих действий или ими руководить;*
 - » *супруг, не знавший о наличии обстоятельств, препятствующих заключению брака, опекун супруга, признанного недееспособным, супруг по предыдущему расторгнутому браку, другие лица, права которых нарушены заключением брака, произведенного с нарушением требований статьи 14 настоящего Кодекса, а также орган опеки и попечительства и прокурор;*
 - » *прокурор, а также супруг, не знавший о фиктивности брака в случае заключения фиктивного брака;*
 - » *супруг, права которого нарушены при наличии обстоятельств, указанных в части третьей статьи 15 настоящего Кодекса.*
2. *При рассмотрении дела о признании недействительным брака, заключенного с*
 - » *лицом, не достигшим брачного возраста, а также с лицом, признанным судом*
 - » *недееспособным, к участию в деле привлекается орган опеки и попечительства.*

9 Full text in Russian available at <http://www.legislationline.org/ru/documents/section/criminal-codes/country/49> (Уголовный Кодекс Республики Таджикистан)

Criminal Code

ARTICLE 168: GIVING IN MARRIAGE A GIRL WHO HAS NOT REACHED MARRIAGE AGE

Giving in marriage a girl who has not reached marriage age by parents or guardians, is punishable by correctional labor for up to 2 years or restriction of freedom for the same period, or confinement for up to 6 months.

ARTICLE 169: CONTRACTING A MARRIAGE IN RELATION TO A PERSON WHO HAS NOT REACHED MARRIAGE AGE

Contracting a marriage in relation to a person who has not reached marriage age, is punishable by a fine in the amount of 1000 to 2000 times the minimum monthly wage or correctional labor for up to 2 years, or up to 6 months of confinement.¹⁰

Family Code

ARTICLE 29. PERSONS ENTITLED TO DEMAND ANNULMENT OF THE MARRIAGE¹¹

1. To demand annulment of the marriage has the right to:
 - » underage spouse, his parents (or persons in loco), the guardianship authority or the prosecutor, if the marriage is concluded with a person who has not attained the age of consent in the absence of permission to marry before the age of consent (ARTICLE 13 of the Code). After reaching the age of eighteen minor spouse to demand annulment of marriage may only that spouse;
 - » spouse whose rights have been violated by marriage, as well as the prosecutor, if the marriage is concluded in the absence of consent of one spouse to his conclusion as a result of coercion, fraud, deceit, or inability due to its condition at the time of registration of marriage to understand the significance of their actions or their lead; [...]

PROSECUTIONS FOR CHILD MARRIAGE

CASE COMMENTARY

There is very limited information about prosecutions for breaching the minimum age for marriage. It is limited to information about the number of prosecutions without providing any specific details and many of these come from unsubstantiated new reports:

¹⁰ Full text in English is available at: <http://www.legislationonline.org/documents/section/criminal-codes/country/49>

¹¹ To make it more clear, this translation differs slightly from the translation of Article 29 of the Family Code attached to this report.

- At least 16 cases in Tajikistan's southern Khatlon province have been reported.¹² They obligated religious clerics (*mullahs*) to report on all religious wedding procedures held on a weekly basis. The mullahs also have to follow regulations that require a government issued certificate in order to perform a traditional wedding ceremony (January 2012).
- Six Tajik families were accused of forcing their underage daughters into marriage. Contrary to apparent common practice, the local Islamic leaders are reported to have supported the government in these cases (May 2012).¹³
- In the period from 2001 to 2008 there were 98 criminal prosecutions brought under [ARTICLE 168](#) of the Criminal Code (8 cases in 2001, 5 cases in 2002, 10 cases in 2003, 18 cases in each 2004, 2005 and 2006, 16 cases in 2007 and 5 cases in 2008).¹⁴

It is not clear whether religious clerics are punished in any way for not reporting religious marriage ceremonies or performing such ceremonies without the requisite official certificate issued by the state.

COMMENTARY

It appears that the amended provision of the Family Code will not necessarily protect girls against forced marriages or child marriages. To date, a very low number of cases has been brought to the courts. This is said to be the result of a common lack of ability to enforce the law. As the Eurasia Foundation's report indicates, "A tension exists between the legal rights of Tajiks and the implementation of those rights by state institutions. Tajiks face significant obstacles to solving legal disputes through state justice institutions and are increasingly turning to informal leaders to mediate conflicts." This is also true in connection with the amended Family Code – the report provides that members of women and youth committees recently admitted that "the local government officials are aware of these [traditional, unregistered] marriage ceremonies, but there is no political will to intervene."¹⁵

12 *Underage Girls Face Forced Marriages In South Tajikistan*, Radio Free Europe, Radio Liberty, January 23, 2012 http://www.rferl.org/content/underage_girls_forced_marriages_south_tajikistan/24460463.html

13 "Tajik Parents Tried For Forcing Underage Daughters Into Marriage", May 02, 2012, http://www.rferl.org/content/tajik_parents_tried_for_forcing_underage_daughters_to_marry/24567957.html

14 "The State program "Basic directions of state policy to ensure equal rights and opportunities for men and women in the Republic of Tajikistan for 2001-2010": Progress evaluation based on public monitoring results", The Coalition of Public Associations "From Equality De Jure To Equality De Facto", 2009, http://www.untj.org/docs/country_context/gender/library/Basic_directions_of_state_policy_to_ensure_equal_rights_and_opportunities_eng.pdf

15 "Informal Justice in Tajikistan. The Role of Informal Leaders in Providing and Preventing Access to Justice", Eurasia Foundation for the Ministry of Foreign Affairs of Finland, January 2012, <http://equalbeforethelaw.org/sites/default/files/library/Informal%20Justice%20in%20Tajikistan.pdf>

LAWS WHICH PROMOTE/ENDORSE BRIDE PRICE OR DOWRY INCLUDING ANY REQUIREMENTS FOR REPAYMENT ON DIVORCE

DOWRIES

Wedding ceremonies, especially in rural areas, used to be very lavish, lasted for days and were attended by hundreds of guests. Celebrations include exchange of the dowry and kalym (bride price, paid by the bride's family) and in the past they were very extravagant.¹⁶ In 2007 a law that regulates private celebrations was passed (Law on Observing National Traditions and Rituals) allegedly to protect the public from spending excessive amounts of money. The law limits the number of guests, eliminates engagement parties, and controls ceremonial gift presentations and other rituals.¹⁷ News reports suggest it appears that the new rules might have dramatically scaled down wedding ceremonies because harsh penalties are imposed for those who break the law.¹⁸ Based on materials available online, it is not clear to what extent these rules are being enforced however.

LEGISLATION

Law on Observing National Traditions and Rituals – text not available.

STATUTORY RAPE LAW AND LAWS THAT CIRCUMVENT THIS THROUGH MARRIAGE

STATUTORY RAPE

RAPE OF A MINOR WOMAN: Pursuant to [ARTICLE 138\(2\)](#) of Criminal Code, a rape (that is sexual intercourse using force or with the threat of force towards the victim or other persons, or using the helpless condition of the victim) of a minor woman (less than 18 years old) is punishable by deprivation of freedom (imprisonment) for a period of 7 to 10 years.

16 Clifford, David Michael. *Marriage and fertility change in post-Soviet Tajikistan*. (Doctoral dissertation, University of Southampton), 2009, available at http://eprints.soton.ac.uk/72368/1.hasCoversheetVersion/Clifford_PhD_thesis.pdf

17 U.S. Commission on International Religious Freedom, Annual Report 2012, <http://www.uscifr.gov/component/tag/tajikistan.html>

18 "Tajik weddings hit by austerity law", BBC New Asia-Pacific, April 14, 2011, <http://www.bbc.co.uk/news/world-asia-pacific-13065495>

Sexual intercourse and other actions of a sexual character with an individual under 16 years of age. Pursuant to [ARTICLE 141](#) of Criminal Code, a sexual intercourse, homosexuality or lesbianism committed by an individual at the age of 18 years with an individual under 16 years of age when there are no elements of the crime stipulated by [ARTICLE 138](#) and [ARTICLE 139](#), is punishable by deprivation of freedom (imprisonment) for a period of 2 to 5 years.

According to the U.S. Department of State's report, "there is no separate statute for spousal rape. The government is unable to provide statistics on the number of cases or convictions. Law enforcement officials usually advised women not to file charges but registered cases on the victim's insistence. Most observers believed the majority of cases were unreported because victims wished to avoid being stigmatized."¹⁹

LEGISLATION

Criminal Code

СТАТЬЯ 138.

1. *Изнасилование, то есть половое сношение с применением насилия или с угрозой его применения к женщине или её близким либо с использованием беспомощного состояния женщины, — наказывается лишением свободы на срок от трех до семи лет.*
2. *Изнасилование:*
 - (а) *совершенное повторно или лицом, ранее совершившим преступление, предусмотренное статьей 139 настоящего Кодекса;*
 - (б) *совершенное группой лиц или группой по предварительному сговору;*
 - (в) *совершенное с особой жестокостью по отношению к потерпевшей или к другим лицам;*
 - (г) *повлекшее заражение потерпевшей венерическим заболеванием;*
 - (д) *заведомо несовершеннолетней;*
 - (е) *двух или более лиц, — наказывается лишением свободы на срок от семи до двенадцати лет.*
3. *Изнасилование:*

19 U.S. Department of State, 2012 Human Rights Reports: Tajikistan, Bureau of Democracy, Human Rights, and Labor, *2012 Country Reports on Human Rights Practices*, April 19, 2013, <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper>

- (а) потерпевшей, заведомо не достигшей четырнадцатилетнего возраста или близкого родственника;
- (б) при особо опасном рецидиве;
- (в) организованной группой;
- (г) с использованием условий общего бедствия или в ходе массовых беспорядков или повлекшее тяжкие последствия;
- (д) с применением или с угрозой применения оружия или предметов, используемых в качестве оружия,

наказывается лишением свободы от двенадцати до двадцати пяти лет или смертной казнью или пожизненным лишением свободы. (зрт 17.05. 04г.N35); (зрт 15.07.2004г.N46); (зрт 01.03.2005г.N86)

СТАТЬЯ 141. ПОЛОВОЕ СНОШЕНИЕ И ИНЫЕ ДЕЙСТВИЯ СЕКСУАЛЬНОГО ХАРАКТЕРА С ЛИЦОМ, НЕ ДОСТИГШИМ ШЕСТНАДЦАТИ ЛЕТ

1. Половое сношение, мужеложство, лесбиянство или иные действия сексуального характера совершенное с лицом, заведомо не достигшим шестнадцатилетнего возраста, при отсутствии признаков преступления, предусмотренного статьями 138 и 139 настоящего Кодекса, — наказывается лишением свободы на срок от двух до пяти лет.
2. Те же действия совершенные:
 - (а) с использованием служебного положения;
 - (б) родителем, педагогом или иным лицом, на которое возложены обязанности по воспитанию, наказываются лишением свободы на срок от трех до пяти лет с лишением права занимать
3. определенные должности или заниматься определенной деятельностью на срок до трех лет или без такового. (зрт 17.05. 04г.N35)

Criminal Code of the Republic of Tajikistan²⁰ (unofficial translation)

ARTICLE 138: RAPE

1. Rape, that is sexual intercourse using force or with the threat of force towards the victim or other persons, or using the helpless condition of the victim, is punishable by deprivation of freedom for a period of 3 to 7 years.
2. Rape:
 - (a) committed for the second time or by an offender who has previously committed forcible actions of sexual character;

20 Criminal Code of the Republic of Tajikistan (unofficial English version), <http://legislationline.org/documents/section/criminal-codes/country/49>

- (b) by a group of persons or a group of persons in a conspiracy;
- (c) jointly with the threat of murder or major bodily injury;
- (d) committed with an extreme brutality in relation to the victim or other persons;
- (e) causing the infection of a venereal disease;
- (f) of a minor woman,
- (g) two or more persons,

is punishable by deprivation of freedom for a period of 7 to 10 years.

3. Rape:

- (a) of a girl at the age under 14 years old or a close relative;
- (b) committed by an organized group;
- (d) in the course of a public calamity or mass riots, or caused grave consequences;
- (e) with using a weapon or with the threat of using it or objects which can be used as a weapon,

is punishable by imprisonment for a period of 15 to 20 years, or by death penalty.

ARTICLE 141: SEXUAL INTERCOURSE AND OTHER ACTIONS OF SEXUAL CHARACTER WITH AN INDIVIDUAL UNDER 16 YEARS OF AGE

1. Sexual intercourse, homosexuality or lesbianism committed by an individual at the age of 18 years with an individual under 16 years of age when there are no elements of the crime stipulated by [ARTICLE 138](#) and [ARTICLE 139](#) of the present Code, is punishable by deprivation of freedom for a period of 2 to 5 years.
2. The same actions:
 - (a) taking advantage of an official position;
 - (b) committed by a parent, teacher or other person who is imposed responsibilities for upbringing, are punishable by imprisonment for a period of 3 to 5 years with deprivation of the right to hold certain positions or be engaged in certain activities for up to 3 years or without it.

**CHILD PROTECTION WHEN
ESCAPING CHILD MARRIAGE**

None known.

LEGAL REQUIREMENTS FOR REGISTRATION OF BIRTHS AND/OR MARRIAGES

BIRTH AND MARRIAGE REGISTRATION

Birth and marriage registration are required by law.

The General Office of Civil Registration is an independent entity within the Ministry of Justice. Offices of Civil Registration (UAGS) are responsible for collecting information on the following: birth; death; marriage; divorce; restoration of age; affiliation; adoption; changing of family name, first name and patronymic. The activity of UAGS is supported by the law “About the state civil registration” and the Family Code.²¹

LEGISLATION

Statutes requiring registration of marriage and birth:

- **Family Code**
- **The law on state civil registration** — It regulates the procedure of state registration of acts of civil status; procedure for amendment, change, restoration and annulment of civil registration procedures; procedure for forming registers of acts of civil status; procedure and conditions of conservation of the act of registration; and the legal status of the institution which carries out the registration of acts of civil status.²² Chapter 2 governs the state registration of birth, chapter 4 governs the state registration of marriage.
- **Law on Observing National Traditions and Rituals**

COMMENTARY

Civil registrations are mainly managed by the UAGS but also involve the Ministry of Health and the State Committee for Statistics. Registration of birth is performed on the basis of a medical document, issued by the health institution where delivery took place. In cases of home-births, where no medical assistance was provided, the fact of the birth is confirmed by the signatures of

21 Ministry of Health of the Republic of Tajikistan Republican Centre for Medical Statistics and Information, Assessment of the health information system in Tajikistan, available at http://www.who.int/healthmetrics/library/countries/HMN_TJK_Assess_Final_2010_01_en.pdf (2009)

22 Ministry of Health of the Republic of Tajikistan Republican Centre for Medical Statistics and Information, Assessment of the health information system in Tajikistan, available at http://www.who.int/healthmetrics/library/countries/HMN_TJK_Assess_Final_2010_01_en.pdf (2009)

two witnesses, present upon delivery. In cases of stillbirth applications must be submitted no later than three days after the event.

Birth registration is required to enroll a child in school, and thus is said in practice to be most often done only at the time a child is ready to begin his or her education.²³ As the Ministry of Education's reports indicate, "about half of all deliveries take place at home. Babies born at home are frequently not registered no matter the legal status of the union from which they issue".²⁴

According to the 2007 Law on Observing National Traditions and Rituals, mullahs are supposed to require a government issued marriage certificate prior to conducting the religious ceremony (*nikah*).²⁵ There are no reliable statistics as to percentage of registered marriages but it was reported that many, if not most, traditional marriages in Tajikistan today are not officially registered with the government.²⁶

Main reasons for which Tajiks might not register traditional marriages:²⁷

- Underage marriage;
- Polygamy which is illegal under the Tajik Penal Code;
- False belief that religious marriages are automatically recognized by the State;
- Socially improper for women to register marriages and properties. Husbands prefer not to register marriages because in case of divorce (a high likelihood, due to mass labor migration to Russia) the wife would not be able to claim alimony, child support and property to which she should be otherwise be entitled;
- It is common for men to marry right before they go abroad so that parents have someone to help in tending the home. Obtaining necessary documents required for marriage registration is costly and time consuming;
- To make it easier for a man to divorce. Under the customary practice of "*triple talaq*", a husband can end a marriage by reciting the term for divorce three

23 U.S. Department of State, 2012 Human Rights Reports: Tajikistan, Bureau of Democracy, Human Rights, and Labor, 2012 Country Reports on Human Rights Practices, April 19, 2013, <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper>.

24 Qualitative survey on issues in girls' education in Tajikistan: In-Depth Analysis of the Reasons Girls Drop Out of School, Ministry of Education of the Republic of Tajikistan and UNICEF (2009), http://www.wunrn.com/news/2007/09_07/09_03_07/090907_girls_files/090907_girls.pdf

25 "Informal Justice in Tajikistan. The Role of Informal Leaders in Providing and Preventing Access to Justice," Eurasia Foundation for the Ministry of Foreign Affairs of Finland, January 2012, <http://equalbeforethelaw.org/sites/default/files/library/Informal%20Justice%20in%20Tajikistan.pdf>

26 "Tajikistan: Loophole Leaves Women in the Lurch When it Comes to Divorce," Eurasianet.org, April 14, 2011 <http://www.eurasianet.org/node/63296>

27 "Informal Justice in Tajikistan. The Role of Informal Leaders in Providing and Preventing Access to Justice," Eurasia Foundation for the Ministry of Foreign Affairs of Finland, January 2012, <http://equalbeforethelaw.org/sites/default/files/library/Informal%20Justice%20in%20Tajikistan.pdf>

times. If traditional marriage is not registered a women is left with limited options for recourse. In 2011 the practice was said to have been condemned and considered un-Islamic, but it is not known if the practice continues.

LEGISLATION

“О государственной регистрации актов гражданского состояния”²⁸

ARTICLE 11(1). OF THE FAMILY CODE

СТАТЬЯ 11. ПОРЯДОК ЗАКЛЮЧЕНИЯ БРАКА

1. Регистрация заключения брака производится в порядке, определенном Законом

Республики Таджикистана “О государственной регистрации актов гражданского состояния”.

Family Code (unofficial translation)

ARTICLE 11. THE ORDER OF MARRIAGE

1. Registration of marriage is made in the manner specified by the Law of the Republic of Tajikistan “About the state civil registration”.

SCHOOLING

Free and universal public education is compulsory until the age of 16.²⁹ According to the statute “About Education” (ARTICLE 12), all children are required to complete nine years of basic education.³⁰ The country is currently working to transfer from the nation’s current 11-year education program to a 12-year education system.³¹

28 Available in Russian on the United Nations in Tajikistan website: http://www.untj.org/docs/country_context/gender/Policies/Law_on_Civil_Registration_2006_rus.pdf

29 U.S. Department of State, 2012 Human Rights Reports: Tajikistan, Bureau of Democracy, Human Rights, and Labor, 2012 Country Reports on Human Rights Practices, April 19, 2013, <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper>

30 Tajikistan — Constitutional Legal Foundations — Education, Republic, Government, and Secondary — StateUniversity.com <http://education.stateuniversity.com/pages/1504/Tajikistan-CONSTITUTIONAL-LEGAL-FOUNDATIONS.html#ixzz2fvt7lFZd>. (**Unable to access “About Education” statute directly online.)

31 Tajikistan, Child Marriage, UNFPA report, October 2012, <http://unfpa.org/webdav/site/eeca/shared/documents/publications/Tajikistan%20English.pdf>. See also *Final Results Declared by the Ministry of Education of Tajikistan*, Khovar December 2, 2010 available at <http://khovar.tj/eng/archive/1532-final-results-declared-by-the-ministry-of-education-of-tajikistan.html>.

LEGISLATION

About Education – text not available

Constitution (*unofficial translation*)

ARTICLE 41. Everyone shall have the right to education. The basic general education shall be compulsory. The state shall guarantee the free of charge general basic compulsory education in the state educational establishments. Everyone shall get free of charge general vocational, primary specialized, vocational specialized and higher specialized education in the state educational establishments, within the framework determined by law. Other forms of education shall be determined by law.

COMMENTARY

In rural areas girls leave schools after 9th grade due to inadequate educational facilities, as well as economic constraints. Daughters are encouraged by their parents to leave school once they complete mandatory education so that they can learn basic professional skills and also help with running the household. In addition, parents prefer to keep their daughters at home once they reach puberty, believing that in co-educational schools they might get into relationships with boys (which might be detrimental to their marriage prospects). It was recently reported that regional ministries of education and schoolteachers as well as women religious leaders (*bibi khalifas*) actively and, in some areas successfully, convinced parents not to take their daughters out of school.³²

According to UNFPA, in some regions 90% of girls attend elementary schools, while in some districts the attendance is between 60 and 70%. The attendance drops significantly in secondary schools and in 2011 only 42% of girls graduated from secondary schools.³³

32 U.S. Department of State, 2012 Human Rights Reports: Tajikistan, Bureau of Democracy, Human Rights, and Labor, *2012 Country Reports on Human Rights Practices*, April 19, 2013, <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper>

“Informal Justice in Tajikistan. The Role of Informal Leaders in Providing and Preventing Access to Justice”, Eurasia Foundation for the Ministry of Foreign Affairs of Finland, January 2012, <http://equalbeforethelaw.org/sites/default/files/library/Informal%20Justice%20in%20Tajikistan.pdf>

33 Tajikistan, Child Marriage, UNFPA report, October 2012, <http://unfpa.org/webdav/site/eeca/shared/documents/publications/Tajikistan%20English.pdf>

INTERSECTION BETWEEN CHILD MARRIAGE AND OTHER SOCIAL ISSUES

COMMENTARY

Poverty encourages early marriages in Tajikistan, which is the poorest country in the Central Asia region. It appears that the endorsement of underage marriage by religious leaders has also had a significant effect. During the Soviet period (before 1991), when the country was more secular, the rate of child marriage was relatively low.³⁴ In addition, during the 1992 - 1997 violent civil war, following the country's independence from the Soviet Union, parents fearing that their underage girls might be raped were forcing them to marry, as marriage was considered to be the best possible way of protecting their daughters.³⁵

The chapter reflects a summary of the jurisdiction's treatment of child marriage. It also reflects some relevant provisions on the subject of child marriage under the national legal framework, primarily if they have been made publicly available in the English language. The summary does not constitute legal advice under any circumstance.

34 Tajikistan, Child Marriage, UNFPA report, October 2012, <http://unfpa.org/webdav/site/eeca/shared/documents/publications/Tajikistan%20English.pdf>

35 "Informal Justice in Tajikistan. The Role of Informal Leaders in Providing and Preventing Access to Justice", Eurasia Foundation for the Ministry of Foreign Affairs of Finland, January 2012, <http://equalbeforethelaw.org/sites/default/files/library/Informal%20Justice%20in%20Tajikistan.pdf>

THAILAND

LEGAL AGE FOR MARRIAGE

AGE OF MARRIAGE

In Thailand, the legal age for formal engagement and for marriage is seventeen for both men and women, although a formal engagement is not a legal condition for marriage.¹

Exceptions

A person who is 17, 18 or 19 years old can get formally engaged and/or married if s/he receives consent from **1)** the parents (if both are alive); **2)** a parent (if one is deceased or unable to give consent); **3)** an adopter; or **4)** a guardian. If none of these is able or willing to give consent to marriage, the minor may petition the court.

In addition, a court may also provide children under the age of seventeen with consent for an “appropriate reason.”² While the law does not specifically define what an “appropriate reason” might be, case law supports as one example marriage after what is described as a consensual sexual relationship.³ Section 277 of the Penal Code exempts from punishment a man who has consensual sexual intercourse with a girl between the ages of 13 and 15 if the court subsequently consents to their marriage based on the totality of the circumstances.⁴

LEGISLATION

Civil and Commercial Code, Book V, Title I (*unofficial translation*)

SECTION 1435. A betrothal can be effected only when the man and woman have reached and concluded their seventeenth year of age.

The betrothal contrary to the provisions of paragraph one is void.

1 Civil and Commercial Code [Civ. Code] Book V, Title I, Section 1435 (Thai). Please note that all English translations come from an unofficial translation of the Civil and Commercial Code by the Thailand Law Forum, available at <http://www.thailawforum.com/database1/marriage-law-thailand.html>.

2 Civil and Commercial Code [Civ. Code] Book V, Title I, Section 1448 (Thai).

3 6484/2545 (1992) (Detailing a situation in which a man who was under nineteen years old was able to lawfully marry the woman who was between the ages of thirteen and fifteen because they had consensual sex).

4 Criminal Code B.E. 2499 Section 277 (Thai). Please note that all English translations come from an unofficial translation of the Criminal Code by Thai Law Online, available at <http://www.thailandlawonline.com/laws-in-thailand/thailand-criminal-law-text-translation#276>.

SECTION 1436. If a minor will conclude a betrothal, the consent of the following persons is required:

His or her parents, in case both of his or her father and mother are still alive;

His or her parent, in case his or her father or mother died, or is in a position or state of being unable to give consent, or is in a situation that make the minor unable to ask for such consent;

His or her adoptor, in case the minor is an adopted child;

His or her guardian, in case there is not person giving consent under (1), (2) and (3), or such person is deprived of parental power.

A betrothal completed by the minor without the said consent is voidable.

SECTION 1448. A marriage can occur only when the man and woman have finished their seventeenth year of age. But the Court may, in case of having appropriate reason, permit them to marry before attaining such age.

SECTION 1454. In case of marriage of a minor, the provisions of Section 1436 shall apply *mutatis mutandis*.

PENALTIES/CRIMINALIZATION

PUNISHMENT FOR CHILD MARRIAGE

There are no criminal penalties for child marriage. A betrothal that does not comply with the legal minimum age is void. Marriage of a minor without consent is voidable in relation to child marriage if either spouse is under twenty or has not received the requisite consents. However, if the marriage is not voided by an “interested party” before the couple reaches the age of twenty or the girl becomes pregnant, then the marriage is valid from the time it was entered into.⁵ No action to void a marriage can be initiated more than a year after the petitioner learned about the marriage.

LEGISLATION

Civil and Commerical Code, Book V, Title I (*unofficial translation*)

SECTION 1503. An application to the Court for cancellation of marriage on the ground of its voidability shall be made only in the case where the spouses have not complied with Section 1448 [minimum age of marriage], Section 1505 [mistaken identity], Section 1506 [fraud], Section 1507 [duress], and Section 1509 [consent to marriage of a minor].

5 Civil and Commercial Code [Civ. Code] Book V, Title I, Section 1504 (Thai).

SECTION 1504. An interested person other than the parents or guardian who have given their consent to the marriage is entitled to apply for cancellation of the marriage on the ground of its voidability.

If the court has not cancelled the marriage until both man and woman have completed the age required under Section 1448 or if the woman has become pregnant before such completion, the marriage shall be deemed to be valid from the time it was made.

SECTION 1509. The marriage made without consent of the persons mentioned in Section 1454 is voidable.

SECTION 1510. Where the marriage is voidable on account of having been made without consent of the persons mentioned in Section 1454, only the person who can give the consent under Section 1454 may apply for the cancellation of the marriage.

The right to apply for the cancellation of the marriage under this Section is extinguished when the spouse has completed the age of twentieth year or when the woman has become pregnant.

The action for the cancellation of the marriage under this Section is barred by prescription after one year from the day where the marriage is known.

PROSECUTIONS FOR CHILD MARRIAGE

Some cases linked to child marriage have been decided in the Thai courts insofar as they relate to the abduction of/sexual activity with underage girls and/or failure to meet the dowry requirements (for these, see under dowry section below). However, these tend to reinforce the principle of underage marriage rather than rule against it.

4587/2532 (1989): A girl between the ages of 15 and 18 consensually cohabited with an adult man for a few days. The defendant was charged with abducting a minor under Section 318 of the Penal Code. The court acquitted him on the grounds that the man intended to marry the girl and the girl consented to their time together.

6484/2545 (1992): One party was between 13 and 15, and the other party was under 19 when they had consensual sex. Upon court approval under the Civil and Commercial Code Section 1448, the parties can get lawfully married and neither party will be penalized under Section 277 of the Penal Code.

LAWS WHICH PROMOTE/ENDORSE BRIDE PRICE OR DOWRY INCLUDING ANY REQUIREMENTS FOR REPAYMENT ON DIVORCE

DOWRIES

In Thailand, the legal age for formal engagement is seventeen for both men and women, although a formal engagement is not a legal condition for marriage.⁶ An engagement is not valid until the man pays a dowry to the woman as evidence that the marriage will take place, and both of them must have the intention to register their marriage with the authorities.⁷ Formal engagements have some of the attributes of a contract (although they may not be enforced by specific performance) because they require the payment of a dowry by the male to the female and they allow for damages in some situations if one of the parties calls off the wedding. If a party breaks off a formal engagement due to an “essential event” such as an infidelity, the innocent party can recover damages, including a return of the dowry (if the victim is the man), or expenses paid in preparation for the marriage (e.g. wedding expenses, a home purchases, etc.). An engagement is not binding until a *Khongman* (marriage gift) has been provided.⁸ Once the betrothal has occurred, the woman has the right to keep the gift. Although providing a dowry is not a legal requirement for marriage in Thailand, it is a common social custom. Known as “*Sinsod*,” the prospective groom will pay a dowry to the bride’s parents in return for her agreement to marry him.⁹ The man can reclaim a dowry paid to the woman’s family if the marriage fails to take place for reasons attributable to the woman.¹⁰

Although there is not official information on this custom, modern Thais view this as a payment for the woman’s good upbringing. The amount of the dowry will depend on the social standing of the bride and her family, as well as her education level, occupation and family background. Generally, the entire dowry is given back to the couple following the ceremony as it is a symbolic gesture in modern Thai society.¹¹

6 Civil and Commercial Code [CIV. CODE] Book V, Title I, Section 1435 (Thai.).

7 Civil and Commercial Code [CIV. CODE] Book V, Title I, Section 1437 (Thai.).

8 *Id.*

9 Civil and Commercial Code [CIV. CODE] Book V, Title I, Section 1437 (Thai.).

10 Civil and Commercial Code [CIV. CODE] Book V, Title I, Section 1437 (Thai.).

11 Warangkana Chomchuen, *Thai dowries change with the times*, World Blog from NBC News (June 6, 2008), http://worldblog.nbcnews.com/_news/2008/06/06/4376648-thai-dowries-change-with-the-times?lite; *Dowry System in Thailand*, Siam Legal, http://www.siam-legal.com/Thailand_Service/thai-dowry.php (last visited June 30, 2013).

LEGISLATION

Civil and Commerical Code, Book V, Title I (*unofficial translation*)

SECTION 1437. Betrothal is not valid until the man gives or transfers the property which is Khongman to the woman as proof that the marriage shall take place.

The Khongman shall become the property of the woman after the betrothal has taken place.

Sinsod is property given on behalf of the zan to the parents, adoptor or guardian of the woman, as the case may be, in return for the woman agreeing to marry. If the marriage does not take place due to a cause related mainly from the woman or on account of any circumstances that make the woman responsible therefore and make the marriage unsuitable for the man or make the man unable to marry that woman, the man can claim the return of the Sinsod.

The provisions of Section 412 to Section 418 of this Code on undue enrichment shall apply to the return of the Khongman or Sinsod under this Chapter, *mutatis mutandis*.¹²

SECTION 1439. After the betrothal has taken place if either party commits a breach of the betrothal agreement, such party shall be liable to make compensation. In case the woman commits a breach of the betrothal agreement, the Khongman shall also be returned to the man.

SECTION 1442. In case where there is an essential event happening to the betrothed woman that make the marriage to the woman unsuitable, the man is entitled to renounce the betrothal agreement and the woman shall return the Khongman to the man.

SECTION 1443. In case where there is an essential event happening to the betrothed man that makes marriage to the man unsuitable, the woman is entitled to renounce the betrothal agreement and the Khongman need not to be returned to the man.

Cases relating to minors who have entered into an engagement

449/2531 (1988): A seventeen year old girl had consensual sexual intercourse with a man whose age was not specified. The girl's father and the man agreed to register the marriage, failing which the man must compensate the girl Bhat 50,000. When the man failed to register the marriage, the Court held that he must honor the agreement and pay the girl Baht 50,000.

3072/2547 (1994): A man who became engaged to a girl under the age of 15 violated the Civil and Commercial Code Section 1435. The engagement was

¹² Civil and Commercial Code [Civ. Code] Book V, Title I, Section 1437 (Thai.).

therefore void. Property arising from the void act was required to be distributed to the parties as though the act did not take place. However, if the man did not know that the girl was under-aged, the girl and her family had to return the dowry received under sections 412 and 413.

4995/2537 (1994): A girl under the age of 16 was in a relationship with a 19 year old man. She would visit him and stay with him at his home periodically where they would have consensual sex with the intention to live together like husband and wife. The man was later unable to pay the dowry and formally get engaged to or marry the child. The man pleaded guilty to the offense of raping a child under the age of 16 under Section 277 of the Penal Code, and was sentenced to four years of imprisonment. However, the court acquitted him of child abduction under Section 317 of the Penal Code because their cohabitation was consensual.

PROVISIONS IMPEDING / PREVENTING ENDING OF UNDERAGE MARRIAGE

None found.

STATUTORY RAPE LAW AND LAWS THAT CIRCUMVENT THIS THROUGH MARRIAGE

STATUTORY RAPE

Thailand has a law that criminalizes any “indecent acts on a child not yet over fifteen years of age,” regardless of the child’s consent. The Penal Code does not explicitly state what constitutes an indecent act. Anyone convicted under this section of the Code faces up to ten years of imprisonment and/or a twenty thousand Baht, or approximately \$6,435, fine.¹³

In addition, the Penal Code stipulates that sexual intercourse with a girl not yet over fifteen years of age who is not married to that person, regardless of the girl’s consent, is a crime punishable by between four and twenty years of imprisonment and a fine of eight to forty thousand Baht (approximately \$260 to \$1290). If the girl is not yet thirteen, the punishment is increased to between seven to twenty years of imprisonment and a fine of fourteen to forty thousand Baht (approximately \$450 to \$1290).¹⁴

¹³ *Id.*

¹⁴ Penal Code [Pen. Code] Book II, Title IX, Section 277 (Thai.).

LEGISLATION

Penal Code Book II, Title IX (*unofficial translation*)

SECTION 276 Whoever has sexual intercourse with a woman, who is not wife, against her will, by threatening by any means whatever, by doing any act of violence, by taking advantage of the woman being in the condition of inability to resist, or by causing the woman to mistake him for the other person, shall be punished with imprisonment of four to twenty years and fined of eight thousand to forty thousand Baht.

If the offense as mentioned in the first paragraph is committed by carrying or using any gun or explosive, or participation of persons in the nature of destroying the woman, the offender shall be punished with imprisonment of fifteen to twenty years and fined of thirty thousand to forty thousand Baht, or imprisonment for life.

SECTION 277 Whoever, has sexual intercourse with a girl not yet over fifteen years of age and not being his own wife, whether such girl shall consent or not, shall be punished with imprisonment of four to twenty years and fined of eight thousand to forty thousand Baht. If the commission of the offense according to the first paragraph is committed against a girl not yet over thirteen years of age, the offender shall be punished with imprisonment of seven to twenty years and fined of fourteen thousand to forty thousand Baht, or imprisonment for life.

If the commission of the offence according to the first or second paragraph is committed by participation of persons in the nature for destroying a girl and such girl is not consent, or by carrying the gun or explosive, or by using the arms, the offender shall be punished with imprisonment for life.

The offense as provided in the first paragraph, if the offender being the man commits against the girl over thirteen years but not yet over fifteen years of age with her consent and the Court grants such man and girl to marry together afterwards, the offender shall not be punished for such offence. If the Court grants them to marry together during the offender be still inflicted with the punishment, the Court shall release such offender.

SECTION 277 BIS. If the commission of the offence according to the first paragraph of Section 276, or the first or second paragraph of Section 277, causes:

Grievous bodily harm to the victim, the offender shall be punished with imprisonment of fifteen to twenty years and fined of thirty thousand to forty thousand Baht, or imprisonment for life;

Death to the victim, the offender shall be punished with death or imprisonment for life.¹⁵

SECTION 279 Whoever, commits an indecent act on a child not yet over fifteen years of age, whether such child shall consent or not, shall be punished with imprisonment not exceeding ten years or fined not exceeding twenty thousand Baht, or both.

If the commission of the offense according to the first paragraph, the offender commits it by threatening by any means whatever, by doing any act of violence, by taking advantage of such child being in the condition of inability to resist, or by causing such child to mistake him for another person, the offender shall be punished with imprisonment not exceeding fifteen years or fined not exceeding thirty thousand Baht, or both.¹⁶

See also case 6484/2545 (1992) above.

CHILD PROTECTION WHEN ESCAPING CHILD MARRIAGE

None found.

LEGAL REQUIREMENTS FOR REGISTRATION OF BIRTHS AND/OR MARRIAGES

BIRTH REGISTRATION

Thailand only legally recognizes the birth of a child if the birth is registered at the District Office.¹⁷ Registration must take place within thirty days of the birth of the child.¹⁸ Thai law requires the parents of any child born in Thailand to register the birth of a child, regardless of their legal status.¹⁹ Although this practice does not provide the child with Thai citizenship, it does establish a legal record of when the child was born and who his or her parents are.²⁰

15 Penal Code [Pen. Code] Book II, Title IX, Section 277 (Thai).

16 Penal Code [Pen. Code] Book II, Title IX, Section 279 (Thai).

17 Civil Registration Act, Amendment No. 2, B.E. 2551 (2008).

18 Registration of Birth in Thailand, Angloinfo: The Global Expat Network, <http://thailand.angloinfo.com/healthcare/pregnancy-birth/registration-of-birth/> (last visited Sept. 26, 2013).

19 Civil Registration Act, Amendment No. 2, B.E. 2551 (2008).

20 Vivian Tam, *In Thailand, birth registration gives refugee babies a good start in life*, UNHCR (Sept. 24, 2012), <http://www.unhcr.org/50604a959.html>.

COMMENTARY

Children who are not registered at birth can be denied the right to social welfare services, including subsidized healthcare, and might be restricted in travel, as well as being more vulnerable to exploitation. Poor children, children of ethnic minorities and migrants, children born in rural areas or at home are less likely to be registered at birth. According to UNICEF, approximately five percent of all children born every year (40,000 children per year) are not registered.²¹

MARRIAGE REGISTRATION

All marriages must be registered in Thailand to be considered binding.²² A “traditional” Thai marriage, normally a Buddhist ceremony, is not considered a legal marriage and the state will not recognize any rights of the married couple.²³

LEGISLATION

Civil Registration Act, Amendment No. 2, B.E. 2551 (2008) *(unofficial translation)*

SECTION 20. When there is the birth report of the child of Thai nationality or without Thai nationality by birth in accordance with Thai law on nationality under Section 18, Section 19, Section 19/1 or Section 19/3, as evidence the registrar shall accept such birth report and issue a birth certificate stating facts as much as it could be.

For a child without Thai nationality by birth in accordance with Thai law on nationality, the registrar shall issue a birth certificate in the manner prescribed in the forms under the discretion of the Director of Central Registration and the place of birth shall be stated as well.²⁴

Civil and Commercial Code Book V, Title I *(unofficial translation)*

SECTION 1457. Marriage under this Code shall be effected only on registration being made.

21 UNICEF Thailand, Child Protection: Birth Registration, UNICEF, http://www.unicef.org/thailand/protection_14929.html (last visited Sept. 26, 2013).

22 Civil and Commercial Code [Civ. Code] Book V, Title I, Section 1457 (Thai.).

23 Is Common Law Marriage Recognized under Thai Law, Samui for Sale, <http://www.samuiforsale.com/family-law/common-law-marriage-thailand.html> (last visited July 22, 2013).

24 Civil Registration Act, Amendment No. 2, B.E. 2551 (2008).

SECTION 1458. A marriage can take place only if the man and woman agree to take each other as husband and wife, and such agreement must be declared publicly before the Registrar in order to have it recorded by the Registrar.

Case law confirms that a marriage is only valid if it is registered:

1117/2535 (1992): A man and woman concluded a customary marriage without any intention of registering their marriage. The Court concluded that it was not a formal engagement, and that the property that the man gave to the woman and her family was considered a legal dowry. Therefore, the man and his family could not recover it when the couple stopped living together.

SCHOOLING

COMMENTARY

The first nine years of education, from ages 7 to 16, are free and strongly encouraged for all children, regardless of their legal status.²⁵ Thai children are entitled to receive at least twelve years of free education.²⁶

According to UNICEF, despite the fact that education is free and generally available, roughly 600,000 primary school aged children are not attending school or enroll late in school.²⁷ Many of the children who do not attend school come from poor, ethnic minority or migrant families. Other children do not attend school because they are disabled or have HIV.²⁸

LEGISLATION

Second National Education Act B.E. 2545 (*unofficial translation*)

SECTION 10. In the provision of education, all individuals shall have equal rights and opportunities to receive basic education provided by the State for the duration of at least 12 years. Such education, provided on a nationwide basis, shall be of quality and free of charge.

SECTION 17. Compulsory education shall be for nine years, requiring children aged seven to enroll in basic education institutions until the age of 16 with the exception of those who have already completed grade 9. Criteria and methods of calculating children's age shall be as stipulated in the ministerial regulations.

²⁵ *Id.*

²⁶ Second National Education Act B.E. 2545, Section 10 (2002).

²⁷ UNICEF, Thailand: Education Overview, <http://www.unicef.org/thailand/education.html> (last visited July 23, 2013).

²⁸ UNICEF, Thailand: Children Not in School, http://www.unicef.org/thailand/education_14936.html (last visited July 23, 2013).

INTERSECTION BETWEEN CHILD MARRIAGE AND OTHER SOCIAL ISSUES

COMMENTARY

One of the largest problems facing girls in Thailand is the sex trade. Thailand has various laws that criminalize both solicitation and sexual intercourse in exchange for money.²⁹ Under the Prevention and Suppression of Prostitution Act, anyone who has sexual intercourse with a prostitute under the age of fifteen shall be liable for between two and six years of imprisonment and a fine of forty thousand to one hundred twenty thousand Baht (approximately \$1290 to \$3860).³⁰ If the child is between fifteen and eighteen years, then that person is subject to one to three years imprisonment and a fine of twenty to sixty thousand Baht (approximately \$640 to \$1930).³¹ These punishments are lower than for non-prostituted girls of the same ages despite the provisions in the Penal Code discounting any so-called “consent” by the girl.

In 2004, the government announced that stopping human trafficking was a part of the national agenda. Since then, relevant laws have been adopted and revised, including the adoption of the Prevention and Suppression of Human Trafficking Act of 2008.³² However, according to the U.S. Department of State’s Trafficking in Persons Report, Thailand has failed to enforce this law. In 2012, the number of prosecutions under the human trafficking laws decreased. Additionally, the government does not provide special services for child victims of sex trafficking. Children victims who do not testify against the traffickers are often repatriated to their home countries. As a consequence, many victims are re-trafficked or reluctant to come forward.³³

The chapter reflects a summary of the jurisdiction’s treatment of child marriage. It also reflects some relevant provisions on the subject of child marriage under the national legal framework, primarily if they have been made publicly available in the English language. The summary does not constitute legal advice under any circumstance.

29 See generally, Prevention and Suppression of Prostitution Act, B.E. 2539 (1996) (Thai.) (criminalizing solicitation, prostitution and establishing or associating with a prostitution establishment).

30 *Id.* at Section 8.

31 *Id.*

32 Child Rights International Network, Thailand: Universal Periodic Review, Child Rights International Network (Feb. 2, 2011), <http://www.crin.org/resources/infoDetail.asp?ID=25983>.

33 U.S. Dept. of State, Trafficking in Persons Report 2013 358-359 (2013).

UGANDA

LEGAL AGE FOR MARRIAGE

AGE OF MARRIAGE

The Constitution provides that 18 is the minimum age for marriage for both men and women. The age of majority in Uganda for all purposes including voting, serving in the military, contracting etc. is 18 years.

EXCEPTIONS

The Hindu Marriage and Divorce Act (Cap. 250) provides an exception when an underage girl receives her guardian's consent. However, this portion of the Hindu Marriage and Divorce Act is void because it conflicts with the Constitution, and thus no statutory exceptions to the minimum age of 18 are in force.

A marriage is voidable under the Customary Marriage (Registration) Act (Cap. 248) if the female party is not yet 16 and the male party 18.

LEGISLATION

The Constitution of the Republic of Uganda (1995)¹

ARTICLE 31: RIGHTS OF THE FAMILY

1. Men and women of the age of eighteen years and above have the right to marry and to found a family and are entitled to equal rights in marriage, during marriage and at its dissolution.. .
3. Marriage shall be entered into with the free consent of the man and woman intending to marry...

ARTICLE 59: RIGHT TO VOTE

Every citizen of Uganda of eighteen years of age or above has a right to vote.

ARTICLE 257: INTERPRETATION

1. In this Constitution, unless the context otherwise requires —
“child” means a person under the age of eighteen years;

¹ Const. of the Republic of Uganda, 1995, art. 31 available at <http://www.ulii.org/ug/legislation/consolidated-act/0>.

Customary Marriage (Registration) Act (Cap. 248)²

SECTION 11. VOID MARRIAGES.

A customary marriage shall be void if —

1. The female party to it has not attained the age of sixteen years
2. The male party to it has not attained the age of eighteen years...

Hindu Marriage and Divorce Act (Cap. 250)³

SECTION 2. CONDITIONS FOR MARRIAGES.

1. A marriage may be solemnised if the following conditions are fulfilled —
 - (1) neither party has a spouse living at the time of the marriage;
 - (2) both parties are of sound mind at the time of the marriage;
 - (3) the bridegroom has attained the age of eighteen years and the bride the age of sixteen years at the time of the marriage;
 - (4) where the bride has not attained the age of eighteen years, the consent of her guardian in marriage, if any, has been obtained for the marriage...

The Marriage and Divorce Bill⁴ (tabled, but not in force)

REQUIREMENTS OF A VALID CIVIL MARRIAGE

15. **MINIMUM AGE FOR MARRIAGE:** A person shall not have the capacity to contract a civil marriage unless he or she has attained eighteen years of age.

REQUIREMENTS OF A VALID CHRISTIAN MARRIAGE

37. **MINIMUM AGE FOR MARRIAGE:** A person shall not have the capacity to contract a Christian marriage unless he or she has attained eighteen years of age.

REQUIREMENTS OF A VALID CUSTOMARY MARRIAGE

58. **MINIMUM AGE FOR MARRIAGE:** A person shall not have the capacity to contract a customary marriage unless he or she has attained eighteen years of age.

REQUIREMENTS OF A VALID HINDU MARRIAGE

82. CONDITIONS FOR HINDU MARRIAGES:

2 Customary Marriage (Registration) Act 1973, available at <http://www.ulii.org/ug/legislation/consolidated-act/248>.

3 Hindu Marriage and Divorce Act 1961, available at <http://www.ulii.org/ug/legislation/consolidated-act/250>.

4 Marriage and Divorce Bill, 2009, available at http://www.ulii.org/files/ug/legislation/bill/2009/10/marriage_and_divorce_bill_bill_no_19_of_2009_pdf_76370.pdf.

- (1) A Hindu marriage may be solemnized where the following conditions are fulfilled —
 - (a) neither party has a spouse living at the time of the marriage;
 - (b) both parties are of sound mind at the time of the marriage;
 - (c) both parties have attained the age of eighteen years...

Requirements of a valid Bahai marriage

97. CONDITIONS FOR A BAHAI MARRIAGE:

- (1) A Bahai marriage shall be solemnized where the following conditions are fulfilled —
 - (a) both parties have consented to the marriage;
 - (b) the bridegroom has paid dowry to the bride;
 - (c) both parties have attained the age of eighteen years

COMMENTARY

While Both the Customary Marriage (Registration) Act (Cap. 248) and the Hindu Marriage and Divorce Act (Cap. 250) set the minimum age for marriage for women at age 16 and for men at age 18, the Constitution provides that 18 is the minimum age for marriage for both men and women. As the Constitution is the supreme law of Uganda, the provisions of the Customary Marriage Act and the Hindu Marriage Act setting a lower age for marriage for women are void.⁵

The Marriage and Divorce Bill, which was tabled before parliament in December 2009, contains separate provisions governing civil, customary, Christian, Hindu, and Bahai marriages. Each sets the legal minimum age for marriage at 18. The Bill has not yet been passed into law, and debate of the bill has been put on hold.⁶

Despite these laws prohibiting underage marriage, Uganda is reported as being one of the top twenty countries with the highest rates of child marriage.⁷ Approximately 12 percent of women are married by age 15, and 46 percent are married by age 18.⁸ In the poorest quintile of the population, 62 percent of girls

5 Information provided by local counsel.

6 Information provided by local counsel; see also Parliament of the Republic of Uganda, Parliament goes on recess, available at <http://www.parliament.go.ug/new/index.php/about-parliament/parliamentary-news/174-parliament-goes-on-recess>.

7 Human Rights Watch, Q & A: Child Marriage and Violations of Girls' Rights (June 14, 2013), available at <http://www.hrw.org/news/2013/06/14/q-child-marriage-and-violations-girls-rights>.

8 Anthony Davis, Claire Postles and Giorgia Rosa, *A Girl's Right to Say No to Marriage*, Plan Limited (2013), at 19; United Nations Children's Fund, *UNICEF in Uganda: Keeping Children Alive, Safe, Learning*, at 1 (2012), [hereinafter *UNICEF in Uganda*], available at http://www.unicef.org/uganda/UNICEF_Uganda_Keeping_Children_Alive_Safe_and_Learning_2012.pdf.

are married before age 18, compared to 26 percent in the wealthiest quintile.⁹ Uganda is also in the top twenty countries with the highest rates of early childbearing. 36 percent of girls have given birth by age 18; 6 percent have done so by age 15.¹⁰

PENALTIES/CRIMINALIZATION

LEGISLATION

Underage marriages are considered void (see statutes in first section above).

Penal Code of Uganda (Cap. 120) as amended by Act 8 of 2007¹¹

SECTION 129. DEFILEMENT OF PERSONS UNDER EIGHTEEN YEARS OF AGE.

1. Any person who performs a sexual act with another person who is below the age of eighteen years, commits a felony known as defilement and is on conviction liable to life imprisonment.
 - (1) Any person who attempts to perform a sexual act with another person who is below the age of eighteen years commits an offence and is on conviction, liable to imprisonment not exceeding eighteen years.
 - (2) Any person who performs a sexual act with another person who is below the age of eighteen years in any of the circumstances specified in subsection (4) commits a felony called aggravated defilement and is, on conviction by the High Court, liable to suffer death.
 - (3) The circumstances referred to in subsection (3) are as follows—
 - » where the person against whom the offence is committed is below the age of fourteen years;
 - » where the offender is infected with the Human Immunodeficiency Virus (HIV);
 - » where the offender is a parent or guardian of or a person in authority over, the person against whom the offence is committed;
 - » where the victim of the offence is a person with a disability; or
 - » where the offender is a serial offender.

⁹ UNICEF in Uganda, at 2.

¹⁰ UNICEF, *Progress for Children: A Report Card on Adolescents*, at 25 (April 2012), [hereinafter *UNICEF Report Card*], available at http://www.unicef.org/uganda/Progress_for_Children_-_No._10_EN_04272012.pdf (based on surveys taken from 2005–2010).

¹¹ Penal Code of Uganda (Cap. 120) as amended by Act 8 of 2007 available here <http://www.ulii.org/content/penal-code-amendment-act-2007>.

2. Any person who attempts to perform a sexual act with another person below the age of eighteen years in any of the circumstances specified in subsection (4), commits an offence and is liable on conviction, to imprisonment for life.
3. Where a person is charged with the offence under this section that person shall undergo a medical examination as to his or her Human Immuno Deficiency Virus (HIV) Status.

SECTION 129A. CHILD TO CHILD SEX.

1. Where the offender in the case of any offence under section 129 is a child under the age of twelve years, the matter shall be dealt with as required by Part V of the Children Act.
2. Where an offence under section 129 is committed by a male child and a female child upon each other when each is not below the age of twelve years of age, each of the offenders shall be dealt as required by Part X of the Children Act.

SECTION 129B. PAYMENT OF COMPENSATION TO VICTIMS OF DEFILEMENT.

1. Where a person is convicted of defilement or aggravated defilement under section 129, the court may, in addition to any sentence imposed on the offender, order that the victim of the offence be paid compensation by the offender for any physical, sexual and psychological harm caused to the victim by the offence.

COMMENTARY

While there are no criminal penalties per se for a violation of the minimum age requirement for marriage, there are no exceptions to the crime of defilement, even if the couple is supposedly “married.” Thus, consummation of the marriage would constitute defilement, which does carry heavy penalties.

PROSECUTIONS FOR CHILD MARRIAGE

COMMENTARY

Prosecution for breach of the minimum age marriage laws is often hampered by the reluctance or inability of the girls involved to report the cases to the police. There has, however, been some improvement in this area.¹² For example, in December 2012, it was reported that police in Mbarara District arrested 16 family members who allegedly forced a 13-year-old girl to get married on the basis that as a minor she could not give her consent.¹³

Additionally, some defilement cases are not prosecuted to conclusion. Often this is said to be due to the victim withdrawing a complaint because her family has reached a settlement with the perpetrator.¹⁴

LAWS WHICH PROMOTE/ENDORSE BRIDE PRICE OR DOWRY INCLUDING ANY REQUIREMENTS FOR REPAYMENT ON DIVORCE

BRIDE PRICE

The payment of a bride price is a common custom. The practice was unsuccessfully challenged in a case brought in the Constitutional Court of Uganda called *Mifumi (U) Ltd & 12 Others v. The Attorney General & Another*. In the case, petitioners argued, inter alia, that the bride price custom degraded women, caused domestic violence, and subjected women to servitude in marriage, and that it violated the following constitutional provisions: Art. 31, which provides that marriage shall be entered into with free consent; Art. 21, which provides that all persons are equal; and Art. 24, which guarantees treatment with dignity.¹⁵ The Court rejected petitioners' arguments and upheld the practice as constitutional.

On the other hand, the practice of a husband demanding a refund of the bride price in the event of dissolution of the marriage has been held unconstitutional as

¹² Information provided by local counsel.

¹³ Information provided by local counsel.

¹⁴ Bureau of Democracy, Human Rights and Labor, U.S. Department of State, *Uganda Country Reports on Human Rights Practices* (2012), available at <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm>.

¹⁵ *Mifumi (U) LTD. and 12 others v. Attorney General*, Constitutional Petition No. 12 of 2007 (March 26, 2010) available at <http://www.ulii.org/ug/judgment/constitutional-court/2010/2>.

violating Art. 31(1), which protects equal rights in marriage and at its dissolution, and Art. 33(6), which prohibits customs that undermine the status of women.¹⁶

COMMENTARY

The bride price custom is problematic in many respects. One commonly held view is that the payment of a bride price permits the husband a great deal of latitude within a marriage, including determining the frequency of sex and the right to sleep with or marry other women.¹⁷ Additionally, the bride price custom provides impoverished parents with a strong motivation to marry their young daughters off early.¹⁸

STATUTORY RAPE LAW AND LAWS THAT CIRCUMVENT THIS THROUGH MARRIAGE

STATUTORY RAPE

The crime of “Defilement” criminalizes sex with a minor under age 18. There is no marriage exception to the crime of defilement, so consummating a marriage with an underage person does constitute a crime.

COMMENTARY

Some defilement cases are not prosecuted to conclusion. As stated above, often this is said to be due to the victim withdrawing a complaint because her family has reached a settlement with the perpetrator.¹⁹

While the currently shelved Marriage and Divorce Bill provides explicitly for conjugal rights, it also provides the right to deny a spouse sexual intercourse on several enumerated grounds.²⁰ Furthermore, it exposes a spouse to criminal and civil liability if that spouse has sex with the other when the other has refused to consent based on one of the enumerated grounds. However this move towards criminalizing rape in marriage is said to be highly unpopular with the majority male members of parliament and is reported to be one of the reasons the bill has stalled.²¹

16 *Masinde v. Watibini*, HCT-04-CV-CR-0020-2012, (Jan. 24, 2013), available at <http://www.ulii.org/ug/judgment/high-court/2013/1> (citing Mifumi).

17 Kabumba, Busingye, *Young Women and the HIV/AIDS Pandemic in Uganda*, at 53 (March 2012) (citing *Mifumi (U) LTD. and 12 others v. Attorney General*, Const. Pet. No. 12 of 2007).

18 USAID Health Policy Initiative, *Addressing Early Marriage in Uganda*, at 5 (March 2009) [hereinafter USAID Report], available at http://pdf.usaid.gov/pdf_docs/PNADT401.pdf.

19 2012 Uganda Country Report.

20 Marriage and Divorce Bill 2009, Clause 114 available at: http://www.parliament.go.ug/new/images/stories/bills/Marriage_Divorce_bill_2009_1.pdf

21 The Africa Report: “Marital Rape bill splits Ugandans”, 7 March 2013 available at <http://www.theafricareport.com/East-Horn-Africa/marital-rape-bill-splits-ugandans.html>.

LEGISLATION

See section above on the crime of Defilement, Penal Code of Uganda (Cap. 120) as amended by Act 8 of 2007.

CHILD PROTECTION WHEN ESCAPING CHILD MARRIAGE

While there is no law in Uganda specifically addressing the issue of protection when escaping child marriages, several laws and mechanisms are in place in Uganda for the protection of children in general. Uganda has signed and ratified several international instruments, notably: The UN Convention on the Rights of a Child 1989 (including the two optional protocols), The African Charter on the Rights and Welfare of the Child (1999), and The 1979 Convention on the Elimination of all Forms of Discrimination against Women.²²

LEGAL REQUIREMENTS FOR REGISTRATION OF BIRTHS AND/OR MARRIAGES

BIRTH REGISTRATION

The Constitution provides that every birth should be registered by the State. In practice, the majority of births are not registered; only 17 percent in the poorest quintile of the population is registered, while 26 percent of the richest quintile is registered.²³ A program was recently started by the Government, with support from UNICEF and Uganda Telecom, to complete birth registration through a process called Mobile Vital Records System, with the goal of increasing birth registration to 80 percent of the population by 2014.²⁴

MARRIAGE REGISTRATION

The Constitution provides that all marriages should be registered by the State. This includes customary marriages.

²² Information in this section was provided by local counsel.

²³ *UNICEF in Uganda*, at 2.

²⁴ *UNICEF in Uganda*, at 6.

LEGISLATION

Constitution of the Republic of Uganda (1995)²⁵

ARTICLE 18: REGISTRATION OF BIRTHS, MARRIAGES AND DEATHS

The State shall register every birth, marriage and death occurring in Uganda.

Births and Deaths Registration Act 1973 (Cap. 309)²⁶

[This Act comprehensively regulates the Constitution's registration requirement—it is too large to include here]

The Marriage Act (1904) Cap 251²⁷ [too large to include here]

The Customary Marriage (Registration) Act²⁸ (1973)

6. REGISTRATION OF CUSTOMARY MARRIAGES.

1. The parties to a customary marriage shall, as soon as may be, but in any event not later than six months after the date of completion of the ceremonies of marriage, attend at the office of the registrar of the marriage district in which the customary marriage took place, with at least two witnesses to the marriage ceremonies, to register details of the marriage.

SCHOOLING

COMMENTARY

In furtherance of the constitutionally enshrined right of children to education, in 1997 the Government of Uganda initiated the Universal Primary Education (UPE) scheme which provides free primary education at public schools for both boys and girls. Thus, education is tuition free and compulsory for the first seven years of primary school for everyone.²⁹ However, only about 36 percent of children

25 Const. of the Republic of Uganda, art. 18.

26 Births and Deaths Registration Act 1973 (Cap. 309), available at <http://www.ulii.org/ug/legislation/consolidated-act/309>.

27 Marriage Act 1904 (Cap. 251), available at <http://www.ulii.org/ug/legislation/consolidated-act/251>

28 The Customary Marriage (Registration) Act 1973 (Cap. 248), available at <http://www.ulii.org/ug/legislation/consolidated-act/248>

29 Information provided by local counsel.

(both boys and girls) complete primary school,³⁰ while only about 21 percent enroll in secondary school.³¹

In reality, child marriages usually result in the affected child dropping out of school.³² Another serious problem is sexual abuse by teachers. Such abuse is common; one survey conducted in 2008 found that 4 percent of girl students reported being forced to have sex with a teacher.³³

LEGISLATION

Constitution of the Republic of Uganda (1995)³⁴

ARTICLE 30: RIGHT TO EDUCATION

All persons have a right to education.

ARTICLE 34: RIGHTS OF CHILDREN

...A child is entitled to basic education which shall be the responsibility of the State and the parents of the child...

ARTICLE OBJECTIVE XVIII. EDUCATIONAL OBJECTIVES.

- (i) The State shall promote free and compulsory basic education.
- (ii) The State shall take appropriate measures to afford every citizen equal opportunity to attain the highest educational standard possible.
- (iii) Individuals, religious bodies and other nongovernmental organisations shall be free to found and operate educational institutions if they comply with the general educational policy of the country and maintain national standards.

The Education (Pre-Primary, Primary and Post-Primary) Act, 2008³⁵

Part IV—Structure of Education

10. LEVELS OF EDUCATION

- 3. The following shall apply to primary education—
 - (a) primary education shall be universal and compulsory for pupils aged 6 (six) years and above which shall last seven years;

30 UNICEF Report Card, at 14 (based on surveys from 2005-2010).

31 UNICEF Report Card, at 50.

32 Information provided by local counsel; see also Parliament of the Republic of Uganda, *Stop Early Marriages—Kadaga Warns*, available at <http://www.parliament.go.ug/new/index.php/about-parliament/parliamentary-news/170-stop-early-marriages-kadaga-warns>.

33 *Over 7,000 Girls Defiled Last Year, Say Police*, The African Child Information Hub, (April 14, 2010), available at http://www.africanchildinfo.net/index.php?option=com_k2&view=item&id=4733%3Auganda-over-7000-girls-defiled-last-year-say-police&Itemid=67&lang=en.

34 Const. of the Republic of Uganda, 1995, available at <http://www.ulii.org/ug/legislation/consolidated-act/0>.

35 The Education (Pre-primary and Post-primary) Act, 2008, available at http://planipolis.iiep.unesco.org/upload/Uganda/Uganda_EducationAct.pdf.

- (b) all children of school going age shall enter and complete the primary education cycle of seven years; and
- (c) Government shall ensure that a child who drops out of school before completing primary education cycle attains basic education through alternative approaches to providing that education.

Children Act (Cap. 59)³⁶

(multiple provisions require a parent or other person having custody of a child to provide education for the child).

INTERSECTION BETWEEN CHILD MARRIAGE AND OTHER SOCIAL ISSUES

COMMENTARY

Though prohibited by law, domestic violence against women remains widespread.³⁷ Married adolescent girls are particularly at risk of experiencing spousal violence, in part because upon marriage the girl must move in with her husband's family, which is often in another village far from her friends and relatives.³⁸ Sixty-seven percent of married adolescent girls surveyed reported experiencing emotional, physical, and/or sexual violence by a spouse.³⁹

Acute poverty is the most commonly cited reason for parents' decisions to give away their children for early marriage and sexual arrangements, particularly in rural areas.⁴⁰ Sometimes it is believed that child marriage will protect against HIV infection when, in reality, married adolescents are more likely to be infected with HIV than those who have never been married.⁴¹ Traditional social norms regarding the roles of women in society, the disadvantaged status of women, and biases against the education of women and girls also contribute to high rates of child marriage.⁴²

36 Children Act, available at <http://www.ulii.org/ug/legislation/consolidated-act/59-0>.

37 Information provided by local counsel.

38 *Ending Child Marriage*, Joy for Children Uganda (2007), available at http://joyforchildren.org/end_of_child_marriage.html.new.

39 *UNICEF Report Card*, at 31 (based on surveys from 2005–2010).

40 Bureau of Democracy, Human Rights and Labor, U.S. Department of State, *Uganda Country Reports on Human Rights Practices* (2012), available at <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm>.

41 *USAID Report*, at v.

42 *Executive Summary: Uganda*, ECPAT International, [hereinafter ECPAT Report], available at http://www.ecpat.net/Ei/pdf/A4A_II/EXSUM_A4A_AF_UGANDA.pdf.

Commercial sexual exploitation of children is also a major issue.⁴³ While the law prohibits sexual exploitation of children, the government does not enforce the law effectively. Research conducted in 2011 suggests that sexual exploitation of children is on the rise, and that the age at which children become involved is decreasing.⁴⁴

The chapter reflects a summary of the jurisdiction's treatment of child marriage. It also reflects some relevant provisions on the subject of child marriage under the national legal framework, primarily if they have been made publicly available in the English language. The summary does not constitute legal advice under any circumstance.

43 *Commercial Sexual Exploitation of Children in Uganda; a critical review of efforts to address CSEC 2005–2011*, Uganda Youth Development Link, (May 2011) [hereinafter *UYDEL Study*], available at <http://www.uydel.org/details.php?category=cuydl&eid=27>.

44 *ECPAT Report; UYDEL Study*.

YEMEN

LEGAL AGE FOR MARRIAGE

AGE OF MARRIAGE

Currently, there is no minimum age set by the law.

Under the Personal Status Law No. 20 of 1992 (the “Personal Status Law of Yemen”), the minimum age of marriage for both males and females in Yemen was set at 15 years.¹ However, in 1999 amendments were made that served as a set-back to women’s rights.² Among the amendments, was removal of the provision that set the legal minimum age for marriage for a girl at 15.³ Pursuant to the amended provision, the girl’s guardian can decide whether or not the girl is physically and psychologically prepared for marriage.⁴

In practice, girls as young as 11 get married, especially in villages and rural areas which have lower education levels.⁵ In some cases,⁶ girls have been married before reaching puberty.

LEGISLATION

Personal Status Law No. 20 of 1992 Article 15 (as amended in law No. 24 of 1999) *(unofficial translation)*

ARTICLE 15: The agreement of the child’s guardian is legal but the person who is contracted to [i.e. the husband] is not allowed to be with her or marry her until she is suitable for intercourse regardless of whether she has exceeded the age of fifteen and an agreement to a minor is not valid except if a benefit is proven.

1 Personal Status Law No. 20 of 1992 Article 15.

2 Decree Law No. 24 of 1999 in relation to Personal Status Law which Amended Article 15 of the Personal Status Law No. 20 of 1992.

3 Personal Status Law No. 20 of 1992 Article 15.

4 Yemen: Government body calls for end to child marriage” IRIN, August 3, 2008, <http://www.irinnews.org/report/79584/yemen-government-body-calls-for-end-to-child-marriage>

5 Human Rights Watch Report, *How Come You Allow Little Girls to Get Married? – Child Marriage in Yemen* (December 8, 2011) <http://www.hrw.org/news/2011/12/08/yemen-child-marriage-spurs-abuse-girls-and-women>

6 Human Rights Watch Report, *How Come You Allow Little Girls to Get Married? – Child Marriage in Yemen* (December 8, 2011) <http://www.hrw.org/news/2011/12/08/yemen-child-marriage-spurs-abuse-girls-and-women>

COMMENTARY

There have been a number of attempts in recent years to introduce amendments to the Personal Status Law of Yemen to provide for a minimum age for marriage. The most significant of these amendments was a short-lived 2009 proposed law setting the minimum age for marriage at age 17.⁷ However, the amendment (along with several others) ultimately failed due to opposition from political parties, who claim that setting a minimum age for marriage is against Islamic principles.⁸ However, September 2013 newspaper reports of the alleged death of an 8 year old girl following injuries sustained on her wedding night to a 40 year old man provoked outrage in Yemen. There are now moves to revive a minimum age of marriage law, setting the age for marriage at 18, or 16 with judicial and medical consent.

PENALTIES/CRIMINALIZATION

PUNISHMENT FOR CHILD MARRIAGE

As there is no minimum age of marriage, it is not considered a criminal act for a minor to be married.

However, a female child who has been forced to marry can request a divorce by filing a case in court, as evidenced by the case of 10 year old Nujood Ali who requested a divorce from her then 30 year old husband.⁹ A judge, at his discretion, can force a legal divorce between the bride and the groom and transfer legal guardianship of the bride to the court. Practically, that means a girl would not have many options other than to return to her family after a divorce – shelters are minimal and of poor quality, and unless a relative or friend is willing to take in the girl, she will return to her parents' home (where she may have been coerced into marrying the older man, in the first place). This is considered a civil process and not a criminal process.

7 US State Department, *Yemen 2012 Human Rights Report*, (2012) <http://www.state.gov/j/drl/rls/hrrpt/2012/nea/204392.htm>

8 Human Rights Watch Report, *How Come You Allow Little Girls to Get Married? – Child Marriage in Yemen* (December 8, 2011) <http://www.hrw.org/news/2011/12/08/yemen-child-marriage-spurs-abuse-girls-and-women>

9 Robert Worth, *Tiny Voices Defy Child Marriage in Yemen*, NYTimes (June 29, 2008) <http://www.nytimes.com/2008/06/29/world/middleeast/29marriage.html?pagewanted=all>

PROSECUTIONS FOR CHILD MARRIAGE

COMMENTARY

No prosecutions have been found because it is not a crime for a minor to be married. However, there have been cases of divorces that have been upheld by the court which have been brought by child brides who were forced to marry or were mistreated in marriage.^{10, 11} In cases where divorce is sought for forced marriage, the onus is on the female child or a family member of the female child to bring the case to the attention of a judge by filing a civil complaint at the local court, with proof that she was forced to marry or faced violence from her husband. At present, this practice is a rarity, especially in rural areas. However, as reflected by Nujood's story, this is slowly changing and child brides are starting to break traditions by speaking up and resorting to the courts to request a divorce. Generally, girls who are granted divorce by the courts still struggle with repaying the dower to the (former) husband as evidenced by the case of Wafaa – a case addressed by Equality Now, in conjunction with the Yemen Women's Union.¹²

LEGISLATION

Personal Status Law No. 20 of 1992 Article 15 (as amended in law No. 24 of 1999)

LAWS WHICH PROMOTE/ENDORSE BRIDE PRICE OR DOWRY INCLUDING ANY REQUIREMENTS FOR REPAYMENT ON DIVORCE

DOWRIES

Dowries (which are paid by the groom to the bride in Yemen) vary in amount and are set and agreed to by the families of the individuals getting married. Stipulations for post-wedding and post-marriage (in case of divorce) payments can be included in the official marriage contract prior to registration of the marriage.

10 Alexandra Sandels, *Yemen: Child bride escapes after months of abuse and chain*, LA Times. (April 1, 2010) <http://latimesblogs.latimes.com/babylonbeyond/2010/04/yemen-runaway-child-bride-and-fourth-child-bride-granted-divorce.html>

11 Kelly McEvors, *Tragedy Shines Light On Lives Of Yemeni Child Brides*, NPR. (April 19, 2010) <http://www.npr.org/templates/story/story.php?storyId=126110751>

12 Equality Now, *Adolescent Girls' Legal Defense Fund* (last accessed 7/1/13) <http://www.equalitynow.org/agldf#yemen>

In the case of a divorce that is requested by the husband, the husband must pay the wife half the dowry amount that was agreed to when they entered into marriage. If, however, the request for divorce is by both the husband and wife or from the wife alone, then the wife is obligated to repay to the husband the full dowry amount.¹³

LEGISLATION

Personal Status Law No. 20 of 1992, Article 36 (unofficial translation)

ARTICLE 36: Half the agreed dower is required to be paid to the wife after divorce or khulu before consummating the marriage request from the husband. If the Khulu request is from both husband and wife together, or from the wife only, no dower amount is required to be paid by the husband and the wife must pay back what she has received [i.e. the dower] which is no longer hers to keep; however she does not have to give back any gifts the husband has already given to her.

PROVISIONS IMPEDING/PREVENTING ENDING OF UNDERAGE MARRIAGE

COMMENTARY

The current law merely states that the requirement for a girl to get married is for her to be “fit for intercourse”. This is interpreted in many different ways and for the majority it is interpreted as a girl who has had her first menstrual cycle.

LEGISLATION

Personal Status Law No. 20 of 1992 Article 15 (as amended in law No. 24 of 1999)

STATUTORY RAPE LAW AND LAWS THAT CIRCUMVENT THIS THROUGH MARRIAGE

STATUTORY RAPE

Not known

¹³ Personal Status Law No. 20 of 1992, Art. 36.

CHILD PROTECTION WHEN ESCAPING CHILD MARRIAGE

COMMENTARY

Legally, the court becomes the guardian of the child. Logically speaking, a girl would not have many options other than to return to her family after a divorce – shelters are minimal and of poor quality, and unless a relative or friend is willing to take in the girl, she will return to her parents' home.

LEGAL REQUIREMENTS FOR REGISTRATION OF BIRTHS AND/OR MARRIAGES

BIRTH REGISTRATION – COMMENTARY

Although it is compulsory in Yemen to register the birth of a child, many families do not register the birth because they are not aware that they are required to do so. This is more prevalent in rural areas with lower education levels.¹⁴

In 2006, the Ministry of Health of Yemen, with the financial and technical support of UNICEF and The Pan Arab Project for Family Health, published the Yemen Multiple Indicator Cluster Survey (MICS) which stated that only 22 percent of births were registered.¹⁵ It also showed that there is a strong correlation between mothers who completed secondary education level (with almost 41% registration of births) and those who have lower education levels (approximately 15%). The MICS also showed a strong correlation between birth registrations and social and economic levels of the mother where the more affluent or educated the mother is, the more likely the child's birth would be registered.¹⁶

The lack of birth registration creates difficulties in proving a person's age. This has also led to some minors being recruited into the military, being tried and charged as adults in court (and being charged with the death penalty).

14 Human Rights Watch Report, *How Come You Allow Little Girls to get married? – Child Marriage in Yemen* (December 8, 2011) <http://www.hrw.org/news/2011/12/08/yemen-child-marriage-spurs-abuse-girls-and-women>

15 Ministry of Health and Population and UNICEF, *Yemen Multiple Indicator Cluster Survey (MICS)*, (2006). http://www.childinfo.org/files/MICS3_Yemen_FinalReport_2006_Eng.pdf Pg. 16 and 54.

16 Ministry of Health and Population and UNICEF, *Yemen Multiple Indicator Cluster Survey (MICS)*, (2006). http://www.childinfo.org/files/MICS3_Yemen_FinalReport_2006_Eng.pdf Pg. 54

MARRIAGE REGISTRATION

The Personal Status Law of Yemen¹⁷ requires the person who draws up the marriage contract (referred to in Yemen as ‘Ameen Shar’i’) or the husband or the wife’s guardian to register the marriage certificate, which must include the age of the bride and groom, their national identification numbers, and the amount of dowry.

In practice, however, marriages are rarely registered and there are no penalties for non-compliance.¹⁸ The most commonly cited reason for not registering the marriage is the lack awareness of such requirement, especially in rural areas.¹⁹

LEGISLATION

Personal Status Law No. 20 of 1992, Article 14 (unofficial translation)

ARTICLE 14: Whoever is responsible for the drafting of the marriage contract or the husband or the guardian of the wife must register the marriage agreement certificate to the related government office within a month and if one of the aforementioned people registers the marriage certificate than the responsibility of registering dissolves from the others but only if the marriage certificate contains all the necessary information like the age of the married couple, the ID numbers of each if available, and the dower amount and the amount to be paid to wife if there is a divorce.

SCHOOLING

COMMENTARY

It is compulsory for both boys and girls to attend school for ‘basic education’, between the ages of 6 and 15.²⁰ There are no exceptions in the law for married school-age children. However, child marriages and early pregnancy disrupts the girls’ right to education, and is a leading cause of school dropout for girls.²¹

17 Personal Status Law No. 20 of 1992 Art. 14.

18 Human Rights Watch Report, *How Come You Allow Little Girls to Get Married? – Child Marriage in Yemen* (December 8, 2011) <http://www.hrw.org/news/2011/12/08/yemen-child-marriage-spurs-abuse-girls-and-women>

19 Phone conversation between LW and Yemeni Lawyer, Maeen Al-Obaidi from Taiz, Yemen. (June 27, 2013)

20 Public Education Law, No. 45 of 1992. Art. 18.

21 Human Rights Watch Report, *How Come You Allow Little Girls to Get Married? – Child Marriage in Yemen* (December 8, 2011) <http://www.hrw.org/news/2011/12/08/yemen-child-marriage-spurs-abuse-girls-and-women>

INTERSECTION BETWEEN CHILD MARRIAGE AND OTHER SOCIAL ISSUES

COMMENTARY

According to the US State Department 2012 Yemen Human Rights Report, which refers to a 2009 study published by the Ministry of Social and Labor Affairs, a quarter of all girls were married before they were 15 years old.²²

The chapter reflects a summary of the jurisdiction's treatment of child marriage. It also reflects some relevant provisions on the subject of child marriage under the national legal framework, primarily if they have been made publicly available in the English language. The summary does not constitute legal advice under any circumstance.

22 US State Department, Yemen 2012 Human Rights Report, (2012) <http://www.state.gov/j/drl/rls/hrrpt/2012/nea/204392.htm>



THOMSON REUTERS
FOUNDATION

Thomson Reuters Foundation

30 South Colonnade
London E14 5EP
United Kingdom