Are existing laws on child, early and forced marriages and unions working for adolescent girls and young women?

POSITION STATEMENT AND RECOMMENDATIONS

By The Child, Early & Forced Marriages & Unions and Sexuality Working Group

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Over the past few decades, passing laws that establish 18 years as the minimum legal age of marriage and prohibit child, early and forced marriages and unions (CEFMU) without exception has been a significant focus of many actors seeking to promote the human rights of adolescent girls and young women (AGYW).[1] In this regard, legal advocacy has had notable success: By 2019, an estimated 52% of countries had established 18 as the minimum legal age of marriage without exceptions or sex disparities.[i]

Once these laws are enacted, it is critical that there be systematic monitoring and evaluation to understand how they affect the lives and rights of AGYW; regrettably, this has not been the case. The body of evidence on the impact of CEFMU and related laws remains scarce, and that which does exist causes us concern. Notably, the evidence shows that in some countries, CEFMU prevalence has not declined following the enactment of laws; where it has, a causal relationship has very rarely been established.[ii] More worrying still is the small yet credible body of research that illustrates that laws are not serving AGYW and, in some contexts, are leading to further human rights violations, particularly when not accompanied by comprehensive, intentionally designed, well-resourced systems that address the root causes and drivers of CEFMU.

We urge fellow advocates to heed the evidence on how the current template for CEFMU laws is ineffective, ill-suited and even causing harm in some contexts, and join us in rethinking the assumptions that have underpinned our legal advocacy to date. As a first step, we must call for more research on how CEFMU and related laws can be formulated and implemented to better advance the human rights of AGYW. The examples that follow have been selected to illustrate a range of impacts of CEFMU and related laws on the lives and human rights of AGYW.

Fewer social protections for AGYW: Following a federal ban on marriage under the age of 18 in Mexico in 2014, the incidence of formal marriages declined, but an equivalent increase in informal unions occurred. The ban had no significant, positive impact on indicators of girls' well-being, such as school enrollment or reductions in adolescent pregnancy, and at the same time left those in informal unions without the protective legal and social benefits available to those in formal marriages.[iii]

AGYW are punished for their sexual and marital decisions: In India, the sexuality of adolescent girls is tightly controlled and criminalized, and norms around endogamy[2] are strictly enforced. The parents of girls who have eloped with their chosen partners—particularly parents from dominant castes, religions and/or economic class—have weaponized the child marriage law. These parents use the child marriage law in conjunction with other laws to bring cases against the girls' husbands to punish and separate the couples. The punishment for these young men is severe (up to 20 years imprisonment), particularly when compared with the relatively minimal penalties (up to two years imprisonment and fines) that exist for performing or solemnizing a child marriage.[iv]

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[1] Together, the term "adolescent girls and young women" refers to girls and women aged between 10–24 years. This age group is the focus of this statement in recognition of the fact that young women's marginalization does not end when they turn 18 years old, and they may continue to be subjected to forced marriage. The organizations that have authored this statement work to advance the rights of both unmarried and married young women under and above the age of 18 years.

[2] "Endogamy" refers to the custom of marrying only within the limits of a local community, clan, tribe, caste or religion.

Married girls are invisibilized: In Egypt and Malawi, the use of punitive legal approaches to CEFMU has driven the practice underground.[v] In these settings, evidence shows that families find ways to navigate around the law. In Egypt, *Urfi* marriages allow parents to circumvent the law by marrying daughters informally before the legal age, then registering the marriage when they reach the age of 18.[vi] In Malawi, the imposition of fines has meant that marriages take place clandestinely to avoid discovery by the police. This obscures the true impact of CEFMU in these communities, which in turn reduces the resources available to address its root causes.[vii]

Increased risk of violence against AGYW: When the enactment of laws is not accompanied by adequate supportive structures for the AGYW who invoke them, this can compound girls' vulnerability to violence. In Ethiopia, England and Wales, girls have experienced violence at the hands of parents or other family members after reporting impending family-arranged forced marriages to law enforcement officials.[viii] In England and Wales, in cases where Forced Marriage Protection Orders—civil injunctions issued on behalf of individuals facing forced marriage—were not adequately followed up on by relevant agencies, violence and abuse from family members continued or escalated.[ix]

Financial consequences for AGYW: In Pakistan and India, where spouses and family members can be fined or imprisoned for child marriage offenses, AGYW (and their children, if any) suffer financial consequences due to the loss of household income. At the same time, good-quality state-sponsored alternatives such as shelter homes, residential educational institutions and vocational training, are lacking for AGYW.[x] Perhaps as a result of this, girls have been reluctant to report instances of forced marriage as it involved incriminating family members upon whom they are dependent.[xi]

AGYW face barriers in accessing health services: In several contexts, adolescent sexuality is taboo and sex before marriage is stigmatized and/or criminalized. In such contexts, the minimum ages for marriage and sexual consent may be conflated and hinder the ability of adolescents to access sexual and reproductive health information and services, particularly where mandatory reporting requirements exist.[xii] The current trend toward raising the age of sexual consent to align with the age of marriage will further criminalize adolescents' sexual activity and hinder their access to services.[xiii]

The law is inaccessible to AGYW: Across multiple contexts, evidence of the law being used to achieve justice for AGYW whose parents force them to marry is extremely scarce, and girls face multiple barriers in initiating cases themselves. In India, of 83 court cases involving marriage under the legal age analyzed by Partners for Law in Development, just four involved forced marriage and only two were brought by girls seeking to avoid a forced marriage. The rest of the cases involved consensual relationships and were brought by parents or other adults in the community who did not approve of the partnerships.[xiv] In Nepal, evidence shows that law enforcement officials pose barriers to girls accessing justice, deferring to their own personal beliefs about marriage, rather than the intent of the law.[xv]

> *"The fact that child marriages remain prevalent is not sufficient to conclude that the law needs to be made stringent or declare child marriage void. Recommendations for law reform have to correlate with findings in relation to how the law is applied and implemented."*[xvi]

CONCLUSION AND RECOMMENDATIONS

The limited evidence that exists illustrates that CEFMU laws are not fulfilling their intended purpose in a number of contexts. Not only are laws not providing protection from *forced* marriage, but there is evidence that they have exacerbated vulnerabilities, undermined the agency and evolving capacities of AGYW and, in some instances, caused tangible harm. **Following the principle of "do no harm," it is incumbent upon us to heed the evidence and rethink our advocacy asks.**

Additionally, the evidence calls us to think critically about several points that have implications for our legal advocacy going forward: 1) why are laws centered on the age of the individuals, rather than on force, coercion and the absence of consent?; 2) how should the law differentiate between child, early and forced marriages and unions

in each context?; and 3) how do minimum age of marriage laws interact with social norms and other laws related to marriage and adolescent sexuality?

In highlighting this evidence and by asking these tough questions, we are not questioning whether CEFMU laws should exist; indeed, **laws hold great potential in the respect, protection and fulfillment of human rights.** Rather, our intention is to point to the urgent need for a deeper understanding as to how laws operate in the lives of AGYW and the roles they play (and do not play), noting that these must always be situated within and accompanied by comprehensive, intentionally designed, well-resourced systems that address the root causes and drivers of CEFMU in each context.

Going forward, we must advocate for a thorough analysis of the impact that existing laws are having, and that new laws may have before calling for their enactment. **We must ground our advocacy in the voices, perspectives and experiences of AGYW** and partner with them in order to generate the evidence needed. In this vein, we make the following recommendations for further research and evidence:

1. Research on how laws have contributed to reductions in CEFMU prevalence is methodologically challenging and, while important, masks the full impact that laws have in the lives of AGYW. **Advocates should call for, and funders should invest in, research that focuses on understanding the law's potential in advancing AGYW's rights** in relation to the following topics:
    - The relationships between the law and society and how these determine the weight of the law vis-à-vis social norms related to marriage and sexuality;
    - Knowledge of the law and its enforcement mechanisms as well as how these are operationalized in each context;
    - The feasibility of AGYW—particularly those from marginalized populations—accessing the legal system, and the social or legal consequences of reporting impending forced marriage;
    - The social and financial impact of legal penalties on AGYW, as well as on their families and communities;
    - The operation of CEFMU law in humanitarian and emergency settings; and
    - The impact of laws on AGYW with disabilities, queer and gender-diverse youth and married adolescents, among other groups of marginalized AGYW.
2. The minimum legal age of marriage alone does not reveal the ways in which the legal framework and system address CEFMU or the agency and rights of AGYW. In each context, **there is a multitude of laws that interact with minimum age of marriage laws** and impact the legal recognition afforded to adolescents; these include those related to sexual consent, minority/majority, sexual and reproductive health, labor and compulsory, free education. **We need more legal research on what those other laws are and the ways in which they interact with CEFMU laws** in theory and practice, as well as how they impact the rights of AGYW.
3. **Globally, the indicator of interest—and primary focus of evidence on the impact of the law—has been CEFMU prevalence. This measurement does not reveal the full picture**, and greater attention must be paid to the communities that are most marginalized and most impacted by CEFMU. Beyond this, indicators that are rights-based and more proximate to the law and its implementation are needed to understand its impact. These include, for example, the extent to which girls who face impending forced marriage are able to utilize the CEFMU law, or girls' satisfaction with the outcome of the legal process.

While the research we are calling for requires significant investment across multiple contexts, it is critical for the development of best practices to ensure that advocacy remains centered on interventions that truly respect, protect and fulfill the human rights of AGYW.

WHO WE ARE

The Child, Early & Forced Marriage & Unions and Sexuality Working Group includes the following organizations: Aahung, American Jewish World Service, CARE, CREA, EMpower, EngenderHealth, Equimundo, Fós Feminista, Girls First Fund, Girls Not Brides, Global Fund for Women, GreeneWorks, International Center for Research on Women, International Planned Parenthood Federation, International Rescue Committee, MADRE, Nirantar Trust, Partners for Law and Development, Plan International, Population Council, Save the Children, The Summit Foundation and The YP Foundation.

https://www.sexualityworkinggroup.org/

[i] UN Women, 2023, Legislating and enforcing the minimum age of marriage: A comparative study of experiences and lessons learned in ending the legalization of child marriage. Available at: https://www.unwomen.org/en/digital-library/publications/2023/09/legislating-and-enforcing-the-minimum-age-of-marriage

[ii] Belinda Maswikwa, Linda Richter, Jay Kaufman and Arijit Nandi, 2015, Minimum Marriage Age Laws and the Prevalence of Child Marriage and Adolescent Birth: Evidence from Sub-Saharan Africa. *International Perspectives on Sexual and Reproductive Health*, Vol 41:2, p 58–68. https://doi.org/10.1363/4105815;
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[iii] Belles-Obrero and Lombardi, op cit.; Lyn, Audrey Au Yong (2019) Prohibition without protection: Marriageable age law reforms and adolescent fertility in Mexico, ifo Working Paper, No. 314, ifo Institute—Leibniz Institute for Economic Research at the University of Munich, Munich. Available at: https://www.econstor.eu/bitstream/10419/213591/1/1684140811.pdf

[iv] PLD, AJWS (2022) A case for differentiated legal responses to child, early and forced marriage and unions: Lessons from India for a global audience. Available at: https://ajws.org/wp-content/uploads/2022/02/AJWS_CEFMU_Lessons_from_India.pdf

[v] Nesreen M. Kamal Elden and Hanan Mosleh, 2015, Impact of Change in Law on Child Marriage in Egypt: A Study in Two Egyptian Governorates. *The Egyptian Journal of Community Medicine*, Vol 33:4. Available at: https://ejcm.journals.ekb.eg/article_695_782c612560875oa730c2de2e3d0bf42f.pdf;
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[vi] Elden and Mosleh, op cit.

[vii] Melnikas et al, op cit.

[viii] Jo Boyden, Alula Pankhurst and Yisak Tafere, 2012, Child protection and harmful traditional practices: female early marriage and genital modification in Ethiopia. *Development in Practice*, Vol: 22:4, 510-522, DOI: 10.1080/09614524.2012.672957;
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[ix] Anitha and Gill, op cit.

[x] PLD, 2020; RESURJ, 2020

[xi] OHCHR, 2023; Population Council 2021

[xii] Elizabeth Yarrow, Kara Apland, Kirsten Andersen and Katherine Watson, 2014, Can a restrictive law serve a protective purpose? *Reproductive Health Matters*, Vol 22:44, 148–156. 10.1016/S0968-8080(14)44809-2. See also the findings of IPPF-Coram country studies completed in Senegal, El Salvador, UK, Malaysia, Philippines, India, Nepal, and Sri Lanka—reports available on request.

[xiii] Suzanne Petroni, Madhumita Das, Susan M Sawyer, 2019, Protection versus rights: age of marriage versus age of sexual consent. *Lancet Child Adolescent Health*, Vol 3: 274–80. https://www.thelancet.com/journals/lanchi/article/PIIS2352-4642(18)30336-5/fulltext

[xiv] PLD op cit.

[xv] Binita Pandey and Sumeera Shrestha, 2020, Redefining the early and child marriage and reconsidering its elimination in Nepal, through absolute criminalisation. Available at: https://www.worecnepal.org/uploads/publication/document/2133142066REDEFINING%20THE%20EARLY%20AND%20CHILD%20MARRIAGE.pdf

[xvi] PLD & AJWS, op cit.