

Analysis of the Language of Child, Early, and Forced Marriages

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Introduction

Child marriage, early marriage, and forced marriage are all interrelated but distinct terms, and they have been combined in every way possible: early and forced marriage; child and forced marriage; early child marriage; and child, early and forced marriage. Often the terms are used interchangeably in the same document, without any explicit definitions. This paper attempts to analyze most of the terms, with the goal of clarifying each label's breadth, or at least clarifying the breadth of the ambiguity surrounding each label.

Forced Marriage

Forced marriage is the most straightforward term to define. It relates to Article 16(2) of the United Nations Declaration on Human Rights: "Marriage shall be entered into only with the free and full consent of the intending spouses." The Convention of the Elimination of all forms of Discrimination against Women (CEDAW), Article 16(1)(b), reiterates men and women's "right freely to choose a spouse and to enter into marriage only with their free and full consent." **Forced marriage, therefore, is a marriage to which one or both of the spouses did not give their free and full consent.** The Council of Europe adopted Resolution 1468 in the year 2005, defining forced marriage as "the union of two persons at least one of whom has not given their full consent to the marriage." Forced marriage can include situations involving physical, psychological, or financial coercion, which render consent meaningless. As the Special Rapporteur on slavery reported, "any duress in a marriage is a violation of internationally recognized human rights standards and cannot be justified on religious or cultural grounds."¹

Forced marriage has been interpreted by many organizations to encompass child marriage, since children inherently lack the ability to consent to marriage.² The United Nations Population Fund, for example, says that "children, given their age, are not able to give free, prior and informed consent to their marriage partners or to the timing of their marriage."³ Of course, this begs the question, what exactly is child marriage?

Child Marriage

There is no universally accepted definition of the word 'child,' and thus no universally accepted definition of child marriage. **The Convention on the Rights of the Child (CRC) defines a child as a "human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier."**⁴ **Since different nations allow their citizens to attain majority at different ages, and some allow majority to be attained upon marriage, this deference to national law is a real and concerning loophole.** In Iran, for instance, girls attain majority at 9 years old, and boys at 15 years old.⁵ The marriage of a 10-year-old girl in Iran, then, might not legally be considered 'child marriage.' In Pakistan, boys reach adulthood at 18 years of age, but girls reach adulthood at 16 years or at puberty.⁶ In Indonesia, majority is defined differently depending on the issue, but for the purposes of marriage, majority is reached at 16 and 19 years of age for girls and boys, respectively.⁷ In Niger, a minor may be emancipated—and

therefore attain majority—through marriage, and the legal age for marriage is 15 for girls and 18 for boys.⁸

CRC General Comments 4 and 13 can be seen as attempts to close the loophole. In General Comment 4, the Committee “strongly recommends that States parties review and, where necessary, reform their legislation and practice to increase the minimum age for marriage with and without parental consent to 18 years, for both girls and boys.”⁹ The Comment consistently uses the term ‘early marriage,’ instead of ‘child marriage,’ perhaps in order to distance itself from Article 1’s definition. General Comment 13 asserts that “the Committee considers that Article 19 [protection from all forms of violence] applies also to children under the age of 18 *who have attained majority or emancipation through early marriage and/or forced marriage*”¹⁰ (emphasis added). Strictly speaking, however, that only partially closes the loophole; it singles out Article 19 instead of the whole Convention, and it does not refer to ‘children’ under the age of 18 who have attained majority, not through marriage, but by state law.

The Convention on the Elimination of All forms of Discrimination Against Women (CEDAW) General Recommendation 21 says that “notwithstanding” the CRC’s definition of child, “the Committee considers that the minimum age for marriage should be 18 years for both man and woman.”¹¹ This is in clarification of CEDAW Article 16(2), which states that “[t]he betrothal and the marriage of a child shall have no legal effect.”¹²

The Council of Europe’s Resolution 1468 defines child marriage as “the union of two persons at least one of whom is under 18 years of age.” Similarly, the African Charter on the Rights and Welfare of the Child Article 21 (2) says that “child marriage and the betrothal of girls and boys shall be prohibited and effective action, including legislation, shall be taken to specify the minimum age of marriage to be 18 years,” implying that child marriage applies to all marriages in which one or both spouses are younger than 18.

The United Nations Population Fund defines child marriage as any marriage in which one or both of the spouses are below the age of 18, but it recognizes that “social norms and customs may . . . dictate that once a girl is married, she be regarded as a woman, even though she may be barely 12 years old.”¹³

Early Marriage

Early marriage has been interpreted, on separate occasions, as synonymous with child marriage or as more inclusive than child marriage. Many United Nations resolutions and reports use ‘early marriage’ and ‘child marriage’ interchangeably, without any noticeable distinction.¹⁴ Others use the phrase “early marriage, including child marriage,”¹⁵ implying that early marriage encompasses child marriage but also includes situations that do not qualify as child marriage, such as marriages in which one or both spouses are below the age of 18 but have attained majority under state laws.

Although early is not explicitly defined to mean less than 18 years old, it is frequently found in that context. The World Health Organization, for instance, uses the term ‘early marriage’ consistently, and the WHO’s stated goal is to prevent marriage before the age of 18. UNICEF’s publication “Early Marriage: A Harmful Traditional Practice” measures the “proportion of women aged 20–24 married by the exact age of 18”;¹⁶ in fact, most organizations that collect

data on early marriage use the under-18 benchmark. The Convention on the Rights of the Child General Comment 4, which uses only ‘early marriage’ and never ‘child marriage,’ notes that:

[I]n some States parties [sic] married children are legally considered adults, even if they are under 18, depriving them of all the special protection measures they are entitled under the Convention. The Committee strongly recommends that States parties review and, where necessary, reform their legislation and practice to increase the minimum age for marriage with and without parental consent to 18 years, for both girls and boys.¹⁷

‘Early’ does not have to refer solely to age, however, and could be read to include other factors that would make a person unready to consent to marriage. Those factors could include the individual’s level of physical, emotional, sexual and psychosocial development, educational and other aspirations, and lack of information regarding the person’s life options. This ties back to the concept of forced marriage and the importance of free and full consent. If one or both spouses are unable to make a free *and informed* choice, then their consent is meaningless, whether they are 15 years old or 21 years old.

Some organizations, however, are concerned that the term ‘early marriage’ is less concrete than ‘child marriage,’ and fear that prohibitions against early marriage can allow for marriage at any age based on social norms and customs. Other groups prefer the term ‘child marriage’ because it is perceived as more emotive than ‘early marriage,’ and thus more likely to receive media and popular attention and support.

It is true that early marriage could be interpreted as more flexible a term than child marriage, particularly when considered in relation to evolving capacities. Evolving capacities is a concept, introduced in the CRC, which recognizes the varying maturities and decision-making abilities among different children of the same age and acknowledges that a child’s right to make certain decisions should reflect his or her particular abilities.¹⁸ It could be invoked in the context of marriage to mean that a mature, capable child who is below the age of majority should be allowed to marry, provided that the choice is made willingly and free of coercion. This makes sense from a practical standpoint: if an informed, stable, emotionally mature 17-year-old wishes to marry his or her 19-year-old partner, can that really be classified as a human rights violation? It is unclear, however, who should have the power to decide which children are mature enough to marry, and how that decision should be made – leading to concerns that such decisions might be made with more deference to cultures and traditions than to evidence of maturity on a case-by-case basis.

Early and Forced Marriage

The term ‘and’ in ‘early and forced marriage’ is problematic, leading to very different interpretations depending on whether the term is thought of as inclusive (in Venn diagram language, the union of terms) or intersectional (the intersection of terms). If inclusive, then the term would mean ‘early marriage and/or forced marriage,’ encompassing marriages that are early but not forced, marriages that are forced but not early, and marriages that are both early and forced. If intersectional—which is how ‘and’ is usually understood—then the term would encompass only marriages that are both early and forced.

In certain contexts, 'early and forced marriage' seems to be used as an inclusive term, as in "the goal is to eliminate both early marriages and forced marriages," rather than "the goal is to eliminate marriages that are both early and forced, but not one or the other." For example, the Human Rights Council Resolution 14/12, "Accelerating efforts to eliminate all forms of violence against women: ensuring due diligence in prevention," uses the following language:

Further urges States to publicly condemn violence against women and provide visible and sustained leadership at the highest levels to prevent all forms of violence against women and girls, and, in particular, in efforts to confront the attitudes, customs, practices and gender stereotypes that lie at the core of discriminatory and harmful acts and practices that are violent towards women, such as female genital mutilation, **forced and early marriage**, femicide, crimes committed in the name of honour and crimes committed in the name of passion...¹⁹

This list of harmful acts and practices could not, by any reasonable analysis, be read to include only marriages that are both early and forced, and not to include marriages that are forced but not early, or marriages that are early but not forced (if those can exist). In this context, the term 'early and forced marriage' encompasses (1) a situation in which a 23-year-old woman is physically or psychologically compelled into marriage, and (2) a situation in which a 14-year-old girl 'consented' to marriage before she was physically and psychologically ready to do so. Both situations embody "discriminatory and harmful acts and practices that are violent towards women."

Other contexts, however, point toward an intersectional usage, particularly when the document focuses on children (in the under-18 sense of the word). The UN Commission on the Status of Women's Agreed Conclusions on the Elimination of All Forms of Discrimination and Violence against the Girl Child, adopted during its fifty-first session in 2007, for instance, includes the following recommendation:

Develop well-resourced educational and livelihood skills programmes to reach girls who are not enrolled in formal education programmes owing to specific life circumstances, inter alia, extreme poverty, child labour, abuse or exploitation, trafficking, prostitution, armed conflict and displacement, migration, **early and forced marriage**, pregnancy, motherhood and disability . . .²⁰

The intersectional meaning of the above term is indicated by the usage, in resolutions adopted during the same session, of 'early marriage' and 'forced marriage,' adjacent but separated:

Concerned that the vulnerability of women, girls and adolescents to HIV/AIDS is increased by their unequal legal, economic and social status, including poverty as well as other cultural and physiological factors, violence against women and girls and adolescents, **early marriage, forced marriage**, premature and early sexual relations, commercial sexual exploitation and female genital mutilation . . .²¹

While an inclusive reading of 'and' leads to a broader interpretation of 'early and forced marriage,' and therefore covers more harmful situations, it also covers the subset of early marriages that are decidedly not forced, as in the case of the mature and informed 17 year old from the section above. Furthermore, in contexts that are clearly meant to address problems faced by girls, not adult women, an inclusive reading can seem unwarranted or even contrived. An intersectional reading of 'and,' on the other hand, can account for the evolving capacities concept, and might avoid infringing on the autonomy of young people who freely wish to marry.

The narrower interpretation, however, could also exclude situations that human rights bodies do in fact wish to address, or at least make it easier for states or other parties to argue that certain situations (early marriages or forced marriages) are not covered by prohibitions on early and forced marriage, and thus avoid their obligation to put an end to such practices.

Child, Early and Forced Marriage

By the same reasoning, if ‘child, early and forced marriage’ is read as an inclusive term, then it covers child marriages, early marriages, and forced marriages, as well as marriages that fall into more than one category. Including both ‘child’ and ‘early’ gives the term the specificity of ‘child’ (under 18 unless having achieved majority under national law) and the potentially broader range of ‘early,’ (under 18 regardless of national law, or otherwise unready for marriage) and it could thus serve to close the CRC Article 1 loophole of ‘child marriage’ while adding a definitive backstop to the more ambiguous ‘early marriage.’ If a condemnation of ‘child, early and forced marriage’ were defined to cover child marriages, and early marriages, and forced marriages, then that would encompass the broadest possible reach of harmful marriages, regardless of age, culture, and traditions.

If the term is defined as intersectional, however, then it becomes the narrowest and least actionable term out of all the possibilities. An intersectional definition would lead to the conclusion that in order for a marriage to be unacceptable, it would have to be (1) a child marriage, meaning that the married person must be considered a minor by the laws of her country; (2) an early marriage, which could potentially be refuted based on evolving capacity and/or social customs; and (3) a forced marriage, meaning the person must have been married against her free and full consent. While an inclusive definition of ‘child, early and forced marriage’ would require only one prong to be satisfied in order for a marriage to be unacceptable, an intersectional definition would require all three to be satisfied – a much harder standard to meet.

Recommendation

The international community must explicitly—and consistently—define these terms so that countries, international bodies, and civil society can share the same understandings and expectations moving forward. Without firm definitions, terms such as ‘child, early and forced marriage’ will lead to divergent interpretations. In order to intelligently strategize for the future, it is vital that all parties share a common currency with regard to the language.

Until then, however, the term ‘early and forced marriage’ is the safest route forward, no matter which way it is read. An intersectional reading of “early and forced marriage” is broader than an intersectional reading of ‘child, early and forced marriage,’ since it does not exclude the marriages of people who have attained majority before the age of 18. And because early marriage has been said by the UN General Assembly to include child marriage, and has been associated in many contexts with marriage under 18 years of age, an inclusive reading of ‘early and forced marriage’ should in practice be just as operative as an inclusive reading of ‘child, early and forced marriage.’ (If the inclusive interpretation is found to be preferable, one could

even use the term ‘early or forced marriage,’ or alternatively, ‘early and/or forced marriage.’) Furthermore, an intersectional reading of “early and forced marriage” excludes early marriages that are not forced (as in the case of the willing 17 year old); and while an inclusive reading of ‘early and forced marriage’ does encompass such marriages, so would an inclusive reading of ‘child, early and forced marriage,’ or even ‘early marriage’ standing alone.

Examples of the Use of Marriage Terminology

		Early	Child	Forced	Early and Forced	Child and Forced	Child, Early and Forced
Treaty Bodies	CEDAW	X	X	X			
	CESCR	X	X	* (free and full consent)			
	ICCPR			* (free and full consent)			
Resolutions	Agreed Conclusions from the Commission on the Status of Women (2013)						X
	Rights of the Child (HRC 2013)				X		
	Rights of the Child (HRC 2012)				X		
	Resolution on the Girl Child (Human Rights Council 2012)					X	
	Adolescents and Youth (CPD 2012)				X		
	The Girl Child (GA 2010)					X	
UN Agencies	Elimination of all Forms of Violence against Women (GA 2005)				X		
	UN Women		X	X			
	UNFPA		X				
	UNICEF		X				
	OHCHR	X	X	X	X	X	
Other	WHO	X					
	Joint Statement to the HRC 23 rd Session by the African Group and the European Union, et al. (2013)	X			X		X
	Beijing Declaration and Platform for Action (1995)	X		X			
	ICPD Programme of Action (1994)	X	X				

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- ¹ Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, Gulnara Shahinian: Thematic report on servile marriage (2012). A/HRC/21/41, para. 20.
- ² See A/HRC/21/41, para. 27.
- ³ United Nations Population Fund, MARRYING TOO YOUNG (2012), p. 11.
- ⁴ Convention on the Rights of the Child, Article 1.
- ⁵ Article 1210 of Iran's Civil Law (amended 1962).
- ⁶ The Offence of Zina (Enforcement Of Hudood) Ordinance, 1979 clause 2(a) [Pakistan], *available at* http://www.pakistani.org/pakistan/legislation/zia_po_1979/ord7_1979.html.
- ⁷ <http://www.scribd.com/doc/24913321/Indonesia-Laws-Family>
- ⁸ 1 Indonesia Law Digest 13.04 [Indonesia], *available at* <http://acerwc.org/wp-content/uploads/2012/05/English-ACERWC-Niger-Harmonisation-of-Laws-on-Children.pdf>.
- ⁹ Convention on the Rights of the Child, General Comment 4 (2003), para. 20.
- ¹⁰ Convention on the Rights of the Child, General Comment 13 (2011), footnote 13.
- ¹¹ Committee on the Elimination of Discrimination Against Women, General Recommendation 21, para. 36.
- ¹² Convention on the Elimination of All Forms of Discrimination Against Women, Article 16(2).
- ¹³ United Nations Population Fund, MARRYING TOO YOUNG (2012), p. 12
- ¹⁴ *E.g.* A/HRC/21/41.
- ¹⁵ *E.g.* United Nations General Assembly Resolution 66/140, *The Girl Child* (2012), A/RES/66/140, p. 4; Beijing Platform for Action (1995), L. *The Girl Child* para. 259.
- ¹⁶ UNICEF, EARLY MARRIAGE: A HARMFUL TRADITIONAL PRACTICE: A STATISTICAL EXPLORATION (2005), p. 4.
- ¹⁷ Convention on the Rights of the Child, General Comment 4 (2003), para. 20.
- ¹⁸ Convention on the Rights of the Child, Article 5 and Article 12.
- ¹⁹ Resolution adopted by the Human Rights Council 14/12: Accelerating efforts to eliminate all forms of violence against women: ensuring due diligence in prevention (2010), A/HRC/RES/14/12, para. 7.
- ²⁰ Commission on the Status of Women 2007 Report, E/CN.6/2007/9, Chapter 1(A), Section 14.2(h).
- ²¹ E/CN.6/2007/9, Chapter 1(D), p. 20, 26, 29.