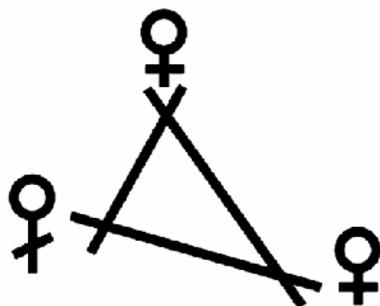


December 2013



**Sexual Rights  
Initiative  
& Women for  
Women's Human  
Rights – New Ways:**

**Submission to the  
Office of the High  
Commissioner on  
human rights  
(OHCHR) on  
preventing and  
eliminating child,  
early and forced  
marriage**

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## DEFINITION OF CHILD, EARLY AND FORCED MARRIAGE<sup>i</sup>

The **Sexual Rights Initiative (SRI)** was created in 2006. Its aim is to create a political space for advocacy on sexual rights by bringing together feminist, LGBTI, southern and northern perspectives and incorporating diverse views without privileging particular experiences. The collaborating partners are Action Canada for Population and Development (ACPD), Creating Resources for Empowerment in Action (CREA), AKAHATA (Latin America), Coalition of African Lesbians (South Africa), the Polish Federation for Women and Family Planning, and the Egyptian Initiative for Personal Rights.

**Women for Women's Human Rights (WWHR) – New Ways** was founded in 1993 with the aim of promoting women's human rights in Turkey and on the international level. In 2001, it has initiated a network of NGOs and academics advocating for sexual and reproductive health and rights as human rights in Muslim societies, the Coalition for Sexual and Bodily Rights in Muslim Societies (CSBR). Through two decades of activism, advocacy and lobbying, WWHR – New Ways has contributed significantly to various legal reforms in Turkey, networking in Muslim societies and promotion of women's human rights at the United Nations (UN) level. Since 2005, WWHR - New Ways has consultative status with the Economic & Social Council (ECOSOC) of the UN.

1. Child marriage, early marriage, and forced marriage are all interrelated but distinct terms, and they have been combined in every way possible in UN policy documents and by UN agencies and treaty bodies: 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.
2. Forced marriage has been mistakenly interpreted by many organizations to encompass child marriage, since children are deemed to inherently lack the ability to consent to marriage.<sup>ii</sup> The United Nations Population Fund (UNFPA), 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.”<sup>iii</sup> However, forced marriages include not only child marriages but also adult women who are often forced into marriage in many countries of the world.
3. Alternatively, according to the Council of Europe's Resolution 1468 child marriage is defined 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. UNFPA 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.”<sup>iv</sup>
4. 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.”<sup>v</sup> 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.<sup>vi</sup> 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.<sup>vii</sup> 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.<sup>viii</sup>
5. Early marriage has been interpreted, on separate occasions, as synonymous with child marriage or as more inclusive than child

marriage. Many UN resolutions and reports use ‘early marriage’ and ‘child marriage’ interchangeably, without any noticeable distinction.<sup>ix</sup> Others use the phrase “early marriage, including child marriage,”<sup>x</sup> 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.

6. Although ‘early’ is not explicitly defined to mean less than 18 years old, it is frequently found in that context. The World Health Organization (WHO), for instance, uses the term ‘early marriage’ consistently, and its 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,”<sup>xi</sup> 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.<sup>1</sup>

7. In fact, the term ‘early marriage’ does not refer solely to age. It refers to an individual’s level of physical, emotional, sexual and psychosocial development that that would make a person unready to consent to marriage. Other factors that should be taken into consideration are the individual’s educational and other aspirations, and lack of information regarding the person’s life options. This is connected 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 18 years old or older. Some stakeholders, 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.
8. On the other hand, it is important to note 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.<sup>xii</sup> It could be invoked in the context of marriage to mean that a mature, capable child who is below the age of 18 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, which duty bearer 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.
9. 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.
10. 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...<sup>1</sup>

11. 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. 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.” In such cases, the term ‘early *or* forced marriage,’ or alternatively, ‘early *and/or* forced marriage’ could be used.

12. 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 . . .<sup>xiii</sup>

13. 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 . . .<sup>xiv</sup>

14. 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. On the other hand, an intersectional reading of ‘and’ 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 (e.g.: forced marriages of those above the age of 18) are not covered by prohibitions on early and forced marriage, and thus avoid their obligation to put an end to such practices.

15. The term ‘early and forced marriage’ is the preferred formulation, 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.' 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.

## HUMAN RIGHTS IMPACT

16. Early and forced marriage impacts various human rights of young women and girls, including their sexual and reproductive rights, as well as their rights to health, equality and non-discrimination, education, live free from all forms of violence and participate in public and political life.

### RIGHT TO HEALTH

17. Early and forced marriages entail violations of young people's, particularly young women and girls, right to the highest attainable standard of health. Violations of the right to health occur as a result of high rates of sexual violence, among other forms of violence, that take place in early and forced marriages, complications arising from early pregnancy and childbirth, barriers to accessing comprehensive health services and information, including sexual and reproductive health information and services, stigma and discrimination, among others.
18. According to the WHO and the International Center for Research for Women, married girls are twice as likely to experience sexual violence, encounter unwanted pregnancies and seek out unsafe abortions<sup>xv</sup> and an estimated 90% of adolescents who give birth are married.<sup>xvi</sup> In low and middle income countries, complications from pregnancy and childbirth are the leading cause of death among girls aged 15-19.<sup>xvii</sup> Evidence from sub-Saharan Africa "suggests that women who marry early have an increased risk of HIV infection; the infection rate among married adolescents is 50% higher than that among their unmarried, sexually active peers" and this may be due to girls' limited ability to negotiate condom use in such relationships.<sup>xviii</sup> According to UNFPA, "contraceptive use is low overall among adolescents who are married or in a union" whereby only 22% of married adolescent girls in developing countries use contraceptives, and more married adolescent women (24%) demonstrate a high unmet need for contraception.<sup>xix</sup> Such evidence reflects a failure to respect, protect and fulfill married young women and girls' right to health, specifically their sexual and reproductive health. Without their rights respected, protected and guaranteed, they are at a greater risk of experiencing unwanted pregnancies, the health consequences associated with early pregnancy and childbirth, unsafe abortion, stigma and discrimination on behalf of health care providers, and others.
19. Upholding gender stereotypes and norms and social barriers create situations in which married young women and girls are unable to make autonomous decisions within relationships, freely express their sexualities, exert control over their reproductive lives, make free and informed decisions regarding if and when to have children, access services and information and decide freely if and when, and with whom, to enter into relationships. This creates barriers to married young women and girls' access to modern methods of contraception, safe abortion services, effective STI prevention methods, among other information and services related to their sexual and reproductive health. Such inequalities are often rooted in harmful cultural and religious traditions that render it permissible to restrict young women and girls' autonomy, agency and well-being.
20. Institutional, legal and policy barriers also violate young women and girls' right to health by limiting their access to sexual and reproductive health services and information. These barriers involve the imposition of restrictions on married young women and girls' ability to freely access accurate, evidence-based information

and services, anonymously and with confidence. Many countries uphold spousal consent requirements for medical treatment in general as well as for specific sexual and reproductive health services. For example, spousal consent to obtain abortion services is required in Republic of Korea, Japan, Morocco, Maldives, Taiwan, Kuwait, Saudi Arabia and Equatorial Guinea. Fear and stigma may deter married young women and girls from obtaining consent from their husbands and therefore they may forego seeking information or accessing a service. They may also seek out back-street service providers, where they may be subject to unskilled or untrained providers in unsafe or unsanitary conditions. Additionally, situations of domestic violence can prevent adolescents from seeking their spouse's consent to access services and information.

21. International development frameworks and the human rights system clearly recognize young women and girls right to health, including their sexual and reproductive health. The Programme of Action of the International Conference on Population and Development calls on governments to protect and promote the right of adolescents to reproductive health. Similarly, the international human rights system recognizes the need to empower adolescents to make informed decisions about their lives and asserts the duty of States to respect, protect and fulfill the sexual and reproductive rights of adolescents. The Convention the Elimination of All Forms of Discrimination Against Women recognizes women's right to decide freely and responsibly on the number and spacing of their children and to have access to information, education and means to enable them to access these rights. Similarly, the CRC provides for the protection of the right to health of young people under the age of 18. General Comment No. 14 of the Committee on Economic, Social and Cultural Rights discusses the issue of reproductive health, noting that "women and men have the freedom to decide if and when to reproduce and the right to be informed and to have access to... family planning...and appropriate health-care services that will, for example, enable women to go safely through pregnancy and childbirth."<sup>xx</sup> Realizing the reproductive rights of married adolescents involves, inter alia, increasing their access to a comprehensive package of sexual and reproductive health services and information, which includes modern forms of contraception,<sup>xxi</sup> (including access to emergency contraception), safe and legal abortion services, post-exposure prophylaxis for HIV infection, and diagnosis and treatment for sexually transmitted infections.

## RIGHT TO EXERCISE CONTROL OVER ONE'S SEXUALITY

22. The root causes associated with early and forced marriage are deeply rooted in patriarchy which perpetuates gender-based inequalities, norms and stereotypes, including traditional perceptions of women's status and roles in society, as well as social control of women's bodies and sexual choices. Control of sexuality is a major tool of women's oppression both in the private (family) and public spheres (community, national and legal domains), limiting women's and girls' chances for social, economic and political participation.<sup>xxii</sup> Early and forced marriage constitutes one example of society's desire to control women's bodies and sexualities. Other examples include female genital mutilation and acid attacks.<sup>xxiii</sup>
23. The root causes translate into attempts at controlling young women and girls' sexual rights. In Eritrea, there is a "belief is that the longer marriage is postponed, the more likely a girl would lose her virginity before marriage, if this happens, she is deemed unsuitable for marriage. As such early marriage is encouraged as a means preserving young women and girls' virginity and 'pureness.'"<sup>xxiv</sup> Similarly, in Turkmenistan, "sex before marriage for women is culturally prohibited to the extent that a young woman can be forced to leave her husband's house in her wedding night if there was no blood during intercourse. Those women who are perceived to be having premarital sex are stigmatized."<sup>xxv</sup> Such examples demonstrate a lack of respect for young women and girls' right to control their sexuality within and outside of marriage. It constitutes not only a violation of their right to bodily autonomy and integrity, and to make free and informed decisions, among other violations of their sexual and reproductive rights, but can also put young women at increased risk of experiencing discrimination and violence. Control of sexuality limits young women and girls' mobility, and also social activities such as sports, using internet cafes, travel, among many other activities.<sup>xxvi</sup>
24. The Special Rapporteur on violence against women, in her report on cultural practices in the family that are violent towards women notes that "persistent stereotyping of women's roles within society and the family

establish and fuel societal norms. Many of those norms are based on the belief that the freedom of a woman, especially with regard to her sexual identity, should be curtailed and regulated.”<sup>xxvii</sup>

## RIGHT TO LIVE FREE FROM VIOLENCE

25. As many as 70% of women experience physical or sexual violence in their lifetimes, and the first sexual experience of up to a third of them is forced. Married girls are twice as likely to experience sexual violence.<sup>xxviii</sup> According to UN Women, 127 countries do not explicitly criminalize rape in marriage.<sup>xxix</sup> This creates situations in which married young women and girls are unable to hold their husbands accountable as perpetrators of sexual violence. Further, statutory rape laws and other laws prescribing minimum age of consent for sexual activity act as a barrier in accessing sexual and reproductive health information and services.<sup>xxx</sup> Without the ability to negotiate contraceptive use or seek legal recourse for violations of their human rights, young married women and girls are at added risk of experiencing unwanted pregnancies, physical and psychological impacts of violence.
26. Married young women and girls are also at risk of experience forms of sexual and reproductive coercion, as a form of violence. Sexual and reproductive coercion include behaviors that a partner uses to maintain power and control in a relationship that are related to reproductive health, such as explicit attempts to impregnate a partner against her wishes, controlling outcomes of a pregnancy, coercing a partner to have unprotected sex, and interfering with birth control methods.<sup>xxxi</sup> In the context of early and forced marriage, young women and girls whose spouses or family members prevent them from accessing modern methods of contraception and safe abortion services, forcing a women to carry an unwanted pregnancy, and exerting power with the intention of controlling individuals’ sexual and reproductive choices constitute cases of sexual and reproductive coercion.

## RIGHT TO EDUCATION

27. Married young women and girls are often unable to complete their studies. Discriminatory policies and stigma related barriers often prevent young women and girls who become pregnant, marry, or reach menarche from continuing their studies. In Pakistan, “child brides are almost always forced to leave school when, or before they get married.”<sup>xxxii</sup> Forcing girls to leave school often places them at greater risk of experiencing stigma or discrimination, on behalf of their peers, community members and families. Laws and policies that prevent married young women and girls from staying in school and accessing higher levels of education directly violate their right to education, and can lead to social exclusion and reductions in their ability to operate as economic and social agents. Mechanisms and policies that allow young women and girls to stay in school, with comprehensive sexuality education curriculums in place, can have a direct impact on preventing unwanted pregnancies and early and forced marriages. This in turn facilitates their access to decent employment and improved income-earning prospects.<sup>xxxiii</sup> Clear strategies are required to ensure that young women and girls who are pregnant, married or reach menarche are able to complete their studies, without fear of stigma, discrimination or violence, so as to guarantee their right to education. Such strategies include ensuring that curriculums are gender-sensitive and young women and girls have access to comprehensive sexuality education, at all ages, in line with their evolving capacities, adequate water and sanitation facilities, environments free from all forms of gender-based stigma and discrimination, safe transportation to and from school, safe educational facilities, among others.
28. Additionally, one main reason why girls are not sent to school and forced into marriage is the fear that education in a mixed-sex setting will increase the possibility of sexual encounters between girls and boys, and the chance that girls (daughters) will reject early and arranged marriages when they receive education.<sup>xxxiv</sup> These rationales are based on structural gender-based inequalities that position women as victims, who are vulnerable and therefore must be protected by husbands, parents or guardians, rather than recognizing the root causes of violence against women.

## STRATEGIES TO PREVENT AND ELIMINATE (CHILD,) EARLY AND FORCED MARRIAGE

### COMPREHENSIVE SEXUALITY EDUCATION

29. Young people's right to access information regarding their sexual and reproductive health is recognized as a basic human right of children in both the annual report of Special Rapporteur on the right to education to the UN General Assembly in 2010 and General Comment No. 4 of the Committee on the Rights of the Child:

In light of articles 3, 17 and 24 of the Convention, States parties should provide adolescents with access to sexual and reproductive information... In addition, States parties should ensure that they have access to appropriate information, regardless of their marital status and whether their parents or guardians consent. It is essential to find proper means and methods of providing information that is adequate and sensitive to the particularities and specific rights of adolescent girls and boys. To this end, States parties are encouraged to ensure that adolescents are actively involved in the design and dissemination of information through a variety of channels beyond the school, including youth organizations, religious, community and other groups and the media.<sup>xxxv</sup>

30. Effective sexuality education must go beyond biology to educate children and adolescents about gender equality, healthy and positive aspects of sexuality, relationships, gender-based and sexual violence, sexual and gender diversity, healthy emotive processes, informed consent and human rights. It should promote empowerment and autonomy by including structured opportunities for adolescents to practice life skills they will need to be able to make free and informed choices about their sexual lives and to explore their attitudes and values. Such education must be free of and aim to eliminate stereotypes, discrimination, and stigma; respect the evolving capacities of children and adolescents; and be tailored to meet the specific needs of particular groups. Evidence shows that when young people have access to comprehensive sexuality education, they can better prevent unwanted pregnancies and the transmission of sexually transmitted infections, including HIV, there is an increase in contraceptive use and decrease in violence against young girls.<sup>xxxvi</sup>

31. UNESCO's guidelines<sup>xxxvii</sup> are a valuable resource for States for designing sexuality education programmes. As identified by the guidelines, it is essential that effective comprehensive sexuality education curriculums address the specific situations facing young people, be provided in formal and informal settings, start at an early age and tackle gender stereotypes and norms. Challenging these is critical when implementing strategies to address the issue of early and forced marriage.

### PUBLIC EDUCATION AND AWARENESS RAISING

32. One of the main challenges associated with early and forced marriage is the lack of awareness regarding the legality of the practice, and its harmful impacts. In Eritrea, "many religious institutions are under the impression that they are responsible for the institution of marriage and therefore continue to conduct illegal marriage ceremonies. In many instances, religious institutions are conducting marriages not knowing that either partner is under the age of 18....people are not aware that they can also approach the police and their administration office to stop such marriages from happening"<sup>xxxviii</sup> This demonstrate the need for collaboration with community leaders, who play an active role in upholding the practice of early and forced marriages, despite its illegality. It also emphasizes the need to inform those affected by the practice of the mechanisms through which they can hold its perpetrators accountable and/or seek remedies.

33. Wide-ranging public education programmes are necessary to eliminate restrictive gender stereotypes and norms and gender-based violence. Such initiatives can bring greater attention to the pressures surrounding marriage, both in terms of a social protection mechanism and as means of suppressing existence or suspicion

of non-conforming sexual orientation and gender identities. Public education and awareness raising campaigns can also help inform communities of the laws and policies surrounding the practice, and provide those affected with channels to seek legal recourse.

34. In Ethiopia, an awareness raising campaign was launched by UNFPA in 2008. It included a 100 meter canvas painting. The painting was completed by 30 of Ethiopia's prominent artists. "The canvas painting event was one major activity forming part of a national campaign entitled "Stop Early Marriage". This unique, participatory and big-impact canvas painting event was believed to be a key milestone in enhancing the understanding of the public, policy-makers and development stakeholders on early marriage. The need to look at this and similar activities as a process and not as an event is crucial in awareness raising."<sup>xxxix</sup>

## EXAMPLES OF GOOD PRACTICES

### UNFPA'S ADOLESCENT GIRLS INITIATIVE

35. UNFPA's Adolescent Girls Initiative calls for effective prevention strategies, including young women and girls' access to comprehensive sexuality education and sexual and reproductive health information and services, their meaningful and effective participation, and mechanisms to reach the most vulnerable. Concretely, the Strategy targets girls at the community level, ensuring they have access to health information and services (including contraception, maternal health and HIV services), decision-making, financial literacy, and life skills training. The Strategy also targets girls' environments, at community and national levels. It aims to transform socio-cultural norms which perpetuate early and forced marriages and pregnancies among girls through targeted community and national-level actions. Critical to the Initiatives' success is creating buy-in from government, strengthened partnerships with donors, and collaboration with existing international initiatives that address adolescent sexual health, child and newborn health, and harmful traditional and cultural practice (including FGM).

### UNFPA'S TOO YOUNG TO WED INITIATIVE

36. UNFPA's Too Young to Wed initiative includes an Agenda for Action, which provides examples of effective strategies advanced by UNFPA in an effort to prevent and eliminate early and forced marriages. Some examples of strategies advanced by the initiative include creating safe spaces for girls to gain information about their sexual and reproductive health, life skills and their rights under the law. The spaces can support networks where they can increase their confidence and interact with peers and mentors. According to UNFPA, reviews of "such programmes have documented changes in knowledge, attitudes, and behaviors related to child marriage over a period of just a few years."<sup>xl</sup> Other strategies advanced by the campaign include: improving girls' access to formal education (including cash transfer programmes), mobilizing communities to transform detrimental social norms, expanding prevention programmes that empower girls at risk of child marriage, addressing the root causes underlying the practice, and generating enabling legal and policy environments. This last strategy involves ensuring that national and sub-national legislation is in line with international human rights standards. It also involves ensuring marriage and birth registration. Without such programmes in place "millions of births go unregistered, making it difficult for girls later to ascertain what is their actual compared to inputted age, and thus claim due protection under the law."<sup>xli</sup>

### RAHNUMA-FPAP 'ADVOCACY AGAINST CHILD MARRIAGE' PROJECT

37. Rahnuma-FPAP<sup>xlii</sup> implemented a project supported by Aus Aid on advocacy against child marriages. A series of interactive dialogues with policy makers and workshops with relevant stakeholders, research,

development of a advocacy and media kits, a documentary, among other tools, revealed the complexity of the issue surrounding child marriage in Pakistan. Issues identified as a result of the approach adopted by this project include recognizing that the Child Marriage Restraint Act was not sufficiently punitive and that there are many conflicting laws such as Shariah law which give room for legal loopholes; young adolescent girls are physically, socially and emotionally affected by this practice; child marriage is mainly influenced by protection of girls, family honour and the provision of stability during unstable social periods; poverty and gender roles in Pakistan; a significant number of young women are left out of the education and development mainstream because of the prevailing practice of child marriage; and that laws on minimum marriage age are poorly enforced and birth registration is not widely practiced or records maintained make it difficult to determine the correct age of girls at the time of marriage.<sup>xliii</sup> These findings support the need to conduct in-depth research into the underlying causes of the practice with the diverse contexts in which they take place. The findings also allow for the development of responsive programmes that meet the needs of young women and girls in early and forced marriages, or those who may encounter the practice. Also, by identifying not only the needs and realities facing young women and girls, but also the legal and policy context in which the practice takes place creates the opportunity to develop effective advocacy strategies aimed at preventing the practice.

## RECOMMENDATIONS

1. The practice of early and forced marriage takes place in diverse contexts. The issue of early and forced marriages affects not only young women and girls under the age of 18, but also adult women, who are forced to marry without their consent. It also includes forcing individuals with non-conforming sexual orientations and gender identities to marry against their will. The practice takes place within all regions, religions, cultures, and in many other contexts around the world. In recognizing this, it is important that **strategies to address early and forced marriage be human rights-based and tailored to meet the specific needs and realities of those affected by or vulnerable to the practice.**
2. In light of the reality that the practice of early and forced marriage takes place in multiple contexts, in that is not limited to a particular age, gender, geographic location, class, religion, and other contexts, there is no one-size fits all strategy or magic bullet solution. It is therefore critical that response and prevention strategies take into account the diverse needs and realities of those affected by the practice. **Effective strategies must adopt intersectoral, varied, long-term and multi-level approaches and investments that examine the issue of early and forced marriage within other diverse contexts, taking into account legal, social, economic, cultural, religious and traditional factors.**
3. 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 **develop a common understanding with regard to the language. The term ‘early and forced marriage’ read intersectionally is the preferred formulation.**
4. Early and forced marriage is rooted in, inter alia, gender inequalities, norms and stereotypes, including traditional perceptions of girl’s women’s status and roles in society, as well as social control of women’s bodies and sexual choices. **Recognizing and addressing the root causes of these practices is therefore critical to ending the practice.**

5. Early and forced marriages constitute a violation of human rights, and further hinder the enjoyment of the rights to education, health, including sexual and reproductive health, decent work, equality, non-discrimination, and freedom from violence, among others. **States must take all necessary measures to recognize and address the human rights dimensions of these practices and take active measures to realize the human rights of all women and girls.** This involves greater respect, protection and fulfillment of the full range of human rights of women and girls, including their reproductive rights; their right to the highest attainable standard of health, including sexual and reproductive health; and their right to have control over and decide freely and responsibly on matters related to their sexuality, free of discrimination, coercion and violence; among others.
6. Laws and policies that restrict young women and girls' access to essential services and information, including sexual and reproductive health services, and limit their ability to live healthy and productive lives, free from violence, are in violation of their human rights. **Laws and policies that violate young women and girls' human rights must be reformed or eliminated,** including those related to spousal consent. States must be held accountable to upholding existing laws and policies that prohibit early and forced marriage. Those responsible for the human rights violations which occur within such marriages must be held accountable, with mechanisms in place to ensure those affected by the practice have access to remedies. Laws and policies that restrict access to abortion in cases of pregnancy resulting from rape must also be reviewed in order to ensure adolescent girls' access to safe and legal abortion services, in all cases. Laws and policies designed to prevent and address the issue must be human rights-based, which includes ensuring they are developed in accordance with children and young people's evolving capacities.
7. Adopting a human rights-based approach to the design and implementation of laws and policies necessitates adherence to Article 5 of the Convention on the Rights of the Child which states that those with responsibility for the child must take into account the capacities of the child to exercise rights on his or her own behalf.<sup>1</sup> This requires **ensuring laws and policies affecting young people and adolescents are established in accordance with their evolving capacities.** Therefore all laws and policies related to early and forced marriage must respect, protect and fulfil young people's right to make free and autonomous decisions regarding their lives, including their decision to marry, recognizing that as they "acquire enhanced competencies, there is a reduced need for direction and a greater capacity to take responsibility for decisions affecting their lives."<sup>1</sup> UNICEF, in its research on children's evolving capacities calls for a the application of a 5-step process to determine if the legislation in question complies with the concept of evolving capacities, as outlined in the Convention on the Rights of the Child. The five steps include: (1) determining if the policy or piece of legislation in question requires an age-limit, (2) choosing the appropriate age, (3) justifying the age, (4) seeking young people's contributions, and (5) clearly demonstrating why the youth age has chosen the youth age.<sup>1</sup>

8. Failing to criminalize sexual violence in marriage constitutes severe violations of women's human rights, and internationally recognized human rights instruments of which states are party to. **It is critical that governments review existing laws that deal with marital rape, with a view to criminalize marital rape.** Marital rape must be included in general criminal provisions, with measures in place to investigate, prosecute and punish the perpetrators of such acts.
9. **States must take urgent measures to meet the needs of those who have been subjected to early and forced marriage.** This includes ensuring effective policies and programmes are in place to allow the continuation of their education, their access to decent employment, and their access to health services, including sexual and reproductive health services such as safe abortion services, emergency contraception, STI and HIV prevention services, among others. Efforts towards addressing early and forced marriage must not directly or indirectly punish those who have been subjected to these practices, for example, by excluding them from education, health, employment or social services. This requires changing societal attitudes, ensuring that health care professionals receive rights-based training, and establishing conducive legal and policy environments so as to meet their needs and recognize their realities, without prejudice, discrimination or coercion, and with full respect for their privacy.
10. Within the context of early and forced marriage, it is critically important to recognize young women and girls, as rights holders, who possess the agency to make informed decisions about their health and lives. **Young women and girls must be involved in developing policies and programmes to realize their rights, especially those at risk of or affected by early and forced marriage.** Young people must be mobilized as advocates to end these practices. This involves establishing mandates, quotas, mechanisms and procedures by which young women and girls' participation is secured; their on-going capacity building so they are able to contribute effectively; and working in partnership with them, youth community groups and youth-led organisations. This principle should underlie all related policy-making at the international, national and local levels, as well as programming efforts. This right extends to women's rights and youth organizations. Their ability to publically discuss and advocate against issues related to early and forced marriage, without fear of reprisal, is critical to supporting the implementation of laws and policies aimed at preventing or eliminating the practice of early and forced marriage.

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<sup>i</sup> Excerpted from the SRI's "Analysis of the language of child, early and forced marriage." Prepared in August 2013. It can be accessed here:

<http://sexualrightsinitiative.com/wp-content/uploads/SRI-Analysis-of-the-Language-of-Child-Early-and-Forced-Marriages-Sep2013.pdf>

<sup>ii</sup> See A/HRC/21/41, para. 27.

<sup>iii</sup> United Nations Population Fund, MARRYING TOO YOUNG (2012), p. 11.

<sup>iv</sup> United Nations Population Fund, MARRYING TOO YOUNG (2012), p. 12

<sup>v</sup> Convention on the Rights of the Child, Article 1.

<sup>vi</sup> Article 1210 of Iran's Civil Law (amended 1962).

<sup>vii</sup> 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](http://www.pakistani.org/pakistan/legislation/zia_po_1979/ord7_1979.html).

<sup>viii</sup> 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>.

- <sup>x</sup> 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.
- <sup>xi</sup> UNICEF, EARLY MARRIAGE: A HARMFUL TRADITIONAL PRACTICE: A STATISTICAL EXPLORATION (2005), p. 4.
- <sup>xii</sup> Convention on the Rights of the Child, Article 5 and Article 12.
- <sup>xiii</sup> Commission on the Status of Women 2007 Report, E/CN.6/2007/9, Chapter 1(A), Section 14.2(h).
- <sup>xiv</sup> E/CN.6/2007/9, Chapter 1(D), p. 20, 26, 29.
- <sup>xv</sup> <http://www.who.int/mediacentre/factsheets/fs364/en/> and <http://www.icrw.org/child-marriage-facts-and-figures>
- <sup>xvi</sup> [http://www.who.int/maternal\\_child\\_adolescent/documents/mpsnnotes\\_2\\_lr.pdf](http://www.who.int/maternal_child_adolescent/documents/mpsnnotes_2_lr.pdf).
- <sup>xvii</sup> <http://www.who.int/mediacentre/factsheets/fs364/en/>
- <sup>xviii</sup> Clark S, Early marriage and HIV risks in sub-Saharan Africa, *Studies in Family Planning* 2004, 35(3):149–160. <<http://dx.doi.org/10.1111/j.1728-4465.2004.00019.x>>
- <sup>xix</sup> UNFPA. 2012. "Marrying Too Young: End Child Marriage."
- <sup>xx</sup> E/C.12/2000/4, footnote 12.
- <sup>xxi</sup> UNFPA and Guttmacher Institute. <http://www.unfpa.org/webdav/site/global/shared/documents/publications/2012/AIU%20Paper%20-%20Estimates%20for%202012%20final.pdf>
- <sup>xxii</sup> Women for Women's Human Rights – New Ways. "Active Against Forced Marriages." Istanbul, 2008.
- <sup>xxiii</sup> Women for Women's Human Rights – New Ways. "Active Against Forced Marriages." Istanbul, 2008.
- <sup>xxiv</sup> An anonymous collaborator collaborated with the SRI to produce a joint submissions for Eritrea's Universal Periodic Review during the 18<sup>th</sup> session of the UPR. The full submission can be accessed here: <http://sexualrightsinitiative.com/universal-periodic-review/upr-submissions-2/attachment/sexual-rights-initiative-joint-upr-submission-eritrea-january-february-2014/>.
- <sup>xxv</sup> LGBT Organization Labrys (Kyrgyzstan) collaborated with the SRI to produce a joint submission for Turkmenistan's Universal Periodic Review during the 3<sup>rd</sup> session of the UPR. The full report can be accessed here: <http://sexualrightsinitiative.com/wp-content/uploads/Turkmenistan-UPR-3.pdf>
- <sup>xxvi</sup> Women for Women's Human Rights – New Ways. "Active Against Forced Marriages." Istanbul, 2008.
- <sup>xxvii</sup> E/CN.4/2002/83, para. 99
- <sup>xxviii</sup> <http://www.who.int/mediacentre/factsheets/fs364/en/> and <http://www.icrw.org/child-marriage-facts-and-figures>
- <sup>xxix</sup> UN Women. 2012. "2011-2012 Progress of the World's Women - In Pursuit of Justice: Executive Summary," 2.
- <sup>xxx</sup> *Ibid.*
- <sup>xxxi</sup> [http://www.plannedparenthood.org/images/IPV\\_and\\_Reproductive\\_Coercion\\_Fact\\_Sheet\\_2012\\_FINAL.pdf](http://www.plannedparenthood.org/images/IPV_and_Reproductive_Coercion_Fact_Sheet_2012_FINAL.pdf)
- <sup>xxxii</sup> Rahnuma-FPAP (the member association of International Planned Parenthood Federation of Pakistan, was established in 1953 and has grown to be Pakistan's largest provider of reproductive health and family planning services), collaborated with the SRI to produce a joint submissions for Pakistan's Universal Periodic Review during the 13<sup>th</sup> session of the UPR. The full report can be accessed here: <http://sexualrightsinitiative.com/wp-content/uploads/Pakistan-UPR-14-FPAK.pdf>
- <sup>xxxiii</sup> High-Level Task Force for the International Conference on Population and Development. 2013. Priorities for the Post-2015 Development Agenda: the Case for Sexual and Reproductive Health and Rights.
- <sup>xxxiv</sup> Women for Women's Human Rights – New Ways. "Active Against Forced Marriages." Istanbul, 2008.
- <sup>xxxv</sup> Committee on the Rights of the Child. General Comment No. 4 (2003): Adolescent health and development in the context of the Convention on the Rights of the Child. Para 28.
- <sup>xxxvi</sup> <http://www.unfpa.org/webdav/site/global/shared/documents/publications/2011/EN-SWOP2011-FINAL.pdf>, 5 & 22.
- <sup>xxxvii</sup> UNESCO. International Guidelines on Sexuality Education: An evidence informed approach to effective sex, relationships and HIV/STI education. 2009, available on-line.
- <sup>xxxviii</sup> An anonymous collaborator collaborated with the SRI to produce a joint submissions for Eritrea's Universal Periodic Review during the 18<sup>th</sup> session of the UPR. The full submission can be accessed here: <http://sexualrightsinitiative.com/universal-periodic-review/upr-submissions-2/attachment/sexual-rights-initiative-joint-upr-submission-eritrea-january-february-2014/>.
- <sup>xxxix</sup> An anonymous collaborator collaborated with the SRI to produce a joint submissions for Ethiopia's Universal Periodic Review during the 6<sup>th</sup> session of the UPR. The full submission can be accessed here: <http://sexualrightsinitiative.com/wp-content/uploads/Ethiopia-UPR-6.pdf>
- <sup>xl</sup> UNFPA. 2012. Marrying Too Young: End Child Marriage, p. 51.
- <sup>xli</sup> UNFPA. 2012. Marrying Too Young: End Child Marriage, p. 51-53
- <sup>xlii</sup> Rahnuma FPAP, the member association of International Planned Parenthood Federation of Pakistan, was established in 1953 and has grown to be Pakistan's largest provider of reproductive health and family planning services.
- <sup>xliiii</sup> Rahnuma-FPAP collaborated with the SRI to produce a joint submission for Pakistan's Universal Periodic Review during the 13<sup>th</sup> session of the UPR. The full report can be accessed here: <http://sexualrightsinitiative.com/wp-content/uploads/Pakistan-UPR-14-FPAK.pdf>