

Out of the Shadows: Child marriage and slavery

Executive Summary

Recognition of the links between marriage and slavery are largely absent from the debate on child marriage, despite growing awareness about the negative consequences of child marriage, especially for girls. Anti-Slavery International's report highlights how child marriage can often operate as a shield behind which slavery and slavery-like practices occur with apparent impunity.

1. Marriage and Children¹

The impact of marriage on children's education, and their physical and psychological health is increasingly highlighted. Nevertheless, child marriage remains a widely culturally accepted practice in many corners of the globe. Latest figures suggest that 11 per cent of women aged between 20 and 24 worldwide were married before reaching the age of 15.² Estimates for the number of boys in marriage and information on their experiences are notably scarce.

2. The Right to Marry in International Law

The right to marry encompasses the equal rights of men and women in entering into, during and upon the dissolution of marriage. It requires the free and full consent of both spouses to a marriage, and that marriages be registered by a competent authority. States must also specify a minimum age for marriage in law.³ No specific age for marriage has been conclusively established in international law, but international bodies increasingly recommend the age of 18. Any practical challenges that such an age poses must be carefully considered. Thus, for example, the rights of under 18's to sexual, reproductive and natal health services must not be restricted by establishing 18 as a minimum age for marriage.

3. Slavery and Slavery-like Practices and Child Marriage

Slavery has *jus cogens* status, making its prohibition a fundamental principle of customary international law from which no State may derogate. All States are obliged to prohibit and eliminate it. As slavery and slavery-like practices are closely intertwined,⁴ many cases of child marriage can fall within the scope of one or more of the relevant treaties. Many marriages involving children will not amount to slavery, particularly between couples aged 16 to 18 years. However, many married children can experience levels of suffering, coercion and control that meet international legal definitions of slavery and slavery-like practices, including servile marriage, child servitude, child trafficking and forced labour.

Slavery

*"Slavery is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised."*⁵

The elements of ownership and control are central to identifying slavery, as is the question of whether or not a person has given their informed consent to the relationship. These considerations will more likely be evident where children are involved due to the inherent power imbalance between children and adults. To assess whether these factors are present in child marriage, and therefore whether such situations fall within the

¹ The term 'child' is used in this report to denote any person under 18 years of age. 'Marriage' is used to describe a union between two people, recognised under civil law, religious law and/or customary rites, and understood to be binding whether or not it has been formally registered.

² UNICEF, *Committing to Child Survival: A Promise Renewed*, Progress Report, New York, USA, (September 2012), p. 23.

³ For example, Article 16, the 1948 Universal Declaration of Human Rights; Articles 1-3, the 1964 UN Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages; Article 16, the 1979 UN Convention on the Elimination of All Forms of Discrimination against Women.

⁴ See David Weissbrodt and Anti-Slavery International, *Abolishing Slavery in its Contemporary Forms*, United Nations, New York and Geneva (2002), pp. 3-5.

⁵ Article 1(1), League of Nations' Slavery, Servitude, Forced Labour and Similar Institutions and Practices Convention of 1926.

rubric of slavery, it is necessary to look at how children enter marriage, are treated during marriage, and whether they can realistically leave or dissolve their marriage.

Entry into marriage: Children are in a weaker position to give free, full and informed consent to marriage than adults, even if they appear to ‘agree’ or do not express refusal. Children are less likely to be fully informed about the true nature or impact of marriage. The younger the child, the more vulnerable they will be, including when pressure to marry comes from their own parents or guardians.⁶

Treatment in marriage: Many children have little or no control over their movements or person within marriage, including over sexual relations. Girls in particular are commonly controlled through violence, threats and humiliation, as well as experience isolation and loneliness.⁷

Inability to leave or end a marriage: Children may not realistically be able to leave their marriage however difficult the situation may be. For example, they may not be able to support themselves financially or may fear repercussions from in-laws and the wider community, as well as their own families.⁸ Where a marriage has not been formally recognized it cannot officially be dissolved and redress for legal violations is harder to attain.⁹ Girls who leave their marriages without familial or independent support are often vulnerable to other forms of slavery and exploitation.¹⁰ In this way, entry into slavery through marriage as a child is likely to lead to a life in slavery for the adults they become.

Servile marriage

Servile marriage is intimately connected to forced marriage. It can encompass promising or giving in marriage a woman who lacks a right of refusal; handing a wife over to another for a value received or otherwise, and widow inheritance.¹¹ Not all marriages involving a transaction necessarily equate to slavery, including *dowry* and *bride price*. However, when a marriage is negotiated according to payments or transactions, the risk of servile marriage is high. It can indicate the commoditisation of children, suggesting treatment akin to ownership and exchange in return for goods or money.

Child servitude

Child servitude is the delivery of a person under 18 years of age with a view to exploiting them or their labour.¹² Many child marriage cases involve children who are handed over by parents or guardians for marriages in which they are exploited by their spouse and/or their spouse’s family. Here, exploitation generally encompasses domestic and/or manual labour, as well as sexual relations. As a spouse, a child frequently has no choice but to engage in these activities.

Child trafficking

Child trafficking applies where a child has been transferred from one location to another for the purpose of exploitation. A child may be trafficked even if they ‘agreed’ to the transfer.¹³ Trafficking appears to occur frequently in relation to child marriage. Globally, many girls are trafficked under the pretext of marriage, being imprisoned, threatened and abused upon reaching their destination, and forced into activities such as prostitution and domestic servitude.¹⁴

Forced labour

Forced labour exists where work or service is exacted from a person involuntarily under menace of penalty.¹⁵ Such work need not specifically be economic activity to qualify as forced labour and can include sexual exploitation.¹⁶ The situation of married children might reasonably amount to forced labour where such children are exploited by being forced to undertake work outside or within the marital home, or engage in sexual relations, and being in no position to refuse or realistically leave the marriage.

⁶ For example, Samuel Lane, *Stealing Innocence: Child marriage and gender inequality in Pakistan*, Abo Academy University/Plan Finland (2011).

⁷ For example, Pernilla Ouis, “Honourable Traditions? Honour Violence, Early Marriage and Sexual Abuse of Teenage Girls in Lebanon, the Occupied Palestinian Territories and Yemen,” *International Journal of Children’s Rights*, 17/3 (2009), particularly pp. 462-5.

⁸ For example, Human Rights Watch, *Will I Get My Dues ... Before I Die?* (2012), p. 1.

⁹ The case of Nujood Ali in Yemen, who, at the age of 10, successfully obtained a divorce, is a rare exception, Human Rights Watch, *How Come You Allow Little Girls to Get Married? Child marriage in Yemen* (2011), p. 19.

¹⁰ For example, European Roma Rights Centre, *Breaking the Silence: Trafficking in Romani Communities*, Budapest, Hungary (March 2011), p. 72-3.

¹¹ Article 1(c), UN Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery 1956.

¹² *Ibid.* Article 1(d).

¹³ Article 3(c), Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime 2000.

¹⁴ See for example Farhat Bokhari, *Stolen Futures: Trafficking for Forced Child Marriage in the UK*, ECPAT UK, 2009, p. 13.

¹⁵ Article 2(1), ILO Convention No.29 concerning Forced or Compulsory Labour 1930.

Forced child labour: Anti-Slavery International has identified compelling parallels between child marriage cases and others, notably some involving child domestic workers, which the International Labour Organization (ILO) has found to amount to forced child labour. It should be noted that child domestic work and child marriage are clearly distinct in many respects. The practice of child domestic work sees millions of children, mainly girls, sent to households where they carry out domestic chores. Where properly regulated, including requirements concerning minimum age for entry into employment, this can be a legitimate occupation. However, the reality for some child domestic workers entails isolation and employer dependency, making them vulnerable to exploitation and forced child labour. This vulnerability went ignored for years. Likewise child spouses continue to be hidden from view in the marital home, which can often lead to them being exploited for their labour and physically and sexually abused, with little realistic hope of escape.¹⁷ Anti-Slavery International believes it is now time to recognise the vulnerability of children in marriage to forced child labour and slavery too.

Worst forms of child labour

A potentially high proportion of child marriage cases appear to constitute worst forms of child labour under the 1999 ILO Convention no. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (ILO Convention 182), namely:

“All forms of slavery or practices similar to slavery, such as the sale and trafficking of children [...] and forced or compulsory labour,”¹⁸

All 174 State parties to this convention are obliged to take immediate and effective steps to end all such forms of labour, including slavery and slavery-like practices. These steps should therefore also aim to protect children in or at risk of entering slavery through marriage.

4. Gaps in International and National Law and Practice

International level

UN treaty bodies and special procedures have raised many concerns about child marriage, but rarely draw links with slavery. A notable exception is the UN Special Rapporteur on contemporary forms of slavery who devoted a report to servile marriage.¹⁹ Only a few child marriage cases to date have been presented to or taken up by the ILO’s supervisory mechanisms, despite the potential relevance of ILO Convention 182 to many child marriage cases.

National level

There have been a number of encouraging developments at the national level. However, globally, many serious obstacles to addressing child marriage remain. These include: discriminatory marriage and divorce laws; the setting of national minimum ages for marriage below 18 years, or not at all; poor publicity and enforcement of law; competing religious, customary or local laws that can undermine protective national law; lack of birth certificates (to verify a child’s age upon marriage) and marriage certificates (to establish officially that a marriage has taken place), further impeding possibilities for dissolution and redress; and the assigning in some jurisdictions of quasi-majority status to married children, thereby removing them from the special protections usually afforded to children.

5. Tackling Root Causes

Whilst critical, the adoption and better enforcement of law cannot eradicate deeply entrenched commitments to child marriage on such a large scale. It also requires programmes and policies that understand and act upon the diverse and complex personal motives and wider social dynamics that sustain support for child marriage.

¹⁶ ILO, *A Global Alliance against Forced Labour: Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work*, Report I (B) of the Director General (2005), p.9, para.35. See also p. 44-5, para. 213.

¹⁷ Yaa Yeboah and Frank Panford, *Eliminating the Worst Forms of Child Labour under Time-Bound Programmes: Guidelines for strengthening legislation, enforcement and the overall legal framework*, Time-Bound Programme Manual for Action Planning, Paper IV-3, ILO-IPEC, (2003), p. 22.

¹⁸ Article 3(a).

¹⁹ *Thematic Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, to the UN Human Rights Council, on Servile Marriage*, UN doc. A/HRC/21/4, (July 2012).

6. Recommendations

Anti-Slavery International calls upon:

1. The UN General Assembly and Human Rights Council to:

- a) Pass a resolution on forced and child marriage, including its links both to slavery and the right to marry safeguards;
- b) Call for the development of a Strategic Action Plan on Forced and Child Marriage, with cross-international agency participation, to accelerate the end of forced and child marriage.

In addition, the *UN Human Rights Council* should:

- c) Dedicate an annual Day of Discussion on the Rights of the Child to child marriage, reaffirming and clarifying its links to slavery; and
- d) Encourage better adherence to the international slavery framework as it relates to child marriage and right to marry safeguards by all UN Member States through the Universal Periodic Review process.

2. UN Treaty Bodies and Special Procedures to:

- a) Promote State ratification and implementation of international slavery standards by States as they relate to combating forced and child marriage.
- b) Continue to encourage better adherence to right to marry safeguards by States in relation to forced and child marriage, including setting and enforcing a legal minimum age for marriage, ideally at 18 years old for both men and women.
- c) Engage in collaborative efforts, reflecting the many overlapping areas child marriage encompasses.

3. The International Labour Organisation to:

- a) Pay greater attention to child marriage when it amounts to slavery and slavery-like practices, including forced child labour, as applicable, through the ILO Committee of Experts on the Application of Conventions and Recommendations and, the ILO Conference Committee on the Application of Standards and ILO country offices.

4. Other UN specialised agencies and non-governmental organisations to:

- a) Pay closer attention to the possible application of slavery and slavery-like practices to child marriage, and raise this issue within their ongoing work on forced and child marriage.

5. Governments to:

- a) Ratify and fully implement in national law all relevant international standards relating to slavery and slavery-like practices as well as the right to marry in national law.
- b) Raise awareness of the links between slavery and slavery-like practices and child marriage, and the relevant laws which apply.
- c) Ensure that all relevant laws and policies are strictly implemented and enforced, including the provision of training to law enforcement agents and other relevant professionals.
- d) Ensure that all children (and adults) trapped in marriage, particularly those living in conditions of slavery, are aware of and have freely available access to advice, protection and rehabilitation.
- e) Prioritise policies and measures to prevent children from entering marriage, including by engaging with communities where child marriage is commonly practised in the development and provision of relevant measures. Such measures should include, economic development and income-generating programmes, as well as quality education that is affordable, accessible and appropriate to community needs.

For more information, the full report and a list of resources are available at: www.antislavery.org.

Anti-Slavery International, Thomas Clarkson House, The Stableyard, Broomgrove Road, London, SW9 9TL
Tel: +44 (0) 207 501 8934, Email: info@antislavery.org, www.antislavery.org
Registered Charity: 1049160