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CHILD MARRIAGE LEGISLATION IN THE ASIA-PACIFIC REGION

By Elisa Scolaro, Aleksandra Blagojevic, Brigitte Fillion, Venkatraman Chandra-Mouli, Lale Say, Joar Svanemyr, and Marleen Temmerman

Child marriage is a human rights violation that robs a girl of her childhood, puts her health, growth, and development at risk, disrupts her education, limits her opportunities for empowerment and social development, and increases her risk of exposure to violence and abuse (for a review of the evidence on the negative effects of child marriage on girls and their children, see Parsons et al. 2015, in this issue). While child marriage is not mentioned specifically in the 1989 Convention on the Rights of the Child (CRC), the Convention does contain a provision requiring governments to abolish “traditional practices prejudicial to the health of children” and calling on them to protect children from “all forms of sexual exploitation and sexual abuse” (art. 4). In addition, child marriage relates to other children’s rights, such as the right to express their views freely, the right to protection from all forms of abuse, and the right to be protected from harmful traditional practices. The CRC also prohibits States Parties from permitting or validating a marriage between persons who have not attained their majority (art. 16.2). The Committee on the Rights of the Child has consistently dealt with child marriage in its Concluding Observations to governments that have ratified the CRC.

On the occasion of the Inter-Parliamentary Union (IPU) regional seminar for the Asia-Pacific parliaments entitled “Ending the cycle of violence against girls in Asia-Pacific,” which took place in Dhaka on September 23–25, 2014, the Department of Reproductive Health and Research, in collaboration with IPU, prepared a report reviewing child marriage legislation in 37 countries in the Asia-Pacific region. During the discussions at the seminar, parliamentarians underlined the importance of legislation in fighting the practice of child marriage, placing their focus on an analysis of what laws have been adopted in the region, and how they are being implemented. They examined how laws and policies can also provide for a range of prevention approaches, including measures aimed at empowering girls, improving their health, and building an environment conducive to ending child marriage. The discussion also aimed at

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analyzing the role of parliamentarians in raising the issue of child marriage and in reviewing the legislation.

Although this part of the discussion will not be covered here, the authors stress that parliamentarians play a crucial role in enforcing existing laws and policies and in bringing about the necessary legal reforms. Parliamentarians in the Asia-Pacific region have taken vital steps towards the development of legal tools aimed at reducing child marriage and have worked to raise awareness on this issue, but much more needs to be done. Harmonizing existing laws and ensuring their implementation, for instance, are some of the priorities.

Despite the introduction of laws to prevent the practice in many of the countries where child marriage is common, global rates have declined only slowly over the past decade (UNFPA 2012; Nguyen and Wodon 2015, in this issue). This article¹ provides a review of legislation about child marriage in 37 countries in the region in order to provide some insights in terms of the legislative gaps that remain.

Child Marriage: Extent and Causes

The term “child marriage” is used to describe a legal or customary union between two people, of whom one or both are below the age of 18. While boys can be subjected to child marriage, the practice affects girls in far greater numbers and with graver consequences, especially in the area of health, but also in other areas (see in this issue the literature review by Parsons et al. 2015 on the economic impacts of child marriage).

According to United Nations Population Fund (UNFPA) (2012; see also Nguyen and Wodon 2015, in this issue), for the period 2000–2011, nearly one in three (34 percent) young women aged 20–24 years in the developing world (excluding China) is in a marriage or union that occurred before their 18th birthday. In 2010, this was equivalent to almost 67 million women. One in nine girls (12 percent) are married before the age of 15. In the Asia-Pacific region, like in other parts of the world, the prevalence of child marriage varies substantially among and within sub-regions and countries. South Asia has the highest rates of child marriage, with 46 percent of

women 20–24 years old who were married or in union by age 18 (2000–2010). By contrast the figures are lower in a region such as Central Asia. While rates vary among the different sub-regions, they also vary considerably between countries, ranging from 3.9 percent in Maldives to 64.9 percent in Bangladesh.

In all regions, the causes of child marriage are complex, interrelated, and tightly interwoven with social and economic circumstances and the cultural context. Gender inequality, poverty, and insecurity in the face of war and conflict are some of the conditions identified as drivers of the practice of child marriage. Changes in circumstances such as conflicts, natural disasters, and other emergencies can lead to an increase in this practice (Walker 2012).

In most of the societies in the Asia-Pacific region where child marriage is prevalent, women and girls are traditionally assigned a lower status than men and boys within the household, the community, and the society. Very often it is assumed that women will neither be active in the community’s life nor contribute to the economy and development of the society. They are assigned responsibilities within the household, covering the role of caregiver, wife, and mother. This view of women’s roles, in particular in the Asia-Pacific region, is often closely linked to the patriarchal structure of the family, as well as the influence of traditional and tribal norms and customs. This view of gender roles reinforces the assumption that marriage is the only way to ensure a girl’s future, and therefore the earlier it occurs, the better.

In the Asia-Pacific region, poverty is also a major factor underlying child marriage. In low-income families, children, especially girls, can be viewed as a financial burden, such that an early marriage can be seen as a convenient solution. Marriage arrangements can also serve to settle familial debts or disputes, or to secure social, economic, or political alliances. Customary requirements, such as dowries or bride prices, may also enter into consideration, especially in communities where families can give a smaller dowry for younger brides (Amin and Bajracharya 2011).

Nevertheless, it must be acknowledged that the 37 countries considered in the report differ a

lot in relation to the drivers above mentioned, which therefore may assume a different relevance as related to the child marriage issue according to the country taken into account.

According to UNFPA, in many countries globally, including in the Asia-Pacific region, child marriage is often seen as a safeguard against premarital sex. Furthermore, the duty to protect the girl from sexual harassment and violence is transferred from father to husband upon marriage. Parents may force a young daughter into marriage with the ultimate aim of preserving the girl's premarital virginity and protecting her from any kind of sexual behavior that would be considered immoral or inappropriate before or outside of marriage (UNFPA 2012).

Finally, weak and sometimes contradictory legislation and lack of enforcement of existing laws is very common, making the fight for the abandonment of the child marriage more challenging. The coexistence of multiple legal systems within countries further complicates the picture. In some countries globally, including many in the Asia-Pacific region, statutory law and religious law both regulate marriage. The resulting regulations are not always aligned—indeed they are often in contradiction with each other.

Methodology and Limitations

The objective of this study is to analyze the legal systems of 37 countries in the Asia-Pacific region as they pertain to child marriage. For each country, a profile on child marriage legislation has been developed in order to provide a clear and concise picture of how the practice is treated, and what international and national legislative tools have been adopted by the countries. The desk review was conducted through PubMed, Popline, Google Scholar, and Google for articles and other publications with various combinations of each country's name and the keywords: marriage, child, early, law, legislation, Asia and/or Pacific. In addition, the authors checked the reference lists of the selected sources to identify further relevant articles. The main sources of information are items of national legislation retrieved from national legislation databases, with a particular

focus on constitutional law, civil law, family law, as well as penal and criminal law.

For each country, the authors described the structure of the legal system and how within this system different sources of laws coexist. The combination of statutory law and customary, religious, traditional and/or tribal frameworks is common in the region and to compare one national legal system with another would not be an entirely effective or feasible approach. The hierarchy of these different frameworks and regulations is not always well defined or consistently applied and thus is very often the subject of controversy. Existing legislation has been analyzed at five levels: relevant international treaties; constitutional provisions; statutory law; customary/religious/traditional/tribal frameworks; and provisions and sanctions.

The United Nations treaties most relevant to child marriage have been taken into account, namely the Convention on the Rights of the Child (CRC, 1989), the Optional Protocol to the CRC on the Sale of Children, Child Prostitution, and Child Pornography (2000), the Convention on the Elimination of All forms of Discrimination against Women (CEDAW, 1979), the International Covenant on Economic, Social, and Cultural Rights (CESCR, 1966) and the Convention on Consent to Marriage, Minimum Age for Marriage, and Registration of Marriages (1962).

At the constitutional level, the authors scanned national constitutional provisions to identify if and how countries provide reference and/or protection to the institutions of marriage and family as well as to fundamental rights, with a special focus on rights relevant to women and children and to child marriage. More specifically, where data were available, the authors reported when and how the following elements are covered under constitutional law: definition, recognition or protection of marriage; definition, recognition or protection of family; right to life; right to health; equality between man and woman/no discrimination on the basis of sex, including special protection for women and/or children; assertion of primacy of constitutional law over other forms of law; assertion of primacy of

religious law over other forms of law; and any other fundamental right relevant to child marriage.

As the next step, statutory law was assessed with specific attention to key elements of legislation relevant to child marriage, including age of marriage; exception upon parental or court consent; spousal consent; ad hoc authorities or mechanisms for child protection; marital rape; mandatory marriage registration and mandatory birth registration. Information on legislation on violence has been covered as well, when relevant to minors and marriage.

Data and information have also been collected on customary law, extending the review to cover written and unwritten norms and including religious, patriarchal, tribal, and traditional practices. Criminal and penal codes in the 37 countries have been analyzed to provide an overview of how key provisions related to child marriage are actually implemented in the country, in order to identify the major barriers to implementation. Criminal procedure codes, penal and civil codes, family law, common law and/or supreme court rules, as well as civil and religious marriage acts and/or administrative registration rules have been analyzed in order to collect information on sanctions and legal provisions that penalize the act, performance, or registration of child marriage or which support the endeavors of parents or guardians to ensure the growth and development of the children under their custody. Under this section, the authors also analyzed whether ad hoc authorities and/or ad hoc mechanisms exist for a child to access justice. The authors have also highlighted examples of specific policies related to child marriage that may be in force in the country.

The main limitation of this study relates to customary law, especially unwritten laws. When the study refers to patriarchal, traditional and tribal norms or frameworks, and sometimes also religious law, most of this information has been transmitted orally and not collected into a comprehensive and written code, therefore information collected may not be comprehensive or may be based on grey literature. Additionally, with regard to laws, the study did not evaluate the quality of legislation, for example, the exact scope

of the legislation, the quality of the legislative text, its political neutrality, flexibility, or enforceability. Moreover, not all laws relevant to child marriage were examined in this study. The authors selected a list of key sources for each country examined. This article does not include a review of national strategies and programs intended to reduce or end child marriage nor does it assess the level of implementation of the laws or the existence and effectiveness of accompanying measures to ensure that legislation and policies have a positive impact on the ground.

Main Findings

All 37 countries considered in the study have ratified the Convention on the Rights of the Child (1989). In addition, 25 countries have ratified the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (2000), two other countries signed it (Nauru and Solomon Islands) and nine did not take any action so far, mostly from Pacific countries. The Convention on the Elimination of All Forms of Discrimination against Women (1979) is ratified by 33 countries and signed by two (Nauru and Palau), with only two countries which have not take any action (Islamic Republic of Iran and Tonga). The International Covenant on Economic, Social, and Cultural Rights (1966) has been ratified by 24 countries, signed by one (Palau), and 12 have not taken any action, mostly from the Pacific region (Kiribati, Marshall Islands, Micronesia, Nauru, Samoa, Tonga, Tuvalu, and Vanuatu), but also Bhutan, Malaysia, Myanmar, and Singapore. Only five countries have ratified the Convention on Consent to Marriage, Minimum Age for Marriage, and Registration of Marriages (1962), namely Bangladesh, Mongolia, New Zealand, Philippines, and Samoa, while Sri Lanka signed it. The other 31 countries have not taken any action so far. Bangladesh, Mongolia, New Zealand, and Philippines ratified all the five international UN treaties taken into account in this study (Table 1).

Various organizations and entities² have formulated clear recommendations for the development of laws to prevent child marriage, as

Table 1: Status of ratification of international UN treaties in Asia-Pacific countries

UN Treaty	Ratification	Signature	No action
Convention on the Rights of the Child (1989)	37	–	–
Optional Protocol to the Convention on the Rights of the Child on the sale of Children, Child Prostitution and Child Pornography (2000)	26	2	9
Convention on the Elimination of All Forms of Discrimination against Women (1979)	33	2	2
International Covenant on Economic, Social and Cultural Rights (1966)	24	1	12
Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (1962)	31	1	5

Source: Compiled by the authors.

well as for the enactment and effective enforcement of these laws identifying key elements of a strong legal framework in line with international and regional standards for protecting girls from child marriage (Odala 2013). These key elements of legislation include, among others: a minimum age of marriage to be set at 18 years old, with no exceptions based upon parental consent or court authorization; the adoption of a consolidated law on children; and an ad hoc institutional framework and enforcement mechanisms to protect children.

Under the analysis of statutory law in the 37 countries, the key elements of legislation that authors of this study have taken into account are age of marriage; exception upon parental or court consent; spousal consent; mandatory marriage registration; mandatory birth registration; marital rape; and ad hoc authorities or mechanisms for child protection. Among these elements, setting the legal age of marriage for boys and girls to 18 years is one of the first elements addressed by countries in the Asia-Pacific region. According to data collected the status of legislation on minimum age of marriage in the 37 countries analyzed can be synthesized as per Table 2.

According to this review, four countries (Bhutan, China, Mongolia, and Vietnam) have set the minimum age of marriage at 18 or above with no exceptions. A total of 23 countries set the minimum age for girls at 18 (below or lower for boys), but with exception to the minimum age upon parental or court's consent. Another 10 countries set the minimum age of marriage lower than 18 years. Almost all countries' laws analyzed within this study contain an explicit norm

providing exception to the minimum age of marriage upon parental or court's consent. The exceptions are Bhutan, China, Mongolia, and Vietnam whose laws do not contain an explicit exception to the minimum age set up by the norm stating indeed that if the marriageable age is not attained, the marriage is prohibited (18 in Bhutan and Mongolia for both boys and girls; 22 for boys and 20 for girls in China; and 20 for boys and 18 for girls in Vietnam).

Upon parental or court's consent the age of marriage can be as low as 14 years in Bangladesh (for both girls and boys) and in Myanmar. The age of marriage can be as low as 15 in Laos (under special circumstances), Philippines (or puberty age for Muslims), and in Tonga (parental consent), while it goes down to 16 in Cambodia (with parental consent if the other party is 18, or regardless of age in the case of pregnancy), and in Iraq, Malaysia, Maldives, Indonesia, New Zealand and Tuvalu (for both boys and girls) and in Japan, Indonesia, Marshall Islands, Palau, Philippines, Samoa and Vanuatu (only for girls).

In Singapore, a girl under 18 can be married with special marriage license or at the age of puberty under customary law. In Sri Lanka, the age of marriage is 18 for girls and boys, but under 18 (with no specification in terms of minimum age) with parental consent or court order for Muslims.

Another key element relating to child marriage, which also provides an understanding on forced agreement, is spousal consent. The authors of this study found a reference to spousal consent in 34 out of 37 countries within statutory law, as well as within customary and religious law.

Table 2: Minimum age of marriage per country in the Asia-Pacific region

Age	Countries
18 or above with no exceptions	Bhutan (18 for boys and girls) China (22 for boys and 20 for girls) Mongolia (18 for boys and 18 for girls) Vietnam (20 for boys and 18 for girls)
18 or above with exceptions	Australia (18 for girls and boys, but between 16 and 18 with court special consent) Bangladesh (18 for girls and 21 for boys, but 14 with parental consent) Cambodia (18 for girls and 20 for boys, but 16 with parental consent if the other party is 18, or regardless of age in the case of pregnancy) India (18 for girls and 21 for boys, except under Mohammedan Law or sharia law) Indonesia (21 for girls and boys, but 16 for girls and 19 for boys with parental consent) Japan (20 for girls and boys, but 18 for boys and 16 for girls with parental consent) Kiribati (21 for girls and boys, but 18 with parental consent) Laos (18 for girls and boys, but 15 under special circumstances) Malaysia (21 for girls and boys for non-Islamic marriages, but 16 with court order) Maldives (18 for girls and boys, with exceptions at the discretion of the Registrar) Marshall Islands (18 for girls and boys, but 16 for girls with parental consent) Myanmar (18 for girls and boys, but 14 for girls with parental consent) Nepal (20 for girls and boys, but 18 with parental consent) New Zealand (18 for girls and boys, but 16 with parental consent) Palau (18 for girls and boys, but 16 for girls with parental consent) Philippines (21 for girls and boys for civil marriages, but 18 with parental consent for non-Muslims and 15 or puberty age for Muslims) Singapore (18 for girls and boys, but under 18 with special marriage license or age of puberty under customary law) Sri Lanka (18 for girls and boys, but under 18 with parental consent or court order for Muslims) Tonga (18 for girls and boys, but 15 with parental consent) Thailand (21 for girls and boys, but 17 with parental consent or under 17 with court order) Samoa (19 for girls, but 16 with parental consent; 21 for boys, but 18 with parental consent) Tuvalu (21 for girls and boys, but 16 with parental consent) Vanuatu (21 for girls and boys, but 18 for boys and 16 for girls with parental consent)
Below 18 (mostly for girls)	Afghanistan (18 for boys and 16 for girls, but 15 for girls with authorization of a guardian or court order) Iran (8 years, 9 months for girls [9 lunar years]; 14 years, 7 months for boys [15 lunar years]) Micronesia (regardless of age under customary law, but states of Kosrae, Chuuk and Pohnpei require 18 for girls and boys, but 16 for girls with parental consent) Nauru (16 for girls and 18 for boys, or less with parental consent) Democratic People's Republic of Korea (17 for girls and 18 for boys) Republic of Korea (16 for girls and 18 for boys with parental consent) Pakistan (16 for girls and 18 for boys, but 14 with parental consent) Papua New Guinea (16 for girls, but 14 with court order; 18 for boys, but 16 with court order) Solomon Islands (15 for girls and boys with father's consent) Timor-Leste (17 for girls and boys, but minor with parental consent)

Source: Compiled by the authors.

In these countries, there may be a reference to the fact that the consent of both spouses is required, or only that the woman's consent is required, to validate the marriage and that no marriage shall be solemnized or arranged without the consent of both parties—male and female. If a marriage is

solemnized or arranged by force (i.e. without consent) such a marriage may be void.

Nevertheless, as mentioned before, even in the countries where spousal consent is a key element to validate the marriage (as expressly stated in the legislative text), there is still the

option of marriages below the legal age of marriage upon the consent of parents or the court. In this case, the consent of the male and, in most cases, of the female is not requested. In some countries, the girl's consent to marriage is generally not considered because the parents contract the marriage for her when they consider that she is physically ready.

Moreover, this requirement is often circumvented by the failure to ensure marriages are registered. Muslim personal laws often include columns to record consent to marriage. Personal laws for other religions do not typically require consent. However, in actual practice, lack of consent may not always been seen as a barrier to legal recognition of marriages.

Additionally, although this study has not systematically analyzed this element, it is relevant to mention that as regarding the age of consent to marriage, in some of the countries included in the study, the legal architecture is made even more complex by the fact that the age of consent to marriage, the age of legal capacity, and the age of consent to sex are not aligned.

In many of the countries considered in this study, the relevance of birth registration and marriage registration has been taken into consideration by legislators in order to exactly determine the age of the girls and boys at the time of the marriage. In some countries, birth registrations may be avoided in order to be able to arrange their girls' marriage before the minimum age of marriage is attained. In most of the countries, the births and marriage registrations have become mandatory only relatively recently. Out of the 37 countries we examined, almost all have reference to birth registration and marriage legislation. Nevertheless registration is not always mandatory and may be optional according to the type of marriage or the laws regulating it. It is often the case that even when required, the failure to register the marriage, for example, may not invalidate it. Further, requirements of registration of marriage and birth are not always enforced, and the practice is not widely applied. Most of the countries have ad hoc authorities to deal with child-rights-related issues, including the issue of child marriage. However, this study did not go into detail in analyzing how these courts or authorities

operate and what the real enabling role is in terms of enforcement of child marriage legislation.

Conclusion

Worldwide, there is widespread consensus that marriage of girls before they are 18 years old is a human rights violation. Several international legal instruments have analyzed child marriage through the lens of both civil and political rights and economic, social and cultural rights covenants. These instruments address child marriage as a violation of interconnected rights, including the right to equality on grounds of sex and age, the right to freely consent to marriage and found a family, the right to life, the right to the highest attainable standard of health, the right to education and development, and the right to be free from slavery. Many countries in the Asia-Pacific region are party to the relevant UN treaties and conventions and many have also tried to adapt their national legal systems to enact and enforce the internationally recognized provisions, meaning that they have committed to ensuring that girls are protected from child marriage.

These attempts to adapt national statutory laws to international treaties are often made difficult by the coexistence within a country of a variety of different legal systems, combining statutory law with customary law, as well as religious, tribal, and patriarchal norms and practices. The review of this complex system of laws has revealed key gaps and inconsistencies that undermine children's ability to seek and obtain legal protection. Even when legislators have been able to adapt statutory laws to international standards, the religious law as well as the norms linked to customs and to tribal and patriarchal schemes may remain unchanged.

As a result, although countries have moved forward in reviewing their statutory laws, still much needs to be done to harmonize different legal systems within the same country. This remains one of the main obstacles in the concrete implementation of the legislation. Additionally, together with the analysis of the key elements of legislation and how different legal systems coexist in a harmonized/non-harmonized way, we need to take into account a wide range of socioeconomic contexts, and different developmental, health,

educational, and gender-related challenges, which make the analysis more complex.

There is also evidence that even when countries have adopted a strong legal system to fight the practice of child marriage, and even where the legislators have been able to harmonize the different legal systems, the rate of child marriage remains still high. While a range of efforts has been made to bring national legislation in line with international human rights instruments such as the CEDAW and the CRC, we need to underscore the fact that even the best legislation could not stand on its own. Accompanying cross-sectoral measures are needed to ensure that legislation and policies have a positive impact on the ground.

Comprehensive empowerment of girls through educational, economic, and health resources, including by enabling the provision of sexual and reproductive health information and services, as well as drawing attention to the risks and rights violations associated with child marriage, are the core elements of a successful approach. Legal, cultural, social, and economic determinants need to be comprehensively addressed, using a holistic approach. Strategies for ending child marriage recommended to the Commission on the Status of Women include supporting and enforcing legislation to increase the minimum age of marriage for girls to 18 years; providing equal access to quality primary and secondary education for both girls and boys; mobilizing girls, boys, parents, and leaders to change practices that discriminate against girls and

to create social, economic and civic participation opportunities for girls and young women; providing girls who are already married with options for schooling, employment, and livelihood skills and sexual and reproductive health information and services (including HIV prevention); offering recourse to services in cases of violence in the home; and addressing the root causes of child marriage, including poverty, gender inequality and discrimination, the low value placed on girls, and violence against girls. Among these interventions, legislation to stop child marriage is a critical element and plays a central role in creating an enabling environment to end this practice.

Parliamentarians play a crucial role. As elected representatives of their people, they are the best placed to raise issues that are relevant to the most disadvantaged groups in the population, including children. They are the voice of people and can stand up to raise awareness among the population on the health, social, economic, and development consequences of child marriage for girls as well as the whole society. But above all they are the ones making the laws—they have the power to bring national legal systems in line with international standards and to liaise with religious and tribal leaders in the community to advocate for a concrete harmonization of different legal systems in order to implement child marriage norms. Last, but not least, they can influence budget allocation in order to ensure that a comprehensive and inclusive approach including health, education, social, and economic services is enabled in order to fight the practice of child marriage. ❖

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 2. Including the African Child Policy Forum is a member of Girls Not Brides: The Global Partnership to End Child Marriage, and CRR (2014) Child Marriage and personal laws in South Asia international standards requiring governments to end human rights violation based on religious norms.

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