THE CONVENTION ON THE RIGHTS OF THE CHILD: THE NECESSITY OF ADDING A PROVISION TO BAN CHILD MARRIAGES

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The United Nations Convention on the Rights of the Child [hereinafter “CRC”], adopted on November 20, 1989 is considered by many to be a comprehensive treaty. It is identified as comprehensive because it not only contains civil and political rights such as freedom of expression and religion but also economic, social, and cultural rights including the rights to an adequate standard of living, to healthcare, and to education.

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instance, CRC articles 6 through 22 cover civil and political rights, while articles 23 through 31 are economic, social, and cultural ones. Cynthia Price Cohen further identifies the CRC as all encompassing given that it protects and promotes the rights of the girl child.

Despite its comprehensiveness, the CRC does not adequately protect and promote the rights of girl children as Cynthia Price Cohen seems to believe. The absence of a provision against child marriage will be used as the basis for the conclusion that the CRC does not apply to boys and girls equally. While the CRC was designed to be gender blind, violations that primarily affect boys (i.e., child soldiers) are covered under CRC article 38. The same consideration is not given to violations predominantly affecting girls with child marriage. This argument can be taken further in the sense that violations that are peculiar to girls (female circumcision) are likewise not expressly addressed in the CRC. For the purposes of this article, however, the focus shall be on child marriages, specifically those that involve girl children. This study will examine various international law treaties, which contain provisions against child marriage and conclude that this is not a sufficient reason to exclude a provision against early marriage from the CRC.

This article will begin with an overview of the incidence of child marriages. Next, an examination of the various provisions contained in the CRC, as well as the Convention on the Elimination of Discrimination Against Women [hereinafter “CEDAW”] article 16, banning child marriages, the Convention on Consent to Marriage, Minimum Age for Marriage, and Registration of Marriages [hereinafter “Marriage Convention”] will be conducted as a way to determine their efficiency in ending early marriages. This examination will prove that different factors including: vague treaty terminology, loopholes, treaty reservations, and refusal to ratify make these other provisions’ and/or treaties’ attempts to ban child marriages less effective than if the CRC itself contained a provision against early marriage. In the end, only by modifying the CRC to include a provision against child marriage can it be deemed a more


5. It should be noted that in certain regions of the world including the northern Indian state of Rajasthan, boys are also victims of child marriage and are married off during adolescence. John F. Burns, Though Illegal, Child Marriage is Popular in Part of India, N.Y. TIMES, May 11, 1998, at A1, A8.
gender neutral and complete treaty and one which protects the rights of boys and girls equally.

I. AN OVERVIEW OF THE INCIDENCE OF CHILD MARRIAGES

Over thirty countries still allow child marriages below the age of fifteen. These countries include African countries such as Ethiopia, Kenya, and Nigeria, Latin American countries including Peru and Argentina, Middle Eastern countries such as Lebanon and Iran, Asian countries such as Sri Lanka and Malaysia, and North American ones like the United States.

Some researchers claim that the marriage age has increased worldwide. However, upon closer examination these claims are invalidated because most marriages, despite legislation advising otherwise, are not registered. Furthermore, a shift toward higher age at marriage may not be indicative of a shift in customs or social attitudes, but rather a state policy designed to serve demographic interests. In other words, countries driving toward development are raising the marriage age as a way to reduce fertility. Finally, age at marriage and the potential for change differs from region to region.

The propensity to raise the marriage age is higher in urban areas, where laws are more comprehensive and more expediently enforced. Educational levels tend to be higher in urban areas than in rural areas. Due to these factors as well as the paramount importance of tradition, women have fewer opportunities in rural regions. Consequently, child

6. Even if the CRC is modified to include a provision against child marriage, it will still remain lacking and discriminatory toward girl children because it also does not contain a provision directly addressing female circumcision.


marriage retains its advantages for poor families in rural locations. These advantages stem from cultural, religious, social, political, and economic variables.

The demand of dowries combined with poverty give rise to a situation where girls are perceived as economic burdens. Early marriage relieves the parents of the costs and responsibilities attached to raising a girl. At the same time as the girl’s parents are relieved of their burden, the groom’s parents also benefit because they gain an unpaid slave and often, a dowry. Thus, child marriages are mutually convenient for both sets of parents.

Another purpose child marriage serves and one sanctioned by the religious community is to assure the girl’s chastity. Virtue is a highly prized commodity in African, Asian, and Arabic countries. Parents worry that the longer the girl remains unmarried, the greater the threat to her virtue. Furthermore, under Islamic law for instance, each year past a girl’s puberty, doubts concerning her purity increase. In parts of India this results in dowry payments rising for each year after menarche, "... an unwed girl who has attained puberty can already be classed as damaged goods." In contrast, the younger the bride, the less dowry demanded.

Early marriage also ensures a girl is young enough to be molded and trained by her husband and in-laws, before she can develop a personality or identity of her own. Early marriage denies a girl’s independence. They go directly from being under their father’s domination to their husband’s
domination. Consequently, she is powerless and dependent. This state of affairs is further intensified if the man she marries is markedly her senior, assuring the girl a lifetime of intimidation, inequality, and subjugation.

Some connect early marriage to social status. Marriage grants girls adult status (even if they are only twelve years old or less) with domestic and childbearing responsibilities. These domestic responsibilities are often considered a girl’s best source of education, whereas actual schooling is considered a waste. A girl’s sole achievement in life hinges on her fertility and early marriage ensures that she will have many fertile years ahead and be the mother of many sons, thereby further increasing her status. This view is not shared by all. For instance, Erica Royston and Sue Armstrong maintain that high maternal deaths, following too many pregnancies, too closely spaced, starting at too young an age, imply low social status for women. This is so because women’s needs and health have been neglected in favor of men’s needs. Other critics argue that rather than early marriage increasing a girl’s status, it is indicative of her inferiority. It forestalls her personal development and limits her options to mother and wife. These critics, therefore, advocate delaying marriage as a way to raise women’s status.

International law is one among several vehicles designed to solve the problems associated with child marriage such as right to life, right to control the number and spacing of one’s children, right to enter a marriage freely, right to equality, and so forth. Various international law treaties including the CRC, CEDAW, and the Marriage Convention have all to varying degrees tackled the issue of child marriage. The following sections examine the efficacy of these approaches to ending the practice of early marriage.

II. THE UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD’S TREATMENT OF CHILD MARRIAGE

As already mentioned, there is no provision in the CRC which specifically or directly bans the practice of child marriage. However, the

21. DIXON-MUELLER, supra note 7, at 129-130; Karkal, supra note 20, at 8-9; Karkal & Rajan, supra note 10, at 505.
22. O’CONNELL, supra note 7, at 15.
23. Cohen, supra note 1, at 54-55; Convention on the Rights of the Child, supra note 11, at 51; GUDETA, supra note 11, at 100; O’CONNELL, supra note 7, at 14; PREVENTING MATERIAL DEATHS, supra note 7, at 49; Karkal & Rajan, supra note 10, at 505.
24. Gudeta, supra note 11, at 100; Karkal, supra note 20, at 7.
25. PREVENTING MATERIAL DEATHS, supra note 7, at 45.
26. Cohen, supra note 1, at 54-55; SOHONI, supra note 8, at 29, 34; O’CONNELL, supra note 7, at 14; PREVENTING MATERIAL DEATHS, supra note 7, at 55.
case could be made that certain other provisions under the CRC indirectly address and prohibit early marriage. This section will analyze these other provisions and show why they fail to satisfactorily protect girls against child marriage.

One article that can be applied to child marriage is CRC article 2(2). CRC article 2(2) places a duty upon States Parties to, “take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child’s parents, legal guardians, or family members.”

Child marriage, which chiefly affects girls, is a form of sex discrimination that stems from the parents’ belief that girls are less valuable than boys. Girls are viewed as economic burdens because money needs to be raised for their dowries, or they are viewed as an inconvenience because it is costly to raise daughters when the money is better spent on sons, who will later take care of the parents in their old age. Therefore, because of son preference, daughters are discriminated against and married off at a young age as a way for parents to dispose of their burden.

Consequently, when States Parties fail to legislate or enforce the ban on child marriages, they perpetuate the type of discrimination outlined in CRC article 2(2).

Unfortunately, because CRC article 2(2) does not specifically mention early marriage, proponents of child marriage can argue that it is not applicable to the practice of early marriage. They can further employ CRC article 2(1) to invalidate the claims of CRC article 2(2). CRC article 2(1) prohibits “discrimination of any kind, irrespective of the child’s or his or her parent’s or legal guardian’s race, color, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.”

CRC article 2(1) can be interpreted to support child marriages because they stem from the parents’ religious

27. CRC, supra note 3, at art. 2(2).
28. SOHONI, supra note 8, at 32; Lynn P. Freedman & Deborah Maine, Women’s Mortality: A Legacy of Neglect, in THE HEALTH OF WOMEN: A GLOBAL PERSPECTIVE 150 (Marge Koblinsky et al. eds.); Child Mothers and Marriage, supra note 7, at 14; CHALLENGES FOR CHILDREN, supra note 12, at 30; PREVENTING MATERIAL DEATHS, supra note 7, at 55.
29. SOHONI, supra note 8, at 21-22; O’CONNELL, supra note 7, at 76; Christiana E.E. Okojie, Gender Inequalities of Health in the Third World, 39 SOC. SCI. MED. 1237, 1244 (1994); FREEDMAN & MAINE, supra note 28, at 150; SUSAN HILL GROSS, WASTED RESOURCES, DIMINISHED LIVES: THE IMPACT OF BOY PREFERENCE ON THE LIVES OF GIRLS AND WOMEN 43 (1992); SOHONI, supra note 8, at 7-8.
beliefs. For instance, because Islamic law sanctions early marriage,32 attempts to ban child marriages can be perceived as discriminating against the parents’ religious convictions and in violation of CRC article 2(1). As a result, CRC article 2(1) and CRC article 2(2) clash with one another and offer conflicting rights when applied to the practice of child marriage.

Child marriage likewise violates CRC article 6 (right to life). Early marriage means early and multiple pregnancies. Pregnancy is encouraged soon after marriage because it is considered the female’s role in life. She is expected to assume her obligations and prove her capability without delay.33 Unfortunately, this assignment carries grave physical dangers for which child brides are not equipped. Girls starting from ten years old to fourteen years old are five to seven times as likely to die during pregnancy than the lowest risk group.34

Rebecca Cook links the roots of maternal mortality to infancy or even prior to birth.35 According to her, calcium, vitamin, or iron deficiencies begin at these stages and continue throughout the girl’s life leading to several health and malnutrition problems such as stunted growth, contracted pelvis, iron deficiency anemia, all of which make pregnancy an even more life threatening endeavor for the girl.36 Underdeveloped and inadequately developed bodies, which are the result of unfulfilled nutrition needs and skeletal growth, lead to obstructed labor due to the disproportion between the pelvis size and the baby’s head.37 Labor becomes a trying and frequently fatal undertaking because the pelvis has not fully developed for

32. SOHONI, supra note 8, at 33; O’CONNELL, supra note 7, at 15; SOHONI, supra note 8, at 9; Mane, supra note 14, at 83.

33. Anderson, supra note 11, at A27; SOHONI, supra note 8, at 12-13; SAEED, supra note 11, at 139; Ghosh, supra note 9, at 26.

34. Low risk groups are women twenty to twenty-four years old. SOHONI, supra note 8, at 74; Julie Mertus, State Discriminatory Family Law and Customary Abuses, in WOMEN’S RIGHTS, HUMAN RIGHTS 138 (Julie Peters and Andrea Wolper eds., 1995); DIXON-MUELLER, supra note 7, at 142; KATARINA TOMASEVSKI, WOMEN AND HUMAN RIGHTS 31 (1993); MAGGIE BLACK, GIRLS AND WOMEN: A UNICEF DEVELOPMENT PRIORITY 9 (1993); Challenges for Children, supra note 12, at 30; Julia Cleves Mosse, The Risks of Being Female, in CHANGING PERCEPTIONS: WRITINGS ON GENDER AND DEVELOPMENT 86 (Tina Wallace & Candida March eds., 1991); PREVENTING MATERIAL DEATHS, supra note 7, at 38.


36. Id.

37. PRIVATE DECISIONS, PUBLIC DEBATE: WOMEN, REPRODUCTION AND POPULATION 5 (Judith Mirsky & Marty Radlett eds., 1994); BLACK, supra note 34, at 9; MOSSE, supra note 34, at 86; Ghosh, supra note 9, at 26.
up to two years after menarche (2% to 9% of pelvic growth occurs during this time).\textsuperscript{38} 

Child pregnancies further endanger the life of the young girl because they take place too early, too frequently, and are too closely spaced.\textsuperscript{39} Estimates indicate that approximately eight births are needed to ensure the survival of some children.\textsuperscript{40} The child bride's survival rate is affected by births less than two years apart or births to more than four children.\textsuperscript{41} 

Child marriage violates CRC article 6 because often high-risk pregnancies lead to maternal mortalities. Advocates of child marriage can invalidate this article's applicability to the practice of early marriage by claiming that not all early marriages lead to death. The ambiguous language of article 6 then offers loopholes for advocates of child marriage to secure that this practice continues. CRC article 6 would have been a more effective deterrent against early marriage if it read as, States Parties recognize that every child has the inherent right to life. Furthermore, this right shall not be discriminated against by the perpetuation of such practices as child marriage, female circumcisions, child soldiers, child labor, etc.

Child marriage similarly violates CRC article 24(3) calling on States Parties to "abolish traditional practices prejudicial to the health of children."\textsuperscript{42} As already mentioned, one outcome of child marriage, a traditional practice in many societies, is the health risks associated with early pregnancy. Unfortunately, because CRC article 24(3) fails to expressly mention child marriage as one of the traditional practices to which it is referring, many States Parties can choose to deny that the practice of child marriage falls under the provisions of article 24(3).\textsuperscript{43} 

Child marriage violates the girl child’s right to education as outlined under CRC article 28. Early marriage ensures, if her education has not already been terminated, the end of the girl’s education. The parents, knowing that she will marry young, are not overly concerned with her

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\textsuperscript{38} Kathleen Merchant & Kathleen Kurz, \textit{Women's Nutrition Through the Life Cycle: Social and Biological Vulnerabilities, in} \textit{The Health of Women: A Global Perspective, supra} note 28, at 75; \textit{Preventing Material Deaths, supra} note 7, at 47.


\textsuperscript{40} Sohoni, \textit{supra} note 8, at 81.

\textsuperscript{41} Dixon-Mueller, \textit{supra} note 7, at 142; \textit{Challenges for Children, supra} note 12, at 31; \textit{Preventing Material Deaths, supra} note 7, at 187.

\textsuperscript{42} Supra note 3, at art. 24(3).

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education. There is no specific reference to child marriage under the terms of CRC article 28 so this too can be interpreted as not addressing the practice of early marriage. Additional safeguards can also be employed to circumvent article 28. For example, grooms can promise to allow child brides to attend school after marriage thereby no longer rendering the practice of early marriage in violation of the right to education. Whether they actually comply with their promise or whether the local government officials apply pressure on the population to obey the right to education provision of the CRC is another matter. What is clear is that the CRC article 28 is not a satisfactory ban on child marriage and can be easily bypassed.

The provision in CRC article 32(2a), “States Parties shall provide for a minimum age for admission to employment,” could also be applied to the practice of child marriage. Child brides often end up no better than servants or unpaid slaves in their in-laws household. Unfortunately, CRC article 32(2a) appears to mainly address child labor in the public sector. However, servitude of pubescent girls in the private sector is also a form of child labor, which possesses the same hazards and pitfalls (i.e. long hours, physical punishment, stunted mental, moral, social, spiritual development) as child labor in the public sector. Actually, child brides are worse off because they do not receive the benefits, such as pay, that victims of child labor in the public realm receive. The situation of child brides cloaks economic exploitation and child labor within the private domain. However, this public/private distinction is disposed of by CRC article 3 in situations where the best interests of the child are at stake. Therefore, child labor occurring in the private realm as in the case of child brides performing as servants for their in-laws, does not make the violation of article 32(2a) any less persuasive. The state has a duty under CRC article 32(2a) in conjunction with CRC article 3 to end child labor whether taking place in the public or private realms due to the compelling health and development risks that stem from child labor. Nevertheless, supporters of child marriage can argue that CRC article 32(2a) applies to employment in the public sector only, and in any event housework is not child labor according to the traditional definition of that word.

CRC article 37 (right against torture, or other cruel, inhuman or degrading treatment or punishment) can likewise be employed to ban the exercise of child marriage. Like CRC article 32(2a), CRC article 37 reads as a provision banning torture specifically in the public sector, or torture at

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44. Askari, supra note 43; Convention of the Rights of the Child, supra note 11, at 51.
45. CRC, supra note 3, at art. 32(2)(a).
46. Cohen, supra note 1, at 65; Anderson, supra note 11, at A27; Convention of the Rights of the Child, supra note 11, at 51; Child Marriages Performed in India, supra note 13, at 19L.
the hands of public officials. This narrow interpretation of the right against torture needs to be revised.

According to article 1 of the Torture Convention, four elements are needed for an act to be defined as torture: 1) severe physical and or mental pain and suffering; 2) intentionally inflicted; 3) for specified purposes; 4) with some form of official involvement, be it active or passive. These four elements that make up the definition of torture apply to the practice of child marriage.

First, severe physical and mental pain and suffering accompany child marriage. The young girl in many cases is coerced into getting married. Once married, she suffers physical and mental abuse at the hand of her husband and in-laws. The young bride is forced to get pregnant immediately after marriage, frequently and at too close intervals, when her body is inadequately developed. Second, to be classified as torture, the pain must be intentionally inflicted. Requiring girls to marry before they are psychologically prepared for the responsibilities of married life or their bodies are physically prepared for child-bearing, constitutes purposeful behavior. Third, the specific purposes behind torture include: intimidation, punishment, and discrimination. The physical and mental abuse the child bride suffers at the hands of her husband or in-laws is either for reasons of intimidation as a way to keep her in her place or punishment when she fails to accomplish a task satisfactorily. Finally, the requirement of official involvement is likewise fulfilled in the case of child marriages.

Either national legislation actively promotes these types of unions or, where legislation does not allow for child marriages, the State’s

48. See id.
49. Askari, supra note 43.
51. SOHONI, supra note 8, at 32-33; GUDETA, supra note 11, at 99-100; SOHONI, supra note 14, at 9; Karkal & Rajan, supra note 10, at 505; PREVENTING MATERIAL DEATHS, supra note 7, at 55.
52. National child marriage laws often fall short of an effective or explicit ban on the practice itself. For example, The Indian Child Marriage Restraint Act created in 1929 and amended in 1977, raises the minimum age for marriage but fails to ban child marriages nor does the Act render child marriages null and void (SAEED, supra note 11, at 139; Sara Hossain, Equality in the Home: Women’s Rights and Personal Laws in South Asia, in HUMAN RIGHTS OF WOMEN, supra note 50, at 476; Child Marriages Performed in India, supra note 13, at 19L; Karkal, supra note 20, at 7; Karkal & Rajan, supra note 10, at 505).
unwillingness to restrict these practices allows them to continue resulting in a passive type of official involvement.\textsuperscript{53} By looking at torture from this broader perspective and expanding it beyond acts in the public realm to also include actions in the private sector, a case could be made to stop child marriages because they constitute a form of torture. Still, because the language of CRC article 37 is directed mainly at torture at the public level, its expansion into the private sphere as a way to ban child marriages will not be readily accepted. In order to validate the notion that acts in the private realm also constitute torture, the drafters of the CRC, when and if they add a provision against child marriage must identify it as a form of torture.

It is evident that these other indirect provisions against child marriage found in the CRC do not effectively deter the practice of early marriage. Where the CRC is lacking in a definite provision banning child marriage, CEDAW is not. CEDAW offers a better source of protection against child marriage that the CRC.

III. THE CONVENTION ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN, ARTICLE 16: BAN ON CHILD MARRIAGES

Unlike the CRC, CEDAW contains a specific provision prohibiting the practice of early marriages. CEDAW article 16(2) provides that child marriages shall have no legal effect.\textsuperscript{54} Thus, child marriages in those states that have ratified CEDAW not only violate international law but are void. On the surface then, CEDAW article 16 appears to adequately ban early marriages. Unfortunately, a variety of factors, which will be discussed subsequently, dispel the notion that CEDAW article 16 is an effective deterrent against child marriage.

Linguistic flaws are among some of the shortcomings from which article 16 suffers, rendering its implementation tentative. For example, CEDAW article 16 fails to prescribe a minimum age at which a girl can be married. This oversight weakens article 16 because it fails to clarify what the drafters of CEDAW define as child marriage. Is child marriage the marriage of a child below the age of 10, 12 or 16? How old or young does the child have to be for a marriage union to be identified as a child marriage and therefore in violation of CEDAW article 16? The failure to set a minimum age at marriage under its provision banning child marriage allows signatories to CEDAW to easily avoid obligations under article 16. For example, countries such as Chile, Ecuador, Panama, Paraguay, Sri Lanka, and Venezuela, all States Parties to CEDAW for over ten years have set twelve as the minimum age for marriage.\textsuperscript{55} The omitted language

\textsuperscript{53} Askari, \textit{supra} note 43.


\textsuperscript{55} Cohen, \textit{supra} note 1, at 42.
of CEDAW article 16 allows rather than prohibits these countries to establish low minimum ages for marriage.

CEDAW is also incompetent as an international law treaty because it has the highest rate of reservations than any other human rights treaty. Reservations limit treaty obligations and the potential domestic effect of the treaty by implying partial commitment. Introducing reservations connotes the essential human rights guarantees of the treaty are weakened. Moreover, two of the main reasons reservations have been entered into for CEDAW are the following: 1) laws pertaining to marriage and family relations and 2) religious and customary laws. As a result, the proficiency of CEDAW article 16 is further called into question.

In addition to the overwhelming number of reservations that make CEDAW a weak human rights instrument, it further suffers because it is not widely ratified. In contrast to the CRC, which is almost universally ratified (191 nations), CEDAW is not as popular.


57. Askari, supra note 2; Askari, supra note 43; MAYER, supra note 56, at 179-182; Cook, supra note 56, at 452; Rebecca J. COOK, State Accountability Under the Convention on the Elimination of All Forms of Discrimination Against Women, in HUMAN RIGHTS OF WOMEN, supra note 50, at 252.

58. LIJNZAAD, supra note 8, at 3-7; STAMATOPOULOU, supra note 56, at 38; HOSSAIN, supra note 52, at 470; Rebecca J. Cook, Reservations to the Convention on the Elimination of All Forms of Discrimination Against Women, 30 VA. J. INT'L L. 643, 649 (1990).

59. COOK, supra note 56, at 451-452; BAYEFSKY, supra note 56, at 352.


61. Cohen, supra note 1, at 76.
Finally, CEDAW was devised as an international Bill of Rights for women. CEDAW was created to “equalize relationships between adult men and women.” Girl’s rights and women’s rights are linked in many respects. Inequalities during girlhood are the basis of discrimination during womanhood. The drafters of CEDAW overlooked this fact. Consequently, rights under CEDAW are intended to apply to adult women, not girls. The existence of a provision against child marriage in CEDAW appears out of place and incompatible with the rest of the treaty. That is, unless one interprets CEDAW article 16 as an article intended to equalize spousal rights to provide adult women the right to choose who they want to marry, give adult women the right to make fertility and health decisions, and not as a provision against early marriage. CEDAW article 16 then is not so much about ending child marriages and protecting the rights of the girl child as about granting adult women more rights over marital decisions. The ban on child marriages appears more akin to an afterthought than the focal point of CEDAW article 16. An article prohibiting early marriage would be more effective if present in a treaty geared at children (CRC) than in one directed at adults (CEDAW).

Another human rights treaty that covers early marriage is the 1962 Marriage Convention. It too contains provisions aimed at ending child marriages. However, as with article 16 of CEDAW, the Marriage Convention’s efforts against child marriage are found lacking due to the ambiguous and exclusionary wording of its provisions.

IV. 1962 CONVENTION ON CONSENT TO MARRIAGE, MINIMUM AGE FOR MARRIAGE AND REGISTRATION OF MARRIAGES

Many problems plague the effectiveness of the Marriage Convention as a ban against child marriages. For example, article 1 of the Marriage Convention, article 24 of the International Covenant on Civil and Political Rights and article 16 of CEDAW all require full and free consent of both parties before a marriage is entered into. Free consent of the marriage partners in the presence of a competent authority is the centerpiece of the 1962 Marriage Convention. The notion that children should not be pressured or allowed to enter into marriage thus became a codified part of international law. However, what the provisions intend and what reality

63. Cohen, supra note 1, at 37.
64. Id. at 40.
65. See id.
66. Supra note 54, at art. 24; Anonymous International Covenant on Civil and Political Rights. 6 I.L.M. 360 (1966); Marriage Convention, supra note 17, at art. 1.
67. Marriage Convention, supra note 17.
provides are two different things. Equality of spouses in entering a marriage (or for any other reasons) in most cultures is non-existent.

Requiring consent prior to entering into a marriage does not necessarily translate into establishment of equality. A young child bride can be tricked into consenting to marriage by being offered various inducements. Equality has not been achieved because child marriage is based on the notion of inequality; the male spouse enjoys a disproportionate amount of power over the female spouse. Requiring prior consent likewise does not usher in the end of child marriages. Instead, fulfilling the prerequisite of consent ensures that child marriages continue and do so within the boundaries of international law.

Article 2 of the Marriage Convention, on advising States to prescribe a minimum age at marriage is also a sham. The Marriage Convention asks States to legislate a specific age at marriage and not recognize as legal, marriages by persons under this age, with the exception that “a competent authority has granted a dispensation as to age, for serious reasons, in the interests of the intending spouses.” The competent authority such as a religious leader may consider following cultural mores a serious reason for allowing child marriages to continue. Therefore, the competent authority’s own prejudices could allow for the perpetuation of discriminatory traditions. As a result, the Marriage Convention does not definitively ban child marriages.

In addition, many states already have legislation that sets a minimum age at marriage such as Sri Lanka, where the legal marriage age is twelve years old. Article 2 goes on to ban marriages of persons under this age. If Sri Lanka ratified the Marriage Convention and marriages below twelve years of age took place, it would be in violation of international human rights law. However, marriage of twelve year old girls would be recognized as legal under the terms of the Marriage Convention. At the same time though, provisions of the Marriage Convention would conflict with those of the CRC, which sets the end of childhood at eighteen years of age. Under the CRC, a marriage of twelve year old is still a child marriage and illegal, but it is legal from the point of view of the Marriage Convention as it is currently worded. Consequently, it appears that the Marriage Convention does more to encourage and support child marriages than not.

68. See id.
70. Marriage Convention, supra note 17, at art. 2.
71. CRC, supra note 3, at art. 1.
V. CONCLUSION

Having examined provisions under the CRC, CEDAW and the Marriage Convention it is apparent that they are unsuccessful in adequately protecting the rights of girl children against child marriage. The CRC lacks a provision against the practice of early marriage altogether. CEDAW article 16 mainly focuses on adult marital relations and rights and only peripherally bans child marriages. The 1962 Marriage Convention is also weak because its ambiguous terminology allows the ban on early marriages to be avoided.

A provision explicitly prohibiting child marriage needs to be added to the CRC, an international law treaty focusing entirely and expressly on children. The CRC is intended to include rights exclusive to children as well as reemphasize rights found in other human rights treaties and make them applicable to children. For the most part, the drafters of the CRC have been successful in carrying out these dual goals. However, the omission of an article banning early marriage renders the CRC incomplete and unable to sufficiently fulfill its goals. The right against child marriage is not only one that is exclusive to children but it is also one that is found in other human rights treaties (e.g., CEDAW, Marriage Convention). The problem with the provision(s) against early marriage in these other international law treaties is that they focus more on equalizing adult spousal rights and less on the rights of the child. Adding a provision to the CRC banning early marriage will reshift the focus of child marriage to the child as the victim and as the party whose rights need to be protected and promoted.

The CRC's near universal ratification and the fast rate with which it went into force have served to over shadow the fact that the CRC is deficient especially in its protection of girl children. The CRC is lacking and prejudicial because it excludes certain violations which predominately affect girls. For children and specifically girls to be sufficiently protected against early marriage, something more is needed than vague and indirect provisions inundated with loopholes that actually perpetuate rather than end the practice of child marriage. What is needed is an article in the CRC, that categorically identifies child marriage as a practice that violates children's rights, identifies an exact minimum age at marriage and obligates States Parties to ban these types of practices. Only when the CRC is amended to include such an article, will it be beneficial to employ

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72. Child marriage involves a situation in which one or both marriage participants are children.

73. Failure to identify an exact minimum age at marriage as evidenced in CEDAW article 16 and the Marriage Convention allows room for States Parties to avoid their obligations under these provisions and to set low minimum ages at marriage. A provision against early marriage can be protected against these safeguards by not leaving this task to each individual state's own discretion.
supplementary provisions under the CRC (i.e., right to life, right to education, etc.) to further strengthen the case against early marriage.