



## Learning series session: The impact of age of marriage and sexual consent laws on child marriage and girls' rights

Notes and related resources, February 2023

### Key takeaways

- **Laws are an important entry point for social norms change and investment, but may have little impact on child marriage prevalence and have negative consequences for girls if they are not part of a comprehensive, context-sensitive, gender-transformative approach to girls' rights.** Laws need to be harmonised, and balance respect for adolescents' evolving capacities with protection from gender-based violence and abuse. They should be accompanied by investments that promote gender equality, including girls' education, access to health, economic rights, protection and quality comprehensive sexuality education. Civil society should work with governments to deliver this.
- **The use of punitive or criminal approaches to adolescent sexuality and marriage can have negative consequences for girls.** Such approaches may lead to increases in informal unions and/or encourage people to marry in secrecy. This means girls cannot access the information and services – including around sexual and reproductive health and rights (SRHR) – social support or justice they need and are entitled to. Laws may also be used selectively to punish or control girls, and can exacerbate existing marginalisations based on ethnicity and race.
- **Context and identity factors heavily influence the impact of the law and the dynamics of marriage/union.** Research, advocacy and programming need to be led by understanding of context, and centred around adolescents' evolving capacities and consent, as expressed by them. Community and religious leaders can be powerful partners in transforming the social norms that drive child marriage and affect reporting and implementation of the law. Rurality, ethnicity and experience of crisis are important factors affecting the impact of the law.
- **Girls who are – or have been – married/in a union or who have experienced forced marriage face barriers to accessing justice.** Addressing these barriers could include removing the requirement to be a legal adult to access the legal system, organising legal literacy campaigns, offering legal aid, strengthening and simplifying birth and marriage registration systems, and investing in support services like shelters, school reintegration and counselling. This should be combined with gender-transformative work in communities, focusing on law enforcement officers and service providers.

### Introduction – Jacky Repila, *Girls Not Brides*

- Laws are an important way to extend rights to all as an entitlement; they also promote accountability. Approaching the 2030 deadline for the Sustainable Development Goals, laws are seen as a catalyst for change.

- *Girls Not Brides* and the movement to end child marriage have historically advocated for age 18 to be the minimum age of marriage with no exceptions. By 2019:<sup>a</sup>
  - 153 countries had set 18 years as the minimum age of marriage.
  - 52% countries had set 18 years as the minimum age of marriage, with no exceptions.
  - 38 countries had different age of marriage for women and men.
  - 6 countries had no specified minimum age of marriage.
- Progressive laws and policies are one of the four pillars of the *Girl Not Brides* [Theory of Change](#). Peace and security, freedom from hunger and poverty, support and respect for gender equity and social justice are also essential for girls and adolescents in all their diversity to choose if, when and whom to marry.
- In our rights-based, gender-transformative approach to child marriage, child marriage laws need to balance respect for progressive autonomy and evolving capacities of adolescent girls with protection from all forms of gender-based violence (GBV) and abuse.
- Laws can be an important entry-point for difficult conversations, social norms change and public service investments. There is a two-way relationship between the law and social norms. We need to:
  - Listen to girls, adolescents and youth.
  - Balance changing attitudes and behaviours with addressing structures and systems.
- What helps delay the age of marriage: Minimum age of marriage laws, girls' education, awareness of unwanted early pregnancy, a positive normative environment, support for behaviour and attitudinal change.
- What prevents equitable implementation of the law: discriminatory norms around gender, sexuality and age; normative counterpoints (or exceptions and pluralistic systems); systems and structures that uphold male privilege and inequalities and reinforce discriminatory norms.
- How the law is used: When they interact with social norms, laws can have unintended negative consequences – they can exacerbate inequality, limit access to justice and put girls at risk.
- Our research questions:
  - What was the contribution of legal age of marriage laws to declines in child marriage prevalence?
  - What is the evidence that legal reform brings positive changes for those who need the law most?
  - What is the impact on informal unions and the lives of adolescents living in them, what are the implications for advocacy?

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<sup>a</sup> UN Women, Unchained at Last, Equality Now and PLD, 2023, [Legislating and enforcing the minimum age of marriage: A comparative study of experiences and lessons learned in ending the legalisation of child marriage](#).

**Recent evidence on the impact and implications of child marriage law: A global synthesis** – Katherine (Kat) Watson, Lawyer, researcher and consultant

- Human rights law framework:
  - 1965 – UN General Assembly resolution calls for 15 years to be lowest age for marriage.
  - 1994 – the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) specifies 18 years as minimum age of marriage.
  - 2004 – Committee on the Rights of the Child reiterates 18 years as the minimum age of marriage.
- Interpretations of the Committee on the Rights of the Child on sexual consent
  1. Set *an* age, but doesn't specify which age.
  2. Avoid criminalising consensual sex between adolescents.
  3. Recognise evolving capacities.
  4. Presuming competence to seek health services.
- Impact of the law on child marriage prevalence:
  1. It is hard to isolate the effect of the law and establish a causal link with prevalence – there are many social and environmental factors that affect this:
    - There is limited evidence.
    - Most studies do not isolate the impact of the law from other factors.
    - Most studies do not measure the before and after effect of a reform or new law, or analyse how it is implemented.

➔ Need to be cautious when referring to this evidence.
  2. Laws have had a limited impact on prevalence, but in some contexts have raised the age of marriage:
    - Would expect to see fewer marriages at age 16-17 if laws are deterring marriage, but a study in 60 countries did not show this.
    - A study in 5 under-studied countries found the law had little or no impact.
    - In Ethiopia, where the average age of marriage was below 18 before the legal reform, the probability of marriage below age 16 decreased, but increased for those aged 17-18.
  3. Context and identity factors heavily influence the impact of the law and the dynamics of marriage/union:
    - Implementation is affected by rurality, ethnicity, experience of crisis, among others.
    - Rise in self-initiated marriages in India and Nepal, due to stigma and criminalisation around young people's sexuality – marriage is an act of agency in this context.

- Decrease in formal marriages but similar increase in informal unions after a national ban before marriage at 18 in Mexico – where cohabitation is acceptable, minimum age of marriage laws have little effect.
- The law and agency and rights:
  1. The law does not match adolescents’ realities, and their evolving capacities<sup>b</sup> are rarely considered:
    - “Adolescence” is a relatively new legal category. Historical binary between childhood and adulthood; age-based laws provide certainty, but do not reflect the nuances of adolescents’ lives.
    - Criminalising adolescent sexuality and/or raising the age of sexual consent does not reflect reality.
    - There are some positive examples of how judges can use evolving capacity to balance girls’ agency and rights with legal protections from abuse.
  2. Criminalising adolescent sexuality blocks their access to sexual and reproductive health and rights (SRHR) information and services:
    - In almost all contexts, laws are refracted through social norms in a way that restricts access to SRHR information and services.
    - Contradictions between the age of sexual consent and the positive right in policy for adolescents to access SRH services.
    - Sometimes providers refuse to offer services for fear of legal repercussions.
  3. The law is weaponised against girls, but also not available for those who need justice.
    - In El Salvador – communities believe laws are to prevent adolescents from being sexually active.
    - In India and Nepal – parents are using the law to break up marriages they disapprove of, including where they are inter-caste or inter-religion.
    - In India – the law is rarely used (4% of cases) to support girls who have experienced forced marriage.
  4. The use of punitive or criminal approaches has a range of consequences on girls’ rights and lives:
    - Driving child marriage underground, where girls cannot access services, social support or justice if their marriages have to remain secret.
    - In Mexico – criminal law could exacerbate existing marginalisations due to greater penalties in cases involving people of Indigenous and Afro-Mexican descent.
    - Girls facing harassment or emotional abuse by law enforcement officials.

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<sup>b</sup> Evolving capacities: The gradual way in which adolescents attain skills and competencies in a number of areas.

- Legal enforcement replacing efforts to enhance the welfare and holistic wellbeing of girls and women.
- Barriers to girls' access to justice:
  - Lack of awareness and clarity in the law, and lack of anonymity in reporting.
  - Legal systems that cannot be accessed by minors.
  - Cost of legal representation.
  - Under-resourced birth and marriage registration systems, and unprepared service providers.
- Ways forward:
  1. Embed our legal advocacy in a comprehensive, gender-transformative approach to gender equality – laws and policies are only one part of this, alongside work to transform social norms and the structural causes of child marriage.
  2. Need to contextualise – not enough diversity in research (contexts); need advocacy to be led by understanding of context and evolving capacities.
  3. Address barriers to girls' access to justice – legal literacy campaigns, legal aid, support services.
- 6 things to remember:
  1. Laws seem to have limited impact on prevalence.
  2. Criminalisation and punitive approaches can have negative consequences.
  3. Girls facing forced marriage and ever-married girls face barriers to accessing justice.
  4. Age of marriage and age of sexual consent should not be combined in law.
  5. The principle of evolving capacities is key.
  6. Laws are one, if important, part of context-specific, gender-transformative approaches to girls' rights.

**The law, child marriage and girls' rights in Nepal** – Irada Gautam, President and founder of AAWAAJ, Nepal

- Context of child marriage in Nepal:
  - Prevalence has declined over the past 10 years, down to 33% in 2019; but there are differences across Nepal.
  - By law, 20 is the legal minimum age of marriage and informal union for women and men; age of sexual consent is 18 years. Marriage under age 20 – with or without consent – is considered illegal, void, with no exceptions, and is punished with imprisonment or fines.
  - Given the age of majority is 18, it is unclear if marriages under age 20 can be called “child marriage”.
  - Age of marriage has increased from 14-15 to 16-18, but self-initiated marriages under the legal age are common and increasing.

- Poverty, insecurity, natural disasters, climate crisis, social media compound risk factors for girls.
- The caste system sets social status, occupation and who you can marry. Patriarchal society means daughters are valued less than sons.
- Adolescent pregnancy is high, and the criminalisation of sex between consenting adolescents is compounded by strong taboos, shame and stigma around pre-marital sex. In rural areas, with no space to talk or build sexual relationships, this is one of the main reasons adolescents choose to elope.
- Comprehensive sexuality education is part of the school curriculum, but taboos mean students and teachers are ill-prepared to engage.
- AAWAAJ – active since 1999, AAWAAJ has worked specifically to address the root causes of child marriage in Nepal , and support married girls and survivors of GBV since 2016. Their community work focuses on Karnali Province.
  - Engage with diverse stakeholders in communities to transfer norms and instil leadership with girls in and outside schools.
  - Advocate for the systems and services needed to promote gender equality.
  - Support *Girls Not Brides Nepal* to roll out the National Strategy.
- Reflections on the evidence review:
  - Laws have contributed to a rise in self-initiated marriages among adolescents below the legal minimum age. But the average age of marriage has risen from 14-15 to 16-18 years.
  - Having the age of majority at 18 and age of marriage at 20 creates confusion. Many parents in rural areas do not register births or marriages, making it difficult for girls to access justice or government services when they experience violence or child marriage.
  - Selective use of existing child marriage law – often used to break up (inter-caste) marriages that parents do not approve of.
  - Under-reporting due to:
    - Stigma and social norms, which is emotionally demanding and can bring shame and limit the social standing of adolescent girls and their families.
    - High costs and lengthy legal processes, especially for those needing to travel from rural areas.
    - Insensitive officials handling child marriage cases.
  - Implementation of the law is hard when local authorities violate the law.
  - AAWAAJ social mobilisers and children’s groups work with adolescents who have or are planning to elope, encouraging them to return home. This is not ideal, but does mean they are more likely to continue their education and avoid social exclusion, and their male partners are less likely to be fined or imprisoned. By delaying until age 20, they can also register the marriage and access government allowances.

- Lack of government resources and commitment to support survivors is another reason for services not being available to those who need them. When girls are left by their male partner, they are left with no support network.
- Lack of awareness of age of sexual consent in comparison to age of marriage.
- Implications:
  - Laws alone cannot end child marriage, but they are instrumental in promoting respect and promotion of girls’ rights. The law can be a tool to transform the social norms that promote child marriage.
  - AAWAAJ will continue to:
    - Sensitise law enforcement officers.
    - Learn lessons from existing community-police partnerships.
    - Promote the need for child marriage and sexual consent laws to reflect the needs and desires of young people.
    - Advocate for (investment in) research into drivers of child marriage, low reporting and increase in self-initiated marriages.
    - Advocate for improved government registration of births and marriages, making them simpler, easier process, and track data.
    - Dialogue on legal contradictions – who is a “child”, matching this with the realities of girls and adolescents in communities.
    - “Consent” to be central to any review of sexual consent law, which should match the realities and rights of consenting adolescents.
    - Increase government support for survivors, balancing right to protection and compensation.

**What the evidence means for work to address child marriage in Malawi** – James Gondwe, Executive Director and Founder, Ulalo, Malawi

- Context in Malawi:
  - Prevalence has declined over the last 10 years to 38%, most marriages are formal but there are a significant number of informal unions.
  - 18 is the legal age for marriage and sexual consent without exceptions (parental consent was removed as an exception in 2017).
  - 2023 Penal Code Amendment decriminalises consensual adolescent sex, providing age difference of less than 2 years.
  - Girls who are poorest, live in rural areas, and are least educated are most likely to marry.
- Ulalo – member of *Girls Not Brides Malawi*, which became a National Partnership in 2017. Child marriage strategy focused on:

- Education: Strategic partnerships with schools, communities and governments to design and deliver targeted solutions.
- Social norms change: Dialogue with girls, parents and communities to prioritise education and gender equality.
- School to work transition: Supporting further education, secure employment and new business for young people.
- Reflections on the evidence review:
  - Child marriage decreased, but little evidence this was due to changes in the law.
  - Low awareness of the law and reforms to it, especially in rural areas – need more socialisation meetings and engagements.
  - Rather than ensuring universal human rights, the law is used selectively and sometimes misused.
  - Inaccessibility of the law and justice – little capacity to prosecute a case; combined with the cost of access to justice, economic dependence, stigma, inequalities due to poverty and decision-making power.
  - Under-investment in government services reduces reporting and recourse to the law – insufficient and inappropriate shelters, school reintegration support, counselling for girls to return to their communities if they leave a marriage.
  - Social norms are powerful roadblocks to justice and use of the law – child marriage is hidden, as girls and families are more afraid of damage to their social status (especially around adolescent pregnancy).
- Implications and recommendations for civil society:
  - Advocate and hold government accountable for (action and financial) commitments.
    - This includes harmonising all relevant laws – including customary laws – to 18 minimum age of marriage with no exceptions.
    - Align with the [Southern Africa Development Community Model Law](#).
    - Ensure implementation is resourced.
  - Call on government to strengthen birth registration systems so cases do not fall through for lack of documentation.
  - Address discriminatory norms that perpetuate child marriage, affect reporting and implementation of the law. Need to engage with custodians of culture – chiefs’ commitments to gender equality and ending child marriage can influence behaviours and practice.
  - Need to discuss sexuality and gender – the law has been changed to recognise adolescent sexual rights, but we need to review our own attitudes to support adolescent-friendly SRHR for young people.
  - Broad-based campaigns to raise awareness of laws and rights in partnership with government, chiefs, etc., including more isolated or marginalised areas and frontline service providers.

- Advocate for government to fund and implement National Children’s Commission (Community) Victim Support Units and other services.
- Support government to implement comprehensive set of investments and measures for gender equality – girls’ quality education, access to health (including SRHR), economic rights, protection and quality comprehensive sexuality education in schools.
- Support national government to reach their commitment to end child marriage – 5-year national strategy, collectively advocate for government to allocate at least 35% of budget to key social sectors (education, health and social protection), and to finance the national strategy.

#### **Q&A and discussion:**

- We will follow up with a set of “Frequently Asked Questions”.

#### **Related resources:**

- *Girls Not Brides*, 2024, [The impact of the law on child marriage and girls’ rights](#), prepared by Katherine Watson.
- *Girls Not Brides*, 2023, [The absolute prohibition of unions in adolescence is not in the best interests of children.](#)
- Women Power Connect, Socio-Legal Information Centre and *Girls Not Brides*, 2022, [The status of child marriage in India: A guide for NGOs and CSOs using the law to end child marriages in India.](#) .CREA, 2023, [Flaws in laws: Challenging criminalisation of young people’s bodily autonomy – Primer and sourcebook.](#)
- *Girls Not Brides*, 2023, [Towards a future without child marriage: Written statement to inform the Pact of the Future.](#)
- Equality Now, 2023, [To end child marriage in Southern and Eastern Africa, governments need to strengthen laws and implementation.](#)
- Women Power Connect and *Girls Not Brides*, 2022, [The status of child marriage in India: A guide for NGOs and CSOs on using the law to end child marriages in India.](#)

#### **Learning spaces and opportunities:**

- The Child, Early and Forced Marriage and Unions and Sexuality Working Group, of which *Girls Not Brides* is a member. See their [website](#) for their position statement and recommendations concerning the law.
- [Injusta Justicia \(Unjust Justice\)](#), coordinated by RESURJ, Vecinas Feministas and Balance in Latin America and the Caribbean.
- Sign up to the [Global Campaign for Equality in Family Law](#) mailing list for opportunities to collaborate.