

A minimum common denominator? Minimum ages for marriage reported under the Convention on the Rights of the Child

Angela Melchiorre¹

Abstract

The international community's recommendation to set 18 as *the* minimum age for marriage is based on the 'right' premise that children need protection. However, when national responses to such recommendation reveal substantial difficulties in implementation, the outcome is a worrisome disconnection between international norms, national practices and children's experiences.

This paper discusses in what ways the international community can identify *a* minimum age for marriage that effectively upholds the rights of the child. Firstly, the paper uses the lack of a specific provision on marriage in the Convention on the Rights of the Child (CRC)², the definition of the child contained therein, and the notion of minimum ages to propose a more nuanced understanding of child marriage. It then scrutinises the first 18 years of the Convention's monitoring process (1993-2010) to assess reported practices. Drawing upon an analysis of States Parties' Reports to the Committee on the Rights of the Child (CRC Committee) and related documents and Concluding Observations, the paper sketches a preliminary overview of worldwide criteria, challenges, overlaps and gaps in this area.

After having concluded that it is not the minimum age for marriage *per se* but the related exceptions and cultural, customary and religious practices that demand further scrutiny and precision, the paper puts forward some recommendations for a more effective method that is better reflective of a rights-based approach. While acknowledging that flexible minimum ages are as difficult to implement as fixed limits, it is proposed that an age range between a general age of 18 and an absolute minimum age of 16, accompanied by rigorous guarantees based on the CRC principles and core aims, may represent a more effective approach.

¹ Dr. Angela Melchiorre is the author of *At what age... are school-children employed, married and taken to court?* (Right to Education Project, 2002/2004/2011), a world-wide analysis of minimum ages as reported under the Convention on the Rights of the Child (CRC). This paper is an abridged version of a decade of research conducted for the different editions of the publication, for the author's PhD thesis on the minimum age for marriage and the CRC, and for a number of subsequent papers and presentations. Excerpts from the States Parties' reports analysed throughout the research can be found in the annotated version of *At what age* available online at <http://www.right-to-education.org/node/53>.

² UN General Assembly resolution 44/25 of 20 November 1989.

Introduction

*“We, the girls of this region, ask our parents to not give us in marriage at an early age and to not arrange marriages for us.” This bold statement, made by 14-year-old Sahanatou Abdou, was met with a deathly silence from the assembled audience of elders and peers in a village in Niger. They were stunned by her plea. However, it was one that had to be heard.*³

Sahanatou is from Niger, but her statement could be relevant in many other countries. Indeed, child marriage is a reality that “is widespread and occurs in all regions of the world”.⁴ A practice of ancient origins, it carries a heavy baggage of cultural, religious, customary, economic and social issues that make it very complex to understand, analyse and influence. In addition, despite having been on the international agenda for many years, only relatively recently has it become the subject of more attentive scrutiny from a human rights perspective at the global level.⁵

This paper explores more in depth this area by providing a worldwide panorama of minimum ages for marriage as reported under the CRC. The main aim is to discuss key criteria and dilemmas in order to understand different practices in national approaches to child marriage and possibly put forward suggestions for the ‘right’ approach needed to overcome implementation challenges and gaps. Before moving into this analysis, however, it is important to first clarify its rationale.

Focus

A trend has developed over time in the international human rights bodies to recommend that the minimum age for marriage should be set at 18 in every corner of the world.⁶ However, practical implementation at the local level shows that achieving such uniformity among national laws is still an ideal. Given this discrepancy between standards and reality, this paper questions the effectiveness of recommending 18 as *the* universal minimum age for marriage and suggests possible improvements to ensure more effective implementation.

Sources and time-frame

The data and information are drawn from State Parties’ Reports to the CRC Committee. On the one hand this is clearly a limitation. On the other, the sources are very authoritative as they represent governments’ accounts of their own practice. The analysis concerns reports for 186 countries covering the first eighteen years of the CRC monitoring process, from 1993 to 2010. Due to the specific timeframe and the backlog in the reporting process, the information provided for some countries might not reflect the current situation. Nonetheless, it is sufficiently solid to offer a worldwide picture of contemporary rules, criteria, limitations and exceptions to the minimum age for marriage as depicted by States and as considered by the CRC Committee.

Methodology

Instead of analysing challenges and dilemmas from a purely theoretical point of view, the paper uses representative examples drawn from States Parties’ reports to discuss challenges and dilemmas. Due to space constraints, it is not possible to present a thorough discussion for each and every case. The selected illustrations used below, however, symbolise the most direct, relevant, representative, and challenging examples offering the broadest room for an engaging discussion.

³ UNICEF, *At a glance: Niger*, available online at http://www.unicef.org/infobycountry/niger_1420.html.

⁴ UN Human Rights Council, *Strengthening efforts to prevent and eliminate child, early and forced marriage: challenges, achievements, best practices and implementation gaps*, UN Doc. A/HRC/24/23, 27 September 2013, preambular paragraph 4.

⁵ Only in 2013 a resolution on the topic was adopted for the first time by the Human Rights Council (see above footnote 4) and by the General Assembly Third Committee (UN Doc. A/C.3/68/L.29/Rev.1, 21 November 2013).

⁶ See in particular the CEDAW Committee’s General Recommendation 21 and the CRC Committee’s General Comment No. 4, both recommending the establishment of a minimum age for marriage at 18.

Definitions and parameters

With reference to marriage, there is often a confusing use of two associated terms: ‘child’ and/or ‘early’. In this paper the use of ‘child’ as a qualifier for marriage has been preferred to the vague notion of ‘early’ as it allows us to highlight in a stronger fashion the contradiction between the level of (im)maturity of the actor and the adult-like nature of the act. Moreover, it also fits the paper’s approach of linking marriage to the CRC and in particular to its definition of the child.

A more nuanced understanding of ‘child’ and ‘marriage’

While a great deal of attention has focussed on clarifying the age-related side of the definition of child marriage, less has been attempted in terms of qualifying the term ‘marriage’. In both cases, though, variations of interpretation seem to be the most common issues of contention. The following section looks at both terms and explains why a more nuanced approach is necessary.

Child. Almost all definitions of the first term in child marriage rely on what I call ‘the often-misunderstood notion of childhood’. There is a tendency among children’s rights advocates, agencies, academics and UN bodies, to stop at the first part of art.1 of the CRC (“a child means every human being below the age of 18 years”) and not to consider the latter part (“unless under the law applicable to the child majority is attained earlier”). However, this is crucial, especially in those cases where majority is attained through marriage: what happens to those children? They are still children from a physical and psychological point of view, but already adults for the law of their country and may risk being no longer eligible for the protection afforded by the CRC.

Breaking off and using only (a part of) art.1 is also limiting because it does not consider a number of additional articles that contribute to define who a child is under the Convention. To do justice to the child, and to the CRC itself, we should not limit our interpretation to art.1 but adopt a more flexible and comprehensive notion, balancing protection and autonomy. This concept should include age, but also the evolving capacities of the child (art.5), his/her opinion (art.12) and best interests (art.3), his/her survival and development (art.6) and his/her right not to be discriminated against on the basis of gender (art.2). As we shall see later, the Committee is well on the path of reinforcing this approach and recommending that even when majority is attained through marriage the spouse(s) should still be protected as children up to 18 years of age in accordance with the CRC general principles. Whether this is at least taken in serious consideration by all States Parties to the CRC, though, remains to be seen and one more reason for more careful and nuanced analysis.

Marriage. It has been affirmed that marriage “does not mean or symbolize the same everywhere; does not offer the same privileges everywhere; does not entail the same losses everywhere; does not receive the same protection everywhere; does not involve the same risks and gains everywhere; and is not sought for the same reasons everywhere”.⁷ If we move away from the notion that marriage is a matter of love between two consenting adults, it becomes clear that age (or love for that matter) has only partial relevance in the definition of marriage.

In many contexts marriage is a contract between families, or an economic transaction, or even a way of settling debts. For some people a religious blessing is necessary; for others a civil recognition is sufficient; for many others traditional and customary rites are more important. Marriage may also vary according to the number and sex of the consenting adults. Marriage is therefore an institution so deeply entrenched in religious traditions and cultural practice that it is very challenging to suggest one, single, uniform, worldwide application. Yet this is what is being recommended at the international level, especially in terms of minimum ages.

⁷ H. Agberemi, *Violence Against Girl-Children in a Rights Paradigm: Deconstructing Child Marriage from Islamic Perspectives*, June 2004, on file with the author), p. 1.

Analysis of the CRC monitoring process and key issues

Lack of provision in the CRC and difficulties with the definition of the child

Often lauded as the most comprehensive human rights instrument for the protection of children, the CRC fails to clearly indicate where it stands with regard to marriage. It does not include any specific provision on the issue and does not directly require States Parties to take any action in this respect.⁸ Despite the Convention's silence on marriage, however, the CRC Committee has tried to overcome this limitation and has regularly questioned States Parties on this issue.⁹ Even more precisely, the Committee has constantly tried to go beyond the above mentioned problems linked with the final clause of art.1 and focused more on the notion of minimum ages.

In its approach, the monitoring body has consistently recommended that States increase the minimum age for marriage when it is too low and has advocated that it "should be the same for boys and girls and closely reflect the recognition of the status of human beings under 18 years of age as rights holders, in accordance with their evolving capacity, age and maturity".¹⁰ In its General Comment No. 4 the Committee has also specifically recommended that this minimum age should be set at 18.¹¹ In this it is also aided by the most recent Guidelines for Periodic Reports which require that "[t]he State party should indicate the minimum marriage age for girls and boys".¹²

Use of minimum ages (for protection, for autonomy, for both?)

Minimum ages are very useful in identifying the transition from childhood to adulthood, but one needs to be very careful and clear about their purpose. In the case of marriage, the establishment of a minimum age is crucial. Marriage entails adult responsibilities; it requires the full consent of the couple and the full understanding of the consequences of such an engagement. Setting an age below which marriage is not allowed is a guarantee that these adult responsibilities are not assigned to children too prematurely.

On the other hand, though, the decision to get married could be an indication of being ready for adult life or a conscious choice. Indeed, while it is true that in many child marriages one or both partners might not be in a position to take the decision to marry with their free and full consent, it is also true that there exist other cases where the adolescent spouse is willing and able to commit to such a responsibility. In this case it is a matter of respecting marriage as a civil right, therefore a minimum age for marriage could be set as a way for the State to recognise the child's evolving capacity and autonomy.

This being said, it is true that establishing a minimum age for marriage is no easy task. Any decision on this matter leads to dilemmas concerning criteria, limitations, exceptions and cultural, religious or traditional values, as demonstrated by the following considerations.

⁸ Child marriage is usually included amongst "traditional practices prejudicial to the health of children" therefore there could be a case for considering the issue covered in art.24 of the CRC. However, even then it is not evident that the provision refers directly to child marriage. The CRC Committee itself, in fact, questions States Parties on the matter mainly under art.1 of the Convention in relation with the definition of the child and minimum ages.

⁹ See, for example, the Summary Records (SR) for Rwanda (UN Doc. CRC/C/SR.953, 2004, para. 20) or Equatorial Guinea (UN Doc. CRC/C/SR.989, 2004, para. 58) or the Concluding Observations (CO) on Brunei Darussalam (UN Doc. CRC/C/15/Add.219, 2003, paras. 22-23), Guatemala (UN Doc. CRC/C/15/Add.154, 2001, paras. 22-23), Spain (UN Doc. CRC/C/15/Add.185, 2002, paras. 23-24).

¹⁰ CRC Committee, *General Comment No. 4: adolescent health and development in the context of the Convention on the rights of the Child*, 2003, UN document CRC/GC/2003/4, paragraph 9.

¹¹ *Idem*, paragraph 20.

¹² CRC Committee, *Treaty-specific guidelines regarding the form and content of periodic reports to be submitted by States parties under article 44, paragraph 1 (b), of the Convention on the Rights of the Child*, UN document CRC/C/58/Rev.2, 2010, paragraph 22.

Inconsistency with CRC principles and within and between countries

Analysis of reports and other documents from the monitoring process between the CRC Committee and 186 States Parties shows that, in general terms, States Parties do indicate minimum ages for marriage in their reports.¹³ However, this is an area in which precise or clear information is often lacking: the vast majority of the world's countries - 102 in total - are currently unable to ensure the respect of the best interest of the child or the child's development, survival, point of view and consent when it comes to marriage, one of the most important steps in the transition from childhood to adulthood. Looking at the breakdown: 19 countries provide no or unclear information and 83 countries have no specific minimum age set for marriage.

Countries with no minimum age for marriage include Mauritania where “[t]here is no legal minimum age for consent to marriage. The minimum age for marriage is the nubile age”¹⁴ or Zambia where the Marriage Act requires that “any person below 21 years requires written consent of a parent or guardian before a marriage is contracted. However, customary law allows the contracting of marriage after attainment of puberty subject to parental consent”.¹⁵ These examples clearly illustrate difficulties in delimiting boundaries: since the terms ‘nubile age’ and ‘puberty’ are not defined, the question of marriageable age is left open. The same could be said about countries that do set a general minimum age, but then allow exceptions without determining an absolute minimum below which no marriage can take place. Examples include: Belgium where “[i]t is possible to obtain permission for marriage at a younger age ‘on serious grounds’. The juvenile court is competent to give such permission”¹⁶; El Salvador where “persons under 18 years may marry if they have reached the age of puberty, if they have had a child together, or if the woman is pregnant”¹⁷; Sweden where “[a] person under the age of 18 may not marry without special permission”¹⁸; Thailand where “a court may allow an earlier marriage if there are reasonable grounds, i.e. religion”.¹⁹ Vague expressions such as ‘younger age’ or ‘persons under 18’ do not guarantee either protection or autonomy as they can refer to 17- or 10-year-olds. Justifications such as ‘serious/reasonable grounds’ or ‘special permission’ are equally insufficient if not supplemented by clear qualifiers and an absolute lower limit. One last example of no minimum age for marriage comes from Samoa where “[a] marriage officer shall not solemnize or record any marriage unless the husband is at least 18 years of age and the wife is at least 16 years of age, but no marriage shall be invalidated by a breach of the provisions of this section”.²⁰ In this case, it is easy to doubt the impact of law and conclude that even if an age is set, it might be disregarded and, what is worse, this disregard would not entail any penalty, making the whole idea of law and in particular of minimum age void of any meaning or concrete benefit.

The analysis also shows that among those States who do have a general minimum age:

- the majority (73) have at the same time exceptions or dispensations whereby the minimum age is then set below 18 for at least one of the sexes, usually girls;
- a very few (7) set it at 18 for both sexes without any exception or dispensation;
- only a very limited number (4) set it above 18, usually for boys.

As for specific ages, if reported and not turned into ‘no minimum’ because of exceptions or overlapping laws and practices, they range from 10 to 21, with the most common age at 16, for both girls and boys. Remarkably, 18 is a much more common minimum age for boys than for girls.

¹³ See Annex – Worldwide minimum ages for marriage, p. 11.

¹⁴ UN Doc. CRC/C/8/Add.42, 2001, para. 20.

¹⁵ UN Doc. CRC/C/11/Add.25, 2002, para. 91.

¹⁶ UN Doc. CRC/C/11/Add.4, 1994, para. 55.

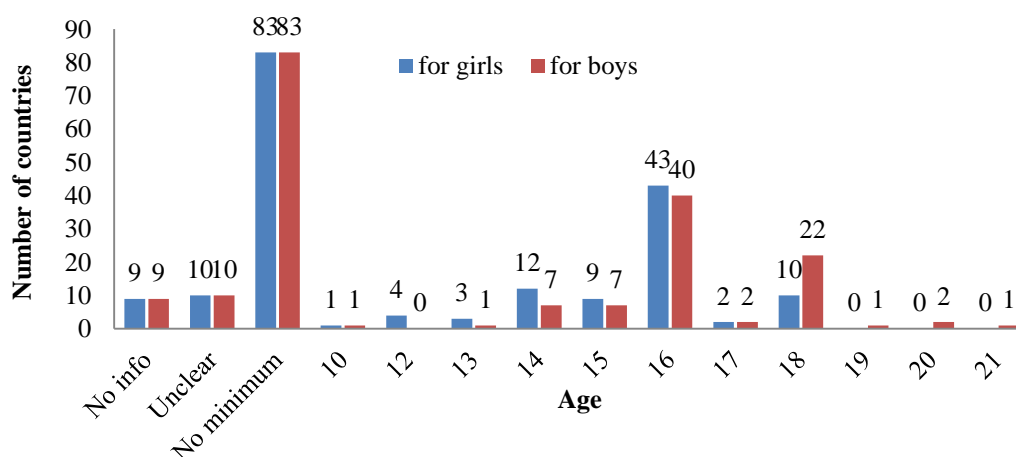
¹⁷ UN Doc. CRC/C/65/Add.25, 2003, para. 19.

¹⁸ UN Doc. CRC/C/65/Add.3, 1998, para. 207.

¹⁹ UN Doc. CRC/C/11/Add.13, 1996, para. 106.

²⁰ UN Doc. CRC/C/WSM/1, 2006, para. 126.

Minimum age(s) for marriage



This variation is reflected between countries but also within individual States when applied to the two different sexes. In fact, in 47 countries girls and boys can marry at the same age, in another 37 countries girls can marry at a younger age than boys.

Gender Discrimination in marriageable age (for girls/for boys)

| Europe North America & Central Asia | | Asia-Pacific | | Middle East & Northern Africa | | Africa | | Latin America & the Caribbean | |
|---|-------|--------------|--------|----------------------------------|--------|--------------|-------|----------------------------------|--------|
| Albania | 16/18 | Cambodia | 18/20 | Egypt | 16/18 | DRC | 15/18 | Bolivia | 14/16 |
| Austria | 16/18 | DPRK | 17/18 | Iran | 13/15° | Niger | 14/16 | Colombia | 12/14° |
| Kyrgyzstan | 17/18 | Fiji | 16/18 | Kuwait | 15/17 | SaoTome&Pri. | 14/16 | Ecuador | 12/14° |
| Luxembourg | 16/18 | India | 18/21* | Morocco | 15/18 | South Africa | 12/14 | Guatemala | 14/16* |
| Poland | 16/18 | Indonesia | 16/19 | | | | | Nicaragua | 14/15 |
| Rep. Moldova | 14/16 | Japan | 16/18 | | | | | Panama | 14/16 |
| Romania | 15/18 | Rep. Korea | 16/18 | | | | | Peru | 14/16 |
| Turkey | 14/15 | Timor Leste | 15/18 | | | | | St Vincent & Gr. | 15/16 |
| Uzbekistan | 16/17 | Vanuatu | 16/18 | | | | | Suriname | 13/15 |
| | | Vietnam | 18/20 | | | | | Uruguay | 12/14° |
| 9 | | 10 | | 4 | | 4 | | 10 | |

Going beyond age

Discord between the CRC norms on the one hand and State implementation on the other is evident in terms of age: universal and national standards are not in synch. However, age is not the only factor in the equation; it is therefore worth considering other cases that show some additional and recurrent criteria and related dilemmas.

In Venezuela, for instance,

Marriage is a free and voluntary act. For a marriage to take place, the woman must be at least 14 and the man 16... If the girl is pregnant and the boy acknowledges that he is the father, the minimum age provided for in article 46 of the Civil Code is waived ... Minors under 18 need parental permission to marry. Should the parents refuse it, the marriage may be authorized by the juvenile court...²¹

²¹ UN Doc. CRC/C/3/Add.54, 1997, paragraph 44.

Kenya in its initial report explained that

For purposes of marriage, several statutes are applicable. The Marriage Act... sets the minimum age of marriage for girls at 16 years, and 18 years for boys. In both cases, parental consent is required. This applies also to marriage under the Hindu Marriage and Divorce Act... In Islamic law, a person is free to marry on attainment of puberty. Under customary law, some communities deem a person ready for marriage after he/she undergoes the relevant initiation rites or after puberty.²²

In Papua New Guinea

One of the common determining criteria applied to males is the ability to independently and successfully make gardens, build a house and hunt, i.e. be able to live by their own means and provide for a family. A young man able to satisfy these criteria is for all intents and purposes an adult. In some cases this could be achieved at 14 years of age or less. In the eyes of the community, the onset of menarche renders the female child ready for marriage. Thus parents and the community may accept marriage of children at the age of 14-15, even though the Criminal Code makes it unlawful...²³

These examples make clear that in this area there are a large number of variables, with many countries having a plethora of rules but a lack of effective protection, especially for girls. In fact, while at first sight it may appear that States are regulating the issue, a closer look reveals that regulating is not enough if not accompanied by clarity, specificity and legitimacy, in particular in those often grey areas related to gender discrimination, consent, religious, cultural and traditional practices and majority. In addition, data show that many problems arise not so much with the general age (which in the vast majority of cases is 18 for at least one of the sexes), but rather with exceptions, overlapping laws and practices, which are frequently very complex and rarely protective. These are precisely the areas that demand more systematic scrutiny in order to ensure that a children's rights approach is applied in all cases.

Gender discrimination

Cases such as those indicated above are clearly in contravention of the principle of non-discrimination and certainly do not protect the child, especially the girl, from the consequences of such a differential treatment. Reactions to similar concerns for other States Parties have been varied. Some have actually followed the CRC Committee's recommendation to set the minimum age for marriage at 18 for both girls and boys, at least on paper (for instance Buthan or Ghana). Others, however, have kept the same discriminatory ages (Bolivia or Nicaragua among others). Some like Chile have at least increased the minimum age for marriage for girls to the same age valid for boys (even if not 18); yet others, like Brazil, have equalised the minimum ages by lowering that for boys:

...The Civil Code in force until 2002, prohibited the marriage of female minors below 16 years and male minors below 18 years... The new Civil Code lays down that, from 2003 onward, a male and a female of 16 can marry, provided that they have the consent of both their parents or their legal guardians, while they have not yet reached the age of legal majority...²⁴

Consent

Parental consent is also problematic when not regulated to ensure that the principle of the best interests of the child is applied. The case of the Philippines illustrates how dangerous it is not to mention an absolute minimum age below which children cannot marry at all, with or without parental consent: "The Family Code provides that contracting marriage shall require parental consent until the age of twenty-one".²⁵ Questions arise immediately: what happens if the parents

²² UN Doc. CRC/C/3/Add.62, 2001, paragraph 93.

²³ UN Doc. CRC/C/28/Add.20, 2003, paragraph 79.

²⁴ UN Doc. CRC/C/3/Add.65, 2003, paragraph 88.

²⁵ UN Doc. CRC/C/65/Add.31, 2004, paragraph 92.

decide to marry their child at a very young age because of economic, social or traditional reasons? Are the development, survival and will of the child taken into consideration at all? The same report by the Philippines seems to underline these dilemmas: “Girl children aged nine to ten, who have not attained biological/reproductive maturity (menstruation) are coerced by their parents to get married in consideration of the customary dowry”.²⁶

Speaking of consent, it is also interesting to note that the majority of the reports mention the consent of parents, guardians, family members or administrative/judicial authorities. Only a very few cases mention the consent of the child. However, taking the child’s agreement into account is worth double attention. Not only because free and full consent is a well established criterion of all international norms on marriage in general, but also because it is in line with art.12 of the CRC on the respect for the views of the child. A possible solution in this case is offered by Bosnia and Herzegovina where “the opinion of the parents of the minor, of the guardianship authority and of health organizations will be heard during the court procedure. The concerned minor, rather than his/her legal representative, will submit the request to enter into marriage to the court”.²⁷

Exceptions

Dispensation by a competent administrative or judicial authority appears, at first sight, to be a protective measure as in most cases, like Estonia, it is based on what is best for the child:

Minors between 15 and 18 may marry with the written consent of their parents or a guardian. If one of the parents or the guardian does not consent to the marriage, a court may grant the right to marry based on the application of one of the parents or of the guardianship authority. The court grants the right to marry if the marriage is in the interests of the minor.²⁸

Generally speaking, the court may decide upon application of the parties concerned and/or on the basis of serious reasons. The first element is fundamental as it indicates the will and consent of the parties to marry (provided there is no coercion in the application). The second element needs careful assessment as serious reasons might include the best interest of the child, but could also encompass physical and psychological maturity or cultural and religious practices. These criteria are not very straightforward and certainly need further consideration.

Pregnancy

Where pregnancy can act as an exception, it is extremely difficult to discern whether this is a criterion that affords protection or one that recognises capacity and autonomy. Indeed it may as well be both, as the best interests of both mother and child must be considered. In the first case, allowing a marriage can be seen as a measure to acknowledge the capacity and maturity of the ‘child’ mother; in the second case, marriage can be seen as a form of protection for the baby child and his or her interests. The Netherlands seem to adopt a relatively sound approach on this issue:

The age at which a person can lawfully enter into a marriage is uniformly fixed at 18 for both men and women. This age requirement, which is the same as the age of legal capacity, does not apply if a man and a woman are both aged 16 or over and the woman lodges a doctor's statement that she is pregnant or if a child has already been born to the parties concerned. In this situation priority is given to the manifest wish of the prospective spouses to raise their child together. It is also possible to obtain a marriage licence at a younger age on “serious grounds”. In such cases the main consideration is whether the prospective spouses are actually capable of taking responsibility for raising the child.²⁹

²⁶ *Idem*, paragraph 205.

²⁷ UN Doc. CRC/C/11/Add.28, 2004, paragraph 37.

²⁸ UN Doc. CRC/C/8/Add.45, 2002, paragraph 36.

²⁹ UN Doc. CRC/C/51/Add.1, 1997, para. 19.

Here there is a general minimum age (18), which is also equal to the age of majority; a possible lower age (16) is clearly justified on the basis of the views of the child (who is also a parent in this case); and further exceptions are admitted on serious grounds and after having assessed the actual development and maturity of the child spouses. Unfortunately the lack of an absolute minimum age for that exception does not guarantee full protection, but overall the approach to the evolving capacities of the child and autonomy is in line with the thrust of the CRC.

Religious, cultural and traditional practices

Religion, tradition and culture can play an influential role in the establishment of minimum ages for marriage, although seldom in conformity with the CRC. In fact, religious or other norms based on puberty, maturity or other flexible factors lack the necessary legal clarity to be considered acceptable and effective. The case of Kenya mentioned Islamic law, puberty, customary law and initiation rites, all indicative of vagueness and inability to establish a specific age. Such factors are also interconnected, at times overlapping (such as in the case of customary, religious and civil laws often existing side-by-side with no clarification in the hierarchy of laws) and very much associated with contextualised definitions of childhood and in particular with definitions of maturity or capacity, thus adding to the confusion and elusiveness. Moreover, marriages may not be registered, which renders the relevance of law doubtful.

This being said, it is also true that these elements need to be considered in any decision regarding the establishment of a minimum age for marriage, lest the risk of a complete disconnection with reality. What is important is to evaluate whether they are open to possible forms of implementation that are consistent with international standards. What this means is not blind acceptance of cultural relativism, but careful respect for choices and values, even when they differ from mainstream universality. This can be achieved by adopting the dynamic approach to culture whereby a more flexible and closer interaction between law and context can allow more effective implementation.

Majority

As mentioned earlier, it is critical to also explore the issue of attaining majority through marriage. Lesotho is a case in point given that

In common law upon marriage at 18 years, subject to parental consent, a male child attains majority, whereas a female child, even upon marriage at a similar age, remains a minor with the perpetual status of a child under the guardianship and marital power of the husband, if married in community of property. This legal position extends to all females married under Lesotho customary law.³⁰

In certain cases the acquisition of majority is a prerequisite for certain activities, such as getting married. In others, majority can actually be acquired through marriage. Two examples from within the European Union will demonstrate this point. The Czech Republic's report from 1996 states that 'marriage can be concluded on attaining majority, i.e. upon reaching the age of 18. Minors older than 16 may get married only with the consent of a court'.³¹ In Spain, instead,

Depending on their degree of maturity and subject to the law, minors aged 14 years or older may act in the following matters: (a) They may marry, provided that a competent court, with just grounds and on the application of the party concerned, waives the age impediment... Marriage produces the de jure emancipation of a minor.³²

Even within the same region, the link between marriage and majority differs vastly from one country to another. This is one more area where clear guidance by the CRC Committee is essential.

³⁰ UN Doc. CRC/C/11/Add.20, 1998, paragraph 28.

³¹ UN Doc. CRC/C/11/Add.11, 1996, paragraph 34.

³² UN Doc. CRC/C/70/Add.9, 2001, paragraph 431.

Conclusions and recommendations

What emerges from this analysis is that a general minimum age for marriage could be set, and set at 18 for that matter, but then be either deprived of its effectiveness through unclear exceptions or not implemented or enforced in practice. Moreover, even when exceptions to a general minimum age for marriage are valid, these often do not foresee an absolute minimum age below which marriage is never permitted. This is why the complexity of child marriage demands rigorous analysis of all the multiple factors mentioned above as well as more careful attention to exceptions and their link with both protection and autonomy. In addition, it is important to recognise that quantitative data on the statutory minimum age for marriage reveal only one part of the legal landscape. Human rights standards for children and marriage demand attention to qualitative aspects, too.

In this light, and in the light of the difficulties with art.1 and the lack of a clear legally binding provisions in the CRC, it becomes then essential to evaluate whether it is effective to impose 18 as *the* universal minimum age for marriage or rather whether it would be better to use a more flexible, yet rigorous, model to make sure that *a* minimum age is established and then reinforced with further specific guarantees supplemented by clear enforcement measures and awareness raising activities. This would mean to ensure (for the State) and verify (for the Committee) that laws in this area:

- 1) establish a general minimum age set at 18 so that the overall thrust of the CRC and the Committee's recommendations are respected;
- 2) set an absolute minimum age for marriage below which it is prohibited to get married at all;
- 3) include a series of guarantees between the two limits to make sure that those children who marry below 18 are still able to enjoy the rights recognised in the Convention. In particular, such guarantees need to ensure that:
 - 1) there is no gender discrimination;
 - 2) the best interests of the child are a primary consideration;
 - 3) the consequences for the life, survival and development of the child are taken into account;
 - 4) the consent of the child is free and full;
 - 5) his or her evolving capacities are respected in unison with concerns for protection;
 - 6) there is a consistent, rights-based vision of childhood in state legislation and policy.

What is then left to be decided is where to set the lowest limit. This analysis has not provided a unique and specific absolute minimum age, but it has established the need for one and offered a series of indicators to make a suggestion:

- 1) the CRC monitoring process has indicated that the minimum age for marriage should not be too low and should include considerations for both protection and recognition of the evolving capacities and maturity of the child;
- 2) the CRC Committee's recommendations have often indicated that 15 is too low, but have not appeared to directly say the same for higher ages such as 16 or 17;
- 3) 16 is the most commonly practiced minimum age in the world for girls and boys.

For these reasons, it is suggested here that a more flexible and realistic measure would be to recommend States to set the minimum age for marriage at 18 with possible exceptions rigorously justified (according to the list of guarantees indicated above) but in no case ever allowed below 16.

Admittedly, some of the implementation difficulties of a fixed age would remain valid for this method, too. However, this meticulous approach would prompt more careful thinking, more accurate understanding, and fuller appreciation of the complexities of both childhood and marriage. On balance, what is key is that establishing when somebody may marry requires not just the 'right' age but a rights-based methodology and a concurrent evaluation of societal structures, conditions, and processes. This is where the broader interpretation of 'the child' and the more articulated analysis of 'marriage' adopted in this paper may prove useful for a more effective approach.

ANNEX – WORLDWIDE MINIMUM AGES FOR MARRIAGE

The following table provides for each country both the general age for marriage and the minimum age for exceptions, in its turn broken down into the various most common criteria. In order to maintain coherence, the following methodology has been applied uniformly to arrive at the interpretations presented in this summary table. Where no information is provided, this is indicated by a cross (X); where information is available but not sufficiently clear, or is self-contradictory, a question mark (?) is used. A star (*) indicates a proposed change in legislation, a division of competence in federal States, a particular exception or practice that begs closer scrutiny of the reports. Where the information comes from the Concluding Observations, Summary Records or Written Replies, a circle (°) is used. Otherwise, the information provided in the reports is translated into either a precise age or "no minimum" if a specific absolute minimum age is not reported.

The table also includes codification of reported information on customary, traditional or religious laws and practices, as well as an indication of the impact of marriage on majority and the status of the child under the CRC. The latter aspect is colour coded as follows:

- Minors acquire majority through marriage ● CRC still applicable to married minors ! Gender discrimination in majority status

| Country | Year of reports | GENERAL girl/boy | EXCEPTIONS girl/boy | | | Customary, traditional or religious laws and practices | Marriage and majority | |
|---------------------|----------------------|------------------|---------------------|---|-----------|--|-----------------------|--|
| | | | Parental consent | Judicial or administrative dispensation | Pregnancy | | | |
| Albania | 2004 | | 16/18 | | | | ● | |
| Algeria | 2005 1996 | 18/21 | | No minimum | | | | |
| Andorra | 2001 | 16 | | 14 | | | | |
| Angola | 2010 2004 | 18 | 15/16 | | | No minimum | ● | |
| Antigua and Barbuda | 2003 | 18 | No minimum | | | | | |
| Argentina | 2009 2002 1993 | 16/18 | | No minimum | | | | |
| Armenia | 2003 1997 | 17/18 | ? | | | | ● | |
| Australia | 2004 1996 | 18 | | 16 | | | | |
| Austria | 2004 1997 | 18 | 16/18 | 16/18 | | | ● | |
| Azerbaijan | 2005 1996 | 18 | ? | | | | ● | |
| Bahamas | 2004 | 18 | 15 | 13 | | | | |
| Bahrain | 2001 | X | | | | | | |

| Country | Year of reports | GENERAL girl/boy | EXCEPTIONS girl/boy | | | Customary, traditional or religious laws and practices | Marriage and majority |
|--------------------------|----------------------|------------------|---------------------|---|------------|--|-----------------------|
| | | | Parental consent | Judicial or administrative dispensation | Pregnancy | | |
| Bangladesh | 2008 2003 1995 | 18/21 | | | No minimum | | |
| Barbados | 1997 | 18 | 16 | 16 | | | |
| Belarus | 2001 1993 | 18 | ? | | | | ● |
| Belgium | 2001 1994 | 18 | | No minimum | | ● | |
| Belize | 2004 1997 | 18 | 14 | | | | |
| Benin | 2005 1997 | 15/18* | | | No minimum | | |
| Bhutan | 2007 1999 | 18 | | | | | |
| Bolivia | 2009 2004 1997 | 14/16 | | | | | |
| Bosnia and Herzegovina | 2004 | 18 | | 16 | | | |
| Botswana | 2004 | 21 | 14/16 | | No minimum | ! | |
| Brazil | 2003 | 18 | 16 | | | ● | |
| Brunei Darussalam | 2003 | 18 | 14 | | No minimum | | |
| Bulgaria | 2007 1995 | 18 | | 16 | | | |
| Burkina Faso | 2009 2002 1993 | 17/20 | | 15/18 | No minimum | | |
| Burundi | 1998 | ? | | | | | |
| Cambodia | 1998 | 18/20 | | | | | |
| Cameroon | 2009 2001 | 15/18° | | No minimum | | | |
| Canada | 2003 1994 | X* | | | | | |
| Cape Verde | 2001 | ? | | | | | |
| Central African Republic | 1998 | 18* | | | | | |
| Chad | 2007 1997 | ? | | | | | |

| Country | Year of reports | GENERAL girl/boy | EXCEPTIONS girl/boy | | | Customary, traditional or religious laws and practices | Marriage and majority |
|-----------------------------|----------------------|------------------|---------------------|---|------------|--|-----------------------|
| | | | Parental consent | Judicial or administrative dispensation | Pregnancy | | |
| Chile | 2005 2001 | 16 | | | | | |
| China | 2005 1995 | 20/22 | | | No minimum | | |
| Colombia | 2005 2000 1993 | 18 | 12/14° | | | | |
| Comoros | 1998 | 18/22 | | No minimum | No minimum | | |
| Congo | 2006 | X | | | | | |
| Costa Rica | 2004 1998 | X | | | | | |
| Cote d'Ivoire | 2000 | 21 | No minimum | | No minimum | | |
| Croatia | 2003 1994 | 18 | | 16 | | ● | |
| Cuba | 1996 | X | | | | | |
| Cyprus | 2002 1995 | 16/18° | No minimum° | | | | |
| Czech Republic | 2002 1996 | 18 | | 16 | | | |
| Dem. People's Rep. of Korea | 2008 2003 1996 | 17/18 | | | | | |
| Dem. Rep. of the Congo | 2008 2000 | 15/18 | | | | ● | |
| Denmark | 2005 2000 1993 | 18 | 15 | | | | |
| Djibouti | 2007 1998 | 18 | No minimum | | | | |
| Dominica | 2003 | 18 | 16 | 16 | | | |
| Dominican Republic | 2007 1999 | 18 | 15/16 | No minimum | | | |
| Ecuador | 2009 2004 1996 | 18 | 12/14° | | | | |
| Egypt | 1999 1992 | 16/18 | | | | | |
| El Salvador | 2003 1993 | 18 | | | No minimum | | |
| Equatorial Guinea | 2004 | X | | | | | |

| Country | Year of reports | GENERAL girl/boy | EXCEPTIONS girl/boy | | | Customary, traditional or religious laws and practices | Marriage and majority |
|---------------|----------------------|------------------|---------------------|---|------------|--|-----------------------|
| | | | Parental consent | Judicial or administrative dispensation | Pregnancy | | |
| Eritrea | 2007 2002 | 18* | No minimum* | | | | |
| Estonia | 2002 | 18 | 15 | 15 | | | |
| Ethiopia | 2005 2000 1995 | 18* | | | | No minimum* | |
| Fiji | 1996 | 21 | 16/18 | | | | |
| Finland | 2005 1998 1995 | 18 | | No minimum | | | |
| France | 2008 2003 | 18 | | No minimum | | | ● |
| Gabon | 2001 | 21* | 15/18* | No minimum* | | No minimum* | |
| Gambia | 2000 | X | | | | | |
| Georgia | 2007 2003 1998 | 18 | 16 | 16 | | | |
| Germany | 2003 1994 | 16 | | | | | |
| Ghana | 2005 1995 | 18 | | | | | |
| Greece | 2001 | 18 | | No minimum | | | |
| Grenada | 2009 1997 | 21 | No minimum | | | | |
| Guatemala | 2008 2000 1995 | 14/16* | | 14/16* | | | |
| Guinea | 1997 | 17/18 | ? | | | | |
| Guinea-Bissau | 2001 | 18* | 14/16* | 14/16* | | No minimum* | |
| Guyana | 2003 | 20 | 16 | No minimum | No minimum | | |
| Haiti | 2002 | 18 | No minimum | | | | |
| Honduras | 2006 1998 | 21 | 18 | | | 16* | |
| Hungary | 2005 1996 | 18 | 16 | | | | ● |
| Iceland | 2002 1995 | 18 | | No minimum | | | ● |

| Country | Year of reports | GENERAL girl/boy | EXCEPTIONS girl/boy | | | Customary, traditional or religious laws and practices | Marriage and majority |
|------------------------|----------------------|------------------|---------------------|---|-------------|--|-----------------------|
| | | | Parental consent | Judicial or administrative dispensation | Pregnancy | | |
| India | 2003 1997 | 18/21* | | | | | |
| Indonesia | 2003 | 21 | 16/19 | | | | |
| Iran | 2003 1998 | 13/15° | | | | | |
| Iraq | 1996 | X | | | | | |
| Ireland | 2005 1996 | 18 | | No minimum | | | ● |
| Israel | 2002 | 17* | | 16/18* | No minimum* | No minimum* | |
| Italy | 2002 | 18 | | 16 | | | |
| Jamaica | 2003 1994 | 18 | 16 | | | | |
| Japan | 2009 2003 1996 | 20 | 16/18 | | | | |
| Jordan | 2006 1999 1993 | 18 | | No minimum | | | |
| Kazakhstan | 2006 2002 | 18 | | 16 | | | |
| Kenya | 2006 2001 | 16/18* | | | | No minimum* | ! |
| Kiribati | 2005 | 21 | 16 | 16 | | | |
| Kuwait | 1996 | 15/17 | | | | | |
| Kyrgyzstan | 2004 1999 | 18 | | 17/18 | | | ● |
| Lao People's Dem. Rep. | 1996 | 18 | 15 | | | | |
| Latvia | 2005 2000 | 18 | 16 | | | | ● |
| Lebanon | 2005 2000 | No minimum* | | | | | |
| Lesotho | 1998 | 21 | 16/18* | No minimum | | | ! |
| Liberia | 2003 | ? | | | | | |
| Libyan Arab Jamahiriya | 2002 1996 | 20 | No minimum | | | | |

| Country | Year of reports | GENERAL girl/boy | EXCEPTIONS girl/boy | | | Customary, traditional or religious laws and practices | Marriage and majority |
|------------------|----------------------|----------------------------|---------------------|---|-----------|--|-----------------------|
| | | | Parental consent | Judicial or administrative dispensation | Pregnancy | | |
| Liechtenstein | 2005 1999 | 18 | No minimum | | | | ● |
| Lithuania | 2005 1998 | 18 | | 15 | ? | | |
| Luxembourg | 2004 1997 | 18 | 16/18 | 16/18 | | | |
| Madagascar | 2003 | 18 | | No minimum | | | ● |
| Malawi | 2008 2001 | 21* | 15/18* | | | No minimum* | |
| Malaysia | 2006 | 16/18 | | No minimum | | | |
| Maldives | 2006 1997 1996 | 18 | | No minimum | | | |
| Mali | 2006 1997 | 18/21 | 15/18 | No minimum | | No minimum | |
| Malta | 1998 | 16 | | | | | ● |
| Marshall Islands | 2005 1998 | 18 | | | | No minimum | |
| Mauritania | 2008 2001 | 18 | | No minimum | | | |
| Mauritius | 2005 | 18 | 16 | | | | ● |
| Mexico | 2005 1998 1993 | 18 | 14/16 | No minimum | | | |
| Micronesia | 1996 | 16/18 | No minimum/18 | | | ? | |
| Monaco | 2000 | 18 | 15/18 | No minimum | | | |
| Mongolia | 2004 | 18 | | | | | |
| Montenegro | 2010 | 18 | | 16 | | | |
| Morocco | 2003 | 15/18 | | | | | |
| Mozambique | 2009 2001 | 18 | 16 | | | No minimum | |
| Myanmar | 2003 1995 | 14/no minimum ^o | | | | | |
| Namibia | 1993 | 21 | | No minimum* | | | ! |

| Country | Year of reports | GENERAL girl/boy | EXCEPTIONS girl/boy | | | Customary, traditional or religious laws and practices | Marriage and majority |
|---------------------|--------------------------------------|------------------|---------------------|---|-----------|--|-----------------------|
| | | | Parental consent | Judicial or administrative dispensation | Pregnancy | | |
| Nepal | 2004 1995 | 21/18 | 16/18 | | | No minimum* | |
| Netherlands | 2008 2003 1997 | 18 | | No minimum | 16 | | ● |
| New Zealand | 2003 1995 | 20 | 16 | | | | |
| Nicaragua | 2010 2004 1999 1998 1994 | 18/21 | 14/15 | | | | |
| Niger | 2008 2001 | 15/18 | | | | 14/16 | |
| Nigeria | 2009 2004 1995 | 18* | | | | No minimum° | |
| Norway | 2009 2004 1998 1993 | 18 | 16 | | | | |
| Oman | 2006 2000 | 18 | | No minimum | | | |
| Pakistan | 2009 2003 | 16/18 | | | | No minimum | |
| Palau | 2000 | No minimum | | | | | |
| Panama | 2003 1995 | 14/16 | | | | | |
| Papua New Guinea | 2003 | 16/18* | | 14/16* | | No minimum* | |
| Paraguay | 2009 2001 | 20 | 16 | 14 | | No minimum | |
| Peru | 2005 1998 1992 | 18 | | 14/16 | | | |
| Philippines | 2009 2004 | 21 | No minimum | | | No minimum | |
| Poland | 2002 | 18 | | 16/18 | | | |
| Portugal | 2001 1994 | 18 | 16 | 16 | | | ● |
| Qatar | 2008 2001 | 16/18 | No minimum | | | | |
| Republic of Korea | 2002 | 16/18 | | | | | ● |
| Republic of Moldova | 2008 2002 | 16/18 | 14/16 | | | | |

| Country | Year of reports | GENERAL girl/boy | EXCEPTIONS girl/boy | | | Customary, traditional or religious laws and practices | Marriage and majority |
|--------------------------------|-----------------|------------------|---------------------|---|-----------|--|-----------------------|
| | | | Parental consent | Judicial or administrative dispensation | Pregnancy | | |
| Romania | 2008 2002 | 16/18 | | 15/18 | | | |
| Russian Federation | 2004 1998 | 18 | | No minimum* | | | |
| Rwanda | 2003 | 21 | | No minimum | | | |
| Saint Kitts & Nevis | 1997 | 16 | | | | | |
| Saint Lucia | 2004 | 18 | No minimum | | | | |
| Saint Vincent & the Grenadines | 2001 | 15/16 | | | | | |
| Samoa | 2006 | No minimum | | | | | |
| San Marino | 2003 | 18 | | 16 | | | |
| Sao Tome & Principe | 2003 | 18 | 14/16 | | | | |
| Saudi Arabia | 2005 2000 | No minimum | | | | | |
| Senegal | 2006 | 18 | 16/? | | | No minimum | |
| Serbia | 2007 | 16 | | | | | |
| Seychelles | 2002 | 18 | 15/18 | No minimum | | | |
| Sierra Leone | 2006 1996 | 18* | | | | No minimum | |
| Singapore | 2003 | 21 | 18 | No minimum | | | |
| Slovakia | 2006 1998 | 18 | | 16 | 16 | | |
| Slovenia | 2003 1995 | 18 | | No minimum | | | |
| Solomon Islands | 2002 | 18 | 15 | | | No minimum | |
| South Africa | 1999 | 21 | 12/14 | | | | |
| Spain | 2009 2001 | 18 | | 14 | | | ● |
| Sri Lanka | 2010 2002 | 18 | | | | No minimum | |

| Country | Year of reports | GENERAL girl/boy | EXCEPTIONS girl/boy | | | Customary, traditional or religious laws and practices | Marriage and majority |
|-----------------------------|----------------------|------------------|---------------------|---|-----------|--|-----------------------|
| | | | Parental consent | Judicial or administrative dispensation | Pregnancy | | |
| Sudan | 2010 2001 | 21 | 10 | | | | |
| Suriname | 2005 1998 | 30 | 15/18 | | | 13/15 | ! |
| Swaziland | 2006 | 21 | 16/18 | No minimum/18 | | No minimum | |
| Sweden | 2004 1998 | 18 | No minimum | | | | |
| Switzerland | 2001 | 18 | | | | | |
| Syrian Arab Republic | 2002 1996 | 17/18 | ? | | | | |
| Tajikistan | 2009 1998 | 17 | | 16 | | | |
| Thailand | 2005 1996 | 17 | | No minimum | | | ● |
| The FYR of Macedonia | 2009 1997 | 18 | | 16 | | | |
| Timor Leste | 2007 | 15/18 | | | | | |
| Togo | 2004 1996 | 18* | | | | | ● |
| Trinidad & Tobago | 2004 1996 | 12/14 | | | | No minimum | |
| Tunisia | 2008 2001 | 18 | | | | | |
| Turkey | 2000 | 18 | 15/17 | 14/15 | | | |
| Turkmenistan | 2005 | 16* | | | | | ● |
| Uganda | 2004 1996 | 21 | No minimum | | | No minimum | |
| Ukraine | 2001 | 17/18 | No minimum | | | | |
| United Arab Emirates | 2001 | X | | | | | |
| United Kingdom | 2008 2002 1994 | 16* | | | | | |
| United Republic of Tanzania | 2005 2000 | 15/18 | | | | No minimum | ● |
| Uruguay | 2006 1995 | 12/14° | | | | | ● |

| Country | Year of reports | GENERAL girl/boy | EXCEPTIONS girl/boy | | | Customary, traditional or religious laws and practices | Marriage and majority |
|------------|----------------------|------------------|---------------------|---|------------|--|-----------------------|
| | | | Parental consent | Judicial or administrative dispensation | Pregnancy | | |
| Uzbekistan | 2005 2001 | 17/18 | | 16/17 | | | |
| Vanuatu | 1997 | 21 | 16/18 | | | | |
| Venezuela | 2007 1997 | 18 | 14/16 | 14/16 | No minimum | | |
| Vietnam | 2002 1992 | 18/20 | | | | | |
| Yemen | 2004 1998 1995 | 15 | | | | No minimum ^o | |
| Zambia | 2002 | 21 | No minimum | | | No minimum | |
| Zimbabwe | 1995 | 16/18 | no minimum | | | | |