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Child marriage legislation in 37 Asia-Pacific countries

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World Health
Organization



UNDP · UNFPA · UNICEF · WHO · World Bank
Special Programme of Research, Development
and Research Training in Human Reproduction

Collaboration WHO/IPU

- ❑ WHO provides technical support on health related matters, with a particular focus on sexual and reproductive health
- ❑ WHO is member of the IPU Advisory Group on HIV/MNCH
- ❑ WHO supports IPU and member States in the preparation and negotiation of health related documents and resolution
- ❑ Policy research, in particular in the area of impact of legislation

Pan African Parliament 2013 Women Conference



Parliamentarians
responding to
Violence Against
Women and Girls in
Africa

***"From Legislation to
Effective
Enforcement"***

Recommendations
by the Conference
Johannesburg,
2 November 2013



**Child marriage
is still
very widespread**

One in three girls (34%)
in the developing world
enters marriage
by the age of 18



Current status and trends in the Asia-Pacific region





Child marriage
in the Asia-Pacific region

Positive trends

- According to latest UNFPA report considerable decline has been registered in some countries of the region
- The practice of child marriage is slowly declining
- Dramatic progress when it comes to marriage of girls under 15 years of age.
- In South Asia, for instance, the decline has been especially marked, dropping from 32% to 17%.

Causes



and consequences

Causes of child marriage are complex

- ❑ **Gender inequality, poverty, social exclusion, marginalization and insecurity** are some of the factors that drive and underpin the practice of early marriage
- ❑ **Poverty** is a major factor underlying child marriage. Girls are viewed as an economic burden, and early marriage is perceived as a solution
- ❑ **Parents may force young girls** into marriage with the ultimate aim of preserving their pre-marital virginity and to protect them from any kind of sexual behavior considered inappropriate before or outside marriage
- ❑ This can happen especially in particular circumstances such as in times of **conflicts and emergency situations**

Harmful consequences on children

Poorer **health** outcomes

lower level of **education**

higher risk of **violence** and abuse

persistent **poverty**

missed opportunity for **empowerment**

Complications of pregnancy and childbirth are
the main causes of death
among adolescent girls 15-19 years old
in developing countries



Being married early normally precludes the possibility
to continue education

whereas additional years of education delays marriage



International agreements suggest that
child marriage is a violation
of interconnected rights

including:

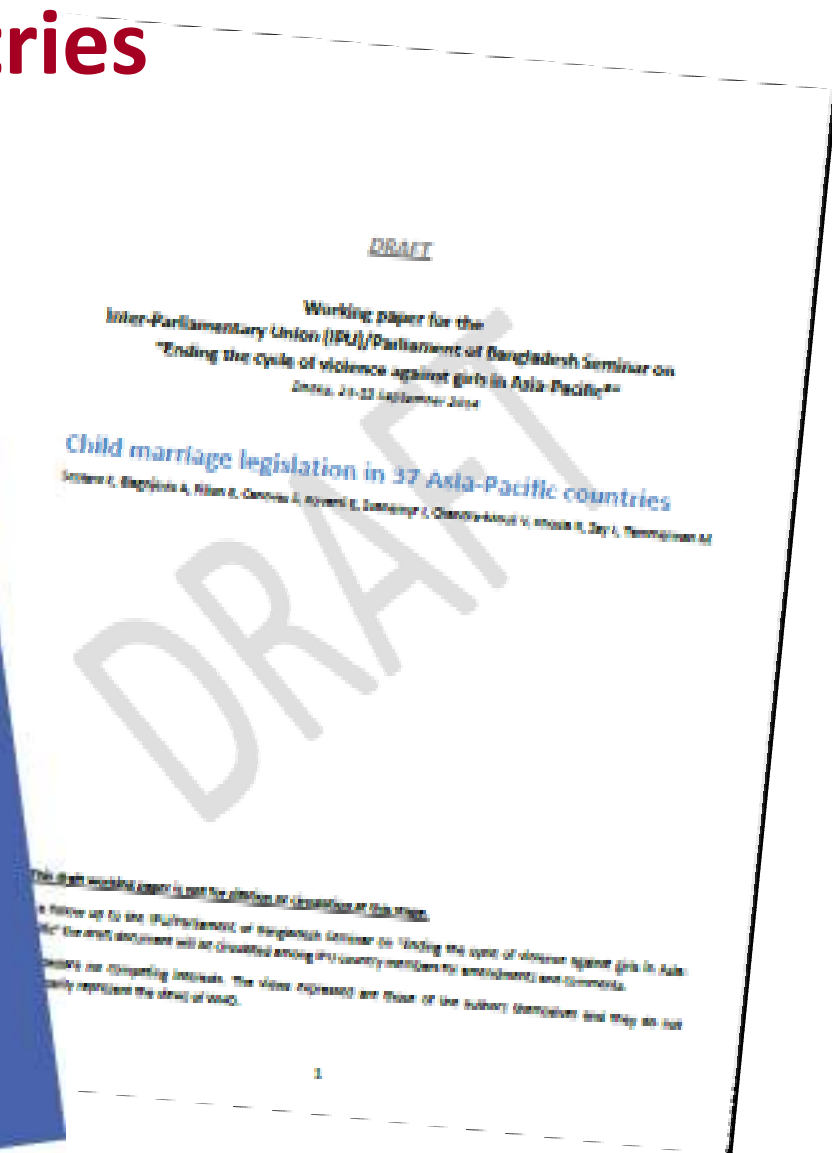
the right to equality on grounds of sex and age,
the right to marry and establish a family,
the right to life,
the right to the education,
the right to development and
to the highest attainable standard of health



Strategies for ending child marriage

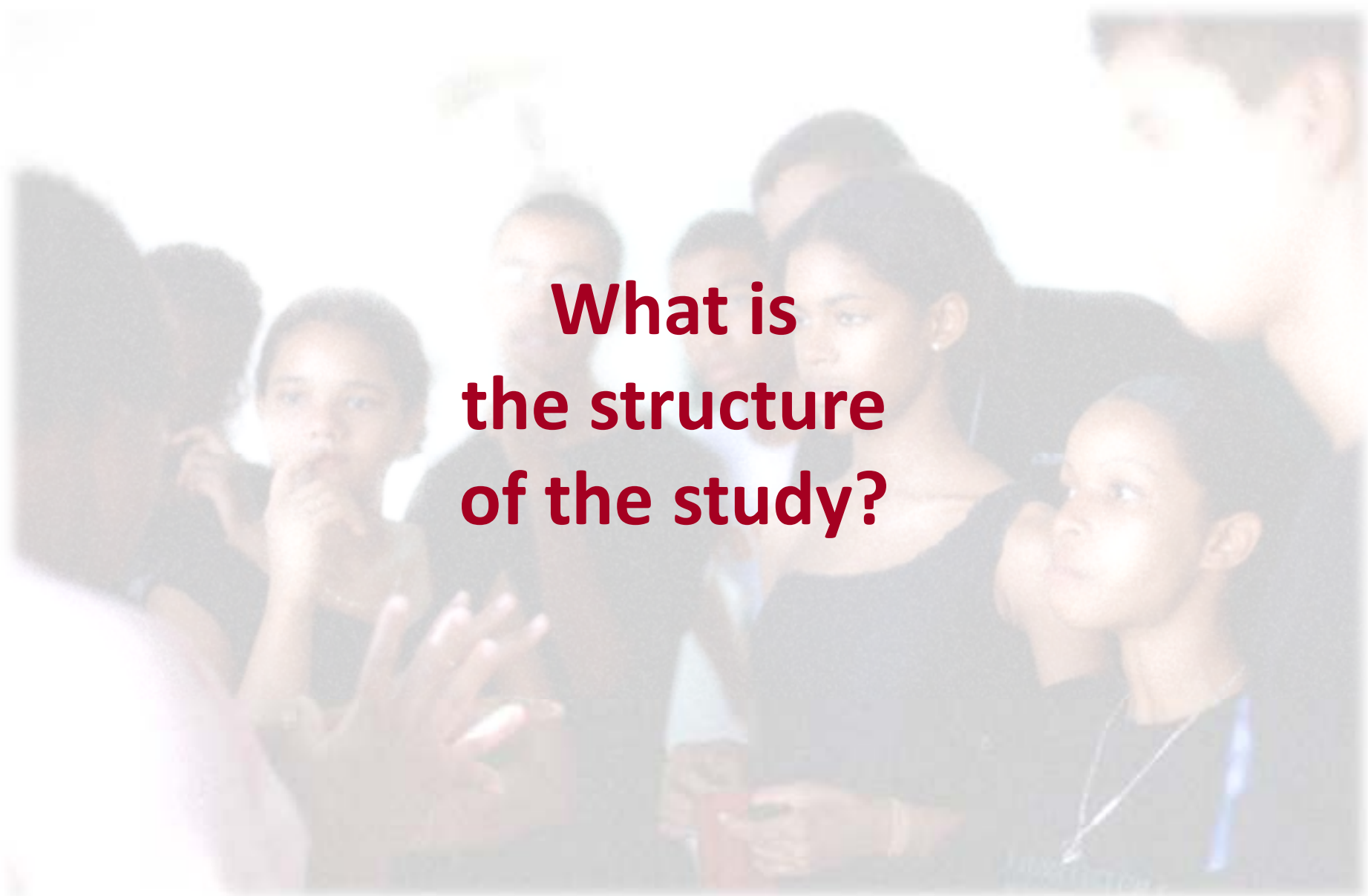
- ❑ supporting and enforcing **legislation** to increase the minimum age of marriage for girls to 18 years;
- ❑ providing equal access to quality primary and secondary **education** for both girls and boys;
- ❑ mobilizing girls, boys, parents and leaders to change practices that discriminate against girls and to create social, economic, and civic **opportunities for girls** and young women;
- ❑ providing **girls who are already married** with options for schooling, employment and livelihood skills, sexual and reproductive health information and services (including HIV prevention), and offering recourse from violence in the home;
- ❑ addressing the **root causes** of child marriage, including poverty, gender inequality and discrimination, the low value placed on girls and violence against girls.

Child marriage legislation in 37 Asia-Pacific countries



Objective

- ❑ This draft working paper is intended to serve as a resource for the parliamentarians attending the regional Inter-Parliamentary Union (IPU) and the Parliament of Bangladesh seminar for the Asia-Pacific parliaments entitled “Ending the cycle of violence against girls in Asia-Pacific”
- ❑ It aims at informing the discussion on child marriage and underlining the importance of legislation in fighting this practice
- ❑ The draft paper provides an overview picture of how the legal systems of 37 countries in the Asia-Pacific region address the issue of child marriage.
- ❑ It aims at identifying best practises and successful approaches to reduce child marriage, as well as gaps and contradictions within the different legislative tools adopted.



**What is
the structure
of the study?**

Background information

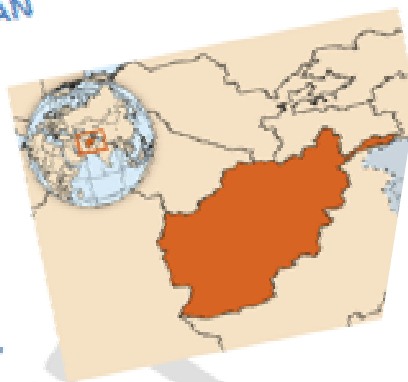
Child Marriage legislation country profile AFGHANISTAN

General background

Total population (thousands) 2012: 29,824.5
 Population (thousands) 2012, under 18: 16,317
 Birth by age 18 (%) 2008-2012: 25.8
 Birth registration (%) 2005-2012, total: 37.4
 (urban 60, rural 33.1)
 GNI per capita (US\$) 2012: 570
 Primary school participation, Net attendance ratio (%),
 2008-2012, male 62.9; female 46.4
 Secondary school participation, Net attendance ratio (%),
 2008-2012, male 42.8; female 21.1

Child marriage rate:

Child marriage (%) 2002-2012, married by 15: N/A
 Child marriage (%) 2002-2012, married by 18: N/A



Child Marriage legislation country profile BANGLADESH

General background

Total population (thousands) 2012: 154,695.4
 Population (thousands) 2012, under 18: 56,867.2
 Birth by age 18 (%) 2008-2012: 40
 Birth registration (%) 2005-2012, total: 30.5
 (urban 35, rural 29.2)
 GNI per capita (US\$) 2012: 840
 Primary school participation, Net attendance ratio (%),
 2008-2012, male 77.2 ; female 81.2
 Secondary school participation, Net attendance ratio (%),
 2008-2012, male 42.9; female 47

Child marriage rate:

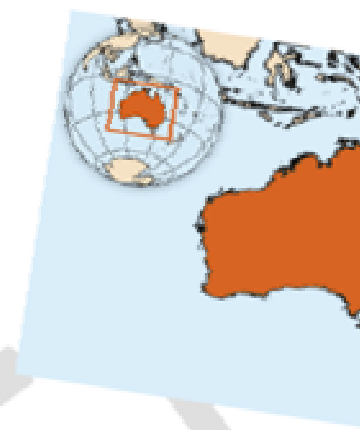
Child marriage (%) 2002-2012, married by 15: 29.1
 Child marriage (%) 2002-2012, married by 18: 64.9



Child Marriage legislation country profile AUSTRALIA

General background

Total population (thousands) 2012: 2,3050.5
 Population (thousands) 2012, under 18: 5,280.4
 Birth by age 18 (%) 2008-2012: N/A
 Birth registration (%) 2005-2012, total: 100
 (urban N/A, rural N/A)
 GNI per capita (US\$) 2012: 59570
 Primary school participation, Net attendance ratio (%),
 2008-2012, male N/A; female N/A



Net attendance ratio (%),
 2008-2012, male N/A; female N/A

N/A
 N/A



Different levels of legislation



Five levels of review:

International treaties

Constitution

Statutory law

Customary law

Provisions and Sanctions

International treaties

Legal framework

1. Relevant International Treaties

Convention on the Rights of the Child (1989)	Optional Protocol to the Convention on the Rights of the Child on the sale of Children, Child Prostitution and Child Pornography (2000)	Convention on the Elimination of All Forms of Discrimination against Women (1979)	International Covenant on Economic, Social and Cultural Rights, (1966)	Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (1962)
1994	2002 (a)	2003	1983 (a)	

Constitutional level

- ❑ definition, recognition or protection of marriage
- ❑ definition, recognition or protection of family
- ❑ right to life
- ❑ right to health
- ❑ equality between man and woman/no discrimination on the basis of sex, including special protection for women and/or children
- ❑ assertion of primacy of constitutional law over other forms of law
- ❑ assertion of primacy of religious law over other forms of law
- ❑ and any other fundamental right relevant to child marriage practise

Statutory law

- ❑ age of marriage
- ❑ exception upon parental or court consent
- ❑ spousal consent
- ❑ age of consent to sex
- ❑ ad hoc authorities or mechanisms for child protection
- ❑ marital rape
- ❑ mandatory marriage registration
- ❑ mandatory birth registration

Customary law

- ❑ age of marriage
- ❑ exception upon parental or court consent
- ❑ spousal consent
- ❑ age of consent to sex
- ❑ ad hoc authorities or mechanisms for child protection
- ❑ marital rape
- ❑ mandatory marriage registration
- ❑ mandatory birth registration

Provisions and Sanctions

- ❑ Criminal and penal codes in the 37 countries have been analyzed in order to gather information to provide an overview of how key provisions related to child marriage are actually implemented in the country, from both an administrative and penal point of view and of the major barriers to enforcement.
- ❑ Criminal procedure codes, penal and civil codes, family law, common law and/or supreme court rules, as well as civil and religious marriage acts and/or administrative registration rules have been analyzed in order to gather sanctions and legal provisions that penalize the act, performance or registration of child marriage or the endeavor of parents or guardians to ensure the growth and development of the child under their custody.
- ❑ Under this section, the authors also analyzed whether ad hoc authorities and/or ad hoc mechanisms exist for a child to access justice.

Contextual factors and Child marriage related policy

Final checklist

8. Key elements of the legislation

	Found	Not found	
Constitutional definition/protection/reference to marriage			
Constitutional definition/protection/reference to family			
Constitutional recognition of right to health			
Constitutional recognition/protection of gender equality/non-discrimination on the basis of gender/sex			
Minimum legal age of marriage			
Spousal consent to marriage			
No exceptions to the legal age for consent to marriage			
Assertion of primacy of national law over other forms of law			
Assertion of primacy of international law over national law			
Mandatory Birth registration			Hukou-household- system inst
Mandatory Marriage registration			
Ad hoc authority (including mechanisms of access to justice for remedies)			
Age of consent to sex			
Criminalization of marital rape			

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Key questions



Key questions include:

- ❑ What are good practices in the region?
- ❑ What did you do in your country to address the issue of child marriage from a legislative point of view?
- ❑ Are there any innovative approaches?
- ❑ What was the role of Parliamentarians in addressing the issue?
- ❑ What are the key elements for a good legislation?
- ❑ What are the key elements for effective enforcement?
- ❑ Are different systems of laws harmonized in the country?