

# CHILD MARRIAGE IN YEMEN: A VIOLATION OF INTERNATIONAL LAW

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## TABLE OF CONTENTS

I.	INTRODUCTION.....	760
II.	CHILD MARRIAGE IN YEMEN .....	761
	A. <i>Historical Context</i> .....	761
	B. <i>Harms to Which Child Marriage Gives Rise</i> .....	763
	1. <i>Violations of the Right to be Free from Violence</i> .....	763
	2. <i>Violations of the Right to Education</i> .....	765
	3. <i>Violations of the Right to Employment</i> .....	766
III.	CHILD MARRIAGE AND INTERNATIONAL LAW.....	767
	A. <i>Treaties to Which Yemen Belongs</i> .....	767
	1. <i>Treaty Mandating a Minimum Age: The 1965</i> <i>Convention on Consent to Marriage</i> .....	767
	2. <i>Other Treaties Mandating Marriage by Consent</i> .....	769
	a. <i>International Covenants</i> .....	769
	i. <i>Civil and Political Rights</i> .....	769
	ii. <i>Economic, Social, and Cultural Rights</i> .....	769
	b. <i>Women's Convention</i> .....	770
	3. <i>Treaties Protecting Children</i> .....	771
	a. <i>1989 Convention on the Rights of the Child</i> .....	771
	B. <i>General Practice of States with Regard to the Minimum</i> <i>Age of Marriage</i> .....	775
IV.	INTERNATIONAL LAW REQUIRES YEMEN TO ABOLISH CHILD MARRIAGE .....	776
	A. <i>What Other Nations May Do to Stop Child Marriage in</i> <i>Yemen</i> .....	776
	B. <i>Non-Legal Measures that May Help End the Practice of</i> <i>Child Marriage in Yemen</i> .....	779
V.	CONCLUSION .....	781

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## I. INTRODUCTION

In early September of 2013, reports emerged from Yemen that eight-year-old child bride “Rawan” had died of internal bleeding stemming from injuries she sustained the night of her arranged marriage to a forty-year-old man.<sup>1</sup> While local officials claimed that these reports were unfounded, the story nevertheless brought the issue of child marriage to the forefront of public discussion both in Yemen and in the larger international community.<sup>2</sup> Notably, European Union High Representative for Foreign Affairs and Security Policy Catherine Ashton issued a statement in the wake of the reports about Rawan urging the Yemeni government to “adhere to international law” and reinstate “a law setting a minimum age for marriage.”<sup>3</sup> Human Rights Watch backed Ashton’s statements and recommended that the minimum age be set at eighteen either by way of inclusion in the new constitution or by new statutory law.<sup>4</sup> In support of its position, Human Rights Watch argued that “Yemen is party to a number of international treaties and conventions that explicitly—or have been interpreted to—prohibit child marriage and commit governments to take measures to eliminate the practice.”<sup>5</sup> In light of the events of the Arab Spring,<sup>6</sup> Yemen is now in a unique historical position to implement reform. This Note will examine the historical background of minimum age laws for marriage in Yemen, the impact of child marriage on children in Yemen, and the international treaties on minimum age and child marriage laws to which Yemen is a party state. In particular, this Note will analyze the treaties with the purpose of determining whether Yemen’s practice of permitting child marriage is being exercised in violation of international law. It will also consider how Yemen’s new constitutional provisions or statutes on child marriage should be drafted and what other actions should be taken to end the practice of child marriage in Yemen.

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<sup>1</sup> *Yemen Child Marriage: Minister Calls for Ban After Death of Eight-Year-Old Girl*, THE GUARDIAN (Sept. 18, 2013), <http://theguardian.com/global-development/2013/sep/18/yemen-child-marriage-ban>.

<sup>2</sup> *Id.*

<sup>3</sup> Hind Al-Eryani, *Yemen’s Child Marriage Problem*, NOW (Sept. 19, 2013, 4:22 PM), <http://now.mmedia.me/lb/en/reports/features/yemens-child-marriage-problem>.

<sup>4</sup> *Yemen: End Child Marriage, Use Transition to Set 18 as Minimum Age*, HUMAN RIGHTS WATCH (Sept. 11, 2013), <http://www.hrw.org/news/2013/09/10/yemen-end-child-marriage>.

<sup>5</sup> *Id.*

<sup>6</sup> NPR Staff, *The Arab Spring: A Year of Revolution*, NPR (Dec. 17, 2011, 6:02 PM), <http://www.npr.org/2011/12/17/143897126/the-arab-spring-a-year-of-revolution> (describing the regional social upheaval known as the Arab Spring caused by opposition to the government in countries throughout North Africa and the Middle East).

## II. CHILD MARRIAGE IN YEMEN

*A. Historical Context*

To comprehend the background of the development of minimum age marriage laws in Yemen, it is necessary to understand the history of Yemen during the time periods in which they were enacted. Although Yemen was originally controlled by the Ottoman Empire, political control of the north and the south was split during the nineteenth century.<sup>7</sup> Zaydi imams controlled North Yemen until 1962, when the Yemen Arab Republic was established, and the British controlled South Yemen until 1967, when the socialist state of the People's Democratic Republic of Yemen was established.<sup>8</sup> In 1990, northern and southern Yemen were united into the Yemen Republic.<sup>9</sup>

Discrimination against women in Yemen is necessarily linked to the issue of child marriage. Such discrimination was present throughout Yemeni history and reinforced in the Yemen Republic through a series of constitutional amendments reflective of the current cultural and societal norms of the state.<sup>10</sup> The Constitution of Yemen originally included a provision providing women with "equal[ity] before the law" and ensuring that there would be no discrimination based on sex; however, amendments passed in 1994 changed these rights.<sup>11</sup> In 1994, amendments altered the constitution to exclude the "equal before the law" and "no discrimination" text and added an article stating that "[w]omen are sisters of men and they have rights and duties as guaranteed by Shari'a and the law."<sup>12</sup> The Yemeni government has historically used this amendment, with its specific reference to Shari'a law, as justification for the formation of sexually discriminatory laws.<sup>13</sup>

In January of 2011, the Arab Spring made its way to Yemen.<sup>14</sup> Inspired by demonstrations in Tunisia and Egypt, protestors took to public streets and

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<sup>7</sup> Amal Basha, Rana Ghanem & Nabil Abdulhafid, *Women's Rights in the Middle East and North Africa-Yemen*, FREEDOM HOUSE 3 (Oct. 14, 2005), available at <http://www.refworld.org/docid/47387b712f.html>.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Yemen's Arab Spring*, FANACK CHRONICLE, <https://chronicle.fanack.com/yemen/history-past-to-present/yemens-arab-spring> (last visited Feb. 27, 2015).

squares in Yemen, publicly and peacefully demonstrating their dissatisfaction with the Yemini government.<sup>15</sup> In particular, citizens complained that the constitutional reforms the government had proposed were not transformative enough.<sup>16</sup> In the wake of the protests, Yemen began the process of drafting a new constitution.<sup>17</sup>

It is against this backdrop that the history of the laws in Yemen relating to child marriage should be evaluated. The legal minimum age for marriage in Yemen was previously set at fifteen.<sup>18</sup> The Yemeni parliament abolished this law in 1999 on "religious grounds" so that there was no longer a minimum age.<sup>19</sup> Parliament cast a majority vote in 2009 to reinstate a minimum age, this time setting it at seventeen.<sup>20</sup> The law, however, never formally took effect.<sup>21</sup>

The politicians who prevented the law from passing claimed that a minimum age requirement for marriage would be "contrary to Sharia."<sup>22</sup> Yemeni opponents to setting a minimum age for marriage still use this argument today, despite the fact that "many other countries . . . that recognize Sharia as a source of law have set the marriage age at 18 or higher."<sup>23</sup> As support for this argument, some opponents base their opposition to a minimum age for marriage on the fact that the prophet Mohammed had a nine-year-old wife.<sup>24</sup> Given that, they argue, a ban on child marriage would be contrary to Shari'a law. Although some Yemeni religious and political leaders claim that opposition to child marriage in Yemen is a form of "cultural imperialism," others argue that the Shari'a may not actually support the practice.<sup>25</sup> The belief that Shari'a may not support child marriage stems from the fact that there is no evidence that the prophet's marriage to his nine-year-old bride was ever consummated, while child bride marriages in Yemen generally are.<sup>26</sup>

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<sup>15</sup> *Id.*

<sup>16</sup> *Update 1 — Protests Erupt in Yemen, President Offers Reform*, REUTERS (Jan. 20, 2011, 8:33 PM), <http://www.reuters.com/article/tunisiaNews/idAFLDE70J2BZ20110120>.

<sup>17</sup> *See Yemen: End Child Marriage, Use Transition to Set 18 as Minimum Age*, *supra* note 4.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *PRB Discuss Online: Child Marriage in Yemen*, POPULATION REFERENCE BUREAU, Apr. 26, 2011, available at <http://www.prb.org/Publications/Articles/2011/child-marriage-yemen.aspx>.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

Given this history, some argue that now is the perfect time for Yemen to work on changing its discriminatory laws. Yemen is currently in the process of drafting a new constitution, and Human Rights Minister Hooria Mashhour has voiced her intention of preparing a draft law for the Rights and Freedoms Committee in the National Dialogue Conference that would set a legal minimum marriage age at eighteen.<sup>27</sup> Given that Yemen is already party to a number of international treaties and obligations that require establishing a minimum age for marriage as well as eradicating the practice of child marriage, the country is likely to face widespread opposition both nationally and internationally if actions are not taken now in this new and unique political climate.<sup>28</sup>

### *B. Harms to Which Child Marriage Gives Rise*

Widespread international (as well as national) opposition to the Yemeni state's acquiescence to the practice of child marriage within its borders exists for many reasons. Opponents argue that child marriage violates international human rights laws.<sup>29</sup> They point in particular to violations of the right to be free from violence, the right to education, the right to employment, and the right to free and consensual marriage.<sup>30</sup>

#### *1. Violations of the Right to be Free from Violence*

Child brides are often exposed to severe violence in the homes of their new husbands.<sup>31</sup> According to the leader of SEYAJ, an organization for childhood protection in Yemen, "[t]he husbands of child brides often 'beat them and abuse them, deprive them of food, and force them into sex.'"<sup>32</sup> The Human Rights Watch claims "research cites spousal age difference, typical of child marriage, as a significant risk factor associated with violence and sexual abuse against girls."<sup>33</sup>

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<sup>27</sup> See Al-Eryani, *supra* note 3.

<sup>28</sup> *Yemen: End Child Marriage: Use Transition to Set 18 as Minimum Age*, *supra* note 4.

<sup>29</sup> *Q & A: Child Marriage and Violations of Girls' Rights*, HUMAN RIGHTS WATCH (June 14, 2013), available at <http://www.hrw.org/news/2013/06/14/q-child-marriage-and-violations-girls-rights>.

<sup>30</sup> *Id.*

<sup>31</sup> *From Poverty to Violence: Yemen Child Brides Sold to Abusive Men*, MIDDLE EAST ONLINE (Oct. 13, 2013), available at <http://www.middle-east-online.com/english/?id=61946>.

<sup>32</sup> *Id.*

<sup>33</sup> See *Q & A: Child Marriage and Violations of Girls' Rights*, *supra* note 29.

In 2008, ten-year-old Nujood Ali and eleven-year-old Reem were forcibly wed to older, abusive husbands.<sup>34</sup> Both girls provided details of the abuse they suffered in court and were able to obtain divorces.<sup>35</sup> In 2010, thirteen-year-old Hind escaped from her seventy-year-old husband, who had repeatedly beaten and raped her, only to be captured by her uncle and chained outside his home for months as punishment.<sup>36</sup> Also in 2010, ten-year-old Sally Al-Sabahi and eleven-year-old Wafa were married to abusive husbands.<sup>37</sup> Al-Sabahi's husband beat and raped her—on one occasion her aunt tied her down to the bed when she resisted.<sup>38</sup> Wafa's husband tortured and raped her repeatedly.<sup>39</sup> Both girls eventually obtained divorces.<sup>40</sup>

The issue of sexual violence within these marriages is compounded by the fact that many child brides have not yet gone through puberty.<sup>41</sup> In 2010, twelve-year-old Fawziya Abdullah Youssef died giving birth to a stillborn baby after three days of agonizing labor.<sup>42</sup> Thirteen-year-old Ilham died three days after her marriage from excessive bleeding caused by a genital tear during sex.<sup>43</sup> And eleven-year-old Saliyeh was hospitalized with genital injuries resulting from sex with her much older husband.<sup>44</sup>

According to Human Rights Watch, “girls aged 15 to 20 are twice as likely to die in childbirth as those in their 20s, and girls under the age of 15 are five times as likely to die.”<sup>45</sup> This is because young girls' pelvises and birth canals are “physical[ly] immature[e]” and not yet fully developed.<sup>46</sup> Childbirth complications “are exacerbated where emergency obstetric

<sup>34</sup> *Yemen: End Child Marriages by Enacting and Enforcing a Minimum Age of Marriage Law*, EQUALITY NOW (Sept. 19, 2013), [http://www.equalitynow.org/take\\_action/adolescent\\_girls\\_action344](http://www.equalitynow.org/take_action/adolescent_girls_action344).

<sup>35</sup> *Id.*

<sup>36</sup> *YEMEN: Child Bride Escapes After Months of Abuse and Chains*, L.A. TIMES (Apr. 1, 2010, 7:20 AM), available at <http://latimesblogs.latimes.com/babylonbeyond/2010/04/yemen-runaway-child-bride-and-fourth-child-bride-granted-divorce.html>.

<sup>37</sup> Hugh Macleod & Annasofie Flamand, *Sally's Story*, AL JAZEERA (Sept. 6, 2010, 9:11 GMT), [http://www.aljazeera.com/photo\\_galleries/africa/2010831920332122.html](http://www.aljazeera.com/photo_galleries/africa/2010831920332122.html); *Yemen: End Child Marriages by Enacting and Enforcing a Minimum Age of Marriage Law*, *supra* note 34.

<sup>38</sup> Macleod & Flamand, *supra* note 37.

<sup>39</sup> *Yemen: End Child Marriages by Enacting and Enforcing a Minimum Age of Marriage Law*, *supra* note 34.

<sup>40</sup> *Id.*

<sup>41</sup> *Q & A: Child Marriage and Violations of Girls' Rights*, *supra* note 29.

<sup>42</sup> *Yemen: End Child Marriages by Enacting and Enforcing a Minimum Age of Marriage Law*, *supra* note 34.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> *Q & A: Child Marriage and Violations of Girls' Rights*, *supra* note 29.

<sup>46</sup> *Id.*

services are scarce, as is the case in many societies where child marriage is prevalent,” like Yemen.<sup>47</sup> Child pregnancy also creates “a serious risk of [the child] developing obstetric fistula, since their smaller pelvises make them prone to obstructed labor.”<sup>48</sup> The physical immaturity of the girls may also lead to internal injuries stemming from sexual intercourse.<sup>49</sup>

Child brides exposed to domestic violence may experience psychological injuries in addition to physical injuries.<sup>50</sup> According to the American Psychological Association, children who have experienced sexual abuse may suffer from “anxiety, guilt, fear . . . and acting out.”<sup>51</sup> These children may also experience “regressive behavior” such as “thumb-sucking, bed wetting, sleep disturbances, eating problems, and behavior and/or performance problems at school.”<sup>52</sup> The psychological effects of child sexual abuse may also follow the child into adulthood, manifesting themselves in “high levels of anxiety . . . [which] can result in self-destructive behaviors, such as alcoholism or drug abuse, anxiety attacks, situation-specific anxiety disorders, and insomnia.”<sup>53</sup>

## 2. *Violations of the Right to Education*

Child marriage often marks the end of a girl’s opportunity to receive education.<sup>54</sup> Upon marriage, child brides are expected to take on domestic responsibilities.<sup>55</sup> These responsibilities are often viewed as more important than the continuation of the child’s education.<sup>56</sup> According to the Elders, an independent group of global leaders who work together for peace and human rights,

[t]here are strong correlations between high rates of child marriage and low levels of education for girls. Over 60 percent of child brides in developing countries have had no formal

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<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> *Child Marriage*, FORWARD, available at <http://www.forwarduk.org.uk/key-issues-child-marriage/> (last visited Feb. 27, 2015).

<sup>50</sup> AMERICAN PSYCHOLOGICAL ASSOC., UNDERSTANDING CHILD SEXUAL ABUSE, available at <http://www.apa.org/pubs/info/brochures/sex-abuse.aspx#> (last visited Feb. 27, 2015).

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> *Q & A: Child Marriage and Violations of Girls’ Rights*, *supra* note 29.

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

schooling at all. Child brides are often practically and legally excluded from continuing their education—married children are half as likely to be in school as children who aren't married.<sup>57</sup>

The Director of Sanaa University's Gender-Development Research and Studies Center, Dr. Husnia al-Kaderi, claimed that child marriage is "the main reason for the lack of education among girls" in Yemen.<sup>58</sup> Al-Kaderi claims that the illiteracy rate of Yemeni women exceeds 70% due to the fact that "[w]hen they get married, girls are expected to quit school and engage in motherly activities."<sup>59</sup>

### 3. *Violations of the Right to Employment*

Due to their domestic responsibilities and lack of education, child brides are often deprived of the opportunity to work outside the home.<sup>60</sup> In the words of a twelve-year-old child bride interviewed by Human Rights Watch, "All that I'm good for is to be a mother, and a home maker . . . I'm illiterate. They didn't teach us anything. If they did, at least I would have benefitted from something."<sup>61</sup>

As stated before, Dr. Husnia al-Kaderi cited child marriage as the reason that "illiteracy among Yemeni women is more than 70 percent."<sup>62</sup> This deprivation of the right to education leaves many child brides stuck in poverty.<sup>63</sup> According to the Population Reference Bureau, "[a] single year of primary school boosts women's wages later in life by 10 percent to 20 percent, while the boost from female secondary education is 15 percent to 25 percent."<sup>64</sup>

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<sup>57</sup> *Q&A: Child Marriage and the Right to Education*, THE ELDERS (Oct. 10, 2013), <http://theelders.org/article/qa-child-marriage-and-right-education>. The Elders is "an independent group of global leaders who work together for peace and human rights" and was established by Nelson Mandela in 2007. The Elders achieve this goal through private and public advocacy. *What is The Elders?*, THE ELDERS, <http://theelders.org/about> (last visited Feb. 6, 2015).

<sup>58</sup> *YEMEN: Early Marriage Hampering Country's Development, Says Report*, IRIN (Mar. 26, 2008), <http://www.irinnews.org/report/77454/yemen-early-marriage-hampering-country-s-development-says-report>.

<sup>59</sup> *Id.*

<sup>60</sup> *See Q & A: Child Marriage and Violations of Girls' Rights*, *supra* note 29.

<sup>61</sup> *Id.*

<sup>62</sup> *YEMEN: Early Marriage Hampering Country's Development, Says Report*, *supra* note 58.

<sup>63</sup> *Id.*

<sup>64</sup> Alexandra Hervish & Charlotte Feldman-Jacobs, *Who Speaks for Me? Ending Child Marriage*, POPULATION REFERENCE BUREAU 3 (201), <http://www.prb.org/pdf11/ending-child->

## III. CHILD MARRIAGE AND INTERNATIONAL LAW

A. *Treaties to Which Yemen Belongs*

The Human Rights Watch pointed out in a 2013 statement that “Yemen is party to a number of international treaties and conventions that explicitly—or have been interpreted to—prohibit child marriage and commit governments to take measures to eliminate the practice.”<sup>65</sup> In making this assertion, the Human Rights Watch specifically mentioned the Convention on Consent to Marriage, Minimum Age for Marriage, and Registration of Marriages.<sup>66</sup>

1. *Treaty Mandating a Minimum Age: The 1965 Convention on Consent to Marriage*

Yemen ratified the Convention on Consent to Marriage, Minimum Age for Marriage, and Registration of Marriages (Child Marriage Convention) on February 9, 1987 with no reservations.<sup>67</sup> The treaty took effect in Yemen on May 10, 1987, and today has fifty-five States Parties, among them the United States.<sup>68</sup>

The Child Marriage Convention explicitly prohibits the practice of child marriage.<sup>69</sup> It does not, however, explicitly set a minimum age at which marriage is appropriate.<sup>70</sup> The preamble references resolution 843(IX) of the General Assembly of the United Nations, which states that “certain customs, ancient laws and practices relating to marriage and the family were inconsistent with the principles set forth in the Charter of the United Nations

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marriage.pdf. The Population Reference Bureau is a non-profit organization that exists to provide information to the international community about population, health, and the environment so that “policymakers in developing countries and in the United States rely on sound evidence, rather than anecdotal or outdated information, when creating population, health, and environmental policies.” *About PRB*, POPULATION REFERENCE BUREAU, <http://www.prb.org/About.aspx>; *Population Reference Bureau*, VELIR, <http://www.velir.com/prb> (last visited Feb. 6, 2015).

<sup>65</sup> *Yemen: End Child Marriage, Use Transition to Set 18 as Minimum Age*, *supra* note 4.

<sup>66</sup> *Id.*

<sup>67</sup> Convention on Consent to Marriage, Minimum Age for Marriage, and Registration of Marriages, 7 Nov. 1962, 521 U.N.T.S. 231 [hereinafter Child Marriage Convention].

<sup>68</sup> *Id.*; *Treaty Database: Convention on Consent to Marriage, Minimum Age for Marriage, and Registration of Marriages*, OVERHEID.NL, <https://verdragenbank.overheid.nl/en/Verdrag/Details/004690> (last visited Feb. 27, 2015) (indicating treaty went into force in Yemen on May 10, 1987).

<sup>69</sup> Child Marriage Convention, *supra* note 67.

<sup>70</sup> *Id.*

and in the Universal Declaration of Human Rights.”<sup>71</sup> The preamble directs that States Parties should “take all appropriate measures with a view to abolishing such customs, ancient laws, and practices, by ensuring . . . complete freedom in the choice of a spouse, eliminating completely child marriages and the betrothal of young girls before the age of puberty . . . .”<sup>72</sup>

The articles of the Child Marriage Convention do not specify a minimum age. Article 2 calls on States Parties to take legislative action to set a minimum marriage age.<sup>73</sup> The Article goes on to state that States Parties will not permit people below this age limit to be legally married, with an exception for “serious reasons . . . in the interest of the intending spouses.”<sup>74</sup>

Therefore, besides the broad directives in the preamble, the treaty gives no guidance on the appropriate minimum age to be set. The preamble reference to “betrothal of young girls before the age of puberty” is vague, and seemingly at odds with another preambular phrase, “eliminating completely child marriages.”<sup>75</sup> Although the treaty purports to constitute an agreement banning the practice of child marriage, its vagueness affords states room to continue to permit the practice of child marriage while still arguing that their actions are in compliance with treaty obligations.

Regardless of the treaty’s vagueness with respect to the actual minimum age to be established, Yemen’s actions are in clear violation of the treaty’s provisions. The Child Marriage Convention explicitly provides that States Parties should set a minimum age for marriage through legislation.<sup>76</sup> Although Yemen may be able to argue that it does not permit girls to marry

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<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> *Id.* art. 2 (“States Parties to the present Convention shall take legislative action to specify a minimum age for marriage.”).

<sup>74</sup> *Id.* (“No marriage shall be legally entered into by any person under this age, except where a competent authority has granted a dispensation as to age, for serious reasons, in the interest of the intending spouses.”).

<sup>75</sup> Over the past 150 years, the average age at which a child reaches puberty has steadily declined. Mary Pierce & Rebecca Hardy, Commentary, *The Decreasing Age of Puberty—As Much a Psychosocial as Biological Problem?*, 41 INT’L J. EPIDEMIOLOGY 300 (2012). The average age at which females reach puberty today is eleven, suggesting that “betrothal of young girls before the age of puberty” may no longer be an appropriate or effective protection against child marriage. *Puberty*, NHS CHOICES, <http://www.nhs.uk/conditions/Puberty/pages/introduction.aspx> (last visited Feb. 6, 2015). Therefore, the preamble’s reference to “betrothal of young girls before the age of puberty” seems to be at odds with the other preambular phrase about “eliminating completely child marriages.”

<sup>76</sup> Child Marriage Convention, *supra* note 67, art. 2.

before reaching the age of puberty, it cannot argue that it has legislatively set a minimum age marriage law—it is clear that it has not.

## 2. *Other Treaties Mandating Marriage by Consent*

### a. *International Covenants*

#### i. *Civil and Political Rights*

Yemen ratified the 1966 International Covenant on Civil and Political Rights on February 9, 1987 with no reservations.<sup>77</sup> Today, the treaty has 168 States Parties.<sup>78</sup> State acquiescence to and inaction on child marriage is in direct violation of Article 23 of the Covenant.<sup>79</sup>

Article 23(2) only discusses the right to marriage of those of a “marriageable age,”<sup>80</sup> Article 23(3) prohibits marriage without consent,<sup>81</sup> and Article 23(4) requires States Parties to take affirmative action to ensure equal rights in marriage in their countries.<sup>82</sup> While inaction on the issue of child marriage does not explicitly violate Article 23(2) (the provision establishes a right to marriage between those of marriageable age, but does not say that states cannot permit marriage below this age), it does seem to violate Article 23(3) and (4). Child brides often do not consent to their marriages (meaning no free and full consent), and Yemen has done nothing to ensure equality of rights within marriage.

#### ii. *Economic, Social, and Cultural Rights*

Yemen ratified the 1966 International Covenant on Economic, Social, and Cultural Rights with no reservations in 1987.<sup>83</sup> Today, the treaty has 161 States Parties. State inaction on the issue of child marriage in Yemen is a

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<sup>77</sup> International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171.

<sup>78</sup> *Id.*

<sup>79</sup> *Id.* art. 23.

<sup>80</sup> *Id.* art. 23(2) (“The right of men and women of marriageable age to marry and to found a family shall be recognized.”).

<sup>81</sup> *Id.* art. 23(3) (“No marriage shall be entered into without the free and full consent of the intending spouses.”).

<sup>82</sup> *Id.* art. 23(4) (“States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution.”).

<sup>83</sup> International Covenant on Economic, Social, and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3.

direct violation of Article 10 and also arguably violates Articles 11 and 12 of the Covenant.

Article 10 states that marriage must be entered into with free consent of both spouses.<sup>84</sup> As stated before, child marriage often violates this provision. Article 11 provides that States Parties will take steps to ensure adequate standards of living for its citizens.<sup>85</sup> Finally, Article 12 provides that States parties must recognize the rights of all to the highest attainable standard of physical and mental health.<sup>86</sup> Given the realities of a child bride's life after marriage, particularly prevalent mental and physical abuse, child marriage seems to violate Articles 11 and 12 as well.

*b. Women's Convention*

Yemen ratified the 1979 Convention on the Elimination of All Forms of Discrimination Against Women (Women's Convention) on May 30, 1984 with reservations.<sup>87</sup> The treaty took effect in Yemen on June 29, 1984, and today has 187 states parties.<sup>88</sup> Yemen's reservation applies to Article 29(1), "relating to the settlement of disputes that may arise concerning the application or interpretation of the Convention," and it does not affect the analysis of any potential provisions relating to child marriage.<sup>89</sup>

The Women's Convention expressly prohibits the practice of child marriage.<sup>90</sup> Article 16 of the Convention provides that states parties will ensure the right of their people to choose a spouse as well as ensuring marriage occurs only on the basis of the consent of both parties.<sup>91</sup> Notably,

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<sup>84</sup> *Id.* art. 10.

<sup>85</sup> *Id.* art. 11 ("States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing, and housing, and to the continuous improvement of living conditions. . . . State Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.").

<sup>86</sup> *Id.* art. 12 ("States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.").

<sup>87</sup> Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13 [hereinafter Women's Convention].

<sup>88</sup> *Id.*; *Treaty Database: Convention on the Elimination of All Forms of Discrimination Against Women*, OVERHEID.NL, <https://treatydatabase.overheid.nl/en/Verdrag/Details/000837> (last visited Feb. 27, 2014) [hereinafter *Treaty Database*] (indicating treaty went into force in Yemen on June 29, 1984).

<sup>89</sup> *Treaty Database*, *supra* note 88.

<sup>90</sup> Women's Convention, *supra* note 87.

<sup>91</sup> *Id.* ("States Parties shall . . . ensure, on a basis of equality of men and women: . . . (b) the same right freely to choose a spouse and to enter into marriage only with their free and full consent.").

Article 16 also explicitly addresses the issue of child marriage, stating that states parties will give child marriages no legal effect and that “necessary action,” including legislation, must be taken by states parties to set a minimum marriage age.<sup>92</sup> Although the marriage equality provision alone may not be enough to hold Yemen in violation of the treaty (as there is no law protecting young boys either), the provisions on the marriage of children and the need for legislation are enough to establish a violation.

### 3. *Treaties Protecting Children*

#### a. *1989 Convention on the Rights of the Child*

Yemen is also a party state to the 1989 Convention on the Rights of the Child, to which it has been bound since 1991, and to which virtually every country in the world now belongs.<sup>93</sup> Although the 1989 Convention on the Rights of the Child explicitly states the age of a child—under eighteen—it does not mention the practice of child marriage.<sup>94</sup> Some of its articles, on privacy, violence, and sexual abuse, however, seem to imply that the Yemeni state’s acquiescence to the practice of child marriage would violate the treaty. These provisions can be found in Articles 3, 6, 16, 27, and 34, as well as in Articles 2, 3, and 9 of the 2000 Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography.<sup>95</sup>

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<sup>92</sup> *Id.* (“The betrothal and marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage.”).

<sup>93</sup> Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3, entered into force Sept. 2, 1990. Yemen ratified this treaty on May 1, 1991. *Convention on the Rights of the Child*, U.N. Treaty Collection, [http://treaties.un.org/Pages/ViewDetails.aspx?mtdsg\\_no=1V-11&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?mtdsg_no=1V-11&chapter=4&lang=en) (last visited Nov. 30, 2013). As of late November 2013, it had 193 parties, including the Holy See and all U.N. member states except Somalia, South Sudan, and the United States. *Id.* According to reports, the United States soon may be the only nonmember state. See Jo Becker, *Dispatches: Will US be Last to Endorse Child Rights Convention?*, HUMAN RIGHTS WATCH (Nov. 26, 2013), <http://www.hrw.org/news/2013/11/26/dispatches-will-us-be-last-endorse-child-rights-convention>; Diane Marie Amann, *With South Sudan Vote, US (Again) Will Stand (Virtually) Alone on Children’s Rights* (Nov. 21, 2013), <http://dianemariamann.com/2013/11/21/with-south-sudan-vote-us-again-will-stand-virtually-alone-on-childrens-rights/>.

<sup>94</sup> Convention on the Rights of the Child, *supra* note 93.

<sup>95</sup> *Id.*; Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography, *available at* <http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPSCCRC.aspx>. Yemen ratified the Optional Protocol with no reservations on December 15, 2004. *Id.* The Protocol took effect on January 15, 2005, and today has 169 states parties. *Id.*

The preamble to the 1989 Convention on the Rights of the Child states the Convention's intent to help the children of all States Parties achieve free and individual lives, lived pursuant to the ideals proclaimed in the UN Charter—particularly, “in the spirit of peace, dignity, tolerance, freedom, equality, and solidarity.”<sup>96</sup> The Preamble also states the need for special safeguards for children given their vulnerable state in relation to adults, including legal protection when necessary, and that special attention should be given to children “living in exceptionally difficult conditions.”<sup>97</sup>

Given the harms of early marriage on child brides, it is obvious that the practice is not in compliance with the goals of the treaty as stated in the preamble. The violence and sexual abuse that young brides face are clear affronts to their peace, dignity and freedom. Moreover, the lack of education and employment undermine their dignity and equality. It is also obvious that “appropriate legal protection,” promised in the preamble, does not extend to child brides. In the Child Marriage Convention, for example, Yemen agreed to set a minimum age marriage law.<sup>98</sup> The fact that Yemen has not done so demonstrates that “appropriate legal protection” is not being extended to its children. Even if Yemen does set a minimum-age marriage law, further actions may be required since establishing a law does not necessarily mean that it will be followed or enforced.

What is more, provisions in the body of the Children's Convention also have been violated. Article 3 states that the best interest of the child should be the most important consideration in all actions affecting children.<sup>99</sup> Article 6 provides that states parties will ensure, as best they can, the development and survival of the state's children.<sup>100</sup> These provisions imply that permitting the practice of child marriage would be a violation of the treaty obligations, considering that marrying a child off to an older man often restricts or severs the child's access to education and exposes her to physical and psychological attack. Such a practice is clearly not within the “best

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<sup>96</sup> Convention on the Rights of the Child, *supra* note 93, at pmb. (“[T]he child should be fully prepared to live an individual life in society, and brought up in the spirit of the ideals proclaimed in the Charter of the United Nations, and in particular in the spirit of peace, dignity, tolerance, freedom, equality and solidarity.”).

<sup>97</sup> *Id.* (“[T]he child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection. Recognizing that, in all countries in the world, there are children living in exceptionally difficult conditions, and that such children need special consideration.”).

<sup>98</sup> Child Marriage Convention, *supra* note 67.

<sup>99</sup> Convention on the Rights of the Child, *supra* note 93, art. 3 (“In all actions concerning children . . . the best interests of the child shall be a primary consideration.”).

<sup>100</sup> *Id.* art. 6 (“States Parties shall ensure to the maximum extent possible the survival and development of the child.”).

interests” of the child, as Article 3 mandates.<sup>101</sup> In allowing the practice to continue, the state is clearly not meeting the Article 6 requirement that it “ensure to the maximum extent possible the survival and development of the child.”<sup>102</sup> It is unlikely that a state truly acting to wholly ensure its children’s survival and development would allow a practice to continue that frequently subjects them to violence and limits their access to education and jobs.

Finally, several provisions of the 1989 Convention on the Rights of the Child detail state duties to protect children from mental and physical abuse, as well as to provide children with an adequate standard of living.<sup>103</sup> In this regard, Article 19 provides that

States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of . . . any . . . person who has the care of the child.<sup>104</sup>

Article 27 similarly provides that every child has a right to an adequate standard of living for development.<sup>105</sup> And, finally, Article 34 provides that member states will protect children from sexual exploitation and abuse and that they will affirmatively act to prevent certain harms, including “[t]he inducement or coercion of a child to engage in any unlawful sexual activity.”<sup>106</sup>

Nowhere does the Children’s Convention overtly state that the parties to the treaty agree to eradicate child marriage; nevertheless, there is an implied promise in the provisions mentioned above.<sup>107</sup> Given the well-documented detrimental effects of child marriage upon the children involved, it is hard to imagine how a state could carry out its obligations under the treaty while still allowing the practice of child marriage to continue in its country. In

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<sup>101</sup> *Id.* art. 3.

<sup>102</sup> *Id.* art. 6.

<sup>103</sup> *See id.* arts. 9, 19, 27, 34.

<sup>104</sup> *Id.* art. 19.

<sup>105</sup> *Id.* art. 27 (“States Parties recognize the right of every child to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development.”).

<sup>106</sup> *Id.* art. 34 (“States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent: (a) The inducement or coercion of a child to engage in any unlawful sexual activity.”).

<sup>107</sup> *See* text accompanying *supra* notes 96–106.

particular, the provisions on violence, sexual abuse, and the child's development seem to be at odds with this practice.

Yemen also ratified the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography with no reservations on December 15, 2004, and the protocol took effect in Yemen on January 15, 2005.<sup>108</sup> As its name indicates, the treaty seeks to prevent the sale of children as well as sexual crimes against children. Although there is no specific mention of child marriage in this Optional Protocol, the definition of "sale of children" in the treaty, coupled with the practices surrounding the effectuation of child marriage in Yemen, suggest that it would be covered under the treaty.<sup>109</sup> Article 2 of the protocol defines the "[s]ale of children" as any act in which a child is exchanged for money or "any other consideration."<sup>110</sup> Article 3 further states that States Parties will take action to criminalize the sale or "purchase" of children for stated purposes, including for the sexual exploitation of the child.<sup>111</sup> Article 9 provides that states parties will adopt proper laws, social policies, and programs to ensure that the offenses listed in the protocol do not occur.<sup>112</sup>

In Yemen, exchanging dowries for brides is considered to be the norm.<sup>113</sup> The dowry process refers to the practice by which a husband (or the husband's family) agrees to pay a certain amount of money to the bride's

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<sup>108</sup> Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Pornography, May 25, 2000, 2171 U.N.T.S. 227, available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPSCCRC.aspx> [hereinafter *Optional Protocol*]; *Treaty Database: Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography*, OVERHEID.NL, <https://verdragenbank.overheid.nl/en/Verdrag/Details/009290> (last visited Feb. 27, 2015) (indicating treaty went into force in Yemen on January 15, 2005).

<sup>109</sup> Optional Protocol, *supra* note 108, art. 2; *Yemeni Minister to Seek Child-Marriage Ban*, AL JAZEERA (Sept. 14, 2013), <http://www.aljazeera.com/news/middleeast/2013/09/201391413182157493>.

<sup>110</sup> Optional Protocol, *supra* note 108, art. 2 ("[A]ny act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration.").

<sup>111</sup> *Id.* art. 3 ("Each state party shall ensure that, as a minimum, the following acts and activities are fully covered under its criminal or penal law . . . (a) in the context of sale of children as defined in article 2: (i) Offering, delivering or accepting, by whatever means, a child for the purpose of: a. Sexual exploitation of the child.").

<sup>112</sup> *Id.* ("States Parties shall adopt or strengthen, implement and disseminate laws, administrative measures, social policies, and programmes to prevent the offenses referred to in the present Protocol.").

<sup>113</sup> Sara Al-Zawqari, *Women + Dowry Prices = Not an Equation That Adds Up to Marriage*, YEMEN TIMES (Sept. 17, 2013), <http://www.yementimes.com/en/1712/report/2903/women-dowry-prices=-not-an-equation-that-adds-up-to-marriage.html>.

family in exchange for her hand in marriage.<sup>114</sup> In countries with extremely high rates of poverty, like Yemen, the availability of a dowry creates a huge incentive for parents to agree to marry their daughters off at a young age.<sup>115</sup> Yemeni women's-rights advocate Rashida al-Hamdani claimed "[s]ome families are getting rid of their girls because of poverty."<sup>116</sup> Marrying off their daughters early gives them money to live off of as well as one less mouth to feed. According to NPR's Kelly McEvers, "many families see marrying their young daughters and receiving dowries as a way to survive."<sup>117</sup> Given that these dowry payments essentially involve the exchange of money for a person, child marriages realized through dowry payments are at odds with the provisions of the Optional Protocol to the Children's Convention prohibiting the "sale of children." Thus, under Article 9 of the Optional Protocol, Yemen has an affirmative duty to adopt laws and social programs designed to eradicate child marriage agreements involving dowry payments.<sup>118</sup>

### *B. General Practice of States with Regard to the Minimum Age of Marriage*

As of 2010, 118 states had established laws setting the minimum age for marriage at eighteen or above, and eighty of these states set the marriage age at eighteen or above with certain exceptions.<sup>119</sup> In contrast, only sixty-five states had established laws setting the minimum age for marriage below eighteen.<sup>120</sup>

Although a clear majority of states have established minimum age marriage laws of eighteen or above, eighty have done so on the basis of certain exceptions.<sup>121</sup> Examples of these exceptions include physical development, pregnancy, court order or permission, consent or parental consent, religious exceptions, special circumstances, and permits.<sup>122</sup>

Thus, although the fact that a clear majority of states have established minimum age marriage laws setting the minimum age at eighteen or above

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<sup>114</sup> *Id.*

<sup>115</sup> Macleod & Flamand, *supra* note 37.

<sup>116</sup> Kelly McEvers, *Tragedy Shines Light on Lives of Yemeni Child Brides*, NPR (Apr. 19, 2010), <http://www.npr.org/templates/story/story.php?storyId=126110751>.

<sup>117</sup> *Id.*

<sup>118</sup> Optional Protocol, *supra* note 108, art. 9.

<sup>119</sup> EQUALITY NOW, CHILD MARRIAGE FACT SHEET 2-4 (2010), available at [http://www.equalitynow.org/sites/default/files/Child%20Marriage%20Fact\\$20Sheet\\_0.pdf](http://www.equalitynow.org/sites/default/files/Child%20Marriage%20Fact$20Sheet_0.pdf).

<sup>120</sup> *Id.*

<sup>121</sup> *Id.*

<sup>122</sup> *Id.*

suggests binding customary law of the general practice of states, that so many have done so only upon the inclusion of exceptions serves to weaken the argument. In other words, although the general practice of states suggests that Yemen may be obligated to set its minimum age marriage law to eighteen or above, the practical effect of such an obligation may be limited. Setting a minimum age marriage law to “eighteen or above except for religious reasons” or “eighteen or above unless consent is given” could have the effect of simply allowing Yemen to institute a minimum age marriage law (of eighteen) that is not actually practiced. Yemen could set the minimum age law and continue to allow the practice by arguing that it was permitting certain child marriages on the grounds of religious justifications.

Regardless of the practical effects, however, the fact that a majority of states, varying geographically and economically, have established minimum age marriage laws of eighteen or above suggests that the practice is an international norm constituting customary international law. Therefore, Yemen has direct treaty obligations as well as obligations under customary international law to establish a minimum age marriage law.

#### IV. INTERNATIONAL LAW REQUIRES YEMEN TO ABOLISH CHILD MARRIAGE

##### *A. What Other Nations May Do to Stop Child Marriage in Yemen*

As discussed, Yemen has an obligation under international law to implement a minimum age marriage law as well as to prohibit the practice of child marriage within its borders. These obligations stem from Yemen's ratification of various treaties that lead, either directly or by implication, to abolition of child marriage. Provisions of the treaties at issue provide for the possible consequences for breach.

Article 8 of the Child Marriage Convention provides that any disputes between States Parties as to the interpretation or application of the treaty not resolved through negotiation will be referred to the International Court of Justice (ICJ) if all parties to the dispute so request.<sup>123</sup> Similarly, Article 29 of the Women's Convention provides that disputes between States Parties about the application or interpretation of the treaty (which are not resolved through negotiations) will be submitted to arbitration at the request of any party to the

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<sup>123</sup> See Child Marriage Convention, *supra* note 67, art. 8.

dispute.<sup>124</sup> If the parties do not agree to arbitrate within six months of the request, any party may submit a request for a ruling on the issue to the ICJ.<sup>125</sup>

The 1989 Convention on the Rights of the Child, in contrast, does not specifically address what will happen in the case of disputes between the States Parties about the application or interpretation of the treaty.<sup>126</sup> Instead, this treaty focuses on the creation, in Article 43, of the Committee on the Rights of the Child.<sup>127</sup> Under Article 44 of the treaty, states are required to provide the Committee with “reports on the measures they have adopted which give effect to the [treaty] rights . . . and on the progress made on the enjoyment of those rights” every five years.<sup>128</sup>

States Parties to the Child Marriage Convention and the Women’s Convention may bring the issue of whether Yemen has violated the provisions in those treaties relating to child marriage to the ICJ pursuant to jurisdictional provisions in those treaties.<sup>129</sup> States Parties to these treaties wishing to bring the issue of Yemen’s breach before the ICJ may do so by submitting an application to the court.<sup>130</sup> Should the state against which the ICJ decides fail to comply with the ruling of the Court, parties to the original dispute may bring the matter before the Security Council.<sup>131</sup> The Security Council may then decide which measures will be taken to enforce the judgment.<sup>132</sup> Such measures could potentially involve legally binding trade sanctions against the country failing to live up to its obligations.<sup>133</sup>

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<sup>124</sup> Women’s Convention, *supra* note 87, art. 29.

<sup>125</sup> *Id.*

<sup>126</sup> *See* Convention on the Rights of the Child, *supra* note 93.

<sup>127</sup> *Id.* art. 43 (“For the purpose of examining the progress made by States Parties in achieving the realization of the obligations undertaken in the present Convention, there shall be established a Committee on the Rights of the Child.”).

<sup>128</sup> *Id.* art. 44.

<sup>129</sup> *See supra* text accompanying notes 123–25.

<sup>130</sup> HOW THE COURT WORKS, INTERNATIONAL COURT OF JUSTICE (2013), available at <http://www.icj-cij.org/court/index.php?p1=1&p2=6>. The International Court of Justice has a jurisdictional requirement for entertaining such applications. The jurisdictional clause in these treaties, however, provides that all States Parties agree to the settlement of disputes as to the application or interpretation of the treaties in the ICJ, is enough to satisfy this requirement. *Id.*

<sup>131</sup> *Id.*

<sup>132</sup> *Id.* The Security Council considers such instances of states’ failure to comply with the ruling of the International Court of Justice due to the fact that Article 94 of the UN Charter provides that all UN members “undertake[ ] to comply with the decision of the [ICJ] in any case to which it is a party” and that “[i]f any party to a case fails to perform the obligations . . . the other party may have recourse to the Security Council.” U.N. CHARTER art. 94.

<sup>133</sup> MARK WESTON JANIS & JOHN E. NOYES, INTERNATIONAL LAW: CASES AND COMMENTARY 342 (4th ed. 2011). This is highly unlikely, however, as even though the Security Council is

Although recourse to the ICJ theoretically provides a means of encouraging Yemen to abide by its treaty obligations, it is unlikely that such recourse will occur, and, if it does, it is equally unlikely that it will be successful in deterring Yemen from continuing in this practice. For one, the ICJ will only consider contentious claims between two nation states.<sup>134</sup> This means that non-governmental human rights organizations cannot take up the claims on behalf of concerned parties—one of the other States Parties to the conventions will have to do so.<sup>135</sup> Because bringing a case before the ICJ requires extensive commitments of time and money, it is unlikely that other States Parties to the convention will have a strong enough motive to bring the claim. And while human rights non-governmental organizations may have a very strong motive to bring the claim, they are prohibited from doing so under the rules of the court.<sup>136</sup>

Furthermore, even if a member state to one of these treaties does bring the issue of Yemen's noncompliance to the ICJ and the court rules against Yemen, it is not likely to make a difference. As international organizations have already publicly reprimanded Yemen for its treaty breaches and called for the state to change its practices, it is unlikely that an ICJ decision will have much more of an impact.<sup>137</sup>

Another option would be for States Parties to react unilaterally or jointly in response to Yemen's treaty breaches. When a multilateral treaty is breached by one of its States Parties, two legal rules apply to the actions that other States Parties may take in response—"rules of release" and "rules of remediation."<sup>138</sup> Rules of release refer to the rules permitting States Parties to disregard their original duties under the treaty, while rules of remediation apply to all other methods of dealing with breaches.<sup>139</sup> As the question here is what actions other States Parties may take to encourage Yemen to honor its treaty obligations, the appropriate international rules to be applied are the rules of remediation.

"The relevant international legal standard governing responses to breach seeking remediation is: (1) that the response be in some rough

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permitted to take this type of action under the Charter of the United Nations, it has never actually done so. *Id.*

<sup>134</sup> See Convention on the Rights of the Child, *supra* note 93.

<sup>135</sup> *Id.*

<sup>136</sup> *Id.*

<sup>137</sup> John K. Seater, *Responses to Breach of a Treaty and Rationalist International Relations Theory: The Rules of Release and Remediation in the Law of Treaties and of State Responsibility*, 83 VA. L. REV. 1 (1997).

<sup>138</sup> *Id.*

<sup>139</sup> *Id.*

sense *proportionate*, in magnitude and kind, to the breach; and (2) that the response be *necessary* to restore compliance by the breaching party with the breached agreement.”<sup>140</sup> In other words, the response must not greatly outweigh the type and magnitude of the breach, and it must be necessary to persuade the breaching party to comply with its treaty obligations. Thus, States Parties could theoretically impose economic sanctions against Yemen in an attempt to persuade the country’s leaders to take action to follow the treaty obligations.

This type of response, however, is also likely to be unsuccessful. Unilateral economic sanctions are hardly ever effective due to the fact that there are almost always companies in other states that can meet the same economic needs of the targeted state.<sup>141</sup> In other words, states acting unilaterally to impose economic sanctions against other states in an attempt to get these states to follow their treaty obligations are unlikely to succeed due to the fact that, acting alone, they will be unable to make enough of an impact on that country’s economy.<sup>142</sup>

Multilateral sanctions, while theoretically more likely to lead to the desired result, are similarly unlikely to succeed due to the difficulty in mustering and maintaining the amount of cooperation necessary for such success.<sup>143</sup> Because legal responses to Yemen’s breach of international law are unlikely to unilaterally change the practice of child marriage in Yemen, it is also helpful to consider non-legal actions that may be taken.

#### *B. Non-Legal Measures that May Help End the Practice of Child Marriage in Yemen*

Legal measures that may be taken in response to Yemen’s breach of its treaty obligations are unlikely to persuade Yemen to honor these obligations and to prohibit and help prevent the practice of child marriage in its territory.<sup>144</sup> As such, it may be more appropriate to examine the non-legal approaches to solving the problem.

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<sup>140</sup> *Id.* (emphasis added).

<sup>141</sup> Robert P. O’Quinn, *A User’s Guide to Economic Sanctions*, HERITAGE FOUNDATION (June 25, 1997), <http://www.heritage.org/research/reports/1997/06/a-users-guide-to-economic-sanctions>.

<sup>142</sup> *Id.*

<sup>143</sup> William H. Kaempfer & Anton D. Lowenberg, *Unilateral Versus Multilateral International Sanctions: A Public Choice Perspective*, 43 INT’L STUD. Q. 37 (1999).

<sup>144</sup> See *supra* text accompanying notes 133–43.

An early non-legal measure that has met with some success in Yemen is the Safe Age of Marriage Project, funded by USAID.<sup>145</sup> The Safe Age of Marriage Project sent educators into two separate regions of Yemen to provide the communities with information regarding the reality of child marriage and early childbirth, as well as the benefits of avoiding the practice and instead allowing girls to stay in school.<sup>146</sup> The self-proclaimed purpose of the project was “to change social norms around early marriage, girls’ education, and children’s rights.”<sup>147</sup>

The Safe Age of Marriage Project was ultimately successful in both of the regions in which it was implemented.<sup>148</sup> The former program coordinator of the project, Dalia Al-Eryani, attributed this success to a variety of factors: the general ignorance regarding the detrimental effects of child marriage that existed in the community prior to the educational project, formal (and positive) recognition of those families in the community who choose not to engage in the practice, a community agreement to lower the maximum amount that parents may pay as a dowry, and special messages tailored to men and provided by male community educators.<sup>149</sup>

Al-Eryani claimed that the key to success in changing community attitudes towards child marriage is to “find the tipping point.”<sup>150</sup> In the regions where the project was implemented, “once the majority of the community was on board, people were reluctant to marry their daughters off early for fear of community outrage.”<sup>151</sup> Al-Eryani attributed this change in attitudes to the rural mindset—“the majority of the population resides in rural areas and community perception means everything to them.”<sup>152</sup> Finally, Al-Eryani argued that the implementation of a minimum age marriage law in Yemen would serve to bolster programs like The Safe Age of Marriage Project by providing “an umbrella that [would protect] individuals/organizations raising awareness, girls who want to delay marriage and families who are under tribal pressure too [sic] marry off their daughters.”<sup>153</sup>

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<sup>145</sup> *PRB Discuss Online: Child Marriage in Yemen*, *supra* note 24.

<sup>146</sup> *Id.*

<sup>147</sup> *Id.*

<sup>148</sup> *Id.*

<sup>149</sup> Al-Eryani claims that tailoring the messages to males “effectively changed the way they perceived child marriage.” In addressing the males, community educators focused on the social problems that could arise in their communities as a result of continuing and widespread acceptance of the practice of child marriage. The men were also instructed on the benefits of delaying marriage. *Id.*

<sup>150</sup> *Id.*

<sup>151</sup> *Id.*

<sup>152</sup> *Id.*

<sup>153</sup> *Id.*

Another non-legal measure that may prove to be successful is the practice of “booking.” This practice, which was attempted by the Christian Children’s Fund in Kenya in 1999, provides economic incentives for parents to avoid arranging early marriages of their children.<sup>154</sup> “Booking” refers to the process by which young girls are “married” to school rather than to husbands.<sup>155</sup> This “marriage” is a parallel to the traditional dowry system, and involves community members offering money or gifts to the girls’ fathers in exchange for their enrollment in boarding school.<sup>156</sup>

Finally, another method of combatting the practice of child marriage that may meet with some future success is the training of local community leaders to provide the same type of education currently being provided by non-governmental organizations.<sup>157</sup> Teaching community leaders how to educate members of the community on issues like maternal health and the resulting impacts of the practice of child marriage on the girls and families involved increases the chances of the organizations’ messages becoming widespread and accepted.<sup>158</sup>

## V. CONCLUSION

Child marriage in Yemen is being practiced in violation of various treaty agreements.<sup>159</sup> According to these treaty agreements, Yemen is legally obligated to establish a minimum age for marriage. Given Yemen’s treaty obligations, its government should establish a minimum age marriage law of eighteen. While states are unlikely to have the proper motive to bring this claim in the ICJ or to impose economic sanctions in an attempt to get Yemen to comply with its treaty obligations, there are other avenues that may produce results.

Non-governmental organizations (such as the Human Rights Watch) should continue to put pressure on the Yemeni government through public statements regarding its noncompliance with the applicable treaty rules and

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<sup>154</sup> INTERNATIONAL CENTER FOR RESEARCH ON WOMEN, 39 NEW INSIGHTS ON PREVENTING CHILD MARRIAGE: A GLOBAL ANALYSIS OF FACTORS AND PROGRAMS (2007), *available at* <http://www.icrw.org/files/publications/New-Insights-on-Preventing-Child-Marriage.pdf>.

<sup>155</sup> *Id.*

<sup>156</sup> *Id.* It should be noted that the International Center for Research on Women is unclear as to whether the practice of booking was actually successful. The ICRW cites the failure of the Christian Children’s Fund to document its results as the reason for this uncertainty. *Id.*

<sup>157</sup> *Id.*

<sup>158</sup> *Id.*

<sup>159</sup> *See* Child Marriage Convention, *supra* note 67; Women’s Conventions, *supra* note 87; Convention on the Rights of Child, *supra* note 93.

international norms on the issue of child marriage. At the same time, these groups should work to expand projects such as the Safe Age of Marriage Project, by establishing community education programs in as many areas of Yemen as possible. Although the results are uncertain, the Safe Age of Marriage Project has met with success in the two areas of Yemen in which it was implemented.<sup>160</sup> This suggests that a change in community attitudes may be necessary to curb the process, regardless of whatever legal actions may be taken. What the Safe Age of Marriage shows, therefore, is that legal actions to implement and enforce a minimum age for marriage in Yemen is just one piece of what is needed to create a real change in the country. The other piece must necessarily come from changes in the communities themselves, which may be helped along by international human rights organizations dedicated to promoting such change. Non-governmental organizations (as well as states so inclined) should push Yemen to establish a minimum age for marriage and should expand community educational projects on the issue regardless of whether legislation actually passes.

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<sup>160</sup> See *PRB Discuss Online: Child Marriage in Yemen*, *supra* note 24.