

PREVENTING & ELIMINATING CHILD, EARLY & FORCED MARRIAGE IN THE COMMONWEALTH

Policy Brief

November 2022



CommonProtect



**Commonwealth
Lawyers Association**



IT'S A PENALTY

ABOUT COMMONPROTECT

Working in collaboration with governments, civil society organisations, child rights champions and Commonwealth institutions, **CommonProtect** is the Commonwealth-wide movement to end impunity for child sexual exploitation and abuse, improve access to justice for survivors, and ensure better child protection. CommonProtect's ultimate goal is for there to be a comprehensive legal framework in place in each Commonwealth country which criminalises CSEA in every form, no matter where the offender is from or where in the world the offence takes place. Please visit this website for further information: www.itsapenalty.org/advocacy/

ABOUT IT'S A PENALTY

It's a Penalty is a UK-based NGO working globally to end abuse, exploitation and human trafficking. CommonProtect is It's a Penalty's advocacy programme focused on legal reform and systems change in order to protect children from sexual exploitation and abuse (CSEA) throughout the Commonwealth. Please visit this website for further information: www.itsapenalty.org

ABOUT THE COMMONWEALTH LAWYERS' ASSOCIATION

The **Commonwealth Lawyers Association (CLA)** exists to maintain and promote the rule of law throughout the Commonwealth by ensuring that an independent and efficient legal profession serves the people of the Commonwealth. Commonwealth countries share a substantial common ground in the legal systems. The CLA is a proud partner with It's a Penalty on the CommonProtect initiative, advocating for legal change to better protect children in the Commonwealth. Please visit this website for further information: www.commonwealthlawyers.com/about/

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INTRODUCTION

Throughout the Commonwealth, the sexual exploitation and abuse of children is reaching catastrophic levels and devastating numerous lives. It is a threat from which no child, community or country is immune. Despite significant work being done by governments and the global child protection community to tackle these issues, millions of children across the Commonwealth remain under significant threat. Children all over the Commonwealth deserve to be better protected from these forms of violence. CommonProtect's goal is to protect every child from sexual exploitation and abuse, through legal reform, improved implementation and enforcement, comprehensive child protection systems, and increased awareness and education.

In May 2022, It's a Penalty published *CommonProtect: A Review of the Legal Systems Protecting Children from Sexual Exploitation and Abuse across the Commonwealth*. The report found that there is still a long way to go towards ensuring every child in the Commonwealth is protected from sexual exploitation and abuse, offenders are prosecuted and survivors have access to justice. It's a Penalty is working with Commonwealth partners to use the findings of the report as a springboard for Commonwealth-wide action.

Under the CommonProtect initiative, a series of Policy Briefs will explore themes and topics related to the protection of children from violence across the Commonwealth. These Policy Briefs are intended for Commonwealth partners, including governments, inter-governmental organisations and civil society actors, to help with agenda-setting, advocacy and the consideration of recommended actions.

This Brief examines child, early and forced marriage (CEFM) primarily through a child protection lens. It was prepared in support of the Commonwealth Law Ministers' Meeting (CLMM) convened in Mauritius in November 2022. This Brief provides an overview of the issue of CEFM in the Commonwealth, a summary of the advocacy and political efforts undertaken to-date by Commonwealth actors to address CEFM, provides an overview of the legal context, and makes recommendations for action going forward.

OVERARCHING RECOMMENDATIONS FOR COMMONWEALTH ACTION

- 1** As well as seeing CEFM as a form of violence against women and girls, work addressing CEFM should take a child protection approach, and also consider that the issue can be a form of modern slavery.
- 2** A holistic and multi-disciplinary approach is needed to ensure lessons learnt so far in work to address CEFM in Commonwealth countries are being used to create effective interventions and move towards implementation.
- 3** A strong and coherent legal framework addressing CEFM should be established which specifies the minimum age of marriage of 18 for both parties, regardless of gender, highlights the principle of free, full and informed consent to marriage, and prohibits all forms of violence, mistreatment and exploitation of children that may occur in the context of CEFM.
- 4** Legal provisions related to CEFM must be accompanied by policies and procedures that address the root causes of CEFM, and protect and support survivors of CEFM, such as those which work with and for girls and involve their families and communities.
- 5** There is an opportunity for increased collaboration and partnership work to continue to address CEFM in the Commonwealth. Through their partnership on CommonProtect, Commonwealth partners led by the Commonwealth Lawyers Association and It's a Penalty have identified this as an area of priority and look forward to closer working in collaboration with the Human Rights Unit of the Commonwealth Secretariat.

OVERVIEW OF THE ISSUE

Child, early and forced marriage (CEFM) is a complex problem. It is a harmful traditional practice that violates the human rights of millions worldwide. The majority of those impacted are women and girls; 1 in 5 girls globally are married before they reach the age of 18 (UNICEF, 2020). In many cases, CEFM can be categorised as a form of violence against women/girls. CEFM is also a major child protection issue as it can be seen as a form of, and a pathway to, child sexual exploitation and abuse (CSEA), as well as a form of modern slavery (ECPAT, 2020). By definition, children under the age of 18 are not able to give full, free, informed consent to marriage. In some countries, child marriage is also linked to other harmful practices such as FGM/C (Girls Not Brides, 2021).

CEFM is a global issue that manifests across countries, cultures, religions and ethnicities (Girls Not Brides, 2022). It has been found to occur in all regions of the world, and in families from all major religions, as well as non-religious families.

No society can afford the lost development opportunity, waste of talent or personal devastation that CEFM causes. The majority of children who are forced into marriage are at an increased risk of sexual violence, intimate partner violence, limited social engagement and economic empowerment, and discontinued education (PLAN International, 2020). For girls, CEFM often leads to school dropout, early childbearing, higher maternal mortality and infant mortality, as well as other impacts on their health. Studies have found that complications during pregnancy and childbirth are the leading cause of death of girls aged 15 – 19 globally (Commonwealth Lawyers Association, 2018).

CHILD, EARLY & FORCED MARRIAGE

Child marriage is defined as any formal or informal union where one or both parties is below the age of 18; early marriage encompasses child marriage and includes situations that do not qualify as child marriage, such as marriages in which one or both spouses are below the age of 18 but have attained majority under state laws; and forced marriage is defined as a marriage in which one and/or both parties have not given their full, free and informed consent to the union (Bartels et al, 2018). Forced marriage is considered a form of modern slavery. The terms are often used together as child, early and forced marriage (CEFM).

Furthermore, power imbalances that manifest in CEFM, and which are worsened by larger age gaps between spouses, result in young girls being less able to make decisions, negotiate within their relationship, or have control within the home (PLAN International, 2020).

CEFM AS A FORM OF, AND PATHWAY TO, CHILD SEXUAL EXPLOITATION AND ABUSE

Work addressing CEFM should take a child protection approach, as well as consideration of the issue as a form of modern slavery and violence against women and girls.

In many cases, CEFM serves as a pathway leading to various forms of child sexual exploitation and abuse. These can include rape, sexual assault, and other forms of non-consensual sexual violence, as well as for commercial purposes, such as trafficking, commercial sexual exploitation of children (CSEC) and the production and distribution of child sexual abuse material (ECPAT, 2020).

Married girls who are forced into non-consensual sexual relationships are essentially victims of acts that would be considered crimes if they were perpetrated outside of marriage.

Where economic transactions take place or the adult parties involved stand to financially benefit from the union, CEFM can itself be considered a form of commercial sexual exploitation of children (CSEC). This includes situations in which child marriage is linked to child servitude and forced child labour, slavery and bondage, or the payment of a dowry or 'bride price' (ECPAT and PLAN 2015).

CAUSES OF CEFM

CEFM takes place as a result of a number of different social, cultural, religious and economic factors. Those at greatest risk of CEFM are often those hardest to reach. They can come from poor families, marginalised groups or rural areas (UNICEF, 2022). Across all contexts, deeply embedded gender inequalities, discrimination and harmful social norms contribute to the occurrence of CEFM by devaluing and restricting the freedom of women and girls (PLAN International, 2020).

CEFM can also be driven by poverty, as child marriage is seen as a solution when families are struggling financially (Girls Not Brides, 2022). In some of these poverty-driven cases, patriarchal norms play a part as they influence the treatment of girls as a commodity. Parents who marry their children before they reach legal age typically seek in marriage a form of protection to shield their children from destitution, household food insecurity and, ultimately, to minimise the risk of sexual harassment or sexual assault. That child marriage may be a route to systemic child sexual exploitation and abuse is largely unrecognised (ECPAT and PLAN, 2015).

In times of crisis, the risks of CEFM are magnified (PLAN International, 2020). Instability, insecurity and displacement, whether caused by conflict, generalised violence, or natural disasters - including climate change, disease outbreak and famine - have a devastating effect on CEFM (Girls Not Brides, 2022). Most recently, for example, droughts in Kenya, Somalia and Ethiopia, have been linked to a doubling in child marriages (Save the Children, 2022).

In the decade prior to the Covid-19 pandemic, global rates of child marriage had been declining. Whilst progress was uneven across and within regions as well as countries, an estimated 25 million child marriages were prevented (UNICEF, 2018). However, a surge in child marriage rates and a spike in teenage pregnancies and school dropouts have followed the pandemic.

As a result of the COVID-19 pandemic, it has been projected that an additional 10 million girls are at risk of marrying as children by 2030 (UNICEF, 2021). This is due to COVID-19 restrictions, school closures, increased adolescent pregnancy, disruption to child marriage programming and economic instability.

If the UN Sustainable Development Goal (SDG) Target 5.3 to end child marriage by 2030 is going to be met, the annual rate of reduction in the prevalence of child marriage would have to increase from 1.9% to 23% (Lo Forte, 2019). Given the impact of the COVID-19 pandemic, as detailed above, efforts to reduce the prevalence face an additional obstacle.

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CEFM: A COMMONWEALTH CONCERN

THE NEED TO ADDRESS CEFM IN THE COMMONWEALTH

The Commonwealth plays a disproportionate role in the global problem of CEFM, as 58.5 percent of all child marriages take place in Commonwealth countries, despite these countries only having 32 percent of the global population (Commonwealth Lawyers Association, 2018). Approximately 8.8 million girls in the Commonwealth are married annually. This equates to 24,000 girls every day, or 17 girls every minute.

In the Commonwealth, the highest rates of CEFM have been found in South Asia and sub-Saharan Africa; populous Commonwealth members such as Bangladesh, India, Nigeria and Pakistan exhibit some of the higher child marriage prevalence rates (Commonwealth Lawyers Association, 2018). Nevertheless, rates of CEFM remain high in many other regions of the Commonwealth, including the Americas and the Pacific. It is also recognised that in the Commonwealth there are culturally-specific understandings of childhood and development, and the relationship between age, consent and force.

Through the commitments made by Commonwealth states in the [Commonwealth Charter](#) to achieving human rights and gender equality for all people in the Commonwealth, Commonwealth member states have a duty to address CEFM. Commonwealth-wide sustained and increased action and collaboration in this area can therefore impact a substantial reduction in global prevalence and help to ensure that the UN SDG target is met.

THE COMMONWEALTH

The [Commonwealth of Nations](#) is a voluntary association of 56 independent and equal countries. The modern Commonwealth was established in April 1949 with the signing of the London Declaration. With a combined population of 2.5 billion, equivalent to one-third of the world, member countries are spread across five regions: Africa, the Americas, Asia, Europe, and the Pacific. Over one third of the world's children live in the Commonwealth.

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COMMONWEALTH CONCERTED EFFORTS

Whilst there has been progress to eliminate CEFM in the Commonwealth, it continues to be prevalent and hinders progress towards ending violence against and the exploitation of children and modern forms of slavery across the Commonwealth.

The issue of child, early and forced marriage has been a Commonwealth concern for over a decade. Various Commonwealth accredited organisations have been advocating to raise the issue in Commonwealth policy spaces (RCS and Plan UK, 2013), also collaborating with the Commonwealth Secretariat's Human Rights Unit and with development partners

(Commonwealth Secretariat, 2013) and youth advocates (CYGEN, 2015).

Commonwealth Heads of Government first addressed the issue at their 2011 meeting (Perth, Australia) and subsequently at all Commonwealth Heads of Government Meetings (CHOGMs). In 2018 the Commonwealth Lawyers Association (CLA), recognising that child marriage is partly a legal problem, published a [pan-Commonwealth overview](#) of the role of the law in eliminating child marriage in order to encourage legal change and better law enforcement. Also in 2018, the Commonwealth Human Rights Initiative (CHRI) published a [roadmap for effective action](#) towards eradicating all forms of contemporary slavery in Commonwealth countries, including CEFM. More recently, in 2022, the CommonProtect initiative has mapped the legal frameworks for child protection in Commonwealth countries and highlighted the gaps that remain in the [CommonProtect Report](#).

It is also noteworthy that a number of Commonwealth member countries are regional and international leaders on advocating for an end to child marriage. Since 2013, Canada and Zambia have co-led five resolutions at the UN General Assembly (UNGA) on child, early and forced marriage. The most recent resolution was adopted by the UNGA's Third Committee on 15th November 2022 and received broad support from a total of 125 co-sponsors from around the world, reaffirming the vital importance of

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this issue (Global Affairs Canada, 2022). The resolution called upon the international community to step up efforts to accelerate progress to end CEFM by 2030, including for girls and women in vulnerable situations.

COMMONWEALTH HEADS OF GOVERNMENT MEETING (CHOGM) 2022

Most recently, at the 2022 CHOGM held in Kigali, Rwanda, Heads '*emphasised the need for effective measures to eradicate forced labour, end modern slavery and human trafficking*' in their [Communiqué](#). Furthermore, in the [Kigali Declaration on Child Care and Protection Reform](#), Commonwealth member states committed to '*put in place the necessary frameworks and resources to ensure sustainable and effective child protection and safeguarding systems for care and protection of all children, including the elimination of child labour in all its forms, forced labour, trafficking and sexual exploitation.*' In light of this commitment, it is essential that work addressing CEFM take a child protection approach, as well as consideration of the issue as a form of modern slavery.

COMMONWEALTH LAW MINISTERS' MEETINGS

Law Ministers meeting in The Bahamas in 2017 recognised that child, early and forced marriage is one of the barriers to the achievement of sustainable development, the full realisation of the human rights of women and girls, and the elimination of violence against women and girls.

The compilation of the *Child, Early and Forced Marriage (CEFM): The Commonwealth Best Practice Guide* by the Commonwealth Secretariat under direction of Law Ministers and its presentation at the November 2022 meeting of Law Ministers in Mauritius is most welcome, as is the continued attention given to this issue.

INTERNATIONAL COMMITMENTS

Emerging international law has stressed the grave consequences of CEFM and has helped clarify the abusive nature of the harmful practice and set new standards to guide the development of more stringent and protective responses (ECPAT and PLAN 2015).

The main issues addressed by international law in relation to unions contracted by children are: minimum age for marriage; consent by the concerned parties; and prohibition of all forms of violence, mistreatment and exploitation of children.

International human rights instruments and international entities stress the need to take measures to address CEFM. In recent years, actions to end child, early and forced marriage have increased at international, regional and national levels, with many Commonwealth countries committing to addressing these issues.

All Commonwealth countries have committed to the [UN Convention on the Rights of the Child](#) (UNCRC), and therefore have an obligation to uphold protecting children from all forms of violence, including CEFM.

The [UN Convention on the Elimination of All Forms of Discrimination against Women](#) (CEDAW) covers the right to protection from child marriage in Article 16, as well as other UN commitments such as the Universal Declaration of Human Rights and the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages.

In addition to international mechanisms, there are certain regional mechanisms and instruments that are relevant to Commonwealth countries.

Relevant regional Instruments include:

- [African Charter on the Rights and Welfare of the Child](#), 1990 - Article 21
- [Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa](#) (the Maputo Protocol), 2003 - Article 6
- [SADC Protocol on Gender and Development](#), 2008 - Article 8
- [ASEAN Commission on Promoting and Protecting the Rights of Women and Children \(ACWC\) Work Plan](#), 2016
- [CEPAL Montevideo Consensus on Population and Development](#), 2013

THE ROLE OF LAW IN ADDRESSING CEFM

Mounting global pressure has partly led to efforts to reform legal frameworks and strengthen national legislation on CEFM.

A strong legal framework on CEFM is essential if the practice is to be eradicated. Having a clear law specifying a minimum age of marriage of 18 for both parties, regardless of gender, that highlights the principle of free, full and informed consent to marriage is a fundamental step to addressing CEFM. Not only does a strong legal framework serve as clarification of a government's position on CEFM, it also provides them with a mandate to refuse marriages or make interventions when deemed necessary. Furthermore, a strong legal framework can legitimise the efforts of campaigners advocating on the issue to reduce the prevalence of CEFM and support those who are impacted (PLAN International, 2020).

Currently, across the Commonwealth, legal frameworks to combat CEFM are undermined by inconsistencies in laws. The CommonProtect report identified that many countries with plural legal systems have multiple legal frameworks (statutory, customary and religious) which contradict each other and result in loopholes (It's a Penalty, 2022). Legal harmonisation is essential in order to address CEFM. Furthermore, national legislation should take precedence over any conflicting customary, traditional or religious provisions regarding the age of marriage.

Other domestic laws can be relevant to CEFM, including criminal laws prohibiting all forms of violence, mistreatment and exploitation of children that may occur in the context of CEFM (ECPAT, 2020). In these

cases, legal provisions can also act as a deterrent if enforced.

In most Commonwealth countries, however, such legal provisions are widely unknown, ignored or unenforced (Commonwealth Lawyers Association, 2018). Throughout the Commonwealth, there have been instances of these laws being the subject of case law and legal cases, which can make an impact and result in a high degree of publicity and comment, but these instances are rare.

Furthermore, laws criminalising adults officiating over a marriage involving a child can be in place. However, evidence has suggested that criminalising CEFM might not always be the most effective way of protecting girls and young women; in practice, criminalisation is often counter-productive, resource heavy, difficult to implement, can alienate communities, and lead to survivors not coming forward out of fear of their own families being arrested (PLAN International, 2020).

Efforts to end CEFM should therefore involve both a strong legal framework and policies and programmes that address the root causes of CEFM, and protect and support survivors of CEFM, such as those which work with and for girls and involve their families and communities (PLAN International, 2020).

Preventing, rather than punishing, is a more sustainable and promising approach. Action aimed at changing attitudes and beliefs and increasing knowledge is more likely to change practice.

RECOMMENDED ACTIONS FOR COMMONWEALTH STAKEHOLDERS

LEGAL

- All laws should set the minimum age of marriage at 18 years for both boys and girls.
- Prohibition on CEFM must extend to all forms of marriage, including customary and religious marriages, and no exceptions or qualification to this minimum age should be allowed. National legislation should take precedence over any conflicting customary, traditional or religious provisions regarding the age of marriage.
- All marriages must require the free, full and informed consent of both parties.
- In instances where rape, sexual assault, and other forms of non-consensual sexual violence, as well as commercial forms, such as trafficking, commercial sexual exploitation of children (CSEC) and the production and distribution child sexual abuse material take place in the context of CEFM, these forms should be criminalised.
- The age of consent should be clearly defined for all children. It should be high enough to ensure that children are protected from abuse but low enough to avoid the over-criminalisation of children's behaviour. Close-in-age exemptions should also be included so as not to criminalise consensual behaviour between adolescents of similar ages.
- To aid enforcement of the prohibition against CEFM, national laws must require and facilitate the registration of all births and marriages.
- Legal aid should be available for those affected by CEFM.
- Legal activists and lawyers should make better use of the courts to challenge laws and practices that foster and enable CEFM, either on the basis of unconstitutionality or non-compliance with a legislative framework.
- Laws on CEFM must be implemented alongside policies which provide training for the judiciary in CEFM and gender equality and ensure access to legal systems for all citizens.

BEYOND LAW

- Promote girls' access to high-quality education for as long as possible, including tailored reintegration programmes for girls who are forced to drop out of school owing to marriage and/or childbirth, and including in situations of disasters, crises and conflict leading to displacement.

- Provide economic support and incentives to girls attending schools and to their families to pursue higher education and delay marriage.
- Governments, civil society and other partners must work together to ensure girls have access to quality health information and services, comprehensive sexuality education and life-skills training, as well as access to employment, political participation, inheritance, land and productive resources.
- Monitoring and data collection strategies for overseeing the prevalence of CEFM should be established in Commonwealth countries where they do not exist - collected and desegregated data by sex, age, disability, geographical location, socioeconomic status, education level.
- A child-friendly and confidential mechanism should be introduced for reporting instances of CEFM. Meaningful support should be provided to survivors, such as legal assistance, shelters, social and economic recovery services, psychosocial support, and protection from acts of retaliation.
- Increased support should be provided to the work of regional and sub-regional organisations to address CEFM, as well as opportunities to exchange lessons learned and good practices at the regional and subregional levels.
- Public awareness and education programmes must be implemented and supported to address the widespread cultural and social acceptance which contributes to the prevalence of CEFM, both directed at girls themselves to know and exercise their human rights, including their right to choose, as adults, whether, when and whom to marry, and to all members of society to raise awareness and build catalysts for change within local communities.
- The involvement of and targeted engagement with men and boys in particular is needed to address CEFM throughout the Commonwealth.
- Girls who are already married or in a union need to be supported. Sexual and reproductive health services are needed to help avoid early pregnancy and sexually transmitted infections. Those who become pregnant must be able to access appropriate care throughout pregnancy, childbirth and in the post-partum period. They should also be supported, if they choose, in returning to formal or non-formal education.

CONCLUSIONS AND NEXT STEPS

The concept of CEFM represents a violation of the fundamental human rights of children, with girls predominantly affected. Examining CEFM through a child protection lens, we can see that it places millions of children in the Commonwealth at greater risk of sexual exploitation and abuse, as well as other forms of violence and mistreatment.

The varied factors interacting that increase the prevalence of CEFM include poverty, social or cultural norms, religious laws and inadequate legislative frameworks and registration systems. These combined with weak enforcement create a most unsatisfactory picture. The legal framework can be changed. Enforcement can be changed. However, to change cultural norms, as well as customary and religious practices, is a greater challenge.

The law, at both international and national levels, does have a role to play. However, a holistic and multi-disciplinary approach, that goes beyond law and responds to local circumstances and tackles the underlying causes, is needed. Coordination between relevant departments/ministries, civil society, and other stakeholders is vitally important to ensure that interventions benefit those at risk of CEFM.

Given the high prevalence of child marriage in the Commonwealth, there is a continued role for collective action in the Commonwealth to ensure the elimination of CEFM over time.

Recent high-level Commonwealth political meetings have reaffirmed the Commonwealth's commitment to preventing and eliminating CEFM. Crucially, the Kigali Declaration on Child Care and Protection Reform, provides a mandate for Commonwealth governments and other stakeholders to work together to protect children from sexual exploitation and abuse, including CEFM.

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