

Improving International Human Rights Standards on Adolescent Sexual and Reproductive Health and Rights

INTRODUCTION

Around 340 million adolescents live in the South Asia region (Afghanistan, Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka) – more than in any other region in the world.¹ Across the region, adolescents continue to face barriers in access to reproductive health services. Although laws, policies, social and cultural conditions vary, there are some common challenges faced by adolescents. The absence of clear laws and policies enabling adolescents to access sexual and reproductive health (SRH) services entails that they are often denied these services without parental or guardian consent.² Social and cultural stigmas also restrict adolescents' access to contraception and safe abortion services. Adolescents remain vulnerable to cultural sanction and even criminal penalties for engaging in consensual sexual activity.³

The Center for Reproductive Rights, through its South Asia Reproductive Justice and Accountability Initiative (SARJAI) network, has partnered with individuals and organizations in five countries in South Asia (**Bangladesh, India, Nepal, Pakistan and Sri Lanka**) to advocate for legal frameworks that protect, respect and promote reproductive rights, including the reproductive rights of adolescents. The five countries represented in the SARJAI network have signed and ratified the Convention on the Rights of the Child (CRC) as well as the Convention on the Elimination of Discrimination Against Women (CEDAW).

During periodic reviews, the CRC and CEDAW Committees have called on governments in these five South Asian countries to take a range of measures to ensure that the sexual and reproductive rights of adolescents are respected, protected and fulfilled. The Committees have made important Concluding Observations in relation to adolescents' access to SRH services, enforcement of laws pertaining to child sexual abuse as well as ending harmful traditional practices such as child marriage. Some aspects of the Concluding Observations, however, do not fully consider the challenges posed by existing legal frameworks and prevailing cultural realities to the realization of the

The CRC Committee has noted that adolescence is a “unique defining stage of human development characterized by rapid brain development and physical growth.”

sexual and reproductive rights of adolescents. This paper analyses standards established by the CRC and CEDAW committees pertaining to SRH and rights of adolescents and highlights some of their gaps in view of the challenges posed by legal frameworks as well as social and cultural norms in the five South Asian countries represented in the SARJAI network.

The paper begins with a brief overview of relevant standards set forth by the CEDAW and CRC Committees pertaining to adolescents’ sexual and reproductive rights. It then goes on to analyze some of the gaps in Concluding Observations made by CEDAW and CRC Committees to the five South Asian countries with respect to three areas: (1) restrictions on consensual sexual activity for adolescents; (2) mandatory reporting of sexual abuse; and (3) criminal laws pertaining to child marriages. Finally, the paper sets forth recommendations for strengthening jurisprudence on adolescents’ sexual and reproductive rights in light of prevailing legal, social, and cultural contexts for adolescents.⁴

INTERNATIONAL HUMAN RIGHTS STANDARDS

International human rights treaties guarantee a range of sexual and reproductive rights to adolescents. The CRC Committee has noted that adolescence “is a unique defining stage of human development characterized by rapid brain development and physical growth, enhanced cognitive ability, onset of puberty and sexual awareness and newly emerging abilities, strengths and skills.”⁵

The CRC Committee has urged states to ensure that health systems and services are able to meet the specific SRH needs of adolescents.⁶ The CRC Committee has made clear that adolescents should have access to the full range of SRH services, including maternal health care, contraceptive information and services, including short- and long-term methods of contraception and emergency contraception, safe abortion and post-abortion care, and services to prevent and address sexually transmitted infections.⁷ The CRC Committee has also urged states to “decriminalize abortion to ensure that girls have access to safe abortion and post-abortion services.”⁸ The CRC Committee has also stated that “all adolescents have the right to have access to confidential medical counselling and advice without the consent of a parent or guardian, irrespective of age, if they so wish.”⁹ The CRC Committee

has emphasized that this right “should not be subject to any age limit.”¹⁰ The CEDAW Committee has called on State parties to provide SRH services and information without discrimination particularly for “female and male adolescents.”¹¹ It has also stated that reproductive health education programs for adolescents must respect their rights to privacy and confidentiality.¹²

In a general comment issued jointly by the CEDAW and CRC Committees, both committees call on State parties to end harmful practices that “are deeply rooted in social attitudes according to which women and girls are regarded as inferior to men and boys based on stereotyped roles.”¹³ The joint general comment points to child marriage as a harmful traditional practice. In its original 2014 version, the joint general comment referred to the “evolving capacities” of the child and noted that “a marriage of a mature, capable child below 18 years of age may be allowed in exceptional circumstances, provided that the child is at least 16 years of age and that such decisions are made by a judge based on legitimate exceptional grounds defined by law and on the evidence of maturity, without deference to culture and tradition.”¹⁴ In 2019, however, the CEDAW and CRC Committees voted to expunge this text.

EVOLVING CAPACITIES OF ADOLESCENTS

Article 5 of the CRC requires that parental discretion and guidance be provided in a manner consistent with the “evolving capacities of the child.”¹⁵ The CRC Committee notes that “[I]n seeking to provide an appropriate balance between respect for the evolving capacities of adolescents and appropriate levels of protection, consideration should be given to a range of factors affecting decision-making, including the level of risk involved, the potential for exploitation, understanding of adolescent development, recognition that competence and understanding do not necessarily develop equally across all fields at the same pace and recognition of individual experience and capacity.”¹⁶

The CRC Committee has also recommended that “States introduce minimum legal age limits, consistent with the rights to protection, the best interests principle and respect for the evolving capacities of adolescents” while also noting that “the right of any child below that minimum age and able to demonstrate sufficient understanding to be entitled to give or refuse consent should be recognized.”¹⁷ The CRC Committee has also noted that “voluntary and informed consent of the adolescent should be obtained whether or not the consent of a parent

or guardian is required for any medical treatment or procedure.”¹⁸ It also called on State parties to consider introducing “a legal presumption that adolescents are competent to seek and have access to preventive or time-sensitive sexual and reproductive health commodities and services.”¹⁹

GAPS IN CRC AND CEDAW COMMITTEES’ JURISPRUDENCE

This section highlights gaps in the Concluding Observations of the CEDAW and CRC Committees to five South Asian countries with respect to three areas: (1) restrictions on consensual sexual activity for adolescents; (2) mandatory reporting of sexual abuse; and (3) criminal laws pertaining to child marriages.

I. CONSENSUAL SEXUAL ACTIVITY BETWEEN ADOLESCENTS

The CEDAW and CRC Committees have called for the implementation of laws that prevent and punish child sexual abuse in their Concluding Observations to South Asian countries.²⁰ They have not yet noted however that some of these laws also place restrictions on consensual and non-exploitative sexual activity between adolescents. Legal frameworks in some South Asian countries prohibit consensual sexual activity among adolescents. In Pakistan, for example, all sex outside marriage is prohibited.²¹ The age of consent to sex is set to 16 years of age, and sex with a person below that age is deemed to be rape with or without their consent.²² At the same time, the age of criminal responsibility is set to 10 years of age,²³ which means that an adolescent could be charged and convicted of rape for consensual sex with another adolescent under the age of 16. Similarly, in Nepal, the age of consent to sex is set to 18 years, while the age of criminal responsibility is 10 years.²⁴ In India, the Protection Of Children from Sexual Offenses Act 2012 (POCSO Act), which sets the age of consent to 18 years, does not recognize any distinction between consensual and non-consensual sexual activity among adolescents and deems both subject to criminal penalties. As a result, a number of adolescents have been prosecuted under the POCSO Act for consensual sex.²⁵

Such laws are inconsistent with the CRC Committee’s General Comment No. 20, which states that non-exploitative, consensual sexual

Exposing adolescents to criminal prosecution and penalties for engaging in consensual sexual behavior endangers their well-being, exposing them to serious harms.

behavior among adolescents of similar ages should not be criminalized.²⁶ The CRC Committee reaffirmed the call for decriminalization of adolescents who engage with one another in consensual sexual acts in its General Comment No. 24 on *Children's Right in Juvenile Justice*.²⁷ The CRC Committee has also called for the “recognition of lesser culpability” for children in the criminal justice system and has noted that “[e]xposure to the criminal justice system has been demonstrated to cause harm to children, limiting their chances of becoming responsible adults.”²⁸ Affirming children’s right to liberty, the CRC Committee has emphasized that “the scale and magnitude of children’s suffering in detention and confinement called for a global commitment to the abolition of child prisons and large care institutions, alongside scaled-up investment in community-based services.”²⁹

The CRC Committee has recognized that adolescence is a unique period of significant physical, emotional and social change. Adolescents will explore their sexuality during this period and therefore it is important that they do so with comprehensive sexuality education and access to health services.³⁰ Exposing adolescents to criminal prosecution and penalties for engaging in consensual sexual behavior endangers their well-being, exposing them to serious harms. It also puts further obstacles against their access to SRH services and information.

II. MANDATORY REPORTING OF SEXUAL ABUSE

The CRC Committee has recommended mandatory reporting mechanisms for cases of child sexual abuse.³¹ While it is critical for states to address child sexual abuse and provide effective remedies for survivors, it is important to ensure that mandatory reporting mechanisms do not expose adolescents to criminal penalties for engaging in consensual sexual relationships or deter adolescents from accessing SRH services.

Mandatory reporting procedures are likely to deter adolescents from seeking SRH services in contexts where laws prohibiting child sexual abuse do not distinguish between consensual and exploitative sexual activity between adolescents. For example, the POCSO Act in India classifies all sexual activity with persons under the age of 18 as child sexual abuse without any exceptions for adolescents in consensual sexual relations.³² The mandatory reporting requirement in the

POCSO Act requires reporting of all suspected sexual activity by minors, including consensual sexual activity by adolescents.³³ Where laws exist to prohibit all sexual relations outside marriage – for example in Pakistan – mandatory reporting would expose adolescents to criminal prosecution and punitive measures as a consequence of consensual sexual activity.

Mandatory reporting laws that require reporting to criminal law enforcement authorities can also be harmful for adolescents facing sexual abuse as they may compel interaction with a criminal justice system that does not serve the best interests of the adolescent.³⁴ Criminal proceedings in the absence of strong social protection services, including counselling, shelters and reproductive health services, could expose the adolescent to more trauma and give rise to backlash from perpetrators and unwanted public exposure. This is especially the case in contexts where criminal proceedings are not child-friendly and are not accompanied with welfare services. Under the POCSO Act in India, any person having knowledge of the commission of a sexual offence or the apprehension that a sexual offence is likely to be committed is required to report to the police or the Special Juvenile Police Unit.³⁵ Reporting to the police under the POCSO Act “will trigger a criminal justice proceeding that is likely to result in acquittal due to lack of adequate evidence, lack of support to the victim, or pressure from the accused.”³⁶

The CRC Committee has recognized the tension between the need for increased reporting and adolescents’ access to SRH services, and has recommended that reporting procedures be “accessible and child-friendly.”³⁷ Given the reality of the criminal justice process in countries in the region, however, a mandatory reporting mechanism that involves reporting to criminal law enforcement authorities is unlikely to be child or adolescent-friendly. Mandatory reporting laws must also be consistent with the CRC Committee’s requirement that health care providers “keep confidential medical information concerning adolescents, bearing in mind the basic principles of the Convention.”³⁸ The CRC Committee has also noted that “[s]uch information may only be disclosed with the consent of the adolescent, or in the same situations applying to the violation of an adult’s confidentiality.”³⁹ While the CEDAW Committee has not made any specific recommendations to the SARJAI focus countries with respect to mandatory reporting requirements, it has recommended that health services for adolescents respect their privacy and confidentiality.⁴⁰

The CRC and CEDAW Committees should emphasize that reporting of suspected cases of child sexual abuse must respect the confidentiality, privacy and autonomy of adolescents and ensure that the safety of the adolescent is never compromised.

The confidentiality and privacy of the adolescent should be compromised only to the extent that is necessary to protect the minor from exploitation and abuse. Mandatory reporting procedures that do not have such safeguards for the privacy of adolescents and are not accompanied with strong social protections for minors could expose them to further trauma rather than create opportunities for healing and meaningful accountability.

III. CHILD MARRIAGE

The CEDAW and CRC Committees have called for the implementation of laws that prohibit child marriage.⁴¹ They have also recommended that the minimum age of marriage be raised to the age of 18 without exceptions⁴² and that child marriages below the minimum age be declared void.⁴³ CEDAW and CRC Committees have also criticized a provision in child marriage legislation in Bangladesh that permits marriage of adolescents above the age of 16 in “special” circumstances with the permission of courts.⁴⁴

While rates of child marriage in South Asian countries remain high, child rights activists have noted that distinctions should be drawn between forced child marriages and self-arranged marriages entered into by older adolescents. Trends in South Asian countries show that older adolescent girls sometimes enter into marriage of their free will due to social and cultural constraints that prevent them from engaging in consensual sexual activity outside of marriage.⁴⁵ Girls often also elope from their homes to marry in order to escape a marriage forced on them by family or community members. Laws criminalizing child marriage are often used to target young couples marrying of their free will.⁴⁶ Criminalizing such marriages could therefore be detrimental to the well-being of adolescents, especially adolescent girls, particularly in light of the fact that there are few protection services and financial support mechanisms available to young persons in these countries.⁴⁷ Having child marriages declared *void ab initio* i.e. invalid at the outset, could also give rise to legal and cultural complications for adolescent girls as it would entail that girls lose any economic rights in the marriage and expose them to further backlash from community members. It would also deter them from seeking access to SRH services as it would reinforce the stigma of their sexual relationship.⁴⁸

RECOMMENDATIONS

CRC and CEDAW Committees' Concluding Observations and relevant General Comments should call on South Asian countries to amend or repeal laws that place adolescents at risk of criminal prosecution and hinder access to sexual and reproductive health and services. They should call on South Asian countries to establish legal frameworks that enable access to SRH services.

I. CALL FOR DECRIMINALIZATION OF CONSENSUAL, NON-EXPLOITATIVE SEXUAL ACTIVITY BETWEEN ADOLESCENTS.

On a number of occasions, the CRC and CEDAW Committees have called for the implementation of laws that prohibit child sexual abuse, recognizing that prevention and punishment of sexual crimes against children must be strengthened. However, the Committees have not so far emphasized that some laws prohibiting child sexual abuse do not distinguish between consensual sexual activity among mature adolescents and coercive sexual activity between adults and minors.

Prohibition of consensual sexual activity between adolescents not only exposes them to criminal prosecution and criminal penalties, it also deters them from seeking access to SRH services. Therefore, the CRC and CEDAW Committees should call on State parties to amend laws that criminalize consensual sexual activity between adolescents. They should call on State parties to stop criminal prosecution and incarceration of adolescents engaging in consensual sexual activity with other minors.

Laws prohibiting child sexual abuse – such as the POCSO Act in India and provisions in the Pakistan Penal Code – should explicitly exempt adolescents who engage in consensual sexual activity with other minors. State parties should also consider introducing close-in-age exceptions to laws prohibiting sexual activities with minors to protect from prosecution adolescents whose ages are not far apart, if they engage in consensual and non-exploitative sexual conduct with another.

II. REPORTING MECHANISMS FOR CHILD SEXUAL ABUSE CASES MUST RESPECT THE BEST INTERESTS OF THE ADOLESCENT

The CRC and CEDAW Committees should emphasize that reporting of suspected cases of child sexual abuse must respect the confidentiality, privacy and autonomy of adolescents and ensure that the safety of the adolescent is never compromised. They should call on State parties to ensure that mandatory reporting mechanisms are not activated

where adolescents have engaged in consensual sexual activity. Reporting protocols that expose adolescents to risk of criminal prosecution for consensual sexual activity or compromise their confidentiality are likely to deter them from seeking access to SRH services. In cases of sexual abuse, mandatory reporting procedures should be accompanied with social protection services, including counselling, shelters and SRH services. Reporting mechanisms that trigger criminal proceedings which could expose the adolescent to backlash, without providing crucial protection services, will not be consistent with the best interests of the adolescent. Instead of prioritizing punitive proceedings and outcomes as the central objective of reporting mechanisms, State parties should develop procedures that focus on the well-being and healing of adolescents.

III. CALL ON STATE PARTIES TO ENSURE THAT LAWS PROHIBITING CHILD MARRIAGE ARE ENFORCED IN A MANNER CONSISTENT WITH ADOLESCENTS' AUTONOMY

Laws prohibiting child marriages should not deny adolescents their agency to enter into consensual sexual relationships. The Committees should call on State parties to take measures to address legal, social and cultural restrictions that prohibit adolescents from entering into consensual, non-exploitative relationships and compel them to enter into child marriage. These measures may include quality and affordable education, awareness raising campaigns as well as adolescent-friendly protection services. Committees should also call on State parties to ensure that punitive measures are not applied against adolescents who have entered into self-arranged marriages.

In the original 2014 version, the joint General Recommendation No. 31 of the CEDAW Committee/General Comment No. 18 of the CRC Committee recognized that under “exceptional circumstances” the marriage of a “mature, capable child below 18 years of age may be allowed.”⁴⁹ This reflected a recognition that older adolescents may freely enter into self-arranged marriages and their choice should not be criminalized. It is therefore concerning that in 2019, the CRC/CEDAW Committees voted to expunge this language.

State parties must be cognizant of the harmful impact that declaring child marriage *void ab initio* could have on adolescents, particularly adolescent girls who have entered into such unions, by further limiting their access to SRH services, making them more vulnerable to family and community backlash and also denying them legal rights in a marriage. Instead of calling on State parties to declare child marriages

ab initio, they should require them to ensure that legal aid and other protections services are available to young persons, especially girls, who wish to escape child marriages.

CONCLUSION

Laws, cultural norms and systemic weaknesses in the criminal justice system continue to pose significant challenges for adolescents' reproductive health and rights in South Asia. International human rights standards guarantee adolescents the right to SRH services while acknowledging that adolescents should not be subject to criminal penalties for engaging in consensual, non-exploitative sexual activity. The above analysis shows that the enforcement of criminal laws against child marriage and child sexual abuse laws that do not distinguish between coercive and consensual sexual activity expose adolescents to punitive consequences and deter them from seeking SRH services. The CEDAW and CRC Committees should call on State parties in South Asia to ensure that their legal frameworks promote development of adolescents, are consistent with their rights to health and privacy, and that laws enacted for the protection of adolescents are enforced in a manner that is sensitive to the cultural and social realities of adolescents in the region.

Endnotes

¹ Elena Camiletti, *Realizing An Enabling Environment For Adolescent Well-Being: An Inventory Of Laws and Policies for Adolescents in South Asia*, UNICEF, 7 (2018).

² *Id.* at 34-35.

³ See Saroj Pachauri, *Sexual and reproductive health services: priorities for South and East Asia* INDIAN JOURNAL OF COMMUNITY MEDICINE, 36(2), 83-4 (2011).

⁴ This paper uses the term "adolescents" to refer to young people in discussing the right to access sexual and reproductive health services. The World Health Organization defines adolescents as ages 10-19.

⁵ Committee on the Rights of the Child, *General Comment No. 20 on the implementation of the rights of the child during adolescence*, para. 9, U.N. Doc. CRC/C/GC/20 (Dec.2016) [hereinafter CRC Committee, General Comment No. 20].

⁶ *Id.* at paras. 59-60.

⁷ *Id.* at paras. 59-60.

⁸ *Id.* at para. 60.

⁹ *Id.* at para. 39.

¹⁰ *Id.* at para. 39.

¹¹ Committee on the Elimination of Discrimination Against Women, *General Recommendation No. 24 on the Right to Health*, para 18 (twentieth session, 1999).

¹² *Id.*

¹³ Joint General Recommendation/General Comment No. 31 of the Committee on Elimination of Discrimination Against Women and No. 18 of Committee on the Rights of the Child on harmful practices, para. 6, U.N. Doc. CEDAW/C/GC/31/CRC/C/GC/18 (2014).

¹⁴ *Id.* at para 19.

¹⁵ Convention on the Rights of the Child *adopted* Nov. 20 1989, G.A. Res. 44/25, annex, U.N. GAOR, 44th Sess. Supp. No. 49, U.N. Doc. A/44/49 (1989) (*entered into force* Sept. 2, 1990), art. 5.

¹⁶ CRC, General Comment No. 20, para. 20.

¹⁷ *Id.* at para. 39.

¹⁸ *Id.* at para. 39. The United Nations Special Rapporteur on the Right to Health has also affirmed the capacity of adolescents to access sexual and reproductive health services. In its 2016 report on the “Right of everyone to the enjoyment of the highest attainable standard of physical and mental health” the Special Rapporteur has urged States to introduce a “legal presumption of competence that an adolescent seeking preventive or time-sensitive health goods and services, including for sexual and reproductive health, has the requisite capacity to access such goods and services.” *Rep. of Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, para. 60, U.N. Doc. A/HRC/32/32 (2016).

¹⁹ CRC Committee, General Comment No. 20, para. 39.

²⁰ Committee on the Rights of the Child, *Concluding Observations on Fifth Periodic Report of Pakistan*, U.N. Doc. CRC/C/PAK/CO/5 para. 36 (2016); Committee on the Rights of the Child, *Concluding Observations on the Combined Third and Fourth Periodic Reports of India*, U.N. Doc. CRC/C/IND/CO/3-4, para. 49-50, (2014).

²¹ Pakistan Penal Code 1860, S. 496B.

²² Pakistan Penal Code 1860, S. 375.

²³ Pakistan Penal Code 1860, S. 82.

²⁴ The Country Penal Code Act, 2017 (2074 BS) Ch.18, No. 219.

²⁵ FIRE CONSORTIUM, PROMOTE PREVENTION, QUESTION CRIMINALIZATION, 11 (2020) *available at* https://www.academia.edu/44731809/Promote_Prevention_Question_Criminalisation.

²⁶ CRC, General Comment No. 20, para. 40.

²⁷ Committee on the Rights of the Child, *General Comment No. 24 on children’s rights in the child justice system*, para. 12, U.N. Doc. CRC/C/GC/24 (2019) [hereinafter CRC, General Comment No. 24].

²⁸ CRC, General Comment No. 24, para 2.

²⁹ CRC, General Comment No. 24, para 82.

³⁰ CRC, General Comment No. 20, para. 9.

³¹ Committee on the Rights of the Child, *Concluding Observations on Fifth Periodic Report of Pakistan*, para. 37, U.N. Doc. CRC/C/PAK/CO/5 (2016); Committee on the Rights of the Child, *Concluding Observations on the Combined Third and Fourth Periodic Reports of India*, para. 50, U.N. Doc. CRC/C/IND/CO/3-4 (2014).

³² POCSO Act 2012, S. 2.

³³ POCSO Act 2012, S. 19(1).

³⁴ NATIONAL LAW SCHOOL OF INDIA UNIVERSITY, AN ANALYSIS OF MANDATORY REPORTING UNDER THE POCSO ACT AND ITS IMPACT ON THE RIGHTS OF CHILDREN, 23 (2018) *available at* <https://feministlawarchives.pldindia.org/wp-content/uploads/Mandatory-Reporting-Paper-CCL-NLSIU-1.pdf>?

³⁵ POCSO Act 2012, S. 19(1).

³⁶ NATIONAL LAW SCHOOL OF INDIA UNIVERSITY, AN ANALYSIS OF MANDATORY REPORTING UNDER THE POCSO ACT AND ITS IMPACT ON THE RIGHTS OF CHILDREN, 12 (2018).

³⁷ Committee on the Rights of the Child, *Concluding Observations on the Combined Third and Fourth Periodic Reports of India*, U.N. Doc. CRC/C/IND/CO/3-4, para. 50, (2014).

³⁸ CRC Committee, General Comment No.4 on *Adolescent Health and Development in the Context of the Convention on the Rights of the Child*, para. 7, U.N. Doc. CRC/GC/2003/4 (2003).

³⁹ *Id.*

⁴⁰ Committee on the Elimination of Discrimination Against Women, *General Recommendation No. 24 on the Right to Health*, para 18 (twentieth session, 1999).

⁴¹ Committee on the Elimination of Discrimination Against Women, *Concluding Observations on the sixth periodic report of Nepal*, U.N. Doc. CEDAW/C/NPL/CO/6, para. 19 (2018); Committee on the Elimination of Discrimination Against Women, *Concluding Observations on eighth periodic report of Sri Lanka*, U.N. Doc. CEDAW/C/LKA/CO/8, para. 45 (2017).

⁴² Committee on the Elimination of Discrimination Against Women, *Concluding Observations on eighth periodic report of Bangladesh*, U.N. Doc. CEDAW/C/BGD/CO/8, para. 17, (2016).

⁴³ CEDAW Committee, *Concluding Observations to Nepal*, *supra* note 41 at para. 43.

⁴⁴ Committee on the Rights of the Child, *Concluding Observation on the fifth periodic report of Bangladesh*, U.N. Doc. CRC/C/BGD/CO/5, para. 22 (2015); CEDAW *Concluding Observations to Bangladesh*, *supra* note 42 at para 16. Bangladesh Child Marriage Restraint Act 2017, S.19 (the “special” circumstances under which marriage of an adolescent below the age of 18 but above the age of 16 are not defined in more detail and ultimately it is the prerogative of the court to determine if a child marriage will be in the best interests of a child).

⁴⁵ See PARTNERS IN LAW AND DEVELOPMENT, WHY GIRLS RUN AWAY TO MARRY 1-4 (2019) available at https://www.academia.edu/40718265/Why_Girls_Run_Away_to_Marry_Adolescent_Realities_and_Socio_Legal_Responses_in_India_2019_Adolescent_Sexuality_and_Early_Marriage_Series_Volume_1

⁴⁶ *Id.* at 64-68.

⁴⁷ FIRE CONSORTIUM, PROMOTE PREVENTION, QUESTION CRIMINALIZATION 34-35 (2020).

⁴⁸ *Id.*

⁴⁹ Joint General Recommendation/General Comment No. 31 of the CEDAW Committee/CRC Committee General Comment No. 18 on harmful practices U.N. Doc. CEDAW/C/GC/31/CRC/C/GC/18, para 19 (2014).