

# EARLY MARRIAGES IN MIDDLE EAST AND NORTH AFRICA

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“Child marriage remains a widely ignored violation of the health and development rights of girls and young women.”<sup>1</sup> Many reasons are given by parents and guardians to justify child marriage.<sup>2</sup> Economic reasons often underpin these decisions which are directly linked to poverty and the lack of economic opportunities for girls in rural areas.<sup>3</sup> Girls are either seen as an economic burden or valued as capital for their exchange value in terms of goods, money or livestock.<sup>4</sup> A combination of cultural, traditional, and religious arguments are examples utilized to justify child marriage.<sup>5</sup> The fear and stigma attached to premarital sex and bearing children outside marriage, and the associated family “honor,” are often seen as valid reasons for the actions that families take.<sup>6</sup> Finally, many parents tend to curtail the education of their girls and marry them off, due to fear of the high level of sexual violence and abuse encountered en route to, and even at, school.<sup>7</sup>

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<sup>1</sup> Ending child marriage, A guide for global policy action, International Planned Parenthood Federation and the Forum on Marriage and the Rights of Women and Girls, 2006, page 6

[http://www.musawah.org/sites/default/files/662\\_filename\\_endchildmarriage.pdf](http://www.musawah.org/sites/default/files/662_filename_endchildmarriage.pdf)

See also UNICEF’S “Why Early Childhood Development” defining development as the formation of the “basis of intelligence, personality, social behavior, and capacity to learn and nurture oneself as an adult”

[http://www.unicef.org/earlychildhood/index\\_40748.html](http://www.unicef.org/earlychildhood/index_40748.html)

<sup>2</sup>*Id.* at Page 7, [http://www.musawah.org/sites/default/files/662\\_filename\\_endchildmarriage.pdf](http://www.musawah.org/sites/default/files/662_filename_endchildmarriage.pdf)

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

<sup>4</sup> *Id.*

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

<sup>6</sup> Otoo-Oyortey, N. and Pobi, S. (2003) Early Marriage and Poverty: Exploring Links for Policy and Programme Development. London: International Planned Parenthood Federation and Forum on Marriage and the Rights of Women and Girls.

<sup>7</sup> *Ending child marriage*, Page 7, [http://www.musawah.org/sites/default/files/662\\_filename\\_endchildmarriage.pdf](http://www.musawah.org/sites/default/files/662_filename_endchildmarriage.pdf)

From Yemen where there is currently no minimum age for marriage, to Libya where the minimum age is 20, early marriage is a varying problem in the Middle East and North Africa (MENA).<sup>8</sup> For the purpose of this research, we will look at early marriages in the MENA region.

The MENA region we will refer to is that defined by UNICEF and includes the following 20 states: Algeria, Bahrain, Djibouti, Egypt, Iran, Iraq, Jordan, Kuwait, Lebanon, Libya, Morocco, Oman, Qatar, Saudi Arabia, Palestine, Sudan, Syrian Arab Republic, Tunisia, United Arab Emirates and Yemen.<sup>9</sup> According to the 2014 UNICEF State of the World's Children Report, 3 percent of girls were married before they turned 15-years-old and 18 percent of girls were married before they reached 18-years-old in MENA.<sup>10</sup> This data does not take into account six of the MENA states.<sup>11</sup>

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), Article 16, paragraph 2, establishes that early marriages are legally void.<sup>12</sup> The article also urges states to take necessary action, including legislation, to specify a minimum age for marriage.<sup>13</sup>

A criticism of this CEDAW article is that it sets no definition as to what constitutes a child and thus states are free to set any age as the majority age and any minimum age for

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<sup>8</sup> Refworld, UN Committee on the Elimination of Discrimination against Women: Sixth Periodic Report of State Parties, Yemen, March 2007, Page 73, analysis of Article 15 of Personal Status Laws, <http://www.refworld.org/docid/467138a62.html>, and Committee on the Elimination of Discrimination against Women, Second, Third, Fourth and Fifth periodic reports of Libya, CEDAW/C/LBY/5, 2008, <http://www2.ohchr.org/english/bodies/cedaw/docs/AdvanceVersions/CEDAW.C.LBY.5.pdf>

<sup>9</sup> Information by Country, UNICEF, <http://www.unicef.org/infobycountry/northafrica.html>

<sup>10</sup> *The State of the World's Children 2014 in Numbers: Every Child Counts, Revealing disparities, advancing children's rights*, pages 78-83

[http://www.unicef.org/sowc2014/numbers/documents/english/SOWC2014\\_In%20Numbers\\_28%20Jan.pdf](http://www.unicef.org/sowc2014/numbers/documents/english/SOWC2014_In%20Numbers_28%20Jan.pdf)

<sup>11</sup> *Id.* See Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and United Arab Emirates (all six states do not have minimum age limit for marriage)

<sup>12</sup> CEDAW, Article 16, para. 2, <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm#article16>

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

marriage. Even though there is a General Recommendation to Article 16(2) of CEDAW, it only recommends that 18 be the minimum age to marry and is not binding to parties of the treaty.<sup>14</sup> More can be done to strengthen international human rights treaty mechanisms to ensure countries are not remiss in complying with their early marriage treaty obligations. There needs to be a treaty that mandates states to set 18 as the minimum age to marry.

This research memorandum will (a) examine the national legal frameworks regarding early marriages in the following four MENA states: Iraq, Yemen, Morocco, and Libya, (b) monitor the degree to which those four states have implemented early marriage laws; and (c) articulate what potential reforms would assist in strengthening MENA early marriage legislation.

In the Middle East and North Africa region, several legal systems are implemented. Some countries' legal system is based solely on Islamic Shari'a law (Yemen), while most countries maintain a hybrid legal system combining a version of French, British or Egyptian legal codes with Shari'a (Iraq, Morocco and Libya).<sup>15</sup> The personal status law, or family code, regulates marriage and is governed in most countries by Shari'a (Yemen, Libya and Iraq).<sup>16</sup>

In examining the legal frameworks for Iraq, Yemen, Morocco and Libya, the local personal status and family laws will be analyzed where available. For states where there is currently an absence of codified family laws or a lack of translation of Arabic personal status laws or recent constitution (Yemen and Libya), references to United Nations, non-governmental organizations (NGOs), local media outlets and academic institutions will be made.

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<sup>14</sup> UN Committee on the Elimination of Discrimination Against Women (CEDAW), *CEDAW General Recommendation No. 21: Equality in Marriage and Family Relations*, 1994, available at: <http://www.refworld.org/docid/48abd52c0.html> [accessed 2 April 2014]

<sup>15</sup> Regional Overview for the Middle East and North Africa, MENA Gender Equality Profile, Status of Girls and Women in the Middle East and North Africa, UNICEF, 2011

<sup>16</sup> *Id.*

## Age Allowed to Marry

According to the *Cairo Declaration*, a woman is equal to a man in human dignity.<sup>17</sup> However, in MENA, minimum marriage age differs widely and often is lower for girls or women than boys or men. Many of these MENA states permit marriage at an even younger age so long as a judge permits it. The minimum age standards for girls or women vary from no minimum age to 20-years-old.<sup>18</sup>

We will examine two states that lack implementation of a minimum age requirement (Iraq and Yemen) and two states that have taken steps to ensure early marriages are prevented (Morocco and Libya).

### Iraq

Currently, Iraq has one of the most progressive policies for marriage in the MENA region—setting the legal marriage age at 18-years-old.<sup>19</sup>

Iraqi law now sets the legal age for marriage at 18-years-old without parental approval.<sup>20</sup> Girls, as young as 15-years-old, can be married with a guardian's approval.<sup>21</sup> If a 15-year-old person asks to be married, the judge can authorize the marriage if the eligibility and physical ability of the person in question has been proven and after obtaining the approval of the person's

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<sup>17</sup> Cairo Declaration on Human Rights in Islam, Article 6(a), August 1990, <http://www1.umn.edu/humanrts/instree/cairodeclaration.html>

<sup>18</sup> Emory Law School, <http://www.law.emory.edu/ifl/region/mideast.html>

<sup>19</sup> Law No. 188 of the year 1959, Personal Status Law and amendments, Section 3, Article 7, [http://apps.americanbar.org/rol/publications/iraq\\_personal\\_status\\_law\\_1959\\_english\\_translation.pdf](http://apps.americanbar.org/rol/publications/iraq_personal_status_law_1959_english_translation.pdf)

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

<sup>21</sup> The Daily Star: Lebanon News, March 15, 2014, <http://www.dailystar.com.lb/News/Middle-East/2014/Mar-15/250339-iraq-bill-slammed-for-legalizing-child-marriage.ashx#ixzz2xjzby1r>

legal guardian.<sup>22</sup> The judge can authorize the marriage of a 15-year-old person if it is deemed an “urgent necessity.”<sup>23</sup>

However, Iraq is in the process of changing a law enacted in 1959 to lower the minimum marriage age.<sup>24</sup> A contentious draft law being considered, known as the Jaafari Personal Status Law, could open the door to girls as young as nine-years-old getting married.<sup>25</sup> While there is no minimum age for marriage included in the bill, the section on divorce includes rules for divorces of girls who have reached the age of 9 years.<sup>26</sup>

Hanaa Eduar, a prominent Iraqi human rights activist, stated that child marriage is a crime against humanity.<sup>27</sup> “It would deprive a girl of her right to live a normal childhood.”<sup>28</sup> In addition, the United Nation’s representative to Iraq, Nickolay Mladenov has also condemned the legislation and stated that the pending bill “risks constitutionally protected rights for women and international commitment.”<sup>29</sup>

Supporters of the draft say it merely regulates customs already in place.<sup>30</sup> In addition, officials stated that there has been a rise in the marriage of girls under the age of 18-years-old since the overthrow of Saddam Hussein in 2003.<sup>31</sup>

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<sup>22</sup> Law No. 188 of the year 1959, Personal Status Law and amendments, Section 3, Article 8, [http://apps.americanbar.org/rol/publications/iraq\\_personal\\_status\\_law\\_1959\\_english\\_translation.pdf](http://apps.americanbar.org/rol/publications/iraq_personal_status_law_1959_english_translation.pdf)

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

<sup>24</sup> *Id.*

<sup>25</sup> “Ja’fari Law Takes the Iraqi Government’s Violation of Women’s Rights to a New Level,” Iraqi Civil Society Solidarity Initiative, April 2014, <http://www.iraqicivilsociety.org/archives/3022>

<sup>26</sup> “Iraq: Don’t legalize Marriage for 9-Year-Olds,” Iraqi Al-Amal Association, <http://www.iraqi-alamal.com/ArticleShow.aspx?ID=236>

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

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

<sup>31</sup> “Ja’fari Law Takes the Iraqi Government’s Violation of Women’s Rights to a New Level,” Iraqi Civil Society Solidarity Initiative, April 2014, <http://www.iraqicivilsociety.org/archives/3022>

Parliament must still ratify the bill before it can become the law. However, elections are scheduled for April 30, 2014, and so it is unlikely that this will take priority until after elections are completed.<sup>32</sup>

## **Yemen**

The UN estimates that one in three Yemeni girls are married before reaching age 18.<sup>33</sup> In Yemen there is currently no minimum age for marriage set.<sup>34</sup> In 1999, Yemen's parliament abolished article 15 of Yemen's Personal Status Law, which set 15 as the minimum age for marriage.<sup>35</sup> This has led to the practice of marrying girls at a young age.<sup>36</sup> "The greatest problem facing Yemeni women today is child marriages," says Wafa Ahmad Ali of the Yemeni Women's Union (YWU), one of several local NGOs trying to change the prospects of young girls by ensuring they remain unmarried and in school until they are at least 18.<sup>37</sup>

According to the UN and Yemeni government data from 2006, 52 percent of girls were married, often to much older men, before age 18, and 14 percent before age 15.<sup>38</sup> Yemen has the fourth highest percentage of women, between ages 20 and 24-years-old, who were married by

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<sup>32</sup> "Iraq: Don't legalize Marriage for 9-Year-Olds," Iraqi Al-Amal Association, <http://www.iraqi-alamal.com/ArticleShow.aspx?ID=236>

<sup>33</sup> UNICEF, Table 9: Child Protection, [http://www.unicef.org/sowc2013/files/Table\\_9\\_Stat\\_Tables\\_SWCR2013\\_ENGLISH.pdf](http://www.unicef.org/sowc2013/files/Table_9_Stat_Tables_SWCR2013_ENGLISH.pdf)

<sup>34</sup> Refworld, UN Committee on the Elimination of Discrimination against Women: Sixth Periodic Report of State Parties, Yemen, March 2007, Page 73, analysis of Article 15 of Personal Status Laws, <http://www.refworld.org/docid/467138a62.html>

<sup>35</sup> "How Come You Allow Little Girls to Get Married?" Human Rights Watch, 2011, [http://www.hrw.org/sites/default/files/reports/yemen1211ForUpload\\_0.pdf](http://www.hrw.org/sites/default/files/reports/yemen1211ForUpload_0.pdf)

<sup>36</sup> *Id.*

<sup>37</sup> *Women in the World Today*, Changing Hearts and Minds: Averting Child Marriage in Yemen, Chapter 12, Dalia-Al-Eryani and Laurel Lundstrom, IIP Digital <http://iipdigital.usembassy.gov/st/english/publication/2012/02/20120228131454ae10.8837789.html#axzz2zDXucUHo>

<sup>38</sup> Yemen, Monitoring the situation of children and women, Multiple Indicator Cluster Survey 2006, page 56-57, [http://www.childinfo.org/files/MICS3\\_Yemen\\_FinalReport\\_2006\\_Eng.pdf](http://www.childinfo.org/files/MICS3_Yemen_FinalReport_2006_Eng.pdf)

age 18.<sup>39</sup> Early marriages often result in increased drop out rates, dying in childbirth, and a higher risk of physical and sexual abuse when comparing to women who marry at 18 or later.<sup>40</sup> Another concern of having no minimum age set is that marriage at such a young age leads to girls as young as 8 years-old dying on their wedding night due to bleeding to death.<sup>41</sup>

Wafa, was married at 11-years-old to a 40-year-old who raped and tortured her.<sup>42</sup> Fortunately, a lawyer hired by Equality Now and the Yemeni Women Union managed to arrange for her divorce.<sup>43</sup> Fawziya, another 11-year-old, died during childbirth.<sup>44</sup> Salwa, a 12-year-old girl, killed herself by throwing herself off a roof.<sup>45</sup> And the recent, widely-reported case, which was not officially corroborated, of an eight-year-old girl said to have died of internal injuries after her wedding night, prompted renewed calls for action.<sup>46</sup>

Until now, Yemen has been one of the few countries in the region without any minimum age for marriage.<sup>47</sup> In 2008, a majority of the Parliament voted to set 17 as the minimum marriage age, but a strong minority comprised of conservatives was able to shelve the bill indefinitely.<sup>48</sup> However, there is opportunity for change, as Yemen has taken the initiative to

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<sup>39</sup> "Marrying Too Young, End Child Marriage," United Nations Population Fund, page 23,

<https://www.unfpa.org/webdav/site/global/shared/documents/publications/2012/MarryingTooYoung.pdf>

<sup>40</sup> Yemen, Monitoring the situation of children and women, Multiple Indicator Cluster Survey 2006, page 56-57,

[http://www.childinfo.org/files/MICS3\\_Yemen\\_FinalReport\\_2006\\_Eng.pdf](http://www.childinfo.org/files/MICS3_Yemen_FinalReport_2006_Eng.pdf)

<sup>41</sup> "How Come You Allow Little Girls to Get Married?" Human Rights Watch, 2011,

[http://www.hrw.org/sites/default/files/reports/yemen1211ForUpload\\_0.pdf](http://www.hrw.org/sites/default/files/reports/yemen1211ForUpload_0.pdf)

<sup>42</sup> Yemen: End child marriages by enacting and enforcing a minimum age of marriage law, Equality Now,

September 2013, [http://www.equalitynow.org/take\\_action/adolescent\\_girls\\_action344](http://www.equalitynow.org/take_action/adolescent_girls_action344)

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

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

<sup>45</sup> *Id.*

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

<sup>47</sup> "How Come You Allow Little Girls to Get Married?" Human Rights Watch, 2011,

[http://www.hrw.org/sites/default/files/reports/yemen1211ForUpload\\_0.pdf](http://www.hrw.org/sites/default/files/reports/yemen1211ForUpload_0.pdf)

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

construct a new constitution.<sup>49</sup> This new constitution could provide the change needed to combat violence against girls in Yemen by passing a minimum age of marriage.

## **Morocco**

Morocco has recently changed their marriage laws to raise the minimum age to 18-years-old.<sup>50</sup> Prior to this change, the minimum marriage age was 18 years for males and 15 for females.<sup>51</sup> In addition, the compatibility of age in marriage is defined as the wife's right.<sup>52</sup> The government also organized a large-scale media campaign—involving Islamic law experts, intellectuals and political representatives—to raise awareness of the new law and encourage changes in behavior.<sup>53</sup>

A Family Affairs Judge may authorize the marriage of a girl or boy below the age of 18 in a “well-substantiated decision explaining the interest and reasons justifying the marriage, after having heard the parents of the minor who has not yet reached the age of capacity or his/her legal tutor, with the assistance of medical expertise or after having conducted a social enquiry.”<sup>54</sup>

Even though Article 19 of the family code adopted in 2004 prohibits marriage for anyone below 18-years-old, child marriage is still a reality in Morocco.<sup>55</sup> It continues to expand, and creates irreparable negative social consequences.<sup>56</sup> According to AFP TV, official figures show

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<sup>49</sup> *Id.*

<sup>50</sup> Human Rights Education Associates, Moroccan Family Code (Moudawana) of February 5, 2004, Title Two, Chapter 1, Article 19, <http://www.hrea.org/moudawana.html#11>

<sup>51</sup> Emory Law School, <http://www.law.emory.edu/ifl/legal/morocco.htm>

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

<sup>53</sup> Middle East Media Research. “King of Morocco Calls for Fundamental Reform in Family Law.” November 7, 2003, <http://www.icrw.org/files/images/Child-Marriage-Fact-Sheet-Laws.pdf>

<sup>54</sup> Human Rights Education Associates, Moroccan Family Code (Moudawana) of February 5, 2004, Title Two, Chapter 1, Article 20, <http://www.hrea.org/moudawana.html#11>

<sup>55</sup> “Morocco considers law on child marriage,” Morocco World News, March 10, 2013

<http://www.morocoworldnews.com/2013/03/81696/morocco-considers-law-on-child-marriage/>

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



that the number of child marriages in Morocco rose to more than 35,000 in 2010 up from 30,000 two years before.<sup>57</sup>

In March 2012, Morocco was shocked by the suicide of Amina Filali, a 16-year-old girl, who was forced to marry the man who had raped her.<sup>58</sup> He remained a free man in accordance with Article 475 of the country's penal code that allows a rapist to escape prison by marrying his victim.<sup>59</sup> This death called for a change in the law to be made. Fortunately, in January 2014, Moroccan lawmakers enacted legal reforms to strengthen punishments for child marriages.<sup>60</sup> Articles were removed from the Personal Status Law that allowed a judge to endorse early marriage under the legal age.<sup>61</sup>

Although, the marriage age minimum is 18-years-old in Morocco, judges continue to approve marriages of younger individuals.<sup>62</sup> Although the parliament has taken measures in responding to some of the demands of women's rights activists regarding early marriages and sexual violence, more needs to be done to ensure that the law in place is being implemented.<sup>63</sup> A bill has been proposed by the Moroccan government threatening prison sentences of up to 25 years for perpetrators of violence against women, yet it is still in the drafting stage.<sup>64</sup> This bill could provide the opportunity needed by criminalizing early and forced marriages.

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<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> "Morocco considers law on child marriage," Morocco World News, March 10, 2013 <http://www.morocoworldnews.com/2013/03/81696/morocco-considers-law-on-child-marriage/>, Morocco: Girl's Death Highlights Flawed Laws, March 23, 2012, <http://www.hrw.org/news/2012/03/23/morocco-girl-s-death-highlights-flawed-laws>

<sup>60</sup> Morocco: Enact legal reforms to strengthen punishments for sexual violence & prevent child marriage, Equality Now, January 28, 2014, <http://www.equalitynow.org/category/country/morocco>

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

<sup>62</sup> "Morocco repeals 'rape marriage law'," Al Jazeera English, January 23, 2014, <http://www.aljazeera.com/news/africa/2014/01/morocco-repeals-rape-marriage-law-2014123254643455.html>

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

<sup>64</sup> *Id.*

## **Libya**

Child marriages are rare in Libya.<sup>65</sup> In looking at the percentage of Libyan women, ages 20 to 24, who married before their 18<sup>th</sup> birthday, only 2 percent of them were married.<sup>66</sup> This percentage places Libya as the state with the lowest percentage of child marriages in the MENA region.<sup>67</sup>

Libya has recently changed their marriage laws to raise the minimum age to 20-years-old.<sup>68</sup> The minimum marriage age is the same for both men and women.<sup>69</sup> Judicial discretion for marriages below that age is granted on the grounds of benefit or necessity and with *Wali* agreement (someone who possesses or has been granted the authority to perform a marriage contract).<sup>70</sup>

In addition, a guardian may not force a girl, boy, woman or man into a marriage or prevent him or her from marrying.<sup>71</sup> If a guardian withholds consent, a minor may take the matter to the court to obtain permission.<sup>72</sup>

Libya is an example of a state that has changed its legal framework by maintaining that 20 be the minimum age for marriage, but also has been able to implement the legal enforcement of its law by showing that a small percentage of its population was married before international legalized marriage age.

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<sup>65</sup> Ending Child Marriage in the Arab Region, Population Reference Bureau, June 2013, <http://www.prb.org/Publications/Reports/2013/child-marriage-mena.aspx>

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

<sup>67</sup> *Id.*

<sup>68</sup> Committee on the Elimination of Discrimination against Women, Second, Third, Fourth and Fifth periodic reports of Libya, CEDAW/C/LBY/5, 2008,

<http://www2.ohchr.org/english/bodies/cedaw/docs/AdvanceVersions/CEDAW.C.LBY.5.pdf>

<sup>69</sup> *Id.*

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

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

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

## Conclusion

“Child marriage cuts across countries, cultures, religions and ethnicities.”<sup>73</sup> Eighteen percent of girls under 18 are married in the Middle East and North Africa.<sup>74</sup> This is a violation of all the rights of the child.<sup>75</sup> It forces girls to assume responsibilities for which they are typically not physically and psychologically prepared for.<sup>76</sup>

States *must* increase the minimum age to marry to 18 years of age for both girls and boys. In addition, child marriages should be criminalized and should not be justified on traditional, religious, cultural or economic grounds. Lastly, there needs to be public awareness highlighting the nature and harm caused by forced and early marriages and community programs to help detect, provide advice, rehabilitation and shelter where necessary.<sup>77</sup>

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<sup>73</sup> International Day of the Girl Child, October 2012, Joint Statement\* by a group of UN human rights experts to mark the first International Day of the Girl Child, Thursday, 11 October 2012,

<https://www.un.org/en/events/girlchild/2012/hrexperts.shtml>

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*