

STUDENT ESSAY

Niger's Approach to Child Marriage: A Violation of Children's Right to Health?

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Child marriage is a global challenge in need of greater attention. According to reports by UNICEF, 650 million girls and women alive today were married as children.¹ The global rate of child marriage still remains high, with data suggesting that over 12 million girls under 18 years are married every year.² With close links to high rates of adolescent pregnancy, domestic violence, infection, morbidity, and mortality, child marriage has been identified as posing significant health risks for girls involved.³ Child marriage impacts the right to health, and human rights institutions around the world are now paying increasing attention to the issue, which has been given greater prominence by its inclusion in target 5.3 of the Sustainable Development Goals, calling for the elimination of the practice by 2030.

While child marriage has been in decline in some parts of the world over the last 10 years, it is still prevalent in Niger, where 76% of women who got married between 2015 and 2021 did so before their 18th birthday.⁴ It is therefore critical that Niger take the steps recommended by regional and international human rights treaties to eradicate the practice. Most efforts to eradicate the practice in Niger have centered on changing cultural and gender norms in order to advance the rights of women and children. While this is crucial, it is evident that the success of such narratives is slow and restricted. Given all the negative health effects linked to child marriage, it is therefore crucial to consider whether embracing and promoting a different narrative that focuses on health might be more effective in sustaining real progress toward the elimination of child marriage across Niger.

This essay examines Niger's approach to child marriage, emphasizing the ways in which current practice violates the country's commitments under the Convention on the Rights of the Child (CRC) and the African Charter on the Rights and Welfare of the Child (ACRWC) to protect children's right to health. The second section provides necessary context by defining child marriage, emphasizing its prevalence in Niger, and highlighting the conditions that make child marriages commonplace throughout Niger. The third section concentrates on the impact of child marriage on health, demonstrating how the practice impedes children's ability to exercise their right to health. The fourth section explores the provisions and obligations of the ACRWC and the CRC pertaining to children's right to health, highlighting how current practice and legislation in Niger regarding child marriage has put the country in violation of these commitments. The conclusion highlights recommendations on how Niger could make progressive steps to minimize, and hopefully over time eradicate, child marriage. In particular, it highlights the need for child marriage to be

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approached from a right to health perspective rather than solely a children's and women's rights issue.

Minimum age for marriage and the definition of child marriage

The CRC defines a child as anyone under the age of 18 “unless under the law applicable to the child, majority is attained earlier.”⁵ This leaves open the window for state parties to have a lower age requirement in determining who is a child for the purpose of marriage. In the case of Niger, the legal age for marriage for boys and girls alike is set at 21, but the law allows girls to marry at 15 and boys at 18 where parental consent is obtained.⁶ This places the legal age of marriage in Niger lower than the age of majority set under human rights treaties and is further weakened by customary law in Niger, which has no minimum age requirement for marriage and under which many girls are married before the age of 15.⁷ Although the CRC and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) do not explicitly address child marriage, the United Nations Committee on the Rights of the Child and Committee on the Elimination of Discrimination against Women have defined child marriage as any union where either of the parties is less than 18 years old, irrespective of parental consent. In a joint general recommendation/general comment, these two committees strongly recommend that even when exceptions are made, the absolute minimum should not be less than 16 and must be approved by a court of law with the informed consent of the individuals involved.⁸ The ACRWC, which Niger has ratified, is even more specific, leaving no room for flexibility. Article 21(2) of the charter explicitly prohibits marriage below the age of 18 and imposes an obligation on state parties to pass legislation prohibiting marriage below the age of 18.⁹

The prohibition against child marriage is closely linked to the prohibition against harmful practices, the right to nondiscrimination, and the right to health. Given their age and lack of maturity, children and adolescents are generally considered

to lack the capacity to enter into legal agreements such as marriage, and hence child marriage is characterized by the Office of the United Nations High Commissioner for Human Rights, the Committee on the Rights of the Child, the Committee on the Elimination of Discrimination against Women, and regional treaties and bodies as a form of forced marriage and a harmful practice and therefore a violation of human rights.¹⁰ Furthermore, both the Committee on the Rights of the Child and the Committee on the Elimination of Discrimination against Women acknowledge that the practice of child marriage is a children's rights issue deeply rooted in gender inequalities.¹¹ Megan Arthur et al. find that the practice disproportionately affects girls and young women, preventing them from accessing human rights on an equal level to boys and men.¹² This discrimination often has its roots in the legislation of many countries, including Niger, where girls are given the legal right to marry a full three years before boys.¹³

Child marriage and health

Relevant academic literature has identified a number of health consequences associated with child marriage, including isolation and depression, high risk of sexually transmitted infection and cervical cancer, high risk of death during labor and delivery, and other long-term gynecological and psychological problems.¹⁴ The health concerns associated with child marriage confirm that children's health is dependent on the eradication of the practice.

The age at which a child first marries often coincides with the age in which she first engages in sexual intercourse.¹⁵ A lack of family planning education alongside external pressures to prove her fertility often mean that a young girl engages in frequent unprotected sex with an older husband who has previously had—or currently has in the cases of polygamous marriages—sex with other partners.¹⁶ This raises the risk of HIV infection; indeed, data show that HIV infection rates among married adolescents are often greater than among non-married adolescents.¹⁷

The high level of unprotected intercourse often results in child marriage being closely associated with high rates of early pregnancy and childbirth.¹⁸ Early pregnancy can be particularly damaging to the health of young girls and adolescents. With their bodies still underdeveloped, girls under 18 who become pregnant often suffer from obstructed labor and fistulas, which can cause lifelong injury and even death.¹⁹ Girls under the age of 20 are also particularly prone to health risks such as eclampsia and postpartum hemorrhage, both of which have a high mortality rate.²⁰ Overall, this has led to many young girls and adolescents dying as a result of childbirth: maternal mortality accounts for 35% of all fatalities among women aged 15–19 in Niger.²¹ Early pregnancy is dangerous not just to the young woman's health but also to the baby's, with figures revealing that children born to women under the age of 19 are up to 55% more likely to be delivered prematurely or at a low birth weight.²² Mortality rates are also higher among infants with younger mothers, who are 60% more likely to die within the first year of life.²³ With estimates showing that eradicating child marriage could save up to 140,000 children every year, it is evident that the practice must be effectively tackled in order to improve children's right to health.²⁴

Child marriage has also been shown to have a negative impact on a child's mental health, with research demonstrating a clear correlation between child marriage and high levels of depression and anxiety.²⁵ This is unsurprising given that these girls are often forced to take on the role of wife and, in some cases, mother while still underage, robbing them of the opportunity to experience a full childhood and forcing them to take on a level of responsibility usually reserved for adults of reasonable maturity.²⁶ Often, child marriage also leads to the child victim being isolated from her family and friends, exacerbating these issues and causing additional psychological harm.²⁷ The increased risk of domestic violence is another contributor to the poor mental and physical health generally found among child brides.²⁸

Child marriage in Niger

As established earlier, Niger has the highest prevalence of child marriage in the world. An estimated 76% of women and girls are married before the age of 18, and of these, 28% are married before the age of 15.²⁹ This rate varies throughout subnational regions but is particularly high along the southern border with Nigeria.³⁰ In places such as Maradi, the prevalence of child marriage reaches as high as 89%.³¹ The high level of child marriage in Niger is partially the result of insufficient legislation, which currently places the minimum age for marriage at 18 for boys and 15 for girls.³² The situation is exacerbated by customary laws, under which the majority of child marriages occur, which disregard age considerations entirely, allowing girls younger than 15 to marry.³³ Such laws and customs encourage gender inequality and imply that child marriage is socially expected. As previously noted, deep-seated gender inequalities and gender-related discrimination are frequently at the root of child marriage. In Niger, these gender inequalities are exacerbated by a variety of social, cultural, and economic issues, resulting in the country's particularly high rate of child marriage.³⁴

Discriminatory gender norms in Niger tend to portray women as inferior and subordinate to men.³⁵ These norms have a significant impact on society's perceptions of the value of girls and women, who as a result are often forced into the roles of wife and mother.³⁶ Consequently, many families do not see the value in allowing their daughters to pursue an education or a career, believing that marriage is the only viable option for them.³⁷ Many families in Niger also view early marriage as a great benefit to the family. For example, a girl's virginity prior to marriage is of great importance and is often tied to the family's honor and social status.³⁸ As a result, premarital sex is widely perceived as dishonorable, and families frequently see early marriage as an effective way of reducing the likelihood of such incidents occurring.³⁹ In cases where premarital sex has occurred, families have been known to force their daughters into an early marriage in order

to “cover up” the dishonorable behavior and keep face.⁴⁰ This can lead to some girls being forced to marry their rapist for the sake of family pride and social standing, leading to a continuation of the abuse.⁴¹

The high prevalence of child marriage in Niger also has strong links to the levels of poverty within the country. Niger is one of the poorest countries in the world, with over 80% of its population living under the poverty line and coming in as the lowest-ranking country on the Human Development Index.⁴² Droughts and food shortages are common, leading many families to marry their daughters off to older men in order to obtain dowry money, which is frequently used to settle debts or for financial gain.⁴³ It is no surprise, therefore, that the poorest areas of the country have the greatest rates of child marriage. However, it is worth noting that rates of child marriage remain high even among wealthier households, demonstrating that poverty is only one of many variables that contribute to child marriage.⁴⁴

Marriage is also seen as a benefit to the young bride, with a girl’s status and respect in the community skyrocketing after marriage. In addition, girls who fail to marry by their late teens or early twenties are typically victim to prominent levels of stigma portraying them as “undesirable,” “deficient,” or a burden on society.⁴⁵ Child marriage is thus a necessity for girls who want to maintain a favorable status among their peers and community. Rates of child marriage are also particularly high in the most unstable areas of Niger, such as Diffa, where the child marriage rate is as high as 89%.⁴⁶ With instability and conflict increasing the risk of sexual and physical assault, many families are motivated to marry their daughters early to alleviate the threat of harm and ensure “protection” for their child.⁴⁷

Other explanations for the high prevalence of child marriage in Niger pertain to dominant cultural beliefs and customs. The majority of Niger’s population practices Islam, and parents and other individuals use religion and culture as justification for child marriage and justification to resist reform in the area.⁴⁸ There are references to religion in

several reports as an influencing factor, and other arguments refer to Islamic ideals surrounding purity, honor, and the sanctity of marriage, which makes marriage the ultimate goal for young women.⁴⁹ Nevertheless, this is more of a cultural rather than an Islamic religious issue, given the prevalence of child marriage in many parts of Africa where the dominant religion is not Islam.

International and regional protections on child marriage and the right to health for children

Despite a range of health risks associated with child marriage, the practice continues to be prevalent across Niger for various reasons, including socio-cultural and economic factors. However, Niger has ratified the CRC, CEDAW, and ACRWC, which all prohibit child marriage, as explained below.

Right to health under the Convention on the Rights of the Child

The CRC, which Niger ratified in 1990, imposes a responsibility on all member states to take all appropriate measures to ensure children’s right to the “highest attainable standard of health.”⁵⁰ As noted by the Committee on the Rights of the Child, children have the right to self-determination over their health and bodies, including reproductive and sexual liberty to make informed decisions.⁵¹ As a result, practices such as child marriage that limit children’s freedom in relation to their health should be regarded as a violation of the convention. In particular, the convention calls on member states to take all “appropriate measures” to “diminish infant and child mortality,” “combat disease and malnutrition,” ensure that parents and children have access to “basic knowledge of child health,” and “develop preventative health care, guidance for parents and family planning education and services.”⁵² The Committee on the Rights of the Child has explicitly recognized child marriage, and early pregnancy commonly associated with the practice, as a barrier to the realization of the right to health for many adolescents, citing health issues such as sexual and reproductive health concerns, high

levels of disease, and links to infant and maternal mortality, all of which are health risks that the committee specifically identifies as areas requiring the attention of member states.⁵³

The CRC also places a requirement on member states to ensure that all children, regardless of their race, sex, religion, or disability, have equal access to the rights under the convention.⁵⁴ With regard to the right to health, states are therefore obliged to ensure that laws and policies do not have a disparate impact on children's health.⁵⁵ Given how disproportionately the health of girls and adolescents is affected by child marriage, it is evident that the practice is discriminatory. As a result, Niger is required to take all necessary steps to put an end to the practice, including through legislation and human rights education consistent with its obligations under the CRC.⁵⁶ While the government of Niger has reportedly engaged in some awareness-raising around reproductive health and family planning, ending child marriage can go a long way to eliminate some of the health consequences that arise from the practice.⁵⁷ In 2018, the Committee on the Rights of the Child found the efforts made by Niger to address this practice to be insufficient.⁵⁸

The right to health under the African Charter on the Rights and Welfare of the Child

The CRC is largely supported and mirrored by the ACRWC, which Niger ratified in 1999. The ACRWC was founded on the same principles as the CRC but with a greater emphasis on concerns that are particularly significant in the African context.⁵⁹ Both the African Committee of Experts on the Rights and Welfare of the Child and the African Commission on Human and Peoples' Rights set the minimum age of marriage at 18 and note in a joint general comment that child marriage "deprives children the full complement of their right to health," "increases their risk of exposure to sexually transmitted infections," and is discriminatory on grounds of sex.⁶⁰ They further note that children and adolescents who are already married must be provided with access to a comprehensive range of sexual and reproductive health rights.⁶¹ The fact that the age of marriage in Niger is set below 18 years

and that there is limited availability and access to health care for young girls are inconsistent with the provisions of the ACRWC. Both the committee and the commission go further to provide that "legislative measures that prohibit child marriage must take precedence over customary, religious, traditional, or sub-national laws" that condone or support child marriage.⁶² There is therefore a need for Niger to enact domestic legislation prohibiting child marriage in line with the age requirements of the ACRWC and to ensure that such legislation overrides customary law, under which the majority of child marriages are being conducted. This is feasible given that other African jurisdictions such as Nigeria and Cameroon have introduced "repugnancy and incompatibility tests" that guarantee the applicability of customary law to the extent that it is not repugnant to natural justice, equity, or good conscience or incompatible with statutory law.⁶³

Harmful practices under the Convention on the Rights of the Child

The need to utilize the "repugnancy and incompatibility" test highlighted above is strengthened by article 21 of the ACRWC, which imposes a responsibility on state parties to protect children from harmful social and cultural practices that are prejudicial to the health of the child and discriminatory on the grounds of sex or other characteristics. This is also provided for in article 24(3) of the CRC.⁶⁴ The joint general recommendation/general comment by the Committee on the Rights of the Child and the Committee on the Elimination of Discrimination against Women explicitly identifies child marriage as a "harmful practice."⁶⁵ This is reinforced by the joint general comment of the African Committee of Experts on the Rights and Welfare of the Child and the African Commission on Human and Peoples' Rights, which describes child marriage as a "harmful practice" and requires states to prohibit all forms of harmful practices that perpetuate child marriage, and to discourage cultural and religious practices that are inconsistent with the welfare of the child.⁶⁶ In addition to causing physical, mental, and economic suffering, harmful practices limit the "recognition, enjoyment and exercise" of human

rights of affected women and children.⁶⁷ The Committee on the Rights of the Child, Committee on the Elimination of Discrimination against Women, African Committee of Experts on the Rights and Welfare of the Child, and African Commission on Human and Peoples' Rights have all found child marriage to be discriminatory against young women and girls.⁶⁸ However, upon ratification, Niger made a significant reservation to CEDAW in which the state indicated that it would not be committing to the obligation to take all appropriate measures to abolish customs and practices that constitute discrimination against women.⁶⁹

Recommendations

Legislation

There are several legislative changes that Niger can implement to better safeguard women and girls from the practice of child marriage. First, Niger should withdraw the reservation made on CEDAW article 2(d) and (f) that removes obligations to abolish customs and practices that are discriminatory toward women and girls. In accordance with the regulations outlined under the ACRWC and as interpreted by both the African Commission on Human and Peoples' Rights and the African Committee of Experts on the Rights and Welfare of the Child, action should also be taken to raise the legal age of marriage to 18 years for both boys and girls. Finally, Niger should introduce a "repugnancy and incompatibility test" to guarantee that customary law is applied only in circumstances where it does not adversely affect children's rights and welfare, including their right to health and protection from the harmful practice of child marriage. Only by implementing these changes will Niger be able to successfully tackle the discriminatory provisions within its legislation.

Like other economic, social, and cultural rights, children's right to health is subject to the principle of progressive realization.⁷⁰ The principle of progressive realization "requires that States expand their promotion and protection of economic and social rights over time to the fullest extent possible with their available resources."⁷¹ While Ni-

ger may therefore be afforded some leeway due to a lack of adequate resources or financing, it is still obliged to adopt all appropriate measures available to protect children's right to health.⁷² In the context of child marriage, this would entail amending existing legislation as outlined above.

Policy and programs

Other appropriate measures include constructing, implementing, and monitoring specific policies and initiatives aimed at decreasing the rate of child marriage and therein protecting children's right to health.⁷³ In this area, Niger has made some progress in adopting "appropriate measures." In 2018, the country developed a National Action Plan to End Child Marriage in partnership with UNICEF and UNFPA. The program has made progress in providing 150,000 girls with opportunities to gain essential knowledge, skills, and mindsets to allow them to "say no to child marriage."⁷⁴ The program has also encouraged community conversations, which are frequently led by traditional chiefs and religious leaders, with the goal of inspiring change and influencing perceptions about the value of investing in and supporting adolescent girls.⁷⁵ Other measures have included provisions adopted by the Economic and Social Development Plan that attempt to lower child marriage rates by prioritizing girls' education, as well as the National Strategy on Adolescent Pregnancy Prevention, which aimed to reduce child marriages between 2012 and 2020 (albeit unsuccessfully).⁷⁶ It is important to note, however, that while these policies are positive steps, they are insufficient given that they have been ineffective in reducing child marriage rates across the country; estimates indicate that if the trends continue as they are, Niger will be unlikely to meet the 2030 target set by Sustainable Development Goal 5.3.1 to eliminate child marriage.⁷⁷

Moving forward, Niger should not only continue to deliver national initiatives aimed at working alongside religious and traditional leaders to help change harmful cultural values and gender norms and increase access to sexual and reproductive health care for young girls and women but also adopt new approaches to the issue. The primary

focus of much of Niger's policy initiatives and programs has been on the effects of child marriage on women's and children's rights, emphasizing the need for shifts in gender and cultural norms. Despite the undeniable importance and relevance of such narratives, it is evident that approaches based on women's rights alone are not always effective at generating incentive for change.

Gender norms are often deeply ingrained and difficult to change; while this does not mean that attempts to change such norms should be abandoned, it does highlight the need for alternative approaches if sustainable and effective change is to be achieved sooner. Programs and initiatives in other countries have found that using a health narrative is an effective way to inspire change around practices that negatively affect girls and young women. In Kenya and Ethiopia, for instance, portraying female genital mutilation (FGM) as a reproductive health issue was found to be more effective than messages promoting girls' human rights in outreach and advocacy programs.⁷⁸ Similarly, research conducted in Egypt showed that associated health risks are one of the main factors for opposition to FGM.⁷⁹ Efforts in Tanzania have also demonstrated how emphasizing the health consequences of FGM has been effective in swaying fathers and communities to reject the practice.⁸⁰ Therefore, it is reasonable to assume that a health strategy could influence child marriage in a similar way. Going forward, Niger should aim to incorporate programs intended to educate its population about the multiple health risks associated with the practice of child marriage alongside already existing narratives on harmful gender norms and stereotypes.

Conclusion

The close relationship between child marriage and high rates of disease, infection, and mortality makes it evident that the practice acts as a major barrier to Niger's fulfillment of its commitments under the ACRWC and CRC to safeguard children's right to health. While the country has taken some positive steps toward the progressive realization of the right by introducing policies aimed at reducing child

marriage, there remains significant room for improvement given that current initiatives have been largely ineffective. Niger should continue to take all necessary actions to implement the recommendations made by various international committees and organizations to protect children's right to health and implement additional measures, including legislative ones, to end child marriage within its borders. Niger should also change its strategy to focus on the health-related risks of child marriage in order to ascertain whether such an approach would be more effective in encouraging a decline in the prevalence of child marriage.

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