

THE UPR PROJECT AT BCU



Submitted by:

The UPR Project at BCU
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About the UPR Project at BCU:

Birmingham City University's Centre for Human Rights was created in 2014 to promote human rights, ensure access to justice, and enhance the rule of law around the world. We seek to achieve this through leading research, education, and consultancy. We submit expert reports to international human rights regions, provide advisory services to governments and nongovernmental organisations, and draft legal opinions and file legal briefs in domestic courts and international human rights courts.

The Centre for Human Rights established the UPR Project in 2018 as part of our consultancy service. We engage with the Human Rights Council's review process in offering support to the UPR Pre-sessions, providing capacity building for UPR stakeholders and National Human Rights Institutions, and the filing of stakeholder reports in selected sessions. The UPR Project is designed to help meet the challenges facing the safeguarding of human rights around the world, and to help ensure that UPR recommendations are translated into domestic legal change in member state parliaments. We fully support the UPR ethos of encouraging the sharing of best practice globally to protect everyone's human rights. The UPR Project at BCU engages with the UPR regularly as a stakeholder and is frequently cited by the OHCHR. You can read more about the UPR Project here: www.bcu.ac.uk/law/research/centre-for-human-rights/projects-and-consultancy/upr-project-at-bcu

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INTRODUCTION

1. Mali is party to all nine core international human rights treaties for which it should be highly commended.¹ This includes the Convention on the Rights of the Child (CRC) and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and in line with the Covenants' protection of minors, this Stakeholder Report focuses upon children's rights with particular reference to child, early and forced marriage.
2. We make recommendations to the Government of Mali on this key issue, implementation of which would see Mali move towards achieving Sustainable Development Goal 5 which aims for "gender equality and empowering all women and girls."
3. We urge the State to make practical commitments in the fourth cycle of the UPR for the advancement of children's rights in this topical area. This includes giving full and practical consideration to all recommendations made by Member States, effectively implementing the recommendations Mali accepts, and actively engaging with civil society throughout the process.

CHILD, EARLY AND FORCED MARRIAGE

A. Mali and International Law on Child, Early and Forced Marriage

4. Child and early marriage occurs before the age of 18 for one or both of the parties and it manifests in any formal marriage or informal union. Forced marriage can occur at any age when one and/or both parties have not provided their full and free consent to the union. A child marriage is therefore considered to be a form of forced marriage, as one and/or both parties are unable to provide their full, free and informed consent.² There are various acronyms to describe this human rights issue, but in this submission we adopt 'Child, Early and Forced Marriage' (CEFM).
5. CEFM is a human rights violation which deprives children of their agency to make decisions about their lives and future. It increases their vulnerability to various ills such as violence, discrimination, abuse, ill-health including sexual and reproductive health problems, and prevents their full participation in the economic, political and social spheres.³
6. Mali has one of the highest rates of child marriage worldwide, with girls disproportionately affected. National data indicates 54% of girls are married before reaching the age of 18, and 16% before the age of 15.⁴

7. Article 281 of Mali's Code of Persons and the Family 2011 establishes the minimum legal age of marriage at 16 years old for girls and 18 years old for boys. Marriage from the age of 15 is allowed subject to the authorisation of the head of the administrative district and parental consent.⁵ In addition, most customary marriages are unregistered especially those involving children as they lack birth registration documents.

International Law Prohibiting Child Marriage

8. The United Nations' framework for addressing CEFM comprises a corpus of international human rights law and jurisprudence. Of particular relevance are Article 16 of the Universal Declaration of Human Rights,⁶ Articles 1, 2, and 24 of CRC,⁷ Article 16 of CEDAW,⁸ the Report of the Secretary General on CEFM,⁹ and the Human Rights Committee decisions.¹⁰
9. Endorsing the worldwide legal age of marriage as 18-years-old, the Committee in its General Comment No. 20 (2016), on the implementation of the rights of the child during adolescence, reminds States parties of "the obligation to recognize that persons up to the age of 18 years are entitled to continuing protection from all forms of exploitation and abuse. It reaffirms that the minimum age limit should be 18 years for marriage."¹¹
10. Furthermore, a number of UN initiatives have identified CEFM as a human rights violation and that such practice should be outlawed worldwide. The Human Rights Council adopted the first UN resolution on CEFM in 2013¹², and in 2015, it adopted its first substantive resolution on the issue where it requested the High Commissioner to organise an expert workshop on the impact of the existing strategies and initiatives.¹³ This led to a further Human Rights Council resolution being adopted in 2017,¹⁴ with the most recent iteration taking place on 7th October 2021.¹⁵ In 2020, the latest Report of the Secretary General on the issue of child, early and forced marriage was presented to the General Assembly.¹⁶
11. Considerable effort has also been made to address CEFM in regional treaties and charters in Africa. This includes Article 21 of the African Charter on the Rights and Welfare of the Child 1990,¹⁷ Article 6 of the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa 2003 (the Maputo Protocol),¹⁸ and the Commonwealth Kigali Declaration to prevent and eliminate child, early and forced marriage adopted in May 2015.¹⁹
12. Mali's domestic law is therefore in violation of international human rights standards on the State obligation to establish a minimum age of marriage for children and the right to consent to marriage.

B. Implementation of Recommendations from Cycle Three in 2018

13. Mali received 194 recommendations in the Third Cycle of which 187 were accepted and 7 were noted.²⁰ A total of 15 recommendations focused on CEFM and these were all

supported by Mali, except one, which is commendable and indicates its commitment to curb child marriage.

14. **Germany** (para 115.51), **Namibia** (para 115.53), and **Sierra Leone** (para 115.48) recommended Mali to raise the minimum age of marriage for girls to 18 with **Canada** (para 115.5), **Iceland** (para 115.52), and **Luxembourg** (para 115.54) also making specific reference to the Maputo Protocol. **Haiti** (para 115.47) recommended an increase to 21 years of age. These recommendations have **not been implemented** and the provisions allowing CEFM in Mali’s Code of Persons and the Family 2011 remain in place.
15. **Angola** (para 115.49) recommended Mali “adopt a legal mechanism to combat child and early marriage” and **Cape Verde** (para 115.39) urged the state to “accelerate legislative measures leading to a strict prohibition and punishment of female genital mutilation and early marriage.” Similarly, **Honduras** (para 114.98) recommended the adoption of legislative and policy measures to combat CEFM. This has **not been implemented**.
16. Other states recommended Mali to continue and/or strengthen its efforts in combating CEFM, conduct awareness raising campaigns to reduce CEFM, as well as strengthen efforts to tackle stigmatization of women and children subjected to CEFM. This included **Chile** (para 114.11), **Maldives** (para 114.109), **Paraguay** (para 114.106), **Poland** (para 114.95), **Rwanda** (114.103), and **Tunisia** (para 114.108).
17. This has been **partially implemented**. Despite the results achieved from the Sahel Women’s Empowerment and Demographic Dividend Project in Sahel (SWEDD-Mali), significant challenges remain.²¹ Violence against women and girls persists and the child marriage rate remains high in the country. One of the main challenges that hinders progress in eliminating CEFM is the lack of national capacities, both in terms of training and quantity. For example, CEFM is intrinsically linked to girls’ retention in school and adolescent reproductive health and maternal health.
18. Another continual challenge is the resistance to changing social norms related to harmful practices, for example deconstructing taboos, facilitating the identification of cases of gender-based violence and implementing effective prevention measures. In order to facilitate change in the legal framework, and in individual and collective behaviour, greater advocacy work needs to be undertaken, in particular with religious leaders at both the community and national level.²²
19. Unfortunately, progress has been slow and new challenges are emerging. The COVID-19 pandemic continues to exacerbate gender inequality by disproportionately affecting girls, many of whom are at risk of not returning to education (see Section C: COVID-19 and the Increased Risk of CEFM).
20. It is also important to note that whilst UPR recommendations such as those to “continue efforts to combat early marriage” are welcomed, it is crucial that they remain specific and

measurable in order to assess the level of implementation. Broad recommendations, whilst easy to accept, lack any impetus to bring about real change.²³ It is recommended that States adopt a SMART approach to recommendations as recognised by UPRinfo.²⁴ This would help Mali initiate an incremental approach to the elimination of CEFM.

21. Additionally, it would prove more beneficial if recommending States make reference to the review criteria which includes “human rights instruments to which a State is party”.²⁵ For example reference to the CRC and/or CEDAW, a treaty the State under Review has ratified, would strengthen any CEFM recommendations.
22. The government is called upon to prioritise amending its Code of Persons and Family in order to harmonise its laws on marriage with international human rights law, and eliminate elements of law that are discriminatory against girls and women.

C. Further Points for Mali to Consider

National Multisectoral Strategy for the Abandonment of Child Marriage in Mali

23. Like other African countries, Mali has been engaged since 2014 in the campaign for the African Union to end child marriage. One of the priorities for the State remains the implementation of the *Stratégie Nationale Multisectorielle pour l’abandon du Mariage des Enfants* (SNMME), the Multisectoral Strategy for the Abandonment of Child Marriage.
24. During its 2022 Voluntary National Review at the High Level Political Forum, the mechanism through which countries report their progress on the Sustainable Development Goals, the government reported that 658 victims of CEFM benefited from holistic care in 2020 and 841 others in 2021 (a total of 1,500 children) through the SNMEE.²⁶ An official launch of the strategy was held on 22 July 2022.²⁷
25. Unfortunately, there is a lack of publicly available data on the SNMEE which makes it difficult to ascertain what the objectives and milestones include, or evaluate the progress and/or success of such a plan. The government should ensure transparency by making this data easily accessible and open to the wider public.
26. The adoption of a national strategy can provide an integrated vision and clear direction to all sectors, at various levels, involved in addressing CEFM in Mali. The strategy should identify clear national goals, objectives, strategies and key interventions across different sectors in order to help Mali adopt an incremental approach to the elimination of the practice.

27. Furthermore, the strategy should ensure effective coordination of the various initiatives to end child marriage. There is an increased need for collaboration, learning, and sharing of best practices amongst the different actors involved in preventing and responding to CEFM. This includes government, parliament, media, civil society, development partners and the private sector. The government must take notable actions to eliminate CEFM through implementation of the SNMME.

COVID-19 and the Increased Risk of CEFM

28. As a result of the COVID-19 pandemic, a further 10 million child marriages are projected globally before the end of the decade; unions that otherwise might have been prevented.²⁸ COVID-19 has exacerbated the risk of CEFM through five main routes:

- (1) interrupted education;
- (2) economic and food insecurity;
- (3) disruptions to programmes and services;
- (4) adolescent pregnancy; and,
- (5) death of a parent or primary caretaker.

29. Furthermore, families tend to make decisions about education and marriage in parallel hence school closures and suspension of educational services increase the risk of discontinuing education and promoting marriage instead. The pandemic has widened educational inequalities for vulnerable children and adolescents living in poor and/or remote rural areas as well as girls, refugees, those with disabilities, and those who are forcibly displaced.²⁹

30. Sexual and reproductive health services have also been disrupted which has a direct impact on adolescent pregnancy and marriage. A dangerous vacuum has been created as a result of curtailing awareness campaigns and community dialogues on the negative consequences of CEFM.³⁰

Impact of COVID-19 on Adolescent Girls and Gender Equality

31. Humanitarian crises and the deleterious impact of COVID-19 amplify and compound gender norms that hinder girls' school attendance, risk of child marriage, early pregnancy, gender-based violence, sexual exploitation and child labour. A girl is at risk of encountering violence in every sphere, including in the classroom, no matter where she may live.

32. Global figures indicate that in comparison to boys their age, girls between 5 and 14 years old spend 40 per cent more time on unpaid household chores and care work, which compromises their education and learning. As a result of COVID-19 school closures, girls

may have increased exposure to sexual activity, sexual violence and unwanted pregnancy as they may spend more time at home and unsupervised. The loss of school time may also lead families to view girls' education as a less worthwhile investment. Unfortunately, a disproportionate number of girls will simply not return to education.³¹

33. Economic fragility, loss of livelihood and an increase in household poverty may limit the ability of families to provide for their children. Economic and food insecurity tend to produce two reactions: reducing expenditure (such as education costs) and reducing the household size. Both can lead to child marriage. In addition, child marriage can benefit a household's income where the groom's family has to pay a form of bride wealth (known as 'lobola' in Southern Africa) to the bride's family.³²

34. According to UNFPA-UNICEF,
"The impact of the pandemic is likely to be felt for at least another decade, also raising the risk of child marriage for girls who are now young. Because marriage fundamentally alters the course of a girl's life, the full effect of the pandemic on human development will play out over a generation."³³

The Universal Periodic Review Recommendations and the Contribution to the Sustainable Development Goals

35. Mali should consider adopting the UPR recommendations as an expression of mutual reinforcement of the government's commitment to promoting the Sustainable Development Goals.³⁴ The human rights values expressed in both the UPR and the SDGs can be woven together to promote policy coherence.

36. SDG 5 provides for "gender equality and empower[ing] all women and girls" but the practice of CEFM is inconsistent with this goal. Specifically, SDG Target 5.3 aims to eliminate all harmful practices such as child, early and forced marriages.³⁵ Mali's commitment to SDG 5 on gender equality will need to involve raising the minimum legal age of marriage to 18.

37. The Special Rapporteur on the sale and sexual exploitation of children has noted in her 2022 annual report that "child marriage is rooted in gender inequality and in the relatively low value accorded to girls, and is exacerbated by poverty, insecurity and conflict."³⁶ CEFM is therefore antithetical to female empowerment, gender equality and the fostering of human dignity of the people of Mali.

D. Recommendations

We recommend the government of Mali to:

- i. Amend the 2011 Code of Persons and the Family raising the minimum legal age of marriage for girls to 18, in line with Article 24(2) CEDAW.
- ii. Adopt policy that clearly defines marriage as a union between two consenting adults and prohibits CEFM.
- iii. Fully implement the Multisectoral Strategy for the Abandonment of Child Marriage (SNMEE) in Mali. This includes regular monitoring and tracking of progress against targets set under the Strategy.
- iv. Ensure data on the SNMEE is publicly available and accessible.
- v. Adopt a COVID-19 response strategy that extends beyond health and prioritises the prevention and elimination of CEFM, paying particular attention to the impact of COVID-19 on vulnerable adolescents, girls, and women.
- vi. Empower girls and boys to be better able to prevent and respond to child marriage. For example, supporting existing adolescents' groups to offer safe spaces to discuss sensitive issues.
- vii. Conduct, in consultation with relevant stakeholders, awareness raising and education programmes aimed at addressing the negative implications of CEFM and how to effectively address the issue. These should be targeted at community and religious leaders.
- viii. Develop a strategy for the dissemination of knowledge on CEFM, including awareness-building and mechanisms for reporting and obtaining assistance, by utilising mass media, community radio, and social media platforms. This is particularly important given the implications of COVID-19 on CEFM.

¹ See <https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=107&Lang=EN>.

² In this submission we adopt the definitions of 'child marriage,' 'early marriage,' and 'forced marriage,' as provided by the OHCHR which identifies that:

- "child marriage" is a marriage in which at least one of the parties is a child. According to the Convention on the Rights of the Child, a child is "every human being below the age of eighteen unless under the law applicable to the child, majority is attained earlier (CRC art 1).
- "early marriage" is often used interchangeably with "child marriage" and refers to marriages involving a person below 18 in countries where the age of majority is attained earlier or upon marriage. Early marriage can also refer to marriages where both spouses are 18 or older but other factors make them unready to consent to marriage, such as their level of physical, emotional, sexual and psychosocial development, or a lack of information regarding the person's life options.
- "forced marriage" is any marriage which occurs without the full and free consent of one or both of the parties and/or where one or both of the parties is/are unable to end or leave the marriage, including as a result of duress or intense social or family pressure.

See OHCHR, 'Preventing and eliminating child, early and forced marriage', (2 April 2014) UN Doc A/HRC/26/22, paras 4-6. See also 'Child and forced marriage, including in humanitarian settings: OHCHR and women's human rights and gender equality', <www.ohchr.org/en/issues/women/wrgs/pages/childmarriage.aspx>.

² Child and forced marriage, including in humanitarian settings, OHCHR, Women's Rights and Gender Section, <www.ohchr.org/en/issues/women/wrgs/pages/childmarriage.aspx>.

³ Child and forced marriage, including in humanitarian settings, OHCHR, Women's Rights and Gender Section, <www.ohchr.org/en/issues/women/wrgs/pages/childmarriage.aspx>.

⁴ 'Country Profile: Mali' <www.girlsnotbrides.org/learning-resources/child-marriage-atlas/atlas/mali>.

⁵ See Mali Code of Persons and the Family 2011 (*portant Code des personnes et de la famille*) <<https://data.unicef.org/wp-content/uploads/2017/12/mali-code-2011-personnes-famille-2.pdf>>.

⁶ The Universal Declaration of Human Rights (1948) Article 16(1): Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution. (2) Marriage shall be entered into only with the free and full consent of the intending spouses. (3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State. See <www.un.org/en/about-us/universal-declaration-of-human-rights>.

⁷ Convention on the Rights of the Child, UNGA Res 44/25, 20 November 1989. Article 1: For the purposes of the present Convention, a child means every human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier. Article 2(1): States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status. Article 2(2): States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members. Article 24(3): States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.

⁸ Convention on the Elimination of All Forms of Discrimination against Women, UNGA Res 34/180, 18 December 1979, UN Doc A/RES/34/180. Article 24(2): The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.

⁹ See eg 'Child, early and forced marriage', UNGA Resolution 73/153 (28 July 2020) UN Doc A/75/262.

¹⁰ See eg UN Human Rights Committee, General Comment No. 20 (2016) on the implementation of the rights of the child during adolescence, CCPR/C/GC/20, 6 December 2016.

¹¹ *ibid* para 40.

¹² 'Strengthening efforts to prevent and eliminate child, early and forced marriage: challenges, achievements, best practices and implementation gaps', (27 September 2013) UN Doc A/HRC/RES/24/23.

¹³ 'Strengthening efforts to prevent and eliminate child, early and forced marriage' (22 July 2015) UN Doc A/HRC/RES/29/8.

¹⁴ 'Child, early and forced marriage in humanitarian settings' (22 June 2017) UN Doc A/HRC/RES/35/16.

¹⁵ 'Child, early and forced marriage in times of crisis, including the COVID-19 pandemic' (7 October 2021) UN Doc A/HRC/48/L.7Rev.1, para 1 states: "Urges States to respect, protect and fulfil the human rights of all women and girls, including those subject to child, early and forced marriage, which include the right to education and the right to the highest attainable standard of physical and mental health, including the right to sexual and reproductive health, to promote equality in all aspects of marriage and its dissolution..."

¹⁶ 'Child, early and forced marriage', UNGA Resolution 73/153 (28 July 2020) UN Doc A/75/262.

¹⁷ African Charter on the Rights and Welfare of the Child 1990, OAU Doc. CAB/LEG/24.9/49 (1990), entered into force Nov. 29, 1999. Article 21(2): Child marriage and the betrothal of girls and boys shall be prohibited and effective action, including legislation, shall be taken to specify the minimum age of marriage to be 18 years and make registration of all marriages in an official registry compulsory.

¹⁸ Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa 2003, Adopted by the 2nd Ordinary Session of the Assembly of the Union, 11th July 2003, Entry into Force 25th November 2005. Article 6: States Parties shall ensure that women and men enjoy equal rights and are regarded as equal partners in marriage. They shall enact appropriate national legislative measures to guarantee that: a) No marriage shall take place without the free and full consent of both parties; b) The minimum age of marriage for women shall be 18 years.

¹⁹ Kigali Declaration, Moving from aspiration to action to prevent and eliminate child, early and forced marriage in the Commonwealth, May 2015.

²⁰ See UNHRC, 'Report of the Working Group on the Universal Periodic Review: Mali' (17 April 2018) UN Doc A/HRC/38/7.

²¹ Republic of Mali, *Voluntary National Review on the implementation of Mali's Sustainable Development Goals* (2022), p.60 available at <<https://hlpf.un.org/sites/default/files/vnrs/2022/Rapport%20National%20Volontaire%20RNV.pdf>>.

²² *ibid*.

²³ Amna Nazir, 'A UPR Perspective on Capital Punishment and the Kingdom of Saudi Arabia' (2022) 19 Muslim World Journal of Human Rights (forthcoming).

²⁴ See UPRinfo, 'For impact on the ground the UPR needs SMART recommendations' (21 October 2015) <www.upr-info.org/en/news/for-impact-on-the-ground-the-upr-needs-smart-recommendations>.

²⁵ UNHRC Res 5/1 (18 June 2007) UN Doc A/HRC/RES/5/1, para 1(c).

²⁶ Republic of Mali, *Voluntary National Review on the implementation of Mali's Sustainable Development Goals* (2022), p.58 available at

<<https://hlpf.un.org/sites/default/files/vnrs/2022/Rapport%20National%20Volontaire%20RNV.pdf>>.

²⁷ 'Lutte contre le mariage d'enfants: la stratégie nationale lancée' (*Maliactu*, 24 July 2022)

<<https://maliactu.net/lutte-contre-le-mariage-denfants-la-strategie-nationale-lancee/>>.

²⁸ UNFPA-UNICEF Global Programme to End Child Marriage, 'Act Now: Accelerating Gender Equality by Eliminating Child Marriage in a Pandemic', Annual Report, October 2020, p. 15. <www.unicef.org/media/108461/file/Act%20now.pdf>.

²⁹ *ibid* 15.

³⁰ *ibid*.

³¹ *ibid* 16.

³² *ibid*.

³³ *ibid* 15.

³⁴ See the UN Sustainable Development Goals website, <<https://sustainabledevelopment.un.org/?menu=1300>>.

³⁵ *ibid*.

³⁶ Mama Fatima Singhateh, 'A practical approach to addressing the sale and sexual exploitation of children' (10 January 2022) UN Doc A/HRC/49/51, para 25.