

# Preventing early childhood marriage in Indonesia: A human rights and customary law approach

*by Anak Agung Istri Ari Atu Dewi*

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Phone: +62711-580063 Fax: +62711-581179

E-mail: [sriwijayalawreview@unsri.ac.id](mailto:sriwijayalawreview@unsri.ac.id) [sriwijayalawreview@gmail.com](mailto:sriwijayalawreview@gmail.com)

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## Preventing early childhood marriage in Indonesia: A human rights and customary law approach

Anak Agung Istri Ari Atu Dewi<sup>a</sup>, Ni Ketut Supasti Dharmawan<sup>b</sup>, Anak Agung Istri Eka Krisnayanti<sup>c</sup>, Putu Aras Samsithawrati<sup>d</sup> and I Gede Agus Kurniawan<sup>e</sup>

<sup>a</sup> Faculty of Law, Universitas Udayana, Bali. E-mail: [ari\\_atudewi@unud.ac.id](mailto:ari_atudewi@unud.ac.id)

<sup>b</sup> Faculty of Law, Universitas Udayana, Bali. E-mail: [supasti\\_dharmawan@unud.ac.id](mailto:supasti_dharmawan@unud.ac.id)

<sup>c</sup> Faculty of Law, Universitas Udayana, Bali. E-mail: [gungistri.legal@gmail.com](mailto:gungistri.legal@gmail.com)

<sup>d</sup> Faculty of Law, Universitas Udayana, Bali. E-mail: [arasamsitha@gmail.com](mailto:arasamsitha@gmail.com)

<sup>e</sup> Faculty of Law, Universitas Pendidikan Nasional, Bali. E-mail: [gedegaguskurniawan@unud.ac.id](mailto:gedegaguskurniawan@unud.ac.id)

### Article

### Abstract

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Preventing early childhood marriage (ECM) protects children's rights from the perspective of human rights. In Indonesia, a person must be at least 19 years old to marry; however, ECM is fairly common (the seventh highest in the world). This study aims to elaborate on the rights of children, which are potentially violated by ECM, and to identify who is responsible for minimizing and/or combating this phenomenon. This normative legal research with a human rights approach takes place in the childhood protection context. The results show that ECM has implications for violations against the right to life, the right to education, the right to develop, and the right to health. By referring to international conventions, Indonesian national law related to the protection of children's rights, and Balinese customary law, we argue that the responsibility to reduce and combat ECM belongs not only to the government, but also to diverse stakeholders within the community such as families, academics, the media, non-profit organizations, entrepreneurs, and customary communities.

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## INTRODUCTION

82 Preventing early childhood marriage (ECM) can contribute to better protections and the fulfillment of children's rights. Like an adult, a child has the right to life; the Inter-American Court classified this as the right to a dignified life. Fuentes et al. emphasized that in relation to children's rights, dignity is connected to the right to health, including the right to

education.<sup>1</sup> Attention to combating child marriage has risen globally, but ECM is still happening, especially in African states like Nigeria, which has the highest rate of ECM in the world. ECM is dangerous and discriminatory and destroys childhood; millions of girls at risk of ECM lose their childhood.<sup>2</sup> Indonesia has the seventh highest rate of ECM in the world. Several factors such as digital media, poverty, and family problems lead to ECM, which is not in accordance with the age limit specified by Indonesian law. The advanced digital world has a negative impact and tends to be permissive and easily accessible to children. Industrial Era 4.0—which is characterized by the Internet of Things (IoT), and is grounded in technology and the concept of Society 5.0—is expected to create a “supersmart” society.<sup>3</sup> As such, ECM must be fought because it endangers children’s growth and development. They lose their childhood, the right to continue their education, and even their right to life. They have to play adult roles. Such practices violate children’s rights and therefore human rights as well.

ECM is any formal marriage or informal union between a child under the minimum legal age and another child or adult. ECM is still widespread, although the number of childhood marriages has declined.<sup>4</sup> The number of girls expected to engage in this practice was more than 100 million before the COVID-19 pandemic.<sup>5</sup> As of now, up to 10 million more girls are at risk.<sup>6</sup>

This study aims to elaborate on children’s rights, which are potentially violated by ECM, and to identify the parties that are potentially responsible for minimizing and/or combating this phenomenon.

## RESEARCH METHODS

This study utilizes normative legal research with the statute, comparative, and analytical approaches to examine national and international legal instruments to prevent ECM in Indonesia, focusing on the child protection context. The international legal instruments explored in this study are the Convention on the Rights of the Child (UNCRC) of the United Nations (UN), the American Convention on Human Rights (ACHR), and the UN General Assembly’s (UNGA) Resolution adopted by the General Assembly on September 25, 2015: Transforming Our World: The 2030 Agenda for Sustainable Development (UNGA’s Resolution of the 2030 Sustainable Development Agenda). Meanwhile, in the domestic arena, the prevention of ECM is addressed using the 1945 Constitution of the Republic of Indonesia (the 1945 Indonesian Constitution), Law Number 23 of 2002 on Child Protection (Law 23/2002) as amended by Law Number 35 of 2014 on Child Protection (Law 35/2014), Law Number 16 of 2019 on the Amendment of Law Number 1 of 1974 on Marriage (Law 16/2019), Law Number 1 of 1974 on

<sup>1</sup> Alejandro Fuentes and Marina Vannelli, “Expanding the Protection of Children’s Rights towards a Dignified Life: The Emerging Jurisprudential Developments in the Americas,” *Laws* 10, no. 4 (2021): 84, <https://doi.org/10.3390/laws10040084>.

<sup>2</sup> Tameshnie Deane, “Marrying Young: Limiting the Impact of a Crisis on the High Prevalence of Child Marriages in Niger,” *Laws* 10, no. 3 (2021): 61, <https://doi.org/10.3390/laws10030061>.

<sup>3</sup> Nabeel Mahdi Althablawi, Zinatul Ashiqin Zainol, and Parviz Bagherib, “Society 5.0: A New Challenge to Legal Norms,” *Sriwijaya Law Review* 6, no. 1 (2022): 41–54, <https://doi.org/10.28946/slrev.Vol6.Iss1.1415.pp41-54>.

<sup>4</sup> UNICEF, “Child Marriage: Child Marriage Threatens the Lives, Well-Being and Futures of Girls around the World,” accessed May 24, 2022, <https://www.unicef.org/protection/child-marriage>.

<sup>5</sup> UNICEF.

<sup>6</sup> UNICEF.

Marriage (Law 1/1974), Law Number 39 of 1999 on Human Rights (Law 39/1999), and Balinese customary law. Children's rights are vulnerable to being violated under ECM. Hence, we must identify who is responsible for reducing and/or eliminating this practice in order to improve children's lives, protect their rights, and ensure their sustainable development in this generation and in the next.

## ANALYSIS AND DISCUSSION

### Protecting children's rights through international treaties and conventions

Based on every perspective mentioned earlier, children are as important as adults, and their rights need to be recognized. More importantly, they are very vulnerable since they are not fully physically or mentally developed. As described by the UN International Children's Emergency Fund (UNICEF), it is important to have regulations on children's rights because children start their lives as dependent beings. Moreover, their health is vital for the future of society and their earliest experiences influence their development, thus defining society. Further, in the political process, their views should be heard and considered, as well as negative impacts that may affect them due to changes in society.<sup>7</sup> Although children need guidance from adults to develop their lives and independence, they do not belong to adults (such as parents or family members) or to the State. Therefore, children's rights are protected under various written legal instruments, both internationally and domestically.

In international fora, there is a comprehensive document the called UNCRC that promotes and protects children's rights. In relation to Article 49, the UNCRC entered into force on September 2, 1990. To date, there are 196 signatory parties; thus, the UNCRC is the world's most widely ratified global human rights agreement.<sup>8</sup>

According to Article 1 of the UNCRC, a child is any human being under the age of 18 unless, under the law applicable to the child, majority is attained earlier. Next, as the UNCRC covers a wide range of children's rights, such rights can be classified into four main pillars: the right to survival, protection, development, and participation.<sup>9</sup>

The first pillar, the right to survival, encompasses the right to life, to a registered name and nationality, to quality health care, and to be cared for and protected by one's parents. The right to life is a fundamental one that other rights depend on. No other fundamental rights will exist without the right to life. A child has an inherent right to life; this right, to be recognized by State Parties, can be found in Article 6 (1) of the UNCRC. Furthermore, State Parties must ensure children's survival and development to the maximum extent possible (Article 6(2) of UNCRC). The right to life implies the right to be able to live and become an adult.<sup>10</sup> Regarding the right to life, in the US, by analyzing Article 19<sup>11</sup> and Article 4 on children's protection through the concept of corpus juris, as seen in the ACHR, the Inter-American Court expanded

<sup>7</sup> UNICEF, "Child Rights and Why They Matter: Every Right, for Every Child," n.d., <https://www.unicef.org/child-rights-convention/child-rights-why-they-matter>.

<sup>8</sup> UNICEF, "What Is the Convention on the Rights of the Child? Child Rights We Should All Know," n.d., <https://www.unicef.org/thailand/what-is-crc>.

<sup>9</sup> UNICEF.

<sup>10</sup> Humanium, "Right to Life: Understanding Children's Right to Life," n.d., <https://www.humanium.org/en/life/>.

<sup>11</sup> The preamble of the ACHR states that "these principles have been set forth in the [ACHR] and refined in other international instruments..." which we can assume include the UNCRC.

25 this right to a dignified life,<sup>12</sup> which is a fundamental right that is strongly connected to other rights, such as the right to health, education, and development.<sup>13</sup>

Second, children are entitled to their rights once they are born and survive. One example is the right to be protected from violence. Obligations related to such rights are regulated under various international documents such as the UNCRC and the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution, and child pornography.<sup>14</sup> The UNGA's Resolution of the 2030 Sustainable Development Agenda outlines in Paragraph 8 that it envisions a world that invests in its children, where children can grow up free from exploitation and violence.<sup>15</sup> The time left to achieve such goals is less than a decade. Another point worth highlighting is that the UNCRC was the first human rights convention to contain a provision aimed at disability.<sup>16</sup> According to Article 23 (1), State Parties must recognize that physically or mentally disabled children should enjoy a full and decent life in conditions that ensure dignity, promote self-reliance, and facilitate active participation in the community.

Third, development rights are related to getting an education to achieve a decent standard of living in mental, physical, spiritual, social, and moral terms. Children's right to education, for example, can be found in articles 28 to 29 of the UNCRC. The recognition of this right by State Parties should be done on the basis of equal opportunity. Article 28 of UNCRC focuses on the steps to be taken by State Parties, such as creating free primary education for everyone and making it compulsory. Article 29 of the UNCRC leans more in the direction of this right to education, including protecting the child's personality, mental abilities, talent, and physical capacity to the child's fullest potential. Additionally, the right to education has more meaning than access to education. This facilitates the implementation of other rights.<sup>17</sup> Article 17 of the UNCRC, on the right to information, and articles 28 to 29 are intertwined in discussing comprehensive sex education. In 1948, the UN mandated the indivisibility, interrelatedness, equality, and interconnectedness of all rights.<sup>18</sup>

Fourth, participation is linked to children's right to express their opinions freely in accordance with their lives as minors. The assurance of such can be found in Article 12 of the UNCRC regarding the right to express one's own views and to be heard in any judicial or administrative proceedings affecting the child.<sup>19</sup> The minor's involvement in decision-making is

<sup>12</sup> Fuentes and Vannelli, "Expanding the Protection of Children's Rights towards a Dignified Life: The Emerging Jurisprudential Developments in the Americas."

<sup>13</sup> Fuentes and Vannelli.

<sup>14</sup> Afrooz Kaviani Johnson and Julia Sloth-Nielsen, "Safeguarding Children in the Developing World—Beyond Intra-Organisational Policy and Self-Regulation," *Social Sciences* 9, no. 6 (2020): 98, <https://doi.org/10.3390/socsci9060098>.

<sup>15</sup> UN, "Resolution of the United Nations General Assembly on Transforming Our World: The 2030 Agenda for Sustainable Development," n.d., <https://sdgs.un.org/2030agenda>.

<sup>16</sup> Ralph Sandland, "A Clash of Conventions?: Participation, Power and the Rights of Disabled Children," *Social Inclusion* 5, no. 3 (2017): 93–103, <https://doi.org/10.17645/si.v5i3.955>.

<sup>17</sup> Jenna Gillett-Swan and Lisa van Leent, "Exploring the Intersections of the Convention on the Rights of the Child General Principles and Diverse Sexes, Genders and Sexualities in Education," *Social Sciences* 8, no. 9 (2019): 260, <https://doi.org/10.3390/socsci8090260>.

<sup>18</sup> Gillett-Swan and van Leent.

<sup>19</sup> Article 12 of UNCRC: (1) State Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due

accommodated by the UNCRC. Thus, it is the most operational provision that allows for children's public participation and emphasizes the child as an active participant in protecting, promoting, and monitoring his/her rights.<sup>20</sup>

The provisions contained in Article 12 are referred to as some of the UNCRC's general principles.<sup>21</sup> In addition to the abovementioned, other general principles are that all children shall be treated equally<sup>22</sup> (Article 2) based on the "best interests of the child" (Article 3),<sup>23</sup> and the child has an inherent right to life and State Parties must ensure the child's survival and development to the maximum extent possible (Article 6). Last but not least, in relation to ECM, the UNGA's Resolution of the 2030 Sustainable Development Agenda strongly targets eliminating harmful practices such as ECM (Goal 5.3).

### **Protecting children's rights under Indonesian laws related to child protection, Indonesian human rights law, and Balinese customary law**

Children's rights are guaranteed in Indonesia by the 1945 Constitution. According to Article 28B, every child has the right to live, grow, develop and the right to protection from violence and discrimination. Furthermore, abandoned children are cared for by the State based on Article 34 (1).

The guarantee of children's rights was reaffirmed through Law 23/2002 as amended by Law Number 35 of 2014. Article 1 (1) of Law 35/2014 defines a child as someone who has not reached the age of 18, including a child who is still in the womb. Child protection describes all activities to protect the child to ensure his/her rights to live, grow, develop, and participate optimally in accordance with the dignity and worth of humanity, and to receive protection from violence and discrimination (Article 1 (2) of Law 35/2014). In line with the UNCRC principle stated in Article 2, whereby all children shall be treated equally, Law 35/2014 has a similar stipulation. According to Article 21 (1) of Law 35/2014, the fulfillment of children's rights shall be done by the State, Government, and Local Government without distinction of ethnicity, religion, race, class, gender, ethnicity, culture or language, legal status, birth order, or physical and/or mental condition.

Law 35/2014 also underlines that children's rights are part of human rights and shall be guaranteed, protected, and fulfilled by parents, families, society, the state, the federal government, and local governments (Article 1 (12) of Law 35/2014). This requirement is also stat-

<sup>20</sup> weight in accordance with the age and maturity of the child, (2) For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

<sup>21</sup> Mariya Riekkinen, "Public Participation Of Children: Foundations And A Review Of Russian Legal Practices Under The Convention On The Rights Of The Child," *Baltic Journal of Law & Politics* 2, no. 2 (2009): 103–38, <https://doi.org/10.2478/v10076-009-0013-9>.

<sup>22</sup> UN Committee on the Rights of the Child, General Comment No. 5, *supra* note 2, para. 12 in Mariya Riekkinen, *Ibid.*

<sup>23</sup> Sofia Sahlberg, Katarina Karlsson, and Laura Darcy, "Children's Rights as Law in Sweden—every Health-care Encounter Needs to Meet the Child's Needs," *Health Expectations* 23, no. 4 (2020): 860–69.

<sup>24</sup> Rosmi Darmi, "Implementasi Konvensi Hak Anak Terkait Dengan Perlindungan Anak Yang Berhadapan Dengan Proses Hukum (Implementation of Children's Rights Convention Related to Children's Protection Against the Law)," *Jurnal Penelitian Hukum De Jure* 16, no. 4 (2017): 439–50.



ed in Article 20 of Law 35/2014. Regarding ECM<sup>24</sup>, Law 35/2014 explicitly mentions parents' obligation to prevent it.<sup>25</sup> This provision can be found in Article 26 (1) of Law 35/2014. ECM, if to be concluded, according to Law 35/2014 should refer back to the definition of "child" given in Article 1 (1), which is a marriage involving someone who has not reached the age of 18 as one of the parties. In case the parents are absent or their whereabouts are unknown, or if they are unable to carry out their responsibility, the duty to prevent child marriage may be transferred to the family, which is done in accordance with Article 26 (2) of Law 35/2014.

The Indonesian government's commitment to preventing ECM was realized with the issuance of Law 16/2019, which amended the minimum age limit for marriage. Article 7 stipulates that marriage is permitted only if the man and woman involved have reached the age of 19. Clearly, this shows improvement at the regulatory level by increasing the minimum age of marriage for women. Previously, Law 1/1974 stated that a woman had to be at least 16. Hence, with this amendment, the minimum age of marriage for women is now equal to the minimum age of marriage for men, which is at least 19. It is also expected that an increase in the age limit of more than 16 years for women will result in lower birth rates and reduce the risk of maternal and child mortality. In addition, children's rights can be fulfilled to optimize children's growth and development, including mentoring parents and giving children the highest possible access to education.

This age limit is important in order to realize the goal of marriage properly without having a divorce and establishing a happy and lasting family. An age limit for marriage is necessary because marriage requires a biological relationship that has health consequences. As stated in Law 1/1974, a prospective husband and wife must have their soul and body mature to carry out the marriage so that they can establish a strong union. Furthermore, the discussion of age limits for marriage is vital to prevent ECM, which is the case in many villages and has negative consequences. Therefore, people who live in rural areas must be receive more education to identify the negative effect of ECM on children.

In 2007, Indonesia's Constitutional Court issued Constitutional Court Decision #221 PUU-XV/2017, which mentions: "...when the differentiation of treatment between men and women has an impact on or obstructs the fulfillment of citizens' basic or constitutional rights—civil, political, economic, educational, social and cultural rights—which should be differentiated solely on the basis of sex, then such a distinction is clearly discrimination."

Along with the abovementioned considerations, it is also stated that the different minimum ages for marriage between men and women not only creates discrimination in the context of implementing the right to establish a family, as guaranteed in Article 28B, Paragraph (1) of the Constitution, but also creates discrimination against the protection and fulfillment of children's rights, as ensured in Article 28B, Paragraph (2) of the Constitution. Hence, when the minimum age of marriage for women is lower than that for men, it is legal for women to form a family faster. Thus, the Constitutional Court ordered legislators to amend the Marriage Law within 3 years. Based on the abovementioned considerations, Law 1/1974 was modified.

<sup>24</sup>In this article, the following terms "ECM" and/or "child brides" will be used interchangeably.

<sup>25</sup>Susan Lee-Rife et al., "What Works to Prevent Child Marriage: A Review of the Evidence," *Studies in Family Planning* 43, no. 4 (2012): 287–303.

In terms of changing the age limit of marriage, Bogue (1969) formulated 4 classifications regarding the age patterns of marriage<sup>26</sup>:

- 1) ECM among people under 18 years old.
- 2) ECM among people aged 18 to 19.
- 3) Marriage at maturity among people aged 20 to 21.
- 4) Late marriage among those aged 22 and older.

From a legal angle, the age of marriage under 18 implies ECM. ECM leads to many risks including physical and mental health risks, which are often faced by women.<sup>27</sup> Elements that cause ECM *inter alia* include economic, educational, parental, and customary factors.

In addition to the abovementioned, in Indonesia, the protection of children can be found in Law 39/1999, according to which children are defined as unmarried persons under the age of 18, including unborn children (Article 1 (5)). Specifically, this law lays out provisions on children's rights under Articles 52 through 66. The rights vary quite a bit; for example, the right to protection by parents, family, society, and the State; the right to life; the right to special care in case of physical and/or mental disability; the right to practice one's religion; the right to know one's parents; the right to protection under the law against all forms of mental and physical violence; and the right to education.

Due to the protection of children's rights under Law 39/1999, we can conclude that children's rights are part of human rights, which are basic rights that apply universally to all people anytime, anywhere. Law 39/1999, through Article 1(1), defines human rights as a set of rights bestowed by God in essence and as creations of God that must be respected, held in the highest esteem, and protected by the State, law, government, and all people to ensure human dignity. Therefore, children's rights are part of human rights, which must be promoted and protected to create a brighter future for the State by having a qualified young generation.

Traditional villages in Bali have begun to play a serious legal and formal role in regulating the age limit for marriage, especially regarding ECM. Bali Provincial Regulation Number 4 of 2019 on Customary Villages ("Bali Provincial Regulation 4/2019") oversees customary villages' authority to control the age limit for marriage based on their autonomy. Article 24 of Bali Provincial Regulation 4/2019 states that one source of authority in a customary village, based on rights of origin, is the formation of *Awig-Awig*, *Pararem*, and other customary regulations. To date, based on the *Awig-awig* of a customary village, there is no specific age at which a person can marry. Article 56, Paragraph (3) of *Awig-Awig of Desa Kesiman*<sup>28</sup> states that "*Pidabdab sa7acingang mawiwaha: ha. sampun manggeh daha-teruna; na. sampun pada rena utawi tan papaksan; ca. manut kecaping agama; ra. kawisudayang malarapan sudi wadhani prade pangambile seosan agama.*" According to this *Awig-awig*, the age limit for marrying has not yet been determined by Balinese customary law. Thus far, from the perspective of Balinese customary law, regardless of one's age, once a person has reached puberty, he/she is allowed to marry. In relation to that, the authority given by Bali Provincial Regulation 4/2019 to custom-

<sup>26</sup> Syarifah Salmah, "Pernikahan Dini Ditinjau Dari Sudut Pandang Sosial Dan Pendidikan," *Al-Hiwar: Jurnal Ilmu Dan Teknik Dakwah* 4, no. 6 (2017).

<sup>27</sup> Agoes Dariyu, Mia Hadiati, and R Rahaditya, "Pemahaman Undang-Undang Perkawinan Terhadap Penundaan Perkawinan Usia Dini Di Indonesia," *Jurnal An-Nafi: Kajian Penelitian Psikologi* 5, no. 1 (2020): 25-37.

<sup>28</sup> Desa Kesiman is a customary village in Bali.



ary villages to create *Awig-Awig*, *Pararem*, and other customary regulations should be fully used to maximize efforts to eliminate ECM by creating a clear provision on the standard age limit for marriage, referring to Law 16/2019 via Law 1/1974.

### Abuses of children's rights Related to ECM

The protection of children's rights is essential and assured by legal instruments related to children, both internationally and nationally. They preserve not only the current young generation, but also younger generations. The way we treat children today impacts their behavior, thus indirectly affecting their parenting of their own future children, which at the end of the day shapes the country's human resources. In brief, there will be immediate and long-term impacts that must be faced. Given such reasoning, diverse actions should be taken to ensure that the members of this young generation are safe and sound to grow, develop, and obtain their rights in every aspect abovementioned.

As already elaborated in the prior section, one action that has already been taken by the government is the creation of a legal "umbrella" through numerous instruments whereby children's rights are regulated, both internationally and nationally; thus, they can ideally enjoy such rights. By doing so, abuse of children's rights is avoided, including abuse related to ECM. However, undeniably, many waves of physical, mental, and sexual abuse are still happening, despite children's economic and social well-being. Abuse occurs at home, at school, or at any other place and can be committed by one's parents, family, friends, or other people.

The Ministry of Women's Empowerment and Child Protection of Indonesia (WECP), based on the *PPA Symphony* (Online Information System for the Protection of Women and Children) throughout the 2019-2021 period, reports of violence against women and children increased<sup>29</sup>: 11,057 cases in 2019, 11,278 cases in 2020, and 14,517 cases in 2021. In addition, there were 12,285 child victims of violence in 2019, 12,425 in 2020, and 15,972 in 2021.<sup>30</sup> In detail, reports of violence against children are as follows: 45% of cases entail sexual violence, 19% involve psychological violence, and 18% are tied to physical violence. Referring to such data, we should be aware that abuse of children's rights is still there, side by side with us.

Bear in mind that abuse or neglect experienced by children affects many aspects of their lives, including their development and learning difficulties, thereby leading to poor performance at school<sup>31</sup>. This may be the case for low self-esteem and people suffering from depression, which may lead to self-harm and risky behavior<sup>32</sup>. Such violence involves serious social and economic costs, such as lost potential and reduced productivity<sup>33</sup>.

Indonesia is also a signatory to the UNCRC, the world's most widely ratified international human rights agreement. The UNCRC was ratified by Indonesia through Presidential Decision No. 36 in 1990 on the Ratification of the CRC, and entered into force on August 25 of that year. Hence, this makes the UNCRC the only international human rights instrument that

<sup>29</sup> Ardino Ramadhan, "Laporan Kasus Kekerasan Terhadap Anak Dan Perempuan Meningkat 3 Tahun Terakhir," n.d., <https://nasional.kompas.com/read/2022/01/20/12435801/laporan-kasus-kekerasan-terhadap-anak-dan-perempuan-meningkat-3-tahun>.

<sup>30</sup> Ramadhan.

<sup>31</sup> UNICEF, "Violence against Children," n.d., <https://data.unicef.org/topic/child-protection/violence/>.

<sup>32</sup> UNICEF.

<sup>33</sup> UNICEF.

was ratified by Indonesia through a presidential decision, as others are ratified by laws.<sup>34</sup> In looking at this case, the first step to be taken is to dig deeply into Indonesian legal instruments to understand whether the four pillars and general principles of child protection set out in the UNCRC are already manifested. Of course, it is important to note that the 1945 Indonesian Constitution was established long before the UNCRC was issued. Hence, it is understandable if such a manifestation of the UNCRC's general principles and pillars in the Constitution may be found in implicit ways.

A closer look at the manifestation of the UNCRC's statement, "all children shall be treated equally," in the Constitution can be found through the provisions whereby every child shall have the right to protection from discrimination (Article 28B (2))<sup>35</sup> and every person shall have the right to be free from and protection from discriminative treatment (Article 28I (2)).<sup>36</sup> Law 23/2002 clearly states that the implementation of child protection under this law shall be based on the UNCRC's general principles as an addition to *Pancasila* and the Constitution. One of these general principles recognized by Law 23/2002 is non-discrimination, which was explicitly adopted by Law 23/2002, specifically in Article 2, Letter (a). Another legal instrument related to children is Law 39/1999. The provision related to non-discrimination is stated under Article 3 of Law 39/1999.

Next, we move on to the next general principle of the UNCRC: the "best interests of the child." Both the UNCRC and the CRC Committee provide a clear definition of this. However, for the purpose of the convention, we can assume that for a definition of the child, we should refer to Article 1 of the UNCRC. The term "best interests" is a combination of two words: *best* (which could be an adverb, adjective, or noun, but in this case, it is an adjective that enhances the noun) and *interests* (a group, in this case children, with a common concern).<sup>37</sup> Based on the words of Michael Freeman, the definition provided by John Eckelaar on best interests "revolve[s] around children's 'basic' interests...their 'developmental' interests, and their 'autonomy' interests..."<sup>38</sup> As such, we can assume that the 1945 Constitution implicitly regulates children's best interests through the essence whereby the Indonesian government shall protect all the people of Indonesia, as stated in the Constitution (Paragraph 4 of the Preamble)<sup>39</sup>. The

<sup>34</sup> Zedy Wulan Ayu Widhi Prameswari, "Ratifikasi Konvensi Tentang Hak-Hak Anak Dalam Sistem Peraturan Perundang-Undangan Di Indonesia," *Yuridika* 32, no. 1 (2017): 167-88, <https://doi.org/10.20473/ydk.v32i1.4842>.

<sup>35</sup> Article 28B (2) of the 1945 Indonesian Constitution stipulates that, "Every child shall have the right to live, to grow and to develop, and shall have the right to protection from violence and discrimination."

<sup>36</sup> Article 28I (2) of the 1945 Indonesian Constitution stipulates that, "Every person shall have the right to be free from discriminative treatment based upon any grounds whatsoever and shall have the right to protection from such discriminative treatment."

<sup>37</sup> Salahudin Hidayat Shariff, "The Application of the Best Interests of the Child Principle as a Criterion for Fulfilling Malaysia's Convention on the Rights of the Child Obligations: A Comparative Study Between Malaysia's Child Act 2001 and the English Children's Act 1989 Including the Common Law and Shari'ah Law Applications in the Respective Jurisdictions" (University of Kent, 2018).

<sup>38</sup> Shariff.

<sup>39</sup> The Preamble (4) of the 1945 Indonesian Constitution stipulates: "Subsequent thereto, to form a government of the state of Indonesia which shall protect all the people of Indonesia and all the independence and the land that has been struggled for, and to improve public welfare, to educate...people and to participate toward the establishment of a world order based on freedom, perpetual peace and social justice; Therefore, the independence of Indonesia shall be formulated into a constitution of the Republic of Indonesia, which shall be built into a sovereign state based on a belief in the One and Only God, a just and civilized humanity, the unity of Indonesia, and a democratic

protection, advancement, upholding, and fulfillment of human rights are the State's responsibility (Article 28I (4)), as well as the implementation of human rights, which shall be guaranteed, regulated, and outlined in laws and regulations (Article 28I (5)).<sup>40</sup> The best interests of the child is one of the UNCRC's general principles, and was explicitly adopted by Law 23/2002 in implementing child protection through Article 2, Letter (b). In discussing the best interests of the child, surprisingly, Article 51 (2) confirms that this law includes such a principle from the UNCRC. Hence, Law 39/1999 already manifests this principle through Article 51 (2).<sup>41,42</sup>

The "child's inherent right to life and obligations of the State Parties in ensuring the child's survival and development to the maximum extent possible" is a general principle of the UNCRC found in the 1945 Constitution through various provisions. For example, every child shall have the right to live, to grow and to develop (Article 28B (2))<sup>43</sup>, as well as the right to life, which cannot be limited under any circumstances (Article 28I (1))<sup>44</sup>. In relation to Law 23/2002, this third general principle is manifested through Article 2, Letter (c). Regarding Law 39/1999, various provisions can be seen as already adopting this principle. Examples include Article 4, Article 9, Article 53 (1), and Article 60.<sup>45</sup>

Another general principle of the UNCRC talks about "the right for children to be able to express their opinions freely" in Article 28E (3) of the 1945 Constitution, where every person shall have the right to the freedom to associate, to assemble, and to express opinions. In Law 23/2002, simply go directly to Article 2, Letter (d) to find the adoption of this last general principle of the UNCRC. Meanwhile, under Law 39/1999, this manifestation can be found in articles 4 and 55.<sup>46</sup>

If the discussion is rolling on the UNCRC's general principles and its manifestations in Indonesian legal instruments related to children beforehand, this section will elaborate from the perspective of the UNCRC's pillars. In relation to the first pillar of the UNCRC, the right to survival, which covers various types of children's rights, one has been chosen as an example to

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life led by the wisdom of thoughts in deliberation among representatives of the people, and achieving social justice for all the people of Indonesia."

<sup>40</sup> Article 28I (5) of the 1945 Constitution stipulates that, "For the purpose of upholding and protecting human rights in accordance with the principle of a democratic and law-based state, the implementation of human rights shall be guaranteed, regulated, and set forth in laws and regulations."

<sup>41</sup> Article 51 (2) of Law 39/1999 stipulates that, "Following dissolution of a marriage, a wife and her former husband have equal rights and responsibilities with regard to all matters concerning their children, taking into account the best interests of the child."

<sup>42</sup> Article 51 (2) of Law 39/1999 stipulates that, "What is meant by 'the best interests of the child' is in accordance with the rights of the child as stated in the Convention on the Rights of the Child, which has been ratified by Presidential Decree No. 36/1990 on Ratification of the Convention on the Rights of the Child."

<sup>43</sup> Article 28B (2) of 1945 Constitution states that, "Every child shall have the right to live, to grow and to develop, and shall have the right to protection from violence and discrimination."

<sup>44</sup> Article 28I (1) of the 1945 Constitution states that: "The rights to life, freedom from torture, freedom of thought and conscience, freedom of religion, freedom from enslavement, recognition as a person before the law, and the right not to be tried under law with retrospective effect are all human rights that cannot be limited under any circumstances."<sup>63</sup>

<sup>45</sup> In Law 39/1999, Article 4 mentions the right to life as a human right that cannot be diminished under any circumstances whatsoever. Article 9 stipulates the right to life for everyone. Article 53 (1) specifically regulates the right to life for every child. Article 60, in brief, regulates the right to access to education for every child.

<sup>46</sup> In Law 39/1999, Article 55 regulates that every child has the right to practice his/her religion, and to think and express himself/herself as befits his/her intellectual capacity and age under the guidance of a parent or guardian. Article 4 mentions that the right to freedom of thought and conscience is a human right that cannot be diminished under any circumstances whatsoever.

be discussed. Children's right to life can be found explicitly in Article 28A of the 1945 Constitution. While under Law 23/2002, such adoption is seen through the provision of articles 3 and 4 on children's right to life, Law 39/1999 can be seen generally through Article 4 and specifically through Article 53 (1).

The second pillar of the UNCRC is children's right to protection. An example is protection from violence. If we look closer through articles 28G (2) and 28I (1) of the 1945 Constitution, children's rights are already regulated. Basically, every person shall have the right to be free from torture or inhumane and degrading treatment<sup>47</sup>. In addition, freedom from torture is part of human rights, which cannot be limited under any circumstances.<sup>48</sup> The manifestation of the right to protection under Law 23/2002 can be seen, as an example, in Article 13 (1)(d), which stipulates that every child, while under the care of a parent, guardian—or any other party who is responsible for the child's care—has the right to be protected from cruelty, violence, and persecution. According to Law 39/1999, the right to protection, as an example of the right to protection from violence, can be found in Article 4, which mentions the right to not be tortured as an example of human rights, and specifically in Article 58 (1), which states that every child has the right to protection under the law against violence, neglect, mistreatment (physically and mentally), as well as sexual assault while under the care of his/her parents, guardian, or any other party responsible for the child's care.

The third UNCRC pillar is children's right to development. An example is a provision of the 1945 Constitution, which states that every person shall have the right to develop himself/herself to improve his/her quality of life and welfare (Article 28C (1))<sup>49</sup>. In addition, each person can obtain information for the purpose of development (Article 28F)<sup>50</sup>. Part of the right to development is the right to education. The adoption of this right can be seen in Article 9 of Law 23/2002. Regarding children's right to education, Article 60 (1) of Law 39/1999 already regulates it. Furthermore, Chapter 3, Section 3 on the Right to Self-Development (Article 11-16) of Law 39/1999 has also adopted the UNCRC's pillar of the right to development, although it regulates that by using the word "everyone," which includes children.

The last pillar of the UNCRC is children's right to participate. The manifestation of participation rights for children is already covered by the 1945 Constitution. It clearly states that freedom of thought is part of human rights, which cannot be limited under any circumstances (Article 28I (1)), as well as the freedom to associate, to assemble, and to express an opinion (Article 28E (3)). For the adoption under Law 23/2002, the provision stated in Article 10 where

<sup>47</sup> Article 28 G (2) of the 1945 Constitution stipulates that, "Every person shall have the right to be free from torture or inhumane and degrading treatment, and shall have the right to obtain political asylum from another country."

<sup>48</sup> Article 28I (1) of the 1945 Constitution stipulates that, "The right to life, freedom from torture, freedom of thought and conscience, freedom of religion, freedom from enslavement, recognition as a person before the law, and the right not to be tried under the law with retrospective effect are all human rights that cannot be limited under any circumstances."

<sup>49</sup> Article 28C (1) of the 1945 Constitution stipulates that "Every person shall have the right to develop himself/herself through the fulfillment of his/her basic needs, the right to get education and to benefit from science and technology, the arts and culture, for the purpose of improving the quality of his/her life and for the welfare of the human race."

<sup>50</sup> Article 28F of the 1945 Constitution stipulates that, "Every person shall have the right to communicate and to obtain information for the purpose of the development of his/her self and social environment, and shall have the right to seek, obtain, possess, store, process and convey information by employing all available channels."

every child shall have the right for his/her opinion to be delivered and to be heard is an example. Last but not least, articles 4 and 55 of Law 39/1999<sup>51</sup> already manifest the UNCRC's pillar on children's right to participation.

**Table 1. Example of (selected) manifestation of the UNCRC's general principles and pillars on protecting children's rights in various Indonesian legal instruments related to Children**

	Category	1945 Indonesian Constitution	Law 23/2002 (Later amended by Law 35/2014)	Law 39/1999
UNCRC general principles	All children shall be treated equally	Article 28B (2) Article 28I (2)	Article 2 letter (a)	Article 3
	Best interests of the child	Preamble paragraph (4) 28I (4) 28I (5)	Article 2 letter (b)	Article 51 (2)
	The Child's inherent right to life and the obligations of State Parties in ensuring the child's survival and development to the maximum extent possible	Article 28B (2) Article 28I (1)	Article 2 letter (c)	Article 4 Article 9 Article 53 (1) Article 60
	The right for children to be able to express their opinions freely	28 E (3)	Article 2 letter (d)	Article 4 Article 55
UNCRC Pillars	Right to survival	Article 28A	Article 3 Article 4	Article 4 Article 53 (1)
	Right to protection	28 G (2) 28 I (1)	Article 13 (1)	Article 4 Article 58 (1)
	Right to development	28C (1)	Article 9	Article 60 (1) Articles 11-16
	Right to participation	28I (1) 28E (3)	Article 10	Article 4 Article 55

Source: Authors

Having noted that the abovementioned Indonesian legal instruments related to children's protection have already accommodated both the UNCRC's general principles and pillars on children's protection, whether explicitly or implicitly, it is time to return to the issue of various forms of child abuse and consequences specifically faced tied to ECM. ECM is a very vulnerable situation as it involves one or both parties that are generally under the age of 18 (under international conventions), or specifically for Indonesia, under the age of 19 according to Law 16/2019. In addition, ECM is a discriminatory and harmful global practice that destroys the

<sup>51</sup> Law 39/1999: Article 4 stipulates that freedom of thought and conscience is one example of human rights that cannot be diminished under any circumstances whatsoever.



human rights of millions of girls as well as their health, well-being, and development.<sup>52</sup> Therefore, ECM causes many problems that ultimately lead to the abuse of children's rights.

As a starting point, ECM abuses children's right to life. First, ECM is closely related to early pregnancy. This creates complications during pregnancy and childbirth.<sup>53</sup> For girls in early and middle adolescence, the risk of serious complications, such as obstetric fistula, or death is greater.<sup>54</sup> The risk of death related to pregnancy is four times higher for adolescents under 16 years than for women in their early twenties.<sup>55</sup> Therefore, the high risk of death in early pregnancy abuses the right to life of the pregnant child ("the young mom"). Second, this so-called early childbearing phenomenon leads to several medical problems such as bleeding, miscarriage, and fetal death in the mother's womb<sup>56</sup>. Therefore, getting married and pregnant at such a young age risks not only the young mother's life but also her baby's life. A young mother's physical body is considered not strong enough to deliver a baby safe and sound. Even if later such a baby is born, the infant's risk of dying in the first year of life when born to a young mother under 18 years of age is 60% larger than that of an infant born to a mother older than 19<sup>57</sup>. Such early pregnancy from ECM may lead to the abuse of children's right to life regarding a young mom and her baby.

ECM mostly occurs due to social ties that reinforce poverty and protection-related beliefs.<sup>58,59</sup> In the context of marriage in general, Naseera and Kuruvilla showed that in a traditional morality context that is mostly influenced by religion, faith has been described as complementary in marriage.<sup>60</sup> The leading role of ECM is played by poverty. These circumstances occur in a society where a higher dowry price is paid for a younger girl; therefore, the family burden will soon disappear as a girl is believed to be costly to be fed, educate, and clothe.<sup>61</sup> Hence, the child in ECM is often exposed to various forms of abuse. Aside from the abuse of the right to life is the abuse of the right to education. Since poverty is often linked with child marriage, after ECM, poor families may not have enough resources to keep girls in school. Moreover, many girls leave school after ECM, which leads to a reduction in learning opportunities and the chance to obtain skills, to have a job, or to have an income<sup>62</sup>. Problems may continue to happen to the next generation. ECM results in a young child leaving school with inade-

<sup>52</sup> Deane, "Marrying Young: Limiting the Impact of a Crisis on the High Prevalence of Child Marriages in Niger."

<sup>53</sup> Jour Svanemyr et al., "Preventing Child Marriages: First International Day of the Girl Child 'My Life, My Right, End Child Marriage,'" *Reproductive Health* 9, no. 1 (2012): 1–3, <https://doi.org/10.1186/1742-4755-9-31>.

<sup>54</sup> Svanemyr et al.

<sup>55</sup> Svanemyr et al.

<sup>56</sup> Dyah Anantalia Widyastari et al., "Rethinking Early Childbearing in Indonesia: Is It Preceded by a Premarital First Birth?," *International Journal of Adolescent Medicine and Health* 34, no. 1 (2022), <https://doi.org/10.1515/ijamh-2019-0055>.

<sup>57</sup> Svanemyr et al., "Preventing Child Marriages: First International Day of the Girl Child 'My Life, My Right, End Child Marriage.'"

<sup>58</sup> Nawal M Nour, "Child Marriage: A Silent Health and Human Rights Issue," *Reviews in Obstetrics and Gynecology* 2, no. 1 (2009): 51.

<sup>59</sup> Damilola Ayotola Jayeola, *Gender Equality and the South African Customary Law: Issues of Ukuthwala and Its Links to Child Marriage* (University of Johannesburg (South Africa), 2018).

<sup>60</sup> Naseera NM and Moly Kuruvilla, "The Sexual Politics of the Manusmriti: A Critical Analysis with Sexual and Reproductive Health Rights Perspectives," *Journal of International Women's Studies* 23, no. 6 (2022): 21.

<sup>61</sup> NM and Kuruvilla.

<sup>62</sup> Svanemyr et al., "Preventing Child Marriages: First International Day of the Girl Child 'My Life, My Right, End Child Marriage.'"



quate skills to compete in the job market, an early pregnancy, and later, a neglected child, which in the end, again, leads to the next generation experiencing poverty, with limited or no access to education. The cycle goes on and on. In brief, no education means abuse of children's right to education. Children's right to education is also closely intertwined with their right to development. As they quit school, the chance to develop their self is also missing. Moreover, even worse, children's right to non-discrimination is indirectly abused. Child brides with insufficient education qualifications naturally get paid under the normal salary since this society believes that no one wants to hire underage, unqualified children.

Aside from previous abuses, children in situations of ECM are vulnerable to violations of the right to health. Kinasih et al. showed that ECM with a poverty background also affects women's reproductive health and quality of life<sup>63</sup>. Obviously, marriage at such a young age, primarily a forced one with an unstable economic and immature mental and physical background, is not a priority for a child bride regarding knowledge about reproductive health or even health in general. Generating income is probably their main goal. Since they have no money, they are mostly unable to access health care.

### Challenges and stakeholders' role in preventing ECM in Indonesia for child protection

ECM—moreover, a forced marriage—is an issue of violation of children's rights. This violation is as serious as other human rights violations. To combat, or at least minimize this violation of children's protection, serious management from various parties is required such as government, non-governmental organizations, families, communities, entrepreneurs, media, indigenous people, academics, religious leaders, and law enforcement. The actions to prevent and minimize ECM have been carried out by both the government and non-profit organizations that focus on community activities.

The role of the government, non-profit institutions, the community, and children themselves are very significant in fulfilling children's rights through the prevention of ECM. The dangers of ECM for children—especially when an invitation to marry at a young age is considered controversial, such as the Aisha Weddings case, which went viral in Indonesia in 2021—has received public attention by responding to it from multiple scientific disciplines. The Pulih Foundation, which focuses on psychological recovery, found that marriage before one is physically, mentally, and emotionally ready will inhibit the child from being able to explore his/her ability to grow and develop further; even the dangers caused make children vulnerable to violence and other negative impacts. The issue of human rights violations from child marriage is still widely found in Indonesia. The negative impact of this phenomenon affects education and self-development, aspects of biological and physical health, and psychological health<sup>64</sup>.

<sup>61</sup> Nahar, the Deputy for Protection Specializing in Children of the WECP, emphasized that child marriage is a violation of children's rights and means a violation of human rights because children's rights are part of human rights. In the context of child protection, it is the responsibility of all parties, including the State, the federal government, local governments,

<sup>63</sup> Sri Endah Kinasih, Toetik Koesbardiati, and Siti Mas'udah, "Women's Reproductive Rights Under Marriage Contract," *Journal of International Women's Studies* 20, no. 9 (2019): 132–44.

<sup>64</sup> Dipna Videlia Putsanra, "Kasus Aisha Weddings Dan Apa Bahayanya Nikah Anak Di Bawah Umur," *Tirto*, 2021, <https://tirto.id/kasus-aisha-weddings-dan-apa-bahaya-nikah-anak-di-bawah-umur-gacg>.

communities, families, and parents or guardians, who are obliged and responsible for the implementation of child protection.<sup>65</sup> Lenny N. Rosalin, the Deputy for the Fulfillment of Children's Rights at the WECP, further stressed that the responsibility for fulfilling children's rights is a shared one, including the responsibility of the child himself/herself<sup>66</sup>. It is important for children to take responsibility for themselves from an early age. Children can become protectors for themselves and those around them, especially from violations of children's rights, including ECM. Indonesia, through the WECP, has made various efforts related to preventing ECM. Examples are policies on community-based integrated special child protection, family learning centers and children's forums, as well as child care villages. To strengthen efforts to prevent ECM, the synergy of several ministries/institutions is crucial. One of them has played a good role in synergizing with the Ministry of Villages.

Prevention of ECM in a holistic way is relevant to be carried out simultaneously in both urban and rural communities, considering that the factors causing ECM are influenced by a permissive culture in the current digital social era, and some are from permissive families, including families in rural areas. Muntamah et al. stated that the factors that cause ECM in Indonesia, apart from the involvement and legitimacy of the family, are also due to the powerful power of social media that exposes shows that should not be consumed by children<sup>67</sup>. Handayani et al. argued that the family factor that is still permissive in several ethnic groups in Indonesia also causes ECM in Indonesia<sup>68</sup>. In this regard, children's rights have been regulated under various international and national regulations. In addition to the approach of national and international law from the perspective of human rights, it is important to synergize the customary law approach to fulfill children's rights. For this reason, to enforce the law, the role of the family, social media, and traditional elder figures is urgently needed.

## CONCLUSION

In facing the challenge of minimizing and eliminating ECM, both international and national legal regulations have established adequate provisions on children's rights protection as part of human rights protection. Those provisions can be found under the UNCRC, ACHR, UNGA's Resolution of the 2030 Sustainable Development Agenda, the 1945 Indonesian Constitution, Law 23/2002 as amended by Law 35/2014, Law 16/2019 as an amendment to Law 1/1974, Law 39/1999, and customary law. Indonesia, as a signatory to the UNCRC, has done its best to adopt the general principles and pillars of children's rights protection under the numerous legal instruments mentioned above. Such norms have been created to ensure children's enjoyment of such rights granted by the State. Moreover, remarkably, efforts to minimize or eliminate ECM can be seen in the provisions established by Law 35/2014 regarding the in-

<sup>65</sup> Kemenpppa, "Kemen PPPA: Cegah Perkawinan Anak Mulai Dari Keluarga Dan Masyarakat," n.d., <https://www.kemenpppa.go.id/index.php/page/read/29/3058/kemen-pppa-cegah-perkawinan-anak-mulai-dari-keluarga-dan-masyarakat>.

<sup>66</sup> kemenpppa.

<sup>67</sup> Ana Latifatul Muntamah, Dian Latifiani, and Ridwan Arifin, "Pernikahan Dini Di Indonesia: Faktor Dan Peran Pemerintah (Perspektif Penegakan Dan Perlindungan Hukum Bagi Anak)," *Widya Yuridika: Jurnal Hukum* 2, no. 1 (2019): 1–12, <https://doi.org/10.31328/wy.v2i1.823>.

<sup>68</sup> Sri Handayani, Syarifah Nuraini, and Rozana Ika Agustiya, "Faktor-Faktor Penyebab Pernikahan Dini Di Beberapa Etnis Indonesia," *Buletin Penelitian Sistem Kesehatan* 24, no. 4 (2021): 265–74, <https://doi.org/10.22435/hsr.v24i4.4619>.

crease in the age limit for men and women to marry at the age of 19. Globally, the UNGA's Resolution of the 2030 Sustainable Development Agenda set out elimination of ECM as its goal. Despite all the ideal norms already established, various data and studies have shown that ECM still occurs widely. Based on these results, ECM has led to violations of diverse children's rights, which are also part of human rights. ECM potentially violates, *inter alia*, the right to life, the right to education, the right to develop, and the right to health, as well as any future child born from ECM. Since the impact is continuous in nature, this practice must be stopped. It is not sufficient to combat this practice by relying only on the government and its regulations to protect children's rights. Many stakeholders, such as the community, families, academics, the media, non-profit organizations, entrepreneurs, and customary communities need to work to eliminate ECM. All in all, all stakeholders need to work together to strengthen the fulfillment of children's rights.

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