

Fordham International Law Journal

Volume 41, Issue 1

Article 2

Guatemala's Ban on Child Marriage: A Step Toward Compliance with CEDAW

Justin A. Behraves^{*}

*

Copyright © by the authors. *Fordham International Law Journal* is produced by The Berkeley Electronic Press (bepress). <http://ir.lawnet.fordham.edu/ilj>

ARTICLE

GUATEMALA’S BAN ON CHILD MARRIAGE:
A STEP TOWARD COMPLIANCE WITH CEDAW

*Justin A. Behraves**

I. INTRODUCTION54

II. CEDAW AND CHILD MARRIAGE57

 A. International Instruments Pre-Dating CEDAW57

 1. The Convention on Consent to Marriage,
 Minimum Age for Marriage and Registration
 of Marriages57

 2. The Declaration on the Elimination of All
 Forms of Discrimination Against Women59

 B. Provisions of CEDAW Addressing Child Marriage60

 1. Article 16.1 (b)60

 2. Article 16.261

III. GUATEMALA’S RELATIONSHIP TO CEDAW
 PRIOR TO ITS BAN ON CHILD MARRIAGE63

 A. Reporting Cycles I-II63

 B. Reporting Cycles III-V66

 C. Reporting Cycle VI68

 D. Reporting Cycle VII70

IV. GUATEMALA’S BAN ON CHILD MARRIAGE72

 A. Decreto Número 8-201572

 B. Compliance with CEDAW74

 1. Article 16.1(b)74

 2. Article 16.274

* Freelance Attorney, Justin Behraves, Attorney at Law; Law Clerk, United States District Court, Southern District of California, 2015-2017. I would like to thank my partner Jes for her continued support of my legal career and scholarly pursuits.

C. The Laws of Panama, Costa Rica, and Honduras as Models for Guatemala.....	75
V. CONCLUSION.....	77

I. INTRODUCTION

Every year, fifteen million girls marry before they turn eighteen.¹ Some girls are married for the purpose of rectifying their family’s wrongdoing or to pay off a debt.² The effects of child marriage cannot be overstated;³ young brides are often disempowered and deprived of basic human rights.⁴ They are also more susceptible to health complications and violence in the home by their spouse.⁵ Child brides and their families are additionally more likely to live in poverty.⁶ Further, the expectation of marriage can create a cycle that reinforces the need for women to marry in the first place.⁷

In Guatemala, over thirty percent of children marry by the age of eighteen.⁸ Child marriage is most frequent in Mayan indigenous communities, which tend to have higher rates of poverty than the rest

1. *What is the Impact of Child Marriage?*, GIRLS NOT BRIDES,, <http://www.girlsnotbrides.org/what-is-the-impact/> [https://perma.cc/D299-3ARK] (last visited Oct. 28, 2017). By some estimates, one out of every three girls in the developing world will marry before her eighteenth birthday. See Clarissa-Jan Lim, *A New Law Will Save Guatemalan Girls From This Harmful, Centuries-Old Practice*, A PLUS (Nov. 13, 2015), <http://aplus.com/a/guatemala-bans-child-marriage> [https://perma.cc/52ES-EG53] (archived Oct. 28, 2017). Worldwide, over 700 million girls under the age of eighteen have “suffer[ed] the consequences of child marriage.” *About Child Marriage*, GIRLS NOT BRIDES, <http://www.girlsnotbrides.org/about-child-marriage/> [https://perma.cc/443G-S3PE] (last visited Oct. 28, 2017).

2. MARSHA A. FREEMAN ET AL., *THE UN CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN*, A COMMENTARY 438 (2012).

3. Unfortunately, girls are much more frequently subject to child marriage than boys. *Id.* at 436. For this reason, this article largely focuses on marriage of girls.

4. See *What is the Impact of Child Marriage?*, *supra* note 1.

5. See *id.* (“Neither physically nor emotionally ready to become wives and mothers, child brides are at greater risk of experiencing dangerous complications in pregnancy and childbirth, contracting HIV/AIDS and suffering domestic violence.”).

6. *Id.*

7. See FREEMAN ET AL., *supra* note 2, at 423 (“Where women are primarily expected to marry, care for children and other family members, and maintain the household, they may be denied or forego education and may have limited or self-limited employment prospects. These limitations, in turn, reinforce the necessity of marriage.”).

8. *At a glance: Guatemala*, UNITED NATIONS CHILDREN’S FUND, http://www.unicef.org/infobycountry/guatemala_statistics.html [https://perma.cc/2X3C-3J8T] (last visited Oct. 28, 2017). Over seven percent of children in the country are married by the age of fifteen. *Id.*

of the country.⁹ According to a former Guatemalan child bride, “economic necessity, teenage pregnancy, and cultural practices are some of the main reasons that young women get married in Guatemala.”¹⁰ When Guatemalan girls marry, they are frequently pressured to begin having children, which can cause significant health risks.¹¹ Regrettably, Guatemala has the highest teen pregnancy rate of all Latin American countries.¹² Guatemalan girls who marry before the age of eighteen are also vulnerable to being sexually exploited, susceptible to sexually transmitted diseases, and financially reliant on their husbands.¹³ Moreover, they often stop attending school and face a higher likelihood of living in poverty.¹⁴

In November of 2015, the Congress of Guatemala approved a law that raised the minimum age for marriage to eighteen.¹⁵ Prior to this law, girls could marry at the age of fourteen and boys at sixteen.¹⁶ Under the new law, children as young as sixteen can still marry in certain circumstances with the permission of a judge.¹⁷ Although this

9. *Child Marriage Around the World: Guatemala*, GIRLS NOT BRIDES, <http://www.girlsnotbrides.org/child-marriage/guatemala/> [<https://perma.cc/KFR8-EADX>] (last Oct. 28, 2017). These communities “largely reside in rural areas and have poor access to basic services, few educational and economic opportunities, and higher rates of poverty than the non-indigenous population. For instance, only 39% of Mayan women are literate in comparison to 77% [of] non-indigenous women.” *Id.* Although there are several different groups of Mayan Indians, they “share a common heritage, a heritage of violence and oppression, a heritage of poverty and discrimination.” MICHELLE TOOLEY, VOICES OF THE VOICELESS: WOMEN, JUSTICE, AND HUMAN RIGHTS IN GUATEMALA 60 (1997).

10. Anna-Cat Brigida, *The Life You Lose as a Child Bride in Guatemala*, BROADLY (Nov. 25, 2015), https://broadly.vice.com/en_us/article/the-life-you-lose-as-a-child-bride-in-guatemala [<https://perma.cc/L73J-79T5>] (archived Oct. 28, 2017).

11. *Child Marriage Around the World: Guatemala*, *supra* note 9 (“Maternal mortality rates in Guatemala are among the highest in the region, and are 3 times higher among indigenous populations than non-indigenous women.”).

12. *See* Brigida, *supra* note 10 (“[N]early 70,000 [Guatemalan] girls under the age of 19 gave birth from January to August of 2015, according to statistics from the Reproductive Health Observatories Network.”).

13. *Id.*

14. *See id.*

15. Anastasia Moloney, *Guatemala Bans Child Marriage*, HUFFINGTON POST (Nov. 12, 2015), http://www.huffingtonpost.com/entry/guatemala-bans-child-marriage_us_5644969be4b045bf3dedd8d1 [<https://perma.cc/9WRJ-XJEB>] (archived Oct. 28, 2017). The law was passed by a vote of eighty-seven to fifteen. *Guatemala Bans Child Marriage but ‘Cultural Shift’ Required, Advocates Say*, GUARDIAN (Nov. 11, 2015), <https://www.theguardian.com/world/2015/nov/11/guatemala-bans-child-marriage> [<https://perma.cc/CZ3Y-K9BD>] (archived Oct. 28, 2017).

16. Brigida, *supra* note 10.

17. Decreto No. 8-2015, que contiene reformas al Decreto Ley 106 del jefe de Gobierno, Código Civil [which contains amendments to Decree Law 106 of the head of Government, Civil

new law is not perfect and implementation may require cultural changes,¹⁸ it represents an important first step toward compliance with the Convention on the Elimination of All Forms of Discrimination Against Women (“CEDAW”), to which Guatemala is a state party.¹⁹

Article 16 of CEDAW contains two provisions regarding marriage of children. Article 16.1(b) provides the following mandate regarding women’s right to only enter into consensual marriages:

1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women: . . .

(b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent[.]²⁰

Similarly, Article 16.2 states that “[t]he betrothal^[21] 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.”²²

This article examines the interplay between these two provisions in Article 16 of CEDAW and Guatemala’s recent ban on child marriage.²³ Part II discusses international instruments pre-dating CEDAW that addressed marriage of children and those provisions of

Code], DIARIO DE SESIONES [SESSION DIARY] (Nov. 23, 2015), <http://www.congreso.gob.gt/manager/images/8DECF119-FFF3-9226-7E17-222C9BE0C434.pdf> [<https://perma.cc/Y2VK-ZQDW>] (archived Oct. 28, 2017); Anastasia Moloney, *Guatemala bans child marriage, big change for rural areas*, REUTERS (Nov. 11, 2015), <http://news.trust.org/item/20151111184347-bhe0h/> [<https://perma.cc/39NZ-3GRJ>] (archived Oct. 28, 2017).

18. See *Guatemala Bans Child Marriage*, *supra* note 15.

19. See *Reporting status for Guatemala*, OFFICE OF THE HIGH COMM’R FOR HUMAN RIGHTS, http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=GTM&Lang=EN [<https://perma.cc/V826-CE2X>] (last visited Oct. 28, 2017). Guatemala signed CEDAW on June 8, 1981, and ratified it on August 12, 1982. *Id.*

20. Convention on the Elimination of All Forms of Discrimination against Women, art. 16.1(b), Dec. 18, 1979, 1249 U.N.T.S. 13 [hereinafter CEDAW].

21. “Betrothal” is an odd-sounding word that is a fancy way of saying engagement. *Definition of BETROTHAL*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/betrothal> [<https://perma.cc/V5HG-JC47>] (last visited Oct. 28, 2017).

22. CEDAW, *supra* note 20, art. 16.2.

23. As an international human rights scholar and an avid surfer, my interest in writing about Guatemala came after a surf trip to the country in August of 2015. Incredible food, spectacular landscape, kind people, and good, uncrowded surf make Guatemala an excellent destination for any surfer. But one cannot only take from a country; for this reason I feel obligated to comment on this important recent human rights development in Guatemala.

CEDAW that concern child marriage. Part III addresses Guatemala's relationship to Article 16 prior to the country's ban on child marriage, including the state party's reports that the country submitted to the Committee on the Elimination of Discrimination Against Women (the "Committee")²⁴ and the Committee's responses. Part IV discusses Guatemala's ban on child marriage; demonstrates how the ban does and does not comply with Article 16 of CEDAW; and uses Panama, Costa Rica, and Honduras as examples of neighboring countries with legislation that fully complies with Article 16. Part V concludes the article with a plea to Guatemala to follow in the footsteps of its neighbors to the south.

II. CEDAW AND CHILD MARRIAGE

A. International Instruments Pre-Dating CEDAW

There are two important international instruments that addressed child marriage prior to CEDAW: (1) The Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (the "Convention") and (2) The Declaration on the Elimination of All Forms of Discrimination Against Women ("DEDAW"). Both of these instruments are discussed below.

1. The Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages

The Convention went into effect on December 9, 1964.²⁵ It has been described as "a watershed call for States to firmly commit to eliminating discrimination in marriage customs and practices."²⁶ The preamble to the Convention provides the following mandate regarding marriage of children:

[A]ll States, including those which have or assume responsibility for the administration of Non-Self-Governing and Trust

24. The Committee was established in 1982 and is comprised of twenty-three women's issues experts. *Convention on the Elimination of All Forms of Discrimination Against Women*, UNITED NATIONS ENTITY FOR GENDER EQUALITY AND THE EMPOWERMENT OF WOMEN, <http://www.un.org/womenwatch/daw/cedaw/committee.htm> [https://perma.cc/4JEH-EDGY] (last visited Oct. 28, 2017).

25. Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, Dec. 9, 1964, 521 U.N.T.S. 231 [hereinafter 1964 Convention].

26. FREEMAN ET AL., *supra* note 2, at 422.

Territories until their achievement of independence, should take all appropriate measures with a view to abolishing such customs, ancient laws and practices by . . . eliminating completely child marriages and the betrothal of young girls before the age of puberty[.]²⁷

In addition to the preamble, the Convention has two articles that address child marriage. First, Article 1.1 states that “[n]o marriage shall be legally entered into without the full and free consent of both parties, such consent to be expressed by them in person after due publicity and in the presence of the authority competent to solemnize the marriage and of witnesses, as prescribed by law.”²⁸

It is important to note that while Guatemala has accessed to the Convention, it provided the following declaration regarding Article 1.1:

With regard to article 1, paragraph 1, of the Convention, Guatemala declares that since its legislation, in respect of its nationals, does not call for the requirements relating to publicity of the marriage and the presence of witnesses for it to be [solemnized], it does not consider itself obliged to comply with those requirements where the parties are Guatemalans.²⁹

Consequently, even though this declaration does not state an explicit objection to the Convention’s consent requirement under Article 1.1, Guatemala’s declaration regarding publicity of marriage arguably provides it with a way of avoiding the consent requirement. This is troubling but consistent with Guatemala’s relationship to other international instruments concerning child marriage.

Second, Article 2 of the Convention also addresses marriage of children:

States Parties to the present Convention shall take legislative action to specify a minimum age for marriage. No marriage shall be legally entered into by any person under this age, except where a competent authority has granted a dispensation as to age, for serious reasons, in the interest of the intending spouses.³⁰

27. 1964 Convention, *supra* note 25, pmb1.

28. *Id.*, art. 1.1.

29. Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, Declarations and Reservations 2 (Dec. 10, 1962), <https://treaties.un.org/doc/Publication/MTDGS/Volume%20II/Chapter%20XVI/XVI-3.en.pdf> [<https://perma.cc/GA57-Y7NK>] (archived Oct. 28, 2017).

30. 1964 Convention, *supra* note 25, art. 2.

Unfortunately, Article 2 does not specify what the minimum age should be, leaving open the possibility that a country that is a party to the Convention could permit child marriage without contravening this international instrument.³¹

2. The Declaration on the Elimination of All Forms of Discrimination Against Women

DEDAW was adopted by the General Assembly of the United Nations on November 7, 1967.³² DEDAW contains a preamble and eleven articles,³³ following the same structure as the Universal Declaration of Human Rights.³⁴ There are two articles in DEDAW that are relevant to a discussion of child marriage. First, Article 6.2.a states that “[a]ll appropriate measures shall be taken to ensure the principle of equality of status of the husband and wife, and in particular . . . [w]omen shall have the same right as men to free choice of a spouse and to enter into marriage only with their free and full consent”³⁵ While this provision does not directly address child marriage, the words “free and full consent” imply that only persons who have reached adulthood should be allowed to enter into marriage, as children generally cannot give legal consent. More explicit is Article 6.3, which reads, “Child marriage and the betrothal of young girls before puberty shall be prohibited, and effective 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.”³⁶ These sub-articles and related provisions address equality within the family

31. See FREEMAN ET AL., *supra* note 2, at 412 (footnote omitted) (“[T]he Convention fails to specify a minimum age of marriage and allows for marriage by proxy. These limitations resonate to the present, as early and forced marriages remain among the most difficult discriminatory practices to eliminate.”).

32. G.A. Res. 2263 (XXII), Declaration on the Elimination of Discrimination against Women (Nov. 7, 1967) [hereinafter DEDAW].

33. *Id.*

34. FREEMAN ET AL., *supra* note 2, at 5.

35. DEDAW, *supra* note 32, art. 6.2(a). This language is similar to Article 16.2 of the Universal Declaration of Human Rights, which provides, “Marriage shall be entered into only with the *free and full consent* of the intending spouses.” G.A. Res. 217 (III) A, Universal Declaration of Human Rights, art. 16.2 (Dec. 10, 1948) (emphasis added).

36. DEDAW, *supra* note 32, art. 6.3.

more specifically than the Convention,³⁷ and they laid the foundation for the mandates of Article 16 of CEDAW.³⁸

B. Provisions of CEDAW Addressing Child Marriage

There are two separate provisions of CEDAW, both contained in Article 16, that are the focus of this article. These provisions and related commentary are addressed separately in this section.

1. Article 16.1 (b)

Article 16.1(b) of CEDAW reads as follows:

1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women: . . .

(b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent[.]³⁹

This provision of Article 16 prohibits child marriage in two separate ways. First, the use of the words “free and full consent” confirms that under Article 16.1(b), only adults should be permitted to enter into marriage, as children cannot give legal consent.⁴⁰ This language is reminiscent of similar provisions in the Universal Declaration of Human Rights and DEDAW, both of which require “free and full consent” for marriage.⁴¹ It is also similar to the language of the Convention, which requires “full and free consent of both parties” for marriage to be valid.⁴²

Second, child marriage is banned under this provision of Article 16 through the Committee’s statements condemning forced marriages. In its twenty-first general recommendation, the Committee stated the following when addressing Article 16.1(b):

37. FREEMAN ET AL., *supra* note 2, at 412.

38. See Cynthia Price Cohen, *The Developing Jurisprudence of the Rights of the Child*, 6 ST. THOMAS L. REV. 3, 11 (1993) (explaining that the typical process the United Nations follows is to first adopt a declaration and then draft a treaty restating the rights in the declaration).

39. CEDAW, *supra* note 20, art. 16.1(b).

40. See FREEMAN ET AL., *supra* note 2, at 423 (“Free and full consent’ to marriage can only be legally given by persons who are recognized by law to have the capacity to consent: adults, defined in General Recommendation 21 as eighteen years of age.”).

41. See Universal Declaration of Human Rights, *supra* note 35; DEDAW, *supra* note 32, art. 6(2)(a).

42. 1964 Convention, *supra* note 25, art. 1(1).

A woman's right to choose a spouse and enter freely into marriage is central to her life and to her dignity and equality as a human being. An examination of States parties' reports discloses that there are countries which, on the basis of custom, religious beliefs or the ethnic origins of particular groups of people, permit forced marriages or remarriages. Other countries allow a woman's marriage to be arranged for payment or preferment and in others women's poverty forces them to marry foreign nationals for financial security. Subject to reasonable restrictions based for example on woman's youth or consanguinity with her partner, a woman's right to choose when, if, and whom she will marry must be protected and enforced at law.⁴³

Moreover, as noted by one scholar, forced marriages often involve young women who have not yet reached adulthood:

Forced marriage, in which parents or other individuals in a position of control determine when and whom a woman will marry without consulting her in any way, is the ultimate denial of women's free and full consent to marriage and as such is condemned. In such situations, the woman frequently is a child by any definition. She may be threatened with force, including death, or exile from the family if she attempts to refuse and may indeed be killed if she does so.⁴⁴

Consequently, through the use of the words "free and full consent" and the Committee's statements regarding forced marriages, Article 16.1(b) of CEDAW prohibits states parties from permitting child marriage.

2. Article 16.2

Article 16.2 states that "[t]he 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."⁴⁵ A necessary question when analyzing Article 16.2 is to

43. Committee on the Elimination of Discrimination Against Women, General Recommendation No. 21: Equality in Marriage and Family Relations, ¶ 16 (1994) [hereinafter General Recommendation No. 21], [http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/A_49_38\(SUPP\)_4733_E.pdf](http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/A_49_38(SUPP)_4733_E.pdf) [<https://perma.cc/K66V-RWCK>] (archived Oct. 28, 2017).

44. FREEMAN ET AL., *supra* note 2, at 424 (footnotes omitted).

45. CEDAW, *supra* note 20, art. 16.2. It is important to note that while the language "the marriage of a child shall have no legal effect" seems to imply that CEDAW provides a remedy

whom this provision applies. Although this provision does not expressly define who qualifies as a “child,” the Committee has stated that it “considers that the minimum age for marriage should be 18 years for both man and woman.”⁴⁶

Explaining the importance of Article 16.2, the Committee has stated as follows:

When men and women marry, they assume important responsibilities. Consequently, marriage should not be permitted before they have attained full maturity and capacity to act. According to the World Health Organization, when minors, particularly girls, marry and have children, their health can be adversely affected and their education is impeded. As a result their economic autonomy is restricted This not only affects women personally but also limits the development of their skills and independence and reduces access to employment, thereby detrimentally affecting their families and communities.⁴⁷

As a result, the Committee has recognized the health and developmental consequences of child marriage when discussing the importance of Article 16.2.

In sum, both Article 16.1(b) and Article 16.2 prohibit the marriage of persons under the age of eighteen. But despite the unquestionable importance of Article 16, a striking number of states parties have provided reservations to this Article in whole or in part.⁴⁸ Many of these reservations are on religious bases.⁴⁹ Other states parties have not provided reservations to Article 16, but nevertheless have not brought their laws into alignment with Article 16.⁵⁰ Guatemala is an example of the latter. The country ratified CEDAW without reservations,⁵¹ but

for nullifying child marriages, the Committee has not addressed this. *See* FREEMAN, ET AL., *supra* note 2, at 437 (“The Committee has not discussed the issue of invalidity as a universal legal remedy for child marriage as suggested by the language of Article 16(2).”)

46. General Recommendation No. 21, *supra* note 43, ¶ 36. *But see* FREEMAN ET AL., *supra* note 2, at 436-37 (noting the lack of uniformity in the definition of who is a “child” across international bodies).

47. General Recommendation No. 21, *supra* note 43, ¶¶ 36-37.

48. *See* FREEMAN ET AL., *supra* note 2, at 441 (noting that thirty-four states parties have reserved all or part of Article 16 as of December 2010); General Recommendation No. 21, *supra* note 43, ¶ 41 (“The Committee has noted with alarm the number of States parties which have entered reservations to the whole or part of article 16”).

49. FREEMAN ET AL., *supra* note 2, at 441 (citing General Recommendation No. 21, *supra* note 43, ¶ 45).

50. *Id.*

51. Rep. of the Comm. on the Elimination of Discrimination Against Women of its Thirteenth Session, U.N. Doc. A/49/38 (Apr. 12, 1994) [hereinafter Rep. of the Comm.].

has been slow to bring its laws into full compliance with Article 16, as discussed below.

III. GUATEMALA'S RELATIONSHIP TO CEDAW PRIOR TO ITS BAN ON CHILD MARRIAGE

Since CEDAW entered into effect, Guatemala has participated in several reporting cycles with the Committee.⁵² These reporting cycles are addressed separately.

A. Reporting Cycles I-II

Guatemala submitted its initial and second periodic state party's reports as a combined document to the Committee on April 2, 1991,⁵³ and submitted an addendum to this document on April 7, 1993.⁵⁴ In its original submission to the Committee, the country directly addressed Article 16.⁵⁵ This report noted, somewhat ironically, that "[t]he basis of marriage is the equality of rights and responsibilities between the spouses, marriage being a 'social institution whereby a man and a woman enter into lawful union'.⁵⁶ Two paragraphs later, however, the country provided the following explanation of the circumstances where child marriage is lawful in Guatemala:

Marriage may be contracted by a man and a woman who have reached the age of majority. However, "a male who has reached the age of 16 years and a female who has reached the age of 14 years" may also marry with the consent of their parents, or of any person who has custody of them in place of the parents or, if there are no parents, with the consent of their legal guardians. Where the consent of the parents cannot be obtained, legal authority for the

52. Although many documents are exchanged between Guatemala, the Committee, and other organizations during each reporting cycle, I only discuss reports submitted by Guatemala and the Committee that address child marriage or Article 16.

53. See generally Comm. on the Elimination of Discrimination Against Women, Consideration of Rep. Submitted by States Parties under Article 18 of the Convention: Initial and Second Periodic Rep. of States Parties: Guatemala, U.N. Doc. CEDAW/C/GUA/1-2 (Apr. 6, 1991) [hereinafter Initial and Second Periodic Rep.].

54. See generally Comm. on the Elimination of Discrimination against Women, Consideration of Rep. Submitted by States Parties under Article 18 of the Convention, Combined initial and second periodic reports of States parties, Guatemala, U.N. Doc. CEDAW/C/GUA/1-2/Amend.1 (Jan. 18, 1994). In the addendum to its first state party's report, Guatemala addressed Article 16 but did not discuss child marriage. See *id.* at 17-18. As a result, this submission is not part of our discussion.

55. See Initial and Second Periodic Rep., *supra* note 53, ¶¶ 184-213.

56. *Id.* ¶ 185.

marriage may be granted, on application, by a court of first instance of the minor's place of residence.⁵⁷

Consequently, the laws of Guatemala provided mechanisms where children could be married; even without the consent of a parent or legal guardian, a court could permit children under the age of eighteen to marry.⁵⁸

These archaic laws, which were still in place just prior to the ban on child marriage in November 2015, were underscored by other statements made by Guatemala in its initial submission to the Committee. For example, when discussing a woman's rights and responsibilities in marriage, Guatemala noted that “[t]he woman has a special right and duty to nurture and care for her children during their minority, and to take charge of domestic affairs.”⁵⁹ The report additionally indicated that men have a basis for objecting to their spouses' participation in activities outside of the house.⁶⁰

In its April 12, 1994 concluding observations, which discussed periodic reports from several countries, the Committee observed that many countries allow for forced marriages on multiple different bases.⁶¹ Addressing Article 16.2, the Committee similarly noted the prevalence of states parties that permit children under eighteen to marry, as well as those that have different minimum ages for marriage for boys and girls:

Some countries provide for different ages for marriage for men and women. As such provisions assume incorrectly that women have a different rate of intellectual development from men, or that their stage of physical and intellectual development at marriage is immaterial, these provisions should be abolished. In other countries, the betrothal of girls or undertakings by family members on their behalf is permitted. Such measures contravene not only

57. *Id.* ¶ 187.

58. *See id.*

59. *Id.* ¶ 190.2.

60. *See id.* ¶ 190.6 (“The husband may object to the woman engaging in activities outside the home, as long as he provides adequate means of maintaining the household and there are valid grounds for his objection.”); *see also id.* ¶ 201 (“The legal context restricts [a woman's] right to personal fulfilment in areas outside her function as mother and housewife and restricts her personal liberty.”). The country also made a point of stating that typically, men are the legal representative of their spouse. *Id.* ¶ 191. Further, in a shockingly blunt statement, this state party's report indicated that “[p]arental authority is a right which is virtually forbidden to women, since it is assigned to the father. Women only come to exercise this right when the father is imprisoned or legally barred from such.” *Id.* ¶ 198.

61. *See Rep. of the Comm., supra* note 51, at p. x.

the Convention, but also a woman's right freely to choose her partner.⁶²

When the Committee addressed Guatemala's initial state party's report and addendum at two of its meetings in January of 1994, it generally observed, "[I]t was felt that the report could have been more analytical and that it lacked information on the de facto situation and on policies carried out to enact related laws."⁶³ Discussing child marriage, the Committee summarized the following exchange that took place during these meetings between the Committee and a representative of the government of Guatemala:

Commenting on the minimum age for marriage, which was fourteen for girls and sixteen for boys, experts said that such a provision encouraged child marriages and should be abolished with a view to setting the same legal age for both partners. In her reply, the representative [of Guatemala] quoted the judgment made by the Constitutional Court according to which civil rights were acquired with the attainment of majority. Entrance into marriage required that the couple had reached majority. The different age requirements for boys and girls were based on physiological and biological factors and on the interests of society. Consequently, the difference in minimum age was not considered to be unconstitutional.⁶⁴

Thus, the country attempted to justify why child marriage and the differential treatment of boys and girls were permitted.

The Committee further identified several areas of concern regarding Guatemala's compliance with CEDAW.⁶⁵ Of significance, the Committee indicated how practices in Guatemala assigned "extremely stereotyped social, economic, political and cultural roles"

62. General Recommendation No. 21, *supra* note 43, ¶ 38..

63. Rep. of the Comm., *supra* note 51, ¶ 40. The Committee also expressed regret that no one who had prepared the report could be present at the meeting. *Id.* ¶ 41 Although not a central point to this article, the Committee also noted that Guatemala showed its lack of commitment to CEDAW through the country's failure to provide funding for the appropriate person to appear at the 1994 meetings. *See id.* ¶ 77 ("The Committee indicated that the Government's failure to cooperate in funding travel for the person in Guatemala responsible for matters relating to women showed that it attached little importance to the subject; such situations probably did not arise in connection with Guatemala's obligations under other human rights treaties."). Given the prevalence of legal sex discrimination in Guatemala at the time, this lack of commitment to meetings with the Committee does not come as a huge surprise.

64. *Id.* at ¶ 69.

65. *See id.* ¶¶ 77-81.

to men and women.⁶⁶ This “resulted in subordination of Guatemalan women in virtually all the areas and at all the levels covered by the articles of the Convention.”⁶⁷ The Committee additionally stated that Guatemalan civil law must be brought into compliance with CEDAW, adding that Article 16 should be a priority in this effort.⁶⁸ The Committee also made several recommendations for the government of Guatemala, including that the country provide more detailed reports.⁶⁹ The Committee moreover urged Guatemala to bring its laws into compliance with CEDAW and again reiterated the importance of Article 16.⁷⁰

In sum, Guatemala’s initial report to the Committee demonstrated that its laws do not comply Article 16 of CEDAW. The country expressed very stereotypical views on gender roles, and the Committee held nothing back in its observation that sexism is massively pervasive throughout the country.

B. Reporting Cycles III-V

Guatemala’s combined third and fourth periodic reports were submitted to the Committee on March 20, 2001.⁷¹ A full ten pages of this lengthy report were devoted to addressing the country’s

66. *Id.* ¶ 78.

67. *Id.* The Committee further provided the following poignant paragraph at the end of its discussion of the areas of concern:

In short, the members of the Committee commented that women did not appear to be a priority for the Government, that there was far-reaching legal discrimination, and that there was no information on initiatives to combat discrimination resulting from highly stereotyped cultural patterns or on the actual situation of women among indigenous ethnic groups. In general, they regarded the report as inadequate in the light of the recommendations made by the Committee in that connection. They expressed the view that the very wording of the report was sometimes discriminatory; that showed that the Government needed to review and adjust its approach so as to improve the situation of Guatemalan women. *Id.* ¶ 81.

68. *Id.* ¶ 79.

69. *Id.* ¶ 82. As a point of comparison, when addressing the initial state party’s report submitted by the Netherlands, the Committee “commended the extensive, very detailed report, which adhered to the general guidelines and also contained ample statistics and graphs, and its presentation to the Committee.” *Id.* ¶ 253.

70. *Id.* ¶ 83.

71. Comm. on the Elimination of Discrimination against Women, Consideration of Reports Submitted by States Parties under Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women: Combined Third and Fourth Periodic Reports of States Parties, Guatemala, U.N. Doc. CEDAW/C/GUA/3-4 (Apr. 1, 2002).

compliance with Article 16.⁷² There, the country admitted that its Civil Code permitted boys to marry at the age of sixteen and girls at the age of fourteen with proper parental authorization.⁷³ Nevertheless, the report argued that under the current law, “Guatemalans are free to choose the person with whom they wish to live permanently.”⁷⁴ The country further noted that an amendment to the Civil Code had been proposed that “would make the age the same for boys and girls, so that on reaching 16 years of age, boys and girls would have the same rights.”⁷⁵ Regrettably, this report did not address child marriage any further.

In its fifth periodic state party’s report, submitted to the Committee on January 17, 2002, Guatemala acknowledged that “there are structural and cultural obstacles to achieving full [gender] equality in practice”⁷⁶ Nevertheless, the report expressed optimism that progress would be made as more Guatemalans became aware of inequality in the country.⁷⁷ Addressing its compliance with the recommendations from the Committee following its initial and second periodic reports, the report stated that with regard to Article 16, “[t]he Civil Code was amended in 1999”⁷⁸ Unfortunately, the report did not expand on how the amendments brought the laws of the country into compliance with Article 16. And as discussed above, immediately prior to the November 2015 ban on child marriage, girls could marry at the age of fourteen and boys at sixteen.⁷⁹ As a result, any amendments to the Civil Code in 1999 did not outright ban child marriage.

In its concluding observations addressing Guatemala’s third through fifth periodic reports, the Committee summarized what took place at its 577th and 578th meetings where it addressed these

72. *Id.* at 80-89.

73. *Id.* at 80.

74. *Id.* But as discussed above, child marriages are often a forced affair. This fact significantly undermines this statement in the report.

75. *Id.*

76. Comm. on the Elimination of Discrimination against Women, Consideration of Reports Submitted by States Parties under Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women: Fifth Periodic Report of States Parties, Guatemala 7, U.N. Doc. CEDAW/C/GUA/5 (Apr. 3, 2002).

77. *Id.*

78. *Id.* at 9.

79. Brigida, *supra* note 10, at 2.

submissions.⁸⁰ Of note, the Committee commended Guatemala “for its political will to implement the Convention in difficult circumstances of [post-civil war] reconstruction and shortage of resources.”⁸¹ After highlighting four positive aspects of the country’s compliance with CEDAW, the Committee devoted multiple pages to outlining areas of concern and recommendations.⁸² Pertinent to our discussion here, the Committee expressed its unease regarding “the disparity between the legal age of marriage for girls and boys, which is discriminatory.”⁸³ The Committee further noted its concern “that the minimum age at which a girl can legally contract matrimony — 14 years — is too low and can impact negatively on their health and impede their education.”⁸⁴

Consistent with these observations, the Committee made the following recommendations to Guatemala:

The Committee urges the State party to take steps to remove the disparity in the legal age of marriage of women and men and take measures to raise the minimum age of marriage for girls, in line with article 1 of the Convention on the Rights of the Child, which defines a child as being below the age of 18, and the provision on child marriage in article 16, paragraph 2, of the Convention on the Elimination of All Forms of Discrimination against Women. The Committee urges the State party to develop awareness campaigns on the negative implications of early marriage on the health and education of girls.⁸⁵

Thus, the core of the recommendations made by the Committee to Guatemala after its combined first and second periodic reports were not implemented by the country in its subsequent two reports.

C. Reporting Cycle VI

Guatemala’s sixth state party’s report was submitted to the Committee and published in January of 2004.⁸⁶ Although this report

80. Comm. on the Elimination of Discrimination against Women, Report of the Committee on the Elimination of Discrimination Against Women on its Twenty-sixth, Twenty-seventh, and Exceptional Sessions 171, UN. Doc. A/57/38 (2002).

81. *Id.* at 173.

82. *See id.* at 73-77.

83. *Id.* at 175.

84. *Id.* at 175-76.

85. *Id.* at 176.

86. Comm. on the Elimination of Discrimination against Women, Consideration of Reports Submitted by States Parties under Article 18 of the Convention on the Elimination of

only devoted one page to discussing compliance with Article 16, it did address four proposed amendments to the Civil Code by Secretaría Presidencial de la Mujer (“SEPREM”), an advisory governmental organization.⁸⁷ Of relevance here are the proposed amendments to Articles 81 and 89 of the Civil Code, respectively addressing capacity to enter into marriage and illegal marriages.⁸⁸ Under the version of Article 81 that was in effect at the time the sixth periodic state party’s report was submitted, boys as young as sixteen and girls as young as fourteen could marry so long as they received proper authorization.⁸⁹ SEPREM proposed the following amendment to Article 81: “Persons who have reached the age of majority are free to enter into marriage. However, boys and girls aged 16 or over may enter into marriage, subject to receiving authorization as stipulated in the following articles.”⁹⁰

Likewise, as of January 2004, Article 89 of Guatemala’s Civil Code read as follows:

“Illegal marriage. Authorization may not be given for the marriage (1) of a person less than 18 years of age without the express consent of the parents or guardian; (2) of a boy less than 16 years of age or a girl less than 14 years of age, unless the girl has conceived prior to that age and the persons exercising parental authority or guardianship give their consent.”⁹¹

SEPREM proposed the following amendment to Article 89:

“Authorization may not be given for the marriage (1) of a person less than 18 years of age without the express consent of the parents or guardian; (2) of a boy or girl less than 16 years of age, unless the persons exercising parental authority or guardianship give their consent.”⁹²

Though not perfect, both of these amendments would have been a welcome change to those provisions of Guatemala’s Civil Code that permitted child marriage.⁹³

All Forms of Discrimination Against Women: Sixth Periodic Report of States Parties, Guatemala, U.N. Doc. CEDAW/C/GUA/6 (Jan. 21, 2004).

87. *See id.* ¶ 174.

88. *See id.*

89. *Id.*

90. *Id.*

91. *Id.*

92. *Id.*

93. I say “not perfect” because both amendments would still permit children under eighteen to marry in certain circumstances. This directly violates Article 16 of CEDAW. *See*

In its concluding observations for reporting cycle VI, the Committee, while not addressing Article 16 directly, expressed its concern that “the domestic legislation [of Guatemala] is still not in conformity with [CEDAW].”⁹⁴ As a result, the Committee urged the country to put into place a strategy to make the required amendments to its discriminatory laws so that they conform to CEDAW.⁹⁵ Thus, while the proposed amendments to Articles 81 and 89 of the Civil Code would have been a positive change to Guatemala’s laws concerning marriage of children, the Committee rightly expressed its frustration that the country did not have an action plan for passing these amendments.

D. Reporting Cycle VII

Guatemala’s final state party’s report before passing the ban on child marriage was submitted on January 7, 2007, and published a year later.⁹⁶ There, the country admitted that it had not made any advances in its legislation with regard to the disparity between the ages that men and women could legally marry, despite the Committee repeatedly making this recommendation.⁹⁷ Addressing Article 16, the report conceded that there are still some provisions of the Civil Code “that maintain unjustified gender-based distinctions.”⁹⁸ Of importance here, “Article 89 regulates permission to marry and establishes a minimum age for marriage with the parents’ consent: 14 years for girls and 16 years for boys.”⁹⁹ The country further stated that the legislative amendments proposed by SEPREM, discussed above, had twice failed to gain any ground in Congress.¹⁰⁰

The Committee’s concluding observations addressing Guatemala’s state party’s report for reporting cycle VII did not address

infra Part IV.B. As discussed below, the November 2015 ban on child marriage largely mirrored these amendments proposed by SEPREM.

94. Comm. on the Elimination of Discrimination against Women, Concluding Comments of the Committee on the Elimination of Discrimination Against Women: Guatemala on its Thirty-fifth session 3, U.N. Doc. CEDAW/C/GUA/CO/6 (June 2, 2006).

95. *Id.*

96. Comm. on the Elimination of Discrimination against Women, Consideration of reports submitted by States parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women, Seventh periodic report of States parties, Guatemala, U.N. Doc. CEDAW/C/GUA/7 (Jan. 7, 2008).

97. *See id.* at 29.

98. *Id.* at 164.

99. *Id.*

100. *Id.*

Article 16 or Guatemala's laws permitting child marriage.¹⁰¹ Nevertheless, the Committee urged the country "to make every effort to address the previous recommendations that have not yet been implemented, as well as the concerns contained in the present concluding observations."¹⁰²

Addressing Guatemala's failure to eliminate its discriminatory laws, the Committee recommended the following:

The Committee urges the State party to give priority attention to legislative reforms to eliminate discriminatory laws against women and ensure compliance with the State party's obligations under the Convention and the Constitution. The Committee recommends that the State party undertake a comprehensive process of review of the compatibility of national legislation with the Convention and repeal all remaining legislation that discriminates against women, including the discriminatory provisions in the Labor, Civil and Criminal Codes.¹⁰³

Thus, while not expressly addressing Guatemala's failure to ban child marriage, the Committee broadly urged the country to amend its laws to bring them into alignment with CEDAW.

In grand sum, all of Guatemala's state party's reports before November 2015 paint the picture of a country where widespread traditional practices permitted child marriage. Despite repeated urging from the Committee, the country was unable to pass legislation amending the Civil Code to prohibit this practice. Thankfully, the tradition of child marriage substantially came to its legal end in November of 2015.¹⁰⁴

101. *See* Comm. on the Elimination of Discrimination against Women, Concluding observations of the Committee on the Elimination of Discrimination against Women, Guatemala, Forty-third session, at 1-10, U.N. Doc. CEDAW/C/GUA/CO/7 (Feb. 12, 2009).

102. *Id.* at 2.

103. *Id.* at 3.

104. It is perhaps too early to tell whether Guatemala's ban on child marriage has had a material impact on the number of child marriages in the country. Further research is warranted on this, after some time has passed.

*IV. GUATEMALA'S BAN ON CHILD MARRIAGE**A. Decreto Número 8-2015*

In November of 2015, the Congress of Guatemala adopted a decree entitled, Decreto Número 8-2015.¹⁰⁵ This decree was adopted in part based on Guatemala's ratification of CEDAW,¹⁰⁶ and it amended five separate sections of the Civil Code.¹⁰⁷ The first amendment was to Article 81 of the Civil Code, and it raised the minimum age for marriage to eighteen.¹⁰⁸ Second, Decreto Número 8-2015 amended Article 82 of the Civil Code.¹⁰⁹ As amended, Article 82 states that "as an exception and based on 'well-founded' grounds the marriage of a minor who is at least 16 years of age may be authorized."¹¹⁰ As discussed above, prior to this amendment, the laws of Guatemala provided that boys as young as sixteen and girls as young as fourteen could marry with proper authorization.¹¹¹ To further solidify these changes in the law, the third amendment, which was to Article 83, states that marriage of children under sixteen years old cannot be authorized.¹¹²

The fourth amendment in Decreto Número 8-2015 was to Article 84.¹¹³ As amended, Article 84 outlines the procedure for obtaining authorization for the marriage of a minor between the ages of sixteen and eighteen.¹¹⁴ Specifically, "a request for authorization of a marriage of minors who have attained the age of 16 must be submitted to the

105. Decreto No. 8-2015. This change in the law was led by the #18yes14no campaign, spearheaded by UNICEF and youth organizations in Guatemala. UNITED NATIONS CHILDREN'S FUND, UNITED NATIONS CHILDREN'S FUND ANNUAL REPORT 2015: GUATEMALA 19-20 (2015), https://www.unicef.org/about/annualreport/files/Guatemala_2015_COAR.pdf

106. Decreto No. 8-2015, at 1.

107. *Id.* at 2; Norma Gutierrez, *Guatemala: Congress Raises Marriage Age*, LIBRARY OF CONGRESS: GLOB. LEGAL MONITOR (Jan. 11, 2016), <http://www.loc.gov/law/foreign-news/article/guatemala-congress-raises-marriage-age/> [<https://perma.cc/Z4UM-TMG3>] (archived Oct. 28, 2017).

108. Decreto No. 8-2015, at 2; Gutierrez, *supra* note 107.

109. Decreto No. 8-2015, at 2.

110. Gutierrez, *supra* note 107; *see* Decreto No. 8-2015, at 2. I am very thankful to the Library of Congress for their English translation of this decree.

111. Sixth Periodic State Party's Report, *supra* note 86, at p. 50.

112. Decreto No. 8-2015, at 2; Gutierrez, *supra* note 107.

113. Decreto No. 8-2015, at 2.

114. *Id.*; Gutierrez, *supra* note 107.

appropriate judge,^[115] who, after listening to the opinion of the minors concerned, will make a determination.”¹¹⁶ Finally, Decreto Número 8-2015 amended Article 177 of the Civil Code.¹¹⁷ Before this amendment, the Civil Code had recognized *de facto* unions¹¹⁸ of minors with the consent of parental authority, a guardian, or a court.¹¹⁹ Article 177 now prohibits these types of unions for children.¹²⁰

Since adopting Decreto Número 8-2015, Guatemala has submitted a state party’s report to the Committee for reporting cycles eight and nine.¹²¹ There, the country made the following statement with regard to this decree:

The State of Guatemala is pleased to report that the Congress of the Republic enacted, as a matter of urgency, Decree No. 8-2015, which provides that the minimum marriageable age for men and women is 18, or 16 in special cases with cause and the permission of a competent judge. It is worth underscoring that acceptance of *de facto* unions between minors will not be allowed. Publication in the *Official Gazette* pending.¹²²

At the time of writing this article, the Committee has not published its concluding observations for reporting cycles eight and nine. It will be interesting to see how they respond to the adoption of Decreto Número 8-2015.¹²³

115. Only family courts in Guatemala are permitted to grant these exceptions. UNITED NATIONS CHILDREN’S FUND, UNITED NATIONS CHILDREN’S FUND ANNUAL REPORT 2016: GUATEMALA, 11 (2016) [hereinafter UNICEF 2016 ANNUAL REPORT], https://www.unicef.org/about/annualreport/files/Guatemala_2016_COAR.pdf [https://perma.cc/26D5-FMG6] (Oct. 28, 2017).

116. Gutierrez, *supra* note 107; see Decreto No. 8-2015, art. 4.

117. Decreto No. 8-2015, art. 5.

118. Gutierrez, *supra* note 107. *De facto* unions are akin to common law marriages in the United States. Gutierrez, *supra* note 107 (citations omitted).

119. Gutierrez, *supra* note 107 (citations omitted).

120. Decreto No. 8-2015, art. 5; Gutierrez, *supra* note 107.

121. Comm. on the Elimination of Discrimination against Women, Consideration of Reports Submitted by States Parties under Article 18 of the Convention: Eighth and Ninth Periodic Reports that States Parties Due in 2015, Guatemala, U.N. Doc. CEDAW/C/GTM/8-9 (Jan. 11, 2016).

122. *Id.* at 41.

123. In all likelihood, the decree will be praised with the exception of the amendments to Articles 82, 83, and 84, which still allow for children as young as sixteen to marry in certain circumstances. See Decreto No. 8-2015, art. 2, 3, 4; Gutierrez, *supra* note 107.

B. Compliance with CEDAW

A necessary next question is the extent to which Decreto Número 8-2015 complies with CEDAW. The discussion below addresses both Article 16.1(b) and Article 16.2.

1. Article 16.1(b)

Article 16.1(b) of CEDAW requires that men and women be given “[t]he same right freely to choose a spouse and to enter into marriage only with their free and full consent.”¹²⁴ As discussed above, through the use of the words “free and full consent” and through the Committee’s statements regarding forced marriages, Article 16.1(b) of CEDAW prohibits child marriage.¹²⁵ As applied to Decreto Número 8-2015, although the amendments to Articles 81 and 177 of the Civil Code prohibit intentional marriages of children and the recognition of *de facto* unions of children, Articles 82 through 84 still permit children as young as sixteen to marry.¹²⁶ Even though the process for authorizing the marriage of a child under eighteen requires (1) that the assigned judge listen to the opinions of the children involved¹²⁷ and (2) that the General Prosecutor’s Office be present during these hearings,¹²⁸ the parties to these marriages are still children; they should not be considered capable of giving “free and full consent” as required by Article 16.1(b).¹²⁹ Further, outside the context of Article 16.1(b), the Committee has directly stated that the minimum age for both men and women to marry should be eighteen.¹³⁰ Consequently, as amended, Articles 81 and 177 comply with this provision of CEDAW, but Articles 82 through 84 provide an unfortunate exception that does not.

2. Article 16.2

As addressed above, Article 16.2 of CEDAW states, “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

124. CEDAW, *supra* note 20, art. 16.1(b).

125. *Id.*; *see supra* Part II.B.1.

126. Decreto No. 8-2015, art. 2, 4; Gutierrez, *supra* note 107.

127. Decreto No. 8-2015, art. 4; Gutierrez, *supra* note 107.

128. UNICEF 2016 ANNUAL REPORT, *supra* note 115, at 19.

129. CEDAW, *supra* note 20, art. 16.1(b).

130. General Recommendation No. 21, *supra* note 43, ¶ 36.

an official registry compulsory.”¹³¹ While there is a lack of uniformity across international instruments with regard to who is considered a child,¹³² as discussed in the preceding subsection, the Committee intends that the minimum age for marriage be eighteen for both men and women.¹³³ This intention to set a minimum age of eighteen, coupled with the unequivocal language in Article 16.2 that child marriages “shall have no legal effect,” leads to one conclusion: the marriages authorized in the amended Articles 82 through 84 of Guatemala’s Civil Code are in direct violation of CEDAW. A state party cannot permit a child under eighteen to be married, even with a thorough examination of the child’s opinion by a family court judge, and still be in compliance with Article 16.2 of CEDAW. Thus, again, while the amendments to Articles 81 and 177 comply with this provision, the remaining portions of Decreto Número 8-2015 do not.

C. The Laws of Panama, Costa Rica, and Honduras as Models for Guatemala

The remaining six countries in Central America have ratified CEDAW.¹³⁴ Nevertheless, Belize, El Salvador, and Nicaragua all have laws that permit children under eighteen to marry in various circumstances.¹³⁵ By contrast, in Panama, marriage of children under

131. CEDAW, *supra* note 20, art. 16(2).

132. See FREEMAN ET AL., *supra* note 2, at 436-37.

133. See General Recommendation No. 21, *supra* note 43, ¶ 36.

134. See *Chapter IV Human Rights, 8. Convention on the Elimination of All Forms of Discrimination against Women*, UNITED NATIONS TREATY COLLECTION, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en [<https://perma.cc/8QGW-XS6R>] (last visited Oct. 28, 2017).

135. See Comm. on the Elimination of Discrimination against Women, Concluding comments of the Committee on the Elimination of Discrimination against Women: Belize, Thirty-ninth session 7, U.N. Doc. CEDAW/C/BLZ/CO/4 (Aug. 10, 2007) (noting that children as young as sixteen in Belize can marry with parental consent); Comm. on the Elimination of Discrimination against Women, Concluding observations on the combined eighth and ninth periodic reports of El Salvador, at p. 11, U.N. Doc. CEDAW/C/SLV/CO/8-9 (Mar. 3, 2017) (indicating that early pregnancies and social customs are reasons that children under eighteen may marry in El Salvador); Comm. on the Elimination of Discrimination against Women, Consideration of reports submitted by States parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women, Sixth periodic report of States parties, Nicaragua, at p. 49, U.N. Doc. CEDAW/C/NIC/6 (July 2005) (stating that the laws of Nicaragua provide that “the minimum age for marriage with parental authorization is 15 for men and 14 for women and . . . the minimum age for marriage without such authorization is 21 for men and 18 for women[.]”).

eighteen is not legal.¹³⁶ Although the laws of Panama had previously allowed for girls as young as fourteen and boys as young as sixteen to marry with parental consent, the government removed these exceptions in 2015.¹³⁷ Costa Rica passed a similar law regarding “improper relations” in October 2016.¹³⁸ This law increased the minimum age that children can marry to eighteen and eliminated a prior exception where children as young as fifteen could marry with parental consent.¹³⁹ And most recently, in July 2017, Honduras banned marriage of children under the age of eighteen with no exceptions.¹⁴⁰ Before this law, girls as young as sixteen could marry.¹⁴¹

The most important point of comparison regarding the laws of Panama, Costa Rica, and Honduras is that they do not contain exceptions where a child under the age of eighteen may marry.¹⁴² This is crucial for compliance with CEDAW. As discussed above, even after the amendments to Guatemala’s Civil Code, Articles 82 through 84 still permit children as young as sixteen to marry in certain circumstances.¹⁴³ No matter how thorough the process is for invoking this exception, it still violates Article 16.1(b) and Article 16.2 of CEDAW.¹⁴⁴ In contrast, by eliminating all exceptions where children under eighteen may marry, Panama, Costa Rica, and Honduras have brought their laws into full compliance with Articles 16.1(b) and 16.2.

136. *Child Marriage around the World: Panama*, GIRLS NOT BRIDES, <http://www.girlsnotbrides.org/child-marriage/panama/> [https://perma.cc/2JGT-NF4B] (last visited Oct. 28, 2017).

137. *Id.*

138. *Child Marriage around the World: Costa Rica*, GIRLS NOT BRIDES, <http://www.girlsnotbrides.org/child-marriage/costa-rica/> [https://perma.cc/FBN5-WT97] (last visited Oct. 28, 2017).

139. *Experts Hope Costa Rica Child Marriage Ban Curbs Teen Pregnancy*, DAILY MAIL (Jan. 26, 2017), <http://www.dailymail.co.uk/wires/reuters/article-4158922/Experts-hope-Costa-Rica-child-marriage-ban-curbs-teen-pregnancy.html>.

140. Anastasia Moloney, *Honduras bans child marriages and removes parental permission exception: Central American nation raises minimum marital age from 16 to 18*, INDEPENDENT (July 13, 2017), <http://www.independent.co.uk/news/world/americas/honduras-child-marriage-ban-age-consent-raised-18-unanimous-vote-parental-permission-exception-a7838606.html> [https://perma.cc/753W-DTYA] (archived Oct. 28, 2017).

141. Comm. on the Elimination of Discrimination against Women, Concluding Observations on the Combined Seventh and Eighth Periodic Reports: Honduras 16, U.N. Doc. CEDAW/C/HND/CO/7-8 (Nov. 25, 2016).

142. See *Child Marriage around the World: Panama*, *supra* note 136; *Experts Hope Costa Rica Child Marriage Ban Curbs Teen Pregnancy*, *supra* note 139; Moloney, *supra* note 140.

143. Decreto No. 8-2015.

144. See *supra* Part IV.B.

In sum, although it was a step in the right direction, Guatemala's ban on child marriage still fails to fully comply with Articles 16.1(b) and 16.2 of CEDAW through the exception that allows for children under the age of eighteen to marry. This exception violates these provisions of CEDAW. The legislatures of Panama, Costa Rica, and Honduras have correctly eliminated similar exceptions, and it would be prudent for Guatemala to follow in the footsteps of those countries.

V. CONCLUSION

Proposing what a developing country should or should not do is an undertaking that must be approached with great caution. As a person of privilege, I need to take a tremendous amount of care when I comment on the cultural and governmental practices of under-resourced and low-income communities and countries. It would be far too easy to become an armchair activist, opining on how the world ought to be while sitting within the comforts of privilege in a developed nation. My intention in writing this article has never been to suggest that I, a white male from the United States, have the solution to resolving an unfortunate cultural practice in another country.¹⁴⁵ To do so would be ignorant at best and colonialist at worst.

Nevertheless, the practice of child marriage can have a devastating impact on young girls in Guatemala, particularly those in Mayan indigenous communities.¹⁴⁶ Decreto Número 8-2015 was inexcusably late in being passed by the Congress of Guatemala. Further, the exception in Decreto Número 8-2015 that still permits children as young as sixteen to marry directly violates Article 16.1(b) and Article 16.2 of CEDAW. There is no excuse for the tardiness of this decree nor for its flaws.¹⁴⁷ But given Guatemala's unfortunate

145. Although not the focus of this article, it should be noted that child marriage is also a problem in the United States. See Chris Baynes, *More than 200,000 children married in US over the last 15 years: Girls as young as 10 were among the minors who wedded under legal loopholes*, INDEPENDENT (July 8, 2017), <http://www.independent.co.uk/news/world/americas/200000-children-married-us-15-years-child-marriage-child-brides-new-jersey-chris-christie-a7830266.html> [https://perma.cc/F9TM-HWDF] (archived Oct. 28, 2017) (“At least 207,468 minors married in the US between 2000 and 2015 . . .”).

146. See *supra* Part I.

147. It is worth noting that I am not alone in my belief that Guatemala should eliminate the exception in its amended Civil Code that allows for children under eighteen to marry. See UNITED NATIONS CHILDREN'S FUND, *supra* note 105, at 20 (“Although [Decreto Número 8-2015] was a notable progress, the UNICEF position remains that the Civil Code should be modified to raise the age of marriage to 18, with no exceptions.”).

history of discriminatory practices, Decreto Número 8-2015 was at least a step in the right direction toward eliminating child marriage in the country once and for all. Guatemala's neighbors, Panama, Costa Rica, and Honduras, are examples of countries that have fully brought their civil codes into compliance with the provisions of CEDAW that prohibit child marriage. By eliminating Articles 82, 83, and 84 of its Civil Code, Guatemala should become the next country in the trend of Central American nations to comply with the provisions of CEDAW that ban child marriage.