



AMICUS CURIAE



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PRESENTED BEFORE THE SUPREME COURT OF JUSTICE

**IN RELATION TO THE ACTION OF
UNCONSTITUTIONALITY: 22/2016
MOVANT: STATE HUMAN RIGHTS
COMMISSION OF AGUASCALIENTES.**

THIS AMICUS IS SUPPORTED BY:

Save the Children

Asociación para el Desarrollo Integral de Personas Violadas A.C. – ADIVAC

Inclusión Ciudadana A.C.

Red por los Derechos de la Infancia en Mexico – REDIM

Red por la Infancia y la Adolescencia Puebla A.C. – RIA

OXFAM México

World Vision, Por los Niños

Youth Build Internacional

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ACTION OF UNCONSTITUTIONALITY: 22/2016
MOVANT: STATE HUMAN RIGHTS COMMISSION OF AGUASCALIENTES.

SUBJECT: Presentation of *AMICUS CURIAE*

MARÍA JOSEFINA MENÉNDEZ CARBAJAL and **SAÚL AZAREL SÁNCHEZ JIMÉNEZ**, on behalf of the international organization **SAVE THE CHILDREN MEXICO**, with address Avenida Francisco Sosa 30, Colonia Villa Coyoacán, Delegación Coyoacán, Ciudad de México, C.P. 04000; allied with the non-profit organizations* Association for the Integral Development of Raped People, Citizen Inclusion, Network for Children's Rights in Mexico, Puebla Network for Childhood and Adolescence; Oxfam, World Vision, and Youth Build International, with all due respect present the following:

Based on Articles 1 and 8 of the Political Constitution of the United Mexican States, Article 23.1 section A of the American Convention on Human Rights, and Article 79 of the Federal Code of Civil Procedures, we offer the present writing as *Amicus Curiae*, in accordance with the following considerations:

1. OF THE OBJECT.

The present memorial has the objective of bringing elements to this Honorable Supreme Court of Justice of the Nation (henceforth named as the Court) to prove that child marriage, early or at a young age¹ – indistinctly-, entered into under the concept of exemptions, is a harmful² and detrimental practice that permanently affects the rights of children and adolescents.

Indeed, as will be seen later, the existence of exemptions to allow for early marriage, has not favored the full development of children and adolescents. On the contrary, since decades ago this practice has meant a lack of access to fundamental prerogatives such as an education, protection, equality and non-discrimination, a life free from violence towards women, the best interest of children, and has truncated life projects in a lacerating way.

* Translator's note – Original Spanish names of the organizations, presented in order: Asociación para el Desarrollo Integral de Personas Violadas A.C. (ADIVAC), Inclusión Ciudadana A.C., Red por los Derechos de la Infancia en Mexico (REDIM), Red por la Infancia y la Adolescencia Puebla A.C. (RIA).

¹ Child marriage, early or at a young age, is understood as the civil or religious union of a couple, where at least one of the parties is younger than 18 years old.

² For this memorial, we will consider harmful practices the traditions, experiences, habits, customs or authority commandments that, based on violence or discrimination, diminish or impair the rights of individuals or groups of people. According to General Recommendation 31 by the Committee for Eliminating Discrimination against Women and General Comment 18 on harmful practices, by the Committee on the Rights of the Child, which have been jointly adopted, harmful practices: "Are based on discrimination due to sex, gender, age, among others, and have often been justified appealing to customs and sociocultural or religious values, as well as misconceptions related to some disadvantaged groups of women and children. In general, harmful practices are often associated with grave forms of violence against women and children". Par 7.

2. OF THE INTEREST OF THE MOVANT.

The international organization Save the Children began more than **90 years** ago as a humanitarian response after the First World War, when our founder, **Eglantyne Jebb**, endeavored to consolidate a multidisciplinary team of experts to work in favor of the children affected by the conflict. Since then, Save the Children has been working to provide humanitarian response, and to promote and defend the rights of children and adolescents across the world.

We have been present in Mexico since **1973**, and we currently influence the lives of more than **398,000** children and adolescents, in **18 states**. Particularly, Save the Children specializes in childhood health and nutrition, a culture of peace, governance, alternative care, and migration prevention, but one of our crosscutting thematic axes relates to the right to protection and the eradication of harmful practices towards children and adolescents.

Such is the source of our interest to endorse, together with the aforementioned organizations, the current *Amicus Curiae* memorial as a technical contribution so that this High Court may have greater elements to render a better judgment on this case.

3. RELEVANT DATA ON CHILD MARRIAGE.

As a brief summary, we offer the following data to contextualize the subject of early marriage or *de facto* unions, and their impact in the lives of children and adolescents, namely:

- There exist 39.2 million children and adolescents in Mexico. In other words, one out of three people in this country is younger than 18 years old.³ From this group, 50.6% are women and 49.4% are men.⁴
- More than half of this population, 53.9%, endures some level of poverty.⁵ This means that 21.4 million children and adolescents live in homes that do not have enough resources to acquire the goods and services required by its family members, and that they also have one or more scarcities regarding their social rights.
- It has been estimated that at least one out of every five women enters into a conjugal union before turning 18 years old⁶. Currently our country has 6.8 million women between 15 and 54 years old that entered into a conjugal union before reaching 18 years of age⁷.

³ INEGI. *Estadísticas a propósito del Día del Niño*, Mexico, 2016. Available in Spanish at: http://www.inegi.org.mx/saladeprensa/aproposito/2016/ni%C3%B1o2016_0.pdf

⁴ Ibid.

⁵ Ibid.

⁶ Save the Children, *Embarazo y Maternidad Adolescente en México 2016*. Available in Spanish at: <http://www.hastaelultimonino.mx/pdf/embarazo-y-maternidad-adolescente.pdf>

⁷ UN Women, *Matrimonios y Uniones tempranas de Niñas*, 2016. Available in Spanish at: http://www2.unwomen.org/-/media/field%20office%20mexico/documentos/publicaciones/2016/matrimonio%20infantil_.pdf

- Child marriage or *de facto* union rates in our country have reduced slightly during the last five years. The greatest reductions have occurred in the groups of those younger than 15 years old and of men⁸.
- Nevertheless, the 2015 Intercensal Survey of the National Institute on Geography and Statistics (INEGI, for its acronym in Spanish) revealed that by that year 74,446 adolescents between 12 and 17 years old were married, of which 58,112 were girls or adolescent women.
- The same survey also revealed that 305,285 adolescents from the same age range lived in common-law or *de facto* unions, for the most part women.
- Nationally, 72.4%⁹ of married individual between 12 and 17 years were not attending school.
- Administrative Records on Vital Marriage Statistics indicate that 80% of married men younger than 15 years old were working, while 3.9% of women younger than 15 years old and 8.2% between 15 and 17 years old did so¹⁰.
- In 2015, there were 31,862 married women between 12 and 17 years old with at least one child¹¹.
- Homes with married adolescents are in conditions that are more precarious. Of the total number of adolescents married in 2015: 19% did not have basic utilities (water, electricity, drainage system), 33% did not have resistant construction at their homes (roofs, walls, floors), 34% lived in overcrowded conditions, and 6% suffered food shortages¹².
- The 193 member States of the United Nations, including Mexico, through resolution A/69/L.85,¹³ have committed to work on an ambitious Development Agenda that contains 17 Objectives and 169 goals, which are integrated and indivisible in nature, and that span social, economic, and environmental spheres. This agenda must be fulfilled between 2015 and 2030.
- According to the 2030 Agenda, child marriage and education (Objective 2) are intrinsically linked. Girls with no kind of education are three times more likely to get married before 18 years of age. This immediately affects the efforts on the eradication of poverty (Objective 1), since the opportunities for married girls with no completed studies to find formal and decently paying employment are more limited (Objective 8). Child marriage also affects maternal and child mortality (Objective 3).¹⁴

4. OF THE RESTRICTIONS TO HUMAN RIGHTS.

Fundamental Rights are not absolute or unlimited, but rather they are subject to legal restrictions that prevent its holders from exercising such prerogatives specific and clear circumstances. However, for that

⁸ Information from the Integral Protection System for Children and Adolescents (SIPINNA) based on administrative records from the INEGI on Vital Marriage Statistics.

⁹ INEGI 2015 Intercensal Survey, data processed by SIPINNA. Available at: <http://en.www.inegi.org.mx/proyectos/enchogares/especiales/intercensal/>

¹⁰ Ibid.

¹¹ Ibid.

¹² Ibid.

¹³ Project for the final document of the United Nations summit for the approval of the agenda for development beyond 2015. Sixty-ninth session. Available at: <http://www.un.org/es/comun/docs/index.asp?symbol=A/69/L.85>

¹⁴ Ommera Zafar, Sustainable development goals: why ending child marriage should be a target.

Article published in The Guardian, April 10, 2015. Available at: <https://www.theguardian.com/global-development-professionals-network/2015/apr/10/sustainable-development-goals-ending-child-marriage-target>

rights restriction to occur, a previous work is necessary of weighting their reasonableness and proportionality against other fundamental rights, and against subjective conditions such as respecting the rights of others, morals, ethics, traditions and customs, to mention some.

In this regard, the Political Constitution of the United Mexican States (henceforth the Constitution) in its first article and first paragraph indicates that:

In the United Mexican States all persons shall enjoy the human rights recognized by this Constitution and by the international treaties of which the Mexican State is party, as well as the guarantees for their protection, the exercise of which may not be restricted or suspended, except in the cases and under the conditions that this Constitution establishes.

As can be read, the limitation of basic prerogatives can have different origins or reasons of being. Nevertheless, the observance of the constitutional order is important so that the exercise of a right is denied legitimately; especially if this prohibitive decision aims to protect people or groups in vulnerable conditions.

Concerning the valid restriction of fundamental rights, the First Chamber of the Nation's Supreme Court of Justice has developed in its jurisprudence the following elements¹⁵:

(...)

In order for the measures admitted by the ordinary legislator with the purpose of restricting fundamental rights to be valid, they must satisfy at least the following requirements: a) be admissible within the constitutional sphere, that is, the ordinary legislator can only restrict or suspend the exercise of individual guarantees with objectives that can be framed within the provisions of the Magna Carta; B) be necessary to ensure the achievement of the purposes underlying the constitutional restriction, meaning, it is not enough that the restriction is in broad terms useful for the achievement of those objectives, but instead it should be the ideal way for its realization, which means that the end sought by the legislator cannot reasonably be achieved by other means less restrictive of fundamental rights; and c) be proportional, that is, the legislative measure must respect a correspondence between the importance of the end sought by the law, and the detrimental effects that it produces in other constitutional rights and interests, in the understanding that the pursuit of a constitutional objective cannot be done at the expense of unnecessarily or unreasonably affecting other constitutionally protected rights.

(...)

The above criterion establishes three important parameters that must be considered by the Mexican State in order to regulate a –constitutionally valid– restriction on fundamental rights. These are:

- a. **Firstly, the restriction regulated by the legislator must be admissible by the Constitution.** The ordinary legislator can only restrict or suspend the exercise of human rights in the cases and under the conditions established by the Constitution itself, as prescribed in Article 1. Therefore, normative production powers must be deployed to give exact content to human rights limitations.

¹⁵ *Suprema Corte de Justicia de la Nación, Jurisprudencia*. Period: *Décima Época*, Record: 160267, Court: *Primera Sala*, Type of Thesis: *Jurisprudencia*, Source: *Semanario Judicial de la Federación* and its newspaper, Book V, February 2012, Tome 1, Subject(s): Constitucional, Thesis: 1a./J. 2/2012 (9a.) , Page: 533, Heading: *RESTRICCIONES A LOS DERECHOS FUNDAMENTALES. ELEMENTOS QUE EL JUEZ CONSTITUCIONAL DEBE TOMAR EN CUENTA PARA CONSIDERARLAS VÁLIDAS.*

- b. Secondly, **the legislative measure must be necessary to ensure the achievement of the purposes underlying the constitutional restriction.** Therefore, the constitutional Judge must ensure that the end sought by the legislator cannot be reached reasonably by other means less restrictive of fundamental rights. Constitutional restrictions on human rights are of an exceptional nature, which implies that the legislator should use them only when strictly necessary.
- c. Thirdly, the measure must maintain a balance between the legal right protected by **the restriction, and the rights that could result intervened with by the implementation of that exception.** Indeed, legislative work must tend to harmonize two parameters that would justify a reasonable restriction on fundamental rights. This balance must also consider constitutional interests that could be at stake, such as their own validity.

Now, if we analyze the case in question through the standards set by the Court on the restriction of rights, the prohibition of early marriage definitely proves to be a reasonable and proportional measure. This is due to the context of inequality, domestic violence, violation of rights, and the obstruction of life projects, generated by the marriage of people under 18 years of age.

We should recall, for now, that Article 45 of the General Law on the Rights of Children and Adolescents (LGDNNA, for its acronym in Spanish) states, "Federal and state laws, within the scope of their respective competencies, shall establish 18 years as the minimum age for marriage". Therefore, it is clear that no state of the Mexican Republic should grant marriage exemptions for individuals without the required minimum age imposed by the norm.

To learn if Article 45 of the LGDNNA is consistent with the parameters established by the Court on the restriction of rights, it is necessary to detail each standard as follows:

- a) *Be admissible within the constitutional sphere.* According to Article 1 of the Constitution, the Convention on the Rights of the Child is part of the constitutionality block, since the Mexican State has signed and ratified this instrument. In turn, Article 19 of the Convention compels State parties to have "**all appropriate legislative, administrative, social and educational measures** to protect the child¹⁶ from all forms of physical or mental harm or abuse, inattention or neglect, mistreatment or exploitation, including sexual abuse, while the child is in the custody of its parents, a legal representative or any other person in charge of the child."

This means that the State must prevent or address through the measures stated by the article itself, any situation that risks the physical, psychological, moral or sexual integrity of the children and adolescents, as well as their access to their rights. In addition, the Comments or General Recommendations 31 and 18 adopted jointly by the CEDAW Committee, and the UN Committee on the Rights of the Child, consider child or forced marriage to be a harmful practice (paragraphs 7 and 9). For this reason, children and adolescents should have the maximum possible level of protection against these damaging situations.

¹⁶ Article 1 of the Convention on the Rights of the Child, understands as a child every "human being younger than 18 years old (...)"

In line with Article 19 of the Convention on the Rights of the Child, the ordinary legislator, through Article 45 of the LGDNNA, established a minimum age parameter that seeks to ensure effective protection against harmful practices, such as marriage at a young age, for persons under 18 years of age.

Therefore, it is possible to state that the minimum age requirement for marriage, stipulated in Article 45 of the LGDNNA, is consistent with Article 19 of the Convention on the Rights of the Child, in regards to Article 1 of the Constitution. Consequently, the restriction of the right to marry satisfies the first standard of the analysis on the constitutional validity of the prohibition.

- b) *The restrictions must be necessary to ensure the achievement of the purposes underlying the constitutional restriction.* We have demonstrated the constitutional validity of the restriction of the right to marry, in relation to the minimum age. However, the need to establish such measures lies in the negative consequences of early marriage, and in how this phenomenon affects the lives of children and adolescents.

Following with the context outlined in Chapter 3 of this document, child marriage seriously affects life projects and access to some rights. The right to an education is seriously affected in the case of men under the age of 18 who enter into marriage, since 8 out of 10 men must drop out of school to work, that is, to be the provider of the family. In addition, the above deepens the gender inequity and emphasizes roles that various sectors of the Mexican society still practice by tradition, habit or custom. It should be said that this practice is not exclusive of indigenous "traditions", or of rural communities, as is commonly believed. There is evidence to show that child marriage has permeated all levels and sectors of society, regardless of origin.

Adolescent pregnancies have negative effects on the health of women, since neither biologically, nor physically nor emotionally, are they prepared to conceive. Marriage is just the perfect breeding ground for adolescent women to compromise their health through pregnancies.

Generally, conditions of precariousness are reproduced in adolescent couples who have married. If we consider that 53% of children and adolescents endure some level of poverty, then it is quite probable that marrying parties will find themselves in a precarious situation. If we add to the above the fact that they usually abandon their studies to care for their home or to work, it can be assumed that the employment they access is not necessarily dignified, decent, or a means towards raising their quality of life.

The previous examples provide a small sample of the negative impact of marriage on the lives of people under the age of eighteen¹⁷. As previously noted, the CEDAW Committee and the Committee on the Rights of the Child have considered child marriage to be a harmful practice that damages the rights of children and adolescents.

Under this premise, the Mexican State is obliged to guarantee the necessary protection against this harmful practice, in favor of children and adolescents. Precisely, on Article 19 of the Convention on the Rights of the Child, the Inter-American Court of Human Rights has mentioned that:

"For this reason, the Convention stipulates that the pertinent measures of protection for children must be special or more specific than those established for the rest of the population, i.e., the adults. In this regard, it should be recalled that the Court has indicated that children enjoy the same rights as adults and possess additional rights. Therefore, Article 19 'should be understood as an additional, supplementary right that the treaty establishes for individuals that, owing to their physical and emotional development, require special protection.' " ¹⁸

¹⁷ We will delve into the negative effects of early marriage in Chapter 7 of the current document.

¹⁸ Advisory Opinion OC-21/14. Rights and guarantees of children in the context of migration and/or in need of international protection. Decision of August 19, 2014. Paragraph 66. Available at: http://www.corteidh.or.cr/docs/opiniones/seriea_21_eng.pdf

In this regard, it is necessary for the Mexican State to adopt effective measures and take advantage of all its available resources to ensure the special protection of children and adolescents against early marriage. The condition on the minimum age for marriage contemplated in Article 45 of the LGDNNA, is a restriction that seeks to distance persons under the age of 18 from the negative consequences of this harmful practice.

Therefore, the constitutional validity of such a restriction turns imperative to guarantee special protection for children and adolescents against a practice that is in fact harmful and that, far from being a vehicle that facilitates access to rights, actually perpetuates discriminatory situations, gender roles, obstructs the right to an education, to health, and to employment (at least), and often reproduces precarious conditions between the spouses and their families.

- c) *The measure must be proportional, that is, the legislative measure must respect a correspondence between the importance of the end sought by the law, and the detrimental effects that it produces in other constitutional rights and interests.* The legislative measure of establishing a minimum age for marriage, complies with a proportionality parameter that seeks to preserve the Child's Best Interest¹⁹, in a context where child marriage is coupled with the violation of various rights.

As has been mentioned, marriage is not an ideal mechanism *per se* to guarantee the rights or to provide integral protection for adolescent mothers and fathers. This is because the effects of marriage do not diminish or correct the negative effects that paternity or maternity can have at a young age (such as poverty, lack of support networks, dropping out of school, hindering their right to recreation, lack of parenting guidelines, the possibility of having several children at an early age, gender violence, among others).

Therefore, certain opinions that restricting the age for marriage without any exemption or exception implies the violation of rights derived from this institution are not plausible, especially if this assumption attempts to avoid the prevailing need to recognize the real problems behind the increase in adolescent pregnancy and maternity/paternity rates in Mexico.

Additionally, we do not find fundamental prerogatives whose exercise could be affected by the restriction, in terms of age, of the right to marry. Nevertheless, some sectors claim that the repeal of exemptions to the age standard for marriage would compromise the right to the free development of personality. Definitely, nothing is further from reality.

It is important to remember the criterion developed by the Court, defining the contents of this right:

(...) The free development of personality constitutes the legal expression of the liberal principle of "personal autonomy", according to which, since the free individual choice of life plans is valuable in itself, the State is prohibited from interfering in their choice, having to limit itself to designing institutions that facilitate the individual pursuit of those plans, and the fulfillment of

¹⁹ According to the Inter-American Court of Human Rights, the prevalence of the Child's Best Interest must be understood as "the need to satisfy all the rights of childhood and adolescence, which is forcing to the State and radiates effects towards the interpretation of all the other rights from the Convention when the case is related to minors". Case *González y otras ("Campo algodónero") vs. Mexico*, preliminary exception, basis, reparations, and legal fees, November 16, 2009, ruling. Paragraph 408.

the ideals of virtue that each chooses, as well as impeding the interference of other people in their pursuit. In the Mexican legal system, the free development of personality is a fundamental right that allows individuals to choose and materialize the life plans that they consider convenient, the external limits of which are only public order and the rights of third parties.²⁰

In this regard, it is advisable to note that establishing a minimum age for marriage does not restrict or limit the right to the free development of personality. As has been mentioned and is now reiterated, guaranteeing the rights of children requires establishing conditions that are specific and appropriate to their degree of development, and that guarantee the full present and future exercise of their rights. Therefore, establishing minimum ages to carry out certain legal acts that could be disproportionate to the level of maturity finds justification. This is not contrary to the principle of progressive autonomy, derived from the Convention on the Rights of the Child, and pointed out in General Comment 12 of the Committee; on which the Nation's Court has also spoken, establishing that:

“(...) to the extent that children acquire ever greater skills, their need for guidance is reduced, and increases their ability to assume responsibility for decisions that affect their lives.”²¹

Establishing minimum legal ages aims to protect adolescents from decisions that could compromise their full development. The essence of this normative measure is not to limit the exercise of rights, but to ensure that children are protected from actions that could affect them or thwart in the present or future the full accomplishment of their life project, thus guaranteeing that they develop to their maximum potential and in a safe environment.

The restriction of the right to marry due to a required minimum age, considered in the first place in Article 45 of the LGDNAA and in various state Civil Codes, meets the standards set by the Court to validate it constitutionally.

For that reason, even though in strict accordance with the law it is a prohibition or limitation of a fundamental prerogative, it is justified in view of its constitutionality; it is necessary to guarantee the right of children to protection against a harmful practice, and its aim (protection) is proportional to how it affects other rights. However, no significant interventions to the rights of individuals have been identified.

5. OF THE EXCEPTIONS TO THE MINIMUM AGE REQUIRED FOR MARRIAGE: THE CASE OF “EXEMPTIONS” AS A DISPROPORTIONATE MEASURE.

²⁰ Period: *Décima Época*, Record: 2009591, Court: *Primera Sala*, Type of thesis: *Jurisprudencia*, Source: Gazette of the Judicial Weekly of the Federation, Book 20, July 2015, Tome 1, Subject(s): *Constitucional*, Thesis: 1a. IJ. 28/2015 (10a.), Page: 570.

DIVORCIO NECESARIO. EL RÉGIMEN DE DISOLUCIÓN DEL MATRIMONIO QUE EXIGE LA ACREDITACIÓN DE CAUSALES, VULNERA EL DERECHO AL LIBRE DESARROLLO DE LA PERSONALIDAD (CÓDIGOS DE MORELOS, VERACRUZ Y LEGISLACIONES ANÁLOGAS).

²¹ *Suprema Corte de Justicia de la Nación*, Period: *Décima Época*, Record: 2009925, Court: *Primera Sala*, Type of thesis: *Aislada*, Source: Gazette of the Judicial Weekly of the Federation, Book 22, September 2015, Thesis: 1a. CCLXVI/2015 (10a.), Page: 305.

EVOLUCIÓN DE LA AUTONOMÍA DE LOS MENORES. FUNDAMENTO, CONCEPTO Y FINALIDAD DE ESE PRINCIPIO.

As mentioned in the previous chapter, marriage at an early age seriously affects life projects, physical and emotional integrity, as well as various rights that are hardly fulfilled after children and adolescents access a life in marriage. Because of that, even though it is a fundamental prerogative, marriage should not be accessible to people that have not, at least, concluded their physical development.

Nevertheless, regarding the right to marry, the American Convention on Human Rights establishes:

Article 17. Protection for the Family

(...)

2. We recognize the right of men and women to marry and establish a family if they have the age and conditions required by internal laws for that effect, to the extent that these do not affect the non-discrimination principle established in this Convention.

Article 23.2 of the International Covenant on Civil and Political Rights refers as well:

Article 23

(...)

2. We recognize the right of men and women to marry and establish a family if they have the age to do so.

In the national legal framework, Article 4 of the Constitution does not specifically mention marriage, but it does determine the protection that subsidiary laws should consider regarding the family. In contrast, the Federal Civil Code (FCC) develops in detail topics regarding marriage, such as certificates, requirements, obligations, among other matters.

It draws attention that the FCC itself is confusing regarding the standard for a minimum age for marriage. On one hand, Article 148 sets the minimum age to hold a civil union at 14 and 16 years old, for women and men respectively. However, Article 149 stipulates that the “son or daughter” that has not turned 18 years old will not be able to marry. Probably, the difference between both age standards lies in the concept of emancipation, although the chapter of the FCC does not refer to this concept, in any of these articles.

It is necessary to note that in both cases the FCC opens up the possibility for the age of the parties to be exempted due to grave or justified causes. This point is of special concern since, even though the global tendency, and the age standard set by the LGDNNA, is of a minimum of 18 years old for both parties, Article 148 as commented on the previous paragraph, makes the age requirement even more flexible than the one the FCC itself indicates: 14 and 16 years old respectively. It is definitive that the federal legislator did not consider the best interest of the child, nor the right to special protection against harmful practices, when adopting this criterion.

In general, the legal concept of exemptions constitutes an exception or relaxation of the prohibition to marry for persons without the minimum age established by the law, due to grave or justified causes. However, it is very worrying that the legislations that have not yet been reconciled with Article 45 of the LGDNNA, do not make concrete and clear reference on what should be understood as grave or justified causes.

Article 2 of the Convention, regarding consent for marriage, minimum age required, and the registration of marriages, does refer to exemptions from the competent authority, for justified causes and in the interest of the marrying parties, but unfortunately it neither specifies what should be expressly understood in these cases:

Article 2

States that are party to the present Convention will adopt the necessary legislative measures to determine the minimum age for marriage. Persons that have not reached that age will not be able to be legally married, unless the competent authority, for justified causes and in the interest of the marrying parties, exempts the age requirement.

Unfortunately in Mexican civil law and in international law, the legal concept of the exemption has not been developed. Nevertheless, the meaning and explanation of that legal concept, as well as causes for its application, finds its source and broader development in canon law and doctrine.

Article 85 of the Code of Canon Law ²² refers to the following regarding exemptions:

CHAPTER V ON EXEMPTIONS

85. The exemption, or relaxation of a merely ecclesiastical law in a particular case, may be granted inside the limits of its competency, by those with executive authority, as well as by those with the explicit or implicit competency of the authority to exempt, be it by their own right or by legitimate delegation.²³

From the previous regulation, it follows that the legal concept of exemptions constitutes a *discretionary or optional faculty*, recognized towards an authority for the relaxation of the law or for the non-compliance with a prohibition established by the law. In that logic, the historical and legal sense of the exemption does not comprise a subjective right of the requestors or recipients of it, but rather a power of the authority not to apply the prohibitive law.

The employment of this discretionary faculty by the Mexican State in the subject of marriage has generated a systematic violation of the dignity mainly of girls and adolescents, who have seen their free determination, and their physical and psycho-emotional development, annulled. The non-application of the prohibition for persons younger than 18 years old to marry has derived in a false legal way out to conceal and perpetuate the abuses and violence practiced mainly against girls and adolescents, as shown below.

True, **the exemption** to the age for marriage has been regulated by legislations in the case of **minor women who conceive** with the man with whom they pretend to marry, as well as in **alleged statutory rape, rape, or abduction**²⁴. It is important to note that the idea of “exempting” child marriage for “grave” or “justified causes” is constantly related to sexual offenses against adolescent women. Without a doubt, the simple nature of this legal concept constitutes an act of impunity and structural violence, legalized through the State apparatus, against girls and adolescent women.

The elimination of the age exemption for marriage from the Civil Code of the state of Aguascalientes, to mention one, represents the fulfillment of the State’s obligation to protect the rights of children and

²² Available in Spanish at: <http://www.vatican.va/archive/ESL0020/INDEX.HTM>

²³ See <http://www.vatican.va/archive/ESL0020/P9.HTM#8> (in Spanish)

²⁴ See GARRONE, José A., *Diccionario Jurídico – Tome II*, LexisNexis, Buenos Aires, 2005, p. 289

adolescents through a temporary restrictive measure. This until they reach the age of majority and are able to fully and freely exercise their rights, including the right to marry.

Fortunately, other Civil Codes like the one from the State of Mexico have reformed the minimum age for marriage to raise it to 18 years old. Nevertheless, before this amendment the Civil Code of the State of Mexico foresaw “exemptions” for the marrying age, related to sexual offenses against women. In this sense, the aforementioned code foresaw:

Civil Code of the State of Mexico

ARTICLE 4.4. To marry, the woman and man need to have reached eighteen years of age. First Instance Judges can grant age exemptions due to grave and justified causes.

For the cases of those offended by the **crime of rape by equation**, when the victim is under fifteen years old, and in the case that she has given her consent for copulation and no modification concurs, **the age required for marriage is of thirteen years.**

It is very important to reflect on the content of the previous article that, favorably, has been repealed. The historical origin of the exemption relates to values or principles mainly from the catholic religion, inasmuch as it adopts this legal concept in its own canon law. In this line of ideas, the “exemption” related to age has been used to “repair” offenses to the honor of families and women younger than 18 years old, when a sexual assault has happened.

It must be noted that even the sexuality of a woman younger than 15 years old, under these premises, is considered subject of protection by the public authorities and families who, in case this good or object is “harmed”, the damage must be repaired through the marriage between the victim of the sexual assault and the perpetrator. It is worrying that the woman, as a human being, is not the center of the exemption’s protection, but rather the “honor” of the family, materialized in the sexuality and body of the victim of sexual violence.

This last fact is what should be worrying. According to Article 4.4 from the Civil Code of the State of Mexico, before the relevant amendments, the sentence for a crime as serious as rape (even statutory), could be substituted or pardoned if the perpetrator agreed to marry the woman that had been sexually assaulted. By itself, this regulation meant a very serious affront against the rights of women; it strengthened situations of violence against the victim, and denied above all to girls and adolescent women the right towards their best interest, and the right to be heard.

Exemptions to the minimum age for marriage have been instrumental in perpetuating situations of violence against women, and have emphasized the existent inequities between men and women. For the previous reasons we encourage to eradicate child marriage and, specially, repeal the exemptions that allow the minimum age standard to be relaxed, to effectively guarantee the protection against harmful practices, and even against sexual crimes against women.

For its part, the Convention on the elimination of all forms of discrimination against women, indicates that the expression “discrimination against women” means any distinction, exclusion or restriction based on sex that aims to or results in the diminishment or annulation of the recognition, enjoyment or exercise by the

woman, of human rights and fundamental liberties in the political, economical, social, cultural, and civil areas, or in any other.²⁵

²⁵ Article 1 of the Convention on the elimination of all forms of discrimination against women. (In Spanish)
<http://www.un.org/womenwatch/daw/cedaw/text/sconvention.htm>

In this sense, the States party to the Convention commit to, among others, adopt all adequate measures, even legislative, to modify or repeal laws, regulations, customs, or practices that constitute discrimination against women.²⁶

Likewise, said Convention establishes that engagements and child marriages will have no legal value, for which all necessary measures, even legislative, should be adopted to establish a minimum age for marriage, and to make compulsory the registration of marriages in an official record.²⁷

In accordance with the Convention on the Rights of the Child, State parties are obliged to adopt all possible effective and appropriate measures to abolish traditional practices that are detrimental to the health of children. Additionally, children have to be protected against all forms of violence, included physical, sexual, or psychological, and they need to guarantee that no child is subject of torture, or cruel, inhumane, or degrading treatment. The four general principles of the Convention on the Rights of the Child apply to the matter of harmful practices: protection against discrimination, attention to the child's best interest, defense of the right to life, survival, and development, as well as the right of children to be heard.²⁸

Among the recommendations emitted by the reference Committees, they indicate that State parties should approve or amend the corresponding legislation aiming to effectively confront and eliminate harmful practices, guaranteeing that the minimum legal age for children to marry, with or without their parent's consent, is set at 18 years old.²⁹

6. OF THE EXEMPTIONS TO THE MINIMUM AGE REQUIRED FOR MARRIAGE; THEIR NEGATIVE INFLUENCE ON THE RIGHT AGAINST DISCRIMINATION.

The subject of discrimination has been addressed from national and international spaces, in public policies, legislation, sentencing and even, in day-to-day practices. Even though there is still road ahead to be able to talk about effective protection, fortunately, this approach has fostered a deep study of the right to non-discrimination, from which certain necessary standards to guarantee this fundamental prerogative have arisen.

Already since the late 1980s, the Human Rights Committee of the United Nations worked on a more precise definition of discrimination, since the International Covenant on Civil and Political Rights did not contain it. In this way, in its General Comment 18, the Committee established that:

(...) the Committee believes that the term “discrimination” as used in the Covenant should be understood to imply any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms.³⁰

²⁶ Convention on the elimination of all forms of discrimination against women. Article 2, section F). <http://www.un.org/womenwatch/daw/cedaw/text/sconvention.htm> (In Spanish)

²⁷ Ibid. Article 16.2

²⁸ Ibid. P. 13

²⁹ Ibid. P. 18

³⁰ Human Rights Committee, General Comment No. 18, par. 7.

In that sense, it should be considered as discrimination all exclusion, restriction or preference that aims to or results in arbitrary intervention over fundamental rights; terms that have been captured in Mexican subsidiary laws, as will be seen later.

Likewise, the Constitution has also established on Article 1, last paragraph, that:

All discrimination motivated by ethnic or national origin, gender, age, disability, social condition, health conditions, religion, opinions, sexual preferences, marital status, or anything else that infringes upon human dignity and is intended to nullify or diminish the rights and freedoms of individuals, is prohibited.

From the previous quotes we gather that any differential treatment of individuals or groups of people, owing to particular circumstances (the Constitution also puts forward in its definition the category of “age”), that aims or results in diminishing or nullifying fundamental rights will have to be prohibited.

In matters of childhood and adolescence, the State is obliged to respect and guarantee the rights recognized in the Convention on the Rights of the Child, without distinction over reasons, personal situations, or any other personal or contextual condition of the child, adolescent, or of his/her parents or guardians.

Additionally, Article 2.2 of the Convention on the Rights of the Child mandates the guarantee of protection of children and adolescents against all forms of discrimination, including due to the exercise of rights of their parents, guardians, or relatives. Accordingly, the Committee on the Rights of the Child underscores the specific obligation of the State to “actively identify children and groups of children, when the recognition and effectiveness of their rights may demand adopting special measures”.³¹

In effect, as has been held and evidenced throughout the present memorial, marriage at an early age is a harmful practice that has violated the access to rights for individuals younger than 18 years old. This negative effect, in many cases, has continued through time and its repercussions have remained even after surpassing the age of majority. Therefore, it is necessary that the Mexican State adopts special measures that discourage early marriage and, in its place, offer life alternatives that allow children and adolescents not to cut short their projects and develop their potential.

The right to non-discrimination has also permeated subsidiary laws. With that aim, Article 1, Section III, of the Federal Law to Prevent and Eliminate Discrimination (LFPED, for its acronym in Spanish),³² integrates the international and constitutional standard as the basis for its definition. However, it highlights important interpretation criteria for analyzing the basis of individual cases, such as the action or omission of a discriminatory act, if this was due to an action or omission, or if the differential treatment is objective, rational, and proportional.

³¹ Committee on the Rights of the Child, General Comment 5, “General measures of implementation of the Convention on the Rights of the Child”, 2003, par. 12.

³² In regards to this law, discrimination will be understood as any distinction, exclusion, restriction or preference which, by action or omission, with or without intention, is not objective, rational or proportional, and has as its object or effect to obstruct, restrict, impede, diminish or nullify the recognition, enjoyment or exercise of human rights and freedoms, when it is based on one or more of the following grounds: ethnic or national origin, skin color, culture, sex, gender, age, disability; social, economic, health or legal status; religion, physical appearance, genetic characteristics, migratory status, pregnancy, language, opinions, sexual preferences, political identity or affiliation, marital or family status, language, criminal record or any other reason.

A notable success of the LPED consists in pointing out the nature of the discriminatory action; that is, direct (for its object) or indirect (for its result). In the words of the Inter-American Court of Human Rights, the State is obliged to “abstain from carrying out actions that are in any way aimed at, directly or indirectly, creating discriminatory situations *de jure* or *de facto*”.³³

It is necessary to analyze the contents and practical application of both categories to determine the existence of illegitimate differential treatment. Nevertheless, in the current case it is important to emphasize the study of discrimination as a result, to prove definitively that exemptions to early marriage perpetuate discrimination due to their indirect effects and, as such, contravene Article 1 of the Constitution.

a) CHILD MARRIAGE AS A FACTOR OF DISCRIMINATION AS A RESULT.

Before proceeding, it is important to distinguish that the parameter of "Direct, *de Jure*, or by Object" discrimination, is understood when through legal norms or practices, different treatments are imposed that arbitrarily intervene in the rights of specific and identifiable individuals or groups. This parameter is invoked precisely when the content of the rule or practice explicitly entails a prohibited discrimination factor.

For example, in the Broeks and Zwann-de Vries cases, the Human Rights Committee adopted the first criterion on direct discrimination, due to local legislation that deprived the married woman from the right to an unemployment pension, unless she could prove that she was the “breadwinner”. In their resolution, the Committee stressed that all differentiation (legal in this case) based on sex is, by itself, unreasonable.³⁴

In what relates to “Indirect, *de Facto*, or as a result” discrimination, this refers to measures that are considered to be discriminatory due to their effects, even though the measure may itself be “(...) neutral, in the sense that it is applicable to all without distinction”.³⁵ This is, situations in which from a simple understanding the practice or law applied to a concrete case is considered “neutral” or does not pretend to create discriminatory conditions, but its real impact produces unreasonable differential treatment in a sector or specific and identifiable individual.

In the criteria of the Inter-American Court of Human Rights, discrimination as a result materializes in those cases where “the disproportionate impact of norms, actions, policies or other measures that, even when they are or appear to be neutral in their formulation, or when they have a general and undifferentiated scope, they produce negative effects for certain vulnerable groups”.³⁶

In practice, early marriage has been the ideal breeding ground so that individuals younger than 18 years old suffer harm to their rights, because of their age (since this measure only harms them), but also because of their gender (multiple discrimination).

³³ Criterion reiterated by the Inter-American Court of Human Rights; *cfr.*: Advisory Opinion OC-18/03, par. 103; Case *Comunidad Indígena Xákmok Kásek*, par. 271; *Atala vs Chile*, par. 80; Case *Duque Vs. Colombia*, *supra*, par. 92.; Case *Flor Floire vs Ecuador*, par. 110. See also, UN, Human Rights Committee of International Covenant on Civil and Political Rights. General Comment No. 18, Non-discrimination, CCPR/C/37, November 10, 1989, par. 6.

³⁴ Human Rights Committee, case Broeks Vs. The Netherlands, par. 8.4 y 14, 1984

³⁵ Human Rights Committee, case Karakurt Vs. Australia, par. 8.4, 1990.

³⁶ Inter-American Court of Human Rights, case *Nadege Dorzema y otros Vs. República Dominicana*, par. 235, 2012.

Although we will offer empirical evidence in the next chapter, supported by official figures, it is important to prove right away some elements that shape discrimination as a result in the case of child marriage.

- **DISCRIMINATION AS A RESULT: TESTING STANDARDS.**

The First Chamber of the Nation's Supreme Court of Justice has developed testing standards to verify the existence of discrimination as a result. Under the legal criterion "Indirect or 'as a result' discrimination. Shaping elements",³⁷ this High Court has set parameters to analyze the basis of the cases of discrimination as a result.

According to the mentioned legal criterion, the rule or criterion under analysis must be:

- a) Apparently neutral, meaning, it must not explicitly contain a forbidden discriminatory determination.
- b) It is necessary to prove that the rule or practice disproportionately affects a social group, in comparison with other groups that are in a similar situation.
- c) A structural study on the situation of discrimination as a result must be considered.

It must be said that almost two thirds of the Mexican states, including Aguascalientes, have modified their Civil Codes and other local legislation, with the objective of setting the standard minimum age for marriage, as determined by Article 45 of the LGDNNA.

However, it can be confirmed that the states of the Republic that have not yet reconciled their corresponding legislation to include the standard minimum age for marriage maintain legal provisions that are apparently "neutral", in the sense that they do not include "textual or literal" discriminatory clauses.

On the contrary, their writing follows the logic of making permissible or relaxing a general rule to allow exceptions to access the right to marry, for people that do not meet the age requirement. In fact, from the examples of the mentioned local Civil Codes, whose regulations guarantee access to marriage for adolescents, it is concluded that there is no literal or clear mention of prohibitive clauses that directly infringe the rights of individuals or groups of people.

Nevertheless, this simple fact fulfills the first parameter determined by the Court to prove the existence of a rule that is "Apparently neutral, meaning, it must not explicitly contain a forbidden discriminatory determination", so we understand that the writing of the exemptions for marriage is, on the surface, harmless against the rights of children and adolescents.

In relation to the second standard to verify the existence of the category of Discrimination as a result, it is noticeable that states such as Baja California continue to establish exemptions or "filters" as an exception for the right to marry, when at least one of the parties is a person younger than 18 years old. Indeed, Article 145 of that state's Civil Code mentions that: "To enter into marriage, the man needs to have reached

³⁷ First Chamber, Supreme Court of Justice of the Nation, "*Discriminación indirecta o por resultados. elementos que la configuran*", Gazette of the Judicial Weekly of the Federation.

the age of sixteen years old, and the woman fourteen. Mayors may grant age exemptions for grave and justified causes.”³⁸

³⁸ Article 145, Civil Code of the state of Baja California. Available in Spanish at: http://www.bajacalifornia.gob.mx/rppc/leyes/codigo_civil_bc.pdf

The impact of this text is damaging in terms of the access to rights. Likewise, the standard of 16 years for the man and 14 years for the woman is in reality aimed at reproducing gender roles and perpetuating discrimination by age and gender, to the extent that:

- I. It reaffirms the man's role of provider. Men at 16 years old are able to execute some jobs, according to the Federal Labor Law. Not to mention that in the case of informal employment, age is only a construct.
- II. Society considers women at 14 years old, even though they have not concluded their physical and biological development, at the beginning of a fertile age. This situation also risks the health of the adolescent mother and her children. Additionally, it limits her decision power in matters related to her health and education.

According to the United Nation's agency in charge of women's issues, UN Women, "The marriage of girls (including early *de facto* unions) constitutes a violation of the girls' human rights and is a harmful practice that gravely affects their lives, health, education, and integrity. These practices impact their future development and that of their families, and increase discrimination and violence against them".³⁹

In this sense, if the recent amends to the Civil Code of the state of Aguascalientes were to be declared unconstitutional, it could mean a major setback for the rights of girls and adolescent women.

Indeed, before the amends to Aguascalientes' Civil Code, Article 145 established the following: "To be married, a man and a woman need to have reached the age of sixteen years old. The Judge may grant an age exemption due to grave and justified causes, but it will not be possible to exempt those younger than fourteen years old"⁴⁰.

In this way, the minimum age for marriage is 14 years old, even though at first it is stated to be 16 years old; an exemption is enough to access this legal status since the early adolescence. Additionally, this regulation from 2014 is a prototype for apparent "neutrality" in the article's writing; so much, that it does not even distinguish by gender for the age parameter, as does the Civil Code in force in the state of Baja California.

According to parameters designed by the Network for the Rights of Children in Mexico,⁴¹ using the 2015 intercensal survey of the INEGI, in Aguascalientes the amount of non-single women aged 17 years old, compared to men from the same state, age, and marital status, is three times greater (15.2% and 4.3% respectively). Marriage affects women between 12 and 17 years old more.

Likewise, in Aguascalientes 18.2% of non-single adolescent women aged 12 years old have at least one living child. For their part, only 3.6% of single mothers of that state aged 17 years old have living children. This could indicate that in that state, with earlier access to marriage or *de facto* union, the incidence of maternity becomes eight times greater.

³⁹ UN Women Mexico, "*Matrimonios y uniones tempranas de Niñas*" Mexico, 2016. Available in Spanish at:

http://www2.unwomen.org/-/media/field%20office%20mexico/documentos/publicaciones/2016/matrimonio%20infantil_.pdf?vs=1122

⁴⁰ Civil Code of the state of Aguascalientes, 2014. Available in Spanish at:

http://www.aguascalientes.gob.mx/Gobierno/Leyes/leyes_PDF/04102013_134757.pdf

⁴¹ Network for the Rights of Children in Mexico, "*10 cosas sobre el matrimonio adolescente en México*". Available in Spanish at:

https://public.tableau.com/profile/indicadores.redim#!/vizhome/10cosassobreelmatrimonioadolescenteenMxico/Datosquecuentan_1

There exists a direct relationship between socioeconomic status and child marriage. More than 60% of women currently between 20 and 24 years of age, which married through exemption, were enduring some level of poverty. Nationally, 37.3% of women married before being 18 years old, had a very low socioeconomic status, compared to 4.2% of those from a high status.⁴²

Something similar happens with the right to an education. The more years of study, the lower incidence of early marriage. Women with more years of education marry later, get pregnant less in adolescence, choose to have fewer children, enjoy employment with better remuneration, and their quality of life and that of their families is significantly better than for those women married while being girls.

Once concluding high school, the rates of child marriage reduce considerably. From the women married before being 18 years old, 46.9% had completed primary school, 40.1% junior high school, and 15% had attended some high school. Of the women married before 18 years old, 2% had college studies.⁴³

In regards to discrimination of non-single men in Aguascalientes, it must be said that among this population group committing to *de facto* unions or marriage interferes with the exercise of their right to an education. Single men aged 17 attend school more than non-single men at 12 years old, but even men aged 17 in common-law unions or married stop attending school by 83%.⁴⁴

In the same way than previous examples for adolescent women, non-single men aged between 12 and 17 years old face some discrimination on education and other rights. It must be said that this discrimination is very specific for this population group, that is, individuals aged 12 to 17 that have acquired obligations as mainstay or support of a family.

For everything stated above, Save the Children Mexico and the organizations signing the current memorial want to make note that child marriage causes disproportionate damages to the rights of individuals in this situation, compared to those with similar characteristics that have not accessed the right to marry.

It is desirable that this High Court takes into consideration the cited examples, and those available in the footnotes, at the time of determining the merits of the current Action of Unconstitutionality. The exemptions for child marriage will continue to deepen inequalities by gender and age in relation to the rest of the population.

Finally, on the third standard established by the Court regarding the consideration of a structural study to prove wholly the existence of discrimination as a result, the next Chapter will strive to fulfill such parameter, based on official empirical evidence and factual arguments.

⁴² Data from UN Women, based on the INEGI, National Survey on the Demographic Dynamic, 2014.

⁴³ Ibid.

⁴⁴ Network for the Rights of Children in Mexico, “10 cosas sobre el matrimonio adolescente en México”. Full figures available in Spanish at: https://public.tableau.com/profile/indicadores.redim#!/vizhome/10cosassobreelmatrimonioadolescenteenMexico/Datosquecuentan_1

7. STRUCTURAL STUDY ON CHILD MARRIAGE AS A HARMFUL PRACTICE AND DISCRIMINATION AS A RESULT; EMPIRICAL EVIDENCE.

To assert that child marriage could signify access to rights for those who enter into it or for their descendants, and that as such can be a reason for individuals up to 17 years old to exercise this right, may imply discriminatory actions by the State. It may also imply omissions in the compliance with the obligation to implement special measures to protect the rights of children and adolescents, all of which would contravene the Constitution and the international treaties that the Mexican State is party to, and would violate the human rights of children and adolescents.

In the specific case regarding access to social security as an argument to favor child marriage, it is noted that granting exemptions or permission for marriage to individuals up to 17 years old, considering that aspect, would imply discrimination against adolescents who study and do not work, or who perform work activities that do not entail the enjoyment of the benefits of social security, and who may also desire to marry.

Such granting of exemptions or permission to marry to individuals up to 17 years old based on one of the marrying parties exercising the right to social security could imply discrimination, as the same right is not recognized to others without access to social security. This is compounded by the fact that a significant proportion of the population without access to social security is in a vulnerable situation due to specific socioeconomic circumstances.

What has been stated above would not only imply non-compliance with Article 1 of the Constitution in regards to the prohibition for discrimination motivated by social condition, but would also contravene Article 10 of the General Law on the Rights of Children and Adolescents. This article establishes that it is necessary to adopt special protective measures for the rights of children and adolescents in vulnerable condition due to specific socioeconomic circumstances. We also note that Article 5 of the Federal Law to Prevent and Eliminate Discrimination does not specify that distinctions based on the access to rights such as social security, should not be considered discriminatory acts.

To this we add that early marriages, and for persons up to 17 years old, are linked to lower school attendance. Nationally, 88.7% of non-single women, aged 15 to 17 in 2015, did not attend school; this figure was four times higher than the one for single women of the same age, 19.6%. These marriages are also linked to greater housework occupation: In Mexico, 78.8% of non-single women, aged 15 to 17 in 2015, were dedicated to housework, while 73% of non-single men with the same age worked on other occupations. Finally, they are also linked with greater poverty: In 2015, the percentage of non-single women aged 15 to 17 in the 15 municipalities with greater poverty, 18%, was four times higher than the percentage of non-single women with the same age at the 15 municipalities with lower poverty, being 4.5%. These are some among other linked aspects.⁴⁵

⁴⁵ Data from INEGI, 2015 Intercensal Survey. Available at: <http://en.www.inegi.org.mx/proyectos/enchogares/especiales/intercensal/>

Additionally, half of the national population of women aged between 15 and 17 years old that were not single in 2015 had had at least one child born alive, while that figure reduced significantly among single women of the same age, being 50.7% and 1.3% respectively. Likewise, we emphasize that nationally the majority of women, between 15 and 17 years old, who did not have children in 2015, 94.8%, was single, while most of the women of the same age with two or more children were not single, 86.9%.⁴⁶

All of the above proves that child marriage is related to an unsatisfactory protection of the rights of girls and adolescent women in particular. Additionally, there is evidence of cases in which early marriage has proven to be an obstacle for enjoying human rights, as well as cutting life projects short, particularly for girls and adolescent women.

There is also ample evidence on the violence against women and girls at home. The fact that every year tens of thousands of women up to 17 years old unite prematurely with men older than 18 years old, in a context of asymmetrical power relationships, does not seem to be linked to a lower incidence of violence against women and a greater protection of their rights.

To this it is added that for decades there have been exemptions or permissions for marriage in the Civil Codes of the states. In spite of them being granted, no major changes have been observed on the incidence of early unions. From 2000 to 2015, the percentage of non-single women between 15 and 17 years old has gone from 10% to 9.4%. Neither is there evidence that these exemptions or permissions are resulting in greater access to rights for the population of married women up to 17 years old.

After presenting these points, we consider that eliminating the exceptions and exemptions for the minimum age for marriage is in line with human rights and with the guarantees established by our Federal Constitution. This is because the phenomenon has proven to be related with multiple failures to fulfill the guarantee of protecting the rights of women. Granting exemptions and permissions has not derived into an effective protection for the rights of girls and adolescent women. Allowing the marriage of adolescents under the hypothesis of granting the marrying parties and their descendants the access to rights, implies conditioning those rights to the legal concept of marriage and violating the rights of individuals not under this status.

In summary, establishing a minimum age for marriage without exceptions or exemptions constitutes a measure of special protection for the rights of children and adolescents. The annulment of the exemptions and exceptions is proportional and reasonable facing the protection of the rights of children and adolescents that are in vulnerable conditions due to specific circumstances related to aspects of gender, poverty, cultural practices, or other factors that restrict or limit their rights. Through the elimination of these concepts we seek equality, substantive and of opportunities, and the guarantee of the right to non-discrimination.

⁴⁶ Ibid.

8. CONCLUSIONS.

1. While human rights are universal, they should not be considered absolute or unlimited, especially if the restriction of a right is foreseen to protect a particular group, in vulnerable conditions, against harmful practices.
2. According to international standards, marriage where at least one of the parties is younger than 18 years old is considered a harmful practice.
3. The standard set by Article 45 of the LGDNNA, establishing 18 years of age as a minimum age for marriage, is a reasonable and proportional measure in light of the analysis of its constitutional validity.
4. Making the minimum age for marriage flexible through the legal concept of “exemptions” exposes children and adolescents to grave human rights violations.
5. Historically, “exemptions” to the minimum age for marriage have served to substitute or pardon sexual offenses against women, even those under 15 years old.
6. Early marriage under the protection of “exemptions” is an obstacle for exercising rights such as those to an education, health, development, among others, and perpetuates situations of scarcity and violence against women, according to official figures.
7. Child marriage deepens gender differences, and gravely affects the right to non-discrimination, above all for adolescent women.
8. In appearances, civil legislation exempting marriage for individuals younger than 18 years old is neutral; however, its application produces discrimination as a result, against girls and women, according to official figures.
9. According to official numbers, early marriage impedes fundamental rights of the children and adolescents in that condition.
10. Since decades ago, tendencies related to child marriage have not varied significantly. This could mean that exemptions have not functioned as an exception or filter, but as a subterfuge to make a regulation flexible, without a case-by-case study.
11. There is no empirical evidence that proves that marriage allows access to additional rights, in the case of individuals younger than 18 years old.

9. REQUESTS.

FIRST. Consider this memorial as presented, so that this Honorable Supreme Court of Justice of the Nation has technical elements, from the Civil Society, for a better resolution.

SECOND. In case that Your Honor deems it necessary, Save the Children and the allied organizations are willing to appear in court to uphold the statements presented here.

THIRD. At the right time, render a judgment in this case declaring the constitutional validity of the amendments to the Civil Code of the state of Aguascalientes, published in the states' official newspaper on February 22, 2016.

SINCERELY.

Mexico City. March 21, 2017.

MARÍA JOSEFINA MENÉNDEZ CARBAJAL
CEO

SAÚL AZAREL SÁNCHEZ JIMÉNEZ
LEGAL AFFAIRS COORDINATOR