

# LEGAL PROGRESS AND SOCIO-ECONOMIC REFLECTIONS ON CHILD MARRIAGE IN LATIN AMERICA

DENISE WIEDEMANN\*

\*Max-Planck-Institute for Comparative and International Private Law, Latin America, Hamburg, Germany.

E-mail: [wiedemann@mpipriv.de](mailto:wiedemann@mpipriv.de)

## ABSTRACT

Most Latin American countries have increased the legal age of marriage to 16 or 18 years during the last years. However, the numbers of child marriages in Latin America do not reflect those reforms so far. Some reforms might be too recent. But furthermore, the legal age of marriage is only one factor out of many. The legislative reforms regulate civil marriage leaving informal unions and religious or indigenous marriages unaffected. Thus, the reforms might prevent early civil marriages, but they have not eliminated early informal unions and early religious or indigenous marriages and the socio-economic factors that can promote them.

## I. INTRODUCTION

While child marriages<sup>1</sup> have declined in the entire world since the 1980s, Latin America<sup>2</sup> has not yet witnessed a decreasing trend.<sup>3</sup> According to statistics published by the United Nations International Children's Emergency Fund (UNICEF), in Latin America one woman in four aged between 20 and 24 was married before reaching the age of 18 (but after the age of 15). Five per cent of women were married

1 The article uses the term 'child marriage' because it is commonly used in literature and by international organizations. For a proposal to use the term 'paedogamy' instead, see van Coller, 'Child Marriage – Acceptance by Association' (2017) 31 *International Journal of Law, Policy and the Family* 363.

2 The cited statistics include the Caribbean.

3 UNICEF, A Profile of Child Marriage and Early Unions in Latin America and the Caribbean (New York 2019), p. 17 <<https://perma.cc/T3M2-7CHL>>; Vanessa Rojas/Francis Bravo/Nikki van der Gaag, Breaking the Silence: Why do Young Women in Peru Marry or Cohabit at a Young Age, and What are the Consequences?, in Gina Crivello / Gillian Mann (eds.), *Dreaming of a better life – Child marriage through adolescent eyes* (Oxford 2020), pp. 49–59, 50, <<https://perma.cc/2XLA-8V7W>>; Rocío Rosero Garcés/Cecilia Valdivieso Vega, Reforming the legislation on the age of marriage: successful experiences and lessons learned from Latin America and the Caribbean, UNICEF/UN Women et al (2016), 7, <<https://perma.cc/9QWT-TLRN>>; Eva Díez Peralta, *El matrimonio infantil y forzado en el Derecho Internacional* (Valencia 2019), p. 138.

before reaching the age of 15.<sup>4</sup> With those numbers, Latin America ranks above the global average<sup>5</sup> but below South Asia and the sub-Saharan countries in Africa. The dispersion of child marriages varies considerably between the individual Latin American countries and within the countries. The statistics are led by the Dominican Republic, Nicaragua, and Honduras, with more than 30 per cent of women being married before reaching the age of 18. Brazil is positioned in the middle with 26 per cent.<sup>6</sup> Furthermore, child marriages are more common in rural areas than in cities.<sup>7</sup>

From a legal vantage point, almost all Latin American countries reformed their marriage laws restricting child marriages during the past years. The first part will outline reform tendencies as well as areas where legislation stagnates. As the above numbers show, the legislative reforms have not, so far, reduced child marriages in Latin America. With that in mind, the second part will sketch sociological findings.

## II. LEGAL SITUATION

There are four important reform tendencies (a): the increase in the legal age of marriage, the equalization of the legal age for men and women, the abolition of exemptions, and the reduction of parental influence. At the same time, the legal framework on the consequences for non-compliance with age requirements stagnates (b).

### 1. REFORM TENDENCIES

#### A. Increasing the Legal Age of Marriage

First of all, there is a tendency to increase the legal age of marriage. For the purpose of this article, 'legal age of marriage' is to be understood as the age from which people can marry without requiring the permission or exemption from a public authority (e.g. a court). But people who reached the legal age of marriage might still need the consent of their legal representative (e.g. their parents).

Many early civil law codifications (e.g. Bolivia,<sup>8</sup> Chile,<sup>9</sup> Colombia,<sup>10</sup> Paraguay,<sup>11</sup> Uruguay,<sup>12</sup> and some Mexican states<sup>13</sup>) reflected Canon Law, which allowed

4 UNICEF (n 3) 5. For the numbers from 2005 to 2012 see also UNICEF, *El Estado Mundial de la Infancia de 2014 en Cifras* (2014), <[www.unicef.org/spanish/publications/index\\_71829.html](http://www.unicef.org/spanish/publications/index_71829.html)>, pp. 78–83. For men, the numbers are significantly lower, Colleen Murray Gastón/Christina Misunas/Claudia Cappa, *Child marriage among boys: a global overview of available data*, *Vulnerable Children and Youth Studies* 2019, p. 219.

5 For the global average, see UNICEF (n 3) 5: 21 per cent of the women aged between 20 and 24 married before reaching the age of 18, but after reaching the age of 15. Five per cent of the women married before reaching the age of 15.

6 UNICEF (n 3) 6; UNICEF, *Child Marriage* (2019), <<https://perma.cc/FXD4-CHHL>>.

7 For example, Peru, *Plan International/UNFPA*, *Las adolescentes peruanas en matrimonio o unión: tradiciones, desafíos y recomendaciones* (Lima 2019) 15, <<https://perma.cc/5GK5-69GZ>>.

8 Art. 44 Código de Familia 1988 (Ley n. 996, 4.4.1988).

9 Art. 26 CC – old version (Código Civil, 14.12.1855) and Art. 4(2) Ley de Matrimonio Civil 1884 (Ley de 10.1.1884, Diario Oficial 16.1.1884).

10 Art. 140 CC – old version (Código Civil, Ley n 84, 1873).

11 Art. 139 CC – old version (Código Civil, Ley n 1.183).

12 Art. 91(1) CC – old version (Código Civil, 29.4.1868).

13 José Julio Nares Hernández/Ricardo Colín García/Rod García Suárez, *Derechos humanos de las niñas y los niños y la prohibición del matrimonio infantil en los tratados internacionales* (TLA-MELAU 2015) 140, 142.

marriage for girls from the age of 12 and for boys from the age of 14.<sup>14</sup> Other countries required a higher age for marriage in their first civil codes (e.g. Argentina,<sup>15</sup> Brazil<sup>16</sup>) but allowed for judicial exemptions.<sup>17</sup>

As of today, almost all states have raised the age limit to 16 or 18 years—mostly through legislative amendment, sometimes through constitutional decisions. In Argentina,<sup>18</sup> Bolivia,<sup>19</sup> Brazil,<sup>20</sup> Chile,<sup>21</sup> Nicaragua,<sup>22</sup> Paraguay,<sup>23</sup> Uruguay,<sup>24</sup> and Venezuela,<sup>25</sup> marriage is considered to be legal upon reaching the age of 16. In Costa Rica,<sup>26</sup> Ecuador,<sup>27</sup> El Salvador,<sup>28</sup> Guatemala,<sup>29</sup> Honduras,<sup>30</sup> Panama,<sup>31</sup> and Peru,<sup>32</sup> the legal age of marriage is linked to reaching the age of 18 years. In Mexico, where the civil law rules vary regionally, the federal legislature called on all territories to set the legal age of marriage at 18 years in the General Law on Girls, Boys, and Young

14 Paul Heinrich Neuhaus, *Ehe und Kindschaft in rechtsvergleichender Sicht* (Tübingen 1979) 20 (increased by two years from 1918).

15 Art. 166(5) CC (Código Civil, Ley 340, 25.9.1869, no longer in force): women 16 years, men 18 years.

16 Art. 183(12) CC 1916 (Lei 3.071, 1.1.1916, <https://perma.cc/9H7U-KB9K>, no longer in force): women 16 years, men 18 years. Earlier, see Art. 7(8) Lei sobre o casamento civil (Decreto no. 181, 24.1.1890, <<https://perma.cc/9H4W-SBSH>>): women 14 years, men 16 years.

17 See below I.1.b).

18 Art. 403(f), Art. 404(1) s. 2 CCyC (Código Civil y Comercial, Ley 26944, Boletín Oficial 8.10.2014).

19 Art. 139(1), (2) Código de las Familias y del Proceso Familiar 2014 (Ley n 603, 19.11.2014, Gaceta Oficial 24.11.2014).

20 Art. 1517, 1520 CC 2002 (Lei 10.406, 10.1.2002, abrufbar unter <<https://perma.cc/SW72-TKJ8>>).

21 Art. 5(3) Ley de Matrimonio Civil 2004 (Ley 19947, 17.5.2004).

22 Art. 54 Código de Familia (Ley n 870, 24.6.2014, La Gaceta no. 190, 8.10.2014).

23 Art. 17(1), Art. 20 of Ley 1/1992 as amended by Ley 5419/2015.

24 Art. 91(1) CC (Código Civil, Ley 19.075, 3.5.2013).

25 Art. 46 CC (Código Civil, Gaceta 2.990 (Extraordinaria), 26.7.1982) and Tribunal Supremo de Justicia, Sala Constitucional, Decision No. 1353, 16.10.2014.

26 Art. 14(7) Código de Familia (Ley 5476, amended by Ley 9406, 30.11.2016 'Fortalecimiento de la protección legal de las niñas y las adolescentes mujeres ante situaciones de violencia de género asociadas a relaciones abusivas').

27 Art. 83 CC (Código Civil, Registro Oficial Suplemento 526, 19.6.2015).

28 Art. 14(1) Código de Familia (Decreto Ley n 754, 17.8.2017, Diario Oficial n 36, 21.2.2017).

29 Art. 81 CC (Código Civil, Decreto Ley n 13/2017 and 8/2015).

30 Art. 16(2) Código de Familia (Decreto n 76-1984, 31.5.1984, Diario Oficial La Gaceta n 24.394, 16.8.1984, amended by Decreto 35-2013, 27.2.2013, Diario Oficial La Gaceta n 33.222, 6.9.2013).

31 Art. 33 Código de la Familia (Ley 3, 17.5.1994, amended by Ley 30, 5.5.2015, Gaceta Oficial 5.5.2015).

32 Art. 241 Nr. 1 CC (Código Civil, Decreto Legislativo n 295, 24.7.1987, Diario Oficial El Peruano 25.7.1984).

People of 2014.<sup>33</sup> Subsequently, all territories complied with this order.<sup>34</sup> Very recently, also the Dominican Republic raised the legal age of marriage to 18 years.<sup>35</sup>

Only Cuba and Colombia have lower age limits: Cuba sets an age limit of 14 years for women and 16 years for men.<sup>36</sup> Colombia has treated women and men equally ever since a constitutional court decision in 2004<sup>37</sup>; the age limit is 14 years (previously 12 for women and 14 for men).<sup>38</sup> In 2019 a proposal to increase the legal age to 18 years without exception failed.<sup>39</sup> In the same year, a further proposal was launched.<sup>40</sup>

33 Art. 45 Ley General de los Niños, Niños y Adolescentes, Diario Oficial de la Federación 4.12.2014; José Julio Nares Hernández/Ricardo Colín García/Rod García Suárez, *Derechos humanos de las niñas y los niños y la prohibición del matrimonio infantil en los tratados internacionales*, TLA-MELAU 2015, 140 et seq.

34 Aguascalientes, Art. 145 CC (Periódico Oficial Suplemento 49, 7.12.1947, amended 22.2.2016); Baja California, Art. 145 CC (Periódico Oficial n 3, 31.1.1974, amended 20.9.2016); Baja California Sur, Art. 157 CC (Decreto n 1090, Periódico Oficial 19.7.1996, amended by Decreto 2168); Federación, Art. 148 CC (Diario Oficial de la Federación 29.5.2000, amended 3.6.2019); Campeche, Art. 159 CC (Periódico Oficial Section 2, 17.10.1942, amended 16.5.2016); Chiapas, Art. 145 CC (Periódico Oficial 2.2.1938, amended 6.4.2016); Chihuahua, Art. 136 CC (Decreto n 403-73, Periódico Oficial 23.3.1974, amended 23.12.2017); Ciudad de México, Art. 148 CC (Gaceta Oficial 25.5.2000, amended 13.7.2016); Coahuila, Art. 141 Ley para la Familia (Decreto n 227, Periódico Oficial 15.12.2015); Colima, Art. 148 CC (Periódico Oficial 25.9.1954, amended 10.9.2016); Durango, Art. 143 CC (Periódico Oficial 1948, amended 26.2.2017); Estado de México, Art. 44 CC (Decreto n 70, Gaceta del Gobierno 7.6.2002, amended 6.3.2010 and 14.3.2016); Guanajuato, Art. 145 CC (Periódico Oficial n 39, 14.5.1967, amended 5.7.2018); Guerrero, Art. 412 CC (Ley n 358, amended 9.5.2017); Hidalgo, Art. 12(2) Ley para la Familia, Decreto n° 350, Periódico Oficial 9.4.2007, amended 31.12.2016); Jalisco, Art. 260 CC (Periódico Oficial 25.2.1995, amended 4.4.2015); Michoacán, Art. 133(2) Código Familiar, Decreto n 554, Periódico Oficial 30.9.2015, amended 22.6.2016); Morelos, Art. 72 Código Familiar (Periódico Oficial 6.9.2006, amended 17.8.2016); Nayarit, Art. 144 CC (Decreto n° 6433, Periódico Oficial 22.8.1981, amended 11.3.2016); Nuevo León, Art. 148 CC (Decreto n 112, Periódico Oficial 6.7.1935, amended 8.1.2018); Oaxaca, Art. 147 CC (Periódico Oficial 30.11.1944, amended 1.9.2017); Puebla, Art. 300 CC (Periódico Oficial 30.4.1985, amended 28.3.2016); Querétaro, Art. 140 CC (Periódico Oficial 21.10.2009, amended 15.10.2018); Quintana Roo, Art. 697 CC (Periódico Oficial 8.10.1980); San Luis Potosí, Art. 17(2), 21 Código Familiar (Decreto n° 555, Periódico Oficial 18.12.2008, amended 17.9.2015); Sinaloa, Art. 43 Código Familiar (Decreto n° 742, Periódico Oficial 6.2.2013, amended 19.8.2016); Sonora, Art. 15 Código de Familia (Boletín Oficial 15.10.2009, amended 21.1.2019); Tabasco, Art. 154 CC (Decreto n° 205, Periódico Oficial n° 5696, 9.4.1997, amended 15.6.2017); Tamaulipas, Art. 132 CC (Decreto n° LII-441, Periódico Oficial 10.1.1987, amended 24.9.2013 and 23.6.2016); Tlaxcala, Art. 46 CC (Decreto n° 88, Periódico Oficial 20.10.1976, amended 30.12.2016); Veracruz, Art. 86 CC (Gaceta Oficial 15.9.1932, amended 3.2.2014); Yucatán, Art. 54(1) Código de Familia (Decreto n° 516, Diario Oficial 30.4.2012, amended 12.6.2015); Zacatecas, Art. 106 Código Familiar (Decreto n° 237, Periódico Oficial 10.5.1986, amended 3.10.2007 and 29.3.2007).

35 Ley no. 1–21 que modifica y deroga varias disposiciones del Código Civil y de La Ley No. 659, sobre del estado civil, 21.12.2020 (Previously: Art. 144 CC and Art. 56 Ley sobre Actos del Estado Civil). Furthermore, a draft for a new Civil Code of the Dominican Republic also provided for an age limit of 18 years (but with the possibility of exemption) (Proyecto de Ley del Código Civil de la República Dominicana (Art. 142, 146), <https://perma.cc/7U77-DTPY>).

36 Art. 3(2), Art. 4(3) Código de Familia (Ley 1289/75).

37 Corte Constitucional, Sentencia C-507-04, 25.5.2004, <<https://perma.cc/26TJ-T57M>>.

38 Art. 140(2) CC (Código Civil, Ley 84/1873).

39 Proyecto de Ley 6/2015, <<https://perma.cc/6N54-SMPK>>, for the state of the proposal see <<https://perma.cc/9KKZ-QHGL>>.

40 Proyecto de Ley 209/2019, <<https://perma.cc/T6VL-HSEJ>>.

### B. Equal Treatment of Women and Men

The second tendency concerns the distinction between men and women. While early civil law codifications distinguished between men and women, by now, almost all countries have evened the age limits for men and women to achieve equality. Most countries have raised the legal age of marriage for women to bring it into line with the legal age of marriage for men. Brazil, in contrast, reduced the legal age of marriage for men from 18 to 16 years.<sup>41</sup> Only Cuba still distinguishes between men and women.

### C. Abolition of Judicial Exemption Procedures

As a third tendency, one should emphasize the abolition of the possibility of an exemption from the legal age requirements. Early Latin American civil law codifications often allowed marriage to be contracted before reaching the legal age of marriage with a judicial exemption.<sup>42</sup> In Brazil, where an exemption from the legal age of marriage could be granted until recently, the civil code allowed for an exemption in two situations.<sup>43</sup> First, the pregnancy of the bride could lead to an exemption.<sup>44</sup> Secondly, an exemption could be granted if the minor and the other person who wished to marry had (criminally punishable) sexual contact; marriage or already living together with the offender gave rise to a waiver from punishment.<sup>45</sup> In the meantime, Brazil and other Latin American countries have abolished this ground for a waiver from punishment in cases of sexual abuse.<sup>46</sup> Sexual relations with minors, who have not reached the age of consent, carry criminal sanctions, regardless of whether a marriage exists or not.<sup>47</sup>

41 Art. 183(12) CC 1916 and Art. 1517 CC 2002.

42 For example, Argentina, Art. 167 CC; Bolivia, Art. 44(2) Código de Familia 1988; Brazil, Art. 1520 CC 2002 – old version.

43 Art. 1520 CC 2002 (old version); also, Estado de México, Art. 4.4. CC (old version), see *María Josefina Menéndez Carbajal/Saúl Azarel Sánchez Jiménez*, Amicus Curiae presentado ante la Suprema Corte de Justicia de la Nación [Mexico], Acción de Inconstitucionalidad 22/2016, 14 <<https://perma.cc/XP8D-BZJT>>.

44 Tribunal de Justiça de Minas Gerais, 24.4.2012 – 1.0696.11.003537-0/001; Tribunal de Justiça de Minas Gerais, 27.3.2008 – 1.0471.07.085024-6/001; Tribunal de Justiça de São Paulo, 12.6.2008 – 560.167.4/0; *Guilherme Calmon Nogueira da Gama*, in Giovanni Ettore Nanni (ed.), *Comentários ao Código Civil* (São Paulo 2019), Art. 1520 (p. 1899), see summary in *Milton Paulo de Carvalho Filho*, in Cezar Peluso (ed.), *Código Civil Comentado*<sup>13</sup> (São Paulo 2019) Art. 1520 (p. 1592).

45 Art. 107(7) Código Penal – old version (Decreto-Lei 2.848, 7.12.1940, <<https://perma.cc/NW2X-GD3J>>).

46 In Brazil, Art. 107(7) Código Penal was deleted by Lei n°11.106, 28.3.2005; see as well *Vanessa Sedletzki/Nadine Perrault*, Legal minimum ages and the realization of adolescents' rights – a review of the situation in Latin America and the Caribbean, UNICEF (2016), 23 et seq., <https://www.unicef.org/lac/en/reports/legal-minimum-ages>; Uruguay, Art. 116 Criminal Code – old version (Código Penal, Ley n° 9155, amended through Ley n° 17.938 'Extinción De Determinados Delitos Por Matrimonio Del Ofensor Con La Ofendida', Diario Oficial n° 26910, 4.1.2006).

47 Most of the Latin American States have a minimum age for sexual consent between 14 and 16 years, *Rosero Garcés/Valdivieso Vega* (n 3) 9; *Sedletzki/Perrault* (n 46) 27.

Furthermore, most countries have eliminated the exemption procedure in recent years.<sup>48</sup> Only Argentina,<sup>49</sup> Peru,<sup>50</sup> and Baja California (state of Mexico)<sup>51</sup> have preserved the possibility of an exemption. The granting of the exemption is subject to judicial discretion, although statutory limitations exist. Peru and the Mexican state of Baja California have a minimum age limit for the granting of an exemption; it is 16 years.<sup>52</sup> If both minor partners entering into marriage have reached the age of 16, the granting of the exemption is left to the discretion of the court, which must examine whether there are legitimate motives (*motivos justificados*)<sup>53</sup> or serious and justified reasons (*causas graves y justificadas*)<sup>54</sup> for marrying.

Argentina has no age limit for the seeking of an exemption. As the legal age of marriage is 16 years in Argentina,<sup>55</sup> persons aged 15 or younger may apply for a judicial exemption.<sup>56</sup> The court has to take into account the age and maturity of the minor. In particular, courts have to consider whether the minor can evaluate the legal

48 Bolivia, Art. 139 Código de las Familias y del Proceso Familiar 2014; Brazil, Lei 13.811, 12.3.2019 'Confere nova redação ao art. 1.520 da Lei n° 10.406, de 10 de janeiro de 2002 (Código Civil), para suprimir as exceções legais permissivas do casamento infantil'; Chile, Art. 5(3) Ley de Matrimonio Civil 2004; Costa Rica, Art. 14(7) Código de Familia (Ley n° 5476, 2.12.1973, La Gaceta n 24, Suplemento n 20, 5.2.1974, amended by Ley n 9406, 30.11.2016); Dominican Republic, Art. 144 CC (Ley n° 1.21, 21.12.2020); Ecuador, Art. 83 CC (amended by Registro Oficial Suplemento n° 526, 19.6.2015); El Salvador, Art. 14 Código de Familia (Decreto n° 677, 11.10.1993, Diario Oficial n° 231, 13.12.1993, amended by Decreto Ley n° 754, 17.8.2017, Diario Oficial n° 36, 21.2.2017); Guatemala, Art. 81, 83 CC (Decreto Ley n° 106, 14.9.1963, El Guatemalteco 1963, 84 et seq., amended by Decretos 8/2015 and 13/2017); Honduras, Art. 16 Código de Familia (Decreto n 76-1984, 31.5.1984, Diario Oficial La Gaceta n° 24.394, 16.8.1984, amended by Decreto 35-2013, 27.2.2013, Diario Oficial La Gaceta n° 33.222, 6.9.2013); Panama, Art. 33 Código de la Familia (Ley n° 3, 17.5.1994, amended by Ley n° 30, 5.5.2015, Gaceta Oficial 5.5.2015); Paraguay, Ley 5419/2015 was published on 11.5.2015 and, according to Art. 1 CC, applied from the following day. As of 12.5.2015, courts are no longer entitled to grant an exemption. Law No. 5419/2015 applies without exception: Tribunal de Apelación de la Niñez y la Adolescencia de San Lorenzo, 29.12.2015, LaLeyOnline PY/JUR/752/2015. In Mexico, the Suprema Corte de Justicia de la Nación (SCJN) confirmed the absolute prohibition of marriage for minors under the age of 18 in the State of Aguascalientes: SCJN 26.3.2019 – 22/2016, Semanario Judicial de la Federación, Libro 77, 8/2020 II, 2129.

49 Art. 404(1) CCyC.

50 Art. 241(1) CC.

51 Art. 145 et seq. CC.

52 Peru, Art. 241(1) CC; Baja California, Art. 145 CC. Before the exemption procedure was abolished in Paraguay, the age limit for the exemption was 14 years Art. 17(1) Ley 1/1992 – old version.

53 Peru: Art. 241(1) CC.

54 Baja California, Art. 145 s. 2 CC.

55 See above, I.1.a).

56 Previously, the legal age of marriage in Argentina was 18 years; thus, 16- and 17-year olds needed an exemption. The legislature has lowered the legal age of marriage from 18 to 16 years: Ley 26.579 (2009) and Ley 26.994 (2015). Thus, minors who have reached the age of 16 years no longer require a judicial exemption as long as their legal representatives agree to the marriage. Argentinean jurisprudence had criticised the previously existing exemption requirement for 16- and 17-year olds as an intervention on parental authority and the growing freedom of choice of young people (*capacidad progresiva*): Tribunal Colegiado de Familia Nro. 5 de Rosario, 17.2.2012, RDF 2012-V-189 = LaLeyOnline AP/JUR/1590/2012: 'Si los padres prestan conformidad para que su hijo menor contraiga matrimonio, la dispensa obligatoria es una intromisión estatal al pleno ejercicio de la autoridad parental y choca con el principio de la capacidad progresiva de los niños que pretende explicitar la esfera de la autonomía de los sujetos en forma escalonada y paulatina, como una tendencia a quebrar la tajante división minoría-mayoría de edad y reemplazar esos conceptos por aquella visión asimilable a la evolución psíquica-biológica de la persona.'

consequences (*consecuencias jurídicas*) of the marriage and consider the opinion of the legal representatives.<sup>57</sup> Argentinean scholarship considers the possibility of an exemption to be conform with international law.<sup>58</sup>

#### D. Reduction of Parental Influence

The fourth and last tendency concerns the role of parents and grandparents. In the 19th century and at the beginning of the 20th century, the consent of the father or of both parents was often required for the substantive validity of the marriage until the age of 21 years, partly because the legal age of marriage was linked to the age of majority.<sup>59</sup> In some cases, consent was necessary until the age of 25.<sup>60</sup>

Furthermore, in the Dominican Republic, formally and respectfully obtaining parental or grandparental advice was a formal requirement for marriage. Until the age of 30 (men) or 25 (women), the couple had to ask for advice three times before they could enter into a marriage not approved by their parents (or grandparents).<sup>61</sup>

The legal influence of the family was steadily reduced.<sup>62</sup> In countries where the legal age of marriage is 16 or earlier, couples require the consent of their parents or other legal representatives only until they reach the age of 18.<sup>63</sup> In countries that require an age of 18 years to marry, the legal age of marriage usually coincides with the age of legal majority, so that the consent of legal representatives is not required. Honduras is an exception: There the legal age of majority is not reached until the age of 21; persons who have reached the age of 18, but not yet the age of 21, therefore need the consent of their legal representatives for marriage.<sup>64</sup> Obtaining parental or grandparental advice is no longer one of the formal requirements for marriage in any Latin American country.

57 Art. 404(3) CCyC. An exemption was granted in the following cases, for example: Cámara Nacional de Apelaciones en lo Civil, 1.11.1984, La Ley Online: 70032344; Cámara Nacional de Apelaciones en lo Civil, 8.9.2004, La Ley Online: 35000630; Tribunal Colegiado de Familia Nro. 5 de Rosario, 22.5.2009, La Ley Online AR/JUR/12359/2009; Tribunal Colegiado de Familia Nro. 5 de Rosario, 17.2.2012, La Ley Online AP/JUR/1590/2012.

58 Marisol B. Burgués, *El derecho de los adolescentes a formar su familia: alcances y limitaciones*, *Revista de Derecho de Familia y de las Personas* [DFyP] Dezember 2019, 103.

59 Argentina, Art. 168, 126 CC; Brazil, Art. 185 CC 1916; Colombia, Art. 116 CC – old version, amended by Decreto 2820/1974.

60 Chile, Art. 106 et seq. CC – old version; Dominican Republic, Art. 148 CC – old version (Código Civil de la República Dominicana, 19.7.2002).

61 Dominican Republic, Art. 151 et seq. CC – old version.

62 Jaqueline Vassallo, 'Leyes patriarcales para parejas modernas? La regulación legal de las parejas conyugales en Latinoamérica' in Julieta Quilodrán (ed.), *Parejas Conyugales en Transformación – Una Visión al Finalizar el Siglo XX* (Ciudad de México 2011), pp. 575–624, 577 et seq.: 'En este punto debemos mencionar que desde los inicios del siglo XX, las familias fueron perdiendo el control de las alianzas matrimoniales que paulatinamente, pasaron [...], a manos de los individuos...'

63 Argentina, Art. 404(1) s. 2 CCyC; Bolivia, Art. 139(2) Código de las Familias y del Proceso Familiar 2014; Brazil, Art. 1517 CC 2002; Chile, Art. 106 et seq. CC; Colombia: Art. 117 CC; Cuba, Art. 3(2), (3) Código de Familia; Nicaragua, Art. 54(2) Código de Familia; Paraguay, Art. 148 CC, Art. 20 Ley 1/1992 as amended by Ley 5419/2015; Tabasco, Art. 155 et seq. CC; Uruguay, Art. 106 CC; Venezuela, Art. 59, 18 CC.

64 Art. 16 Código de Familia.

## 2. STAGNATION: LEGAL CONSEQUENCES OF NON-COMPLIANCE WITH MARRIAGE REQUIREMENTS

Despite the reforms on the legal age of marriage, the majority of Latin American countries are still quite generous in their treatment of marriages that are contracted in non-compliance with the legal age of marriage. Some legal systems do not ‘punish’ the failure to have reached the legal age with absolute nullity, but only with relative nullity or voidability. Furthermore, nullity (whether absolute or relative nullity) still has to be determined by a court. And breaches of the rules on the legal age of marriage are often curable.

### A. Nullity or Voidability

Many Latin American countries differentiate between relative and absolute nullity or between voidability (*‘anulabilidad’*) and nullity (*‘nulidad’*) in the case of violations of the requirements for marriage, whereby the failure to have attained the legal age of marriage is classified differently. Some legal systems do not ‘punish’ such a shortcoming with absolute nullity, but only with relative nullity or voidability. Where the failure to have reached the legal age of marriage is classified as a reason for relative nullity (or voidability), nullity can usually be claimed only by the parties concerned.<sup>65</sup> If such a failure is classified as an (absolute) reason for nullity, anyone who has an interest in the matter can claim nullity.<sup>66</sup> In some cases, public officials are also entitled to submit an application.<sup>67</sup> In addition, the failure to have reached the legal age of marriage must be taken into account *ex officio* if the validity of the marriage is raised as a preliminary question in other proceedings.<sup>68</sup>

A marriage entered into after having reached the legal age but in the absence of the consent of the legal representative often does not even lead to nullity or voidability. Rather, there are sanctions for the spouses.<sup>69</sup> In some cases, all ascendants (not only those entitled to give consent) have the right to disinherit the minor and reclaim gifts in the absence of consent.<sup>70</sup> In other cases, minors do not gain the power of disposal over their assets in the absence of parental consent,<sup>71</sup> or matrimonial property remains separated.<sup>72</sup>

65 Argentina, Art. 425(a) CCyC (*nulidad relativa*); Brazil, Art. 1550(1), 1552 CC 2002 (*anulabilidade*); Honduras, Art. 228 Código de Familia (*anulabilidad*); Nicaragua, Art. 56, 58(c) Código de Familia (*impedimento relativo* – adolescents under 18 and over 16 who do not have the authorization of the legal representative); Panama, Art. 224(2), 225(2) Código de la Familia; Paraguay, Art. 181(b) CC (*anulabilidad*); Peru, Art. 277(1) CC (*anulabilidad*).

66 Costa Rica, Art. 14, 64 Código de Familia; El Salvador, Art. 14(1), 90(4), 91 Código de Familia; Venezuela, Art. 117 CC.

67 El Salvador, Art. 91 Código de Familia (Procurador General de la República, Fiscal General de la República).

68 Costa Rica, Art. 14, 64 Código de Familia; El Salvador, Art. 91 Código de Familia; Nicaragua, Art. 57(a), 60 Código de Familia (*impedimento absoluto* – children and adolescents under 16).

69 Different: Brazil, Art. 1550(2) CC 2002 (*anulabilidade*); Nicaragua, Art. 56, 58(c) Código de Familia (*impedimento relativo*).

70 Chile, Art. 114, 115 CC; Colombia, Art. 124, 125 CC.

71 Peru, Art. 247 CC.

72 Paraguay, Art. 149 CC and Art. 21 Ley 1/1992, see Arnaldo Martínez Rozzano, *Derecho de Familia* (Asunción 2016), 51.



### B. Judicial Declaration

Nullity (whether absolute or relative nullity) still has to be determined by a court. The unlawful child marriage is not *ipso iure* void in any of the countries examined. To the contrary, only a judicial determination of the violation of the rules on the legal age of marriage will lead to a dissolution of the marriage.<sup>73</sup>

Irrespective of the distinction between relative and absolute nullity, a positive declaratory decision on nullity or avoidance usually has retroactive effect (*ex tunc*).<sup>74</sup> There are, however, exceptions for partners and third parties acting in good faith and for the right of descent of children born in marriage. The retroactive rescission does not affect the affiliation of a child to the mother's husband.<sup>75</sup>

### C. Curability

Most Latin American countries allow for a curing of marriage impediments.<sup>76</sup> In some states, reaching the legal age of marriage cures the absence of the legal age at the time of the marriage.<sup>77</sup> The full validity of the marriage contracted before reaching the legal age is therefore subject to the condition of reaching the legal age. In Brazil, there is an additional requirement of confirmation by the spouses and legal representatives.<sup>78</sup> In Peru, the spouses can even confirm a marriage that has already been dissolved by a court.<sup>79</sup>

In some Latin American countries, curing occurs regardless of age in cases of pregnancy<sup>80</sup> or if the couple has been living together for a certain period of time.<sup>81</sup> Some countries combine reaching the legal age with a further condition. Majority cures a child marriage if the spouses have lived together prior to reaching majority

73 Argentina, Art. 425 CCyC; Bolivia, Art. 168 et seq. Código de las Familias y del Proceso Familiar 2014; Brazil, Art. 1552 CC 2002; Chile, Art. 44(a) Ley de Matrimonio Civil 2004, see Javier Barrientos Grandón, De la inexistencia del matrimonio en el derecho chileno, *Revista de Derecho* XIX (Diciembre 2006), <https://perma.cc/HQF9-MFFX>, pp. 52–63; Hernán Corral Talciani, in Anastasia Assimakópoulos Figueroa/Hernán Corral Talciani (eds.), *Matrimonio Civil y Divorcio – Análisis Crítico y Criterios Para la Aplicación de la Ley N. 19.947*, de 2004 (Santiago de Chile 2005) pp. 37–75, 41 et seq.; Costa Rica, Art. 14, 64 Código de Familia; Dominican Republic, Art. 184 CC; El Salvador, Art. 91 Código de Familia; Honduras, Art. 228 Código de Familia; Colombia, Art. 148 CC; Cuba, Art. 45 et seq. Código de Familia; Nicaragua, Art. 60 Código de Familia; Panama, Art. 224, 225 Código de la Familia; Paraguay, Art. 181 CC; Peru, Art. 277(1) CC; Uruguay, Art. 201 CC; Venezuela, Art. 117 CC.

74 Argentina, Art. 430 CCyC; Bolivia, Art. 172 Abs. 1 Family Code 2014; Brazil, Art. 1563 CC 2002; Chile, Art. 50(1) Ley de Matrimonio Civil 2004. See, however, Colombia: Art. 148 CC ('Anulado un matrimonio, cesan desde el mismo día entre los consortes separados todos los derechos y obligaciones...').

75 Bolivia, Art. 172(a) Código de las Familias y del Proceso Familiar 2014; Brazil, Art. 1617 CC 2002; Chile, Art. 51 Abs. 4 Ley de Matrimonio Civil 2004; Costa Rica, Art. 66(1) Código de Familia; El Salvador, Art. 99, 141(2) Código de Familia; Colombia, Art. 149 CC; Panama, Art. 231 Código de la Familia; Venezuela, Art. 127 CC.

76 Costa Rica is an exception: Art. 64 et seq. Código de Familia.

77 Argentina, Art. 425 lit. a CCyC; Brazil, Art. 1553 CC 2002; Paraguay, Art. 181(b) CC; Peru, Art. 277(1) CC; Uruguay, Art. 201 CC; Venezuela, Art. 120 CC.

78 Art. 1553 CC 2002.

79 Art. 277(1) CC.

80 Brazil, Art. 1551 CC 2002; Honduras, Art. 16(3) Código de Familia; Paraguay, Art. 181(b) CC; Peru, Art. 277(1) CC; Venezuela, Art. 120 CC.

81 Bolivia, Art. 171 Código de Familia 2014 (one year); Nicaragua, Art. 61 Código de Familia (only for relative nullity: one month after the couple became aware of the defect).

without having claimed nullity, or if the wife has become pregnant before reaching the age of majority.<sup>82</sup>

In some cases, there are time limits for claiming nullity irrespective of age, pregnancy, or cohabitation. These time limits are usually understood as procedural prescription rules; after the time limit has elapsed, no one can initiate a proceeding to declare the nullity of the marriage.<sup>83</sup> Finally, the death of one spouse occasionally leads to the loss of the right of action,<sup>84</sup> with the consequence that nullity can no longer be claimed in the case of inheritance.

### III. SOCIO-ECONOMIC BACKGROUND

It is important to note that UNICEF includes not only formal marriages but also informal unions within the term ‘child marriage’. Informal unions are characterized by the fact that partners live in a common household but are unmarried.<sup>85</sup> In Latin America, early informal unions predominate over formal child marriages.<sup>86</sup> For example, in Peru, Bolivia, Colombia, and Honduras, more than 80 per cent of the girls aged 15–17 who counted as ‘married’ within the UNICEF-definition lived with a man without being formally married.<sup>87</sup>

Formal marriage has lost its importance in large parts of the Latin American population, though not everywhere. Furthermore, poverty, lack of educational opportunities, and ethnic affiliation and beliefs may promote early formal marriages or early informal unions.

#### 1. SOCIAL IMPORTANCE OF FORMAL MARRIAGE

Today, Latin American legislators often acknowledge the instability of marriage. Several countries have introduced the possibility of divorce without the necessity of a reason or prior separation.<sup>88</sup> In addition, legislators no longer give marriage a monopoly position for family co-habitation. Non-marital relationships are regulated by law in most countries and offer couples to a great extent the same rights and obligations as marriages in terms of maintenance, inheritance, taxes, and social law.<sup>89</sup> In

82 Bolivia, Art. 170 Código de Familia 2014; Cuba, Art. 47 Abs. 3 Código de Familia. Similarly: Uruguay: Art. 201 CC.

83 Ecuador, Art. 99 CC (2 years); Panama, Art. 228 Abs. 1 Family Code (5 years).

84 Chile, Art. 47 Ley de Matrimonio Civil 2004; Panama, Art. 229 Family Code; Venezuela, Art. 124 CC; Peru, Art. 278 CC.

85 UNICEF (n 3) 7.

86 *Plan International/UNFPA*, Una realidad oculta para niñas y adolescentes – Matrimonios y uniones infantiles, tempranas y forzadas en América Latina y el Caribe (2019) 16, <<https://perma.cc/L7G3-T8XB>>; UNICEF (n 3) 7.

87 UNICEF (n 3) 7; see also *Plan International/UNFPA* (n 7) 24.

88 For example, Argentina, Art. 214 Abs. 1, 202 CC and Art. 437 CCyC; Brazil, Art. 226 § 6 Constituição da República Federativa do Brasil de 1988, (<<https://perma.cc/QNS2-DVVV>>) and Art. 1580 CC (divorce without a reason); Ciudad de México, Art. 266 et seq. CC.

89 *Plan International/UNFPA* (n 86) 16; Alice Y. Taylor/Erin Murphy-Graham et al, ‘Child Marriages and Unions in Latin America: Understanding the Roles of Agency and Social Norms’ 64 (2019) *Journal of Adolescent Health* 45, 46; Jan Peter Schmidt, Intestate Succession in Latin America, in Kenneth G. C. Reid/Marius J. de Waal/Reinhard Zimmermann (ed.), *Comparative Succession Law, Vol. II: Intestate Succession*, K (Oxford 2015) pp. 118–158. Further, there is no longer any discrimination against

contrast to the legal progressiveness, however, no clear picture of the importance of marriage can be drawn in Latin American societies.

### A. Social Status

In urban, educated and wealthier parts of Latin America, couples live together unmarried, because informal cohabitation is no longer associated with a social stigma. Even in more rural and poorer parts of Latin America, it is to a certain extent a common practice for young women and men to establish a common household without marrying; marriages are considered to be too expensive and cumbersome.<sup>90</sup>

Thus, marriage as a step towards admission to the circle of adults and independence from parents has largely lost importance, although not everywhere. In some parts of the society, young women and men understand marriage as a form of emancipation from their parents and unmarried adults are still perceived as failures.<sup>91</sup> Marriage determines social status, especially that of women.<sup>92</sup> The perception of being a woman is associated with being married and being a mother. Girls learn that they obtain acceptance in the society through marriage and motherhood. They pin their hopes on marriage and grow up with the belief that their task is to serve their (future) husband.

### B. Sexuality and Control

In large parts of Latin America, sexual relations outside of marriage are no longer socially stigmatized. It is accepted by society that young women and men will establish a common household without being married. Also, sexual relationships at a young age prior to marriage are regarded as normal.<sup>93</sup> More than 22 per cent of adolescents have their first sexual experiences before the age of 15.<sup>94</sup>

Nevertheless, pre-marital sexual relations of women do not comport with the social norms everywhere; rather, in some parts of the society only marriage is accepted as a framework for female sexuality and great importance is attached to pre-marital virginity.<sup>95</sup> Lauro et al, for example, report for poorer areas in Belém (Federal state of Pará) and São Luís (Federal state of Maranhão) in Brazil that many of the

illegitimate children, *ibid.*, 140; for Chile: Ursula Pohl, *Familienrecht in Chile* (Baden-Baden 2013) 50, 138 et seq.

90 Dominican Republic: *Plan Internacional República Dominicana*, Niñas esposadas: caracterización del matrimonio infantil forzado en las provincias de Azua, Barahona, Pedernales, Elías Piña y San Juan, Boletín Planteamientos 2017, No. 2, 16, 23, <<https://perma.cc/Z2ZV-NK5W>>; Mexico: Estela Rivero/José Luis Palma, Report on Early Unions in Mexico – A National, State and Regional Analysis (2017), 15 <https://perma.cc/WQ4S-YXRD>; Peru: Rojas/Bravo/van der Gaag (n 3) 49, 50.

91 *Plan Internacional/UNFPA* (n 86) 16, 47; *Plan Internacional República Dominicana* (n 90) 16; Alice Taylor / Giovanna Lauro et al, 'She goes with me in my boat' – Child and Adolescent Marriage in Brazil: Results from Mixed-Methods Research (2015) 49, <<https://perma.cc/4FW3-9V9U>>.

92 So für Guatemala, Bolivia und El Salvador: *Plan Internacional/UNFPA* (n 86) 16; Dominican Republic: *Centro de estudios de Género*, Desigualdades entre mujeres y hombres en todos los ciclos de vida. evidencia de exclusión social en la República Dominicana: Una nota crítica, *Ciencia y Sociedad* 2018, 67, 76; *Plan Internacional República Dominicana* (n 90) 13.

93 E.g. Rivero / Palma (n 90) 15.

94 Rosero Garcés/Valdivieso Vega (n 3) 9; Sedletzki/Perrault (n 46) 22.

95 Taylor/Lauro et al (n 91) 60.

interviewed men preferred wives who had no pre-marital relations.<sup>96</sup> If parents find out that their daughter is sexually active, they work towards a marriage to protect the family's honour.<sup>97</sup> Different social norms apply to young men; they are given more independence.<sup>98</sup> The restriction of female sexuality is based on the attempt to control young women. The parental pressure to marry early aims at controlling adolescent sexuality and preventing risky behaviour (going out, one-night stands).<sup>99</sup> The male preference for virgin women is accompanied by a preference for easily controllable women with a little experience in life.<sup>100</sup>

The attempt to control young women is also reflected in the social beliefs about the ideal age for marriage. Brazilian men in the *Taylor/Lauro* study stated that they preferred underage wives because they were more attractive and easier to control<sup>101</sup>; men in the Dominican Republic made similar remarks.<sup>102</sup> In contrast, young women prefer older men as partners because they associate age with greater life experience, responsibility, and economic independence.<sup>103</sup>

The studies by Murphy-Graham et al.<sup>104</sup> and Mann<sup>105</sup> as well as that of the Guatemala organization Igualdad Ya<sup>106</sup> illustrate, however, the multi-layered effect of this behaviour by pointing out the intrinsic motivation of young women. Young women consciously enter into relationships early for the purpose of escaping the parental household in order to gain control over their own life and sexuality.<sup>107</sup> Their decision expresses their understanding of self-determination.<sup>108</sup> Also in the study of *Plan International* and *UNFPA*, women expressed the hope that marriage would provide them more self-determination towards their parents and other social controls than they had in their family of origin.<sup>109</sup>

Furthermore, women use marriage to escape from violence within their family of origin.<sup>110</sup> Studies show that a significant proportion of women who enter child marriage have experienced domestic violence in their past, and women believe that marriage offers them more protection than their family of origin.<sup>111</sup> Nevertheless, child marriages often resemble the conflict-laden situation from which the women sought protection.<sup>112</sup> A traditional understanding of gender roles prevents women from

96 Ibid.

97 *Plan International/UNFPA* (n 86) 9, 43; *Taylor/Lauro* et al. (n 91) 59 (for Brazil).

98 *Plan International/UNFPA* (n 86) 42.

99 *Taylor/Lauro* et al (n 91) 13; *Rosero Garcés/Valdivieso Vega* (n 3) 7.

100 *Taylor/Lauro* et al (n 91) 60 (for Brazil).

101 *Taylor/Lauro* et al (n 91) 13.

102 *Plan Internacional República Dominicana* (n 90) 22.

103 *Plan Internacional República Dominicana* (n 90) 16; *Taylor/Lauro* et al (n 91) 95.

104 *Taylor/Murphy-Graham* et al., *Journal of Adolescent Health* 64 (2019) 45, 49.

105 *Rojas/Bravo/van der Gaag* (n 3) 49, 54.

106 Igualdad Ya, *Proteger a las niñas – El uso de la ley para erradicar los matrimonios infantiles, prematuros y forzados y otras violaciones de derechos humanos relacionadas* (2014), 33 <<https://perma.cc/UTL5-SZJ>>.

107 *Taylor/Murphy-Graham* et al, *Journal of Adolescent Health* 64 (2019) 45, 49.

108 *Taylor/Lauro* et al (n 91) 58.

109 *Plan International/UNFPA* (n 86) 32.

110 *Rojas/Bravo/van der Gaag* (n 3) 49, 52; *Plan International/UNFPA* (n 86) 9; *Plan International/UNFPA* (n 7) 23.

111 *Plan International/UNFPA* (n 86) 32 et seq.

finding the freedom they had hoped for, as *Crivello* and *Mann* show in their interview study for Peru.<sup>113</sup> A study including Colombia, the Dominican Republic, Haiti, and Honduras also found that woman who married at a young age is more likely to report suffering from intimate partner violence.<sup>114</sup>

### C. Framework for Reproduction

Marriage remains the only recognized framework for reproduction in some parts of society. According to a recent study by Murphy-Graham et al, in Brazil, Guatemala, and Honduras, a wanted or unwanted pregnancy is one of the main reasons for child marriage, whether done to preserve the reputation of the young woman and the families or to insist that the partner of the pregnant woman assumes family responsibilities.<sup>115</sup>

The social norm, according to which marriage is the only recognized framework for reproduction, has the effect that a high number of early pregnancies in Latin America also leads to a high number of child marriages. And even if there is no such social norm, early pregnancies are still a reason for early informal unions.<sup>116</sup> Latin America has the second highest number of early pregnancies worldwide: 66.5 out of 1000 women gave birth between the ages of 15 and 19. Worldwide, only 45 out of 1000 women gave birth at this age.<sup>117</sup> Early sexual activity, inadequate sexual education, insufficient information on contraceptive methods, restricted access to birth control measures (in some countries from the age of 18 only<sup>118</sup>), restrictive abortion laws and, finally, sexual violence are mentioned as reasons for the high number of unwanted early pregnancies in Latin America.<sup>119</sup> Young women also frequently idealize romantic love but consider open discussions about sex to be indecent.<sup>120</sup>

### D. Civil Marriage or Customary/Religious Marriage?

In all Latin American countries, only civil law marriages (i.e. with a marriage ceremony conducted before a state authority) have civil law effect. Accordingly, the state

112 *Plan International/UNFPA* (n 86) 11, 34 et seq.

113 *Rojas/Bravo/van der Gaag* (n 3) 49, 55.

114 *Plan International/UNFPA* (n 7) 32 et seq.; Rachel Kidman, 'Child Marriage and Intimate Partner Violence: A Comparative Study of 34 Countries' (2017) *International Journal of Epidemiology*, 662, 672; *Rosero Garcés/Valdivieso Vega* (n 3) 11.

115 Taylor/Murphy-Graham et al, *Journal of Adolescent Health* 64 (2019) 45, 49. Taylor/Lauro et al (n 91) 58. In contrast, a study from Mexico does not show a social stigma or pressure to marry; early informal unions, including those with children, are a common practice, *Rivero/Palma* (n 90) 15.

116 *Plan International/UNFPA* (n 7) 20.

117 PAHO/UNFPA/WHO/UNICEF, Accelerating Progress Toward the Reduction of Adolescent Pregnancy in Latin America and the Caribbean (Washington 2016), < <http://iris.paho.org/xmlui/bitstream/handle/123456789/34493/9789275119761-eng.pdf?sequence=1&isAllowed=y>>.

118 *Rosero Garcés/Valdivieso Vega* (n 3) 9; *Plan International/UNFPA* (n 86) 10; *Díez Peralta* (n 3) 139.

119 *Díez Peralta* (n 3) 139; *Olavarría Aranguren/Molina Gutiérrez*, Embarazos en adolescentes, vulnerabilidades y políticas públicas, *Polis – Revista Latinoamericana* 31 (2012) 1, 18; *Plan Internacional República Dominicana* (n 90) 10, 15; *Rivero/Palma* (n 90) 8; *Rosero Garcés/Valdivieso Vega* (n 3) 9. Partly, it is argued that early pregnancies should not necessarily be understood as a problem, because that biases politics and discriminates against women: *Jaramillo Sierra*, 'Introducción' in *Jaramillo Sierra* (ed.), *Embarazo Adolescente: Entre la Política y los Derechos* (Bogotá 2013) p. 6, 7.

120 *Plan International/UNFPA* (n 86) 9, 43; *Plan Internacional República Dominicana* (n 90) 16.

is obliged to participate in the marriage. Customary marriages do not have the effects of a civil marriage. And despite the strong influence of Canon Law, even a religious marriage produces legal effects only after fulfilling certain registration requirements.<sup>121</sup>

However, in indigenous communities and in the poor rural population, civil requirements for marriages are often ignored, and marriages are established according to the customs of the community.<sup>122</sup> Thus, in societies where social expectations to marry still exist (for reasons of social status, sexuality, and reproduction), those expectations are not necessarily linked to civil marriage. Rather, customary or religious marriage is what counts in the eyes of society.

## 2. POVERTY AND LACK OF ECONOMIC PERSPECTIVE

Quantitative studies show a link between child marriages/early unions and poverty. The number of child marriages and early unions varies significantly between more wealthy and poorer sections of the population.<sup>123</sup> While an average of 25 per cent of women in Latin America were married or in a union before the age of 18, the figure is only 10 per cent in the most prosperous areas but 38 per cent in the poorest area.<sup>124</sup> In the Dominican Republic, almost a quarter (23.1 per cent) of the youth of the poorest fifth of the population entered a marriage or an early union before the age of 15 years; in the richest fifth, the figure is only 3.4 per cent.<sup>125</sup>

According to the UN, the higher spread of child marriages and early unions in economically weaker parts of the population is linked to the limited alternatives resulting from poverty. Access to education is often denied,<sup>126</sup> and marriages or at least unions are frequently seen by parents as the only way to ensure for their child a more financially stable future.<sup>127</sup> Especially daughters are considered expensive—probably because they often have a lower income than men—and must be married off.<sup>128</sup> Interview studies show that young women themselves often look for a relationship as a way out of poverty.<sup>129</sup> Traditional roles are attributed to genders, with

121 For example Brazil, Art. 1515 bras. CC 2002 (Gesetz Nr. 10.406 vom 10.1.2002, <https://perma.cc/SW72-TKJ8>); Chile, Art. 20 chil. Ley de Matrimonio Civil 2004 (Ley 19947, 7.5.2004, Diario Oficial 17.5.2004); Anastasia Assimakópulos Figueroa, El reconocimiento civil del matrimonio religioso, in Matrimonio civil y divorcio – Análisis crítico y criterios para la aplicación de la Ley N. 19.947, de 2004, hrsg. von Anastasia Assimakópulos Figueroa/Hernán Corral Talciani (Santiago de Chile 2005) 77–89, 88; Jürgen Samtleben, Heirat und Scheidung im neuen chilenischen Ehegesetz, StAZ 2004, 285–290, 286.

122 Plan International/UNFPA (n 86) 27.

123 Díez Peralta (n 3) 138 et seq.; Plan International/UNFPA (n 7) 21; Rojas/Bravo/van der Gaag (n 3) 49, 50.

124 Rosero Garcés/Valdivieso Vega (n 3) 7.

125 Paulina Araneda/César Leyton/Catalina Bobadilla, Estudio Sobre el Mejoramiento de la Educación Secundaria en la República Dominicana (CEPAL 2018), 38 < <https://repositorio.cepal.org/handle/11362/43559>>.

126 Rosero Garcés/Valdivieso Vega (n 3) 7.

127 Rosero Garcés/Valdivieso Vega (n 3) 8; Igualdad Ya (n 106) 10.

128 Rosero Garcés/Valdivieso Vega (n 3) 7.

129 Rojas/Bravo/van der Gaag (n 3) 49, 54 (Peru); Plan International/UNFPA (n 86) 9, 66 et seq. (Bolivia, Brazil, Dominican Republic, Guatemala, Honduras, Nicaragua und Peru); Taylor/Lauro et al (n 91) 62 (Brazil); Plan Internacional República Dominicana (n 90) 16 (Dominican Republic).

men taking the role of family breadwinner.<sup>130</sup> According to one study, women consider an ideal husband to be a man who has money, can provide economic support, and has a car.<sup>131</sup>

However, the hope of escaping poverty in the family of origin remains unfulfilled in most cases. The lack of school education and the social expectations projected onto women as housewives and mothers often lead to women not taking up employment and their financial situation ultimately does not change. Rather, women who marry early tend to depend on their husbands, on whom the burden of income generation solely rests.<sup>132</sup>

### 3. EDUCATION

According to UNICEF, among women who were married or in a union before reaching the age of 18, 51 per cent have no level of education or only a primary school education; 18 per cent completed secondary school or higher education.<sup>133</sup> Early marriage or early unions and education influence each other in different ways. A lack of educational opportunities is the key reason for child marriage and simultaneously one of its prime risks.

A study published by UN Women, UNICEF et al identifies the lack of alternative (career) perspectives in life and exclusion from the educational system as a key reason for child marriage in Latin America.<sup>134</sup> In addition to an insufficient educational system, the general idea that school education is more important for boys than for girls also plays an important role. Education for girls is less valued because girls are less likely to perform jobs that require education.<sup>135</sup> Girls are expected to run the household and later care for the children<sup>136</sup>; boys are expected to feed their families with their work.<sup>137</sup>

While the lack of educational opportunities and a lack of educational ambition among girls are the causes of child marriage, it is also the case that child marriages and early unions put the education of young couples at risk. As soon as young women marry or enter a union (and/or become pregnant), their chances of completing school decrease.<sup>138</sup> In practice, however, the correlation between child marriage (or early unions), early pregnancy, and education is more complex. Although it often happens that young women leave school after marriage or the birth of a child, there are also cases reported in which young women continue to go to school, while young men have to leave school to support the family.<sup>139</sup>

130 Rosero Garcés/Valdivieso Vega (n 3) 8.

131 Plan International/UNFPA (n 86) 10.

132 Rojas/Bravo/van der Gaag (n 3) 49, 53 f.; Plan International/UNFPA (n 86) 11, 66 et seq.

133 UNICEF (n 3) 8. For a worldwide study, see Jennifer McCleary-Sills, Lucia Hanmer/Jennifer Parsons/Jeni Klugman, Child Marriage: A Critical Barrier to Girls' Schooling and Gender Equality in Education, *The Review of Faith & International Affairs* 2015, 69.

134 Rosero Garcés/Valdivieso Vega (n 3) 7. See as well Plan International/UNFPA (n 86) 49.

135 Plan International/UNFPA (n 86) 10, 49.

136 Rojas/Bravo/van der Gaag (n 3) 49, 52.

137 Plan International/UNFPA (n 7) 40.

138 Plan International/UNFPA (n 86) 50; Plan Internacional República Dominicana (n 90) 19; Plan International/UNFPA (n 7) 26 et seq.

139 Plan International/UNFPA (n 86) 10.



#### 4. ETHNIC AFFILIATION AND BELIEFS

In some Latin American countries, women who belong to indigenous population groups or who have African roots marry more often before the age of 18 years than the women from other population groups.<sup>140</sup> This could be related to group-specific social norms and traditions.<sup>141</sup> However, in today's Latin America child marriage and early unions are not an issue of certain groups as the phenomena pervade all ethnic groups.<sup>142</sup> Rather, the increased number of child marriages in certain ethnic groups should be read in conjunction with the spread of poverty in these groups and the more traditional social norms in rural areas.

#### IV. CONCLUSION

Legislative reforms epitomize a shift in the respective understanding that the legal systems in Latin America have of child marriage. With the increase in the legal age of marriage, the equal treatment of women and men and the reduction of parental influence, many legislators took action to combat child marriage. In most Latin American countries, the legal age of marriage is now 16 or 18 years. However, the legal consequences of marriages concluded in violation of the legal age have remained unaffected by these reforms; in particular, most countries allow for a curing of this deficit.

The statistics on child marriages and early informal unions do not reflect the reforms so far. Two factors have prevented the numbers from declining. First, the reforms only have an impact on civil marriages. Civil marriages, however, are not the only relevant framework for early relationships. Moreover, early informal unions, where couples live together unmarried, claim a great share because the social importance of marriage has declined parts of Latin America. Furthermore, customary or religious marriage is more important to indigenous communities as well as in the poor, rural population; in indigenous population groups and in poor, rural areas, civil law is often effective on paper only and is not applied in practice.

Secondly, the legal treatment of child marriages is only one factor out of many. Social pressure to marry early, early sexual relationships and early pregnancy, poverty, lack of economic and educational perspectives, and also ethnic affiliation and beliefs can promote early marriages or early informal unions. The increase in the legal age of marriage has not eliminated those socio-economic factors. Thus, sexual education, the availability of contraceptives, and improving educational and professional perspectives, especially for young women, are of paramount importance for the future.

140 *Plan International/UNFPA* (n 7) 16; *Rosero Garcés/Valdivieso Vega* (n 3) 7 et seq. *UNICEF* (n 3) 10.

141 For example, Costa Rica: *Girls Not Brides*, Child marriage in Costa Rica: In Conversation with Director Dana Ziyasheva (20.1.2017), <<https://perma.cc/SMSU-UAM7>>.

142 *Menéndez Carbajal/Sánchez Jiménez* (n 43) 8.