

An International Framework for Marriage Promotion

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Governments across the globe lately have been raising the alarm about declining marriage rates and adopting a wide variety of measures to increase these rates. This article presents a framework, distilled from human rights law, for assessing whether such measures are in keeping with States' international obligations to eliminate all forms of coercion and discrimination in their policies and practices concerning diverse family structure and composition. The framework draws clear boundaries between measures that are permissible under human rights law and measures that are prohibited by human rights law. It also provides a tool for evaluating marriage-promotion measures that, although not inherently coercive or discriminatory, run the risk of coercing or discriminating against individuals depending on the circumstances.

Overall, the framework presented in this article underlines States' obligations to work simultaneously to make it more possible for individuals to choose to marry and to make it more possible for individuals to choose not to marry. States must remove social, economic, and legal barriers to forming both marital and nonmarital relationships and to thriving in these relationships. Marriage-promotion measures that are permissible under human rights law do not privilege marriage over other family forms but instead facilitate and support marriage as one option available on equal terms to freely consenting adults.

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INTRODUCTION.....	791
I. DEFINING POPULATION POLICY	796
II. INTERNATIONAL LAW’S APPROACH TO POPULATION POLICY	799
III. A FRAMEWORK FOR EVALUATING MARRIAGE-PROMOTION MEASURES	803
A. <i>Coercion</i>	804
B. <i>Discrimination</i>	809
IV. APPLYING THE FRAMEWORK.....	813
A. <i>Permissible</i>	813
1. Removing Status-Based Restrictions or Impediments	813
a. <i>Race and Ethnicity</i>	814
b. <i>Religion</i>	816
c. <i>Ability</i>	817
d. <i>Sexual Orientation and Gender Identity</i>	820
2. Eliminating Mandatory Premarital Testing for HIV	823
3. Eliminating Dowry and Bride Price	825
4. Addressing Socioeconomic Inequality.....	829
B. <i>Impermissible</i>	831
1. Forced Marriage	831
a. <i>Child Marriage</i>	834
2. Marital Status Discrimination	837
3. Discrimination Against Children Born out of Wedlock	840
C. <i>Permissible or Impermissible, Depending on the Specifics</i>	843
1. Eliminating Other Legal Unions	843
2. Marriage Education.....	845
3. Media Campaigns	848
4. Taxation	850
5. Matchmaking	852
V. POTENTIAL COUNTERARGUMENTS.....	854
A. <i>The Definition of “Family”</i>	854
B. <i>Religion</i>	858
VI. CONCLUSION.....	860

INTRODUCTION

The *honjok* lifestyle, a trend of unmarried individuals' embracing and enjoying being single, is on the rise in South Korea.¹ Some of the individuals participating in this trend are simply delaying marriage, but others are living without romantic attachments and may even have pledged never to marry (*bihon*).² The *honjok* lifestyle trend both contributes to and reflects a broader demographic trend: South Korea has for several years been experiencing declining marriage and birth rates due to a number of factors, including the high cost of living and starting a family, as well as younger generations' reluctance to be bound by the traditional gendered expectations that continue to shape marriage.³

The Seoul Metropolitan Government initially responded to this demographic change with new initiatives targeting one-person households, including health and safety services that address the unique needs of unmarried individuals.⁴ In 2024, however, the President of South Korea articulated the need for a different approach: instead of adjusting programs and policies to support one-person households, the President called the declining birth rate a "national emergency" and created a new ministry to address this perceived crisis.⁵ Local governments, including the Seoul Metropolitan Government, responded to the President's call to action by creating matchmaking programs and related initiatives.⁶

For example, on June 21, 2025, the Seoul Metropolitan Government brought one hundred pre-selected singles (fifty men and fifty women) to Saebit Island to take part in one-on-one speed dating conversations, to receive advice about dating, and to play games and go on boat rides with each other.⁷

1. Raphael Rashid, *Happy Alone: The Young South Koreans Embracing Single Life*, GUARDIAN (Feb. 4, 2022), <https://www.theguardian.com/world/2022/feb/05/happy-alone-the-young-south-koreans-embracing-single-life> [https://perma.cc/7XJ2-5AW3].

2. *Id.*

3. *Id.*; Moon Joon-Hyun, *30-Year Report Shows Marriages Halved, Births Down Two-Thirds, Foreign Marital Unions Now 1 in 10*, KOR. HERALD (Sept. 3, 2025), <https://www.koreaherald.com/article/10567780> [https://perma.cc/YK8W-2QNF].

4. Rashid, *supra* note 1.

5. Micah McCartney, *South Korea to Create Birth Rate Ministry for Declining Population*, NEWSWEEK (July 2, 2024), <https://www.newsweek.com/south-korea-create-birth-rate-ministry-declining-population-1919971> [https://perma.cc/4HVK-M474].

6. Aislyu Akhmetzianova, *Gov't Provides Aid for Dating and Marriage*, KOREA.NET (Aug. 22, 2024), <https://www.korea.net/NewsFocus/Society/view?articleId=257194> [https://perma.cc/25QM-VGNK]; Yoon Min-Sik, *Cash for Marriage? Korea's All-Out Efforts to Raise Birth Rate Includes Playing Matchmaker*, KOR. HERALD (May 20, 2025), <https://www.koreaherald.com/article/10491758> [https://perma.cc/MT98-MZP7].

7. Min-Sik, *supra* note 6.

The next day, the government notified participants of successful matches and gave them coupons for future dates.⁸ The Seoul Metropolitan Government is also considering subsidizing the weddings of matched couples,⁹ but the occasion might not arise. For most Koreans, cash incentives to marry have not been enough to reverse their negative perception of marriage or to outweigh the attraction of the *honjok* life.¹⁰

Although South Korea has experienced an especially stark decline in marriage rates,¹¹ its government is far from alone in thinking that it is facing a demographic “crisis” that requires drastic measures.¹² In the twenty-first century, governments across the globe have frequently raised the alarm about marriage for a variety of reasons, including declining marriage rates.¹³ These governments have also adopted measures that increase, or are intended to increase, the marriage rate (which this article refers to as “marriage-promotion measures”).¹⁴ As seen in South Korea, governments have tried to use matchmaking, education, and subsidies to incentivize marriage, but they have also used a range of other tactics to remove or diminish social, economic, and legal barriers to marriage as well as to create or increase social, economic, and legal barriers to remaining unmarried.¹⁵

8. *Id.*

9. *Id.*

10. Soobin Kim & Dasl Yoon, *Even a \$14,000 Government Handout Can't Get South Korea's Singles to Marry*, WALL ST. J. (Mar. 26, 2025), <https://www.wsj.com/lifestyle/relationships/singles-dating-marriage-fertility-birthrate-south-korea-bdb40c7b> [https://perma.cc/M99Y-3PU9]; ‘Marry and Receive 20 Million Won’—But Will Cash Incentives Really Drive Marriage?, KOR. TIMES (May 24, 2025), <https://www.koreatimes.co.kr/southkorea/society/20250524/marry-and-receive-20-million-won-but-will-cash-incentives-really-drive-marriage> [https://perma.cc/X5RM-4J2M].

11. See James M. Raymo & Hyunjoon Park, *Marriage Decline in Korea: Changing Composition of the Domestic Marriage Market and Growth in International Marriage*, 57 DEMOGRAPHY 171, 173 (2020).

12. Kristin Celello & Hanan Kholoussy, *Introduction*, in DOMESTIC TENSIONS, NATIONAL ANXIETIES: GLOBAL PERSPECTIVES ON MARRIAGE, CRISIS, AND NATION 1, 1–2 (Kristin Celello & Hanan Kholoussy eds., 2016) (discussing STEPHANIE COONTZ, MARRIAGE, A HISTORY: HOW LOVE CONQUERED MARRIAGE (2006)).

13. *Id.* at 1–3. States have also been known to raise the alarm about increasing marriage rates, increasing or decreasing divorce rates, and trends involving specific types of unions (e.g., interracial, interreligious, child, or same-sex marriages). *Id.* at 3. Due to the limitations of space, this article focuses on States’ attempts to increase marriage rates, which has frequently been their response to real or imagined declines in marriage rates.

14. When used in a specific local context, the term “marriage promotion” might additionally require some explanation of the types of marriage(s) being promoted and some analysis of the ideology or ideologies underlying the measures. In a global context, however, there is so much institutional and ideological variety that a more generic definition of marriage promotion more adequately serves as the basis for an international framework. See *id.* at 3.

15. See *infra* Part IV.

The wide range of marriage-promotion measures governments have been implementing raises the question of the extent to which a State¹⁶ may intervene in an individual's decision of whether, when, and whom to marry. This article looks to human rights law to answer this question, deriving from this law a framework for assessing whether States' efforts to promote marriage are in keeping with their international obligations. To provide context for this framework, the article begins in Part I by defining "population policy," a broad term that encompasses measures that increase, or are intended to increase, the marriage rate. Part II then gives a brief history of international approaches to population policy, with an emphasis on the Cairo Program of Action, which was adopted by 179 States at the conclusion of the 1994 International Conference on Population and Development (ICPD).¹⁷ Although the Cairo Program of Action itself is soft law,¹⁸ it is nevertheless a landmark achievement that emphasized the need for governments to comply with their binding human rights obligations when articulating and implementing population policies.¹⁹ Part III then interprets the meaning of States' specific human rights obligations, highlighted in the Cairo Program of Action, to "eliminate all forms of coercion and discrimination in their policies and practices" concerning diverse family structure and

16. States, as used in this article, refers to nation-states, not U.S. states.

17. International conferences usually conclude with the adoption of a resolution, report, or similar document. Robbie Sabel, *Conferences and Congresses, International*, in MAX PLANCK ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW ¶ 52 (2008). Here, the International Conference on Population and Development refers to the conference itself and the Program of Action refers to the resulting document.

18. Unlike human rights treaties, which are binding on States that have ratified or acceded to them, the agendas of population conferences may be soft law (non-binding) and/or evidence of a customary international law norm (binding). That is, they do not create new obligations but instead provide important opportunities for States to reaffirm their commitments to fulfill their existing obligations and to express their understanding of what these obligations entail. Sabel, *supra* note 17, ¶¶ 9–10, 21, 53.

19. UNITED NATIONS POPULATION FUND, PROGRAMME OF ACTION ADOPTED AT THE INTERNATIONAL CONFERENCE ON POPULATION AND DEVELOPMENT, CAIRO, 5–13 SEPTEMBER 1994, ¶ 1.15 (20th anniversary ed., 2014) [hereinafter CAIRO PROGRAM OF ACTION] ("While the International Conference on Population and Development does not create any new international human rights, it affirms the application of universally recognized human rights standards to all aspects of population programmes."); C. Alison McIntosh & Jason L. Finkle, *The Cairo Conference on Population and Development: A New Paradigm?*, 21 POPULATION & DEV. REV. 223, 249 (1995). That Cairo was a landmark achievement does not necessarily mean that States immediately and without resistance acted on the commitments they endorsed there; implementation of the Program of Action is ongoing. See Ole Jacob Sending, *Policy Stories and Knowledge-Based Regimes: The Case of International Population Policy*, in GLOBAL INSTITUTIONS AND DEVELOPMENT: FRAMING THE WORLD? 56, 69–70 (Morten Bøås & Desmond McNeill eds., 2004).

composition.²⁰ The Part provides, in the abstract, an international legal framework for assessing the legality of marriage-promotion measures that requires separate analyses of coercion and of discrimination, as the elimination of each of these entails a distinct set of obligations.

Part IV applies this international legal framework to specific measures States have used to promote marriage. It draws on a range of domestic and comparative examples, as well as historic and contemporary examples. This Part sorts marriage-promotion measures into those that are generally permissible, those that are generally impermissible, and those that may be permissible or impermissible depending on the specific circumstances. Generally permissible measures include those that remove status-based restrictions or impediments, eliminate mandatory premarital testing for HIV, eliminate dowry and bride price, and address socioeconomic inequality. Generally impermissible measures include those that cause or contribute to forced marriage, child marriage, marital status discrimination, and discrimination against children born out of wedlock. Finally, measures that may be permissible or impermissible depending on the circumstances include the elimination of legal unions other than marriage, marriage education, media campaigns concerning marriage, marriage-related tax schemes, and matchmaking activities. Finally, Part V anticipates and responds to potential arguments against the framework arising out of sovereignty and religion.

One of the primary contributions of this article is its addition to the international legal literature on human rights and population policies. Up until now, scholars in this area have devoted significant attention to pronatalism (i.e., attempts to increase the birth rate),²¹ but have discussed marriage promotion (i.e. attempts to increase the marriage rate) only as it

20. CAIRO PROGRAM OF ACTION, *supra* note 19, ¶¶ 5.5–5.6.

21. This article adopts a narrow definition of pronatalism for the same reason that it adopts a narrow definition of marriage promotion. *See supra* note 14. Broader definitions of pronatalism involve the ideologies that often underly attempts to increase the birth rate, including eugenics. *See, e.g.,* Alena Heitlinger, *Pronatalism and Women's Equality Policies*, 7 EUR. J. POPULATION 343, 344–45 (1991) (explaining that “pronatalism is hard to define in an absolute and unequivocal way” but that, on the level of ideology, the concept can involve “a patriotic, ethnic or eugenic obligation”); Rasadokht Forati & Deborah Bartz, *The Rise and Fall and Rise of Pronatalism: A Disingenuous Policy that Harms the Health of People and Society*, 53 J.L. MED. & ETHICS 435, 435–36 (2025) (describing pronatalist policies across the globe as having “three main motivators . . . economic concerns, nationalism, and instillment of conservative or traditional family values”). These definitions and descriptions of pronatalism attempt to capture the way that States have used genuine concerns (for example, about aging populations) as an excuse to adopt sexist, racist, and xenophobic measures.

overlaps with pronatalism or have failed to discuss it altogether.²² Although measures that increase or attempt to increase the marriage rate and measures that increase or attempt to increase the birth rate often coincide, it is worth considering marriage-promotion measures separately to be able to grasp the full spectrum and define the precise contours of these measures.

This article should also serve to facilitate ongoing conversations in family law and international law about whether States can or should move beyond marriage²³ and toward increased valuation and accommodation of diverse family forms.²⁴ The article provides key context to ground these

22. See, e.g., Henrik Andersson et al., *Review Article: The Ethics of Population Policies*, 27 CRITICAL REV. INT'L SOC. & POL. PHIL. 635, 639–40 (2024); Lori S. Ashford, *New Population Policies: Advancing Women's Health and Rights*, POPULATION BULL., March 2001, at 3, 3; Gill Greer, *To Have or Not To Have: The Critical Importance of Reproductive Rights to the Paradox of Population Policies in the 21st Century*, 106 INT'L J. GYNECOLOGY & OBSTETRICS 148, 148 (2009). But see Sonia Corrêa & Richard Parker, *Sexuality, Human Rights, and Demographic Thinking: Connections and Disjunctions in a Changing World*, SEXUALITY RSCH. & SOC. POL'Y, Jan. 2004, at 15, 20 (noting that the ICPD not only “provide[s] clarity and inspiration with respect to gender, sexual and reproductive health, and rights” but that it also “include[s] the concept of ‘family’ in its various forms, which is extremely valuable for the further development of rights in relation to sexuality.”).

23. See, e.g., Patricia A. Cain, *Imagine There's No Marriage*, 16 QUINNIPIAC L. REV. 27 (1996); Martha Albertson Fineman, *Why Marriage*, 9 VA. J. SOC. POL'Y & L. 239 (2001); Elizabeth S. Scott, *A World Without Marriage*, 41 FAM. L.Q. 537 (2007); TAMARA METZ, UNTYING THE KNOT: MARRIAGE, THE STATE, AND THE CASE FOR THEIR DIVORCE (2010); Alice Ristroph & Melissa Murray, *Disestablishing the Family*, 119 YALE L.J. 1236 (2010); Jessica Knouse, *Civil Marriage: Threat to Democracy*, 18 MICH. J. GENDER & L. 361 (2012); Aníbal Rosario-Lebrón, *For Better and For Better: The Case for Abolishing Civil Marriage*, 5 WASH. U. JURIS. REV. 189 (2013); Gregg P. Strauss, *Why the State Cannot “Abolish Marriage”: A Partial Defense of Legal Marriage*, 90 IND. L.J. 1261 (2015).

24. See, e.g., Macarena Saez, *In the Right Direction: Family Diversity in the Inter-American System of Human Rights*, 44 N.C. J. INT'L L. 317 (2019); Francesca Miccoli, *Resisting Family Diversity? A Queer Perspective on the European Court of Human Rights Attitudes Towards Heteronormativity and Legal Pluralism in Family Regimes*, in RELATIONSHIP RIGHTS AND LEGAL PLURALISM: THE INADEQUACY OF MARRIAGE LAWS IN EUROPE 47 (Mateusz Stępień & Anna Juzaszek eds., 2025); Gender Identity, and Equality and Non-Discrimination of Same Sex Couples: State Obligations Concerning Change of Name, Gender Identity, and Rights Derived from a Relationship Between Same-Sex Couples (Interpretation and Scope of Articles 1(1), 3, 7, 11(2), 13, 17, 18 and 24, in Relation to Article 1, of the American Convention on Human Rights), Advisory Opinion OC-24/17, Inter-Am. Ct. H.R. (ser. A) No. 24 (Nov. 24, 2017) [hereinafter OC-24/17]; Atala Riffo and Daughters v. Chile, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 239 (Feb. 24, 2012); Hum. Rts. Comm., General Comment No. 28: Article 3 (Equality of Rights Between Men and Women), ¶ 27, U.N. Doc. CCPR/C/21/Rev.1/Add.10 (Mar. 29, 2000) [hereinafter Hum. Rts. Comm., General Comment No. 28]; Hum. Rts. Comm., General Comment No. 19: Article 23 (The Family), U.N. Doc. HRI/GEN/1/Rev.1 (1990) [hereinafter Hum. Rts. Comm., General Comment No. 19]; Hum. Rts. Comm., General Comment No. 16: Article 17 (Right to Privacy), U.N. Doc. HRI/GEN/1/Rev.9

conversations by being the first to elucidate the relevant standards for evaluating marriage-promotion measures under international law. It should be noted that the framework articulated in this article does not represent the author's normative views on what international law's approach to marriage ought to be; rather, it consists of a faithful distillation of human rights law as it exists at present.²⁵

I. DEFINING POPULATION POLICY

At its most basic, a population policy is “a system of measures (of a legislative, administrative, economic or social nature) intended to affect the growth, structure or distribution of [a] population.”²⁶ Even States that do not have a systematic population policy tend to employ measures that have these effects.²⁷ A systematic population policy, however, is unique in its deliberate attempt to manipulate demographic outcomes.²⁸ The population the policy attempts to manipulate might be local or global.²⁹ The word “attempt” is

(Vol. 1) (1988); Comm. on the Elimination of Discrimination Against Women, General Recommendation No. 21: Equality in Marriage and Family Relations, U.N. Doc. A/49/38 (Feb. 4, 1994); Inter-Am. Comm'n H.R., Towards the Effective Fulfillment of Children's Rights: National Protection Systems, ¶¶ 407–08, OEA/Ser.L/V/II/166, Doc. 206/17 (Nov. 30, 2017).

25. Although I am ideologically aligned with much of the human rights project, in my prior work I have argued that human rights law should be interpreted to be more inclusive of same-sex couples, more protective of unmarried couples and unmarried individuals, and more responsive to the needs and experiences of individuals in multiple-partner relationships. See Evan Wolfson et al., *The Freedom to Marry in Human Rights Law Worldwide: Ending the Exclusion of Same-Sex Couples from Marriage*, 32 IND. INT'L & COMPAR. L. REV. 1 (2022); Jessica Tueller, *Marital Status and Human Rights*, 100 TUL. L. REV. 1023 (2026). I at times use the footnotes to explain where my views diverge with the law's existing approach, but I do not bring my views to the fore because my goal in this article is to map the current state of the law.

26. Massimo Livi-Bacci, *Population Policies: A Comparative Perspective*, 66 INT'L SOC. SCI. J. 317, 317 (1994).

27. Massimo Livi-Bacci, *Population Policy in Western Europe*, 28 POPULATION STUD. 191, 192 (1974).

28. Diana D.M. Babor, *Population Growth and Reproductive Rights in International Human Rights Law*, 14 CONN. J. INT'L L. 83, 113 (1999) (citing RUTH DIXON-MUELLER, POPULATION POLICY & WOMEN'S RIGHTS: TRANSFORMING REPRODUCTIVE CHOICE 15–16 (1993)).

29. Andersson et al., *supra* note 22, at 640. For examples of local population policies, see United Nations Population Division, *World Population Policies*, <https://www.un.org/development/desa/pd/data/world-population-policies> [<https://perma.cc/DZ9E-5XYW>]. For an example of a global population policy, see Ruth Dixon-Mueller, *U.S. International Population Policy and “The Woman Question”*, 20 N.Y.U. J. INT'L L. & POL. 143 (1987); and Joan Fitzpatrick Hartman, *The Impact of the Reagan Administration's International Population Policy on Human Rights Relating to Health and the Family*, 20 N.Y.U. J. INT'L L. & POL. 169 (1987).

employed here because, historically, population policies have often been ineffective.³⁰

The outcome a State aims to achieve with a population policy might be to increase, decrease, or stabilize the growth of a population, or otherwise modify the population's composition.³¹ Usually, the demographic effect the population policy is intended to have is not (and, some would argue, ought not to be)³² the end goal of the State. Instead, the State is often pursuing a broader objective that it considers to be tied to the growth, structure, or composition of its population. The broader objectives that population policies serve are various and change over time. For much of the twentieth century, the broader objective motivating population policies was economic development.³³ In the twenty-first century, the broader objective increasingly is ensuring a sustainable environment,³⁴ an objective which (like economic development before it) has been a subject of critique and controversy.³⁵ As for marriage-promotion schemes, these often go hand in hand with

30. Judith Blake, *Demographic Science and the Redirection of Population Policy*, 18 J. CHRONIC DISEASES 1181, 1182 (1965).

31. Paula Abrams, *Population Politics: Reproductive Rights and U.S. Asylum Policy*, 14 GEO. IMMIGR. L.J. 881, 890 (2000); Babor, *supra* note 28, at 83. It is worth noting that a State's intent can be difficult to discern due to the multiplicity of actors involved in policymaking, who generally have competing interests and objectives. *See, e.g.*, SHAUN BRESLIN, CHINA RISEN? STUDYING CHINESE GLOBAL POWER 64 (2021) (observing that common assumptions that the Chinese government has a "unified and coherent national project" tend to "overlook . . . the different levels and layers of agents involved in the development and implementation of policy").

32. Wolfgang Lutz, *A Population Policy Rationale for the Twenty-First Century*, 40 POPULATION & DEV. REV. 527, 528 (2014).

33. Babor, *supra* note 28, at 88.

34. *Id.* at 83; *see also* Reed Boland, *The Environment, Population, and Women's Human Rights*, 27 ENV'T. L. 1137 (1997); Simon Caney, *Human Rights, Population, and Climate Change*, in HUMAN RIGHTS AND 21ST CENTURY CHALLENGES: POVERTY, CONFLICT, AND THE ENVIRONMENT 348 (Dapo Akande et al. eds., 2020); Matthew Hamity et al., *A Human Rights Approach to Planning Families*, 49 SOC. CHANGE 469 (2019). As acknowledged by the Intergovernmental Panel on Climate Change, the UN body on climate science, human population growth is one of two primary causes of climate change, the other being GDP per capita. Philip Cafaro, *Climate Ethics and Population Policy*, 3 WIREs CLIMATE CHANGE 45, 46 (2012); *see, e.g.*, Comm. Elimination of Discrimination Against Women, *supra* note 24, ¶ 23 ("voluntary regulation of population growth helps preserve the environment and achieve sustainable economic and social development").

35. *See* Bertil Egerö, *Population Policy: A Valid Answer to Climate Change? Old Arguments Aired Again Before COP15*, 12 ACME 88 (2013); Louise Carver, *Where Science Meets Politics – Controversy Surrounding the Relationship Between Population Growth and Climate Change*, 4 CONSILIENCE 103 (2010); Suzanne Petroni, *Policy Review: Thoughts on Addressing Population and Climate Change in a Just and Ethical Manner*, 30 POPULATION & ENV'T 275 (2009).

pronatalism³⁶—and, like pronatalism, may be more broadly motivated by eugenics.³⁷ That said, increasing the rate of childbearing is not the only possible reason a State might wish to see an increased rate of marriages. States may purport to increase the marriage rate because they consider marriage necessary for other purposes, such as the health, morality, or stability of individuals and society more broadly.³⁸

In pursuit of objectives such as the ones described, States adopt population policies that are geared toward modifying rates of mortality, morbidity, childbearing, migration, and marriage.³⁹ These policies often include measures meant to shape individual demographic behaviors, such as the choice of whether, when, and whom to marry.⁴⁰ The measures occupy a sliding scale from coercive (removing all possibility of choice) to non-coercive (having no effect on choice) to empowering (facilitating choice).⁴¹ The measures can also be direct (targeting the behavior) or indirect (otherwise influencing the behavior).⁴² Indirect regulations encompass a range of incentives and disincentives.⁴³ Both direct and indirect regulations

36. See, e.g., Ronald R. Rindfuss & Minja Kim Chloe, *Diversity Across Low-Fertility Countries: An Overview*, in LOW AND LOWER FERTILITY: VARIATIONS ACROSS DEVELOPED COUNTRIES 1, 6 (Ronald R. Rindfuss & Minja Kim Chloe eds., 2015).

37. See Newton E. Morton, *Genetic Aspects of Population Policy*, 56 CLINICAL GENETICS 105 (1999); LAURA L. LOVETT, CONCEIVING THE FUTURE: PRONATALISM, REPRODUCTION, AND THE FAMILY IN THE UNITED STATES, 1890–1938 (2007); Lina-Maria Murillo, *Fears of White Population Decline: The Politics of Race, Gender, Reproductive Justice, and White Supremacy in the US*, 34 J. GENDER STUD. 716 (2025); Paul A. Lombardo, *The American Breed: Nazi Eugenics and the Origins of the Pioneer Fund*, 65 ALB. L. REV. 743, 749, 767, 772 (2002); Bethany L. Letiecq, *Theorizing White Heteropatriarchal Supremacy, Marriage Fundamentalism, and the Mechanisms that Maintain Family Inequality*, 86 J. MARRIAGE & FAM. 1184 (2024); Matthew J. Lindsay, *Reproducing a Fit Citizenry: Dependency, Eugenics, and the Law of Marriage in the United States, 1860–1920*, 23 LAW & SOC. INQUIRY 541 (1998).

38. Linda C. McClain, *What Place for Marriage (E)quality in Marriage Promotion?*, in MARRIAGE PROPOSALS: QUESTIONING A LEGAL STATUS 106, 108 (Anita Bernstein ed., 2006); Celello & Kholoussy, *supra* note 12, at 1–2.

39. Livi-Bacci, *supra* note 27, at 192; Babor, *supra* note 28, at 113 n.133; see also NANCY F. COTT, PUBLIC VOWS: A HISTORY OF MARRIAGE AND THE NATION 5 (2002) (“No modern nation-state can ignore marriage forms, because of their direct impact on reproducing and composing the population. The laws of marriage must play a large part in forming ‘the people.’ They sculpt the body politic.”).

40. Babor, *supra* note 28, at 113; Livi-Bacci, *supra* note 27, at 192.

41. Abrams, *supra* note 31, at 892–93; Andersson et al., *supra* note 22, at 640; Babor, *supra* note 28, at 118–19; Mulela Margaret Munalula, *Essential Motherhood: Implications for Law and Population Policy*, in BODY POLITICS AND WOMEN CITIZENS—AFRICAN EXPERIENCES 70, 81 (Ann Schlyter ed., 2009).

42. Abrams, *supra* note 31, at 890; Andersson et al., *supra* note 22, at 640.

43. Abrams, *supra* note 31, at 891.

potentially involve some degree of coercion.⁴⁴ These measures might also target specific social groups and historically have placed some of the heaviest burdens and restrictions on women, especially women who are marginalized due to poverty, race, and/or nationality.⁴⁵ As such, States' pursuit of population policies, although presumably for the common good, exists in tension with the rights of individuals.⁴⁶

II. INTERNATIONAL LAW'S APPROACH TO POPULATION POLICY

Since its founding in 1945, the United Nations (UN) has played a crucial role in the development of local and global population policies.⁴⁷ It has provided fora for international cooperation, including a number of intergovernmental conferences.⁴⁸ The United Nations also has centralized research on demography and related policy, and has financed States' activities in this area.⁴⁹ UN efforts to facilitate cooperation and build consensus, which exert broad normative pressure on States, have in some contexts been supplemented by targeted economic pressure on States exerted by the World Bank, a group partially composed of specialized UN agencies.⁵⁰

44. *Id.* at 891, 893.

45. *Id.* at 894; Andersson et al., *supra* note 22, at 640, 648–49; CTR. FOR REPROD. RTS., RETHINKING POPULATION POLICIES: A REPRODUCTIVE RIGHTS FRAMEWORK 1, 3–4 (2003); M. Bahati Kuumba, *A Cross-Cultural Race/Class/Gender Critique of Contemporary Population Policy: The Impact of Globalization*, 14 SOCIO. F. 447, 448 (1999); Stephen L. Isaacs, *Incentives, Population Policy, and Reproductive Rights: Ethical Issues*, 26 STUD. FAM. PLAN. 363, 364 (1995); Elizabeth Wirtz, *Population Control and Population Policy*, in THE WILEY BLACKWELL ENCYCLOPEDIA OF GENDER AND SEXUALITY STUDIES 1, 4 (Nancy A. Naples ed., 2016).

46. *See* Isaacs, *supra* note 45, at 363.

47. Barry Mirkin, *The Evolution of National Population Policies Since the United Nations 1954 World Population Conference*, 61 GENUS 297, 324 (2005).

48. *Id.*; Tobias Böger et al., *Pathways to Family Policy in Half a Century of Population Control: International Paradigms and National Programmes*, in INTERNATIONAL IMPACTS ON SOCIAL POLICY: SHORT HISTORIES IN GLOBAL PERSPECTIVE 261, 263–64 (Frank Nullmeier et al. eds., 2022). These conferences are no small matter. *See* Nafis Sadik, *Reflections on the International Conference on Population Development and the Efficacy of UN Conferences*, 6 COLO. J. INT'L ENV'T L. & POL'Y 249, 249 (1995) (explaining that the conferences “have a very important role to play in meeting today's demands for global action: they help to define issues and allocate responsibilities, and the preparatory activities for each conference serve to create the modicum of consensus necessary to (at the very least) prevent even more global instability and disarray than exists today”).

49. Mirkin, *supra* note 47, at 324; Böger et al., *supra* note 48, at 263–64.

50. Rachel Sullivan Robinson, *Population Policy in Sub-Saharan Africa: A Case of Both Normative and Coercive Ties to World Polity*, 34 POPULATION RSCH. & POL'Y REV. 201, 201 (2015); Maurizio Ragazzi, *World Bank Group*, in MAX PLANCK ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW ¶ 7 (2017).

Early UN involvement in population policy was focused on economic development; notions of human rights, to the extent that these were at all reflected in population policies, served to justify an agenda of global fertility reduction for the sake of the economy.⁵¹ This was partly due to the fact that UN conferences primarily gathered technical experts on population, as opposed to political representatives or human rights advocates.⁵² This dynamic began to change in the 1970s, when representatives of developing countries (many of them recently decolonized) began to participate in the conferences and to denounce as inaccurate and, moreover, imperialist the dominant narrative of population growth as a cause, as opposed to a consequence, of underdevelopment.⁵³ Additionally, at the 1974 World Conference in Bucharest, developing countries asserted not only their right to sovereignty in the area of population policy but also the international rights of the individual, especially the human right to reproductive autonomy.⁵⁴ By the time of the 1994 International Conference on Population Development (ICPD), a paradigm shift had occurred, with the emphasis having moved from collective development to individual rights.⁵⁵ This shift can be attributed in part to the greater involvement not only of political representatives⁵⁶ but also increasingly of nongovernmental organizations (NGOs) in UN conferences

51. Roman Birke, “It Is Under the Banner of the Defence of Human Rights That We Shall Gather Our Crusade”: *Human Rights and the Population Control Movement from the 1940s to the 1970s*, 10 HUMANITY 157, 158 (2019); Luke T. Lee, *Human Rights and Population: A Strategy for Action*, 12 VA. J. INT’L L. 309, 309 (1972).

52. Stan Bernstein et al., *Population Institutions and International Population Conferences*, in INTERNATIONAL HANDBOOK OF POPULATION POLICIES 337, 339 (John F. May & Jack A. Goldstone eds., 2022).

53. Birke, *supra* note 51, at 171; Böger et al., *supra* note 48, at 264 (citing Jason L. Finkle & Barand B. Crane, *The Politics of Bucharest: Population, Development, and the New International Economic Order*, 1 POPULATION & DEV. REV. 87, 105 (1975)). For more on the contributions of decolonized countries to human rights, see ROLAND BURKE, *DECOLONIZATION AND THE EVOLUTION OF INTERNATIONAL HUMAN RIGHTS* (2010).

54. Böger et al., *supra* note 48, at 264; Birke, *supra* note 51, at 170; United Nations World Population Conference, *Report of the United Nations World Population Conference, 1974*, ¶¶ 14(d), (f), U.N. Doc. E/CONF.60/19 (Aug. 30, 1974) [hereinafter *Bucharest Plan of Action*].

55. Böger et al., *supra* note 48, at 265; Andersson et al., *supra* note 22, at 638–39; Reed Boland, *Population Policies, Human Rights, and Legal Change*, 44 AM. U. L. REV. 1257, 1257 (1995); McIntosh & Finkle, *supra* note 19, at 227; CAIRO PROGRAM OF ACTION, *supra* note 19, at 10–11. Although Cairo represented a paradigm shift, there is still much progress to be made toward the effective implementation of human rights approaches in the context of population policies. See Alicia Ely Yamin, *Promising but Elusive Engagements: Combining Human Rights and Public Health to Promote Women’s Well-Being*, 8 HEALTH & HUM. RTS. 62, 62 (2004).

56. The United States, for example, was at the time a supporter of reproductive rights and was actively involved in shaping the outcome of this conference. Bernstein et al., *supra* note 52, at 356.

in the 1990s, including the involvement of many feminist NGOs that drew attention to sexual and reproductive health, gender-based violence, and the principles of equality and non-discrimination.⁵⁷

Ultimately, the rights the 1994 ICPD most emphasized were those concerning reproductive autonomy. This emphasis likely came in response not only to the feminist NGOs but also to widespread negative publicity surrounding certain population control measures of the time, including China's one-child policy.⁵⁸ The Cairo Program of Action adopted at the conclusion of the ICPD repeatedly affirmed that every individual has the "right to decide freely and responsibly the number and spacing of their children."⁵⁹ It also explained that the exercise of this right must be facilitated by the State through information and education, and that reproductive healthcare services should be provided "without any form of coercion."⁶⁰ The Program of Action especially emphasized that the exercise of reproductive autonomy should be facilitated, not coerced, when discussing populations that have historically been disproportionately harmed by population policies, including adolescents, persons with disabilities, and indigenous peoples.⁶¹ The Cairo Program of Action also, in contrast with the 1974 Bucharest World Population Plan of Action,⁶² expressly disapproved of incentives and disincentives for childbearing, noting that these in the past had often been ineffective or even counterproductive as well as stating that governments should focus primarily on providing information and services that empower individuals to exercise their rights instead of on manipulating individuals' behavior.⁶³

57. Jason L. Finkle & C. Alison McIntosh, *United Nations Population Conferences: Shaping the Policy Agenda for the Twenty-First Century*, 33 *STUD. FAM. PLAN.* 11, 12–15, 17–18 (2002).

58. Victoria Mikesell Mather, *Population Law and Policy: From Control and Contraception to Equity and Equality*, 50 *ST. MARY'S L.J.* 917, 925–26 (2019); *CAIRO PROGRAM OF ACTION*, *supra* note 19, at xi. From 1979 to 2015, China penalized couples who had more than one child; in 2016, China switched to a two-child policy. Yong Cai & Wang Feng, *The Social and Sociological Consequences of China's One-Child Policy*, 47 *ANN. REV. SOCIO.* 587, 589–91 (2021).

59. *CAIRO PROGRAM OF ACTION*, *supra* note 19, at 13, 60.

60. *Id.*

61. *Id.* at 48, 50, 55–57.

62. Bucharest Plan of Action, *supra* note 54, ¶ 34 ("Family size may also be affected by incentive and disincentive schemes. However, if such schemes are adopted or modified it is essential that they should not violate human rights.").

63. *CAIRO PROGRAM OF ACTION*, *supra* note 19, at 64, 68; *see also* McIntosh & Finkle, *supra* note 19, at 227. For an argument that women's empowerment is an effective means of controlling population growth that is more protective of human rights than other means, *see* Elizabeth Spahn, *Feeling Grounded: A Gendered View of Population Control*, 27 *ENV'T L.* 1295, 1295 (1997).

A less emphasized but no less important aspect of the Cairo Program of Action is its section on “Diversity of family structure and composition.”⁶⁴ This section acknowledged that demographic, social, and economic changes had created a disconnect between traditional familial forms and roles and the realities of how families look and operate.⁶⁵ The Program of Action’s stated objectives in this section were, among other things, “To develop policies and laws that better support the family, contribute to its stability and take into account its plurality of forms, particularly the growing number of single-parent households.”⁶⁶ The Program of Action additionally emphasized that, in the context of diverse family structure and composition, as in the context of reproductive autonomy, “Governments should take effective action to eliminate all forms of coercion and discrimination in policies and practices.”⁶⁷

Following the 1994 ICPD, there have been no other world population conferences.⁶⁸ That does not mean, however, that the UN population conferences have ceased to be relevant to today’s population challenges. On the contrary, the “ICPD remains the bedrock of international population policies and interventions.”⁶⁹ The United Nations has conducted periodic reviews to assess the implementation of the recommendations in the Cairo Program of Action that resulted from the 1994 ICPD.⁷⁰ During these review processes, the commitments in the Program of Action have been clarified and reaffirmed.⁷¹ The United Nations has also treated these reviews as opportunities to celebrate the progress of States toward meeting population goals, as well as to note limitations and setbacks.⁷² The latest of these reviews, the 2019 Nairobi Summit, resulted in a new framework for fully implementing the Cairo Program of Action by 2030.⁷³ Regional bodies, States, and NGOs have also undertaken their own activities to advance and to monitor the implementation of the Cairo Program of Action.⁷⁴

Although there is evidence that progress has been made toward the implementation of some of the recommendations in the Cairo Program of

64. CAIRO PROGRAM OF ACTION, *supra* note 19, at 39–41.

65. *Id.* at 39.

66. *Id.* at 40.

67. *Id.* at 41.

68. Bernstein et al., *supra* note 52, at 342.

69. *Id.* at 361.

70. *Id.* at 342.

71. *Id.* at 343.

72. See, e.g., G.A. Res. S-21/2, ¶¶ 9–10 (Nov. 8, 1999).

73. Bernstein et al., *supra* note 52, at 344–45.

74. *Id.* at 343–44.

Action, the vaguer aspects of the Program have been less likely to receive UN funding or to prompt State action.⁷⁵ The section on “Diversity of family structure and composition” from the 1994 ICPD is one such vague aspect of the Program, and it has not been adequately clarified in subsequent decades. The UN Secretary General did enter into greater detail than did the Cairo Program of Action about the relevant demographic trends in this area in his 2014 follow-up on the Program of Action, where he expressly reaffirmed the need for States to be aware and accepting of the “various forms” that the family can take and emphasized that this need is even greater now than it had been in 1994 given “the growing instability of marital unions in many societies” and “the growing heterogeneity of household structures and living arrangements, including the one-person, single-parent, child-headed and grandparent-headed households that characterize many families today.”⁷⁶ Nevertheless, the Secretary-General did not adequately clarify Cairo’s recommendations, only flagging that States ought to provide housing and communal social spaces to suit the needs of various family and household forms.⁷⁷ There is thus still more to do to ensure that States fully understand and can therefore comply with their obligations to eliminate coercion and discrimination in this context. Part III aims to fill in this gap.

III. A FRAMEWORK FOR EVALUATING MARRIAGE-PROMOTION MEASURES

This Part provides a framework for assessing the legality of marriage-promotion measures under international law. It does so by interpreting States’ universal human rights obligations, as affirmed in the Cairo Program of Action, to “eliminate all forms of coercion and discrimination in [their] policies and practices” concerning diverse family structure and composition.⁷⁸ The Part discusses separately the concepts of coercion (Section III.A) and discrimination (Section III.B), as each entails a distinct set of obligations.⁷⁹ Even a non-coercive measure may nevertheless be

75. *Id.* at 339.

76. U.N. Secretary-General, *Framework of Actions for the Follow-Up to the Programme of Action of the International Conference on Population and Development Beyond 2014*, ¶¶ 520–21, U.N. Doc. A/69/62 (Feb. 12, 2014).

77. *Id.* ¶ 542.

78. CAIRO PROGRAM OF ACTION, *supra* note 19, at 41.

79. In this respect, the article departs from the approach of scholars who have used the concept of discrimination as a means of determining whether a measure is coercive. *See, e.g.*, Isaacs, *supra* note 45, at 365; Abrams, *supra* note 31, at 894–97.

discriminatory,⁸⁰ and even a coercive measure may be justified if it is necessary to avoid discrimination.⁸¹ Although the Cairo Program of Action, which is soft law that sets out States' understandings of their international obligations and objectives, is helpful in prompting and guiding this article's focus on coercion and discrimination, the standards for coercion and discrimination discussed in this Part are drawn from binding law (i.e., treaties and customary international law) and the work of human rights mechanisms and scholars to interpret this binding law.⁸²

Before beginning to elaborate the framework, it is worth noting that this Part at times also argues by analogy to the law and the legal scholarship on population policies and reproductive autonomy. The analogy is apt as pronatalist measures and marriage-promotion measures have significant overlap: States often (though not always) adopt both types of measures at around the same time and for similar reasons, anticipating that the measures will work in concert.⁸³ It is also, as a practical matter, necessary to draw on legal approaches beyond the context of marriage promotion, given the dearth of attention to marriage and population from human rights mechanisms and human rights scholars as compared to the wealth of work these mechanisms and scholars have generated on the topic of reproduction and population.⁸⁴

A. Coercion

The consent of both parties to a marriage, as a substantive requirement for entry into marriage, is a norm of customary international law and therefore binding on all States.⁸⁵ The Cairo Program of Action reaffirms this norm when it asserts that States ought to take to "eliminate . . . coercion" in the context of family structure and composition.⁸⁶ At the same time, it emphasizes the broad reach of the norm by highlighting that "all forms of coercion" must be eliminated; this suggests that States' obligations are not limited to the most grave forms of coercion or coercion by certain actors.⁸⁷ The Program of Action additionally clarifies States' understanding of the content of this norm by specifying that coercion must be eliminated both "in

80. Andersson et al., *supra* note 22, at 647–48.

81. See the discussion of bans on child marriage in Section IV.A.1 *infra*.

82. See *supra* notes 18–19 and accompanying text.

83. See *supra* notes 33–35 and accompanying text.

84. See *supra* note 20 and accompanying text.

85. WILLIAM A. SCHABAS, *THE CUSTOMARY INTERNATIONAL LAW OF HUMAN RIGHTS* 240 (2021).

86. CAIRO PROGRAM OF ACTION, *supra* note 19, at 41.

87. See *id.*

policy and practice,” suggesting that one must consider not only whether the policy is on its face coercive but also whether it is coercive in its implementation.⁸⁸ That States have a broad human rights obligation to eliminate coercion in the context of marriage is therefore well established. The question then is how human rights law defines coercion.⁸⁹ Although there is no express definition of coercion in human rights law, the approach of human rights mechanisms and human rights scholars to coercion in the context of reproduction and population policies is instructive.

Human rights mechanisms have consistently found that compulsory reproductive health interventions (i.e., those that remove the possibility of choice) violate human rights. Forced abortion and forced sterilization, for example, are universally recognized as coercive measures that violate human rights, including not only the right to decide on the number and spacing of children but also the right of individuals to be free from torture and cruel, inhuman, or degrading treatment.⁹⁰ In the context of marriage promotion, then, it follows that a measure that removes the possibility of choice about whether, when, or whom to marry—all choices squarely protected by the right to marry codified in several human rights instruments⁹¹—falls within the meaning of coercion.

The complete removal of choice is, however, at the extreme end of a scale of coercion,⁹² and the Cairo Program of Action emphasizes that States have an obligation to “eliminate all forms of coercion,” including those that are less extreme.⁹³ When discussing reproductive autonomy, the Program of Action highlighted that even incentives and disincentives (which do not remove options completely but instead attempt to influence individuals’

88. *See id.*; Babor, *supra* note 28, at 120; Isaacs, *supra* note 45, at 365.

89. CAIRO PROGRAM OF ACTION, *supra* note 19, at 212.

90. Luke T. Lee, *Population: The Human Rights Approach*, 6 COLO. J. INT’L ENV’T L. & POL’Y 327, 336 (1995); World Health Organization [WHO], *Eliminating Forced, Coercive and Otherwise Involuntary Sterilization: An Interagency Statement*, at 14 (2014); Comm. Against Torture, Concluding Observations on the Fifth Periodic Rep. of China, ¶¶ 51–52, U.N. Doc. CAT/C/CHN/CO/5 (Feb. 3, 2016); *I.V. v. Bolivia*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 329 (Nov. 30, 2016).

91. G.A. Res. 217 (III) A, Universal Declaration of Human Rights (Dec. 10, 1948); International Covenant on Civil and Political Rights art. 23(2), Dec. 16, 1966, 999 U.N.T.S. 171; Convention on the Rights of Persons with Disabilities art. 23(1), Dec. 13, 2006, 2515 U.N.T.S. 3; Convention for the Protection of Human Rights and Fundamental Freedoms art. 12, Nov. 4, 1950, 213 U.N.T.S. 221; American Convention on Human Rights art. 17(2), Nov. 22, 1969, 1114 U.N.T.S. 123.

92. Lee, *supra* note 90, at 334.

93. CAIRO PROGRAM OF ACTION, *supra* note 19, at 41.

choices between or among options) can be considered coercive.⁹⁴ In line with the approach of the 1994 ICPD, UN agencies have expressly disapproved of “a range of incentives or coercive pressures” that have been used to further population goals, such as “offers of food, money, land and housing, or threats, fines or punishments, together with misleading information.”⁹⁵ UN agencies have also considered that a State that makes benefits (including “recognition of identity, medical insurance, social assistance, employment or release from an institution”) and/or health care dependent on an individual’s reproductive choices is using an “inappropriate” type of incentive or pressure.⁹⁶ In the context of marriage promotion, then, one can assume that a similarly wide variety of possible incentives and disincentives might run contrary to the obligation to eliminate “coercion” as expressed in the Program of Action.

Supposing that an incentive or disincentive is coercive, the objective the State is pursuing would then be relevant to determining whether that measure is unduly coercive.⁹⁷ According to the Universal Declaration on Human Rights, which is often described as forming part of customary international law,⁹⁸ a limitation on someone’s human rights can only be justified if the purpose is to “secur[e] due recognition and respect for the rights and freedoms of others and [to] meet[] the just requirements of morality, public order and the general welfare in a democratic society.”⁹⁹ In the context of population policies, scholars have similarly argued that to justify a restriction on individual autonomy the State must be responding to a violation or a threat to violate someone else’s rights, or to an extremely grave harm, such as “war, famine, disease, poverty, pollution, or overcrowding.”¹⁰⁰ In the context of reproductive autonomy, scholars have argued that, for a measure restricting individual decision-making to be justified, the government must have an extremely significant objective it is attempting to further, such as responding to threats to “the survival of society” or dangers of “irreparable harm to present or future generations.”¹⁰¹ Thus, when evaluating whether incentives and disincentives that promote marriage are not merely coercive but are, more

94. *See id.* at 68; *see also* Andersson et al., *supra* note 22, at 647 (discussing RICHARD H. THALER & CASS R. SUNSTEIN, *NUDGE: IMPROVING DECISIONS ABOUT HEALTH, WEALTH, AND HAPPINESS* (2009)).

95. World Health Organization [WHO], *supra* note 90, at 2.

96. *Id.* at 14.

97. Andersson et al., *supra* note 22, at 640.

98. Hilary Charlesworth, *Universal Declaration of Human Rights (1948)*, in MAX PLANCK ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW, ¶ 15 (2008).

99. G.A. Res. 217 (III) A, *supra* note 91, at art. 29, ¶ 2.

100. Andersson et al., *supra* note 22, at 647.

101. Isaacs, *supra* note 45, at 365.

specifically, unduly coercive, one should take into account not only the degree of restriction on individual choice but also the type of objective being pursued and the importance of that objective.

Additionally, when assessing whether a measure is unduly coercive, it is relevant to consider the fit of the incentive or disincentive to the objective pursued. The measure should not place a disproportionate amount of pressure on an individual to comply.¹⁰² One scholar describes disproportionate incentives with regard to reproductive behavior as “inherently coercive,”¹⁰³ arguing that, “while government regulation by incentives and disincentives does not present the same type of direct government interference exemplified in conduct involving physical force or direct barriers, it nonetheless should be considered coercive where there is substantial punitive impact or where individual choice is illusory.”¹⁰⁴ In the context of marriage promotion, then, a disincentive that delivers a punishment, or an incentive that delivers a reward, disproportionate to the pursued objective could be considered unduly coercive under human rights law.

It is also relevant to consider the effectiveness of the incentive or disincentive. As one scholar has explained, an incentive or disincentive should not “overshoot its mark” but it also should not lack any “real chance of success.”¹⁰⁵ The Cairo Program of Action notes, in the context of reproductive autonomy, that incentive and disincentive schemes have often had an insignificant impact or been counterproductive.¹⁰⁶ Efforts to raise marriage rates likewise tend to be ineffective.¹⁰⁷ In the context of marriage promotion, then, measures that do not in fact result in increased marriages might be considered unduly coercive.

Last but not least, it is relevant to consider whether any alternate means, other than a given incentive or disincentive, could achieve the same ultimate objective.¹⁰⁸ In the context of reproductive autonomy, the Cairo Program of Action encouraged States “to focus most of their efforts toward meeting their

102. Boland, *supra* note 34, at 1160.

103. Abrams, *supra* note 31, at 895.

104. *Id.*

105. Simone Veil, *Human Rights, Ideologies, and Population Policies*, 4 POPULATION & DEV. REV. 313, 320 (1978).

106. CAIRO PROGRAM OF ACTION, *supra* note 19, at 64.

107. See Ronald Freedman, *Operations and Other Types of Research in Taiwan's Family Planning History*, in FAMILY PLANNING OPERATIONS RESEARCH: A BOOK OF READINGS 35, 39, 44 (James R. Foreit & Tomas Frejka eds., 1998); Crystal Li Jiang & Wanqi Gong, *Understanding Single Womanhood in China: An Intersectional Perspective*, in THE PALGRAVE HANDBOOK OF INTERSECTIONALITY IN PUBLIC POLICY 287, 299–300 (Olena Hankivsky & Julia S. Jordan-Zachery eds., 2019).

108. Andersson et al., *supra* note 22, at 641.

population and development objectives through education and voluntary measures rather than schemes involving incentives and disincentives.”¹⁰⁹ Scholars likewise have argued that less restrictive means should be employed first, and that only if these are proved ineffective should more restrictive means be employed.¹¹⁰ In general, scholars also find that there tend to exist alternatives to coercive population policies.¹¹¹ In the context of marriage promotion, then, it follows that an incentive or disincentive is unduly coercive when there are available alternate, less restrictive means of advancing the objective.

It is worth noting that, under human rights law, the absence of coercion does not signify an absence of State action. On the contrary, States have positive obligations to facilitate individuals’ informed and free decision-making.¹¹² For example, States are required to protect individuals from private actors who attempt to restrict their choices,¹¹³ which often happens in the context of marriage.¹¹⁴ Additionally, States have a positive obligation to educate¹¹⁵ that the Cairo Program of Action evokes when it calls on States to educate children about marriage.¹¹⁶ In the context of reproductive autonomy, human rights mechanisms have required States to provide information and services that support the capacity of individuals to make choices.¹¹⁷ Even in this context, however, the Program of Action warns that there is a risk that the communication will be coercive.¹¹⁸ To avoid coercion, communication ought to be straightforward and objective, as opposed to propagandistic or moralistic.¹¹⁹ In the context of marriage promotion, then, it follows that States

109. CAIRO PROGRAM OF ACTION, *supra* note 19, at 68.

110. Isaacs, *supra* note 45, at 365.

111. Andersson et al., *supra* note 22, at 646.

112. Isaacs, *supra* note 45, at 364; World Health Organization [WHO], *supra* note 90, at 1.

113. Munalula, *supra* note 41, at 79.

114. *See* Boland, *supra* note 34, at 1160.

115. The State obligation to provide an education is found both in treaties and in customary international law. Douglas Hodgson, *Education, Right to, International Protection*, in 3 MAX PLANCK ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW 339, ¶¶ 6–16 (2006). Comprehensive sexuality education, which provides individuals with the information they need to make free and informed choices about their intimate lives, falls within the scope of the right to education in treaty law and, by some arguments, in customary international law. *See* Julia Gebhard & Diana Trimiño Mora, *Reproductive Rights, International Regulation*, in 8 MAX PLANCK ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW 930, ¶¶ 5–6 (2013); *see also infra* Section IV.C.2.

116. CAIRO PROGRAM OF ACTION, *supra* note 19, at 49 (“The social responsibilities that marriage entails should be reinforced in countries’ educational programmes.”).

117. Carmel Shalev, *China to CEDAW: An Update on Population Policy*, 23 HUM. RTS. Q. 119, 145–46 (2001); Gila Stopler, *A Feminist Perspective on Natality Policies in Multicultural Societies*, 2 LAW & ETHICS HUM. RTS. 1, 3–4 (2008).

118. CAIRO PROGRAM OF ACTION, *supra* note 19, at 127.

119. Veil, *supra* note 105, at 316; Munalula, *supra* note 41, at 73.

are required to protect individuals from pressure from third parties as well as to facilitate individuals' choices by providing clear and accurate information, education, and services.¹²⁰

B. Discrimination

Under customary international law, individuals have the right to equality and non-discrimination while States have an obligation not to discriminate against individuals as well as an obligation to protect individuals from discrimination by third parties.¹²¹ That States have broad obligations to eliminate discrimination is reaffirmed in the Cairo Program of Action in the specific context of family structure and composition.¹²² Additional clarification from the Cairo Program of Action is not necessary, however, because human rights mechanisms have defined "discrimination" clearly and consistently. The UN Human Rights Committee, which interprets and applies the International Covenant on Civil and Political Rights (ICCPR), provides a representative definition of discrimination as:

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.¹²³

The list of grounds given by the Human Rights Committee is not exhaustive, as indicated by the word "such as" as well as by the phrase "other status."¹²⁴ Over time, the Human Rights Committee and other human rights mechanisms have identified other prohibited grounds of discrimination, including sexual

120. See World Health Organization [WHO], *supra* note 90, at 10.

121. SCHABAS, *supra* note 85, at 169, 178.

122. CAIRO PROGRAM OF ACTION, *supra* note 19, at 60.

123. Hum. Rts. Comm., CCPR General Comment No. 18: Non-Discrimination, ¶ 7, U.N. Doc. HRI/GEN/1/Rev.1 (Nov. 10, 1989). The approach of international law to equality rights is distinct from the U.S. approach. Louis Henkin, *Rights: American and Human*, 79 COLUM. L. REV. 405, 417–18 (1979).

124. Hum. Rts. Comm., *supra* note 123, ¶ 7. The same phrasing can be found in the ICCPR itself. International Covenant on Civil and Political Rights, *supra* note 91, arts. 2, 26.

orientation,¹²⁵ gender identity,¹²⁶ marital status,¹²⁷ ability¹²⁸ (which includes fertility),¹²⁹ and socioeconomic status.¹³⁰ UN agencies have expressed concern about discrimination when programs restricting reproductive autonomy target groups along such lines, including, for example, the forced sterilization of women, persons with disabilities, individuals with HIV, people living in poverty, indigenous peoples, ethnic minorities, and trans and intersex persons.¹³¹ If a marriage-promotion measure similarly involves targeting along these lines, it may be discriminatory.

This is true whether targeting a group on the basis of a protected status is the intent of the policy or merely an effect of it. Human rights law not only prohibits direct discrimination (i.e., unequal treatment), but also indirect discrimination (i.e., unequal opportunities and outcomes) and structural discrimination (i.e., systems and stereotypes that are the root causes of unequal treatment, opportunities, and outcomes).¹³² In the context of reproductive autonomy, scholars have argued that financial incentives, even if not intended to target a specific population, can effectively eliminate choice for poor women, a form of indirect discrimination on the basis of sex and

125. Hum. Rts. Comm., *Toonen v. Australia*, ¶ 8.7, U.N. Doc. CCPR/C/50/D/488/1992 (Mar. 31, 1994).

126. Hum. Rts. Comm., *G. v. Australia*, ¶ 7.12, U.N. Doc. CCPR/C/119/D/2172/2012 (Mar. 17, 2017).

127. *Id.*

128. Convention on the Rights of Persons with Disabilities, *supra* note 91, at art. 4.

129. *Artavia Murillo et al. ("In Vitro Fertilization") v. Costa Rica*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 257 (Nov. 28, 2012).

130. Comm. on Econ. Soc. & Cultural Rts., General Comment No. 20: Non-Discrimination in Economic, Social and Cultural Rights (Art. 2, Para. 2, of the International Covenant on Economic, Social and Cultural Rights), ¶¶ 27, 35, U.N. Doc. E/C.12/GC/20 (July 2, 2009); Hum. Rts. Comm., *Whelan v. Ireland*, ¶ 7.12, U.N. Doc. CCPR/C/119/D/2425/2014 (July 11, 2017); Comm. on the Rts. of Persons with Disabilities, General Comment No. 6 (2018) on Equality and Non-Discrimination, ¶ 21, U.N. Doc. CRPD/C/GC/6 (Apr. 26, 2018).

131. World Health Organization [WHO], *supra* note 90, at 2–8; *see also* *Mestanza Chávez v. Peru*, Case 12.191, Inter-Am. Comm'n H.R., Report No. 71/03, OEA/Ser.L/V/II.118, doc. 70 (2003) (friendly settlement) (approving the settlement of a case where an indigenous woman died as a result of forced sterilization); Comm. on the Elimination of Discrimination Against Women, *Carbajal Cepeda v. Peru*, ¶ 8.8, U.N. Doc. CEDAW/C/89/D/170/2021 (Oct. 30, 2024) (finding a violation of the right to non-discrimination in the case of several indigenous women subjected to forced sterilization).

132. Hum. Rts. Comm., *supra* note 123, ¶ 7. The Human Rights Committee's interpretation of the rights to equality and non-discrimination as entailing both negative obligations (e.g., the State may not discriminate) and positive obligations (e.g., the State must take action to prevent and redress discrimination by third parties) is in keeping with human rights mechanisms' general approach to rights, requiring States not merely to respect rights but also to protect and fulfill them. *See* Rolf Künemann, *A Coherent Approach to Human Rights*, 17 HUM. RTS. Q. 323, 327–28 (1995).

socioeconomic status.¹³³ Additionally, the UN Committee on the Elimination of Discrimination Against Women, which interprets and applies the Convention on the Elimination of All Forms of Discrimination Against Women, has expressed concern about population policies that perpetuate and reinforce harmful gender stereotypes, a form of structural discrimination.¹³⁴ Human rights mechanisms' attention to direct, indirect, and structural discrimination also aligns with the need, highlighted in the Cairo Program of Action, to assess both the design and the implementation of a population policy as potentially discriminatory.¹³⁵ Thus, a marriage-promotion measure may be discriminatory if its intent is to target an individual or group on the basis of a protected status, if its effect is to target an individual or group on the basis of a protected status, or if it perpetuates and reinforces harmful stereotypes about an individual or group on the basis of a protected status.

The Human Rights Committee also has noted that differentiation, even on the basis of protected grounds, does not constitute discrimination "if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the Covenant."¹³⁶ Some of the analysis from Section III.A on coercion is thus applicable here: one must assess the purpose of the measure and the fit of the measure to its purpose to determine whether that measure is discriminatory.¹³⁷ There are, however, some added nuances when assessing discrimination.

First, there is the possibility that the purpose itself is discriminatory. For example, if a State were to identify increasing the marriage rate as the sole objective a measure was pursuing—treating marriage as an end in itself—this would likely not be a legitimate purpose under international law. International law's naming the family as a basic unit of society does not mean that either international law or domestic law can impose one "traditional" view of the family; instead, States must acknowledge and accommodate the diversity of families.¹³⁸ Valuing marriage over and at the expense of other possible structures and compositions of the family constitutes discrimination against nonmarital families and unmarried individuals on the basis of marital status.¹³⁹ If a marriage-promotion measure is going to be consistent with the

133. Babor, *supra* note 28, at 119.

134. Comm. on the Elimination of Discrimination Against Women, Concluding Observations on the Combined Eighth and Ninth Periodic Reports of Mongolia, ¶ 28(b), U.N. Doc. CEDAW/C/MNG/CO/8-9 (Mar. 10, 2016).

135. Andersson et al., *supra* note 22, at 638–39.

136. Hum. Rts. Comm., *supra* note 123, ¶ 13.

137. *See supra* Section III.A.

138. CAIRO PROGRAM OF ACTION, *supra* note 19, at 39; *see also infra* Section V.A.

139. *See* Tueller, *supra* note 25, at 1032; *see also infra* Section IV.B.2.

principles of equality and non-discrimination, increasing the marriage rate must at the very least be a means to an end, not an end in itself.

Second, there is the possibility that the measure is assumed to fit its purpose(s) only because of harmful stereotypes about a protected class, which reveal the measure to be discriminatory. For example, if one were to suppose that increasing the rate of childbearing were itself a legitimate purpose (or, as is more likely, a plausible step toward another, broader objective found to be legitimate), and then argue that increasing the marriage rate is a reasonable and objective means of increasing the birth rate, one might be relying on harmful stereotypes. Conflating the marriage rate and the birth rate perpetuates and reinforces the harmful marital status stereotype that marriage is the only or the ideal forum for sex and procreation.¹⁴⁰ In some societies with strict social and moral codes of sexual behavior, whether and when an individual marries could have an impact on the birth rate,¹⁴¹ but many societies do not fit this description. Nor should they; marriage will become an increasingly less accurate predictor of childbearing as restrictions on access to marriage based on sexual orientation, gender identity, and ability (including fertility) are increasingly lifted (in accordance with States' obligations under human rights law).¹⁴²

For another example of how an analysis concerning the fit of the measure to the purpose might proceed, consider stability. States might argue that increasing the marriage rate is a means of increasing the stability of families or even of society as a whole,¹⁴³ but the assumption that marriage is inherently more stable than other relationship structures is another harmful marital status stereotype.¹⁴⁴ The relative stability of marriage in the United States, for example, can largely be attributed not to the inherent nature of this bond but to the government's regulation of families, which historically has privileged marital relationships while ignoring, erasing, and criminalizing nonmarital relationships.¹⁴⁵ Assumptions about the inherent stability or instability of

140. Tueller, *supra* note 25, at 1057.

141. John Cleland, *The Contraceptive Revolution*, in INTERNATIONAL HANDBOOK OF POPULATION POLICIES 595, 598 (John F. May & Jack A. Goldstone eds., 2022).

142. Hum. Rts. Comm., *supra* note 126, ¶ 7.12; Convention on the Rights of Persons with Disabilities, *supra* note 91, at art. 23. For more on discrimination on the basis of sexual orientation and gender identity, see Wolfson et al., *supra* note 25. For more on discrimination on the basis of ability, see Carole J. Petersen, *Reproductive Justice, Public Policy, and Abortion on the Basis of Fetal Impairment: Lessons from International Human Rights Law and the Potential Impact of the Convention on the Rights of Persons with Disabilities*, 28 J.L. & HEALTH 121 (2015).

143. See *supra* note 38 and accompanying text.

144. Tueller, *supra* note 25, at 1055.

145. See SERENA MAYERI, MARITAL PRIVILEGE: MARRIAGE, INEQUALITY, AND THE TRANSFORMATION OF AMERICAN LAW 2–11 (2025).

types of familial arrangements cannot be the basis for differentiating between families moving forward. Under human rights law and as emphasized in the Cairo Program of Action, States ought to increase the stability of forms of relationships other than marriage, rather than to push individuals into marriage as though it is the only family structure capable of stability.¹⁴⁶

IV. APPLYING THE FRAMEWORK

This Part applies the international legal framework introduced, in the abstract, in Part III, to specific measures States have used to promote marriage. It draws on a range of domestic and comparative examples, as well as historic and contemporary examples. This Part sorts marriage-promotion measures into those that are generally permissible (Section IV.A), those that are generally impermissible (Section IV.B), and those that may be permissible or impermissible depending on the specific circumstances (Section IV.C). For the sake of space, this Part considers only those measures that increase, or are intended to increase, the likelihood that an unmarried individual will marry. Measures that increase, or are intended to increase, the likelihood that a married individual will remain married will be addressed in a future piece.

A. Permissible

1. Removing Status-Based Restrictions or Impediments

The removal of bans or other impediments that are based on statuses protected by international law is one way for States both to comply with their human rights obligations and to increase marriage rates. This marriage-promotion measure is required by the principles of equality and non-discrimination. It also, typically, does not coerce anyone to marry,¹⁴⁷ but merely makes the option of marriage available to more people. Such measures would allow individuals already in committed relationships who want to marry to marry, as well as allow individuals who refrained from engaging in such relationships because they thought marriage was not a possibility for them to seriously consider marrying.

This section discusses restrictions based on race, religion, ability, and sexual orientation and gender identity. The status-based restrictions on

146. CAIRO PROGRAM OF ACTION, *supra* note 19, at 40.

147. *But see infra* notes 153, 177, 305, and accompanying text.

marriage considered here are not meant to be a comprehensive list; there are other restrictions, such as those on intersex persons¹⁴⁸ and those on persons deprived of liberty,¹⁴⁹ whose removal would likely also be welcomed and possibly required by human rights mechanisms.

a. Race and Ethnicity

Over time, express prohibitions on interracial or inter-ethnic marriage have tended to give way to more subtle impediments to the formations of relationships across races. These impediments can be legal or social. One example of a legal impediment to interracial marriage in the United States is the requirement in some states that individuals list their race on their marriage license, an impediment which is a holdover from the days of Jim Crow.¹⁵⁰ Couples may avoid marrying to avoid having to list their race.¹⁵¹ Interracial and inter-ethnic couples may also face social obstacles, such as the disapproval of their families and communities arising out of entrenched stereotypes about their relationships.¹⁵² These impediments, if eliminated, could increase the marriage rate without coercing anyone into marriage. That said, the Committee on the Elimination of Discrimination Against Women has made clear that States cannot extend their efforts beyond removal of restrictions and impediments to marriage to begin forcing individuals into

148. Sarah Mazhar et al., *Combating Discrimination, Violence and Harmful Practices Against Intersex Persons*, 1 TILS L. REV. 76, 77 (2025).

149. *Hamer v. United Kingdom*, App. No. 7114/75, 10 Eur. Comm’n H.R. Dec. & Rep. 174 (1977).

150. Mikaela A. Phillips, Note, *Marriage Mandates: Compelled Disclosures of Race, Sex, and Gender Data in Marriage Licensing Schemes*, 27 WM. & MARY J. RACE, GENDER & SOC. JUST. 575, 577 (2021).

151. *Id.* at 591.

152. See Solangel Maldonado, *Romantic Discrimination and Children*, 92 CHI.-KENT L. REV. 105, 121 (2017); René D. Flores, “A Little More Ghetto, a Little Less Cultured”: *Are There Racial Stereotypes About Interracial Daters in the United States?*, 6 SOCIO. RACE & ETHNICITY 269, 269 (2020); Elizabeth M. Toledo, *When Loving Is Not Enough*, 104 CALIF. L. REV. 769, 784–86 (2016); Ginny E. Garcia et al., *Attitudes Regarding Laws Limiting Black-White Marriage: A Longitudinal Analysis of Perceptions and Related Behaviors*, 46 J. BLACK STUD. 199, 201–04 (2015); Allison L. Skinner & Caitlin M. Hudac, “Yuck, You Disgust Me!” *Affective Bias Against Interracial Couples*, 68 J. EXPERIMENTAL SOC. PSYCH. 68, 68 (2017); Erica Chito Childs, *Listening to the Interracial Canary: Contemporary Views on Interracial Relationships Among Blacks and Whites*, 76 FORDHAM L. REV. 2771, 2774–81 (2008); Angela Onwuachi-Willig & Jacob Willig-Onwuachi, *A House Divided: The Invisibility of the Multiracial Family*, 44 HARV. C.R.-C.L. L. REV. 231, 252 (2009); KUMIKO NEMOTO, *RACING ROMANCE: LOVE, POWER, AND DESIRE AMONG ASIAN AMERICAN/WHITE COUPLES* 20–21, 31 (2009); Guerdy Sauvignon-Markowski, *An Interpretive Phenomenological Analysis of Black Women and White Men Towards Interracial Marriage in America* 1–4 (Mar. 2021) (Ph.D. dissertation, Nova Southeastern University).

marriages across lines of race or ethnicity, or providing financial incentives for interracial or inter-ethnic marriage, as those measures would be coercive.¹⁵³

Eliminating impediments to interracial marriage is, moreover, required in the furtherance of equality and non-discrimination under international law. Article 16 of the Universal Declaration of Human Rights states that “Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family.”¹⁵⁴ Similarly, Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination obliges States to “undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law,” including with respect to “[t]he right to marriage and choice of spouse.”¹⁵⁵ The Committee on the Elimination of Racial Discrimination, which interprets and monitors compliance with the International Convention on the Elimination of All Forms of Racial Discrimination, has relied on Article 5 of the treaty when calling on India to punish acts of discrimination and violence against inter-caste couples.¹⁵⁶ Along these lines, the European Court of Human Rights has identified a need to protect from discrimination and violence not only individuals in protected groups, but also individuals who associate with individuals in protected groups, including those in interracial relationships.¹⁵⁷ The Inter-American Court of Human Rights has likewise commented approvingly on increased acceptance of interracial relationships as evidence of social progress in keeping with the principles of equality and non-discrimination.¹⁵⁸ Human rights mechanisms have also determined that the right to non-discrimination on the basis of race places on States an obligation to combat (e.g., through cultural and educational

153. See Comm. on the Elimination of Discrimination Against Women, Concluding Observations on the Ninth Periodic Report of China, ¶ 51(b), U.N. Doc. CEDAW/C/CHN/CO/9 (May 31, 2023).

154. G.A. Res. 217 (III) A, *supra* note 91, at art. 16.

155. International Convention on the Elimination of All Forms of Racial Discrimination art. 5, Dec. 21, 1965, 660 U.N.T.S. 195.

156. Comm. on the Elimination of Racial Discrimination, Concluding Observations of the Committee on the Elimination of Racial Discrimination: India, ¶ 18, U.N. Doc. CERD/C/IND/CO/19 (May 5, 2007).

157. See *Škorjanec v. Croatia*, App. No. 25536/14, ¶¶ 52–71 (Mar. 28, 2017), <https://hudoc.echr.coe.int/eng?i=001-172327> [<https://perma.cc/FAK8-A9HG>]; OSCE OFF. FOR DEMOCRATIC INSTS. & HUM. RTS., *HATE CRIME LAWS: A PRACTICAL GUIDE* 63–64 (2d ed. 2022).

158. *Atala Riffo v. Chile*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 239, ¶ 120 (Feb. 24, 2012).

measures) harmful racial stereotypes, including those that discourage interracial and inter-ethnic marriages.¹⁵⁹

b. Religion

The marriage laws of some States endorse religious requirements for entry into marriage, resulting, in countries such as Somalia and Bangladesh, in an absence of legal recognition for inter-faith marriages.¹⁶⁰ States such as Indonesia also impede the legal recognition of inter-faith marriages since inter-faith couples, although permitted to marry, face obstacles to marriage not faced by same-faith couples, including a more complicated bureaucratic process and forced temporary conversion.¹⁶¹ Meanwhile, in Israel, religious law governs all marriages, which presents barriers to marriage for individuals who have no religion or who do not want to marry in accordance with their faith's doctrines.¹⁶² Removing bans and other impediments to inter-faith marriages is a non-coercive measure that could increase the marriage rate by enabling inter-faith couples to marry.

This marriage-promotion measure is also required as a matter of equality. Human rights law prohibits discrimination on the basis of religion.¹⁶³ Additionally and as noted above, Article 16 of the Universal Declaration of Human Rights specifically states that "Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family."¹⁶⁴ The Human Rights Committee likewise has interpreted the International Covenant on Civil and Political Rights to require States to remove restrictions, in law or in practice, that prevent marriages between a

159. See Eva Brems & Alexandra Timmer, *Introduction*, in *STEREOTYPES AND HUMAN RIGHTS LAW* 1, 4 (Eva Brems & Alexandra Timmer eds., 2016).

160. See Nurul Adhha, *The Human Rights and Women in the Context of Interfaith Marriage and Inheritance: A Comparative Analysis of Family Law in Muslim Countries*, in *PROCEEDINGS OF THE 1ST INTERNATIONAL CONFERENCE ON RECENT INNOVATIONS* 964, 970 (2018) (discussing Somalia); Md. Kamruzzaman, *Interreligious Marriage in Bangladesh: From Human Rights Perspective*, 1 *INT'L J. EDUC. CULTURE & SOC'Y* 44, 44–45 (2016).

161. See Anthin Lathifah, *State Marriage and Civil Marriage: The Role of State Policy on Interreligious Marriage in Central Java*, 15 *AL-IHKAM* 1, 28 (2020).

162. See Yuval Merin, *The Right to Family Life and Civil Marriage Under International Law and Its Implementation in the State of Israel*, 28 *B.C. INT'L & COMPAR. L. REV.* 79, 80, 130 (2005).

163. See G.A. Res. 217 (III) A, *supra* note 91, at arts. 2, 18; International Covenant on Civil and Political Rights, *supra* note 91, at arts. 2(1), 18, 26; International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3; American Convention on Human Rights, *supra* note 91, at arts. 1(1), 12; Convention for the Protection of Human Rights and Fundamental Freedoms, *supra* note 91, at arts. 9, 14; Org. of Afr. Unity [OAU], African Charter on Human and Peoples' Rights arts. 2, 8, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (June 27, 1981).

164. G.A. Res. 217 (III) A, *supra* note 91, at art. 16.

member of one religion to a person who belongs to a different religion or no religion.¹⁶⁵ Similarly, the Committee on the Elimination of Discrimination Against Women has specifically expressed concern that Djibouti bars a Muslim woman from marrying a non-Muslim man.¹⁶⁶ The Committee on the Rights of the Child, which interprets and monitors compliance with the Convention on the Rights of the Child, has also expressed concern that the failure of a State to recognize inter-faith marriages may result in a failure to recognize and register the birth of children resulting from such marriages, leading it to recommend State recognition of inter-faith marriages.¹⁶⁷

c. Ability

Persons with disabilities have often been excluded from marriage.¹⁶⁸ A 2016 study found that 37% of countries expressly do not allow individuals with mental illness to marry.¹⁶⁹ India has legislated against the marriages of individuals with leprosy.¹⁷⁰ Guardianship practices have compromised

165. Hum. Rts. Comm., General Comment No. 28, *supra* note 24, ¶ 24.

166. *See* Comm. on the Elimination of Discrimination Against Women, Combined Initial, Second and Third Periodic Reports of States Parties: Djibouti, ¶ 154, U.N. Doc. CEDAW/C/DJI/1-3 (Apr. 16, 2010).

167. Comm. on the Rts. of the Child, Concluding Observations: Syrian Arab Republic, ¶¶ 43(a), 44, U.N. Doc. CRC/C/SYR/CO/3-4 (Feb. 9, 2012).

168. Comm. on the Rts. of Persons with Disabilities, *supra* note 130, ¶ 61; *see, e.g.*, Comm. on the Rts. of Persons with Disabilities, Concluding Observations on the Combined Second and Third Periodic Reports of El Salvador, ¶ 44(a), U.N. Doc. CRPD/C/SLV/CO/2-3 (Oct. 1, 2019); Comm. on the Rts. of Persons with Disabilities, Concluding Observations on the Initial Report of Tuvalu, ¶ 41, U.N. Doc. CRPD/C/TUV/CO/1 (Apr. 16, 2025).

169. *See* Dinesh Bhugra et al., *Legislative Provisions Related to Marriage and Divorce of Persons with Mental Health Problems: A Global Review*, 28 INT'L REV. PSYCHIATRY 386, 388 (2016); *see also* Natalie Drew et al., *Human Rights Violations of People with Mental and Psychosocial Disabilities: An Unresolved Global Crisis*, 378 LANCET 1664, 1667 (2011); Comm. on the Rts. of Persons with Disabilities, Concluding Observations on the Combined Second and Third Periodic Reports of Argentina, ¶ 43(a), U.N. Doc. CRPD/C/ARG/CO/2-3 (Dec. 7, 2023); Comm. on the Rts. of Persons with Disabilities, Concluding Observations on the Initial Report of Iraq, ¶ 41, U.N. Doc. CRPD/C/IRQ/CO/1 (Oct. 23, 2019) [hereinafter Comm. on the Rts. of Persons with Disabilities, Concluding Observations on the Initial Report of Iraq]; Comm. on the Rts. of Persons with Disabilities, Concluding Observations on the Combined Initial and Second Periodic Reports of Malawi, ¶ 47, U.N. Doc. CRPD/C/MWI/CO/1-2 (Oct. 5, 2023); Comm. on the Rts. of Persons with Disabilities, Concluding Observations on the Initial Report of the Kingdom of the Netherlands, ¶ 51(b), U.N. Doc. CRPD/C/NLD/CO/1 (Sept. 27, 2024); Comm. on the Rts. of Persons with Disabilities, Concluding Observations on the Initial Report of Turkey, ¶¶ 26(d), 46, U.N. Doc. CRPD/C/TUR/CO/1 (Oct. 1, 2019).

170. *See* Comm. on the Rts. of Persons with Disabilities, Concluding Observations on the Initial Report of India, ¶¶ 13(b), 48, U.N. Doc. CRPD/C/IND/CO/1 (Oct. 29, 2019).

individuals' ability to enter marriage by depriving them of legal capacity.¹⁷¹ Persons with disabilities may also be indirectly discouraged from marrying if marrying will prevent their receiving State benefits.¹⁷² Additionally, persons with disabilities, especially women with disabilities, have been stereotyped as unfit for marriage or incapable of consenting to marriage, resulting in their frequent exclusion from marriage both in law and in practice.¹⁷³

171. See, e.g., Comm. on the Rts. of Persons with Disabilities, Concluding Observations on the Combined Second and Third Periodic Reports of Azerbaijan, ¶ 51(a), U.N. Doc. CRPD/C/AZE/CO/2-3 (Apr. 22, 2024); Comm. on the Rts. of Persons with Disabilities, Concluding Observations on the Combined Second and Third Periodic Reports of China, ¶ 67, U.N. Doc. CRPD/C/CHN/CO/2-3 (Oct. 10, 2022); Comm. on the Rts. of Persons with Disabilities, Concluding Observations on the Combined Second and Third Periodic Reports of Germany, ¶ 51(a), U.N. Doc. CRPD/C/DEU/CO/2-3 (Oct. 3, 2023); Comm. on the Rts. of Persons with Disabilities, Concluding Observations on the Initial Report of Estonia, ¶ 44(a), U.N. Doc. CRPD/C/EST/CO/1 (May 5, 2021); Comm. on the Rts. of Persons with Disabilities, Concluding Observations on the Initial Report of France, ¶ 48(a), U.N. Doc. CRPD/C/FRA/CO/1 (Oct. 4, 2021) [hereinafter Comm. on the Rts. of Persons with Disabilities, Concluding Observations on the Initial Report of France]. This limitation was one of the principal complaints of Britney Spears about her years under guardianship. See Natalie M. Chin, *The Structural Desexualization of Disability*, 124 COLUM. L. REV. 1595, 1600 (2024); Marisa A. Leib-Neri, *Love, Marriage, & Neurodiversity: Using Neuroscience to Equalize Marriage Rights for People with Intellectual & Developmental Disabilities Under Guardianship Arrangements*, 108 IOWA L. REV. 1475, 1477 (2023).

172. Gabriella Garbero, *Rights Not Fundamental: Disability and the Right to Marry*, 14 ST. LOUIS U. J. HEALTH L. & POL'Y 587, 588–89 (2021).

173. See Hiam Al-Aoufi et al., *Islam and the Cultural Conceptualisation of Disability*, 17 INT'L J. ADOLESCENCE & YOUTH 205, 212 (2012); Renu Addlakha et al., *Disability and Sexuality: Claiming Sexual and Reproductive Rights*, 25 REPROD. HEALTH MATTERS 4, 4 (2017); Bhugra et al., *supra* note 169, at 387; Alexandra Gartrell et al., *"We Do Not Dare to Love": Women with Disabilities' Sexual and Reproductive Health and Rights in Rural Cambodia*, 25 REPROD. HEALTH MATTERS 31, 35–36 (2017); WAI WAI AUNG ET AL., *DISABILITY, SEXUALITY, AND GENDER IN ASIA: INTERSECTIONALITY, HUMAN RIGHTS, AND THE LAW*, at xvii (Wanhong Zhang et al. eds., 2024); Inst. for Stud. of Soc'y, Econ., & Env't (iSEE), *Stigma Faced by People with Disabilities in Vietnam*, in *DISABILITY, SEXUALITY, AND GENDER IN ASIA: INTERSECTIONALITY, HUMAN RIGHTS, AND THE LAW* 3, 22 (Wanhong Zhang et al. eds., 2024); Rama Dhakal, *The Situation in Sexual Reproductive Health Rights of Women with Disabilities in Nepal*, in *DISABILITY, SEXUALITY, AND GENDER IN ASIA: INTERSECTIONALITY, HUMAN RIGHTS, AND THE LAW* 160, 163 (Wanhong Zhang et al. eds., 2024); Sarah Lorr, *The Capacity to Marry*, 126 COLUM. L. REV. 485, 528–31 (2026); Inter-Am. Comm'n H.R., *Situación de los Derechos Humanos de las Personas con Discapacidad en las Américas*, ¶ 402, OEA/Ser.L/V/II, doc. 1/25 (Jan. 31, 2025); Comm. on the Rts. of Persons with Disabilities, General Comment No. 3 (2016) on Women and Girls with Disabilities, ¶ 25, U.N. Doc. CRPD/C/GC/3 (Nov. 25, 2016) [hereinafter Comm. on the Rts. of Persons with Disabilities, General Comment No. 3]; Comm. on the Rts. of Persons with Disabilities, General Comment No. 1 (2014): Article 12: Equal Recognition Before the Law, ¶ 8, U.N. Doc. CRPD/C/GC/1 (May 19, 2024) [hereinafter Comm. on the Rts. of Persons with Disabilities, General Comment No. 1]; Comm. on the Rts. of Persons with Disabilities, Concluding Observations on the Initial Report of Andorra, ¶ 47(a), U.N. Doc.

Removing bans and barriers and combating stereotypes that have prevented persons with disabilities from marrying represent an opportunity to increase the marriage rate in a way that is not coercive. This marriage-promotion measure is non-coercive because it frees persons with disabilities to choose whether, when, and whom to marry.¹⁷⁴ This measure is in keeping with States' obligation under Article 12 of the Convention on the Rights of Persons with Disabilities to "recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life," including marriage.¹⁷⁵ While States can support the decision-making of persons under the Convention on the Rights of Persons with Disabilities, they are not allowed to limit their fundamental rights, "especially," in the words of the Committee on the Rights of Persons with Disabilities (which interprets and monitors compliance with the treaty), "the right to marry."¹⁷⁶ The Committee on the Rights of Persons with Disabilities, however, has indicated that States may not go beyond this "to promote financial incentives for marriage with a woman with disabilities or to prompt marriage among persons with disabilities," which the Committee has identified as a harmful practice.¹⁷⁷

Removing impediments to marriage for persons with disabilities is also required by international law to further equality. In general, international law has identified persons with disabilities as a group that must be protected from

CRPD/C/AND/CO/1 (Oct. 9, 2023); Comm. on the Rts. of Persons with Disabilities, Concluding Observations on the Combined Second and Third Periodic Reports of Canada, ¶ 45(a), U.N. Doc. CRPD/C/CAN/CO/2-3 (Apr. 15, 2025); Comm. on the Rts. of Persons with Disabilities, Concluding Observations on the Initial Report of Ghana, ¶ 44(a), U.N. Doc. CRPD/C/GHA/CO/1 (Oct. 2, 2024) [hereinafter Comm. on the Rts. of Persons with Disabilities, Concluding Observations on the Initial Report of Ghana]; Comm. on the Rts. of Persons with Disabilities, Concluding Observations on the Initial Report of Kuwait, ¶ 12(b), U.N. Doc. CRPD/C/KWT/CO/1 (Oct. 18, 2019) [hereinafter Comm. on the Rts. of Persons with Disabilities, Concluding Observations on the Initial Report of Kuwait]; Comm. on the Rts. of Persons with Disabilities, Concluding Observations on the Initial Report of Togo, ¶ 45(a), U.N. Doc. CRPD/C/TGO/CO/1 (Apr. 11, 2023); Comm. on the Rts. of Persons with Disabilities, Concluding Observations on the Initial Report of Zambia, ¶ 45(a), U.N. Doc. CRPD/C/ZMB/CO/1 (Apr. 29, 2024).

174. See Comm. on the Rts. of Persons with Disabilities, Concluding Observations on the Initial Report of Ghana, *supra* note 173, ¶ 45(a); Comm. on the Rts. of Persons with Disabilities, Concluding Observations on the Initial Report of Mauritania, ¶ 23, U.N. Doc. CRPD/C/MRT/CO/1 (Oct. 4, 2023).

175. Convention on the Rights of Persons with Disabilities, *supra* note 91, art. 12; Comm. on the Rts. of Persons with Disabilities, General Comment No. 1, *supra* note 173, ¶¶ 8, 31.

176. Comm. on the Rts. of Persons with Disabilities, General Comment No. 1, *supra* note 173, ¶ 29(f).

177. Comm. on the Rts. of Persons with Disabilities, *supra* note 170, ¶ 36(b).

discrimination.¹⁷⁸ In particular, Article 23 of the Convention on the Rights of Persons with Disabilities obliges States to “take effective and appropriate measures to eliminate discrimination against persons with disabilities in all matters relating to marriage,” including measures that will ensure “[t]he right of all persons with disabilities . . . to marry.”¹⁷⁹ The Committee on the Rights of Persons with Disabilities has interpreted this obligation as requiring the State not merely to enact legislation permitting marriages of persons with disabilities but also to “adopt measures to prevent third-party opposition to marriages of persons with disabilities owing to stigma and stereotypes.”¹⁸⁰ These measures might include awareness-raising campaigns targeting “cultural and religious misconceptions [and] myths.”¹⁸¹

d. Sexual Orientation and Gender Identity

At the time of this writing, fewer than forty States have extended legal recognition of marriages to couples regardless of sexual orientation and gender identity.¹⁸² This means that many individuals in committed relationships, some of whom not only wish to marry but have been actively campaigning for the freedom to marry,¹⁸³ cannot. Removing barriers to these marriages is, as with race/ethnicity, religion, and ability, a non-coercive measure that would likely increase the marriage rate.¹⁸⁴ Although some opponents of marriage equality in the United States suggested, pre-*Obergefell*,¹⁸⁵ that expanding access to marriage would lead heterosexual couples not to marry, thereby decreasing the overall marriage rate, studies

178. See Convention on the Rights of Persons with Disabilities, *supra* note 91, at art. 25; *Ximenes-Lopes v. Brazil*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 149, ¶ 105 (July 4, 2006).

179. Convention on the Rights of Persons with Disabilities, *supra* note 91, at art. 23.

180. Comm. on the Rts. of Persons with Disabilities, Concluding Observations on the Initial Report of France, *supra* note 171, ¶ 49(a); see also Comm. on the Rts. of Persons with Disabilities, Concluding Observations on the Initial Report of Iraq, *supra* note 169, ¶ 42.

181. Comm. on the Rts. of Persons with Disabilities, Concluding Observations on the Initial Report of Ghana, *supra* note 173, ¶ 45(a).

182. See *Same-Sex Marriage Around the World*, PEW RSCH. CTR. (June 2, 2025), <https://www.pewresearch.org/religion/fact-sheet/same-sex-marriage-around-the-world> [<https://perma.cc/H8JB-WRX2>].

183. See FREEDOM TO MARRY GLOB., <https://www.freedomtomarryglobal.org> [<https://perma.cc/2YYY-7BLK>].

184. But see *infra* notes 296–97 and accompanying text.

185. *Obergefell v. Hodges*, 576 U.S. 644 (2015).

have shown that this did not occur; on the contrary, there was a slight increase in the country's overall marriage rate.¹⁸⁶

Thus far, the inter-American human rights system is alone in interpreting its principal treaty, the American Convention on Human Rights, to require that States extend recognition to couples' marriages without discrimination on the basis of sexual orientation or gender identity.¹⁸⁷ Nevertheless, the UN, European, and African systems tend to welcome States' voluntary efforts in this direction because recognizing same-sex marriage enables States more easily to comply with universally recognized obligations to ensure same-sex couples can enter into some form of legal partnership, can receive certain rights and benefits often associated with marriage, and can have their marriages recognized abroad.¹⁸⁸ The Committee on the Elimination of Discrimination Against Women, for example, has noted and welcomed the introduction of same-sex marriage in States such as Chile, Estonia, Luxembourg, and Slovenia¹⁸⁹ and has expressed concern when States have failed to extend legal recognition to same-sex marriages in accordance with their own domestic court orders or with private international law.¹⁹⁰

186. Melanie A. Zaber, *After 20 Years of Same-Sex Marriage, Research Finds No Harms to Different-Sex Couples; Growth for Overall Support of Marriage*, RAND (May 13, 2024), <https://www.rand.org/news/press/2024/05/13/index1.html> [<https://perma.cc/CJ4T-7KWJ>].

187. OC-24/17, *supra* note 24, ¶¶ 203–28; Inter-Am. Comm'n H.R., *Advances and Challenges Towards the Recognition of the Rights of LGBTI Persons in the Americas*, ¶¶ 223, 235, OEA/Ser.L/V/II.170, doc. 184 (Dec. 7, 2018).

188. See Kees Waaldijk, *Same-Sex Couples Under the International Right to Marry: Some Recognition of Their Right but More Recognition for Their Exclusion from It and for Their Existing Marriages*, in *THE OXFORD HANDBOOK OF LGBTI LAW* 657, 659–65, 675–78 (Andreas R. Ziegler et al. eds., 2025).

189. Comm. on the Elimination of Discrimination Against Women, Concluding Observations on the Eighth Periodic Report of Chile, ¶ 55, U.N. Doc. CEDAW/C/CHL/CO/8 (Oct. 31, 2024); Comm. on the Elimination of Discrimination Against Women, Concluding Observations on the Seventh Periodic Report of Estonia, ¶ 43, U.N. Doc. CEDAW/C/EST/CO/7 (June 6, 2024); Comm. on the Elimination of Discrimination Against Women, Concluding Observations on the Seventh Periodic Report of Slovenia, ¶ 51, U.N. Doc. CEDAW/C/SVN/CO/7 (Mar. 2, 2023); Comm. on the Elimination of Discrimination Against Women, Concluding Observations on the Combined Sixth and Seventh Periodic Reports of Luxembourg, ¶ 51, U.N. Doc. CEDAW/C/LUX/CO/6-7 (Mar. 14, 2018).

190. Comm. on the Elimination of Discrimination Against Women, Concluding Observations on the Seventh Periodic Report of Nepal, ¶¶ 52(e), 53(f), U.N. Doc. CEDAW/C/NPL/CO/7 (Feb. 28, 2025) [hereinafter Comm. on the Elimination of Discrimination Against Women, Concluding Observations on the Seventh Periodic Report of Nepal]; Comm. on the Elimination of Discrimination Against Women, Concluding Observations on the Combined Fifth to Ninth Periodic Reports of Belize, ¶¶ 41(d), 42(d), U.N. Doc. CEDAW/C/BLZ/CO/5-9 (Feb. 27, 2025); Comm. on the Elimination of Discrimination Against Women, Concluding Observations on the Ninth Periodic Report of Japan, ¶¶ 51(d), 52(d), U.N. Doc.

Additionally, human rights mechanisms such as the UN Human Rights Committee and the African Special Rapporteur on Human Rights Defenders have expressed concern when States expressly prohibit and/or criminalize same-sex marriage.¹⁹¹

Legal recognition of marriage without discrimination on the basis of sexual orientation or gender identity also may very well begin to be considered a State obligation by human rights mechanisms that had been reluctant to acknowledge this possibility in the past.¹⁹² The Human Rights Committee, although having declined to find within the International Covenant on Civil and Political Rights a right to marry without discrimination on the basis of sexual orientation in a 2002 decision,¹⁹³ has in more recent decisions found that Australia violated its obligations concerning equality and non-discrimination under the ICCPR when it prohibited a married transgender person from changing the sex marker on her birth certificate and when it prevented a same-sex married couple from divorcing.¹⁹⁴ The Human Rights Committee also recently decided that

CEDAW/C/JPN/CO/9 (Oct. 30, 2024) [hereinafter Comm. on the Elimination of Discrimination Against Women, Concluding Observations on the Ninth Periodic Report of Japan]; Comm. on the Elimination of Discrimination Against Women, Concluding Observations on the Fifth Periodic Report of Albania, ¶ 48(a), U.N. Doc. CEDAW/C/ALB/CO/5 (Nov. 14, 2023); Comm. on the Elimination of Discrimination Against Women, Concluding Observations on the Ninth Periodic Report of Honduras, ¶¶ 48(a), 49(a), U.N. Doc. CEDAW/C/HND/CO/9 (Nov. 1, 2022); Comm. on the Elimination of Discrimination Against Women, Concluding Observations on the Ninth Periodic Report of Colombia, ¶¶ 43, 44(b), U.N. Doc. CEDAW/C/COL/CO/9 (Mar. 14, 2019).

191. See Hum. Rts. Comm., Concluding Observations on Nigeria in Absence of Its Second Periodic Report, ¶ 19, U.N. Doc. CCPR/C/NGA/CO/2 (Aug. 29, 2019); Hum. Rts. Comm., Concluding Observations on the Initial Report of Liberia, ¶ 18, U.N. Doc. CCPR/C/LBR/CO/1 (Aug. 27, 2018); Hum. Rts. Comm., Concluding Observations on the Sixth Periodic Report of Australia, ¶ 29, U.N. Doc. CCPR/C/AUS/CO/6 (Dec. 1, 2017); *Press Release on the Implication of the Same Sex Marriage [Prohibition] Act 2013 on Human Rights Defenders in Nigeria*, AFR. COMM’N ON HUM. & PEOPLES’ RTS. (Feb. 6, 2014), <https://achpr.au.int/en/news/press-releases/2014-02-06/press-release-implication-same-sex-marriage-prohibition-act-2013> [https://perma.cc/YDG2-6F8K]; see also Leilani Farha (Special Rapporteur), *Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and on the Right to Non-Discrimination in this Context*, ¶¶ 62, 97, U.N. Doc. A/HRC/43/43/Add.1 (Jan. 3, 2020).

192. Wolfson et al., *supra* note 25, at 13–19.

193. Hum. Rts. Comm., *Joslin v. New Zealand*, ¶ 8.2, U.N. Doc. A/57/40 (July 17, 2002).

194. Hum. Rts. Comm., *G. v. Australia*, ¶ 7.12, U.N. Doc. CCPR/C/119/D/2172/2012 (Mar. 17, 2017); Hum. Rts. Comm., *C v. Australia*, U.N. Doc. CCPR/C/119/D/2216/2012 (Nov. 1, 2017). These decisions have prompted some scholars to suggest that if *Joslin v. New Zealand* were decided today, it would have resulted in a determination that the ICCPR requires States to extend legal recognition to same-sex marriages. See Oscar I. Roos & Anita Mackay, *A Shift in the*

France's requirement that a civil registrar solemnize same-sex marriages was in accordance with States' obligations to ensure the enjoyment of rights without discrimination on the basis of sexual orientation or gender under the ICCPR.¹⁹⁵ The Human Rights Committee even, in concluding observations, has welcomed steps various States have taken toward recognizing same-sex marriage and has specifically recommended that Japan extend recognition to same-sex marriages.¹⁹⁶ Additionally, the European Court of Human Rights, which has repeatedly refrained from finding violations of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) when States deny recognition to same-sex couples because the Court considers there to be a lack of consensus in the region,¹⁹⁷ may eventually respond to the trend in Europe toward increased recognition of same-sex marriage.¹⁹⁸

2. Eliminating Mandatory Premarital Testing for HIV

States would also be permitted under human rights law to attempt to increase marriage rates by removing HIV testing requirements for couples who wish to marry. In some States, governments and/or churches condition marriage on first having undergone mandatory premarital testing for HIV, which tends to prevent or at least to discourage individuals with HIV from marrying.¹⁹⁹ The Supreme Court of India has even interpreted laws

United Nations Human Rights Committee's Jurisprudence on Marriage Equality? An Analysis of Two Recent Communications from Australia, 42 U.N.S.W. L.J. 747, 781 (2019).

195. Hum. Rts. Comm., *Mariton v. France*, ¶¶ 9.3, 10, U.N. Doc. CCPR/C/133/D/3009/2017 (Apr. 20, 2023).

196. Hum. Rts. Comm., *Concluding Observations on the Seventh Periodic Report of Chile*, ¶ 17, U.N. Doc. CCPR/C/CHL/CO/7 (May 1, 2024); Hum. Rts. Comm., *Concluding Observations on the Third Periodic Report of Viet Nam*, ¶ 15, U.N. Doc. CCPR/C/VNM/CO/3 (Aug. 29, 2019); Hum. Rts. Comm., *Concluding Observations on the Seventh Periodic Report of Japan*, ¶ 11(b), U.N. Doc. CCPR/C/JPN/CO/7 (Nov. 30, 2022).

197. *Schalk v. Austria*, 2010-IV Eur. Ct. H.R. 409; *Oliari v. Italy*, App. Nos. 18766/11 & 36030/11, ¶¶ 189–94 (July 21, 2015), [https://hudoc.echr.coe.int/eng#%7B%22itemid%22:\[%22001-156265%22%7D](https://hudoc.echr.coe.int/eng#%7B%22itemid%22:[%22001-156265%22%7D)}. The Court's reliance on consensus in this context has been the subject of much critique. See, e.g., Helen Fenwick & Daniel Fenwick, *Relying on Human Rights Treaties to Establish Access to Same-Sex Registered Partnerships and Marriage—Confronting the Question of Cultural Sensitivities*, 10 ATHENS J.L. 443, 450 (2024); Masuma Shahid, *The Right to Same-Sex Marriage: Assessing the European Court of Human Rights' Consensus-Based Analysis in Recent Judgments Concerning Equal Marriage Rights*, 10 ERASMUS L. REV. 184, 184 (2017).

198. PEW RSCH. CTR., *supra* note 182.

199. See Fahad M. Alswaidi & Sarah J. O'Brien, *Premarital Screening Programmes for Haemoglobinopathies, HIV and Hepatitis Viruses: Review and Factors Affecting Their Success*,

criminalizing the knowing spread of infection as placing a duty not to marry on individuals who have tested positive for HIV.²⁰⁰

Mandatory premarital testing for HIV is considered coercive under international law. The World Health Organization and UN AIDS have issued a statement against mandatory HIV testing as a form of “coercion” that is almost never appropriate, except in the limited contexts of screening of “blood destined for transfusion or for the manufacture of blood products” or of donors before “procedures involving the transfer of bodily fluids or body parts.”²⁰¹ Marriage falls outside these narrow bounds.²⁰² Mandatory premarital screening has also been found to be relatively ineffective and inefficient as opposed to other measures for reducing the spread of HIV, and thus the coercion is not justified on public health grounds.²⁰³ Eliminating mandatory premarital HIV testing is thus a non-coercive way to remove a barrier to marriage.

Eliminating mandatory premarital testing for HIV would also further equality. Mandatory premarital HIV testing tends to increase stigma and

16 J. MED. SCREENING 22, 22–25 (2009); Mahmud Kayode Adebayo et al., *Determination of HIV Status as a Pre-Requisite for Contracting English/Transitional Marriages: The Emerging Matrimonial Issue in Nigeria and Zambia*, 2 GAM. L. REV. 60, 60 (2019); Al-Aoufi et al., *supra* note 173, at 210; Sylvia Ifemeje, *Mandatory Premarital HIV Testing Policy in Nigeria: A Gross Violation of the Rights of People Living with HIV/AIDS*, 16 INT’L J. HUM. RTS. 401, 401–02 (2011); Isaac N. Luginaah et al., *From Mandatory to Voluntary Testing: Balancing Human Rights, Religious and Cultural Values, and HIV/AIDS Prevention in Ghana*, 61 SOC. SCI. & MED. 1689 (2005); Sujith Kumar Manakandan & Rosnah Sutan, *Expanding the Role of Pre-Marital HIV Screening: Way Forward for Zero New Infection*, 7 OPEN J. OBSTETRICS & GYNECOLOGY 71, 71 (2017); Augustina Okwu Onyema & Ugo Samuel Bassey, *Mandatory Premarital HIV/AIDS Tests and Infringement on the Right of Choice Among Intending Marriage Couples in Some Selected Pentecostal Churches in Calabar, Cross River State, Nigeria*, 14 SAPIENTIA J. PHIL. 128, 128–29 (2021).

200. Jayanth K. Krishnan, *The Rights of the New Untouchables: A Constitutional Analysis of HIV Jurisprudence in India*, 25 HUM. RTS. Q. 791, 809 (2003).

201. WORLD HEALTH ORG. & JOINT UNITED NATIONS PROGRAM ON HIV/AIDS, WHO, UNAIDS STATEMENT ON HIV TESTING SERVICES: NEW OPPORTUNITIES AND ONGOING CHALLENGES 2 (2017), https://www.unaids.org/sites/default/files/media_asset/2017_WHO-UNAIDS_statement_HIV-testing-services_en.pdf [<https://perma.cc/8Q6B-YX5Z>].

202. Off. of the United Nations High Comm’r for Hum. Rts. & Joint United Nations Programme on HIV/AIDS, *International Guidelines on HIV/AIDS and Human Rights*, ¶ 118, U.N. Doc. HR/PUB/06/9 (2006).

203. Paul D. Cleary et al., *Compulsory Premarital Screening for the Human Immunodeficiency Virus: Technical and Public Health Considerations*, 258 JAMA 1757, 1757 (1987); Daniel R. Mekonnen, *Mandatory Premarital HIV Testing as a Challenge to Human Rights: A Case Study of Eritrea*, INTERDISC. J. HUM. RTS. L., 2010, at 1, 6.

discrimination against those with HIV,²⁰⁴ a category of person protected from discrimination under international law.²⁰⁵ Individuals with HIV are also protected from discrimination because international law has considered medical conditions such as HIV to fit within the definition of disability for the purpose of anti-discrimination measures.²⁰⁶

3. Eliminating Dowry and Bride Price

Another marriage-promotion measure States have at times adopted is the reform and even the elimination of dowry and bride price payments.²⁰⁷ Saudia Arabia responded to inflationary bride prices that were making it difficult for young men to marry by placing a ceiling on these payments and by making available loans and grants that would help cover the cost.²⁰⁸ India, responding to violence against women rather than directly attempting to increase the marriage rate,²⁰⁹ adopted and later amended the Dowry Prohibition Act 1961, which it has struggled to enforce.²¹⁰ These efforts have the potential to

204. Ebenezer Durojaye & Victoria Balogun, *Human Rights Implications of Mandatory Premarital HIV Testing in Nigeria*, 24 INT'L J.L. POL'Y & FAM. 245, 254 (2010); C. J. Uneke et al., *Mandatory Pre-Marital HIV Testing in Nigeria: The Public Health and Social Implications*, 19 AIDS CARE 116, 116 (2007).

205. Comm. on Econ. Soc. & Cultural Rts., *supra* note 130, ¶ 33.

206. Richard Elliott et al., *HIV, Disability and Discrimination: Making the Links in International and Domestic Human Rights Law*, J. INT'L AIDS SOC'Y, Nov. 2009, at 1, 7–8. For more on HIV and equality, see Miriam Maluwa et al., *HIV- and AIDS-Related Stigma, Discrimination, and Human Rights: A Critical Overview*, 6 HEALTH & HUM. RTS. 1 (2002).

207. There are many different versions of dowry and bride price systems, but the basic difference between the two is that a dowry is paid by a bride's family and bride price is paid by a groom's. See UNITED NATIONS POPULATION FUND, MY BODY IS MY OWN: CLAIMING THE RIGHT TO AUTONOMY AND SELF-DETERMINATION 36–37 (2021). These payments are sometimes made in cash but might also be made in goods or livestock. Comm. on the Elimination of Discrimination Against Women, General Recommendation on Article 16 of the Convention on the Elimination of All Forms of Discrimination Against Women (Economic Consequences of Marriage, Family Relations and Their Dissolution), ¶ 33, U.N. Doc. CEDAW/C/GC/29 (Oct. 30, 2013).

208. Valerie M. Hudson & Hilary Matfess, *In Plain Sight: The Neglected Linkage Between Brideprice and Violent Conflict*, 42 INT'L SEC. 7, 35–36 (2017). Unfortunately, the ceiling Saudi Arabia has imposed on bride price is significantly higher for a never-married woman than for a previously married woman, indicating that a never-married woman is more valuable. *Id.* at 35. This is an example of marital status discrimination.

209. Comm. on the Elimination of Discrimination Against Women, Concluding Observations on the Combined Fourth and Fifth Periodic Reports of India, ¶ 10, U.N. Doc. CEDAW/C/IND/CO/4-5 (July 24, 2014); G.A. Res. S-26/2, ¶ 58 (June 27, 2001).

210. Nidhi Gupta, *Women's Human Rights and the Practice of Dowry in India: Adapting A Global Discourse to Local Demands*, 48 J. LEGAL PLURALISM & UNOFFICIAL L. 85, 104 (2003); Namratha S. Ravikant, *Dowry Deaths: Proposing a Standard for Implementation of Domestic*

increase the marriage rate because there are those who wish to marry who are temporarily or permanently prevented from doing so because their families cannot afford the dowry or bride price.²¹¹

Eliminating dowry and bride price systems in States where these systems exist would not only potentially increase the marriage rate but would also comply with the recommendations of human rights mechanisms²¹² by facilitating choice in the context of marriage. Although eliminating dowry and bride price may be unpopular with those who see some advantages to those systems or who consider them necessary to validate a marriage in practice if not in law,²¹³ human rights mechanisms consider their prohibition to be justified as a means of protecting individuals from coercion and related

Legislation in Accordance with Human Rights Obligations, 6 MICH. J. GENDER & L. 449, 472–74 (2000).

211. Hudson & Matfess, *supra* note 208, at 14–18 (“The result of this persistent brideprice inflation is that marriage is either delayed or even put out of reach for many young men, particularly in situations of economic stagnation, rising inequality, or both.”).

212. *See* Comm. on the Elimination of Discrimination Against Women, Concluding Observations on the Combined Second and Third Periodic Reports of Oman, ¶ 54, U.N. Doc. CEDAW/C/OMN/CO/2-3 (Nov. 22, 2017); Comm. on the Elimination of Discrimination Against Women, Concluding Observations on the Combined Second and Third Periodic Reports of the United Arab Emirates, ¶ 46, U.N. Doc. CEDAW/C/ARE/CO/2-3 (Nov. 24, 2015); Comm. on the Elimination of Discrimination Against Women, Concluding Observations on the Initial Report of South Sudan, ¶ 51, U.N. Doc. CEDAW/C/SSD/CO/1 (Nov. 23, 2021) [hereinafter Comm. on the Elimination of Discrimination Against Women, Concluding Observations on the Initial Report of South Sudan]; Comm. on the Elimination of Discrimination Against Women, Concluding Observations on the Seventh Periodic Report of the Congo, ¶ 25, U.N. Doc. CEDAW/C/COG/CO/7 (Nov. 14, 2018); Comm. on the Elimination of Discrimination Against Women, Concluding Observations on the Combined Fourth and Fifth Periodic Reports of Vanuatu, ¶ 21, U.N. Doc. CEDAW/C/VUT/CO/4-5 (Mar. 9, 2016); Comm. on the Elimination of Discrimination Against Women, Concluding Observations on the Seventh Periodic Report of Nepal, *supra* note 190, ¶¶ 24–25, 52–53; Yakin Ertürk (Special Rapporteur on Violence Against Women, Its Causes and Consequences), *Mission to Ghana*, ¶ 93, U.N. Doc. A/HRC/7/6/Add.3 (Feb. 21, 2008).

213. *See* Eva Brandl & Heidi Collieran, *Does Bride Price Harm Women? Using Ethnography to Think About Causality*, EVOLUTIONARY HUM. SCIS., 2024, at 1, 7; Gill Hague et al., *Bride-Price and Its Links to Domestic Violence and Poverty in Uganda: A Participatory Action Research Study*, 34 WOMEN’S STUD. INT’L F. 550, 551, 556 (2011); Sara Lowes & Nathan Nunn, *Bride Price and the Well-Being of Women*, in TOWARDS GENDER EQUITY IN DEVELOPMENT 117, 119 (Siwan Anderson et al. eds., 2018); Comm. on the Elimination of Discrimination Against Women, Concluding Observations on the Combined Fourth and Fifth Periodic Reports of Djibouti, ¶ 45, U.N. Doc. CEDAW/C/DJI/CO/4-5 (Feb. 26, 2024); Comm. on the Elimination of Discrimination Against Women, Concluding Observations on the Eighth Periodic Report of the Democratic Republic of the Congo, ¶ 52, U.N. Doc. CEDAW/C/COD/CO/8 (July 30, 2019) [hereinafter Comm. on the Elimination of Discrimination Against Women, Concluding Observations on the Eighth Periodic Report of the Democratic Republic of the Congo].

harms.²¹⁴ Eliminating dowry and bride price protects individuals from coercion before the marriage takes place because these systems have been known to incentivize child, early, and forced marriage,²¹⁵ limiting the right to choose whether, when, and whom to marry.²¹⁶ It also protects individuals from harms that might take place after the marriage; a married individual whose family does not or cannot pay a promised dowry or bride price might be forced into debt in order to fulfill the obligation, or be subjected to imprisonment, violence, and/or death.²¹⁷

Even in cases where the reform of dowry and bride price systems have made them, arguably, non-coercive—for example, where marriage is conditioned on a dowry of a single, symbolic dinar,²¹⁸ or where the bride price

214. Comm. on the Elimination of Discrimination Against Women, Concluding Observations on the Eighth Periodic Report of the Democratic Republic of the Congo, *supra* note 213, ¶ 53; Comm. on the Elimination of Discrimination Against Women, Concluding Observations on the Seventh Periodic Report of Nepal, *supra* note 190, ¶¶ 24–25, 52–53.

215. Urmila Bhoola (Special Rapporteur on Contemporary Forms of Slavery, Including Its Causes and Consequences), *Visit to Togo*, ¶ 59, U.N. Doc. A/HRC/45/8/Add.1 (Aug. 6, 2020); Comm. on the Elimination of Racial Discrimination, Concluding Observations on the Combined Seventeenth to Nineteenth Periodic Reports of Zambia, ¶ 23, U.N. Doc. CERD/C/ZMB/CO/17-19 (June 3, 2019); Comm. on the Elimination of Discrimination Against Women, Concluding Observations on the Initial Report of South Sudan, *supra* note 212, ¶ 50; Comm. on the Rts. of the Child, Concluding Observations on the Combined Second and Third Periodic Report of Turkey, ¶ 56, U.N. Doc. CRC/C/TUR/CO/2-3 (July 20, 2012); Comm. on the Rts. of the Child, Concluding Observations on the Initial Report of Togo, ¶ 26, U.N. Doc. CRC/C/OPSC/TGO/CO/1 (Mar. 8, 2012).

216. Comm. on the Elimination of Discrimination Against Women, *supra* note 207, ¶ 33; Comm. on the Elimination of Discrimination Against Women, Concluding Observations on the Initial Report of the Sultanate of Oman, ¶¶ 44–45, U.N. Doc. CEDAW/C/OMN/CO/1 (Nov. 4, 2011). For more on coercion in the context of child, early, and forced marriage, see *infra* Section IV.B.

217. Comm. on the Elimination of Discrimination Against Women & Comm. on the Rts. of the Child, Joint General Recommendation No. 31 of the Committee on the Elimination of Discrimination Against Women/General Comment No. 18 of the Committee on the Rights of the Child on Harmful Practices, ¶ 24, U.N. Doc. CEDAW/C/GC/31-CRC/C/GC/18 (Nov. 14, 2014); Comm. on the Elimination of Discrimination Against Women, General Recommendation No. 19: Violence Against Women, ¶ 11, U.N. Doc. HRI/GEN/1/Rev.6 (May 12, 2003); Dubravka Šimonović (Special Rapporteur on Violence Against Women, Its Causes and Consequences), *Visit to Nepal*, ¶ 48, U.N. Doc. A/HRC/41/42/Add.2 (June 19, 2019); Hum. Rights Comm., Concluding Observations on the Fourth Periodic Report of the Islamic Republic of Iran, ¶ 31, U.N. Doc. CCPR/C/IRN/CO/4 (Nov. 23, 2023); Olivier De Schutter (Special Rapporteur on Extreme Poverty and Human Rights), *Visit to Nepal*, ¶ 29, U.N. Doc. A/HRC/50/38/Add.2 (May 13, 2022).

218. Comm. on the Elimination of Discrimination Against Women, Concluding Observations of Reports Submitted by States Parties Under Article 18 of the Convention: Tunisia, ¶ 60, U.N. Doc. CEDAW/C/TUN/CO/6 (Nov. 5, 2010).

is not compulsory but instead a voluntary “gift[]”²¹⁹—the Committee on the Elimination of Discrimination Against Women has still called for their elimination because it considers these systems to be harmful practices that discriminate on the basis of sex and gender.²²⁰ Other human rights mechanisms have adopted the same position, that dowry and bride price are inherently discriminatory because they perpetuate harmful gender stereotypes.²²¹ One such stereotype is that men own the women in their lives, which results in men being more likely to try to control women, including through violence.²²² Another relevant stereotype that dowry and bride price tend to perpetuate and reinforce is that women are a burden on their families.²²³ Thus, and although human rights mechanisms caution that the elimination of dowry and bride price may initially have some negative impacts for women and girls that will need to be addressed,²²⁴ they are overall in favor of this measure.²²⁵

219. Comm. on the Elimination of Discrimination Against Women, Concluding Observations of the Committee on the Elimination of Discrimination Against Women: Uganda, ¶ 47, U.N. Doc. CEDAW/C/UGA/CO/7 (Nov. 5, 2010).

220. Comm. on the Elimination of Discrimination Against Women & Comm. on the Rts. of the Child, *supra* note 217, ¶ 7; Comm. on the Elimination of Discrimination Against Women, Concluding Observations on the Initial Report of South Sudan, *supra* note 212, ¶ 24; Comm. on the Elimination of Discrimination Against Women, Concluding Observations of the Committee on the Elimination of Discrimination Against Women: Zimbabwe, ¶ 37, U.N. Doc. CEDAW/C/ZWE/CO/2-5 (Mar. 23, 2012).

221. *See, e.g.*, Hum. Rts. Comm., Concluding Observations on the Second Periodic Report of Angola, ¶ 19, U.N. Doc. CCPR/C/AGO/CO/2 (May 8, 2019); Comm. on the Rts. of the Child, Concluding Observations on the Combined Third to Fifth Periodic Reports of Nepal, ¶ 37, U.N. Doc. CRC/C/NPL/CO/3-5 (July 8, 2016); Comm. on Econ., Soc. & Cultural Rts., Concluding Observations on the Committee on Economic, Social, and Cultural Rights: India, ¶ 25, U.N. Doc. E/C.12/IND/CO/5 (Aug. 8, 2008); Comm. on the Rts. of Persons with Disabilities, General Comment No. 3, *supra* note 173, ¶ 37; *see also* Gupta, *supra* note 210, at 111 (emphasizing the need to understand and to eradicate the “assumptions concerning male supremacy or unequal relations between men and women” that “contribute to the dowry problem”).

222. *See* Carlson Anyangwe, *Vulnerability of Women in Africa to Extrajudicial Killings*, 1 AFR. HUM. RTS. Y.B. 1, 14–15 (2017); Bolanle Oluwakemi Eniola & Joseph I. Aremo, *Bride Price and Sexual and Reproductive Rights of Women: A Case Study of South Africa and Nigeria*, 96 J.L. POL’Y & GLOBALIZATION 26, 28 (2020); Hague et al., *supra* note 213, at 556–58.

223. Afroza Begum, *Dowry in Bangladesh: A Search from an International Perspective for an Effective Legal Approach to Mitigate Women’s Experiences*, 15 J. INT’L WOMEN’S STUD. 249, 251 (2014); Berfin Isik-Yilmaz & Yigit Iltas, *Bride Price and Bride Exchange in Turkey*, 37 WOMEN’S RTS. L. REP. 180, 184 (2016).

224. Comm. on the Elimination of Discrimination Against Women & Comm. on the Rts. of the Child, *supra* note 217, ¶ 53.

225. It is worth noting that a possible critique of human rights mechanisms’ consistent and forceful denunciation of dowry and bride price is that human rights mechanisms are exhibiting a Western bias, since these practices are currently most prevalent in parts of Africa and Asia. *See*

4. Addressing Socioeconomic Inequality

States may also be able to indirectly increase the rate of marriages by addressing socioeconomic inequality. It is not merely the expense of getting married that is prohibitive; it is the expense of living day-to-day life as a

Siwan Anderson, *The Economics of Dowry and Brideprice*, 21 J. ECON. PERSPS. 151, 153–54 (2007). The human rights project is not exclusively Western: scholars have complicated the narrative about the origins of human rights law and have pointed to the universality of human rights principles. See, e.g., KATHRYN SIKKINK, EVIDENCE FOR HOPE: MAKING HUMAN RIGHTS WORK IN THE 21ST CENTURY 56–58, 104–06 (2017) (describing the contributions of the Global South to the development of human rights law); Martha Nussbaum, *Capabilities and Human Rights*, 66 FORDHAM L. REV. 273, 285–88, 292–97 (1997) (identifying cross-cultural support for human rights norms). Nevertheless, the history of advocacy for human rights has, in practice, been significantly shaped by a racialized and gendered narrative that casts the West as the “savior” of nonwestern “victims” (presumed to be women) from the violence of nonwestern “savages” (presumed to be men). Makau Mutua, *Savages, Victims, and Saviors: The Metaphor of Human Rights*, 42 HARV. INT’L L.J. 201, 202, 205, 207–08 (2001). This narrative has made it easier for human rights mechanisms to label nonwestern cultural practices, like dowry and bride price, harmful to women, while neglecting to address the harms of Western cultural practices. See Lisa Fishbayn Joffe, *Finding a Seat on the Bus: Is the Practice of Sex Segregation Among Ultra Orthodox Groups in Israel a Harmful Traditional Practice Under CEDAW?*, in INTERROGATING HARMFUL CULTURAL PRACTICES: GENDER, CULTURE AND COERCION 81, 81 (Chia Longman & Tamsin Bradley eds., 2015).

A departure from this narrative does not require an elevation of local culture over international law but instead an international law that contains “a basic assumption about the moral equivalency of all cultures.” Mutua, *supra*, at 207. Instead of exoticizing and vilifying nonwestern cultures, human rights mechanisms must ensure that they are relying on evidence and acknowledging nuances when analyzing cultural practices and must make recommendations that are both strategic and sensitive. *Id.* at 245. Returning to the subject of dowry and bride price specifically, human rights mechanisms have been rightly faulted for tending to make assumptions about the origins and effects of these practices rather than investigating the “material, social, and institutional explanations” that would give rise to more effective strategies for combating the relevant harms. Ratna Kapur, *The Tragedy of Victimization Rhetoric: Resurrecting the “Native” Subject in International/Post-Colonial Feminist Legal Politics*, 15 HARV. HUM. RTS. J. 1, 13–17 (2002).

At the same time, human rights mechanisms must be willing to turn a critical lens on Western cultural practices. Mutua, *supra* note 225, at 245. In this specific context, human rights mechanisms ought to expand the scope of their work to be critical of Western cultural practices relating to marriage that perpetuate gender stereotypes, which are sometimes the same stereotypes perpetuated by the practices of dowry and bride price. Human rights mechanisms might, for example, turn a critical eye on the Western cultural practice of the father giving away the bride at a wedding, which perpetuates the stereotype that men own and control women, and recommend educational and cultural measures that could lead to a modification in the marriage ritual. See Vernon R. Wiehe, *“Who Gives This Woman to Be Married to This Man?” Implications of a Question*, 2 J. RELIGION & ABUSE 81, 82, 87–88 (2001). Educational and cultural measures would be useful here because there are already couples who, when planning their weddings, want to make choices that go against stereotypes but have trouble doing so due to the pressure to comply with social norms and the dearth of alternative examples. See Rosa Terlazzo, *Weddings and Counter-Stereotypic Couples*, 47 SOC. THEORY & PRAC. 789, 790 (2021).

married couple that leads some individuals to postpone marriage temporarily or indefinitely. In their study of changing family norms in the United States, June Carbone and Naomi Cahn observed that individuals in the middle and upper classes are more likely than lower-class individuals to get married.²²⁶ This aligns with other studies which have determined that many individuals who value marriage do not marry, because they feel that they have not attained adequate financial security to marry.²²⁷ Addressing socioeconomic inequality is one means of potentially increasing the rate of marriage, because it gives individuals the means to marry should they desire, but places no specific pressure on them to do so.

Addressing socioeconomic inequality is, moreover, an emerging obligation of States under international law. For decades, human rights law did not much concern itself with domestic socioeconomic inequality, but the tide is turning.²²⁸ The U.N. Guiding Principles on Extreme Poverty and Human Rights, a soft law instrument adopted by the Human Rights Council in 2012,²²⁹ acknowledge that “[t]hose living in poverty are . . . subject to discriminatory attitudes and stigmatization from public authorities and private actors precisely because of their poverty” and label this discrimination on the basis of “economic status.”²³⁰ The Principles state that States must not only prohibit discrimination on the basis of economic status but also take positive measures to ensure equality.²³¹ Likewise, the UN human rights treaty

226. JUNE CARBONE & NAOMI CAHN, *MARRIAGE MARKETS: HOW INEQUALITY IS REMAKING THE AMERICAN FAMILY* 2, 6, 15, 18–20 (1st ed. 2014).

227. See, e.g., JULIANA MENASCE HOROWITZ ET AL., PEW RSCH. CTR., *MARRIAGE AND COHABITATION IN THE U.S.*, https://www.pewresearch.org/wp-content/uploads/sites/20/2019/11/PSDT_11.06.19_marriage_cohabitation_FULLL.final.pdf; Vivian Hamilton, *Will Marriage Promotion Work?*, 11 J. GENDER, RACE & JUST. 1, 9–10 (2007) (“Studies have identified a number of major barriers to marriage among disadvantaged couples [including] an inability to meet economic standards for marriage.”).

228. See Tilmann Altwickler, *Social Justice and the Judicial Interpretation of International Equal Protection Law*, 35 LEIDEN J. INT’L L. 221, 222 (2022). There is also an argument to be made that human rights law should concern itself not merely with domestic but also with global socioeconomic inequality. See Margot E. Salomon, *Why Should It Matter That Others Have More? Poverty, Inequality, and the Potential of International Human Rights Law*, 37 REV. INT’L STUD. 2137, 2144–51 (2011).

229. Adam Ploszka, *All Beginnings Are Difficult: The Guiding Principles on Extreme Poverty and Human Rights a Decade After Their Adoption*, 23 HUM. RTS. L. REV. 1, 5, 14, 21 (2023).

230. Magdalena Sepúlveda Carmona (Special Rapporteur on Extreme Poverty and Human Rights), *Final Draft of the Guiding Principles on Extreme Poverty and Human Rights*, ¶ 18, U.N. Doc. A/HRC/21/39 (July 18, 2012); see also U.N. Secretary-General, *Report of the Independent Expert on the Question of Human Rights and Extreme Poverty*, ¶ 29, U.N. Doc. A/63/274 (Aug. 13, 2008).

231. Carmona, *supra* note 230, ¶¶ 21–22.

bodies have interpreted the equality and non-discrimination provisions of their respective treaties to include economic status as a prohibited ground of discrimination.²³² The Committee on the Rights of Persons with Disabilities has even explained that equality under the Convention on the Rights of Persons with Disabilities includes “a fair redistributive dimension to address socioeconomic disadvantages.”²³³ The inter-American human rights system has also clearly established a right to non-discrimination on the basis of economic status in its treaties,²³⁴ case law,²³⁵ and thematic reports.²³⁶ Addressing socioeconomic inequality is thus not merely a marriage-promotion measure human rights mechanisms might welcome, but one that they increasingly consider to be obligatory.

B. Impermissible

1. Forced Marriage

The most straightforward way for States to increase their marriage rates would be to force individuals to marry or, as is more often the case, to turn a blind eye as families, churches, or other non-State actors force individuals to marry. The Committee on Elimination of Discrimination against Women and the Committee on the Rights of the Child have composed a list of the “various forms” a forced marriage might take, including “child marriage” (which will be discussed in the next section), “exchange or trade-off marriages (i.e.,] *baad* and *baadal*), servile marriages, and levirate marriages (coercing a widow to marry a relative of her deceased husband).”²³⁷ The Committees

232. Comm. on Econ. Soc. & Cultural Rts., *supra* note 130, ¶¶ 27, 35; Hum. Rts. Comm., *supra* note 126, ¶ 7.12; Comm. on the Rts. of Persons with Disabilities, *supra* note 130, ¶ 21.

233. Comm. on the Rts. of Persons with Disabilities, *supra* note 130, ¶ 11.

234. *See* American Convention on Human Rights, *supra* note 91, at art. 1(1); Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights: Protocol of San Salvador art. 3, Nov. 17, 1988, O.A.S.T.S. No. 69.

235. *See, e.g.*, *Gonzales Lluy v. Ecuador*, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 298, ¶¶ 285, 291 (Sept. 1, 2015); *Murillo v. Costa Rica*, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 257, ¶ 303 (Nov. 28, 2012); *Ramírez Escobar v. Guatemala*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 351, ¶¶ 291, 293 (Mar. 9, 2018).

236. Inter-Am. Comm’n H.R., *Report on Poverty and Human Rights in the Americas*, ¶¶ 3, 152, OEA/Ser.L/V/II.164, Doc. 147 (Sept. 7, 2017).

237. Comm. on the Elimination of Discrimination Against Women & Comm. on the Rts. of the Child, *supra* note 217, ¶ 23; *see also* Comm. on the Elimination of Discrimination Against Women, General Recommendation No. 27 on Older Women and Protection of Their Human Rights, ¶ 52, U.N. Doc. CEDAW/C/GC/27 (Dec. 16, 2010).

have also considered within the scope of the term individuals who are forced to marry their rapists, those who are forced to marry within the family's community of origin for migration purposes, and those who are forced to marry in the context of armed conflict.²³⁸ This is not, however, an exhaustive list. The Special Rapporteur on the Rights of Women in Africa has added to it, for example, by calling the State of Chad's decision to fine individuals who turn down a marriage proposal "tantamount to . . . forced marriage."²³⁹

Although undoubtedly effective in increasing the marriage rate, forced marriages violate human rights law as they are, by definition, coercive.²⁴⁰ The Committee on the Elimination of Discrimination Against Women and the Committee on the Rights of the Child have defined forced marriage as a marriage "in which one and/or both parties have not personally expressed their full and free consent to the union."²⁴¹ States not only have a negative obligation not to force individuals to marry but also a positive obligation to prevent third parties from forcing individuals into marriage by, among other things, criminalizing the practice and ensuring that forced marriages are voided.²⁴² States should be cautious about the potential negative impacts that dissolving such marriages might cause to victims of forced marriages,²⁴³ but this in no way lessens their obligations to combat forced marriage.

Human rights mechanisms have also condemned forced marriage as discriminatory. The Committee on the Elimination of Discrimination Against Women and the Committee on the Rights of the Child have identified forced marriage as a form of sex- and gender-based discrimination, as it disproportionately impacts women and girls.²⁴⁴ The European Court of Human Rights and the Human Rights Committee have also noted that gay men and lesbians are at risk of forced marriage, as they might be pressured to enter into heterosexual marriages, which would constitute discrimination

238. Comm. on the Elimination of Discrimination Against Women & Comm. on the Rts. of the Child, *supra* note 217, ¶ 23.

239. *Special Rapporteur on the Rights of Women in Africa*, AFR. COMM. ON HUM. & PEOPLES' RTS. <https://achpr.au.int/en/inter-session-activity-reports/special-rapporteur-rights-women-africa-0> [<https://perma.cc/G8HH-YNAH>]. This policy is, moreover, discriminatory, as women receive a higher fine than men. *Id.*

240. Comm. on the Elimination of Discrimination Against Women, *supra* note 217, ¶¶ 1, 11.

241. Comm. on the Elimination of Discrimination Against Women & Comm. on the Rts. of the Child, *supra* note 217, ¶ 23.

242. The Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence arts. 32, 37, Apr. 12, 2011, 3010 U.N.T.S. 107.

243. *Id.* at art. 59(4); Comm. on the Elimination of Discrimination Against Women & Comm. on the Rts. of the Child, *supra* note 217, ¶ 53.

244. Comm. on the Elimination of Discrimination Against Women & Comm. on the Rts. of the Child, *supra* note 217, ¶ 7.

on the basis of sexual orientation.²⁴⁵ Persons with disabilities are also at a potentially heightened risk of forced marriage, especially women and girls (as emphasized by the Committee on the Rights of Persons with Disabilities),²⁴⁶ but men and boys are not immune from these dangers.²⁴⁷ In sum, forced marriage is never a permissible marriage-promotion measure, as it is always coercive and often discriminatory.

245. See *M.I. v. Switzerland*, App. No. 56390/21, ¶¶ 21–22 (Nov. 12, 2024), <https://hudoc.echr.coe.int/?i=001-237905>; see also Hum. Rts. Comm., *M.I. v. Sweden*, ¶ 7.2, U.N. Doc. CCPR/C/108/D/2149/2012 (Sept. 26, 2013).

246. Comm. on the Rts. of Persons with Disabilities, General Comment No. 3, *supra* note 173, ¶¶ 36–37.

247. Rachael Clawson & Rachel Fyson, *Forced Marriage of People with Learning Disabilities: A Human Rights Issue*, 32 *DISABILITY & SOC'Y* 810, 826 (2017).

a. Child Marriage

Child marriage,²⁴⁸ although often classed by human rights mechanisms as a subset of forced marriage,²⁴⁹ is worth considering separately for this article's purposes because child marriage is one of the forms of forced marriage most likely to be used as a marriage-promotion measure due to its close link to pronatalism. Earlier marriage is correlated with an earlier first pregnancy and more pregnancies over a lifespan.²⁵⁰ States interested in promoting both marriage and childbearing thus might decide to permit child marriage or to fail to enforce laws prohibiting child marriage.²⁵¹ For example,

248. Human rights mechanisms define child marriage as a marriage in which one or both of the parties is or was under eighteen years of age at the time of betrothal and/or marriage. Comm. on the Elimination of Discrimination Against Women & Comm. on the Rts. of the Child, *supra* note 217, ¶ 20; Org. of Afr. Unity [OAU], African Charter on the Rights and Welfare of the Child, art. 21, ¶ 2, OAU Doc. CAB/LEG/24.9/49 (Nov. 29, 1990) [hereinafter OAU, *Child*]; Org. of Afr. Unity [OAU], *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa* art. 6(b), OAU Doc. CAB/LEG/66.6 (July 11, 2003) [hereinafter OAU, *Protocol*]; *M. v. Italy & Bulgaria*, App. No. 40020/03, ¶ 164, (July 31, 2012), <https://hudoc.echr.coe.int/fre?i=001-112576>; Inter-Am. Comm. H.R., *supra* note 24, ¶ 346. Human rights mechanisms only recently consolidated around eighteen as the uniform minimum legal age for marriage. Alissa Koski et al., *The Evolution of Child Marriage as a Human Rights Concern*, 24 HUM. RTS. REV. 585, 598 (2023). Before settling on eighteen, international law had allowed States some flexibility in setting a minimum legal age for marriage. See Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages art. 2, Nov. 7, 1962, 521 U.N.T.S. 231 (“States Parties to the present Convention shall take legislative action to specify a minimum age for marriage.”).

Although human rights mechanisms agree that eighteen is the appropriate age, there are scholars who argue for a minimum legal age for marriage that is higher, lower, or unspecified. See, e.g., Vivan E. Hamilton, *The Age of Marital Capacity: Reconsidering Civil Recognition of Adolescent Marriage*, 92 B.U. L. REV. 1817, 1861 (2012) (arguing for a higher minimum legal age of marriage based on cognitive maturity and psychosocial development); Hoko Horii, *A Blind Spot in International Human Rights Framework: A Space Between Tradition and Modernity Within the Child Marriage Discourse*, 24 INT'L J. HUM. RTS. 1057, 1061 (2019) (criticizing a minimum legal age of marriage set at eighteen as a Western construct that is too high for other parts of the world). Compare Annie Bunting, *Stages of Development: Marriage of Girls and Teens as an International Human Rights Issue*, 14 SOC. & LEGAL STUD. 17, 18 (2005) (“[A] strategy based on a uniform marriageable age . . . and a narrow rights-based analysis [miss] the complexity of both marriage and age.”), with Ruth Gaffney-Rhys, *International Law as an Instrument to Combat Child Marriage*, 15 INT'L J. HUM. RTS. 359, 370 (2011) (“[S]etting a uniform minimum age for marriage would be advantageous as it sends a clear message that early marriage is unacceptable.”).

249. Comm. on the Elimination of Discrimination Against Women & Comm. on the Rts. of the Child, *supra* note 217, ¶¶ 20, 23.

250. Jennifer Parsons et al., *Economic Impacts of Child Marriage: A Review of the Literature*, 13 REV. FAITH & INT'L AFFS. 12, 15 (2015).

251. UNITED NATIONS POPULATION FUND, *supra* note 207, at 36 (“[E]ven where child marriage is prohibited by law, it continues in practice.”).

Iran, after the Islamic Revolution, lowered the legal age of marriage from 18 to 13 for women and from 20 to 15 for men.²⁵² It is also worth noting that child marriage is not limited to nonwestern states; it also regularly occurs in countries such as the United States, where many state laws include exceptions to eighteen as the age of marital consent.²⁵³

States may not use child marriage as a marriage-promotion measure because human rights mechanisms have found it to be inherently coercive. The Committee on the Elimination of Discrimination Against Women and the Committee on the Rights of the Child have expressed concern that children are “too young to be physically and psychologically ready for adult life or to make conscious and informed decisions and thus not ready to consent to marriage.”²⁵⁴ They have additionally noted that, in some cases of child marriage, the child’s consent is not sought, but instead is substituted by that of a family member or legal guardian.²⁵⁵ The African Commission on Human and Peoples’ Rights and the African Committee of Experts on the Rights and Welfare of the Child similarly have emphasized that “children under the age of 18 are not capable of giving full and free consent to a marriage,” and that free and full consent in marriage “entails a non-coercive agreement to the marriage with full understanding of the consequences of giving consent.”²⁵⁶ They brook no exception for parental consent.²⁵⁷ The Inter-American Commission on Human Rights has likewise stated that child marriages are necessarily forced marriages due to the lack of free and full consent.²⁵⁸ Human rights mechanisms have determined that due to the lack of consent in this context, States are obligated “to ensure that the betrothal and the marriage of a child will have no legal effect.”²⁵⁹

252. Reyhane Izadi et al., *Qualitative Document Analysis on Iranian Contents and Trends of Population Policies: Lessons Learned and Avenues for Future*, HELIYON, June 2023, at 1, 7.

253. Rachel L. Schuman, *State Regulations Are Failing Our Children: An Analysis of Child Marriage Laws in the United States*, 60 WM. & MARY L. REV. 2337, 2339–41 (2019).

254. Comm. on the Elimination of Discrimination Against Women & Comm. on the Rts. of the Child, *supra* note 217, ¶ 21.

255. *Id.*: Comm. on the Elimination of Discrimination Against Women, *supra* note 24, ¶ 38.

256. AFR. COMM’N ON HUM. & PEOPLES’ RTS. [ACHPR] & AFR. COMM. OF EXPERTS ON THE RTS. & WELFARE OF THE CHILD [ACERWC], JOINT GENERAL COMMENT OF THE AFRICAN COMMISSION ON HUMAN AND PEOPLES’ RIGHTS (ACHPR) AND THE AFRICAN COMMITTEE OF EXPERTS ON THE RIGHTS AND WELFARE OF THE CHILD (ACERWC) ON ENDING CHILD MARRIAGE ¶ 6 (2017) [hereinafter ACHPR].

257. *See id.*

258. Inter-Am. Comm’n H.R., *Violence and Discrimination Against Women and Girls: Best Practices and Challenges in Latin America and the Caribbean*, ¶ 215, OAS/Ser.L/V/II, Doc. 233/19 (Nov. 14, 2019).

259. Comm. on the Elimination of Discrimination Against Women & Comm. on the Rts. of the Child, *supra* note 217, ¶ 31.

Human rights mechanisms have also found child marriage to be discriminatory on several bases. The Committee on the Elimination of Discrimination Against Women and the Committee on the Rights of the Child, as well as the African Commission on Human and Peoples' Rights and the African Committee of Experts on the Rights and Welfare of the Child, have identified child marriage as a form of sex- and gender-based discrimination, since it disproportionately affects women and girls.²⁶⁰ They have observed that, in a heterosexual child marriage, it is usually the girl and only the girl who is under eighteen,²⁶¹ and that she is liable to experience a wide range of harms as a result of the marriage, including increased risk of domestic violence, interrupted access to education and information, and negative implications for sexual and reproductive health, including higher rates of maternal mortality due to early pregnancy.²⁶² Human rights mechanisms are additionally concerned that States' legislation frequently sets different minimum ages for boys and girls, including in the case of the minimum legal age for marriage, and recommend that the age of capacity not differ on the basis of sex or gender.²⁶³ For example, the African Court on Human and Peoples' Rights found that Mali had violated its human rights obligations when it set the minimum legal age for marriage at 18 for men and at 16 (or 15 under exceptional circumstances) for women.²⁶⁴

Some human rights mechanisms have also highlighted the likelihood of intersectional discrimination in the context of child marriage. The Inter-American Commission on Human Rights has described child marriage as a

260. *Id.* ¶ 7; ACHPR, *supra* note 256, ¶ 5.

261. Comm. on the Elimination of Discrimination Against Women & Comm. on the Rts. of the Child, *supra* note 217, ¶ 20.

262. *Id.* ¶ 22; *see, e.g.*, Comm. on the Elimination of Discrimination Against Women, General Recommendation No. 39 (2022) on the Rights of Indigenous Women and Girls, ¶ 47, U.N. Doc. CEDAW/C/GC/39 (Oct. 31, 2022); Comm. on the Elimination of Discrimination Against Women, General Recommendation No. 34 (2016) on the Rights of Rural Women, ¶ 38, U.N. Doc. CEDAW/C/GC/34 (Mar. 7, 2016) [hereinafter Comm. on the Elimination of Discrimination Against Women, General Recommendation No. 34]; Comm. on the Elimination of Discrimination Against Women, General Recommendation No. 24: Article 12 of the Convention (Women and Health), ¶ 28, U.N. Doc. A/54/38/Rev.1, ch. I (1999); Comm. on the Rts. of the Child, General Comment No. 3 (2003): HIV/AIDS and the Rights of the Child, ¶ 11, U.N. Doc. CRC/GC/2003/3 (Mar. 17, 2003); Comm. on the Rts. of the Child, General Comment No. 4 (2003): Adolescent Health and Development in the Context of the Convention on the Rights of the Child, ¶ 20, U.N. Doc. CRC/GC/2003/4 (July 1, 2003) [hereinafter Comm. on the Rts. of the Child, General Comment No. 4].

263. Comm. on the Rts. of the Child, General Comment No. 4, *supra* note 262, ¶ 9.

264. Association pour le Progrès et la Défense des Droits des Femmes Maliennes and the Institute for Human Rights and Development in Africa v. Mali, No. 046/2016, Afr. Ct. H.P.R., ¶¶ 77–78 (May 11, 2018).

form of discrimination based not only on sex and gender but also on age.²⁶⁵ Meanwhile, the Committee on the Rights of Persons with Disabilities has identified girls with disabilities as especially at risk of child marriage, which it has attributed to a combination of harmful gender and disability stereotypes.²⁶⁶ The African Commission on Human and Peoples' Rights and the African Committee of Experts on the Rights and Welfare of the Child have likewise noted "[t]he disproportionate impact of child marriage on children with disabilities" and have added that "migrant children, children who are refugees and children in child headed households" are also disproportionately impacted by this practice.²⁶⁷ Additionally, the United Nations Population Fund (commonly known as the UNFPA) and the UN Special Rapporteur on Violence Against Women, Its Causes and Consequences have noted that poor families are likely to marry off their underage daughters out of desperation, indicating the possibility of intersectional discrimination on the basis of sex, age, and economic status.²⁶⁸ Although effective in promoting marriage and childbearing, child marriage is inevitably a human rights violation because it is always coercive and usually discriminatory, frequently along multiple axes.

2. Marital Status Discrimination

Another marriage-promotion measure States have employed is to privilege engaged and/or married couples over unmarried couples and unmarried individuals.²⁶⁹ For example, Singapore has encouraged individuals to marry by enacting housing policies that give preference for certain units to engaged couples and that additionally limit the eligibility of unmarried individuals to apply until they reach the age of thirty-five.²⁷⁰ A policy such as this one is arguably coercive, in that it places an undue amount of pressure on individuals to marry in order to access a basic necessity, but it more obviously constitutes direct discrimination on the basis of marital status. States have also engaged in indirect discrimination on the basis of marital status by failing

265. Inter-Am. Comm'n H.R., *supra* note 258, ¶ 216.

266. Comm. on the Rts. of Persons with Disabilities, General Comment No. 3, *supra* note 173, ¶¶ 36, 56.

267. ACHPR, *supra* note 256, ¶ 5.

268. See UNITED NATIONS POPULATION FUND, *supra* note 207, at 126; Šimonović, *supra* note 217, ¶ 37.

269. See, e.g., Comm. on the Elimination of Discrimination Against Women, *supra* note 24, ¶¶ 6–7, 9, 22, 24, 27, 29.

270. Lindy Williams, *W(h)ither State Interest in Intimacy? Singapore Through a Comparative Lens*, 29 SOJOURN: J. SOC. ISSUES SE. ASIA 132, 148 (2014).

to protect unmarried couples and individuals from discrimination by private actors. For example, Tennessee’s 2025 Medical Ethics Defense Act, allowing medical professionals to deny healthcare to patients due to the professionals’ religious, moral, or ethical beliefs, has resulted in an unmarried pregnant woman being denied prenatal care by a physician and having to seek this care out of state.²⁷¹

Marital status is a prohibited ground of discrimination under human rights law.²⁷² Although it appears expressly in only a few treaties,²⁷³ many human rights mechanisms have nevertheless interpreted their treaties’ general prohibitions on discrimination to implicitly prohibit marital status discrimination.²⁷⁴ This means that States cannot enact any “distinction, exclusion, restriction, or preference” based on a person’s status as unmarried, married (under any legal regime or *de facto*), divorced, widowed, or other related status, that 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” unless the measure is a reasonable and objective means of achieving a legitimate purpose.²⁷⁵ For example, human rights mechanisms have found that States have violated the prohibition on marital status discrimination when they have promoted marriage by making parental

271. Rachel Wells, *Pregnant Mother in Tennessee Denied Care for Being Unmarried*, NASHVILLE BANNER (July 20, 2025), <https://nashvillebanner.com/2025/07/20/doctor-denies-pregnant-woman-care> [<https://perma.cc/E23E-7LYD>] (discussing 63 TENN. CODE ANN. § 63-1-903 (2025)).

272. Tueller, *supra* note 25, at 1035–40.

273. Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, July 1, 2003, 2220 U.N.T.S. 3; OAU, *Protocol*, *supra* note 248, arts. I(f), XVI.

274. See, e.g., Comm. on the Rts. of Persons with Disabilities, General Comment No. 3, *supra* note 173, ¶ 14; Comm. on the Rts. of the Child, General Comment No. 4, *supra* note 262, ¶ 28; Hum. Rts. Comm., *supra* note 126, ¶¶ 7.12, 7.15, 8; Comm. on Econ., Soc. & Cultural Rts., General Comment No. 16: The Equal Right of Men and Women to the Enjoyment of All Economic, Social and Cultural Rights (Art. 3 of the International Covenant on Economic, Social and Cultural Rights), ¶ 10, U.N. Doc. E/C.12/2005/4 (Aug. 11, 2005); *Wessels-Bergervoet v. Netherlands*, App. No. 34462/97, ¶¶ 49, 54–55 (Nov. 12, 2002), <https://hudoc.echr.coe.int/eng?i=001-60734> [<https://perma.cc/4FGX-DPJG>]; *Petrov v. Bulgaria*, App. No. 15197/02, ¶¶ 52–53, 56 (May 22, 2008), <https://hudoc.echr.coe.int/eng?i=001-86454> [<https://perma.cc/3SQF-5V7L>].

275. Hum. Rts. Comm., *supra* note 123, ¶¶ 7, 13; Comm. on Econ. Soc. & Cultural Rts., *supra* note 130, ¶ 31.

rights,²⁷⁶ health services,²⁷⁷ access to housing or land,²⁷⁸ or access to social security contingent on marriage.²⁷⁹ States must thus be careful that they do not promote marriage to the detriment of the unmarried. The European Court of Human Rights, interpreting the European Convention on Human Rights,

276. *See, e.g.*, Comm. on the Elimination of Discrimination Against Women, Concluding Observations on the Fifth Periodic Report of Kyrgyzstan, ¶ 50(g), U.N. Doc. CEDAW/C/KGZ/CO/5 (Nov. 29, 2021); Comm. on the Elimination of Discrimination Against Women, Concluding Observations on the Sixth Periodic Report of Azerbaijan, ¶ 42(c), U.N. Doc. CEDAW/C/AZE/CO/6 (July 12, 2022); Comm. on the Elimination of Discrimination Against Women, Concluding Observations on the Ninth Periodic Report of Hungary, ¶ 42(b), U.N. Doc. CEDAW/C/HUN/CO/9 (Mar. 2, 2023).

277. *See, e.g.*, Comm. on the Elimination of Discrimination Against Women, Concluding Observations on the Combined Seventh and Eighth Periodic Reports of China, ¶ 39(d), U.N. Doc. CEDAW/C/CHN/CO/7-8 (Nov. 14, 2014); Comm. on the Elimination of Discrimination Against Women, Concluding Observations on the Combined Fourth and Fifth Periodic Reports of Maldives, ¶ 36(b), U.N. Doc. CEDAW/C/MDV/CO/4-5 (Mar. 11, 2015) [hereinafter Comm. on the Elimination of Discrimination Against Women, Fourth and Fifth Periodic Reports of Maldives]; Comm. on the Elimination of Discrimination Against Women, Concluding Observations on the Combined Second and Third Periodic Reports of Timor-Leste, ¶ 31(d), U.N. Doc. CEDAW/C/TLS/CO/2-3 (Nov. 24, 2015) [hereinafter Comm. on the Elimination of Discrimination Against Women, Second and Third Periodic Reports of Timor-Leste]; Comm. on the Elimination of Discrimination Against Women, Concluding Observations on the Sixth Periodic Report of Maldives, ¶ 45, U.N. Doc. CEDAW/C/MDV/CO/6 (Nov. 23, 2021); Comm. on Econ., Soc. & Cultural Rts., General Comment No. 22 (2016) on the Right to Sexual and Reproductive Health (Article 12 of the International Covenant on Economic, Social and Cultural Rights), ¶¶ 41, 44, U.N. Doc. E/C.12/GC/22 (May 2, 2016) [hereinafter Comm. on Econ., Soc. & Cultural Rts., *Sexual and Reproductive Health*]; Comm. on Econ., Soc. & Cultural Rts., Concluding Observations on the Initial to Third Reports of the United Republic of Tanzania, ¶ 24, U.N. Doc. E/C.12/TZA/CO/1-3 (Dec. 13, 2012); Dainius Pūras (Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health), *Visit to Malaysia*, §§ IV.A.1, V, U.N. Doc. A/HRC/29/33/Add.1 (May 1, 2015); Inter-Am. Comm'n H.R., *Access to Maternal Health Services from a Human Rights Perspective*, ¶ 37, OEA/Ser.L/V/II, Doc. 69 (2010).

278. *See, e.g.*, Comm. on the Rts. of Persons with Disabilities, Concluding Observations on the Initial Report of Kuwait, *supra* note 173, ¶ 39(b); Afr. Comm. on Hum. & Peoples' Rts., *Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights*, ¶ 79(p) (May 26, 2010), <https://archives.au.int/handle/123456789/2063> [<https://perma.cc/EXF3-TBHA>]; Comm. on the Elimination of Discrimination Against Women, General Recommendation No. 34, *supra* note 262, ¶ 59.

279. *See, e.g.*, Comm. on the Elimination of Discrimination Against Women, General Recommendation No. 34, *supra* note 262, ¶ 41(a); Working Grp. on the Issue of Discrimination Against Women in L. & in Practice, Hum. Rts. Council, *Gendered Inequalities of Poverty: Feminist and Human Rights-Based Approaches*, ¶¶ 45, 62(b), U.N. Doc. A/HRC/53/39 (Apr. 23, 2023); Hum. Rts. Comm., *Broeks v. Netherlands*, ¶¶ 14–15, U.N. Doc. CCPR/C/29/D/172/1984 (Apr. 9, 1987); Hum. Rts. Comm., *Zwaan-de Vries v. Netherlands*, ¶¶ 14–15, U.N. Doc. CCPR/C/29/D/182/1984 (Apr. 9, 1987); Comm. on the Elimination of Discrimination Against Women, Concluding Observations on the Fifth Periodic Report of Singapore, ¶ 28, U.N. Doc. CEDAW/C/SGP/CO/5 (Nov. 21, 2017).

has made this clear: “promoting one type of family at the expense of another is never acceptable.”²⁸⁰

3. Discrimination Against Children Born out of Wedlock

A related marriage-promotion measure is States’ privileging of children born in wedlock over those born outside of it.²⁸¹ Although this practice was more prevalent historically,²⁸² both de jure and de facto discrimination against children born out of wedlock continue. For example, States sometimes limit the inheritance rights of children born out of wedlock,²⁸³ as well as their access to citizenship and nationality.²⁸⁴ Children born out of wedlock may

280. *Macaté v. Lithuania*, App. No. 61435/19, ¶ 214 (Jan. 23, 2023), <https://hudoc.echr.coe.int/eng?i=001-222072> [<https://perma.cc/F96V-9DQ4>].

281. Human rights law’s prohibition on marital status discrimination in fact grew out of a prohibition on discrimination against children born out of wedlock. Tueller, *supra* note 25, at 1035.

282. Alessia Valongo, *Children Born Out of Wedlock: The End of an Anachronistic Discrimination*, 1 ITALIAN L.J. 83, 83–84 (2015).

283. *See, e.g.*, Comm. on the Elimination of Discrimination Against Women, Concluding Observations on the Sixth Periodic Report of Japan, ¶ 17, U.N. Doc. CEDAW/C/JPN/CO/6 (Aug. 7, 2009); Hum. Rts. Comm., Concluding Observations on the Fourth Periodic Report of the Netherlands, ¶ 21, U.N. Doc. CCPR/C/NLD/CO/4 (Aug. 25, 2009) [hereinafter Hum. Rts. Comm., Fourth Periodic Report of the Netherlands]; Hum. Rts. Comm., Concluding Observations on the Fifth Periodic Report of Japan, ¶ 28, U.N. Doc. CCPR/C/JPN/CO/5 (Dec. 18, 2008) [hereinafter Hum. Rts. Comm., Fifth Periodic Report of Japan]; Comm. on the Rts. of the Child, Concluding Observations on the Combined Fourth and Fifth Periodic Reports of Maldives, ¶ 26(d), U.N. Doc. CRC/C/MDV/CO/4-5 (Mar. 14, 2016); *Marckx v. Belgium*, App. No. 6833/74, ¶ 59 (June 13, 1979), <https://hudoc.echr.coe.int/fre?i=001-57534> [<https://perma.cc/ZF3E-965G>]; *Fabris v. France*, App. No. 16574/08, ¶ 73 (Feb. 7, 2013), <https://hudoc.echr.coe.int/eng?i=001-116716> [<https://perma.cc/3XAC-A3QM>]; *Mazurek v. France*, App. No. 34406/97, ¶ 55 (Feb. 11, 2000), <https://hudoc.echr.coe.int/eng?i=001-58456> [<https://perma.cc/FWT7-QH65>]; *Brauer v. Germany*, App. No. 3545/04, ¶ 40 (May 28, 2009), <https://hudoc.echr.coe.int/eng?i=001-92752> [<https://perma.cc/96BD-QZEG>]; Association pour le Progrès, *supra* note 264, ¶¶ 110–15.

284. *See, e.g.*, Comm. on the Elimination of Discrimination Against Women, Concluding Observations on the Sixth Periodic Report of Malaysia, ¶ 34, U.N. Doc. CEDAW/C/MYS/CO/6 (June 6, 2024); Comm. on the Elimination of Discrimination Against Women, Concluding Observations on the Fourth Periodic Report of the United Arab Emirates, ¶ 40, U.N. Doc. CEDAW/C/ARE/CO/4 (July 12, 2022); Comm. on the Elimination of Discrimination Against Women, Concluding Observations on the Ninth Periodic Report of Austria, ¶ 29(b), U.N. Doc. CEDAW/C/AUT/CO/9 (July 30, 2019); Comm. on the Elimination of Discrimination Against Women, Fourth and Fifth Periodic Reports of Maldives, *supra* note 277, ¶ 30; Hum. Rts. Comm., Fifth Periodic Report of Japan, *supra* note 283, ¶ 28; Comm. on the Rts. of the Child, Concluding Observations on the Combined Third to Fifth Periodic Reports of Cameroon, ¶ 20, U.N. Doc. CRC/C/CMR/CO/3-5 (July 6, 2017); Comm. on the Rts. of the Child, Concluding Observations on the Combined Third and Fourth Periodic Reports of the Islamic Republic of Iran, ¶¶ 45–46,

also be at greater risk of abandonment²⁸⁵ and family separation²⁸⁶ due not only to discriminatory laws but also to societal stigmatization.²⁸⁷ They are also less likely to have their births registered than children born in wedlock.²⁸⁸ Additionally, in some countries, lower amounts of child support have been awarded when a child's mother is unmarried.²⁸⁹ Although these measures may be an effective means of increasing the marriage rate because they spur the parents of children conceived out of wedlock to marry prior to the birth if

U.N. Doc. CRC/C/IRN/CO/3-4 (Mar. 14, 2016); Dubravka Šimonović (Special Rapporteur on Violence Against Women, Its Causes and Consequences), *Mission to the Bahamas*, ¶ 73(f), U.N. Doc. A/HRC/38/47/Add.2 (May 25, 2018).

285. *See, e.g.*, Comm. on the Rts. of the Child, Concluding Observations on the Combined Second to Fourth Periodic Reports of Samoa, ¶ 32(i), U.N. Doc. CRC/C/WSM/CO/2-4 (July 12, 2016) [hereinafter Comm. on the Rts. of the Child, Second to Fourth Periodic Reports of Samoa]; Comm. on the Rts. of the Child, Concluding Observations on the Combined Third and Fourth Periodic Reports of Oman, ¶ 45, U.N. Doc. CRC/C/OMN/CO/3-4 (Mar. 14, 2016); Comm. on the Rts. of the Child, Concluding Observations on the Second Periodic Report of the United Arab Emirates, ¶ 33, U.N. Doc. CRC/C/ARE/CO/2 (Oct. 30, 2015) [hereinafter Comm. on the Rts. of the Child, Second Periodic Report of the United Arab Emirates].

286. *See, e.g.*, Comm. on the Elimination of Discrimination Against Women, Concluding Observations on the Sixth Periodic Report of Kuwait, ¶¶ 43-44, U.N. Doc. CEDAW/C/KWT/CO/6 (June 6, 2024).

287. Comm. on the Elimination of Discrimination Against Women, Concluding Observations on the Ninth Periodic Report of Japan, *supra* note 190, ¶ 12(b); Comm. on the Elimination of Discrimination Against Women, Concluding Observations on the Sixth Periodic Report of Samoa, ¶ 43(b), U.N. Doc. CEDAW/C/WSM/CO/6 (Nov. 14, 2018) [hereinafter Comm. on the Elimination of Discrimination Against Women, Sixth Periodic Report of Samoa]; Comm. on the Elimination of Discrimination Against Women, Concluding Observations on the Combined Fourth to Seventh Periodic Reports of Uruguay, ¶ 48, U.N. Doc. CEDAW/C/URY/CO/7 (Nov. 14, 2008); Comm. on Econ., Soc. & Cultural Rts., Concluding Observations on the Initial Report of Gabon, ¶ 12, U.N. Doc. E/C.12/GAB/CO/1 (Dec. 27, 2013).

288. *See, e.g.*, Comm. on the Elimination of Discrimination Against Women, Concluding Observations on the Combined Fourth and Fifth Periodic Reports of the Gambia, ¶ 30, U.N. Doc. CEDAW/C/GMB/CO/4-5 (July 28, 2015) [hereinafter Comm. on the Elimination of Discrimination Against Women, Fourth and Fifth Periodic Reports of the Gambia]; Hum. Rts. Comm., Fifth Periodic Report of Japan, *supra* note 283, ¶ 28; Comm. on the Rts. of the Child, Concluding Observations on the Combined Third and Fourth Periodic Reports of the Marshall Islands, ¶ 17(d), U.N. Doc. CRC/C/MHL/CO/3-4 (Feb. 27, 2018); Comm. on the Rts. of the Child, Concluding Observations on the Fifth Periodic Report of Pakistan, ¶ 28, U.N. Doc. CRC/C/PAK/CO/5 (July 11, 2016).

289. Comm. on the Elimination of Discrimination Against Women, Second and Third Periodic Reports of Timor-Leste, *supra* note 277, ¶ 17; Hum. Rts. Comm., Fourth Periodic Report of the Netherlands, *supra* note 283, ¶ 21; Hum. Rts. Comm., Fifth Periodic Report of Japan, *supra* note 283, ¶ 28.

possible (as in the proverbial shotgun wedding),²⁹⁰ the coercion may be so great that it vitiates consent.²⁹¹

Even if a subset of these measures were found not to be unduly coercive, they would nevertheless violate human rights because they discriminate on the basis of birth, harming those children whose parents remain unmarried (either because they manage to resist the pressure or because there is an impediment to their entering into marriage). Human rights treaties prohibit discrimination on the basis of birth,²⁹² and human rights mechanisms have interpreted this prohibition to require States to ensure that children born out of wedlock enjoy the same rights as children born within wedlock, in law and in practice.²⁹³ The American Convention on Human Rights makes this obligation plain by stating expressly that “[t]he law shall recognize equal rights for children born out of wedlock and those born in wedlock.”²⁹⁴ Similarly, the African Charter on the Rights and Welfare of the Child establishes that “[n]o child shall be deprived of maintenance [i.e., child support] by reference to the parents’ marital status.”²⁹⁵ The European Court of Human Rights, although lacking such a provision in the treaties over which

290. See generally Christina M. Gibson-Davis et al., *Midpregnancy Marriage and Divorce: Why the Death of Shotgun Marriage Has Been Greatly Exaggerated*, 53 DEMOGRAPHY 1693 (2016) (studying the rate of marriages occurring during and due to pregnancy).

291. Jessica Ellis et al., *Nonconsensual Marriage*, in HUMAN TRAFFICKING: A GLOBAL HEALTH EMERGENCY: PERSPECTIVES FROM NURSING, CRIMINAL JUSTICE, AND THE SOCIAL SCIENCES 219, 219 (Mary de Chesnay & Donna Sabella eds., 2023); Robert F. Drinan, *The Loving Decision and the Freedom to Marry*, 29 OHIO ST. L.J. 358, 365–67 (1968).

292. See, e.g., International Covenant on Civil and Political Rights, *supra* note 91, at art. 2, ¶ 1; International Covenant on Economic, Social and Cultural Rights, *supra* note 163, at art. 2, ¶ 2; Convention on the Rights of the Child art. 2, Nov. 20, 1989, 1577 U.N.T.S. 3; Convention for the Protection of Human Rights and Fundamental Freedoms, *supra* note 91, at art. 14; American Convention on Human Rights, *supra* note 91, at art. 1, ¶ 1.

293. Comm. on the Elimination of Discrimination Against Women, Sixth Periodic Report of Samoa, *supra* note 287, ¶ 44(c); Comm. on the Elimination of Discrimination Against Women, Fourth and Fifth Periodic Reports of the Gambia, *supra* note 288, ¶ 31; Hum. Rts. Comm., Concluding Observations on the Fourth Periodic Report of the Libyan Arab Jamahiriya, ¶ 27, U.N. Doc. CCPR/C/LBY/CO/4 (Nov. 15, 2007); Comm. on the Rts. of the Child, Second Periodic Report of the United Arab Emirates, *supra* note 285, ¶ 24; Comm. on the Rts. of the Child, Concluding Observations on the Combined Third and Fourth Periodic Reports of Saudi Arabia, ¶ 33(b), U.N. Doc. CRC/C/SAU/CO/3-4 (Oct. 25, 2016); Comm. on the Rts. of the Child, Second to Fourth Periodic Reports of Samoa, *supra* note 285, ¶ 33(d); Comm. on Econ., Soc. & Cultural Rts., Concluding Observations of Reports Submitted by States Parties Under Articles 16 and 17 of the Covenant, ¶ 14, U.N. Doc. E/C.12/URY/CO/3-4 (Dec. 1, 2010); *Fabris v. France*, 57 Eur. Ct. H.R. 563, 580 (2013).

294. American Convention on Human Rights, *supra* note 91, at art. 17, ¶ 5.

295. OAU, *Child*, *supra* note 248, at art. 18, ¶ 3; Conrad Nyamutata, *Article 18: Protection of the Family*, in THE AFRICAN CHARTER ON THE RIGHTS AND WELFARE OF THE CHILD: A COMMENTARY 264, 270 (Julia Sloth-Nielsen et al. eds., 2025).

it has jurisdiction, has relied on the 1975 European Convention on the Legal Status of Children born out of Wedlock (even when considering actions of States that have not ratified the treaty)²⁹⁶ to require “very weighty reasons . . . to be advanced before a distinction on grounds of birth outside marriage can be regarded as compatible with the [European] Convention [on Human Rights].”²⁹⁷ The prohibition on discrimination against children born out of wedlock has also become a norm of customary international law.²⁹⁸ Marriage-promotion measures that constitute or contribute to discrimination against children born out of wedlock violate human rights law; they may be unduly coercive with regard to the parents, and they are certainly harmful to the children.

C. Permissible or Impermissible, Depending on the Specifics

1. Eliminating Other Legal Unions

One way that States might attempt to increase the marriage rate is by eliminating other legal unions.²⁹⁹ In the past, this happened in some States via the doctrine of common-law marriage, which enabled judges to convert a nonmarital cohabitation into a marriage, at times “forcibly . . . imputing the intent to marry to couples who had merely intended to cohabit” and thereby “transform[ing] potentially subversive relationships—subversive in their disregard for the social and legal institution of marriage—into completely traditional relationships.”³⁰⁰ Although the doctrine of common-law marriage has been declining for some time,³⁰¹ the conversion of nonmarital unions into marriages is on the rise again as States that extend legal recognition to same-sex marriages at times take the opportunity to simultaneously abolish civil unions or domestic partnerships that had until that moment been the primary

296. *Mazurek v. France*, 42 Eur. Ct. H.R. 1, 12 (2000).

297. *Id.*; *Fabris*, 57 Eur. Ct. H.R. at 582.

298. SCHABAS, *supra* note 85, at 184.

299. This is especially true as declining marriage rates in some countries are accompanied by increasing partnership rates. Anne-Laure Garcia, *The (In)visibility of French Family Diversity*, in *THE CHANGING FACES OF FAMILIES: DIVERSE FAMILY FORMS IN VARIOUS POLICY CONTEXTS* 39, 44 (Marina A. Adler & Karl Lenz eds., 2023).

300. Ariela R. Dubler, *Wifely Behavior: A Legal History of Acting Married*, 100 COLUM. L. REV. 957, 969 (2000).

301. See Sonya C. Garza, *Common Law Marriage: A Proposal for the Revival of a Dying Doctrine*, 40 NEW ENG. L. REV. 541, 541 (2006).

vehicle for extending legal recognition to same-sex relationships.³⁰² Whether the elimination of civil unions or domestic partnerships is coercive or discriminatory depends on the specific circumstances.

The most coercive method of eliminating legal unions other than marriage is the automatic conversion of existing unions other than marriage into marriage. For example, after *Obergefell*, some U.S. states not only eliminated the option of entering into civil unions or domestic partnerships but also converted existing civil unions or domestic partnerships into marriages unless the couple opted out, which the states made difficult or impossible to do.³⁰³ A less coercive method would be to eliminate the choice moving forward and enable those in partnerships to voluntarily convert their partnerships to marriage, without requiring it. Human rights law would likely allow this method, since the legal recognition of intimate nonmarital relationships does not appear to be strictly required in States where marriage is already open to same-sex couples.³⁰⁴ The least coercive method to adopt, however—the one that most facilitates choice—would not be to eliminate alternatives to marriage at all, but rather to maintain and even to expand the options for registration of relationships.³⁰⁵

It is possible that a State might choose to eliminate civil unions or domestic partnerships in the interest of equality. For example, if a State's civil union or domestic partnership regime is equivalent to marriage (with the same methods of entry and exit, as well as the same rights and responsibilities within the relationship), with the only difference being that only heterosexual couples could marry and only same-sex couples could partner, this would certainly constitute discrimination on the basis of sexual orientation.³⁰⁶ However, if a State's civil unions or domestic partnerships are open to all and/or are governed somewhat differently than marriage, then to eliminate these partnerships would likely not be in the interest of equality. There are

302. See Kaiponanea T. Matsumura, *A Right Not to Marry*, 84 FORDHAM L. REV. 1509, 1518–25 (2016); Holning Lau, *Marriage Equality and Family Diversity: Comparative Perspectives from the United States and South Africa*, 85 FORDHAM L. REV. 2615, 2626–27 (2017); Brief for Foreign and Compar. L. Experts Harold Hongju Koh et al. as Amici Curiae Supporting Respondents at 34, *Hollingsworth v. Perry*, 570 U.S. 693 (2013) (No. 12-144).

303. Sarah L. Swan, *Constitutional Backfires Everywhere*, 25 U. PA. J. CONST. L. 311, 315 (2023).

304. See *supra* Section IV.A.1.d.

305. Lau, *supra* note 302, at 2626–27; Melissa Murray, *Paradigms Lost: How Domestic Partnership Went from Innovation to Injury*, 37 N.Y.U. REV. L. & SOC. CHANGE 291, 305 (2013); Nancy D. Polikoff, *What Marriage Equality Arguments Portend for Domestic Partner Employee Benefits*, 37 N.Y.U. REV. L. & SOC. CHANGE 49, 51 (2013); Naomi Cahn et al., *Family Law for the One-Hundred-Year Life*, 132 YALE L.J. 1691, 1745–55 (2023).

306. See OC-24/17, *supra* note 24, at 482.

individuals, including and especially those in LGBTQ+ communities, who choose civil unions or domestic partnerships not because of the unavailability of marriage but because of their ideological opposition to the institution and its role in heteropatriarchal oppression.³⁰⁷

2. Marriage Education

States have used education to promote marriage. The United States, for example, has required schools at home and abroad to teach abstinence-only-until-marriage education, which promotes marriage by falsely casting premarital and extramarital sex as unfailingly harmful (to those participating and also to resulting children, if any) and idealizing heterosexual marriage as the only forum for safe sex.³⁰⁸ The United States has also used welfare funds to support adult marriage education programs, which have tended to reinforce rigid gender roles and are sometimes run by religious organizations.³⁰⁹ Similarly, Iran has recently added a required course on “Knowledge of

307. Susan B. Boyd & Claire F. L. Young, “From Same-Sex to No Sex?”: Trends Towards Recognition of (Same-Sex) Relationships in Canada, 1 SEATTLE J. SOC. JUST. 757, 785 (2003).

308. See generally Michelle Fine & Sara I. McClelland, *Sexuality Education and Desire: Still Missing After All These Years*, 76 HARV. EDUC. REV. 297, 298, 306, 309–12 (2006); Suzanne Petroni, *Rethinking U.S. Population Policy*, in A PIVOTAL MOMENT: POPULATION JUSTICE AND THE ENVIRONMENTAL CHALLENGE 276, 286, 303 (Laurie Mazur ed., 2010); Hazel Glenn Beh & Milton Diamond, *The Failure of Abstinence-Only Education: Minors Have a Right to Honest Talk About Sex*, 15 COLUM. J. GENDER & L. 12 (2006); Doortje Braeken & Melissa Cardinal, *Comprehensive Sexuality Education as a Means of Promoting Sexual Health*, 20 INT’L J. SEXUAL HEALTH 50, 56 (2008); Leslie M. Kantor et al., *Abstinence-Only Policies and Programs: An Overview*, 5 SEXUALITY RSCH. & SOC. POL’Y 6 (2008); JULIE F. KAY, SEX, LIES & STEREOTYPES: HOW ABSTINENCE-ONLY PROGRAMS HARM WOMEN AND GIRLS (2008); Patricia J. Kelly & Lisa R. Schwartz, *Abstinence-Only Programs as a Violation of Adolescents’ Reproductive Rights*, 37 INT’L J. HEALTH SERVS. 321 (2007); HUM. RTS. WATCH, IGNORANCE ONLY: HIV/AIDS, HUMAN RIGHTS AND FEDERALLY FUNDED ABSTINENCE-ONLY PROGRAMS IN THE UNITED STATES (2002); Alice M. Miller & Rebecca A. Schleifer, *Through the Looking Glass: Abstinence-Only-Until-Marriage Programs and Their Impact on Adolescent Human Rights*, 5 SEXUALITY RSCH. & SOC. POL’Y 28 (2008); Cynthia Rothschild, *Abstinence Goes Global: The United States, the Right Wing, and Human Rights*, in 21ST CENTURY SEXUALITIES: CONTEMPORARY ISSUES IN HEALTH, EDUCATION, AND RIGHTS 178 (Gilbert Herdt & Cymene Howe eds., 2007); John Santelli et al., *Abstinence and Abstinence-Only Education: A Review of U.S. Policies and Programs*, 38 J. ADOLESCENT HEALTH 72 (2006).

309. Jennifer M. Randles, *Redefining the Marital Power Struggle Through Relationship Skills: How U.S. Marriage Education Programs Challenge and Reproduce Gender Inequality*, 30 GENDER & SOC’Y 240, 243–49 (2016); McClain, *supra* note 38, at 109–12.

Family and Population” to its university curriculum, which provides information about marriage based mainly on Islamic teachings.³¹⁰

Marriage education does not necessarily constitute a violation of human rights. Comprehensive sexuality education, which human rights mechanisms consider to be both a right in itself and a means of ensuring the fulfillment of other rights, tends to involve some discussion of marriage.³¹¹ The United Nations Educational, Scientific, and Cultural Organization (“UNESCO”), a UN agency that has produced technical guidance in this area, defines comprehensive sexuality education as “a curriculum-based process of teaching and learning about the cognitive, emotional, physical[,] and social aspects of sexuality.”³¹² Parts of the curriculum touch on the various forms of family, including marriage, so that children will be able to understand legal aspects of marriage (e.g., what marriage is, how to enter and exit a marriage, what rights and obligations exist within a marriage) as well as its social aspects (e.g., how marriage has been shaped by culture and religion, that both marriage and other family structures are valuable, how to sustain a long-term commitment).³¹³ Comprehensive sexuality education thus has the potential to increase the marriage rate and might be adopted as a marriage-promotion measure by States because it ensures that individuals know what the institution is and how to enter it.

It is crucial, however, that States’ comprehensive sexuality education programs not go so far in their promotion of marriage that they become coercive.³¹⁴ Human rights mechanisms would not consider comprehensive sexuality education coercive based on children’s compulsory attendance—

310. Khadijeh Asadisarvestani & Tomáš Sobotka, *A Pronatalist Turn in Population Policies in Iran and Its Likely Adverse Impacts on Reproductive Rights, Health and Inequality: A Critical Narrative Review*, SEXUAL & REPROD. HEALTH MATTERS, Oct. 13, 2023, at 1, 8.

311. Vernor Muñoz (Special Reporter on the Right to Education), *Report of the United Nations Special Rapporteur on the Right to Education*, ¶¶ 19–20, U.N. Doc. A/65/162 (July 23, 2010); Guzmán Albarracín et al. v. Ecuador, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 405, ¶ 139 (June 24, 2020); Comm. on the Elimination of Discrimination against Women, *supra* note 24, ¶ 22; ACHPR, *supra* note 256, ¶ 36.

312. UNITED NATIONS EDUC. SCI. & CULTURAL ORG., INTERNATIONAL TECHNICAL GUIDANCE ON SEXUALITY EDUCATION: AN EVIDENCE-INFORMED APPROACH 16 (2018) [hereinafter UNESCO].

313. *Id.* at 43–44; *see also* Comm. on the Elimination of Discrimination Against Women, General Recommendation on Article 16 of the Convention on the Elimination of All Forms of Discrimination Against Women (Economic Consequences of Marriage, Family Relations and Their Dissolution), ¶ 32, U.N. Doc. CEDAW/C/GC/29 (Oct. 30, 2013). It would also be useful to educate children (and adults) about the financial consequences of marriage, since they might otherwise be oblivious to them. *See* MAYERI, *supra* note 145, at 266.

314. UNESCO, *supra* note 312, at 16.

they tend to approve of mandatory sexuality education in schools³¹⁵—but based on the content of the program. Both UNESCO and the UN Special Rapporteur on the Right to Education have emphasized that the goal of comprehensive sexuality education is to empower individuals so that they understand the range of social and sexual behaviors and relations, choose which of these best suits them, and thrive in their chosen lifestyle.³¹⁶ Human rights mechanisms have emphasized that for comprehensive sexuality education to empower individuals to choose among options (instead of pressuring them to choose any particular option), the information provided must be complete, accurate, unbiased, evidence-based, and up-to-date.³¹⁷ The Committee on Economic, Social and Cultural Rights has also clarified that international law requires States to “refrain . . . from censoring, withholding or intentionally misrepresenting health-related information” in the context of sexuality education.³¹⁸ Additionally, the African Commission on Human and Peoples’ Rights has explained that States are obliged to provide this kind of education and information “without judgment,” so that the individual feels free to choose.³¹⁹ The UN Special Rapporteur on the Right to Education has determined that abstinence-only education is coercive because it “den[ies] students’ right to accurate information that allows them to make informed and responsible decisions.”³²⁰

315. Muñoz, *supra* note 311, ¶ 25 (“In general, treaty monitoring bodies have expressly recommended that sexual and reproductive health education should be a mandatory component of learning.”); Macaté, *supra* note 280, ¶ 207 (“[T]he Court has found that mandatory sex education, including at primary school, which was aimed at giving children correct, precise, objective and scientific knowledge on the subject, presented in a manner appropriate to their age, was compatible with Article 2 of Protocol No. 1, as well as with Articles 8 and 9 of the Convention.”); Angulo Losada v. Bolivia, Preliminary Objections, Merits, Reparations, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 475, ¶ 216 (Nov. 18, 2022) (ordering the State to incorporate sexual and reproductive education “into the compulsory school teaching materials in accordance with the level of maturity of the children”).

316. UNESCO, *supra* note 312, at 16; Muñoz, *supra* note 311, ¶¶ 16–17.

317. UNESCO, *supra* note 312, at 16; Comm. on Econ., Soc. & Cultural Rts., *Sexual and Reproductive Health*, *supra* note 277, ¶¶ 9, 47, 49(f), 63; Afr. Comm. on Hum. & Peoples’ Rts., General Comment No. 2 on Article 14.1 (a), (b), (c) and (f) and Article 14.2 (a) and (c) of the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa, ¶¶ 28, 51 (Nov. 28, 2014).

318. Comm. on Econ., Soc. & Cultural Rts., General Comment No. 14 (2000) The Right to the Highest Attainable Standard of Health (Article 12 of the International Covenant on Economic, Social and Cultural Rights), ¶ 34, U.N. Doc. E/C.12/2000/4 (Aug. 11, 2000).

319. Afr. Comm. on Hum. & Peoples’ Rts., *supra* note 317, ¶¶ 28, 51.

320. Muñoz, *supra* note 311, ¶ 68.

Comprehensive sexuality education should also avoid discriminating against any group and instead should further equality.³²¹ UNESCO and the UN Special Rapporteur on the Right to Education have emphasized that comprehensive sexuality education can further equality by increasing understanding, respect, tolerance, and acceptance, especially as it combats stereotypes and reduces stigma along lines of sex, gender, sexual orientation, and gender identity.³²² The UN Special Rapporteur on the Right to Education has also emphasized that comprehensive sexuality education needs to reach everyone regardless of age, ability, culture, religion, gender, or marital status, as well as to reach those not attending school; the Rapporteur has explained not only that all individuals need to be taught but also that the curriculum must be adapted to be inclusive of these individuals' experiences.³²³ For children and adolescents, this means they have a right to "age-appropriate" comprehensive sexuality education that "take[s] into account the[ir] evolving capacities."³²⁴ Abstinence-only education, on the other hand, the Rapporteur has found to be discriminatory because it perpetuates and reinforces harmful gender stereotypes.³²⁵

3. Media Campaigns

States have also used media campaigns to promote marriage. In Iran, for example, the government has used mass media to spread messages in favor of early marriage and against divorce.³²⁶ Meanwhile, in China, the State and

321. Comm. on Econ., Soc. & Cultural Rts., *Sexual and Reproductive Health*, *supra* note 277, ¶ 54.

322. UNESCO, *supra* note 312, at 17; Muñoz, *supra* note 311, ¶¶ 23, 33, 38–39, 63.

323. Muñoz, *supra* note 311, ¶¶ 6, 13, 62, 70; *see also* Afr. Comm. on Hum. & Peoples' Rts., *supra* note 317, ¶ 52 (emphasizing that comprehensive sexuality education must reach individuals at faith-based schools and individuals who do not attend school). For more on sex education and persons with intellectual and developmental disabilities, see Sarah L. Curtiss & Melissa Stoffers, *Theorizing the Role of Sex Educators in the Resistance and Reification of Epistemic Injustices Related to the Sexual Expression of People with Intellectual Disability*, 54 ARCHIVES SEXUAL BEHAV. 605 (2025).

324. Comm. on Econ., Soc. & Cultural Rts., *Sexual and Reproductive Health*, *supra* note 277, ¶¶ 47, 49(f); Comm. on the Rts. of the Child, General Comment No. 20 (2016) on the Implementation of the Rights of the Child During Adolescence, ¶ 61, U.N. Doc. CRC/C/GC/20 (Dec. 6, 2016); Afr. Comm. on Hum. & Peoples' Rts., *supra* note 317, ¶ 51; UNESCO, *supra* note 312, at 16.

325. Muñoz, *supra* note 311, ¶ 69. In the context of U.S. abstinence-only education, it has been argued that stereotypes based on class, race, and age are perpetuated and reinforced. Claire Greslé-Favier, *Adult Discrimination Against Children: The Case of Abstinence-Only Education in Twenty-First-Century USA*, 13 SEX EDUC. 715, 722 (2013).

326. Izadi et al., *supra* note 252, at 10.

media have collaborated on a “leftover” women media campaign, which spread the message that women were not marrying because they were undesirable or too picky.³²⁷ The campaign ignored the real reasons for the decrease of marriage in the country (many women were delaying marriage to pursue their education) and instead attempted to make women think of marriage as a crowning achievement and encouraged them to marry young.³²⁸

While States may use the media to share information about marriage with the public, it is important, as in the context of marriage education, that this information be objective and accurate.³²⁹ Messaging that is propagandistic and moralizing is more likely to be coercive than messaging that is straightforward and evidence-based.³³⁰ Additionally, States may not use media campaigns to advocate for marriage-promotion measures that are themselves already known to be coercive, such as child marriage.³³¹

States are also required under international law to address discrimination in the media, including by combating harmful stereotypes based on protected statuses, including gender. The Convention on the Elimination of All Forms of Discrimination Against Women Article 5(a) obligates States to combat harmful gender stereotypes,³³² and the Committee on the Elimination of Discrimination Against Women has urged States to do so in the context of public information programs.³³³ The inter-American and African human rights systems have similar provisions requiring the elimination of harmful gender stereotypes in their regional treaties on gender equality, provisions which expressly state that such stereotypes must be eliminated from the media.³³⁴ The European Court of Human Rights also considers human rights law to have a role in combating harmful gender stereotypes in media, even in

327. Martyna Krystyna Nowak, *Gender Analysis of the One-Child Policy—The Impact on Gender Inequalities in China* 25–28 (2017) (Ph.D. dissertation, The Hong Kong Polytechnic University) (on file with the Pao Yue-Kong Library, Hong Kong Polytechnic University).

328. *Id.* at 26–28.

329. *See supra* note 318 and accompanying text.

330. *See supra* note 119 and accompanying text.

331. *See discussion supra* Section IV.B.1.a.

332. U.N. Convention on the Elimination of All Forms of Discrimination Against Women, *supra* note 273, at art. 5(a).

333. Comm. on the Elimination of Discrimination Against Women, General Recommendation No. 41 on Dismantling Gender Stereotypes and the Unequal Power Relations that Sustain Them: DRAFT, ¶¶ 47–48 (Mar. 4, 2026), <https://www.ohchr.org/sites/default/files/documents/hrbodies/cedaw/grecommendations/gr41/gr-41-gender-stereotypes-call-comments.docx>.

334. Organization of American States, Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women art. 8(b), 8(g), June 9, 1994, O.A.S.T.S. No. A-61; OAU, *Protocol*, *supra* note 248, at art. 12(b).

the absence of a specific treaty provision on the topic.³³⁵ Additionally, even though gender stereotyping is one of the more likely culprits in the context of a State media campaign about marriage, it is important to note that stereotyping on the basis of other protected statuses, such as race, age, and sexual orientation, would also constitute violations of human rights law.³³⁶

4. Taxation

Taxation is another means States have used to promote marriage. Historically, this has sometimes included an outright tax on unmarried individuals, such as in Germany,³³⁷ or on unmarried men in particular, as in Thailand.³³⁸ Lately, it has also included the use of joint tax measures for spouses in countries such as the United States, Canada, and Australia,³³⁹ although this only benefits a subset of married couples, thereby indirectly penalizing those married couples that do not fit the breadwinner/homemaker model and reducing the participation of married women in the workforce.³⁴⁰ These measures have been found to have an effect on personal decision-making about whether and when to enter into a marriage;³⁴¹ the greater this

335. See Lourdes Peroni & Alexandra Timmer, *Gender Stereotyping in Domestic Violence Cases: An Analysis of the European Court of Human Rights' Jurisprudence*, in STEREOTYPES AND HUMAN RIGHTS LAW, *supra* note 159, at 40.

336. See Mathias Möschel, *Racial Stereotypes and Human Rights*, in STEREOTYPES AND HUMAN RIGHTS LAW, *supra* note 159, at 131; International Convention on the Elimination of All Forms of Racial Discrimination, *supra* note 155, at art. 7; Inter-Am. Comm'n H.R., Violence Against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas, ¶ 254, OEA/Ser.L/V/II.rev.1, Doc. 36 (Nov. 12, 2015); Inter-Am. Comm'n H.R., Violence, Children and Organized Crime, ¶ 123, OEA/Ser.L/V/II., Doc. 40/15 (Nov. 11, 2015).

337. See Livi-Bacci, *supra* note 27, at 192, 198.

338. See Morakot Muthuta, *Public Policy Related to Fertility in Thailand: Past, Present and the Way Forward*, 8 INT'L J. CRIME L. & SOC. ISSUES 8, 11 (2021).

339. See Kathleen Lahey, *Australian Tax-Transfer Policies and Taxing for Gender Equality: Comparative Perspectives and Reform Options*, in TAX, SOCIAL POLICY AND GENDER: RETHINKING EQUALITY AND EFFICIENCY 35, 57–58 (Miranda Stewart ed., 2017).

340. See Åsa Gunnarsson, *Gender Equality and Taxation—International Perspectives* 2, 16 (CBS, Law Research Paper No. 20-29, 2020), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3688899 [<https://perma.cc/EU2X-452B>]; Nadia Myohl, *Till Taxes Keep Us Apart? The Impact of the Marriage Tax on the Marriage Rate*, 31 INT'L TAX & PUB. FIN. 552, 554 (2024); Margherita Borella et al., *The Effects of Marriage-Related Taxes and Social Security Benefits* 11 (Nat'l Bureau of Econ. Rsch., Working Paper No. 23972, 2018).

341. See James Alm & Leslie A. Whittington, *Income Taxes and the Marriage Decision*, 27 APPLIED ECON. 25, 29–31 (1995); James Alm & Leslie A. Whittington, *For Love or Money? The Impact of Income Taxes on Marriage*, 66 ECONOMICA 297, 298 (1999) [hereinafter Alm & Whittington, *For Love or Money?*]; James Alm & Leslie A. Whittington, *Income Taxes and the*

effect, the more likely the measure will be considered unduly coercive under international law.³⁴²

The question then is whether marriage-promotion tax measures are discriminatory and, if so, along which lines, since there are comparisons to be drawn across many groups.³⁴³ Human rights mechanisms have thus far given limited guidance in this area. The European Court of Human Rights historically has been tolerant of differentiation between married and unmarried taxpayers, but it has only considered cases in which higher tax burdens were placed on married couples than on unmarried couples; it might not tolerate burdens that run the other way.³⁴⁴ The Committee on the Elimination of Discrimination Against Women gave slightly more guidance in its 2016 Concluding Observations to France, when it recommended that the State:

(a) Revise the tax system and introduce individual taxation of income, at least as an option, and abolish or modify the ‘family quotient’ to make the income tax system gender-neutral rather than a disincentive for participation by women in the labour market; [and] (b) Simplify and harmonize the treatment of couples, whether they are married, in a civil partnership or in a de facto union, in tax law and social law.³⁴⁵

Timing of Marital Decisions, 64 J. PUB. ECON. 219, 220 (1997); Alexander Fink, *German Income Taxation and the Timing of Marriage*, 52 APPLIED ECON. 475, 478–79 (2020); Nick Frazier & Margaret McKeehan, *Hesitating at the Altar: An Update on Taxes and the Timing of Marriage*, 46 PUB. FIN. REV. 743, 744, 746 (2018); Hayley Fisher, *The Effect of Marriage Tax Penalties and Subsidies on Marital Status*, 34 FISCAL STUD. 437, 439 (2013); Leora Friedberg & Elliott Isaac, *Same-Sex Marriage Recognition and Taxes: New Evidence About the Impact of Household Taxation*, 106 REV. ECON. & STAT. 85, 87–88 (2024); Myohl, *supra* note 340, at 579.

342. Arguably, all taxation is coercive. A non-coercive tax system would be a nonexistent tax system, and human rights mechanisms do not advocate for the nonexistence of taxation. Taxation is needed for States to have the resources to comply with positive human rights obligations. See INITIATIVE FOR HUM. RTS. PRINCIPLES IN FISCAL POL’Y, PRINCIPLES FOR HUMAN RIGHTS IN FISCAL POLICY 5, 7 (2021) (a non-binding document resulting from a three-year, interdisciplinary, multi-actor dialogue across Latin American and the Caribbean).

343. See Lawrence Zelenak, *Doing Something About Marriage Penalties: A Guide for the Perplexed*, 54 TAX L. REV. 1, 3 (2000).

344. See Philip Baker, *Taxation and the European Convention on Human Rights*, 2000 EUR. TAX’N 298, 318–19.

345. Comm. on the Elimination of Discrimination Against Women, Concluding Observations on the Combined Seventh and Eighth Periodic Reports of France, ¶ 39, U.N. Doc. CEDAW/C/FRA/CO/7-8 (July 25, 2016); see also Comm. on the Elimination of Discrimination Against Women, Concluding Observations on the Ninth Periodic Report of Germany, ¶ 56(b), U.N. Doc. CEDAW/C/DEU/CO/9 (May 31, 2023) (“Amend tax legislation to reduce the percentage of married women placed in the most unfavourable tax bracket so that they have

This seems to suggest two things. First, that human rights mechanisms will consider marriage-promotion tax measures that indirectly harm women and/or that treat married couples differently from couples in other registered relationships to be discriminatory. Second, that these mechanisms might not consider tax measures that treat couples in registered relationships differently from couples and individuals not in registered relationships to be discriminatory.³⁴⁶

5. Matchmaking

States have also attempted to promote marriage via matchmaking. In Thailand in the 1940s, such efforts included the founding of a governmental Office of Marriage Information that arranged social events for singles.³⁴⁷ In the 1980s, Singapore's marriage-promotion efforts included State-sponsored matchmaking services for college graduates as well as State-sponsored holidays and cruises for young unmarried individuals.³⁴⁸ Some of these methods are still used today, as in the example of South Korea's in-person matchmaking events described in the introduction to this article.³⁴⁹ Increasingly, however, States appear to be following the private sector into the world of online dating. States such as China, India, Iran, and Japan have launched State-sponsored dating apps.³⁵⁰

State-sponsored dating apps are potentially better positioned than commercial dating apps to facilitate individuals' decision-making around marriage. Both the States' and the users' interests in a dating app involve the formation of a personal connection,³⁵¹ whereas a private company's interest in a dating app is profit, which might not be served by the formation of a

incentives to enter or remain in the labour market by paying lower taxes and thus earning higher incomes . . .").

346. Human rights mechanisms also appear to tolerate differentiations in the taxation of cohabiting siblings as compared to married couples or civil partners. See Fareda Banda & John Eekelaar, *International Conceptions of the Family*, 66 INT'L & COMPAR. L.Q. 833, 835 (2017) (discussing *Burden v. United Kingdom*, App. No. 13378/05 (Apr. 29, 2008), <https://hudoc.echr.coe.int/eng?i=001-86146>).

347. See Muthuta, *supra* note 338, at 12; Pramote Prasartkul et al., *Prospects and Contexts of Demographic Transitions in Thailand*, J. POPULATION & SOC. STUD., Jan.–Mar. 2019, at 1, 10.

348. J. John Palen, *Fertility and Eugenics: Singapore's Population Policies*, 5 POPULATION RSCH. & POL'Y REV. 3, 11–12 (1986).

349. See *supra* notes 6–10 and accompanying text.

350. Martin Beckstein & Bouke de Vries, *Dating Apps as Tools for Social Engineering*, ETHICS & INFO. TECH., Dec. 2024, at 1, 1.

351. See *id.* at 6; Bouke de Vries, *State-Run Dating Apps: Are They Morally Desirable?*, PHIL. & TECH., Feb. 2024, at 1, 8.

personal connection.³⁵² The profit motive has led commercial dating apps to keep users on their platforms by wasting their time with bots or actors, addicting them to the app through methods such as gamification, and presenting them with profiles of individuals with whom they are unlikely to connect.³⁵³ A State-sponsored app is unlikely to have these problems.³⁵⁴ Still, States that adopt this measure should be careful not to do so in a coercive way, such as by banning commercial competitors.³⁵⁵ It would be better for individuals to have more options to choose from, not to have their choice reduced to a single State-run dating app that might not be a good fit.

States could also take the opportunity to promote equality via dating apps. States have well-established obligations under human rights law not to filter out potential matches based on ability, ethnicity, religion, or caste, as some private applications are wont to do.³⁵⁶ States would likely also offer this as a free or more affordable service, making it more possible for individuals to meet regardless of socioeconomic status.³⁵⁷ They could also be more responsive than private dating apps have been to gender-based harassment on these apps,³⁵⁸ and to concerns raised by UN human rights mechanisms about how dating apps might facilitate trafficking and exploitation.³⁵⁹ States should be careful, however, that any safety measures put in place are effective in

352. Beckstein & de Vries, *supra* note 350, at 5–6; de Vries, *supra* note 351, at 3–6.

353. Beckstein & de Vries, *supra* note 350, at 5.

354. *See id.* at 5–6.

355. *See id.* at 4.

356. *See id.* at 6; Nidhi Goyal, *Is Access Real? Disability, Sexuality, and the Digital Space*, ARROW FOR CHANGE, Mar. 2016, at 31, 32; *see also supra* Section IV.A.1. Businesses also have human rights obligations, but the nature, content, scope, and enforcement of their obligations are not as well established as those of States. *See* John Gerard Ruggie, *Business and Human Rights: The Evolving International Agenda*, 101 AM. J. INT'L L. 819, 819–22 (2007) (describing human rights obligations of businesses and the challenges with the articulation and implementation of these obligations).

357. *See supra* Section IV.A.4.

358. *See* Rebecca Bates et al., *Swipe Right: Harms Associated with Using and Meeting People via Dating Apps*, 14 PARTNER ABUSE 114, 114 (2023).

359. *See* Comm. on the Elimination of Discrimination Against Women, Concluding Observations on the Combined Seventh and Eighth Periodic Reports of the Philippines, ¶ 27(a), U.N. Doc. CEDAW/C/PHL/CO/7-8 (July 25, 2016); Juan Miguel Petit (Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography), *Mission to Ukraine*, ¶¶ 57, 75(e), U.N. Doc. A/HRC/4/31/Add.2 (Jan. 24, 2007); Maud de Boer-Buquicchio (Special Rapporteur on the Sale and Sexual Exploitation of Children, Including Child Prostitution, Child Pornography and Other Child Sexual Abuse Material), *Visit to the Gambia*, ¶ 20, U.N. Doc. A/HRC/46/31/Add.1 (Jan. 22, 2021).

protecting individuals from discrimination and violence, and not simply an excuse for censoring and surveilling the population.³⁶⁰

V. POTENTIAL COUNTERARGUMENTS

Having articulated and illustrated a framework for assessing whether a marriage-promotion measure is permissible or prohibited under human rights law, this article proceeds to address two potential arguments against the ability of human rights law to place limits on State actions that increase or attempt to increase the marriage rate. Section V.A addresses the argument that human rights law does not define the concept of family, so that if States wish to limit the definition of “family” to “marital family,” that remains within the scope of their sovereignty. It responds by explaining that human rights law still requires that States’ exercise of authority over the concept of family comply with the principles of equality and non-discrimination, including non-discrimination on the basis of marital status. Section V.B addresses the argument that marriage is not merely a civil but also a religious institution and that religion therefore should be able to shape the types of marriages entered and the means through which these marriages are promoted. It responds that the protection of the individual’s international right to freedom of religion prevents one religion from controlling the meaning of marriage for the whole of society and notes that the overall approach of human rights mechanisms to freedom of religion complements, rather than conflicts with, this article’s framework.

A. *The Definition of “Family”*

One response to this article’s framework for assessing whether a particular marriage-promotion measure is permissible under human rights law would be to assert States’ authority over the definition of “family.” States might point out that international law does not define “family,” and that, instead, States have retained sovereignty in this area, enabling them to define “family” in accordance with their social practices and domestic legal systems. If States

360. See Brenda Dvoskin & Thomas E. Kadri, *Safe Sex in the Age of Big Tech Feminism*, 39 HARV. J.L. & TECH. 59, 64 (2025); Beckstein & de Vries, *supra* note 350, at 4; Aynne Kokas, *Data Trafficking and the International Risks of Surveillance Capitalism: The Case of Grindr and China*, 24 TELEVISION & NEW MEDIA 673, 677–80 (2023); Zahra Stardust et al., *Surveillance Does Not Equal Safety: Police, Data and Consent on Dating Apps*, 19 CRIME MEDIA CULTURE 274, 284–87 (2023); Clément Nyaletsossi Voule (Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association), *Visit to Brazil*, ¶ 64, U.N. Doc. A/HRC/53/38/Add.1 (May 23, 2023).

wish to limit the definition of “family” to “marital family” and thus decline to extend recognition, support, or protections to nonmarital social arrangements, that would be, per this argument, their prerogative.

It is true that international law has not imposed a definition of “family” on States.³⁶¹ One reason for the absence of a definition of “family” in international law is the lack of global consensus about what constitutes a family, which makes the formulation of a universal definition challenging if not impossible.³⁶² The Human Rights Committee has indicated “that it is . . . not possible to give the concept [of the family] a standard definition” in international law because “the concept of the family may differ in some respects from State to State, and even from region to region within a State.”³⁶³

There is also evidence however, that some drafters of human rights instruments and the human rights mechanisms interpreting these documents have been disinclined to define “family” not only because of a lack of consensus but also because they want the concept of family to be expansive.³⁶⁴ The Universal Declaration of Human Rights, for example, has been seen as embodying “a pluralistic vision of family that can accommodate many types of family arrangements.”³⁶⁵ Meanwhile, the Inter-American Court of Human Rights expressly stated a preference for a broad and flexible definition when explaining that “the American Convention [of Human Rights] does not define a limited concept of family, nor does it only protect a ‘traditional’ model of the family.”³⁶⁶

A flexible, expansive approach to the concept of family accounts not only for diversity in the present but also for changes moving forward, allowing human rights law to be responsive to social trends and technological advances.³⁶⁷ Even a human rights mechanism that is especially concerned about consensus on matters concerning the family, as the European Court of Human Rights is,³⁶⁸ will tend to update its understanding of the concept of

361. See Marek Stych, *The Definition of Family in International and EU Law*, 9 MEST J. 192, 194–95 (2021); Saez, *supra* note 24, at 319; Ekanem Okon, *Towards Defining the ‘Right to a Family’ for the African Child*, 12 AFR. HUM. RTS. L.J. 373, 375 (2012).

362. See M. Joel Voss, *Contesting “Family” at the United Nations Human Rights Council*, 14 RELIGION & HUM. RTS. 95, 95–96 (2019); Okon, *supra* note 361, at 377.

363. Hum. Rts. Comm., General Comment No. 19, *supra* note 24, ¶ 2.

364. See Voss, *supra* note 362, at 96; Saez, *supra* note 24, at 319; Okon, *supra* note 361, at 387.

365. Savitri Goonesekere, *Human Rights as a Foundation for Family Law Reform*, 8 INT’L J. CHILD.’S RTS. 83, 86 (2000).

366. Banda & Eeklaar, *supra* note 346, at 843.

367. Stych, *supra* note 361, at 197.

368. Clare Ryan, *Europe’s Moral Margin: Parental Aspirations and the European Court of Human Rights*, 56 COLUM. J. TRANSNAT’L L. 467, 473, 490 (2017).

family over time. Olga Cvjeić Jančić has observed that the European Court “is clearly inclined to take into account the circumstances of real life and to transform that reality into law, instead of doing the opposite—subduing reality to law, even where the law no longer reflects the reality and the real needs of the population.”³⁶⁹ This attitude alone indicates that human rights mechanisms are unlikely to look favorably upon restrictive definitions of “family.”

Moreover, human rights mechanisms must reject definitions of “family” that are restrictive in a manner that violates human rights law. Even though human rights mechanisms are arguably incapable of, and also uninterested in, setting forth a permanent and unambiguous definition of “family,” they remain capable of, and interested in, rejecting domestic definitions of “family” that are not in keeping with human rights principles. The most relevant human rights principles in this context thus far have been the rights to equality and non-discrimination.³⁷⁰ For example, the right to be free from discrimination on the basis of sex and gender under international law has required a radical rethinking of the concept of family. Traditional definitions of family have disproportionately harmed women,³⁷¹ and human rights law requires that this form of discrimination against women (along with all other forms of discrimination against women) be eliminated.³⁷² Human rights mechanisms specifically have found that women’s rights require States not to recognize certain forms of family relationships, such as polygyny³⁷³ and marriages arising out of rape.³⁷⁴ They have also found that States cannot perpetuate harmful gender stereotypes in their definitions of the family, such as by ascribing rigid, traditional roles to men and/or women.³⁷⁵

The right to be free from discrimination on the basis of sexual orientation has also influenced the concept of family in international law.³⁷⁶ For example,

369. Olga Cvjeić Jančić, *The Definition of Family in Modern Law and Its Legal Protection*, 1 INT’L J. JURIS. FAM. 77, 96 (2010).

370. Voss, *supra* note 362, at 132; Saez, *supra* note 24, at 319; Banda & Eeklaar, *supra* note 346, at 860.

371. Arati Rao, *Home-Word Bound: Women’s Place in the Family of International Human Rights*, 2 GLOB. GOVERNANCE 241, 256 (1996).

372. Convention on the Elimination of All Forms of Discrimination Against Women, *supra* note 273, at art. 16.

373. In another article, I argue that human rights law’s rejection of multiple-partner relationships may itself be discriminatory. Tueller, *supra* note 25, at 1069–72. Regardless, the principle of equality and non-discrimination is relevant to answering the question of what constitutes a family and therefore merits both domestic and international protections.

374. Banda & Eeklaar, *supra* note 346, at 837.

375. Off. of the United Nations High Comm’r for Hum. Rts., *Gender Stereotyping as a Human Rights Violation*, at 18 (2013).

376. *See* Banda & Eeklaar, *supra* note 346, at 837.

the European Court of Human Rights found a violation of the right to family life, as well as the right to equality and non-discrimination, when France barred a lesbian woman from adopting a child due to the woman's sexual orientation.³⁷⁷ Although the European Court did not give a definition of family here, this decision does indicate the Court's understanding that, however France chooses to define family, this definition cannot be so narrow as to exclude lesbian parents, single-parent households, or adoptive parents. The European Court has also described same-sex couples as enjoying "family life" under the European Convention and therefore being entitled to some form of legal recognition, although the European Court has yet to find that States must recognize their relationships in the same manner as they do heterosexual couples.³⁷⁸ The inter-American human rights system has likewise rejected narrow definitions of "family" that exclude lesbian and gay parents and has gone even farther in rejecting definitions of family that deprive same-sex couples of legal recognition, support, and protection equal to that of heterosexual couples.³⁷⁹

Were a State to attempt to limit the definition of "family" to the "marital family," this definition would not be in keeping with the principles of equality and non-discrimination under international law. Specifically, in this case, the right to be free from discrimination on the basis of marital status.³⁸⁰ Although the prohibition of discrimination on the basis of marital status initially arose out of the prohibition on discrimination against children born out of wedlock, it has since expanded to require equal treatment for unmarried couples and individuals.³⁸¹ On the strength of these two overlapping prohibitions, human rights mechanisms have interpreted "family" to include nonmarital partners (including but not limited to cohabitants) as well as parents of children born out of wedlock.³⁸² The Inter-American Court of Human Rights has even expressly stated that "the concept of family life is not limited only to marriage and must encompass other de facto family ties in which the parties live together outside of marriage."³⁸³ Therefore, although it generally remains within the sovereign authority of States to define family, the principles of

377. Cvjeić Jančić, *supra* note 369, at 98 (discussing *E.B. v. France*, App. No. 43546/02 (Jan. 22, 2008), <https://hudoc.echr.coe.int/?i=001-84571>).

378. See Banda & Eeklaar, *supra* note 346, at 843; Wolfson et al., *supra* note 25, at 11.

379. Saez, *supra* note 24, at 335–47.

380. See Tueller, *supra* note 25, at 1044–47 (providing examples of human rights mechanisms' denouncing direct discrimination on the basis of marital status).

381. *Id.* at 1035–40.

382. Cvjeić Jančić, *supra* note 369, at 95, 97; Banda & Eeklaar, *supra* note 346, at 841.

383. Banda & Eeklaar, *supra* note 346, at 843 (quoting *Atala Riffo v. Chile*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 239, ¶ 142 (Feb. 24, 2012)).

equality and non-discrimination place limits on this sovereignty by preventing States from defining the “family” so narrowly as to encompass only the marital family.

B. Religion

Another possible response to this article is that the framework does not adequately account for marriage’s dual nature as a civil institution derived from and entangled with religion.³⁸⁴ One might argue that religion should continue to shape marriage, which in this context would include both the types of marriages promoted and the means used to promote marriage.³⁸⁵ For example, per this argument, a State should be able to withhold legal recognition from certain couples if extending recognition to these couples contradicts a religious concept of marriage.³⁸⁶ Additionally, under this view, an argument might be made that States ought to have the ability to provide funding to religious organizations to conduct marriage education in accordance with that religion’s beliefs and values.³⁸⁷

However, the international right of the individual to freedom of religion and the related right to be free from discrimination on the basis of religion³⁸⁸

384. Ayelet Shachar, *Entangled: Family, Religion and Human Rights*, in HUMAN RIGHTS: THE HARD QUESTIONS 115, 120 (Cindy Holder & David Reidy eds., 2013).

385. See HEINER BIELEFELDT ET AL., FREEDOM OF RELIGION OR BELIEF: AN INTERNATIONAL LAW COMMENTARY 343 (2016) (“Through the State religion ‘gate’ can enter discrimination in the rights to marry, divorce, decide on family size, . . . and so on.”); Sharon Shakargy, *Marriage by the State or Married to the State? On Choice of Law in Marriage and Divorce*, 9 J. PRIV. INT’L L. 499, 515 (2013) (explaining that “the public has yet to accept the extent to which marriage has turned private”; instead it “clings to a religious-like perception of marriage.”).

386. See, e.g., Paolo G. Carozza & Daniel Philpott, *The Catholic Church, Human Rights, and Democracy: Convergence and Conflict with the Modern State*, 15 LOGOS 15, 35, 37 (2012) (describing the Catholic Church’s opposition to same-sex unions and its willingness to present its objections in international fora, including UN population conferences); Yuval Merin, *Anglo-American Choice of Law and the Recognition of Foreign Same-Sex Marriage in Israel—On Religious Norms and Secular Reform*, 36 BROOK. J. INT’L L. 509, 511 (2011) (explaining that Orthodox Jewish law forbids same-sex relationships and that same-sex marriages have gone unacknowledged in Israel for this reason).

387. See *supra* Section IV.C.2.

388. International Covenant on Civil and Political Rights, *supra* note 91, at arts. 2(1), 18, 26, 27; International Convention on the Elimination of All Forms of Racial Discrimination, *supra* note 155, at art. 5(vii); International Covenant on Economic, Social and Cultural Rights, *supra* note 163, at art. 2(2); Convention on the Rights of the Child, *supra* note 292, at arts. 2(1), 14, 30; American Convention on Human Rights, *supra* note 91, at arts. 1(1), 12; Convention for the Protection of Human Rights and Fundamental Freedoms, *supra* note 91, at arts. 9, 14; African Charter on Human and Peoples’ Rights, *supra* note 163, at arts. 2, 8.

require States to encourage religious plurality and tolerance.³⁸⁹ In a pluralistic environment—embracing believers of many faiths, atheists, individuals of no belief, and individuals who decline to profess their beliefs—no one religion has authority to define the contours of marriage for the whole of society.³⁹⁰ The Inter-American Court of Human Rights invoked the principle of the separation of church and state (relevant to the encouragement of religious plurality)³⁹¹ in an opinion requiring States to extend legal recognition to same-sex marriages in spite of religious opposition.³⁹² Additionally, while the European Court of Human Rights has in the past permitted nondenominational religious schools to receive state funding, it has, at the same time, required that this education be “conveyed in an objective, critical and pluralistic manner” and not “pursue an aim of indoctrination.”³⁹³ Human rights mechanisms’ understanding of the requirements of religious freedom and non-discrimination in the context of education clearly aligns with this article’s approach to marriage education and media campaigns: the materials may be informational and evidence-based; they may not be partial or propagandistic.³⁹⁴

Human rights law also requires States to protect plurality within faiths.³⁹⁵ Instead of heeding only the dominant voices within a faith, States also owe a duty to those individuals whose beliefs are unorthodox and whose identities might have kept them on the margins of their faith’s organization and practices.³⁹⁶ For example, a Muslim lesbian who does not want to be forced

389. BIELEFELDT ET AL., *supra* note 385, at 311; Piet Hein van Kempen, *Freedom of Religion and Criminal Law: A Legal Appraisal: From the Principle of Separation of Church and State to the Principle of Pluralist Democracy?*, in TENSIONS WITHIN AND BETWEEN RELIGION AND HUMAN RIGHTS 27, 33, 35, 38, 41 (Johannes A. Van Der Ven & Hans-Georg Ziebertz eds., 2012); Carolyn Evans & Christopher A. Thomas, *Church-State Relations in the European Court of Human Rights*, 2006 BYU L. REV. 699, 700.

390. BIELEFELDT ET AL., *supra* note 385, at 326–27; Evans & Thomas, *supra* note 389, at 710–11; Kempen, *supra* note 389, at 33, 36.

391. BIELEFELDT ET AL., *supra* note 385, at 342. The specific model of the relationship between church and the government is not specified by international law, which leaves States some flexibility in organization so long as individual rights are not infringed. *Id.* at 350–51; Winfried Brugger, *Separation, Equality, Nearness: Three Church-State Models*, 25 INT’L J. SEMIOTICS L. 263, 265 (2012).

392. OC-24/17, *supra* note 24, ¶ 223.

393. Evans & Thomas, *supra* note 389, at 714–15 (quoting Kjeldsen v. Denmark, App. No. 5095/71, 1 Eur. Ct. H.R. Rep. 737, ¶ 53 (1976)); *see also* BIELEFELDT ET AL., *supra* note 385, at ch. 1.3.6 (on religion, teaching, and human rights).

394. *See supra* Sections IV.C.2–3.

395. BIELEFELDT ET AL., *supra* note 385, at 329–30.

396. *See* IOANA CISMAS, RELIGIOUS ACTORS AND INTERNATIONAL LAW 3 (2014) (rejecting the assumption that religion and international law will inevitably conflict and encouraging a

to marry a man because of her religious beliefs relating to sexuality should be understood to be exercising her freedom of religion, even if her views do not align with those of her church or broader religious community.³⁹⁷ Conceiving of her arguments as an exercise of religious freedom further reinforces that forced marriage is an impermissible means of marriage promotion as well as that extending legal recognition to same-sex marriages is a permissible means of marriage promotion.³⁹⁸ The overall approach of human rights mechanisms to religion thus appears not to provide a basis for contesting the framework outlined in Part IV, but instead to provide additional support for this framework.

VI. CONCLUSION

This article has identified, expanded on, and illustrated an international legal framework for evaluating States' efforts to promote marriage. It has drawn clear boundaries between those measures that could increase the marriage rate that are permissible under human rights law (removing status-based impediments to marriage; eliminating mandatory premarital testing for HIV; eliminating dowry and bride price; and addressing socioeconomic inequality) and those measures that are prohibited by human rights law (forced marriage, including child marriage; marital status discrimination; and discrimination against children born out of wedlock). It has shown that those measures that are clearly permissible tend to empower individuals to make their own choices about when, whether, and whom to marry and to do so on a basis of equality with others, while those measures that are clearly prohibited are often both coercive and discriminatory.

The article also provides a tool for evaluating marriage-promotion measures that, although not inherently coercive or discriminatory, run the risk of coercing or discriminating against individuals depending on the circumstances. Although the article specifically discusses only a limited set of such measures (the elimination of legal unions other than marriage; marriage education; media campaigns concerning marriage; marriage-related tax schemes; and matchmaking activities), there are many marriage-promotion measures that could be analyzed under this framework, such as

deeper analysis of "the dynamism and diversity of religions"); BIELEFELDT ET AL., *supra* note 385, at 350 (noting that women within religious minorities face discrimination on the basis of sex and gender from within their communities as well as discrimination on the basis of religious belief).

397. Jeffrey A. Redding, *Human Rights and Homo-Sexuals: The International Politics of Sexuality, Religion, and Law*, 4 NW. J. INT'L HUM. RTS. 436, 453 (2006).

398. *Id.* at 439; *see supra* Sections IV.A.1.d & IV.B.1.

marriage loans³⁹⁹ and mass wedding ceremonies.⁴⁰⁰ Policymakers, activists, and academics can rely on this article's framework when evaluating these measures in their specific country contexts, including those emerging with the Trump Administration's implementation of Project 2025,⁴⁰¹ to ensure that States are complying with their human rights obligations.

Compliance with human rights obligations in this context requires States to undergo a radical shift not merely in strategy but in perspective. They must stop devising marriage-promotion measures against a background of crisis,⁴⁰² and instead begin to devise these measures within this article's framework of individuals' international rights to autonomy and equality.⁴⁰³ This human rights framework requires States to work simultaneously to make it more possible for individuals to choose to marry and to make it more possible for individuals to choose not to marry. States must remove social, economic, and legal barriers to both marital and nonmarital relationships, and to thriving in these relationships. Marriage-promotion measures that are permissible under human rights law do not privilege marriage over other family forms but instead facilitate and support marriage as one option available on equal terms to freely consenting adults.

399. See, e.g., Asadisarvestani & Sobotka, *supra* note 310, at 8.

400. See, e.g., *Mass Wedding Ceremonies Held Around Mexico on Valentine's Day*, MEX. NEWS DAILY (Feb. 15, 2023), <https://mexiconewsdaily.com/culture/mass-weddings-mexico-valentines-day> [<https://perma.cc/7B7B-RKAH>]; Simi Jolaoso, *Mass Wedding for Nigeria Orphans Sparks Outcry*, BBC NEWS (May 17, 2024), <https://www.bbc.com/news/articles/c3gqvzql9ylo> [<https://perma.cc/Y33C-FKZ3>].

401. When President Donald Trump took office for a second term, he began enacting Project 2025. See *Project 2025, Explained*, ACLU, <https://www.aclu.org/project-2025-explained> [<https://perma.cc/S93C-Z8ZF>]. A policy agenda designed by the Heritage Foundation, Project 2025 identifies the "crisis of marriage and the family" (by which it refers to both the decreasing rate of marriages and the expanded access to marriage for gay couples) as the root cause of a wide variety of social ills. HERITAGE FOUND., *MANDATE FOR LEADERSHIP: THE CONSERVATIVE PROMISE* 4, 451, 489, 490 (Paul Dans & Steven Groves eds., 2023). To address this crisis, the manual recommends not only removing disincentives to marriage arising out of the current structure of federal housing and welfare benefits, but also "encouraging marriage" through changes to child support, education, family planning services, and more. *Id.* at 284, 451, 479, 480, 489, 503, 509. The Trump Administration also appears to be coming up with its own ideas for marriage-promotion measures; for example, Secretary of Transportation Sean Duffy announced in February 2025 that communities with higher-than-average marriage rates (and birth rates) would receive priority for federal funding from his department. Linda Greenhouse, *Abortion's Long History*, N.Y. REV. (Sept. 25, 2025), <https://www.nybooks.com/articles/2025/09/25/abortions-long-history-linda-greenhouse> [<https://perma.cc/8ZT5-PDM7>].

402. See *supra* notes 12–14 and accompanying text.

403. See *supra* Part III.