

Mandates of the Working Group on the issue of discrimination against women in law and in practice; the Special Rapporteur on the right to education; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on the sale of children, child prostitution and child pornography; the Special Rapporteur on contemporary forms of slavery, including its causes and consequences; and the Special Rapporteur on violence against women, its causes and consequences

REFERENCE: OL
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Excellency,

We have the honour to address you in our capacities as Chairperson-Rapporteur of the Working Group on the issue of discrimination against women in law and in practice; the Special Rapporteur on the right to education; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on the sale of children, child prostitution and child pornography; Special Rapporteur on contemporary forms of slavery, including its causes and consequences; and Special Rapporteur on violence against women, its causes and consequences pursuant to Human Rights Council resolutions 23/7, 26/17, 24/6, 25/6, 24/3, and 23/25.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **current reform process of the 1929 Child Marriage Restraint Act**.

According to information received:

The 1929 Child Marriage Restraint Act is currently being reviewed by your Excellency's Government. It is alleged that a proposed provision would include an exception to the current minimum age of marriage of 18 for girls and 21 for boys. The suggested provision would allegedly allow for the marriage of girls from the age of 16 with the consent of parents and the agreement of the court. It is further alleged that the draft has not been shared with concerned stakeholders of the civil society.

It is reported that child marriage is an endemic phenomenon in Bangladesh with up to two thirds of women having been married before the age of 18. This is allegedly due to poverty and cultural factors such as the need to maintain pre-marriage virginity. It is further reported that legal proceedings on child marriage

are lengthy and the judiciary suffers from a backlog of up to two years to conclude trials.

We would like to take this opportunity to express our concern to your Excellency's Government regarding the aforementioned envisaged exception in the draft Act which would in effect condone and legitimize child and forced marriages. As children do not have the capacity to consent to marriage, child and forced marriages are in essence marriages without the right to refuse. Child and forced marriages are harmful practices which violate many of the fundamental human rights of girl children, including their right to physical and mental health, severely undermine their safety and their long-term prospects for education or economic and social opportunities. Furthermore, child and forced marriages constitute gender discrimination since girls are predominantly affected by them and they are rooted in prejudicial, customary or other practices based on stereotyped roles for men and women, and for boys and girls. Moreover, child and forced marriages constitute a slavery-like practice.

Both child and forced marriages violate the right not to be married without consent and constitute the infringement of girls' and women's physical integrity and human dignity. Child and forced marriages also expose girls and women to physical, sexual and psychological abuse and violence within the marriage. Besides, due to the reported lengthy legal proceedings affecting child marriage cases, which would only increase with such an exception requiring the consent of the courts, there is a high risk of girls turning 18 by the time of the judiciary decision.

In light of the above, we would therefore encourage your Excellency's Government to review its draft Act, so that the minimum age requirement conforms to national legislation, as set out in the Children's Act of 2013, as well as to all the principles and provisions of international treaties ratified by Bangladesh, in particular, the Convention of the Rights of the Child which defines as a child every human being below the age of eighteen.

In connection to the above alleged facts and concerns, please see the **Reference to international law Annex** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

It is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. We would therefore be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide an update on the status of the above-mentioned draft Act in conformity with its international rights obligations.

3. Please provide further information on any measures taken by Your Government to address child and forced marriages which discriminate women and girls and have negative impacts on their health and their protection from violence.
4. Please provide any further information on additional issues such as appropriate redress mechanisms available for victims, rehabilitation, counselling and reintegration, girls' education, and awareness raising campaigns, with the involvement of men and women, to prevent and eliminate child marriage.

We would appreciate receiving a response within 60 days.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

Maud De Boer-Buquicchio
Special Rapporteur on the sale of children, child prostitution and child pornography

Emna Aouij
Chairperson-Rapporteur of the Working Group on the issue of discrimination against women in law and in practice

Kishore Singh
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Urmila Bhoola
Special Rapporteur on contemporary forms of slavery, including its causes and consequences

Rashida Manjoo
Special Rapporteur on violence against women, its causes and consequences

Annex

Reference to international human rights law

The above-mentioned alleged facts would indicate a prima facie violation of a minimum age of marriage and to prevent the marriage of children; the obligation to prevent violence against women and girls; the right to enter a marriage freely (article 23(3)); and the right to protection, as a minor, without discrimination (article 24(1)) as set forth in the International Covenant on Civil and Political Rights (ICCPR), acceded by Bangladesh on 6 September 2000. They also indicate a violation of the right to the highest attainable standard of health of young girls (article 12); right to education (article 13); the right to work (article 6) under the International Covenant on Economic, Social and Cultural Rights (ICESCR), also acceded by Bangladesh on 5 October 1998.

Child and forced marriages undermine a number of rights and principles guaranteed under the Convention on the Rights of the Child (CRC), ratified by Bangladesh on 3 August 1990, which includes non-discrimination (article 2); the best interests of the child (article 3); the right not to be separated from their parents against their will (article 9); the right of the child to be heard and express his or her views (article 12), the right to the enjoyment of the highest attainable standard of health, where States must “take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children” (article 24 (3)); the right to education and to receive educational and vocational information and guidance (article 28); and the rights to protection from all forms of physical and mental violence, injury or abuse, including sexual abuse, while in the care of parents or legal guardians (article 19); sexual exploitation (article 34); sale of children (article 35) and exploitation (article 36).

In paragraph 9 of its General Comment No. 4 (2003) on *Adolescent Health and Development in the Context of the Convention on the Rights of the Child*, the Committee on the Rights of the Child has noted that “States parties need to ensure that specific legal provisions are guaranteed under domestic law, including with regard to setting a minimum age for ... marriage”, which “should be the same for boys and girls.” In paragraph 20, the Committee strongly recommends that “State parties “review and, where necessary, reform their legislation and practice to increase the minimum age for marriage with and without parental consent to 18 years, for both girls and boys.”

Similarly, the Special Rapporteur on the sale of children, child prostitution and child pornography has indicated that child marriage may be considered as sale of children for the purposes of sexual exploitation, in violation of (articles 2-3) of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (CRC-OPSC), ratified by Bangladesh on 6 September 2000.

Following her visit to Bangladesh in 2013, the Special Rapporteur on violence against women, its causes and consequences, noted in her country visit report (A/HRC/26/38/add.2) that “despite being outlawed through the adoption of the Child Marriage Restraint Act of 1929, early marriage remains a major problem. According to the United Nations Children’s Fund (UNICEF), 66 per cent of Bangladeshi girls are

married before the age of 18 and approximately one third of women aged 20 to 24 were married by the age of 15. The Special Rapporteur was informed that in rural areas, some parents feel compelled to marry off their girl children as a “protective measure” against rape, and they resort to obtaining fake birth certificates to escape penalties for violating the law”. Furthermore, she noted “that Bangladesh has one of the highest child marriage rates worldwide” and that “early marriages have serious consequences for the health, education and development rights of girls” and that “the country also has one of the lowest birth registration rates, which hinders the effective implementation of laws against child marriages.” On this issue, the Special Rapporteur recommended that the Government of Bangladesh “take urgent legislative measures to prohibit early and forced marriages and other practices harmful to the well-being of women and girl children”.

Furthermore, the Committee on the Rights of the Child recommended, following its review of Bangladesh in 2009 (CRC/C/BGD/CO/4), that “the State party take urgent legislative measures to prohibit early and forced marriages and other traditional practices harmful to the health and development of boys as well as girls. The Committee urges the State party to introduce gender-sensitive awareness-raising programmes, with the involvement of community leaders, for practitioners, families and the general public to prevent and end harmful practices, especially in rural areas. The Committee also recommends that the State party adopt effective measures to empower girls in the family, school and community settings.”

The Convention on the Elimination of all forms of discrimination against women (CEDAW), which was acceded to by Bangladesh on 6 November 1984, is also very relevant in this case, particularly (article 2), which condemns all forms of discrimination against women; (article 5), which requests the modification of social and cultural patterns of conduct in order to eliminate discrimination against women; (article 10), which requires the elimination of discrimination against women in the field of education; (article 12), which requires the elimination of discrimination against women in the field of health care and; (article 16), which requires the elimination of discrimination against women in all matters relating to marriage and family relations.

The CEDAW Committee, in paragraph 36 of its General Recommendation No. 21 (1994) on *Equality in Marriage and Family Relations*, has specified that “the minimum age for marriage should be 18 years for both men and women.” Furthermore, in paragraph 39, the Committee has called upon State parties to “require the registration of all marriages, whether contracted civilly or according to custom or religious law.”

Both the CRC and CEDAW Committees have stressed the importance of additional legal safeguards to protect the right of all individuals to freely enter into marriage, even in plural legal systems which include both customary and statutory law. In paragraph 54 (h) of the Joint general recommendation/general comment No. 31 of the Committee on the Elimination of Discrimination against Women and No. 18 of the Committee on the Rights of the Child on *Harmful practices*, it is stated that “a system of national compulsory, accessible and free birth registration of all children [should be] established, in order to effectively prevent harmful practices including child marriages”.

Girls who marry young are also more vulnerable to intimate partner violence and sexual abuse than those who marry later in life. In this regard, (article 4 (c & d)) of the United Nations Declaration on the Elimination of Violence against Women is of relevance, as it notes the responsibility of States to exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons. It also underlines the responsibility of States to condemn violence against women and calls on them not to invoke any custom, tradition or religious consideration to avoid their obligations with respect to its elimination.

The CESCR Committee, in its General Comment No. 14, has stressed the need to adopt effective and appropriate measures to abolish harmful traditional practices affecting the health of children, particularly girls, including early marriage (para. 22). Child and forced marriages can also have a significant impact on girls' mental well-being as it often results in separation from family and friends and a lack of freedom to participate in community activities. It usually brings an end to a girl's chance of continued education and economic opportunities. The CESCR Committee has also stated that the practice of early marriage also has a negative impact on the rights to education and work.

According to a 2012 report released by the United Nations Population Fund, "Marrying too Young, End Child Marriage", this practice can lead to complications of pregnancy and child birth. Still births and new born deaths are 50 percent higher among mothers under twenty than in women who become pregnant in their twenties. As well as facing an increased risk of exposure to sexually transmitted infections including HIV, obstetric fistula is also one of the disabilities associated with early childbirth, which can leave girls in constant pain and vulnerable to infection. For these reasons, the World Health Organization has discouraged marriage before the age of eighteen and pregnancy before the age of twenty. The International Conference on Population and Development and the Commission on the Status of Women have called on States to review, enact and strictly enforce laws and regulations concerning the minimum legal age of consent and the minimum age for marriage in order to end the practice of child and forced marriages.

Lastly, we would like to emphasize the fact that under the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, which was acceded to by Bangladesh on 5 February 1985, all forms of servile marriage, in which a spouse is reduced to a commodity over whom any or all the powers of ownership are attached, are defined as a practice similar to slavery (Article 1(c)). The Convention implicitly prohibits child marriage, which constitutes forced marriage, since the child is not in a position to provide informed consent, and calls on the State parties to prescribe, where appropriate, suitable minimum ages of marriage, to encourage the use of facilities whereby the consent of both parties to a marriage may be freely expressed in the presence of a competent civil or religious authority, and to encourage the registration of marriages (Article 2). Other slavery-like practices linked to servile marriage are domestic servitude and sexual slavery (see A/HRC/21/41, paras. 13, 14 and 17).