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HIGH COMMISSIONER FOR HUMAN RIGHTS

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

Mandates of the Working Group on the issue of discrimination against women in law and in practice; 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 situation of human rights in the Islamic Republic of Iran; the Special Rapporteur on contemporary forms of slavery; the Special Rapporteur on freedom of religion or belief; the Special Rapporteur on the sale of children, child prostitution and child pornography; and the Special Rapporteur on violence against women, its causes and consequences.

REFERENCE: OL Health (2002-7) Iran (2011-16) Slavery (2007-2) G/SO 214 (89-15) G/SO 214 (56-23) G/SO 214 (69-19)
IRN 20/2013

28 November 2013

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; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on the situation of human rights in the Islamic Republic of Iran; Special Rapporteur on contemporary forms of slavery; Special Rapporteur on freedom of religion or belief; Special Rapporteur on the sale of children, child prostitution and child pornography; and Special Rapporteur on violence against women, its causes and consequences pursuant to Human Rights Council resolutions 23/7, 24/6, 22/23, 24/3, 22/20, 16/12, and 23/25.

In this connection, we would like to bring to the attention of your Excellency's Government concerns related to the persistence of legislation and provisions which directly or indirectly discriminate against women and girls, including provisions allowing for child marriage and polygamy and which are rooted in prejudicial, customary or other practices based on stereotyped roles for men and women. A recent example of such legislation of which we have been informed is the adoption of the "Unsupervised or III Supervised Children and Youth Protection Bill", by the Islamic Consultative Assembly on 22 September 2013, which allows for marriage between children, most of whom are girls, and their legal guardian.

According to the information received:

Article 1401 of the Civil Code of the Islamic Republic of Iran provides for marriage for girls at 13 years; however, girls can also enter into a marriage contract at a younger age with the permission of a competent court. The 2013 Family Protection Law of the Islamic Republic of Iran reportedly allows for two

types of marriage contract, full or temporary, and polygamy is legal under article 4.4, 21 of this law as well as Shari'a Law. According to Article 1210 of the aforementioned Civil Code, the age of puberty is set at 9 lunar years (8 years and 9 months) for a girl and 15 lunar years (14 years and 7 months) for a boy.

In addition, it is reported that, on 22 February 2009, the Government of the Islamic Republic of Iran first presented the "Unsupervised or III Supervised Children and Youth Protection Bill" (hereinafter "the Bill") to the eighth Islamic Consultative Assembly, for consideration, during which article 24 of the Bill dealing with the *legalization of marriage between child and legal guardian* was introduced for the first time. This article had stated that, with the expert opinion of the State Welfare Organization (hereinafter "Behzisty"), the matter of whether a child and legal guardian could marry should be referred to a competent court for approval.

The results of the first consultation on the proposed Bill reportedly concluded that the inclusion of such an article would be unacceptable to the public and should be removed. As such, the subsequent amended draft of the Bill dated 29 July 2009 excluded article 24.

However, it is alleged that the issue of marriage between a child and legal guardian arose again and was provided for in article 27 of a subsequent draft of the Bill. It is also alleged that, on 29 September 2009, one member of the Islamic Consultative Assembly suggested that such a marriage be prohibited. This suggestion was reportedly implemented and the newly amended Bill resubmitted to the Guardian Council on 13 October 2009. However, due to a technicality on 2 November 2009, the progress of the Bill was effectively halted by the Guardian Council and the last correspondence between the Guardian Council and the eighth Consultative Assembly was recorded on 17 March 2010.

The Bill was then reportedly rescheduled for assessment following the parliamentary elections for the new (ninth) Islamic Consultative Assembly, and subsequently resubmitted to the Guardian Council for its consideration on 24 April 2012. Expert consultations on 13 June 2012 reportedly reflected the Guardian Council's opinion that marriage between a child and the legal guardian "may be in the best interest of the mature / pubescent child." These consultations also allegedly recommended that the previous suggestion that article 27 prohibit such a marriage should be amended, to read: "marriage between the child and the legal guardian either during the time of guardianship or after is prohibited unless after the child has reached maturity / puberty marriage with the guardian would be in the best interest of the child. The matter should be decided after expert consultation with Behzisty by a competent court."

It is reported that, despite this recommendation, the redrafted Bill, submitted on 25 July 2012, still maintained its position regarding the prohibition of such a marriage. However, it is further reported that, on 15 August 2012, the Guardian Council unequivocally stated that the prohibition of marriage between a child and

the legal guardian failed to conform to Islamic criteria and therefore must be removed as there is no legal impediment under Shari'a Law for a legal guardian to marry an adoptive child, as it is considered that there is no affinity or consanguinity in an adoptive relationship.

As such, the Bill was allegedly amended in line with the Guardian Council's recommendation and ratified by the Islamic Consultative Assembly on 23 February 2013. The Bill was then submitted to the Guardian Council for further comment and, although other articles in the Bill were discussed at this time, no changes were made to article 27 and it was not discussed again.

On 22 September 2013, the Islamic Consultative Assembly ratified the "Unsupervised or III Supervised Children and Youth Protection Bill."

We would like to take this opportunity to express our grave concern to your Excellency's Government regarding the aforementioned discriminatory legislation which allows discrimination on the basis of sex and child marriage and polygamy to continue in the Islamic Republic of Iran. We are particularly concerned that article 1401 of the Civil Code provides for marriage for girls at 13 years and that, with the permission of a competent court, girls can enter into a marriage contract at an even younger age. We are also concerned that article 27 of the recently ratified "Unsupervised or III Supervised Children and Youth Protection Bill", allows for a marriage between a child and legal guardian in circumstances where a child "has reached maturity / puberty" and "marriage with the guardian would be in the best interests of the child". When read in conjunction with article 1210 of the Civil Code, which sets the age of puberty for girls at 9 lunar years (8 years and 9 months), the implication of article 27 is that girls as young as 9 years can be married. This is clearly a serious violation of their most fundamental human rights and a threat to their physical, mental and moral integrity. Also, article 5(j) of the Bill states that a single woman aged thirty years and above with sufficient means can adopt only a female child: when read in conjunction with article 27 of the Bill, it is clear that article 27 primarily relates to marriage between an adoptive father and a girl child. Under no circumstances can a marriage of a girl child aged 9 years with her legal guardian be considered as being in the "best interests" of the child.

In this connection, we would like to take this opportunity to remind your Excellency's Government of its obligations under the Convention on the Rights of the Child (hereinafter "CRC"), which was ratified by the Islamic Republic of Iran on 13 July 1994. Child marriage undermines a number of rights guaranteed under the CRC, including 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)) and the rights to protection from all forms of physical and mental violence, injury or abuse, including sexual abuse (article 19), sexual exploitation (article 34) and exploitation (article 36). Child marriage also violates the right not to be separated from their parents against their will (article 9); the right to education and to receive educational and vocational information and guidance (article 28) and the right to seek, receive and impart information and ideas (article 13). Furthermore, article 19 CRC requires States to take

"all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation including sexual abuse, while in the care of parent(s), *legal guardian(s)* or any other person who has the care of the child..."

In particular, we wish to refer to the right to the highest attainable standard of health of young girls affected by the Bill. This right is protected, *inter alia*, by article 12 of the International Covenant on Economic, Social and Cultural Rights (ratified by the Islamic Republic of Iran on 24 June 1975), which provides for the right of everyone to the enjoyment of the highest attainable standard of mental and physical health. In its General Comment No. 14, the Committee on Economic, Social and Cultural Rights holds that the right to health imposes three types or levels of obligations on States parties: the obligations to respect, protect and fulfil (para.33). The obligation to respect requires States to refrain from interfering directly or indirectly with the enjoyment of the right to health, while the duty to protect requires States to take measures to protect all vulnerable or marginalized groups of society, in particular women, children and adolescents. Furthermore, the Committee stresses the need to adopt effective and appropriate measures to abolish harmful traditional practices affecting the health of children, particularly girls, including early marriage, female genital mutilation, preferential feeding and care of male children (para. 22).

We wish to emphasize that the health implications associated with the practice of child marriage are devastating. 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% 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.

Child marriage 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 often brings an end to a girl's chance of continued education. The Committee on Economic, Social and Cultural Rights has also stated that the practice of early marriage also has a negative impact on the rights to education and work (E/1999/22, para.73).

With this in mind, we would like to reiterate the recommendations of the 2005 Concluding Observations from the Committee on the Rights of the Child (CRC/C/15/Add.24) to the Islamic Republic of Iran, where the Committee expressed its deep concern at the "very low ages and the related practice of forced, early and temporary marriages" in the State. The Committee urged the Islamic Republic of Iran in paragraph 23 of the same Concluding Observations to "review its legislation so that the age of majority is set at 18 years of age and that minimum age requirements conform with all the principles and provisions of the Convention and with internationally accepted

standards ... in particular that they are gender neutral, in the best interests of the child, and ensure that they are enforced.” The Committee also recommended that the State “take the necessary steps to prevent and combat forced, early and temporary marriages.”

Similarly, in paragraph 18 of its 2013 Concluding Observations (E/C.12/IRN/CO/2) to the Islamic Republic of Iran, the Committee on Economic, Social and Cultural Rights expressed its concern that the minimum age for marriage, namely 13 years for girls and 15 years for boys, as provided for in the Civil Code, is inconsistent with the requirement under the Covenant that marriage be entered into only with the free consent of the intending spouses. The Committee again called on the State to raise the minimum age of marriage to 18 years for both boys and girls, and to ensure that marriage can be entered into only with the free consent of the intending spouses.

Furthermore, we wish to recall paragraphs 28 of the 2011 Concluding Observations of the Human Rights Committee (CCPR/C/IRN/Q/CO.3), where the Committee expressed concern to the Islamic Republic of Iran that the minimum age for marriage is too low and that it differentiates on the basis of sex. The Committee was also concerned about the practice of forced, early and temporary marriages of young girls and called on the State to eliminate discrimination on the basis of sex in the minimum age of marriage, to ensure that the minimum age complies with international standards, and to adopt active measures preventing forced, early and temporary marriage of girls.

Child marriage violates many of the fundamental human rights of a girl and severely undermines her long-term prospects. The International Conference on Population and Development (ICPD) has called on countries to eliminate child marriage and to “strictly enforce laws to ensure that marriage is entered into only with the free and full consent of the intending spouses” in accordance with Article 16(b) of the Universal Declaration of Human Rights. In paragraph (qq) of its Agreed Conclusions adopted in March 2013 (E/2013/27- E/CN.6/2013/11), the Commission on the Status of Women recommended that States “review, enact and strictly enforce laws and regulations concerning the minimum legal age of consent and the minimum age for marriage, raising the minimum age for marriage where necessary, and generate social support for the enforcement of these laws in order to end the practice of child, early and forced marriage.”

Girls who marry young are also more vulnerable to intimate partner violence and sexual abuse than those who marry later in life. This is especially true when the age gap between the child bride and the spouse is large. In this regard, we would like to bring to your Excellency’s Government’s attention article 4 (c & d) of the United Nations Declaration on the Elimination of Violence against Women, which 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. To this end, States should develop penal, civil, labour and administrative sanctions in domestic legislation to punish and redress the wrongs caused to women who are subjected to violence. Article 4 of the Declaration also underlines the responsibility of States to condemn violence against women and calls on States not to invoke any custom, tradition or religious consideration

to avoid their obligations with respect to its elimination. In her 2006 report on her country mission to the Islamic Republic of Iran, (E/CN.4/2006/61/Add.3), the Special Rapporteur on violence against women called on the Government to “prevent early and forced marriages” and to “raise the age of majority of girls and boys to 18 in conformity with the Convention on the Rights of the Child” (para. 73).

Moreover, child marriage can be considered as a form of slavery. Article 1 of the Supplementary Slavery Convention, which was acceded to by the Islamic Republic of Iran on 30 December 1959, stipulates that State parties “shall take all practicable and necessary legislative and other measures to bring about progressively and as soon as possible the complete abolition or abandonment of the following institutions and practices, where they still exist.” This includes “any institution or practice whereby a woman, without the right to refuse, is promised or given in marriage on payment of a consideration in money or in kind to her parents, guardian, family or any other person or group” (article 1(c)(i)). As children do not have the capacity to consent to marriage, child marriage is in essence marriage without the right to refuse. In her 2012 Thematic Report on Servile Marriage, the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, highlighted the need to view servile marriages, which include child marriages, as forms of slavery, so as to better form and shape actions to prevent such marriages and support victims.

In relation to the information received regarding the conformity of article 27 of the aforementioned Bill with Shari’a Law, we would like to recall article 5 of the Vienna Declaration and Programme of Action, which prioritizes and guarantees women’s rights to equality in all contexts, including where discrimination derives from religion. Article 5 states that “all human rights are universal, indivisible and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.” Article 18 of the Declaration also stipulates that “the human rights of women and the girl-child are an inalienable, integral and indivisible part of universal human rights. The full and equal participation of women in political, civil, economic, social and cultural life, at the national, regional and international levels, and the eradication of all forms of discrimination on grounds of sex are priority objectives of the international community.”

In addition, the Human Rights Committee’s interpretation of the International Covenant on Civil and Political Rights (hereinafter “ICCPR”), which was ratified by the Islamic Republic of Iran on 25 June 1975, is clear in that where a clash occurs, it is the right to equality which prevails. Paragraph 5 of its General Comment 28 on Equality of rights between men and women states that, “inequality in the enjoyment of rights by women throughout the world is deeply embedded in tradition, history and culture, including religious attitudes ... States parties should ensure that traditional, historical, religious or cultural attitudes are not used to justify violations of women’s right to equality before the law and to equal enjoyment of all Covenant rights.”

Harmful practices inflicted on women or girls can never be justified in the name of freedom of religion or belief. In this regard, we would like to bring to your Excellency's Government's attention paragraph 30 of the 2013 interim report of the Special Rapporteur on freedom of religion or belief to the General Assembly (A/68/290), in which he emphasizes that "... as a human right, freedom of religion or belief can never serve as a justification for violations of the human rights of women and girls." Furthermore, in paragraph 69 of the 2011 interim report to the General Assembly (A/65/207), the Special Rapporteur on freedom of religion or belief stresses that "... the mandate needs to continue highlighting discriminatory practices that women have had to suffer over centuries and continue to do so, sometimes in the name of religion or within their religious community. It can no longer be taboo to demand that women's rights take priority over intolerant beliefs used to justify gender discrimination."

With regard to the Guardian Council's opinion, dated 15 August 2012, that there was no legal impediment under Shari'a Law to a legal guardian marrying an adoptive child, we would like to draw your Excellency's Government's attention to paragraph 28 of the aforementioned report (A/68/290), in which the Special Rapporteur on freedom of religion or belief emphasizes that "freedom of religion or belief, in conjunction with freedom of expression, helps open up religious traditions to systematic questions and debates... This can lead to more gender-sensitive readings of religious texts and far-reaching discoveries in this field."

In this context we would like to bring to the attention of your Excellency's Government paragraph 9 of General Comment 22 on the right to freedom of thought, conscience and religion, in which the Human Rights Committee observed that "The fact that a religion is recognized as a state religion or that it is established as official or traditional or that its followers comprise the majority of the population, shall not result in any impairment of the enjoyment of any of the rights under the Covenant."

Furthermore, we would like to remind your Excellency's Government of paragraph 10 of the aforementioned General Comment 22, which states that "If a set of beliefs is treated as official ideology in constitutions, statutes, proclamations of ruling parties, etc., or in actual practice, this shall not result in any impairment of the freedoms under article 18 or any other rights recognized under the Covenant nor in any discrimination against persons who do not accept the official ideology or who oppose it."

In light of the above, we would therefore encourage your Excellency's Government to review its domestic legislation, so that the age of majority is set at 18 years, and that minimum age requirements conform with all the principles and provisions of internationally accepted standards, in particular, the Convention on the Rights of the Child.

We would also encourage your Excellency's Government to undertake a comprehensive review of the recently ratified "Unsupervised or III Supervised Children and Youth Protection Bill, with a view to removing all provisions that discriminate against, or have a discriminatory impact on women, including young girls and that it also take the necessary steps to prevent and combat forced, early and temporary marriages.

We further encourage your Excellency's Government to ratify the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and to withdraw its reservation to the Convention on the Rights of the Child, which stipulates that, "the Government of the Islamic Republic of Iran reserves the right not to apply any provisions or articles of the Convention that are incompatible with Islamic Laws and the international legislation in effect."

Moreover, as it is our responsibility under the mandates provided to us by the Human Rights Council and reinforced by the appropriate resolutions of the General Assembly, to seek to clarify all cases brought to our attention and, since we are expected to report on these cases to the Council, we would be grateful for your cooperation and your observations on the following matters:

1. Are the facts alleged in the above summary of the case accurate?
2. Please provide information on measures taken by the Government of the Islamic Republic of Iran to address forced, early and temporary marriages in conformity with its international human rights legal obligations.
3. Please provide information on efforts undertaken by the Government to implement recommendations from the 2006 Report of the Special Rapporteur on Violence Against Women following her visit to the Islamic Republic of Iran, in particular to prevent early and forced marriages and raising the age of majority for girls and boys to 18, in conformity with the Convention on the Rights of the Child.
4. Please provide details of measures taken to ensure the enjoyment of the right to health of children who are affected by the Bill.
5. Please explain, in light of the Guardian Council's opinion of 15 August 2012 that a marriage between a child and the legal guardian cannot be prohibited under Shari'a Law, how the Bill ensures full respect and compliance with the international human rights standards on freedom of religion or belief relating to the prohibition of child marriage.

We would appreciate a response within sixty days. Your Excellency's Government's response will be made available in a report to the Human Rights Council for its consideration.

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

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

Anand Grover
Special Rapporteur on the right of everyone to the enjoyment of the
highest attainable standard of physical and mental health

Ahmed Shaheed
Special Rapporteur on the situation of human rights in the Islamic
Republic of Iran

Gulnara Shahinian
Special Rapporteur on contemporary forms of slavery

Heiner Bielefeldt
Special Rapporteur on freedom of religion or belief

Najat Maalla M'jid
Special Rapporteur on the sale of children, child prostitution and child
pornography

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