

Mandates of the Working Group on the issue of discrimination against women in law and in practice; the Special Rapporteur on the sale of children, child prostitution and child pornography; the Special Rapporteur on contemporary forms of slavery; the Special Rapporteur on trafficking in persons, especially women and children; and the Special Rapporteur on violence against women, its causes and consequences

REFERENCE: AL
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18 July 2014

Excellency,

We have the honour to address you in our capacity as Chairperson-Rapporteur of the Working Group on the issue of discrimination against women in law and in practice; Special Rapporteur on the sale of children, child prostitution and child pornography; Special Rapporteur on contemporary forms of slavery; Special Rapporteur on trafficking in persons, especially women and children; and Special Rapporteur on violence against women, its causes and consequences pursuant to Human Rights Council resolutions 23/7, 25/6, 24/3, 17/1, and 23/25.

In this connection, the Working Group would like to bring to the attention of your Excellency's Government concerns related to discriminatory legislation and the persistence of harmful practices allowing for child and forced marriage.

According to the information received:

Child and forced marriages are reportedly a widespread phenomenon in the Republic of Yemen, with girls as young as 8 years old being married in rural areas. It is alleged that reasons for this phenomenon include alleviation of poverty and a belief that arranging marriages for girls provides them with better prospects for the future. Some families allegedly also consider their daughters as an economic asset, due to the payment of a dowry, in the form of money or gifts, which are offered to the family of the bride by a future husband prior to marriage.

Since the abrogation in 1999 of the Personal Status Law No. 20 of 1992, which had previously set the minimum age for marriage at 15 years, there is reportedly no legislative framework expressly specifying a minimum age for marriage in the Republic of Yemen. It is also reported that, although article 2 of the Law on the Rights of the Child defines a child as "every human being below the age of 18 years of age unless majority is attained earlier", article 50 of the Civil Law of Yemen (Qanun al-Madani) sets the age of maturity at 15 years, with no

exceptions, and article 127 of the Personal Status Law No. 24 of 1999 sets the age of maturity (sin al rushud) for boys at 10 years, or the attainment of puberty, whichever is earlier, and for girls, at 9 years, or the attainment of puberty.

Additionally, article 15 of the Personal Status Law expressly permits marriage of a girl less than 15 years of age, with the consent of her guardian. The Personal Status Law specifically provides that a girl child's consent is not required for her guardian to arrange her marriage. Furthermore, article 23 of the Personal Status Law states that a previously-married woman or a widow must consent to marriage; however, the same article establishes that a "virgin's silence signifies her consent."

In 2009, the Government of Yemen reportedly introduced a draft Bill, modifying article 15 of the Personal Status Law, and proposing a minimum marriage age for both girls and boys of 17 years. However, following a debate in the national Parliament in 2010, the Shari'a Legislative Committee made recommendations against establishing a minimum age of marriage, citing that setting such a minimum age contradicted Islamic principles. It has been reported that discussion on the Bill has subsequently been postponed and that the draft Bill is still pending adoption.

Lastly, it has been alleged that trafficking in girls for sexual purposes or "tourism marriage" is an extremely grave phenomenon in the Republic of Yemen and that older men from the region come to Yemen in order to marry girls as young as 15 years old.

We would like to take this opportunity to express our concern to your Excellency's Government regarding the aforementioned discriminatory legislation which condones 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, severely undermine their health and safety, and their long-term prospects for education or economic and social opportunities. 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.

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 to all the principles and provisions of internationally accepted standards, in particular, the CRC.

We would also encourage your Excellency's Government to undertake a comprehensive review of the Personal Status Law, in line with recommendations of the CEDAW Committee (CEDAW/C/YEM/CO/6) set out below with a view to repealing 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 child, forced and temporary marriages.

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.

As it is our responsibility under the mandate provided to us by the Human Rights Council to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.

2. Please provide information on any reform measures currently being considered by the Republic of Yemen, including an update on the status of the above-mentioned Bill, to prevent child and forced marriages, in conformity with its international rights obligations.

3. Please provide any further information on any measures taken by Your Government to address women's and girls' health and protection from violence in child and forced marriages, and additional issues such as appropriate redress mechanisms available for victims, rehabilitation, counselling and reintegration, and girls' education.

We would appreciate 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.

Frances Raday
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Maud De Boer-Buquicchio
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Urmila Bhoola
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Special Rapporteur on trafficking in persons, especially women and children

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

Annex

Reference to international human rights law

The above-mentioned alleged facts indicate a prima facie violation of a minimum age of marriage and 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), ratified by Yemen on 9 May 1987. 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 ratified by Yemen on 9 May 1987.

The Convention on the Elimination of all forms of discrimination against women (CEDAW), which was acceded to by Yemen on 30 May 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.”

We would like to reiterate the concerns expressed by the CEDAW Committee in its 2009 Concluding Observations (CEDAW/C/YEM/CO/6) to the Republic of Yemen. In paragraph 30, the Committee has expressed its extreme concern at the amendment to the Personal Status Law No. 20 of 1992 by Law No. 24 of 1999, which it considers was “a clear setback for the women’s rights and a serious violation of the State party’s obligations under the Convention.” The Committee has expressed its deep concern at the “legality” of such early marriages of girl children, some as young as eight years of age, which amounts to violence against them, creates a serious health risk for those girls and also prevents them from completing their education.”

In paragraph 31 of the aforementioned Concluding Observations, the CEDAW Committee has urged the State to “take urgent legislative measures to raise the minimum age of marriage for girls ... enforce the requirement to register all marriages in order to monitor their legality and the strict prohibition of early marriages, as well as to prosecute the perpetrators violating such provisions” and “to develop awareness-raising campaigns on the negative effects of early marriage on the well-being, health and education of girls.”

A further matter of concern highlighted in paragraph 32 is in relation to the so-called “tourist marriages” or “temporary marriages” of young Yemeni girls, usually from poor families, to non-Yemenis, usually rich men from neighbouring countries. The Committee has urged Yemen to “adopt all necessary measures to prevent these negative phenomena and combat this form of sex tourism, as well as to actively consider the recommendations of the Parliamentary Committee of Islamic jurisprudence legislators on this issue ... and prosecute the perpetrators of such acts” (para.33).

Similar concerns were also raised by the Committee on the Rights of the Child, in its 2014 Concluding Observations (CRC/C/YEM/CO/4) on Yemen (paras. 48-49 and 81-82).

Child and forced marriages undermine a number of rights and principles guaranteed under the Convention on the Rights of the Child (CRC), ratified by Yemen on 1 May 1991, 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 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.” 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.

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), acceded by the Republic of Yemen on 15 December 2004.

We wish to also recall paragraph 10 of the 2012 Concluding Observations of the Human Rights Committee (CCPR/C/YEM/CO/5) for Yemen, regarding the

discriminatory nature of article 23 of the Personal Status Law, which states that in matters of marriage, a “virgin’s silence” signifies consent.

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.

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.

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 (ICPD) 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.

In relation to the information received regarding the conformity of the proposed provision in the aforementioned draft Bill, raising the minimum age for marriage to 17 years, to Islamic principles, we would like to recall article 5 of the Vienna Declaration and Programme of Action, which 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.”

In addition, the Human Rights Committee's interpretation of the ICCPR clarifies that where a clash occurs between religious or cultural attitudes and women's right to equality, 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 rights 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, the 2013 report of the Special Rapporteur on freedom of religion or belief to the General Assembly (A/68/290), 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." (paragraph 30) and "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." (paragraph 28) Furthermore, in paragraph 69 of his 2011 report to the General Assembly (A/65/207), the Special Rapporteur 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."